

**Chemical Emergency  
Service Capabilities  
& Constraints Along  
the U.S.-Mexico  
Border**

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## I. INTRODUCTION

Thousands of manufacturing facilities are scattered along the Mexican side of the U.S.-Mexico border. Because raw materials are scarce in Mexico, chemicals used in these facilities' production processes must frequently be imported. Due to cost and availability considerations, many such imports originate in the U.S. Some common chemicals have recently become available in Mexico, however, and these materials are being exported to U.S. purchasers. In addition, laws regulating hazardous waste generated in Mexico require that certain wastes be shipped to the U.S. for treatment or disposal.<sup>1</sup> Thus, hazardous cargo moves between the two countries continuously.

The transport of these materials, their use in border facilities, and shipment delays at international ports of entry all pose risks to the region. The level of risk created depends upon the properties of the materials, the ways in which they are packaged or stored, and the ways in which they are used or handled. Risks may also be created by external considerations such as weather conditions. Regardless, individuals living and/or working at the border all face the consequences of hazardous materials accidents on a daily basis.

This constant flow of hazardous materials creates a need for emergency services in border communities, services that must be provided by personnel having completed special training and having access to appropriate equipment. In the event of a chemical release, potential threats to public health, property, and the environment must be immediately assessed and methods of containment must be implemented. How the two countries are addressing or failing to address this need has created significant conflicts along the border.

This report summarizes factors relevant to the need for and status of emergency services along the border corridor and analyzes laws and regulations relating to this issue.

The first section of the report discusses domestic legal requirements in each country. The following section summarizes government agency roles and responsibilities with regard to chemical emergency services and the problems that have arisen under the current legal and administrative schemes. Municipalities, counties, and states discussed are utilized as representative examples of trends along the entire border corridor; time and budgetary constraints limited the scope of the research to those areas noted.

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<sup>1</sup> The La Paz Agreement between the U.S. and Mexico (discussed in Section III.A of this report) and regulations governing Mexico's maquiladora program require certain hazardous waste originating in Mexico to be transported to the U.S. NAFTA also imposes requirements, but these are being phased out in stages and will terminate completely in the year 2008. Exactly how these different legal provisions work together has created a certain amount of regulatory confusion for both industry and government officials. For a discussion of this topic see *"Hazardous Waste and Customs Practices Along the U.S./Mexico Border. Through the Maze of Legal and Administrative Requirements,"* Amy T. Mignella and Oscar S. Lizardi, HAZWaste 96 Symposium, Phoenix, Arizona, November 1996.

## II. JURISDICTION

### A. Federal

#### 1. Laws

##### a. United States

#### *Robert T. Stafford Disaster Relief and Emergency Assistance Act*

The provisions of this law can be found at 42 U.S.C.S. §§ 5121 et seq. The statute includes provisions addressing emergency assistance and disaster preparedness, among other issues.

Section 5131(a) of the Act provides the President of the United States with authority to establish disaster preparedness programs that include planning for “mitigation, warning, emergency operations, rehabilitation, and recovery; training and exercises; [and] coordination of Federal, State, and local preparedness programs . . . .”

Section 5131(c) allows for grants from the federal government to the states of up to \$250,000 (aggregate) for “development of plans, programs, and capabilities for disaster preparedness and prevention.”

Section 5191(b) provides that the President of the United States can authorize federal assistance in any emergency “for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority.”

Section 5192(a) adds to this, providing that the President may, “[i]n any emergency . . . direct any Federal agency, with or without reimbursement . . . to utilize its . . . resources . . . [including personnel, equipment, supplies, facilities, and managerial, technical and advisory services] in support of State and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe . . . .” Total assistance is limited to \$5,000,000 per single emergency, but this can be exceeded if the President determines that additional assistance is “immediately required [because] . . . there is a continuing and immediate risk to lives, property, public health or safety, and necessary assistance will not otherwise be provided on a timely basis.”<sup>2</sup>

The law also states that the U.S. will “provide a system of emergency preparedness for the protection of life and property in the United States from hazards and [will] vest responsibility for emergency preparedness jointly in the [f]ederal [g]overnment and the States and their political subdivisions.”<sup>3</sup> The statute indicates that “[t]he . . . [g]overnment shall provide necessary direction, coordination, and guidance and shall provide necessary assistance, as

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<sup>2</sup> 42 U.S.C.S. § 5193(1988).

