United States
Environmental Protection
Agency

Solid Waste
and Emergency Response
(5305W)

EPA530-R-98-004
May 1998
www.epa.gov/osw

EPA

RCRA Orientation Manual

RCRA orientation

14747

RCRA Orientation Manual

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FOREWORD

This manual updates the *1990 RCRA Orientation Manual*, which has proven to be a popular and valuable resource for anyone working with EPA's solid and hazardous waste management program or underground storage tank program. Since the manual's publication in 1990, the RCRA program has evolved dramatically. As a result of changes in the dynamics of solid and hazardous waste management, as well as changes in the regulatory expectations and demands of government, public, and private entities, the RCRA program has been steadily modified through new regulations, policies, Agency-wide initiatives, and Congressional mandates. The manual's revision reflects the progress that has been made in the program and documents the changes in RCRA.

At this time, the RCRA Subtitle C hazardous waste regulatory framework is completely in place, and almost all states are implementing large portions of the program. EPA has achieved significant progress in establishing provisions to fully protect both ground water and air resources. Under Subtitle D, the establishment of municipal solid waste landfill criteria ensures adequate protection of human health and the environment from solid waste disposal practices. In addition, the Agency has significantly expanded initiatives aimed at reducing the amount of waste generated, and in the event that this cannot be achieved, making any resulting waste management more efficient. Lastly, the Subtitle I underground storage tank program is being fully implemented, and tank owners and operators are working towards upgrading their units to meet the most current and environmentally protective management standards.

As we move ahead in the continuing implementation of RCRA, several priority initiatives stand out. For example, EPA continues to encourage waste minimization in order to reduce the quantities of waste generated and the volume of waste that needs to be handled by practices such as land disposal and combustion. Also, the RCRA program is advancing risk-based regulation by evaluating new ways to regulate wastes based on the risk that they might pose to human health and the environment. Lastly, EPA is increasing the incorporation of states, the regulated community, and the public into the regulatory process in order to further a protective environmental strategy that is easy to implement, provides feasible compliance options, and takes into account the interests of citizens.

The continued success of the RCRA program rests on the involvement of all stakeholders. This manual provides a mechanism through which affected parties can learn more about the program and serves as an effective introduction to the various facets and basic structure of the RCRA program designed to regulate solid and hazardous waste.

This manual was developed by the Office of Solid Waste, Communications, Information, and Resources Management Division. Special thanks to the many individuals at EPA Headquarters who reviewed the drafts and provided comments.

USE OF THE MANUAL

This document has been reviewed by the U.S. Environmental Protection Agency and has been approved for publication. Mention of trade names, products, or services does not convey, and should not be interpreted as conveying, official EPA approval, endorsement, or recommendation.

This manual serves as an effective introduction to the various facets and basic structure of the RCRA program designed to regulate solid waste, hazardous waste, and underground storage tanks. In order to achieve this goal, the *RCRA Orientation Manual* is designed for EPA and state staff, members of the regulated community, and the general public who wish to better understand RCRA. While this manual constitutes a review of the RCRA program, it is not a substitute for RCRA or its implementing regulations, nor is it a regulation itself. Thus, it cannot impose legally binding requirements on EPA, states, or the regulated community. In addition, the manual is not intended to modify or affect in any way existing statutory or regulatory requirements or Agency policies; it is simply intended to briefly summarize those requirements and policies. If there is any unintended variation between any statements in this manual and existing requirements or policy statements, the requirements or policy statements are controlling.

Further information is available over the Internet on the Office of Solid Waste and Emergency Response's Homepage at: http://www.epa.gov/oswer. For more detailed information about hazardous and nonhazardous solid waste, please see the Office of Solid Waste's Homepage at: http://www.epa.gov/osw. Regulatory information and documents are also available from the RCRA, Superfund & EPCRA Hotline at either (703) 412-9810 in the Washington DC area, or toll-free, (800) 424-9346 elsewhere. TDD users should call (800) 553-7673. The Hotline is accessible over the Internet at http://www/epa.gov/epaoswer/hotline.

RCRA ORIENTATION MANUAL

EXECUTIVE SUMMARY

OVERVIEW

The Resource Conservation and Recovery Act (RCRA) was enacted in 1976 to address the huge volumes of municipal and industrial solid waste generated nationwide. After several amendments, the Act as it stands today governs the management of solid and hazardous waste and underground storage tanks (USTs).

The U.S. Environmental Protection Agency (EPA) published the *1990 RCRA Orientation Manual* in order to educate and inform the public about the broad requirements of RCRA's regulatory program. The 1990 manual has proven to be a popular and valuable resource for anyone working with EPA's solid and hazardous waste management program or UST program.

Since the manual's publication in 1990, the RCRA program has evolved dramatically. As a result of changes in the dynamics of solid and hazardous waste management, as well as changes in the regulatory expectations and demands of government, public, and private entities, the RCRA program has been steadily modified through new regulations, policies, Agency-wide initiatives, and Congressional mandates. The manual's revision reflects the progress that has been made in the program and documents the changes in RCRA.

FEATURES OF THIS MANUAL

Specifically, this manual addresses:

- Introduction to RCRA
- Managing Solid Waste — RCRA Subtitle D
- Managing Hazardous Waste — RCRA Subtitle C
- Managing Underground Storage Tanks — RCRA Subtitle I
- Miscellaneous Statutory Provisions
- RCRA and Its Relationship to Other Environmental Statutes
- Public Participation in RCRA.

