



CALIFORNIA CUPA FORUM

"An Association of Certified Unified Program Agencies"

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August 22, 2013

TO: ALL UNIFIED PROGRAM AGENCIES

FROM: BILL JONES, ENFORCEMENT ISSUE COORDINATOR^{SENT VIA EMAIL}

SAVE MART SUPERMARKETS INJUNCTIVE PROVISIONS

This communique is to address the question of what an inspector should do months or years down the road from a statewide settlement when they observe additional or similar violations. One suggestion in discussions with statewide prosecutors was to summarize the injunctive provisions following a judgment and distribute the summary to all UPA's. This way UPA's would have easy access to a document that would include the injunctive provisions to compare with any future potential violations.

In addition, it is important that clear direction be provided on what to do if future violations occur and where this information should be sent. For those jurisdictions that have had active involvement by a local prosecutor, this is the point of contact to send subsequent non-compliance information. If your jurisdiction does not have active prosecutorial involvement, you are requested to provide the information to the San Joaquin County District Attorney's Office, ATTN: Supervising Deputy DA David J. Irey, Phone: (209) 468-2400, Fax: (209) 468-0314 (david.irey@sjcda.org) with a copy to me.

What follows is a quick and dirty summary of the injunction provisions. For more detailed information, you are directed to the final court document referenced below.

SAVE MART SUPERMARKETS' INJUNCTIVE PROVISIONS (ref. Case No. 39-2013-00295102-CU-TT-STK, Stipulation for Entry of Final Judgment and Permanent Injunction)

Save Mart Supermarkets shall comply with:

California Health and Safety Code (H&SC) Division 20:
Chapter 6.5 (Section 25100-25258.2): Hazardous Waste Control
Chapter 6.95 (Section 25500-25520): Business and Area Plans

Division 104:
Part 14 (Section 117600-118360): Medical Waste

California Code of Regulations, Title 22 (CCR Title 22)

Penal Code Section 374.8(b)

Additional Specific Injunctions:

4.1.a. Defendant shall not dispose, or cause the disposal of, any hazardous waste at a point not authorized or permitted by the Department of Toxic Substances Control ("DTSC").

4.1.b. Defendant shall determine, at each California Facility, whether each item returned by a customer to that facility is "waste" and if so, determine if that waste is "hazardous waste,".

4.1.c. Defendant shall determine, at each California Facility, whether each waste generated at that facility as a result of a spill, container breakage or other means rendering the product not usable for its intended purpose, is a "hazardous waste".

4.1.d. Defendant shall manage every hazardous waste so identified pursuant to paragraphs 4.1.a., 4.1.b., and 4.1.c

4.1.e. Defendant shall not transport, transfer custody of, or cause to be transported, any hazardous waste unless the transporter is properly licensed and registered to do so. This prohibition includes, without limitation, the transportation of any hazardous waste by a person that is not properly licensed and registered to transport hazardous waste on a tractor and/or trailer owned or operated by Defendant.

4.1.f. Defendant shall not transport, or cause to be transported, any hazardous waste to an unauthorized location.

4.1.g. Defendant shall not transport, or cause to be transported, any item that would be considered hazardous in California as part of its "reverse logistics" process to centralize the management of returned items at distribution centers owned by Defendant, unless pursuant to a contractual agreement expressly providing for the return of the item to the manufacturer or the manufacturer's designated agent, and unless the item is in sufficiently good condition that it may be donated, resold, reused, or recycled in a manner that does not constitute discard.

4.1.h. Defendant shall lawfully and timely dispose of all accumulated hazardous waste from each California Facility at least one time during ninety (90) day period (unless a longer interval is allowed); and shall timely cause to be prepared and filed with DTSC a hazardous waste manifest for all hazardous waste that is transported, or submitted for transportation, for offsite handling, treatment, storage, disposal, or any combination thereof; and shall timely notify the DTSC by filing an exception report concerning the treatment, storage, or disposal facility's failure to return any executed manifest.

4.1.i. Defendant or Defendant's designated contractor shall contact the transporter and/or the owner or operator of the designated facility which was to receive any hazardous waste to determine the status of the hazardous waste in the event of non-receipt of a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within thirty-five (35) days of the date the waste was accepted by the initial transporter.

4.1.j. Defendant shall not treat, store, dispose of, transport, or offer for transportation, any hazardous waste without having received and used a proper identification number from the U.S. Environmental Protection Agency or DTSC, for the originating facility.

4.1.k. Defendant shall maintain a program for the lawful storage, handling and accumulation of hazardous waste, and for the lawful segregation of hazardous waste items that are in leaking containers.

4.1.l. Defendant shall maintain properly designated and designed hazardous waste storage areas, which include the segregation of hazardous wastes, and shall conduct weekly inspections of hazardous waste storage areas, at each California Facility.

4.1.m. Defendant shall comply with all employee training obligations pertaining to the handling of hazardous waste, including, but not limited to, the requirement to maintain for a period of three (3) years, all training documentation for each employee involved in hazardous waste handling at any California Facility. In addition, Defendant shall establish and maintain an employee training program designed to enhance employee awareness of any regulatory or statutory changes in environmental compliance requirements, including, but not limited to, changes in Chapters 6.5 and 6.95 of Division 20 of the H&SC, and of any corresponding changes in Defendant's environmental compliance program(s).

4.1.n. Defendant shall have in place at all times a hazardous waste contingency plan and emergency procedures for each California Facility.

4.1.o. Defendant shall, at each California Facility, continuously implement, maintain, and submit to the respective UPA (administering agency), a complete hazardous materials business plan, as applicable. Each hazardous materials business plan shall include procedures for emergency response to a release or threatened release of hazardous materials. Such a plan shall also include an employee training program.

4.1.p. Defendant shall immediately report any release or threatened release of a reportable quantity of any hazardous material from any California Facility into the environment.

4.1.q. Defendant shall prepare and maintain hazardous waste manifests.

4.1.r. Defendant shall keep a copy of each manifest signed for three (3) years, or until the generator received a signed copy from the designated facility which received the hazardous waste.

4.1.s. Defendant shall properly manage, mark, and store universal waste in compliance with the standards for universal waste management.

4.1.t. Defendant shall keep a record of each shipment, if any, of universal waste received at any California Facility.

4.1.u. Defendant shall comply with the California Medical Waste Management Act.

4.1.v. Defendant shall not knowingly cause to be deposited, without the permission of the owner, any hazardous substance upon the land of another.

If you have any questions, please feel free to call me at 323-890-4042 or email me at bill.jones@fire.lacounty.gov.

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c. Enforcement Steering Committee