<sup>3</sup> 42 U.S.C.S. § 5195(1994).

authorized in this title, so that a comprehensive emergency preparedness system exists for all hazards.”<sup>4</sup>

The law defines “materials” as including “raw materials, supplies, medicines, equipment, component parts and technical information and processes necessary for emergency preparedness.” The statute provides that monies made available to states for emergency preparedness can be allocated to “emergency personnel, materials, and facilities . . .” costs.<sup>5</sup>

The statute also addresses “mutual aid pacts between . . . neighboring countries” and provides that the Federal Emergency Management Agency (FEMA) shall give assistance to “[s]tates in arranging, through the Department of State, mutual emergency preparedness aid between . . . neighboring countries.”<sup>6</sup> It defines the term “neighboring countries” to include “Canada and Mexico.”<sup>7</sup>

Regulations issued from this law provide that other financial assistance is available to states through an “annual improvement grant” that cannot exceed \$50,000. The regulations also list examples of costs incurrable to this grant but state that other expenditures may also be acceptable. “Eligible products” identified in the requirements include hazard assessments, disaster assistance plan updates, handbooks and exercise materials, personnel training, and facility inventories. Materials expenditures are not mentioned.<sup>8</sup> The statutory provision from which this grant is established indicates that these monies can be allocated to “evaluations of natural hazards and development of the programs and actions required to mitigate such hazards.”<sup>9</sup>

These provisions are significant because they establish funding parameters for state, and, consequently, local community response units. Funding problems that relate to these provisions are discussed in Section III.E.3 of this report.

### *Comprehensive Environmental Response Compensation and Liability Act (CERCLA)*

The provisions of CERCLA can be found at 42 U.S.C.S. §§ 9601 et seq. The primary purposes of the statute relate to hazardous substance release emergencies, areas of contamination that are designated to be “national priorities,” liability and financial responsibility allocations with regard to these situations, and establishment of a claim process for a remediation fund.

CERCLA is relevant here because of its provisions relating to emergency situations involving hazardous materials. It applies to “facilities,” which include motor vehicles “where a hazardous substance has been deposited, stored, . . . [or] placed . . .” and their “releases,” which

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<sup>4</sup> *Id.*

<sup>5</sup> 42 U.S.C.S. § 5196d(1994).

<sup>6</sup> 42 U.S.C.S. § 5196a (1994).

<sup>7</sup> 42 U.S.C.S. § 5195a(1994).

<sup>8</sup> 44 C.F.R. § 300.3(1989).

<sup>9</sup> 42 U.S.C.S. § 5131(d)(1988).

include “any spilling, leaking, . . . pouring, emitting, emptying, discharging, . . . escaping, leaching, [or] dumping . . . .”<sup>10</sup> Hazardous substance is defined to include any substance designated as such by CERCLA, RCRA, the Clean Water Act, the Clean Air Act or by the Environmental Protection Agency (EPA) Administrator under the Toxic Substances Control Act.<sup>11</sup>

Executive Orders issued to implement CERCLA in 1987 and 1991 delegate responsibility for emergency response situations to various federal agencies.<sup>12</sup>

#### b. Mexico

Emergency activities in Mexico are coordinated pursuant to three laws: the Organic Law of the Federal Public Administration (*Ley Orgánica de la Administración Pública Federal*), the Law of the Mexican Army (*Ley Orgánica de Armada de México*), and the Decree Reforming the General Law of Ecological Balance and Environmental Protection (*Decreto que reforma, adiciona y deroga diversas disposiciones de la Ley General del Equilibrio Ecológico y la Protección al Ambiente*).

##### *Organic Law of the Federal Public Administration*

The Organic Law establishes that the Secretary of the Interior is responsible for carrying out federal programs and policies for prevention, assistance, recovery, and support of the population in situations of disaster in coordination with other federal agencies and the states and municipal authorities. The Secretary must also coordinate with the private sector.<sup>13</sup>

##### *Law of the Army*

The Law of the Army provides that the Armed Forces must assist the population in cases of emergency and disaster.<sup>14</sup>

##### *Decree Reforming the General Environmental Law*

The Decree reforming the General Law of Ecological Balance and Environmental Protection provides that the federal government is authorized to participate in the prevention and

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<sup>10</sup> 42 U.S.C.S. § 9601(1996).

