

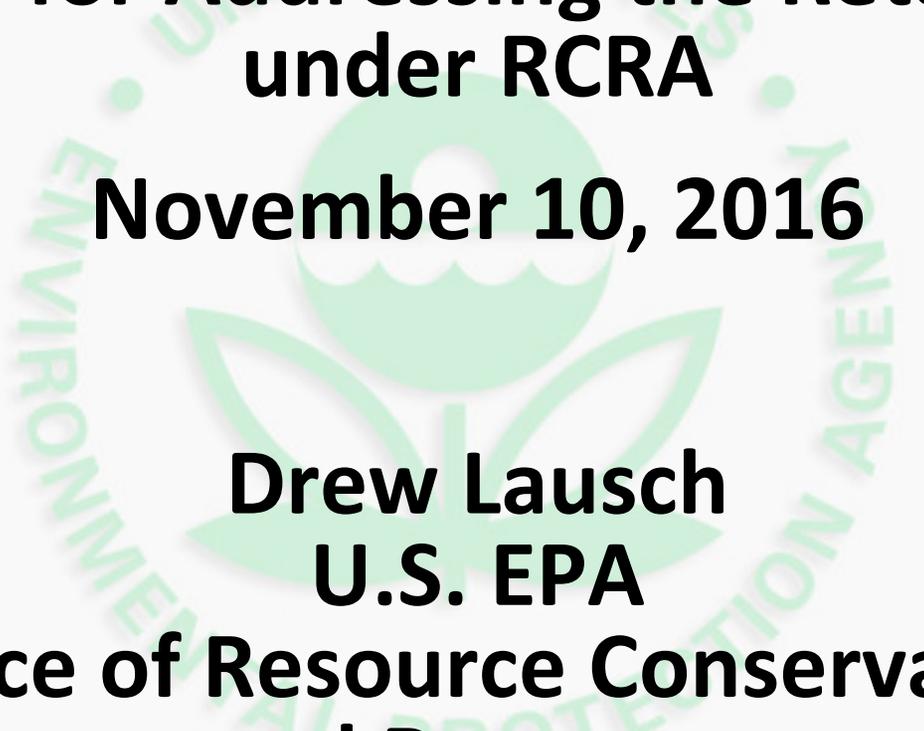


**U.S. EPA Webinar
Strategy for Addressing the Retail Sector
under RCRA**

November 10, 2016

**Drew Lausch
U.S. EPA**

**Office of Resource Conservation
and Recovery**





Objectives

- Provide a brief background of EPA ORCR's engagement with the retail sector.
- Discuss EPA's **strategy** to address the retail sector under RCRA.
- Allow opportunity for audience members to ask questions about the retail strategy.
- Promote continued dialogue and information exchange.

Webinar is part of the ongoing outreach process and helps to ensure successful implementation of the retail strategy!



History of ORCR Engagement with the Retail Sector

- This strategy is a culmination of wide engagement with various members of the retail community and the states which started back in 2006.
- At that time, data indicated retailers were Conditionally Exempt Small Quantity Generators (now known as Very Small Quantity Generators).
- In response to the 2011 Executive Order 13563, EPA developed a retrospective regulation review plan. In this plan, EPA committed to analyze information and identify issues with the RCRA regulations and the retail sector.



Background – Retail NODA

- EPA published a Notice of Data Availability (NODA) for the Retail Sector on February 14, 2014, to better understand stakeholder concerns/viewpoints regarding challenges the retail sector faces when complying with RCRA regulations.
- NODA requested comment on a series of topics related to retail operations, waste management practices, and challenges faced in properly managing materials (retail products) that may become hazardous wastes when discarded.
- A total of 44 stakeholders provided feedback, including (as a few examples), retailers and industry/trade associations as well as governmental and related organizations. Comment period closed on May 30, 2014.
- EPA evaluated comments received to identify stakeholder issues/concerns to assist in developing the retail strategy.



