

Environmental Due Diligence

Property Transfer Assessments

Ed Shaw

Bulloch Brothers Engineering

COMMON GOALS

- Compliance with Applicable Laws & Regulations
- Potential for Present or Future Liabilities
- United States
- Europe
- North/South America
- Asia
- Australia

United States

- **“All Appropriate Inquiry” Standard**
- **ASTM 1527-97/00**
 - **May 31, 1997**
 - **Federal Register May 9, 2003**
 - **Effective Date June 9, 2003**
- **New Rule, January 11, 2004**

ASTM E1527-97

- **Need to Know All the Definitions**
 - **Site Reconnaissance or Site Visit**
 - **CORRACTS versus RCRA TSD facilities list**
 - **Occupants - Owner - User**
 - **Transaction Screen Process (ASTM E1528)**
 - **Innocent Landowner Defense**
 - **Appropriate Inquiry**

ASTM E1527-97

- **Basic Elements of ASTM E1527-97**
 - **Records Review**
 - **Public**
 - **Corporate**
 - **Site Reconnaissance**
 - **Interviews**
 - **Occupants**
 - **Owners/Managers**
 - **Public Officials**

ASTM E1527-00

July 2000

- **Business Environmental Risk:** "a risk which can have a material environmental or environmentally-driven impact on the business associated with the current or planned use of a parcel of commercial real estate, not necessarily limited to those environmental issues required to be investigated in this practice (E1527-00). Consideration of business environmental risk issues may involve addressing one or more non-scope considerations."
- **“Non-Scope Services”**
- **Contiguous Property - All Appropriate Inquiry**
- **Environmental Liens**
- **Purchase Price vs. Property’s “Clean” Value**
- **Innocent Purchaser, Bona Fide Prospective Purchaser, & Contiguous Property Owner**

The Brownfield Amendments

Small Business Liability Relief and Brownfields Revitalization Act

- **Ongoing Response Action Cooperation**
- **Comply with Land Use Restrictions (LUCs)**
- **Provide Access for LUC Maintenance**
- **Section 107(q) Contiguous Property Defense**
- **“Appropriate Care” - Post Purchase**
- **Threshold Criteria**
 - **Appropriate Inquirey**
 - **No Affiliation**

US EPA COMMENTS

March 14, 2003/October 28, 2003

● TOP TEN HELPFUL HINTS

- 1 In Many Cases, RCRA TSDs can be “brownfields,” eligible for grants and the enforcement bar.
- 2 All Three landowners seeking landowner liability protection (ILO, BFPP, and CPO) must perform “all appropriate inquiry.” Failure to do so defeats the protection.
- 3 For the first time, a party (I.e., a BFPP) can purchase **with** knowledge of contamination and not be subject to CERCLA liability.
- 4 ILOs and CPs cannot purchase with knowledge of contamination and get liability protection. A CPO, may, however, still qualify as a BFPP.

US EPA COMMENTS

March 14, 2003/October 28, 2003

● **TOP TEN** (Continued)

- 5 EPA does not believe that reasonable steps typically include complete remedial measures. The ILO “due care” case law provides a good reference point for evaluating “reasonable steps.”
- 6 EPA believes that the legislation essentially does away with the need for most Prospective Purchases Agreements.
- 7 EPA will be issuing a model document for resolving windfall liens under § 107 (r) and issuing a guidance defining generally where it will and will not pursue windfall liens.
- 8 Generally, a determination to exclude an eligible response site (once it enters the CERCLIS universe) will be made after an SI is conducted.

US EPA COMMENTS

March 14, 2003/October 28, 2003

● **TOP TEN** (Continued)

- 9 **EPA will make an affirmative decision on when CERCLIS sites are no longer eligible response sites and will make this information available to the public through CERCLIS and other means.**
- 10 **All grants guidance can be found at: [www.epa.gov brownfields](http://www.epa.gov/brownfields).
All liability guidance can be found at:
www.epa.gov/compliance/resources/policies/cleanup/index.html**

US EPA COMMENTS

March 14, 2003/October 28, 2003

● EPA Tools

– Comfort Letters

? Relate to EPA's intent to exercise/not exercise its RCRA corrective action authority at a property.

