

# MEMO

**To:** California Licensed Professional-CLP  
**From:** California Certified Hazardous Materials Manager-CHMM  
**Date:** October 22, 2018  
**Subject:** Regulatory Review of Information for International Window Facility Located at 1551 E. Orangethorpe Ave, Fullerton, California

I was tasked to conduct a review of facility information for a confidential facility located in Fullerton, California that was provided by a CLP. Specifically, I was asked to identify potential violations of Federal, State and county hazardous materials, hazardous waste, solid waste, Stormwater, occupational health and Department of Transportation (DOT) regulations.

Fullerton, California is located in Orange County, California, The Fullerton Fire Department oversees the Hazardous Materials and Underground Tank Program and the County of Orange Environmental Health Division serves as the County Unified Program Agency (CUPA) lead for the oversight of facilities generating hazardous waste, releasing air emissions and/or discharging pollutants to water.

The following documents were provided by the CLP for my review:

- Safety Data Sheet (SDS) for H.B. Fuller® HL-5130-125, “Hot Melt Adhesive”;
- SDS for H.B. Fuller® HL-5130-149, “Hot Melt Adhesive”;
- Order to Stop Crushing Drums issued by CLP dated October 18, 2018;
- Two photographs of crushed drums placed in uncovered dumpster;
- E-mail from CLP to CHMM dated October 18, 2018; and
- E-mail from C. Tatalovich to L. Ireland, regarding access to SDS dated October 15, 2018.

This memo summarizes the potential violations identified during my review of the information provided by the authorized representative and offers supporting justification for each potential violation identified, including citations to the appropriate regulations. The maximum fines for a one time occurrence, of all noted violations, could be as high as \$2,000,000+ and with possible criminal penalties. Per Cal OSHA, Employers shall make available on a timely and reasonable basis a SDS on each hazardous substance in the workplace upon request of an employee. Further, I have suggested what steps a facility located in Fullerton, California would need to take to demonstrate compliance with each of the identified issues.

**REGULATORY REVIEW OF FULLERTON, CALIFORNIA FACILITY**

Comment No.	Comment	Federal Requirement	State/County Requirements	Steps to Demonstrate Compliance
1.	<p>The two photographs submitted for review appear to show that the drums have been crushed and placed in a dumpster for municipal solid waste. Facility representatives stated that the drums were “Non-hazardous”. Other than the SDSs, no additional documentation was provided to support the facility’s waste determination that these containers were correctly classified as “Non-Hazardous”.</p>	<p><b>40 CFR §262.11</b> requires that all generators make a waste determination, and store their waste no longer than allowed.</p>	<p>Generators are required to determine if the waste they generate is hazardous by exclusion from regulation, testing the waste according to acceptable methods, or applying knowledge of the hazard characteristic (<b>22 CCR Division 4.5 §66262.11</b>). The decision criteria used to make the waste determination should be documented and maintained in the facility’s operating record, so that it is available for review by the regulatory authority. Per <b>22 CCR Division 4.5 §66262.40(c)</b>, a generator shall keep records of any test results, waste analyses, or other determinations made in accordance with <b>22 CCR Division 4.5 §66262.11</b> for at least three years from the date that the waste was last sent for on-site or off-site treatment, storage, or disposal. Waste determinations should be reviewed, at a minimum, annually or when there is a change to the process or the ingredients used.</p>	<p>The facility is responsible for making a waste determination on <u>all</u> waste streams generated at the site. Waste determinations may be based on analytical data, generator knowledge or a combination of the two. The data or rationale used to develop the waste determination for each waste stream generated should be documented and maintained in the facility’s operating record for at least 3 years.</p>
2.	<p>The memo dated October 19, 2018 from the CLP to CHMM., stated that there is typically “up to 6 inches are remaining at the bottom” of the drums</p>	<p>Per <b>40 CFR §261.7</b>, the definition of a RCRA empty container depends on the type of waste and the container. Containers of acute hazardous waste are</p>	<p>Per <b>22 CCR §66261.7 (b)</b> a container, or an inner liner removed from a container, which previously held a hazardous material, <u>including hazardous waste</u>, is empty if the container or the inner liner removed from a</p>	<p>The facility must comply with the <i>October 18, 2018 Order to Stop CRUSHING 55-gallon Steel DRUMS and to</i></p>

