COMMENT

Is RCRA Enforceable by Citizen Suit in States With Authorized Hazardous Waste Programs?

by Adam Babich

Editors' Summary: RCRA allows EPA to authorize any state that has a qualified hazardous waste program to operate its program in lieu of the federal RCRA hazardous waste (subchapter III) program. When a state has received such authorization, questions arise as to whether the state program suspends portions of RCRA, and whether RCRA citizen suit enforcement of the state's hazardous waste regulations against regulated entities is permissible. Resolving this intersection of federal and state law is crucial to the ability to prosecute RCRA citizen suits, because many state hazardous waste laws do not provide for such enforcement. This Comment addresses the use of RCRA §7002(a)(1)(A) citizen suits to enforce both federal hazardous waste prohibitions implemented by EPA-authorized state programs and state hazardous waste prohibitions.

This Comment briefly reviews RCRA regulation of hazardous waste and discusses RCRA's federal cooperative scheme. After distinguishing §7002(a)(1)(A) citizen suits from other RCRA citizen suits, the Comment focuses on the intersection of federal and state law as it pertains to the ability to bring §7002(a)(1)(A) citizen suits. It first concludes that EPA authorization of state programs does not suspend any portion of RCRA subchapter III. Then, applying a Chevron U.S.A., Inc. v. Natural Resources Defense Council, 14 ELR 20507, analysis to whether §7002(a)(1)(A) suits may be used to enforce RCRA and an EPA-authorized state hazardous waste program, the Comment concludes that EPA authorization of a state program does not preclude these enforcement actions. Scrutiny of relevant RCRA provisions and applicable case law reveals that citizens are authorized to bring §7002(a)(1)(A) suits to enforce RCRA's mandates, regardless of whether it is EPA or an authorized state that implements those mandates.

Conflicting lines of authority interpreting the Resource Conservation and Recovery Act (RCRA) threaten—depending on your point of view—either to defeat Congress' intent to supplement government enforcement with "private attorneys general,"¹ or overwhelm the federal judiciary by allowing "any"² interested person to enforce state RCRA programs in federal court.³ The conflict boils down to two


2. 42 U.S.C. §6972(a), ERL STAT. RCRA 55 ("Except as provided in subsection (b) or (c) of this section, any person may commence a civil action . . .") (emphasis added). Despite the U.S. Supreme Court's alleged "slash and burn expedition through the law of environmental standing," Lujan v. Defenders of Wildlife, 112 S. Ct. 2130, 2160, 22 ELR 20913, 20927 (U.S. 1992) (Blackmun, J., dissenting), the injury plaintiffs must suffer or be threatened with to prove a sufficient personal stake in the outcome of a case to demonstrate standing to sue still need not be physical or economic; injury to aesthetic, conservational, or recreational interests is sufficient. Sierra Club v. Morton, 405 U.S. 727, 735, 738, 2 ELR 20192, 20194-95 (1972).

legal issues: whether the U.S. Environmental Protection Agency's (EPA's or the Agency's) authorization of a state to operate its hazardous waste program "in lieu of" a federal RCRA program suspends effectiveness of RCRA statutory provisions, and whether EPA's approval of a state's application "to administer and enforce a hazardous waste program pursuant to this subchapter [RCRA, subchapter III]" causes state RCRA requirements to become "effective pursuant to this chapter [RCRA]" and, thus, enforceable by citizen suit. Resolution of these issues has very practical consequences. Because many state hazardous waste laws do not provide for citizen enforcement, the question may not be where RCRA citizen suits will be prosecuted—i.e., in state or federal forums—but whether they may be brought at all.

This Comment briefly reviews RCRA regulation of hazardous waste and discusses RCRA's cooperative federalism scheme. The cooperative federalism discussion may be helpful to those deciding which sovereign, if any, implements a particular RCRA regulation. The Comment then analyzes the statutory provisions and selected cases applicable to the availability of federal citizen suits in states with EPA-authorized RCRA programs. It concludes that RCRA provides for citizen enforcement of the statute and its implementing regulatory programs, regardless of whether EPA or authorized states administer the programs.