– Prospective Purchaser Agreements

? See EPA Memo "Prospective Purchaser Agreements and Other Tools to facilitate Cleanup and Reuse of RCRA sites", April 8, 2003.

– Creative Settlements

The EPA "recognizes revitalization as a key part of the Agency's mission."

US EPA COMMENTS

March 14, 2003/October 28, 2003

● FAQ

- Q What are the threshold criteria to qualify for a landowner liability protection.
- A BFPPs, CPOs, and ILOs must meet the threshold criteria of performing “all appropriate inquiry” on or before acquiring the property. Contiguous property owners and bona fide prospective purchasers must also demonstrate they are not potentially liable or affiliated with any other person that is potentially liable for response costs at the property.

US EPA COMMENTS

March 14, 2003/October 28, 2003

● FAQ

- Q If a new purchaser agrees to assume the obligations of a prior owner PRP, as defined in an EPA order of consent decree, will compliance with those obligations satisfy the reasonable steps?
- A Yes, in most cases, if the order or consent decree comprehensively addresses the obligations of the prior owner through completion of the remedy. Note that not all orders or consent decrees identify obligation through completion of the remedy and some have open-ended cleanup obligations.

US EPA COMMENTS

March 14, 2003/October 28, 2003

● FAQ

- Q What is the standard to be applied for “all appropriate inquiry?”
- A For property purchased before 5/31/97 there is a statutory narrative standard - commonly known information about the property, value of the property if clean, ability of the defendant to detect contamination, and other similar criteria.
 - For property purchased after that date, use the 1997 ASTM Phase I Environmental Assessment standards. The new legislation provides that EPA is required to issue all appropriate inquiry standards by January 11, 2004.

New U.S. EPA Regulation

- **January 11, 2004**

Research Tools

www.epa.gov/enviro

Envirofacts Data Warehouse

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Data Update
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View
environmental
information
for any ZIP
Code, City, or
County.
Use State
Abbreviations:

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State Abbr

 County,
State Abbr
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Select **Quick Start** to retrieve a sampling of information available pertaining to your area, or choose a **Topic** for more in-depth questions and answers about your area. If you are an experienced user, select **Advanced Capabilities**.

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- Toxics
- Air
- Land
- Radiation
- Compliance
- Other
- Maps

Advanced Capabilities



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 Last updated on Friday, November 7th, 2003
URL: <http://www.epa.gov/enviro/>

This script creates the footer URL

Research Tools

www.epa.gov/oeca/sfi

Sector Facility Indexing Project

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Other Links

The following links may be of interest to SFIP users:

- [EPA EnviroFacts Data Warehouse](#)
- [EPA Emergency Response Notification System \(ERNS\) Homepage](#)
- [Enviro\\$en\\$e](#)
- [Integrated Data for Enforcement Analysis \(IDEA\)](#)
- [EPA Sector Notebooks](#)
- [AIRData Mainpage](#) (Access to air pollution data)
- [Toxics Release Inventory](#)
- [Surf Your Watershed](#) (Environmental information on your watershed and community)
- [EPA Databases and Software](#)
- [The Right-to-Know Network \(RTK Net\)](#)
- [SEC EDGAR Database](#) (Source of Corporate Environmental Disclosure Data)
- [Hazardous Waste Data](#)
- [Federal Facilities Enforcement Office \(FFEO\)](#)
- [Office of Environmental Information \(OEI\)](#)
- [Scorecard](#)
- [Region 10 Environmental Compliance Online](#)

Research Tools

www.epa.gov/opptintr/opptab.htm



U.S. Environmental Protection Agency
Office of Pollution Prevention & Toxics (OPPT)

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Databases & Software

This page lists databases and Software programs produced by or for OPPT. Items available online can be accessed by clicking on the links to the file or database. Those which are not directly available through the website will have a link to more detailed information, including where the database or program can be obtained.

