



# Laws Governing Use and Impact of Agricultural Chemicals: Regulation of Hazardous Wastes and Use of Hazardous Chemicals<sup>1</sup>

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## STORAGE AND DISPOSAL OF PESTICIDES AND PESTICIDE CONTAINERS: FIFRA AND THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

Farmers and commercial pesticide applicators are subject to penalties if they fail to store or dispose of pesticides and pesticide containers properly. The two principal federal statutes applicable in this area are FIFRA<sup>1</sup> and the Resource Conservation and Recovery Act (RCRA).<sup>2</sup> The EPA has the primary responsibility for enforcement of these statutes.

### EPA Recommended Procedures for Storage and Disposal

In addition to the mandatory procedures contained within the labeling of each pesticide product, the EPA has published recommended procedures for storage and disposal of pesticides and containers in the Code of Federal Regulations.<sup>3</sup> These procedures are not mandatory, but are

recommended as extremely useful guidelines for safe storage and disposal.<sup>4</sup> The recommended procedures apply to both general and restricted use pesticides, and address the needs of both private and commercial applicators.<sup>5</sup> The recommended procedures do not apply to the disposal of single containers of pesticides registered for use in the home and garden, which may be disposed of during municipal waste collection if wrapped according to recommendations.<sup>6</sup>

The EPA guidelines provide that in general, persons in possession of excess pesticides should either store them for future use, or attempt to return them to the manufacturer for relabeling or reprocessing. Only if these two options are unavailable should the user attempt to dispose of them.<sup>7</sup>

Storage sites should be carefully chosen to minimize the chance of contamination into the environment.<sup>8</sup> Pesticides should not be stored in an area susceptible to flooding or where the characteristics of the soil at the site would allow

1. This document is Fact Sheet FRE-146, a series of the Food and Resource Economics Department, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida. Publication date: September 1995.
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leaching into ground water.<sup>9</sup> Storage facilities should be dry and well-ventilated, and should be provided with fire protection equipment. Stored pesticides should be carefully labeled and segregated and stored off of the ground.<sup>10</sup> Pesticides should not be stored in the same area as animal feed.<sup>11</sup> Where "relevant and practicable" the storage facility should also be surrounded by a climb-proof fence, and the facility should be kept locked when not in use.<sup>12</sup> Further precautions include appropriate warning signs<sup>13</sup> and regular inspection of containers for corrosion or leakage.<sup>14</sup> Protective clothing and decontamination equipment should also be present where highly toxic pesticides are stored.<sup>15</sup>

Extreme care should be taken in the disposal of pesticides or pesticide wastes. Disposal requires the use of specialized equipment or the availability of specially designated landfills, and should not be undertaken if these are unavailable.<sup>16</sup> The EPA guidelines separate pesticides into three categories and specify increasingly stringent disposal procedures for each: organic pesticides (except organic mercury, lead, cadmium, and arsenic), metallo-organic pesticides, and inorganic pesticides (this category includes organic mercury, lead, cadmium, and arsenic).<sup>17</sup> The first category may be incinerated in pesticide incinerators pursuant to instructions on the labeling.<sup>18</sup> The second and third categories require special treatment to recover heavy metals or chemically deactivate the pesticide residues.<sup>19</sup> If such treatment is unavailable, pesticides in the second category may be disposed of at a landfill specially designated for this purpose.<sup>20</sup> Pesticides in the third category must be encapsulated before disposal at such a facility.<sup>21</sup>

### **Hazardous Waste Regulations Relating to Pesticides and Containers**

Although FIFRA controls federal regulation of pesticide use, including application, storage, and disposal, in some circumstances, the disposal of pesticides and pesticide containers is subject to the EPA's hazardous waste management regulations pursuant to RCRA.<sup>22</sup> Discarded pesticides and their containers constitute solid waste under RCRA.<sup>23</sup> Individual pesticide products and their containers and residues constitute hazardous solid waste if they meet the characteristics of hazardous wastes specified in the EPA's hazardous waste regulations,<sup>24</sup> or if the pesticide is included in the EPA's listing of hazardous wastes.<sup>25</sup> It is the responsibility of the generator of the wastes to determine whether the waste constitutes

hazardous wastes under the regulation. A generator may petition the Administrator of the EPA for the exemption of a particular waste from the regulations.<sup>26</sup>

Most registered pesticides, containers, and residues come within the hazardous waste category of subpart D, section 261.33 of the EPA's regulations, because this category includes discarded commercial chemical products, off-specification species, containers, and residues thereof. Pesticide containers, inner liners, and any residue are subject to the hazardous waste regulatory provisions unless the containers or liners are empty.<sup>27</sup> A container or liner removed from a container that held acute hazardous waste is empty<sup>28</sup> if:

- the container or liner has been triple rinsed using a solvent capable of removing the commercial chemical product;
- the container or liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal, or;
- in the case of a container, the inner liner that has prevented contact of the commercial chemical product...with the container, has been removed.<sup>29</sup>

Once emptied by one of these methods, the container is no longer subject to the hazardous waste regulations. Improper disposal of containers that have not been emptied subjects the generator to civil and criminal penalties,<sup>30</sup> as well as citizen suits<sup>31</sup> for violating the provisions of RCRA.

