

12.0 Private Sector, Federal, and State Roles and Responsibilities

12.1 Private Sector

Under the Oil Pollution Act of 1990 (OPA 90), the responsible party (RP) is the facility owner or operator involved in the incident. OPA-90 includes any motor vehicle, rolling stock or pipeline in their definition of facility.⁶⁰ RPs must directly provide hazardous materials response resources, environmental monitoring and protection, as well as remediation capabilities to remove the spilled product and return environment to pre-incident conditions. The RP may also be responsible for cost recovery of utilized public resources including equipment, labor, and materials costs.

The regulatory structure for crude oil and ethanol transportation by rail assigns the practical and legal responsibility for the safety of shipments to the private-sector shipping company. Industry safety standards set by the railroad companies themselves for rail transportation are sometimes more stringent than U.S. federal regulations.

In general, railroads are responsible for their equipment, tanks, tracks, lines, vehicles, personnel, and training, as well as inspection for compliance with hazardous material packaging and placarding.⁶¹ Regarding incident response, 49 CFR 130 (Oil Spill Prevention and Response Plans) states that railroads must maintain either a basic response plan or a comprehensive response plan, if each of the tank cars used holds more than 1,000 barrels of liquid petroleum or non-petroleum oil. Comprehensive plans are subject to FRA approval, must comply with the National Contingency Plan and relevant Area Contingency Plans (ACPs), and provide for training and exercise to address a worst-case spill or release. Basic plans require only identification of the manner of response, response personnel, and equipment that will be available, and contact information. The most frequently used tanks cars are DOT-111s and CPC-1232s (compliant) and each carry about 700 barrels apiece; therefore, they do not require a comprehensive plan.⁶²

Railroads frequently use unit trains to ship crude oil and ethanol by rail. Unit trains have consists of similar cars that are used to transport a single commodity (e.g. crude oil or ethanol), and are capable of transporting 70,000 barrels (or 2.94 million gallons) or more, per train. Given the broad use of unit trains, the NTSB has recommended lowering the volume threshold for comprehensive plans and covering more crude oil and ethanol unit-train shipments.

OPA-90 establishes that the owner or operator of a facility/vessel, from which oil is spilled, is liable for the cost associated with the containment and cleanup of the spill- including any damages that may have occurred. Even though the railroads do not own the cars, they maintain responsibility as operators while the rail cars are in transit. OPA-90 also requires that private companies test their plans and maintain the equipment necessary to respond to a spill. During a

⁶⁰ OPA-90. Retrieved from <http://uscode.house.gov/view.xhtml?path=/prelim@title33/chapter40&edition=prelim>. January 11, 2016.

⁶¹ American Association of Railroads, *United States Hazardous Materials Instructions for Rail*. January 4, 2011. Print.

⁶² Fritelli, John, Andrews, Anthony, Parfomak, Paul, Pirog, Robert, Ramseur, Jonathon, and Ratner, Michael, US Library of Congress, Congressional Research Service, *US Rail Transportation of Crude Oil: Background and Issues for Congress*, R43390, 2014, <https://www.fas.org/sgp/crs/misc/R43390.pdf> (accessed June 22, 2015).

three-year cycle, a facility must test its plan annually against the 15 preparedness components that are listed in the National Preparedness for Response Exercise Program, which was developed to meet the intent of Section 4202(a) of OPA-90.⁶³ Railroads may have contracts or agreements with private companies for the purpose of hazardous materials response, incident mitigation, and cleanup. These provisions must be detailed in their plans.

Railroad companies will be guided by their emergency response plans in an incident involving the transportation of crude oil and other hazardous materials, including ethanol. Emergency response plans should take into account the chemical properties of crude oil and ethanol, and the potential effects of accidental releases during transportation. The content of these plans will be familiar to agencies that have regulatory authority, at the federal and state levels; however, these plans are not always shared with local response and emergency management organizations. Lack of communication and coordination of respective response roles and capabilities across sectors creates gaps in response that may negatively impact safety of responders and the public.

To assist local first responders in response, the AAR has developed an “AskRail” smartphone application that allows trained hazardous materials first responders to query railcar contents at railroad accidents. The mobile application requires railroad-industry approved training before access is granted. Once approved, users will have real-time access to railcar contents on all North American Class I railroads. “AskRail” provides a simple way to determine whether a railcar is carrying hazardous material, while also providing essential information regarding the stability, volatility, or reactivity of products involved in a railroad accident.

