

ENVIRONMENTAL CRIMINAL LAWS

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FEDERAL ENVIRONMENTAL STATUTES WITH CRIMINAL PROVISIONS - SELECTED

- **Clean Air Act (CAA), 42 U.S.C. §§ 7401-7671**
- **Comprehensive Environmental Response, Compensation & Liability Act, 42 U.S.C. §§ 9601-9675**
- **Emergency Planning and Community Right to Know Act (EPCRA) (also known as SARA Title III), 42 U.S.C. §§ 11001-11050**
- **Energy Supply and Environmental Coordination Act, 15 U.S.C. §§ 791-798**
- **Federal Hazardous Material Transportation Law, 49 U.S.C. §§ 5101-5127**
- **Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136-136y**
- **Clean Water Act (CWA)), 33 U.S.C. §§ 1251-1387**
- **Noise Control Act, 42 U.S.C. §§ 4901-4918, 42 U.S.C. § 4910 (criminal provision)**
- **Resource Conservation and Recovery Act (RCRA)), 42 U.S.C. §§ 6901- 6992k**
- **Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f-300j-26**
- **Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. §§ 1201-1328**
- **Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692**

PHILOSOPHY OF CRIMINAL ENFORCEMENT

- Compliance with environmental statutes carries significant costs.
- Criminal provisions were included to deter illegal shortcuts.
- Most prosecutions target those who have knowingly chosen to break the law because they feel environmental responsibility is too much work or too expensive.
- A continuing goal of criminal enforcement is to ensure that businesses that intentionally disregard environmental statutes do not gain a competitive advantage.
- Criminal prosecution acknowledges that environmental stewardship has become a mainstream value and that unlawful polluting is an insult to society.

GENERAL PROOF REQUIREMENTS

- **Proof of a pollution event (i.e. discharge of a pollutant into water, emission of an air pollutant, or dumping of waste on land).**
- **Proof of criminal intent.**
 - The government proves that intent by showing that the defendant acted “knowingly.”
- **Voluntary and intentional conduct, not an accident or mistake of fact.**
 - If you know something could happen, extreme weather for example, then it’s not an accident.
- **Failure to comply with workplace safety standards or falsification of records, shows intent.**
- **Victim rights are important. Asbestos cases, toxic spills, dumping onto private land, and industrial “accidents” with harm to employees are examples.**
- **Charges against individuals and jail are favored penalties because these cannot be passed along to customers.**

PRIORITIES

- **Actual Harm**
- **Threat of Significant Harm**
- **Failure to Report**
- **Illegal Conduct Represents a Trend or Common Attitude in Industry or Company**
- **History of Repeated Violations**
- **Deliberate Misconduct Resulting in Violation**
- **Concealment of Misconduct or Falsification of Records**
- **Tampering with Monitoring or Control Equipment**
- **Business Operating Without Permits**

COLLATERAL CHARGES ARE COMMON

- **False Statements (18 USC 1001)**
- **Mail Fraud (18 USC 1341)**
- **Wire Fraud (18 USC 1343)**
- **Conspiracy (18 USC 371)**
- **Obstruction of Justice (18 USC 1501 –1517)**

EPCRA CRIMINAL PROVISIONS

- Failure to Notify of Release
 - Elements:
 - A person who is an owner or operator of a facility
 - Knowingly and willfully
 - Fails to provide notice immediately after the release of a reportable quantity of a hazardous substance or extremely hazardous substance
- Statute: 42 U.S.C. 11045(b)(4)
- Penalty:
 - 2 years and/or fines pursuant to 18 U.S.C. 3571.
 - Up to 5 years if second or subsequent conviction

CERCLA CRIMINAL PROVISIONS

- **Failure to Notify of Release**
 - **Elements:**
 - **A person in charge of a facility or vessel**
 - **Knowingly**
 - **Fails to notify immediately as soon as he/she became aware of the release into the environment of a hazardous substance in an amount equal to or greater than a reportable quantity without a federal permit**
- **Statute: 42 U.S.C. 9603(b)**
- **Penalty:**
 - **3 years and/or fines pursuant to 18 U.S.C. 3571.**
 - **Up to 5 years if second or subsequent conviction**

