

Public Health Law 101



A CDC Foundational Course for
Public Health Practitioners



Public Health Law Program

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PUBLIC HEALTH LAW 101

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- Unit 1: Key Concepts of U.S. Law in Public Health Practice
- Unit 2: Ethics and the Law
- Unit 3: Administrative Law
- Unit 4: Role of the Legal Counsel
- Unit 5: Law of Public Health Surveillance, Investigations, and Emergencies
- Unit 6: Privacy and Confidentiality
- Unit 7: Infectious Diseases
- Unit 8: Environmental Public Health, Occupational Health, and Injury
- Unit 9: Chronic Diseases and Birth Defects



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Unit 8

Environmental Public Health,
Occupational Health, and Injury



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Unit 8 Objectives

By the end of this unit, you should be able to:

1. Understand the role of law in environmental health.
2. Understand the role of law in occupational health.
3. Understand the role of law in injury and violence prevention.



Objective 8.1

Understand the role of law in environmental health.



What is Environmental Health?

- Traditional measures for ensuring:
 - Drinking water sanitation (cholera)
 - Food sanitation (salmonellosis)
 - Nuisance abatement (tanneries)
 - Vector-borne disease control (malaria)
- Contemporary measures for controlling:
 - Industrial and automotive air pollution
 - Ground water pollution



Historical Importance of Environmental Health

- As late as 1850, the urban life expectancy was approximately 25 years
 - Environmental-related diseases were major cause of mortality
 - In summer 1793, a vector-borne disease (yellow fever) killed 10% of Philadelphia's population
- The *Shattuck Report* (published in 1850) proposed first model environmental law
 - Environmental health laws contributed to doubling of life expectancy between 1850 and 1950



Constitutional Division of Environmental Health Powers

- Pre-Constitutional period
 - Colonial governments regulated environmental health hazards
 - States continued this regulation before uniting under the Constitution
- The Constitution reserves environmental health powers – part of the police powers – to the states



State and Federal Roles in Environmental Health

- Until the early 1900s, almost all environmental health regulation was done by state and local government
- The federal food sanitation law passed in 1905 was early important federal environmental health regulation
- Since the 1960s, the federal government has taken the lead in many areas of environmental health



Modern Environmental Public Health

- Some issues are regulated by both the federal government and states:
 - Air pollution
 - Water pollution
- Some are state and locally regulated:
 - Mosquito control
 - Animal control
- Even for some state-regulated issues, interstate outbreaks require federal legal assistance
 - Monkeypox (animal control)
 - West Nile virus (mosquito control)



Agencies with Roles in Environmental Public Health

- Environmental public health involves many agencies at all levels of government
- Federal examples:
 - Environmental Protection Agency
 - U.S. Department of Agriculture
 - Agency for Toxic Substances and Disease Registry (ATSDR)
- State and local agency examples
 - State departments of environmental protection
 - Large city and county health departments



Key Federal Environmental Laws

- Clean Air Act
- Clean Water Act
- Pesticide and herbicide laws
- Superfund
 - Addresses clean-up of certain polluted sites
 - Applies “polluter pays” concept for clean-up liability



Federal and State Roles in Environmental Health Law

- Federal environmental law may preempt state laws
- In many areas, the federal government sets minimum standards:
 - Often implemented and enforced by the states
 - States may not allow higher risks than federal law
 - State standards may be stricter than federal standards or involve greater scope
- When Congress believes uniform federal standards are important, it can require that state standards be the same as federal standards



Environmental Regulation: Drinking Water

- Drinking water regulations involve environmental public health and communicable disease control agencies
- State and federal law govern the treatment and provision of water:
 - Chlorination levels
 - Limits on trace pollutants
- State and local disease reporting laws provide for collection of information on waterborne illnesses and outbreaks



Environmental Regulation: Vector Control

- Mosquitoes transmit many serious public health threats:
 - Yellow Fever
 - Malaria
 - West Nile virus
 - Dengue Fever
- Mosquito control historically has been a state and local activity
- Rapid spread of West Nile virus nationally was tracked by local health agencies, state health departments, and CDC



Environmental Regulation: Vector Control

- Activities
 - Requiring drainage of poorly maintained swimming pools or disposal of old tires on private property
 - Spraying private property without permission
- Legal issues:
 - Do state tort claims acts bar suits by persons who claim to have been injured by mosquito spraying?
 - Do state mosquito spraying activities violate federal water pollution laws?



Environmental Regulation: Animal Control

- Some animals (e.g., feral animals and some pets) pose significant public health risks
 - Rabies exposure through dog attacks and bites
 - Attacks by exotic animals such as monkeys and ferrets
- Animals can facilitate interstate and international transmission of disease:
 - Monkeypox
 - Psittacosis
 - Salmonellosis



Environmental Regulation: Animal Control Measures

- Public health orders to destroy dangerous animals
- Regulations prohibiting keeping of dangerous or exotic animals
- Fencing and insurance requirements for keeping dangerous animals
- Federal bans and seizure of potentially infected animals traveling in interstate commerce



Environmental Regulation: Environmental Toxins

- Public health issues
 - Limiting arsenic in drinking water
 - Requiring proper ventilation of homes at risk of radon contamination
 - Requiring removal of lead-based paint
- Legal issues
 - Who should pay to remediate natural hazards such as radon?
 - Who should pay to remediate hazards such as lead paint applied 75 years ago?