As a courtesy to the RP, the Iowa DNR provides a listing of contractors, to help expedite spill response. The listed contractors have indicated to Iowa DNR that they are in compliance with OSHA regulations for emergency response personnel. Once hired by the RP, contractors are urged to communicate with Iowa DNR to ensure they are aware of site conditions, response timelines, and expectations for remediation. The contractor list provides the name, location, contact information, service area, response level, and general service limitations. Response levels are listed as:

- Level A – Requiring the greatest level of skin, respiratory, and eye protection.
- Level B – Requiring the highest respiratory protection but a lesser level of skin protection.
- Level C – Requiring lesser levels of respiratory and skin protection.
- Level D – Requiring little or no respiratory and skin protection.

12.2 Federal-State Government Relationship

Federal powers to promulgate and enforce crude oil transportation and security regulations are derived primarily from the Commerce Clause (Article 1, Section 8) of the U.S. Constitution. The Commerce Clause gives Congress the power to regulate commerce among the states, with tribes and with foreign nations. Federal regulations that address transportation, found in Title 49 of the CFR, are illustrations of this power. The Commerce Clause prohibits states from passing legislation that discriminates against or excessively burdens interstate commerce.

⁶³ Oil Pollution Act of 1990 33 US Code §1321; §4202 and §1321.

The Supremacy Clause (Article 6, Section 2) of the U.S. Constitution dictates that the laws of the United States are the supreme law of the land. This means that federal law takes precedence over state laws, and that federal law preempts, or invalidates, any state law that conflicts with the exercise of federal power. In many instances, Congress empowers federal regulatory agencies to set national minimum standards, but does not define such minimums as preempting state regulations that would impose more stringent standards. The U.S. Supreme Court typically prefers interpretations that avoid preempting state laws, especially those passed in an effort to improve current practices that threaten the environment and the general public.^{64,65}

When a federal agency determines that regulatory action is necessary and appropriate, it develops and publishes a proposed rule in the Federal Register, soliciting comments from the public.⁶⁶ All comments, including those from private companies that the proposed rule might affect, are taken into consideration and addressed before a regulatory action is finalized. On occasion, federal changes to standards and regulations fail to keep up with an industry's rapid growth. In these cases, states may face the need to pass laws or create regulations to protect public health and safety, a role traditionally considered reserved for the states and "the people" by the 10th Amendment of the US Constitution. In these cases, the state's actions could still be vulnerable to federal preemption if and when federal agencies exercise their regulatory authority on a matter under federal authority, such as interstate transportation.

12.2.1 Federal Roles and Responsibilities

Several federal agencies have jurisdiction or responsibilities over aspects of the crude oil/ethanol (under hazardous materials transportation) transportation industry. While some responsibilities are clearly defined and directly impact the industry, others are indirect and more subtle. The summaries below provide an overview of federal department responsibilities related to hazardous materials transportation safety and incident response preparedness.

U.S. Department of Homeland Security (USDHS)

Under a variety of statutes and Executive Orders, the USDHS has been given primary responsibility for assuring security of the nation's critical infrastructure. "Homeland Security Presidential Directive 7" (HSPD-7) identified 17 critical infrastructure and key resource (CI/KR) sectors, and designated Federal Government Sector-Specific Agencies (SSAs) for each of the sectors. One particular sector deals with the energy infrastructure, which is crucial in providing stable energy supplies for the nation. The petroleum segment is most pertinent to crude oil activities, as it entails the exploration, production, transportation, and refinement of crude oil.

The U.S. Department of Energy (USDOE), and other Federal, State, and local government agencies have been working with their security partners, i.e. public/ private utilities, through Energy Sector Coordinating Councils [for oil, natural gas, and electricity] to better secure CI/KR across the nation. The Oil and Natural Gas Sector Coordinating Council (ONG SCC) represents more than 98 percent of Oil and Natural Gas Sector owners and operators. This council, formed

⁶⁴ Cornell University School of Law, *Topic: Supremacy Clause, et al.*

https://www.law.cornell.edu/supct/cases/topics/tog_supremacy_clause.html (accessed June 22, 2015).

⁶⁵ Executive Office of the President, Office of Information and Regulatory Affairs, *Regulations and the Rulemaking Process*, 2015, <http://www.reginfo.gov/public/jsp/Utilities/faq.jsp> (accessed June 22, 2015).

⁶⁶ US Department of Homeland Security, Energy Sector-Specific Plan. *An Annex to the National Infrastructure Protection Plan*, 2010, Print.

by the Oil and Natural Gas trade associations, serves as a broad, industry-wide network to help coordinate ongoing industry initiatives, government partnerships, and responsibilities. The council selects a representative from the industry to serve as chair of the ONG SCC, and act as the liaison to USDHS.⁶⁷ USDHS collaborates and coordinates with oil and gas industry stakeholders in developing a more resilient sector, reducing vulnerabilities, and improving response for critical incidents occurring at refineries, along pipeline, etc.