<p>being placed into the general waste dumpsters (Per Victor at the facility).</p> <p>The statement of “at a minimum up to 6 inches of material remaining at the bottom of the drum” would not meet either the Federal or California standards for an “<i>empty container</i>”.</p> <p>The facility was first verbally instructed to cease this practice on September 18, 2018 a CLP and the facility authorized representative for the Superfund (CERCLA) and State of California, State Water Resources Control Board, Site Cleanup Program. The authorized representative provided a second verbal warning to the Fullerton facility representative (Mr. Joseph Sokol) on October 5, 2018. A written Order to Stop Crushing 55-Gallon Steel Drums and to Cease Disposal Practice was issued by the authorized representative on October 18, 2018.</p> <p>Current CUPA Enforcement Policy states that the facility may be subject to up to \$25,000 per day for each violation (i.e., each drum disposed) in addition to cleanup costs. It has been <b>35</b> days since the facility was first notified of the potential violation.</p>	<p>considered empty if they have been triple-rinsed using a solvent capable of removing the waste. Or, they can be cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal.</p> <p>For non-acute hazardous wastes that are not gases, the container is empty if two steps are taken. First, all wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, such as pouring, pumping, and aspirating. Second, the container cannot have more <u>than 1 inch of residue or 3% residue by weight</u>. If the container has a capacity over 119 gallons, the percentage of residue allowed is reduced to 0.3%.</p> <p>If containers will be shipped off-site, then DOT hazardous materials transportation regulations (<a href="#">49 CFR §172.101</a>) apply to the shipment if there is any residue remaining in the containers.</p>	<p>container has been emptied so that: <b>(2)</b> If the hazardous material which the container or inner liner held is <u>not pourable</u>, no hazardous material remains in or on the container or inner liner that can feasibly be removed by physical methods (excluding rinsing) which comply with applicable air pollution control laws and which are commonly employed to remove materials from that container or inner liner. Following material removal, the top, bottom and sidewalls of such a container shall not contain remaining adhered or crusted material resulting from buildup of successive layers of material or a mass of solidified material. A thin uniform layer or dried material or powder is considered acceptable. A person who treats a container or inner liner onsite by employing physical methods to satisfy the standard in this subsection is authorized to perform such treatment for purposes of <a href="#">Health and Safety Code Section 25201</a>.</p> <p><b>22 CCR §66261.7 (r)</b> states that any container, or inner liner removed from a container, which previously held a hazardous material, including but not limited to hazardous waste, and which is <u>not empty</u> as defined in subsections (b) or (d) of this section, or otherwise exempt from regulation as a hazardous waste under this division or <b>Chapter 6.5 of Division 20 of the Health and Safety Code (commencing with Section 25100)</b>, <u>shall be managed as a hazardous waste</u> in accordance with this division and <b>Chapter 6.5 of Division 20 of the Health and Safety Code (commencing with Section 25100)</b>.</p>	<p><i>Cease with DISPOSAL Practice</i> (the Order) issued by the authorized representative. Failure to comply with the Order will result in the facility conducting illegal disposal of hazardous waste.</p> <p>Under Chapter 6.5 §25189.2(c) of the H&amp;SC Any person who disposes, or causes the disposal of, any hazardous or extremely hazardous waste at a point which is not authorized according to the provisions of this chapter is liable for a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each violation and may be ordered to disclose the fact of this violation or these violations to those persons as the court or, in the case of an administrative action, a hearing officer, may direct. Each day on which the deposit remains is a separate additional violation, unless the person immediately files a report of the deposit with the department and is complying with any</p>
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				order concerning the deposit issued by the department, a hearing officer, or a court of competent jurisdiction for the cleanup.
3.	Containers that do not meet the Federal or California standards for empty; must be managed as hazardous waste. The facility must obtain a permit/authorization to crush hazardous waste drums onsite or ship the drums off-site in accordance with the DOT pre transport requirements.	<p>All states must follow the federal DOT regulations. <b>49 CFR Parts 172 thru 179</b> require that shippers package, label, mark and offer placards to the transporter in accordance with the applicable DOT regulations before transporting or offering hazardous materials or hazardous wastes for transportation off-site.</p> <p>All employees that are involved in loading and unloading hazardous materials, inspecting, accepting, signing shipping papers for incoming shipments of hazardous materials, signing hazardous waste manifests, labeling or closing hazardous materials or waste containers, must be trained and tested in accordance with the Department of Transportation (DOT) Hazardous Materials Awareness training at a minimum as is outlined in <b>49 CFR Part 172 Subpart H</b>.</p>	Under <b>Health and Safety Code section 25504, subdivision (c)</b> , regulated facilities are required to provide employees with training in safety procedures in the event of a release or threatened release of a hazardous material or hazardous waste.	<p>Review all employees' records (including full-time, part time, temporary workers and contractors) to ensure that each employee whose job function requires them to handle shipments of hazardous materials or hazardous waste has received this training within the past three years.</p> <p>Document all training and ensure copies of the training records are maintained and available for review at the facility in a central location</p>
4.	A review of the SDSs for HL-5130-125 and HL-5130-149 indicates that no toxicity or ecotoxicity data is available to demonstrate that residues left in the drums cannot have an adverse impact	Not Applicable	California EPA requires that facilities determine whether a solid waste exhibits the characteristic of toxicity, has the potential to bioaccumulate or exposure can result in a lethal dose to 50% of the population or the waste has the potential to migrate through	The facility should provide toxicity data for the "HL-5130-125 and HL-5130-149 products" and any other hazardous materials that they are

