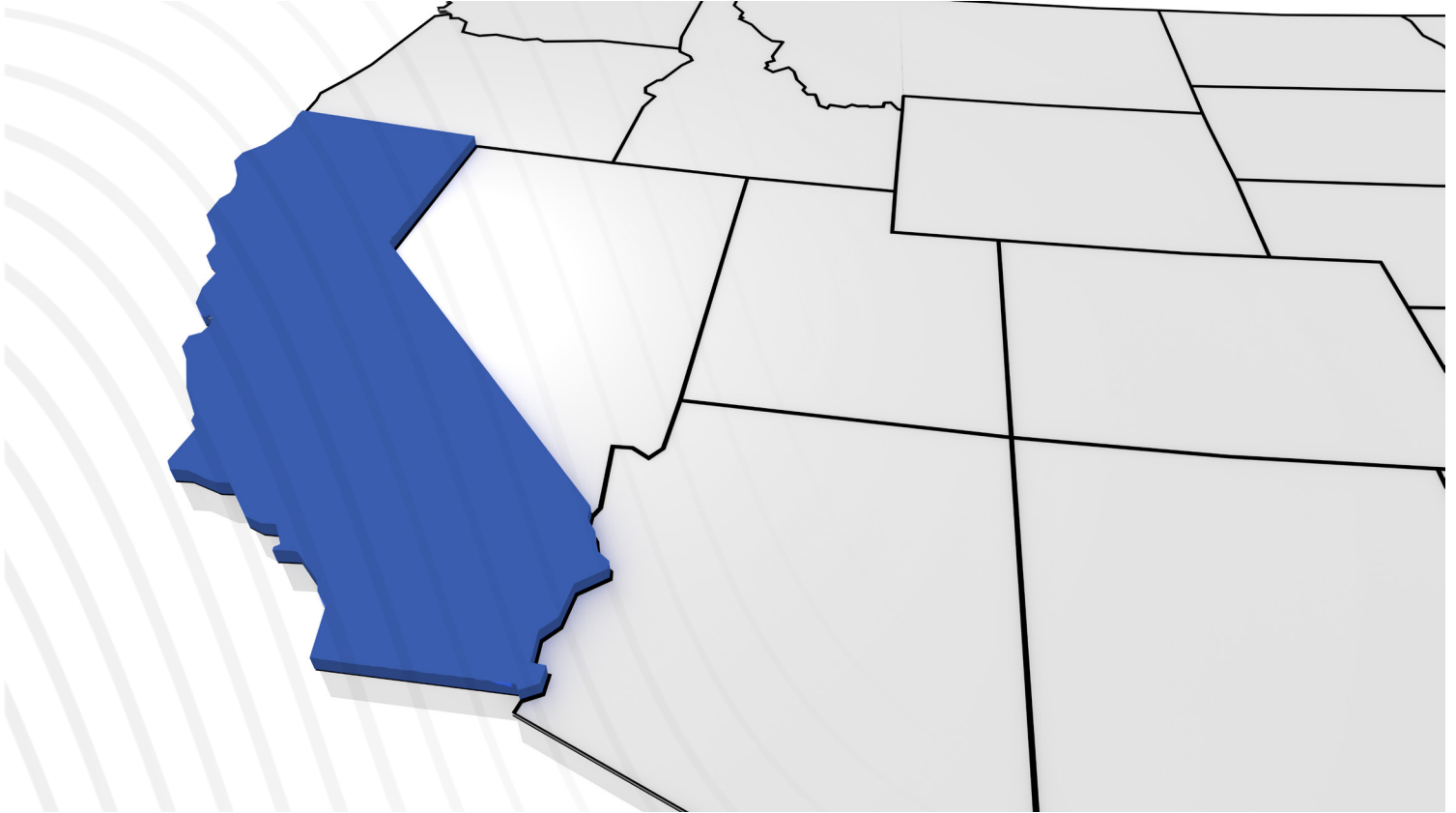


UNTANGLING THE CALIFORNIA ENVIRONMENTAL REGULATORY STRUCTURE FOR RETAILERS



Retailers with operations in California are subject to some of the most stringent and complex regulations in the country including regulations governing product labeling, storage of hazardous materials, mandatory recycling programs, and the management and disposal of hazardous and medical waste. This regulatory framework is further complicated by the layered and concurrent jurisdiction over many of these programs between state and local agencies, which creates the potential for increased scrutiny by multiple agencies and can lead to inconsistent interpretations and uncertainty regarding compliance status.