In its Energy Sector-Specific Plan, USDHS states two major goals as it relates specifically to crude oil infrastructure:

- Assess security vulnerabilities at single-point assets, such as refineries, storage terminals, and other buildings, as well as networked features such as pipelines and cyber systems, and;
- Work toward secure cyber networks and Supervisory Control and Data Acquisition (SCADA) systems, which control equipment at refineries, in order to detect and respond to cyber-attacks.⁶⁸

Since 2004, the USDHS has maintained robust infrastructure protection field operations through the Protective Security Advisor (PSA) program.⁶⁹ PSAs are subject matter experts trained in critical infrastructure protection and vulnerability mitigation. USDHS regional directors are supervisory PSAs, and are responsible for the activities of eight or more PSAs and geospatial analysts, who ensure all critical infrastructure protection programs and services are delivered to state, local, territorial, and tribal stakeholders and private sector owners and operators. Since regional directors and PSAs are strategically located across the country, they are often the first personnel from USDHS to respond and deploy to federal emergencies and disasters. During an incident, they frequently work within state and local Emergency Operations Centers and at the Federal Emergency Management Agency (FEMA) Joint Field Office, where they:

- Advise the USDHS and other government and private sector representatives on interdependencies, cascading effects, and damage assessments concerning impacts on critical infrastructure.
- Help owners and operators, law enforcement personnel, and state and local officials prioritize and coordinate re-entry and recovery activities.

In addition to the energy sector, USDHS recognizes the transportation systems sector as another component of critical infrastructure. One of the main SSAs for the transportation sector is the Transportation Security Administration (TSA). While the TSA is most known for screening passengers at airports, this arm of the USDHS is also responsible for safeguarding surface transportation. Although not concerned with federal regulations on train speeds and tank car specifications, the TSA is technically responsible for ensuring that carried cargo is safe and will not pose any threats to public safety. USDHS, in collaboration with the U.S. Department of Transportation (USDOT), developed 24 Security Action Items (SAIs) after field reviews and

⁶⁷ U.S. Department of Homeland Security. (2011). *National Infrastructure Protection Plan: Energy Sector*. http://www.dhs.gov/xlibrary/assets/nipp_energy.pdf

⁶⁸ U.S. Department of Homeland Security. (2010). *Energy Sector-Specific Plan: An Annex to the National Infrastructure Protection Plan*. <http://www.dhs.gov/xlibrary/assets/nipp-ssp-energy-2010.pdf>

⁶⁹ U.S. Department of Homeland Security. (April 2015). *Protective Security Advisors*. <https://www.dhs.gov/protective-security-advisors>

vulnerability analysis of railroad operations. These SAIs are voluntary measures and address three critical areas: system security, access control, and en-route security.⁷⁰ TSA actively monitors the level of SAI implementation by railroads. Observations and surveys by TSA surface transportation security inspectors focus on seven specific SAIs, which were selected because of their direct impact on transportation security.

The TSA, through its Corporate Security Review (CSR) program, assesses how a carrier's security plan addresses the transportation of hazardous materials. It reviews and assesses the effectiveness of the plans in seven areas, which includes cyber security, protection of critical assets, security awareness training, and threat assessment.⁷¹ The TSA has a Surface Transportation Security Inspection workforce program, which deploys 175 inspectors in 54 field offices to conduct surveys and inspections of freight rail operations, throughout the nation. The efforts of the inspectors are focused on the areas of highest risk in the freight rail industry. The inspection program is responsible for verifying the implementation of voluntary security measures, conducting vulnerability assessments, and conducting regulatory compliance inspections. These inspectors also act as local liaisons to rail carriers and other government agencies for the purpose of emergency planning and response.⁷²

Rail safety and security on the rail systems go hand-in-hand; TSA and USDOT continue to work together closely to address new potential vulnerabilities such as crude by rail.⁷³ USDHS also helped develop the Rail Corridor Risk Management System, which was a response to the freight rail industry's need for a tool to perform safety and security-route risk analyses.⁷⁴ The system meets federal regulatory requirements of HM-232E: Enhancing Rail Transportation Safety and Security for Hazardous Materials Shipment. The system allows rail operators to consider 27 required criteria including network infrastructure, railroad operations, human factors, environmental, and terrorist-related parameters. The Rail Corridor Risk Management System also assists operators in maintaining analyses documentation prior to review by the FRA.