### **Exceptions for Farmers**

Farmers disposing of waste pesticides for their own use are not required to comply with the requirements of part 264, 265, 268, or 270 of the EPA's hazardous waste regulations, provided that they triple rinse each container, as described above, and dispose of the residues on their own farms in a manner consistent with the disposal instructions on the pesticide label.<sup>32</sup> Note that disposal of pesticide residues into water or where they are likely to reach surface or groundwater may be considered a source of pollution under the Clean Water Act, the Safe Drinking Water Act, or the Coastal Zone Management Act. Disposal of pesticide residues may also be regulated under state law.

Upon following the triple rinse procedure, the containers are then "empty," and the farmer can

discard them without further regard to the hazardous waste regulations. However, empty containers are always subject to the disposal instructions contained within the labeling of the product. Disposal in a manner "inconsistent with the labeling instructions" is a violation of FIFRA.<sup>33</sup> Compliance with the EPA guidelines detailed within this chapter is necessary to minimize exposure to legal liability. State regulations may be more stringent.

### **Exceptions for Small Generators of Hazardous Wastes**

Notwithstanding the farmer exception, a person disposing of pesticide containers or residues is exempt from the hazardous waste regulations if the person generates less than 1 kilogram (2.2 pounds) per month of the hazardous waste described in 40 C.F.R. §§261.31-261.33 of the EPA's regulations, or 100 kilograms (220 pounds) of residue or contaminated debris resulting from cleanup or a spill.<sup>34</sup>

Even if an applicator falls within the small quantity generator exemption, the applicator must still make a determination of the hazardous nature of the waste as per 40 C.F.R. §262.11 of the EPA's regulations, and follow certain procedures for storage and disposal. Hazardous waste that is being legitimately recycled, reused, or reclaimed is not subject to the hazardous waste management regulations.<sup>35</sup>

### **Special Regulations for Commercial Applicators and Operators of Storage, Treatment, or Disposal Facilities**

Commercial applicators are hazardous waste generators under the regulations whenever they generate or discard commercial chemical products, or spill residues as described in 40 C.F.R. §261.33, or any other hazardous waste as defined in the regulations. The exemption for farmers who use pesticides on their own land does not apply to commercial applicators. Nor are commercial applicators likely to qualify for the small quantity generator exemption. Commercial applicators storing or disposing of pesticides or containers are, therefore, subject to the standards for generators, transporters, and disposers of hazardous waste listed in 40 C.F.R. parts 122-124 and 262-267.

The major elements of RCRA hazardous waste provisions are (1) notification, (2) permitting, and (3) standards for handling hazardous wastes. Section

6930 of RCRA requires any person who generates or transports hazardous wastes, or owns or operates a facility for the storage, treatment, or disposal of hazardous waste, to notify the EPA of the identity of the hazardous waste involved and the nature of the activity. Transporting, storing, or disposing of hazardous waste before filing the notice is unlawful.<sup>36</sup> Additionally, each person owning or operating a facility for the storage, treatment, or disposal of hazardous wastes, must have a permit from the EPA. The permitting procedures are published at 40 C.F.R. parts 122-124.

Extensive regulations regarding record-keeping and reporting, storage, transportation, and disposal, both off- and on-site, are contained in 40 C.F.R. parts 262-264. A major feature of these regulations is a manifest system that allows the EPA to follow hazardous waste from generator, to transporter, to disposer. Upon request by the EPA or designated state officials, the generator must permit the officials to inspect the facility, inspect and reproduce records, and inspect and obtain samples of wastes, containers, or labeling.<sup>37</sup>

### **Penalties for Hazardous Waste Violators**

When the EPA determines that a person has violated any provision of RCRA, the EPA has several options. The EPA can issue an order

- assessing a civil penalty, or
- requiring compliance within a specified time, or
- both, or

the EPA can commence a civil action for a temporary or permanent injunction.<sup>38</sup> In determining the amount of the civil penalty, the EPA considers the seriousness of the violation, and any good faith efforts to comply with the applicable requirements.<sup>39</sup>

The person charged can request a public hearing within thirty days, but if no hearing is requested then the order is final.<sup>40</sup> If the violator fails to comply within the specified time, the EPA may assess a fine of not more than \$25,000 per day of continued noncompliance, and the EPA may suspend or revoke the violator's permit.<sup>41</sup>