Environmental Regulation: Land Use Measures

- Separate neighborhoods from dangerous industrial activities
- Require proper housing design and construction
 - Wind and flood standards in hurricane zones
 - Insulation in extreme climates
- Require design of communities to facilitate walking and exercising



Environmental Regulation: Land Use Measures

- Zoning restrictions on construction and development
- Building codes addressing quality of construction
- Requirements for property owners to abate nuisances
- Issue: When does regulation become a taking that requires just compensation?



Objective 8.2

Understand the role of law in occupational health.



Occupational Health Issues

- Occupational disease context
 - Cancer in chimney sweeps (classic example of scientifically-described occupational disease)
 - Cancer associated with X-ray exposure in health care workers
 - Mesothelioma associated with asbestos
 - Liver cancer and vinyl chloride exposure
- Occupational injury risk examples
 - Crush injuries
 - Amputations
 - Repetitive motion syndrome



Occupational Health Law Example: Triangle Factory Fire, New York City

- Late on March 11, 1911, a fire broke out in top floor workroom
- Within 30 minutes, 146 workers (mostly women), died directly from the fire or from jumping
- Exits had been blocked to prevent workers from taking unauthorized breaks
- Public outcry accelerated the modern era of occupational safety



Triangle Factory Fire: Legal Liability for Workplace Injuries

- While lawsuits were brought after the Triangle factory fire, few were successful and plaintiffs received little compensation
 - Traditional tort law made it very difficult for injured workers to receive compensation
- General principle: Employers had little financial incentive to improve workplace safety
 - Triangle Factory fire stimulated workers' compensation



Workers' Compensation Laws

- Administered by state agencies, rather than courts
- Provide limited compensation
- Compensation for injury-related costs:
 - Medical care costs
 - Time off from work during recovery
 - Disability payments
- Require reports of workplace injuries, allowing surveillance for injuries



Occupational Safety and Health (OSH) Act of 1970

- In 1970, Congress passed the OSH Act
 - The OSH Act recognized that workers' compensation laws did not create sufficient incentive to reduce occupational illness and injury
- The Act federalized parts of occupational health regulation
 - But it does not apply to miners, workers in the transportation industry, public employees, and the self-employed
- States may develop and operate their own occupational safety and health programs if approved by the Occupational Safety and Health Administration (OSHA), and if their standards are as least as effective as **comparable** federal OSHA standards



Federal Occupational Safety and Health Agencies

- The Occupational Safety and Health Act created two federal agencies:
 - National Institute for Occupational Safety and Health (NIOSH)
 - Occupational Safety and Health Administration (OSHA)



NIOSH

- NIOSH: Part of the Centers for Disease Control and Prevention (CDC)
- NIOSH objectives include:
 - Conducting research to reduce work-related illnesses and injuries
 - Promoting safe and healthy workplaces through interventions, recommendations and capacity building
 - Funding educational programs for occupational safety and health professionals
 - Approving respirators for use in the workplace
- NIOSH provides funding for occupational safety and health research



OSHA

- OSHA: part of the Department of Labor
- OSHA's mission is to assure the safety and health of U.S. workers by:
 - Setting and enforcing standards
 - Providing training, outreach, and education
 - Establishing partnerships between government, employers, and employees
 - Encouraging continual improvement in workplace safety and health



Regulatory and Scientific Interface: OSHA / NIOSH

- NIOSH provides the scientific input for OSHA regulations
- OSHA requires employers to maintain certain records that assist NIOSH in collecting data for its research
 - OSHA requires occupational injuries and diseases to be recorded and made available for review
 - OSHA requires employers and occupational medicine providers to retain records for long periods to allow identification of long-term risks
- OSHA translates NIOSH and other expert findings into regulatory policy



OSHA and State Cooperation

- State public health and labor departments play an important role in occupational health
 - States have broad authority to require disease and injury reporting
 - States are the intermediary for most reports that flow to federal government
 - OSHA standards assure uniform data collection nationally
- OSHA has limited resources and draws on state and local health departments to support its mission



Occupational Health and Private Litigation

- With few exceptions, workers' compensation laws prohibit tort claims against the employer
 - Injured workers can sue companies that supplied their employer with defective products that injured them
 - Employers recover workers' compensation payments if the employee recovers damages from a third party for the same injury
- Records from health department investigations can be subpoenaed in private litigation



Objective 8.3

Understand the role of law in injury and violence prevention.



