



U.S. Department  
of Transportation

Federal Highway  
Administration

# Memorandum

Subject: **INFORMATION:** Hazardous Wastes  
in Highway Rights-of-Way

Date: MAR 15 1994

From: Director, Office of Environment  
and Planning


Reply to  
Attn of HEP-42

To: Regional Federal Highway Administrators  
Federal Lands Highway Program Administrator

Attached for your information is a summary of the National Cooperative Highway Research Program (NCHRP) Report 351, *Hazardous Wastes in Highway Rights-of-Way*. The study examined the systems and approaches used by State Departments of Transportation (DOTs) for detecting and dealing with hazardous wastes when acquiring and managing highway rights-of-way (ROW). Through a series of case studies and telephone surveys, the study committee assessed these approaches and developed recommendations for policies and procedures that help minimize the cost, uncertainty, delay, and liability from hazardous waste while fully satisfying environmental and public interest responsibilities.

Three copies of the report are being sent to the division ROW officers, as well as a copy of this memo and attachment. This effort has been coordinated with the Office of Right-of-Way. We suggest that the division office keep one and forward the other two copies to their State ROW and hazardous waste counterparts.

The report has a nearly 1,000 page appendix (available separately) of hazardous waste policies and procedures from the States that participated in the case studies and telephone surveys. Copies of this appendix have been sent to the regional offices, or they are available for purchase through the National Research Council.

  
Kevin E. Heanue

Attachment

FHWA:HEP-42:EChalk :nb:X62070:3/7/94  
Disk: Edie's, File name: RPT351.MEM  
cc: HPD-1, HEP-1, HEP-40, HEP-41,  
HEP-30, HEP-31, HEP-32,  
HEP-42/Files(2), HEP-42(EChalk)



Summary of  
HAZARDOUS WASTES IN HIGHWAY RIGHTS-OF-WAY  
NCHRP Report 351

The Special Studies Division of the Transportation Research Board has issued a report titled *Hazardous Wastes in Highway Rights of Way*. The importance of hazardous waste problems and their ramifications are highlighted, elements of a suitable response are given, guidelines for developing a program to manage the problem are recommended, and resource materials are identified in the NCHRP Report 351.

The information in this report was gathered from a series of case studies (Massachusetts, New Jersey, North Carolina, Ohio, Colorado, and California) and telephone surveys (Arizona, Arkansas, Florida, Illinois, Louisiana, Minnesota, Missouri, Montana, New Hampshire, New York, Oregon, Pennsylvania, Tennessee, Texas, Virginia, and Washington State).

This report examines the policies and procedures that DOTs use to address hazardous wastes problems in the ROW. It describes the strengths and weaknesses of the State DOT hazardous waste programs, and what makes them work or fail. It also recommends a process for State highway agencies to use in assessing whether and how to proceed with projects that involve hazardous waste sites. This process includes such issues as regulatory requirements, coordination with appropriate agencies, public involvement, evaluation of specialized consultants, and technology assessments.

The principle findings of the committee are that:

- (1) hazardous wastes are frequently encountered and are potentially present in nearly all DOT projects;
- (2) hazardous wastes can present serious liabilities to DOTs in terms of cost, delays, and threats to the health and safety of both employees and the public;
- (3) hazardous waste problems are manageable with procedures and approaches available to DOTs for developing hazardous waste programs;
- (4) petroleum-related contamination is the most commonly encountered problem but is one for which relatively well-developed procedures are available;
- (5) early detection of hazardous waste is important to maximize the options available to DOTs and permit sound business decisions concerning it;
- (6) the relationship between DOTs and their State environmental regulatory agency (SRA) can be very important to a successful hazardous waste program;
- (7) solutions to the problems of appraisal of contaminated properties and cost recovery are still evolving; and

- (8) groundwater contamination presents a potential long-run problem for DOTs.

The recommendations of the committee for DOTs to establish essential and effective hazardous waste programs are:

- (1) all DOT employees should be made aware of the seriousness of hazardous waste, and top management should become and remain involved in the evolution of their department's response to the hazardous waste problem;
- (2) all State DOTs should immediately develop hazardous waste programs and recognize that these programs must be evolutionary and adaptable to changing regulatory requirements, staff experience, and problems encountered;
- (3) the DOTs should work within their organizational structure to develop the expertise and processes that will effectively detect and manage hazardous waste problems and not allow organizational structure to become an obstacle to effective hazardous waste control;
- (4) a formal, tiered training program should be established within DOTs for personnel that may have contact with or have responsibilities for hazardous waste;
- (5) the DOTs should develop hazardous waste expertise within their legal staff and keep the legal staff involved in the decisionmaking process from the early planning phases through construction and cost recovery;
- (6) the DOTs should develop effective and thorough processes for discovering hazardous waste and should consider adopting innovative methods for detecting sites;
- (7) the DOTs should develop a good working relationship with their SRA and should acknowledge the environmental responsibilities they have as landowners and operators, as well as their responsibilities for protecting the public interest as public servants;
- (8) all DOTs should develop a formal Memorandum Of Understanding with their SRA and consider establishing a formal liaison between the agencies to focus the exchange of information and documents between them;
- (9) the DOTs should develop, in conjunction with their SRA, some pre-approved basic approaches for resolving petroleum contamination problems perhaps as part of a Best Management Practice document;
- (10) because of the potential for long-term liability and cost from groundwater contamination, DOTs should assure themselves that they are in compliance with Federal and State requirements for groundwater problems and that they confront groundwater problems directly and explicitly with their SRA;

- (11) with regard to appraisal, DOTs should attempt to escrow at least part of the estimated cleanup cost for parcels they acquire and they should continue to explore and develop alternative valuation methods and share their results with each other; and
- (12) with regard to cost recovery, DOTs should develop a decision framework for making a realistic business decision on whether they are likely to recover cleanup costs. If recovery is an option, DOTs should get their hazardous waste attorneys involved early and they should document all costs directly related to the cleanup and the reasons for the expenditures.