Background

RCRA Regulation

One of Congress' more complex creations, RCRA—as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA)—regulates hazardous waste (subchapter III, also known as subtitle C), used oil (subchapter III), solid waste (subchapter IV), underground storage tanks (subchapter IX), and medical wastes (subchapter X). This Comment focuses on subchapter III hazardous waste regulation. RCRA prohibits treatment, storage, or disposal of subchapter III "hazardous waste" without a permit or interim status. Subchapter III also imposes corrective action requirements—alognous to remedial action under the Comprehensive Environmental Response, Compensation, and Liability Act on owners and operators of treatment, storage, and disposal facilities. Further, the subchapter regulates generators and transporters of hazardous waste. RCRA is implemented by hundreds of pages of regulations which, in turn, are the subject of myriad Federal Register preambles and EPA guidance documents.

Cooperative Federalism Under RCRA

Under RCRA §3006, a state seeking to administer and enforce its own subchapter III hazardous waste program applies to EPA for approval. EPA "shall" approve state applications regarding programs that conform to regulatory requirements designed to ensure that the programs are "equivalent to" and "consistent with" the federal program and provide "adequate" enforcement of compliance requirements. Generally, state programs may be more stringent than federal law, but aspects of a state program that have no basis in human health or environmental protection and effectively prohibit treatment, storage, or disposal of hazardous waste "may" be deemed inconsistent. Also, state requirements that unreasonably restrict or impede free movement of hazardous wastes across state borders to lawful treatment, storage, or disposal facilities "shall" be deemed inconsistent.

Once authorized, a state implements its programs "in lieu of the Federal program," and the program "shall at all times be conducted in accordance" with federal RCRA regulations. State action that is taken pursuant to an authorized hazardous waste program has "the same force and effect as action taken by [EPA]."

EPA often changes and supplements RCRA regulations and Congress occasionally amends the statute. Before 1984, RCRA consistently provided states a grace period of about one year to incorporate any federal changes into their own programs so that state programs would remain consistent with RCRA. During this period, changes to the federal

4. 42 U.S.C. §6926(b), ELR STAT. RCRA 32.
5. Id.
6. Id. §6972a(a)(1)(A), ELR STAT. RCRA 55.
7. To obtain EPA authorization, state programs must provide for public participation in the enforcement process by allowing a right to intervene or comment on settlements. 40 C.F.R. §271.16(d) (1992).
10. Id. §§6935, ELR STAT. RCRA 37-38.
11. Id. §§6941-6949(a), ELR STAT. RCRA 44-49.
12. Id. §§6991-6991i, ELR STAT. RCRA 68-74.
13. Id. §§6992-6992k, ELR STAT. RCRA 75-78.
14. To RCRA lawyers, the terms "hazardous waste" and "solid waste" are ambiguous because either the regulatory (subchapter III) definitions or the statutory definitions may be at issue. See Sierra Club v. U.S. Dep't of Energy, 734 F. Supp. 946, 20 ELR 2104 (D. Colo. 1990) (noting the difference between RCRA statutory and regulatory definitions). Thus, in EPA's preamble to promulgation of its subchapter III definitions, the Agency stated: "... although this regulation limits what may be regulated as a 'hazardous waste' under Sections 3002 through 3005 and 3010 of RCRA, it does not limit those materials which may be considered 'hazardous wastes' under other sections of the statute." 45 Fed. Reg. 33084, 33090 (May 19, 1980). Unless otherwise noted, in this Comment the term "hazardous waste" refers to the subchapter III definition.
15. Interim status is a grandfathering provision for facilities already in existence when the waste they manage becomes subject to regulation. 42 U.S.C. §6925(e), ELR STAT. RCRA 29-30. See Sierra Club v. Chemical Handling Corp., 35 Envtl. Rep. Cas. (BNA) 1562, 1569 (D. Colo. 1992) (holding that interim status is a statutorily conferred grandfathering provision that is not granted or conferred by administrative agencies).
17. 42 U.S.C. §§6924(a), (v), 6928(h), ELR STAT. RCRA 28, 35.
18. Id. §§6922-6923, ELR STAT. RCRA 22-23.
20. 42 U.S.C. §6926(b), ELR STAT. RCRA 32.
21. 40 C.F.R. §271.1(e).
23. 40 C.F.R. §271.4(b).
24. Id. §271.4(a).
25. 42 U.S.C. §6926(b), ELR STAT. RCRA 32.
26. 40 C.F.R. §271.1(g).
28. See 40 C.F.R. §271.21(e)(1), (2).
program did not apply in authorized states. 29 Thus, the effective dates of RCRA regulations—including additions to lists of regulated substances—varied geographically depending on the authorization status of particular states. 30

