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REAL ESTATE TRANSFER:
GUIDELINES TO MINIMIZE POTENTIAL LIABILITY

Fulfillment of Creative Component for INDEN 5350.9

Submitted to: Dr. Wayne C. Turner

Submitted by: Derek Blackshare

May 11, 1988

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BACKGROUND

THE PROBLEM

The sale of land is not as simple as it used to be primarily due to recent developments on hazardous wastes and their regulations. Both federal and state authorities have contributed to this evolution of regulations by imposing stiff penalties when environmental problems arise. It then becomes a legal matter which varies from case to case as to who is liable. The problem is only magnified when contaminated land has changed hands. This means the buyer, seller, and lender in a real-estate transaction need to be careful. Thus, the objective of this paper is to: Develop guidelines for all parties involved in the transaction including the buyer, the seller, and the lender to minimize their potential liability.

Before examples of the potential liability are given, it might be beneficial to give a brief explanation of the primary governing legislation, the Comprehensive Environmental Response Compensation & Liability Act of 1980 (CERCLA or Superfund), and some of the pertinent terminology. A very brief overview of CERCLA is that it is an act designed to clean up contaminated areas and recover the cost of cleaning up those areas. The manner in which these costs are recovered is very liberal. The costs can be recovered from present or past owners or operators of the property as well as anyone who transported, disposed of, or treated the

hazardous substances. The liberal policy is evident from this text as just about anyone who had to do with the waste in any way could be held liable. Examples include generators (parties which produce hazardous waste in some manner which must be properly disposed of), banks which foreclosed on the property and participated in the management or operation of it, current owners of the property, as well as past owners.

CERCLA liability is "strict", i.e., no negligence need be shown. Additionally, the liability is "joint and several", so that any one party who is responsible may be liable for the whole cost of clean up.¹ Thus, the danger of costly cleanups is high. Some examples will illustrate the problems for each of the three (3) parties involved in a transaction. They are given next.

THE BUYER

When the buyer purchases the land, he/she immediately assumes some or all of the responsibility for cleanup costs which could occur. The power of this statement is obvious and many examples can be cited. The irony of this responsibility is that **the buyer may be held responsible even if the contamination of the land occurred before he purchased it.** The point of strict liability becomes evident here. Joint and several liability becomes ominous as cleanup costs typically can run \$1000 per barrel. Many examples are available where total cleanup costs run in the millions of dollars.

Some specific examples include:

A Carolina company which was a transformer reconditioner (generator) hired a transporter which disposed of waste illegally by dumping PCB contaminated oil on the roadway. The court deemed the company (generator) responsible and held them liable for a \$3,000,000 cleanup.²

Missouri vs. Independent Petrochemical where Independent Petrochemical (the generator) was held liable even though its wastes were removed from the site at which it arranged for disposal and taken to another site from which the release occurred.³

New York vs. General Electric where contaminated waste oil was used on a dragstrip to suppress dust. The court held General Electric (the generator) liable stating that generators should not be able to contract away their liability.⁴

THE SELLER

The potential liabilities of the seller are much the same as with the buyer. The seller would likely be considered a past owner or operator and therefore potentially subject to the same responsibilities as the buyer. The concepts of strict and joint and several liability also apply here.

Another important concept is that of "deep pockets" in which cleanup costs will attempt to be recovered from wherever the money can be found. For example, this could be

the case if the current owner of the property could not afford the cleanup. The costs would likely then be attempted to be recovered from any other liable source which had the money.

Some hypothetical examples are:

A generator sells property which contains a plant and underground storage tanks. While the generator owned the plant, a release occurred from the plant and one of the underground storage tanks developed a leak. The generator cleaned up both releases but after the sale, more contaminated land and groundwater were found. The generator (seller) could be held liable, even if the subsequent contamination occurred after the sale.

Suppose XYZ corporation sold a piece of land to ABC corporation who proceeded to illegally dispose of hazardous waste in a landfill on-site. Then ABC corporation mysteriously disappears. The courts would want XYZ to participate in the clean up **unless they can prove the contamination was done after the sale.**

THE LENDER

The potential liability for the lender lies in the case where the lender forecloses on the land and is therefore considered the owner. Again, strict and joint and several liability hold. Maybe more important here than in any other case, the concept of deep pockets comes into play.⁵

Some specific examples are:

United States vs. Maryland Bank & Trust in which the bank foreclosed on land with release of hazardous waste from fifty-five gallon drums and held the property for four years. The court held that the bank was the owner and was held responsible for a \$460,000 cleanup on a loan originally of \$335,000.⁶

Union National Bank of Massachusetts in which the bank acted as owner by setting the salary of a new consultant, allegedly forcing removal of president, and forcing transfer of assets. They settled for \$250,000.⁷

Pennsylvania Bank foreclosed and hired a construction company which illegally disposed of waste and the bank ended up paying \$900,000 for the cleanup.⁸

THE SOLUTION

The danger of the situation is obvious, so, the question becomes what can each of the respective parties involved in the real estate transaction do to protect themselves? In the following paragraphs, measures which should be taken will be briefly addressed. In general, any party involved should take precautionary measures and, most importantly, document and retain any developments germane to the transaction. Some general comments are offered below to show what can be done.

THE BUYER

The buyer party of the transaction is striving to

protect himself against any future or present problems. The manner in which he achieves this is by assessing the current condition of the property and attempting to obtain any indemnifications possible for past damages. This assessment would likely be done in the form of an environmental audit, which will be common to all parties involved in the transaction, and will be discussed at great length in succeeding sections. The buyer would then likely attempt to obtain insurance against such liabilities if possible.

THE SELLER

The seller, like the buyer, wants to protect himself against future developments and problems. His/Her goal is to establish the current condition of the land at the time of the transaction and clear himself of any future liability. Again, to assess the condition of the land, an environmental audit will be necessary with different parameters stressed than in the case of the buyer. These differences will be pointed out in later sections. The seller should also attempt to obtain contracts clearing himself of future liability stating that the land was in a certain condition at the time of the transaction.

THE LENDER

The lender is also guarding against future problems. Like the other two parties, the lender should perform an environmental audit to assess if problems could arise. The

reason is that the lender will eventually have to weigh the risks of a cleanup cost against the loan amount. Foreclosure plays into this too as at all costs the lender may not decide to foreclose, and certainly not actively participate in managing the land, if future problems arise. The banks decision is therefore very complicated and should be evaluated thoroughly. The lender should also request periodic assessments after the purchase is made to see how its investment is progressing.

SOURCES OF HELP

All of this forms a seemingly unsurmountable barrier which offers no security to anyone involved in a real estate transaction. Such is not the case. First, professional help in the form of consultants and lawyers would be beneficial in any case. There are any number of professionals specializing in this area and the investment of their services is well worth the money. Another area of security was announced when Congress passed the Superfund Ammendments and Re-authorization Act (SARA) in 1986. SARA contained a clause which offers some security to individuals involved in a real estate transaction. The statement is as follows: "... must have taken, at the time of acquisition, all 'appropriate inquiry' into the previous ownership and uses of property....". The question then becomes what is "appropriate inquiry"? That is where the professionals mentioned previously come into play. That is their job, to

know what is the appropriate inquiry. The impact to all parties involved in the real estate transaction are obvious. The legislation provides an opportunity to reduce potential liability in writing. The individual ways to achieve this will be given in the individual sections for each of the parties involved.