This Fact Sheet provides a description of the California regulatory agencies with jurisdiction over retail operations, key state-specific environmental requirements relevant for California retailers, recent trends in the state's development and enforcement of these programs, and best practices for staying abreast of new developments.

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



The California Environmental Protection Agency (CalEPA) is tasked with developing and adopting specific rules and regulations addressing air and water pollution, toxic substances, the use of pesticides, and waste recycling and reduction. CalEPA has several offices and departments that have jurisdiction over retailers and their operations.

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

The Department of Toxic Substances and Control (DTSC) coordinates the cleanup of contaminated property, regulates the management of hazardous wastes, and establishes standards for chemicals in consumer products. Most relevant to retailers is DTSC's Hazardous Waste Management Program, which oversees the hazardous waste generator program and issues permits for California facilities that treat, store, and dispose of hazardous waste.

OFFICE OF ENVIRONMENTAL HEALTH AND HAZARD ASSESSMENT

The Office of Environmental Health Hazard Assessment (OEHHA) is responsible for the assessment of health risks posed by environmental contaminants. OEHHA implements the Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as Proposition 65, and compiles the state's list of substances considered to cause cancer or reproductive harm.

DEPARTMENT OF RECYCLING AND RECOVERY

The California Department of Resources Recycling and Recovery, known as CalRecycle, administers and provides oversight for California's state-managed non-hazardous waste handling and recycling programs, including beverage container and electronic-waste recycling, organics management, used tires, used motor oil, carpet, paint, mattresses, rigid plastic containers, newsprint, construction and demolition debris, medical sharps waste, household hazardous waste, and food-scrap composting.

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

The Environmental Management Branch of the Department of Public Health (DPH) establishes statewide standards for the implementation and administration of the Medical Waste Management Act, which governs the management and disposal of medical waste, including prescription and over-the-counter pharmaceuticals.

OFFICE OF THE STATE FIRE MARSHAL

The Office of the State Fire Marshal (OFSM) evaluates and provides technical assistance for the Hazardous Material Management Plan (HMMP) and the Hazardous Materials Inventory Statement (HMIS) programs.

CALIFORNIA AIR RESOURCES BOARD

The California Air Resources Board (CARB) is responsible for setting emission standards for vehicles, fuels, and consumer products, and managing California's refrigerant management program. CARB also oversees 35 local air pollution control districts, which are responsible for permitting and compliance for stationary sources (including emergency generators).

CALIFORNIA UNIFIED PROGRAM



The California Unified Program provides authority to local agencies, known as Certified Unified Program Agencies (CUPA) for permitting and enforcement of certain hazardous materials and waste requirements throughout the state. While CalEPA oversees the statewide implementation of the Unified Program, CUPAs have the authority to apply the regulatory standards established by CalEPA (DTSC), DPH, and OFSM, among others. Specifically, the Unified Program consolidates the administration, permit, inspection, and enforcement activities of six environmental and emergency management programs, sometimes called the "core" programs:

- Aboveground Petroleum Storage Tank Program;
- Area Plan Program/Business Plan Program;
- California Accidental Release Prevention Program;
- Hazardous Material Management Plan/Hazardous Material Inventory Statement Program;

- Hazardous Waste Generator/Tiered Permitting Program; and
- Underground Storage Tank Program.

While each California county is required by law to apply for CUPA certification, cities or other eligible local agencies (e.g., fire departments) may also apply. A list of current CUPAs is provided [here](#). Successful applications must, among other things, demonstrate that a local agency has adequate resources and expertise to effectively implement the Unified Program within the agency's jurisdiction. Every 3 years, CalEPA reviews the ability of each CUPA to meet established performance standards and implement the Unified Program within its jurisdiction.

In general, CUPAs and the responsible state agency share inspection and enforcement authority for the six core CUPA programs, although the agency with primary responsibility frequently depends on the CUPA, the environmental program, activity, or even regulated product. In addition, while not listed above, the Medical Waste Management Act also authorizes local jurisdictions to exercise enforcement authority.

The Unified Program's Consolidated Permit provides regulated businesses with a single permit for the six core CUPA programs. Once permitted, regulated entities are expected to fulfill a majority of their CUPA reporting obligations through the [California Environmental Reporting System \(CERS\)](#). CUPAs share the information collected by CERS with state and federal authorities.

