



CALIFORNIA CUPA FORUM

"An Association of Certified Unified Program Agencies"

P.O. Box 2017, Cameron Park, CA 95682-2017
530-676-0815 OFFICE 530-676-0515 FAX
www.calcupa.net

Unified Program Guidance Document

MANAGING HAZARDOUS NON-SALEABLE MERCHANDISE

This factsheet explains California's laws and regulations regarding hazardous non-saleable merchandise. As used in this fact sheet, "non-saleable merchandise" includes: **spilled, customer returned, excess or overstocked, damaged, used, and/or discontinued merchandise that, as a consequence of spillage, damage, use (as tester or display), company policy or phase out, cannot or will not be sold.** It is intended to help owners and operators understand the different options of handling hazardous non-saleable merchandise.

A wide variety of retail establishments including, but not limited to, grocery stores, home improvement stores, department stores, pharmacy stores, convenience stores, discount stores, and automotive retailers have the potential to generate some amount of hazardous waste. Certain non-saleable merchandise found in retail stores may be hazardous wastes, and must be properly managed under the requirements of California Health & Safety Code (H&SC) Chapter 6.5, and California Code of Regulations (CCR) Title 22.

Why is this important to me?

It is important to understand these rules because non-saleable merchandise may be (or may become) hazardous wastes. Hazardous wastes commonly found at retail establishments may pose a threat to public health or the environment. A retailer that fails to acknowledge that a non-saleable or a returned good is a hazardous waste may be liable for significant fines and penalties. Therefore, it is important that you understand how to properly manage non-saleable merchandise to avoid enforcement actions and having to pay such fines and penalties. It is illegal to dispose of hazardous waste to the trash or down the drain.

Does this apply to me?

The laws discussed in this fact sheet apply equally to everyone (in California) who, in the course of business, sells or offers for sale hazardous merchandise or uses hazardous materials, including wholesale and retail businesses of all sizes, ranging from small door-to-door salespersons to large "big-box" retailers.

What if my business does not sell any hazardous goods or hazardous commodities?

If your business does not sell any hazardous merchandise, then this fact sheet will not be very helpful to you. However, you may want to continue reading, because, as explained below, many businesses erroneously believe they don't handle any hazardous materials but, in fact, they do.

Whom do I contact with questions?

In California, the day-to-day regulation, oversight, inspection and enforcement of hazardous waste is done by local agencies called Certified Unified Program Agencies (CUPAs)¹. In some areas of California, there are CUPAs operating at the city level as well as at the County level and are often identified as the Health Department, Environmental Health Department, City or County Fire Department or Hazardous Materials Division.

Where can I get copies of the actual laws and regulations?

The [DTSC Laws, Regulations and Policies web page](#) will take you to the webpage where you can access excerpts from the California Health and Safety Code and Title 22 California Code of Regulations.²

Which non-saleable merchandise is hazardous?

Hazardous non-saleable merchandise is any good or commodity that is: Ignitable, Corrosive, Reactive (explosive) or Toxic³. In brief, the characteristics of a hazardous waste are:

Ignitability: Merchandise that can easily burn or can cause a fire in the surrounding materials (includes materials marked as oxidizers).

Corrosivity: Merchandise that can eat through containers and/or burn bare skin, including merchandise that, when mixed with water, can produce such solutions.

Reactivity: Merchandise that is explosive, contains an ignitable compressed gas, or contains reduced forms of cyanide or sulfur.

Toxicity: Merchandise that is identified as "toxic" (T) via any of the multiple criteria in section 66261.24, including merchandise comprised of acutely poisonous substances (LD₅₀ values <2,500 mg/l), and merchandise that contains one or more of sixteen heavy metals listed in Table 2 of section 66261.24, and merchandise that would be kill fish if it were spilled in a waterway (aquatically toxic).

There is no complete list of hazardous non-saleable merchandise. A list of many commonly found items is included at the end of this factsheet.

Is it waste?

The beginning of the proper management of non-saleable merchandise is determining if the non-saleable merchandise is a waste. Generally, a waste is any non-saleable merchandise that can not be used for its originally intended purpose. Merchandise may cease to be "usable" due to any

¹ A list of all local agencies can be found at <http://www.calepa.ca.gov/CUPA/CUPAMail.htm>.

² Regulations regarding hazardous wastes can be found at <http://www.dtsc.ca.gov/LawsRegsPolicies/index.cfm>.