RESEARCH OBJECTIVES

The purpose then of this research is to find ways for all three parties to better manage their liability exposure. Specifically, the buyer needs to know what liabilities may exist in present site contamination. The seller wants to set an existing condition baseline so he/she will not be held responsible for any future problems. Finally, the lender wants to avoid having to foreclose on a piece of land with environmental problems thereby accepting the liability.

This paper will address these problems and develop a procedure to minimize the probability of their occurrence. Part of this procedure will include the use of an environmental audit in all cases. Since this audit is common to all parties it is given a separate section and is probably the single most important development of the paper. It is true that the three parties will be interested in different aspects of the audit and these will be pointed out in the separate sections, but the general idea of the audit will be the same for each. The next section therefore will discuss at length the procedure to be followed while performing the

audit.

ENVIRONMENTAL AUDIT

This section discusses the environmental audit which can be broken down into four phases: abstract review, paperwork search/review, on-site inspection, and lab tests. A flowchart of the procedure can be seen in figure 1. The section is written from a buyers point of view because the buyer is the one potentially assuming the most liability. The concepts of the audit remain the same for all three parties in the transaction however and, as stated previously, the differences will be developed later.

ABSTRACT REVIEW

The first step in an environmental audit happens long before the actual on-site inspection, which is commonly thought of as the actual audit. This first step involves a title check of the property in question. An attorney should be hired to check the abstract of the property as these abstracts can be very long and complicated. The abstract review should check for ownership, liens, right-of-ways, royalties, and, if possible, use. The desired outcome of the review (in addition to the normal checks) should be a list of past owners with uses for the land, if possible. Parties involved in the transaction should then review this list for potential problems (Joe Blow Plating Co., Bob's Fuel Dump, Tom's Landfill, pipelines, etc.). The question to keep in

GENERAL REAL-ESTATE TRANSACTION PROCEDURE

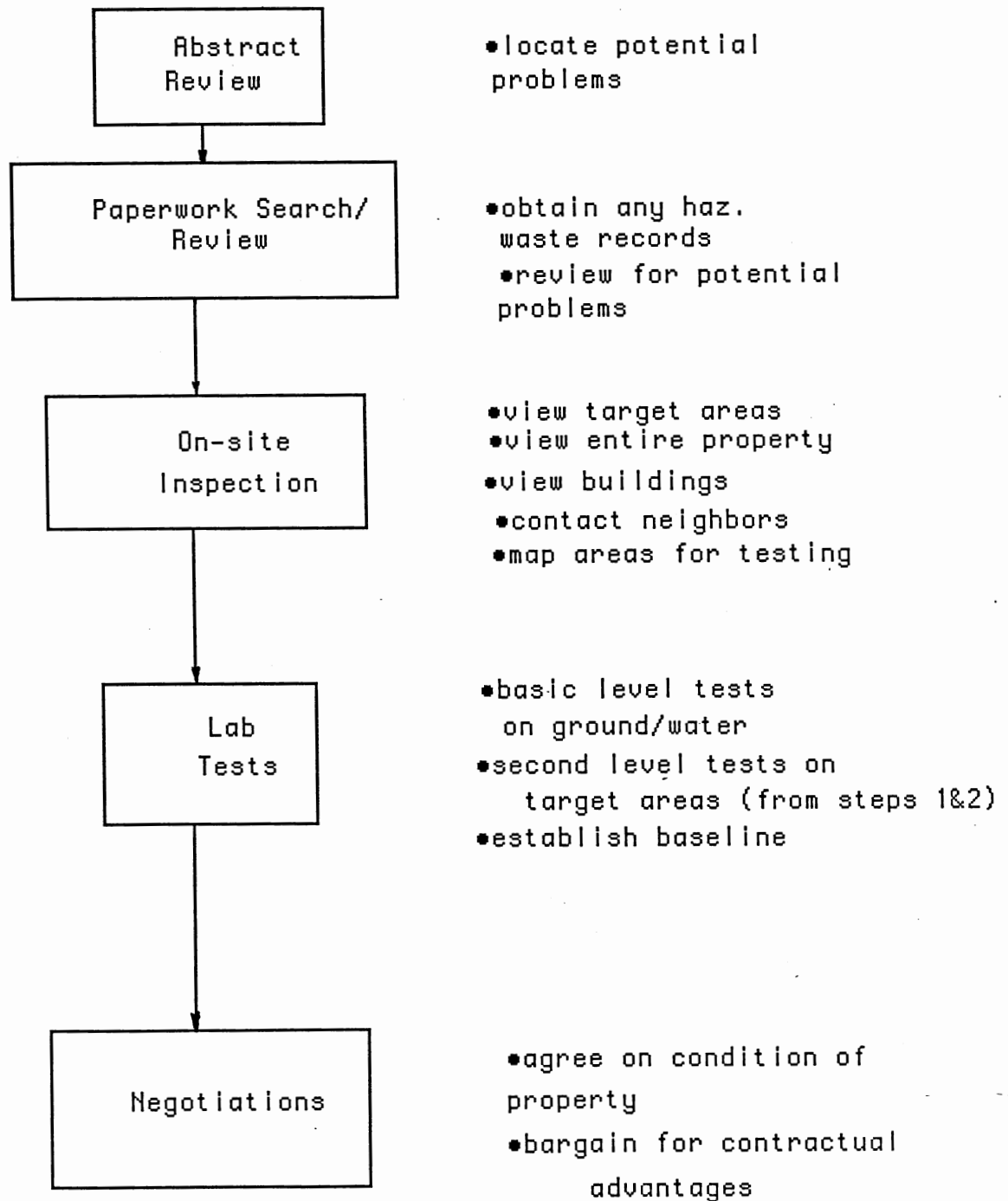


Figure 1

mind is, "Is there any indication of hazardous waste activity?"

The next step is to ask the owner (seller) what he/she knows about previous owners or any problems that have arisen in the past. These questions could be directed at potential problems located in the abstract review.

The desired outcome of this inquiry is to, in general, locate any potential problems which require further investigation. The owner (seller) may have some information which is beneficial for further investigation.

PAPERWORK SEARCH/REVIEW

The next step is to initiate further investigation into the problems indicated in the abstract review by reviewing past owners hazardous waste records/compliance. The first step in this investigation is to obtain as much documentation on questionable owners/uses as possible. The following list of agencies should be written for the listed information:

F.O.I. officer
U.S. E.P.A.
Mail Code 4-101
401 M Street Southwest
Washington D.C. 20460
800-424-9346

This is a RCRA-CERCLA database on land reported for investigation by EPA. They can tell the status and results or simply if land in question is on list.

Oklahoma Department of Health
Waste Management Services
1000 N.E. 10th
Oklahoma City, Oklahoma 73152
(405) 271-5338

Complete state file including quarterly reports, compliance records, manifests, permit status, state waste plan, etc.

Oklahoma Civil Defense Agency
Rogers Office Building Tunnel
Oklahoma City, Oklahoma 73105
(405) 521-2481

Tier one and Will
two forms and
Toxic Chemical
Release Forms.

Oklahoma Water Resources Board
1000 N.E. 10th
Oklahoma City, Oklahoma 73152
(405) 271-2555

Waste disposal
permits, permit files,
compliance records.

