

US EPA ARCHIVE DOCUMENT

The Breakdown of Federal Protections: How Environmental Health Policy Set at the National Level Can Be Derailed at the State Level



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A Case Study: Waste Management in Utah



- **Legal Background**
 - Resource Conservation and Recovery Act of 1976
 - Utah Code
- **Consequences**
 - Evasion of Congressional Intent
 - Harm to Community
- **Future**
 - State Regulation & Federal Action
 - Overcoming Economical and Political Constraints

Legal Background



Photo: Love Canal Avenue of Barrels, AEG



Photo: Salt Lake Tribune

Resource Conservation and Recovery Act

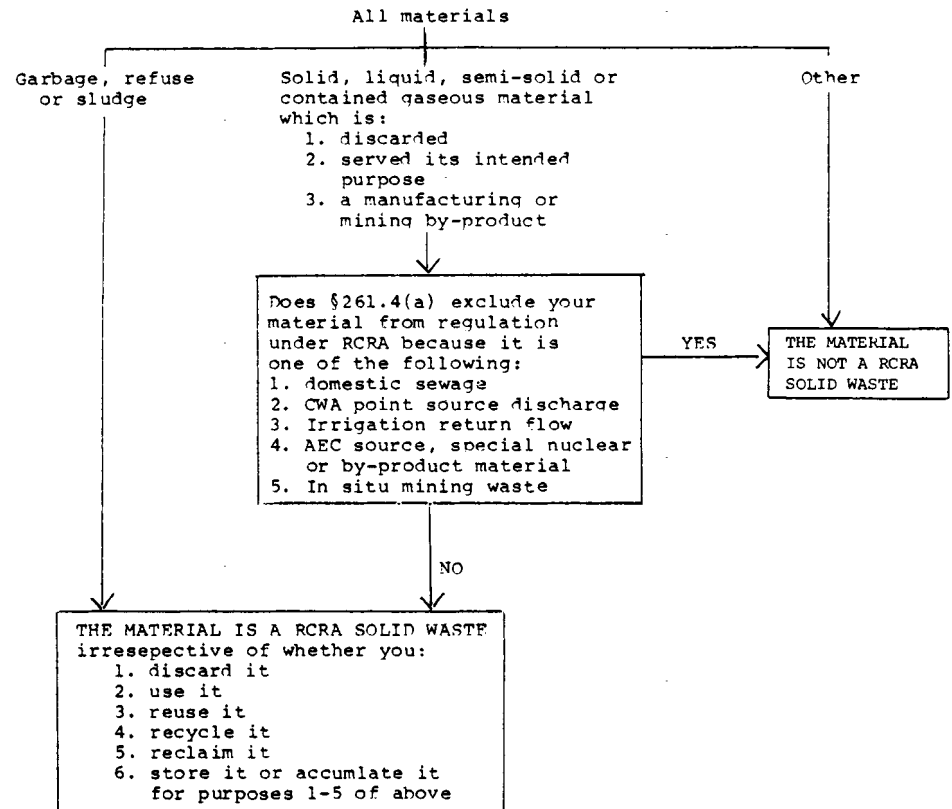
Subtitle D – Solid Waste

42 U.S.C. § 6903(27)

Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities



FIGURE 1
DEFINITION OF A SOLID WASTE



Resource Conservation and Recovery Act

Subtitle C – Hazardous Waste

40 C.F.R. § 261.2

Discarded materials that are abandoned, recycled, or designated as “inherently waste-like.”