US Department of Transportation (USDOT)

The USDOT is the umbrella agency for the FRA and PHMSA. It has the authority to regulate hazardous material transportation through the Hazardous Materials Transportation Act, the Federal Rail Safety Act, and other related rulemaking. The Hazardous Materials Transportation Act provides the authority to ensure safe and secure shipments of hazardous materials across different modes of transportation. Regulations regarding transportation of hazardous materials are developed by PHMSA and cover classification, packaging, emergency communication, security plans, risk assessments, training, and specific requirements for each transportation mode.

⁷⁰ Transportation Security Administration. (2014). *Standards and Regulations*. <http://www.tsa.gov/stakeholders/standards-and-regulations-1>

⁷¹ Transportation Security Administration. (2014). *Programs and Initiatives*. <http://www.tsa.gov/stakeholders/programs-and-initiatives>

⁷² Ibid.

⁷³ Sobczak, B. (24 July 2014). *As DOT issues new oil-by-rail rules, DHS lags in its security plans*. EnergyWire. <http://www.eenews.net/stories/1060003375>

⁷⁴ VisualRisk Technologies. (2015). *Rail Corridor Risk Management System*. <http://www.vrisk.com/svcRisk.html>

Regulations for Oil Spill Prevention and Response Plans (49 CFR 130) describe the minimal planning components required by transport carriers, including having a current, written comprehensive response plan if oil being transported by carriers is greater than 1,000 barrels.⁷⁵

USDOT issued an emergency restriction on May 7, 2014 requiring all railroad carriers that operate trains transporting 1,000,000 gallons or more of Bakken crude oil to provide notification to the State Emergency Response Commissions (SERC) when such trains move through that SERC's state.⁷⁶ Minimally, notifications must provide a reasonable estimate of the number of trains that are expected to travel per week through each county, within the state. They also must describe the classification of petroleum crude oil being transported, and provide all applicable emergency response information and transportation routes for the Bakken crude oil.

Federal Railroad Administration (FRA)

The mission of the FRA is to enable the safe, reliable, and efficient movement of people and goods.⁷⁷ Under the authority delegated by the U.S. Secretary of Transportation, the FRA is responsible for ensuring secure movement of hazardous freight via railroads and enforcing hazardous materials regulations. This includes regulations on the design and use of equipment, track, locomotives, and cars used to carry hazardous materials.

The FRA is responsible for the general oversight and approval of oil-spill response plans that are developed by each railroad that transports crude oil. Policy calls for the FRA to conduct investigations of rail transportation incidents resulting in the death of a railroad employee, or injury to five or more persons. The FRA also conducts studies on activities that promote railroad safety.⁷⁸ Additionally, if an accident is significant enough, the FRA may collaborate with the NTSB during the investigation, and jointly issue safety recommendations.

The FRA has an Office of Rail Safety, which includes approximately 400 federal inspectors conducting investigations and inspections focusing on the compliance and enforcement of regulatory standards and policies. The FRA also trains and certifies state safety inspectors to enforce federal rail-safety regulations. Currently, there are 170 FRA inspectors covering 30 states.⁷⁹

Within the Office of Rail Safety, the Hazardous Materials Division administers a safety program that oversees the movement of hazardous materials throughout the nation's rail transportation system, and ensures that hazardous materials are being packaged and/or contained according to regulations. The Office of Rail Safety also administers:

- The Risk Reduction Program Division- evaluates safety risks through accident data collection and analysis, institutionalizes best practices and lessons learned to the rail industry, provides support to stakeholders to develop strategies and plans

⁷⁵ US Department of Transportation, Pipeline Hazardous Materials Safety Administration. *Pipeline Inspections 101*. <http://phmsa.dot.gov/pipeline/inspections>

⁷⁶ US Department of Transportation. *Docket No. DOT-OST-2014-0067: Petroleum Crude Oil Railroad Carriers*. <https://www.fra.dot.gov/Elib/Document/3860>

⁷⁷ US Department of Transportation, Federal Railroad Administration. *About FRA*. <https://www.fra.dot.gov/Page/P0002>

⁷⁸ 49 CFR 225.31(a)

⁷⁹ US Department of Transportation, Federal Railroad Administration. *Office of Railroad Safety*. <https://www.fra.dot.gov/Page/P0032>

to improve safety, and develops and enforces regulations promulgated in response to the Rail Safety Improvement Act of 2008.

- The Safety Regulatory Analysis Division- plans, develops, and administers cost-effective solutions to railroad safety problems, and develops and analyzes rail-safety performance goals.
- The Operating Practices Division- examines railroad carrier operating rules, employee qualification guidelines, and carrier training and testing programs to determine compliance with occupational safety and health standards and accident and personal injury reporting requirements.
- Railroad Safety Information Management- plans and directs all activities relating to the management of railroad safety, including making railroad safety information readily available to railroad companies, research and planning organizations, and the general public.