In addition, the EPA imposes criminal penalties on any person who knowingly:

- (a) transports hazardous waste to a facility that does not have a permit,

- (b) treats, stores, or disposes of any hazardous waste without obtaining a permit, or
- (c) makes any false statements or representations on any application, label, manifest, record, report, permit, or document required by the statute.<sup>42</sup>

Upon conviction for violating (a) or (b), the violator is subject to a fine of not more than \$50,000 for each day that the violation continues, five years imprisonment, or both. Upon conviction for violating (c), the violator is subject to the same fine, two years imprisonment, or both. Subsequent violations of (a) or (b) are punishable by fines of not more than \$100,000 a day, ten years imprisonment, or both. Subsequent violations of (c) are punishable by the same fines, four years imprisonment, or both.<sup>43</sup>

Unlike FIFRA, RCRA allows citizen suits for violations of the statute. The plaintiff must notify the alleged violator, the EPA, and the appropriate state authorities at least sixty days prior to bringing suit and may not bring suit against any person already being prosecuted under the Act.<sup>44</sup>

### **EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW**

Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires states and localities to develop plans for coping with hazardous chemical emergencies.<sup>45</sup> Each state must establish an "Emergency Response Commission"<sup>46</sup> and designate "Emergency Planning Districts"<sup>47</sup> and a "Local Emergency Planning Committee"<sup>48</sup> for each district. Each district must develop emergency response plans. To enable state and local bodies to plan intelligently, the law requires that facilities that manufacture, process, or use specified hazardous chemicals provide information about the nature and use of such chemicals to local planning agencies.<sup>49</sup>

Farms that use pesticides may be "facilities" subject to the notification requirements of the law. The EPA has developed a list of "extremely hazardous substances" and a "threshold planning quantity" (TPQ) for each substance.<sup>50</sup> Numerous pesticides are on this list. If the amount of an extremely hazardous substance present at the facility meets or exceeds the TPQ, then the facility is subject to the planning and notification requirements of Title III.<sup>51</sup> If the TPQ is met, the facility must notify the state commission of this fact, and cooperate with the local planning commission by providing requested information.

Notification is also required for emergency releases of hazardous chemicals.<sup>52</sup> However, a continuous release of potentially hazardous pesticide is not considered an emergency release, so a continuous release is exempted from this notification requirement.<sup>53</sup> Nonetheless, any time the amount of the release changes, it would be wise to consult this section. The community right-to-know provisions of the act require that material safety data sheets required under OSHA (see discussion of OSHA Hazard Communication Standard at pp. 49-51 below), as well as documents showing the location and amount of chemicals present at the facility, be provided to the state and local emergency planning bodies and to the local fire department.<sup>54</sup>

### **TRANSPORTATION OF HAZARDOUS MATERIALS: DOT AND THE HAZARDOUS MATERIALS TRANSPORTATION ACT**

The Hazardous Materials Transportation Act (HMTA) was enacted by Congress over their concern for spills of unknown substances on public highways. This act is under the jurisdiction of the Department of Transportation (DOT) since it is the agency responsible for the safe transportation of all materials on public highways.

HMTA grants the Secretary of Transportation a broad grant of authority to designate any material shipped in commerce as hazardous if it poses an unreasonable risk to health, safety and property. Hazardous materials can include radioactive materials, etiological agents, flammable and combustible liquids or solids, oxidizing or corrosive materials, compressed gases, poisons and explosives. The list of materials does include certain chemicals used in pesticides. In fact, most pesticides fall within the materials characterized as hazardous under the regulations issued by DOT. The Secretary of the DOT also promulgates regulations governing any aspect deemed necessary for the safe transportation of hazardous materials.

The regulations apply to common, contract, or private carriers of hazardous materials.<sup>55</sup> A commercial pesticide applicator transporting pesticides for application under contract would constitute either a contractor or private carrier and thus be subject to the regulations. Under certain circumstances, a private pesticide applicator transporting pesticides for his own use may be considered a private carrier subject to the regulations.

Generally speaking, the carriers subject to HMTA regulations:

- operate across state lines and transport materials listed on the Hazardous Material Table; or
- transport materials above the reportable quantities for various chemicals listed on the Hazardous Substance Table; or
- do not meet the above requirements, but operate in a state that requires compliance with DOT regulations.

Most states have adopted the DOT requirements for intrastate (within state) commerce. It is important to note that one should always follow the DOT regulations even if there is no state requirements and there is not interstate (between states) commerce. Some courts have interpreted the DOT regulations to include all companies, intrastate as well, because most are using chemicals that cross state lines in shipment to the user of the chemical. The legal interpretation is that purchasing a chemical that has crossed state lines makes the purchaser a part of interstate commerce.