Databases	Software	Availability
Chemical Information	Green Chemistry	On the Internet
Chemical Releases	Modeling Programs	Other Sources
Environmental Accounting	Regulatory Information	
HPV Chemicals	Risk Assessment	
Pollution Prevention Regulatory Information		
Chemicals on Reporting Rules (CORR)		

[Alphabetical List of All Databases and Software](#)

[Other EPA Databases and Software](#)

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Last updated on Thursday, May 1st, 2003
URL: <http://www.epa.gov/opptintr/opptdb.htm>

Research Tools


[yosemite.epa.gov/oswer/ceppoweb.nsf/
content/ap-chai.htm](http://yosemite.epa.gov/oswer/ceppoweb.nsf/content/ap-chai.htm)

U.S. Environmental Protection Agency

Chemical Emergency Preparedness and Prevention

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Audit and Investigation Reports

- [EPA Chemical Accident Investigation Reports](#)
- [Other Chemical Accident Investigation Reports](#)
- [EPA's Annual Chemical Safety Audit Status Reports](#)

(Note: You can order hard copies of the full reports, including graphics, from the [National Service Center for Environmental Publications \(NSCEP\)](#) or by calling them at 1-800-490-9198. The [Adobe Acrobat Reader 5.0.5](#), a free software system, will be needed to read documents in Portable Document Format (PDF). More information on PDF can be found on the [PDF information page](#))

EPA Chemical Accident Investigation Reports

- [EPA Chemical Accident Investigation Report - Accra Pac Group, Inc. North Plant, Elkhart, Indiana](#)
Issued: September 2000 (PDF)
- [Prevention of Reactive Chemical Explosions - Case Study: Waste Fuel/Oxidizer Reaction Hazards](#)
Issued: April 2000 (PDF)
- [How to Prevent Runaway Reactions - Case Study: Phenol-Formaldehyde Reaction Hazards](#)
Issued: August 1999 (PDF)



Risk Management Plans (RMPs)

Emergency Planning and Community Right-to-Know Act (EPCRA)

Laws & Regulations

Tools & Resources

Chemicals in Your Community

Preventing Chemical Accidents

News & Events

International Partnerships

CEPPO's Role in Homeland Security

About CEPPO

Research Tools

www.epa.gov/air/data/index.html

The screenshot shows the EPA AirData website. At the top, there is the U.S. Environmental Protection Agency logo and the text "U.S. Environmental Protection Agency". Below this is a dark blue header with "AirData" in white. A search bar is visible with a "GO" button. A breadcrumb trail reads "EPA Home > Air & Radiation > AirData". On the left, a vertical menu lists: Reports and Maps, Monitor Data, Queries, About AirData, How To Select..., and Contacts. The main content area is titled "AirData : Access to Air Pollution Data" and features five icons with labels: Reports and Maps, Queries, About, How To, and Contacts. The "Purpose" section explains that the website provides access to air pollution data for the entire United States, including ozone levels, monitoring sites, and sources of pollution. The "Data" section lists two databases: AQS (Air Quality System) for ambient concentrations and NEI (National Emission Inventory) for annual emissions. The "Features" section states that data is extracted periodically from these databases.

U.S. Environmental Protection Agency

AirData

Recent Additions | Contact Us | Print Version Search **GO**

EPA Home > Air & Radiation > AirData

AirData : Access to Air Pollution Data

Reports and Maps Queries About How To Contacts

Purpose

The **AirData** Web site gives you access to air pollution data for the entire United States. Want to know the highest ozone level measured in your state last year? Ever wonder where air pollution monitoring sites are located? Are there sources of air pollution in your town? *You can find out here!* AirData produces reports and maps of air pollution data based on criteria that you specify.

Data

AirData presents annual summaries of air pollution data from two EPA databases:

- **AQS** (Air Quality System) database provides air monitoring data - ambient concentrations of criteria air pollutants at monitoring sites, primarily in cities and towns.
- **NEI** (National Emission Inventory) database provides estimates of annual emissions of criteria and hazardous air pollutants from all types of sources. The NEI database in 2002 replaced two separate EPA databases for emissions of criteria air pollutants (National Emission Trends, or NET) and hazardous air pollutants (National Toxics Inventory, or NTI).

