

INDIAN HEALTH SERVICE



ENVIRONMENTAL COMPLIANCE AWARENESS GUIDE



OFFICE OF ENVIRONMENTAL HEALTH AND ENGINEERING

Division of Facilities Operations

ROCKVILLE, MARYLAND
DECEMBER 2007





Above: The Alaska Native Medical Center, Anchorage, Alaska

About the Guide:

The purpose of this Awareness Guide is to provide a basic introduction to the myriad of complex environmental regulations. It is intended to be used by CEOs and AOs to inform them of their basic responsibilities under each regulation, and provide informational resources to help them achieve compliance with each of these regulations. It states the requirements for compliance and the penalties and consequences for non-compliance.

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Acknowledgements

In the late 1990s the Indian Health Service Office of Environmental Health and Engineering established an Environmental Steering Committee to guide the process for addressing environmental needs and corrective actions in IHS facilities. The Committee members, past and present, are to be recognized for their foresight in calling for the development of this Environmental Compliance Awareness Guide, which was designed primarily for use by IHS administrators and managers. Its development was an ambitious undertaking and could not have been completed without the extensive efforts of many individuals.

Special thanks are extended to the Internal Resource Team (IRT) members who agreed to be a part of this effort while continuing to carry on their normal duties. Collectively, the IRT that worked on the development of this guide provided a variety of perspectives. Service Unit Chief Executive Officers assured that the guide will serve as a compendium of regulatory information to help them fulfill their environmental responsibilities, and they emphasized the need for clarity, brevity, and breadth of topical coverage. The environmental professionals of the group emphasized consistency with current IHS policies and procedures and technical accuracy in relation to current laws and regulations. IHS facilities operations personnel assured that information in the manual has practical application to the wide range of facilities operated by IHS. Federal Occupational Health (FOH) staff provided guidance and technical support throughout the project.

The following were members of the Workgroup:

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Introduction and Overview

Introduction to the Awareness Guide

Welcome to the Indian Health Service (IHS) Environmental Compliance Awareness Guide. This Awareness Guide, which represents one element of a comprehensive Environmental Management System (EMS) strategy by the Agency, is meant to be a user-friendly resource for Federal environmental regulations that affect Agency operations and activities.

This Awareness Guide has been developed as a joint effort between the Division of Facility Operations (DFO), the Environmental Steering Committee, and Federal Occupational Health (FOH). Contributions in the form of content, review, and recommendations have also come from the Division of Environmental Health Services (DEHS) staff, the HQ NEPA Coordinator, and IHS Environmental Steering Committee members.

Purpose of the Awareness Guide

The purpose of this Environmental Compliance Awareness Guide is to provide a **basic introduction** to the complex world of Federal environmental regulations for the IHS employee not normally involved in facilities operations.

These regulations cover a wide range of activities and operations (construction projects, hospitals, wastewater treatment plants, and landfills) as well as “media” (surface water, air, hazardous wastes, and natural resources).

This Awareness Guide is meant to introduce IHS management and employees to these regulations, inform them of their basic responsibilities under each regulation, and provide informational resources to help them achieve compliance with each of these regulations.

This Awareness Guide has also been created with the objective of helping to standardize the responses that IHS employees and facilities take in complying with Federal environmental regulations. Because of the decentralized nature of IHS operations, the wide range of IHS activities, and some unique requirements related to Agency jurisdiction, it is likely that differences exist in the approaches various Areas have taken to comply with these regulations.

The goal of this Awareness Guide is to help ensure, through education, that all IHS facilities and projects achieve the same high standard of environmental compliance.

Structure of the Awareness Guide

This Awareness Guide is structured by regulation: each Chapter is dedicated to one regulation and provides the following information:

- Overview of the Regulation
- Relevance to IHS Operations and Activities
- Penalties and Consequences of Non-Compliance
- Compliance Approaches for IHS Facilities
- Information Resources

In addition, an “Awareness Checklist” is provided for each regulation to assist in determining a basic level of compliance. Although the checklists do not provide a comprehensive listing of all requirements under a regulation, they are designed to help raise awareness of important aspects of each regulation as it applies to IHS facilities, operations, and projects.

While the focus of this Awareness Guide is on environmental regulations, an overview of the Occupational Safety and Health Act (OSHA) has also been provided.

Use of the Awareness Guide

Based on the structure of this Awareness Guide, relevant information for a certain regulation (e.g., the Resource Conservation and Recovery Act or Clean Water Act) can be obtained by going directly to that chapter. In this manner, the Awareness Guide serves as a ready-reference tool.

An Environmental Topic Cross-reference Table to environmental regulations is presented on the following pages; this Table can be used if, for example, you are looking for the regulation that governs hazardous waste but don't know the name of the regulation.

At the same time, this Awareness Guide can also be used as an educational tool. A thorough review of this document will provide the reader with a broad exposure to Federal regulations that may affect IHS operations, facilities, and projects. Accordingly, this Awareness Guide can be used for employee training in the areas of environmental compliance.

Last but not least, this Awareness Guide has also been designed to provide quick access to the wide variety of environmental informational resources both inside of and external to the Agency. Currently, many tribal and public-sector organizations provide tremendous amounts of free and accessible information on how to comply with environmental regulations. This Awareness Guide has been designed, through listing websites and helpful documents, to direct the user to these informational and assistance sources as quickly and efficiently as possible.

Environmental Compliance within IHS

Environmental, health, and safety compliance is a primary directive for all IHS employees. Chapter 9 of the Indian Health Manual outlines the requirements for a successful employee health and safety program. Presidential Executive Order 13423 (Strengthening Environmental, Energy, and Transportation Management) requires that environmental principles be integrated into daily decision-making processes and work procedures. In addition, Executive Order 12088 (Federal Compliance with Pollution Control Standards) requires that Federal facilities and operations comply with state and local environmental laws. To this end, IHS leadership has committed to complying with Federal, state, local, and tribal environmental laws and regulations.

IHS Resources for Environmental Compliance

Recently, the following guidance/policy documents have been created or revised to provide detailed information on complying with many of the environmental regulations reviewed in this Awareness Guide:

IHS Environmental Review Manual – The 2007 revision updates the 1993 “blue book” for the IHS environmental review process for proposed IHS activities and projects. While the focus of the Review Manual is on compliance with the National Environmental Policy Act (NEPA), the revised Manual also contains detailed reference sections on a wide range of environmental topics.

Guidance Document for Managing Hazardous Materials in IHS Buildings – This document provides best management practices for managing a wide variety of hazardous materials that may be present in IHS facilities (e.g., asbestos, lead-based paint, hazardous wastes, etc.). The document is structured via the four primary activities that occur in association with IHS

facilities: routine building operations; renovation and construction; demolition; and building transfer.

Both of these documents should be reviewed for more detailed information on the regulatory topics discussed in this Awareness Guide.

In addition to the above documents, internal IHS information resources include:

- Local Facilities Management Staff
- Area Office Facilities Engineering Staff
- Institutional/Environmental Health Officers
- HQ and Area Office NEPA Coordinators
- DEHS Coordinators and Project Managers
- HQ-level Facilities and DEHS Staff
- Community Environmental Health Staff
- The Environmental Health Support Center

These informational resources can provide IHS employees with a wealth of real-world knowledge about complying with the Federal environmental regulations.

In addition to these sources of information, external resources can be very helpful in determining how to comply with a specific regulation or set of regulations. These resources include:

- County and State Agencies that are responsible for environmental regulatory enforcement and assistance (e.g., a State Division of Air Quality or Hazardous Waste)
- The Environmental Protection Agency (EPA)
- The Occupational Safety and Health Administration (OSHA)
- Other Federal Agencies that face similar environmental requirements (e.g., Dept. of Housing and Urban Development, Bureau of Land Management, etc.)
- Professional organizations and trade groups that provide publications and workshops on environmental compliance (e.g., Associated General Contractors, National Ground Water Association, International Facility Management Association, etc.).

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Environmental Topic Cross-Reference Table

Topic	Awareness Guide Reference Section(s)	Code of Federal Regulations (CFR) Citation	Additional IHS Reference Documents
Air Emissions	Clean Air Act	40 CFR Parts 61-63	Section 6, Review Manual
Asbestos	Clean Air Act (NESHAP) TSCA	40 CFR Parts 61-62 40 CFR Part 763	Section 1, Guidance Document Section 6, Review Manual
CFCs (Refrigerants)	Clean Air Act (Section 608)	40 CFR Part 82	Section 1, Guidance Document Section 6, Review Manual
Endangered Species	Endangered Species Act	50 CFR Part 402	Section 2, Review Manual
Fluorescent Light Bulbs	Universal Waste (RCRA Subtitle C)	40 CFR Part 273	Section 1, Guidance Document Section 9, Review Manual
Fluorescent Light Ballasts	TSCA (PCBs)	40 CFR Part 761	Section 1, Guidance Document
Hazardous Waste	RCRA Subtitle C	40 CFR Parts 260-272	Section 1, Guidance Document Section 9, Review Manual
Lead Paint	TSCA RCRA Subtitle C	40 CFR Part 745 40 CFR Parts 260-272	Section 1, Guidance Document Section 9, Review Manual

Key:

Guidance Document – *Guidance Document for Managing Hazardous Materials in IHS Buildings*
Review Manual - *IHS Environmental Review Manual*

Environmental Topic Cross-Reference Table, cont'd

Topic	Awareness Guide Reference Section(s)	Code of Federal Regulations (CFR) Citation	Additional IHS Reference Documents
Mercury-containing Switches	Universal Waste (RCRA Subtitle C)	40 CFR Part 273	Section 1, Guidance Document Section 9, Review Manual
Pesticides	FIFRA Universal Waste	40 CFR Parts 152-186	Section 9, Review Manual
Radon	TSCA	40 CFR Part 700	Section 1, Guidance Document
Shipping Hazardous Materials	HMTA	49 CFR Parts 171-189	Section 9, Review Manual
Solid Wastes	Solid Waste	40 CFR Parts 239-257	Section 8, Review Manual
SPCC Plans	Oil Pollution Act	40 CFR Part 112	Section 7, Review Manual
Spill Reporting	EPCRA CERCLA	40 CFR Part 355	Section 9, Review Manual
Storm Water Runoff	Clean Water Act	40 CFR Parts 122-125	Section 3, Review Manual
Transformers	TSCA (PCBs)	40 CFR Part 761	Section 1, Guidance Document Section 9, Review Manual

Key:

Guidance Document – *Guidance Document for Managing Hazardous Materials in IHS Buildings*

Review Manual - *IHS Environmental Review Manual*

Environmental Topic Cross-Reference Table, cont'd

Topic	Awareness Guide Reference Section(s)	Code of Federal Regulations (CFR) Citation	Additional IHS Reference Documents
Underground Storage Tanks	RCRA Subtitle I	40 CFR Parts 280-282	Section 1, Guidance Document Section 7, Review Manual
Used Batteries	Universal Waste (RCRA Subtitle C)	40 CFR Part 273	Section 1, Guidance Document Section 9, Review Manual
Wastewater Discharge	Clean Water Act	40 CFR Parts 122-135	Section 3, Review Manual
Wetlands	Clean Water Act (Section 404)	40 CFR Parts 230, 232	Section 3, Review Manual

Key:

Guidance Document – *Guidance Document for Managing Hazardous Materials in IHS Buildings*
 Review Manual - *IHS Environmental Review Manual*

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The Clean Air Act

Overview of the Regulation

The Clean Air Act (CAA) of 1970 was originally enacted by Congress to reduce smog and atmospheric pollution. Since then, the Act has been amended several times, most significantly in 1990. The CAA was designed to establish Federal standards for air pollution sources (designated as both “stationary” and “mobile”); create enforcement authority for EPA; and provide for air quality research. The Clean Air Act, as amended in 1990, is a far-reaching regulation with a mission to protect human health and the environment from adverse effects from air pollution.

The Clear Skies Act of 2003 was a proposed amendment to the CAA. After failing to be passed in the Senate, key provisions of the Act were implemented administratively through EPA. It is unclear if these measures will withstand legal review.

Relevance to IHS Operations & Activities

The CAA is designed to be implemented by the States and tribes, since these entities have a better understanding and ability to monitor and control local air emission sources. As with many environmental regulations, if a State or Tribal Plan is not acceptable to EPA, the Agency can take over enforcing the CAA.

The Tribal Authority Rule (TAR) identifies the provisions in the CAA that tribes are best suited to self-regulate. EPA can provide financial and technical assistance to tribes that wish to develop their own air quality regulations under the CAA.

Penalties and Consequences of Non-Compliance

Under the CAA, EPA can impose penalties

of up to **\$25,000 for each day of non-compliance (with a maximum penalty of \$200,000)**. Individuals and corporations can be charged for both “knowing” and “negligent” violations. **For individuals, EPA can levy fines of up to \$250,000 and imprisonment of up to five years.** For corporations (or facilities), fines may be up to \$500,000.

Compliance Approaches for IHS Facilities

The first step in complying with the Clean Air Act is to identify the type of CAA permitting that currently exists for your facility as well as whether the tribe has developed its own Tribal Implementation Plan (TIP).

If no air permits are in place for your facility or project, then you will need to determine the types of air emission sources at your facility and identify which of these sources may require air permitting. Activities and operations that may be regulated by the CAA include the following:

Potential IHS Activities/Operations Regulated by the Clean Air Act

- Refrigeration and air conditioning units with ozone-depleting refrigerants
- Emergency power generators
- Boilers
- Chemical disinfection units
- Dry-cleaning operations
- Painting and paint-stripping
- Removal of asbestos-containing materials during a renovation project
- Construction projects that involve soil excavation and stockpiling, as well as the use of heavy equipment
- Solid/medical waste incinerators
- Gasoline storage and dispensing

If any of these activities or operations are present at your facility or project, you may be required to register these sources with the Tribal Air Authority, the State, and/or the EPA.