Hazardous Waste Man. Div.
EPA Region 6
Allied Bank Tower at
Fountain Place
1445 Ross Avenue
Dallas, Texas 75202

Complete file including
notification of
hazardous waste
activity, UST
notifications, permit
applications, compliance
records.

City or County Offices
respective county
or municipality.

Local records such as in
aerial photos

The addresses given are for Oklahoma but the list could be easily ammended to any other geographical location with some phone calls. When writing for information, be as specific as possible. Any names, addresses (questionable ones located in title check), legal descriptions, and other possible subsidiaries which can be given will aid and speed the process of obtaining information. Also, ask for all information they can give on past owners or uses of the land.

During the paperwork search/review phase, it may be beneficial to visit some agency to view their records. In Oklahoma, the State Department of Health has very extensive files on all generators in the state. The files contain the waste plan filed with the state, manifests, compliance/fine records, permit applications, UST notifications, and, in

general, any correspondence with the facility. It would be well worth an interested parties time to make a trip to view this file first hand and secure the documentation.

Some information as to past practices could be obtained from past owners. Therefore, it is beneficial to contact these past owners. One strategy would be a two letter approach. The first letter informs them of the situation and asks for any records they have on hazardous waste activities (same information as stated earlier). The second letter asks for information on specific problems found in the background review or earlier in the paperwork search. The reason for this contact is that it may be an avenue to obtain documentation which could not be secured from the various agencies.

After the documentation is secured, a review is in order. An extensive checklist is provided in appendix A to aid this review. The first objective of the review is to look for blatant problems. These, again, could be potential problems indicated in the background review. Examples of blatant problems would be spill reports, fires, or final destination copy of manifests not filed. The remainder of the review is more qualitative in nature. In general, this check is for more subtle problems like inconsistencies, improperly filled out forms, and deviations in amounts. For example, suppose quarterly reports showed a fairly constant volume of waste being disposed of and, all of the sudden, along comes a quarter where the volume is significantly

lower. This would require further investigation. Another example would be waste being disposed of at an unknown landfill.

The goal of the paperwork search is to account for all waste and locate problems which will be examined in detail in the onsite inspection, subsequent tests, and detective work. A flowchart for the paperwork search/review procedures is given in figure 2.

ON-SITE INSPECTION

Before the actual site visit, the inspecting party should review potential problems located in previous sections for hints of areas to observe on the audit. All work in the audit section so far has been leading up to this very subject, to hint at potential problems to look for on-site. Also before the actual site visit, the inspecting party should keep in mind that the goal of the inspection is to map areas for testing and further research.

Once on-site, the first task is to walk around the property observing any signs of potential problems. The walkaround should include all of the property. Also, it should not be hurried. For instance, one of the first things to look for is drums or other indication of waste disposal. If the walkaround is hurried, drums could be overlooked because they were in the weeds or partially hidden. During the walkaround, certain target areas should be carefully

PAPERWORK SEARCH/REVIEW PROCEDURES

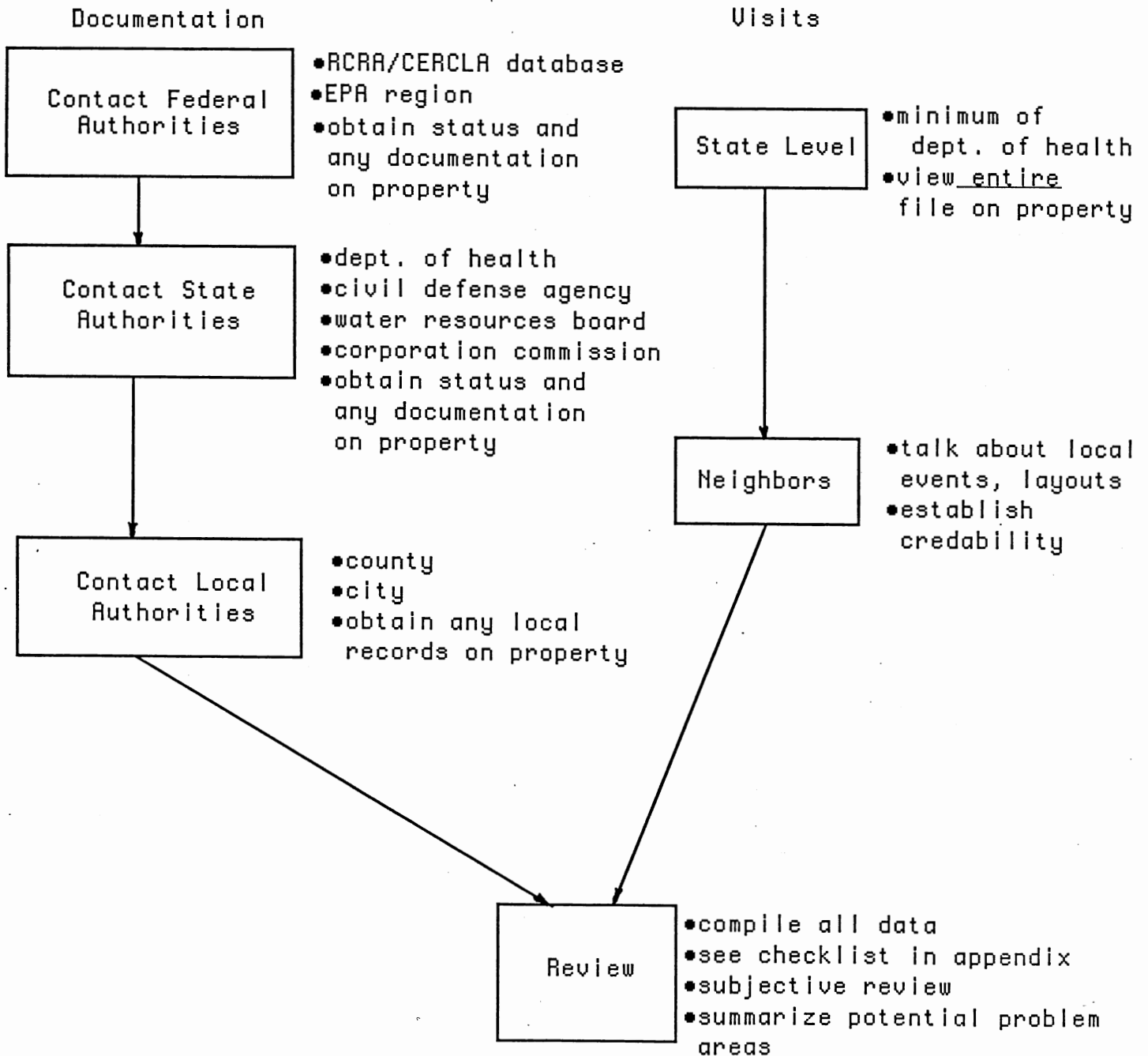


Figure 2

observed. A checklist of target areas can be found in appendix B. The walkaround and observation of target areas is very subjective and, in general, is looking for something "unnatural". For example, creeks or ponds with dead fish or no life are a good sign that something is wrong. Also during the walkaround, flood areas should be observed. Low-lying areas on the land in question and upstream sources are both candidates for areas of contamination. The aerial photo's mentioned earlier in this section might be helpful to locate other areas which should be observed or mapped.

