

#### IV. SOLID WASTE AND HAZARDOUS WASTE

**Producer Note:** There are several laws which control the use and disposal, as well as the cleanup, of hazardous wastes. Producers who use hazardous chemicals or use petroleum or other products stored in storage tanks must be aware of the requirements governing their actions.

##### A. Federal Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act<sup>22</sup> (RCRA) controls the treatment, storage, and disposal of hazardous waste as well as the disposal of municipal solid waste. RCRA also regulates the storage of petroleum and other products in underground storage tanks.

RCRA could have the following impacts on producers:

- Disposal of hazardous waste on a farm could subject producers to significant responsibility including closure and post-closure care;
- Recalled pesticides intended for disposal may be subject to manifest and transportation requirements; and
- Offsite disposal of hazardous waste could subject producers to hazardous waste generator requirements.

##### 1. *Disposal*

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<sup>21</sup> UTAH CODE ANN. § 11-7-1 *et seq.* (1996).

<sup>22</sup> 42 U.S.C. § 6901 *et seq.* (1994).

Producers disposing of their own used waste pesticides which are hazardous wastes are exempted from hazardous waste requirements, so long as the emptied containers are triple-rinsed in accordance with the labeling and the pesticide residue is disposed of on the farm in a manner consistent with the disposal instructions on the pesticide label. However, if the chemical is defined as a RCRA waste, the triple-rinsate must be disposed of at an approved hazardous waste site.

Producers can dispose of non-hazardous agricultural wastes on their own property, unless the disposal is prohibited by other state or local laws. This includes manure and crop residues returned to the soil as fertilizers or soil conditioners and solid or dissolved materials in irrigation return flows.

## **2. *Underground Storage Tanks***

Underground storage tanks<sup>23</sup> (USTs) and their associated piping holding less than 1,100 gallons of motor fuel for non-commercial purposes, tanks holding heating oil used on the premises, and septic tanks are excluded from RCRA regulations. All new regulated USTs are required to meet standards related to construction, monitoring, operating, reporting to state or federal regulatory agencies, owner record keeping, and financial responsibility.

## **3. *Used Oil***

Producers who generate an average of 25 gallons or less per month of used oil from vehicles or machinery per calendar year are exempt from regulations. Producers exceeding 25 gallons are required to store the used oil in tanks meeting underground or aboveground technical requirements and use waste transporters with EPA authorization numbers for removal of the waste from the farm. Storage in unlined surface impoundments which are wider than they are deep is banned.

## **4. *Farming***

For food chain crops, farming can occur on land where hazardous chemicals are applied so long as the producer receives a permit from EPA. The producer must demonstrate that no substantial risk to human health is caused by the growth of crops in that manner.

## **5. *Penalties***

RCRA criminalizes a variety of knowing violations in the transportation of waste to unpermitted facilities, or transporting, treating, storing, or disposing of waste without a permit. In addition, making false statements or knowingly omitting material information in applications, manifests, or reports constitutes criminal conduct. Fines can be as high as \$50,000 per day of violation and imprisonment may be from two to five years, depending on the violation.

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<sup>23</sup> 42 U.S.C. § 6991 *et seq.* (1994).

Subsequent convictions result in a doubling of penalties. Any person who knowingly violates the law and subjects another person to imminent danger of death or serious injury may be fined up to \$250,000 and imprisoned up to 15 years. A corporation found guilty of knowing endangerment is subject to a fine of up to \$1,000,000.

## **B. Federal Comprehensive Environmental Response, Compensation and Liability Act**

The Comprehensive Environmental Response, Compensation and Liability Act<sup>24</sup> (CERCLA) was passed to rectify perceived inadequacies of earlier environmental legislation, especially RCRA. RCRA was deemed inadequate to address past hazardous waste disposal sites.

The federal government is authorized under CERCLA to conduct cleanup operations with funds from the "Superfund." The government may then seek to recover the costs of cleanup from "potentially responsible parties" (PRPs). The government is also authorized to issue cleanup directives or seek injunctive relief ordering PRPs to conduct responsive actions to abate an "immediate and substantial endangerment to public health or the environment." In addition, private parties are authorized to seek reimbursement from the "Superfund" or they may file cost recovery actions against PRPs.

CERCLA and the courts have broadly defined the term persons to include individuals, corporations, and other corporate actors, such as corporate officers, as well as other types of business entities.

