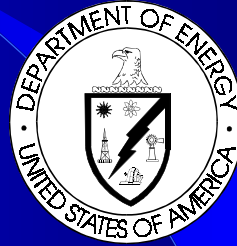


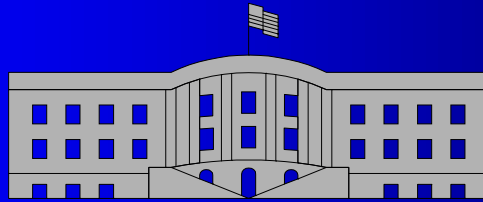
Resource Conservation and Recovery Act Orientation



The purpose of the Resource Conservation and Recovery Act (RCRA) Orientation Workshop is to provide:

- an overview of the RCRA program, including portions outside the hazardous waste program such as underground storage tank requirements;
- an introduction to the hazardous waste “cradle-to-grave” regulatory program;
- an overview of each element in the hazardous waste “cradle-to-grave” program:
 - ✓ generation;
 - ✓ transport;
 - ✓ land disposal restrictions; and
 - ✓ treatment, storage, and disposal.

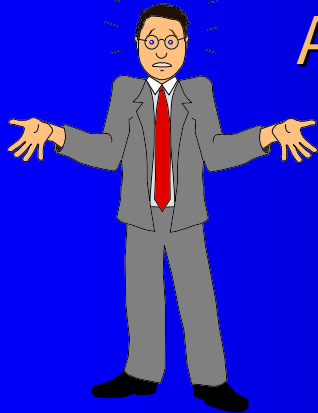
Introduction to the Regulatory Process

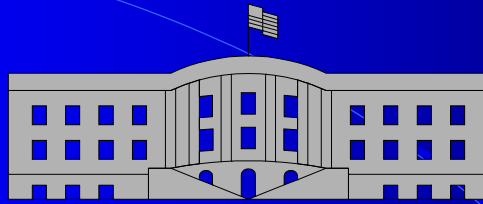


The purpose of this module is to familiarize you with (1) the rulemaking process and (2) the key players in regulatory development. Specific information to be gained from this module include:

1. the source of authority for developing environmental regulations (pages Intro-3 through Intro-6);
2. the steps the U.S. Environmental Protection Agency (EPA) follows in the rulemaking process (pages Intro-7 and Intro-8); and
3. the key players in developing and enforcing environmental requirements (page Intro-9).

Who Is the Source of Regulatory Authority?



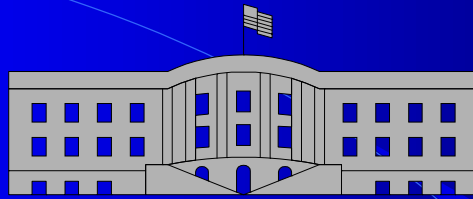


- **Congress enacts public health, safety, and environmental laws.**
- **Congress identifies a responsible agency to implement the requirements outlined in the law.**
- **The responsible agency develops implementing regulations to provide detailed compliance requirements.**

At the federal level, Congress enacts laws to, among other things, protect the public welfare and the environment. Often specific incidents trigger Congressional concern and generate support for the passage of laws. For example, contamination resulting from the disposal of harmful substances at Love Canal contributed to Congressional awareness of the need to have authority and funds to respond to uncontrolled releases of such substances into the environment. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) was the product of this concern. CERCLA established a funding mechanism, the Superfund, to allow cleanup to prevent harm from uncontrolled releases where no responsible party can be identified to clean up the release in a protective and timely manner. CERCLA mandated the development of specific requirements for notification after discovery of a release and a plan of action to address releases.

Congress, however, does not have the scientific, technical, and legal resources to develop the detailed plan of action required to address its general concerns. Therefore, Congress identifies a responsible federal executive agency to develop mechanisms to ensure that the intent of the law is met. The responsible agency then implements regulations to ensure compliance with the law's requirements.

In the case of environmental laws such as RCRA, EPA is the implementing agency. In developing environmental regulations, EPA must identify the relevant scientific and technical issues, keep in mind the scope of its authority under the law, and also consider public comment. Once effective, the regulations so developed provide the specific guidelines for compliance with the broad legal mandate.



Congress establishes the outline of requirements.



EPA fills in the outline and explains the specific criteria the regulated community must meet to comply with the law.

RCRA Sec. 3005 [42 *United States Code (USC)* 6925] mandated that EPA promulgate [i.e., “to put (law) into action or force” according to Webster’s] regulations requiring permits for treatment, storage, and disposal of hazardous waste and imposed a deadline for development of these regulations. RCRA also imposed requirements on the duration of permits and on specific types of units. Nevertheless, the law does not explain the process to follow in obtaining a permit, the contents of the permit application, or how the permit process differs for existing vs new facilities. In other words, without more detailed regulations, facilities would have no way to obtain a permit.

