

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 Act²⁰ (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.

¹⁹ IDAHO CODE § 39-2301 *et seq.* (1985).

²⁰ 42 U.S.C. § 6901 *et seq.* (1994).

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

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 tanks²¹ (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.

²¹ 42 U.S.C. § 6991 *et seq.* (1994).

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. 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 Act²² (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

²² 42 U.S.C. § 9601 *et seq.* (1994).

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 Act²³ (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 objectives of the Emergency Planning & Community Right to Know Act²⁴ (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. Submission 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.

²³ 15 U.S.C. § 2601 *et seq.* (1994).

²⁴ 42 U.S.C. § 11001 *et seq.* (1994).

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 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.

1. Solid Waste Disposal Sites

In Idaho, solid waste disposal systems²⁵ are established, maintained, and operated in each county, or in regional solid waste disposal districts,²⁶ for the following purposes:

²⁵ IDAHO CODE § 31-4401 *et seq.* (1996).

²⁶ IDAHO CODE § 31-4901 *et seq.* (1996).

- ! Reducing the threat to health posed by uncollected garbage, refuse, and scrap;
- ! Maintaining the natural and aesthetic setting of land, water, and air resources;
- ! Providing a means for reclamation of otherwise unusable land areas; and
- ! Any other cultural, social, economic, and sanitation reasons as may be necessary from time to time.

Producer Note: As a result, every landowner who disposes of solid waste on his own land must obtain a written permit from the board of county commissioners for the disposal.

It is a misdemeanor for any person to throw away, dump, or discard any type of solid waste on any public lands, rights of way of any kind, or private land of another instead of at solid waste disposal sites. In addition to criminal penalties, civil damages in the amount of three times the actual damage are imposed upon the person convicted, and the damages are used to restore the lands to their original state.

2. *Liquified Petroleum Gases*

Regulations may be adopted regarding the design, construction, location, installation, and operation of equipment for storing, handling, transporting by tank truck or tank trailer, and utilizing liquified petroleum gases for fuel purposes, and for the odorization of those gases.²⁷ The term liquified petroleum gas includes any material which is composed predominantly of propane, propylene, butanes, and butylenes.

Liquefied petroleum gas containers or receptacles for any gas, compound, or other purpose may not be refilled or reused. Violations will result in a fine of not more than \$300.

3. *Hazardous Waste Management*

The Hazardous Waste Management Act²⁸ provides for the protection of the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or unsound management of hazardous waste. It also establishes a program to track and control hazardous wastes from the time they are generated through transportation, treatment,

²⁷ IDAHO CODE § 39-2201 *et seq.* (1985).

²⁸ IDAHO CODE § 39-4401 *et seq.* (1985 and Supp. 1996).

storage, and disposal, and assures the safe and adequate management of hazardous wastes within the state.

Hazardous waste is defined as a waste or combination of wastes of a solid, liquid, semisolid, or contained gaseous form which, because of its quantity, concentration, or characteristics may cause or significantly contribute to an increase in deaths or an increase in serious, irreversible or incapacitating reversible illnesses. The term also includes those which pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed.

Producer Note: Hazardous wastes include, but are not limited to, materials which are toxic, corrosive, ignitable, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties but do not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to national pollution discharge elimination system permits or source, special nuclear, or by-product material.

A permit is required for the treatment and storage of hazardous waste and for the discharge, incineration, release, spill, placement, and disposal of any hazardous waste so that it may enter the environment.

The statute can be enforced through permit suspension or revocation, monetary penalties, costs, restraining orders, injunctions, or any other relief. Penalties can include fines up to \$10,000, imprisonment up to one year, or both for each separate violation or for each day of a continuing violation.

Citizens may also bring a civil suit against any person violating the law, unless the department has commenced and is diligently prosecuting an administrative, civil, or criminal action to require compliance. Citizens must give 60 days notice to DEQ before the action can be brought. In addition, the citizen may intervene in a state action, and the department may intervene in any citizen's action.

4. *Idaho Solid Waste Facilities Act*

Idaho also regulates solid waste facilities, although the regulations may not impose conditions or requirements more stringent or broader in scope than RCRA.²⁹ Solid waste is defined as any garbage or refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities, but does not include solid or dissolved

²⁹ IDAHO CODE § 39-7402 *et seq.* (Supp. 1996).

materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources, or source, special nuclear, or by-product material.

5. *Petroleum Clean Water Trust Fund Act*

The Petroleum Clean Water Trust Fund Act³⁰ has a potential effect on agriculture, especially for operators who store petroleum products in tanks on their property. The act is intended to protect the state of Idaho from releases of petroleum products from storage tanks by providing a liability insurance trust fund. A release is defined as any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a petroleum storage tank into groundwater, surface water, or surface or subsurface soils. Funding for the trust fund is provided through application fees for the insurance and through a one cent (\$.01) per gallon transfer fee on the delivery or storage of specified petroleum products.

³⁰ IDAHO CODE § 41-4901 *et seq.* (1991 & Supp. 1996).

³¹ 7 U.S.C. § 136 *et seq.* (1994).