Clean Air Act permits vary by the type, size, and emissions of activities. These permits can include the following:

- Air Pollution Source Reporting
- Tier I Title V (Part 71) Operating Permit
- Tier II Title V Operating Permit
- Fugitive Dust Control
- Permit to Construct

Again, you can determine the type of permit you will need by consulting with your Area Office environmental coordinator, NEPA coordinator, the Regional Air Quality Agency, the State or Tribal Air Quality Agency, or the EPA.

All of these permits will be obtained through the use of standardized forms and applications developed by EPA and/or local regulatory authorities. Standard information required for these forms will include facility plans, descriptions of all air emission sources, emission estimates for all sources, types of air pollution control equipment, and contact names for individuals responsible for air quality compliance at the facility.

For contractor-supported construction activities at IHS facilities, the contractor is typically responsible for obtaining and ensuring compliance with any air quality permits. However, air quality agencies can and have held facility owners and operators liable for non-compliant contractor activities, depending on the circumstances.

With regard to asbestos, the National Emission Standards for Hazardous Air Pollutants (NESHAP) includes asbestos

and provides strict requirements for the disturbance and removal of asbestos in buildings. The regulations specify work practices to be followed during demolition and renovation, as well as requiring building owners and/or contractors to notify applicable state and local air quality agencies (and/or EPA regional offices) before all demolition and renovations that disturb asbestos-containing materials above certain thresholds.

A comprehensive overview of NESHAP requirements with regard to IHS buildings is provided in the ***Guidance Document for Managing Hazardous Materials in IHS Buildings***. This document provides excellent summaries of both regulatory requirements and best management practices with regard to asbestos (and other hazardous materials) in IHS buildings.

Information Resources

The National Tribal Air Association (NTAA) homepage
<http://www.ntaatribalair.org/>

EPA's Office of Air and Radiation Tribal Air homepage. Contains links to training resources, information on grants and funding, and a tribe-to-tribe database of intertribal efforts
www.epa.gov/air/tribal/

EPA's "Plain English Awareness Guide to the Clean Air Act," containing an index of topics
<http://www.epa.gov/air/caa/peg/>

The Tribal Air newsletter published on a quarterly basis by EPA's Office of Air Quality Planning and Standards
www.epa.gov/air/tribal/tribalnws.html

Clean Air Act Awareness Checklist

- DO:** Identify all emissions sources at your facility, including boilers, emergency power generators, chemical disinfection units, gasoline storage and dispensing units, and chemical storage tanks.
- DO:** Identify devices containing ozone-depleting refrigerants, such as chillers, air conditioners, and compressors, and maintain a current inventory of this equipment.
- DO:** Identify any upcoming asbestos abatement projects that may require NESHAP notification to local and state agencies.
- DO:** Identify any current or upcoming construction projects that may impact air quality through the use of heavy equipment (gasoline or diesel emissions) or soil excavation and stockpiling. Verify that contractors have obtained all necessary Clean Air Act permitting, if required.
- DO:** Contact knowledgeable individuals to determine whether your facility may require Clean Air Act reporting and permitting based on the potential emission sources described above.
- DO:** Ensure that all air pollution control equipment (scrubbers, filters, etc.) is in good working condition and receives periodic maintenance.

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The Clean Water Act

Overview of the Regulation

Growing public awareness and concern for controlling water pollution led to the enactment of the Federal Water Pollution Control Amendments of 1972, which reorganized and expanded a statute from 1948. The Act was amended in 1977 and became known as the Clean Water Act (CWA). Numerous subsequent amendments have been enacted, enabling the Act to regulate many aspects of protection for the nation's waterways and wetlands. Programs under the Act include:

- Pretreatment standards for discharges to treatment facilities
- National Pollutant Discharge Elimination System (NPDES), which permits point source discharges
- Permit program for dredge and fill operations (Section 404)
- Storm water regulations
- Wetlands regulations

Relevance to IHS Operations & Activities

Basically, activities that may discharge water, have storm water events, or involve filling a wetland will be required to comply with CWA requirements. The following provisions of the Act are most likely to be applicable to IHS activities:

CWA Section 401 Permit: The Section 401 permit signifies that the EPA regional office and the tribe have reviewed and approved, conditioned, or denied all Federal permits or licenses that might result in a discharge to state or tribal waters.

CWA Section 402 (NPDES) Permit: This section manages the National Pollutant Discharge Elimination System (NPDES) program and the Storm Water Program. These permits limit the amount of pollutants that can enter waters of the United States.

Storm Water: The Clean Water Act requires operators of construction sites to obtain permit coverage to discharge storm water to a water body or to a municipal storm sewer. The EPA has issued a general permit for storm water discharges from construction sites, which includes sites on Indian lands. Activities that may need coverage under a Storm Water Permit include the following:

- Clearing & grubbing
- Grading
- Excavating and filling
- Road and bridge building
- Installing infrastructure
- Maintenance shops
- Transportation facilities

CWA Section 404 Permit: For any project that affects a wetland or that may dump dredged or fill material into the waters of the United States, a 404 permit is required.

Penalties and Consequences of Non-Compliance

EPA can bring administrative, civil, and criminal enforcement actions against IHS employees under the CWA. States also have authority where they administer discharge permits. In addition, citizen groups may bring actions for injunctive relief and civil penalties (but not "damages") when the group has legal standing.

Any person or facility that violates a CWA requirement is liable for **civil penalties of \$10,000 to \$25,000 per day for each non-compliance (a showing of fault or negligence is not necessary).**

CWA also allows the imposition of criminal penalties for negligent or "knowing" violations. **For negligent violations, penalties can be \$2,500 to \$25,000 per day and/or one year imprisonment. For "knowing" violations, penalties can be**

\$5,000 to \$50,000 per day and/or three years imprisonment.

Compliance Approaches for IHS Facilities

Generally, the EPA and the U.S. Army Corps of Engineers administer and enforce the CWA on Indian reservations. IHS personnel are responsible for ensuring that activities do not pollute or negatively impact waterways and wetlands.

These responsibilities include a wide range of potential IHS activities that could impact waterways, including:

- Discharges to waterways
- Discharges to sewers
- Storm water run-off
- Construction in wetlands
- Chemical or oil spills that reach waterways

Information Resources

Section 4.0 – Water Resources
(*IHS Environmental Review Manual*)

EPA's homepage for the Clean Water Act
www.epa.gov/region5/water/cwa.htm

The U.S. Army Corp's Institute for Water Resources homepage
www.iwr.usace.army.mil/

Tribal wetland case studies that highlight successful wetland strategies used in Indian Country
<http://www.epa.gov/owow/wetlands/initiative/tribalpro.html>

National Wetland Inventory Maps
www.nwi.fws.gov

EPA's homepage for NPDES permitting (includes storm water links)
<http://cfpub1.epa.gov/npdes/index.cfm>

Clean Water Act Awareness Checklist

- DO:** Identify all wastewater discharges from your facilities.
- DO:** Determine if a wastewater permit is required for these discharges.
- DO:** Determine if any construction activities require a storm water permit.
- DO:** Ensure stored petroleum products, chemicals, and wastes do not enter waterways.
- DO NOT:** Store hazardous waste containers, tires, petroleum products, batteries or oily machinery outside unless under cover and in secondary containment.
- DO NOT:** Allow wastewater from washed vehicles to discharge directly to a storm drain unless the run-off is filtered through an oil-water separator or similar system.
- DO NOT:** Discharge any hazardous wastes into drains, sewers, or storm drains.
- DO NOT:** Allow any hazardous substances to enter waterways.
- DO NOT:** Fill or disturb wetland areas without a permit.

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Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Overview of the Regulation

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as “Superfund,” was enacted by Congress on December 11, 1980. The Act provided EPA authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment.

The Act provides for the following:

- Establishes prohibitions and requirements concerning closed and abandoned hazardous waste sites;
- Assigns liability to persons responsible for releases of hazardous wastes at these sites; and
- Establishes a National Priorities List (NPL) of known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States and its territories (Superfund sites). The NPL is intended primarily to assist EPA in determining which sites warrant further investigation and cleanup.

The Act was amended by the Superfund Amendments and Reauthorization Act (SARA) in 1986 and the Community Environmental Response Facilitation Act (CERFA) in 1992. These amendments provided the following:

- Strengthened enforcement provisions;
- Facilitated settlement negotiations for responsible parties;
- Required community involvement during cleanups and reporting of spills; and
- Required performance of due diligence audits for Federal properties.

Additional amendments to CERCLA include the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996 and the Small Business Liability Relief and Brownfields Revitalization Act of 2002. In addition to creating exemptions from CERCLA for “innocent landowners,” these amendments also placed certain limits on EPA’s use of its enforcement and cost recovery authorities at low-risk sites where response actions are in compliance with state programs.

Relevance to IHS Operations & Activities

CERCLA could potentially apply to all IHS properties that are found to be contaminated by hazardous substances (not including petroleum and its derivatives). In addition, **CERCLA liability could be incurred by IHS facilities and operations that have disposed of hazardous wastes at facilities (typically landfills) that have mismanaged these wastes and are under investigation as potential NPL sites.** Finally, IHS could also be held liable for property transfers in which the agency acquired contaminated property without conducting an appropriate inquiry into the past history of the facility. In all cases, IHS could be named as a Potentially Responsible Party (PRP) and, due to the joint, strict and several liability of CERCLA, could be held responsible for the entire cost of cleanup.

Penalties and Consequences of Non-Compliance

As indicated above, **IHS can be held liable under CERCLA for the entire cost of a site cleanup** or as part of a PRP group of many different contributors. Additional costs could be incurred for natural resource damage as well as the costs of any health risk assessments conducted at the site.

Fines for corporations (or facilities) may be up to \$25,000 per violation of court order. If a second violation occurs, the penalty can amount to \$75,000 for each day the violation continues. Civil and criminal liabilities can also be incurred under CERCLA for organizations and individuals responsible for hazardous substance management.

Compliance Approaches for IHS Facilities

CERCLA compliance revolves around being proactive with respect to property transfers as well as the management of any materials which pose a threat to human health or the environment.

With regard to property transfers, any property considered for purchase or transfer should receive a due diligence investigation, typically in the form of a Phase I Environmental Site Assessment (ESA) which meets the All Appropriate Inquiry (AAI) requirements set forth by EPA. Generally, a Phase I ESA meeting the ASTM Standard E1527 2005 fulfills the AAI requirements. This investigation will help to establish landowner liability protections under CERCLA. These investigations must be conducted by environmental professionals.

With regard to current hazardous substance/waste practices, the strategies covered in the RCRA and EPCRA sections of this Awareness Guide should be followed. These strategies include the use of proper storage containers, labeling, recordkeeping, contingency planning, and employee training. **In addition, IHS facility managers should conduct thorough due diligence investigations of all hazardous waste transporters and disposal facilities utilized by IHS in order to identify any**

entities that may have or could potentially mismanage IHS wastes. Many organizations conduct independent audits of these types of entities to document proper management practices. In addition, state agencies and the EPA will have facility compliance databases and records that can be researched.

Information Resources

Section 5.0 – Real Property
IHS Environmental Review Manual

Section 4.0 – Real Property
Guidance Document for Managing Hazardous Materials in IHS Buildings

EPA's overview of CERCLA
<http://www.epa.gov/superfund/policy/cercla.htm>

The Superfund homepage, including Enviromapper, a tool for identifying Superfund sites by zip code, city, or state. Also includes Superfund redevelopment case studies.
www.epa.gov/superfund/sites/index.htm

EPA's link for Superfund reportable quantities, providing an efficient means to identify any hazardous substance and its Reportable Quantity
www.epa.gov/superfund/programs/er/triggers/haztrigs/rqover.htm

The National Tribal Environmental Council Superfund Work Group homepage
<http://www.ntec.org/superfund.htm>

Homepage for the National Response Center. Includes a database of all NRC-reported releases throughout the country.
www.nrc.uscg.mil/nrchp.html

CERCLA Awareness Checklist

- DO:** Identify all hazardous substances in excess of the Reportable Quantities stored at your facility (most IHS facilities will NOT have hazardous substances in excess of these thresholds).
- DO:** Immediately report any release of a hazardous substance in excess of its Reportable Quantity to the National Response Center (800-424-8802).
- DO:** Conduct appropriate due diligence investigations prior to any real property purchase, disposal, or transfer to identify any potential current or historical hazardous substance liabilities associated with the property.
- DO:** Conduct a regulatory compliance review of all hazardous waste transporters and disposal facilities utilized by your facility to ensure these entities are properly handling IHS hazardous wastes.
- DO NOT:** Utilize any hazardous waste transporter or disposal facility without obtaining certifications from each facility regarding its current environmental compliance.
- DO NOT:** Purchase, dispose, or transfer real property without a thorough understanding and assessment of any environmental liabilities associated with the property.

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Emergency Planning and Community Right-to-Know Act (EPCRA)

Overview of the Regulation

In 1986, the Superfund Amendments and Reauthorization Act of 1986 (SARA) was signed into law. This Act amended the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). Included under Title III of SARA was a free standing law, the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). Its purpose is to encourage and support emergency planning efforts at the state and local levels and to provide the public and local governments with information concerning potential chemical hazards present in their communities.

Relevance to IHS Operations & Activities

SARA Title III is divided into four areas of requirements:

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

Emergency Planning (Sections 301-303)

If a facility stores an extremely hazardous substance equal to or in excess of the **threshold planning quantity (TPQ)**, the facility is subject to the EPCRA emergency planning requirements and must notify both the State Emergency Response Commission (SERC) and the Local Emergency Planning Committee (LEPC) (often the fire department). The facility must also appoint an emergency response coordinator who will work with the LEPC on developing and implementing the local emergency plan at the facility. **Extremely hazardous substances (EHSs)** that may

be present at IHS facilities include, but are not limited to, ethylene oxide, formaldehyde, chloroform, sulfuric acid (e.g., in emergency power generator batteries or forklift batteries), and ammonia; each of these substances has an established TPQ that is presented in 40 CFR Part 355 (it is worth noting that this table is constantly updated and TPQs may be revised – ensure that you are referencing the most current table).