Unhappy with this situation, Congress—when enacting the HSWA in 1984—created an exception to the authority of authorized state programs to regulate in lieu of EPA. 31 As amended, RCRA mandates that each HSWA requirement, including each regulation that implements HSWA, take effect on the same date in every state. 32 Pending incorporation of the HSWA requirements into authorized state programs (and pending EPA approvals of those modified programs), the HSWA requires EPA to implement the new requirements directly, even in states with authorized programs. 33

If Congress had tried, it could hardly have made its 1984 amendments to RCRA’s cooperative federalism scheme more confusing. Rather than treating all RCRA regulatory changes the same, RCRA, as amended, applies a special rule to statutory provisions added by the HSWA and to regulations that implement the HSWA. EPA, however, continues to change RCRA regulations in ways unrelated to the HSWA, 34 and for such non-HSWA regulatory changes, the grace-period system still applies. Thus, the existence of a grace period (during which a regulatory change may go unimplemented), and the identity of the regulator that will implement the change, depends not on when EPA promulgates the change but, instead, on when Congress amended RCRA to provide authority for it. This kind of analysis is disturbing to those with limited interest in the historic development of environmental law or limited budgets for obtaining legal advice. Fortunately, when promulgating RCRA regulations, EPA makes a point of discussing implementation and effective dates in its Federal Register preambles to the regulations. 35

Because EPA has yet to promulgate several required HSWA regulations, it is unlikely that authorized state programs will catch up, and remain caught up, with the federal program any time soon. 36 Thus, in most states, EPA continues to receive applications for RCRA permits and to enforce the HSWA-based RCRA regulations. 37 Moreover, citizen suits aside, EPA often is not alone in enforcing the HSWA-based regulations in states that lack authorization to do so in lieu of the Agency. States do not need, and rarely await, EPA authorization to enforce state law. 38 Indeed, there may be significant delays between a state’s adoption of a regulation to conform to an HSWA-based requirement, submission of its application to EPA for authority to implement the regulation in lieu of the federal version, and EPA’s grant of approval, during which both EPA and the state may enforce separate versions of essentially the same requirement. In such situations, state and federal regulatory schemes are not only dual, but duplicative, and unwary regulated entities that meet the requirements of only one sovereign may miss important deadlines enforced by the other.

The HSWA provisions are not the only source of limits to the authority of authorized state programs to regulate in lieu of the federal government. RCRA allows EPA to issue compliance orders or bring enforcement actions in states with authorized programs after providing notice to the state in which the violation occurred. 39 If a state program changes or is interpreted or implemented in a manner that fails to meet minimum requirements of federal law, EPA may withdraw its authorization. 40 EPA actively oversees state implementation and requires that states afford its unrestricted access to information. 41 The Agency reviews, and may terminate, state-issued permits and may suspend or revoke interim status. 42 Indeed, RCRA regulations allow EPA to comment on draft state RCRA permits and then, if the state does not respond to EPA’s satisfaction, enforce certain comments as if they were permit conditions. 43

**RCRA Citizen Suits**

Subject to limitations, such as notice and waiting period provisions, 44 RCRA allows “any person” to bring three types of citizen suits. 45 First, under §7002(a)(1)(A), citizens may enfore any RCRA “permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this chapter [RCRA],” including subchapter III requirements, against regulated parties. In such actions, citizens may obtain injunctions and orders for payment of civil penalties to the U.S. Treasury. 46 Second, RCRA §7002(a)(1)(B) allows citizens to seek restraining orders and orders requiring defendants to take “such . . . action as may be necessary,” 47 including environmental monitoring, 48 when past or present waste handling contributes to a situation that “may present an imminent and substantial endangerment to health or environment.” 49 50

