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Department of Ecology
ATTN: HWTR Program Rules Unit
P.O. Box 47600
Olympia, WA 98504-7600

REFERENCE: Hazardous Waste Generator Improvements Rule (Chapter 173-303 WAC)

To Whom It May Concern:

Walmart is pleased to provide the attached comment in response to the proposed adoption of the "Hazardous Waste Generator Improvements Rule" (Chapter 173-303 WAC).

Should the Department of Ecology have questions about the comments, please feel free to contact me at 949-250-5672 or via e-mail at myron.eng@walmart.com.

Sincerely,

Myron Eng
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Enclosure



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Walmart Comments to Adoption of Proposed Amendments to Ch. 173-303

Hazardous Waste Generator Improvements

Wal-Mart Stores, Inc. (“Walmart”) thanks the Washington Department of Ecology for the opportunity to provide comments on the proposed amendments to Chapter 173-303 Washington Administrative Code (WAC) Dangerous Waste Regulations. As a major retailer serving Washington (WA) consumers, Walmart has been required to wrestle with the Resource Conservation and Recovery Act’s (RCRA) regulation of consumer products and the analogous requirements of Chapter 173-303 WAC.¹

Introduction

Walmart strives to be an environmental leader and believes everyone benefits when we work with regulators to develop policies and regulations that achieve environmentally protective results and make sound business sense. Walmart is committed to environmentally sustainable business practices and has been recognized as one of the world’s leading companies in the sustainability arena.²

In the State of WA, Walmart operates 69 retail stores, employs over 20,000 associates, and collected \$269.1 million dollars in taxes and fees on behalf of the State of Washington as part of transactional sales of taxable goods and services for FYE 2017. Walmart stores are comprised

¹ Note that Walmart’s comments focus on the particular issue of the Dangerous Waste Regulation application to consumer products. The term “consumer product” in this document, means the products Walmart offers for sale to the general public in its stores and clubs.

² Walmart has three aspirational sustainability goals: 1) Create Zero Waste; 2) Be powered by 100% renewable energy; and 3) Sell products that sustain people and the environment. For information on Walmart’s sustainability initiatives, accomplishments, and commitments, please visit walmartsustainabilityhub.com.



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of a mix of grocery, general merchandise, pharmacy, and membership-oriented stores and clubs.

As the U.S. EPA recognized in the Retail Notice of Data Availability (NODA), significant challenges exist for the Retail Sector regarding RCRA's application to consumer products.³ Walmart sells millions and millions of consumer products each year in the state of WA and has millions of different kinds of consumer products in inventory. Applying Dangerous Waste Regulations to all of these consumer products continues to be a Herculean task. Brief highlights of our efforts include:

- Providing annual training for more than 20,000 associates.
- Developing dangerous waste determination systems designed to assist our stores in making dangerous waste determinations for millions of different consumer products.
- Developing over 150 Standard Operating Procedures governing management of consumer products that are hazardous materials or that become wastes at retail stores.
- Conducting over 3,500 weekly dangerous waste inspections annually.
- Contracting for over 3,500 dangerous waste service stops at our retail stores by licensed dangerous waste transporters every year.
- Completing internal and third-party monitoring and auditing programs that review nearly 4,000 aspects of our dangerous waste programs for consumer products.⁴

While proud of our Dangerous Waste compliance program, Walmart believes that much of the efforts are largely unnecessary to protect human health and the environment since the vast

³ See EPA's [Retail NODA](#) dated February 14, 2014 and Walmart's response as part of the NODA official record.

⁴ Walmart estimates that it has spent over \$50 million dollars from 2008 to 2013 attempting to comply with Dangerous Waste requirements as they relate to consumer products that were not sold to the public in our stores. Unfortunately, actual benefit to public health and the environment is not commensurate with this massive commitment of resources.