Emergency Release Notification (Section 304)

Section 304 applies to any facility that:

- Stores, produces or uses a "hazardous chemical"; and
- Releases a **reportable quantity** of either an extremely hazardous substance or a CERCLA hazardous substance.

If the amount of a chemical released to the environment exceeds the reportable quantity in a 24-hour period, the facility must immediately report the release to the **National Response Center (800-424-8802)**, as well as the appropriate LEPC and SERC, and provide a written follow-up as soon as practicable.

Community Right-to-Know Reporting (Sections 311-312)

These sections establish reporting requirements to provide the public with information on chemicals in the community, and they mandate the Hazard Communication Program for businesses. IHS facilities are required to comply with Section 311 (Chemical Hazards) reporting if they:

- Are required to have available MSDSs for on-site chemicals;
- Store one or more extremely hazardous substances greater than the TPQ or 500 pounds (227 kg), whichever is less;

- Store 10,000 pounds (4,536 kg) or more of any hazardous substance requiring an MSDS.

In the case of IHS facilities, it is likely that many facilities will be required to provide Section 311 reporting to the SERC, LEPC, and the fire department with jurisdiction over the facility.

Facilities that are covered by Section 311 reporting requirements must, under Section 312 (Chemical Inventory Reporting), submit annually an emergency and hazardous chemical inventory form to the LEPC, the SERC, and the local fire department. This reporting is typically done using either the Tier I or Tier II forms. Section 312 information must be submitted on or before March 1 of each year.

Toxic Chemical Release Inventory Reporting (Section 313)

The purpose of this section is to inform the public and government officials about routine releases of toxic chemicals to the environment. EPCRA requires each affected facility to submit a Toxic Chemical Release Inventory Form (Form R) to the EPA and designated state officials each year on July 1. Due to their non-manufacturing nature, most IHS facilities will not be required to provide Form R reporting. However, if there is any uncertainty as to whether this reporting requirement applies, contact your EPA regional office or the **EPCRA Hotline at (800) 424-9346**.

Penalties and Consequences of Non-Compliance

Executive Order 12856 requires Federal facility compliance with the various reporting requirements of EPCRA.

However, the Order waives all civil and criminal penalties under the statute for Federal facilities.

Compliance Approaches for IHS Facilities

As indicated above, hazardous chemical use and storage at IHS facilities can trigger reporting requirements under EPCRA. Facility managers should start their EPCRA compliance process by developing an up-to-date and accurate inventory of all hazardous chemicals at the facility that require the provision of an MSDS under the OSHA Hazardous Communication Program. Once this inventory has been established, EPCRA responsibilities can include:

EPCRA Requirements

- Notifying the SERC and LEPC if extremely hazardous substances are present at the facility above threshold planning quantities and designating an emergency response coordinator (Section 301-303).
- Providing the hazardous chemical inventory or MSDSs to the SERC, LEPC, and fire department (Section 311).
- Perform annual reporting if facility stores or uses hazardous substances over threshold amounts (Tier I or Tier II, Section 312).
- Report all releases of hazardous substances over reportable quantities, and all releases that enter waterways (Section 304).
- Have a Hazard Communication Program for employees at all facilities that store or use hazardous substances.
- Report routine chemical releases if facilities fall under designated categories (Section 313).

Information Resources

EPCRA Hotline
(800) 424-9346

EPA's searchable list of chemicals that provides the TPQs and RQs for a wide range of chemicals

<http://web-services.gov/lol/>

Emergency Planning and Community Right-to-Know Awareness Checklist

- DO:** Identify and inventory all hazardous chemicals requiring a Material Safety Data Sheet (MSDS) at your facility.
- DO:** Provide a copy of this inventory or copies of the MSDSs to the SERC, LEPC, and local fire department, if requested (Section 311 reporting).
- DO:** Determine whether any extremely hazardous substances (EHSs) are stored at your facility in excess of Threshold Planning Quantities (TPQs). These chemicals can include chlorine, ethylene oxide, formaldehyde, sulfuric acid (in batteries), and ammonia (in refrigerant systems).
- DO:** Notify the SERC and LEPC if EHSs are present at your facility above TPQs (Section 301-303 Reporting).
- DO:** Immediately report chemical spills above reportable quantities to the National Response Center (800-424-8802), as well as the SERC and LEPC (Section 304 Reporting). Post telephone numbers of state and local officials by the telephone.
- DO:** Ensure MSDSs are up-to-date and available to employees.
- DO:** Annually submit a Toxic Chemical Release Inventory Form, if required (Section 313 Reporting).

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The Endangered Species Act

Overview of the Regulation

The Endangered Species Act (ESA) was enacted in 1973 and requires all Federal agencies to use their authority to “seek to conserve” threatened and endangered (T&E) plant and wildlife species, as well as their critical habitats. The Act is administered by the U.S. Fish and Wildlife Service (USFWS) for terrestrial species (including plants and freshwater fishes), and by the National Marine Fisheries Service (NMFS) for marine species. NMFS is part of the National Oceanic and Atmospheric Administration (NOAA) and is also known as the NOAA Fisheries Service.

A species is considered **endangered** if it is in danger of extinction through all or a significant portion of its range. A species is considered **threatened** if it is likely to become an endangered species within the foreseeable future. There are approximately 1,880 species listed under the ESA.

Other Federal laws that protect species and/or habitat include:

- The Marine Mammal Protection Act
- The Migratory Bird Treaty Act
- The Anadromous Fish Conservation Act
- The Lacey Act

Relevance to IHS Operations & Activities

The ESA applies to any action by IHS that has the potential to impact directly or indirectly any species or designated critical habitats. Activities by IHS most likely to impact T&E species include construction projects or any activity that disrupts vegetation, soil, or waterways. Note that tribal and state/Federal regulatory agencies should be consulted because these agencies may compile different lists of T&E

species, and all listed species must be considered. In addition, the “action area” is defined broadly to include all areas directly and indirectly affected by the action, not merely those in the immediate areas involved in the action.

Penalties and Consequences of Non-Compliance

The USFWS and NMFS can bring both civil and criminal actions and fines against IHS and its employees for violations of the ESA.

Civil penalties up to \$25,000 per violation can be levied against any person who knowingly violates provisions of the ESA, including taking, selling, purchasing, or maliciously damaging or destroying T&E species.

Criminal penalties can include up to \$50,000 and/or one-year imprisonment for ESA violations. Criminal penalties can also be issued for a knowing violation of any other regulation issued under the ESA; these penalties can include up to \$25,000 and/or six months imprisonment.

Compliance Approaches for IHS Facilities

Detailed information on ESA compliance (including a step-wise compliance sequence) is provided in the *IHS Environmental Review Manual*. Key points from this reference are presented below.

If preliminary information (site knowledge, previously identified species, etc.) indicates a potential for impact to T&E species or critical habitat, IHS must initiate a consultation with USFWS, NMFS, and/or other state and tribal agencies. Consultation with these agencies may be either informal or formal, but the outcome must be the same – the proposed IHS action does not adversely impact T&E species OR it includes mitigation strategies.

If mitigation is required, this strategy or set of strategies must be acceptable to USFWS/NMFS and documented in a Biological Assessment (BA) or Biological Evaluation (BE) that is answered by either of these agencies through a Biological Opinion (BO).

If the program activity or proposed project does not affect species or critical habitat, consultation may be brief (e.g., a phone call and a letter). If the program activity or project may adversely impact species and/or critical habitat, consultation may take six months or longer, thus possibly impacting the timeline of the program activity or project.

IHS Responsibilities under the ESA

- Identify any threatened or endangered species that might be in the potential project area.
- Participate in the agency consultation and coordination process for impacts to T&E species to protect your interests.
- Prepare T&E biological assessments or biological evaluations of the effects of a proposed action.
- Prepare natural resource management plans to protect T&E species.

Many of the review stages and decision points in the ESA process are defined by time limits that IHS program and project officers should be aware of. For instance,

the formal consultation process must be concluded within 90 calendar days of “initiation” (the date USFWS/NMFS receives the IHS request, along with all relevant data). Once IHS receives the draft BO from either agency, it has 45 days to review the draft opinion or amend the project in a manner acceptable to both IHS and USFWS/NMFS.

Information Resources

Current understanding of ESA
endangered.fws.gov/policies/index.html

NOAA Fisheries Sustainable Fisheries Act
<http://www.nmfs.noaa.gov/sfa/>

The Endangered Species Program
endangered.fws.gov/

The ESA Consultation Handbook
endangered.fws.gov/consultations/s7hndbk/s7hndbk.htm

Secretarial Order #3206-American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act
endangered.fws.gov/tribal/Esatribe.htm

Endangered Species Listing
endangered.fws.gov/wildlife.html#Species

Consultations with Federal Agencies
endangered.fws.gov/consultations/index.html

Endangered Species Act Awareness Checklist

- DO:** Be familiar with T&E species and critical habitats on owned properties.
- DO:** For all projects that will impact water, soil, or vegetation, consider if any T&E species will be impacted. Perform biological assessments as needed.
- DO:** Consult with the Fish and Wildlife Service or the National Marine Fisheries Service.
- DO:** Have Natural Resource Management Plans prepared to protect any T&E species.

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Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)

Overview of the Regulation

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) was enacted in 1947, under the Department of Agriculture, to provide Federal control over commercial pesticide distribution, sale, and use. The program was transferred to EPA in 1970 and has subsequently been amended several times. The Act applies to all types of pesticides, including insecticides, herbicides, fungicides, rodenticides, and antimicrobials.

One of the central objectives of the Act is the EPA approval and registration of any pesticide for either “general” or “restricted” use. For restricted-use pesticides, EPA is authorized to require commercial users to obtain certification to apply these compounds.

Relevance to IHS Operations & Activities

Generally, it is unlikely that IHS personnel will directly apply restricted pesticides since special licensing is required. However, IHS facilities may contract out the commercial applications of pesticides and therefore become responsible for their use at its facilities. **In addition, if unused or expired stocks of pesticides are stored at IHS facilities, IHS is required to comply with the FIFRA regulations pertaining to the storage and disposal of these materials.**

Penalties and Consequences of Non-Compliance

If IHS applies pesticides in violation of FIFRA, civil fines up to \$1,000 can be assessed. Penalties for commercial applicators are more stringent and include civil fines up to \$5,000 and criminal fines of up to \$25,000 and/or imprisonment of up to a year.

Compliance Approaches for IHS Facilities

IHS is responsible for ensuring that any pesticide application that occurs on its property is performed following FIFRA rules. This includes the following:

FIFRA Requirements

- Ensuring that pesticide contractors are certified under FIFRA and follow FIFRA laws for the training and use of proper protective equipment.
- If any pesticide containers are left on IHS property for disposal, ensuring disposal complies with all Federal, state, and local laws.
- Properly managing storage and labeling of pesticides on site.
- Maintaining records of pesticide applications.

Information Resources

EPA Region 5: Federal Insecticide, Fungicide, and Rodenticide Act

www.epa.gov/region5/defs/html/fifra.htm

EPA FIFRA Contact Information - Names and Phone Numbers at the EPA

www.ehso.com/FIFRA.htm

FIFRA Compliance Assistance

<http://ehso.com/cssfifra/fifrahelp.php>

Tribal Pesticide Program Council

<http://www.epa.gov/oppead1/tribes/tppc.htm>

FIFRA Awareness Checklist

- DO:** Use outside contractors for applications of all restricted pesticides (unless IHS personnel are certified by EPA for pesticide application).
- DO:** Ensure contractor applicators are licensed and are following regulations during application, storage, and disposal.
- DO:** Require that contractor applicators remove all pesticide containers and residuals from IHS property and assume full responsibility for disposal of these items.
- DO:** Dispose of pesticides and pesticide containers following all Federal, state, and local laws.
- DO:** Use pesticides minimally and explore alternative ways to deal with pest issues.
- DO:** Proactively deal with accumulated stocks of pesticides at your facility.
- DO NOT:** Accumulate or store pesticides at IHS facilities.
- DO NOT:** Dispose of residual pesticides in the trash.

Hazardous Materials Transportation Act (HMTA)

Overview of the Regulation

To address the issue of increasing shipments of hazardous materials and wastes, Congress created the Hazardous Materials Transportation Act (HMTA) in 1975. HMTA is enforced by the Department of Transportation (DOT), which promulgated the HMTA regulations found in 49 CFR Parts 171-180. The regulations cover the identification, packaging, marking, labeling, and condition of hazardous materials offered for intrastate and interstate transportation. Transportation vehicles covered include motor vehicles, aircraft, railcar, and vessels (any watercraft or other artificial contrivance used, or capable of being used, as a means of transport on water).

The Hazardous Materials Transportation Uniform Safety Act (HMTUSA) of 1990 was enacted by Congress to clarify the maze of conflicting state, local, and Federal regulations with regard to hazardous material transportation. In addition, DOT promulgated HM-181 in 1990 to revise the Hazardous Materials Regulations with respect to hazard communication, classification, and packaging requirements. One of the main objectives of HM-181 was to establish consistency between HMR and international transportation regulations.