The FRA has the authority to issue one-time approvals for the movement of compromised or damaged railcars that no longer conform to Hazardous Materials Regulations.⁸⁰ It publishes the Hazardous Materials Guidance 127 (HMG-127), which provides procedures for obtaining approvals to move “noncompliant bulk packages.” This regulation establishes a “standing approval” for certain minor flaws, meaning that in most cases shippers can move tank cars with defective safety valves, dented metal, leaky heating coils (for heavy crude), or bad bottom outlet valves without formal FRA approval. Revision to this authority (Revision 4) issued October 7, 2014, include:

- Development of a flowchart to assist in determining the appropriate one-time movement approval (OTMA) category for a specific defect
- Clarification that OTMA approval is also required to move an empty non-conforming USDOT specification railcar
- Expansion of the use of a standing approval, provided that an accurate and complete notification is submitted, and that the defect is specifically allowed

Pipeline Hazardous Materials Safety Administration

PHMSA’s mission is to protect people and the environment from the risks of hazardous materials transportation. It establishes national policy, sets and enforces standards in pipeline and hazardous materials safety, and works to prepare the public and responders to reduce consequences when an incident occurs.⁸¹

PHMSA currently has 139 federal inspection and enforcement staff and over 300 state inspectors who regulate the companies who primarily work with and transport hazardous materials. The majority of PHMSA’s operations focus on conducting safety-related activities, such as public outreach and awareness, inspections for compliance, enforcement and incident investigations of any entity involved in hazardous materials transportation.

⁸⁰ 49 CFR 171-180

⁸¹ US Department of Transportation, Pipeline Hazardous Materials Safety Administration. *PHMSA – Mission and Goals*. <http://www.phmsa.dot.gov/about/mission>

Found in 49 CFR 100-177, PHMSA has the authority to regulate and enforce hazardous materials procedures that each entity must follow. Each part defines terms and prescribes procedures for regulating hazardous materials safety, handling, and transport. In addition, PHMSA is the USDOT operating administration responsible for promulgating regulations implementing the Hazardous Materials Transportation Act. As authorized by the Clean Water Act (33 USC 1321), PHMSA has implemented regulations which require railroads to formulate comprehensive response plans to be implemented in the event of an oil spill. Those regulations are provided in 49 CFR 130.31.

The following are recent notices and rules issued by PHMSA related to hazardous materials use and transport:

PHMSA-2012-0082 (80 FR 26643): Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains⁸² May 8, 2015

This new federal rule intends to reduce the frequency and impacts of rail accidents involving large volumes of flammable liquids. The changes address NTSB recommendations on the accurate classification and characterization of such commodities, enhanced tank car construction, and rail routing.

Under this rule, tank cars constructed after October 1, 2015, that are used to transport flammable liquids as part of a High Hazard Flammable Train (HHFT) will be required to meet specific design requirements or performance criteria (e.g., thermal, top fittings, and bottom-outlet protection; tank-head and shell puncture resistance). A HHFT is a train that includes 20 or more loaded tank cars of a Class 3 flammable liquid in a continuous series, or 35 or more loaded tank cars of a Class 3 flammable liquid total in the train.

The rule requires existing rail tank cars that are used to transport flammable liquids as part of a HHFT to be retrofitted to meet the adopted performance requirements, except for top fittings protection. Railroads operating cars that are not retrofitted may choose to retire, repurpose, or operate them under the new speed restrictions for up to five years, based on packing group assignment of the lading.

PHMSA provides the following timelines for tank cars used as part of HHFT:

1. For Packing Group I, DOT Specification 111 tank cars are not authorized after October 1, 2017;
2. For Packing Group II, DOT Specification 111 tank cars are not authorized after October 1, 2018; and
3. For Packing Group III, DOT Specification 111 tank cars are not authorized after October 1, 2020.

PHMSA-2015-0099, Notice 15-7: Hazardous Materials Emergency Response Information Requirements⁸³ April 23, 2015

⁸² US Department of Transportation, PHMSA. 80 FR 26643.
<http://phmsa.dot.gov/portal/site/PHMSA/menuitem.6f23687cf7b00b0f22e4c6962d9c8789/?vgnextoid=06b88ec93f83d410VgnVCM100000d2c97898RCRD&vgnnextchannel=26a1d95c4d037110VgnVCM1000009ed07898RCRD&vgnnextfmt=print>

PHMSA issued this notice to remind hazardous materials shippers and carriers of their responsibility to ensure that current, accurate, and timely emergency response information must be immediately available to emergency response officials regarding shipments of hazardous materials, and that such information must be maintained on an ongoing basis.

