

# Environmental Laws and Alternative Dispute Resolution: Tools for Environmental Justice

## Resource Conservation and Recovery Act

### Introduction

The Resource Conservation and Recovery Act (RCRA) is the primary federal law regulating the management and disposal of solid and hazardous waste.

### Purpose

The purpose of the Resource Conservation and Recovery Act is to provide legal and regulatory tools for use by the federal government to govern the management and disposal of solid and hazardous waste. The goals of RCRA are to:

- Ensure that wastes are managed in a manner that protects human health and the environment;
- Reduce or eliminate as quickly as possible the amount of waste generated; and
- Conserve energy and natural resources through waste recycling and recovery.

### Approach

RCRA is different than most pollution control laws that focus on addressing pollution as it “leaves the pipe.” It is meant to be a pollution prevention statute. At the outset, RCRA:

- Established a protective “cradle-to-grave” approach to hazardous waste management;
- Implemented a permitting and tracking system for managing wastes;
- Developed design and performance standards for hazardous waste treatment, storage and disposal facilities; and
- Started a state authorization program for states to play a major role in addressing waste management.

In 1984, Congress expanded RCRA's authority and made the law even stronger. It passed the Hazardous and Solid Waste Amendments, which:

- Created a land disposal restriction program (which serves as an incentive for business to implement waste minimization plans);
- Established Corrective Action requirements (which address cleanup of contamination);
- Specified permitting deadlines for hazardous waste facilities;

## Approach, continued

- Regulated businesses that generated small amounts of hazardous waste;
- Required a nationwide look at the conditions of solid waste landfills;
- Encouraged source reduction and recycling;
- Imposed strict conditions for landfill closure; and
- Specified design and operating practices that protect human health.

## Issues Addressed

The Resource Conservation and Recovery Act authorizes the federal government to manage hazardous waste from its creation, through its transportation, to its ultimate disposal. The statute also has provisions dealing with non-hazardous solid waste, including municipal garbage, underground storage tanks, used oil, and medical waste. States also can obtain authorization to administer the RCRA hazardous waste program. Since many additional requirements were added in the 1984 amendments to RCRA, states have had to apply for supplemental authorization to administer these requirements. Thus, in many cases, the state will issue the basic RCRA permit, but EPA will still be the agency that determines what corrective action (if any) is required for past hazardous waste disposal at the permitted facility.

## Framework

The Resource Conservation and Recovery Act addresses the following:

### Public Notice and Participation

- Public hearing to be held if EPA receives written notice of opposition (§7004(b)(2), 42 U.S.C. §6974(b)(2)).
- Expanded Public Participation Rule - informal public meetings not applicable between permit applicants and affected communities (must occur *before* permit application submitted) (40 C.F.R. Part 270).

### Available Information

EPA information requests to “handler” of hazardous waste (all info received open to public) (§3007(a), (b), 42 U.S.C. §6927(a), (b)).

### Legal Rules and Opportunities

Rulemaking:

- General rulemaking authority (§2002(a)(1), 42 U.S.C. §6912(a)(1)).
- Hazardous waste listing and identification criteria (§3001, 42 U.S.C. §6921).
- Generator standards (§3002(a), 42 U.S.C. §6922(a)).
- Transporter standards (§3003(a), 42 U.S.C. §6923(a)).
- Transporter standards, in consultation with the Department of Transportation (§3003(b), 42 U.S.C. §6923(b)).
- Treatment, storage, disposal facility standards (§3004(a), 42 U.S.C. §6924(a)).
- Treatment, storage, disposal facility location standards (§3004(o)(7), 42 U.S.C. §6924(o)(7)).
- Monitoring and controlling air emissions at treatment, storage, and disposal facilities (§3004(n), 42 U.S.C. §6924(n)).
- Non-hazardous wastes (§§4001-4010, 42 U.S.C. §§6941-6949a).
- Guidelines to assist in development and implementation of state solid waste management plans (§§4002(b), 4002(c)(9), 42 U.S.C. §§6942(b), 6942(c)(9)).
- Criteria for determining which facilities are “open dumps” or “sanitary landfills” (§4004(a), 42 U.S.C. §6944(a)).
- Underground storage tanks (§§9001-9010, 42 U.S.C. §§ 6991-6991i).

## Legal Rules, continued

### Permitting and other approvals:

- Hazardous waste permitting omnibus authority (§3005(c)(3), 42 U.S.C. § 6925(c)(3)).
- Land disposal permits (§3019, 42 U.S.C. §6939a).
- Non-hazardous waste management facilities that receive household and small quantity generator hazardous waste (§4005, 42 U.S.C. §6945)

### Siting:

- Treatment, storage, disposal facility standards (§3004(a), 42 U.S.C. § 6924(a))
- Treatment, storage, disposal facility location §3004(o)(7), 42 U.S.C. §6924(o)(7)).

### Cleanup decision:

- Corrective action for permitted facilities (§§3004(u),(v), 3008(h), 42 U.S.C. §§6924(u),(v), 6928(h)).
- "Imminent and substantial endangerment" court action (§7003, 42 U.S.C. §6973)

### Enforcement and compliance assurance:

- EPA compliance orders, suspension/revocation of permits, administrative civil penalties (§3008, 42 U.S.C. §6928).

## Using RCRA to Achieve Environmental Justice

The public plays an important role in the RCRA program. EPA requires waste management facilities to involve the public and the local community throughout the RCRA permitting process. At any time during the process, the public can submit comments and request public hearings to clarify information or voice concerns and objections.

Further, the public has a role in facility cleanup processes. Under corrective action, the local community can access a facility's inspection information, and participate in remedial decisions and processes. EPA also works with tribes to control open dumps on native lands.

RCRA provides many opportunities for community residents to become involved in government decisions on activities regulated by this law. Some examples of these opportunities include:

- Public hearings can be held if EPA receives written notice of opposition;
- Expanded Public Participation Rule: informal public meetings between permit applicants and affected communities can be held, but they must occur before a permit application is submitted;
- ATSDR health assessments may be prepared for land disposal facilities authorized: public may submit evidence of release or exposure (§3019, 42 U.S.C. §6939a); and
- EPA-ordered monitoring: EPA can do monitoring or authorize "any person" to do it at company expense (§§3013, 3008(d), 42 U.S.C. §§ 6934, 6928(d)).

In addition to opportunities to participate in government decision-making, it is also important for community residents to understand where they can obtain information that will assist them to achieve their goals. Information sources include clearinghouses and databases. One source is EPA's website, which has several fact sheets under "managing hazardous waste in your community." See [www.epa.gov/epawaste](http://www.epa.gov/epawaste). Facility monitoring is another important activity for community residents. Community residents should obtain and review copies of documents that address the regulated facility, such as the following:

- Generators' recordkeeping requirements (§3002(a), 42 U.S.C. §6922(a));
- Transporters' recordkeeping requirements (§3003(a), 42 U.S.C. §6923(a));
- Treatment, storage, disposal facility requirements (§3004(a), §6924(a));
- EPA information requests to "handler" of hazardous waste (all information received is open to public) (§3007(a), (b), 42 U.S.C. §6927(a), (b)); and
- EPA-ordered monitoring (§§3013,3008(d), 42 U.S.C. §§ 6934, 6928(d)).

**RCRA and Public Participation:**

Community residents should keep in mind that public participation regulations require all relevant comments offered by the public to be taken into consideration before final decisions are made.