Background – Analysis of NODA Comments

- Retail Sector Differs from the Industrial/Manufacturing Sector
 - Large number of stores in many locations handling consumer goods that, in many instances, could become hazardous waste upon discard
 - Numerous varieties of goods, which are generally manufactured by someone else and whose ingredients are often not fully known, make hazardous waste determinations difficult
 - Unpredictable quantity of waste generation due to episodic generation (e.g., recalls and customer returns)
 - HW training at the store level difficult due to high employee turnover
 - Use of reverse distribution (RD) process to manage unsalable products – including those that become hazardous waste when discarded



Background – Analysis of NODA Comments (continued)

- Major NODA Comments (with approximate percentage of commenters):
 - **Address Pharmaceuticals (42%)**
 - **Endorse RD Retail Paradigm – encompasses point of generation and waste determination issues (40%)**
 - **Manage Retail Products as Universal Waste (primarily focused on aerosol cans but also includes waste categories such as pesticides, electronics and/or pharmaceuticals) (35%)**
 - Provide Flexibility for Episodic Generation/Hazardous Waste Quantity Determinations (19%)
 - Exclude Retail Products as Hazardous Waste – Household Hazardous Waste Exemption (10%)
 - Revise/Update Satellite Accumulation Area Requirements (9%)



ORCR's Observations

- Historical focus on industrial and manufacturing facilities but, during the past several years, regulators have become increasingly involved with the retail sector (performing inspections, etc.).
- Inspections by regulators (EPA, state or local governments) have identified compliance issues requiring attention and continue to occur.
- How the reverse distribution process is regulated or should be regulated under RCRA – particularly as to when waste determinations should be made – is the source of a number of questions from both the retail industry and regulators.
- Additional information regarding EPA's observations is presented in the **retail strategy**.



Overview of Retail Strategy

- Strategy consists of a number of EPA commitments:
 - Rules that were underway at EPA prior to the NODA
 - ✓ Completed rulemakings (Definition of Solid Waste and Hazardous Waste Generator Improvements final rules)
 - ✓ Ongoing rulemaking (Hazardous Waste Pharmaceuticals proposed rule)
 - New commitments directed specifically at the retail sector resulting from the NODA:
 - ✓ Guide to Recycling Aerosol Cans
 - ✓ Universal Waste Proposed Rule for Aerosol Cans
 - ✓ Policy on Reverse Distribution and RCRA
- All of these activities in combination are intended to ensure a better fit between RCRA and the retail sector.



Final EPA Rulemakings

Definition of Solid Waste Rule

- Promulgated January 2015
- Hazardous secondary materials recycled under the control of the generator
- Hazardous secondary materials transferred off-site to a verified recycling facility
- Retailers may be able to use this exclusion for recycling aerosol cans and possibly other retail items

<http://www2.epa.gov/hwgenerators/final-rule-2015-definition-solid-waste-dsw>



Final EPA Rulemakings (continued)

Hazardous Waste Generator Improvements Rule

- Includes the following provisions responsive to NODA comments:
 - Providing flexibility for episodic generators of hazardous waste.
 - Allowing consolidation of conditionally exempt small quantity generator waste at large quantity generators.
 - Permitting waiver of the 50-foot buffer requirement for ignitable/reactive wastes under certain conditions.
- EPA Regional Administrator signed this rule on October 28, 2016.
- **EPA has scheduled webinars to discuss the final Generator Improvements rule on November 30, 2016 and December 5, 2016.**

<http://www2.epa.gov/hwgenerators/proposed-rule-hazardous-waste-generator-improvements>



Ongoing EPA Rulemaking

Hazardous Waste Pharmaceuticals Proposed Rule

- Establishes RCRA regulations for the management of hazardous waste pharmaceuticals at healthcare facilities, which addresses a number of retailer concerns by:
 - Advancing an approach where a healthcare facility, including a retailer with a pharmacy, generating 1 kg of acute (P-listed) hazardous waste pharmaceuticals in a calendar month will not become a large quantity generator.
 - Clarifying how the reverse distribution of pharmaceuticals is regulated under RCRA.
 - Requesting comment on whether e-cigarettes and nicotine-containing liquids for e-cigarettes should be included within the definition of pharmaceutical and therefore managed as other hazardous waste pharmaceuticals.



