



United States
Department of
Agriculture

Farmers
Home
Administration

Washington
D.C.
20250

FmHA AN No: 2177 (1955)

November 20, 1990

SUBJECT: Reporting Hazardous Substance Activity
When Selling or Transferring Real Property

TO: State Directors, District Directors,
and County Supervisors

Purpose/Intended Outcome:

The purpose of this AN is to call your attention to newly created federal agency responsibilities in conveying real estate. Federal agencies who convey property out of inventory must comply with the hazardous substance notification and covenant requirements established by an Environmental Protection Agency (EPA) rule (40 C.F.R. Part 373), and the provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) section 120(h) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA).

Comparison with Previous AN's:

There is no previous AN on this subject.

Implementation Responsibilities:

CERCLA:

Section 120(h) prescribes the responsibilities of federal agencies in conveying real property with respect to the existence of hazardous waste. The statute requires agencies to (1) investigate their property; (2) notify entities who obtain the property from the agency of any waste that was on the site; and (3) warrant that all appropriate actions were taken by the agency to clean up the waste, if any existed. Notification must be attached to any transaction involving government property when, during the time of government ownership, waste was stored on the site for more than one year, or waste was disposed of or released at any time. The notice will provide information regarding the type and quantity of waste and the time at which the storage, disposal, or release took place. This information must be derived after an appropriate search of agency records. The notice should also provide a description of the remedial actions taken by the agency to address the waste problem.

EXPIRATION DATE: NOVEMBER 30, 1991

FILING INSTRUCTIONS:
PRECEDING FmHA
INSTRUCTIONS 1955-B



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Secretary of Agriculture, Washington, D.C. 20250

The statute also requires the agency to provide a covenant in the transfer documents of the property on which the waste was stored, disposed of, or released. The covenant must state that (1) all necessary remedial actions have been taken to protect the human health and environment prior to transfer; and (2) the government will conduct any future remedial actions on the site, should it be found necessary. This covenant is not necessary when the property is being transferred to a person who is a Potentially Responsible Party (PRP) with respect to the site. CERCLA apportions the liability for cleaning up hazardous waste among PRP's. PRP's include current owners and operators of the site, as well as the owners and operators at the time the waste was deposited on the site.

Process:

All property considered for disposal will be evaluated for possible hazardous substance contamination. The evaluation will include a field and agency record/file examination. The purpose is to ensure FmHA compliance with CERCLA section 120(h) requirements (see Attachment I for general information).

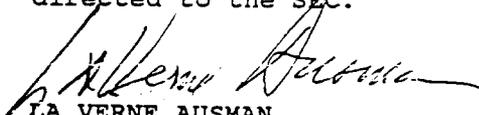
In all instances when any interest in inventory property is conveyed or transferred, FmHA will perform a Preliminary Hazardous Waste Site Survey (PHWSS). This consists of a site inspection and a review of documents in the case file (Attachment II).

If the review results in the conclusion that no waste is or has been on the property during the time it was in inventory, then this conclusion should be documented and placed in the case file (Attachment III). With this documentation on record, no further action will be necessary to meet statutory requirements.

Where contamination is found or the results of the PHWSS are inconclusive, the reviewer will contact the State Environmental Coordinator (SEC) for further guidance. The reviewer may also find that waste was on the property, but was removed. In either case, a notification form (Attachment IV) will be completed and included with the transaction documents. If the transferee is not a PRP, FmHA will warrant that the government has taken appropriate remedial action and will conduct future remedial actions. A covenant (Attachment V) regarding the warranty will be included in the transaction documents.

Attachment VI is a flow diagram of the process implementing the requirement of CERCLA section 120(h).

Question concerning these issues and their implementation should be directed to the SEC.


