

WHEN HAND SANITIZER GOES BAD: MANAGING AND DISPOSING UNUSED ETHANOL

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When COVID-19 hit, many companies with commercial connections to alcohol wanted to make hand sanitizer. The United States Food and Drug Administration relaxed its regulatory rules and companies began manufacturing a literal flood of hand sanitizer in order to meet the demand for clean hands. Now that the epidemic has abated and the demand for precautionary protections has fallen, a number of companies are stuck with significant quantities of hand sanitizer and its fundamental raw material, ethyl alcohol or ethanol. Some of these companies are finding out the sad truth that ethanol, when discarded, is a hazardous waste under the federal Resource Conservation and Recovery Act (RCRA) and its state equivalents. In November, the Environmental Protection Agency (EPA) published a memo¹ reminding the industry that companies that store and dispose of ethanol are subject to the full panoply of hazardous waste requirements including storage restrictions, manifesting for transportation, disposal at licensed facilities, and specialized reporting and recordkeeping.

The applicability of RCRA requirements also means that companies in violation of these requirements are subject to substantial penalties. Observers of the commercial retail world know that many of the big box stores have had to pay seven figure penalties recently for mishandling the transportation and disposal of bulk quantities of common household products or pharmaceuticals that meet the definition of hazardous waste. These large penalties were for violations of the same hazardous waste laws that apply to hand sanitizers.

One might ask how a health based product like hand sanitizer can be characterized as a hazardous waste. The answer is that it does not become a waste until it is discarded which is a term of high art in the RCRA world. Ethanol itself is inflammable, so its storage under any condition requires safety precautions to protect against fire. However, when a company decides to discard its ethanol, the ethanol becomes a waste and, due to its inflammability, becomes a hazardous waste regulated by RCRA.

How a company decides to manage ethanol is a key component of whether it becomes a hazardous waste. If the company will pay to dispose of it at a commercial disposal facility, the ethanol becomes a hazardous waste. The company must store it according to RCRA regulations, obtain a generator identification number, and fill out a manifest to transport it to a disposal facility. All of this activity is then reported to EPA. Ethanol is also a hazardous waste if the company tries to use its BTU value by burning it for energy recovery or sending it to a commercial energy recovery facility because EPA defines discard specifically to include combusting for energy recovery.

A company cannot avoid this result by simply not deciding how to manage its ethanol. If ethanol is stored for an extended period in the hope that someone will eventually buy it, it also becomes a hazardous waste because EPA defines "discard" to include speculative accumulation. While the company may not have a plan to get rid of the material, if it also does not have a plan to use it, EPA believes that is the same as disposal.

On the other hand, EPA encourages what it calls “legitimate recycling.” If ethanol reclaimed from a product such as hand sanitizer can be sold to another company for use in another product and the ethanol is handled and priced similar to other raw materials or intermediates, EPA does not consider that activity to involve the discard of the material. As a result, the material is not considered a hazardous waste, and the company does not need to store and handle the material in compliance with RCRA.

EPA issued its latest memo because it was receiving an abundance of questions and plainly saw a number of companies who entered into the hand sanitizer business with good intentions but without detailed knowledge of the hazardous waste rules that govern disposal. Those rules are complex and the penalties can be enormous. As a result, it is important for these companies to become more familiar with these requirements.

FOOTNOTES

¹ <https://rcrapublic.epa.gov/files/14953.pdf>

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