US Environmental Protection Agency (USEPA)

The USEPA's mission is to protect human health and the environment.⁸⁴ It is primarily charged with implementing federal environmental law by developing and enforcing regulations protecting the environment from harm such as hazardous substances released from containment. The USEPA has responsibilities during a hazardous materials release incident, and has authority over hazardous materials through five federal laws: the Clean Air Act (CAA), the Clean Water Act (CWA), the Oil Pollution Act of 1990 (OPA90), the Emergency Planning and Community Right-to-Know Act (EPCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

The CWA covers all waters and pollution prevention. It includes the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and other provisions to protect water quality. Through the CWA, the EPA's National Pollution Discharge Elimination System controls the discharge of any pollutant from a point source into navigable waters through permitting industrial, municipal, and other business facilities where discharges go directly to surface waters.⁸⁵

The CAA requires that any facility that stores or handles hazardous materials greater than a certain amount, and as listed in the USEPA Risk Management Plan Rule, must develop and implement a risk management program that is submitted for review by USEPA.⁸⁶

OPA90 - Originally published in 1973 under the authority of §311 of the Clean Water Act, the Oil Pollution Prevention regulation sets forth requirements related to preventing, responding to, and paying for vessel and facility oil pollution incidents in and along navigable waterways. The term "facility" includes any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes.⁸⁷ To prevent oil from reaching navigable waters and adjoining shorelines, and to contain discharges of oil, the regulation requires these facilities to develop and implement Spill Prevention, Control, and Countermeasure (SPCC) Plans and establishes procedures, methods, and equipment requirements (Subparts A, B, and C). These regulations can apply at production and loadout

⁸³ US Department of Transportation, PHMSA. *Notice No. 15-7: Hazardous Materials: Emergency Response Information Requirements*. <https://www.federalregister.gov/articles/2015/04/23/2015-09436/hazardous-materials-emergency-response-information-requirements>

⁸⁴ US Environmental Protection Agency. *Our Mission and What We Do*. <http://www2.epa.gov/aboutepa/our-mission-and-what-we-do>

⁸⁵ Summary of the Clean Water Act, 33 USC Section 1251 wt. seq. Retrieved from <https://www.epa.gov/laws-regulations/summary-clean-water-act>. March 14, 2015.

⁸⁶ US Environmental Protection Agency, *Risk Management Plan Rule, List of Regulated Substances under the Risk Management Plan Program*, <http://www2.epa.gov/rmp/list-regulated-substances-under-risk-management-plan-rmp-program>

⁸⁷ Oil Pollution Act of 1990. Title 1. Section 1001(9).

facilities. At this time, Iowa does not currently have any crude oil loadout facilities; however, this ruling would be applicable if conditions change in the future.

The EPCRA requires states and municipalities to develop state emergency response commissions (SERCs) and local emergency planning committees (LEPCs). SERCs are responsible for establishing procedures for managing and processing requests for information collected under EPCRA, reviewing local emergency response plans, designating local emergency planning districts, appointing LEPCs, and supervising LEPC activities.⁸⁸ The LEPCs are responsible for developing emergency response plans for the potential release of hazardous substances.

The CERCLA mandates that USEPA take immediate action in the event of a chemical release that poses an imminent threat to public health and safety.⁸⁹ In conjunction with the passage of the act, Congress broadened and strengthened the emergency response capabilities of the National Contingency Plan. Mandated as one of the Special Forces under the NCP, USEPA's Environmental Response Team (ERT) functions in an advisory capacity to USEPA On-Scene Coordinators (OSCs), Remedial Project Managers, Site Assessment Managers, USCG OSCs, other federal, state, and local officials, and foreign governments concerned with hazardous waste sites, spills, and other environmental threats. In addition, the ERT provides training to first responders, such as local firefighters and other emergency personnel, on aspects of emergency spill response and readiness.

12.2.2 State of Iowa - Agencies

Depending on the type and magnitude of an incident, multiple state agencies may have roles and responsibilities. State law establishes state agencies' responsibilities and authorities generally. The Oil and Hazardous Materials (hazmat) Response Emergency Support Function – 10 (ESF-10) to the Iowa Emergency Response Plan (IERP), developed and maintained by Iowa HSEMD, provides direction to Iowa's state agencies and local governments. The following section identifies agencies with responsibilities and roles for preparedness, response, and recovery activities involving crude oil incidents.