We extract data periodically from these databases for use in AirData. The [database status](#) page has details.

Features

Here are the types of information you can find at the AirData Web site:

Research Tools

www.ehsfreeware.com/ptclean.htm



**PROPERTY
TRANSFER
ASSESSMENTS**

Can't Find
What You
Need?



Following is a list of freeware that provides tools for conducting Phase I and Phase II real property transfer assessments. To learn more about a particular item, click on the item name. To download a software product or visit an interactive web site, click on "download" or "view," respectively. But first, please read our [disclaimer and permissions](#) page if you haven't already done so.

[Accidental Release Information Program \(ARIP\)](#)

By US Environmental Protection Agency, Office of Pollution Prevention and Toxics (OPPT). Information on accidental releases of hazardous chemicals at fixed facilities gathered by EPA regional offices on a questionnaire consisting of 23 questions about the facility, the circumstances and causes of the incident, and the accidental release prevention practices and technologies in place prior to, and added or changed as a result of, the event. The questionnaire focuses on several areas of accident prevention including hazard assessments, training, emergency response, public notification procedures, mitigation techniques, and prevention equipment and controls.
[download](#)

[AIRData](#)

By US Environmental Protection Agency. The AIRData Web site gives you access to air pollution data for the entire United States. Want to know the highest ozone level measured in your state last year? Ever wonder where air pollution monitoring sites are located? Are there sources of air pollution in your town? You can find out here! AIRData produces reports and maps of air pollution data based on criteria that you specify.
[visit](#)

Research Tools

www.egr.msu.edu/~envirotools/cgi-bin/fsl.php3?cat=factsheet&fs=Assessment

EnviroTools | ABOUT | FACTSHEETS | PRESENTATIONS | LINKS | GLOSSARY | HOME
Empowering citizen participation in cleaning up contaminated sites

Factsheets - Assessment

- Steps to Cleanup**
- COMMUNITY
- ASSESSMENT**
- POLLUTANTS
- HEALTH
- RISKS
- REGULATIONS
- FINANCING
- REMEDIATION
- REDEVELOPMENT

- Navigate -

Environmental Site Assessment	Provides an understanding of each element of the Environmental Site Assessment process and how these components relate to brownfields redevelopment.
Industry Chemicals	Lists the type of chemicals to be found on a site based on the past use of the site.
Baseline Environmental Assessment (BEA)	Protects the purchaser of the facility from liability from previous owners' actions and to hold the new owner accountable for future use and contamination.
Understanding Groundwater	Discusses the flow of groundwater, how it gets contaminated and the possible sources of contamination
Remedial Investigation/ Feasibility Studies	RI/FS is the step in the cleanup process that is conducted to gather sufficient information to support the selection of a site remedy that will reduce or eliminate the risks associated with the contamination at the site.
Collecting Environmental Information Using the Data Quality Objectives Process	Describes the seven steps in DQO process, which helps in determining when data of sufficient quality is collected for taking accurate decisions
Environmental Site Assessment: Phase I and Phase II for Brownfields	This factsheet explains the 2 major steps taken in environmental assessment: In Phase I, historical occurrence of contamination is evaluated and in Phase II, the extent of contamination is determined.
Risk based Site Cleanup Standards for Michigan	Provides detailed information about risk assessment using Michigan standards. While Michigan focused, the information may be useful to anyone desiring technical information about Superfund clean-up, risk-based standards.
Contaminated Sediments	Gives information on contaminated sediments, their assessment and

State Regulations

- **New Jersey**

- ISRA (Industrial Site Recovery Act)
- Brownfield and Contaminated Site Remediation Act

- **California - CUPA** (Certified Uniform Program Agency)

- **Ohio - Laboratory Certification**

- **New York**

- Brownfield Cleanup Program 10/07/03

- **Oregon - Prospective Purchaser Agreement**

- \$2,500 Application (minimum)