Under CERCLA, criminal penalties may be levied for failing to report releases, knowingly reporting false or misleading information, or knowingly destroying or falsifying records. Fines may be as high as \$250,000 for individuals and \$500,000 for corporations. Incarceration for up to three years for a first conviction and up to five years for subsequent convictions can also be imposed. An individual who provides information leading to the arrest and conviction of a person failing to report a release can receive up to \$10,000 as a reward.

## **C. Federal Toxic Substances Control Act**

The Toxic Substances Control Act<sup>25</sup> (TSCA) allows EPA to regulate new commercial chemicals prior to sale on the market and to regulate the distribution and use of existing chemicals when they pose an unreasonable risk to human health or to the environment. TSCA also prohibits the use of polychlorinated biphenyl (PCB) transformers in areas that could affect food or feed. An exposure risk to food or feed is caused if PCBs are released in any way from the item and the releases have a potential pathway to human food or animal feed. EPA considers human food or animal feed to include items regulated by USDA or the Food and Drug

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<sup>24</sup> 42 U.S.C. § 9601 *et seq.* (1994).

<sup>25</sup> 15 U.S.C. § 2601 *et seq.* (1994).

Administration (FDA) as human food or animal feed, including direct additives. Food or feed stored in private homes is excluded.

#### **D. Federal Emergency Planning & Community Right to Know Act**

The objectives of the Emergency Planning & Community Right to Know Act<sup>26</sup> (EPCRA) are to: (1) allow state and local planning for chemical emergencies; (2) allow for emergency release notification; and (3) allow for toxic and hazardous chemical right-to-know.

EPCRA requires businesses which store chemicals subject to the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard to submit information or a list of those chemicals to state and local authorities. Submittal of this information will facilitate emergency planning and response. Annual reporting to state and local authorities is required for businesses which have those chemicals present at the facility in amounts above a certain threshold. However, hazardous chemicals used in routine agricultural operations or fertilizers held for resale by a retailer are excluded from EPCRA.

In addition, farms storing and using hazardous chemicals for routine agricultural operations do not have to meet the requirements for reporting under EPCRA. However, farms storing any amount of an extremely hazardous substance above specified thresholds must notify state and local emergency planning committees.

Businesses which produce, store, or use extremely hazardous substances or CERCLA hazardous chemicals must report any non-permitted releases of a listed chemical above threshold amounts to federal, state, and local authorities. Releases could occur into the atmosphere, surface water, or groundwater.

**Producer Note:** Farmers should work with their Local Emergency Planning Committee (LEPC) to ensure that the LEPC has sufficient information to respond should a local emergency occur. Excluded from the emergency planning requirements are activities involving the proper application of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) regulated pesticide products as well as the handling and storage of these pesticide products by an agricultural producer.

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<sup>26</sup> 42 U.S.C. § 11001 *et seq.* (1994).

## E. Occupational Safety and Health Administration

**Producer Note:** State OSHA or Labor Department officials can assist the operator in fully understanding worker training and safety requirements, particularly in the area of exposure to hazardous chemicals.

The Occupational Safety and Health Administration (OSHA) has regulations which include training requirements to protect workers from hazardous chemicals. Employers must comply with the regulations. The regulations cover workers involved in clean up responses under CERCLA and RCRA.

OSHA has over 100 standards which include some training requirements. OSHA has also promulgated a right-to-know law for employees exposed to hazardous chemicals, and many states have similar laws. RCRA regulations require treatment, storage, and disposal facility personnel to have expertise in their areas of assignment.

## F. State Solid Waste and Hazardous Waste Laws and Regulations

**Producer Note:** While most farmers and ranchers are not generators, transporters, or disposers of solid waste, it is important to check with state officials concerning the definitions of solid waste to determine whether an operation's activities could be regulated under state solid and hazardous waste statutes.

Under the Utah Solid and Hazardous Waste Act,<sup>27</sup> responsibility for overseeing solid and hazardous waste disposal rests with DEQ and the Utah Solid and Hazardous Waste Control Board (Waste Control Board). The Waste Control Board has the authority to issue orders implementing the provisions of the Act as well as to ensure compliance with the Act's provisions.

**Producer Note:** Producers must be aware of solid and hazardous waste regulation in Utah because generally, solid waste is defined as any garbage, refuse, or sludge resulting from industrial, commercial, mining, or agricultural operations. The definition does not include solid or dissolved materials in irrigation return flows. A hazardous waste is defined as a solid waste or combination of solid wastes which may cause or significantly contribute to an increase in mortality or cause an increase in serious irreversible or incapacitating illness.