LA VERNE AUSMAN
Administrator

ATTACHMENT 1

GENERAL INFORMATION

Reporting hazardous substance activity when selling or transferring real property extends to all transfers of property affecting FmHA inventory. This includes not only the sale of property to an individual, government agency, or entity, but also includes the lease of property, and transfer of any partial interest of property. This means that when FmHA transfers a conservation easement to the U.S. Fish and Wildlife Service (FWS), the requirements will have to be met as to FWS and to the farmer who will purchase the remainder of the farm. The only exception to this is if the transferee is a "Potential Responsible Party" (PRP) and the property has been cleaned up by FmHA; in those situations, notice still needs to be given, but a covenant need not be included with the transfer. .

FmHA field staff will conduct Preliminary Hazardous Waste Site Surveys on all real property transfers. The attached survey or checklist, ATTACHMENT II, is intended to provide suggestions as to noteworthy items to be observed during an inspection of a property. It should not be construed as an all-inclusive listing of potential health and environmental problems associated with a property transfer or sale. It is intended to help the field gather information to support answers to very general objective questions about the property, such as:

1. What is the appearance of the property?
2. Is there anything that suggests the presence of hazardous substance?
3. If chemicals or chemical containers are present, are they of sufficient hazard or quantity to be of concern?

These questions can be difficult to answer with absolute certainty. Therefore, the survey can only alert the field office to general "red flags". The following list may be useful in illustrating the thought processes in identifying "red flags".

1. Are there apparent chemical containers present?
2. Is there anything in the containers?
3. Are the contents identifiable by labels, markings, appearance, or odor?
4. Are the contents included in either the CERCLA hazardous substance list (40 CFR 3074) or RCRA acutely hazardous waste list (40 CFR 261.33)?

5. Do the containers (individually or combined) now hold or could they have held the quantities requiring notification (more than 1,000 kilograms of hazardous substances or one kilogram of acutely hazardous wastes)?
6. What is the condition of the containers?
7. Can people or animals be exposed to the contents?
8. Are there stains on the ground?
9. Are there ponds or streams used for fishing, drinking, or bathing?
10. Is drinking water obtained from a nearby well?
11. Are there garbage or rubbish piles or dumps?
12. Are any chemical or oily wastes evident?

Answers to the above questions combined with the survey results should help the field begin to form an overall impression of the property, albeit a subjective one. At that point, the reviewer may be able to make an informed determination. If, however, the results are inconclusive, the reviewer should contact the SEC for assistance.

The level of site inquiry is dependent upon the facts of the particular case. The reviewer has the latitude to adjust the intensity of the examinations based on the location and what information is known about individual properties.

If any questionable substances are found or there are indications of hazardous substances, FmHA should consider having an expert or knowledgeable person inspect the tract. This person could be a qualified FmHA employee, a contractor or a State environmental agency person. Unknown substances should be assumed to be hazardous and handled only by trained personnel, wearing protective clothing.

ATTACHMENT II

FARMERS HOME ADMINISTRATION
PRELIMINARY HAZARDOUS WASTE SITE SURVEY

SITE BACKGROUND INFORMATION

1. SITE NAME: _____

ADDRESS: _____

CITY: _____ COUNTY: _____ STATE: _____ ZIP: _____

PHONE: _____

2. DIRECTIONS TO PROPERTY (From nearest town): _____

3. NEAREST INTERSECTION: _____

4. PROPERTY SIZE: _____ PLOT MAP AVAILABLE? (If yes, attach)

5. PROPERTY USE (CHECK ALL THAT APPLY):

____ Residential ____ Industrial ____ Mixed

____ Agricultural ____ Commercial ____ Other, describe:

6. ADJACENT PROPERTY USAGE:

North _____

South _____

East _____

West _____

7. SITE OWNERSHIP HISTORY

A. Current Owner _____

B. Previous Owner _____

Primary Use(s) _____

Features/Comments _____

Source of Ownership Data _____

C. To your knowledge, are there circumstances associated with the site or adjacent sites' history that may indicate a potential for hazardous substance contamination? Consider such factors as: (1) was the site used for industrial, manufacturing, refining or processing purposes; (2) regulatory history as revealed by citations from local, state or federal agencies; (3) any reported accidents of chemical spills; and (4) proximity of closest National Priority List Superfund clean up site. Yes ___ No ___

If Yes, describe _____

SITE INSPECTION

Answer all applicable questions by checking appropriate response.

