NACDS NATIONAL ASSOCIATION OF CHAIN DRUG STORES

Submitted via e-mail
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Re: NACDS Comments to Draft Amendments to the Dangerous Waste Regulations Chapter 173-303 WAC

On behalf of our members that operate approximately 820 chain pharmacies in the state of Washington, the National Association of Chain Drug Stores (NACDS) is writing to the Department of Ecology (Department) to submit comments to the Department's Draft Amendments to Dangerous Waste Regulations, and more specifically, those amendments pertaining to the federal Environmental Protection Agency's (EPA) Proposed Rule on Management Standards for Hazardous Waste Pharmaceuticals. While we appreciate that the state's draft rule mostly mirrors the proposed federal rule, we ask the Department to wait for any final EPA rules to ensure consistency between a federal rule and the state amendments.

There are several differences between the state's draft amendments and the federal proposed rule. First, there is inconsistency between the draft state amendments and the EPA's proposed rule as to the determination of "creditable dangerous waste pharmaceuticals." The Department proposes to delete the term "potentially" from "potentially creditable dangerous waste pharmaceuticals," whereas the proposed EPA rule retains the term "potentially." As indicated in the Preamble of the EPA Proposed Rule, pharmacies are not always aware of whether a particular pharmaceutical will be creditable at the time it is being pulled from the shelf. EPA is aware of this challenge and proposed to establish a set of criteria within the proposed definition of "potentially creditable hazardous waste pharmaceutical." Removing the word "potentially" implies that the pharmacy has to know, for certain, in advance which particular products will or will not receive credit even though there can be many factors in this determination. For retailers and health care facilities operating multiple locations in one or more states, it is crucial that the criteria are workable and consistent and avoid unintended business consequences.

We urge the Department to follow the lead of the EPA and adopt a more nuanced approach on this issue. The EPA's proposed rule preserves use of the term "potentially creditable hazardous waste pharmaceutical" and defines it as:

> (1) A hazardous waste pharmaceutical that has the potential to receive manufacturer's credit and is: (i) Unused or un-administered; and (ii)

> Unexpired or less than one year past expiration date. (2) The term does not include ''evaluated hazardous waste pharmaceuticals,'' residues of pharmaceuticals remaining in containers, contaminated personal protective equipment, and clean-up material from the spills of pharmaceuticals.

See 80 FR 58084. Moreover, the EPA's proposed rule preamble elaborates on the criteria used for determining "potentially creditable hazardous waste pharmaceuticals" at 80 FR 58022-23. EPA's approach allows chain pharmacies to more readily anticipate and manage which products are creditable and which are not creditable and we ask the Department to adopt a similar approach.

A second area of inconsistency involves Washington's recognition of certain state-only dangerous waste pharmaceuticals that are not recognized by the EPA. In the draft amendments, the Department proposes to include those state-only drugs within the state's pharmaceutical hazardous waste regulations. Some of these state-only drugs are over-the-counter (OTC) medications. Given the uncertainty of how the EPA Proposed Rule will be applied to OTC medications and the potential for intersection with state-only drugs, it is difficult for NACDS to provide comments before the publication of the finalized federal rule. Accordingly, we ask the Department not to act on this issue until and to allow public comment on this issue after the EPA has published its final rule on hazardous waste pharmaceuticals.

The final subject of inconsistency between the state's draft amendments and the proposed federal rule involves the treatment of syringes and syringe residue. The proposed federal rule exempts from regulation as hazardous waste both fully-depressed syringes and partially dispensed syringes, but the draft amendments only exempt the former. We believe pharmacies should have regulatory consistency nationwide in how they handle both fully and partially-depressed syringes. The proposed federal rule provides such consistency, and we ask the Department to align their draft rules with the proposed federal rule on the handling of syringes as waste. Doing so will ensure that pharmacies do not have to follow unique rules for handling syringes as hazardous waste solely in the state of Washington.

In conclusion, we highly encourage the Department to continue to track the EPA's proposed rule on hazardous waste pharmaceuticals and delay action until EPA's positions and intended direction are finalized and public. We thank you for your consideration of our comments.

Sincerely,

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