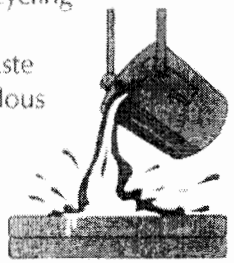
This manual also contains appendices that present important RCRA forms and paperwork requirements, a glossary, a list of acronyms and abbreviations, an organization chart for EPA's Office of Solid Waste, and useful environmental contacts.

MANUAL HIGHLIGHTS

Each of the seven sections of the manual discusses different aspects of the regulatory program.

Introduction to the Resource Conservation and Recovery Act

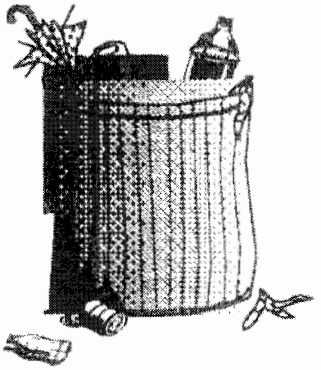
- RCRA's goals are to protect human health and the environment from the hazards posed by waste disposal; to conserve energy and natural resources through waste recycling and recovery; to reduce or eliminate the amount of waste generated, including hazardous waste; and to ensure that wastes are managed in an environmentally safe manner.



- RCRA, enacted in 1976, is an amendment to the Solid Waste Disposal Act of 1965. RCRA has been amended several times, most significantly by the Hazardous and Solid Waste Amendments (HSWA) of 1984.
- Within this manual, the acronym RCRA does not only refer to the Statute itself, but also to corresponding regulations codified in the Code of Federal Regulations (CFR), guidance, and policy.
- RCRA addresses three programs — solid waste, hazardous waste, and USTs.
- RCRA involves several organizations and entities, including Congress, EPA's Office of Solid Waste and Emergency Response (OSWER), EPA Regions, states, the regulated community, and the general public.
- Current program initiatives include encouraging waste minimization, streamlining RCRA regulations, and fostering federal/state partnerships.

Managing Solid Waste — RCRA Subtitle D

- RCRA's solid waste management program, Subtitle D, encourages environmentally sound solid waste management practices that maximize the reuse of recoverable material and foster resource recovery.
- The term solid waste is very broad, including not only the traditional nonhazardous solid wastes, such as municipal garbage, but also some hazardous wastes. RCRA Subtitle D addresses solid wastes, including those hazardous wastes that are excluded from the Subtitle C regulations (e.g., household hazardous waste), and hazardous waste generated by conditionally exempt small quantity generators (CESQGs).



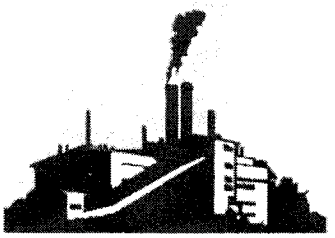
- The solid waste management program also addresses municipal solid waste, which is generated by businesses and households and is typically collected and disposed in municipal solid waste landfills (MSWLFs).
- EPA recommends an integrated, hierarchical approach to managing municipal solid waste that includes: source reduction, recycling, combustion, and landfilling. Source reduction and recycling are preferred elements of the system.

- The Subtitle D program includes technical criteria for MSWLFs to ensure that such landfills will be fully protective of human health and the environment.

- EPA has launched several new initiatives to further the development of the solid waste management program — Wastewise, the Jobs Through Recycling program, unit pricing, and full cost accounting for municipal solid waste.

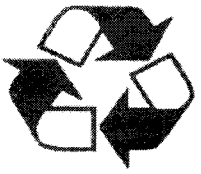
Managing Hazardous Waste — RCRA Subtitle C

- The hazardous waste management program, Subtitle C, is intended to ensure that hazardous waste is managed safely from the moment it is generated to the moment it is finally disposed.



- The Subtitle C program includes procedures to facilitate the proper identification and classification of hazardous waste.

- While waste recycling and recovery are major components of RCRA's goals, they must be implemented consistently with proper hazardous waste management. As a result, RCRA contains provisions to ensure safe hazardous waste recycling, and to facilitate the management of commonly recycled wastestreams.

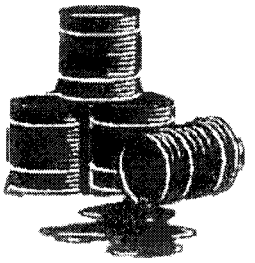


- The program also includes standards for those facilities that generate (i.e., produce), transport, treat, store, or dispose hazardous waste. These include requirements for general facility management and specific hazardous waste management units. The provisions for treatment, storage, and disposal facilities (TSDFs) include additional precautions to protect ground water and air resources.

- The hazardous waste management program includes safeguards to protect human health and the environment from hazardous waste that is disposed on the land (these safeguards are known as the land disposal restrictions (LDR)) or burned.

- Because EPA wants to limit hazardous waste treatment, storage, or disposal to those facilities that can adequately protect human health and the environment, RCRA requires such facility owners and operators to obtain a hazardous waste permit from the Agency.

- Since hazardous waste management may result in spills or releases into the environment, RCRA Subtitle C also contains provisions governing corrective action, or the cleanup of contaminated air, ground water, and soil.



