



United States
Department of
Agriculture

Farmers
Home
Administration

Washington
D.C.
20250

FmHA AN No: 2462 (1955)
February 5, 1992

■ **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 responsibilities in conveying real property. Federal agencies conveying real property out of inventory must comply with the hazardous substance notification and covenant requirements established by the Environmental Protection Agency (40 C.F.R. Part 373), and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Section 120 (h) as amended by the Superfund Amendments and Reauthorization Act of 1986.

Comparison with Previous AN's:

This AN replaces AN No. 2177, which expired November 30, 1991.

Implementation Responsibilities:

CERCLA:

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

EXPIRATION DATE: January 31, 1993

FILING INSTRUCTIONS:
PRECEDING FmHA
INSTRUCTIONS 1955-B



Farmers Home Administration is an Equal Opportunity Lender.
Complaints of discrimination should be sent to:
Secretary of Agriculture, Washington, D.C. 20250

information will be derived from an appropriate search of FmHA records. The notice should also provide a description of the remedial actions taken by the agency to address the problem.

The statute also requires the agency to provide a covenant in the transfer documents of the property on which the hazardous substance 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 the 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 Potentially Responsible Party (PRP) with respect to the site. 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. CERCLA apportions the liability for cleaning up hazardous waste among PRP's.

Process:

All property considered for disposal will be evaluated for possible hazardous substance contamination. The evaluation will include a Preliminary Hazardous Waste Site Survey (PHWSS) which consists of a site inspection and a review of documents in the case file. 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.

In all instances when any interest in inventory property is conveyed or transferred, FmHA will perform a PHWSS to ensure compliance with CERCLA section 120(h).

If the PHWSS results in a conclusion that no hazardous substance is or has been on the property during the time it was in inventory, the conclusion should be documented using Attachment III and a copy of Attachments II and III placed in the case file. With this documentation on record, statutory requirements are satisfied and no further action will be necessary.

If the PHWSS results in the conclusion that a containerized hazardous substance was found on the property but has been removed, this conclusion should be documented using Attachment IV and a copy of Attachments II and IV placed in the case file. With this documentation on record, statutory requirements are satisfied and no further action will be necessary.

Where contamination is found or the results of the PHWSS are inconclusive, the reviewer will contact the State Environmental Coordinator (SEC) for further guidance.

This guidance will result in either completion of Attachment III by the SEC or the SEC's designee; or in identification of the hazardous substance, an estimate of the amount of any release, and a cleanup plan for the site. In the latter case, a notification form (Attachment V) will be completed and included with the transfer 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 if additional contamination is found. A covenant (Attachment VI) regarding the warranty will be included in the transfer documents. If the transferee is a PRP, notice (Attachment V) must be given, but a covenant (Attachment VI) does not need to be included with the transfer. 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 transfers of FmHA inventory property. This includes not only the sale of property to an individual, government agency, or other entity; but also includes the lease of property, or transfer of any partial interest of property. For example when FmHA transfers a conservation easement to the U.S. Fish and Wildlife Service (FWS), the requirements will have to be met as to both FWS and to the farmer who will purchase or lease the remainder of the farm.

Other Uses of the PHWSS:

In addition to inventory property considered for disposal, Attachments I and II may be used as screening tools or to document the presence of hazardous substances or underground storage tanks when properties are being appraised for either loan making or loan servicing actions.

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



LA VERNE AUSMAN
Administrator

Attachments

GENERAL INFORMATION

Experienced field personnel generally familiar with the type of property to be evaluated should have the ability to conduct Preliminary Hazardous Waste Site Surveys (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. A PHWSS should not be construed as an all-inclusive listing of potential health and environmental problems associated with a property. 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(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 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 have an expert or knowledgeable person inspect the tract. This person could be a qualified FmHA employee, a contractor or a person from the State regulatory agency. Unknown substances should be assumed to be hazardous and handled only by trained personnel.

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 _____

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 industrial, manufacturing, refining or processing processes; (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. ___ ___ 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?

4. _____ If there are any above or below ground 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 results of this Preliminary Hazardous Waste Site Survey are:

_____ Evidence of contamination was not found or observed.

_____ Evidence of contamination was found.

_____ Containerized hazardous substances were found and removed. Evidence of contamination was not 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: _____

FINDING: HAZARDOUS SUBSTANCE ACTIVITY

The property described below was examined for potential contamination by a hazardous substance. Based on examinations as documented by a Preliminary Hazardous Waste Site Survey, evidence of contamination by a hazardous substance was not found on the property.

Property Description:

SIGNATURE: _____

NAME: _____

TITLE: _____

DATE: _____

FINDING: 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, evidence of a containerized hazardous substance was found on the property. The containerized hazardous substance has been removed and disposed of in accordance with State regulatory agency requirements.

Property Description:

SIGNATURE: _____

NAME: _____

TITLE: _____

DATE: _____

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; 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 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: _____

COVENANT REGARDING HAZARDOUS SUBSTANCE REMEDIATION

- (1) Farmers Home Administration warrants that all remedial action necessary to protect human health and the environment with respect to 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.