

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.

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.

²⁰ 42 U.S.C. § 6901 *et seq.* (1994).

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 (see discussion of state storage laws on page NE-26).

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. 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.

²¹ 42 U.S.C. § 6991 *et seq.* (1994).

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 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.

²² 42 U.S.C. § 9601 *et seq.* (1994).

²³ 15 U.S.C. § 2601 *et seq.* (1994).

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 on 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.

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

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

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. *Nebraska Environmental Protection Act*

Solid and hazardous wastes are regulated under the Nebraska Environmental Protection Act.²⁵ The Act contains several definitions of waste:

- Solid Waste) Any garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution facility, or any other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and mining operations and from community activities, but not including solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and subject to CWA permits;
- Hazardous Waste) Solid waste, or any combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:
 - ◆ Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
 - ◆ Pose a substantial present or potential hazard to human or animal health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed; and

²⁵ NEB. REV. STAT. § 81-1501 *et seq.* (1994 & Supp. 1996).

- Land Pollution) The presence upon or within the land resources of one or more contaminants, including, but not limited to refuse, garbage, rubbish, or junk, in quantities and of quality as will or are likely to:
 - ◆ Create a nuisance;
 - ◆ Be harmful, detrimental, or injurious to public health, safety, or welfare;
 - ◆ Be injurious to plant and animal life and property; or
 - ◆ Be detrimental to the economic and social development, the scenic beauty, or the enjoyment of the natural attractions of the state.

Producer Note: Solid waste for regulatory purposes is not necessarily solid in form. Producers must consider whether they may be violating either federal or state statutes when they dispose of wastes on their farms or ranches. Of particular concern are petroleum products, unused pesticides, herbicides and fertilizers and their containers, and other wastes that may contaminate ground or surface water or pose a threat to humans, livestock, or wildlife. The practice of burying items in a farm dump may no longer be permissible under RCRA or the Nebraska Integrated Solid Waste Management Act.

The Act directs DEQ to adopt regulations for solid waste disposal and for hazardous waste management. The solid waste regulations cover storage, collection, transportation, processing, resource recovery, and disposal. The protection of groundwater and the handling of hazardous materials are of particular concern.

The hazardous waste management regulations also address the generation of hazardous wastes, labeling, container requirements, treatment, storage, collection, transportation, processing, resource recovery, and disposal. As with solid waste regulations, groundwater protection is important.

The improper disposal of solid and hazardous wastes constitutes an unlawful act under the statute. Also unlawful is the discharge of those wastes into the waters or air or onto the lands of the state in excess of permitted amounts, or in a manner that would degrade environmental quality below established standards. Water and air pollution civil and criminal penalties will apply.

Producer Note: The Act also prohibits the accumulation of junk on any property if the junk is a potential hazard to health. An exception is made, however, for junk that is "purely agricultural in character."

2. *Nebraska Integrated Solid Waste Management Act*

The Nebraska Integrated Solid Waste Management Act²⁶ includes additional requirements for the handling, disposal, and regulation of solid waste by counties and municipalities. The Act also prohibits the disposal of solid waste at any place other than a landfill approved by DEQ, unless a permit has been obtained from the agency for disposal at another location. The Act allows the Council on Environmental Quality to adopt regulations exempting the following from the permit requirements:

- The use of dirt, stone, brick, or specified inorganic compounds for landfill, landscaping, excavation, or grading purposes;
- The placement of tires, posts, or ferrous objects, not contaminated with other wastes, for bank or blowout stabilization; and
- Other waste placement or depositing activities that are found not to pose a threat to the public health or welfare.

The Act further provides that no person will be in violation of the ordinance if:

- The solid waste generated by an individual is disposed of on that individual's property;
- The property is outside the corporate limits of a municipality; and
- DEQ determines that the county has not provided integrated solid waste management facilities for its residents.

3. *Petroleum Products and Hazardous Substances Storage and Handling Act*

Nebraska has also enacted the Petroleum Products and Hazardous Substances Storage and Handling Act.²⁷ The Act was passed to address the problem of leaking underground storage tanks and has two primary features. First, all producers with existing or new tanks for storage of a regulated substance must obtain a permit from the Nebraska Fire Marshal. Farm and residential tanks for storing heating oil must be registered with the Fire Marshal. Regulated substances include designated hazardous substances and all petroleum products except propane and natural gas. Exempt from these regulations are tanks that hold no more than 1,100 gallons of motor fuel for farm or residential use and tanks of the same size used for storing heating oil.

²⁶ NEB. REV. STAT. § 13-2001 *et seq.* (Supp. 1996).

²⁷ NEB. REV. STAT. § 81-15,117 *et seq.* (1994 and Supp. 1996).

The statute also creates a program for reimbursing cleanup costs of leaking underground tanks. Payments are made in accordance with an approved remedial action plan, and eligibility for reimbursement is based on a number of criteria found in the Act. These include whether the tank was in substantial compliance with statutory requirements, and whether timely notice of the spill was given to the Fire Marshal or to DEQ.

Persons violating the requirements of the Act are subject to a civil fine of not more than \$5,000 for each offense, with each day of violation constituting a separate offense. DEQ and the Fire Marshal may also seek injunctions against violations and threatened violations of the statute.

²⁸ 7 U.S.C. § 136 *et seq.* (1994).

²⁹ Pesticides classified under FIFRA for restricted use are listed at 40 C.F.R. § 152.175 (1996).