CUPAs regularly inspect regulated facilities to ensure compliance with the regulated programs under their jurisdiction. Under some of the programs, CUPAs have the authority to obtain a warrant to access a facility. Some programs require CUPAs complete a minimum number of inspections on an annual or triennial basis. If an inspection results in one or more assessed violations, CUPAs may implement a range of enforcement actions depending on the severity of the alleged violations. These options include Notices to Comply for less serious violations to formal administrative, civil, or criminal enforcement for more serious ones. Further, CUPAs maintain the ability to refer enforcement matters to their respective county district attorneys, state-level agencies, or the Environmental Protection Agency (EPA). Resulting judgments may include civil penalties, required changes in business operations, supplemental environmental projects, and/or reimbursement for investigation costs.

KEY CALIFORNIA RETAIL ENVIRONMENTAL REQUIREMENTS



HAZARDOUS MATERIALS MANAGEMENT

California regulates the storage of hazardous materials, which not only include hazardous wastes but also hazardous substances and products that have not yet been discarded. Examples of regulated products include refrigerant used in on-site refrigeration equipment, propane used for fork lifts, and helium used to fill balloons. Notably, while consumer products offered for sale are supposed to be excluded from this reporting obligation, some jurisdictions have taken the position that propane offered for sale must be reported as part of this program. Most of these requirements can be found in the state's [Fire Code](#) and are intended to provide information to first responders in case of a release.

Qualifying facilities with hazardous materials must develop and maintain a Hazardous Materials Business Plan, Hazardous Materials Management Plan, and/or Inventory Statement, which require, among other things, an inventory for hazardous materials at a facility, emergency response plans and procedures, and schedules of employee training. These requirements are implemented and enforced by local jurisdictions as part of the CUPA program, and each CUPA can adopt more stringent requirements at the local level through the passage of local ordinances, which creates the potential for inconsistent and unclear regulatory applicability to retailers with locations in multiple jurisdictions. For example, thresholds and reporting requirements for a given material (e.g., propane or refrigerant) may differ by jurisdiction.



Retail waste streams, including damaged or unsalable consumer products as well as wastes from store operations, can be subject to federal and [California hazardous waste laws](#) and regulations. In addition to the federal hazardous waste classifications, California has the [Aquatic Toxicity test](#), which can lead to additional waste streams needing to be managed as hazardous upon disposal. (The identification of hazardous waste, especially in a retail setting, is a complex process. For more information visit the RCC [Hazardous Waste Page](#).)

California's [Universal Waste Rule](#) allows individuals and businesses to transport, handle and recycle certain common hazardous wastes, termed universal wastes, in a less burdensome manner than the requirements for other hazardous wastes. These requirements were adopted to ensure that universal wastes are managed safely and are not disposed of in the trash. Items on this list include (1) electronic devices; (2) batteries; (3) electric lamps; (4) mercury-containing equipment;

(5) cathode-ray tubes and glass; and (6) non-empty aerosol cans.

Since 2007, state and local prosecutors have brought and settled significant enforcement actions with many retailers for the alleged mismanagement of hazardous waste. These settlements have initiated efforts to appropriately amend hazardous and medical waste regulations to accommodate retail operations while maintaining the overall purpose of the environmental programs. In 2017, the Retail Waste Working Group (RWWG) submitted a [report](#) to the California Legislature describing the concerns that had been identified by the RWWG with the state's interpretation of the applicability of hazardous waste requirements to retailers and to suggest legislative and regulatory solutions. While many stakeholders believe reform continues to be in the best interest of all interested parties, no significant legislative or regulatory action has been taken to date.



MEDICAL WASTE MANAGEMENT

California's [Medical Waste Management Act \(MWMA\)](#), implemented by the Department of Public Health (DPH), applies to facilities that generate medical waste. Medical waste includes both human and veterinarian prescription and nonprescription (i.e., over-the-counter) pharmaceuticals when they are discarded, unless they would be regulated as a hazardous waste under federal standards upon discard. In practice, products with "drug facts" on the label are subject to the MWMA, while products such as supplements, which only have "supplement facts," are not viewed by DPH as subject to the MWMA. Note that a product that would only be regulated as a California hazardous waste (under the Aquatic Toxicity test) is not subject to this carveout and must instead be managed as a medical waste upon discard. The MWMA includes an exemption for pharmaceuticals that are sent offsite to a qualifying reverse distributor for redistribution, treatment, or disposal. In addition to pharmaceuticals, the definition of medical waste includes used syringes, body fluids, and laboratory wastes, among other things. Retailers with medical clinics on-site must account for this broader applicability in developing compliance programs.