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29. See id.
31. See 40 C.F.R. §271.3(b).
33. Id.; 40 C.F.R. §271.3(b)(3).
34. See, e.g., New Mexico, 969 F.2d at 1132-33, 22 E.L.R. at 21267 (holding that EPA made a regulatory change in 1986 by issuing a notice interpreting pre-HSWA RCRA provisions).
36. For example, presently EPA has yet to issue final regulations fully implementing the HSWA’s corrective action requirements.
37. 40 C.F.R. §271.19(f).
38. RCRA only preempts portions of state programs that are less stringent than the RCRA regulatory scheme. 42 U.S.C. §6929, E.L.R. Stat. RCRA 35; 40 C.F.R. §271.11(c).
40. Id. §6926(e), E.L.R. Stat. RCRA 32; 40 C.F.R. §271.22.
41. 40 C.F.R. §271.17.
43. 40 C.F.R. §271.19(b), (c)(2).
46. Id.
47. Id.
nally, under §7002(a)(2), citizens may seek injunctive relief against EPA when the Agency fails to perform nondiscretionary duties, such as promulgation of regulations by statutory deadlines. In all such actions, substantially prevailing plaintiffs are entitled to awards of litigation costs, including reasonable attorneys fees.

The issues this Comment addresses concern only one subset of the first type of citizen suits discussed above—§7002(a)(1)(A) suits to enforce RCRA subchapter III statutory and regulatory standards. EPA authorization of state hazardous waste programs should not affect actions under §7002(a)(1)(A) to enforce provisions of other RCRA subchapters, such as RCRA’s §4005 ban on open dumping of subchapter IV solid waste, because such authorization does not allow states to implement subchapter IV in lieu of federal law. Similarly, §7002(a)(1)(B) imminent endangerment actions generally do not enforce compliance with the RCRA subchapter III regulatory program but provide an independent cause of action to address situations analogous to common-law public nuisances. Thus, §7002(a)(1)(B) authority is not part of the subchapter III regulatory program that EPA delegates to states. And, of course, suits to compel EPA to fulfill its nondiscretionary duties are unlikely to be based on the kind of subchapter III provision that EPA authorizes states to implement in lieu of federal law. Finally, as discussed above, EPA implements some of the HSWA-based requirements directly in authorized states, pending amendment of the states’ authorized programs. There should be no controversy about use of RCRA citizen suits to enforce such EPA-implemented RCRA requirements. The controversy this Comment addresses is about use of §7002(a)(1)(A) citizen suits to enforce: (1) federal statutory prohibitions that are implemented by EPA-authorized state programs, and (2) implementing state statutes, regulations, permits, and orders.

Does EPA Authorization of State Programs Suspend Portions of RCRA?

RCRA allows a state with an authorized “hazardous waste program” to carry it out “in lieu of the Federal program.” Neither the statute nor its regulations, however, define “program.” Nevertheless, it is clear that Congress did not intend the term to include the RCRA statute itself. Throughout RCRA, Congress refers to the statute as “this subchapter” or “this title,” never “this program.” Moreover, EPA regulations contemplate that the term “program” applies only to the regulatory program. More importantly, Congress directed RCRA’s plain language to both EPA and state-implemented programs, and thus, could not have intended authorization of state programs to suspend the statute’s effectiveness.

RCRA §3005(a) requires owners and operators of facilities that treat, store, or dispose of hazardous wastes “to have a permit issued pursuant to this section.” This section is §3005, and §3005(c) directs “the Administrator (or the State)” to issue a permit when “the Administrator (or a State, if applicable)” determines that the facility qualifies. Thus, when §3005(a) prohibits treatment, storage, or disposal of hazardous waste “except in accordance with such a permit,” the phrase “such a permit” refers to the permit issued “by the Administrator (or the State)” pursuant to §3005(c). Indeed, as the First Circuit has noted, “A permit under this subchapter [III] is one issued by the Administrator of the EPA or by an authorized state.”

RCRA itself specifically allows EPA enforcement when a violation of a “requirement of this subchapter [III] . . . occurs in a State which is authorized to carry out a hazardous waste program under [§3006].” Clearly then, the RCRA statute applies and is enforceable nationwide—EPA authorization of state programs does not suspend it.

Does RCRA Allow Federal Citizen Suit Enforcement of State Hazardous Waste Regulations in Authorized States?