The emphasis of the act is to produce regulations. DOT regulations list the materials deemed hazardous in transport.<sup>56</sup> Additionally, the regulations set forth in great detail the requirements for

1. the testing of containers used in shipment,
2. obtaining shipping papers and certification (including the preparation of a hazardous waste manifest as required by EPA regulations at 40 C.F.R. part 262),
3. marking and placarding of vehicles,
4. the inspection of vehicles,
5. the training of drivers and related personnel,
6. the loading, unloading, and storage of hazardous materials, and
7. the immediate reporting of hazardous materials accidents which result in death, injury requiring hospitalization, material damage in excess of \$50,000, fires, or spills.<sup>57</sup>

The Code of Federal Regulations covers all transportation of hazardous materials including structural pest control chemicals.<sup>58</sup> The regulations address chemicals, not the types of businesses. The Hazardous Materials Table and its appendix list and describe all the hazardous materials defined by DOT.<sup>59</sup> Within the appendix is the Hazardous Substance Table. This table lists the substances that are considered dangerous when transported at certain

levels. The levels, or "reportable quantities", determine at what point a spill will trigger requirements under the HMTA regulations. The following is an example of the reportable quantities for some pest control chemicals:

- one pound of chlorpyrifos
- one pound of pyrethrins
- one pound of diazinon
- 100 pounds of 2,4-D

To avoid liability, manufacturers and distributors of hazardous materials often provide the information needed to follow HMTA regulations. However, it is the responsibility of anyone handling hazardous chemicals to ensure that the information is correct. Anyone who falls under the jurisdiction of the DOT and HMTA should know how to use the Hazardous Materials Table and Hazardous Substance Table.

Most carriers transporting hazardous materials, including pesticides, across state lines must have special insurance coverage.<sup>60</sup> Private carriers transporting purely within the borders of a single state are exempted from this requirement provided the transport vehicle has a gross vehicle weight if less than 10,000 pounds.<sup>61</sup> If the vehicle is a tank truck, it must have a tank of less than 3,500 water gallons capacity (regardless of the actual quantity of material transported) to be exempted from the insurance requirement.<sup>62</sup>

The overriding principle of HMTA is to make it unlawful for any person to transport or offer or accept for transportation a hazardous material or waste, except in accordance with the appropriate regulations. If a company or individual such as a farmer is involved with the transportation of a material (like a pesticide) that might be considered hazardous, s/he should check with the DOT regulations to see if s/he is subject to the jurisdiction of the DOT and HMTA.

## UNDERGROUND STORAGE TANKS

Underground storage tanks are regulated under RCRA.<sup>63</sup> A storage tank is considered to be underground if greater than ten percent of its volume, including the underground pipes connected thereto, is beneath the surface.<sup>64</sup> The capacity of the tank must be greater than 1,100 gallons for it to fall under RCRA.<sup>65</sup> The statute lists exceptions to the definition. These exceptions include heating oil for home use, septic tanks, surface impoundments, ponds,

pits, lagoons, storm and wastewater collection, and flow-through processing tanks. Tanks located in basements are also excepted.<sup>66</sup>

RCRA requires that the state or local government be notified of the existence of an underground storage tank.<sup>67</sup> Furthermore, state and local authorities must also be notified of any leaks.<sup>68</sup> While RCRA provides the basis for the regulation of underground storage tanks, state and local governments can and do regulate these tanks as well.<sup>69</sup> The more specific state and local regulations are more stringent than the minimum RCRA requirements,<sup>70</sup> thus they should always be consulted.

### **THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA)**

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund),<sup>71</sup> authorizes the federal government to cleanup inactive hazardous waste sites that threatened human health or the environment. CERCLA enables the EPA to recover cleanup costs from those parties responsible for the contamination, if they can be identified. CERCLA provides a fund, the Hazardous Substance Superfund,<sup>72</sup> to pay for the cleanup of contaminated sites when no other parties are able to conduct the cleanup.

CERCLA was amended in 1986 by the Superfund Amendments and Reauthorization Act (SARA).<sup>73</sup> SARA reauthorized and clarified parts of the original law. As amended, CERCLA enables the EPA to identify and cleanup inactive hazardous waste sites and to look to certain parties for reimbursement. One section of CERCLA authorizes the EPA to act whenever there is a release or substantial threat of release of a hazardous substance or "any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare" into the environment.<sup>74</sup>

CERCLA also authorizes several types of responses, including

- short-term removal actions to deal with spills, emergencies requiring immediate response, and non-emergencies which present a near-term threat;<sup>75</sup>
- long-term remedial actions designed to permanently solve the problems encountered at hazardous waste sites<sup>76</sup> which are listed on the

National Priorities List, a master list of the "worst sites" created to prioritize site cleanup;<sup>77</sup> and

