

# RESOURCE CONSERVATION AND RECOVERY ACT (RCRA): EJ Hook Fact Sheet

## Summary of Law

- Cradle-to-grave system controls generation, transportation, treatment, storage and disposal of hazardous waste.
- States are responsible for management and disposal of solid wastes.
- Promotes pollution prevention to protect the environment and public health.
- No direct federal authority for siting of facilities.

## Environmental Justice “Hooks”

RCRA provides authority to address environmental justice challenges caused by hazardous and solid waste. Types and examples of provisions that can be used by community residents include:

1. **Legislative Intent:** Section 1003(b) “declares it to be the national policy of the U.S. that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible.” This provision provides the opportunity to focus on pollution prevention as a means of reducing risks in heavily impacted communities.
2. **Omnibus Authority:** Section 3005 (c)(3) states that “each permit issued under this section shall contain such terms and conditions as the Administrator (or State) determines necessary to protect human health and the environment.” EPA has interpreted this provision to authorize denial of a permit to a facility if EPA determines that operation of the facility would pose an unacceptable risk to human health and the environment and that there are no additional permit terms or conditions that would address this risk. On a case-by-case basis, this omnibus authority may be applicable to address the following health concerns:
  - cumulative risks due to exposure from pollution sources in addition to the applicant facility;
  - unique exposure pathways and scenarios (e.g. subsistence fishers, farming communities);
  - sensitive populations (e.g. children with levels of lead in their blood, individuals with poor diets)
3. **Location Standards:** Section 3004(o)(7) states that EPA can issue location standards as are necessary to protect human health and the environment. For example, EPA could establish minimum buffer zones between hazardous waste management facilities and sensitive areas (e.g. schools, areas that already have several hazardous waste facilities, residential areas).
4. **Exposure Information and Health Assessments:** Section 3019 provides that EPA has the authority to increase requirements for applicants for land disposal permits to provide exposure information and to request that the Agency for Toxic Substances Disease Registry conduct health assessments at such land disposal facilities.
5. **Contingency Plans:** Section 3004(a) requires that permitted facilities must maintain “contingency plans for...effective action to minimize unanticipated damage from any

treatment, storage, or disposal of...hazardous waste.” Thus, EPA could require facilities to prepare and/or modify their contingency plans to reflect the needs of communities that have limited resources to prepare and/or respond to emergency situations.

6. **Public Participation Opportunities:** Community residents have the opportunity to comment on government decision-making on permitting of hazardous and solid waste facilities. They can also participate in informal public meetings between permit applicants and affected communities (before submission of permit application).
7. **Case Authority:** *Chemical Waste Management, Inc.*, 6 E.A.D. 66, 1995 WL 395962 (1995). If the operation of a facility may have a disproportionate impact on a minority or low-income community, EPA can:
  - Assure early and ongoing public participation opportunities to comment on the permitting process.
  - Conduct a second review of its health and environmental impact assessment of the facility in order to determine if the impact on minority or low-income populations is disproportionately adverse.
  - Impose permit conditions or denials based on disproportionately high and adverse human or environmental health effects.

Note: there is no legal basis for rejecting a permit application solely based on alleged social or economic impacts.

### Environmental Justice Outcomes Under RCRA

Possible outcomes from RCRA that address environmental justice challenges and goals include:

1. Permit denials or conditions
2. Establishment of cleanup priorities
3. Research studies
4. Increased public participation opportunities
5. Buffer zones

For more details on how to use RCRA to achieve environmental justice, please see:

1. *Opportunities for the Advancement of Environmental Justice: An Analysis of EPA Statutory Authorities* (Environmental Law Institute, 2001).
2. *A Citizen's Guide to Using Federal Environmental Laws to Secure Environmental Justice.* (Environmental Law Institute, 2002).