Ongoing EPA Rulemaking (continued)

Hazardous Waste Pharmaceuticals Proposed Rule (continued)

- Exploring possible approaches to address concerns with designating nicotine-containing smoking cessation products (e.g., gums, lozenges and patches) and other low-concentration nicotine-containing products as acutely hazardous (P-listed) wastes such as the following:
 - narrow exemption from the P075 listing for Food and Drug Administration-approved over-the-counter smoking cessation products
 - broader, concentration-based approach to listing nicotine (P-listing for high concentrations and U-listing for low concentrations)
- Public comment period ended on December 24, 2015. More than 180 commenters provided feedback.

<http://www2.epa.gov/hwgenerators/proposed-rule-management-standards-hazardous-waste-pharmaceuticals>



New EPA Activities to Address Retail Issues

Guide to Recycling Aerosol Cans

- An aerosol can consists of three major components: (1) the metal can/cannister (2) propellant and (3) product.
- The propellant and/or product can be RCRA hazardous waste if disposed.
- All components have the potential to be recycled:
 - can/cannister as scrap metal
 - propellant as fuel substitute (e.g., propane and butane),
 - product (e.g., blending and energy recovery)
- Guide will discuss approaches for managing all components of aerosol cans under existing recycling exclusions.



New EPA Activities to Address Retail Issues (continued)

Universal Waste Proposed Rule for Aerosol Cans

- Aerosol cans are ubiquitous in today's society. According to one industry group, up to 1,500 kinds of products are packaged as aerosols.
- A major retailer has estimated that aerosols constitute approximately 50% of total retail facility hazardous waste by pounds and 40% of the total items managed as hazardous waste.
- A NODA commenter indicated the retail sector generates as much as 43 million lbs./year of aerosol cans as hazardous waste.



New EPA Activities to Address Retail Issues (continued)

Universal Waste Proposed Rule for Aerosol Cans (continued)

- Some states such as California and Colorado manage aerosol cans as universal waste and the process appears to be working well.
- Universal waste regulations streamline the hazardous waste management standards for certain categories of hazardous waste that are commonly generated by a wide variety of establishments.
- EPA believes universal waste regulations will increase the likelihood that aerosol cans are properly managed and that opportunities for recycling are fully utilized.



New EPA Activities to Address Retail Issues (continued)

Policy on Reverse Distribution and RCRA

- EPA recognizes that RD is an important aspect of retail sector operations with reverse logistics centers playing a key role regarding:
 - Material disposition (i.e., reuse, recycling or disposal)
 - Financial reconciliation
 - Recall management
 - Material tracking
 - Data Collection
- EPA also recognizes RCRA may not always be the best fit in terms of the RD process – particularly as to when discard occurs and the timing of waste determinations.
- EPA's RD policy will take into account NODA comments and information obtained during the past two years of outreach efforts, as well as feedback received moving forward.



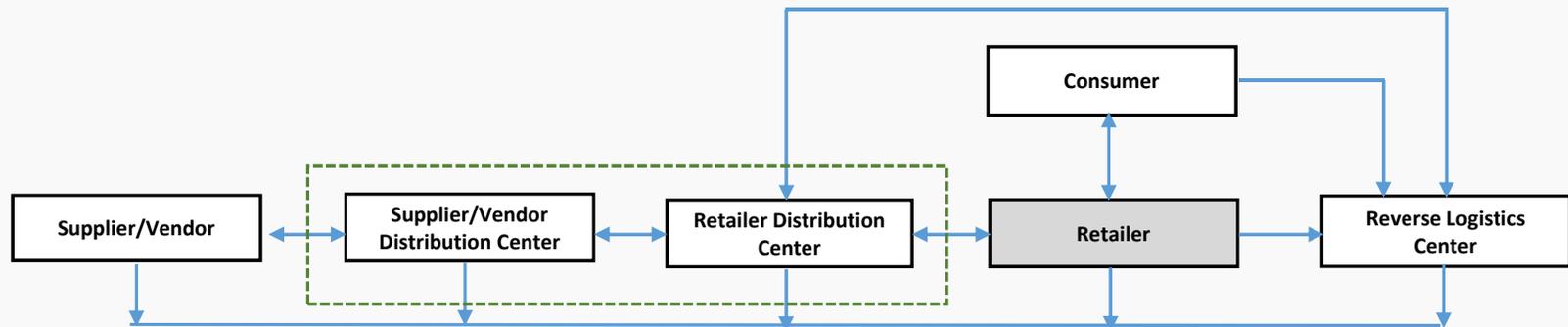
New EPA Activities to Address Retail Issues (continued)