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<sup>27</sup> UTAH CODE ANN. § 19-6-101 (1995).

## 1. *Treatment, Storage, Transportation, and Disposal of Hazardous Waste*

No person can transport hazardous waste to a hazardous waste facility unless the facility has a hazardous waste operation plan or permit under applicable Utah law or RCRA. In addition, no person can treat, store, or dispose of certain hazardous wastes without a hazardous waste operation plan and permit. Making a false material statement in an application for a plan or permit or transporting certain hazardous wastes without a manifest is also illegal. Violations are considered felonies subject to monetary fines ranging from \$10,000 to \$50,000 per day, substantial terms of imprisonment, or both.

In order to minimize the effects of a hazardous substances release, Utah has enacted the Hazardous Substances Mitigation Act.<sup>28</sup> This Act allows the state to take remedial steps to mitigate the effects of an unauthorized spill, leak, or discharge of hazardous materials or substances. DEQ may bring lawsuits against all of the responsible parties which caused the spill for the costs of the remedial action. Liability is apportioned among the responsible parties according to each responsible party's respective contribution to the release. However, in apportioning liability the court cannot impose joint and several liability.

**Producer Note:** Joint and several liability means that when more than one individual contributes to an environmental problem, each party is jointly liable for the damage and can be required to pay for their share of the damages and cleanup costs. For example, if it costs \$100,000 to clean up a site polluted by two individuals, and one is responsible for five percent of the problem and the other for 95 percent, each would pay their share. One party would pay \$5,000 and the other would pay \$95,000. However, if only one of the parties is financially solvent, that party could be forced to pay 100 percent of the costs, regardless of their contribution to the problem.

## 2. *Underground Storage Tanks*

Utah has enacted the Underground Storage Tank Act to regulate underground storage tanks.<sup>29</sup> The Act applies to all tanks covered by RCRA and specifically includes petroleum storage tanks. The Waste Control Board has the power to make rules regarding certification of tank installers, inspectors, testers, and removers as well as requiring the registration of underground tanks. Each owner or operator of an underground tank must register the tank with the Executive Secretary of the Waste Control Board if the tank is currently in use or was closed after January 1, 1974. The owners or operators of petroleum tanks are required to pay an annual fee.

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<sup>28</sup> UTAH CODE ANN. § 19-6-301 (1995).

<sup>29</sup> UTAH CODE ANN. § 19-6-401 *et seq.* (1995).

Any tank registered after July 1, 1991, must have been checked for tank tightness either six months before the tank was registered or within 60 days after the tank was registered. Petroleum cannot be delivered to an underground tank if the owner or operator of the tank does not have a valid certificate of registration or is not in compliance with the applicable rules. There are substantial monetary penalties if the Act is not followed.

**Producer Note:** Many producers placed underground storage tanks on their property many years ago. If a producer has an underground storage tank on the property, special controls may be necessary to regulate the substances contained in those tanks. In some cases, removal of the tank may be necessary.

### 3. *Solid Waste Management*

Utah has given individual communities the power to control the right to collect, transport, and dispose of solid waste within the community's jurisdiction.<sup>30</sup> Fees to be used for solid waste purposes may be assessed against property within Utah. Solid waste includes all rotting and nonrotting materials or substances discarded or rejected. Under the definition, agricultural wastes would be considered solid waste.

**Producer Note:** Producers should check with local authorities to ensure compliance with solid waste collection and disposal laws.

### 4. *Used Oil*

Utah has enacted the Used Oil Management Act<sup>31</sup> to regulate the disposal of used oil. Used oil may not be discharged into a sewer, drainage system, septic tank, any body of water, or on the ground unless the discharge is specifically allowed under the provisions of the Used Oil Management Act. Generally, oil collection facilities must be registered and are required to obtain an operating permit. However, producers who generate an average maximum of 25 gallons per month per year of used oil from vehicles or machinery used on the farm are not considered an oil collection facility.

**Producer Note:** All farming operations are subject to the general prohibition against discharging oil on the ground or into the water.

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<sup>30</sup> UTAH CODE ANN. § 19-6-501 *et seq.* (1995).

<sup>31</sup> UTAH CODE ANN. § 19-6-701 *et seq.* (1993).