

# HAZARDOUS SUBSTANCES AND TOXIC WASTE

## Resource Conservation and Recovery Act\*

42 U.S.C. §§6901-6992k

### Hazardous waste management (Subtitle C)

#### *“Hazardous waste” and “solid waste”*

“**Solid waste**” is discarded material other than (i) solid or dissolved material in domestic sewage; (ii) solid or dissolved material in irrigation return flows; (iii) industrial discharges that are point sources subject to FWPCA permitting; and (iv) source, special nuclear, or byproduct material as defined by the Atomic Energy Act. [RCRA §1004(27)]

Hazardous waste” is solid waste that is potentially dangerous to human health or the environment. [RCRA §1004(5)]

The Act requires EPA to determine which hazardous wastes should be subject to Subtitle C by identifying **hazardous waste characteristics** and by **listing specific substances** as hazardous wastes. In determining these characteristics, EPA must consider toxicity, persistence, degradability in nature, potential for accumulation in tissue, flammability, and corrosiveness. [RCRA §3001(a), (b)]

#### *Hazardous waste generation, transportation, treatment, storage, and disposal*

The Act requires EPA to promulgate standards applicable to **generators** and **transporters** of characteristic or listed hazardous waste and **owners and operators** of facilities for **treatment, storage, and disposal (TSD)** of such wastes. **Standards for generators** must include requirements for recordkeeping, labeling, using containers, furnishing information to transporters and TSD facilities, manifesting, and submitting reports to EPA or the appropriate state agency. **Standards for transporters** must include requirements for recordkeeping, labeling, manifesting, and delivering waste to permit-holding TSD facilities designated on the manifest form. **Standards for TSD facility owners and operators** must include requirements for recordkeeping; manifesting; operating methods, techniques, and practices; facility location, design, and construction; contingency plans to minimize unanticipated facility damage; maintenance, personnel training, and financial responsibility; and permit compliance. [RCRA §§3002-3004] The Act requires promulgation of regulations for control of air emissions at TSD facilities and establishes minimum technological require-

ments for certain waste management units. [RCRA §3004(n), (o)] The Act requires EPA to promulgate regulations regarding hazardous wastes used as fuel and requires labeling of hazardous waste fuels. [RCRA §3004(q), (r)]

#### *Permits*

The Act requires EPA to promulgate regulations requiring owners and operators of existing and planned TSD facilities to obtain **permits** and prohibiting unpermitted treatment, storage, or disposal of characteristic and listed hazardous waste. [RCRA §3005(a)] The Act grants “**interim status**” to any facility in existence on November 19, 1980 or on the effective date of a statutory or regulatory change that subjected the facility to the permitting requirement, provided that the facility complied with the notification requirement of §3010(a) and applied for a permit under §3005. An interim status facility is treated as having been issued a permit until a final administrative disposition of its permit application has been made. Interim status granted to a land disposal facility before November 8, 1984, terminates on November 8, 1985, unless the facility operator or owner applies for a final permit determination before November 8, 1985, and certifies that the facility complies with applicable groundwater monitoring and financial responsibility requirements. [RCRA §3005(e)] EPA may suspend or revoke interim status if EPA determines that there has been a release of hazardous waste from an interim status facility. [RCRA §3008(h)]

#### *Corrective action*

Permits must require corrective action for hazardous waste or hazardous waste constituent releases at TSD facilities. [RCRA §3004(u)] In addition, EPA must require TSD facility owners and operators to perform corrective action beyond a facility’s boundaries when necessary to protect human health and the environment. [RCRA §3004(v)] EPA may order corrective action at interim status facilities when necessary to protect human health and the environment. [RCRA §3008(h)]

