

SECTION 15 - PAST SITE CONTAMINATION AND REAL PROPERTY ACQUISITION

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Synopsis

Initial Implementation Requirements:

- If a NWS facility or work site is notified that it is a Potentially Responsible Party (PRP) for the remediation of a contaminated site, contact the NOAA SECO and NWS Office of General Counsel immediately. (15.5.1a)
- If attempting to acquire a piece of real estate, have a Phase I property investigation performed by a qualified contractor. (15.5.1b)
 - If contamination is found, perform a Phase II investigation or look for another site. (15.5.1b)

Recurring and Annual Task Requirements:

- Continued Monitoring of a Remediated Site

| Past Site Contamination and Real Property Acquisition Checklist | YES | NO | NA |
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| 1. Has the facility or work site been notified that it is a Potentially Responsible Party for contamination of property? (15.5.1a) | - | - | - |
| 2. If the NWS is attempting to acquire real estate, has a Phase I property investigation been performed? (15.5.1 b) | - | - | - |

SECTION 15 – PAST SITE CONTAMINATION AND REAL PROPERTY ACQUISITION

15.1 Purpose and Scope

This section is applicable to any National Weather Service (NWS) facility that is currently located on or attempting to acquire a site that was or may have been chemically contaminated by past activities and operations. The section applies to all NWS facilities and work sites.

15.2 Definitions

- Due Diligence** The formal investigation of a piece of real estate to determine its environmental history and the potential for on-site contamination.
- Responsible Party** Any person, organization, agency or other legal entity that is found to be responsible for any contaminants located on a piece of property.
- Station Manager** For the purpose of this procedure, the Station Manager shall be either the NWS Regional Director; NCEP Director; Directors of Centers under NCEP (Aviation Weather Center, NP6; Storm Prediction Center, NP7; Tropical Prediction Center, NP8, and Space Weather Prediction Center, NP9); Directors of the NDBC, NWSTC, and Chiefs of NRC, ROC and SFSC facilities; or Meteorologist in Charge (MIC), Hydrologist in Charge (HIC), or Official in Charge (OIC).

15.3 Acronyms Employed in this Section

- CERCLA Comprehensive Environmental Response, Compensation and Liability Act
 NOAA National Oceanic & Atmospheric Administration
 NWS National Weather Service
 NWSH National Weather Service Headquarters
 PRP Principal Responsible Party
 SECO NOAA Safety and Environmental Compliance Office

15.4 Regulatory Requirements

15.4.1 Federal

Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or Superfund was created by Congress to address the environmental, social, and financial problems created by previously contaminated real estate. While the law is best known for the creation of the Superfund - a pot of money to fund clean-ups where responsible parties cannot be identified - it also established strict and lasting liability for anyone who improperly managed hazardous waste.

15.4.2 State

To address problems at contaminated sites that do not qualify for the Federal CERCLA program, several States have enacted similar legislation and regulatory programs. NWS Focal Points will contact the Regional Environmental/Safety Coordinator, if required, to determine if the State has a similar program.

15.5 Requirements

CERCLA created two principals regarding property contaminated by improper waste disposal.

First, if a person, business, or governmental agency caused a piece of real estate to become contaminated by what is deemed “improper disposal” of a waste, the person, business, or governmental agency is responsible for remediation of the site.

Secondly, if a person, business or governmental agency buys or acquires a piece of real estate that is contaminated by the improper disposal of a waste by another entity - and the buyer does not perform a “due diligence search” to determine if the property is contaminated and to what extent, the buyer is responsible for remediating any and all contamination discovered on the property at a later date.

15.5.1 Application to the NWS

For the NWS, these principles will apply to three activities: past disposal activities, acquiring real estate, and transferring real estate.

a. Past Disposal Activities

If an NWS facility or work site sent waste for treatment, storage or disposal to a solid (or garbage) or hazardous waste facility or site that is now (or could be in the future) determined to be contaminated, the NWS could be identified as a “Responsible Party,” and because the EPA (or State) need only identify one responsible party, the NWS facility could be held legally responsible for conducting and paying for the entire cost of the clean-up, even if it only sent a very small amount of waste. The NWS would then be required to sue any other potentially responsible parties (PRPs) to recover any money it was forced to pay.