HMTA defines two major classes of regulated entities: the hazardous material offeror (commonly referred to as a “shipper”) and the hazardous material carrier. Although responsibilities for these two entities frequently overlap, the list of shipper responsibilities includes:

- Properly identifying all hazardous materials prior to shipment;
- Determining the proper shipping name, hazard class/division, and identification number for each material;

- Proper preparation of shipping papers;
- Proper packaging, marking, and labeling of hazardous material containers;
- Determining compatibility between hazardous materials;
- Placarding of transportation vehicles;
- Employee training; and
- Incident reporting

Much of the shipping requirements for a particular hazardous material can be found in the **Hazardous Materials Table**, the backbone of the HMTA regulation. Through the use of the Table, a hazardous material shipper will be able to identify most of the HMTA requirements for that shipment. The Table is found in 49 CFR Section 172.101, as well as at a variety of online sites, including the following:

<http://www.myregs.com/dotrspa/>

One of the most important first steps in determining shipping requirements is the identification of the hazardous material and the **proper shipping name**. This shipping name can be derived from a Material Safety Data Sheet for the material and/or knowledge of the active ingredient(s).

Relevance to IHS Operations & Activities

HMTA regulations should be followed any time an IHS facility is shipping hazardous materials to an outside destination (e.g., hazardous waste treatment facility, recycler, etc.). In addition, HMTA regulations may also apply when hazardous materials are being shipped from one IHS facility to another, depending on the type and quantity of material.

Due to the complexities involved in determining the proper shipping name, packaging, labeling, and placarding associated with a hazardous material shipment, it is highly recommended that

IHS personnel consult with individuals familiar with these requirements.

Many carriers (transporters) of hazardous materials and/or disposal facilities will often assist in the preparation of hazardous material shipping papers (e.g., manifests), as well as placarding for the transporting vehicle. However, because an IHS representative will be required to sign and certify the shipment, ultimate responsibility for accuracy falls on IHS and its employees.

Shipping papers can be in the form of a bill of lading, freight bill, hazardous waste manifest, or other shipping document. The exception is that all hazardous wastes must be accompanied by the Uniform Hazardous Waste Manifest (EPA Form 8700-22; Revised March 2005).

Penalties and Consequences of Non-Compliance

Civil penalties for HMTA violations can reach up to **\$32,500 per violation; criminal penalties can reach up to \$250,000 for an individual and \$500,000 for a corporation.** Prison sentences can reach up to five years in length. **Although the Federal government is exempt from penalty provisions under HMTA, Federal employees are not.**

Compliance Approaches for IHS Facilities

As indicated above, HMTA compliance is complex and requires detailed knowledge of the hazardous material(s) that are being shipped and the appropriate use of the *Hazardous Materials Table*. Other compliance areas include the following:

Packaging: IHS personnel that prepare hazardous material shipments must ensure that the correct packaging (referred to as “performance-oriented packaging”) is used for each shipment. Packaging requirements can be found in the *Hazardous Materials*

Table and include packing group and chemical compatibility issues.

Training: Specific training on HMTA regulations is now required for any personnel who handle, ship, transport, and store hazardous materials (the regulations refer to these personnel as “hazmat employees”). Any IHS personnel that prepare hazardous materials for shipment must receive initial, as well as refresher, training.

Emergency Response: With regard to emergency response, IHS personnel must also provide emergency response information and an emergency response telephone number to the hazardous materials carrier (this information is often provided on the shipping paper). The emergency response contact must be an individual who either is knowledgeable about the hazardous material being shipped or has immediate access to a person who possesses such knowledge. Regulatory citations and penalties can be levied for incorrect or outdated emergency response information on shipping documents.

Information Resources

A searchable version of the *Hazardous Materials Table*

http://www.setonresourcecenter.com/MSDS/172_101/172HMT/172_101000.HTM

Hazardous materials transportation training modules created by the Pipeline and Hazardous Materials Safety Administration
<http://hazmat.dot.gov/training/mods/mod.htm>

EPA’s Page for the Hazardous Waste Manifest
<http://www.epa.gov/epaoswer/hazwaste/gener/manifest/>

Federal Hazardous Materials Regulations
<http://hazmat.dot.gov/regs/notices/dotbill.pdf>

HMTA Awareness Checklist

- DO:** Identify the proper shipping name for each hazardous material being shipped through use of the *Hazardous Materials Table* (49 CFR 172.101), Material Safety Data Sheets, and your knowledge of the material.
- DO:** Use shipping papers for every hazardous material shipment and ensure these papers contain all the information required by the regulation (including emergency response contact information).
- DO:** Ensure that all hazardous material shipments are properly packaged, labeled, and placarded, based on the requirements identified for that material in the Hazardous Material Table.
- DO:** Establish and document initial and refresher training for any IHS personnel that prepare and certify hazardous materials shipments.
- DO:** Use only licensed and permitted transporters (“carriers”) for your hazardous material shipments.
- DO NOT:** Fail to inspect each hazardous material package for integrity, proper labeling, and placarding prior to shipment.
- DO NOT:** Ship any hazardous materials that you are unsure of with regard to proper identification, packaging, labeling, and chemical compatibility with other items shipped in the same container.

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National Environmental Policy Act (NEPA)

Overview of the Regulation

The National Environmental Policy Act (NEPA) of 1970 is the basic national charter for protection of the environment. The primary objective of the Act is to create “a national policy which will encourage productive and enjoyable harmony between man and his environment.” To oversee and support the implementation of NEPA, the Act established the Council of Environmental Quality (CEQ).

Unlike other, more targeted Federal regulations (e.g., the Clean Water Act or Endangered Species Act), NEPA does not regulate a specific resource. Rather, the Act requires Federal agencies to consider a wide range of environmental impacts in relation to a proposed action or set of actions. Specific resources and impacts that are included in a NEPA analysis can include, but are not limited to, the following: air; water (including drinking water); hazardous and solid wastes; endangered species; wetlands; historic buildings and landmarks; cultural resources; noise; socioeconomics; wilderness areas; and coastal management zones.

The central question for a NEPA analysis of any proposed action is the following:

Is what I’m proposing to do a major Federal action that will significantly affect the quality of the human environment?

To answer this question, NEPA has established several response options for an agency to use:

- Documentation of a Categorical Exclusion
- Preparation of an Environmental Assessment (EA) and Finding of No

Significant Impact (FONSI) Determination

- Preparation of an Environmental Impact Statement (EIS) and Record of Decision (ROD)

Relevance to IHS Operations & Activities

IHS NEPA policy is based on CEQ regulations, Department policy, and Public Health Service (PHS) or HHS grants policy statements. In addition, IHS NEPA policy and practice has been documented in the *IHS Environmental Review Manual*, which contains comprehensive overviews of all NEPA requirements, the IHS Environmental Review process, and relevant Federal regulations and Executive Orders.

Many IHS actions can be considered “Federal actions” for the purposes of NEPA. The Department defines an action as approval, award, modification, cancellation, termination, use of, commitment of Federal funds or property by means of a grant, contract, purchase, loan, guarantee, deed, lease, and license or by any other means (GAM 30-00-30A).

Activities such as construction, renovation, and changes in land use should also be considered “actions” that require an environmental review to determine the level of NEPA analysis required. In addition, the IHS environmental review process will also identify other regulatory requirements (e.g., storm water or emissions permitting) that may also be required for the project or operation.

Penalties and Consequences of Non-Compliance

No specific enforcement provisions exist under NEPA. However, Federal actions are subject to public scrutiny during the EA and EIS processes; when these actions are

challenged by outside interests, judicial review and/or injunctions may result. **Failure to satisfy NEPA requirements may therefore result in court injunctions against the proposed project or action until these requirements are met.** When this has happened in the past, professional staff resources were taken up by correspondence and depositions to document all IHS activities, from project proposal to the current phase of the project. Staff also had to attend meetings with Department of Justice lawyers and be available for court hearings. The IHS pays for that time spent doing other than IHS activities.

Compliance Approaches for IHS Facilities

Implementing the IHS environmental review process early in project or program planning is highly recommended and will help prevent unnecessary costs, delays, and impacts. The environmental review process consists of the following steps:

IHS Environmental Review Process

1. Determine if the proposed action is covered by any of the **category exclusions** established by IHS.
2. Determine if any **extraordinary or exceptional circumstances** apply to the action that would negate the categorical exclusion(s) for the action.
3. If deemed necessary by the Area NEPA Coordinator, complete and submit the Checklist for approval and sign-off.
4. If further analysis is required, complete an Environmental Assessment and, if required, an EIS.

Category exclusions are actions that have been identified by the Department that normally do not have a significant impact on the environment and therefore do not require completion of an EA or an EIS. With

the appropriate environmental review and documentation, these exclusions cover such activities as:

- Maintenance and day-to-day operations
- Replacement-in-kind of utilities and building components
- Building alteration or renovation that does not substantially change the function or general appearance of existing buildings
- Construction or lease of new facilities (with several notable exceptions)
- Acquisition, sale, release abandonment, closure, or transfer of real property (with several requirements)
- Construction of sanitation facilities (with the exception of a sanitary landfill or wastewater treatment facility).

Even if the proposed action is covered by a categorical exclusion, the environmental review process requires consideration of all **extraordinary or exceptional circumstances**. These circumstances have been identified as having a potentially significant or adverse environmental effect and would therefore negate the categorical exclusion for an action. Examples include, but are not limited to, the following:

- Adverse effects on archeological or cultural resources
- Adverse effects on historic properties
- Those requiring a floodplain or wetland assessment
- Construction projects greater in scope or size normally experienced for the category of action

Information Resources

IHS Environmental Review Manual (Contact your Area NEPA Coordinator)

EPA's Home Page for NEPA
<http://www.epa.gov/compliance/nepa/index.html>

NEPA Awareness Checklist

- DO:** Consider whether a proposed action or program has the potential for a significant impact to the environment. Conduct this preliminary analysis at the early stages of project or program planning.
- DO:** Consult with your Area NEPA Coordinator to determine if completion and submission of the Environmental Information and Documentation Form (the "Checklist") is warranted for your proposed action, project, or program.
- DO:** Provide all relevant documentation for all categorical exclusions that cover the proposed action, project, or program.
- DO:** Consider all extraordinary or exceptional circumstances that may negate the categorical exclusions covering the proposed action, project, or program (e.g., historic properties).
- DO:** Comply with all Federal, tribal and applicable state environmental regulations that are relevant for the proposed action, project or program (e.g., storm water or emissions permitting, threatened and endangered species, historic properties, etc.).
- DO:** Consult with your Area NEPA Coordinator prior to proceeding with an Environmental Assessment or Environmental Impact Statement for your proposed action, project, or program.
- DO NOT:** Wait until your project or program is about to begin before you initiate the environmental review process and/or consult with your Area NEPA Coordinator.

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Oil Pollution Act

Overview of the Regulation

In 1973, EPA issued the Oil Pollution Prevention Act to address the oil spill prevention provisions contained in the Clean Water Act. This regulation forms the basis of the **Spill Prevention, Control, and Countermeasure (SPCC) Program**, which is designed to prevent oil spills from aboveground and underground storage tanks.

To strengthen certain provisions of the Act (including a new requirement for Facility Response Plans for certain oil storage facilities), Congress enacted the Oil Pollution Act (OPA) in 1990. Since its enactment, several revisions have occurred, including a final rule issued in 2002 that addresses the SPCC Program.

SPCC Plans are the cornerstone of the OPA and are designed to ensure that facilities have containment and other countermeasures that would prevent oil spills from reaching navigable waters (a broadly defined term that includes most surface waters).

Relevance to IHS Operations & Activities

Petroleum-containing aboveground and underground storage tanks are present at a number of IHS facilities. In addition, IHS must ensure the proper management and storage of petroleum at project construction sites. Based on the criteria above, many of these facilities are required to have SPCC Plans.

Penalties and Consequences of Non-Compliance

Civil and criminal penalties can be levied against IHS and its employees under OPA. OPA has established Class I and Class II civil penalties for oil discharges in violation

Facilities Covered Under OPA

- Total aboveground oil storage capacity of greater than 1,320 gallons (4,997 liters)
- Total underground oil storage capacity greater than 42,000 gallons (158,987 liters)
- Storage *capacity* is the key criterion; tanks do not have to be full to be covered by the regulation
- For the 1,320 gallon (4,997 liters) threshold, only containers of oil with a capacity greater than 55 gallons (208 liters) are covered
- Facilities that store petroleum products that, if spilled or released, could “reasonably be expected” to discharge to navigable waters, may be required to have an SPCC Plan

of the CWA. **Class I penalties can be \$10,000 per violation, up to \$25,000. Class II fines can be up to \$10,000 per day of violation, up to \$125,000.**

A “knowing release” carries maximum criminal fines of up to \$50,000 per day of violation and three years imprisonment. Prior convictions double these penalties. In addition, a knowing discharge that places a person in imminent risk of death or serious bodily harm carries a maximum criminal penalty of \$250,000 and five years imprisonment. Organizations can be fined a maximum of \$500,000.

Compliance Approaches for IHS Facilities

IHS facilities that exceed the oil storage capacities of the SPCC regulations are required to implement an SPCC Plan by no

later than July 1, 2009. It is worth noting that the definition of “oil” includes a variety of substances, such as gasoline, heating oil, vegetable oil, roofing tar, and mineral oil. With regards to heating oil, aboveground containers of 55-gallons (208 liters) or more are likely included in the SPCC inventory whereas underground storage tanks of heating oil are not included [unless the capacity of these tanks is greater than 42,000 gallons (158,987 liters)].

The SPCC Plan should clearly address the following elements:

- Operating procedures that prevent oil spills;
- Control measures installed to prevent a spill from reaching navigable waters; and
- Countermeasures to contain, clean up, and mitigate the effects of an oil spill that reaches navigable waters.

The SPCC Plan must be unique to the facility and must be certified by a licensed professional engineer as well as facility management [qualifying facilities storing 10,000 gallons (37,854 liters) or less may self-certify]. Elements of the Plan must include:

- A description of the physical layout and a facility diagram. This diagram should include all underground storage tanks, even if they are exempt from the SPCC regulations.
- Contact list and phone numbers for the facility response coordinator, National Response Center, cleanup contractors, and all appropriate Federal, state, and local agencies who must be contacted in case of a discharge.