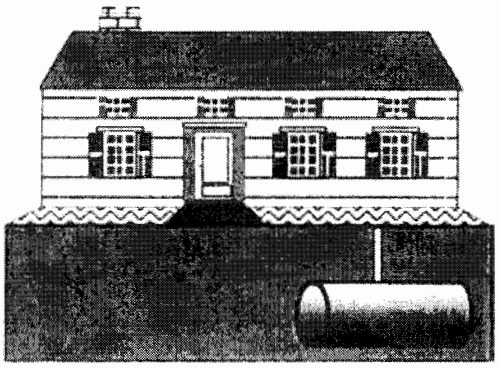
- The Statute also grants EPA broad enforcement authority to require all hazardous waste management facilities to comply with the regulations.

- The Subtitle C program also contains provisions to allow EPA to authorize state governments to implement and enforce the hazardous waste regulatory program.

Managing Underground Storage Tanks (UST) — RCRA Subtitle I

- The RCRA Subtitle I UST regulatory program regulates underground tanks storing petroleum or hazardous substances.

- In order to protect human health and the environment from threats posed by releases from such tanks, the program governs tank design, construction, installation, operation, release detection, release response, corrective action, closure, and financial responsibility.



- Many UST owners and operators must secure loans from financial and other institutions to comply with environmental regulations, such as UST upgrading and maintenance requirements. The Subtitle I program contains specific provisions to protect lending institutions from liability that they might incur from extending such loans.

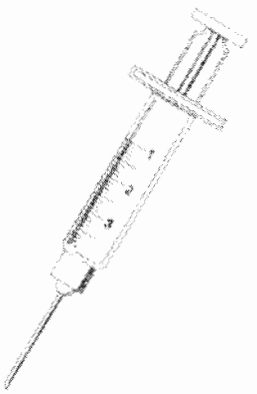
- Similar to RCRA Subtitle C, Subtitle I contains provisions to allow EPA to approve state government implementation and enforcement of the UST regulatory program.

- The expense and threats of contamination from leaking USTs necessitate efficient, effective, and thorough cleanups. In order to guarantee that such cleanups will be conducted in an efficient and protective manner, Subtitle I also established a Leaking Underground Storage Tank (LUST) Trust Fund to facilitate cleanup oversight and guarantee cleanups when the responsible owner and operator cannot take action, or when the situation requires emergency action.

Miscellaneous Statutory Provisions

- Consistent with RCRA's focus on recycling, the Statute contains provisions for EPA to encourage recycling and promote the development of markets for materials with recovered materials content.

- To help achieve this goal, EPA publishes federal procurement guidelines that set minimum recovered materials content standards for certain designated items. RCRA requires federal procuring agencies to purchase those items composed of the highest percentage of recovered materials practicable. These requirements are specified in Comprehensive Procurement Guidelines (CPG) and Recovered Materials Advisory Notices (RMAN).



- RCRA's focus is not limited to solid waste, hazardous waste, or USTs. Medical waste can pose similar threats to human health and the environment. As a result, RCRA established a medical waste tracking program to ensure that such waste is properly handled from the moment it is generated to the moment it is disposed. This program was a demonstration program that began June 22, 1989, and ended June 22, 1991. At this time, the program has expired and no federal EPA tracking requirements are currently in effect.

RCRA and Its Relationship to Other Environmental Statutes

- RCRA is only one aspect of the federal regulatory system to protect the environment. The RCRA regulations interact closely with

other environmental statutes such as the Clean Air Act (CAA), Clean Water Act (CWA); the Emergency Planning and Community Right-to-Know Act (EPCRA); the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Marine Protection, Research, and Sanctuaries Act (MPRSA); the Occupational Safety and Health Act (OSHA); the Safe Drinking Water Act (SDWA); and the Toxic Substances Control Act (TSCA).

- One statute in particular, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or Superfund, has a close relationship with RCRA in that both programs are designed to protect human health and the environment from the dangers of hazardous waste. While these programs are similar, they have different regulatory focuses. RCRA mainly regulates how wastes should be managed to avoid potential threats to human health and the environment. CERCLA, on the other hand, is relevant primarily when mismanagement occurs or has occurred (i.e., when there has been a release or a substantial threat of a release in the environment of a hazardous substance, or of a pollutant or contaminant, that presents an imminent and substantial threat to human health).

Public Involvement in RCRA

- A major tenet and focus of the RCRA program is the involvement of citizens, the regulated community, and stakeholders in the regulatory process. As a result, RCRA contains extensive public participation and involvement provisions.
- RCRA includes provisions to facilitate public participation in the permitting, corrective action, and state authorization processes.
- EPA, consistent with the requirements of the Administrative Procedures Act (APA), proactively involves the public every time the Agency issues a rulemaking that establishes or changes regulatory provisions.
- EPA is also committed to equal protection of all socioeconomic and racial groups in the implementation and enforcement of the nation's environmental laws. RCRA, consistent with such environmental justice initiatives, seeks to ensure that all segments of the population have an equal opportunity to participate in the regulatory process and have equal access to information.
- Because the RCRA program as a whole is a complex regulatory framework, EPA has established several public outreach and assistance mechanisms to foster public involvement. These include access to information through training grants; the Freedom of Information Act (FOIA); EPA's Office of Ombudsman; the RCRA Information Center (RIC); and the RCRA, Superfund & EPCRA Hotline.

SECTION VII

PUBLIC PARTICIPATION

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OVERVIEW

EPA is committed to involving the public in the development and implementation of the solid waste, hazardous waste, and UST environmental decision-making. One of the Agency's central goals is to provide equal access to information and an equal opportunity to participate. EPA regards public participation as an important activity that empowers communities to become involved in local RCRA-related activities.