	on human and the environment if the material is mismanaged.		the subsurface of a landfill and negatively impact groundwater. Generators can make a determination using generator knowledge or analytic data. However, the SDS provided no toxicological information. <b>22 CCR §66261.24</b> outlines various test methods that can be used to determine the toxicity of a waste in the absence of other data. <i>The</i> Total Threshold Limit Concentration (TTLC) is the maximum concentration allowed for a waste in solid or powdered form to be considered possibly non-hazardous. If the concentration of a waste is greater than the allowed TTLC value for that waste, the waste is toxic (and is thus hazardous waste).	using to establish the potential for adverse health effects on humans and aquatic life. This data can be provided by conducting testing such as the WET Test, toxicological studies, or other generator knowledge.
5.	The SDSs for HL-5130-149 and HL-5130-125 indicate that the recommended use for these products is as a "Hot Melt Adhesive" Containers that have previously held industrial products such as 'Adhesives" are typically classified as hazardous waste or special waste at the state or local level. These types of wastes are not allowed to be placed in the municipal waste stream.	Not Applicable	<b>22 CCR Division 4.5, Chapter 11, Article 5, Appendix XII Section (b)</b> states that Adhesives are to be assigned California Hazardous Waste Code <b>281</b> .	Refer to the recommendations under Comments 1 and 2.
6.	Since it appears that the waste stream consisting of the crushed drums meets the classification of a hazardous material and a hazardous waste, the facility must update their hazardous materials business plan (HMBP) to reflect this information to ensure compliance with the California Health & Safety Code.	Not Applicable	Per <b>§ 25507 of the Health &amp; Safety Code</b> , if a business handles any of the following types of hazardous materials with a minimum disclosable amount, at any one time during the reporting year, then <u>it is required</u> to electronically complete and submit a Hazardous Material Business Emergency Plan (HMBEP):  Materials or mixtures must be reported if the business handles an amount equal to or <ul style="list-style-type: none"> <li>• greater than 55 gallons of liquid,</li> <li>• 500 pounds of solid, or</li> <li>• 200 cubic feet of compressed gas</li> </ul>	Submit or update the HMBP, Inventory and Map for the facility to ensure that all hazardous waste, universal wastes and hazardous materials managed by the facility are captured in the plan. Ensure that the map contains all of the required elements as identified in the following guidance:

