

Facility Management ***Environmental Compliance Short Review***

As a facility manager it is important to be aware of three acts of legislation designed to ensure that facilities properly control their hazardous materials and wastes. The authority to create these regulations and implement penalties is granted to:

- Environmental Protection Agency (EPA)
- Department of Transportation (DOT)
- Occupational Safety and Health Administration (OSHA)

Local agencies are granted authority under the Resource Conservation and Recovery Act (RCRA); Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); and Superfund Amendments and Reauthorization Act (SARA). By recognizing the regulations, facility managers can develop efficient procedures and policies for handling potentially hazardous materials.

RCRA (Resource Conservation And Recovery Act)

RCRA was designed for two purposes: to promote the protection of human health and the environment, and to conserve valuable resources. Congressional amendments have allowed RCRA to keep in stride with current waste management issues and problems.

The most notable amendment, which passed in 1984, was the Hazardous and Solid Waste Act. As shown in Chart 1, RCRA currently has 10 subtitles.

| CHART 1: | |
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| Subtitle | Coverage |
| Subtitle A: | General provisions |
| Subtitle B: | Office of Solid Waste, Authorities of the EPA Administrator |
| Subtitle C: | Hazardous waste management |
| Subtitle D: | State or Regional Solid Waste Plans |
| Subtitle E: | Duties of the Secretary of Commerce in Resource Recovery |
| Subtitle F: | Federal Responsibilities |
| Subtitle G: | Miscellaneous Provisions |
| Subtitle H: | Research, Development, Demonstration and Information |
| Subtitle I: | Underground Storage Tanks |
| Subtitle J: | Demonstration Medical Waste Tracking Program |

Subtitle C specifically addresses the management of hazardous waste and must be followed by facilities that accumulate, transport, treat, store, and/or dispose of hazardous waste.

The goal of Subtitle C is to identify what a hazardous waste is and to establish standards for care of these wastes. The provisions of Subtitle C apply to a waste from the moment it becomes a hazard until it is no longer considered detrimental to humans and the environment. This is commonly referred to as the "cradle to grave" concept.

RCRA is the EPA's backbone and driving force. The EPA is required to develop and enforce regulations regarding the management of hazardous waste. These regulations set the mandatory procedures and requirements for compliance with the RCRA.

The relationship between the EPA, DOT, and OSHA is worthy of consideration when dealing with waste disposal compliance. The functions of these major federal departments overlap and cover all aspects of hazardous waste regulations. These regulations are compiled annually into the Code of Federal Regulations (CFR): 29 CFR, OSHA; 40 CFR, EPA; and 49 CFR, DOT. 40 CFR is divided into several parts, with Parts 124, 260 through 268, 270, 273, and 279 devoted to hazardous waste management.

Section 3006 of RCRA allows each state to develop, operate, and enforce its own hazardous waste management regulations after it has received authorization from the EPA.

Facility managers and building owners need to familiarize themselves with state regulations as well. If there is a discrepancy between federal and state regulations, the more stringent regulation applies, as long as the state program is consistent with the federal program and is:

- Not unreasonably restrictive, impedes, or bans the free movement of hazardous waste across the state border;
- Not unreasonably protective of human health and the environment (such that the prohibitions of the program have no basis);
- Not less stringent than the federal requirements.

As a result, facilities may be subject to inspection by both the EPA and state environmental agencies.

Facilities may be involved either directly or indirectly with aspects of hazardous waste management. For example, when materials such as solvents, cleaning agents, and ordinances no longer meet their specifications they become waste. Keeping this waste in some type of tank or container for a period of time – until it is carried away for subsequent treatment, disposal, or long-term storage – constitutes hazardous waste accumulation. At some point the waste must be transported to another site for proper disposal or conversion. Both the EPA and DOT regulate any hazardous waste carried off site.

All public, private, and federal facilities are required to comply with the many facets of hazardous waste regulations. Regardless of the type of activity, all applicable RCRA regulations must be observed.

CERCLA (Comprehensive Environmental Response, Compensation and Liability Act)

In response to the need to cleanup and reclaim sites that were contaminated prior to this act properly, Congress created CERCLA, more commonly known as "Superfund." CERCLA established two related funds to be used for the immediate removal of hazardous substances released into the environment.

Superfund is intended to establish a way for the immediate cleanup of hazardous waste contamination from accidental spills and from chronic environmental damage associated with abandoned hazardous waste disposal sites. CERCLA was designed to:

- Provide a system for identifying and cleaning up chemical and hazardous substance releases;
- Establish a fund to pay for cleanup of environmental contamination where no responsible parties can be located, or where those responsible cannot or will not pay for the cleanup;
- Enable the government to collect costs of cleaning up a release from “responsible parties.”

Currently, there are approximately 1,200 Superfund sites nationwide. The EPA has published regulations dictating how these sites are investigated, ranked in accordance with the National Priorities List of sites, and, ultimately, cleaned up.

In 40 CFR Part 302.4, the EPA has published a list of CERCLA hazardous substances which can trigger the Superfund process. This publication includes reporting requirements for when the substances are released into the environment. The DOT has also adopted this list of hazardous substances and reportable quantities.