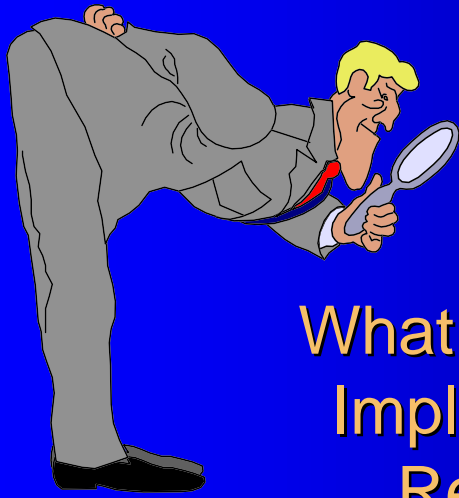
The regulations, therefore, provide the detailed process and criteria that must be met to obtain a permit. The regulations define the scope and applicability of the permitting requirements. Scope and applicability, however, must be within the Congressional mandate established in the law, RCRA.

EPA Is Limited by Law

- **In developing regulations, EPA cannot exceed the scope of authority Congress delegates to it in the law.**
- **When challenged, the courts decide if EPA has acted within its Congressionally imposed limits.**

Remember that EPA is not free to do as it wishes. It must always operate within the authority Congress establishes. Of course, EPA sometimes influences Congress and the scope of authority Congress is willing to delegate.

When private parties feel that EPA has exceeded the scope of authority under the law, they can challenge EPA in court. The legal system and appeal process then are available to determine if EPA did exceed its authority. If EPA loses such challenges, it must appeal to a higher court or amend its requirements so they are in the legitimate scope of authority. The Department of Energy or other federal agencies cannot challenge EPA in court. Federal agencies can, nevertheless, enter into formalized dispute resolution when they feel EPA has exceeded its scope of authority.



What Are the Steps in Implementing Legal Requirements?

How Does EPA Promulgate Regulations?

**Advance Notice of Proposed Rulemaking
(ANPRM)**



**Notice of Proposed Rulemaking (NPRM)
(Proposed Rule)**



Final Rule and Effective Date

EPA develops specific regulations to ensure compliance with the law. Scientific and technical data provide the foundation for many decisions on environmental regulations. EPA then proposes regulatory requirements for public comment in the daily *Federal Register (FR)*. EPA receives comment from any interested party and must evaluate comments received. When EPA publishes a final rule, it must explain how it accommodated, or chose not to accommodate, public comment.

EPA publishes its planned agenda of regulatory actions semiannually in the *FR*. Thus, the regulated community can keep track of issues EPA intends to address in the future and be prepared to comment.

This slide shows the process. The process usually begins with EPA's publishing a notice of proposed rulemaking (NPRM). Sometimes EPA publishes an advance notice of proposed rulemaking (ANPRM). The ANPRM is often used to request data from the regulated community that can be considered in the NPRM.

FR notices are also used to notify the public of meetings, to assemble working groups, to request data, and to provide corrections to published actions.

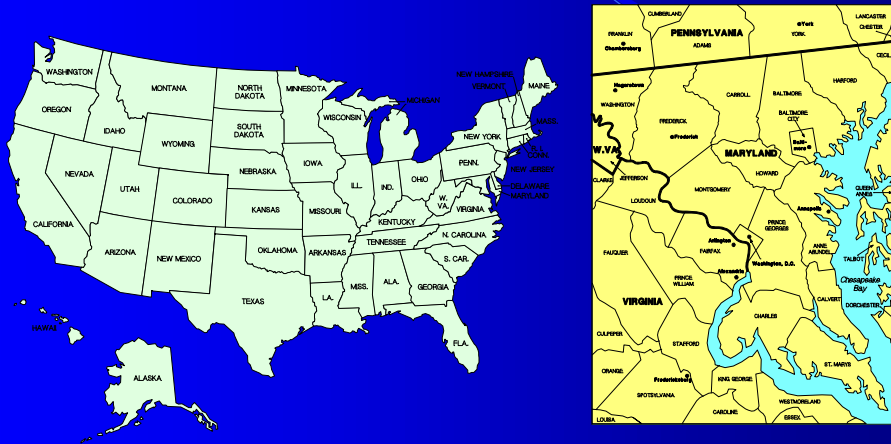
As part of its ongoing operations, DOE's Office of Environmental Policy and Assistance (OEPA) (EH-41) monitors and responds to EPA rulemakings and other regulatory items. OEPA maintains a list of priority regulatory items that can be accessed through its home page at <http://tis-nt.eh.doe.gov/oeпа/>. At the home page, click on the "New Regulations" button. Select "Monthly Priority Items List" from the "New Federal Regulatory Initiatives" page.