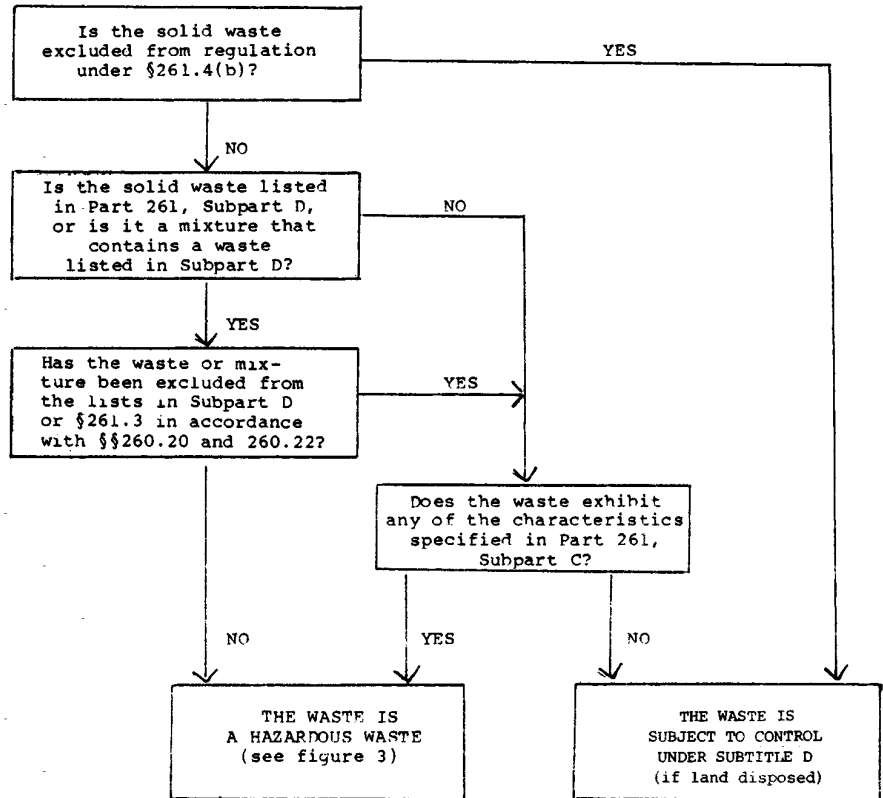
42 U.S.C. § 6903(5)

A solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may –

- (a) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or
- (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

FIGURE 2

DEFINITION OF A HAZARDOUS WASTE



Resource Conservation and Recovery Act

Bevill Amendment



- **RCRA § 3001(b)(3)(A)(ii)***
 - Exempts “solid waste from the extraction, beneficiation and processing of ores and minerals.”
 - Pending completion of a study, Report to Congress, and determination by the EPA either to promulgate regulations under Subtitle C or to declare such regulations unwarranted.
- **40 C.F.R. § 261.4(b)(7)**
 - Specifies twenty special mineral processing wastes exempted from Subtitle C under the Bevill Amendment.

* SOLID WASTES WHICH ARE NOT HAZARDOUS WASTES



The mission of the Department of Environmental Quality is to safeguard human health and quality of life by protecting and enhancing the environment.



Utah Department of
Environmental Quality

Resource Conservation and Recovery Act From Federal to State Regulation

- RCRA authorizes State programs in lieu of federal program
- 50 States have been granted authority
- State programs must be at least as stringent as the federal requirements
- Key requirements of state programs include state authority to monitor activity and bring enforcement actions

Waste Management in Utah



Solid Waste

Utah Code Ann. § 19-6-102(18)

Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities

Hazardous Waste

Utah Code Ann. § 19-6-102(9)

A solid waste or combination of solid wastes *other than household waste* which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Waste Management in Utah



- **Utah Code Ann. 19-6-102(18)(b)**
 - **Solid waste** does not include “solid wastes from the extraction, beneficiation, and processing of ores and minerals” unless the “waste causes a public nuisance or public health hazard or is otherwise determined to be a hazardous waste.”
- **Utah Admin. Code R315-301-2(35)**
 - Excludes mining waste and other wastes listed in Utah Code Ann 19-6-102(18)(b) from the definition of “Industrial solid waste.”

Consequences & Future Action



Photo: rprogress.org

**BECAUSE WE DON'T THINK
ABOUT FUTURE
GENERATIONS, THEY WILL
NEVER FORGET US.**

**~HENRIK TIKKANEN
(FINNISH WRITER,
1924-1984)**

Consequences



- **Evasion of Congressional Intent**
- **Harm to Community**
 - Risks Posed by Bevill Wastes (EPA Report 1997)
 - No monitoring and reporting requirements
 - No opportunity for public participation
- **Utah – Recent Headlines**
 - Kennecott mine tailings pond

Future



- **State & Federal Action**
 - Multi-level approach
- **Potential Barriers**
 - Economic Concerns
 - Encroaching on State Rights
 - Political Climate
- **Is a catastrophe required for action?**
 - Coal Ash example

Questions? Comments?



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