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“Retail Hazardous Waste” Targets Expand in California

By: [Peter McGaw](#) and [John Epperson](#)

By now, readers likely are familiar with the series of “retail hazardous waste” enforcement actions being brought across the state of California. For several years, various retailers have been targeted for coordinated, state-wide enforcement by local District Attorneys based on undisclosed, behind-the-scenes “dumpster audits.” These businesses are then accused of disposing of hazardous waste in their trash. While these often are typical consumer items that receive little attention when disposed in ordinary household trash, when they are disposed by commercial enterprises, different rules apply as many consumer items are considered to be “hazardous waste” under California’s unique hazardous waste laws.

Thus, throwing away common items such as used aerosol cans, cosmetics and personal care products, cleaning and disinfection products (particularly prevalent since the start of COVID), small batteries and small consumer electronics (including key fobs and ear buds), and many other consumer products have led to multi-million dollar settlements with some of the state’s major retailers. Often, items with just small amounts of residual material nonetheless fail to qualify as “empty” under California’s particular regulatory definitions, precluding their disposal in the local landfill. These, along with many customer returns and other items that may be broken or leaking, must be managed as “hazardous waste.” This requires the retailer to meet strict training, labeling and recordkeeping requirements, comply with strict time limits on how long items may be stored on-site, and follow hazardous waste manifesting and transportation procedures.

With penalties and other costs incurred, settlements (to date!) have ranged as high as \$25 million, with settlements in the \$10 million, \$15 million and \$20 million ranges being common. Targets so far have included: “big box” retailers; grocery stores; pharmacies; auto dealers and service centers; telecom providers; discount retailers; plus many others. Even thrift stores have come under scrutiny.¹

Now, you can add the hospitality sector to the types of businesses receiving the attention of the District Attorneys. Late last week, a settlement of hazardous waste issues was announced with Ritz-Carlton, the high-end hotel and resort operator. Although Ritz-Carlton operates only a handful of properties in California, they paid one of the highest costs-per-facility, on a par with the auto dealers and service providers. Ritz-Carlton’s alleged misdeeds? Transporting and disposing of “hazardous waste” at local landfills, including batteries, electronics, flammable liquids, cleaning agents and other “reactive, toxic and corrosive materials.”

¹ This is not a complete list. If your favorite retailer is not one of these, they likely will be on this list before too long!

These investigations and settlements often come in waves of similar businesses, so the Ritz-Carlton settlement may signal more investigations of hotel chains are already underway. The Ritz-Carlton settlement is also noteworthy for the small number of California "facilities" involved. Significantly, this settlement suggests the District Attorneys are broadening their focus, both in terms of the mix of businesses they are investigating and in terms of the number of locations a company operates in California.

At this point, no sector of the consumer-oriented economy can afford to be complacent. If your business uses consumer products, consumer-type products, or any sort of "chemical" product in its daily operations, beware. You may be next! It may be time to review your California "hazardous waste" management programs, and not just from the company's headquarters. While many businesses have excellent hazardous waste management programs in place "on paper," execution of a well-designed hazardous waste program often falls by the wayside under real world conditions.

These enforcement actions start in the field, and that is where you should start your evaluation of the efficacy of your existing programs. Even the best program will fail if it is not properly executed in the field.

For additional information, please contact:



Peter McGaw

Of Counsel
(415) 227-3568
pmcgaw@buchalter.com



John Epperson

Of Counsel
(415) 227-3549
jepperson@buchalter.com

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