Who Are the Key Players in Developing and Enforcing Requirements?



1. Congress
2. EPA
3. EPA regions and states

How Does Enforcement Relate to Regulatory Development?



The disconnect between development of environmental regulations and their enforcement is especially important to your facility's compliance. The arm of EPA that develops regulations is not the arm that enforces them. When states adopt regulations and gain enforcement authority, they adopt regulations and not the preamble language that explains EPA's rationale for developing the regulations. Thus, conflicting or unclear portions of regulation are subject to interpretations that can vary among enforcement agents and states. Often EPA Headquarters directs questioners to defer to the interpretation of their regions and states.

Unfortunately, getting documented guidance from EPA Regions and states is difficult. These agencies lack resources to respond and often do not want to document their responses in writing. Nevertheless, your EPA Region and state are the agencies with enforcement authority over your facility. Thus you often have to seek their interpretations and guidance. Inquiries to them should be coordinated through appropriate contractor compliance organizations and DOE field or site offices.

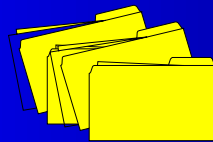
Although this workshop will sometimes refer to the differing enforcement interpretations among states and EPA Regions, it is based on policy and guidance originating at EPA Headquarters.

Summary

- **Congress defines the objectives of RCRA and delegates authority to EPA to establish the regulatory framework to ensure compliance.**
- **EPA implements rules, which define specific requirements that must be met to comply with the law.**
- **EPA regions and authorized states ensure compliance with regulations through enforcement.**

A Closer Look

Resource Conservation and Recovery Act



This introduction should familiarize you with the history, objectives, and statutory framework of RCRA. By the end of the section, you should also be able to:

1. Recognize that the Solid Waste Disposal Act of 1965 is the origin of RCRA (page Intro-14),
2. recognize the broad statutory objective of RCRA (page Intro-15 through Intro-17),
3. recognize federal agencies' compliance responsibility (page Intro-20), and
4. identify the three subtitles that are the basis for most of RCRA's environmental regulations (page Intro-21).

Overview of RCRA

- **History**
- **Objectives of the Law**
- **Major Subtitles**
- **Focus on cradle-to-grave hazardous waste management**

Solid Waste Disposal Act Origin of RCRA

- **1965 Solid Waste Disposal Act**
- **1970 Resource Recovery Act**
- **1976 Resource Conservation And Recovery Act (RCRA)**
- **1984 Hazardous And Solid Waste Amendments (HSWA)**
- **1992 Federal Facility Compliance Act**
- **1996 Land Disposal Program Flexibility Act**

The Solid Waste Disposal Act (SWDA) was the legislative foundation for hazardous and solid waste management requirements. The SWDA, as enacted in 1965, gave states responsibility for developing solid waste management plans. Today, as a result of this long-standing concern for solid waste, some states have well-developed solid waste management programs. States may also gain authority to implement the federal municipal solid waste permitting standards.

The Resource Recovery Act funded resource recovery programs and represented an early effort to encourage resource conservation and recycling programs.

RCRA amended the SWDA and clearly established authority for EPA to designate hazardous wastes and impose stringent requirements for their management. RCRA established a “cradle-to-grave” system for managing hazardous waste. The acronym “RCRA” is commonly used to refer to the overall framework of the SWDA, as amended. RCRA will be used as the acronym to refer to the SWDA for the remainder of this course.

The Hazardous and Solid Waste Amendments (HSWA) to RCRA introduced stringent new requirements to minimize the future risks from hazardous waste management practices.

The Federal Facility Compliance Act waived sovereign immunity under RCRA. Federal agencies are now subject to monetary penalties.

The Land Disposal Program Flexibility Act provides an exemption from LDR requirements for certain low-risk wastes.

Proposals to further amend RCRA have been introduced in Congress and amendments to the law have occurred since 1984. A comprehensive reauthorization of RCRA, however, has not yet been enacted.