<sup>11</sup> *Id.*

<sup>12</sup> Executive Orders 12580 and 12777, issued January 1987 and October 1991, respectively.

<sup>13</sup> Title 1, Article 27, Section XXVII, *Ley Orgánica de la Administración Pública Federal* (D.O. 12-29-76).

<sup>14</sup> Title 1, Article 2, Section VII, *Ley Orgánica de Armada de México* (D.O. 12-24-93).

control of environmental emergencies in conformance with the policies and programs that have been established for civil protection.<sup>15</sup>

It also provides that the participation of states and municipalities in environmental emergencies will conform to policies and programs that have been established for these incidents.<sup>16</sup>

The Decree provides that the federal government will create legal norms regarding response procedures for environmental emergencies created by air pollutants from fixed sources.<sup>17</sup>

## 2. Government Agencies

### a. United States

#### *Environmental Protection Agency*

The EPA is authorized by the President of the United States to plan for and respond to chemical emergencies.<sup>18</sup> 42 U.S.C.S. §9605 mandates the creation of a national plan outlining actions to be taken in the event of oil or hazardous material discharges; a national team of response officials is another product of this requirement. The framework for this task is provided in regulations promulgated by the EPA.<sup>19</sup> The process itself involves input from the EPA, FEMA, and the Nuclear Regulatory Commission.<sup>20</sup> The product is a National Contingency Plan, which is discussed in Section III.B of this report.

Another statutory provision, 42 U.S.C.S. §6928 (the Resource Conservation and Recovery Act), vests the EPA Administrator with authority to take immediate legal action against any contributor to hazardous or solid waste handling, storage, treatment, transport, or disposal when such activities may present an imminent and substantial endangerment to public health or the environment. The Administrator is also authorized to “take other action . . . including . . . issuing orders as may be necessary to protect public health and the environment” upon notifying the affected state. Section 6973(c) provides that the Administrator must also immediately notify local government agencies.

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<sup>15</sup> Article 5, Section VII of the Decree reforming the General Environmental Law, *Decreto que reforma, adiciona y deroga diversas disposiciones de la Ley General del Equilibrio Ecológico y la Protección al Ambiente* (D.O. 12-13-96).

<sup>16</sup> *Supra* Note 15, Article 7, Section XII and Article 8, Section XI.

<sup>17</sup> *Supra* Note 15, Article 111, Section XIV.

<sup>18</sup> *Supra* Note 12.

<sup>19</sup> 40 C.F.R. § 300 et seq.

<sup>20</sup> 40 C.F.R. § 300.2(1996).



### *Federal Emergency Management Agency*

FEMA was created through an executive reorganization plan after original authority for emergency coordination had been assigned to several existing federal agencies.<sup>21</sup> The agency was created to handle fire, flood, and other emergency situations for the federal government of the United States.<sup>22</sup>

Executive Orders relating to CERCLA (discussed above) require that FEMA be represented on the National Response Team. In these Orders, the President also delegated authority to FEMA for permanent and temporary relocation of “residents, businesses, and community facilities . . . otherwise not provided for” in cases of chemical emergencies.<sup>23</sup>

FEMA’s activities establishing rules regarding emergency prevention, preparedness, and disaster relief cannot be initiated “unless the potential benefits to society for the regulation outweigh the potential costs to society”; they must “. . . be chosen to maximize the net benefits to society.”<sup>24</sup>

### *National Strike Force*

The National Strike Force was created in 1973 to respond to oil and hazardous materials incidents. It consists of three, 38-member personnel teams and is part of the U.S. Coast Guard. The agency can dispatch two-person teams immediately when assistance is requested and 12-member personnel groups within six hours of a request; assistance authorization must originate with the Coast Guard or EPA.<sup>25</sup>

Response efforts are managed through regional locations in California, Alabama, and New Jersey, and one coordination center in North Carolina. The Strike Force is equipped to assist with spill management, containment, administration/documentation needs related to an incident, and source control and assessment. Team skills are utilized in a broad range of situations including natural disasters; they recently assisted in recovery from the 1997 flooding in North Dakota. Hazards at issue involved chemical-containing debris from businesses and households that was displaced during the floods as well as gases and other chemical hazards that had accumulated within flooded structures.<sup>26</sup>

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<sup>21</sup> Reorganization Plan No. 3 of 1978, approved by Congress September 17, 1978.