- enforcement actions against potentially responsible parties capable of paying the costs of cleanup.<sup>78</sup>

CERCLA recognizes several distinct classes of parties responsible for cleanup, including generators of the waste, transporters and those who arrange for transportation of the waste, and current or past owners or operators of the facility.<sup>79</sup> Liability imposed under CERCLA is retroactive, strict, and joint and several.<sup>80</sup> The parties responsible for cleanup of a site are also responsible for notifying the EPA of the facility and retaining records relating to the facility for 50 years.<sup>81</sup>

### **Defenses**

Individuals cited under CERCLA may argue as a defense that the release or damages were caused by an act of God, an act of war, or the actions of a "non-contractual" third party.<sup>82</sup> Since the act of God and act of war defenses are only a remote possibility, the third party defense is the best argument for avoiding liability. To prevail under the third party defense, the individual charged must establish that:

- no contractual relationship existed, either directly or indirectly, between the individual charged and the third party;
- the third party was the sole cause of the release or threatened release; and
- the individual charged showed all due care with respect to the hazardous substance and that precautions were taken against such occurrences.<sup>83</sup>

One case in which a defendant successfully invoked the third party defense is Lincoln Properties v. Higgins.<sup>84</sup> In this case the owner of a shopping center (Lincoln) periodically leased to dry cleaning businesses. Many of these dry cleaners used perchloroethylene (PCE) in the course of their business. The officials of San Joaquin county (County), where the shopping center was located, discovered PCE in some of the County wells in the vicinity of the shopping center. Lincoln agreed to pay cleanup costs under CERCLA, but sued the County for cleanup cost contributions. Lincoln based its suit on the fact that the County owned a portion of the leaky sewer lines from which the PCE had seeped into the wells. The County invoked the third party defense to absolve itself of liability.

The court ruled that the County had established that Lincoln was the sole cause of the release because although the County owned the sewer lines there was no evidence that it took part in discharging PCE.

The court also ruled that no contractual relationship existed between Lincoln and the County although Lincoln paid assessments to and received maintenance services from the county. The court stated that this was not the type of contractual relationship that congress envisioned when it created the third party defense. The court further added that contractual relationships, for the purpose of the third party defense, are those that transfer legal title. There was no such transfer between Lincoln and the County.

Finally, the court found that the County had exercised due care with respect to PCE by taking precautions against foreseeable discharges. The County inspected its wells for PCE discharges and upon discovering PCE in one of its wells, the County promptly took the well out of service and began destroying it. The court also noted that the County sewer lines had been built and maintained in accordance with industrial standards. Therefore, the County established all three elements of the CERCLA third party defense and was not liable to Lincoln for any cleanup costs.

Prior to the passage of SARA, the third party defense offered little protection from cleanup liability for innocent parties acquiring property after it had been contaminated. But, in SARA, Congress clarified what constituted a "contractual relationship." This clarification is now referred to as the "innocent landowner defense".<sup>85</sup> In addition to the third party and innocent landowner defenses, CERCLA also offers a security interest exception for those with a security interest in the facility who do not participate in the management of the facility.<sup>86</sup>

## **Enforcement**

### **Criminal Penalties**

The President may require the Attorney General to issue an abatement action if the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment.<sup>87</sup> In addition, any person who violates the abatement order may be fined not more than \$25,000 per day for each day the violation continues.<sup>88</sup>

Any person in charge of a release, other than a federally permitted release, in a quantity greater than 1 pound (or 2 pounds in the case of a few particular substances), who fails to immediately notify the applicable agency or who submits information with knowledge that the information is false or misleading, shall upon conviction be fined or imprisoned for not more than 3 years, or not more than 5 years in the case of a second or subsequent conviction, or both.<sup>89</sup>

### **Civil Penalties**

Any person who at the time of disposal of any hazardous substance owned or operated a facility at which such hazardous substance was disposed of is liable for all costs of removal or remedial action, any other necessary response costs, damages for injury to, destruction of, or loss of natural resources, and the costs of any health assessment or health study carried out to determine the associated health risks.<sup>90</sup> In addition, if the person fails to properly provide for removal or remediation, the person may be liable for punitive damages in an amount 3 times the amount of any costs incurred by the Superfund as a result of the failure to take proper action.<sup>91</sup>

Two classes of administrative penalties may be assessed: Class I administrative penalties of up to \$25,000 per day for violation; and Class II administrative penalties of up to \$25,000 for a first violation, and up to \$75,000 for subsequent violations, per day for each day the violation continues. Both classes can be assessed only after the alleged violator is given notice and an opportunity to be heard.<sup>92</sup>

In addition to punitive damages and administrative penalties, judicial penalties may also be assessed up to \$25,000 per day for a first violation, and up to \$75,000 per day for subsequent violations, for each day the violation continues.<sup>93</sup>