Through RCRA, Congress gave EPA broad authority to provide for public participation in the regulatory program. RCRA §7004(b) directs EPA to provide for, encourage, and assist public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under the Act.

The RCRA public participation requirements bring government, private industry, public interest groups, and citizens together to make important decisions about hazardous waste, solid waste, and UST facilities. Specifically, these groups and

individuals have a stake in RCRA's hazardous waste management program, such as TSDF permitting, corrective action, and state authorization. On a broader level, the public also has tremendous interest in EPA's rulemaking process and environmental justice.

Public involvement in the RCRA program presents unique needs and opportunities. While the Agency is firmly committed to promoting broad and equitable public participation, EPA also seeks to ensure the flexibility for individual permit writers, facilities, and communities to adopt the most appropriate, site-specific approach consistent with the principles of fairness and openness. As a result, in many instances, EPA references guidance, instead of codified regulatory language, to encourage all stakeholders, such as facilities, permitting agencies , and the public, to strive toward public involvement goals, while at the same time maintaining the flexibility consistent with a national regulatory approach.

EPA views public outreach as an essential element of public participation. Public outreach educates people about hazardous waste issues and the RCRA decision-making process. Public outreach also creates informal opportunities for public input and dialogue. To expand public participation, the Agency actively engages in extensive public outreach activities.

PERMITTING

A focus of RCRA public participation is the involvement of the public in the hazardous waste TSDF permitting process. (Permitting is fully discussed in Section III, Chapter 8.) TSDF owners and operators handle large quantities of waste that present potential risk to human health and the environment. Public participation informs the public of the types of wastes and management methods that the TSDF owner and operator intends to employ and allows the public an opportunity to discuss the facility's anticipated waste management activities with the owner and operator. Communities may provide information that facility owners and operators may not otherwise have access to, and which may impact some of the facility plans (e.g., information on day care locations that might impact transportation routes to and from the facility). Public participation also benefits the TSDF owner and operator because it fosters community relations and can help to avoid delays and future litigation by addressing public concerns up front.

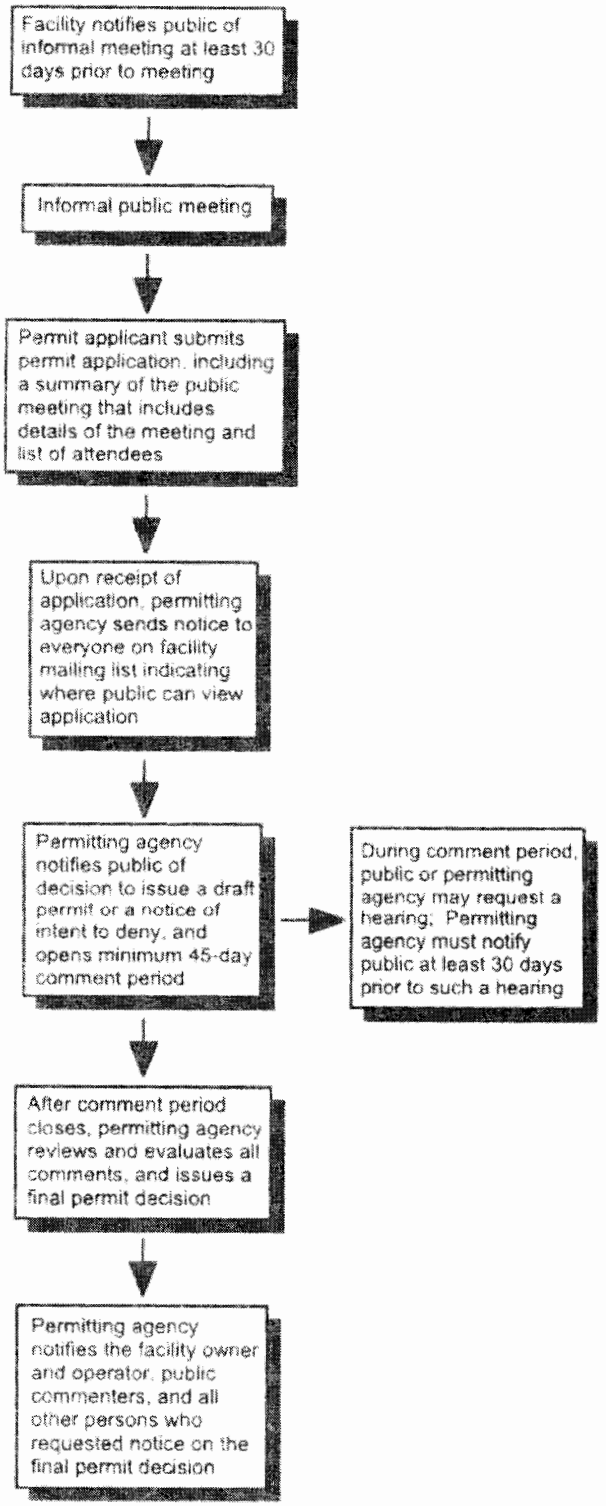
THE IMPORTANCE OF PUBLIC PARTICIPATION

Public participation informs the public of the types of wastes and management methods that a TSDF owner and operator intends to employ and allows the public an opportunity to voice its concerns about these risks. Public participation also benefits the TSDF owner and operator because it fosters community relations and can help to avoid delays and future litigation by addressing public concerns up front.

