
Chapter 1

Introduction

Overview of this Manual

This manual covers federal public participation requirements. States may have additional requirements.

This manual is a guide to improving cooperation and communication among all participants in the RCRA permitting process. Like the September 1993 RCRA Public Involvement Manual (EPA530-R-93-006), this manual outlines public participation procedures and what staff in EPA and RCRA-authorized state programs can do to ensure that the public has an early and meaningful role in the process. However, this new manual goes beyond the scope of past manuals by providing public participation guidance to regulated industries and the communities that interact with them.

The broader scope of today's manual reflects EPA's belief that all stakeholders have a role in providing for meaningful public participation. Permitting agencies, public interest organizations, community members, and regulated facilities are all stakeholders in RCRA permitting actions. Each group has an interest in the permitting process and, moreover, can take steps to increase public participation and improve communication. This manual provides guidance for all RCRA stakeholders who seek to achieve these goals. Of course, the Federal and State agencies still administer RCRA and its public participation activities, but EPA acknowledges that members of communities and owners and operators of hazardous waste management facilities also play an integral role in the permitting process.

One reason for the broader scope of this guidance document is that facility owners and operators have more formal responsibilities than ever in RCRA public participation. This trend in EPA's approach, demonstrated through regulations such as the permit modifications procedures in 40 CFR 270.42 (52 FR 35838, September 23, 1987) and the part 124 changes in the "RCRA Expanded Public Participation" rule (60 FR 63417-34, December 11, 1995), has made facility owners and operators responsible for a number of public participation activities -- from public notices to meetings and information repositories. These new regulations underscore EPA's support for strengthening the link between facilities and their host communities.

This manual will also be helpful to many private companies that have adopted, or are establishing, public participation programs as part of their commitment to good corporate citizenship. While these activities often take place outside of the official RCRA permitting process, EPA supports

facilities in their efforts to inform and involve the public. This manual will guide facility owners and operators as they implement the public participation requirements of the RCRA program, especially those in the RCRA Expanded Public Participation rule. The manual will help facility owners and operators go beyond the regulatory requirements, expand their public participation activities, and build lasting relationships with surrounding communities.

Citizens are an essential component of the RCRA permitting process. The formal public participation activities, required by regulation, aim to provide citizens with both access to information and opportunities to participate in the process. Some citizens and other groups have expressed concerns about barriers to involvement in RCRA permitting. EPA was also concerned -- as are many members of the public -- that formal public participation begins too late in the permitting process and that RCRA permitting information is not always accessible to people. In response to these concerns and others, EPA promulgated the RCRA Expanded Public Participation rule. We hope that this rule and its accompanying policy statement will improve access to permitting information and enhance public participation.

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EPA recognizes that valuable public participation can take place outside of the formal procedures mandated by regulation. Through informal channels, citizens communicate and interact with other citizens, public interest groups, regulated facilities, and permitting agencies. EPA supports communities in their efforts to carry out informal means of participation that go beyond regulatory standards. Some of the most meaningful and informative involvement for citizens may come through activities not organized by permitting agencies or regulated facilities. We hope that this manual will be a valuable resource for communities and public interest groups that are concerned about RCRA facilities in their area.

Following this introductory chapter, the manual is organized as follows:

Chapter 2, “Guidelines for a Successful Public Participation Program,” introduces some basic public participation concepts and points out principles of public participation that we encourage all RCRA stakeholders to follow.

Chapter 3, “Public Participation in RCRA Permitting,” covers the basic steps in the RCRA permitting process and the public participation activities that accompany them. After reviewing the requirements, the chapter provides a list of additional participation activities to supplement the requirements.

Chapter 4, “Public Participation for RCRA Corrective Action Under Permits and §3008(h) Orders,” details EPA’s public participation guidelines for the corrective action program. This chapter reflects the

current agency position on these issues as the corrective action program continues to evolve.

Chapter 5, "Public Participation Activities: How to do Them," provides detailed descriptions for dozens of public participation techniques -- required and optional, formal and informal. The chapter explains all of the public participation methods mentioned in the previous chapters and provides information on additional methods.

The Appendices provide resources that will help any participant in the RCRA permitting or corrective action programs. Included in the Appendices are: phone numbers and addresses for contact persons at all state agencies, the 10 EPA Regional offices, and EPA Headquarters; current permitting fact sheets; example notices and press releases; and EPA policy memoranda.

If you already have a general knowledge of the RCRA permitting program, you may want to skip ahead to Chapter 2 at this point.

The Big Picture

The RCRA program involves many people and organizations with roles that vary greatly. Congress writes or amends the Act which, when signed by the President, becomes law. After the Office of Solid Waste and Emergency Response (OSWER) at EPA develops the regulations that more specifically define and explain how the law will be implemented, the RCRA program is implemented by both EPA Headquarters (OSWER) and staff in EPA regional offices. The states may, in turn, apply to EPA for the authority to run all or part of the RCRA program. In doing so, a state may adopt the federal program outright or develop its own program, as long as it is at least as stringent and as broad in scope as the federal program. The regulated community is involved with the RCRA program because it must comply with the law and its regulations. Finally, the general public participates by providing input and comments at almost every stage of the program's development and implementation.

RCRA and its 1984 Amendments

The Resource Conservation and Recovery Act, an amendment to the Solid Waste Disposal Act, was enacted by Congress in 1976 to address a problem of enormous magnitude -- how to safely manage and dispose of the huge volumes of municipal and industrial solid waste generated nationwide. The goals set by RCRA were:

- C To protect human health and the environment;
- C To reduce waste and conserve energy and natural resources; and

RCRA GOALS

- C To protect human health and the environment
- C To reduce waste and conserve energy and natural resources
- C To reduce or eliminate the generation of hazardous waste as expeditiously as possible

- C To reduce or eliminate the generation of hazardous waste as expeditiously as possible (also referred to as waste minimization and pollution prevention).