³ The defining criteria for these properties are located in California Code of Regulations, Title 22, Division 4.5, Chapter 11, Sections: 66261.21, 66261.22, 66261.23 & 66261.24, respectively.

number of factors including, but not limited to, contamination of the product (e.g. broken container or seal), expiration/exceeding shelf life, overstock not to be sold or returned, and corporate policy on restock of returns.

What are my waste management options?

Once you have determined that your non-saleable merchandise is a hazardous waste, it must be handled in one of the four following manners:

1. Handle as a hazardous waste. This manner of management would require you to place the non-saleable merchandise in an approved shipping container, mark the container with the appropriate information, and manage the container in a manner that prevents release of the waste. Storage time restrictions may apply to the waste depending on the quantities of waste generated in any month. For a complete list of requirements please contact the local agency in the city or county in which the retail location operates.¹ Each retail location must obtain and use its own EPA ID number. Hazardous waste must be shipped from each location using a “Uniform Hazardous Waste Manifest” and by a registered hazardous waste transporter.

2. Handle as an “Excluded Recyclable Material” (ERM). Generally, this option allows the non-saleable merchandise to be used by another person. This manner of management would require you to demonstrate that the non-saleable merchandise is being reused and that certain conditions are being met. In order to make a claim that the waste non-saleable merchandise is an ERM you must keep (and provide upon request) documentation that demonstrates that the non-saleable merchandise meets the following conditions:
 - The non-saleable merchandise was used without any reclamation or additional processing to make another product (e.g. broken bottle of polish remover - acetone is used by purchasing company to make an acetone-based glass cleaning product) OR show that the non-saleable merchandise was returned to the original process from which it was generated without any reclamation or processing (e.g. broken bottle of nail polish remover - acetone is sent back to the manufacturer to be made back into polish remover and re-packaged);
 - The name, address, and telephone number of the company that manages the non-saleable merchandise for re-use;
 - Demonstration that there is a known market for disposition of the non-saleable merchandise once re-used (e.g. product specifications and end user information to verify claims);
 - The non-saleable merchandise may not be used in a manner constituting disposal (applied to land or used to produce a product which is applied to land), burned for energy recovery, or accumulated speculatively (stored in place of actually being re-used or in anticipation for future re-use).

While being stored at the retail location prior to shipment, ERMs must be managed in a manner consistent with new product (e.g. packaged in sound containers, stored in a manner

that “good” merchandise would be stored), must be included on any hazardous materials business plan submittals, and must be labeled/marked with the following:

- the phrase “Excluded Recyclable Materials”
- company name/address/city/state/ zip code
- the contents [i.e. “acetone”]
- the hazardous properties [i.e. “flammable”]
- the physical state [i.e. “liquid”].

Additionally, if you generate more than 100 kilograms of ERM in any month (approximately 27 gallons or 220 pounds) you must complete and submit a biennial “Recyclable Materials Report” to the local CUPA. ERMs may be shipped using a bill of lading or shipping receipt, and retail locations should keep and make available the above noted paperwork during any inspection.

3. Retrograde Material. A retrograde material is an **unused** non-saleable merchandise that can not be used or sold due to one of the following reasons:

- Product has undergone chemical, biochemical, physical or other changes
- Exceeded a recommended shelf life
- Has been banned by law
- Other safety, health or economic reasons.

Materials must be returned to the original manufacturer within one year to be considered retrograde, otherwise they should be managed as hazardous wastes.

4. Continued Use. To qualify for continued use, the non-saleable merchandise must continue to be used for its original intended purpose. Broken packages and those products opened and returned (which are not allowed by law or company policy to be resold) generally will not qualify for continued use because the contents have been potentially contaminated. An example of continued use would be donating overstock or discontinued detergent to a woman’s shelter to wash bedding and clothes. By not using the non-saleable merchandise in a manner that the merchandise was originally intended may be considered “sham recycling” which may result in an enforcement action and monetary penalties being assessed against you. It is strongly recommended that you maintain documentation noting donation agreement with any receiving group, company, person or agency.

Can I use a “Reverse Distribution” system or return it to the supplier?