Authority to enforce RCRA statutory prohibitions is a far cry from the ability to prosecute any violation of a hazardous waste “permit, standard, regulation, condition, requirement, prohibition, or order.” The details of many RCRA re-

50. Id. §6972(a)(2), ELR STAT. RCRA 55.
51. Id. §6972(c), ELR STAT. RCRA 56.
52. Middlesex City Bd. of Chosen Freeholders v. New Jersey, 645 F. Supp. 715, 721-22, 17 ELR 20475, 20477-78 (D.N.J. 1986); see also Lincoln Properties, 23 ELR at 20671 (noting that RCRA §7002(a)(1)(B) confers authority on courts “to grant affirmative equitable relief to the extent necessary to eliminate any risk posed by toxic wastes”) (emphasis added).
55. 42 U.S.C. §6926(b), ELR STAT. RCRA 32.
56. 40 C.F.R. §271.1(c) ("... upon approval [EPA] shall suspend the issuance of Federal permits...").
57. 42 U.S.C. §6925(e), ELR STAT. RCRA 29 (emphasis added).
58. Id. §6925(c), ELR STAT. RCRA 29 (emphasis added).
59. Id. (emphasis added).
60. Many other RCRA statutory provisions address both EPA and state programs. See, e.g., id. §6924(a), ELR STAT. RCRA 28 (permits issued after November 8, 1984, by EPA or a State, shall require corrective action’’); Id. §6925(c)(2)(C), ELR STAT. RCRA 29 (setting time periods for issuance of final permits by “any State which is administering an authorized hazardous waste program’’).
62. 42 U.S.C. §6928(a)(2), ELR STAT. RCRA 34. RCRA criminal provisions also are consistent with this analysis. When addressing the statutory violation of unpermitted storage, §3008(d)(2)(A) refers to storage “without a permit under this subchapter.” (Emphasis added.) But when addressing violations of the regulations that implement RCRA’s statutory prohibition, §3008(d)(3)-(5) refers to “any applicable interim status regulations” or “regulations promulgated by the Administrator (or by a State in the case of an authorized State program).” Id. §6928(d)(2)(C), (d)(3)-(5), ELR STAT. RCRA 34.
64. 42 U.S.C. §6972(a), ELR STAT. RCRA 55.
qurements are found in the regulatory program, not the statute. And if RCRA §3006 “in lieu of” language means anything, surely EPA-authorized state regulatory programs supersede corresponding federal regulations.65

A frequently cited environmental law case, Chevron U.S.A., Inc. v. Natural Resources Defense Council,66 supplies the analysis to resolve the issue of whether citizens may use RCRA §7002(a)(1)(A) to enforce EPA-authorized state statutes and regulations that implement RCRA. Chevron governs judicial determination of the validity of agencies’ interpretations of the statutes they implement.67 It sets up a two-step process:

First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter. . . . If, however, . . . Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather . . . the question for the court is whether the agency’s answer is based on a permissible construction . . . .68

In the context of administering RCRA §3006, EPA has adopted the following interpretation: “[I]t is EPA’s position that the citizen suit provision of RCRA is available to all citizens whether or not a state is authorized.”69 Put another way:

Under RCRA, Section 7002, any person may commence a civil action on his own behalf against any government instrumentality or any person who is alleged to be in violation of permits, regulations, conditions, etc. . . . As a result, any person, whether in an authorized or unauthorized State, may sue to enforce compliance with statutory and regulatory standards.70

Because EPA has announced an interpretation of the availability of §7002(a)(1)(A) suits in authorized states, courts should analyze the validity of that interpretation under the Chevron test. The applicable questions are: (1) is RCRA “crystalline”71 in adopting a rule contrary to EPA’s interpretation, and if not, (2) is EPA’s interpretation a reasonable construction? A review of RCRA reveals that

65. See Reider v. Sonotone Corp., 442 U.S. 330, 339 (1979) (holding that a court is “obliged to give effect, if possible, to every word Congress used”).
67. Congress charged EPA with administering RCRA’s cooperative federalism scheme in §3006. 42 U.S.C. §6926(b), ELR STAT. RCRA 32. To administer §3006, EPA evaluates the adequacy of a state program’s enforcement and public participation provisions. 40 C.F.R. §271.1(c).
73. Id. §6926(b), ELR STAT. RCRA 32 (emphasis added).
74. Id. §6926(d), ELR STAT. RCRA 32.
75. Id. §6972(b)(1)(A)(i), ELR STAT. RCRA 56.
76. Id. §6972(b)(1)(B), ELR STAT. RCRA 56.
77. Cf. Gwaltney of Smithfield v. Chesapeake Bay Found., Inc., 484 U.S. 49, 59, 18 ELR 20142, 20145 (1987) (noting that citizens must give prior notice of suits to states to allow the states to bring their own enforcement actions).
82. 23 ELR 20814 (D. Colo. 1993).
83. 725 F. Supp. at 262, 20 ELR at 20346.
suit provision does not provide for review of EPA permits, much less state permits.\textsuperscript{93}