From the permitting agency's point of view, the public can contribute valuable information and ideas that can improve the quality of agency decisions and permit applications. With public input, permitting decisions are influenced by local circumstances that technical staff alone cannot provide.

The permitting process serves as an appropriate mechanism for public participation requirements because the permit serves as the set of requirements against which compliance will be measured. Public interaction in the process serves both to educate the public and to allow the public to express concerns to the facility and the permitting agency. Each step in the RCRA permit decision process is accompanied by public participation requirements (see Figure VII-1). EPA promulgated regulations in 40 CFR Parts 25, 124, and 270 to create opportunities for the public to learn about RCRA activities and provide input

Figure VII-1: PUBLIC INVOLVEMENT IN THE RCRA PERMITTING PROCESS



during the permitting process. These requirements may not be sufficient in all cases. Permitting agencies and facilities should consider going beyond the regulatory requirements, as necessary, to provide for meaningful and equitable public participation.

Public interaction occurs during pre-application meetings, public comment and response periods, and public hearings. Through all of these steps, the public can engage facility owners and operators and regulators in a dialogue. This dialogue is crucial because a successful public participation program requires the flow of information among all stakeholders.

EPA encourages public participation activities that occur outside the formal permitting process. Citizens can contact environmental, public interest, and civic and community groups that have an interest in the facility and become involved in their activities. The permit applicant may also create informal opportunities for public input and dialogue.

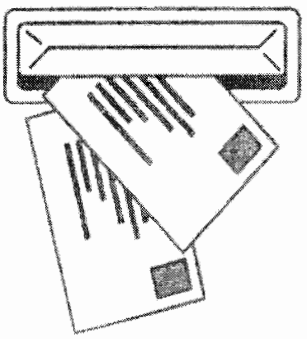
Pre-Application Meeting

The public participation provisions require prospective applicants to hold an informal public meeting before submitting an application for a RCRA permit. The permit applicant should select a meeting time, date, and place that are convenient to the public. The permit applicant must provide notice of the pre-application meeting at least 30 days prior to the meeting in a manner that is likely to reach all members of the affected community. The applicant must advertise the meeting in the newspaper, through a broadcast announcement, and on a sign posted at or near the property. The meeting will provide a chance for the community to interact with and provide input to an owner and operator before the submission of the permit application. At the meeting, the owner and operator should describe the facility in the level of detail that is practical at

the time of the meeting to give the public enough information to understand the facility operations and potential impacts to human health and the environment. The permit applicant must submit with the permit application a summary of the meeting and a list of all attendees. Upon receipt of the permit application, the permitting agency must send a notice to everyone on the facility mailing list specifying where the public can examine the application. Thus, the public may begin reviewing the application at the same time as the permitting agency.

The Draft Permit, Public Comment Period, and Public Hearing

Once the permit application is complete, the permitting agency will decide whether to issue a draft permit or a notice of intent to deny. In either case, the permitting agency notifies the public of its decision and announces the opening of a minimum 45-day public comment period. The permitting agency prints the notice in a local paper, broadcasts the notice over a local radio station, and sends a copy to the mailing list recipients and relevant agencies. The permitting agency also prepares a fact sheet or statement of basis regarding its decision. The fact sheet (or statement of basis) explains the factual, legal, methodological, and policy questions considered in making the decision to issue or deny the permit.



Any person may request a public hearing during the comment period. The permitting agency holds a hearing if someone submits a written notice of opposition to the draft permit and a request for a hearing, or if the permitting agency finds a significant degree of interest in the draft permit. The permitting agency may also hold a public hearing at its own discretion. The permitting agency must notify the public at least 30 days prior to the hearing.

The comment period on the draft permit allows public submission of written concerns and suggestions to the permitting agency in writing. The permitting agency describes and responds to all significant comments raised during the comment period.

After the public comment period closes, the permitting agency will review and evaluate all comments and issue a final permit decision. The agency sends a notice of decision to the facility and any person who submitted comments or requested notice on the final permit decision.

Permit Modification

As with the initial permit process, permit modifications can raise public concerns that must be addressed through public participation. Public participation responsibilities and activities vary depending on who initiated the modification and the degree to which the modification changes the facility permit. When a modification is proposed, only the permit conditions subject to modification are reopened for public comment.

Permitting agencies may initiate a permit modification if there are substantial alterations or additions to the facility, if new information is received by the permitting agency that was not available at the time of permit issuance, or if new regulations or judicial decisions affect the conditions of the permit. Agency-requested permit modifications are subject to the same public participation requirements that are required during the permitting process.

Permit modifications initiated by the facility owner and operator are categorized as Class 1, 2, or 3 according to how substantively they change the original permit. The only public involvement requirement for Class 1 modifications is that within 90 days of implementing a change the facility must send a notice to all parties on the mailing list compiled by the permitting agency.

The Class 2 modifications are more stringent than Class 1 modifications, and involve public notice in a local newspaper, a 60-day comment period, and a public meeting held no earlier than 15 days into the comment period and no later than 15 days before it ends. At any time during the Class 2 procedures, the permitting agency may reclassify the request as a Class 3 modification if there is significant public concern or if the agency determines the modification is too complex for the Class 2 procedures.

Class 3 modifications address changes that substantially alter a facility or its operations, and often raise significant public concern. While these modifications are subject to the same public participation provisions as Class 2 modifications, Class 3 modifications require the permitting agency to provide the public with additional opportunities to participate in the process. For example, the permitting agency must issue a public notice of the agency's draft permit decision, allow for a 45-day public comment period on the decision, develop a fact sheet or statement of basis, and hold a public meeting (if requested) with 30-day advance notice.

