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Lessons from Stericycle's Recent Settlement of RCRA Allegations

Much has already been written and said about the new Trump Administration's sweeping changes in the area of environmental policy. The head-spinning pace of these changes has created some uncertainty as to how to approach environmental compliance management in this new era. During times of such uncertainty though, the fundamentals of environmental compliance management do not necessarily change. A recent RCRA enforcement settlement serves as a useful reminder of this fact.

On the eve of Inauguration Day, Stericycle, Inc. settled a RCRA enforcement action with the U.S. Department of Justice in connection with the transport of hazardous waste on behalf of Stericycle's generator customers. According to the Order of Settlement, Stericycle committed numerous violations of hazardous waste management regulations relating to the proper manifesting of waste shipments. Stericycle's fine of $9.5 million is one of the largest RCRA fines on record.

What are the lessons to be gleaned from the settlement of this enforcement action? The first lesson quite simply comes down to paying attention to the importance of recordkeeping and reporting. Complying with the requirements for manifesting hazardous waste shipments is one of the most fundamental compliance activities that any hazardous waste generator, shipper, or management facility can undertake. (My very first task in the world of environmental affairs as a young environmental engineering co-op many years ago was to maintain an oil refinery's hazardous waste manifest log.) The implementation of a robust hazardous waste manifest system is essential to fulfilling RCRA's goal of ensuring the proper management of hazardous waste "from cradle to grave."

By taking its eye off the ball and not paying attention to this fundamental recordkeeping requirement, the shipper not only incurred tremendous liability for itself, but may also have created significant headaches - if not additional compliance issues - for its generator customers. This knock-on effect leads to the second important lesson of this enforcement action. Facility operators outsourcing their environmental management activities may, and often will, be held liable for the compliance failures of their environmental vendors and contractors. Thus, it is essential for facility operators to develop and implement robust procurement and contractor selection management programs, and to vigilantly supervise the activities of their environmental vendors and contractors throughout the duration of the contractual relationship.

Hazardous Waste Pharmaceuticals: EPA's RCRA Subpart P Rule Shows Its Teeth in S.C.

The issuance of two recent consent orders by South Carolina's Department of Environmental Services demonstrates that EPA's regulatory regime for hazardous waste pharmaceuticals has real teeth. Promulgated by EPA in late 2019, RCRA's Subpart P rule restructured the regulation of unused and discarded hazardous waste pharmaceuticals. EPA approved South Carolina's regulations implementing these requirements in 2023.

The consent orders involved two hospitals affiliated with one of the largest healthcare networks in the State. Both consent orders alleged that the hospitals: (i) failed to keep containers of "non-creditable hazardous waste pharmaceuticals" closed and secure; and (ii) failed to label containers used to accumulate non-creditable hazardous waste pharmaceuticals with the words "Hazardous Waste Pharmaceuticals." Penalties assessed under the two consent orders totaled $24,000.

Subpart P establishes a tiered program for the classification and regulation of hazardous waste pharmaceuticals. These classifications are mainly tied to how the return of unused prescription pharmaceuticals are managed and handled in the supply chain. Distributors typically receive credits from the manufacturer or wholesaler for certain unused prescription pharmaceuticals.

Not all unused pharmaceuticals are eligible for such credits though. Unused pharmaceuticals with damaged packaging or whose expiration period has lapsed are not eligible. If these pharmaceuticals meet the criteria for hazardous waste, they are considered as "non-creditable hazardous waste pharmaceuticals" ("NCHWPs"). Containers used to accumulate NCHWPs must be labeled with the words "Hazardous Waste Pharmaceuticals." In addition, such containers must remain closed and secured in a manner that prevents unauthorized access to the contents. The two hospitals at the center of these enforcement actions are alleged to have violated these container management requirements.

Since many hospitals and other healthcare facilities outsource their hazardous waste management programs, the issuance of these consent orders serves as yet another useful reminder of the importance of vigilant contractor management. Hospitals and other healthcare facilities are in the business of treating patients; not managing hazardous waste. However, as was pointed out in the previous article, waste generators may sometimes be held responsible for the compliance failures of their environmental vendors and contractors. Thus, it is essential for hospitals and

healthcare facilities to develop and implement robust procedures for the management of vendors and contractors who manage and transport hazardous and medical waste. (For more on this topic, see my article from 2019 entitled *Down the Drain: EPA's "Sewering Prohibition" Is Right Around the Corner* which can be accessed by clicking here.)

Combating PFAS Contamination: *Will EPA Follow Cal's Example for Chrome Platers?*

EPA's April 28th announcement on its plans for combating PFAS contamination included a statement on the Agency's plans for developing effluent limitations guidelines ("ELGs") for the metals finishing industry. PFAS-containing materials are used in the metals finishing industry as dispersion agents, coating additives, and corrosion inhibitors. However, it is the use of PFAS in chrome plating operations that is of the most significant concern to environmental regulators. PFAS-containing materials are used in chrome plating operations as wetting agents and fume suppressants to minimize emissions of hexavalent chrome (or Cr(VI)), a known carcinogen.

The State of California has been actively investigating the role of chrome plating operations in the contamination of soils, groundwater, and surface water with PFAS for more than a half-decade. In 2019, California's State Water Resources Control Board ("SWRCB") issued Order WQ 2019-0045-DWQ (the "SWRCB Order"), requiring the State's chrome plating facilities to undertake comprehensive assessments of the presence of PFAS in soils, groundwater, surface water, and stormwater. It is expected that SWRCB will use the information collected from these assessments for regulatory initiatives requiring the reduction of discharges, the prevention of accidental releases, and the prohibition of particular uses of certain PFAS associated with chrome plating operations.

While the intended focus of this regulatory effort has been the State's chrome plating facilities, a review of a limited sample of the assessment reports submitted in response to the SWRCB Order reveals the discovery of collateral sources of PFAS contamination in and around these facilities. The SWRCB Order covered well over 200 former and current chrome plating operations throughout California. Given the number of facilities covered and the ubiquitous nature of PFAS contamination, it was inevitable that these investigations would result in the discovery of potential sources of PFAS contamination that are unrelated to chrome plating operations. PFAS was detected in city-supplied influent process water for one particular chrome plating facility. According to the report, the nature and character of the facility's effluent discharges seemed to suggest that it was not the source of the PFAS in the city-supplied process water. A report for another facility in a different part of the State identified species of PFAS that might have come from off-site discharges of aqueous firefighting foam ("AFFF").

For now, EPA is only talking about developing ELGs for metal finishers. ELGs are technology-based discharge limitations developed for specific industry classes. As such, the nature and character of PFAS contamination from sources unrelated to the metal finishing industry should not have any impact on the development of such guidelines. That being said, the process of developing these ELGs will involve a painstaking process of collecting and assessing reems of data relating to the presence of PFAS in a variety of media. Such efforts may cause EPA to expand the scope of its focus on the metals finishing industry. This in turn may lead to the emergence of other sources of PFAS contamination that attract the attention of EPA or state regulatory

agencies. For this reason, industries using PFAS-containing materials should track PFAS-related regulatory assessments, even if such assessments are focused on unrelated industries. One never knows what these efforts may turn up. It is possible that a regulatory agency or a neighboring facility assessing PFAS contamination may try to point the finger in your direction.

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