SUPPLY CHAIN CONFERENCE

Connect. Transform. Deliver.

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Paradise Point Resort & Spa
San Diego, CA
The Regulatory Environment: Making Sense of it All

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Agenda

- Regulatory Realities
- Hazardous Waste Regulations
- Key Issues for Retailers
- The Importance for Manufacturers
- Keeping the Supply Chain Safe
- Best Practices
- Panel Discussion
Regulatory Realities
California settles with Retailer $8.65M

Retailer will pay $27.6M to settle a hazardous-waste lawsuit

Stores pay $2.3M to settle waste case

Retailer fined for illegal disposal $3.3M

Retailer settles hazardous-waste claims $9.87M

Retailer to pay $22.5M to settle hazardous-waste dumping case
The states on enforcement “fire” by state and federal agencies (represented by the darker red)

Uncertainty with new Administration and budget allocation
High-Level Hazardous Waste Regulations
What Every Generator Must Do

COUNT THE AMOUNT OF HAZARDOUS WASTE IT GENERATES

You have to know what it is to count it
To count it you have to know...

- Is the item a solid waste?
- Is the item excepted from definition of solid waste?
- Is the waste a listed hazardous waste?
- Is the waste a characteristic hazardous waste?
- Is the item excepted from definition of hazardous waste?
- Is the item a universal waste?

...for the relevant state or local regulation.
Is it a solid waste?

- Accumulated, stored, treated before disposal
- Not a solid waste if…
  - Subject to certain solid waste exclusions
  - Returning through Reverse Logistics for financial reconciliation and/or other purposes (potential liquidation, donation, packaging evaluation, etc.)
EPA Deems Hazardous

1. LISTS
   - Includes, P & U lists
   - Acutely (P-listed)
   - Non-Acutely

2. CHARACTERISTIC
   - Ignitable (flashpoint < 140 deg. F)
   - Corrosive (2.0 < pH < 12.5)
   - Reactive
   - Toxic (40 chemicals w/ published regulated concentration)
Characteristic Hazardous Wastes

SELECTED RETAIL EXAMPLES

TOXIC D004-D043
Some Multivitamins

CORROSIVE D002
Some Anti-dandruff Shampoos

IGNITABLE D001
Some Body Sprays
Some Hairsprays
Listed Hazardous Waste

“P-Listed” Acutely Hazardous

Sole Active Ingredient: Nicotine

Nicorette Gum

NicoDerm CQ

“U-Listed” Not Acutely Hazardous

Some Chloroseptic Sprays

Moth Balls

Sole Active Ingredient: Phenol

Sole Active Ingredient: Napthalene

The mere presence of a certain concentration (or any) of a chemical in a waste can make it a hazardous waste.
**Generator Status**

≥ 1,000 kg per month HW  
No limit to on-site accumulation

HW onsite at any given time ≤ 6,000 kg  
< 1,000 kg per month HW  
≤ 1 kg per month, Acutely HW (Nicotine)

HW onsite at any given time < 1,000 kg  
≤ 100 kg per month HW  
≤ 1 kg per month, Acutely HW (Nicotine)

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*Note: Recently EPA published the Generator Improvements Rule which modifies CESQG to Very Small Quantity Generator (VSQG) effective May 30, 2017 or as States adopt.*
# Extensive Training Required

## Hazardous Waste

- Anyone who could cause non-compliance at the facility
- Training contents: duties that ensure compliance
- Initial training: employee assumes duties
- Annual review thereafter

## DOT Hazardous Materials

- Employees who directly affect transportation safety
- Training contents: compliance with applicable rules and safety
- Determined, tested, and certified by the employer
- Initial training: employee assumes duties
- Repeat every three years
- Train whenever relevant rule changes
Note: These maps are not intended as legal advice. It is intended for illustrative purposes only. It is intended to cover certain, common consumer products and prescription drugs. It is not intended to cover some consumer products (e.g., electronic devices, etc.), residues from consumer products, and products intended for recycling (e.g., triggering various state exceptions or exemptions to the definition of solid waste or hazardous waste). Any generator should review and apply the state hazardous waste law that applies to the location, in question.
Challenges within Hazardous Waste Regulations

EPA Sets the Federal Floor

States may be more stringent than EPA regulations

State patchwork of hazardous waste regulations developed

- Exemptions/exclusions to definition of waste
- Waste characterization
- Point of generation of waste
- Generator categories
- Management of hazardous waste
- Universal wastes
- Electronic devices
- Emphasis on enforcement in retail
Key Issues for Retailers
Retail ≠ Industrial

**RETAIL**
- Stores in many states
- Many products
- Low-volume waste streams
- Volume naturally fluctuates
- Consumer packaged product
- No chemical experts
- Hourly employees

**INDUSTRIAL**
- Facilities in a few states
- Few waste streams
- Large-volume waste streams
- Relatively consistent volumes
- Drums & tanks of waste
- Chemical experts
- Full-time employees
Interpreting Rule Requirements

How would you interpret this for the retail setting?

