

CHAPTER 2

REGULATORY FRAMEWORK

2-1. Federal regulations

a. The Resource Conservation and Recovery Act (42 USC 6901 et. seq.) or, as it is more commonly referred to, (RCRA), requires all operators of hazardous waste management facilities to apply to the US Environmental Protection Agency (EPA) or an authorized state agency for a permit to operate the facility. In addition to providing compliance requirements for the private sector, (RCRA) mandates compliance for each department, agency and instrumentality of the executive, legislative and judicial branches of the Federal Government (42 USC 6961, subtitle F). Subtitle F states that the compliance is to be "... both substantive and procedural (including any requirements for permits or reporting or any injunctive relief and such sanctions as may be imposed by a court to enforce such relief).

Neither the United States nor any agency, employee or officer thereof shall be immune or exempt from any process or sanction or any State or Federal Court with respect to the enforcement of any such injunctive relief."

b. The applicability of (RCRA) as the primary instrument regulating the treatment, storage, transportation and disposal of hazardous wastes is underscored by 42 USC 6905, subtitle A. This part of the law instructs EPA to avoid administrative and enforcement duplication by integrating the program of (RCRA) regulations to the maximum extent possible with applicable provisions of the--

- Clean Water Act
- Safe Drinking Water Act
- Clean Air Act
- Federal Insecticide, Fungicide and Rodenticide Act
- Marine Protection Research and Sanctuaries Act

c. The principal source of design criteria for land treatment/disposal facilities, is title 40, (CFR) part 264.

Other sections of the law and regulatory program, such as the definitions in part 260 and the hazardous waste criteria in part 261, may also influence the design of facilities in a less direct manner. Presented in appendix B are the parts of 40 (CFR) and the elements of those parts pertinent to this technical manual.

d. The (RCRA) part 264 regulations consist primarily of two sets of performance standards-one for land disposal/land treatment units and the other for ground-water monitoring. The first set of standards, contained in subparts K through N of the regulations, enumerates design and operating standards separately tailored to surface impoundments, waste piles, land

treatment and landfills, respectively. The second set of standards contained in subpart F, establishes criteria for a ground-water monitoring and response program applicable to land disposal/land treatment facilities.

2-2. State and local regulatory requirements.

a. state cannot assume the responsibility for regulating hazardous wastes until the administrator of EPA determines that the state program is equivalent to the Federal requirements. Thus, the EPA standards are minimum requirements; nothing prevents states from establishing additional or more stringent regulations. In a number of states this is precisely the situation. For example, the majority of states have laws which actively discourage the use of land disposal for hazardous wastes or ban burial of these materials; New York has denied land disposal permits on the grounds that applicants failed to provide adequately for alternative technologies to landfilling (US Congress, Office of Technology Assessment IOTA], 1983). In other states the laws may require additional permits for hazardous waste facilities besides those required by (RCRA), or they may have commissions authorized to impose more stringent land use controls than the state regulatory program. It is therefore, necessary for the facility designer to review the requirements of the state where the facility is or will be located.

b. In addition, it is important to determine whether or not the state is fully authorized to control its hazardous waste management program. As of February 1983, 16 states were operating under cooperative arrangements or partial authorizations; 34 states and 1 territory had interim authorization, while 9 states had partially satisfied the Phase II requirements leading to complete authorization of their program.

c. The differences between states will usually be related to the types and quantities of controlled wastes, exemptions, geotechnical requirements, and the use of more specific design criteria to implement part 264 performance standards. Early review of applicable state requirements, and a comparison of their technical and regulatory elements with the EPA program can disclose any variations which may affect design work. Appendix B further defines the individual state programs by comparing the "universe of regulated wastes" with the (RCRA) waste listing and identifying land disposal restrictions and siting procedures for each state.

d. Local controls will be secondary to state and federal requirements with respect to Army installations;

they will principally relate to zoning, roads and air quality.

2-3. Army regulations

a. The Department of the Army's (DA) program for compliance with environmental protection standards of Federal, State, interstate and local agencies is established by Army Regulations (AR) 200-1 and 200-2. AR 200-1, paragraph 1-1, "prescribes (DA) policy, responsibilities, and procedures to protect and preserve the quality of the environment." AR 200-2, paragraph 1-1, states (DA) policy and "establishes procedures for the integration of environmental considerations into Army planning and decision-making in accordance with 42 USC 4321 et. seq., the 'National Environmental Policy Act of 1969' (NEPA)."

b. Management programs for both hazardous materials and hazardous wastes are described in chapters 5 and 6 of AR 200-1. Procedures to implement the management programs are tied to the requirements of the primary hazardous waste/hazardous material regulations: NEPA, RCRA, The Clean Water Act, The Marine Protection Research and Sanctuaries Act of 1932, and the Toxic Substances Control Act of 1976. AR 200-1, paragraph 6-3, increases the range of regulatory compliance by emphasizing DA's policy on source

reduction, recovery and recycling.

c. AR 200-2 describes procedures that the Army will employ to comply with the requirements set out by NEPA. Specifically, paragraph 3-1 of the regulation requires the DA to integrate NEPA's "systematic examination of the possible and probable environmental consequences of implementing a proposed action," and development of a written report Environmental Impact Statement (EIS). Certain categories of actions are exempt from the above requirement; AR 200-2, paragraph 3-3, defines the categories and associated requirements (or exemptions). However, even if an EIS is not required, an Environmental Assessment (EA) may be needed (AR 200-2, para 5-1). Actions typically requiring an EA include changes to established installation land use which may be expected to have some impact on the environment, and generation of hazardous or toxic materials (AR 200-2, para 5-3).

d. AR 200-2, paragraph 3-5, states that these environmental assessment documents "should be forwarded to the planners, designers, and/or implementers so that recommendations and mitigations.. . may be carried out." Prior to the start up of any construction work, the designer (through the installation) must ensure that required EA's and EIS's have been completed and project go-ahead has been finalized.