Environmental & Occupational Health Regulation

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Who Pays for Occupational Injuries?

- 1996: 5.8 Million non-fatal on-the job injuries
- 45% musculoskeletal, costing $258 billion
- Indirect costs were 4 - 10 times more
  - absenteeism
  - “presenteeism”
More Occupational Costs

- 439,000 illnesses such as asthma and skin diseases
- cost = >$1 billion
Preventive interventions are key

But how are effective interventions designed, developed and put into “the system?”

This generally requires legislative and policy changes at the federal and state levels
“THE LAW”

■ The Constitution of the United States and State Constitutions
  – Create branches of government
  – Establish powers and duties of these branches
  – Contracts between people and government
Legislatively enacted Laws are called STATUTES.

- Create a broad, constitutionally based provision for establishing some government mandate.
- Often create Administrative Agencies.
- Delegate certain powers to Administrative Agencies.
“THE LAW”

■ ADMINISTRATIVE AGENCIES
  – Make Rules and Regulations, based on their delegated authority
  – These too are LAWS
“THE LAW”

- Courts of Law
  - Interpret both Statutory and Regulatory Law
  - Their decisions are binding as LAW
  - Some judicial decisions may be appealed to a higher court
“THE LAW”

Branches of Government
- Legislative (makes laws)
- Judicial (interprets laws)
- Executive (enforces laws)
“THE LAW”

U.S. CONSTITUTION

LEGISLATIVE

STATUTES
e.g., EP Act or OSH Act

JUDICIAL

COURT CASES

EXECUTIVE

AGENCY
e.g., EPA or OSHA

REGULATIONS
“THE LAW”

- **U.S. Supreme Court**
  - Final arbiter concerning any federal laws or regulations

- **State Supreme Courts**
  - Final arbiter of exclusively State matters
  - In New York the highest state court is the Superior Court
### Federal vs. State

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<th>State Courts</th>
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<tbody>
<tr>
<td>US Supreme Court</td>
<td>State Supreme Court</td>
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<tr>
<td>US Court of Appeals</td>
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<td>US District Court</td>
<td>State Circuit Court</td>
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<td>Federal Bankruptcy Court</td>
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<td>Federal Tax Court</td>
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- Municipal Courts
- State Circuit Court
Common Law

- From England---hundreds of years of courtroom law
- Most related to contractual relationships, personal injury
- Most relevant to environmental and occupational law is TORT = personal injury
Legal Issues and Processes

- Torts
- Contracts
- Civil Actions
- Criminal Actions
Torts

- Nuisance
- Trespass
- Assault
- Battery
- Negligence
- Strict Liability
- Proximate Cause
Contracts

- Good Faith
- Meeting of the Minds
- Breach
- Remedies
Civil Actions vs. Criminal Actions

- Person vs. Person (or Corporation)
- State vs. Person (or Corporation)
- Courts
- Standards
- Remedies
  - Remedy of Equity--Injunction
  - Remedy of Law--Damages
Legal Process

- Complaint
- Answer
- Amendments
- Discovery
  - Interrogatories
  - Depositions
  - Production/Exams
- Motions
- Default Judgement
- Summary Judgement
Legal Process (cont’d.)

- Trial
- Settlement
- Verdict and Judgement
- Appeal
Environmental and Occupational Health Laws

- Resource Conservation and Recovery Act (RCRA)
- Clean Air Act (CAA)
- Clean Water Act (CWA)
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
Environmental and Occupational Health Laws

- Emergency Planning and Community Right-to-Know Act (EPCRA)
- Toxic Substances Control Act (TSCA)
- Occupational Safety and Health Act (OSHA)
Resource Conservation and Recovery Act (RCRA)

- Enacted in 1976, amended in 1984
- Declares a national policy to reduce or avoid Hazardous Waste production
- Prohibits open dumping
- Land disposal is discouraged
RCRA (cont’d.)

- Concept of “Cradle to grave”
- Applies to facilities which generate and/or manage Hazardous Wastes
- TSD = Transportation, Storage, and/or Disposal Facilities
RCRA (cont’d.)

- **Subtitle C**
  - Establishes the National Hazardous Waste Program
  - Defines “Hazardous Waste”

- **RCRA Performance Standards**
  - Technology requirements
  - Groundwater monitoring
  - No land disposal for untreated hazardous wastes
Clean Air Act (CAA)

- Originally the 1967 Air Quality Act
- Although Federally implemented, the States are responsible for administration
Clean Air Act (cont’d.)

- Programs of CAA fall into 3 categories
  - Air quality regulations through limits contained in SIPs
  - New sources--more stringent regulation
  - Specific pollution problems
Clean Air Act (cont’d.)

