

FACT SHEET ON SELECTED ENVIRONMENTAL AUTHORITIES RELEVANT TO HOMELAND SECURITY

INTRODUCTION:

The tragic events of September 11, 2001 ushered in fundamental changes to our society and system of governance. These changes include both responsive and proactive measures designed to protect the people of the United States from acts of terrorism. As the nation builds its “homeland security,” there is an urgent opportunity to maximize protection of the population and natural resources through both new homeland security authorities and existing environmental laws. At the same time, an important opportunity exists to enhance environmental protection through homeland security measures.

POSSIBLE SITUATIONS:

The following potential scenarios illustrate the intersection of environmental and homeland security issues, and describe instances in which authorities could invoke environmental laws:

- A holding tank for a city’s drinking water is intentionally contaminated with a chemical agent. That water must be removed from the tank and disposed of in a manner that does not cause harm to the environment or public health.
- A building is intentionally contaminated with a biological agent. In response, the contaminated area is washed with water and that water is then discharged into the city’s sewer system.
- An explosive device is discharged at a facility that has hazardous materials on-site. Hazardous materials are released. When the fire department arrives, water is mixed with the hazardous materials and it runs into the nearby river— a source of drinking water for the town.
- A domestic organization with a strong financial base is determined to have intentionally caused the release of a chemical or biological agent into a water supply reservoir for terrorist purposes. The release constitutes a violation of an environmental law that provides for a penalty per violation per day.

Our challenge is to devise a system of governance that secures our country's environment and health from intentional, natural, and accidental acts that result in environmental degradation and adverse health effects. Achieving these dual purposes will also ensure maximum use of increasingly limited government resources.

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CIRCUMSTANCES IN WHICH ENVIRONMENTAL LAWS ADMINISTERED BY EPA MAY APPLY:

Environmental laws administered by the U.S. Environmental Protection Agency (EPA) provide a framework that can be accessed to strengthen protection of human health and natural resources from acts of terrorism. In some instances, the laws as written provide authority to address homeland security needs. In other cases, the laws provide a base upon which to build additional measures to protect human and natural resources from terrorism events. Environmental laws can apply to the following types of actions involving homeland security:

- Act of terrorism, through the release of a biological, chemical or radiological agent
- Site-specific actions taken in response to a terrorist event, including remediation measures and sanctions
- Government programs or projects developed as a systemic response to homeland security needs
- Biological, chemical or radioactive agents that may become weaponized for terrorist actions

SELECTED ENVIRONMENTAL AUTHORITIES

The potentially applicable environmental statutes and provisions presented below are categorized according to the focus of the law, and include a statement of their potential applicability to homeland security issues. This focus can be categorized as: 1) control of substances and preventing their misuse; 2) prospective review of specific government actions or policies; 3) remediation and response to incidents; 4) natural resource protection; and 5) access to information. The relevant laws are identified below, along with a statement of their potential applicability to homeland security issues, and presented by category.

SUBSTANCE CONTROL — The Toxic Substances Control Act (TSCA) addresses the risks to health and the environment from existing and new chemical substances, establishes a framework for identifying potentially harmful chemical substances, and regulates them.

REVIEW OF GOVERNMENT ACTIONS

— The National Environmental Policy Act (NEPA) requires the federal government to evaluate the environmental impacts of major actions significantly affecting the quality of the environment.

REMEDIAL ACTION AND RESPONSE TO INCIDENTS

— The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended addresses the cleanup of sites where hazardous substances have been (or where a substantial threat suggests they will be)

LAW	FOCUS OF LAW					TYPE OF HOMELAND SECURITY ACTION			
	Natural Resource Protection	Control of Substances and Preventing Their Misuse	Prospective Review of Specific Government Actions or Policies	Remediation and Response to Incidents	Access to Information	Act of Terrorism	Site Specific Response Action	Systemic Responses to Homeland Security	Weaponized Agents
Safe Drinking Water Act (SDWA)	<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Federal Water Pollution Control Act ("Clean Water Act")	<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Toxic Substances Control Act (TSCA)		<input checked="" type="checkbox"/>							<input checked="" type="checkbox"/>
National Environmental Policy Act (NEPA)			<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)				<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>		
Resource Conservation and Recovery Act (RCRA)				<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Emergency Planning and Community Right-to-Know Act (EPCRA)					<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Freedom of Information Act (FOIA)					<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	

released into the environment and authorizes EPA to clean up and take action to prevent releases of hazardous substances, to recover costs from the responsible parties, and to require those parties to take the necessary cleanup actions. The **Resource Conservation and Recovery Act (RCRA)** regulates the management and disposal of hazardous and non-hazardous solid waste. Hazardous waste use is managed from creation, through transportation, to ultimate disposal.

NATURAL RESOURCE PROTECTION — The Federal Water Pollution Control Act (“Clean Water Act”) governs the quality of surface water and establishes national, technology-based standards for municipal waste treatment and numerous categories of industrial “point source” discharges. The **Safe Drinking Water Act (SDWA)** addresses potential vulnerabilities of public water supply systems. SDWA protects drinking water by regulating public water systems and water quality through national primary and secondary drinking water standards, and by protecting underground sources of drinking water from contamination.

ACCESS TO INFORMATION — The **Emergency Planning and Community Right-to-Know Act (EPCRA)**, enacted as Title III of the Superfund Amendments and Reauthorization Act of 1986, requires owners and operators of certain facilities to report on the use, storage, and release of specific chemicals. EPCRA also requires state and local entities to prepare for chemical release emergencies, such as emergency response plans. The **Freedom of Information Act (FOIA)** allows the public to obtain important documents and other information from federal government agencies.

This fact sheet provides a summary of information on federal authorities that can be fully explored in ELI's report, *Homeland Security and Drinking Water: An Opportunity for Comprehensive Protection of a Vital Natural Resource*. For more information contact B. Suzi Ruhl, Director of ELI's Center for Public Health at ruhl@eli.org, or visit www.eli.org.



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