Objectives of RCRA

“To promote the protection of health and the environment and conserve valuable material and energy resources . . .” 42 USC 6902

Congress mandated the following means to meet the objectives of RCRA by:

1. providing technical assistance to state and local governments to improve solid waste management;
2. providing training grants in occupations involving the design, operation, and maintenance of solid waste disposal systems;
3. prohibiting open dumping;
4. assuring hazardous waste management practices that are protective of human health and the environment;
5. requiring proper hazardous waste management from point of generation to reduce the need for future cleanup;
6. minimizing generation and land disposal of hazardous waste by encouraging process substitution, materials recovery, recycling and reuse, and treatment (in that order of preference for management);
7. establishing a viable federal-state partnership in administering the SWDA;
8. providing for promulgation of guidelines for solid waste management and resource recovery;
9. promoting national research and development in solid waste management and resource recovery;
10. promoting demonstration, construction, and application of solid waste management resource recovery, and resource conservation systems; and
11. establishing a cooperative effort among the federal, state, and local governments and private enterprise to recover materials and energy from solid waste.

National Policy

“ . . . Wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Waste that is nevertheless generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment.” 42 USC 6902

Although we associate pollution prevention with more recent laws such as the Pollution Prevention Act of 1990, RCRA has long required a focus on source reduction, recycling, and reuse.

How Does RCRA Achieve Its Objective?

RCRA's ten subtitles (1) create a legal framework that establishes EPA's authority to administer RCRA and (2) define the scope of that authority.

RCRA's Ten Subtitles Are:

- **A: General Provisions**
- **B: Authority of the Administrator**
- **C: Hazardous Waste Management**
- **D: State or Regional Solid Waste Plans**
- **E: Duties of the Secretary of Commerce in Resource Recovery**

Subtitle A includes general information, such as Congressional findings, that gave rise to RCRA. Subtitle A also includes the objective of the law, definitions, integration with other laws, financial disclosure, and solid waste management information and guidelines.

Subtitle B established various panels and committees (e.g., resource recovery and conservation panel) and the authority of the administrator.

Subtitles C and D are covered in a later slide.

Subtitle E established the responsibilities of the Secretary of Commerce, the requirement to develop specifications for secondary materials, and the development of markets for recovered materials. The responsibilities of the Secretary of Commerce include encouraging commercialization of proven resource recovery technology by providing accurate specifications for recovered materials, stimulation of development of markets for recovered materials, promotion of proven technologies, and provision of a forum for exchange of technical and economic data relating to resource recovery facilities.

RCRA's Ten Subtitles Are:

- **F: Federal Responsibilities**
- **G: Miscellaneous**
- **H: Research, Demonstration and Development**
- **I: Underground Storage Tanks**
- **J: Demonstration Medical Waste Tracking Program**

Subtitle F addresses the applicability of RCRA to federal agencies and establishes criteria for federal procurement of recycled goods.

Subtitle G addresses some important miscellaneous provisions such as employee protection, citizen suits, and response to imminent hazard.

Subtitle H addresses research, demonstrations, and training.

Subtitle I is covered in more detail in a later slide.

Subtitle J established a demonstration program addressing tracking and inspections of medical waste management activities in New York, New Jersey, Connecticut, the states contiguous to the Great Lakes, and any state petitioning to be included. States could elect not to participate. Subtitle J did not directly affect many DOE installations. It, however, does reflect growing concern for management of medical waste. This growing concern is also evident from the implementation of state medical waste management rules in some states.

Federal Responsibilities Subtitle F

Federal agencies “shall be subject to and comply with, all federal, state, interstate, and local requirements, both substantive and procedural . . . including the payment of reasonable service charges.” Federal agencies are not “immune or exempt from any process or sanction of any state or federal court with respect to the enforcement of any such injunctive relief.” 42 USC 6962

RCRA Orientation Focus: Subtitles Associated with RCRA Regulatory Programs

- **C: The “cradle-to-grave” hazardous waste management provisions,**
- **D: Solid waste management, and**
- **I: Underground Storage Tanks.**

The RCRA Orientation course will focus on Subtitle C’s hazardous waste management provisions. The complex regulations implemented under the legal authority of Subtitle C are the source of the majority of Notices of Violation (NOVs) at federal facilities. Under the Federal Facility Compliance Act (FFCA), such deficiencies are subject to fines and penalties that can have substantial impact on the operating budgets of federal facilities.

The RCRA Orientation course will also present overviews of the Subtitle D and I programs. Subtitle D establishes federal objectives for state or regional solid waste management planning and authorizes EPA to establish criteria for sanitary landfills. States are in the process of amending their programs to address the criteria EPA has finalized for municipal solid waste landfills.

The Subtitle I program addresses requirements for the installation, management, and closure of underground storage tanks that contain petroleum products or hazardous substances, as that term is defined under CERCLA. Tanks containing hazardous wastes must comply with the management standards established under Subtitle C.