



DEPARTMENT OF THE NAVY

NAVAL FACILITIES ENGINEERING COMMAND

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IN REPLY REFER TO
26 May 1989

From: Commander, Naval Facilities Engineering Command

Subj: COMNAVFACENGCOM POLICY ON TOXIC AND HAZARDOUS WASTE IN REAL PROPERTY ACQUISITION

Encl: (1) Toxic and Hazardous Waste Considerations in Land Acquisition

1. As was discussed during last November's Planning and Real Estate Conference, because of recent changes in environmental law, the Navy could be held liable for toxic/hazardous wastes on property we acquire even if we had nothing to do with causing the problem. Therefore, it makes good business sense to evaluate every property for such substances prior to acquisition. Enclosure (1) provides policy and guidelines for determining and evaluating the risk from hazardous and toxic wastes when acquiring real property. These guidelines should be followed for all current and future real property acquisitions. These guidelines will be incorporated into the NAVFACENGCOM P-73 (Real Estate Procedural Manual).

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By direction

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Toxic and Hazardous Waste Considerations
in
Real Property Acquisitions

Purpose and Policy

The Navy could be held responsible for toxic/hazardous wastes or materials left by other parties at a site acquired by the Navy. This concept is known as strict liability and is established under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Resource Conservation and Recovery Act (RCRA). There is the possibility that the Navy can take legal action against a seller or nearby property owner if toxic/hazardous wastes are discovered after acquisition but this should not be relied upon. It is important that the Navy be aware of site contamination prior to signing an agreement with a seller/lessor or, if this information is not available, including proper contingency language in the agreement. This language should be developed with the aid of Counsel. There is always an element of risk that a site may unexpectedly contain toxic/hazardous waste. These procedures attempt to minimize this risk. It shall be the policy of the Navy to avoid acquiring sites that have known toxic/hazardous waste contamination unless it is in the best interest of the Navy to do so.

Applicable Federal Laws

The following federal statutes have bearing on toxic/hazardous waste management:

- a. Resource Conservation and Recovery Act (RCRA).
- b. Hazardous and Solid Waste Act (HSWA).
- c. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
- d. Toxic Substances Control Act (TOSCA).
- e. Clear Air Act (CAA).
- f. Clean Water Act (CWA).
- g. Safe Drinking Water Act (SDWA).

Applicable State and Local Laws

A number of states and localities have laws which regulate the transfer of property that has known or has the potential of having toxic/hazardous waste. Further research should be conducted prior to the real estate acquisition concerning these laws.

General Procedures

Potential Sources of Toxic/Hazardous Material

The following are but a few of the ways sites and/or buildings may become contaminated:

- a. Past uses of the site by industrial/commercial/agricultural or other uses. Appendix A presents a list of some suspect land uses.
- b. Contamination emanating from other off-site uses.
- c. Materials used in the construction of buildings.
- d. Equipment such as electrical transformers used in building systems.
- e. Chemicals used within the building.
- f. Radon gas emitted from soil or building materials.
- g. Leaking underground storage tanks.

Evaluating Risk of Site Contamination

Existing Buildings/Structures on Site

Inspection should be undertaken by a qualified person or firm to determine the presence of any toxic/hazardous materials within the building, to assess the magnitude of their occurrence, and to suggest methods and costs for remedial action should these materials be found.

Some examples of materials that should be researched in an existing building/structure are:

- a. Friable asbestos.
- b. PCB electrical transformers.
- c. Radioactive materials (including Radon).
- d. Underground storage tanks.
- e. Urea formaldehyde insulation.
- f. Pesticides.
- g. Hazardous/toxic materials on surface or in stored containers.
- h. Lead based paint on walls.

Land Areas of Sites with or without Improvements

If there is reason to believe that past uses of a site or adjacent uses may have led to toxic/hazardous wastes being on, under or adjacent to the site, a further investigation of surface and/or groundwater must be undertaken by a qualified firm. Procedures for making an assessment as to whether or not an on-site toxic/hazardous investigation should be pursued follow.

Determining if On-Site Toxic/Hazardous Investigation
should be Pursued

Phase I - Preliminary Investigation

The checklist below may be used as an initial screening device for clues regarding possible hazardous waste problems, prior to a full site study. A thorough site study for toxic/hazardous materials should be conducted by qualified technical experts.

