

Product Return Systems Under Ohio Hazardous Waste Rules

DHWM Guidance Document

Date: March 2008

What is the Purpose of this Guidance?

If your company is using commercial chemical products (CCP) or selling consumer goods (i.e., cosmetics, chemicals, paint or pharmaceuticals), you may find that the product is no longer needed or usable. This might happen when the product is:

- past its shelf life,
- excess,
- an off-specification product,
- discontinued or
- otherwise unsalable.



Often the CCP meets the definition of a [listed](#) or [characteristic](#) hazardous waste when discarded. Until a CCP is actually discarded, or the decision is made to discard the CCP, it is not subject to hazardous waste regulation.

The most common product return system management scenarios for CCPs and consumer products are:

- Direct reuse by another company.
- Reclamation by original manufacturer.
- Shipment to a third party service contractor for reuse, reclamation or reformulation.

The most common regulated management scenario for CCPs and consumer products is:

- Returned to the manufacturer, distributor or a third party contractor for treatment or disposal.

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How are These Materials Which are Returned for Reclamation, Reformulation or Repackaging Regulated?

If you return CCPs such as unused specialty chemicals and pharmaceuticals to manufacturers, distributors or third party service contractors for reclamation, reformulation or repackaging, they are considered commercial chemical products and are not wastes per Ohio Administrative Code (OAC) rule [3745-51-02](#). Under OAC rule [3745-51-02](#), if you reclaim CCPs they are not waste, and cannot be considered hazardous waste [OAC rule [3745-51-02\(C\)\(3\)](#) and OAC rule [3745-51-03](#)].

Product return systems are not meant to replace waste management systems.

Do I Ever Need to Manage These Materials as Wastes?

When there is reasonable expectation on the part of the manufacturer, distributor or supplier that the material will be recycled, it may be shipped to a third party contractor for handling as a product. For the purposes of this fact sheet, reasonable expectation means that unless an unexpected event occurs, it is believed that the materials will be reclaimed, reformulated or repackaged. When there is no reasonable expectation that the CCPs will be recycled (i.e., the products will be discarded), then the materials must be managed as wastes. They must be evaluated in accordance with OAC rule [3745-52-11](#) to determine if they are hazardous wastes. If the materials are hazardous wastes and will not be recycled, then they must be managed in accordance with the applicable hazardous waste regulations; including manifesting, storing and transporting. Be aware that the waste must be managed as hazardous from the point of generation if it will not be recycled. This means that if a particular product is consistently unusable and must be treated and disposed, it cannot be handled as a non-waste under a reverse distribution system.

What Types of Materials are Considered CCPS?

Commercial chemical products include all types of unused commercial products, whether or not they would commonly be considered chemicals (e.g., circuit boards, batteries and other types of equipment). Although OAC rule [3745-51-02\(C\)\(3\)](#), Table 1, applies this provision to commercial chemical products listed in OAC rule [3745-51-33](#), Ohio EPA interprets the definition to also include commercial chemicals that are not listed in OAC rule [3745-51-33](#), but exhibit one or more characteristic of hazardous waste (50 FR [14219](#); April 11, 1985).

The view that CCPs returned for recycling are not wastes is based on a system established to facilitate the recycling of products, rather than a waste management system. When you reformulate, reuse or reclaim CCPs they are not considered to be wastes under OAC rule [3745-51-02](#). Any products being sent back for sale are not regulated as hazardous waste.

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Commercial chemical products which you ship to a reclaimer are not considered to be a waste. The CCPs should be shipped pursuant to [Department of Transportation](#) and [U.S. Postal Service](#) regulations. A uniform [hazardous waste manifest](#) is not required to ship the material if it is going to be reclaimed.

Can I Include Product Returns from Household Customers Under this Program?

Additionally, items that may be returned for reclamation, reformulation or repackaging include products which are generated from a household and returned from the household to the store are eligible for the household hazardous waste exclusion if you choose to handle them separately from any unsold stock you are also returning.

These household hazardous wastes and CCPs may be shipped back to the distributor, manufacturer or to a third party contractor. Returned materials which are not excluded as household hazardous waste would become hazardous wastes “if and when” they are discarded or intended to be discarded. Ohio EPA expects that all of the CCPs shipped as part of an unregulated reverse distribution system will be reclaimed, repackaged or resold. The material is excluded from regulation only if it is being recycled. See the November 25, 1980 [Federal Register](#) (Vol. 45, No. 229) which states, in part, “it is quite likely that, in some cases, a manufacturer or supplier will find it necessary to discard some portion of the materials returned to him because he is unable to reprocess, repackage, resell or use it. Where this occurs, that portion which is discarded becomes a hazardous waste when it is discarded or when the decision is made to discard the material. In this situation, the manufacturer or supplier is the generator of a hazardous waste because he is the “person...whose act...produces hazardous waste...” (See the definition of generator in OAC rule [3745-50-10](#)).

Can a Third Party Contractor Decide if My Materials Can be Reused?

