

Client Alert

Environmental Practice Group

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EPA Seeks Comments by April 15 Regarding Hazardous Waste Compliance Burdens on Retail Establishments

The Resource Conservation and Recovery Act (RCRA) and rules promulgated by U.S. EPA under RCRA regulate “hazardous” wastes generated by U.S. businesses. Under these laws, certain products that can be placed in the trash by homeowners must be managed as “hazardous” wastes by commercial retail stores when they become unusable or unsellable. The legal regime for managing these retail sector “hazardous” wastes is the same that applies to heavy industries including petrochemical, automotive manufacturing, and mining of metals.

EPA acknowledges that these existing hazardous waste rules present special challenges and burdens for the retail sector. Ongoing communications with retail representatives have highlighted some of these concerns, but EPA is asking for more input. In a February 14, 2014 Federal Register notice, EPA solicited public comments and additional data that could help the Agency improve this situation, including, surprisingly, cost estimates associated with managing hazardous wastes. This information request is timely given a series of recent state and federal hazardous waste enforcement actions brought against retailers that have resulted in millions of dollars of penalties and settlements requiring extensive upgrades to waste management systems. These sorts of remedial requirements can be particularly challenging in the retail sector where they involve replicating expensive hazardous waste management systems at tens, hundreds, or even thousands of retail stores as well as throughout the companies’ distribution centers.

In the Federal Register notice, EPA said that it seeks information on such topics as:

- The vast number of products in retail establishments and associated hazardous waste management requirements for these products when damaged or unsellable;
- Multiple agency jurisdiction over management of pharmaceutical products that may become wastes;
- Reverse distribution challenges and point-of-waste determinations;

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- The enormous number of workers requiring hazardous waste management training, exacerbated by high employee turnover rates in the retail sector;
- Episodic waste generation resulting in fluctuating “small quantity” versus “large quantity” hazardous waste generator status; and
- Special concerns associated with aerosol cans.

EPA recognized that this list may be too limited and asked for information about other RCRA concerns facing any segment of the retail sector.

EPA wants help in making the hazardous waste rules, policies, and guidance more effective and less burdensome for retail establishments. The Agency is looking for specific suggestions that would help meet these goals. These comments could address such things as:

- Identifying hazardous wastes from the retail sector that "pose less risk to human health and the environment" than other hazardous wastes;
- Whether existing rules impede the ability to donate returned or other products;
- How EPA could encourage safe recycling or reuse of retail sector hazardous wastes;
- Whether expansion of the Universal Waste Rule—which streamlines the storage, labeling, transportation, training, and notification requirements placed on waste handlers—could be beneficial (the Agency is considering separate universal waste rules for pharmaceutical products);
- Ways to modify rules to reduce burdens on facilities with episodic hazardous waste generation patterns; and
- Ways to reduce regulatory barriers to participating in product take-back programs.

While EPA has requested comments on these, and other topics, any suggestions for improvement are seemingly fair game. Comments are due by April 15, 2014.

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