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## Returned Products/Hazardous Waste Enforcement: U.S. Environmental Protection Agency and Whole Foods, Inc. Settle Alleged Violations by Arkansas/Texas/Louisiana/New Mexico/Oklahoma Facilities

### Arkansas Environmental, Energy, and Water Law Blog

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The United States Environmental Protection Agency ("EPA") issued a September 20<sup>th</sup> news release stating it had reached a settlement with Whole Foods, Inc., ("Whole Foods") addressing alleged Resource Conservation and Recovery Act ("RCRA") hazardous waste regulation violations.

The alleged violations involved in part the classification of returned consumer products.

EPA alleges that Whole Foods:

...improperly identified or mishandled hazardous waste at company facilities throughout Texas, Arkansas, Louisiana, New Mexico and Oklahoma.

EPA states that its investigation began as a "follow-up" on information that the New Mexico Environment Department shared with the federal agency. A year-long investigation and record review of Whole Foods' actions as a generator of hazardous waste allegedly determined that the company did not make proper hazardous waste determinations at various company facilities. The company also allegedly improperly handled spent lamps (i.e., "universal" hazardous waste).

Whole Foods is stated to be correcting the violations and is assessed a civil penalty of 3.5 million. Further, the company has agreed to fund a Supplemental Environmental Project ("SEP") to educate Texas retailers about compliance with hazardous waste laws.

Whole Foods in a news release stated that the enforcement action is resolving recordkeeping and cataloging issues related to "common consumer products" that may become waste at stores located in Texas, Arkansas, Louisiana, Louisiana, Oklahoma and New Mexico. It further states:

The products in question, which are classified as hazardous waste when they can no longer be used for their intended purpose, include items like nail polish remover, certain products containing alcohol (i.e. hand sanitizer), liquor and certain vitamins. This often occurs when a product is opened and returned by a customer and can no longer be returned to the stores' shelves.

Whole Foods also notes it has implemented a comprehensive compliance program designed to assist “Team Members” to properly manage the “limited number of products that may be regulated by EPA when they can no longer be used for their intended purpose.”

The company describes the environmental compliance measures and the type of products being addressed which are listed as:

- Flammables: Hand sanitizer gels and sprays, perfumes and colognes, nail polish, nail polish remover, liquor (48 proof or above, etc.
- Federal Toxics: Vitamins nad vitamin suplements (containing chromium, selenium and/or colloidal silver)
- Oxidizers: Laundry bleach, hair color products with hydrogen peroxide, etc.
- Corrosive Acidic: Certain toilet bowl cleaners, calcium and/or lime removers, products containing acetic, hydrochloric or phosphoric acid, etc.
- Corrosive Basic: Certain drain cleaners, oven cleaners, warewashing detergents, etc.
- Universal Waste: Electronics, batteries, fluorescent bulbs, and some state regulated items, such as paint in Texas

[A copy of the EPA and Whole Foods news releases can be downloaded here.](#)