<sup>22</sup> *Supra* Note 21, Part II.

<sup>23</sup> *Supra* Note 12.

<sup>24</sup> 44 C.F.R. § 1.4(1985).

<sup>25</sup> Information obtained from Shane Ishiki, Commanding Officer of the Pacific Strike Team, Novato, California, at the Region 9 Regional Response Team meeting held in Rio Rico, Arizona, May 1997.

<sup>26</sup> *Id*

### *Federal Railroad Administration (FRA)*

Federal regulations provide that state agencies with jurisdiction under state law can “participate in investigative and surveillance activities concerning federal railroad safety laws and regulations by entering into [a federally authorized] agreement . . . .”<sup>27</sup> State agencies can “participate” in this fashion regarding rules, regulations, orders, or standards issued under the Federal Railroad Safety Act of 1970 by filing an annual certification.<sup>28</sup>

The FRA reserves “exclusive authority to assess and compromise penalties, to issue emergency and compliance orders, institute or cause to be instituted actions for collection of civil penalties and to pursue all other enforcement actions authorized under the federal railroad safety laws.”<sup>29</sup> Exceptions to this blanket authority allow participating states to bring civil penalty actions in federal court if the FRA has failed to make an appropriate determination within 60 days of being requested to do so; states may also seek injunctions if the FRA has failed to make a determination within 15 days of being requested to do so.<sup>30</sup>

### b. Mexico

In Mexico, chemical emergency response services are handled by the *Dirección General de Protección Civil*, a federal agency established by the Internal Regulation of the Department of Interior, by *La Secretaría de Medio Ambiente, Recursos Naturales y Pesca* or SEMARNAP, Mexico’s equivalent to the EPA, and by the Federal Police of Roads and Bridges.<sup>31,32,33</sup>

### *Protección Civil*

*Protección Civil* is responsible for developing specific programs of civil protection. In so doing, it is mandated to integrate, coordinate, and supervise the National System of Civil Protection to ensure the safety, aid, and rehabilitation of the population in the case of disasters. It is responsible for coordination of emergency activities involving other federal agencies and must synchronize its efforts with those of the private sector.<sup>34</sup>

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<sup>27</sup> 49 C.F.R. § 212.103(1996) and 49 C.F.R. §212.105(1992), respectively.

<sup>28</sup> 49 C.F.R. § 212.107(1996).

<sup>29</sup> 49 C.F.R. § 212.115(1996).

<sup>30</sup> *Id.*

<sup>31</sup> Chapter I, Article 2, *Reglamento Interior de la Secretaría de Gobernación* (D.O. 02-13-89).

<sup>32</sup> See Article 32BIS of the *Ley Orgánica de la Administración Pública Federal*, *Supra* Note 13

<sup>33</sup> See Title 4, Article 56 of the Regulation on Surface Transportation of Hazardous Materials and Wastes (D.O. 04-07-93).

<sup>34</sup> *Supra* Note 31, Article 19.

## **SEMARNAP**

As Mexico's federal environmental agency, SEMARNAP is responsible for most environmental matters federal jurisdiction. The Decree Reforming the General Environmental Law is interpreted as vesting authority for its provisions in SEMARNAP.<sup>35</sup> Consequently, SEMARNAP is to coordinate with state and municipal officials regarding environmental emergency response activities. An international agreement between the U.S. and Mexico, however, indicates that both *Protección Civil* and SEMARNAP are to be involved in chemical emergencies that occur along the shared border corridor.<sup>36</sup>

### ***Federal Police of Roads and Bridges***

The Federal Police of Roads and Bridges, in addition to other appropriate authorities, are to be notified in the event of a chemical emergency that originates from shipments during transport.<sup>37</sup>