Iowa Homeland Security and Emergency Management Division

Established under Iowa Code 29C, Iowa HSEMD is responsible for the administration of emergency planning matters, including emergency resource planning in this state, cooperation with, support of, funding for, and tasking of the United States Air Force Auxiliary- Civil Air Patrol for missions not qualifying for federal mission status.⁹⁰

During emergencies and disasters, Iowa HSEMD provides resources and mutual aid to local political subdivisions in the state when local jurisdictions have depleted their own resources or do not have sufficient capability to manage an incident. Iowa HSEMD may also activate the State Emergency Operations Center and/or deploy state coordinated resources as needed to assist with emergency operations.

⁸⁸ US Environmental Protection Agency, *State Emergency Response Commissions*, <http://www2.epa.gov/epcra/state-emergency-response-commissions>

⁸⁹ US Environmental Protection Agency. *Summary of the Comprehensive Environmental Response, Compensation, and Liability Act*. <http://www2.epa.gov/laws-regulations/summary-comprehensive-environmental-response-compensation-and-liability-act>

⁹⁰ Iowa Code, Chapter 29C, *Emergency Management Security*. Print.

State resources coordinated through Iowa HSEMD include the homeland security and emergency response teams. These teams are deployed as a state asset only by a directive from the administrator or under a governor's disaster proclamation, unless the sponsoring local agency's response team is needed to perform emergency services within its own jurisdiction.

At its discretion, an Iowa HSEMD emergency response team may deploy at the direct request of a local jurisdiction, without a directive from the Iowa HSEMD administrator or without a Governor's disaster proclamation. In such cases, a team deployed upon local request may seek compensation from the local jurisdiction making the request and in accordance with any current mutual aid agreements.⁹¹

Iowa HSEMD provides staff and support to local jurisdictions to review, and amend as appropriate, the hazardous materials portion and at a minimum of 20 percent of the remaining ESF's or portions of local emergency operations plans on a yearly basis. Through the review process, Iowa HSMED ensures the hazardous materials plans meet the minimum requirements of federal law, 42 U.S.C. §11003 for Comprehensive Emergency Response Plans. The complete local emergency operations plans are reviewed entirely, and amended as appropriate, every five years.

Also chartered through Iowa Code 29C, Iowa HSEMD develops and maintains a public emergency notification system called "Alert Iowa." This public mass notification and emergency messaging system is limited to imminent emergency and public safety-related issues. Iowa HSEMD also provides access to the system for use, as needed or desired, to county and local emergency management coordinator offices, and is under the control of the Local Emergency Management Commissions.⁹² As of November 16, 2015, there were 87 of Iowa's 99 counties signed up to use the Iowa Alert system. Out of the 87 counties, 76 are able to register users and issue alerts, while the remaining 11 counties are still preparing their systems for use.⁹³

Iowa Department of Natural Resources (DNR)

The Iowa DNR oversees response regulations and EPCRA reporting, and requires that all persons manufacturing, storing, transporting, handling, or disposing of a hazardous substance to report all hazardous conditions to DNR and local law enforcement as soon as possible, but no later than six hours after discovery of the incident. The Iowa DNR also provides technical and regulatory support to first responders responding to incidents creating a hazardous condition.

As noted under the Private Sector section above, the Iowa DNR provides a listing of contractors as a courtesy to a responsible party (RP) to help expedite spill responses. Iowa DNR does not register, certify, or endorse hazardous materials response contractors, nor do they require responsible parties (RP) to hire contractors on the department's list. Once hired by the RP, contractors are urged to communicate with Iowa DNR to ensure they are aware of site conditions, response timelines, and expectations for remediation. A list of private contractors can be found through the DNR at www.iowadnr.com/spills/

⁹¹ Iowa Administrative Code. Homeland Security and Emergency Management Department [605]. *Chapter 12*. Print.

⁹² Iowa Code, Chapter 29C, *Emergency Management Security*. Print.

⁹³ Iowa Alert Statewide Messaging System. Retrieved from http://homelandsecurity.iowa.gov/about_HSEMD/alert_iowa.html on December 08, 2015.

The Iowa Environmental Protection Commission (Iowa EPC) provides policy oversight to the state's Department of Natural Resources (Iowa DNR), and consists of a panel of citizens, appointed by the Governor and confirmed by vote of the Senate, who provide oversight over Iowa's environmental protection efforts.⁹⁴ The Iowa EPC is primarily concerned about air, land, and water quality standards. Its primary statutory responsibilities include establishing policy for Iowa DNR approving or denying the issuance of hazardous waste disposal site licenses, and approving budgets related to projects advancing public and environmental health and safety.

While the Iowa EPC works to establish sound policy to protect public and environmental health and safety, Iowa DNR is charged with enforcing the state's environmental laws and addresses any concerns by the public regarding anything that may have a detrimental impact to the Iowa's natural resources. Iowa DNR has environmental jurisdiction over publicly owned land and water.