### **Citizen Suits**

Any person can bring a civil action on his/her own behalf against any other person including the President or an officer of the United States. No action may be commenced before 60 days after the individual bringing the action gives notice. The court may shift the litigation costs of the prevailing party to the losing party. Additionally, no such action may be commenced against a person if the President has already commenced and is diligently prosecuting an action under CERCLA or the Solid Waste Disposal Act.<sup>94</sup>

### **Impact on Farmers, Commercial Applicators and Distributors**

Storage, use, and disposal of crop management materials and other hazardous substances are common farm and ranch operation practices. CERCLA does provide some liability protection for agricultural producers. CERCLA exempts the producer "for any response costs or damages resulting from the application of a pesticide product registered under FIFRA."<sup>95</sup> The farm or ranch will not be considered a Superfund site or the owner held responsible for the cost of cleanup since the pesticides applied in compliance with labeling are not considered hazardous substances.<sup>96</sup> This also includes the normal application of fertilizers. However, soil, ground and surface waters contaminated by the improper use, storage, or disposal of registered pesticides can result in CERCLA liability. Plus, CERCLA does not modify other provisions of state or federal law, including common law actions, so suits may still be brought under those provisions.<sup>97</sup>

Some of the more serious on-farm contamination problems involve mixing and loading sites. Cleanup costs in this instance can be excessive. Thousands of these abandoned and contaminated sites are thought to exist in the United States. While farmers and ranchers have not yet been specifically targeted by the regulatory agencies, other agricultural-related enterprises, such as nurseries and golf courses, have.<sup>98</sup> Since the costs of cleanup responses can exceed the value of collateral, CERCLA defenses and court decisions accentuate the need for lenders to examine collateral for environmental contamination prior to and during the course of the creditor/debtor relationship. As a result, lenders are increasingly wary of becoming financially involved with properties on which current or past activities involved hauling of agricultural chemicals.<sup>99</sup>

### **DEFINITIONS, ABBREVIATIONS AND ACRONYMS**

#### **Citation Definitions**

Et seq.: and the following

Id.: the same; used to indicate a reference previously made.

Infra: within; used to indicate a reference made in a later part of the paper.

Supra: above; used to indicate a reference made in a previous part of the paper.

#### **Definitions**

**Actual Damages** -- The amount awarded to a plaintiff in compensation of the plaintiff's actual and real loss or injury.

**Common Law** -- It is a body of law that develops and derives through judicial decisions, as distinguished from legislative enactments.

**Enjoin** -- To require a person, by writ of injunction, to perform, or to abstain or desist from, some act.

**Injunctions** -- A court order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury.

**Inherently dangerous** -- Danger inhering in an instrumentality or condition itself at all times, so as to require special precautions to prevent injury; not danger arising from mere casual or collateral negligence of others with respect to under particular circumstances.

**Nominal Damages** -- The trifling sum awarded to a plaintiff in an action, where there is no substantial loss or injury to be compensated, but still the law recognizes a technical invasion of his rights or a breach of the defendant's duty.

**Punitive Damages** -- Damages that are above and beyond that which would compensate the plaintiff for his loss. They are based on the public policy of punishing a defendant who acted willfully, maliciously, or fraudulently.



**Statutory Law** -- The body of law created by acts of the legislature in contrast to constitutional and common law.

Definitions are taken from *Black's Law Dictionary* 1990 edition.

### Abbreviations

C.F.R.: Code of Federal Regulations

U.S.C.: United States Code

### Acronym List

BMP - Best Management Practices

CERCLA - Comprehensive Environmental Response, Compensation, and Liability Act

CZMA - Coastal Zone Management Act

DOT - Department of Transportation

EPA - Environmental Protection Agency

ESA - Endangered Species Act

FAA - Federal Aviation Administration

FACT - Food, Agriculture, Conservation, and Trade Act

FDA - Food and Drug Administration

FFDCA - Federal Food, Drug, and Cosmetic Act

FIFRA - Federal Insecticide, Fungicide, and Rodenticide Act

IPM - Integrated Pest Management

MCL - Maximum Contaminant Level

MCLG - Maximum Contaminant Level Goals

NPDES - National Pollution Discharge Elimination System

OSHA - Occupational Safety and Health Act

PPE - Personal Protective Equipment

RCRA - Resource Conservation and Recovery Act

RCWP - Rural Clean Water Program

REI - Restricted-Entry Interval

SARA - Superfund Amendments and Reauthorization Act

TPQ - Threshold Planning Quantity

USDA - United States Department of Agriculture

WPS - Worker Protection Standard

### ACKNOWLEDGEMENTS

The author is indebted to legal researchers Susan Kubar, Toni Cunningham and Patrick Meriwether of the University of Florida College of Law and those state and federal agency personnel who gave of their time and advice in the preparation of this publication.