After the walkaround has been performed and questionable areas have been mapped, any buildings on the premises must be walked through too. The process will be similar to the land walkaround with different target areas stressed. Assuming the building had some hazardous waste activities at some time in its past, target areas would be: Areas on floors where drums spilled or sat, storage areas and where runoff goes, containment areas, drainage system, loading area for transport, underground storage tanks, and drum storage areas. Again, this walkaround will be very subjective emphasizing locations where hazardous waste could have leaked to the environment or even currently be releasing to cause later problems.

Neighboring property owners should be contacted. This action could have been put in the paperwork search/review section as it is really just another way to obtain information on past practices or check information already

obtained for accuracy. It is placed on the actual visit to the site though as part of the on-site inspection as personal contact with the neighbors could prove beneficial. These neighbors might be able to divulge information about local historical events such as floods, earthquakes, fires, spills, toxic clouds, or evacuations that have occurred affecting the land in question. They can also be a source for information such as areas that flood and other neighbors. Finally, this action could make allies by showing environmental consciousness. A flowchart for the on-site inspection procedure is provided in figure 3.

LAB TESTS

The lab tests are argueably the single most important outcome of the environmental audit. The reason is that they are scientific, concrete evidence for subsequent developments. There will be two levels of testing. The first level consists of general tests to establish existing conditions. For instance, ponds will likely be tested for contamination. The first level tests on water will be pH, heavy metals, and leachate tests. For soil, tests for heavy metals and cation exchange capacity will be made.

The second level tests are more specific to problems noted in the on-site inspection. Second level tests might consist of EPA waste characterization, TOX, total organic

ONSITE INSPECTION PROCEDURES

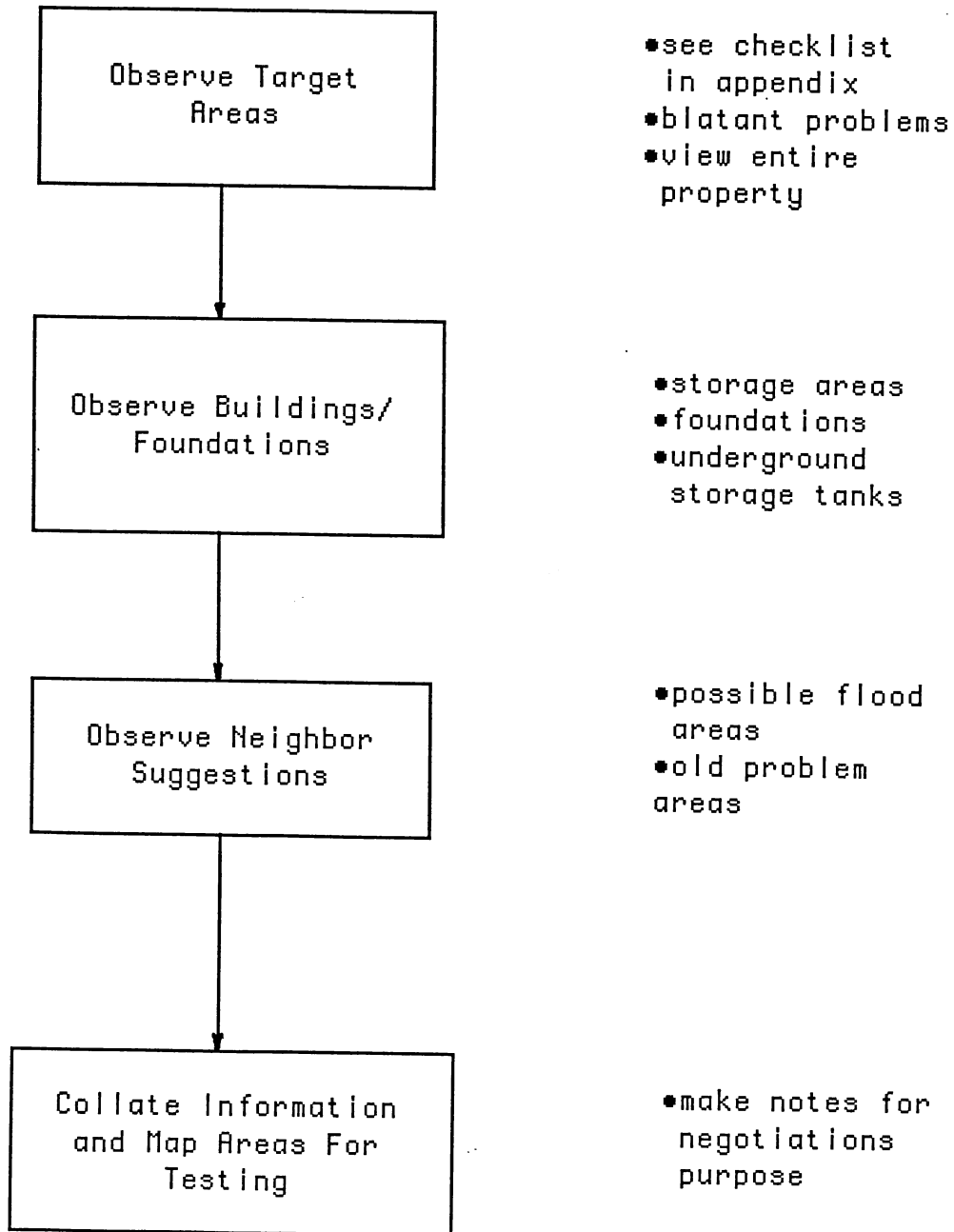


Figure 3

carbons, pH, heavy metals, total dissolved solvents, pesticide, herbicide, hydrocarbon scan, or whatever appropriate tests need be made.

The goal in any case is to establish what level of contaminants are in the medium (soil, water). These levels will then be used to evaluate the condition of the land and weigh the probability of problems developing.

THE BUYER

The buyer is the party potentially assuming the most liability and is therefore interested in every phase of the environmental audit. Again, his/her goal is to evaluate the property and weigh the results against the potential liability. The buyer must initiate all action in the audit and constantly evaluate his/her progress. The level of depth any given step in the audit procedure is investigated is based on the results of the previous step. For instance, if no indication of hazardous waste activity is found in the abstract review, some minimal level of paperwork search should be initiated, but the full-blown procedure may not be necessary.

The following procedures should be followed as a minimum assuming no indication of hazardous waste activity or problems are found at any given step:

1. Abstract review--have the attorney review the abstract and give uses along with owner and company name if possible.
2. Paperwork search--at least make contact, by phone or in writing, with state and federal authorities inquiring about the status of past companies, facilities, or owners.
3. On-site inspection--potential buyers should always view the land by at least walking around noting anything suspicious.
4. Lab tests--at least basic tests should be run on

water and ground.

Again, remember that these steps are minimums that should be performed and that, if at any step, questionable results are found, the procedure should iterate back to the appropriate step. Most often this step will be paperwork search/review.

In addition to the environmental audit, the buyer should inquire about insurance. This inquiry should be based on the results of the environmental audit and the potential liability recognized by it. This insurance will likely be expensive but could prove to be very beneficial should the buyer decide to purchase and problems arise. It will also give the buyer another point of view as to the status of the land as the insurance company will likely also go through some sort of audit procedure. Insurance may also be required by the lender, depending on the amount of the loan and the potential liability identified by the lender.