PUBLIC PARTICIPATION DURING PERMIT MODIFICATIONS

Public participation requirements during permit modifications vary depending on the extent of the modification. Class 1 permit modifications require that within 90 days of implementing a change, the facility must send a notice to all parties on the mailing list compiled by the permitting agency. Class 2 permit modifications involve public notice in a local newspaper, a 60-day comment period, and a public meeting held no earlier than 15 days into the comment period and no later than 15 days before it ends. While Class 3 modifications are subject to the same requirements as Class 2 modifcations, such modifications require the permitting agency to provide the public with additional opportunities to participate in the process.

Permit Renewals

A facility owner and operator who makes a significant change during the renewal of their permit is also subject to the pre-application meeting and notice requirements. A significant change in facility operations is a change that is equivalent to a Class 3 modification. This requirement ensures that if during permit renewal a facility makes significant changes to an already publicly reviewed and approved permit, the public will have an opportunity to participate in the permit review and approval process.

Trial Burn Notices

Owners and operators of new hazardous waste combustion facilities may not commence a trial burn until after the permitting agency has issued the required notice. EPA anticipates that permitting agencies will typically notify the public at least 30 days prior to the trial burn. The notice requirement applies only to the initial trial burn, and not to subsequent burns that may be conducted as part of a permit modification. For interim status combustion units, the permitting agency must also provide public notice of the intent to approve a trial burn plan.

Interim Status Facilities

In general, interim status facilities are not required to follow any standardized public participation procedures until the facility owner and operator applies for a permit. Implementing

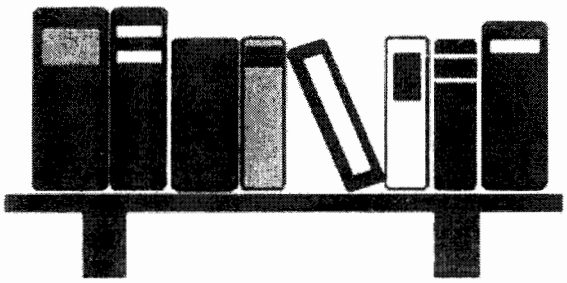
agencies may need to use innovative techniques to communicate with the public about interim status facilities. EPA acknowledges that each situation will require a different type and level of community involvement in order to address public concerns.

Post-Closure Permits

Owners and operators who submit a permit application for the purpose of conducting post-closure activities are not subject to the pre-application meeting and notice requirements. EPA's experience is that the public has usually been concerned with permit decisions related to active hazardous waste management operations rather than closed facilities. Post-closure activities are subject to the public notice and comment period at the draft permit stage.

Information Repositories

In certain instances, RCRA permits can be the subject of intense debate. When public interest is strong, the demand for information increases. The public participation requirements allow the permitting agency to require a permit applicant to



set up an information repository at any time after submittal of the permit application and during the life of the permit. The repository will hold all information and documents that the permitting agency decides are necessary to adequately inform and educate the public. EPA intended for permitting agencies to use the information repository requirement sparingly on a case-by-case basis when a significant amount of public concern has surfaced or where the community has unique information needs.

CORRECTIVE ACTION

Corrective action investigations and remedial actions at hazardous waste facilities also create strong community interest because contamination can directly affect and impact communities. (Corrective action is fully discussed in Section III, Chapter 9.) The community may seek information related to current or potential contamination, including levels of contamination, the extent of health and environmental risks, and the potential for future risks. The public may also seek additional opportunities to provide input to the overseeing agency or the facility about the cleanup of the contamination.

More than 5,000 facilities are subject to RCRA corrective action. The necessary degree of cleanup at these sites varies significantly. Program implementors are granted latitude in structuring the corrective action process, developing cleanup objectives, and selecting remedies appropriate to site-specific circumstances. Similar latitude is allowed in determining the best approach to public participation, in order to provide opportunities appropriate for the level of interest of the community.

Public participation requirements during corrective action are established in regulations; further recommendations are set out in guidance. The regulations set requirements that facilities and implementing agencies must meet when a permit is issued or modified to incorporate corrective action provisions.

In the absence of final regulations specifically addressing public participation during corrective action, program implementors and facility owners

and operators should develop public participation strategies on a site-specific basis, consistent with existing public participation requirements and the program goal of full, fair, and equitable public participation. Permitting agencies and facilities should make all reasonable efforts to provide for early public participation because important corrective action decisions are made during the site investigation and characterization. At a minimum, information regarding corrective action activities should be available to the public and the public should be given an opportunity to review and comment on proposed corrective action remedies.

Corrective Action Permits

When corrective action is part of the RCRA permitting process, it follows the public participation requirements associated with permitting. Thus, the corrective action provisions in any permit application are available for public review throughout the permitting process and the public can comment on them at the draft permit stage.

Corrective Action Orders

EPA regulations do not require that corrective action activities that are imposed or overseen through an order include public participation. However, EPA's policy is that the same level of public participation requirements imposed under a permit should generally apply under a corrective action order. There may be limitations on the implementing agency's ability to release or discuss certain information when using an order, but if public interest in the facility is high, the agency should address concerns without breaching the confidentiality of the owner's and operator's case by at least discussing why limitations are necessary, and if and when they will be lifted.