Injury Prevention as A Public Health Domain

- Laws directed at preventing unintentional and violent injuries have long been part of legal canon:
 - Speed limits date to the first automobiles
 - Laws on keeping domestic animals out of the way of horses and carts are even older
 - Laws prohibiting murder date to early recorded history
- Only within recent decades have injury and violence prevention been considered part of public health and become a health department concern
- Injury and violence prevention relies on a complex mix of behavioral and environmental change strategies



Injury Prevention and Law: Surveillance

- Reporting laws provide basic data:
 - Health-care providers report injuries
 - Law enforcement officials can report on circumstances of accidents and violent deaths
- Epidemiologic analysis detects:
 - Patterns of injuries
 - New types and sources of injuries
- Surveillance data can be used to develop new injury prevention regulations



Injury Prevention: State and Local Responsibilities

- Laws that affect individual behavior – examples:
 - Drunk driving laws
 - Child abuse and neglect laws
- Laws that affect local practices – examples:
 - Regulation of the sale of dangerous products
 - Building codes
- Federal government provides financial incentives to encourage states and localities to adopt uniform laws and best practices



Product Safety: Federalism and Injury Prevention

- The Constitution grants authority to the federal government to regulate interstate commerce
 - Federal government has a primary role in product safety regulation
- Federal preemption of state laws
 - In some areas of product safety, federal government preempts all state regulation
 - States may regulate in areas that are not preempted by federal law
- Limits on state regulation:
 - States must not interfere with interstate commerce in the guise of safety regulation
 - States must not have requirements that conflict with federal laws



Federal Product Regulatory Agencies

- Federal government agencies promulgate extensive regulations to improve the safety of manufactured products
 - Department of Transportation (DOT)
 - Consumer Product Safety Commission (CPSC)
 - Food and Drug Administration (FDA)
- Federal regulations preempt state laws in some areas to assure uniform practice in the U.S.
 - Medical devices
 - Pesticide labeling



Private Product Liability Litigation

- An objective of product liability litigation is to reduce accidents by passing on costs of injury to manufacturers
 - Product liability allows recovery if the product is defective and causes an injury
 - Manufacturer has limited defenses
 - Effect is increased incentive to design safer products
- Limited defenses may complicate prevention of unfounded claims



Federal Regulation: Automobile Safety

- Regulations contributing to reduced crash rates and increased survival:
 - DOT regulations on crashworthiness:
 - Improved structural integrity
 - Seatbelts and passive restraints
 - Crash reduction technology and design
 - Improved brakes
 - Better tires
 - Safer windshields



Federal and State Regulation: Highway Safety

- DOT and state highway departments regulate highway design and construction
- Regulations to reduce injuries -- examples:
 - Shock-absorbing guardrails
 - Highway medians that prevent cross-over crashes
 - Improved road surface materials to enhance traction



Federal and State Regulation: Driving Laws

- Federal government uses its spending power to encourage states to pass uniform safety laws:
 - Seatbelt use and child restraint laws
 - Uniform speed limits
 - 70 mile-per-hour maximum speed limit
- States have passed strict drunk driving laws:
 - Mandatory imprisonment for drunk driving
 - Lower thresholds for allowable blood alcohol levels



Federal, State, and Local Regulation: Fire Safety

- Fire safety involves state agencies, local fire departments, and CPSC
 - CPSC regulations on flammability of clothing
 - State and local laws set standards for fire safety in building construction
- Local fire departments conduct fire hazard inspections in businesses and private residences
- State and local laws regulate fireworks



Federal, State, and Local Regulation: Electrical Safety

- Requirements for state education campaigns addressing dangers of working around power lines
- CPSC regulations on grounding and electrical isolation of consumer products and power tools
- State regulations requiring utility companies to reduce hazards of electrical distribution systems
- State and local building code provisions on electrical safety



State Licensing and Permitting for Hazardous Activities

- Examinations as a condition for a license:
 - Driver's license examinations
 - Re-examining older drivers to assure competency to drive
 - Exams for boat licenses, firearms permits, and other potentially hazardous activities
- Building permits requiring that construction meet safety standards
- Exception: Federal government regulates commercial transportation professionals (e.g., airline pilots and interstate truck drivers)



Dual Purpose Laws: Child Abuse and Neglect

- Child abuse and neglect laws are dual purpose laws:
 - Identify at-risk households to allow interventions to prevent ongoing and future harm, and to provide epidemiologic data
 - Identify potential needs for criminal prosecution
- Interventions to prevent harm are governed by public health law principles
- Criminal investigations / prosecutions must comport with Constitutional rights



Dual Purpose Laws: Violent Injury Reporting

- States may require reporting of violent injuries:
 - Gunshot injuries, stab wounds, and other injuries caused by potential criminal activity
 - Domestic violence and elder abuse
- Like child abuse and neglect laws, these are dual purpose laws, intended to allow both interventions and criminal prosecution



Conclusion: Unit 8



Summary

- Environmental public health is rooted in traditional state police powers but now depends on a network of federal, state, and local regulations
- The federal government is the lead in occupational health and safety, but the states and localities play an important role
- Injury and violence prevention rely on a complex mix of federal, state, and local legal authorities



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