

Improving Regulations Docket
Environmental Protection Agency
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Executive Order 13563 - Improving Regulation and Regulatory Review
Retail Hazardous Waste Operations

Dear Environmental Protection Agency:

The Home Depot would like to first thank the Environmental Protection Agency for allowing the opportunity to submit comments to the agency under Executive Order 13563, titled “Improving Regulation and Regulatory Review.”

The Home Depot operates ~1900 locations throughout the United States (including the territories of Puerto Rico and the Virgin Islands), Canada, China and Mexico. Our store inventory consists of up to 40,000 different kinds of building materials, home improvement supplies, appliances and lawn and garden products. The company has the privilege to serve over 500,000 customers per day.

The Home Depot has a tremendous opportunity to make a positive impact in the lives of our customers and their respective communities throughout the United States. This commitment is easily demonstrated in the efforts put forth to be a retail sustainability leader. A few notable successes provided in Home Depot’s 2010 sustainability strategy report (<https://corporate.homedepot.com/wps/portal>) include reducing store energy usage by 2.6 billion kilowatt hours since 2004, in 2009 sales of The Home Depot’s Eco Option products resulted in \$740 million in utility bill savings for our customers, the company recycled more than 410,000 lbs of CFL bulbs, 105,000 lead acid batteries, and 667,000 lbs of rechargeable batteries in 2009 as well. These accomplishments demonstrate The Home Depot strives to be a market leader in environmental compliance and sustainability.

The Home Depot feels that further positive impact and community involvement is possible if certain regulatory burdens were streamlined. Specifically, the Resource Conservation and

Recovery Act (RCRA) has become a confounding regulatory challenge for the retail industry. RCRA's hazardous waste management regulations were initially developed many years ago to prevent the improper disposal of hazardous waste and respective damage to the environment. The regulations were tailored to more align with industrial processes such as manufacturing and chemical processing. Retail operations are presented with significant challenges when compared to the typical industrial process. Industrial processes are typically more predictive in terms of waste characterization and generation volumes. Waste determination and characterization are two fundamental RCRA requirements which retail programs will struggle when evaluated or inspected from a strict compliance perspective.

The characterization of waste is burdensome for retailers as wastes are mostly evaluated at a product level with varying degrees of information available to make an effective determination on the hazardous properties of a product. The retailer is often dependent on the vendor or manufacturer to supply accurate and timely information to meet the requirements of health and safety regulations and ultimately RCRA. The characterization of products which may potentially become waste is a complex and subjective task. Retailers are forced to become experts on product hazards and assumed waste implications while the manufacturers which own the product intellectual property are mostly allowed to operate without a level accountability in the life cycle of a product. It's not suggested that manufacturing bear all the accountability and costs of the entire life cycle but there should be some level of harmonization for the product data available on a Material Safety Data Sheet (MSDS) so any retailer can make an efficient and effective waste determination.

This process must be extremely difficult for more resource challenged retailers, grocers, restaurants, or convenience stores. It appears the level of compliance enforcement is not equally distributed across the retail sector as some smaller companies may choose to avoid the compliance requirements due to limited technical knowledge or regulatory awareness. It also appears that the level of inspection and enforcement actions at a state level target larger retail companies which in most cases are attempting to meet the compliance requirements, limit risk to their respective businesses, and do the right thing for the environment and respective communities in which they operate. One could argue that the violations which are cited may not directly align the overall intent of the RCRA agenda. Compliance matters regarding characterization are very much subjective based on the local regulatory agency's experience and expectations.

RCRA also requires that a waste determination be conducted to determine if a potentially regulated material should be discarded or can still be used for its intended purpose. Waste determination has become a very confusing and frustrating process filled with subjectivity and significant impact to retail operating strategies. Waste can be potentially generated through various processes such as customer satisfaction returns, customer take back programs, household hazardous waste events, product recalls, damaged product containers or packaging, off specification product, unauthorized dumping, customer spills, and merchandising set changes.

As you can see there is a large variability in how waste can be generated. Each waste generation variable contains many different pivotal events as well. It's very difficult for a retailer to effectively implement the waste determination requirements as currently written. There are many circumstances where the retail industry attempts to create alternative processes to prevent the generation of potentially regulated waste which has resulted in additional scrutiny by environmental compliance agencies.

As you are fully aware, the RCRA regulation requires that generators of hazardous waste have a strategy to minimize waste generation where possible. This is a very important piece of the RCRA regulation if it can be utilized as written. Retailers have several processes which can be leveraged to minimize the environmental, regulatory, and fiscal impact of generating large amounts of hazardous waste. Specifically, the industry utilizes reverse logistics systems to consolidate goods in order to effectively manage process and transportation costs. The reverse logistics platforms are uniquely designed to consolidate products which can be used for their intended purpose through selling, returning to vendor, or donating to charitable organizations. Again, there is a significant amount of subjectivity revolving around the reverse logistics processes and waste determination. There are legitimate opportunities to prevent waste from unnecessarily being generated as the consolidation process incentivizes regional recyclers, salvagers, and charitable organizations to offer outlets as transportation and processing costs are minimized. In addition to the reverse logistics process, product recalls or vendor return policies offer the opportunity for the retailer to provide the manufacturer or vendor merchandise to be recycled, reused, evaluated, or repackaged and sold depending on the circumstances rather than strictly discarding the products as regulated wastes. Retailers which have the best intentions and arguably meet the intent of the RCRA regulation are becoming scrutinized with multi-million dollar penalties by attempting to leverage different outlets to meet the waste minimization requirements set forth in RCRA.