7.	In order to treat, store, dispose of, transport or offer for transportation, all generators are required to have an active EPA ID No. or State ID No.	Refer to State requirements	Per <b>22 CCR Division 4.5 §66262.12 (a)</b> , all hazardous waste generators are required to have an active EPA ID No. in order to treat, store, dispose of, transport or offer for transportation any amount of hazardous wastes.	Confirm whether the facility has been issued a federal or state ID No. by checking the Department of Toxic Substance Control (DTSC) website (using the facility's current site address. If the facility has been issued an ID number, then ensure it is active. If the number is inactive, then proceed to step 2.  Determine whether the facility has submitted EPA ID Verification Questionnaire for 2018.
8.	The two photographs submitted for review appear to show that the drums have been crushed and placed in a dumpster for municipal solid waste. As discussed in previous comments, this is not the appropriate and would not meet the container management standards outlined in <b>40 CFR §265.173 or 22 CCR §66265.173</b> ,  Furthermore, it appears that the dumpster is uncovered and located outdoors where contents of the drum could be mobilized by either rain or wind and potentially impact surrounding soils or Stormwater. This would subject the facility to the Stormwater regulations under the Industrial General Permit.	The Federal Clean Water Act (Clean Water Act) prohibits certain discharges of storm water containing pollutants except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. ( <b>33 U.S.C. §§ 1311, 1342</b> (also referred to as Clean Water Act <b>§§ 301, 402</b> .) The United States Environmental Protection Agency (U.S. EPA) promulgates federal regulations to implement the Clean Water Act's mandate to control pollutants in storm water discharges. ( <b>40 CFR. § 122</b> , et seq.) The NPDES permit must require implementation of Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant	In accordance with the container management standards outlined in <b>22 CCR §66265.173</b> , generators must ensure that containers of hazardous wastes are managed to meet the following requirements: <ul style="list-style-type: none"> <li>• Ensure that a container holding hazardous waste is kept closed at all times during transfer and storage, except when it is necessary to add or remove the waste. [<b>22 CCR §66265.173(a)</b>]</li> <li>• Ensure that a container holding hazardous waste is not opened, handled, transferred or stored in a manner which may rupture the container or cause it to leak. [<b>22 CCR §66265.173(b)</b>]</li> <li>• Conduct a weekly inspection of areas where containers are stored or transferred. (<b>22 CCR §66265.174</b>)</li> </ul>	Determine whether the facility is subject to RCRA, the California Hazardous Waste Control Law (HWCL), or the Clean Water Act. If the facility determines that any of these regulations are applicable then they must ensure that address all applicable requirements. See comments 1, 3, 4, 5, 6 and 7.  Stormwater dischargers must certify and submit all Permit Registration Documents (PRDs) for the General Industrial Permit via the State