- A description of containment and/or diversionary structures and a complete discussion of the spill prevention and control measures applicable to the facility and/or its operations.
- Contingency Plans if containment is not practical.
- An Inspection Plan
- Personnel Training
- Security
- Location of the Plan (must be maintained at the facility).
- A complete discussion of the spill prevention and control measures applicable to the facility and/or its operations.

IHS facility personnel must be trained on the contents of the SPCC Plan. This training applies to all personnel who may be handling petroleum products stored and used at the facility (defined as “oil-handling employees” by the regulation).

Any changes in the oil storage at the facility require amending the SPCC Plan within six months. In addition, SPCC Plans must be reviewed a minimum of once every five years.

Information Resources

Oil Information Hotline
800-424-9346

EPA’s Overview for Oil Pollution Prevention
<http://www.epa.gov/oilspill/opprover.htm>

EPA’s SPCC Requirements
<http://www.epa.gov/oilspill/spccmust.htm>

The National Park Service’s Guidance Document for SPCC Plans
http://www.doi.gov/greening/NPS/Spill_Prevention_Planning.pdf

Oil Pollution Act Awareness Checklist

- DO:** Conduct an inventory of the types and quantities of all oil storage containers at the facility. "Oil products" include petroleum-based oils, non-petroleum-based oils (animal based, vegetable oil, and biofuel) and oil-containing products (paints, thinners, inks, etc.). Heating oil is included in this inventory if it is stored in aboveground containers greater than 55 gallons (208 liters) OR in underground storage tanks with a combined capacity greater than 42,000 gallons (158,987 liters).
- DO:** Determine if the above inventory exceeds the 1,320 gallon (4,997 liter) aboveground or 42,000 gallon (158,987 liter) underground storage capacity thresholds. Remember, containers less than 55 gallons (208 liters) do not need to be counted against the 1,320-gallon (4,997 liter) threshold.
- DO:** Develop an SPCC Plan if either threshold is exceeded OR if there is a reasonable expectation that a facility oil spill could, over any period of time, discharge into navigable waters of the United States or adjoining shorelines. Discharges to the ground that could enter groundwater and ultimately connect to surface waters, such as a river or wetland, should also be considered.
- DO:** Develop the SPCC Plan in accordance with EPA requirements, including certification by a professional engineer [self-certification is acceptable for facilities with less than 10,000 gallon (37,854 liter) capacity].
- DO:** Ensure that appropriate spill, leak containment, and/or drainage control structures or equipment are available in oil storage and handling areas.
- DO:** Ensure that "oil handling personnel" receive documented training on the SPCC Plan and the spill control measures that they should use.
- DO:** Conduct a documented review of your facility's SPCC Plan every five years.

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The Pollution Prevention Act

Overview of the Regulation

The Pollution Prevention Act of 1990 (PPA) articulated a national waste management policy that:

- pollution should be prevented or reduced at the source whenever feasible;
- pollution that cannot be prevented should be recycled in an environmentally safe manner whenever feasible;
- pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and
- disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

Central to the regulation is the concept of source reduction – practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or protection of natural resources by conservation. In practical terms, source reduction can include one or more of the following strategies:

Source Reduction Strategies

- Equipment or technology modifications
- Process or procedure modifications
- Reformulation of products
- Redesign of products
- Substitution of raw materials
- Housekeeping
- Maintenance
- Training
- Inventory Control

While the PPA was primarily designed for voluntary compliance, it is the basis for Executive Order 12856 (Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements), which directs all Federal agencies to develop pollution prevention strategies and incorporate them into facility management. In addition, facilities that report chemical releases and inventories under the Emergency Planning and Community Right to Know Act (EPCRA) are required by PPA to report information on pollution prevention and recycling activities for each toxic chemical at the facility.

Relevance to IHS Operations & Activities

As indicated above, EO 12856 requires each Federal agency to develop a pollution prevention strategy that includes the following:

- A pollution prevention policy statement
- A commitment to utilize pollution prevention through source reduction, where practicable
- A toxic chemical reduction goal of 50 percent
- Ensuring that each facility has a written Pollution Prevention Plan
- A plan and goals for eliminating unnecessary acquisition of products containing extremely hazardous substances or toxic chemicals
- Compliance with EPCRA reporting requirements

Penalties and Consequences of Non-Compliance

The programs created by the PPA are voluntary; however, the Executive Orders that were created in response to the PPA have specific requirements for all Federal agencies.

Compliance Approaches for IHS Facilities

As indicated above, pollution prevention can take a variety of forms, depending on the nature of a facility, operation, or program. Many pollution prevention programs are initiated via an audit of current facility practices involving products, raw materials, chemicals, and waste generation. The audit will serve to identify those practices that can benefit from re-engineering, re-design, or elimination. Examples of pollution prevention strategies can include, but are not limited to, the following:

- Substitution of less toxic products, thereby generating less (or no) hazardous wastes;
- Use of environmentally friendly cleaning and maintenance products;
- Recycling of office paper and use of recycled paper with post-consumer content;
- Increased use of energy-efficient equipment, including light bulbs, water heaters, etc.;
- Use of a “waste exchange” network that allows for the transfer and recycling (rather than off-site disposal) of unused products or chemicals;
- Proper collection and off-site recycling of universal wastes (batteries,

mercury-containing equipment, pesticides, and lamps);

- Re-designed housekeeping and maintenance procedures that reduce or eliminate the use of toxic chemicals; and
- Employee training that encourages the identification of pollution prevention strategies throughout a facility.

Information Resources

Tribal Pollution Prevention Homepage

<http://www.tribalp2.org/>

EPA Pollution Prevention Homepage

<http://www.epa.gov/oppt/p2home/>

CEQ guidance on incorporating pollution prevention into NEPA documents

<http://ceq.eh.doe.gov/nepa/regs/poll/ppguidnc.htm>

Executive Order 12856 – EPCRA and Pollution Prevention

http://www.labtrain.noaa.gov/ppAwarenessGuide/ffpp_48.htm

Executive Order 12902 – Energy Conservation and Water Use

<http://ceq.eh.doe.gov/nepa/regs/eos/eo12902.html>

Pollution Prevention Awareness Checklist

- DO:** Conduct a pollution prevention audit to identify current practices relating to material, product and chemical ordering, usage, and waste generation.
- DO:** Identify less toxic chemical substitutes for cleaning and maintenance products.
- DO:** Recycle paper and packaging to the greatest extent possible.
- DO:** Upgrade, when appropriate, to energy- and water-saving devices throughout the facility.
- DO:** Collect and recycle all universal waste (batteries, mercury-containing equipment, pesticides, and lamps) using permitted recyclers.

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Regulated Medical Waste

Overview of the Regulation

The majority of regulated medical waste in the United States is defined by law or regulation at the state or local level. As a result, definitions of regulated medical waste vary widely. The EPA places medical waste into four categories: infectious; hazardous; radioactive; and general wastes (e.g., packaging). The vast majority of waste from medical facilities falls into the “general” category; while approximately 10-15% can be considered infectious, hazardous, or radioactive, and are normally covered by federal regulations. Examples include waste that contains heavy metals (such as mercury) and are covered under the Resource Conservation and Recovery Act (RCRA) or waste that contains radioactive isotopes or materials and are covered by Nuclear Regulatory Commission (NRC) regulations. In addition, the Occupational Safety and Health Administration (OSHA) Blood Borne Pathogen regulations address the handling of contaminated sharps (e.g., needles, scalpels) and other infectious agents. For the purposes of this document, regulated medical waste will be those materials generally considered to be infectious, hazardous, or radioactive.

OSHA Definition of Medical Waste

- Liquid or semi-liquid blood or other potentially infectious materials;
- Contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed;
- Items that are caked with dried blood or other potentially infectious materials and are capable of releasing these materials during handling;
- Contaminated sharps; and
- Pathological and microbiological wastes containing blood or other potentially infectious materials.

State and local medical waste laws and

regulations may include additional items and waste streams in their definitions.

Relevance to IHS Operations & Activities

Due to their health-care orientation, many IHS facilities generate regulated medical waste. Typically, this is referred to as “red bag” or “sharps container” wastes. Depending on the scope of services at the IHS facilities, the volume and type of regulated medical waste will vary.

It is unlikely that IHS facilities will continue to use medical waste incineration (MWI) as a primary means of disposing of regulated medical waste. With the promulgation of new MWI emission standards by the EPA in 1997, this strategy may no longer be appropriate or legal. In general, IHS facilities should be using a medical waste disposal contractor.

Penalties and Consequences Of Non-Compliance

Because some regulated medical waste may also include materials regulated by RCRA (those wastes with heavy metals as well as listed hazardous waste), non-compliance with applicable disposal regulations may result in the same penalties and consequences. It is certainly the case that the ultimate responsibility for medical waste mismanagement and illegal disposal rests with the facility and its operators. **Any person or facility that violates a RCRA hazardous waste requirement is liable for a civil penalty of up to \$25,000 for each day of noncompliance.**

RCRA also allows the imposition of criminal penalties against persons who knowingly commit certain violations. **Conviction can result in criminal fines of up to \$50,000 for each day of violation, two years imprisonment, or both.** Compliance penalties will also be driven by the state and local regulations for medical waste.

Compliance Approaches for IHS Facilities

As with hazardous and solid waste, proper management of regulated medical waste revolves around policy and procedure development, and employee education and competency. Segregation of wastes with appropriate storage and assurance of destruction/inactivation of organisms (if required) are key practices. All of these practices should be appropriately documented, particularly the use of licensed/permitted transporters and final disposal (or properly permitted on-site treatment if acceptable).

- Each IHS facility that generates regulated medical waste should have a management plan that specifically addresses this type of waste. This should include procedures for the identification, collection and handling, treatment (if necessary), waste categorization, packaging and storage, acceptable methods of disposal, and temporary management, disposal, and destruction of infectious waste during emergencies.
- The facility's Infection Control and/or Safety Committee should be responsible for reviewing the management plan and applicable policies and procedures.
- Each facility should designate a responsible person (such as Lead Housekeeper, Infection Control Officer, Safety Officer) with appropriate competency for implementing the management plan and applicable policies and procedures.
- IHS employees that will likely handle medical waste should receive periodic training on how to identify, segregate, package, and clean up spills or releases of the various types of medical waste at the facility.
- Routine facility-wide assessments should be conducted to determine the locations, types, and conditions of medical waste generation.
- Medical waste should be segregated into "hazardous" and "non-hazardous," based upon characteristics of the waste; special handling and disposal procedures should be developed when necessary. For example, extracted teeth with amalgam fillings should not be disposed of as regulated medical waste.
- In the event that radioactive medical waste is generated, it should be separated from all other medical waste and disposed of in accordance with local and NRC regulations.
- A designated medical waste or biohazard storage area should be established for the storage of full medical waste containers, prior to on-site treatment or off-site shipment. This storage area should be clearly labeled, secured, and protected from weather to ensure that the storage containers remain intact.
- The facility should ensure that only licensed and permitted transporters and disposal facilities are being utilized for off-site medical waste disposal.
- Off-site medical waste disposal facilities should be inspected/visited by staff from the facility. Results of any inspections conducted by regulators at the disposal facility should also be obtained by the IHS facility.
- A manifest or bill of lading tracking system should be established to monitor off-site shipments of medical waste. In addition, these records, as well as certifications of transporters and disposal facilities, should be maintained on site.

Information Resources

EPA's Medical Waste Home Page

<http://www.epa.gov/epaoswer/other/medical/>

IHS Institutional Environmental Health Program Policies, Including Medical Waste
<http://www.ihs.gov/NonMedicalPrograms/IEH/index.cfm?module=policyprocedures>

Regulated Medical Waste Checklist

- DO:** Ensure a management plan is in place that covers regulated medical wastes. Policies and procedures to support the management should be in place and up to date.
- DO:** Designate a responsible person to implement the management plan and applicable policies and procedures.
- DO:** Conduct routine facility-wide assessments of the locations, types, and conditions of medical waste containers.
- DO:** Periodically conduct and document employee training on the proper identification and separation of medical waste.
- DO:** Maintain medical waste containers close to the point of generation.
- DO:** Develop a system of recording medical waste shipments from the facility.
- DO:** Use only licensed medical waste transporters and disposal facilities.
- DO:** Conduct periodic audits of the medical waste transporters and disposal facilities used by your facility. Ensure the operations meet local, state and Federal regulations.
- DO:** Designate a central medical waste storage area that is well-labeled, secured, under the control of a limited number of individuals, and does not subject containers to weather conditions that may compromise their integrity.
- DO NOT:** Mix hazardous and non-hazardous medical waste streams.
- DO NOT:** Mix radioactive and non-radioactive medical waste streams.
- DO NOT:** Discharge liquid medical wastes (e.g., blood/body fluids from suction in the operating room or dental operations) unless this discharge is permitted by local ordinances and/or state regulations.

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The Resource Conservation and Recovery Act (Subtitle C)

Overview of the Regulation

To address the rapidly expanding growth in solid and hazardous wastes generated in the United States, Congress enacted the Resource Conservation and Recovery Act (RCRA) in 1976. Subtitle C of this Act covers the generation, storage, transportation and disposal of hazardous wastes, therefore covering all of the “cradle to grave” activities associated with hazardous wastes.

Since 1976, RCRA has been amended by the 1984 Hazardous and Solid Waste Amendments (HSWA), the 1992 Federal Facilities Compliance Act (FFCA), and the 1996 Land Disposal Program Flexibility Act.

Relevance to IHS Operations & Activities

The RCRA regulations promulgated by EPA (and, in most cases, enforced by state agencies) apply to a wide range of hazardous waste generators. IHS operations and activities that may be regulated by RCRA, depending on the types and quantities of hazardous wastes generated, include laboratories, maintenance shops, construction projects, custodial activities, X-ray labs, and any other activities that generate used chemicals above threshold quantities.