YES NO

1. ___ ___ Are you aware that any federal, state or local agencies ever investigated or cited the property for violations of any hazardous substance laws?
2. ___ ___ Is there any documented or visible evidence of hazardous substance releases on the subject property or neighboring sites (e.g. stressed vegetation, stained soil, open or leaking containers, foul fumes or smells, oily ponds, etc)?
3. ___ ___ Is there any evidence of dumping of hazardous materials, debris or construction materials on the property?

4. _____ If there are any above or below ground storage tanks which contain hazardous materials on the property:
- _____ a. Are any of the tanks known to leak now or have leaked in the past?
- _____ b. Do any of the tanks because of age have an immediate potential to leak?
5. _____ If there are any chemicals stored on the property in drums or other containers, are they known to leak now or to have leaked in the past or, because of their condition, have the potential to leak?
6. _____ Are there any known spills, leaks or other releases of hazardous substances on adjacent sites?
7. _____ Is there any positive or circumstantial evidence of ground water contamination?
8. _____ Is there any positive or circumstantial evidence of surface water contamination?

CONCLUSION

I have reviewed documents in the case file and have made a site inspection. The results of this Preliminary Hazardous Waste Site Survey are:

- _____ No contamination was found to be present.
- _____ Contamination was found to be present.
- _____ Contamination was found but has been removed.
- _____ The Preliminary Hazardous Waste Site Survey results were found to be inconclusive.

NAME: _____

TITLE: _____

DATE: _____

ATTACHMENT III

CERTIFICATION: HAZARDOUS SUBSTANCE ACTIVITY

The property described below was examined for potential hazardous substance contamination. Based on examinations as documented by a Preliminary Hazardous Waste Site Survey, no evidence of potential hazardous substance on the property was found.

Property Description: _____

SIGNATURE: _____

NAME: _____

TITLE: _____

DATE: _____

ATTACHMENT IV

NOTIFICATION: HAZARDOUS SUBSTANCE ACTIVITY

The property described as:

was examined for evidence of potential hazardous substance contamination. To the extent such information is available on the basis of a complete search of Agency files, hazardous substance was stored for one year or more, known to have been released, or disposed of.

The following table documents the findings of hazardous substance found pursuant to the record and file and field examinations. The TYPE identifies the product the product name and chemical name; the QUANTITY indicates the amount in pounds and kilograms for solids and liquids; the TIME FRAME indicates beginning and ending dates for each event; and the CURRENT STATUS describes the current situation (e.g. Container of benzene was transported to Federal Hazardous Waste Site on 11/9/90; area of contaminated soil remains on site, etc.).

STATUS	TYPE AND CASRN NUMBER 1/	QUANTITY	TIME FRAME	CURRENT STATUS
STORED				
RELEASED				
DISPOSED OF				

1/ CASRN - Chemical Abstracts Service Registry Number. This is a specific number assigned to known hazardous substances and would be available from labs that analyze for hazardous substance. If known the number must be on the notice that accompanies the deed, as per 40 CFR 373.3(a).

List any other information pertinent to describing the history of hazardous substance on the property:

The information contained in the notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or Superfund) 42 U.S.C. section 9620(h).

SIGNATURE: _____

NAME: _____

TITLE: _____

DATE: _____

ATTACHMENT V

COVENANT REGARDING HAZARDOUS SUBSTANCE REMEDIATION

- (1) Farmers Home Administration warrants that all remedial action necessary to protect human health and the environment with respect of any such substance remaining on the property herein transferred or conveyed has been taken before the date of this transfer or conveyance.
- (2) If [transferee] finds that additional remedial action is necessary to protect the human health and the environment after the date of this transfer or conveyance, the United States, acting through the Farmers Home Administration, will conduct such action.
- (3) The hazardous substance remediation requirements described herein do not apply when the property is transferred or conveyed to a potentially responsible party.

REPORTING HAZARDOUS SUBSTANCE ACTIVITY