- a. Historical Background. Check the previous ownership (by having a title company prepare a chain of title) and business license records for evidence of purchase or sale to manufacturing, chemical or similar companies. Determine if previous site users generated waste, manufactured, refined, treated, stored, handled or disposed of waste above or below ground. Check site plans for buildings and structures that may have been removed. Check insurance records and fire hazard maps to see if any hazardous operations were insured at the site. Check past aerial photographs (if available) of the site to see if areas of the site may have been used for waste disposal. Check with area residents, current/former employees, and brokers. Visit site area and discuss with people who are or have been connected with the site, or nearby properties, and/or its current or previous uses.
- b. Review Regulatory Agency Records. Check EPA and appropriate State and local agency records for permits, enforcement actions (consent decrees), uses, development permits, audits, or inclusion on lists of hazardous waste sites. Local agencies may include health, fire, and zoning departments.
- c. Search for Evidence of Soil Staining. Look on-site for evidence of soil staining. Examine the drainage course at site for any different soil coloration.
- d. Search for Evidence of Vegetation Stress. Examine trees and vegetation for signs of stress.
- e. Check Site for Unusual Odors.
- f. Examine Site for any Fill Areas or Depressions. Clean dirt or other fill materials may cover hazardous wastes.

REPRODUCED AT GOVERNMENT EXPENSE

Phase II - Detailed Site Investigation by Technically Qualified Firm

This step should be taken if the investigation described in Phase I indicates potential for contamination and the site has a high economic or operational potential which would justify the expenditure of funds necessary to undertake the investigation. The specific investigative tasks to be undertaken depend on the nature and extent of the contamination and the character of the site (i.e., soil type, geology, hydrology, etc.). For this reason, it is important that the selected firm have qualified and experienced scientists/engineers and use certified laboratories and testing procedures in conducting investigations. To obtain further information about a firm's competence to perform the work, contact State environmental agencies and/or regional offices of the EPA.



Acquiring Sites with Contamination

If site contamination exists and it is decided to purchase the property, all attempts should be made to have the seller undertake the remedial action pursuant to State environmental agency and/or EPA requirements unless not doing so would be in the interest of the Navy. In addition, the following steps, as a minimum, should be undertaken prior to purchase:

- a. Work with Counsel to develop appropriate protections in sales contract, option agreement, or lease agreement.
- b. Determine costs of remedial action (if Navy undertakes action). In most cases such costs will effect the price to be paid for the property.
- c. Determine, to the best extent possible, the time frame for cleanup.
- d. Coordinate with State environmental agency and/or EPA as appropriate.

Once a remedial effort is undertaken, the Navy should:

- a. Have qualified technical experts oversee the remedial effort to make sure that the work is done in an effective manner.
- b. Get certification from State environmental agency and/or EPA that remedial effort is acceptable to them.

Examples of Land Uses Potentially Associated
with
Toxic/Hazardous Waste

(Source: U.S. Environmental Protection Agency)

Agricultural Operations
Agricultural Spraying Service Companies, including Lawn Firms, Pest
Control Operators
Airports
Asphalt Plants
Auto Repair Centers
Battery Companies
Bottling Companies
Cement Processing Operations
Chemical Companies
Dry Cleaners
Fence Companies
Firing Ranges/Test Sites
Gas Stations/Tank Farms/Heating Oil Businesses
Highway Spill Sites
Hospitals
Incinerator Sites
Industrial Parks
Junk Yards/Scrap Yards
Labor Camps - State Highway Department Operations
Landfills
Metal Fabricators
Mining Sites - Sand and Gravel Pits
Ordnance Operations
Paint Stores, Warehouses, etc.
Penitentiaries
Plastics Companies
Plating Operations
Processing Plants/Heavy Industrial Sites
Railroad, Maintenance Yards and Other Related Uses (derailment
sites)
Recycling Companies
Refining Operations
Rendering Companies
Research Laboratories
Semiconductor/Computer Plants, High Technology Plants
Sewage Treatment Plants
Surplus Government Property
Surplus Military Property
Tanneries
Tire and Rubber Plants
Trucking Terminals
Utility Companies: power plants, electrical equipment storage yards
Waste Lagoons
Welding Products Companies
Wood Processing and Preserving Operations

