



Resource Conservation and Recovery Act (RCRA) and Real Property Disposal

What is the *Resource Conservation and Recovery Act* and what does it cover?

The *Resource Conservation and Recovery Act* (RCRA) is a 1976 amendment to the *Solid Waste Disposal Act* (SWDA). RCRA (the common reference to the amended SWDA) addresses the management of municipal and industrial solid waste (i.e., non-hazardous waste) and provides a "cradle-to-grave" system for managing hazardous waste.

The goals of RCRA are to:

- protect human health and the environment from the potential hazards of waste disposal;
- conserve energy and natural resources;
- reduce the amount of waste generated; and
- ensure that wastes are managed in an environmentally sound manner.

What types of waste and facilities-related hazardous activities does RCRA apply to?

RCRA applies to hazardous wastes (Subtitle C of 40CFR §261), solid wastes (Subtitle D), and underground storage tanks or USTs (Subtitle I). Its scope includes waste generators and transporters, and facilities engaged in the treatment, storage or disposal of hazardous and solid waste. Congress added Subtitle I to RCRA in 1984, which directed EPA to establish comprehensive regulations governing USTs that store petroleum or certain chemical products. See GSA's Fact Sheet *Federal and State Underground Storage Tank Programs and Real Property Disposal*.

How does EPA define "solid waste" and "hazardous waste"?

EPA defines solid waste as "garbage, refuse, sludge, or other discarded material, including solids, semi-solids, liquids, and contained gaseous materials."

Solid wastes are defined as "hazardous wastes" by EPA if they are specifically named in Subpart D of 40CFR §261 (referred to as "listed wastes") or if they exhibit one of four characteristics located in Subpart C of 40CFR §261 (referred to as "characteristic wastes").

- **Listed wastes** are known to be harmful to human health and the environment when not managed properly, based on EPA studies. They include wastes and waste streams from certain industrial or manufacturing processes and discarded commercial chemical products.
- **Characteristic wastes** are other wastes not specifically listed by EPA that possess certain characteristics of *ignitability*, *corrosivity*, *reactivity*, or *toxicity* as defined in 40CFR §261.

Munitions and their components can also be classified as solid waste under certain conditions. This includes munitions that are determined to be abandoned or are being disposed of, or damaged or deteriorated munitions that cannot be put back into use.

What is the relationship of RCRA to CERCLA?

Setting aside the UST program, RCRA applies to *operating facilities* and the transportation, treatment, storage, or disposal of waste they generate. The primary purpose of RCRA is to *prevent* contamination. CERCLA, the *Comprehensive Environmental Response, Compensation and Liability Act*, applies to the *cleanup* of hazardous substances at *closed or inactive facilities*.

However, there is some overlap between the two laws regarding the cleanup of hazardous wastes that have been released into the environment. CERCLA typically is utilized when such releases are so significant that the release site has the potential for being placed on the National Priorities List (NPL—the list of the most hazardous waste sites in the United States). RCRA typically is utilized for sites that do not meet NPL standards, or where a site was already permitted or under the control of RCRA for managing solid or hazardous wastes when the release occurred.

What level of government enforces RCRA?

Both EPA and state agencies have a role in enforcing RCRA. The Act mandated that EPA issue Implementing rules for RCRA, but authorized EPA to delegate RCRA enforcement to individual states provided that a state's regulations were at least as stringent as those issued by EPA (this is known as an "authorized" state). CERCLA, in contrast, is not a delegated program but is retained primarily by EPA.



Are federal facilities subject to RCRA?

Yes. Congress waived federal sovereign immunity to the requirements of RCRA. This applies to both RCRA programs administered by EPA and by authorized states. The *Federal Facilities Compliance Act of 1992* strengthened this waiver by allowing the imposition of federal, state and local penalties on federal agencies for RCRA violations. The *Energy Policy Act of 2005* expanded this waiver by allowing the imposition of federal, state and local penalties for UST violations as well.

