

SECTION A - 2

HAZARDOUS MATERIALS REGULATIONS

A. Overview of Federal Hazardous Materials Legislation

There are a number of Federal laws that regulate hazardous materials. The following is a brief overview of the major pieces of legislation that comprise our country's hazardous materials management policies and programs (See Figure 1).

1. The Environmental Protection Agency

a. The Resource Conservation and Recovery Act of 1976 (RCRA)

This law, administered by EPA, establishes a Federal program to provide comprehensive regulation of hazardous waste. This includes certain materials which pose a potential threat to public health and safety when they are discarded. RCRA regulations provide and maintain a hazardous waste management system that covers the generation, transportation, use, and disposal of such waste (sometimes summarized as regulation from "cradle to grave"). Major control mechanisms include a manifest system to track hazardous waste shipments and a permit system requiring waste site owners and operators to comply with specified safety standards. While RCRA primarily regulates safety precautions at hazardous waste facilities in operation today, it also has strong provisions potentially relevant to cleanup if any part of a facility was in operation during the 1980s.

b. The Clean Air Act (CAA)

This act, passed in 1970, is the basic Federal law for controlling air pollution. It requires EPA to keep an up-to-date list of industrial pollutants that are hazardous to human health, and set an emission standard for each "with an ample margin of safety." Under the law, EPA prepares minimum pollution standards, and States prepare implementation plans showing how these standards will be attained. States issue permits for the release of listed pollutants into the atmosphere, and take samples to evaluate the State's air quality.

c. The Clean Water Act (CWA)

Originally enacted in 1972, this act envisioned swimmable waters by 1983 and pollution discharges halted by 1985. Obviously, these goals were not accomplished. The law continues to promote clean water by supporting construction of sewage treatment facilities (which are currently bearing a heavy burden in processing pollutants); supporting the preparation of water quality plans encompassing the entire Nation; and setting up a permit system restricting the amount and type of pollutants that can be discharged into the Nation's waterways. The law is primarily designed to address point sources of pollution, although non-point sources such as agricultural runoff is starting to be addressed.

d. The Safe Drinking Water Act (SDWA)

This act is specifically designed to protect public water supplies from contamination by mandating water testing, denying Federal funds to projects that threaten critical water supplies, and requiring States to submit plans to protect public wells from contamination.

e. Pesticides Legislation

Both the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the Federal Food, Drug and Cosmetic Act (FFDCA) regulate pesticides. Originally requiring mere registration of pesticides, FIFRA was amended in 1972 to require testing for short-term and long-term toxic effects prior to registration. For pesticides used on food crops, EPA establishes an upper limit on the amount of residue that can remain on food based on human tolerance levels. The FFDCA requires the Food and Drug Administration (FDA) to enforce these residue limits by monitoring and seizing foods whose residues are in excess of these standards.

f. The Toxic Substances Control Act (TSCA)

This legislation was passed in 1976 to reduce the threat from new chemicals that "present or will present an unreasonable risk of injury to health or the environment." As a result, chemical producers are required to research the effects of new chemicals and notify EPA before they are manufactured. EPA has the authority to ban or restrict chemical uses if there is sufficient evidence that the substance poses an "unreasonable risk." The Act also regulates polychlorinated biphenyls (PCBs) and asbestos.

g. Comprehensive Emergency Response, Compensation and Liability Act (CERCLA)

In 1980, Congress passed the Comprehensive Emergency Response, Compensation and Liability Act or CERCLA. This is commonly known as Superfund. The bill's purpose was to fund cleanups and emergency response actions for some of the worst inactive or abandoned hazardous waste sites scattered across the country. A billion dollar revolving trust fund--financed primarily by a tax on certain chemical and petroleum products--was created to pay for Federal and State response actions when releases of hazardous substances pose an existing or potential threat to human health or the environment.

In 1986, this bill was revised and expanded in the Superfund Amendments and Reauthorization Act of 1986 (SARA). The third part of SARA, Title III, is known as the Emergency Planning and Community Right-to-Know Act of 1986. This portion of the legislation makes over three hundred "extremely hazardous substances" subject to routine and detailed reporting to designated local, State, and Federal government agencies. It also requires local planning committees to use this information (and other data on local hazards) to create effective plans for hazardous materials emergencies.

2. The Department of Transportation

a. Hazardous Materials Transportation Act of 1974 (HMTA)

The purpose of this Act is to improve the regulation and authority of the Secretary of Transportation to protect the nation adequately against risk to life and property which are inherent in the transportation of hazardous materials in commerce. The Department of Transportation (DOT) was responsible for issuing the HMTA regulations (49 CFR 171-177). These regulations govern the packaging, marking, labeling, and acceptable condition of hazardous materials offered for intrastate or interstate transportation. It also covers the actual transportation procedures and specifications for motor vehicle, aircraft, rail car, and vessels carrying hazardous materials.

b. HMTA as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA)

Some key revisions are:

- 1) Shipping Papers: The person offering a hazardous material for transportation must provide a shipping paper with required information, and in the event of an emergency incident, immediately disclose the information to appropriate emergency response authorities.
- 2) Training Requirements: Regulations have been issued specifying the requirements for training of "HazMat employees" (individuals who affect transportation of hazardous materials including employees who handle, prepare or package hazardous materials or operate a vehicle to transport hazardous materials). These requirements are in addition to the Hazardous Waste Operations and Emergency Response (HAZWOPER) training requirements under OSHA and EPA.
- 3) Identify and safeguard: Improvement of the placarding system and development of a central reporting system and computerized telecommunications data center.