RCRA defines a “waste” as any solid, liquid, or contained gaseous material that is discarded by being disposed of, burned or incinerated, or recycled (some exemptions exist for recycling certain types of materials).

Common Hazardous Waste Streams

- Used or discarded solvents, paints, thinners, and lacquers
- Used oil containing solvent
- Pesticides
- Used or discarded laboratory chemicals

Penalties and Consequences of Non-Compliance

EPA and the authorized states can bring administrative, civil, and criminal enforcement actions against IHS employees under RCRA. **Any person or facility that violates a RCRA hazardous waste requirement is liable for a civil penalty of up to \$25,000 for each day of noncompliance.**

RCRA also allows the imposition of criminal penalties against persons who knowingly commit certain violations. **Conviction can result in criminal fines of up to \$50,000 for each day of violation, two years imprisonment, or both.**

Compliance Approaches for IHS Facilities

IHS facility managers are responsible for ensuring that hazardous waste management activities under RCRA are properly performed.

These responsibilities include a wide range of activities, including hazardous waste identification, proper storage and labeling of hazardous waste containers, contingency planning in the event of spills, employee training, and the arrangement of off-site transportation and disposal of these hazardous wastes.

The initial steps in RCRA compliance involve determining the following:

- The types of hazardous wastes generated at your facility
- The amounts of hazardous waste generated on a monthly/yearly basis

As RCRA defines “hazardous waste” using several different methods (e.g., “listed” versus “characteristic” waste), it is important that you consider all potential definitions (an

excellent resource is EPA's *Managing Your Hazardous Waste* found at www.epa.gov/epaoswer/hazwaste/sqg/sqghand.htm

The identification of hazardous wastes can be accomplished via several strategies, including a review of MSDS sheets for a chemical, applying your knowledge of the constituents of a particular waste stream, and using laboratory analysis to determine characteristic hazardous wastes.

Once you've determined the types of hazardous wastes at your facility, the next step is to determine the relative amounts of wastes generated on a monthly (calendar) basis. This determination will help to identify the "generator" category for your facility. RCRA imposes varying levels of requirements for the three different generator categories:

- Conditionally exempt small quantity generators (CESQGs) that generate less than 100 kilograms per month
- Small quantity generators (SQGs) that generate between 100 and 1,000 kilograms per month
- Large quantity generators (LQGs) that generate more than 1,000 kilograms per month

It is important to note that your generator category may change, based on a change in your monthly generation of hazardous wastes (e.g., a laboratory cleanout of chemicals may alter your status to large quantity generator and therefore result in more stringent requirements for managing your wastes).

Once hazardous waste identification and quantification has occurred at your facility, the focus should turn to on- and off-site management of these wastes. This day-to-

day management consists of the following aspects:

- Designated hazardous waste storage areas
- Using appropriate containers
- Labeling of containers
- Weekly documented inspections of these areas
- Employee awareness training
- Emergency response procedures
- Proper manifesting of shipments
- Review and selection of permitted hazardous waste transporters and disposal facilities

Information Resources

EPA's website for waste management in Indian Country; includes tribal case studies
www.epa.gov/tribalmsw

An inventory of state RCRA programs and other informational resources
www.epa.gov/epaoswer/osw/comments.htm

A comprehensive database developed for environmental management in Federal agencies and programs
www.fedcenter.gov/programs/chemical

A comprehensive EPA website dedicated to RCRA, includes the RCRA Orientation Manual and RCRA Training Modules
www.epa.gov/rcraonline

An excellent 31-page beginner's Awareness Guide to RCRA; includes a section on used oil management.
www.epa.gov/epaoswer/hazwaste/sqg/sqghand.htm

Hazardous Waste Awareness Checklist

- DO:** Identify all the hazardous waste streams at your facility.
- DO:** Calculate your generator status based on monthly amounts of generation of these wastes.
- DO:** Keep containers of hazardous wastes always closed, except when removing or adding wastes to these containers.
- DO:** Properly label your hazardous waste containers, ensuring that an accumulation start date and the words "hazardous waste" are clearly visible.
- DO:** Conduct *weekly* documented inspections of your hazardous waste storage areas.
- DO:** Keep all of your hazardous waste records (lab analyses, EPA paperwork, inspection forms, manifests) in a centralized area.
- DO:** Make all efforts to reduce your hazardous waste generation through eliminating or substituting chemicals.
- DO:** Communicate with your state agency to identify any hazardous waste management requirements that are more stringent than the Federal regulations.
- DO NOT:** Mix your hazardous wastes with non-hazardous waste.
- DO NOT:** Store hazardous waste containers in high-traffic areas where these containers may be damaged or punctured by vehicles, forklifts, and other heavy equipment.
- DO NOT:** Discharge any hazardous wastes into drains, sewers, or storm drains.
- DO NOT:** Use unauthorized hazardous waste transporters and/or disposal facilities.
- DO NOT:** Fail to file a manifest exception report to your state agency if a signed copy of your manifest has not been returned to you within the required time frame.

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Safe Drinking Water Act

Overview of the Regulation

The Safe Drinking Water Act (SDWA) was passed by Congress in 1974 to protect the nation's drinking water supplies. Initially, the Act focused on water treatment, but amendments in 1986 and 1996 expanded the role of the Environmental Protection Agency (EPA) to protect water sources (lakes, rivers, reservoirs, springs, ground water), provide operator training, funding for water system improvements, and public education and information. Wells that serve fewer than 25 individuals are exempt from SDWA requirements.

All states except Wyoming and Washington, DC, have primacy to administer the SDWA. Four tribes are also eligible for primacy. State and tribal programs must be at least as stringent as Federal mandates and must include water testing, review of plans for water system improvements, on-site inspections, training and technical assistance, and enforcement for non-compliance.

Standards for Drinking Water

The National Primary Drinking Water Regulations set enforceable Maximum Contaminant Levels (MCLs) for particular contaminants, including the following:

- Disinfectants
- Microorganisms
- Organic chemicals
- Inorganic chemicals
- Radionuclides
- Lead and copper (at the tap)

In addition, the EPA has Awareness Guidelines for secondary contaminants that are not considered a health threat but may be objectionable. To see the entire list of MCLs and secondary contaminants, go to:

<http://www.epa.gov/safewater/mcl.html#mcls>

Sole Source Aquifers

The SDWA authorizes EPA to designate aquifers that are the sole or principal source of drinking water for an area. If an aquifer is so designated, EPA can review proposed projects that are to receive Federal funds and which have the potential to contaminate the aquifer. However, projects that are funded entirely by state, local, or private concerns are not subject to EPA review. Examples of Federally funded projects that have been reviewed by EPA under this protection program include the following:

- highway improvements and new road construction
- public water supply wells and transmission lines
- wastewater treatment facilities
- construction projects that involve disposal of storm water
- agricultural projects that involve management of animal waste
- projects funded through Community Development Block Grants

EPA's review may lead to specific recommendations or additional pollution prevention requirements as a condition of funding. If the project meets all Federal, state, and local ground water protection standards, usually EPA does not add more requirements. However, if the applicant does not make recommended modifications, Federal funding may be denied.

Well-head Protection Plans

Additionally the SDWA also requires the development of Well-head Protection Plans for all public water systems; these identify potential water pollution sources in the area that may impact the resource and takes proactive measures to ensure that groundwater is not impacted.

Underground Injection Control

The SDWA also regulates discharges to groundwater from underground injection wells. For practical purposes, this is designed to prevent the infiltration of impacted water to the ground.

Relevance to IHS Operations & Activities

All IHS facilities use drinking water. Many facilities are situated on municipal systems that are monitored by cities and municipalities. However, some facilities may use water from private wells, or even own or have responsibility for their well. In these situations, the IHS facility must ensure that drinking water is safe. At a minimum, the SDWA Act requires:

- Test for proscribed constituents using certified laboratories;
- A Well-Head Protection Plan
- Consumer Confidence Reports
- Operator Certification

The facility may choose to test for additional parameters or test more frequently than required, depending upon the location and land uses surrounding the well. Also, IHS may propose development projects in areas where a sole source aquifer is present. Additional ground water protection measures may be required for these development projects.

Penalties and Consequences of Non-Compliance

Both EPA and states can take enforcement actions against water systems not meeting standards. **Penalties cannot exceed \$25,000 per day and the statutory maximum under an emergency order is \$5,000 per violation.** Other violations include tampering with a public water system, which carries a maximum civil penalty of \$50,000, and attempting or threatening to tamper with a public water

system, which carries a maximum civil penalty of \$20,000.

Compliance Approaches for IHS Facilities

If the IHS facility is on a city or municipal water system, those system operators are responsible for compliance with SDWA. **If the IHS facility is responsible for its own water system, a series of testing and compliance must be followed.**

As a result of the 1991 Lead and Copper Rule, drinking water systems are required to monitor lead and copper levels at customer taps. The number of taps sampled is dependent on the size of the systems; the frequency of monitoring is every six months, unless the system qualifies for reduced monitoring. Specific information on this Rule can be found at:

<http://www.epa.gov/safewater/lcrmr/index.html>

All development projects by IHS should consider whether the project occurs in a sole source aquifer area. Early consultation with EPA for project scoping to determine any necessary water source protection measures will help prevent delays further along in the project planning process.

Information Resources

SDWA Hotline
800-426-4791

Main EPA Web Page for SDWA
<http://www.epa.gov/safewater/sdwa/index.html>

List of Drinking Water Contaminants and MCLs
<http://www.epa.gov/safewater/mcl.html>

EPA Fact Sheet Describing SDWA
<http://www.epa.gov/safewater/sdwa/30th/factsheets/understand.html>

Safe Drinking Water Act Awareness Checklist

- DO:** Be aware of the source of drinking water for the facility and check with water providers regarding compliance records.
- DO:** Ensure that if the facility uses its own supply of water, all appropriate testing occurs and the facility follows all requirements for reporting, record-keeping, etc.
- DO:** Conduct system-wide drinking water sampling in accordance with the Lead and Copper Rule. If lead or copper levels are detected above the action levels, comply with additional requirements for mitigation.
- DO:** Consult with EPA if any project plans occur within a sole source aquifer or if the IHS water source is from a sole source aquifer.

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Solid Waste (RCRA Subtitle D)

Overview of the Regulation

Congress enacted the Solid Waste Disposal Act of 1965 to address the growing quantity of solid waste generated in the United States. The Act was subsequently amended, most notably by RCRA and the Hazardous and Solid Waste Amendments (HSWA), to increase the scope of Federal regulations with regard to solid waste management.

The term "solid waste" is broadly defined by RCRA and includes garbage, refuse, water and wastewater treatment sludges, and a wide range of other discarded materials that can include solid, semi-solid, liquid, or contained gaseous materials. **Municipal solid waste** is a subset of solid waste and includes the following:

MUNICIPAL SOLID WASTE

- Durable goods (e.g., appliances, tires, batteries)
- Nondurable goods (e.g., newspapers, books, magazines)
- Containers and packaging
- Food wastes
- Yard trimmings
- Miscellaneous organic wastes from residential, commercial, and industrial non-process sources

To address the need for better control and regulation of municipal solid waste landfills (MSWLFs), EPA promulgated revised minimum criteria in 40 CFR Part 258. These criteria address the following major aspects of MSWLF management: location; operation; design; groundwater monitoring; corrective action; closure and post-closure; and financial assurance.

A MSWLF meets the criteria in 40 CFR 258. If a facility does not comply with 40 CFR 258, then it is not a MSWLF and should be considered an "open dump." [RCRA Sec. 1004; 42 USC Sec. 6903(14)]

Relevance to IHS Operations & Activities

Solid waste disposal is an ongoing challenge for IHS facilities. Because of the remote location of some facilities, waste disposal options can be expensive and difficult to coordinate. Creative solutions to this issue have included recycling, waste reduction, and conservation efforts. Increasingly stringent Federal and state regulations require additional expense for transporting the remaining solid waste to off-reservation regulated MSWLFs.

Federal courts have stated that if IHS is engaged in activities which fall under RCRA, including generating waste and contracting for its disposal, the IHS is ". . . obligated to insure compliance with the pertinent regulations set forth by the Environmental Protection Agency." The IHS Director has mandated that all IHS-funded facilities dispose of their waste only at State regulated and permitted or licensed disposal facilities or at facilities that have been inspected and certified by knowledgeable professionals as being operated in compliance with current EPA solid waste disposal regulations. IHS facilities should not use open dumps or landfills that do not comply with these requirements. The responsible and knowledgeable facility staff and contracting officer's representative should inspect the disposal facility at least annually to ensure the disposal facility continues to comply with EPA solid waste disposal regulations.

Penalties and Consequences of Non-Compliance

As with the RCRA hazardous waste regulations, the ultimate responsibility for illegal solid waste management and disposal rests with the generator of this waste. **Any person or facility that violates a RCRA solid waste requirement is liable for a civil penalty of up to \$25,000 for each day of noncompliance.**

RCRA also allows the imposition of criminal penalties against persons who knowingly commit certain violations. **Conviction can result in criminal fines of up to \$50,000 for each day of violation, two years imprisonment, or both.**

Many landfills were constructed and were in use prior to the promulgation of the MSWLF regulations and now do not comply with those regulations. It is worth noting that IHS, BIA, and a tribe were ordered by a Federal court to provide funding to remediate landfills that received their solid waste. In addition, these landfills were required to be brought into compliance with MSWLF regulations (Blue Legs court cases). As of the writing of this document, litigation on this case continues.

