



State of Ohio Environmental Protection Agency

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December 15, 2000

Kristin L. Watt
Vorys, Sater, Seymour and Pease, LLP
52 East Gay Street
Post Office Box 1008
Columbus, Ohio 43216-1008

Re: Bath & Body Works - Reverse Logistics Program

Dear Ms. Watt:

I am writing this in response to your October 13, 2000, letter to Jeff Mayhugh requesting a determination regarding the regulatory status of Bath & Body Works (BBW) products that you propose to have returned from the retail stores to a third party contractor. The third party service company will facilitate the processing, crediting, and appropriate disposal of the returned products using the criteria provided by BBW. Currently, such products are returned directly from the retail stores to the Reynoldsburg, Ohio, BBW Distribution Center.

When the store does not have a reasonable expectation that the products can be recycled (i.e., the products will be discarded) the store must consider the products to be wastes. The store must evaluate these wastes in accordance with the Ohio Administrative Code (OAC) rule 3745-52-11 to determine if the products are a hazardous waste. If the products are hazardous wastes then the store must manage them in accordance with the applicable hazardous waste regulations. According to Ohio Revised Code (ORC) § 3734.02, the store can only send hazardous waste to a facility which has a hazardous waste installation and operation permit for treatment, storage or disposal of hazardous wastes. Waste products from households (as defined in OAC 3745-51-04(B)) as BBW customer returns, would be excluded from the RCRA regulations per OAC 3745-51-04(B).

BBW products include a variety of household, personal care, and toiletry products. We understand that these products may be returned for many reasons which include: 1) customer returns, 2) store testers, 3) damaged product, 4) expiration dated, 5) excess, 6) discontinued, and 7) unsaleable. You state in your letter that the retail stores have no decision making ability regarding the regulatory status of most of these products, and

currently package these materials as consumer products to be shipped to the Distribution Center. The retail stores do not know whether the returned products will be reused, reclaimed, sold, or disposed. You state that some of the products will be restocked for associate or retail sales; and that many are discarded for various business reasons, including the prevention of unintended reuse in the marketplace.

An off-site third party contractor will perform sorting and handling to determine if a product is a waste or will be reclaimed. Other activities will include restocking and disposal. The hazardous products are ultimately separated from the non-hazardous products when sorted for disposal. Hazardous wastes will be manifested to an off-site facility. We recommend that returned products be recycled whenever possible. Most returned BBW products which are classified as hazardous waste exhibit the characteristic of ignitability. Returned products which do not exhibit the characteristic of ignitability, and which are destined for disposal, should not be assigned the D001 hazardous waste code. Returned products, which are destined for disposal, should be managed as non-hazardous waste if they do not meet the characteristics of a hazardous waste as defined in OAC Chapter 3745-51.

You state in your letter that some of the products being returned from the retail stores will not be considered waste until that determination is made by the third party service provider. We agree with your determination that the third party service provider will be considered the generator, because they are making the waste determination. OAC Chapter 3745-50-10 defines a "Generator" as any person, by site, whose act or process produces hazardous waste identified or listed in Chapter 3745-51 of the Administrative Code or whose act first causes a hazardous waste to become subject to the hazardous waste rules. The returned products themselves are considered to be "commercial chemical products," when recycling by use or reuse is a viable option (See Table 1, OAC 3745-51-02). If the assumption is that the returned products will be recycled, then those products managed within the reverse distribution system are not solid waste until the third party contractor determination is made to dispose of them. At that time the third party contractor would be considered the generator. Although records do not exist for the amount of returned material which is reused versus disposed, we would be interested in receiving data generated in the future supporting the assumption that the products being returned are indeed being recycled.

This view is based on a system established to facilitate the recycling of Bath & Body Works products rather than a waste management system. A reverse distribution system should not be implemented as an alternative for generators who are required to evaluate wastes prior to disposal. Other divisions of The Limited, Inc., who may also consider a reverse distribution system, would be held to these same standards and expectations.

Please feel free to contact me at this office at 614.644.2966 if you have any questions. We appreciate your interest in this matter, and the opportunity to provide input.

Sincerely,

Andrew D. Kubalak
Compliance Assurance Section
Division of Hazardous Waste Management

cc: Lundy Adelsberger, DHWM, CDO
District Office Managers
Linda Neumann, DHWM

October 13, 2000

*OEPA
122 South Front St
Columbus, OH 43216*

Re: Bath and Body Works - Reverse Logistics Program

Dear Mr. Mayhugh:

As a follow up to our August 24th meeting, I write to confirm that a hazardous divisions will be in compliance with applicable law. The examples and issues addressed in this letter are related to Bath & Body Works(BBW), a division of The Limited, Inc., however, other divisions will likely use similar programs. BBW is in the business of selling a wide variety of household, personal care and toiletry products such as antibacterial soap, shampoo, shower cleansing products, body cologne, air fresheners and accessory items.

Retail Stores:

BBW retail stores currently send their customer returns, store testers, damaged product and products that are "marked out of stock"(MOS) to its Reynoldsburg, Ohio Distribution Center (DC) for sorting, handling, restocking and/or disposal. The retail stores have no decision making ability regarding most of these products; they must package the materials as consumer products and ship them to the DC. A large variety of products are at issue and require sorting once returned to the DC. Some are restocked for reuse (either for retail or associate sales), however, many are generally discarded for various business reasons. Discarded product is generally incinerated or otherwise destroyed to prevent unintended reuse in the marketplace

Some BBW products are flammable due to alcohol content; for example, body splashes, finger nail polish, hair spray, etc. When disposed by BBW, some of these flammable consumer products must be deemed hazardous under RCRA for the characteristic of ignitability 40 CFR 261.21. Thus, hazardous products are ultimately separated from non-hazardous products when sorted for disposal. Hazardous materials are then manifested to an off-site disposal facility.

BBW is seeking to retain an off-site third party to perform this sorting, handling, restocking and disposal function. Thus, the retail stores will simply ship the product to the third party service provider which will sort and determine whether a product is a waste or reusable (using criteria provided by BBW). Under this scenario, the products being returned from the retail stores will not be considered waste because that determination will be made by the third party service provider. Because the service provider will be making the "waste" determination, we understand that they would be the "generator". Our preliminary discussions indicated you agreed with this assessment.

Implementation of this program will provide BBW more warehouse space for storing its products and will continue to allow for uniform and proper handling and disposal from its retail stores. In addition, the third-party service providers being contemplated currently plan to recycle many aspects of the products as opposed to simply landfilling the materials. For instance, plastics and metals could be recycled, flammable liquids used for energy recovery, and flammable non-hazardous materials burned for steam production (heat).

Assembly Centers

BBW is also seeking to use a service provider for its Assembly Centers. Assembly Centers are third party contractors hired to assemble together individual products for retail sale (e.g. gift sets). BBW supplies the contractors with products, baskets, etc. for assembly, packaging and return to BBW for distribution and sale. Assembly Centers will occasionally have damaged, excess and MOS products. These products are currently returned to the BBW DC. Like the retail stores, the Assembly Centers have no decision making criteria regarding the products.

My research indicates that the program contemplated by BBW is commonly implemented by the pharmaceutical industry, has been approved in writing by the US EPA and is consistent with applicable regulations. I have advised my clients that a similar program for personal care items should be in compliance with the law and I would like to obtain your concurrence in writing. If you need any additional information, please do not hesitate to call

Sincerely,

Kristin L. Watts