In \textit{Thompson}, the court rejected a plaintiff’s attempt to use §7002 to force EPA to take enforcement action. Noting that the plaintiff did not allege that EPA itself was managing hazardous waste, the court dismissed the claim.\textsuperscript{94} This was the correct result, because §7002(a) nowhere authorizes citizens to sue the government directly over the exercise of enforcement discretion. The case does not address the issue of whether §7002(a)(1)(A) suits against persons who are “alleged to be in violation” of RCRA subchapter III requirements may be prosecuted in a state with an authorized program.

The \textit{Williamsburgh} decision cites a similar case, \textit{Luckie v. Gorsuch}.\textsuperscript{95} In \textit{Luckie} the court dismissed a §7002(a)(1) claim against a state official for the state’s alleged improper regulation of an asbestos dump. The court held that to be liable under §7002(a)(1), the state must be the “instrumentality discharging the pollution.”\textsuperscript{96} Thus, although some language in the \textit{Williamsburgh}, \textit{Thompson}, or \textit{Luckie} opinions may be confusing, the courts’ actual holdings simply do not address the question of §7002(a)(1)(A) applicability in states with authorized programs.

\textbf{Conclusion}

Careful analysis of the relevant provisions of RCRA and applicable case law reveals that Congress authorized citizens to bring §7002(a)(1)(A) suits to enforce RCRA statutory and regulatory requirements nationwide, regardless of the authorization status of particular states. Despite the confusing nature of the interplay between RCRA §3006 and §7002,\textsuperscript{97} together the provisions effectively address the fact that EPA and the states do not have the resources to pursue every RCRA violation aggressively. Because a RCRA violation “is only ‘small’ to one who does not live near the offending hazardous waste facility,” the court in \textit{Chemical Handling} appropriately acknowledged “Congress’ wisdom in recognizing that those who live in close proximity to hazardous waste facilities often are the most diligent enforcers of RCRA’s mandates.”\textsuperscript{98} RCRA provides for citizen enforcement regardless of whether it is EPA or an authorized state that implements those mandates.

\textsuperscript{93} RCRA’s judicial review provision, §7006, rather than the citizen suit provision, §7002, provides for permit appeals. \textit{Id.} §6976(b), ELR STAT. RCRA 58.

\textsuperscript{94} 680 F. Supp. at 2-3, 18 ELR at 20803. The court also dismissed the plaintiff’s claims under RCRA’s “open dumping” provision, §4005(a), 42 U.S.C. §6945(a), ELR STAT. RCRA 45. \textit{Id.} But §4005 is part of RCRA subchapter IV, not subchapter III, and EPA does not authorize states to administer that section. See \textit{Dague}, 732 F. Supp. at 465-67, 20 ELR at 21003-04 (D. Vt. 1989) (dismissing subchapter III claim but retaining jurisdiction over open dumping claim).

\textsuperscript{95} 13 ELR 20406 (D. Ariz. 1983).

\textsuperscript{96} \textit{Id.} at 20406.

\textsuperscript{97} For example, enforcers who fail to allege violation of the state regulations that supersede EPA’s regulations in a state with an authorized program may find their complaints dismissed. \textit{See}, \textit{e.g.}, \textit{Lutz v. Chromatex, Inc.}, 718 F. Supp. 413, 426, 19 ELR 21368, 21374 (M.D. Pa. 1989).

\textsuperscript{98} 88 Sierra Club v. Chemical Handling Corp., 23 ELR 20814, 20815 (D. Colo. 1993).

\begin{itemize}
\item 84. 23 ELR at 20815.
\item 88. 45 Fed. Reg. 85016 (Dec. 24, 1980).
\item 89. 30 Env’t Rep. Cas. (BNA) 1188 (N.D.N.Y. 1989).
\item 90. 680 F. Supp. 1, 18 ELR 20802 (D.D.C. 1987).
\item 92. 42 U.S.C. §6926(b), (d), ELR STAT. RCRA 32.
\end{itemize}