Compliance Approaches for IHS Facilities

Remember, the name of the law (RCRA) includes "resource conservation" and "recovery"; therefore, by law, solid waste compliance for an IHS facility should be focused around the following strategies:

- **Source Reduction:** Reducing or eliminating the generation and disposal of solid wastes in the first place. Specific strategies range from reengineering processes to reduce waste to making double-sided copies.
- **Recycling:** Currently, more than 30 percent of the municipal solid waste stream is recycled. Strategies include composting yard and food waste as well as recycling a variety of materials.
- **Separation:** Solid and hazardous waste should always be separated. Solid waste containers that contain hazardous waste are considered hazardous waste and are subject to much more stringent management, transportation, and disposal requirements under RCRA Subtitle C. Improperly disposed hazardous waste

can create significant environmental liabilities for an IHS facility. Construction and demolition waste should be separated from facility solid waste if the option of a construction and demolition landfill exists.

- **Proper On-Site Storage:** Proper storage of solid waste is critical, not only from a regulatory perspective but also to protect employee safety and public health. Improperly containerized solid waste can create not only the potential for accidents but also attract potential disease vectors, such as rodents, birds, and insects.
- **Use of State Regulated and Permitted Disposal Facilities:** Any site on or off Federal property that is used for the disposal of solid waste must comply with the MSWLF regulations. Current directives dictate that IHS facility managers ensure that all solid wastes are properly transported and disposed of at state regulated and permitted landfills that comply with the Federal MSWLF regulations.
- **Disposal Facility Compliance:** There needs to be assurance that all disposal facilities used by IHS continue to be in compliance with Federal and/or state regulations. It is strongly recommended that compliance certifications are requested and maintained on file for each disposal facility. These facilities should be checked at least annually by knowledgeable professionals and a contracting officer's representative.

Information Resources

EPA's Municipal Solid Waste Home Page
www.epa.gov/epaoswer/non-hw/muncpl/index.htm

Decision Makers' Guide to Solid Waste Management
www.epa.gov/epaoswer/non-hw/muncpl/dmg2.htm

Solid Waste Awareness Checklist

- DO:** Conduct a periodic inventory of all solid waste streams at the facility to identify opportunities for source reduction and recycling.
- DO:** Separate solid and hazardous waste storage areas to avoid the potential for mixing waste streams.
- DO:** Store solid waste in well-marked containers with lids that are weather-resistant and durable.
- DO:** Develop facility standard operating procedures for the care and maintenance of solid waste storage areas at the facility.
- DO:** Maintain solid waste storage containers and areas in a manner that reduces the presence of disease vectors, such as birds, rodents, and insects.
- DO:** Use only licensed solid waste haulers to transport solid waste from the facility to disposal sites.
- DO:** Develop a system of recording solid waste shipments from the facility, including the names of haulers and disposal sites.
- DO:** Annually inspect your disposal facilities.
- DO:** Annually review licensing/permitting documents to ensure continued compliance with MSWLF regulations.
- DO:** Require and review solid waste inspection surveys conducted by the licensing/permitting authority.
- DO:** Recycle materials to reduce general solid waste volume.
- DO:** Assess viability of recycling options for paper, cardboard, glass, metals, construction debris, etc.
- DO NOT:** Dispose of facility solid wastes at any unregulated/unpermitted landfills or incinerators.
- DO NOT:** Accumulate excess solid wastes at the facility, thereby potentially creating an employee and public health threat.
- DO NOT:** Commingle general solid waste with hazardous or medical waste.

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Toxic Substances Control Act

Overview of the Regulation

The Toxic Substances Control Act (TSCA) was enacted in 1976 to authorize EPA to manage hazardous chemicals through regulation. The Act requires the testing of potentially hazardous chemicals and restricts the manufacture, distribution, and use of these chemicals. The primary objective of the regulation is to prevent unreasonable risks of injury to health or the environment by the manufacture, processing, distribution in commerce, use or disposal of chemical substances. The regulations are codified in 40 CFR Parts 700 to 766.

In addition, certain hazardous materials, including asbestos, radon, lead, and polychlorinated biphenyls (PCBs), are regulated under this Act. TSCA is divided into the following four titles:

Titles under TSCA

Title I – Control of Toxic Substances

Title II – Asbestos Hazard Emergency Response

Title III – Indoor Air Radon Abatement

Title IV – Lead-Based Paint Exposure

Since the enactment of TSCA, EPA has screened more than 70,000 new toxic chemicals before they were introduced into use.

Relevance to IHS Operations & Activities

Title I of TSCA is focused on the manufacturers (importers), processors, distributors, and users of chemical substances. Most of these entities fall under SIC Codes 20-39 (Manufacturing) and will likely not include IHS facilities.

Titles II, III, and IV will likely affect IHS activities and operations with regard to asbestos, radon, and lead, respectively. Depending on the age of construction, many IHS facilities may have asbestos-containing materials, PCB-containing light fixtures, switches, capacitors, transformers, and/or lead-based paint. In addition, facilities in high radon areas may need retrofitting to dissipate any radon accumulations in buildings. The law regulates how these substances are managed, abated, and disposed of.

IHS Activities Potentially Regulated by TSCA

- Testing for, encapsulating, or removing lead-based paint
- Performing asbestos sampling and analysis, abatement, or management-in-place
- Properly managing buildings that may have high radon levels
- Properly handling and disposing of equipment containing PCBs and/or PCB remediation wastes

Penalties and Consequences of Non-Compliance

Under TSCA, **civil penalties for noncompliance can be enforced by EPA up to \$27,500 per day and can include recovery of any economic benefit of non-compliance.** Criminal sanctions for knowing or willful violations can be up to \$27,500 per day and up to one year of imprisonment.

Compliance Approaches for IHS Facilities

Compliance Awareness Guidelines for asbestos, lead, PCB, and radon in IHS facilities are provided in the ***Guidance Document for Managing Hazardous***

Materials in IHS Buildings. This document provides an overview and checklist for each of these materials as they are affected by building operations, renovation and construction, demolition, and building transfer. Brief summaries for each of these materials are provided below. For detailed information, consult the **Guidance Document**.

Asbestos:

- Conduct complete asbestos surveys of each building
- Develop Asbestos Operations and Management Plans for managing asbestos in occupied buildings
- Abate asbestos based on risk to building occupants and users

Lead:

- Conduct lead-based paint inspections for buildings constructed prior to 1978
- Conduct lead-based paint risk assessments in target housing (pre-1978) and child-occupied facilities
- Conduct proper abatement of significantly deteriorated and/or lead-based paint hazards in target housing, child-occupied facilities, and areas frequented by children (e.g., waiting rooms)

PCBs:

- Identify all PCB transformers (greater than 500 parts per million or ppm), PCB-contaminated transformers (between 50 and 499 ppm), and PCB-containing capacitors
- Report PCB spills greater than one pound (0.454 kg) to the National Response Center (800-424-8802)
- Containerize any leaking ballasts and clean associated spills immediately (if the PBC status of the ballasts is unknown, the regulation requires that

you treat these ballasts as “PBC-containing”

- Properly dispose of any PCB wastes within one year of collection

Radon:

- Conduct radon monitoring in facilities in known high radon areas; if necessary, reduce radon levels through design and engineering controls

Information Resources

TSCA Hotline
(202) 554-1404

Department of Energy Guidance for TSCA
<http://www.eh.doe.gov/oepa/laws/tsca.html>

EPA TSCA Enforcement Home Page
<http://www.epa.gov/compliance/civil/tsca/index.html>

What is the TSCA Chemical Substance Inventory?
<http://www.epa.gov/opptintr/newchemicals/publications/inventory.htm>

TSCA – US Code
<http://www.access.gpo.gov/uscode/title15/chapter53.html>

EPA’s Home Page for PCBs
<http://www.epa.gov/opptintr/pcb/>

EPA’s Home Page for Lead
<http://www.epa.gov/opptintr/lead/index.html>

EPA’s Home Page for Asbestos
<http://www.epa.gov/opptintr/asbestos/index.html>

Toxic Substances Control Act Awareness Checklist

- DO:** Identify all asbestos-containing materials at your facility through a comprehensive survey.
- DO:** Develop an Asbestos Operations and Management Plan that details roles and responsibilities for managing asbestos in your facilities.
- DO:** Perform asbestos abatements of damaged asbestos-containing materials, based on risk to building occupants and users.
- DO:** Ensure asbestos abatement is performed by licensed contractors.
- DO:** Conduct-lead based paint risk assessment of residential and child-occupied housing constructed prior to 1978.
- DO:** Perform abatement of lead-based paint hazards in residential and child-occupied housing constructed prior to 1978.
- DO:** Survey electrical equipment (transformers, capacitors) to determine if they contain PCBs.
- DO:** Manage all discarded PCB-containing electrical equipment as “PCB wastes,” including the use of proper transporters and disposal facilities.
- DO:** Report all releases of PCBs greater than one pound (0.45 kg) to the National Response Center at 800-424-8802.
- DO:** Determine whether facilities are located in high radon areas and conduct radon monitoring if they are.
- DO:** Mitigate high radon levels in IHS facilities.

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Underground Storage Tanks (RCRA Subtitle I)

Overview of the Regulation

In 1984, Congress responded to the increasing threat to groundwater posed by leaking underground storage tanks (USTs) by adding Subtitle I to the Resource Conservation and Recovery Act (RCRA). Subsequent amendments were added in 1985 and 1986 to develop a comprehensive regulatory program for USTs storing petroleum or certain hazardous substances.

Under RCRA Subtitle I, an underground storage tank system (UST) is a tank system, storing hazardous materials or petroleum hydrocarbons, that has at least 10 percent of its combined volume underground (including lines).

The Federal UST program includes:

- Leak detection, reporting and cleanup requirements
- Upgrade and new tank design requirements
- Financial assurance measures

Relevance to IHS Operations & Activities

IHS facilities may have USTs on site to store petroleum products, either for vehicles or emergency power generation. Tanks used solely for heating or boilers are exempt from these regulations; however, environmental liability can still occur from releases from and mismanagement of these types of tanks.

The greatest potential hazard from a leaking UST is that petroleum or other hazardous substances can travel through soil and contaminate groundwater. A leaking UST also has the potential for fire and explosion. Proper installation, maintenance, and monitoring will help prevent these problems from occurring at IHS properties.

Penalties and Consequences of Non-Compliance

Section 9007(a) requires Federal agencies to comply with all Federal, state, and local UST regulations. **For administrative enforcement actions, EPA or authorized states can impose a civil penalty of up to \$10,000 per tank for each day of noncompliance. If the owner/operator violates an administrative order, penalties can be up to \$25,000 per day of continued noncompliance.** Because many states have established, and enforce, their own UST requirements, additional liabilities can be imposed.

Compliance Approaches for IHS Facilities

Compliance guidelines for underground storage tanks at IHS facilities are provided in the ***Guidance Document for Managing Hazardous Materials in IHS Buildings***. This document provides a comprehensive overview as well as best management practices and regulatory requirements for UST systems. A summary of this information is provided below; for detailed information consult the ***Guidance Document***.

- Register any regulated UST systems with the EPA or state regulatory authority (a comprehensive list of implementing agencies can be found at <http://www.epa.gov/swerust1/states/index.htm>)
- Provide protection from leaks through corrosion protection, overfill protection, and catchment basins, following industry practices for tank filling
- Provide leak detection by at least one of the following methods:
 - secondary containment and interstitial monitoring
 - automatic tank gauging systems
 - vapor monitoring

Underground Storage Tanks

- statistical inventory reconciliation
- manual tank gauging [only for tanks less than 2,000 gallons (7,571 liters)]
- tank tightness testing and inventory control
- other methods approved by state regulatory agency

Note: UST piping must also have leak detection systems.

- Have the ability to clean up releases.
- For out-of-service USTs, continue to monitor these systems, permanently close-in-place, or remove the system from the ground.

Notify EPA and/or the state agency at least 30 days prior to UST system closure and removal and use only certified personnel to perform the work. Many states now have certification programs for UST removal contractors, as well as consultants.

If, during the removal action, a leak is detected and /or petroleum hydrocarbons are identified in the soil and/or groundwater, notify the state agency and/or the EPA and the National Response Center, depending on the amount detected. **Petroleum releases greater than 25 gallons (95 liters) to soil and any petroleum release to surface water that creates a “visible sheen” must be reported within 24 hours.**

Financial responsibility for assessing and cleaning up a Leaking Underground Storage Tank (LUST) site is the responsibility of the facility owner/operator.

Most Subtitle I implementing states will have a well-established sequence of events to follow at the time a release is detected from an UST system. These events can include:

- A Site Assessment to determine the nature and extent of petroleum hydrocarbon contamination to soil, groundwater, and surface water
- A Remedial Action Plan that proposes cleanup strategies that will meet or exceed established soil and groundwater cleanup standards for petroleum constituents
- A Risk Assessment that justifies modification to cleanup standards and/or alternative cleanup strategies
- A Site Closure Report that details all remedial activities, as well as ongoing site monitoring actions.
- Periodic groundwater monitoring data submitted to the agency (if required)

Information Resources

An overview of the Federal Underground Storage Tank Program

<http://www.epa.gov/swrust1/overview.htm>

EPA website providing resources for cleaning up UST spills

<http://www.epa.gov/swrust1/cat/index.htm>

Musts for USTs: A User-Friendly Summary of Federal Regulations for Underground Storage Tank Systems

<http://www.epa.gov/swrust1/pubs/musts.htm>

Underground Storage Tank Awareness Checklist

- DO:** Read about specific state requirements for facility tanks and, if applicable, register tanks with the state agency or EPA.
- DO:** Ensure tanks meet latest standards for new tanks or are retrofitted to meet regulations.
- DO:** Ensure tanks have corrosion and overfill protection.
- DO:** Ensure leak protection methods work properly.
- DO:** Notify the regulatory authority(ies) within 24 hours when a leak is detected or a spill occurs.
- DO:** Identify tank spill remediation contractors ahead of time to call in an emergency.
- DO NOT:** Allow untrained employees to respond to a spill.
- DO NOT:** Use non-state certified personnel for UST removals and site sampling.