This brings up a point which should be addressed, the similarity between the buyer and the lender in a real estate purchase with the possibility of environmental risk. The goals of the two parties are very similar, they are both trying to protect themselves against future problems. Because of this similarity, the buyer should work in conjunction with the lender concerning the environmental audit. The cooperation may result in lower cost in performing the audit and better, more subjective, overall

results. This also brings up the fact that it would be beneficial for the buyer to contact the lender as early in the process as possible to save himself/herself some wasted work.

Finally comes the negotiations stage which occurs after all audit activities and lab tests have been performed. The first step will be to decide on the current status of the land based on the lab results. From here, bargaining for advantage will take place based on the agreed condition of the land. Again the lender is going to be involved as he/she is going to have an idea of how much he/she will be willing to loan.

While in the bargaining stage, the buyer should attempt to obtain any contractual agreements clearing him/her of liabilities which may arise because of past practices. An ideal statement along these lines would be "I, _____(buyer), having discussed the consequences with _____(seller), am hereby cleared of any future liability which may develop on the property hereby described." It is very unlikely that such a statement would ever be agreed upon or signed by the seller but it is a starting point.

Finally, the buyer should keep in mind that he/she needs to be patient throughout this process. It is the very nature of any such procedure that there are going to be "bugs" along the way which will be very discouraging. The problem could arise if a price is agreed upon which "seems too good to be true." Beware and investigate a little further and there

will likely be a reason for such a deal.

THE SELLER

The point of view of the seller is very different from that of the buyer or lender. True, the seller is interested in protecting himself/herself against potential liability but from another point of view. The seller is trying to sell some land, and with it, possibly some liability. For these reasons, the points of the environmental audit stressed by the seller are much different from those of the buyer or lender.

The seller is only interested in establishing the current condition or environmental baseline of the property. For this reason, he/she has no interest in the abstract review or paperwork search/review. Besides, he/she probably already knows much of what would be found in those steps. The seller is similarly not as interested in the on-site inspection as he/she certainly should already know the status of the property. The seller's most stressed point of the audit section is the lab tests and results. It is from these that he/she can establish the environmental baseline.

In addition to establishing the environmental baseline, the lender will want to check into the financial background of the potential buyer. This is more a common sense point than one concerning the technical end of a transaction but one worth noting nonetheless. A bad credit rating could be one reason for doubt about a potential buyer.

When the process proceeds to the negotiations phase, the seller's goals are simple: To get as high a price as possible

for the land while releasing himself/herself of as much liability as possible. Similar to the buyer seeking contractual agreements clearing himself/herself of future liability, the seller will strive for contractual agreements. The sellers ideal agreement would clear him/her of all future liability. An ideal statement along these lines would be "I, (seller) , having discussed the consequences with (buyer) , do hereby and forever claim no financial responsibility for environmental damages which may arise on the property forementioned." Again, it would be unlikely that anyone buying the property would ever agree to such a statement but it is a place to start the bargaining from the sellers standpoint.

THE LENDER

It could be argued that the lender is the party assuming the most potentially liability in a real-estate transaction with the possibility of environmental damage because of not only having to worry about the buyer paying back the loan but about foreclosing and assuming all clean-up costs in addition. For this reason, the lender is also very interested in the environmental audit. The sections of the audit the lender deems most important will likely differ somewhat from those the buyer sees as being important though. The lender will most often be more interested in the on-site inspection and lab results and not as interested in the abstract review and paperwork search/review. This is not to say that the lender is not interested in the background of the property as he/she certainly is, but rather to say that he/she will likely not spend as much time on the abstract review and paperwork search/review. The lender should make some superficial check into the background but it will likely consist of simply contacting authorities and visits would be rare.

As was stated in the buyer section, the lenders and buyers goals are much the same. For this reason it would be beneficial to cooperate with the buyer during the environmental audit process. This would be a way for the lender to get information without actually doing the work himself/herself.

In addition to the environmental audit, the lender has

several responsibilities. If the buyer is a generator of hazardous waste or plans on continuing the business which is currently on-site and a generator, the history of regulatory compliance should be checked. The lender will also check into the financial stability of the buyer. Other issues the lender should inquire about include insurance, coverage limits, and exclusions.

After all the data is compiled, the lender has to weigh a very complex situation. Based on the everything (audit results, potential liability because of foreclosure of bankruptcy, buyers financial status, compliance record, insurance, etc.) that has been compiled to this point, the lender has to decide if and how much he/she will loan. The lender should then be involved in the negotiations and bargaining stage.

If the lender decides to and loans money, other issues arise. First there is the foreclosure option should problems arise in the future. This is an option which should be weighed carefully as not foreclosing should certainly be considered, even if the buyer defaults on the payments causing the lender to take a loss. This loss could be small in contrast to foreclosing and paying a large clean-up bill. If problems arise and the lender does decide to foreclose, he/she should under no circumstances actively participate in managing the facility. This would be viewed by the courts as being a owner/operator and pull them into the picture of being liable. They are already taking a chance by

foreclosing in the first place which would likely be viewed as owner. Also if the lender loans money, he/she should make periodic environmental assessments of his/her investment.

CASE STUDY

The scenario presented here is that of the reader as the potential buyer of ABC industries. The plans are to continue the existing business of metals manufacturing specializing in heat exchanger repair and production. The audit is currently in the review phase of the paperwork search/review procedure. A summary of the abstract review from the attorney is as follows:

<u>Period</u>	<u>Land Owner</u>	<u>Notes</u>
1932-1958	R. W. Wallace	Agriculture
1958-1966	PWI Landfill Inc.	Privately Owned
1966-1970	Allied Car Repair	Body Shop Operation
1970-1987	ABC Industries	Metals Manufacturing

A sketch of the property is provided on the following page and the following documentation has been secured which follows:

- *EPA notification of hazardous waste activity form
- *Quarterly reports for hazardous waste disposal
- *Underground storage tank notification form
- *Hazardous waste manifests

The objective then is to make a list of all potential problems indicated in the information available and to also list the places testing should be performed. A sample solution is provided at the end of the documentation.