## **B. State**

### **1. States within the United States of America**

#### **a. Arizona Department of Public Safety**

Arizona law provides that the Department of Public Safety is responsible for creating and coordinating services for use by local law enforcement agencies in protecting public safety.<sup>38</sup> The Department includes the Arizona Highway Patrol. Responsibilities for the Patrol Division laid out in state law indicate that the Department "may cooperate" with the state departments of Transportation and Agriculture in enforcing laws relating to motor vehicles and that the Patrol "shall patrol the highways of the state" to enforce state law.<sup>39,40</sup> The Patrol is also responsible for investigations of accidents that occur on the highways; the Department includes a special hazardous materials response unit to provide initial emergency response services at chemical incidents occurring there.<sup>41</sup>

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<sup>35</sup> *Supra* Note 15, Article 6.

<sup>36</sup> Joint United States of America - United Mexican States Contingency Plan for Accidental Releases of Hazardous Substances Along the Border, signed January 29, 1988

<sup>37</sup> *Supra* Note 33.

<sup>38</sup> Arizona Revised Statutes (A.R.S.) § 41-1711(1995).

<sup>39</sup> A.R.S. § 41-1712(1969).

<sup>40</sup> A.R.S. §§ 41-1741(1968) and -1742(1991).

<sup>41</sup> A.R.S. § 41-1711(K)(1995).

The Department of Public Safety is responsible for enforcement of Arizona's hazardous materials transportation requirements.<sup>42</sup> "[P]olitical subdivision[s]" of the Department can also enforce these provisions.<sup>43</sup>

Amendments to these provisions will take effect in October 1997. At that time, any "political subdivision" acting to enforce the state's hazardous materials transportation rules must do so only through individuals who have been certified by the Department of Public Safety for such activities.<sup>44</sup>

b. Arizona Corporation Commission

The Arizona Corporation Commission is authorized to establish safety standards for railroads in the state.<sup>45</sup>

The railroads are authorized to maintain their own police forces.<sup>46</sup> Such police are allowed as "supplement[s]" to municipal or other police powers in the state who protect "the persons and property of railroad passengers and employees." Each such officer "shall also possess and exercise all law enforcement powers of peace officers in [the] state," implying that while on duty, such officials are equivalent to any other state law enforcement official. The exact extent of their authority, therefore, is unclear.

The Corporation Commission defines hazardous to essentially include all wastes identified under other laws except those set out under the Clean Air Act.<sup>47</sup>

Under state law, the Arizona Corporation Commission acts in place of the U.S. Department of Transportation and Federal Railroad Administration with respect to safety oversight of hazardous cargo shipped by rail.<sup>48</sup> The Commission includes a Railroad Safety Section at its office in Phoenix, Arizona to perform these functions.

Railroads must immediately report to the Commission by phone in the event of any accidents involving hazardous materials.<sup>49</sup> In addition to other information about the incident, the report must include the generic name or names of the materials involved plus the name, address, and telephone number of the shipper. Although releases of hazardous materials from rail shipments will ultimately involve government response personnel and other investigatory

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<sup>42</sup> A.R.S. § 28-2402(C)(1996).

<sup>43</sup> *Supra* Note 42.

<sup>44</sup> A.R.S. § 28-5204(C)(1995).

<sup>45</sup> A.R.S. § 40-841(1954).

<sup>46</sup> A.R.S. § 40-856(1971).

<sup>47</sup> See Section 101, Chapter 5, Title 14 of the Arizona Administrative Code(1996)

<sup>48</sup> See Section 102 of Chapter 5, Title 14 of the Arizona Administrative Code(1992), amending specific sections of Title 49 of the Code of Federal Regulations, adopted by reference.