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Universal Waste (RCRA Subtitle C Part 273)

Overview of the Regulation

In 1995, EPA promulgated the Universal Waste regulations to promote the identification, proper management, and recycling of certain types of hazardous wastes that were historically unregulated and were being disposed of in municipal solid waste landfills. These “universal wastes” were:

- Being generated in large volumes in a wide variety of settings;
- Subject to a wide range of management practices; and
- Cumulatively, represented significant sources of contamination for landfills.

Universal waste currently covered under the Federal regulation (40 CFR Part 273) includes batteries, pesticides, lamps, and mercury-containing equipment. States have the ability to add additional waste streams to their universal waste management programs (for instance, California also regulates cathode ray tubes and consumer electronic devices as universal waste).

Relevance to IHS Operations & Activities

Because the universal waste regulations are closely modeled after the Federal hazardous waste regulations, they contain requirements for such activities as storage, labeling, proper shipping and disposal, and employee awareness training. However, many of these requirements were intentionally designed to be less burdensome than the hazardous waste regulations.

As with the hazardous waste regulations, the first criterion for universal waste management is whether the material is considered a “waste” (materials that still have value as products and/or are still being used are not considered “wastes”). Items

that fall under the four general categories of universal waste and may be present at IHS facilities include the following:

Batteries:

- Any electrochemical cell which is designed to receive, store, and deliver electric energy
- Unbroken batteries from which the electrolyte has been removed
- Lead-acid batteries *not* managed under 40 CFR Part 266

Pesticides:

- Unused pesticides banned from use, damaged by temperature extremes, or no longer necessary due to crop changes

Lamps:

- Fluorescent
- High intensity discharge
- Neon
- Mercury vapor
- High-pressure sodium
- Metal halide

Mercury-Containing Equipment:

- Thermometers
- Manometers
- Barometers
- Relay switches
- Mercury regulators, meters, pressure gauges
- Sprinkler system contacts

Once universal waste has been identified at the facility, an estimate should be made of the total amount of universal waste present. The following two types of **universal waste handlers** are established by the regulations:

SQHUW (Small Quantity Handlers of Universal Waste) – facilities that accumulate less than 5,000 kilograms of all universal waste at any one time

LGHUW (Large Quantity Handlers of Universal Waste) – facilities that accumulate more than 5,000 kilograms of all universal waste at any one time.

Most IHS facilities will likely qualify as Small Quantity Handlers.

It is worth noting that businesses producing less than 100 kilograms of universal waste per month have the option of managing their universal waste under the universal waste regulations or as a Conditionally Exempt Small Quantity Generator [(CESQG; see 40 CFR 261.5)].

Penalties and Consequences of Non-Compliance

As universal waste management is linked to RCRA, the penalties and consequences for non-compliance are the same. **Any person or facility that violates a RCRA hazardous waste requirement is liable for a civil penalty of up to \$25,000 for each day of noncompliance.**

RCRA also allows the imposition of criminal penalties against persons who knowingly commit certain violations. Conviction can result in criminal fines of up to \$50,000 for each day of violation, two years imprisonment, or both.

Compliance Approaches for IHS Facilities

As indicated above, most IHS facilities will likely fall under the SQHUW designation, based on stored quantities of universal waste at any one time. Regulatory requirements for this designation are as follows:

- A one-year storage period for accumulated universal wastes
- Use of appropriate containers for storage of waste lamps

- Labeling of universal waste containers (e.g., “Universal Waste – Lamps” or “Waste Lamps” or “Used Lamps”)
- Employee training on basic handling and emergency information
- Use of permitted universal waste transporters and destination facilities (recycling, treatment or disposal facilities)

Although the use of shipping manifests is not required for SQHUW, it is strongly recommended that each IHS facility document, through the use of a manifest or other tracking form, the transporter and destination facilities for its universal waste. In addition, the transporter and/or destination facility may also require the use of a manifest for their documentation purposes.

With regard to disposal options, many universal wastes (or their components) are currently recycled at local and regional facilities. As with waste disposal contractors, however, it is strongly recommended that IHS personnel research the current regulatory status (e.g., Superfund site listing) of any destination facility utilized by IHS for universal waste.

Information Resources

EPA’s Home Page for Universal Waste Regulations

<http://www.epa.gov/epaoswer/hazwaste/id/univwast/index.htm>

Universal Waste Resources (fact sheets, lists of recyclers for various universal wastes, etc.)

<http://www.epa.gov/epaoswer/hazwaste/id/univwast/resrcs.htm>

EPA’s Training Module for Universal Waste
<http://www.epa.gov/epaoswer/hotline/training/uwast05.pdf>

Universal Waste Awareness Checklist

- DO:** Identify and count all universal waste present at your facility. This inventory should include waste batteries, waste lamps, waste pesticides, and waste mercury-containing equipment.
- DO:** Identify your universal waste handler category based on the above inventory. Small quantity handlers have less than 5,000 kilograms of universal waste at a facility at any given time; large quantity handlers have over 5,000 kilograms.
- DO:** Label all universal waste containers with the appropriate verbiage (e.g., “Universal Waste – Batteries” or Waste Batteries” or “Used Batteries”).
- DO:** Develop, conduct, and document employee training on the basic handling of universal waste and emergency procedures.
- DO:** Use only permitted universal waste transporters and destination facilities (e.g., recyclers, disposal sites) for your universal waste.
- DO NOT:** Store accumulated universal waste for periods of longer than one year.
- DO NOT:** Dispose of any universal waste into solid waste dumpsters located at your facility.

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Overview of OSHA and Its Regulations

The Occupational Safety and Health Administration, or OSHA, is an administrative branch of the U.S. Department of Labor that was founded in 1971 after passage of the Occupational Safety and Health Act of 1970. The mission of OSHA is to prevent work-related injuries, illnesses, and deaths. Since its inception, OSHA has helped to cut workplace fatalities by more than 60 percent and occupational injury and illness rates by 40 percent.

Section 19 of the Act contains special provisions to assure safe and healthful working conditions for Federal employees. Under this section, it is the responsibility of the head of each Federal agency to establish and maintain an effective and comprehensive occupational safety and health program. In addition, Executive Order 12196 (Occupational Safety and Health Programs for Federal Employees) prescribes additional responsibilities for the heads of agencies.

Relevance and Responsibilities for IHS Operations and Activities

Employers are required to provide a safe workplace; specifically, a workplace free from hazards that are likely to cause death or serious physical harm to employees. This includes the employees of all Federal agencies. Federal agencies are required to take certain steps to protect workers, and workers are required to take certain actions to protect themselves. In addition, Federal employees are entitled to certain rights including permission to:

- Participate in their agency's safety and health program and related activities on official time.
- Access safety and health information, including information on hazardous substances.

- Comment on proposed agency standards that differ from OSHA standards.
- Obtain copies of medical and exposure records.
- Report unsafe or unhealthful working conditions to state or Federal OSHA officials.
- Request OSHA officials inspect unsafe or unhealthful working conditions.

Although the Director of IHS needs to establish an effective agency-wide occupational health and safety program, the IHS operational responsibility for ensuring compliance with safety regulations for employees, as well as patients and the general public, rests primarily with facility and service unit Chief Executive Officers (CEOs). The role of IHS staff in Headquarters and Area Offices focuses more on such areas as development of policies and procedures, consultation and training, and program review and data management.

Consistent facility-level safety compliance depends heavily on clearly identifying an individual at each facility who is responsible for coordinating the implementation of safety programs. **The CEO needs to ensure that responsibilities are established and that the appointment is in place.** This individual's efforts need to be strongly supported by an active local safety committee. The involvement and support of the CEO to ensure attention to an integrated program of patient safety and occupational safety should also go a long way toward addressing safety requirements of the Joint Commission on Accreditation of Health Care Organizations.

Penalties and Consequences of Non-Compliance

Federal OSHA has jurisdiction over Federal facilities and can conduct

unannounced inspections as well as issue citations if facilities are found to be in violation of OSHA standards.

However, fines and penalties will not be assessed for these violations. It is worth noting, though, that all *contractors* working on Federal facilities are subject to OSHA regulations and may receive citations, as well as penalties, for non-compliance.

Compliance Approaches for IHS Facilities

At a minimum, IHS CEOs and managers need to:

- Be familiar and comply with OSHA regulations
- Have a written safety/training program
- Appoint a person or persons responsible for facility safety and health
- Identify and reduce workplace hazards
- Keep injury and illness records
- Provide ongoing safety training
- Verify that training was understood
- Provide personal safety equipment
- Perform a self-inspection of IHS facilities annually

Each IHS facility needs to post in a prominent location a poster informing employees of the OSH Act, Executive Order 12196, and the agency safety and health program under 29 CFR Part 1960.

OSHA Inspections

OSHA may conduct workplace inspections to enforce its standards. Inspections may be unannounced and occur at any time. OSHA has the right to inspect any part of your building and five years of logbooks, records, and written safety plans. If violations are found, fines, and civil and/or criminal penalties may be imposed.

An IHS employee may be selected to join the OSHA inspections. OSHA may ask that employee various questions such as: Have you had safety training classes? Where is

your MSDS book? In what part of your job do you not feel safe? Have you been trained for accidents/emergencies?

Areas of IHS Facilities Program Operations Which May Be Covered By The Act

Each operational unit within an IHS facility will have areas of safety responsibility that require attention. For example, some of the safety areas that facility managers are responsible for (either all or in part) are:

- Hazard Communication Program
- Fire Prevention and Fire Plans
- Emergency Exit Routes
- Ladder Safety
- Walking Surface Safety
- First Aid Provisions
- Office Safety, Housekeeping, Ergonomics
- Lockout and Tagout of Hazardous Energy
- Occupational Noise Exposure
- Workplace Violence
- Confined Space Entry
- Personal Protective Equipment
- Respiratory Protection
- Blood Borne Pathogen Standard
- Asbestos
- Lead
- Ethylene Oxide

Other departments (e.g., nursing or laboratory) may have some of the same items as on the list above, but also others representing a different set of safety concerns that require attention and compliance.

Finally, one additional note regarding OSHA requirements and facility program operations; frequently O&M projects are of such a magnitude that they will fall under the category of “construction.” Anytime that construction occurs on IHS property or at IHS facilities, OSHA construction standards apply. Construction safety activities applicable to IHS may include, but are not limited to, the following: general

housekeeping; ladder safety; material handling; personal protective equipment; fall protection; and electrical safety.

OSHA Information Resources

OSHA's Home Page
www.OSHA.gov

Home Page for the Office of Federal
Agency Programs
www.osha.gov/dep/fap/index.html

Frequently Asked Questions about OSHA
www.osha.gov/as/opa/osh-faq.html

Index of Fact Sheets for Various OSHA
Topics
http://www.osha.gov/OshDoc/toc_fact.html

For additional information, refer to Chapter
9 of the Indian Health Service Manual

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APPENDIX A
GLOSSARY OF ACRONYMS

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Glossary of Acronyms

AAI	All Appropriate Inquiry	FFCA	Federal Facilities Compliance Act
AST	Aboveground Storage Tank	FIFRA	Federal Insecticide Fungicide and Rodenticide Act
BA	Biological Assessment	FONSI	Finding of No Significant Impact
BE	Biological Evaluation	HMTA	Hazardous Materials Transportation Act
BO	Biological Opinion	HMTUSA	Hazardous Materials Transportation Uniform Safety Act
CAA	Clean Air Act	HSWA	Hazardous and Solid Waste Amendments
CERCLA	Comprehensive Environmental Response Compensation and Liability Act (also known as "Superfund")	LEPC	Local Emergency Planning Committee
CERFA	Community Environmental Response Facilitation Act	LQG	Large Quantity Generator
CEQ	Council on Environmental Quality	LQHUW	Large Quantity Handler of Universal Waste
CESQG	Conditionally Exempt Small Quantity Generator	LUST	Leaking Underground Storage Tank
CWA	Clean Water Act	MSDS	Material Safety Data Sheet
DEHS	Division of Environmental Health Services	NMFS	National Marine Fisheries Service
DOT	Department of Transportation	NOAA	National Oceanic and Atmospheric Administration
EA	Environmental Assessment	NPDES	National Pollutant Discharge Elimination System
EHS	Extremely Hazardous Substance	NPL	National Priorities List
EIS	Environmental Impact Statement	NEPA	National Environmental Policy Act
EMS	Environmental Management Systems	NESHAP	National Emissions Standards for Hazardous Air Pollutants
EPA	Environmental Protection Agency	NOV	Notice of Violation
EPCRA	Emergency Planning and Community Right to Know Act	NRC	National Response Center
ESA	Endangered Species Act		

Glossary of Acronyms

OPA	Oil Pollution Act	SPCC	Spill Prevention Control and Countermeasure
OSHA	Occupational Safety and Health Administration	SQG	Small Quantity Generator
PCB	Polychlorinated Biphenyl	SQHUUW	Small Quantity Handler of Universal Waste
PPA	Pollution Prevention Act	TAR	Tribal Authority Rule
PRP	Potentially Responsible Party	TCLP	Toxicity Characteristic Leaching Procedure
RCRA	Resource Conservation and Recovery Act	TIP	Tribal Implementation Plan
ROD	Record of Decision	TPQ	Threshold Planning Quantity
RQ	Reportable Quantity	TRI	Toxic Release Inventory
SARA	Superfund Amendments and Reauthorization Act	TSCA	Toxic Substances Control Act
SDWA	Safe Drinking Water Act	USFWS	U.S. Fish and Wildlife Service
SERC	State Emergency Response Commission	UST	Underground Storage Tank



INDIAN HEALTH SERVICE

ENVIRONMENTAL COMPLIANCE

AWARENESS GUIDE

ROCKVILLE, MARYLAND

DECEMBER 2007

