



CONCERNS OF THE RETAIL ASSOCIATIONS WITH EPA'S RULEMAKING ON HAZARDOUS WASTE GENERATORS

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Office of Management and Budget
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KEY POINTS

The Proposed Rule Magnifies the Problems with Applying RCRA to the Retail Sector

- RCRA was designed to address industrial wastes but is now being applied aggressively to discarded consumer products from the retail sector – even though they are fundamentally different.
- EPA has recognized the mismatch and claimed that the current rule will go a long way toward fixing the problem but the proposal is actually a big step in the wrong direction.
- Retailers will bear the brunt of the rule since they are now the biggest group of regulated hazardous waste generators.
- The costs would be devastating and cannot be justified by any environmental benefit, especially since households discard exactly the same wastes in far greater quantities.

The Proposed Requirement to Keep Records on Non-Hazardous Waste Determinations Is Unlawful and Would Impose Tremendous Costs on Retailers

- EPA lacks statutory authority to require records for non-hazardous wastes and has not defined what “wastes” would be covered by the requirement.
- EPA's estimate of costs ignores impacts on the largest group of generators – retailers – which would be in the hundreds of millions or billions of dollars per year.
- It is not even clear that retailers could comply since they do not have full knowledge of product composition/characteristics and cannot feasibly test all the products.
- This is clearly a “major” rule requiring heightened OMB scrutiny.

The Proposal to Classify Generators with Minor Non-Compliances as Hazardous Waste Treatment/Storage/Disposal Facilities (TSDFs) Requiring a Permit Is Unlawful and Would Have Unimaginable Consequences

- Essentially all generators – even those with outstanding compliance programs – have occasional non-compliances and would be classified as TSDFs under this proposal.
- The result would be “a TSDF on every corner.”
- This would be a dramatic departure from current rules and would erase the fundamental statutory distinction between generators and TSDFs.
- EPA does not provide a rational explanation for this proposal and does not discuss the draconian implications, which would be grossly disproportional to any minor non-compliance.

EPA's Apparent Delay of Action on Nicotine-Containing Products Compounds the Problems with the Generator Rule

- Many retailers are subject to full regulation as large hazardous waste generators solely because they occasionally have to discard more than 1 kg (2.2 lbs) of low-concentration nicotine products (*e.g.*, gums, lozenges, patches, prescription sprays, and e-cigarettes).
- The 1 kg limit applies because these wastes are classified as *acutely* hazardous wastes, even though they clearly do not meet the criteria for such wastes – a teaspoon's worth will not result in death.
- Even though EPA has expressed openness to reclassifying low-concentration nicotine products from acutely hazardous to non-acutely hazardous or even non-hazardous wastes, its hesitation to move forward is difficult to understand.
- Finalizing the generator rule without addressing the nicotine issue will unnecessarily and inappropriately subject large numbers of retailers to the full force of the rule.

EPA's Limited Efforts to Provide Some Relief from Current Rules Are of Little or No Value to Retailers

- EPA's proposal to provide regulatory relief to "episodic generators" (who exceed the large generator threshold of 100 kg/month only occasionally) is only of very limited benefit to retailers since they generally will not know they have exceeded the threshold until it is too late to submit the required notification to EPA.
- EPA's proposal to "allow" large generators to consolidate hazardous wastes from related very small generators, subject to conditions, is actually more stringent than current law and would likely stop consolidation altogether.
- EPA's proposal to allow local fire departments to waive the requirement for a 50-foot buffer zone between ignitable/reactive waste storage areas and the property boundary would be an improvement but unnecessarily cumbersome.

Other Parts of the Generator Rule Were Not Designed with Retailers – the Biggest Group of Generators – in Mind

- As just one example, EPA's proposal to require detailed markings on hazardous waste containers is unworkable in the retail context, where a drum may contain many different types of hazardous wastes.