Recently Proposed Rule:
“[Incompatible hazardous waste] must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.”

80 Fed. Reg. at 57,996, 2015
Where does a consumer product or pharmaceutical become waste?

- Retailer?
- Reverse Distributor?
- Consumer

EPA Longstanding Regulatory Interpretations
EPA Reconsidering Position
The Importance for Manufacturers
Selected Retail Products Which May Need DOT Classification

- Aerosols
- Toxics
- Oxidizers

- Flammables
- Corrosives Caustic
- Corrosives Acidic
Why should manufacturers care?

- Unnecessary regulatory burdens have direct and indirect impacts on manufacturers.
- State inconsistencies in regulation cause retailers to apply the most stringent of the rules at all facilities.
- Regulatory burdens equal more waste.
- Unnecessary regulatory burdens disrupt viability of secondary market and other sustainable solutions.
- Collaborative opportunities to educate regulators.
- Retailers rely on manufacturers to tell them what is in their product or how to handle/ship/dispose of properly.
Extended Producer Responsibility

- Typically holds manufacturers responsible for funding the handling and disposal of certain consumer products
- Electronic devices
- Pharmaceuticals

Pharm. Research & Mfrs. Of Am. v. County Of Alameda

- Before U.S. Supreme court
- First of kind ordinance
- Requires drug producers to establish and pay for drug take back program
- Constitutional challenge – commerce clause
- If upheld, could lead to a wave of similar laws and could extend to other consumer products
Keeping the Supply Chain Safe
Flow of Retail Items (Consumer Goods) and Wastes

Supplier/Vendor → Supplier/Vendor Distribution Center → Retailer Distribution Center → Retailer

→ Reverse Logistics Center

Retailer → Consumer

→ Donation or Liquidation (Salvage)

→ Repair or Refurbishment

→ Recycling

→ Solid Waste Disposal

→ Hazardous Waste Disposal

→ Hazardous Waste Disposal

→ Solid Waste Disposal

→ Recycling

→ Repair or Refurbishment

→ Donation or Liquidation (Salvage)

→ Consumer

→ Retailer

→ Retailer Distribution Center

→ Supplier/Vendor Distribution Center

→ Supplier/Vendor

Lifecycle of a Product
Government goal is “waste reduction”
Reduce, Reuse, Recycle

- Donation or Liquidation (Salvage)
- Repair or Refurbishment

- Recycling
- Solid Waste Disposal
- Hazardous Waste Disposal
Best Practices
DON’T SEND BROKEN/LEAKING PRODUCTS TO REVERSE DISTRIBUTOR
Is it being managed in a waste-like manner?

## Is it being managed in a waste-like manner?

<table>
<thead>
<tr>
<th>Section 1: Does the facility appear to be managing the material being evaluated in a manner that suggests it is a product (as opposed to being abandoned or stored in lieu of abandonment)?</th>
<th>Yes</th>
<th>No</th>
<th>N/A</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Note: Where the inspector observes questionable management practices that suggest abandonment of a material (see below), take pictures to document these observed practices.</td>
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<tr>
<td>1. Are the containers used to store the material in good condition (vs. crushed, bulging, corroded, dusty, leaking, incompatible with the contents, open, or overpacked)?</td>
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<td>2. Are the containers of concern stored in a manner that suggests the material has value? (For example, is the material protected from precipitation, locked-up when the facility is not operating, or stored in a fenced/secure area?)</td>
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<tr>
<td>3. Does the management of the containers appear to preserve the material’s integrity and serve to prevent the material from becoming unstable, unusable or contaminated?</td>
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<td>4. Do the containers have labels that identify the contents as product?</td>
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<tr>
<td>5. Do the container labels have information, such as lot number, manufacture date, or expiration date, to help determine the age/viability of the material, particularly if a recommended expiration date has been exceeded?</td>
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<tr>
<td>6. If a container is not labeled, can the facility support a claim that the contents is a product (e.g., provide analytical testing results to verify that the material meets specifications for use, or explain that it recently had to transfer contents to a new container due to damage to the original container and can provide record of purchase)?</td>
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<tr>
<td>7. Does the condition of the material suggest it is a valuable product? (For example, no crystals have formed inside or outside the container, the material is not discolored, there is no phase separation evident)</td>
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<tr>
<td>8. Does the facility manage the material as a valuable commodity by limiting access to the material and having security procedures in place to prevent unauthorized removal of the material?</td>
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</tr>
</tbody>
</table>

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**HOUSEKEEPING MATTERS**

DON’T COMMINGLE HAZARDOUS WASTES WITH NON-HAZARDOUS WASTES
Don’t commingle product with wastes

CRITICAL
SEGREGATE INCOMPATIBLE HAZARDOUS WASTES
Panel Discussion
Questions