

#### 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.

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<sup>21</sup> S.D. CODIFIED LAWS ANN. § 34-35-9 *et seq.* (1994).

<sup>22</sup> S.D. CODIFIED LAWS ANN. § 5-5-19 (1994).

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

The Resource Conservation and Recovery Act<sup>23</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 farmers:

- Disposal of hazardous waste on a farm could subject farmers 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 farmers to hazardous waste generator requirements.

### **1. Disposal**

Farmers 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.

Farmers 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>24</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.

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<sup>23</sup> 42 U.S.C. § 6901 *et seq.* (1994).

<sup>24</sup> 42 U.S.C. § 6991 *et seq.* (1994).

### 3. *Used Oil*

Farmers 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. Farmers 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 farmer receives a permit from EPA. The farmer 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. 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>25</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" (PRP). The government is also authorized to issue cleanup directives or seek injunctive relief ordering PRP 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 PRP.

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<sup>25</sup> 42 U.S.C. § 9601 *et seq.* (1994).

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. Violators may be incarcerated for up to three years for a first conviction and up to five years for subsequent convictions. 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>26</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 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 objective of the Emergency Planning & Community Right to Know Act<sup>27</sup> (EPCRA) is 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.

The 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

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<sup>26</sup> 15 U.S.C. § 2601 *et seq.* (1994).

<sup>27</sup> 42 U.S.C. § 11001 *et seq.* (1994).

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.

## **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 cleanup 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**

### ***1. Solid Waste***

South Dakota defines solid waste as any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded materials, including solid, liquid, semisolid, or contained gaseous material, resulting from industrial, commercial, and agricultural operations. The definition does not include defined hazardous waste, solid, or dissolved sewage materials, dissolved material in return irrigation flows, discharges from point sources subject to water pollution laws or nuclear material regulated by the Atomic Energy Act.

All persons who intend to dispose of solid waste are required to comply with the state's solid waste statutes.<sup>28</sup>

No person may operate a solid waste disposal site without a permit. Permit requirements for solid waste facilities may include requirements for financial security and other operating standards. The owner or operator of the facility is responsible in perpetuity for the waste and any detrimental effect or pollution caused by it, as are any governmental units which have exported solid waste to South Dakota. Additionally, owners and operators of solid waste disposal facilities are required to monitor groundwater unless it is affirmatively shown that groundwater deterioration will not result.

Persons who knowingly or intentionally operate a solid waste facility without a permit are guilty of felonies as well as being subject to a civil action. Those who operate in violation of permits or make false statements and misrepresentations in the permit process are guilty of serious misdemeanors. Illegal disposal of solid waste in any quantity is an offense. Disposal of more than ten pounds of waste is considered illegal dumping, which in some cases is a felony.

**Producer Note:** Farmers who generate solid waste from normal farming and domestic activities may dispose of it on their land as long as the disposal is not a nuisance, a danger to public health, and does not otherwise violate state or federal water pollution law.

General permits may be issued to cover specific categories of solid waste handling facilities. Facilities operating under general permits must dispose of the same or substantially similar materials, be of similar design, operate under similar operating conditions, and require similar monitoring. Examples of facilities which may be issued general permits are land applicators of petroleum contaminated soils, land applicators of whey, demolition and rubble disposal, waste tire handlers, and sludge disposal facilities.<sup>29</sup>

## 2. *Hazardous Waste Management*

No hazardous waste treatment, storage, or disposal facility may be owned, built, operated, or modified without a permit.<sup>30</sup>

Discharges of a wide variety of substances are classified as regulated substance discharges, and these include federally defined hazardous and toxic substances, pesticides, fertilizers, and petroleum and petroleum products, including waste oil.<sup>31</sup>

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<sup>28</sup> S.D. CODIFIED LAWS ANN. § 34A-6-1.1 *et seq.* (1992 & Supp. 1996).

<sup>29</sup> S.D. ADMIN R. 74:27:10:01 (1993).

<sup>30</sup> S.D. CODIFIED LAWS ANN. § 34A-11-1 (1992 & Supp. 1996).

<sup>31</sup> S.D. CODIFIED LAWS ANN. § 34A-12-1 *et seq.* (1992 & Supp. 1996).

Regulated substance discharges cannot occur without a permit. Anyone discharging a regulated substance must report it immediately, and be held strictly liable for the costs of corrective action. Corrective costs function as a lien on property. If the discharger is not identifiable, the owner or operator of the property may be designated as a responsible party for the purposes of corrective action.

The pesticide rules, in conjunction with South Dakota environmental laws and rules, dictate the proper disposal of pesticide wastes. Properly prepared containers may be buried within the limitations provided in the rules. The DOA offers a free program for the disposal of unusable pesticides. The DOA oversees the land application of pesticide and fertilizer contaminated materials for this intended purpose. (See page SD-35).