How does RCRA apply to the disposal of excess and surplus federal real property?

RCRA applies in four ways:

- First, RCRA applies to federal real property disposals primarily through the "RCRA Corrective Action Program," the formal name for the RCRA program of the cleanup of "hazardous waste treatment, storage and disposal facilities" where releases have occurred.
- Second, RCRA applies to disposals in those cases where the property has an operating RCRA permit, the status of which the buyer and seller must resolve during negotiations (e.g., where, say, the buyer is interested in continuing hazardous waste management operations after the sale).
- Third, since RCRA governs the operation, monitoring, and maintenance of solid waste landfills at both operating and closed facilities, regulators use the corrective action and permitting process to ensure that they maintain control over landfills that are conveyed out of federal ownership.
- Fourth, in regard to USTs that are or were in existence on the property, there is a requirement placed on the past and current owner to ensure such USTs are or were properly managed on the property (e.g., in the case of a tank no longer in operation, ensuring that such tank was closed in accordance with UST regulatory requirements).

In all four cases, the state is typically the regulator, in its EPA-authorized role.

What does the RCRA Corrective Action Program do?

EPA's March 2000 Fact Sheet, *History of RCRA Corrective Action*, states that: "The RCRA Corrective Action Program evaluates releases of hazardous wastes and hazardous constituents at hazardous waste treatment, storage and disposal facilities, and develops and implements remedial measures to protect human health and the environment."

What are the goals of the RCRA Corrective Action Program?

EPA states that the goals of RCRA Corrective Actions are to:

1. Protect human health and the environment;
2. Attain cleanup objectives for the contamination media; and
3. Remediate the sources of releases.

What cleanup criteria does EPA use for RCRA corrective action projects?

Selection of a specific cleanup remedy is to be based on the following evaluation and balancing criteria:

- Long-term reliability and effectiveness
- Reduction of toxicity, mobility, and volume
- Short-term effectiveness
- Implementability
- Cost
- Community acceptance
- State acceptance

GSA realty specialists should be familiar with these criteria because they can affect the terms and conditions of excess and surplus real property disposals, including state approvals of cleanup plans and post-conveyance remedy protection responsibilities. Consequently, RCRA Corrective Action obligations can affect property disposal negotiations and, ultimately, the fair market value of surplus real property.

How do RCRA landfill regulations affect the future use of surplus federal property compared to CERCLA land-use controls?

RCRA landfill operating permits are typically limited to ten years and include an active monitoring program. EPA and the state agencies can require landfill operators to install new landfill caps or leachate collection systems as a condition of such permits or as a result of the RCRA Corrective Action Program. These requirements can be imposed on a federal landholding agency as a condition to approve the transfer of an operating permit (and property title) to a non-federal recipient, or they can be imposed on the recipient itself. Consequently, RCRA landfill obligations can affect disposal negotiations and the fair market value of surplus real property.

In contrast, CERCLA based land use controls (LUCs) typically prohibit certain activities, such as penetrating a landfill cap, but they do not require the property owner to maintain an operating permit for the LUC site. LUCs are subject to EPA's Five-Year Review guidance, but they generally do not require the same level of monitoring as a site subject to a RCRA Corrective Action or landfill permit.



What RCRA-related information should landholding agencies provide when they submit a Report of Excess (ROE) to GSA?

Landholding agencies should be asked:

- If there are (or were) any RCRA permits issued for the excess property for the treatment, storage, or disposal of hazardous waste;
- If the excess property is the site of an ongoing or past RCRA corrective action project or an ongoing RCRA facility assessment, facility investigation, or corrective measures study;
- If the site includes an operating or closed landfill subject to a RCRA permit; and
- To provide information on the regulatory status of any USTs that are or were on the property.

Where can I find more information about EPA's RCRA Program?

There is additional information about EPA's RCRA Program at:
<http://www.epa.gov/rcraonline>