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Solid Waste/RCRA: Federal Court Addresses Status of Medicinal Product

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The United States District Court for the Northern District of California (“Court”) addressed in a January 21st Opinion an issue arising under the Resource Conservation and Recovery Act (“RCRA”). *See Westerfield v. L’Oreal USA, Inc.*, No. 25-CV-07653-JSC, 2026 WL 158807 (N.D. Cal. Jan. 21, 2026).

The question considered was whether Plaintiff has plausibly alleged L’Oreal USA, Inc.’s (“Defendant”) products produce “a solid waste.”

The Court further determined whether the benzene produced by Defendant’s products constitutes “other discarded material.”

Plaintiff purchased Defendant’s La Roche-Posay Effaclar Duo Dual Action Acne Treatment 5 .5%. For one of the purchased products independent testing showed it contained 261 ppm benzene, but Defendant was stated to have not recalled it.

The Court further noted:

- The U.S. Food and Drug Administration recognizes benzoyl peroxide as safe in treatment of acne but benzene is a potential degradation product.
- The U.S. Environmental Protection Agency has classified benzene as a:
- Known human carcinogen for all routes of exposure.
- Long term exposure may present an imminent substantial endangerment to health or the environment.

Defendant was alleged to have violated RCRA by “generating hazardous waste without complying with the applicable regulations.”

Plaintiff purchased an over-the-counter acne treatment manufactured by the Defendant.

The Plaintiff was required to prove the benzene produced by the Defendant’s product qualified as “a solid or hazardous waste” and that the Defendant “contributed or is contributing to the past or present handling, storage, treatment, transportation, or disposal” of waste.

The Court first considered the issue of whether the benzene was a solid or hazardous waste.

RCRA defines “hazardous waste” as:

- A solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may—
- (A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

- (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

RCRA defines “solid waste” as:

... Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, ... but does not include solid or dissolved material in domestic sewage ...

The Court found that the Plaintiff cited no cases to support the claim the Defendant’s products should be considered “hazardous waste.” It was deemed insufficient to assert that the Defendant’s product creates hazardous waste: the alleged waste must be because of the product’s intended use. Further, the Plaintiff was held to have not properly asserted the argument that the Defendant “discarded” its product by selling it to customers in the opposition brief. Therefore, the Court did not consider this argument.

The Court then considered the Plaintiff’s claim that the Defendant was “directly connected” to the waste disposal process of hazardous wastes from its products and facilities. It concluded that the Plaintiff’s RCRA claim failed due to insufficient evidence to support the argument that the Defendant contributed to “past or present handling, storage, treatment, transportation, or disposal” of waste.

The Court found that the disposal of the Defendant’s product occurred after the Plaintiff’s purchase. This meant Defendant did not have active involvement in the disposal process. The Defendant was not sufficiently connected to the waste disposal process to be held liable for handling or storage of hazardous waste. The Court also found the Plaintiff’s claim that the Defendant was a “generator” of waste failed due to insufficient supporting evidence.

The Defendant’s motion to dismiss was, therefore, granted.

A copy of the Order can be found [here](#).