The Act continues to evolve as Congress amends it to reflect changing needs. It has been amended several times since 1976, most significantly on November 8, 1984. The 1984 amendments, called the Hazardous and Solid Waste Amendments (HSWA), significantly expand the scope and requirements of RCRA. The HSWA provisions related to corrective action at RCRA facilities are described later in this chapter.

The program outlined under Subtitle C of the Act is the one most people think about when RCRA is mentioned. Subtitle C establishes a program to manage hazardous wastes from cradle to grave. The objective of the Subtitle C program is to ensure that hazardous waste is handled in a manner that protects human health and the environment. To this end, EPA established regulations under Subtitle C regarding the generation; transportation; and treatment, storage, and disposal of hazardous waste. These regulations are found in Title 40 of the Code of Federal Regulations (CFR), in Parts 261-266 and Parts 268-270. [Note: The CFR contains all the general and permanent rules published by the Executive departments and agencies of the Federal Government.]

The Subtitle C program has resulted in perhaps the most comprehensive regulatory program EPA has ever developed. The Subtitle C regulations first identify those solid wastes that are "hazardous" and then establish various administrative requirements for the three categories of hazardous waste handlers: (1) generators; (2) transporters; and (3) owners or operators of treatment, storage, and disposal (TSD) facilities. This manual applies only to the TSD facilities, and the term "facilities" in this manual refers only to TSD facilities. The Subtitle C regulations set technical standards for the design and safe operation of hazardous waste facilities. These standards are designed to minimize the release of hazardous waste into the environment. Furthermore, the regulations for RCRA facilities serve as the basis for developing and issuing (or denying) permits to each facility. Issuing permits is essential to the Subtitle C regulatory program because it is through the permitting process that the regulatory agency actually applies the technical standards to facilities.

RCRA Facility Permitting

Owners or operators of TSD facilities are required to submit a comprehensive permit application covering all aspects of the design, operation, maintenance, and closure of the facility. Owners and operators are also required to certify annually that they have a waste minimization program in place. Many companies have found waste minimization is often a cost-effective alternative or supplement to waste management. Facilities in existence on November 19, 1980, operate under interim status until a final permit decision is made. Similarly, facilities that are in

existence when new regulations are promulgated that subject them to RCRA Subtitle C may also operate under interim status while they proceed through the permitting process. New facilities are ineligible for interim status and must receive a RCRA permit before construction can commence.

The permit application is divided into two parts: A and B. Part A is a short, standard form that collects general information about a facility. Part B is much more detailed and requires the owner or operator to supply detailed and highly technical information about facility operations. Because there is no standard form for Part B, the owner or operator must rely on the regulations to determine what to include in this part of the application. Existing facilities that received hazardous waste on or after November 19, 1980, or subsequently fell under Subtitle C due to new regulations, submitted their Part As when applying for interim status. Their Part B applications can be either submitted voluntarily or called in by the regulatory agency. Owners or operators of new facilities must submit Parts A and B simultaneously at least 180 days prior to the date on which they expect to begin physical construction; however, construction cannot begin until the agency has issued the permit. Permit applications are processed according to the procedures found in 40 CFR Part 124.

The RCRA Corrective Action Program

RCRA requires owners and operators of RCRA facilities to clean up contamination resulting from present and past practices, including those practices of previous owners of the facility. These clean up activities are known as corrective action. HSWA added three provisions for corrective action, thus significantly expanding EPA's authority to initiate corrective action at both permitted RCRA facilities and facilities operating under interim status. Section 3004(u) of HSWA requires that any permit issued under RCRA §3005(c) to a facility after November 8, 1984 address corrective action for releases of hazardous wastes or hazardous constituents from any solid waste management unit (SWMU) at the facility. If all corrective action activities cannot be completed prior to permit issuance, then the permit must include a “schedule of compliance” establishing deadlines and financial assurances for completing the required corrective actions. Section 3004(v) authorizes EPA to require corrective action beyond the facility boundary, if necessary. Finally, §3008(h) authorizes EPA to issue administrative (i.e., enforcement) orders or bring court action to require corrective action or other measures, as appropriate, when there is, or has been, release of hazardous waste or hazardous constituents from a RCRA facility operating under interim status.

Corrective action is typically carried out by the facility owner or operator under the requirements or conditions stated in the RCRA permit or administrative order. In some cases, the owner or operator is required, through an order, to begin corrective action prior to permit issuance. If the regulatory agency issues a permit to the facility prior to completion of all activities specified in the order, then the agency may require the owner or

operator to continue all or some of the activities under the order, or may incorporate the requirements of the order into the RCRA permit schedule of compliance.

Public Participation in the RCRA Program

Section 7004(b) of RCRA gives EPA broad authority to provide for, encourage, and assist public participation in the development, revision, implementation, and enforcement of any regulation, guideline, or program under RCRA. In addition, the statute specifies certain public notices (radio, newspaper, and a letter to relevant agencies) that EPA must provide before issuing any RCRA permit. The statute also establishes a process by which the public can dispute a permit and request a public hearing to discuss it.

In fulfilling its statutory mandate, EPA has written regulations to implement the RCRA program. To carry out its public participation responsibilities under the Act, EPA has used its authority to develop specific public participation activities in the RCRA permitting program. As we explain in more detail in the following chapters, EPA's RCRA regulations provide for public participation at all hazardous waste management facilities -- from before permit application, through the permitting process, and during the permit life.