Europe/Asia/North-South America/Africa/Australia

- **Mostly Based Upon U.S. Experience**
- **Varying Contract Formats**
- **Significant Variations in Historical Usage**

CANADA



- **Code of Environmental Stewardship**
 - “The Government of Canada fully supports the principle of sustainable development.”
- **Provincial Environmental Legislation**
 - Twelve Various Sets of Laws/Regulations
- **Indian and Northern Affairs**
 - Ontario Regulations
 - Canada’s Additions to Reserve policy

ENGLAND

Environment Agency

- » Financial Provisions for Non-Landfill Waste Management Licensing
- » Negotiated Agreements
- » Environmental Taxes
- » Trading Schemes
- » EU considerations

Text Only Thursday 11 December 2003 You are in: Business > How we regulate your business > Regulatory instruments



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Business

Regulatory instruments

There are many different ways in which regulation can be implemented. The following pages describe what these are and provide links to relevant regulations that use these systems.

- **Direct regulation**
The traditional approach to regulation.
- **Environmental taxes**
How taxes can be used in regulation.
- **Trading Schemes**
How trading schemes can be used to achieve environmental objectives.
- **Negotiated or voluntary agreements**
Agreements between businesses that achieve higher than required environmental outcomes.
- **Education and advice**
How education and advice plays a role in awareness raising.
- **Environmental management systems**
Find out about using environmental management systems to improve performance, plus a link to romas - the Europe-wide project linking management systems with business performance.

In this section:

- ↑ How we regulate your business
- Principles and approaches
- **Regulatory instruments**
- Directives
- Working with you

Australia

- Department of the Environment and Heritage

- Environmental Protection and Biological Diversity Conservation Act (EPBC)
- Administrative Guidelines on Significance
- National Landcare Programs
- Distinguishing Wastes/Non-Wastes

Distinguishing Wastes from Non-Wastes under Australia's Hazardous Waste Act

*Environment Australia
Information Paper No.2, Fourth Edition
June 2001*

FIGURE 1: Summary of the Waste and Non-waste Examples used in this Information Paper.

Issues Related to Final Disposal	
Waste Examples	Non-waste Examples
<p>Spent Potlinings (<i>Example 2</i>)</p> <p>Spent potlinings for testing are wastes because they are in Q7 of Table C and the residues are disposed of in a secure landfill after testing.</p>	<p>Blood & Urine Samples (<i>Example 1</i>)</p> <p>Clinical samples for testing are non-wastes because they are not in any entry in Table C.</p>
Additional Considerations	
Waste Example	Non-waste Example
<p>Brass Dross (<i>Example 7</i>)</p> <p>Brass dross is a waste because its production is unavoidable, it is not produced to quality controls and it is sold to a waste recovery industry.</p>	<p>Processing of nickel-cobalt ores (<i>Examples 5&6</i>)</p> <p>Nickel ore refining can produce more than one product when there is a clear intention to produce both to a specification.</p>
<p>Spent Catalysts for regeneration / manufacture (<i>Example 10</i>)</p> <p>Spent catalysts are a waste when destined for recovery of components but are a non-waste when destined for regeneration.</p>	<p>Anode Slimes (<i>Example 8</i>)</p> <p>Anode slimes are a non-waste when produced intentionally by blending and processing to meet specifications.</p>
<p>Used Computers for Disassembly (<i>Example 12</i>)</p> <p>Used computers are wastes if destined for disassembly followed by re-use, recycling and recovery of their components.</p>	<p>Used Computers for Continued Use (<i>Example 11</i>)</p> <p>Used computers are non-wastes if destined for continued use as computers and are in working order or require only minor repairs.</p>

NORWAY

- **Pollution Control Act**
- **Product Control Act**
- **EFTA** (European Free Trade Association)
- **OSPAR Convention**
- **LRTAP Convention** (UN)
- **PIC** (Prior Informed Consent Convention - UNEP)
- **POPs** (Persistent Organic Pollutants Convention - UNEP)

