



Stoel Rives<sup>LLP</sup>

# Resource Conservation and Recovery Act

Presented by Laura Kerr  
Environmental Law Institute  
Western Boot Camp  
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- **What** is RCRA?
- **What** does RCRA regulate?
- **Who** does RCRA regulate?
- **How** does RCRA regulate?
- **How** is RCRA enforced?



**HAZARDOUS WASTE**

FEDERAL LAWS PROHIBIT IMPROPER DISPOSAL.

IF FOUND, CONTACT THE NEAREST POLICE OR  
PUBLIC SAFETY AUTHORITY, OR THE  
U.S. ENVIRONMENTAL PROTECTION AGENCY.

GENERATOR INFORMATION:

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

EPA ID NO. \_\_\_\_\_ EPA WASTE NO. \_\_\_\_\_

ACCUMULATION START DATE \_\_\_\_\_ MANIFEST TRACKING NO. \_\_\_\_\_

[ \_\_\_\_\_ ]

D.O.T. PROPER SHIPPING NAME AND UN OR NA NO. WITH PREFIX

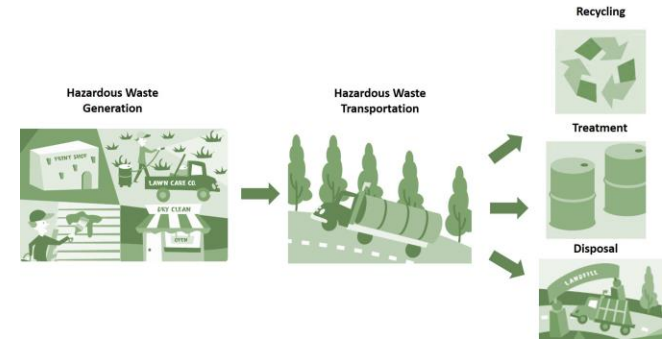
**HANDLE WITH CARE!**

# What is RCRA?

- Brief History
  - 1965: Solid Waste Disposal Act
  - 1976: Amended by RCRA
  - 1984: Amended by Hazardous and Solid Waste Amendments
- Current Law (42 USC 6901 *et seq.*)
  - **Cradle-to-grave regulation of HW (Subtitle C)**
  - Framework for regulation of Solid Waste (Subtitle D)
  - Underground storage tank program (Subtitle I)

# Key Features of RCRA

- Cradle-to-grave approach
- Technology-forcing standards
- Waste-reduction focus
- Hands-off approach to production process
- Encourage recycling
- Maintain state responsibility for solid waste regulation



Cradle-to-grave (Courtesy of EPA)

## What does it regulate?

### Solid Waste (40 CFR 261.2)

- Discarded material (abandoned, recycled, or inherently waste-like)

### Hazardous Waste (40 CFR 261.3)

- Solid waste that is ***listed*** or exhibits a ***characteristic*** of hazardous waste

## Is it a solid waste?

- Any garbage or refuse, sludge from a wastewater treatment plant, supply treatment plant, or air pollution control facility and **other discarded material**
- Solid Wastes are discarded when they are:
  - Abandoned
  - Inherently Waste-Like
  - A Discarded Military Munition
  - Recycled\*\*

## Case Study: *Ecological Rights Found. v. PG&E* (9th Cir. 2013)

### Issue

- Whether wood preservative that escaped from utility poles through normal wear and tear was a “solid waste” under RCRA.

### Holding

- Wood preservative was not solid waste because it was being used for its intended purpose, not discarded.

### Reaction

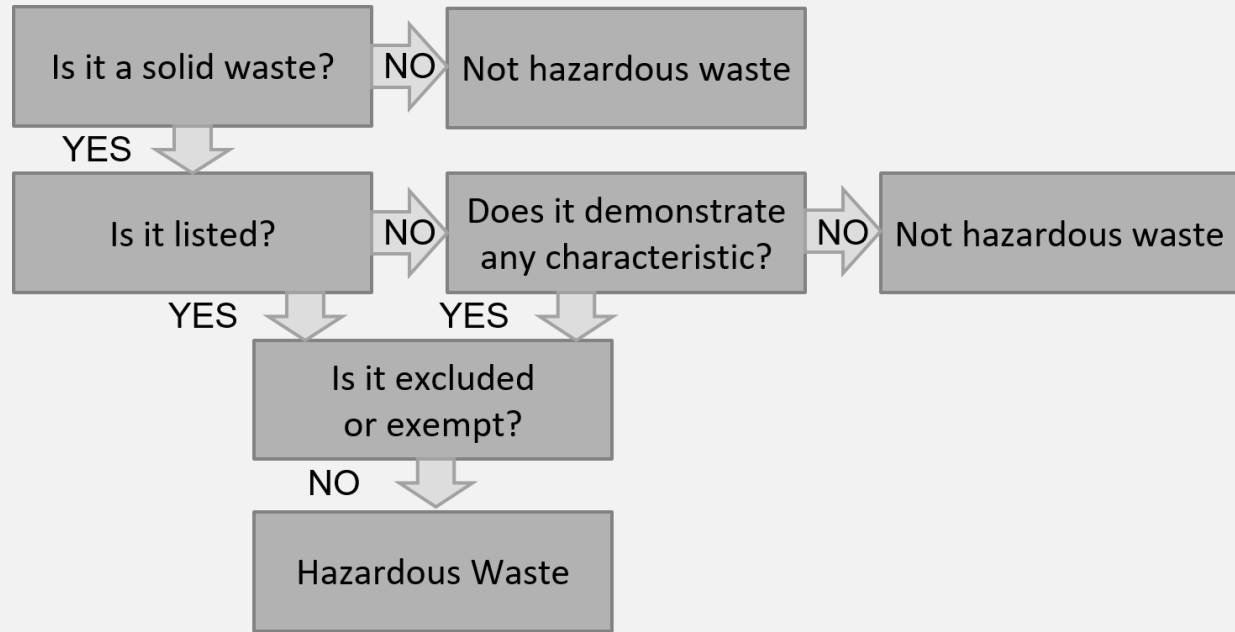
- EPA does not like this holding and memorialized its disagreement in a June 12, 2014 memorandum.

