2021 Handbook of Florida Water Regulation: Hazardous Waste Management[1]

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Preface

This handbook is designed to provide an accurate, current, and authoritative summary of the principal federal and state (Florida) laws that directly or indirectly relate to agriculture. This handbook provides a basic overview of the many rights and responsibilities that farmers and farmland owners have under both federal and state laws as well as the appropriate contact information to obtain more detailed information. However, the reader should be aware that because the laws, administrative rulings, and court decisions on which this handbook is based are subject to constant revision, portions of this publication could become outdated at any time. Several details of cited laws are also left out due to space limitations. This handbook is provided as an educational text for those interested in water use and water resource issues in Florida.

This handbook is distributed with the understanding that the authors are not engaged in rendering legal or other professional advice, and the information contained herein should not be regarded as a substitute for professional advice. This handbook is not all inclusive in providing information to achieve compliance with the federal and state laws and regulations governing water protection. For these reasons, the use of these materials by any person constitutes an agreement to hold harmless the authors, the UF/IFAS Center for Agricultural and Natural Resource Law, and UF/IFAS Extension for any liability claims, damages, or expenses that may be incurred by any person as a result of reference to or reliance on the information contained in this handbook. Note: UF/IFAS is the acronym for University of Florida, Institute of Food and Agricultural Sciences.

HWM Overview

Broadly stated, a hazardous waste is anything that can result in a serious threat to public health or the environment if mismanaged. As part of the federal hazardous waste management, the United States Environmental Protection Agency (EPA) has compiled a list of specific chemicals and materials that are hazardous and has also designated materials with certain characteristics (such as toxicity, flammability, combustibility, corrosiveness and reactiveness) as hazardous.

Certain materials have been specifically designated as *not* hazardous, including

- Household waste (garbage, trash, septic tank wastes, etc.)
- Solid wastes that are generated by the growing or harvesting of agricultural crops or by the raising of animals (including manure) that are returned to the soil as fertilizer

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- Slight residues in otherwise empty containers (generally not subject to regulation as hazardous waste) (40 Code of Federal Regulations, Section 261.7)

Who regulates hazardous waste?

Both the state and federal authorities have power to enforce essentially the same rules related to hazardous waste management. However, the Resource Conservation and Recovery Act (RCRA) expressly states that the federal EPA is not required to enforce its rules within the states that have passed their own EPA-approved hazardous waste management programs that are at least as strict as the EPA regulations on hazardous waste. The Florida Department of Environmental Protection (FDEP) regulates hazardous wastes in Florida through its own EPA-approved program.

Note that hazardous waste management can still fall into the realm of federal EPA regulation for violations of the the federal Clean Water Act (CWA), which prohibits all discharges of hazardous materials into navigable waters (FE582), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which provides a comprehensive approach to financing and executing hazardous waste spill cleanups (FE584).

For more information on hazardous waste regulation in Florida, visit the FDEP website (https://floridadep.gov/waste/permitting-compliance-assistance/content/hazardous-waste-management-main-page).

Who is responsible for managing hazardous waste?

The five parties responsible for managing hazardous waste are as follows:

1. Generators of hazardous substances

2. Transporters of hazardous substances

3. Owners of treatment, storage, and disposal facilities

4. Operators of treatment, storage, and disposal facilities

5. Arrangers (arrange hazardous substance transportation)

To ensure compliance with all statutes and rules, it is essential to determine whether an individual fits into one or more of these five categories. Note that these are the same five categories of potentially liable parties for cleanup costs under CERCLA (see FE584).

Who are generators?

A generator is anyone who produces a hazardous waste. EPA requires that all generators must obtain an identification number before they can treat, store, dispose, or transport their waste. Furthermore, EPA sets standards for pre-transportation packaging and labeling of waste and provides for an elaborate manifest recordkeeping system that allows the government to account for the waste from the point of its creation to its final disposal.

Generators may accumulate no more than 55 gallons of hazardous waste and 1 quart of "acutely" hazardous waste onsite for up to 90 days without a permit (40 CFR 262.15(a)). After that, unless EPA grants a 30-day extension for unforeseen delays in removing the waste, an owner/operator permit is required. Generators must follow all applicable laws dealing with storage and labeling of hazardous waste and must take all required steps to prevent a spill of the hazardous waste and contamination.

Generators of more than 100 kilograms (220 pounds) but less than 1,000 kilograms (2,200 pounds) of hazardous waste in a calendar month may accumulate hazardous waste onsite for up to 180 days without a permit. However, the generator must comply with numerous requirements set forth by EPA (e.g., the quantity of waste onsite must never exceed 6,000 kilograms or 13,227.74 pounds).