The Iowa EPC and Iowa DNR understand the importance of not only environmental laws but also the implementation and enforcement of such laws to ensure that Iowa's natural resources are preserved. Through authority established by the Iowa legislature, the Iowa DNR is charged with ensuring compliance with state environmental laws and regulations by private companies, relevant stakeholders, and the general public. To ensure compliance, the Iowa EPC and Iowa DNR have established several programs to educate citizens and promote awareness of applicable laws and the impacts on Iowa's natural resources. In addition, the Iowa DNR issues administrative orders to individuals and companies who have violated state laws and regulations, and uses a variety of tools to ensure regulatory compliance ranging from technical assistance to legal actions.

Iowa Department of Transportation

Iowa DOT is the primary entity that oversees rail transportation within the state through its Office of Rail Transportation. The Office of Rail Transportation is primarily responsible for all rail interests within the state's 3,869⁹⁵ miles of operational track. Its actions are governed by applicable federal and state policymaking authorities along with related resources.⁹⁶ The 2009 Iowa Railroad System Plan serves as a guide for the improvement of the State's rail network, with respect to the Iowa's communities and economy. The plan also identifies the key issues that the Iowa's rail network faces, and provides an action plan for addressing these issues.⁹⁷ An updated plan was being developed at the time of this study; a 2016 Iowa Railroad System Plan is anticipated.

The Office of Rail Transportation conducts research, analysis, and recommendations on how to improve overall rail transportation as it relates to public safety, environmental health, and economic impacts. It also provides resources to relevant stakeholders, railroad companies, and the general public. The Office of Rail Transportation assists any person or entity with questions or concerns regarding rail transportation and directs them to the appropriate agency or representative, as appropriate.⁹⁸

⁹⁴ Iowa Code 2015. 455A.6 Environmental Protection Commission- appointment and duties.

⁹⁵ Association of American Railroads, *Railroads and States*. <https://www.aar.org/data-center/railroads-states#state/IA>. Retrieved January 13, 2016.

⁹⁶ Iowa DOT, Office of Rail Transportation. *About Us*. <http://www.iowadot.gov/iowarail/aboutus/contactus.htm>

⁹⁷ Iowa DOT. *Rail Transportation Plan*. <http://www.iowadot.gov/iowainmotion/rail.html>

⁹⁸ Iowa DOT, Office of Rail Transportation. *Office of Rail*. <http://www.iowadot.gov/iowarail/index.htm>

Although Iowa DOT is responsible for rail transportation within the state, it has limited regulatory authority. The state has limited legislation regarding railroads and follows federal policies. The state defers its jurisdiction over railroads to the FRA and Surface Transportation Board (STB).⁹⁹ Iowa DOT does participate and make the state's voice heard during FRA and STB rule making. It also assists in resolving complaints about railroads through a formal contested case process involving the Iowa Department of Inspections and Appeals.

Iowa code also specifically states that any statute conflicting with federal laws, rules, or regulations applicable to railway will be suspended to the extent necessary to eliminate inconsistency.¹⁰⁰

Iowa Utilities Board

The Iowa Utilities Board (IUB) regulates utilities to ensure safe and environmentally responsible utility services are available to the public. As stated in Iowa Code, the IUB has the authority to supervise all pipelines within the state. It is also primarily responsible for regulating the rates and services of electric, natural gas, and water utilities, the services of communications utilities, and the transmission, sale, and distribution of electrical current.¹⁰¹

In 2001, the Iowa Legislature passed a law requiring utility companies to obtain approval from railroad companies to allow their utilities to cross any railroad right-of-way. A railroad right-of-way is essentially an interest or property owned, occupied, operated, or managed by a railroad corporation.¹⁰² As a result, the IUB adopted rules requiring each railroad and each public utility with a facility crossing railroad right-of-way to file with the IUB contact information for emergency notifications 24 hours per day, seven days per week.¹⁰³ The IUB currently lists all the emergency contact information for railroads and public utilities, as well as a state railroad map on its website.

⁹⁹ Iowa DOT, Office of Rail Transportation. *Regulatory Jurisdiction Over Railroads*.
<http://www.iowadot.gov/iowarail/railroads/regulatory/whoregulates.htm>

¹⁰⁰ Iowa Code 2015. 327D.200 Inconsistency with federal law- railroads

¹⁰¹ Iowa Utilities Board. *Jurisdiction*. <https://iub.iowa.gov/jurisdiction-of-the-board>

¹⁰² Iowa Code 2015. 476.27 *Public utility crossing- railroad rights-of-way*.

¹⁰³ Iowa Administrative Code. 199 IAC 42.4(2) Emergency notice and repairs.