<sup>49</sup> See Section 105(A) of Chapter 5, Title 14, Arizona Administrative Code(1992).

officials, rail companies frequently contract with private environmental consultants in regions where they operate. Consequently, these individuals may also be at the scene of a chemical spill.

c. Military Affairs & Emergency Services

Arizona's Division of Military Affairs also includes the state's Emergency Services agency.<sup>50</sup>

Arizona law defines "emergency functions" as including transportation; "emergency services" is defined to include the "preplanning and preparation necessary to carry out emergency functions, other than functions for which military forces or federal agencies are primarily responsible . . . ."<sup>51</sup>

"Hazardous material[s]" include those substances so designated by the U.S. Department of Transportation, by Title 49, Chapter 5, Article 2 of the Arizona Revised Statutes, or any material determined to be a radioactive waste by the Nuclear Regulatory Commission.<sup>52</sup>

"Local emergency" includes conditions of disaster or extreme peril to the safety of persons or property within a town, city, or county, that are determined to be beyond the capabilities of the locality by its officers.<sup>53</sup>

"Response" includes all activities that are "designed to provide emergency assistance...."<sup>54</sup>

Arizona law outlines guidelines for the state's hazardous emergency management program.<sup>55</sup> The Division of Emergency Services is the designated coordinating agency for development of Arizona's hazardous materials emergency program. The agency is responsible for appointing a director of emergency services.

The director of the Division of Emergency Services is required to coordinate the use of state or other personnel, equipment, services, and facilities as requested by local officials in emergency situations.<sup>56</sup> The director must also develop, implement, and maintain a state hazardous materials emergency plan; coordinate the development, implementation, and maintenance of standardized curricula for hazardous materials training and education; and coordinate mitigation efforts stemming from hazardous materials emergencies on behalf of the state.<sup>57</sup> All of these activities require approval from the agency's adjutant general.<sup>58</sup>

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<sup>50</sup> See Title 26, A.R.S., Chapter 2.

<sup>51</sup> A.R.S. § 26-301(1996).

<sup>52</sup> *Id.*

<sup>53</sup> *Supra* Note 51.

<sup>54</sup> *Id.*

<sup>55</sup> A.R.S. § 26-305.02(1991).

<sup>56</sup> A.R.S. § 26-306(1996).

<sup>57</sup> A.R.S. § 26-306(B)(1996).

Amendments to Arizona law changed these mandates in July 1997. Now the director is no longer expressly responsible for certifying hazardous materials management specialists and must obtain approval from the adjutant general for all other activities outlined above.<sup>59</sup>

The director of Emergency Services is responsible for coordinating resources not readily available to local officials, including resources to aid “responsible authorities on federal reservations” and “specialized personnel and/or equipment from other states.”<sup>60</sup>

## 2. States within Mexico

*Protección Civil* has offices operated through state “units.” The technical coordination of the state unit for Sonora, for example, is located in Hermosillo.<sup>61</sup>

Although border states may have laws or programs relating to emergency response situations, hazardous materials incidents occurring within the border corridor are the responsibility of the federal government.<sup>62</sup> Only the federal government has jurisdiction over hazardous waste and toxic substances.<sup>63</sup> In addition, the Mexican Constitution has historically been interpreted as providing that the prevention of impacts to public health from environmental contamination is a federal responsibility.<sup>64</sup>

## C. Local

### 1. Localities within the United States

Santa Cruz County has its own official protocol to be used in the event of a hazardous materials emergency.<sup>65</sup> The procedures outline the responsibilities of various entities with respect to emergency and spill incidents that occur within the county. The County Board of Supervisors is vested with authority for rule-making; the Emergency Services Department is responsible for “coordinating County emergency service plans, procedures, and programs” with other governmental entities and with the private sector.

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<sup>58</sup> A.R.S. § 26-306(A)(1996).

<sup>59</sup> A.R.S. § 26-306 (A)(1996).

<sup>60</sup> Title 8, Chapter 2, Section 102 of the Arizona Administrative Code(1990).

<sup>61</sup> Interview with Bertoldo Ruiz, chief of the Nogales, Sonora *Protección Civil* unit, June, 1997.

<sup>62</sup> See, for example, the Law of Ecological Balance and Environmental Protection of the state of Nuevo Leon, enacted June 16, 1989.

<sup>63</sup> See Article 150 of the Decree Reforming the General Environmental Law, Supra Note 15.

<sup>64</sup> See Article 73, Section XVI, Subsection 4a.