EPA has clarified various issues in reference to public participation activities during RCRA §7003 imminent hazard cleanups. Specifically, §7003 orders should involve public participation to the maximum extent possible. During these cleanups, EPA should provide public notice and an opportunity to comment when the Agency issues the order, during the remedy selection process, and upon Agency determination that the cleanup has been completed. When situations prevent public participation from occurring, the Agency should involve the public at the earliest opportunity. The Agency may also consider holding public meetings to address concerns if the site has attracted significant attention.

PUBLIC PARTICIPATION DURING CORRECTIVE ACTION

When corrective action is part of the RCRA permitting process, it follows the public participation requirements associated with permitting. While EPA regulations do not require public participation for corrective action activities that are imposed or overseen through an order, EPA's policy is that the same level of public participation requirements imposed under a permit should generally apply under a corrective action order.

Voluntary Corrective Action

Although EPA typically has less control over public participation during voluntary corrective action, the Agency encourages the use of public participation and will generally take into account the level of public participation conducted by the facility owner and operator when evaluating the acceptability of voluntary actions.

STATE AUTHORIZATION

RCRA also requires public involvement when EPA authorizes states to implement the hazardous waste regulations. Such public involvement is intended to allow the public to voice their

concerns regarding the change in implementing agency. Specifically, during the state authorization process, a state must provide public notice and an opportunity for public hearing before submitting its application for final authorization. The Statute also requires that EPA provide opportunity for public hearing before it decides to grant or deny a state's authorization and before EPA withdraws a state's authorization. (State authorization is fully discussed in Section III, Chapter 11.)

THE RULEMAKING PROCESS

Besides facilitating public participation during hazardous waste TSDF permitting, corrective action, and state authorization under the RCRA Subtitle C program, EPA proactively initiates public involvement activities as part of all formal RCRA rulemakings. Congress, through the **Administrative Procedures Act** (APA) (5 U.S.C. Sections 551-559), established the legal requirement that federal agencies provide the public with notice and an opportunity to comment on rulemakings. The Act addresses rulemaking procedures as well as site-specific licensing procedures, access to agency information, and procedures and standards for judicial review of agency actions. All environmental rulemakings proposed and finalized by EPA include public participation throughout the process (see Figure VII-2).

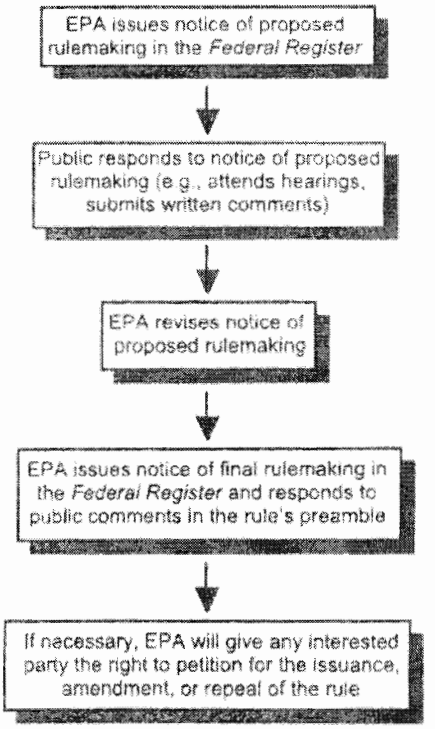
Proposed Rulemakings

The first step in the rulemaking process is the issuance of the notice of proposed rulemaking by EPA. The forum for providing the public with notice of a proposed rule is the *Federal Register*. The notice must include a statement of the time, place, and nature of the rulemaking, a reference to the legal authority under which the rule is proposed, and the terms of the proposed rule.

Public Comment

After notice is given, EPA must provide interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments. This process not only educates the public, but also provides valuable information to EPA during the regulatory development process. Up-front participation reduces the likelihood of litigation challenging subsequent regulations. Public participation can take many forms, including opportunity for a hearing, opportunity for access to EPA materials, and opportunity for written comments on proposals.

Figure VII-2: THE RULEMAKING PROCESS



Final Rulemakings

Once public comments are considered, EPA will revise the proposed rulemaking. The rule will often change between its proposal and finalization as a result of public comments. The final rule is published in the *Federal Register*, and EPA will respond to public comments in the rule's preamble. After final promulgation, EPA must give any interested party the right to petition for the issuance, amendment, or repeal of the rule.

Rulemaking Information

EPA evaluates a variety of background information, as well as public comments, in the development of a particular rulemaking. Each *Federal Register* lists a background docket that is available for public viewing. This docket contains all the background documents, including scientific studies, risk assessments, public comments, and EPA responses, that were used for that particular rulemaking.

In addition to the background docket, the *Federal Register* also contains regulatory impact analyses. These are analyses of a particular rulemaking's effects on other environmental regulations and economic impact on the regulated community.

In these analyses, EPA evaluates the effects this rule will have on other environmental regulations, such as CERCLA and CWA, and publishes the expected impacts in the *Federal Register*. In addition, EPA studies the economic effects of a particular rule on the regulated community to determine compliance costs. As required by the Regulatory Flexibility Act of 1980, the Agency also evaluates the impacts of the rulemaking on small businesses, small organizations, and small governmental jurisdictions.

