

Legal Brief

Veterinarians and waste disposal

The options available to a veterinary clinic or hospital for disposal of its waste are becoming more limited. One of the methods traditionally used by veterinary hospitals and clinics is incineration. In the Aug 1, 1994 *JAVMA*, page 396, is an item entitled, "EPA tightening the belt on medical waste incinerators." The gist of this item is that more stringent requirements may reduce the number of medical waste incinerators permitted to operate, and that, though these requirements will currently exempt incinerators that burn only animal tissue and waste, there are circumstances under which this exemption may not apply. The item states,

Implications for veterinary medical facilities differ, depending on the size of the incinerator in question and the type and amount of regulated medical or infectious waste that is generated by the facility... Large clinical or research facilities are likely to be affected by the changes.

In *State v Braun*, 378 A2d 640, the Supreme Court of Delaware upheld a provision in the law that made it unlawful "to construct, install, replace, modify or use any equipment or device which may cause or contribute to the discharge of an air contaminant" without obtaining a permit. The defendant in this case was a rendering plant that used an incinerator to dispose of some of its waste. Defenses to action taken by the state, were those that a veterinarian might allege if similar action were taken to enjoin use of an incinerator. These were that the law was so vague it did not pro-

vide proper guidance, that there was an unconstitutional delegation of legislative authority to a state agency, and that the law was improperly retroactive in its application. The Supreme Court of Delaware struck down all of those defenses. Courts in other states would no doubt follow suit, especially in view of the increased interest in preventing air pollution, and as a result of environmental protection regulations incorporating more scientific guidelines.

That municipal, as well as federal and state laws, may affect one's right to use an incinerator is illustrated by *City of Ft Lauderdale v Multidyne Medical Waste Management*, 567 S2d 955 (Fla App 1990). The defendant, a waste management facility, challenged the authority of the city commission to enforce a city ordinance under which, if the commission determined that there was air pollution, use of an incinerator could be enjoined. The appellate court reversed a trial court holding in favor of the waste management facility, saying "the circuit judge substituted his judgment as to the weight of the evidence for that of the commission."

The Supreme Court of New York, Appellate Division, upheld a similar ordinance of the town of Ellenburg in *Pete Drown Inc v Town Board of Ellenburg*, 591 NYS2d 584 (1992), and the US Court of Appeals upheld a similar ordinance of the City of Baltimore in *Medical Waste Associates Ltd v Mayor and City Council of Baltimore*, 966 F2d 148 (1992).

Clean water acts—federal, state, and even local—have inaugurated additional controls over the discharge of waste into sewers, drains, and watercourses. Businesses and property owners not connected directly to public sewage treatment facilities can be re-

quired to install and maintain septic systems that will prevent untreated sewage from reaching streams and watercourses—or from polluting underground water resources.

Environmental protection requirements are forcing more and more small cities and villages to install or upgrade sanitary sewage systems. Ordinances developed by these municipalities may compel residences and businesses to connect with the sewage system. In *Village of Riverwoods v Untermeyer*, 369 NE2d 1385, an Illinois appellate court upheld the village's requirement that a resident connect with the village sewage system, even though a septic tank and septic field served the property.

Veterinarians who rely on waste disposal companies to discard solid waste are concerned not only with definitions (what waste is "hazardous" and subject to control), but whether the veterinarian's disposal agency is permitted to handle the kinds of waste generated. Enforcing agencies and the courts take the view that veterinarians or other generators of waste have a duty to provide for legal disposal. Thus, if the agency handling the waste of a veterinary clinic does so without a proper permit, this would not excuse the veterinarian for violation of the law or regulation.

Providing waste disposal recommendations is one of the useful deeds a state veterinary medical association can do. A number of years ago, the ecology committee for the Illinois State Veterinary Medical Association developed such recommendations with guidelines for the disposal of insecticides, infectious waste, carcasses and body parts, syringes, needles, and expired or unwanted drugs.

Though a veterinarian's main concern is with the laws and regu-

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lations that control the disposition of waste, certain circumstances may make veterinarians vulnerable in civil suits to those who claim a nuisance exists. Such a cause of action can exist despite the veterinarian's adherence to rules and regulations. Adding to the arsenal of those who might seek damages or injunctive relief are state and local laws defining a "public nuisance." The effect of the nuisance theory on veterinarians has been discussed in other Legal Briefs and will not be pursued here. The purpose in mentioning it is to point out that adherence to Environmental Protection Agency regu-

lations, zoning laws, and any other strictures that affect a veterinary practice, may not be protection against neighbors who allege that their enjoyment of life is being constricted by the veterinarian's activities.

Food animal veterinarians also have concerns about the disposal of livestock waste by their clients. Manure disposal is a major problem with many large confinement operations. Environmental Protection Agency regulations that have been adopted can control the times, amounts, and types of soil on which manure can be spread. The cost of complying, including

the building of lagoons or other holding facilities, may affect the size of the livestock population on the farm and, in some instances, even lead to termination of the enterprise. Finding other farms that can accommodate manure from a confinement operation is a growing concern. In the January 1995 issue of *Agricultural Law Update*, a newsletter of the American Agricultural Law Association, there is a model contract and comments on a "manure application agreement." This is just another development on which veterinarians need to stay abreast.

Book Review:

Plant-associated Toxins: Agricultural, Phytochemical, and Ecological Aspects. Edited by S.M. Colegate and P.R. Dorling. 581 pages; illustrated. CAB International, Wallingford, Oxon OX10, 8DE, England. Available in the United States from The University of Arizona Press, 1230 N Park Ave, Ste 102, Tucson, AZ 85719. 1994. Price \$120.00.

This book is a compilation of the material that was presented at the Fourth International Symposium on Poisonous Plants, which was held in Fremantle, Western Australia, in the fall of 1993. The symposium was dedicated to Dr. Lynn F. James, an industrious and experienced scientist at the USDA Poisonous Plant Research Laboratory in Logan, Utah, who was instrumental in initiating international poisonous plant meetings to advance worldwide research. Annual economic losses attributable to direct effects of poisonous plants on livestock in the United

States alone were estimated to be \$340 million in 1989.

Presentations were fully edited and reviewed to provide consistency, to ensure scientific integrity, and to keep the book within acceptable size. The result is 102 extremely readable, 4- to 6-page chapters covering aspects of plant poisonings and mycotoxicoses, such as detection, isolation, and identification of toxic chemical compounds biosynthesized by plants and microbes; investigations of the biochemistry of plant-associated toxins to elucidate mechanisms of action; investigations of

toxin-induced adverse effects, including reduced productivity, fetotoxicosis, and organ-specific toxicoses; management techniques to reduce toxin effects; and development of nontoxic strains of fodder crops. Many details of experimental methods and protocols were omitted, but appropriate references and mailing addresses of authors are provided to facilitate further inquiries.

All plant toxins are not addressed, but numerous toxins in several countries, along with effects in several species, are covered. Although not of interest to everyone, veterinary toxicologists, clinicians in rangeland areas, nutritionists, and clinical pathologists will find the material informative and easy to read.

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