## Is it a hazardous waste?

- Listed Hazardous Waste (40 CFR 261 Subpart D)
- Characteristic Hazardous Waste
  - Ignitability (40 CFR 261.21)
  - Corrosivity (40 CFR 261.22)
  - Reactivity (40 CFR 261.23)
  - Toxicity (40 CFR 261.24)



# Hazardous Waste Determination



# Exclusions and Exemptions

## Exclusions

- Materials that are not solid wastes
- Solid wastes that are not hazardous wastes

## Exemptions

- Certain mixtures of solid and hazardous wastes
- Waste generated by VSQGs

## Who does it regulate?

Generators

Transporters

Treatment,  
Storage, and  
Disposal Facilities  
(TSDFs)

## What is a generator?

A person who . . .

- generates a hazardous waste or
- first causes hazardous waste to be subject to regulation

## Types of generators

	Quantity/Month
LQG	$\geq 1,000$ kg
SQG	$> 100$ kg $< 1,000$ kg
VSQG	$\leq 100$ kg or $\leq 1$ kg acutely hazardous waste



## Generator Rules

- Hazardous waste characterization
- EPA ID number
- Manifest, package, label, and mark for transport
- May accumulate up to 90 days or up to 55 gallons in satellite accumulation area
- Container and tank standards
- Biennial report, training, and contingency plan

## What is a transporter?

A person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water

- EPA ID number
- Manifest compliance
- May store at transfer facility for 10 days
- Immediate action to address discharge

## What is a TSDF?

A facility that treats or stores hazardous waste for more than 90 days or disposes of hazardous waste

- A permit is required
- Examples: landfills, incinerators, treatment facilities, long-term storage facilities



## TSDF Requirements

- Recordkeeping and reporting
- Contingency plan and emergency procedures
- Preparedness and prevention
- Air emissions
- Construction, use and management
- Corrective action
- Closure and post-closure care
- Financial assurance
- Groundwater monitoring
- Land disposal restrictions (LDRs)

## Other Types of Waste

### Used Oil

- Oil contaminated as a result of use (40 CFR part 279)

### Universal Waste

- Streamlined standards for certain hazardous waste (40 CFR part 273)

## Resources

RCRA Statute, 42  
USC 6901 et seq.

Hazardous Waste  
Regulations, 40  
CFR Parts 260-282

EPA Website  
(RCRA Online;  
FAQs)

# RCRA “Hot Button” Issues

- **Regulation of PFAS under RCRA**
  - “Listing of Specific PFAS as Hazardous Constituents” (EPA-HQ-OLEM-2023-0278)
  - “Definition of Hazardous Waste Applicable to Corrective Action for Releases from Solid Waste Management Units” (EPA-HQ-OLEM-2023-0085)
- **Climate Change**
  - EPA Draft Guidance, Implementing Climate Resilience in Hazardous Waste Permitting Under RCRA (December 12, 2023)
- **Enforcement Overlay**
  - EPA national enforcement and compliance initiatives for FY 2024-2027 include: (1) tackling PFAS contamination; and (2) curbing climate change

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# RCRA Enforcement

## RCRA Authorities

- Section 3007: Inspections
- Section 3008: Compliance Orders
- Section 3013: Monitoring, Testing, Analysis
- Section 7003: Imminent and Substantial Endangerment

# Compliance Monitoring

- Methods
  - Inspections
  - Information requests
- Objective is to determine whether facilities:
  - Have identified all the regulated waste streams
  - Have properly characterized each waste stream
  - Are properly handling each waste stream



## Citizen Suits

Section 7002(a)(1)(A): Violations

Section 7002(a)(1)(B): Imminent and substantial endangerment

Section 7002(a)(2): EPA failure to perform nondiscretionary act

## Case Study: *Meghrig v. KFC Western Inc.*, 516 U.S. 479 (1996)

### Issues

- Whether a plaintiff in a RCRA citizen suit can recover prior cleanup costs.
- Whether an imminent and substantial endangerment must exist when a citizen suit is filed.

### Holdings

- A plaintiff in a RCRA citizen suit cannot recover prior cleanup costs.
- RCRA does not authorize citizen suits to remediate waste that does not pose an imminent and substantial endangerment.

## Case Study: *Crandall v. Denver*, 594 F.3d 1231 (10th Cir. 2010)

### Issue

- Whether use of aircraft deicing fluid that can produce hydrogen-sulfide gas presented imminent and substantial endangerment.

### Holding

- No, because at the time of the trial there was no detectable hydrogen-sulfide gas in the concourse; potential for future harm was not sufficient.

## Limitations on Citizen Suits

### Violation Claim

- 60-day notice to EPA, state, and alleged violator
- No “diligent prosecution” by agency

### Endangerment Claim

- 90-day notice to EPA, state, and alleged violator
- No agency RCRA or CERCLA action

### Relief

- Limited to injunctive relief, civil penalties for regulatory violations, and attorneys’ fees/costs
- No recovery of cleanup costs