**Producer Note:** No small scale or farmer exemption to regulated substance discharge requirements exists.

### 3. *Underground Storage Tanks*

For the most part, South Dakota has chosen to implement its underground storage tank (UST) program through a series of administrative rules.

**Producer Note:** Underground storage tank rules do not apply to motor fuel tanks of less than 1,100 gallons capacity or to home heating oil tanks. Producers should carefully inventory their underground tanks for possible regulatory problems.

In South Dakota, any tank or combination of tanks and pipes containing regulated substances which is more than 10 percent below ground is considered an underground tank. This does not include farm and residential motor vehicle fuel tanks containing less than 1,100 gallons for noncommercial purposes, or tanks containing residential heating oil, surface lagoons, wastewater collection systems, or septic tanks.<sup>32</sup> In addition, tanks which contain used oil, sumps, and those tanks containing a minimal amount of a regulated substance are exempt from the rules controlling USTs, as are tanks of less than 1,110 gallons capacity.<sup>33</sup>

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<sup>32</sup> S.D. CODIFIED LAWS ANN. § 34A-2-98 (1992 & Supp. 1996).

<sup>33</sup> S.D. ADMIN. R. 74:03:29:01 (1989).

**Producer Note:** All new USTs and associated subsurface plumbing are required to be of fiberglass reinforced plastic, cathodically protected steel, or steel and fiberglass reinforced composite. Tank installations must comply with nationally recognized standards for construction. Existing USTs must be upgraded to comply with spill and overfill standards for new tanks, release detection systems must be implemented, and cathodic protection or an internal liner must be installed.

Owners of all USTs must notify DENR of the existence and location of the UST and also notify the local authorities, unless the tank is known to have been removed. Installations of USTs require the filing of plans and specifications with DENR and any designated local notification agency prior to the start of installation. Designated local notification agencies are local subdivisions designated by the Governor to carry out any provisions of UST statutes or rules.

All operators and owners must report spills, overfills, and other releases of regulated substances from their tanks unless the spill is less than 25 gallons of petroleum, in which case it must be cleaned up within 24 hours or reported. If a release is suspected, the owner must investigate and take immediate corrective action, which can include removal of the tank contents, reporting the corrective action taken, removal of contaminated soil, and submission of data to DENR which substantiates the taking of corrective action.

If a tank is taken out of service for more than three but less than 12 months, continued monitoring is required, and the owner must cap and secure all equipment other than vents. If the tank is removed from service for more than 12 months, it must be permanently closed. If the tank was closed after 1987, it must be removed or filled with an inert solid.

#### ***4. Emergency Planning and Management***

The state Emergency Response Commission (ERC) assists local emergency planning commissions by reviewing their response plans for dealing with the release of extremely hazardous, hazardous, and toxic chemicals.<sup>34</sup> ERC functions include:

- Determining the threat from release of dangerous substances and the local ability to respond;
- Preparation of action recommendations; and
- Evaluation of options and preparation of funding recommendations.

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<sup>34</sup> S.D. CODIFIED LAWS ANN. § 1-50-1 *et seq.* (1992 & Supp. 1996).

In addition, some agencies, such as DENR, the Department of Agriculture, Soil Conservation Districts, and the Animal Industry Board have the power to issue emergency orders and take necessary actions to address other environmental emergencies. Among these are:

- Orders to abate air pollution;<sup>35</sup>
- Emergency soil erosion control orders;<sup>36</sup>
- Livestock quarantine orders;<sup>37</sup>
- Plant quarantine and pest control orders; and<sup>38</sup>
- Orders to abate water pollution.<sup>39</sup>

### 5. *Infectious Waste*

**Producer Note:** Producers need to be aware of and comply with regulated medical waste disposal rules that apply to their livestock health programs.

Infectious waste includes medical waste containing disposable equipment, instruments, or substances that carry harmful organisms.<sup>40</sup> Also, the state treats used sharps, vials, pipettes, needles, tubing and syringes as regulated medical waste. These definitions include materials used in the care and treatment of livestock. Animal carcasses or parts resulting from the treatment of disease are not included in the definition of infectious waste. Persons who knowingly or recklessly cause the release of infectious waste are guilty of felonies, and those who negligently cause the release of infectious waste are guilty of misdemeanors. Substantial fines and penalties may be imposed.

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<sup>35</sup> S.D. CODIFIED LAWS ANN. § 34A-1-45 (1992).

<sup>36</sup> S.D. CODIFIED LAWS ANN. § 38-8A-24 (1996).

<sup>37</sup> S.D. CODIFIED LAWS ANN. § 40-5-11 (1991).

<sup>38</sup> S.D. CODIFIED LAWS ANN. § 38-24A-9.1 (1996).

<sup>39</sup> S.D. CODIFIED LAWS ANN. § 34A-2-68 (1992).

<sup>40</sup> S.D. CODIFIED LAWS ANN. § 34A-6-93 (1992 & Supp. 1996).