In addition to the EPA requirements, Florida law requires any generator who produces more than 1,000 kilograms of hazardous waste in a year to file a separate report with FDEP at the end of that year.

Federal law allows for certain exemptions to the permitting requirements. The two most important are small quantity generators and farm pesticide exemptions.

1. **Small Quantity Generators:** Generators who produce more than 100 kilograms (220 pounds) but less than 1,000 kilograms (2,200 pounds) of hazardous waste in a calendar month may be entitled to status as "small quantity generators" (SQG). SQGs are entitled under the federal rules to "conditional exemptions" such as exemptions from certain land-disposal restrictions, the right to accumulate waste onsite for longer periods of time without a permit, and greater disposal options. Under Florida law, FDEP should notify all SQGs, via the United States Postal Service, of their legal responsibilities and disposal alternatives. In response, each SQG is required, within 30 days of receiving the notification, to disclose to FDEP all waste management practices, including the

types and quantities of waste handled. Failure to disclose this information can lead to fines of up to $150 per day for not more than 100 days.

2. **Farm Pesticide Exemptions:** Specifically exempt from the requirements governing generators are farmers who dispose of their own pesticides. They must, however, comply with the disposal instructions on the pesticide label and must triple-rinse each container.

Who are transporters?

A transporter is anyone who transports a hazardous waste. Like generators, transporters must obtain an identification number from the EPA and maintain detailed records of all wastes they handle. Transporters are not required to obtain an owner/operator permit so long as they do not store waste more than 10 days.

In the event of a spill, transporters must take all necessary action, including notifying crisis management authorities, to protect public health and the environment and to clean up the spill. Florida rules impose financial responsibility on transporters of at least $1 million per accident and require that all transporters must be bonded and insured.

Transporters should note that they may also be subject to regulation by the United States Secretary of Transportation under the Hazardous Materials Transportation Act (HMTA). HMTA governs vehicular activities such as driving, parking, and refueling vehicles that are hauling in commerce any poisonous, flammable, combustible, corrosive, or other materials that "may pose an unreasonable risk to health and safety or property" (US Department of Labor n.d.).

Who are owners/operators?

Anyone involved in the treatment, storage, and/or disposal of hazardous waste must have a permit from FDEP and EPA. The only relevant exceptions to this rule are the limited onsite accumulations allowed to generators, farm pesticide exceptions, and facilities that completely re-use waste in some other production process. EPA has established extensive, detailed rules providing for the operation and security of such facilities. EPA also addresses personnel, safety, closure, and virtually every other aspect of maintaining a treatment, storage, or disposal facility.

On the state level, FDEP requires owners/operators to monitor and maintain the groundwater standards of their land and to report any changes to FDEP. Owners/operators must be bonded and insured against accidents. No waste may be treated, stored, or disposed of anywhere except at a licensed facility. Waste may never be dumped into a sewage system or septic tank. Florida is working to discontinue the disposal of hazardous wastes through landfills.

The Florida Statutes authorize and subsidize local governments to set up local hazardous waste collection centers and instruct FDEP to set up "toxic roundups" in community centers where generators can deliver small amounts of hazardous waste (less than 100 kilograms).

Who are arrangers?

Arrangers are defined broadly as anyone involved in arranging for the transportation of hazardous waste, such as a middleman who contacted the transporter to ship the hazardous waste, etc. This is a catch-all category that assigns liability to parties who may not fit under the previous categories yet were involved in the process of getting the hazardous waste transported.

What are the penalties under federal law?

Both civil and criminal penalties, including prison, are available under the Clean Water Act (FE582), the Resource Conservation and Recovery Act (FE583), and the Comprehensive Environmental Response, Compensation, and Liability Act (FE584). The least severe penalties accompany negligent violations. Knowing violations and intentional violations each carry significantly greater penalties.

Further information on hazardous waste regulation in Florida can be found in the Florida Agricultural Handbook of Solid and Hazardous Waste at http://edis.ifas.ufl.edu/topic_series_2008_solid_and_hazardous_waste

Sources

42 United States Code, Sections 6901 to 6987

42 United States Code, Sections 9601 to 9687

33 United States Code, Sections 1251 to 1387

40 Code of Federal Regulations, Sections 260 to 272

Chapter 403, Florida Statutes, Sections 403.702 to 403.7721

Title 62, Florida Administrative Code

US Department of Labor, https://www.osha.gov/SLTC/trucking_industry/transportinghazardousmaterials.html

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