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majority of the wastes generated at Walmart stores are derived from common household consumer products, many of which are specifically designed and regulated for safe human consumption and bodily use. By their very nature common consumer products as purchased from a retail store do not pose significant risks to human health or the environment because they are designed and regulated by other agencies to be safe for consumers. Naturally, consumers do not want to buy products that present a serious danger to themselves and their families. A more comprehensive approach to addressing the State's concerns with risks posed by consumer products should include a focus on the products used by the public, not just the disposal. Additionally, modern municipal solid waste programs are specifically designed to safely manage consumer product wastes and the vast majority of consumer product waste is generated by the public and managed by these solid waste programs. Treating a very small subset of identical consumer products as dangerous waste, because it was generated by a retail store and not the public, would have little impact on the environment.

Comments on the Hazardous Waste Generator Improvements Rule

New or revised definitions and language:

- Authorized representative – The current definition in 40 CFR Part 260.10 defines *authorized representative* as the person responsible for the overall operation of a facility or an operational unit (*i.e.*, part of a facility), e.g., the plant manager, superintendent or person of equivalent responsibility. The revised definition for *authorized representative* removes “person of equivalent responsibility.” Walmart is opposed to this deletion and believes it will cause an unnecessary burden on all retailers in the state of WA by limiting who can be an authorized representative for a facility. It is important in developing this proposal that any solution must be applicable to, and implementable by, all kinds of retail businesses, both large and small. According to the National Retail



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Federation, over 95% of retailers in the U.S. are single store operators.⁵ Many small retail businesses literally have no capability of making dangerous waste determinations for all of the consumer products they sell, manage, and occasionally discard and will not have an associate at the store with the knowledge or experience to interpret these complicated regulations. We believe the definition provided in RCRA is adequate and should be adopted without revision. In the alternative, Walmart suggests including language that would permit a subject matter expert from a retailer's headquarters to act as the authorized representative because of how subject matter experts are often centralized. Another alternative to the proposed authorized representative amendment could include, as part of the definition, a subject matter expert based in the State of Washington with responsibility for compliance throughout the state.

- Waste Determinations – Walmart is opposed to the additional language proposing a clarification that any person who discovers an unknown material is also responsible for accurately designating that waste. It is important in developing this proposal that any solution must be applicable to, and implementable by, all kinds of retail businesses, both large and small. Retail businesses literally have no capability of making immediate dangerous waste determinations. Retailers do not have onsite laboratories or analytical instruments to determine hazard characteristics. Therefore, outside services are required to assist the retailer in making waste determinations. Determining the hazard characteristics of an unknown waste requires time that is not provided for in the regulation as currently drafted. We believe the additional wording is not necessary to protect human health or the environment. The current programs in place at Walmart stores are protective of human health and the environment by ensuring that potential dangerous waste is appropriately managed until characterized before shipment for disposal.

⁵ National Retail Federation letter to Congress dated April 2014.



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- Point of generation – During a webinar by WA, it was mentioned that the expectation will be to identify, label and characterize unknown waste as it is found including identifying the appropriate waste code. Retailers do not have the ability to identify unknowns immediately. Retailers do not have onsite laboratories or analytical instruments to analyze an unknown to determine hazard characteristics. Therefore, outside services are required to assist the retailer in making waste determinations and determining the hazard characteristics of the unknown waste and this requires time. We believe this expectation is unrealistic and is largely unnecessary to protect human health and the environment.
- The mixture rule – Walmart believes that the Mixture Rule should be implemented in the regulations for WA as they are done under the federal regulations. This would avoid impacting such areas as the management of spill cleanups that would not be considered dangerous waste but for the original characterization of the product as dangerous.
- Condition of dangerous waste containers – WA is proposing to expand the examples of dangerous waste containers that are “not in good condition” such as “severe rusting” to now include the following severe conditions:
 - Corroding
 - Rusting
 - Flaking
 - Scaling

Walmart recommends including qualifying language such as, “severe corroding, rusting, flaking, scaling, and/or apparent structural defects that could lead to imminent leakage” of the container.