The Home Depot has taken full ownership of protecting the environment where stores operate and will continue to do the right thing by ensuring any unauthorized waste is properly managed. The unexpected generation of potentially hazardous waste results in a perceived increase in waste generation related to a store's operations. Generation rates will vary with customer returns, seasonality, and unforeseen dumping in location parking lots. The existing RCRA regulations requires generation rates be calculated over a calendar month. Due to unforeseen seasonality and local waste generation events, generation rates factored over roughly 30 calendar days could force retailers to fluctuate from Conditionally Exempt Small Quantity Generator (CESQG) to Small Quantity Generator (SQG) and possibly Large Quantity Generator (LQG) each month. This variation could be normalized if an average waste generation over many months could be used rather than a single month.

The process challenges previously mentioned could be further streamlined by evaluating potential consumer product exemptions relating to waste determination, characterization, and generator status. As stated, a significant portion of waste generated can be driven by unforeseen

events in retail operations. It doesn't seem this level of variability was planned for in the RCRA regulations. The EPA provides that Household Hazardous Waste (HHW) isn't regulated as hazardous waste when generated by the consumer allowing these items to be discarded in the "trash." As provided on the EPA Household Hazardous Waste – Disposal Options webpage.

... "Federal law allows disposal of HHW in the trash. However, many communities have collection programs for HHW to reduce the potential harm posed by these chemicals. EPA encourages participation in these HHW collection programs rather than discarding the HHW in the trash."

Retailers are held to a high level of accountability and expend large amounts of resources to ensure effective hazardous waste management systems are in place to manage a small percentage of "hazardous waste" in consumer packaging or quantities. The consumer population is allowed to discard the same products via municipal waste. Obviously, the consumer HHW waste streams will be much larger than the waste generating process within a retail company. Understanding the EPA encourages consumers to find alternative outlets for household hazardous waste (HHW), there are few outlets available and often the retailer becomes the "disposal site" for consumer generated hazardous wastes. It seems that EPA could follow the path of other regulatory or standards organizations such as the International Fire Codes (IFC) which provides relief for materials provided in consumer quantities or packaging. An exception provided for household and consumer quantities in the 2006 International Fire Code (IFC) – Chapter 27, Hazardous Materials Section 2701.1 8 is provided below.

"Corrosives utilized in personal or household products in the manufacturer's original consumers packaging in Group M Occupancies."

From an environmental regulatory standpoint, the Universal Waste rules are well positioned to provide similar exceptions for consumer goods. The rules exist to provide less specific management requirements for low risk wastes commonly generated in many different industries. Universal Wastes currently include batteries, pesticides, mercury containing equipment and lamps. All of which are most likely offered to the consumer through retail outlets. The Universal Waste rules Part 273.8 provide guidance for persons handling household hazardous waste but do not specifically address retail operations and consumer goods. The Universal Waste rules could be expanded providing retailers relief on arduous product level waste classification requirements, ineffective waste determination requirements, and burdensome generator level management system requirements. It seems reasonable to suggest that when products have value and can be offered for recycling, reuse, salvage, or donation, retailers should pursue those options. If the Universal Waste rule could be expanded to streamline and clarify the previously mentioned requirements, resources most likely could be re-allocated to create outlets for household hazardous wastes to be more effectively and efficiently managed on a national scale.

The Home Depot has attempted to communicate the significant challenges presented to retail operations in complying with the RCRA regulations as currently written, interpreted, and enforced. The EPA has the opportunity to implement positive change for the consumer and the environment through expanding the Universal Waste regulations to include consumer products. This regulatory review could help streamline a burdensome process for the retail industry. Specifically, the EPA could consider improvements in the following areas:

- Provide consumer product relief under the Universal Waste rules allowing consumer products to be characterized generally as Universal Waste limiting the resource intensive product level hazard characteristic review
- Provide consumer product relief under the Universal Waste rules allowing for a consumer product waste exemption minimizing SQG or LQG management system constraints and respective regulatory scrutiny
- Provide consumer product relief under the Universal Waste rules allowing consumer product waste determinations to be made at a consolidation or returns processing facility or provide a specific ruling on when waste determination must be made in the retail returns process
- Provide definitive ruling on the regulatory requirements to donate or salvage potentially regulated consumer products
- Provide relief and regulatory guidance for retailers which participate in household hazardous waste collection programs

The Home Depot feels these recommendations will help initiate much warranted transformational change in the RCRA regulation. This change will provide further opportunities for retailers to help the EPA meet the intent of the RCRA regulation by providing avenues to minimize the generation of hazardous waste. Thank you again for the opportunity to partner with the EPA in an attempt to create a safer, more compliant, and sustainable work and shopping environment for our communities, customers, and associates.

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