



Farmers  
Home  
Administration

Washington  
D.C.  
20250

FmHA/RDA AN No: 3037 (1955-B)  
July 20, 1994

**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 reemphasize federal agency hazardous substance notification responsibilities when selling or transferring government-owned real property. Federal agencies selling or transferring real property must comply with the hazardous substance notification requirements established by the U. S. Environmental Protection Agency rule (40 C.F.R. Part 373), and section 120 (h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986. A 1992 United States Court of Appeals decision ~~has~~ further affects these responsibilities. The Court's holding states that notification requirements of whether a hazardous substance was stored, released, or disposed of on government-owned property should not be limited to the period of time of government ownership but should be given regardless of when the substances were found, if the information is known to the government.

**Comparison with Previous AN's:**

This AN replaces AN No. 2854 (1955) which expires on July 31, 1994, and is applicable to both the Farmers Home Administration and the Rural Development Administration.

**Implementation Responsibilities:**

**CERCLA:**

Section 120(h), "Property Transferred by Federal Agencies", describes federal agency responsibilities when selling or transferring government-owned property on which hazardous substances or petroleum products were stored, released, or disposed of. If hazardous substances or petroleum products were stored, released or disposed of on government-owned property, the

**EXPIRATION DATE:** June 30, 1995

**FILING INSTRUCTIONS:**  
PRECEDING FmHA  
INSTRUCTIONS 1955-B



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statute requires the agencies to (1) include in the purchase/transfer contract a notification of the type and quantity of such substances and a notice of the time at which such storage, release, or disposal took place; (2) a description of the remedial or corrective action taken, if any; and (3) a covenant warranting that all remedial actions necessary to protect human health and the environment with respect to any substance remaining on the property have been taken before the date of such transfer, and that any remedial action found to be necessary after the date of such transfer shall be conducted by the government.

The above covenant (item 3) warranting that all remedial actions have been taken before the date of transfer and any additional remedial actions found to be necessary are not required if the property is transferred to a Potentially Responsible Party (PRP). PRP's include and are defined as current and prior owners and operators of the property.

#### **Process:**

All sales or transfers of Government-owned property or a portion thereof will be evaluated for the presence of hazardous substances or petroleum products. The evaluation will include completion of a Preliminary Hazardous Waste Site Survey (PHWSS) which includes a site visit and a review of documents. Attachment I provides general information to be considered when completing the evaluation. Attachment II is a checklist with the minimum information required for a PHWSS.

If the PHWSS concludes that hazardous substances are not present on the property, or that a containerized hazardous substance was found on the property but removed, the conclusion should be documented by checking the appropriate blank in the Conclusion portion of the PHWSS. The completed PHWSS should be placed in the case file. With this documentation on record, statutory requirements are satisfied and no further action will be necessary.

If the presence of hazardous substances or petroleum products are found or the results of the PHWSS are inconclusive, the reviewer will contact the State Environmental Coordinator (SEC) for further guidance. SECs will evaluate the conclusion and, if they conclude that no further evaluation is necessary, they will complete the appropriate blank on the conclusion portion of PHWSS.

If additional evaluation is necessary, the SEC will initiate the appropriate activities to characterize and determine the extent of the potential problem and, if necessary, to remediate the property prior to the sale or transfer of the property.

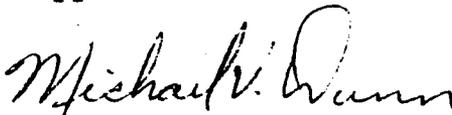
After a remedial action has been completed, the notification form (Attachment III) will be completed and included with the transfer/sale documents. If the transferee is not a PRP, FmHA or RDA will include the covenant (Attachment IV) with the transfer/sale documents. Including these attachments with the transfer means that they should be incorporated into or recorded with the deed or other transfer document.

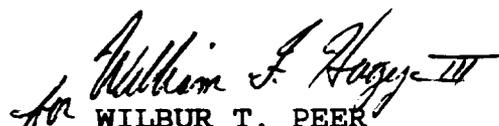
Reporting hazardous substance activity when transferring real property applies to all sales/transfers of Government-owned property. This includes transfers of any partial interest on property (i.e., transfers of conservation easements to the U.S. Fish and Wildlife Service).

**Other Uses of the PHWSS:**

Except in the B&I Loan Program (see FmHA/RDA AN 2809 (1980)), Attachments I and II may be used to evaluate for the presence or release of hazardous substances or petroleum products for loan processing activities where a determination of market value is necessary, other loan servicing activities to include liquidation and acquisitions of security property, and evaluations of the environmental conditions of abandoned/custodial properties. The American Society of Testing and Materials, E 1528-93, "Standard Practice for Environmental Site Assessments: Transaction Screening Questionnaire" may be substituted for the PHWSS for any of the activities covered by this AN.

