



**CERTIFIED MAIL - RETURN RECEIPT REQUIRED**

July 11, 2023

Paul C. Schultz  
Division Assistant Asset Protection/Safety Manager  
Kroger Company  
1550 S. Redwood Rd.  
Salt Lake City, UT 84104

**RE: NOTICE OF VIOLATION AND RESOLUTION  
SMITHS FOODS NO 409  
EPA ID# NMR000000836**

Dear Mr. Schultz:

On May 17, 2023, the New Mexico Environment Department ("NMED") conducted a hazardous waste Compliance Evaluation Inspection ("Inspection") at Smiths Foods No 409, ("SM 409") located at 600 E. 20<sup>th</sup> St., Farmington, New Mexico ("Facility"). SM 409 is a commercial retail business selling food items and pharmaceuticals. These activities generate waste aerosols; corrosive, basic and inorganic liquids; flammables; toxics; pharmaceuticals, and universal waste which are generated as a result of typical grocery store/supermarket and pharmaceutical operations and from expired and damaged goods. SM 409 utilizes corporate maintenance personnel to service light fixtures.

Based on that inspection and review of the information obtained, NMED has determined that SM 409 is a Very Small Quantity Generator of hazardous waste as defined in 40 Code of Federal Regulations ("CFR") 262.13. Furthermore, NMED has determined that SM 409 has violated the New Mexico Hazardous Waste Management Regulations ("HWMR") 20.4.1 New Mexico Administrative Code ("NMAC") as specified below.

NMED Inspector observed the following violations:

1. Failure to label universal waste batteries with the words "Universal Waste", or with other wording to identify the waste. Specifically, NMED observed one unlabeled container of universal waste batteries at the facility's Central Accumulation Area

("CAA"). This is a violation of 20.4.1.1000 NMAC, incorporating 40 CFR § 273.14(a) and 20.4.1.1001(B) NMAC.

2. Failure to demonstrate the length of time universal waste has accumulated. Specifically, NMED observed one container of universal waste batteries in the CAA which was not marked with an accumulation start date or associated with an accumulation log. This is a violation of 20.4.1.1000 NMAC, incorporating 40 CFR § 273.15(c) and 40 CFR § 273.15(c)(1).

NMED has determined that the violations were adequately addressed during the time of inspection; therefore, no further action is required.

This Notice of Violation is considered an informal enforcement response in accordance with NMED's Enforcement Response Protocol. Please be aware that failure to address the above violations and any future substantial deviations from regulatory requirements may result in SM 409 being considered for an elevated enforcement action. Also, be aware that any corrective action taken during our Inspection, or in response to this letter, does not relieve SM 409 of its obligation to comply with any and all other applicable laws and regulations.

Pursuant to the NMED Delegation Order dated March 24, 2023, the Cabinet Secretary has delegated the authority to issue Notices of Violation under the Hazardous Waste Act and HWMRs to the Chief of the Hazardous Waste Bureau. If you have any questions regarding this letter, please contact Peter J. Garcia Sr. of my staff at 505-490-5868 or by email at [PeterJ.GarciaSr@env.nm.gov](mailto:PeterJ.GarciaSr@env.nm.gov).

Sincerely,

Ricardo Maestas  
Acting Chief  
Hazardous Waste Bureau

RM:pg

cc: Aaron Coffman, Program Manager, NMED HWB  
Peter J. Garcia Sr., NMED HWB  
Thomas X. Vigil, Acting NMED District II Manager

file: Library # 2182