



WHITE PAPER

Getting Help with Compliance in the Complex Hazardous Waste Regulatory Environment

To address the problems caused by increased volumes of municipal and industrial waste generated nationwide, Congress passed the Resource Conservation and Recovery Act (“RCRA”) in 1976. Its focus was and is the protection of public health and the environment from improper management of hazards of waste disposal, in addition to focusing on the reduction in the amount of waste generated.

RCRA empowers the U.S. Environmental Protection Agency (“EPA”) to issue federal regulations regarding the safe management, transport, and disposal of solid and hazardous waste. Over the years, there have been many changes in the dynamics of waste, as new technologies have emerged and public awareness about hazardous waste has increased. Consequently, RCRA has been modified through additional regulations, policies, EPA initiatives, and Congressional mandates since 1976.

All of these developments have resulted in a complex set of federal regulations with which waste generators comply. But that’s only part of the regulatory picture. In addition to the federal regulations, most states have their own set of regulations for both hazardous and non-hazardous waste that may be even more stringent than federal regulations.

This paper provides an outline of RCRA and discusses the challenges that waste generators face in the regulatory environment. Further, it emphasizes the importance of choosing an environmental services provider that has the knowledge, experience, and capacity to assist waste generators with their compliance efforts.

What Is RCRA?

What is commonly known as RCRA is a federal statute that regulates generators, transporters, and disposers of solid and hazardous wastes. Today, RCRA consists of ten subtitles (A through J) that outline the authority of the EPA and its responsibilities along with detailed waste regulations.

RCRA Subtitle C specifically outlines the requirements for hazardous waste management from cradle to grave. Its regulations govern the generation, transportation, treatment, storage, and disposal of hazardous waste. Subtitle C is by far the most comprehensive and complex set of regulations the EPA has issued. Subtitle D regulates non-hazardous solid waste.

State Hazardous Waste Regulations Are Often More Stringent

Site-specific enforcement of RCRA is delegated to EPA regional offices and state government agencies. Using their authority to regulate hazardous waste under Subtitle C and non-hazardous waste under Subtitle D, state agencies typically take the lead in local enforcement. When a waste generator has compliance issues, they will primarily have to deal with state regulatory agencies.

It's important for waste generators to understand that most state regulations are more stringent than federal regulations. For instance, California and Texas have reputations for having very complex sets of regulations.

Waste generators must have a clear understanding of all of the waste they are producing in order to ensure that they are complying with federal and state regulations regarding both hazardous and non-hazardous waste.

Keeping Up with the Regulations and Frequent Rule Changes

Compliance can be an enormous burden. It's the responsibility of every business to determine whether or not they are generating regulated hazardous or non-hazardous waste and to take the necessary actions to stay in compliance with all applicable laws and regulations.

Perhaps the best way to understand the complex dynamics of complying with RCRA is to compare it to the income tax code. The sheer volume of regulations is overwhelming. Complicating matters further is the fact that a portion of those regulations changes every year.

Fortunately, a much smaller subset of regulations apply to any given business. Still, most businesses seek licensed professional help to plan for and prepare their taxes. Because those tax professionals understand the intricacies of the tax code and stay up to date on frequent changes, they can help their clients make the right decisions.

The reality for most hazardous waste generators is that they don't have the internal expertise to understand the nuances of state and federal regulations and to keep up with the frequent changes. Without the help of an environmental services provider to support their compliance efforts, waste generators are operating with higher potential risk of non-compliance.

The Consequences for Non-Compliance

The success of RCRA depends on compliance. When a waste generator is found to be non-compliant, RCRA provides for penalties that may include corrective orders, civil fines, and/or criminal actions. The EPA has wide discretion to decide which action or combination of actions to pursue, depending on the nature and severity of the violation.

An inspection conducted by the EPA or a state equivalent agency is the first line of compliance enforcement. These state agencies have the authority to review records, take samples, and observe facility operations to determine if the waste generator is in compliance.

If a violation is found, the waste generator could be subjected to an administrative action. In this case, the EPA or the state agency will issue a Notice of Violation. This is a non-judicial letter that details the specific actions the waste generator must take to correct the violation within a specified period. If the situation is more serious, the EPA or the state agency may issue a Compliance Order that imposes legally enforceable duties to take corrective action along with imposing a fine.

Non-compliance or failure to respond properly to a Notice of Violation or Compliance Order could result in a civil lawsuit filed against the waste generator. The EPA or the state agency can obtain an injunction to enforce corrective action and impose civil penalties for each violation.

In those rare cases where a person has knowingly or willfully violated RCRA regulations, that person may be subject to a substantial financial penalty per day of violation and potential time in prison. If their violation places another person in imminent danger of death or serious bodily injury, they may be subject to an even larger penalty and additional time in prison. The waste generator may also be required to pay a fine.

In addition to these administrative, civil, and criminal penalties, RCRA allows private citizens to sue a past or present waste generator when the handling of waste may have presented an imminent and substantial endangerment, or may be in violation of a permit, standard, regulation, condition, requirement, or order.

It's clear that the burden of non-compliance can devastate a business. Paying lawyers for a legal defense, paying fines, and spending time and money correcting violations can be an overwhelming financial burden. Add to that the significant negative impact to the public reputation of the business and the cumulative burden can be so significant that the business may never fully recover.

Finding the Right Partner Is Crucial to Staying in Compliance

Businesses are responsible for the waste they generate from start to finish. State and federal hazardous waste regulations are complex and evolving—and the cost of violating RCRA regulations is high. The handling of waste shouldn't be an afterthought. It needs to be a component of the overall business strategy.

To avoid the consequences of non-compliance, it helps to partner with an environmental services provider who understands the regulatory environment and is motivated to stay current with changes. While there is a cost associated with working with a provider, the cost of non-compliance is much higher.

The right environmental services provider has a staff of certified professionals who have the on-going responsibility to stay current on federal and state regulations. Ideally, the provider wouldn't have a financial interest in a landfill, incinerator, or other disposal facility, so that the provider can maintain its objectivity. This level of independence gives the provider the freedom to design a customized waste management plan that fits the specific needs of any business.

Another characteristic to look for in an environmental services provider is its ability to recycle waste and turn it into a valuable material that can be reused. By selling waste to another business, or reusing material in a closed loop, waste generators may be able to reduce expenses while generating less waste.

Stay in Compliance with Help from Nexeo Solutions

Because Nexeo Solutions has been a chemical distributor and waste generator since 1981, the company faces all of the regulatory concerns and challenges their clients face each day. Nexeo Solutions' internal compliance efforts are driven by a staff of environmental health and safety professionals, as well as certified hazardous materials managers, whose expertise benefits their clients.

With services that include hazardous and non-hazardous waste disposal, recycling and beneficial reuse programs, and on-site support, the Nexeo Solutions' Environmental Services Group brings an unbiased approach to waste management. Nexeo Solutions has a nationwide network of disposal sites that are audited on a routine basis, providing customers with an added layer of assurance that the waste they generate will be handled properly, from the cradle to the grave.