Property Line

640
620

600

560

Plant

Parking

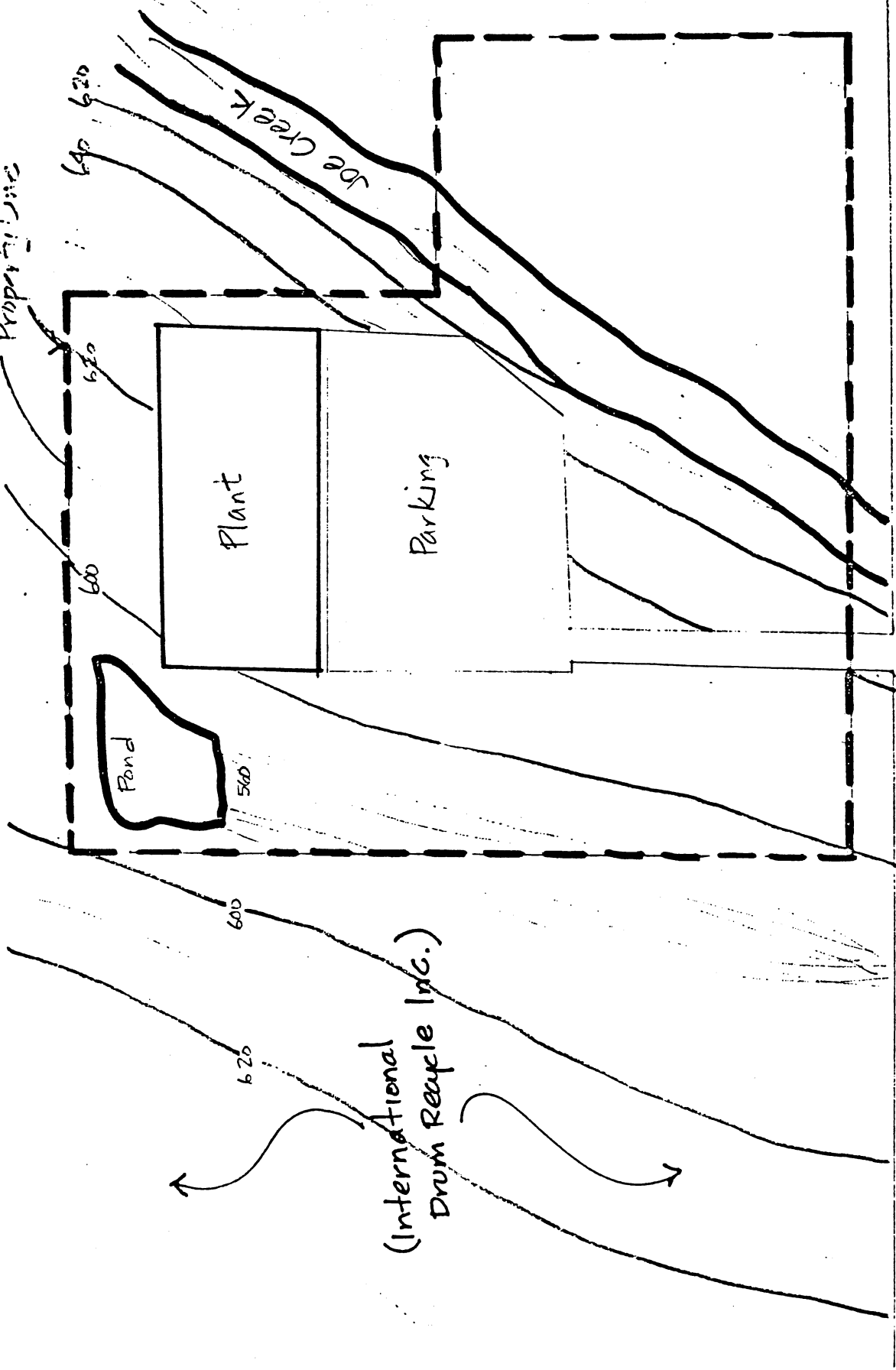
Pond

600

620

(International
Drum Recycle Inc.)

West Street



Please print or type with ELITE type (12 characters per inch) in the unshaded areas only

United States Environmental Protection Agency
Washington, DC 20460



Notification of Hazardous Waste Activity

Please refer to the instructions for Filing Notification before completing this form. The information requested here is required by law (Section 3010 of the Resource Conservation and Recovery Act)

For Official Use Only

Comments

Installation's EPA ID Number

Approved

Date Received
(yr. mo. day)

OKD955432112 T/A C 1

810115

I. Name of Installation

ABC INDUSTRIES

II. Installation Mailing Address

Street or P.O. Box

123 WEST STREET

City or Town

State

ZIP Code

TULSA

OK 74113

III. Location of Installation

Street or Route Number

123 WEST STREET

City or Town

State

ZIP Code

TULSA

OK 74113

IV. Installation Contact

Name and Title (last, first, and job title)

Phone Number (area code and number)

R B MOORE MAITH 629 189556825

V. Ownership

A. Name of Installation's Legal Owner

B. Type of Ownership (enter code)

S M SMITHE

P

VI. Type of Regulated Waste Activity (Mark 'X' in the appropriate boxes. Refer to instructions.)

A. Hazardous Waste Activity

B. Used Oil Fuel Activities

- 1a. Generator
- 1b. Less than 1,000 kg/mo.
- 2. Transporter
- 3. Treater/Storer/Disposer
- 4. Underground Injection
- 5. Market or Burn Hazardous Waste Fuel (enter 'X' and mark appropriate boxes below)
 - a. Generator Marketing to Burner
 - b. Other Marketer
 - c. Burner

- 6. Off-Specification Used Oil Fuel (enter 'X' and mark appropriate boxes below)
 - a. Generator Marketing to Burner
 - b. Other Marketer
 - c. Burner
- 7. Specification Used Oil Fuel Marketer (or On site Burner) Who First Claims the Oil Meets the Specification

VII. Waste Fuel Burning: Type of Combustion Device (enter 'X' in all appropriate boxes to indicate type of combustion device(s) in which hazardous waste fuel or off-specification used oil fuel is burned. See instructions for definitions of combustion devices.)

- A Utility Boiler
- B Industrial Boiler
- C Industrial Furnace

VIII. Mode of Transportation (transporters only — enter 'X' in the appropriate box(es))

- A. Air
- B. Rail
- C. Highway
- D. Water
- E. Other (specify)

IX. First or Subsequent Notification

Mark 'X' in the appropriate box to indicate whether this is your installation's first notification of hazardous waste activity or a subsequent notification. If this is not your first notification, enter your installation's EPA ID Number in the space provided below.

- A. First Notification
- B. Subsequent Notification (complete item C)

C. Installation's EPA ID Number

Notification for Underground Storage Tanks

FORM APPROVED
OMB NO. 2000-0004
APPROVAL EXPIRES 6-30-85

I.D. Number

STATE USE ONLY

Date Received

GENERAL INFORMATION

Notification is required by Federal law for all underground tanks that have been used to store regulated substances since January 1, 1974, that are in the ground as of May 8, 1986, or that are brought into use after May 8, 1986. The information requested is required by Section 9002 of the Resource Conservation and Recovery Act, (RCRA), as amended.

The primary purpose of this notification program is to locate and evaluate underground tanks that store or have stored petroleum or hazardous substances. It is expected that the information you provide will be based on reasonably available records, or, in the absence of such records, your knowledge, belief, or recollection.

Who Must Notify? Section 9002 of RCRA, as amended, requires that, unless exempted, owners of underground tanks that store regulated substances must notify designated State or local agencies of the existence of their tanks. Owner means:

- (a) in the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances, and
- (b) in the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such tank immediately before the discontinuation of its use.

What Tanks Are Included? Underground storage tank is defined as any one or combination of tanks that (1) is used to contain an accumulation of "regulated substances," and (2) whose volume (including connected underground piping) is 10% or more beneath the ground. Some examples are underground tanks storing 1. gasoline, used oil, or diesel fuel, and 2. industrial solvents, pesticides, herbicides or fumigants.

What Tanks Are Excluded? Tanks removed from the ground are not subject to notification. Other tanks excluded from notification are:

- 1. farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes,
- 2. tanks used for storing heating oil for consumptive use on the premises where stored,
- 3. septic tanks,

4. pipeline facilities (including gathering lines) regulated under the Natural Gas Pipeline Safety Act of 1968, or the Hazardous Liquid Pipeline Safety Act of 1975, which is an intrastate pipeline facility regulated under State laws.