<sup>65</sup> County of Santa Cruz Hazardous Materials Emergency/Spill Response Procedure, Santa Cruz County Emergency Services Department, Nogales, Arizona. The Procedure is currently being updated and integrated into a revised County Emergency Operations Plan

a. Sheriff's Department

The Sheriff's Department is responsible for providing any services needed to protect life or property and will be the "24-hours point of contact" for receiving reports and notifying additional authorities including the state officials from the Department of Public Safety. In the event of an emergency, the Sheriff's Department provides an on-scene coordinator who will be the overall authority directing efforts at the scene. While the on-scene coordinator must recognize and utilize the "training and expertise" of available state and federal officials, on-scene authority is "not to be usurped" by any other agency.

As the threat of an incident is reduced and the recovery/mitigation phase begins, authority for on-scene activities will transfer from the Sheriff's Department on-scene coordinator back to each county agency.

b. Emergency Services Department

In the event of an emergency, Emergency Services will notify the State Hazardous Materials Officer and other regulatory agencies, coordinate requests for equipment and other tasks received from the on-scene coordinator, and provide information to the public.

c. County Engineer/Director of Public Works

The County Engineer/Director of Public Works is responsible for any needed roadway repairs, clearance, or reconstruction, provides roadblocks or other traffic control equipment, and procures additional emergency equipment from the private sector when needed to "effectively respond to a hazardous materials incident/emergency."

d. County Health Department

The County Health Department is responsible for providing the requested ambulance and other medical support as needed at each incident and for monitoring health aspects of cleanup and disposal phases to insure "that conditions threatening to life, health, and the environment are eliminated." The Health Department is also responsible for contacting the Arizona Department of Health Services employee representing the EPA Regional Response Team.

**2. Localities within Mexico**

In addition to its state offices, *Protección Civil* has offices operated through municipal "units." For example, both Nogales and Agua Prieta, Sonora have individuals designated as municipal unit representatives.<sup>66</sup>

In local chemical emergencies, municipal fire response service providers known as *bomberos* are usually the first on the scene.<sup>67</sup> Although response to these incidents is

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<sup>66</sup> *Supra* Note 61.

theoretically a federal responsibility, the *bomberos*' nearly immediate access to the scene makes their assistance essential.

#### D. Summary

Although Mexico's legal framework is less elaborate than that of the United States, it nevertheless establishes a scheme within which adequate emergency services can be provided. Furthermore, as is evident from the U.S. laws referenced in the previous sections, added detail does not necessarily yield better government services. Conflicts between laws from the different levels of government and the absence of needed language can reduce the effectiveness of actual response efforts. For example, Arizona law seems to defer state authority at emergency incidents to that of the federal government where "[federal] agencies are primarily responsible," while only pledging to assist local responders when capabilities are insufficient or when asked to do so; county provisions assert unabridged on-scene authority.<sup>68</sup> The state's regulations commit its agencies to specific involvement in chemical emergency responses occurring on highways, related to rail lines, etc. The Santa Cruz County program also provides this, with even greater specificity regarding points at which actual on-scene command will shift.

It is unclear from federal statutory and regulatory language, however, when federal authority pre-empts that of the state or the county. That is, would it be invoked as soon as federal officials arrive at the incident; as soon as a determination can be made that federal interests are at stake; or at the point of some other circumstance variation? Because the answers to these questions are not evident, confusion at the scene is likely, especially considering language in the county provisions stating that "on-scene authority is not to be usurped" seemingly under any circumstances.<sup>69</sup> On-scene confusion will only undermine adequate protection of public health and the environment after a chemical release.

Mexico's provisions indicate that *Protección Civil* and SEMARNAP are responsible for chemical emergency services, with backup assistance to be provided by the Army. In practice, municipal fire response officials handle the initial needs at the incident scene. Officials questioned during preparation of this report expressed varied ideas regarding the roles of each agency at an emergency scene, however. SEMARNAP officials stated that they, not *Protección Civil*, were the authorities to be called in the event of a chemical emergency. Yet international agreements with the U.S. indicate that *Protección Civil* is to be involved and no legal provisions contravene their involvement. This confusion is comparable to that caused by U.S. laws and must be resolved for successful management of any large-scale emergency incident.

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<sup>67</sup> July 23rd phone interview with Elvira Martinez of Phillip Environmental, Tijuana, Baja California, Mexico.

<sup>68</sup> *Supra* Note 44 and Section II.C(1)(a) of this report.

<sup>69</sup> *Supra* Note 65.