Questions concerning these issues and their implementation should be directed to the SEC or the National Office, Program Support Staff at (202) 720-9619.

  
MICHAEL V. DUNN  
Administrator  
Farmers Home Administration

  
for WILBUR T. PEER  
Acting Administrator  
Rural Development  
Administration

Attachments

## ATTACHMENT I

### GENERAL INFORMATION

Experienced field personnel generally familiar with the type of property to be evaluated should have the ability to conduct a Preliminary Hazardous Waste Site Survey (PHWSS). Attachments I and II are intended to provide suggestions as to noteworthy items to be observed during an inspection of a property or a review of a case file. This information is provided 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(s)?
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, etc.?
4. Are the contents included in either the CERCLA hazardous substance list (40 CFR 302.4) or RCRA acutely hazardous waste list (40 CFR 261.33)?
5. Do the containers (individually or combined) now hold or could they have held a reportable quantity?

(A call to the RCRA/Superfund Hotline 1-800-424-9346 will provide answers to questions 4 and 5)

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 any chemical or oily wastes evident?

10. Are there areas of dead or distressed vegetation?
11. Are there ponds or streams used for fishing, drinking, or bathing?
12. Is drinking water obtained from a nearby well?
13. Are there garbage or rubbish piles or dumps?

Answers to the above questions combined with the PHWSS results should help the reviewer form an overall impression of the property, albeit a subjective one. At that point, the reviewer may be able to make an informed determination. However, if the results are inconclusive, the SEC should be contacted 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 or RDA should have an environmental professional inspect the property. Unknown substances should be assumed to be hazardous and handled by professionally trained personnel. The gathering of environmental samples for laboratory analysis is a highly regulated activity for obvious reasons and shall not be completed by or required of any FmHA or RDA employee.

ATTACHMENT II

FARMERS HOME ADMINISTRATION/RURAL DEVELOPMENT 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 \_\_\_\_\_

8. RECORD REVIEW AND PERSONAL KNOWLEDGE

To your knowledge, are there circumstances associated with the site or adjacent sites' history that may indicate a potential for hazardous substance contamination? Did your review of the FmHA case file for this property indicate a potential for hazardous substance contamination? Consider such factors as: (1) was the site used for any industrial, manufacturing or processing purposes; (2) regulatory history of the site 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. \_\_\_\_\_ Did you find any documented evidence or did you observe 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?

ATTACHMENT III

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, or was known to have been released, or disposed of.

The following table documents the hazardous substance(s) found pursuant to the record and field examinations. The TYPE identifies the hazardous substance by 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 (to the best of your knowledge); and the CURRENT STATUS describes the current situation (e.g. 50 gallon drum of 2,4,5-T was transported to RCRA approved Treatment, Storage, or Disposal Facility (include copy of manifest) on 11/9/90; area of contaminated soil remains on site, etc.).

STATUS	TYPE AND CASRN NUMBER*	QUANTITY	TIME FRAME	CURRENT STATUS
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STORED

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RELEASED

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DISPOSED OF

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\* CASRN - Chemical Abstracts Service Registry Number. This is a specific number assigned to known hazardous substances and is available from analytical laboratories, USEPA lists, or the National Office. 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 this 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 IV

COVENANT REGARDING HAZARDOUS SUBSTANCE REMEDIATION

- (1) The United States, acting through the (Farmers Home Administration)/(Rural Development Administration) warrants that all remedial or corrective actions necessary to protect human health and the environment with respect to any such substance remaining on the property herein sold or transferred has been taken before the date of this sale or transfer.
- (2) If \_\_\_[transferee]\_\_\_ finds that additional remedial or corrective actions are necessary to protect the human health and the environment after the date of this sale or transfer, the United States, acting through the (Farmers Home Administration)/(Rural Development Administration), will conduct such action.
- (3) The transferee herein, hereby grants to the United States, acting through the (Farmers Home Administration)/(Rural Development Administration), access to the property in any case in which remedial or corrective actions are found to be necessary.

4. If there are any above or underground storage tanks known on the property:
- a. Are any of the tanks known to leak now or have leaked in the past?
  - b. Is the tank registered with the state regulation agency?
  - c. Are any of the tanks known to have contained hazardous substances?
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 result of this site evaluation is:

- Evidence of contamination was not found or observed.
- Evidence of contamination was found.\*
- Containerized hazardous substances were found and removed, no evidence of contamination was found or observed.
- The Preliminary Hazardous Waste Site Survey results were found to be inconclusive.\*

\* A finding of evidence of contamination or an inconclusive finding will require review by the State Environmental Coordinator (SEC) or the SEC's designee.

NAME: \_\_\_\_\_  
 TITLE: \_\_\_\_\_  
 DATE: \_\_\_\_\_