5. surface impoundments, pits, ponds, or lagoons

6. storm water or waste water collection systems

7. flow-through process tanks,

8. liquid traps or associated gathering lines directly related to oil or gas production and gathering operations,

9. storage tanks situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

What Substances Are Covered? The notification requirements apply to underground storage tanks that contain regulated substances. This includes any substance defined as hazardous in section 101 (14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) with the exception of those substances regulated as hazardous waste under Subtitle C of RCRA. It also includes petroleum, e.g., crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

Where To Notify? Completed notification forms should be sent to the State given at the top of this page.

When To Notify? 1. Owners of underground storage tanks in use or that have been taken out of operation after January 1, 1974, but still in the ground, must notify by May 8, 1986. 2. Owners who bring underground storage tanks into use after May 8, 1986, must notify within 30 days of bringing the tanks into use.

Penalties: Any owner who knowingly fails to notify or submits false information shall be subject to a civil penalty not to exceed \$10,000 for each tank for which notification is not given or for which false information is submitted.

INSTRUCTIONS

Please type or print in ink all items except "signature" in Section V. This form must be completed for each location containing underground storage tanks. If more than 5 tanks are owned at this location, photocopy the reverse side, and staple continuation sheets to this form.

Indicate number of continuation sheets attached

2

I. OWNERSHIP OF TANK(S)

Owner Name (Corporation, Individual, Public Agency, or Other Entity)
ABC Industries

Street Address
123 WEST STREET

County
TULSA

City
TULSA State
OK ZIP Code
74113

Area Code
918 Phone Number
555 0025

Type of Owner (Mark all that apply)

Current State or Local Gov't Private or Corporate
 Former Federal Gov't (GSA facility I.D. no.) Ownership uncertain

II. LOCATION OF TANK(S)

(If same as Section I, mark box here)

Facility Name or Company Site Identifier, as applicable

Street Address or State Road, as applicable

County

City (nearest) State ZIP Code

Indicate number of tanks at this location 2

Mark box here if tank(s) are located on land within an Indian reservation or on other Indian trust lands

III. CONTACT PERSON AT TANK LOCATION

Name (If same as Section I, mark box here) Job Title Area Code Phone Number

IV. TYPE OF NOTIFICATION

Mark box here only if this is an amended or subsequent notification for this location

V. CERTIFICATION (Read and sign after completing Section VII)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Name and official title of owner or owner's authorized representative R. B. Moore Signature R. B. Moore Date Signed 5-1-86

CONTINUE ON REVERSE SIDE

UNIFORM HAZARDOUS WASTE MANIFEST		1. Generator's US EPA ID No. OK D 958432/12		Manifest Document No. 00 9167		2. Page 1 of 1		Information in the shaded areas is not required by Federal law.			
		3. Generator's Name and Mailing Address ABC Industries 123 West Street Tulsa, OK 74113				A. State Manifest Document Number		B. State Generator's ID			
4. Generator's Phone (918) 555 6025		5. Transporter 1 Company Name EVINRON TRANSPORT		6. US EPA ID Number TX D 443322115		C. State Transporter's ID		D. Transporter's Phone			
7. Transporter 2 Company Name		8. US EPA ID Number		E. State Transporter's ID		F. Transporter's Phone		G. State Facility's ID			
9. Designated Facility Name and Site Address BILLINGS DISPOSAL 45 N. ROAD LONE STAR, TX 75003				10. US EPA ID Number TX D 53211431		H. Facility's Phone					
11. US DOT Description (Including Proper Shipping Name, Hazard Class and ID Number)				12. Containers		13. Total		14. Unit		1. Waste No.	
				No.		Type		Quantity		Wt/Vol	
a. <input checked="" type="checkbox"/> WASTE 1-1-1 TRICHLOROETHANE, ORM-E, UN 1985				007 DM		350		6		F001	
b. <input checked="" type="checkbox"/> WASTE FLAMMABLE LIQUID, NOS UN 1993				003 DM		150		6		D001	
c. <input checked="" type="checkbox"/> WASTE CORROSIVE LIQUID, NOS UN 1774				008 DM		400		6		D002	
d. <input type="checkbox"/>											
J. Additional Descriptions for Materials Listed Above						K. Handling Codes for Wastes Listed Above					
15. Special Handling Instructions and Additional Information											
<p>16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations.</p> <p>If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.</p>											
Printed/Typed Name R.B. Moore				Signature <i>R.B. Moore</i>				Month Day Year 8 1 85			
17. Transporter 1 Acknowledgement of Receipt of Materials											
Printed/Typed Name Howard Blue				Signature <i>Howard Blue</i>				Month Day Year 8 1 85			
18. Transporter 2 Acknowledgement of Receipt of Materials											
Printed/Typed Name				Signature				Month Day Year			
19. Discrepancy Indication Space											
20. Facility Owner or Operator: Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19.											
Printed/Typed Name Mike Jones				Signature <i>Mike Jones</i>				Month Day Year 8 3 85			

UNIFORM HAZARDOUS WASTE MANIFEST		1. Generator's US EPA ID No. OKD 9554321		Manifest Document No. 009123		2. Page 1 of 1		Information in the shaded areas is not required by Federal law.						
		3. Generator's Name and Mailing Address ABC Industries 123 West Street Tulsa OK 74113				A. State Manifest Document Number		B. State Generator's ID						
4. Generator's Phone (918) 555-6825		5. Transporter 1 Company Name READY HAUL		6. US EPA ID Number		C. State Transporter's ID		D. Transporter's Phone						
7. Transporter 2 Company Name		8. US EPA ID Number		E. State Transporter's ID		F. Transporter's Phone		G. State Facility's ID						
9. Designated Facility Name and Site Address READY HAUL INC		10. US EPA ID Number		H. Facility's Phone										
11. US DOT Description (Including Proper Shipping Name, Hazard Class and ID Number)						12. Containers		13. Total		14. Unit		15. Waste No.		
						No.		Type		Quantity		Wt/Vol		
a. <input checked="" type="checkbox"/> WASTE FLAMMABLE LIQUID, NOS UN 1993						009 DM		450		G		D001		
b.														
c.														
d.														
J. Additional Descriptions for Materials Listed Above						K. Handling Codes for Wastes Listed Above								
15. Special Handling Instructions and Additional Information														
<p>16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations.</p> <p>If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.</p>														
Printed/Typed Name R. B. MOORE						Signature R B Moore			Month Day Year 6 15 04					
17. Transporter 1 Acknowledgement of Receipt of Materials						Printed/Typed Name Steve Smith			Signature STEVE SMITH			Month Day Year 6 15 04		
18. Transporter 2 Acknowledgement of Receipt of Materials						Printed/Typed Name			Signature			Month Day Year		
19. Discrepancy Indication Space														
20. Facility Owner or Operator: Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19.														
Printed/Typed Name BOB SMITH						Signature Bob Smith			Month Day Year 6 30 04					

ORIGINAL-RETURN TO GENERATOR

SAMPLE SOLUTION

List of potential problems noted:

- suspicious of FWI Landfill from abstract review
- question body shop operation from abstract review, suggest further investigation
- would want to test at a base level: pond, creek, and selected spots along border to drum recycler, strengthened by indication of low-lying area on that border
- question why no documentation between January of '81 (when notification of activity submitted) and July of '84 (second manifest)
- suspicious of why quarterly volumes decreased significantly in March '87 quarterly report
- note to look at and test underground storage tanks
- suspicious of July '84 manifest of "ready haul" company suspicion strengthened by transporter and owners name also no ID number
- would additionally want to find indication of drum storage from FWI and test as required

Based on the documentation presented, would be very hesitant to consider purchase seriously. Would require strong indemnification and contractual agreements.