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Search

A-Z directory

Air pollution
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Climate and ozone
Cultural heritage

Environmental chemicals
International co-op
Noise
Outdoor recreation

Polar region
Waste
Water pollution

What is new
Data and statistics

Hazardous chemicals



- 1.State: Serious pollution in some areas
- 2.Impact: Impacts on environment and health
- 3.Driving forces: We are using more and more chemicals
- 4.Pressure: Our activities cause pollution
- 5.Response: Preventing environmental damage and health problems

Emissions of many of the chemicals known to be most dangerous have been considerably reduced, but new problems are constantly arising. There is a general rise in the use of chemicals, and more and more new products are being put on the market.

1.State 2.Impact 3.Driving forces 4.Pressure 5.Response

Serious pollution in some areas

A number of Norwegian rivers and fjords have suffered serious pollution in the past. The content of hazardous substances in mussels is a good indicator of the state of the environment in a fjord. Water quality has improved in a number of the fjords that have been studied, but is still not satisfactory in all of them. In some localities, fish and shellfish contain such high concentrations of hazardous chemicals that it is not advisable to eat them. The health authorities have therefore introduced restrictions on consumption or advised people not to eat shellfish or liver from fish from heavily polluted fjords.

Dogwhelks (*Nucella lapillus*) have also suffered from pollution by chemicals. Both along the Norwegian coast and in other countries, scientists have found female dogwhelks that have developed male sexual organs. This phenomenon is called imposex, and results in sterility. Imposex is caused by tributyltin, which has been used in antifouling paints for ships, and threaten populations of dogwhelks all along the coast of Norway

- Hazardous chemicals
- List of Dangerous Substances
- Criteria for undesirable properties
- The Observation List
- The substitution principle
- Products
- Endocrine disruption
- Contaminated ground
- Regulations in the EU and Norway
- Data og statistics

Medio (Mexico)

Ambiente

● SEMARNAT

- Secretaria de Medio Ambiente y Recursos Naturales
- Newly Enacted Environmental Policies
- Based Upon Early US Model

NUEVA POLÍTICA DE MEDIO AMBIENTE EN MÉXICO	
¿Qué es la Semarnat?	El Desarrollo Sustentable
Antecedentes	La Nueva Política Ambiental está basada en los principios de:
Reglamento Interior	<ul style="list-style-type: none">El desarrollo en armonía con la naturaleza.El crecimiento con calidad humana y ambiental.El apego a la legalidad y rendición de cuentas.Alianzas con los actores sociales
Estructura Orgánica	Los seis pilares de la Nueva Política Ambiental son:
Órgano Interno de Control	Integralidad: manejo conjunto y coordinado de los recursos naturales.
Funciones	Compromiso con los sectores: el desarrollo sustentable es una tarea compartida por varias Dependencias del Gobierno Federal.
Programas y Proyectos	La nueva gestión ambiental: detener, revertir, restaurar el deterioro de los ecosistemas y abarcar las tres vertientes del desarrollo sustentable.
	Valoración social y económica de recursos naturales: para que sean utilizados de manera racional.
	Combate a la impunidad ambiental: sin excepciones.
	Participación social y rendición de cuentas: la sociedad interviene en la formulación y ejecución de las políticas y programas (ONG's, sector privado, academia).
	En base a estos principios se formularon los siguientes programas del Plan Nacional del Medio Ambiente y Recursos Naturales 2001 - 2006 :
	Programas de carácter Sectorial e Institucional Cruzadas Nacionales Programas Estratégicos Programas Regionales y Multisectoriales Programas Especiales

