

Managing Hazardous Waste: Three Keys to RCRA Compliance

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EVERY ENTITY, LARGE OR SMALL, that generates any waste that requires disposal is subject to the federal Resource Conservation and Recovery Act (RCRA), including colleges, healthcare facilities, retail establishments and office buildings. In fact, regulatory changes that make RCRA compliance more practical for retailers and other businesses not typically involved in hazardous waste management are under consideration by the U.S. EPA.

Although the RCRA requirements imposed on industrial businesses are more demanding, there are some requirements that apply to all entities that generate waste. Here are three key hazardous waste management issues that must be addressed to ensure RCRA compliance.

#1: Anyone who generates waste is required to make a determination as to whether that waste is regulated as a hazardous waste. The failure to do so is a violation of RCRA, even if the waste is not hazardous waste. Determining whether waste is hazardous waste under RCRA is not a common sense exercise.

Waste may be deemed hazardous if it appears on one of four lists published by the EPA or demonstrates the characteristics of ignitability, corrosiveness, reactivity or toxicity, as those terms are defined in the RCRA regulations. The determination can be a complicated analysis and should be performed by someone who is familiar with the RCRA regulations, the processes that generated the waste and the characteristics of waste.

Hazardous waste determinations can be based on actual testing or knowledge of the waste. Once a generator has properly classified a waste stream, it can continue to rely on that determination rather than repeating it for each batch of waste, as long as the waste being generated is the same.

#2: The point at which materials become waste has significant consequences under RCRA. For some types of materials, such as merchandise returned by customers or expired inventory, it may not be obvious when material changed from being a product to a waste. While it is a product, RCRA does not apply, but once it becomes a waste, a determination has to be made as to whether it is hazardous waste, and penalties can be assessed for failure to handle it in accordance with the applicable requirements.

When there is a bona fide potential for sale or reuse as a product, the material can be maintained as a non-waste until it can be evaluated and a determination made regarding its suitability for sale or reuse. The determination on sale or reuse has to be made within a reasonable amount of time and the potential for sale or reuse has to be genuine. A decision to recycle such a material could also save it from regulation as a waste, but it depends on the type of recycling involved and someone with RCRA expertise should be consulted.

A plan that includes various disposition options and decision points should be developed with a consultant or attorney who has a strong RCRA background. The plan should be sophisticated enough to withstand government scrutiny. EPA and state environmental agencies will evaluate the plan to determine whether it is "real" or merely a sham designed to postpone or avoid waste management regulation.

Regulators will be inclined to deem items as waste and subject to regulation as of the time they are treated like waste. The fact that the materials are not formally declared to be wastes by the generator until weeks later may not postpone the generator's responsibility to comply with applicable waste management requirements.

#3: For those businesses that generate any hazardous waste, the degree of regulation imposed by RCRA

continued on page 60



continued from page 58

depends on how much hazardous waste is generated and stored in each calendar month. Companies are required to count all hazardous waste generated or stored on a calendar-month-by-calendar-month basis. There are three categories of generators:

Conditionally Exempt Small Quantity Generators (CESQG)—CESQGs are exempt from hazardous waste management regulations provided they identify all hazardous waste that they generate; generate no more than the following quantities of waste in a calendar month—100 kilograms (220 lbs.) of nonacute hazardous waste, 100 kilograms (220 lbs.) of acute spill cleanup residue and/or 1 kilogram (2.2 lbs.) of other acute hazardous wastes; store no more than 1,000 kilograms (2,200 lbs.) of nonacute hazardous waste, no more than 100 kilograms (220 lbs.) of acute hazardous waste spill cleanup residue and no more than 1 kilogram (2.2 lbs.) of other acute hazardous wastes on site at any time; and ensure that the hazardous waste they produce is sent to an appropriate offsite treatment or disposal facility.

Small Quantity Generators (SQG)—SQGs are excused from some waste management requirements provided

they generate no more than 1,000 kilograms (2,200 lbs.) of hazardous waste in a calendar month.

Large Quantity Generators (LQG)—The full spectrum of hazardous waste requirements apply when the generator produces more than 1,000 kilograms (2,200 lbs.) of nonacute hazardous waste or 1 kilogram (2.2 lbs.) of acute hazardous waste in a calendar month. It is important, when possible, to manage the generation, handling and disposal of wastes in a way that preserves eligibility for the lesser regulated categories. For example, timely disposal of hazardous wastes can avoid loss of CESQG status due to the accumulation of too much hazardous waste in a calendar month. Similarly, timely evaluation of materials for sale or reuse, rather than allowing them to accumulate, can avoid loss of CESQG status when more of the materials than expected in a calendar month have to be disposed as waste.

As part of a White House initiative to improve regulation and regulatory review, the EPA is evaluating information received from the retail sector regarding the hazardous waste management practices of retail establishments. Difficulties reported thus far by retailers include

management of products returned by customers, handling of aerosol cans, and dealing with episodic high volume wastes such as what may occur due to product recalls, parking lot dumping or spill cleanups.

The EPA's purpose is to better understand the retail sector's concerns in hopes of identifying opportunities to address the key issues. This may ultimately result in regulatory changes that make RCRA compliance more practical for retailers and other businesses not typically involved in hazardous waste management. In the meantime, retailers and similarly situated organizations must be familiar with the current RCRA scheme and have a workable plan for successfully dealing with it. Consultation with an environmental professional to stay abreast of ongoing regulatory requirements is recommended. ■

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U.S. retailers have paid penalties ranging from \$800,000 to \$22.5 million for improper handling and disposal of hazardous wastes.