SUMMARY

The paper's objective was to lay out procedures for buyers, sellers, and lenders to minimize their potential liability when dealing with real estate transfer with the possibility of environmental damage, which it does very well. The common goal of all parties involved is to protect themselves against future problems and the paper lays out a procedure highlighted by an environmental audit which does just that.

The audit consists of four stages: an abstract review, a paperwork search/review, an on-site inspection, and lab tests. The paper then goes into detail in each individual section. In the abstract review, the procedure calls for a review of the abstract by an attorney with the result being a list of past property owners and uses of the land. In the paperwork search/review, the procedures give specific contacts with addresses for securing documentation and a checklist for reviewing the documentation. The result is a mapping and noting of potential problems to be investigated further. For the on-site inspection, specific checklists of target areas to observe are given and the rest of the procedure is flowcharted. The suggested lab tests are in two phases, a basic level and a second level for specific problems.

The special areas of interest for each party are then laid out with a basis to proceed into the negotiations phase.

The result is a comprehensive set of guidelines for any one of the forementioned parties to follow when dealing with real estate transfer with the possibility of environmental damage.

I would like to thank Dr. Wayne C. Turner for all his help and guidance in developing this paper and for developing as a person in general. His presence has been invaluable.

APPENDIX A

DOCUMENTATION CHECKLIST

This list does not claim to be complete but rather used as a guideline for reviewing the paperwork.

MANIFESTS

names: are company and individuals names consistent with other documentation and manifests? Are names given in all correct places? Are company names such as the transporter and the disposal site known ones?

comments:

addresses: are all addresses present and consistent with other documentation and manifests?

comments:

dates: are all dates present, in correct chronological order, and are returned dates within the 30 day period?

comments:

signatures: has the manifest been signed in the correct places? Printed names do not suffice.

comments:

I. D. #'s: are all ID numbers given and consistent with other documentation and manifests?

comments:

final copies: have the final copies of the manifests been received and filed? Is there any evidence of tampering with the manifest?

comments:

descriptions: are all descriptions of the shipped waste correct and complete?

comments:

UNDERGROUND STORAGE TANK NOTIFICATIONS

names: are names given on the form and are they consistent with other documentation?
comments:

addresses: are all appropriate addresses present and consistent with other documentation?
comments:

dates: are dates present and concurrent with reporting period?
comments:

signatures: has the notification been signed? Printed names will not suffice.
comments:

number: note the number of tanks reported to see if all can be found on-site.
comments:

location: note location of tanks to help locate them on-site in case they are not obvious.
comments:

QUARTERLY REPORTS

names: are names given and are they consistent with other documentation and quarterly reports?
comments:

addresses: are addresses present and consistent with other documentation and quarterly reports?
comments:

dates: do the dates follow a chronological quarterly pattern? Do there seem to be any quarters missing?
comments:

signatures: are signatures present and consistent with other documentation and quarterly reports?
comments:

permit #'s: are permit numbers given and consistent with other quarterly reports?
comments:

consistency of volume: does there seem to be a pattern of the amount of a given waste disposed of in a given quarter and does that amount stay fairly constant?
comments:

consistency of waste codes: do the reports seem to have the same wastes disposed of and are the codes always present and consistent?
comments:

EPA NOTIFICATION OF HAZARDOUS WASTE ACTIVITY

names: are names present and consistent with other documentation?
comments:

addresses: are addresses present and consistent with other documentation?
comments:

dates: when was the notification given and how long after that was the next dated documentation you could find?
comments:

I.D. #: is the ID # present and is it consistent with other documentation?
comments:

PERMIT APPLICATIONS

names: are names present and consistent with other documentation?
comments:

addresses: are addresses present and consistent with other documentation?
comments:

dates: is the date present and when was the application made?
comments:

signatures: are signatures present and consistent with other documentation? Printed names do not suffice.
comments:

I.D. #'s: are ID numbers present and consistent with other documentation?
comments:

subsequent action: is there any indication of the results of the application?
comments:

SPILL REPORTS

names: is the name given of the person reporting the spill? Is the name of the spilled substance given?
comments:

date: is the date of the spill given?
comments:

signatures: are signatures given? Printed names will not suffice.
comments:

location: is the location of the spill given?
comments:

action: what action was taken to clean the up the spill?
comments:

follow up: were tests of the spilled area taken at a later time and what were the results?
comments:

CLOSURE PLANS

names: are names given and are they consistent with other documentation?
comments:

dates: what are the dates on the closure plan?
comments:

action: was the plan followed? Look for areas of closure which can be observed on-site.
comments:

AUDIT RESULTS

names: who performed the audit and who was interviewed in the plant?
comments:

dates: when was the audit held? Was the audit sometime after a spill or other problem?
comments:

results: what were the problem areas noted in the audit?
comments:

action: is there any evidence of action taken to remedy problems noted in the audit?
comments:

COMPLIANCE RECORDS

names: who was held accountable for the action if any was taken? Is this name consistent with other documentation?
comments:

addresses: are addresses present and are they consistent with other documentation?
comments:

date: when was the compliance check made? Did this happen to fall after a spill or other problem?
comments:

problem: was there a problem with compliance and if so, what was the problem?
comments:

action: is there any indication of action taken to remedy problems with compliance?
comments:

fine: was there a fine administered and if so, how much?
comments:

EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY FORMS

names: are names present and consistent with other documentation?
comments:

addresses: are addresses given and are they consistent with other documentation?
comments:

dates: are dates present and when are they?
comments:

signatures: who signed the form and is this person someone who's name appears other places in the documentation? A printed name is not sufficient.
comments:

consistency: are successive forms consistent and do the forms seem consistent with other documentation?
comments:

TOXIC CHEMICAL RELEASE FORMS

names: are names present and consistent with other documentation?
comments:

addresses: are addresses present and consistent with other documentation?
comments:

dates: are dates present and do they match up with the reporting period?
comments:

consistency: do successive forms seem to be consistent?
comments:

APPENDIX B

TARGET AREAS TO OBSERVE DURING WALKAROUND ON-SITE

This list does not claim to be a complete checklist but rather a guide for areas which should be observed.

- drums or drum storage areas
- ground with lack of vegetation
- deformed plant life
- creeks, ponds
- dead trees
- areas on the ground with gooey substance or splotches
- right-of-ways
- tanks
- foundations
- underground storage tanks
- low-lying areas
- all perimeter area
- areas where tanks used to be

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- ⁷excerpt from Oklahoma State University Engineering Extension handout, "SARA Title III and Community Right To Know", February 1988, no page.
- ⁸excerpt from Oklahoma State University Engineering Extension handout, "SARA Title III and Community Right To Know", February 1988, no page.