EPA'S REINTERPRETATION OF THE RCRA INDUSTRIAL ETHYL ALCOHOL EXEMPTION

Date: 14 June 2023

US Policy and Regulatory Alert

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In November 2022, the US Environmental Protection Agency (EPA) published a memo regarding the management of discarded hand sanitizer under the Resource Conservation and Recovery Act (RCRA), which was discussed in a prior alert. In this memo, EPA stated that an industrial ethyl alcohol-based product must be "*spent*" in order to qualify for the recycling exemption at 40 CFR § 261.6(a)(3)(i). EPA's regulations define a "spent" material as one that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.[1]

Recently, however, EPA issued a reinterpretation of the RCRA industrial ethyl alcohol exemption as it applies to the reclamation of alcohol-based hand sanitizer.[2] Superseding its prior interpretation, EPA now takes the position that industrial ethyl alcohol-based products, including alcohol-based hand sanitizer, qualify for the exemption *whether or not the materials are spent*.

Therefore, for those needing to discard unused product, including those businesses that amassed large quantities of hand sanitizer during the height of the COVID-19 pandemic, EPA's reinterpretation presents the possibility of sending the product to a facility that will reclaim the industrial ethyl alcohol from the hand sanitizer, thereby remaining outside the scope of the RCRA regulations.

As evidenced by EPA's recent reinterpretation of the RCRA industrial ethyl alcohol exemption, the hazardous waste rules that govern disposal are complex. Accordingly, it is critical that businesses maintain a familiarity with EPA's waste management rules in order to ensure compliance and avoid penalties, which can be substantial.

Those interested in discussing hazardous waste disposal regulations are encouraged to contact the authors or another member of K&L Gates' Environment, Land, and Natural Resources practice group.

FOOTNOTES

[1] 40 CFR §261.1(c)(1).

[2] RCRA Online Memorandum #14953, *RCRA Management of Excess Alcohol-based Hand Sanitizer* (May 9, 2023), *available at*https://rcrapublic.epa.gov/files/14953.pdf.

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