Retailers often provide their non-saleable merchandise to third party distributors who are contracted to properly manage or reuse the non-saleable merchandise or return the non-saleable merchandise to the original distributor/supplier. Please be aware that due to differences in California and Federal law, acceptable handling of products and waste may differ between California and other states. Under California law, you must still demonstrate that your waste non-saleable merchandise is being managed as previously outlined in this fact sheet, even if you utilize a third party to manage the waste or return it to the distributor/supplier. The third party should demonstrate that they have a reasonable expectation of reuse upon receipt of the waste

non-saleable merchandise and that the non-saleable merchandise received can be managed as an ERM or for continued use. It is incumbent upon you to make this demonstration available for review. It is illegal to ship waste non-saleable merchandise to a third party if that waste unwanted merchandise has no reasonable expectation of re-use or continued use. General waste classification can be done at third party reverse distribution centers only for non-saleable merchandise which leaves the retail location under a reasonable expectation of reuse or continued use. Broken containers which contain potentially contaminated contents by the fact that they have been damaged and the contents exposed should be very closely examined in this process as claims of the reuse of a contaminated material in the same way as an uncontaminated material may be met with skepticism.

Are there any exceptions to all these rules?

The primary exceptions to the rules above apply to aerosol cans, non-automotive batteries, fluorescent lights, and electronic devices (with circuit boards and/or cathode ray tubes). These items are considered “Universal Wastes” and may be exempt from many of the storage, labeling and documentation of shipping. There are relaxed management requirements for Universal Wastes in California.⁴ Donating or giving pesticides to individuals or organizations has some additional guidelines from the State Dept. of Pesticide Regulation. Additional information about pesticide donation can be found at:

<http://www.calcupa.net/civica/filebank/blobdload.asp?BlobID=3000>

Common examples of Hazardous Non-saleable Merchandise

Ignitable:

A. Flammable liquids having a flashpoint less than 140 degrees F.

Gasoline, white gas/Coleman Lantern fuel (kerosene), lighter fluid (butane), nail polish remover (acetone), rubbing alcohol (isopropyl alcohol), perfumes and other fragrances including tester strips (alcohol), mouthwashes (alcohol), and hard liquors such as high-proof whiskey and vodka (ethanol).

B. Ignitable Compressed Gasses

Aerosol cans -- approximately 85% of all aerosol cans produced and sold utilize LPG (liquefied petroleum gasses) as the propellant. Such aerosol cans include: furniture polishes, household cleaners/ disinfectants/ air fresheners, personal care products, sunscreens and tanning solutions, spray paints, spray adhesives and sealants, and brake and carburetor cleaners and polishes, LPG cylinders, (camp-stove/lantern cylinders and BBQ/space heater type). Some specialized gasses used in industrial and medical settings, such as acetylene used for welding, are also ignitable.

C. Chemicals that are oxidizers.

Pool and spa chlorinators and “shock treatments,” strong bleach solutions, liquid oxygen cylinders, certain disinfectants such as potassium permanganate, water treatment chemicals such as ferric chloride, and oxidizing acids such as nitric acid and aqua regia.

⁴ Additional information regarding Universal Waste management can be found at http://www.dtsc.ca.gov/HazardousWaste/UniversalWaste/upload/HWM_FS_SB1158.pdf

Corrosive:

A. Liquids that are strongly acidic (pH <2) or strongly alkaline (pH >12.5)

Swimming pool acid (muriatic acid, a.k.a. hydrochloric acid), Battery acid (sulfuric acid), oven cleaners, aluminum wheel cleaners, and aluminum etching/cleaning solutions.

B. Solids that when mixed with water produce solutions described immediately above

Swimming pool acid - Dry Acid (sodium bisulfate), swimming pool chlorinators (e.g., calcium hypochlorite), lime-containing soil amendments, alkaline batteries, drain cleaners (lye or NaOH), and cement.

Reactive:

Merchandise that explodes or that reacts violently or releases toxic gasses when wetted

Dynamite, blasting caps, ammunition, isocyanate containing part A/B resins, and large lithium-ion batteries.

Toxic:

Merchandise that is (or that contains) substances that are toxic to mammals or fish or that contain certain heavy metals or carcinogens above numerical thresholds listed in Title 22 section 66261.24.

Electronic devices, most batteries, some magnetic recording media, photographic films, some photographic papers and some photographic and printing solutions, most light bulbs, most pesticides and wood preservatives, some preserved wood products, some adhesives, many paints, varnishes, finishes, and paint thinners, paint pigments and inks, some household cleaners, some petroleum products, some personal care products, and pharmaceuticals.

Non-Saleable Merchandise Best Management Practices Decision Flowchart