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

- **When dealing with Hazardous Wastes:**
 - Treatment, storage, or disposal without a permit
 - Treatment, storage, or disposal in violation of a permit
 - Transportation of Hazardous Waste without a Manifest
 - Transportation to an Unpermitted Facility
 - Omits material information or makes any false statement in any document
 - **Knowing Alteration, Destruction, or Concealment of Records**
 - **Knowing Endangerment**
 - Transports, treats, stores, disposes of, or exports a hazardous waste knowing such acts put another person in imminent danger of death or serious bodily injury.
- **Penalty:**
 - 2 – 5 years and/or fines pursuant to 42 U.S.C. 6928(d).
 - Doubled if second or subsequent conviction

CLEAN AIR ACT - CAA

- 42 U.S.C. 7413(c)(1)–Any person who knowingly violates any requirement or provision of NESHAP (National Emission Standards for Hazardous Air Pollutants)
 - fine or imprisonment not to exceed five (5) years, or both (doubled for second conviction).
 - 188 of these including dioxin, asbestos, toluene, and metals such as cadmium, mercury, chromium, and lead compounds.
- 42 U.S.C. 7413(c)(2)–Any person who knowingly-
 - makes any false statement or knowingly alters, conceals or fails to file any document,
 - fails to notify or report as required,
 - tampers with monitoring device or monitoring method
 - fine or imprisonment not more than two (2) years, or both (doubled for second conviction).



CLEAN AIR ACT – CAA cont.

- **Knowing/Negligent Endangerment**
 - **Elements:**
 - **Negligently/Knowingly**
 - **Releases into the ambient air any hazardous air pollutant or any extremely hazardous substances listed pursuant to EPCRA**
 - **Put another person in imminent danger or death or serious bodily injury**
- **Statute: 42 U.S.C. 7413(c)(4)&(5) [42 U.S.C. 7412(b)(1)]**
- **Penalty:**
 - **Knowing: 15 years and/or fines pursuant to 18 U.S.C. 3571.**
 - **Negligent: 1 year and/or fines pursuant to 18 U.S.C. 3571.**

