

RCRA Hazardous Waste Permitting: U.S. Environmental Protection Agency Seeks Comment on Electronic Public Notice Alternatives



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

12/21/2021

The United States Environmental Protection Agency (“EPA”) published a notice in the December 16th Federal Register inviting comment on:

... allowing modern electronic alternatives for public notification in implementing Subtitle C of the Resource Conservation and Recovery Act (RCRA).

See 86 Fed. Reg. 71482.

Certain Resource Conservation and Recovery Act (“RCRA”) regulated activities require public notice. The RCRA public notice requirements can be found in the following regulatory cites:

- 40 C.F.R. § 25.3-13
- 40 C.F.R. § 124.10
- 40 C.F.R. § 124.12
- 40 C.F.R. § 124.14
- 40 C.F.R. § 124.31
- 40 C.F.R. § 124.32
- 40 C.F.R. § 124.33

The requirements include public notice by permit applicant of:

- Pre-application meetings
- Public notice by the permitting agency when an application is submitted
- Preparation of draft permit
- Notification of comment periods
- Public hearings

The December 16th Federal Register notice is intended to communicate the federal agency’s interpretation that both the RCRA and EPA regulatory provisions requiring newspaper notice for certain actions can be satisfied by notice in qualifying online newspapers (as well as print newspapers).

EPA also requests comments regarding whether:

... online mechanisms that might not typically be viewed as newspapers, such as bulletins or newsletters published online by state environmental agencies, could also satisfy these requirements.

EPA takes the position that the agency can in appropriate cases authorize state regulations providing for equivalent notice mechanisms other than newspaper publications or actions other than permit issuance. Examples referenced are permit modifications.

The Federal Register notice also requests comments on whether EPA should amend its regulations to provide additional flexibility in providing notice of permit actions and other RCRA actions.

One of the motivations cited for this review is the lack of available print newspapers in some communities. For example, it is noted:

- Some communities have no local newspaper
- Newspaper circulation decreased by 55 million between 2004 and the end of 2019

A copy of the Federal Register notice can be downloaded [here](#).