

September 8, 2020

Some Relief for Generators of Retail Hazardous Waste in Sight

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On September 1, the California legislature sent to the Governor amendments to California's Hazardous Waste Control Law. Once signed by the Governor, AB 2920 will allow retail hazardous waste to be shipped on a "consolidated manifest." This simplified procedure has been available for specific types of hazardous waste such as used oil, but this is the first time it has applied a broad, general category such as "retail hazardous waste."

"Retail hazardous waste" refers to certain products that retailers dispose of rather than sell, such as returns, damaged products, display and sample products, or outdated products that the vendor does not want back. Some of these unwanted retail products must be managed as hazardous waste because of their hazardous characteristics, including everyday items as apparently innocuous as aerosols, laundry detergent, some cosmetics, personal hygiene products, sunscreen, alkaline batteries, electronic devices, and cleaning products. Items such as these may not be disposed of in the regular trash and must be shipped and disposed of as hazardous waste.

Improper management of retail hazardous waste is a frequent target of coordinated statewide enforcement actions by teams of District Attorneys and the Attorney General. Penalties and costs collected from retailers have ranged from the millions to the tens of millions to, in some cases, over 20 million dollars.

To properly manage items of retail hazardous waste, retailers must arrange for licensed companies to transport their hazardous waste to facilities that are permitted to treat or dispose of the waste. Currently, each individual shipment of each store's hazardous waste must be documented on a separate hazardous waste manifest, which follows the waste through to its eventual treatment or disposal. A copy of the manifest must then be filed with the USEPA and the State.

As the "generator" of the hazardous waste, the retailer bears ultimate responsibility for seeing that its manifests are properly filed and so must track and reconcile each hazardous waste manifest. This cumbersome process can be particularly vexing for retailers, as managing hazardous waste is far outside their core business operations. Retailers tend to generate relatively small (but nonetheless significant) amounts of hazardous waste, which may be shipped offsite only once or twice a year, so it is difficult to develop any sort of a routine that fits within their daily operations.

AB 2920 lifts some of the burden from retailers by allowing hazardous waste transporters to combine retail hazardous waste from multiple retail locations and transport it under a single "consolidated" hazardous waste

manifest. The retailer receives a receipt and the transporter assumes the position of both “generator” and “transporter” on the manifest.

This simpler process puts responsibility squarely in the hands of trained professionals who do this every day, rather than retail employees who rarely deal with the complex hazardous waste rules. Individual retail locations will no longer be responsible for tracking hazardous waste manifests to be certain their waste arrived at a permitted treatment/disposal facility and filing manifest exception reports if the manifest is not filed with the State.

By lightening the burden somewhat on retailers faced with the myriad of regulations that suddenly apply when a consumer product is determined to be both “hazardous” and a “waste,” the availability of these new procedures should reduce the cost of managing retail hazardous waste. Moreover, by allowing the consolidation of retail hazardous waste from multiple locations, consolidated manifesting will reduce the volume of hazardous waste being sent to the limited number of hazardous waste repositories in California.

The new law is not a complete panacea for retailers, however. It only applies to waste that is not deemed hazardous under Federal law but which is classified as “hazardous waste” under California’s more stringent definitions. Thus, some items of “retail hazardous waste,” such as the current proliferation of almost-empty bottles of hand sanitizer (which would be “ignitable” under both Federal and California law), would still need to be manifested according to Federal law.

Nonetheless, much of the “retail hazardous waste” generated in California is considered hazardous simply because it does not pass the California-specific “96-hour acute aquatic toxicity test.” The new law provides retailers, and transporters, with a path to simplify at least one piece of the complex regulations applicable to “retail hazardous waste.”

The Governor has until September 30, 2020, to sign the bill, but this common-sense amendment, which passed with no opposition, should soon be providing some welcome relief to retailers.

Buchalter has experienced environmental attorneys who can assist clients with the complex world of hazardous waste regulations, including significant experience representing clients in enforcement by District Attorney teams targeting retail hazardous waste. Please feel free to contact any of the Buchalter attorneys below.



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