



CALIFORNIA CUPA FORUM

"An Association of Certified Unified Program Agencies"

P.O. Box 2017, Cameron Park, CA 95682-2017
530-676-0815 OFFICE 530-676-0515 FAX
www.calcupa.net

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June 27, 2014

TO: ALL UNIFIED PROGRAM AGENCIES

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

LOWE'S HOME CENTER/ORCHARD SUPPLY COMPANY INJUNCTIVE PROVISIONS

This is to summarize the injunctive provisions of the Lowe's/New Orchard statewide judgment dated April 1, 2014. The purpose of this communicate is to provide Unified Program Agencies a document that outlines injunctive provisions to compare with any future potential violations.

This is also to provide clear direction on what to do if future violations occur and where this information should be sent. For those jurisdictions that have 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 Alameda County District Attorney's (DA's) Office, ATTN: Senior Deputy DA Kenneth Mifsud, (510) 569-8816, or David Irey, Yolo County DA's Office (Special Deputy to San Joaquin County DA's Office) at david.irey@yolocounty.org with a copy to me.

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

Lowes'/New Orchard's Injunction Provisions (ref. Case No. 14718732, Stipulation for Entry of Final Judgment and Permanent Injunction).

Lowes'/New Orchard shall comply with:

California Health and Safety Code:
Chapters 6.5 (Section 25100-25258.2): Hazardous Waste Control
Chapter 6.95 (Section 25500-25520): Hazardous Materials Release Response Plans and Inventory

Health and Safety Code Sections 117600-118360: Medical Waste

Additional injunctive provisions summarized without the statutory or regulatory citations:

4.1.a. Defendants 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), including without limitation, to any trash compactor, dumpster, drain, sink, or toilet, or onto the surface or subsurface of the ground at any unauthorized location, or at a landfill or transfer station not authorized to receive hazardous waste.

4.1.b. Defendants 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. Defendants 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. Defendants shall manage every hazardous waste identified pursuant to paragraphs 4.1.a., 4.1.b. and 4.1.c. in accordance with state requirements.

4.1.e. Defendants 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.

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

4.1.g. Defendants shall lawfully and timely dispose of all accumulated hazardous waste at least one time during every ninety (90) day period 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.

4.1.h. Defendants 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.i. Defendants 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.

4.1.j. Defendants 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.k. Defendants shall maintain properly designated and designed hazardous waste storage areas, which include the segregation of hazardous wastes, and shall conduct inspections of hazardous waste storage areas, at each Covered Facility.

4.1.l. Defendants shall comply with employee training obligations pertaining to the management of hazardous waste.

4.1.m. Defendants shall immediately report any release or threatened release of a reportable quantity of any hazardous material from any Covered Facility into the environment, if required.

4.1.n. Defendants shall continuously implement, maintain, and submit to the responsible "Unified Program Agency" a complete hazardous materials business plan. Each required hazardous materials business plan shall include procedures for emergency response to a release or threatened release of hazardous materials. Such plan shall also include an employee training program.

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

4.1.q. Defendants shall keep record of each shipment of universal waste sent from any Covered Facility.

4.1.q. Defendants shall comply with the California Medical Waste Management Act.

4.1.r. Defendants 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.

WJ:lc

c. UP Enforcement Steering Committee