"Nonhazardous" Never Means "Harmless" But "Municipal" Sometimes Means "Industrial": Practical Issues in Environmental Regulatory Harmonization

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ABSTRACT

Our current environmental regulatory framework has evolved via a succession of state and federal rules promulgated over the past 35 years. As a result of this intricate history, the definitions of certain regulatory terms conflict with their generally-accepted public meanings. Furthermore, because programs for air, water, waste, and remediation all evolved independently, entities are sometimes classified and regulated with apparent inconsistencies between and within regulatory agencies. These conditions conspire to confuse the regulated community, especially small businesses and local governments, which usually lack the in-house expertise needed to recall and apply the historical contexts in which regulatory terminology and program management precedents were initially developed.

By law, it is incumbent upon each entity to understand and abide by the statutory and regulatory definitions of all terms that apply to their operations. In practice in our information-overloaded world, this often does not occur. An untrained manager will typically resort to his or her established framework of understanding when parsing new environmental regulatory information, often without realizing that they are doing it. And if regulatory and public definitions differ, the decisions those managers make will sometimes be inappropriate.

One term frequently misunderstood is "nonhazardous". A lay person typically equates "nonhazardous" with "harmless", but its regulatory definition bears no resemblance to that vernacular assumption: it was a term coined to differentiate between "hazardous" wastes defined per the Resource Conservation and Recovery Act (RCRA), and a variety of other industrial and nonindustrial wastes regulated by the state of Texas (e.g., TCEQ Publication RG-022, Page 1). Mismanagement of "nonhazardous" waste can lead to significant site remediation challenges, as many Texas Risk Reduction Program (TRRP) case studies clearly show. This makes it anything but "harmless".

As complicated as that is, the most stringent regulatory constraints imposed upon a facility might actually be dictated by yet another discrete regulatory framework. In some scenarios, nonhazardous wastes are significant air emission sources, and their associated Effects Screening Levels (ESLs) and other air quality considerations may impose constraints on handling, even in situations where nonhazardous waste management and potential site remediation considerations may not.

The misinterpretation of the regulatory term "nonhazardous" is an example of lack of correspondence between regulatory and generally-accepted definitions – in other words, an inter-source harmonization issue. Intra-source disharmonies also negatively affect the regulated community by disrupting logical expectations. The term "industrial" is an example. Within the Water Quality Division assigns facilities a de facto designation of "industrial" based on their primary standard industrial classification (SIC) code for the purposes of industrial storm water discharge regulation. However, the Waste Permits Division instead defines industrial facilities based on a decision tree related to manufacturing (e.g., 1996 unnumbered TCEQ publication titled "Is Your Facility An Industrial Facility?"). As a result, many common facilities find themselves defined as "industrial" for water purposes and "nonindustrial" for waste purposes (e.g., warehousing operations) - different designations emanating from the same TCEQ Office for the same facilities. In a similar vein, the fact that a facility is publicly recognized as "municipal" does not guarantee that it is "nonindustrial" (e.g., city and county airports are regulated under the industrial storm water program).

Lack of harmonization (whether inter- or intra-source or both) promotes misunderstandings that can contribute both to inadvertent noncompliance, and to site contamination. In recent years, regulators have increased efforts to counteract these effects via greater emphasis on "plain language" regulation (e.g., the EPA's Spill Prevention, Control and Countermeasure (SPCC) rule; 40 CFR 112) and improved presentation of multidisciplinary requirements (e.g., TCEQ small business outreach efforts and comprehensive websites dedicated to specific industries). However, much work remains to be done before full and logical harmonization is achieved.

Texas Association of Environmental Professionals (TAEP) Conference, February 16, 2009, Houston, TX