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

Occupational Health Cost Management

- 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

"THE LAW"

- Legislatively enacted Laws are 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**

- **STATUTES**
  - e.g., EP Act or OSH Act
- **COURT CASES**
- **AGENCY**
  - e.g., EPA or OSHA
- **REGULATIONS**

Federal vs. State

- **US Supreme Court**
- **US Court of Appeals**
- **US District Court**
- **Federal Bankruptcy Court**
- **Federal Tax Court**
- **State Supreme Court**
- **State Court of Appeals**
- **State Circuit Court**
- **Municipal Courts**
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: SO₂, NO₂, particulates, CO, O₃, 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

EPCRA

- 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

OSHA

- 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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