PROPOSITION 65

The [Safe Drinking Water and Toxic Enforcement Act of 1986](#), commonly known as Proposition 65, requires covered businesses (manufacturers, distributors, and retailers with more than 10 employees) to provide warnings about exposures to chemicals that cause cancer, birth defects or other reproductive harm prior to exposure. The Office of Environmental Health Hazard Assessment (OEHHA) publishes a [list of chemicals](#) considered to meet the qualifying criteria. The law applies to consumer products as well as occupational and environmental exposures. Thus, retailers are potentially subject to the warning requirement for products sold in stores, if those products contain listed chemicals at levels that would cause exposures over established thresholds, and for exposures that may occur to customers and employees in their stores. The language required for warnings was recently updated to require more specificity, including naming at least one chemical in the warning, per exposure type (reproductive harm and cancer) and also to narrow the potential liability for retailers. Proposition 65 can be enforced both by the California Attorney General and private plaintiffs, though most frequently it is enforced by private plaintiffs, who issue more than 2,000 notices of violation per year.



REFRIGERANT MANAGEMENT

California's [Refrigerant Management Program \(RMP\)](#), managed by CARB, requires facilities with refrigeration systems containing more than 50 pounds of high-global warming potential (GWP) refrigerant to conduct and report periodic leak inspections, promptly repair leaks, and keep service records on site. The regulation also requires that facilities implement service practices intended to minimize refrigerant emissions. While there is also a federal refrigerant management program managed by EPA, the obligations imposed by CARB are not entirely consistent with EPA's program and require annual reporting and additional monitoring and compliance obligations. In addition, with the [passage of the California Cooling Act](#), California's legislature enacted new prohibitions on the use of certain high-GWP refrigerants, including R-404A and R-507A, which became effective on January 1, 2019. As a result, new equipment that uses these refrigerants can no longer be sold in the state.

EMERGENCY GENERATORS – AIR PERMITTING

Stores that have emergency generators for back-up power may need a permit from the [local air permitting control district \(APCD\)](#) for emissions. Permitting and compliance obligations for emergency generators differ by size of the generator, amount and type of use, and by jurisdiction.

COMMERCIAL RECYCLING

California businesses, including retailers, that generate at least 4 cubic yards of commercial solid waste per week are required to arrange for recycling services pursuant to [California's Mandatory Commercial Recycling Law](#). Covered businesses have several compliance options, including self-hauling, subscription to a recycling service, arranging for the pickup of recyclable materials, and subscribing to recycling services that include mixed waste processing off-site, as long as diversion results are comparable to source separation at the store. Local jurisdictions may have more stringent recycling requirements, including on-site segregation obligations.

ORGANICS

Under the [California organics program](#), businesses must recycle organic waste depending on the amount of waste they generate per week (as of January 2019, the threshold is 4 cubic yards of solid waste). Organic waste means food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with food waste. While CalEPA manages the state-level organic waste program, local jurisdictions maintain the authority to enforce the organic waste recycling requirements and are authorized to pass local ordinances to make obligations more stringent. More information about California's organics waste program is available [here](#).

BEST PRACTICES FOR RETAIL ENVIRONMENTAL COMPLIANCE



With the number of applicable requirements, the frequent addition of new programs and changing applicability, and multi-layered enforcement by state and local agencies, retailers are hard pressed to stay ahead of the curve with regard to environmental compliance in California. Information sharing with other retailers through RILA's RCC is an excellent way to benchmark compliance and stay abreast of new developments.

In addition, each year, retailers and other regulated entities are offered the opportunity to participate in the CUPA conference, which is the annual conference where local inspectors and other regulators learn the latest updates and receive training on the implementation of the programs within their jurisdictions. This conference is a unique opportunity to hear from regulators, interact with your local regulators, and, most importantly, help them understand how their implementation affects the regulated community. The [2020 conference](#) will be held in Burlingame, February 3-6.

Many times, retailers first learn of an adverse agency interpretation through an inspection report that identifies a violation or noncompliance. Retailers should closely track allegations and local inspection trends to identify areas for improvement or new interpretations by CUPAs. CUPAs within different jurisdictions will often share their findings from inspections with inspectors from other jurisdictions and will highlight compliance gaps for each other.

Finally, state and local district attorneys continue to bring enforcement actions against retailers, sometimes developing new and novel legal arguments to support their claims. Keeping track of these settlements is another helpful way to stay abreast of enforcement trends and agency interpretations as applied in the retail context. [Yolo County](#) is often the lead district for these settlements and will usually post press releases on its website as settlements are reached.