Sometimes it's appropriate for the third party contractor to make a determination that a CCP can be reused. The third party contractor may have “special knowledge” of the material. The third party claim of special knowledge of the material being reclaimed, reformulated or repackaged should be closely reviewed to prevent abuse.

Examples of Special Knowledge:

- A computer or electronic dismantler who uses specialized instruments to test the components to determine if they can be reused.
- A distributor or a manufacturer who knows the chemical makeup and the physical properties of their products that are involved in a product return system. The manufacturer or the distributor has the special knowledge and can determine if a particular material can be reused, reclaimed or reformulated.
- A list or an instruction form provided to a third party contractor by the manufacturer or the distributor is an example of special knowledge if the list or instructions include criteria that the material must meet in order to decide to reuse it, reclaim it or reformulate it only.

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Examples that are NOT Special Knowledge:

- Review of the material expiration dates and disposal of expired product.
- A list or an instruction form provided to a third party contractor by the manufacturer or the distributor if the only option is disposal.

Note: Since each situation will have its own specific set of circumstances, all parties involved in a reverse distribution system (i.e., manufacturers, distributors, third party contractors and retailers) should take the steps necessary to prevent the receipt of off-site waste.

Specific acceptance criteria should be developed and evaluated prior to the shipment or receipt of returned material. In the unlikely event that a company accepts a shipment of hazardous waste from off-site, they should notify the customer and make arrangements for the waste to be immediately shipped off-site to a [treatment, storage and disposal facility](#) (TSD) after the waste has been fully evaluated (Ohio EPA has determined that 24 hours from the time the sender was first notified is reasonable for the hazardous waste to be shipped off-site.) If screening takes place upon initial receipt of material, the time needed to ship the waste off-site would be minimized. The recipient of the hazardous waste should submit an unmanifested waste report to the director of Ohio EPA as required by OAC rule [3745-54-76](#). They must also manifest the waste off-site as appropriate when the customer fails to make these arrangements.

Under a reverse distribution system, it is presumed that all of the commercial chemical products and any materials returned under the reverse distribution system umbrella must be either reused, reclaimed or reformulated and not disposed.

Some distributors or manufacturers may choose to contract with a third party on their behalf to manage reverse distribution activity so that they do not need to provide warehouse space or deal with transportation concerns. Because their primary goal is sales and distribution, the use of a third party contractor allows them to focus on these important business goals.

Until a CCP is actually discarded or the decision is made to discard the CCP, it is not subject to hazardous waste regulation. This is probably the most important element to consider as you determine if/when the material is regulated by the hazardous waste rules. OAC rule [3745-51-02\(F\)](#) does not specify the time at which you are required to determine if your material is a waste. Until such time as a material is determined to be a waste, the burden of proof rests on the owner of the

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material to show that they are managing it in a manner consistent with it having a commercial value (i.e., is not abandoned, discarded or stored in lieu of disposal). OAC rule [3745-51-02\(F\)](#) requires information to support or demonstrate that a material is not regulated.

A reverse distribution system should not be implemented as an alternative for generators who are required to evaluate wastes prior to disposal. This means that if a particular product is consistently unusable and must be treated and disposed, it cannot be handled as a non-waste under a reverse distribution system.

Note: We recommend you maintain records of how much material is returned and how much is reused, reclaimed or reformulated to support your claim that the returned materials are not regulated.

Where Should I Send these Materials if they Will Not be Reused, Reclaimed or Reformulated?

If you are not recycling these materials by reuse, reclamation or reformulation, they become a waste subject to evaluation. If the materials are determined to be a hazardous waste, Ohio Revised Code (ORC) [§3734.02](#) requires that hazardous waste only be sent to a facility that has a [hazardous waste installation and operation permit](#) for treatment, storage or disposal.

If the receiving facility does not have a hazardous waste installation and operation permit, it would be in violation for storing without a permit and the generator would be in violation for transporting hazardous waste or causing hazardous waste to be transported to a non-permitted location. You should keep in mind that a reverse distribution system is a means to facilitate recycling; it is not meant to replace a waste management system.

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References

Ohio Administrative Code rules [3745-51-02](#), [3745-51-03](#), [3745-51-21](#), [3745-51-33](#), [3745-52-11](#), and [3745-54-76](#).

Ohio Revised Code [§3734.02](#).

U.S. EPA RCRA Online Letter from Alan S. Corson, U.S. EPA to Steven C. Wittmer, MERCK SHARP & DOHME, [Faxback #11012](#), May 13, 1981.

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[Federal Register](#). Volume 14. Number 229, November 25, 1980.

[Federal Register](#). Volume 48. Number 32, February 15, 1983.

Ohio EPA, DHWM. [Letter](#) to Doug Staton, EXP Pharmaceutical Waste Management, Inc., from Karen Hale, Ohio EPA, October 12, 2000.

Ohio EPA, DHWM. [Letter](#) to Kristin L. Watt, Vorys, Sater, Seymour, and Pease, LLP, from Andy Kubalak, Ohio EPA, December 15, 2000.