	<p>A review of the SMARTS database by the authorized representative indicates that the facility has not submitted any permit registration documents for their stormwater discharges as of October 23, 2018.</p>	<p>Control Technology (BCT) to reduce or prevent pollutants in storm water discharges and authorized nonstorm water discharges (NSWDs). The NPDES permit must also include additional requirements necessary to implement applicable water quality objectives or water quality standards (water quality standards, collectively).</p>	<ul style="list-style-type: none"> <li>• Container or inner liner &gt; 5 gallons must be marked with date emptied and managed pursuant to special management practices outlined in <b>22 CCR §66261.7(e)</b> within one year of date emptied. [<b>22 CCR §66261.7(f)</b>]</li> <li>• Bulk containers or inner liners of containers containing hazardous wastes that are not empty per <b>22 CCR §66261.7(b) or (d)</b> must be managed as hazardous wastes. [<b>22 CCR §66261.7(p)</b>].</li> </ul>	<p>Water Board's Storm Water Multiple Application and Report Tracking System (SMARTS) website.</p> <p>Failure to comply with the container management standards found in <b>22 CCR §66265.173</b> which result in the release of hazardous waste may result in civil penalties of up to \$5,000 per day per incident per <b>§ 13264 of the H&amp;SC.</b></p> <p><b>§ 13265(d)(1) of the California Water Code</b> authorizes the Regional Water Board to assess civil liability fines up to \$5,000 per day for negligently discharging hazardous waste, as defined by the <b>Health and Safety Code, in violation of § 13264.</b></p>
9.	<p>In an e-mail dated October 15, 2018, an employee requested access to SDS for the facility and was told that they were not available at the facility.</p> <p>Under CAL OSHA's Penalty Regulations (8 CCR 336), The maximum penalty for general and regulatory violations has increased is \$12,471 per day; the minimum penalty for willful violations is \$8908 per day, and the maximum penalty is \$124,709</p>	<p>California is a State Plan State; Therefore, the Cal OSHA supersedes Federal OSHA.</p>	<p>Employers <b>who use any substance that is listed as a hazardous substance in 8 CCR, §339 (www.dir.ca.gov/title8/339.html), or is covered by the Hazard Communication standard (www.dir.ca.gov/title8/5194.html)</b> must provide employees information on the hazardous chemicals in their work areas, access to SDS, and training on how to use hazardous chemicals safely. Employers shall make available on a timely and reasonable basis a SDS on each hazardous substance in the workplace upon request of an employee,</p>	<p>All California employers—regardless of size—whose employees may be exposed to hazardous substances are subject to the Hazard Communication Standard (<b>8 CCR 5194 (b)</b>). Obtain and maintain current SDSs and make them readily accessible to employees in their</p>

	per day. California's maximum penalty for failure-to-abate, is currently set at \$15,000 per day.		an employee's collective bargaining representative, or an employee's physician.	work area(s) during each work shift.  Train employees so they know how to handle and protect themselves in the event of a chemical spill or a leak from a sealed container. In addition, ensure that employees are trained on how to understand the information in the SDSs and on the latest Globally Harmonized System (GHS) labels. Training of employees should be documented and training records should be maintained for a minimum of one year per <b>8 CCR 3203(b)(1)</b> ,
10.	Since SDSs were not readily available, there is a potential for the facility to not have a Hazard Communication or Injury and Illness Prevention Plans in place. This is a common violation.	California is a State Plan State; Therefore, the Cal OSHA supersedes Federal OSHA.	All employers must have a written and effective Injury and Illness Prevention Program (IIPP) meeting the requirements of <b>8 CCR §3203</b> .	A complete inventory of all hazardous chemicals currently being used should be conducted and a review of the SDS information should be conducted to ensure that the most up-to-date SDS is on file for all workers, relevant information should be shared with affected workers in each Department.