This publication is supported in part by a grant from the National Agricultural Pesticide Impact Assessment Program (NAPIAP) of the United States Department of Agriculture.

1. 7 U.S.C. Ch. 6 (1994).
2. 42 U.S.C. Ch. 82 (1994).
3. 40 C.F.R. part 165 (1993).
4. Id. at §165.2(a) (1993).
5. 40 C.F.R. §165.2 (1993).
6. 40 C.F.R. §165.2(c),(e) (1993).
7. 40 C.F.R. §165.2(f) (1993).
8. 40 C.F.R. §165.10(b) (1993).
9. Id.
10. 40 C.F.R. §165.10(c) (1993).
11. 40 C.F.R. §165.10(d) (1993).
12. 40 C.F.R. §165.10(e)(1) (1993).
13. 40 C.F.R. §165.10(c)(1) (1993).
14. 40 C.F.R. §165.10(c)(2) (1993).

15. 40 C.F.R. §165.10(d)(2) (1993).
16. 40 C.F.R. §165.10(f) (1993).
17. 40 C.F.R. §§165.8, 165.10 (1993).
18. 40 C.F.R. §165.8 (1993).
19. 40 C.F.R. §165.8(a) (1993).
20. 40 C.F.R. §165.8(b),(c) (1993).
21. 40 C.F.R. §165.8(b) (1993).
22. 40 C.F.R. §165.8(c) (1993). The guidelines define "encapsulate" as "to seal a pesticide, and its container if appropriate, in an impervious container made of plastic, glass, or other suitable material which will not be chemically degraded by the contents. This container should then be sealed with a durable container made from steel, plastic, concrete, or other suitable material of sufficient thickness and strength to resist physical damage during and subsequent to burial or storage." 40 C.F.R. §165.1(j) (1993).
23. 42 U.S.C. §6901 et seq. (1994).
24. Id. at §6903(27) (1994).
25. 40 C.F.R. part 26, subpart C (1993).
26. 40 C.F.R. part 26, subpart D (1993).
27. 40 C.F.R. §260.22 (1993).
28. 40 C.F.R. §261.7(a)(1) (1993).
29. 40 C.F.R. §261.7(b)(3) (1993). See also 40 C.F.R. §261.7(b)(1) which sets forth the requirements for a container or liner removed from a container that held *any* hazardous waste, and 40 C.F.R. §261.7(b)(2) which sets forth the requirements for a container or liner removed from a container that held a hazardous waste that was a *compressed gas*.
30. 42 U.S.C. §6928 (1994).
31. 42 U.S.C. §6972 (1994).
32. 40 C.F.R. §262.70 (1993).
33. Id. The EPA has acted to eliminate any inconsistencies between the disposal procedures indicated on the product labeling and the disposal procedures required by the hazardous waste management regulations. Section 262.70 says that FIFRA is not violated when disposal is "in a manner consistent with the disposal instructions on the pesticide label."
34. 40 C.F.R. §261.5 (1993); see also 42 U.S.C. §6921(d) (1994).
35. 40 C.F.R. §261.5(f) (1993).
36. 42 U.S.C. §6930(a) (1994).
37. 42 U.S.C. §6927(a) (1994).
38. 42 U.S.C. §6928(a) (1994). According to 42 U.S.C. §6928(a)(2) (1994), if the person violates a state hazardous waste program, the EPA must notify the state prior to acting under 42 U.S.C. §6928(a)(1).
39. 42 U.S.C. §6928(f) (1994).
40. 42 U.S.C. §6928(b) (1994).
41. 42 U.S.C. §6928(c) (1994).