#### *Land disposal restrictions*

The Act prohibits placement of bulk or

noncontainerized liquid hazardous wastes in landfills and, in general, bans placement of liquids that are not hazardous waste in hazardous waste landfills. [RCRA §3004(c)] The Act also bans land disposal of certain wastes absent an administrative determination that banning a method of land disposal is not necessary after a demonstration that there will be no migration of hazardous constituents from the disposal unit for as long as the waste remains hazardous. [RCRA §3004(d), (e)]. The Act requires EPA to ban disposal of certain wastes by deep injection into underground wells if it may be reasonably determined that such disposal may not be protective of human health and the environment for as long as the waste remains hazardous. [RCRA §3004(f)] The Act requires EPA to submit a schedule for making land disposal determinations for characteristic and listed hazardous wastes and authorizes certain variances from land disposal prohibitions. [RCRA §3004(g), (h)] The Act prohibits storage of hazardous wastes that are prohibited from land disposal unless such storage is for the sole purpose of accumulating enough waste to recover, treat, or dispose of it properly. [RCRA §3004(j)] The Act requires EPA to promulgate treatment standards for wastes subject to land disposal restrictions and provides that hazardous wastes that have been treated to such standards may be disposed of in a land disposal facility. [RCRA §3004(m)]

### *State programs*

States may apply to EPA for authority to administer and enforce their own hazardous waste programs in lieu of the federal program. A state may not implement its own program if EPA finds that the state program is not equivalent to the federal program, is not consistent with federal or state programs in other states, or does not provide adequate enforcement of compliance with Subtitle C. [RCRA §3006(b)] States may not impose requirements that are less stringent than those imposed by Subtitle C regulations covering the same subject. [RCRA §3009]

### *Enforcement*

If EPA determines that a person has violated Subtitle C, it may issue orders assessing civil penalties and requiring compliance, or it may commence a civil action in U.S. district court. [RCRA §3008(a)] Anyone knowingly transporting hazardous waste to an unpermitted facility or knowingly treating, storing, or disposing of hazardous waste without a permit or in violation of a permit or interim status regulations is subject to criminal fines and imprisonment. [RCRA §3008(d)] Anyone who knowingly commits any such act and thereby places another person in imminent danger of death or serious bodily injury is subject to additional criminal fines and imprisonment. [RCRA §3008(e)]

### *Used Oil*

The Act requires EPA to determine whether to list or

identify used crankcase oil as hazardous waste. The Act exempts from §§3001(d), 3002, and 3003 generators and transporters of used oil that is listed or identified as hazardous waste if such used oil is recycled. The Act also authorizes EPA to promulgate regulations governing recycling of used oil. [RCRA §3014]

### **Nonhazardous solid waste management (Subtitle D)**

The Act requires EPA to promulgate regulations for determining whether a facility is an open dump or a sanitary landfill. At a minimum, sanitary landfills are facilities at which there is no reasonable probability of adverse effects on health or the environment from the disposal of solid waste. [RCRA §4004(a)] The Act prohibits open dumps. [RCRA §4005(a)]

The Act authorizes federal grants to assist states in developing and implementing EPA-approved solid waste management plans. [RCRA §4008] To obtain EPA approval, a plan must, among other things, prohibit new open dumps and provide for the closing or upgrading of existing open dumps. [RCRA §4003(a)]

### **Citizen suits**

Anyone may commence a civil suit against any person (including the United States or, subject to the U.S. Constitution's Eleventh Amendment, any governmental agency) for **violations of RCRA permits, regulations, or other requirements**. [RCRA §7002(a)(1)(A)] Anyone may commence a civil suit against any person (including the United States or, subject to the U.S. Constitution's Eleventh Amendment, any governmental agency) who has contributed or is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste that may present an **imminent and substantial endangerment** to health or the environment. [RCRA §7002(a)(1)(B)] Anyone may commence a civil suit against EPA for an alleged **failure to perform a nondiscretionary duty**. [RCRA §7002]

### **EPA "imminent and substantial endangerment" suits**

EPA may bring suit against any person who has contributed or is contributing to the handling, storage, treatment, transportation, or disposal of any solid or hazardous waste that may present an imminent and substantial endangerment to health or the environment. [RCRA §7003(a)]

### **Underground storage tanks (USTs) (Subtitle I)**

Each owner of an UST must notify the appropriate state or local agency of the existence of the UST, specifying its age, size, type, location, and uses. [RCRA §9002(a)(1)] The Act requires EPA to develop regulations for UST leak detection, prevention, and cleanup. [RCRA §9003(a)] EPA may approve a state UST pro-

gram in lieu of the federal program if the state program is at least as stringent as the federal program. If EPA approves the state program, the state has primary enforcement responsibility for that program. [RCRA §9004(a), (b), (d)]