ENVIRONMENTAL JUSTICE

Environmental justice refers to the fair distribution of environmental risks across socioeconomic and racial groups. On February 11, 1994, President Clinton issued Executive Order 12898, directing federal agencies to identify and address environmental concerns and issues of minority and low-income communities. EPA is committed to equal protection in the implementation and enforcement of the nation's environmental laws. EPA believes that environmental justice issues should be addressed on a local level and on a site-specific basis. EPA encourages permitting agencies and facilities to use all reasonable means to ensure that all segments of the population have an equal opportunity to participate in the permitting process and have equal access to information in the process. These means may include, but are not limited to, multilingual notices and fact sheets, as well as translators, in areas where the affected community contains significant numbers of people who do not speak English as a first language.

OUTREACH AND PUBLIC ASSISTANCE

A number of opportunities exist for the public to obtain RCRA program information and assistance. These include grants, the Freedom of Information Act, EPA Office of Ombudsman, the RCRA Information Center, and the RCRA, Superfund & EPCRA Hotline.

Grants

Under RCRA §7007, EPA has the authority to provide grants to states, municipalities, educational institutions, or any other organization to help these groups effectively implement training programs that demonstrate solid waste management and resource recovery operations. Such grants provide governments and nonprofit organizations with the opportunity to further the goals of Act through public outreach.

Freedom of Information Act

The **Freedom of Information Act** (FOIA) provides private parties with the right to obtain information in the possession of the government. Unless materials are promptly published and copies are offered for sale, each agency must make information available for public inspection and copying. FOIA requires each agency to establish procedures for handling requests regarding government statutes, regulations, standards, permit conditions, requirements, orders, and policies.

There are certain materials which are not subject to FOIA. These include:

- Draft materials
- Matters of national defense or foreign policy
- Material related solely to internal personnel rules and practices
- Trade secrets and privileged commercial or financial information
- Investigation material collected for enforcement purposes
- Geological and geophysical information and data.

EPA has pursued a policy of fully disclosing its records to the public, consistent with the rights of individuals to privacy, the rights of persons entitled to protection under confidential business information (CBI) provisions, and the need for EPA to promote internal policy deliberations. EPA will disclose information to any requester to the fullest extent possible without unjustifiable expense or unnecessary delay.

EPA's Office of Ombudsman

In order to create a central clearinghouse for public concerns on matters relating to the implementation and enforcement of RCRA, EPA established the Office of Ombudsman and appointed a Hazardous Waste Ombudsman at EPA Headquarters and each EPA Region. The primary responsibilities of the Ombudsman are to respond to questions and complaints regarding implementation of the RCRA program. Additionally, the Ombudsman makes recommendations to the EPA Administrator based on inquiries received. The EPA Headquarters Ombudsman may be reached by contacting:

Office of Ombudsman
U.S. Environmental Protection Agency
Office of Solid Waste and Emergency Response
401 M Street, S.W.
Washington, DC 20460
(800) 262-7937

RCRA Information Center

The RCRA Information Center (RIC) houses the background dockets for all RCRA rulemakings, as well as additional EPA publications on RCRA. The public can view docket materials Monday through Friday from 9:00 a.m. to 4:00 p.m., EST. The public can make an appointment to review these materials by calling (703) 603-9230. A maximum of 100 pages may be copied from any regulatory document at no charge and additional

copies cost $0.15 per page. The RIC is located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia.

RCRA, Superfund & EPCRA Hotline

The RCRA, Superfund & EPCRA Hotline is a publicly accessible service which provides up-to-date regulatory information. The Hotline responds to factual questions on federal EPA regulations developed under RCRA, CERCLA, EPCRA, the Oil Pollution Act (OPA), and SPCC. The Hotline is staffed by professionals who are completely familiar with the latest issues and regulations affecting the hazardous waste program. The Hotline is open Monday through Friday from 9:00 a.m. to 6:00 p.m., EST, and may be contacted at either (703) 412-9810, or toll-free, (800) 424-9346.

SUMMARY

EPA is committed to involving the public in the development and implementation of the solid waste, hazardous waste, and UST regulations and seeks to empower communities to become involved in local RCRA-related activities. To achieve these goals, the RCRA public participation requirements bring government, private industry, public interest groups, and citizens together to make important decisions about hazardous waste management facilities.

A focus of RCRA public participation is the involvement of the public in the hazardous waste TSDF permitting process. The public interaction occurs during pre-application meetings, public comment and response periods, and public hearings. RCRA includes specific provisions to involve the public in all stages of the hazardous waste TSDF permitting process: prior to the initial permit application; after draft permit issuance; and during permit modifications, permit renewals, post-closure permits, and trial burns.

In addition, RCRA requires public involvement during Subtitle C corrective action, whether such cleanups are instituted through a permit or order, or conducted voluntarily. RCRA also requires public involvement when EPA authorizes states to implement the hazardous waste regulations.

While RCRA's initiatives to facilitate public participation during hazardous waste TSDF permitting, corrective action, and state authorization are limited to the RCRA Subtitle C program, EPA is required to comply with the public involvement provisions under APA for all formal rulemakings under all RCRA subtitles.

Consistent with Executive Order 12898, directing federal agencies to identify and address environmental concerns and issues of minority and low-income communities, EPA encourages allowing all segments of the population equal access to information pertaining to the RCRA program.

To assist in disseminating information and promoting public education about the RCRA program, EPA engages in several outreach and public assistance mechanisms. The Agency provides training grants, allows access to information through the Freedom of Information Act, and provides program information through the EPA Office of Ombudsman, the RCRA Information Center, and the RCRA, Superfund & EPCRA Hotline.