42. 42 U.S.C. §6928(d) (1994).
43. Id. The EPA imposes more severe penalties if the violator commits knowing endangerment, which is defined in 42 U.S.C. §6928(f). Upon conviction, a knowing violator is subject to a fine of not more than \$250,000, not more than two years imprisonment, or both. However, if the violator's conduct manifests an extreme indifference for human life, the violator is subject to a fine of not more than \$250,000, not more than five years imprisonment, or both. 42 U.S.C. §6928(e) (1994).
44. 42 U.S.C. §6972 (1994).
45. 100 Stat. 1728 (1986) codified as 42 U.S.C. §11001 et seq. (1994).
46. Id. at §11001(d) (1994).
47. 42 U.S.C. §11001(b) (1994).
48. 42 U.S.C. §11001(c) (1994).
49. 42 U.S.C. §11021 (1994).
50. 40 C.F.R. part 355 (1993). This list of extremely hazardous substances appears as "Appendix A" to part 355.
51. Id. at §335.30 (1993).
52. 40 C.F.R. §335.40 (1993).
53. 40 C.F.R. §335.40(a)(2) (1993).
54. 42 U.S.C. §11021 (1994).
55. The term "common," "contract," and "private" carriers are not defined in the Act or its regulations. DOT apparently employs the definitions provided by the Federal Motor Carrier Act, as amended by the Interstate Commerce Act, 49 U.S.C. §10101 et seq. (1994). Common carriers are those carriers transporting persons or property for the general public for compensation. 49 U.S.C. §10102(4) (1994). Contract carriers transport only under continuing agreements with a limited number of parties. 49 U.S.C. §10102(5) (1994). Private carriers are any persons that transport property (1) that they own, lease, or hold under bailment, (2) across state lines or on a public highway, (3) when the property is being transported for sale, lease, rent, or bailment, or to further a commercial enterprise. 49 U.S.C. §10102(15) (1994).
56. 49 C.F.R. s 171.1-177.870 and app. A.
57. 49 C.F.R. s 177.807-177.861.
58. Title 49 C.F.R.
59. 49 C.F.R. 172.101
60. 49 C.F.R. part 387 (1993)
61. Id. at § 387.3(c) (1993).
62. Id. This section states that "the rules in this part (the Transportation Act) do not apply to the transportation of...nonbulk hazardous materials...." The definition of "in bulk" is found in 49 C.F.R. §387.5 (1993). Reading these two section together results in the outcome that tank trucks with a tank of less than 3,500 water gallons capacity are exempt from the insurance requirements of the Act. This *exception does not apply* to vehicles used the transportation of any quantity of Class A or B explosives, any quantity of poison gas, or highway route controlled quantity of radioactive materials.
63. 42 U.S.C. §6991 (1994). The Resource Conservation and Recovery Act is set out in 42 U.S.C. §6901 et seq. [Ch. 82] (1994).
64. Id. at §6991(1) (1994).
65. Id.
66. Id.

67. 42 U.S.C. §6991a(a)(1) (1994).
68. 42 U.S.C. §6991b (1994).
69. 42 U.S.C. §6991c (1994).
70. 42 U.S.C. §6991g (1994).
71. 42 U.S.C. §9601 et seq. (1994).
72. 26 U.S.C. §9507 (1994). The Superfund is funded by environmental taxes, amounts recovered under CERCLA, amounts recovered under the Clean Water Act, penalties assessed under CERCLA, and punitive damages recovered under CERCLA. Id. The government may use fund money for any uses set forth in 42 U.S.C. §9611 (1994).
73. Pub. L. No. 99-499, 100 Stat. 1613-1782 (1986) codified throughout 42 U.S.C. §§9601-9675 (1994).
74. 42 U.S.C. §9604(a) (1994).
75. Id.
76. 42 U.S.C. §9604(b) (1994).
77. 42 U.S.C. §9605(a)(8)(B) (1994).
78. 42 U.S.C. §9601(25) (1994).
79. 42 U.S.C. §9607(a) (1994).
80. 42 U.S.C. §§9601(32), 9607 (1994). A retroactive law is a law which takes away or impairs vested rights acquired under existing laws, creates new obligations, imposes a new duty, or attaches a new disability in respect to the transactions or considerations already past. Black's Law Dictionary 1317 (6th ed. 1990). See also Michael T. Olexa, Common Law Standards of Conduct and Theories of Liability for definitions of strict liability and joint and several liability.
81. 42 U.S.C. §9603(d) (1994).
82. 42 U.S.C. §9607(b) (1994).
83. Id.
84. 36 ERC 1228 (1993)
85. Scott Wilsdon, Note, When a Security Becomes a Liability: Claims Against Lenders in Hazardous Waste Cleanup, 38 Hastings L.J. 1261, 1269 (1987).
86. 42 U.S.C. §9601(20)(A) (1994).
87. 42 U.S.C. §9606(a) (1994).
88. 42 U.S.C. §9606(b) (1994).
89. 42 U.S.C. §9607(a) (1994).
90. 42 U.S.C. §9607(a) (1994).
91. 42 U.S.C. §9607(c) (1994).
92. 42 U.S.C. §9609(a)-(b) (1994).
93. 42 U.S.C. §9609(c) (1994).
94. 42 U.S.C. §9659 (1994).

95. 42 U.S.C. §9607(i) (1994).
96. Wadley and Settle, Statutory Regulation of Hazardous Chemicals on the Farm, July 1989 Agricultural Law Update 6.
97. 42 U.S.C. §9607(i) (1994).
98. Missimer, Environmental Audits of Agricultural Facilities and Properties, Proceedings of the Third Annual Agricultural Environmental Seminar of the Florida Fruit and Vegetable Association, at 3 (March 1990).
99. Michael T. Olexa, Legal and Environmental Issues Affecting Agricultural Production and Policy, University of Florida Department of Food and Resource Economics 3-4 (May-June 1994).