When a contaminated site is identified, usually a number of PRPs are identified, contacted, and for a variety of reasons, the PRPs jointly become involved in determining the scope of the clean-up and their individual share in paying the cost. Because the potential liabilities are so high, should an NWS facility be notified by the EPA or State that it has been identified as PRP, the Station Manager must immediately contact the NWS Regional Director, NWS Headquarters environmental and safety staff, and the NOAA SECO for assistance. Copies of all the NWS correspondence must be sent to NOAA Office of General Counsel.

b. Acquisition of Property

Before an NWS facility or work site acquires a piece of real estate, the environmental history of the property must be investigated to determine if site contamination is present. This investigation is termed a “due diligence” or “Phase I” investigation and it must be done in accordance with a protocol designed by the American Society for Testing and Materials (ASTM) entitled, “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” (ASTM 1527-05 dated November 18, 2005). A Phase I Environmental Site Assessment includes four basic components: a records review, a site reconnaissance, and interviews with current owners and occupants of the property and an evaluation and report of the findings. This investigation must be

performed by a qualified environmental specialist or consultant and shall be arranged as part of the acquisition process.

A Phase II Assessment is usually initiated when more detailed or specific information is required about the property under investigation. For example, if the property was previously used as a “junkyard,” an investigation into whether the soil and groundwater at the site were contaminated with oil, solvents or paints.

A Phase II can include soil and groundwater testing or even a search for underground tanks, drums or equipment using ground-penetrating radar or other investigative techniques.

If the Phase I study identifies a major environmental problem or problems with a site, the NWSH environmental/safety staff and NOAA SECO should be contacted. With NOAA Office of General Counsel (OGC) guidance, recommendations on the course of action will be developed. Possible options would be to:

- 1) Perform a Phase II Environmental Site Assessment to further characterize the site.
- 2) Pursue an alternate site location.
- 3) Pursue legal documentation which would indemnify NWS from past use site environmental liability.
- 4) Accept the problem(s) and assume the environmental liability associated with the site.

One or more of these options should be pursued prior to NWS taking control of the site.

c. Transferring Property

When an NWS facility no longer needs a piece of real property, it will often transfer the property to another agency or governmental unit. When this occurs, NWS is required to meet the requirements of CERCLA 120, subpart (h), which requires Federal agencies to disclose all known environmental contamination prior to the sale or transfer of real property. The Regional Environmental/Safety Coordinator, NWSH environmental/safety staff, or NOAA SECO should be contacted to assist in determining whether the real property has the potential for environmental contamination and if necessary, to conduct an environmental survey to investigate if there is any contamination. A written disclosure of known environmental contamination will be included in the real property sale or transfer deeds.

There are additional requirements when a property is sold to a non-Federal buyer. The NOAA SECO, Real Property Management Division (RPMD), and NWSH environmental/safety staff should be contacted to assist in this effort.

15.6 Responsibilities

15.6.1 NWS Headquarters (NWSH)

- a. The NWSH Environmental/Safety Office will provide assistance to Regional Headquarters, Operating Unit, and field personnel to ensure that NWS facilities comply with requirements of this section (if applicable).
- b. NWSH will coordinate with NOAA SECO, NOAA General Counsel, and RPMD as necessary, regarding compliance issues related to this section.

15.6.2 Regional or Operating Unit Environmental/Safety Coordinator

- a. Will monitor and promote compliance with the requirements of this section at the Regional Headquarters and field offices or Operating Unit (if necessary).
- b. Will ensure that procedures are implemented at Regional Headquarters or Operating Unit facilities to identify and report past site contamination (if applicable).

15.6.3 Station Manager

- a. Will have oversight over the implementation of this section and ensure that the requirements of this section are followed by individuals at the NWS facility (if applicable).
- b. Will ensure that procedures are developed and implemented under NWSH, Regional and SECO oversight at NWS field offices when chemical contamination discovered on-site.
- c. Will review or delegate review of this section on an annual basis to ensure that the facility is complying with its requirements. Confirmation of this review will be forwarded to the Regional or Operating Unit Environmental/Safety Coordinator.

15.6.4 Environmental or Environmental/Safety Focal Point or Designated Person

Will ensure that any tasks assigned by the Station Manager are implemented in accordance with this section.

15.7 References

Incorporated References

The following list of references is incorporated as a whole or in part into this section. These references can provide additional explanation or guidance for the implementation of this section.

15.7.1 American Society for Testing and Materials (ASTM)

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| ASTM E1527-05 | “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” |
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15.7.2 U.S. Environmental Protection Agency

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| 40 CFR 312 | Innocent Landowner, Standards for Conducting All Appropriate Inquiries |
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