Policy on Reverse Distribution and RCRA (continued)

- EPA's RD policy will apply to unused/intact consumer goods that have become unsalable at retail stores for various reasons and are moving through the RD system.
- RD policy will be based on an understanding of the "flow" of consumer goods among different entities and the roles/responsibilities in terms of managing these items.
- This policy will not cover wastes from routine maintenance activities and cleanup of spilled materials, as well as damaged/leaking products no longer considered commodities and "unknowns" (item contents cannot be identified).

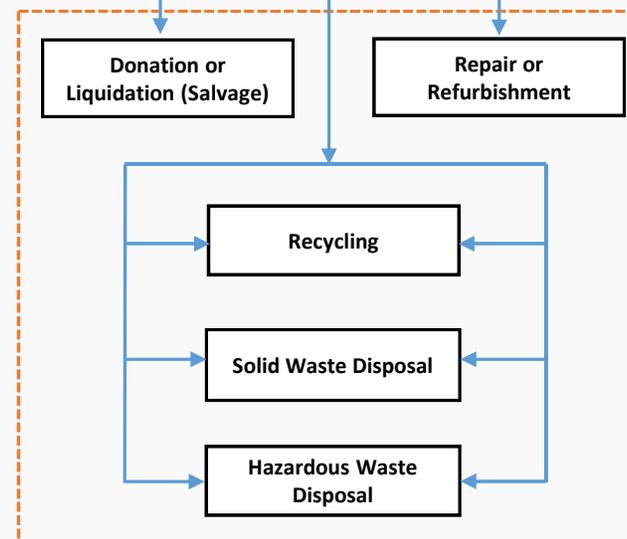


Retail System Players and Relationships (Conceptual Framework)



Notes:

1. Diagram depicts both forward and reverse distribution flow (arrows showing flow direction).
2. Distribution centers may serve as locations for receiving items/materials under both forward and reverse flows.
3. Not all steps within the dashed green line occur in every instance.
4. Items/materials transported under Department of Transportation regulations (non-manifested) or under hazardous waste manifest as appropriate.
5. Reverse logistics centers serve as centralized locations for data collection, product condition assessment, recall management, credit or financial reconciliation, evaluation (for disposition) and tracking of returned items.
6. Recycling includes reclamation, use or reuse.
7. Liquidation (salvage) denotes sale of products on the secondary market (products could also be placed on the tertiary market) to consumers.
8. Refurbished or repaired consumer products may ultimately be sold to consumers.
9. Redistribution involves flow of items from reverse logistics centers to retailers or suppliers/vendors for distribution, restocking and sale.
10. Retailers or suppliers/vendors could also include agents acting on their behalf such as, for example, reverse logistics centers.
11. Possible outcomes of the reverse distribution process are shown within the dashed orange line as a disposition hierarchy.
12. In addition to customers' returning items to retail stores, customers who make on-line purchases may be instructed to return these items to a reverse logistics center.



Although this diagram depicts EPA's current understanding of how unsalable consumer goods and wastes are managed in the retail sector, changes to these processes may occur in the future if/when additional information becomes available.



Closing Thoughts

- We encourage you to read through the retail strategy and examine the accompanying retail flowchart – and to share this information with others for review.

<https://www.epa.gov/hwgenerators/strategy-addressing-retail-sector-under-resource-conservation-and-recovery-acts>

- Your feedback is very important as we move forward in partnership with all stakeholders to implement this strategy.
- We will decide whether to schedule an additional webinar depending in large part on stakeholder interest expressed during today's webinar.



Thank You!

Please contact us if you wish to discuss our strategy

Drew Lausch

Phone: 703-603-0721

Email: lausch.robert@epa.gov

Kristin Fitzgerald

Phone: 703-308-8286

Email: fitzgerald.kristin@epa.gov

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Questions?