3. The Department of Labor

Enacted in 1970, the purpose of this law is to assure, so far as possible, "safe working conditions" to "every working man in the country." This is accomplished by the issuing of basic safety and health standards, assigning OSHA employees to inspect workplaces, and forcing industry to reduce or eliminate job hazards by imposing fines for identified violations.

The Occupational Safety and Health Administration (OSHA) sets standards for worker exposure to hazardous substances and requires that such substances bear warning labels. It also mandates that employees be given training and other information on dangers posed by chemicals, and be given instruction as to how to use these chemicals safely.

Note: The University of Nebraska at Omaha (UNO) does not currently fall under the Occupational Safety and Health Administration's (OSHA) jurisdiction.

Under SARA, the Secretary of Labor was directed to issue a final standard to protect the health and safety of employees engaged in hazardous waste operations. In 1989, OSHA issued this rule on Hazardous Waste Operations and Emergency Response (HAZWOPER), which represents the first comprehensive approach to protecting public and private sector employees involved in the

business of handling hazardous waste materials. Many of the workers affected by this rule are employees of State and local governments.

The State of Nebraska passed legislation in 1993 (LB 757), which applies to all Nebraska public and private employees. Under these requirements (Title 230, Ch. 6), the Nebraska Department of Labor (NDOL) will conduct inspections of work sites to help develop occupational safety programs for employees with high frequency or severity rates of work-related injuries. The OSHA and Mine Safety & Health Administration standards shall be considered in determining minimum acceptable standards.

Compliance with OSHA standards is also a condition of many grants. Non-compliance would be considered non-performance of a grant condition which is subject to penalty as specified in the grant.

4. The Federal Emergency Management Agency

The Federal Emergency Management Agency (FEMA) is responsible for coordinating all civil emergency planning, management, mitigation, and assistance functions of the Federal Government. Under SARA's Title III, FEMA is the primary Federal agency responsible for planning and related training for hazardous materials emergency management. This authority encompasses accidents at manufacturing, processing, storage, and disposal facilities, as well as hazardous materials in transit by highways, on water, by rail, and by air.

B. Responsibilities of Key State Agencies

A state agency may receive authorization to administer all or part of a federal agency's regulations provided they have demonstrated that their programs are substantially equivalent to the federal program. Once authorized, the federal agency may withdraw a state authorization within 90 days of notifying the State of a nonconformity.

Nebraska has many State agencies whose primary responsibility is to protect the health and safety of Nebraskans. A list of the key State Agencies and the federal programs which have been delegated by a federal agency are:

1. AIR QUALITY

Department of Environmental Quality Air and Waste Management Division P.O. Box 98922
Lincoln, NE 68509-8922 Regulations: Title 129, but delegated to the City of Omaha, Air Quality Control, Chapters 33 and 41, Omaha Ordinance

2. COMMUNITY RIGHT-TO-KNOW

Nebraska Emergency Response Commission Civil Defense Agency 1300 Military Road Lincoln, NE 68508-1090

3. HAZARDOUS WASTE

Nebraska Department of Environmental Quality Air and Waste Management Division Resource

Conservation Recovery Act Section P.O. Box 98922 Lincoln, NE 68509-8922 Regulations: Title 128

4. WORKPLACE SAFETY CONSULTATION PROGRAM

Nebraska Department of Labor Division of Safety P.O. Box 95024 Lincoln, NE 68509-5024
Regulations: Title 230, Chapter 6 (not federally delegated)

5. RADIOACTIVE MATERIALS

Nebraska Department of Health Division of Environmental Health P.O. Box 95007 Lincoln, NE 68509 Regulations: Title 180, Chapter 1

6. UNDERGROUND STORAGE TANKS

Nebraska State Fire Marshal P.O. Box 94677 Lincoln, NE 68509-4677 Regulations: Title 159

7. WATER QUALITY

Department of Environmental Quality Water Quality Division P.O. Box 98922 Lincoln, NE 68509-8922 Regulations: Titles 117, 118, 119, 127

8. SOLID WASTE

Nebraska Department of Environmental Quality Air and Waste Management Division Integrated Solid Waste Management Section P.O. Box 98922 Lincoln, NE 68509-8922 Regulations: Title 132, Omaha Ordinance, Chapter 33

C. When the Laws are Not Obeyed

The Nation's regulation of hazardous materials is accomplished through several key pieces of legislation, each of which addresses a specific aspect of the problem. This legislation charges numerous Federal agencies with responsibilities to protect our environment and the public health, each agency bringing its expertise in a specific area to bear on particular areas of concern. These laws and agencies support State and local governments in addressing their hazardous materials problems.

Noncompliance or notice of violation can be written for many reasons such as:

- Violating normal agency procedures
- Violating a substantive statute or regulation
- Abusing its discretionary authority (that is, making a decision based on inadequate information or inappropriate standards)
- Violating legally required decision-making procedures
- Violating environmental impact review requirements

Penalties include:

- Restitution for environmental damage
- Community services
- Unfavorable publicity

- Substantial monetary fines (civil penalties)
- Personal convictions (criminal penalties)

REGULATORY STRUCTURE
FIGURE 1