CAA GENERAL DUTY CLAUSE

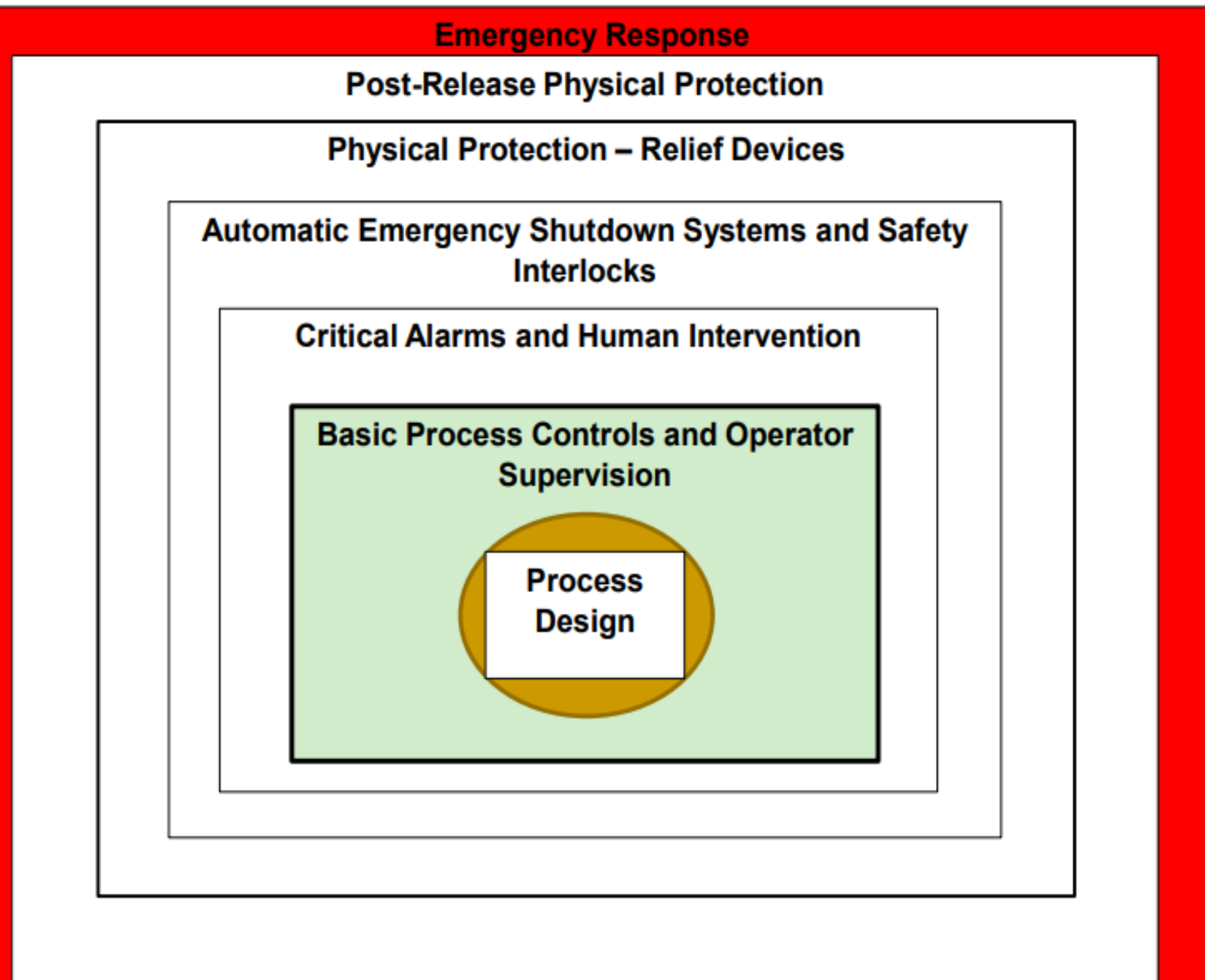
- CAA Section 112(r)(1)¹, owners and operators of stationary sources must:
 - identify hazards from accidental releases and assess the impacts of releases,
 - design and maintain a safe facility to prevent accidental releases,
 - plans and procedures to minimize the consequences of releases when they occur
- Increasing use of General Duty when the facility isn't acting to prevent accidents or in 20/20 hindsight following an accident
 - Near Misses
- ¹112(r) also includes the RMP program

Key Concept

in CAA

§ 112(r):

Safe facilities have layers of protection to prevent and mitigate damage from chemical releases



IOWA

- **HAZARDOUS WASTE**
- **716B.2 - Unlawful disposal of hazardous waste – penalties**
 - **Knowingly or with reason to know, disposes of hazardous waste or arranges for or allows the disposal of hazardous waste at any location other than one authorized.**
 - **“Disposal” means discharge, deposit, injection, dumping, spilling, leaking or placing so that a hazardous substance may enter the environment.**
- **Knowingly or with reason to know, treats or stores hazardous waste without a permit**
 - **aggravated misdemeanor - fine of not more than \$25,000 per day, two years, or both.**
 - **2nd conviction - class “D” felony - fine up to \$50,000 per day, five years, or both.**

IOWA cont.

- **AIR RELEASES**
- **455B.146A Criminal action — penalties**
 - negligently releases any hazardous air pollutant and places another person in danger
 - fine of not more than \$25,000 for each day, or one year, or by both.
 - knowingly releases any hazardous air pollutant and knows that the conduct places another person in imminent danger
 - if an individual or a government entity a fine of not more than \$50,000 or two years, or both.
 - If other than an individual or a government entity the person shall be punished by a fine of not more than \$1,000,000.
- Circumstantial evidence may be used, including evidence that the defendant took affirmative action to be shielded from relevant information

QUESTIONS

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- Let me know if you want to be on the NASTTPO email list or want documents.