“NAAQS”--National Ambient Air Quality Standards
- Established 6 Pollutants: \( \text{SO}_2, \text{NO}_2, \text{particulates}, \text{CO}, \text{O}_3, \text{and Pb} \)
- Must be reviewed every five years
Clean Water Act (CWA)

- Federal Water Pollution control Act of 1972 (FWPCA)
- 1977 Amendments
  - Nationwide effluent standards set for various industries
  - Established the National Pollutant Discharge Elimination Systems Program (NPDES)
Clean Water Act

- **Goals**
  - Elimination of discharge of pollutants into surface waters
  - Achieve water quality suitable to wildlife and recreational uses

- **Important Terms**
  - Pollutant
  - Addition
  - Point Source
  - Navigable Waters
Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

- *aka “Superfund”* enacted in 1980
- Addresses inactive Hazardous Waste sites
- Complements RCRA
- Superfund Amendments and Reauthorization Act added in 1986 (SARA)
CERCLA (cont’d.)

- Hazardous Substances Superfund
  - $$ comes from taxes on petroleum and chemical industries and corporations
  - Pays for cleanup and enforcement by EPA as well as cleanup by private parties
CERCLA (cont’d.)

- **Definition of Hazardous Substance under CERCLA**
  - “Hazardous Wastes” under RCRA
  - “Hazardous Substances” of CWA
  - “Toxic Pollutants” of CWA
  - “Hazardous Pollutants of CAA
  - Or substances which may present “substantial danger to public health or the environment”
Emergency Planning and Community Right-to-Know Act (EPCRA)

- Title III of Superfund Amendments and Reauthorization Act (SARA) of 1986
- States responsible for developing preparedness programs and informing communities of local hazards
4 Components

- Emergency Planning
- Emergency Release Notification
- Community Right to Know
- Toxic Chemical Release Inventory Reporting
Toxic Substances Control Act (TSCA)

- Enacted in 1976
- Consists of original Title I (control of Toxic Substances) and three amendments
- Amendments involve control of asbestos, radon and lead
TSCA (cont’d.)

- Chemical manufacturers must provide data concerning health and environmental effects
- EPA granted regulatory authority
- Unlike other statues, TSCA seeks to regulate substances before commercial release
Occupational Safety and Health Act (OSH Act) of 1970

- Created the Occupational Safety and Health Administration (OSHA)
  - Serves as the regulatory and enforcement entity for workplace safety

- Created the National Institute of Occupational Safety and Health (NIOSH)
  - Serves as the research entity for workplace safety
OSHA

- Located within the U.S. Department of Labor
- Must follow Administrative Procedures Act (APA) in developing standards and enforcing regulations
OSHA

- “Employer” is anyone engaged in “interstate commerce”
- Exempts residential/household employees
- Minimum number of employees = 1
Employers are required to furnish a place of employment “FREE FROM RECOGNIZED HAZARDS, WHICH CAUSE OR ARE LIKELY TO CAUSE DEATH OR SERIOUS PHYSICAL HARM”

This is the “GENERAL DUTY CLAUSE” of the OSH Act
OSHA

- The Administrative Agency is allowed to adopt standards, require conditions, or require the adoption of practices, means and methods, operations or processes that are reasonably necessary to provide for a safe work site
OSHA

- **General Industry Standards**
  - Apply to nearly all employers
  - EXCEPT airlines, mines, government contractors, motor carriers and railroads
    » Covered by other specific federal laws

- **Industry Specific Standards**
  - For construction, longshoring, shipbuilding, pulp and paper mills, and agriculture due to special safety problems
OSHA Standards

- **Personal Protective Equipment**
  - hardhats, respirators, safety shoes, safety belts
- **Safety Training**
- **Physical Hazards**
  - Walking surfaces, means of escape, electrical systems, machine protection, hazardous materials, fire protection
- **Environmental Hazards**
  - Ventilation, noise, radiation, sanitation, air contaminants, toxic & hazardous substances
- **Medical and First Aid**
OSHA

- Record Keeping Requirement
  - Post notices informing employees of rights and obligations under the Act
  - Maintain records and reports on work related deaths, injuries and illnesses
  - For sites with 11 or more employees, a log and summary of occupational illnesses and injuries must be kept
The Florida Experience in Workers’ Compensation

1993 Law
- Mandates dispute resolution
- Creates incentives for safety and drug free workplace programs
- Fraud reduction measures
- Co-pay for medical services received after MMI
- Prohibits provider self-referral
- Requires physician certification
Florida Workers’ Compensation (cont’d.)

- 1993 Workers’ Compensation Law
  - Requires that all care for injured workers be provided through state certified managed care organizations
  - Requires that clinical protocols be developed for injury treatment
Differences in health care costs for a workers’ compensation insurer and a health insurer in California

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<th>Injury</th>
<th>W/C</th>
<th>H/I</th>
<th>Ratio</th>
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<tr>
<td>Backs</td>
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<tr>
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