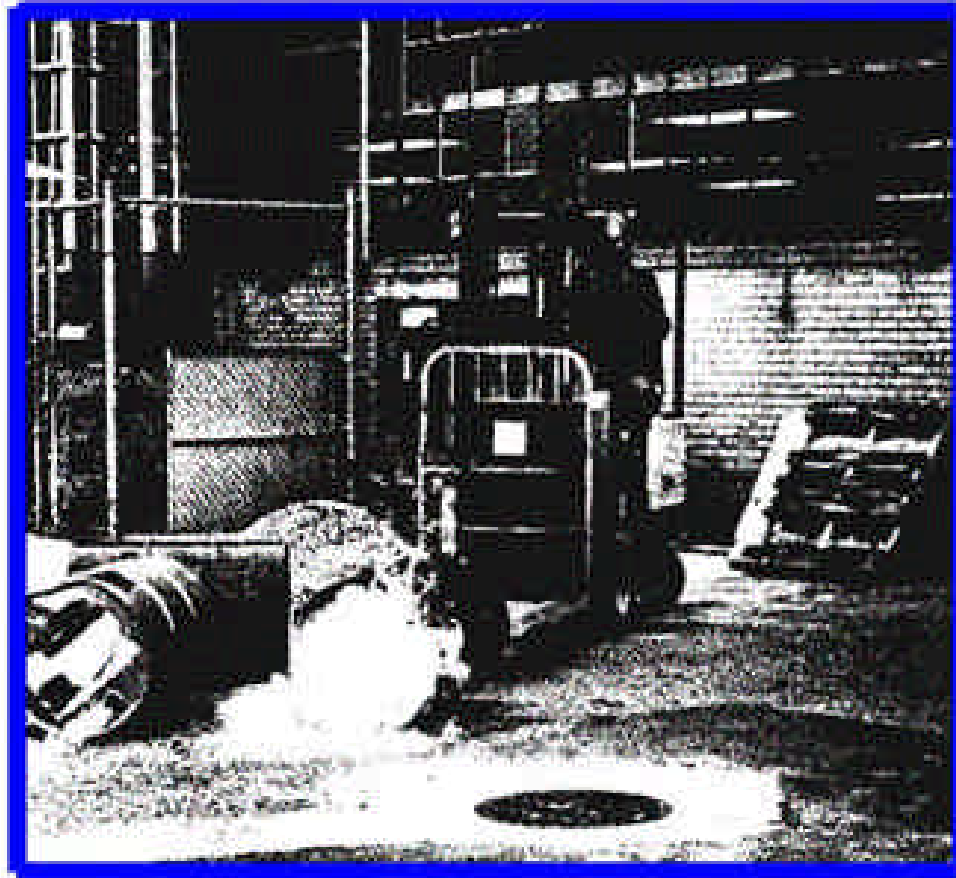
**HOW MUCH
INFORMATION DO YOU
NEED?**

Personnel Safety/Compliance History?

- **Will You Inherit Employees?**
 - **What has been their History?**
 - **What is the Facility's Compliance History?**
 - **What Kind of Accidents?**
 - **Frequency of Accidents?**
 - **Any Problems with Regulators?**
 - **Any Problems with Local Law Enforcement?**



Personnel Safety/Compliance History?



Personnel Safety/Compliance History?



Personnel Safety/Compliance History?



Personnel Safety/Compliance History



What About Neighbors?



What About Neighbors?



What About Neighbors?



NORWAY Neighbors



NORWAY Neighbors



NORWAY

Unhappy Regulators



More Neighborhood



More Neighborhood

Fuel Blending



More Neighborhood

Fuel Blending Haz Waste



More Neighbors



What About ASTM E2247-02?

- **Rural Property Environmental Site Assessments**
 - » **Developed by ASTM Subcommittee E50.02**
 - » **Relates to Forestlands and Rural Properties**
 - » **Not Included within EPA's May 9, 2003 Reg**

Aquiring Contaminated Property

- **IT CAN BE DONE - SAFELY?**

- **Define Existing Conditions**
- **Understand Existing Weaknesses**
- **Negotiate Conditions of Transfer**
 - **With Owner**
 - **With Regulators (Federal/State/Local) (CA - CUPA)**
- **Innocent Land Owner or Bona Fide Prospective Purchaser**

Aquiring Contaminated Property Regardless of How Large



Aquiring Contaminated Property or How Small