11.	<p>Titanium Dioxide, airborne of a respirable size is listed as a Carcinogen on the current Prop 65 list which is issued under the State of California Environmental Protection Agency Safe Drinking Water and Toxic Enforcement Act of 1986. While the SDS states that the titanium dioxide is bound in the product and cannot be released. No toxicity or fate and transport data have been provided to support these statements.</p> <p>DTSC has identified titanium dioxide as a priority chemical for additional research under its Safer Consumer Products Draft Three Year Priority Product Work Plan for 2018-2020.</p>	Refer to State requirements	<p><b>Per 8 CCR 5194[d]</b>, California employers must determine whether any of the hazardous chemicals from their chemical inventory are subject to Proposition 65 requirements. A “hazardous substance” includes:</p> <p>Any hazardous substances listed in:</p> <ul style="list-style-type: none"> <li>• The Hazardous Substances List (<b>8 CCR, Section 339</b>), commonly known as “The Director’s List of Hazardous Substances”</li> <li>• <b>29 CFR Part 1910, Subpart Z</b>, “Toxic and Hazardous Substances,” Occupational Safety and Health Administration (Federal OSHA); and <b>8 CCR, §5155, “Air Contaminants”</b></li> <li>• Threshold Limit Values (TLVs) for Chemical Substances in the Work Environment, American Conference of Governmental Industrial Hygienists (ACGIH), 1991–1992 4. Sixth Annual Report on Carcinogens, National Toxicology Program (NTP), 1991 5. Monographs, International Agency for Research on Cancer (IARC), Vols. 1–53 and Supplements 1–8. World Health Organization;</li> <li>• Safety Data Sheets as reproductive toxicants or cancer producing substances <b>22 CCR, §12000</b>, under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), “Chemicals Known to the State to Cause Cancer or Reproductive Toxicity,” a list published at least once a year by Cal/EPA’s Office of Environmental Health Hazard Assessment</li> </ul>	<p>Review all of the SDSs for the hazardous chemicals and substances managed at the facility to determine which of those may be regulated under California Proposition 65.</p> <p>Provide information and warning information/signage for those workers and in those areas where the regulated chemicals are being used.</p>
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			<ul style="list-style-type: none"> <li>Any other substances that present a physical or health hazard as determined by scientific evidence.</li> </ul>	
12.	Based upon a review of the available information it appears that the handling of hazardous materials and wastes at the facility has not been consistently occurring and this may be due to inadequate training.	Refer to State requirements	<p>The proper storage and use of hazardous materials can significantly reduce the possibility of accidental releases and injury to employees or the surrounding environment. To minimize risk to life, habitat and property.</p> <p><b>8 CCR Subchapter 7, Group 16, Article 9 Hazardous Substances and Processes, Control of Hazardous Substances</b> requires that the requirements of both a written Hazard Communication Plan and written Injury and Illness Prevention Plan (IIPP) have been implemented. SDSs for hazardous substances should be kept in a main file and at each storage location for every shift.</p>	<p>It is recommended that a review of each of the current employee's qualifications as it pertains to their job title, function and responsibility be conducted. Determine what additional training/certification is required to ensure that the employee meets all of the regulatory training requirements to be able to perform their duties.</p> <p>Schedule any necessary training required.</p> <p>At a minimum, all personnel whose responsibilities include the handling or management of universal waste, used oil, hazardous waste, hazardous materials, safety of a shipment of hazardous materials or responding to any releases of hazardous waste or hazardous constituents must have the following training and</p>

				<p>be current with the required refresher training:</p> <ul style="list-style-type: none"> <li>a. DOT Hazardous Materials Awareness Training (Initial and refresher every 3 years);</li> <li>b. California Hazardous Waste Training (Initial and Annually);</li> <li>c. Universal Waste Training ((Initial and Annually);</li> <li>d. OSHA 40 –hour HAZWOPER Training(Initial);</li> <li>e. OSHA 8-Hour HAZWOPER Refresher (Annually);</li> <li>f. SPCC Training (Annually); and</li> <li>g. Emergency Response Plan Training (Annually);</li> </ul> <p>The training identified above may be conducted by the facility employees. However, the facility must be prepared to demonstrate that any facility employees serving as instructors are qualified to train on the topic(s) they were chose to instruct on. The "Hazardous Waste Operations and Emergency Response"</p>
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				<p>standard (HAZWOPER), <b>29 CFR §1910.120</b>, states in paragraph (e) (5) that "Trainers shall be qualified to instruct employees about the subject matter that is being presented in training". In addition, <b>29 CFR §1910.120(e) (5)</b> explains that the qualifications of the instructors may be shown by academic degrees, completed training courses and/or work experience. In addition, to having a strong knowledge of the subject matter, trainers must also have the ability to communicate this information to students. Therefore, additional requirements to demonstrate the qualifications of a trainer would include education and training in instructional design, curriculum development, presentation skills or other experience in conducting training activities.</p>
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