SARA (Superfund Amendments And Reauthorization Act)

The Superfund Amendments and Reauthorization Act (SARA) of 1986 was the first major "revision" of CERCLA. SARA establishes a fund to finance Superfund response activities.

SARA also establishes a trust fund for cleanup of petroleum underground storage tanks, a program to maximize the safety of workers engaged in hazardous waste operations, an Emergency Planning and Community Right-to-Know program, and a new radon gas and indoor air quality (IAQ) research program. SARA is also known as the Community Right-to-Know regulation.

The Emergency Planning and Community Right-to-Know Act of 1986 (also known as SARA Title III or EPCRA) establishes guidelines for federal, state, and local governments and facilities regarding emergency planning and Community Right-to-Know. These guidelines require reporting on specific types of hazardous and toxic chemicals.

The EPCRA's intent is not only to help communities that could be directly affected by the use of such chemicals, but also to prepare and plan for potential emergencies. The reason for doing this is to provide knowledge to the community which allows for planning and mitigation. The EPCRA has four major sections:

- Emergency Planning (Section 301-303),
- Emergency Release Notification (Section 304),
- Community Right-to-Know Reporting Requirements (Section 311-312), and
- Toxic Chemical Release Inventory (Section 313).

Facility managers who know the processes and materials first hand are a great asset to internal and external officials, since they can offer valuable insight in determining the application of these regulations.

According to Section 304, a release of a hazardous substance (as a material or a waste) into the environment that exceeds the reportable quantity limits for that substance, requires immediate notification. Notice is only required by the Act if the release is an EPA listed

substance that has exceeded the reportable quantity and extended beyond the facility's boundaries. The hazardous substances subjected to this requirement can be found in the Federal Register (40 CFR 355).

There are 360 extremely hazardous substances and over 700 hazardous substances listed in CERCLA Section 103 (a) (40 CFR 302.4). This list is being updated regularly.

There are two portions of the Community Right-to-Know requirements within SARA Title III. These portions are split into Sections 311 and 312.

Section 311 requires facilities to prepare Material Safety and Data Sheets (MSDS) (required by OSHA) and submit them to three jurisdictional agencies. The second portion, Section 312, requires facilities to submit an emergency and hazardous chemical inventory form. This form follows a two-tier format. Chart 2 explains what is required under these tiers.

| CHART 2: Section 311-312: Community Right-To-Know Requirements* | |
|---|--|
| TIER I | |
| <ul style="list-style-type: none">• An estimate (in ranges) of the maximum amount of chemicals for each category present at the facility at any time during the preceding calendar year• An estimate (in ranges) of the average daily amount of chemicals in each category• The general location of hazardous chemicals in each category | |
| TIER II | |
| <ul style="list-style-type: none">• The chemical name or the common name amount of chemicals for each category as indicated on the MSDS• An estimate (in ranges) of the maximum daily amount of chemicals in each amount of the chemical present at any time category during the preceding calendar year• A brief description of the manner of chemicals in each category storage of the chemical• The location of the chemical at the facility• An indication of whether the owner elects to withhold location information from public disclosure. | |

* Source: U.S. Environmental Protection Agency

Generally speaking, Tier I is the only portion that is required to be submitted. Tier II must be submitted if requested by the proper agencies. In addition to Tier I information, Tier II requires a chemical or common name used on the MSDS and gives owners the ability to withhold location information. The EPA strongly suggests that facilities submit Tier II, since the information is more useful for communities and emergency planning. In the great majority of the States, Tier II is the default reporting mechanism.

Section 313, Form R, also known as the Toxic Chemical Release Form, is a report that reflects the release of specified chemicals over the preceding calendar year. Under EPCRA, specified facilities need to submit this report by July 1 of that current year to the EPA and any designated local officials.

This information is relevant to communities and government officials. As well as providing public information, it also allows for development and research of guidelines, regulations, and standards.

The reporting requirement applies to all owners and operators of facilities that have 10 or more full-time employees, that are in SIC codes 20-38, and that manufacture, process, or otherwise use a listed toxic chemical in excess of specified threshold quantities.

SARA Title III contains the penalties for failure to comply with these sections. Civil and administrative penalties reach \$10,000 to \$75,000 per violation (or per day per violation).

The public can also initiate civil actions against the EPA and any other entity that fails to meet the requirements set by the Emergency Planning and Community Right-to-Know provisions.

Conclusion

As an facility manager, in the public or private sector, community involvement is half the battle to resolving potential nightmares. All professionals managing facilities that possess these chemicals will improve chemical safety and protect public health and the environment by their involvement and compliance. Another important element is the increased involvement of the states. States are now able to join in the effort with the EPA in all stages of identifying priorities, amending regulations, identifying funding, and planning for emergencies.

Determining how these regulations apply to a facility is the beginning of a long process that varies from site to site. However, there are two concepts that are common to all sites: responsibility and compliance. By at least knowing this much about the regulations, facility managers can save their communities and organizations time and money.

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