CHAPTER 9

Environmental Laws

Most transactions involving the sale, acquisition, or financing of real property or industrial or manufacturing equipment will require an initial evaluation of environmental risks. The burden of identifying environmental risks is originally on the buyer or lender, rather than the owner, of the property. In some instances, however, it may be to the advantage of the seller or borrower to undertake an environmental investigation or audit to prevent the risks from being exaggerated in subsequent negotiations.

Environmental risks can be classified into risks relating to the cleanup of contaminated property and risks relating to operations of the business. An example of a federal statute for the risks relating to the cleanup of contaminated property is the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), summarized below. The risks relating to the operations of the business can involve failure to obtain permits, to comply with permits, to file reports, or to comply with other applicable standards. The Clean Air Act, Clean Water Act, Toxic Substances Control Act (TSCA), and Resource Conservation and Recovery Act (RCRA) are examples of federal statutes relating to regulatory requirements, and brief overviews of these laws are presented below.

The first task of an acquisition lawyer in dealing with environmental matters is usually to discuss with the client whether an environmental consultant should be retained and, depending on the client's familiarity with these matters, help select the consultant, negotiate the terms of the consultant's contract, and interact with the consultant during the investigative process.

Frequently, a site assessment will be necessary. There is no standard description of what a site assessment includes; it was originally designed to comply with the "commercially reasonable investigation" of Superfund. Typically it results in an opinion on the likelihood of environmental contamination based on a review of readily available public records, a site visit, and interviews with persons knowledgeable about the property. Helping the client decide upon the scope of this assessment can be an important part of the lawyer's role.1 The areas of investigation and the kinds of records that might be examined in a site assessment are described below in greater detail than may be warranted in particular transactions.

If the transaction involves the risk of succeeding to the environmental liabilities of the seller, it may be advisable to evaluate the potential liability for past practices and off-site contamination. Where ongoing operations are acquired, it may be advisable to evaluate the regulatory status and permit status of the target. The permit review process is discussed as part of the review of general environmental liabilities.

At times the target may be particularly reluctant to allow the acquiring company to interview employees or conduct investigations because of anticipated problems regarding its compliance. These "sensitive inquiries" may involve the target's compliance with law or reporting requirements. For

example, the target may be wary of investigations that would lead to a duty to report under the environmental laws, if the acquiring company can walk away from the deal and leave the target in worse shape than before. Dealing with this problem can require careful drafting of indemnity agreements and rigorously controlled distribution of test results. In case the transaction does not close, a limited measure of confidentiality may be achieved if the environmental consultants are hired by the lawyer rather than the client. It may also be important to have a confidentiality agreement with the environmental consultants; otherwise, industry practice may lead to unintended dissemination.

If there is known contamination or noncompliance with permit requirements, or if contamination or noncompliance is discovered in the process of review, local experts and environmental lawyers should be retained to evaluate alternatives and consequences. The presence of environmental problems can be addressed in many ways. For example, in one transaction in which a buried pipe across the property may have carried hazardous materials at one time, test drillings indicated that the main concern was not the pipe itself but the leaks and later migration to the soils surrounding the pipe. In this transaction, the solution was to obtain a first-party environmental remediation insurance policy covering the risk of those substances on the rest of the property excluding the pipe corridor, allow the insurance company to do its testing and set the price for a policy, and escrow payments for five years of the policy. Although this situation is not typical, it illustrates that environmental problems do not automatically kill the deal. In fact, there are consultants who specialize in finding alternatives for deals with environmental problems.

PURPOSE OF REVIEW

The purpose of an environmental acquisition review is to review the extent of the target's exposure to liability because of the environmental laws and regulations affecting it. If an asset acquisition, rather than a stock acquisition, is contemplated, there may be the collateral advantage of establishing the "innocent purchaser defense,"2 but that is not the primary purpose of acquisition review. The scope of review and the depth to which it will be pursued should be negotiated between the client and the attorney in all cases. Few clients are prepared for either the cost of review, the extent of possible environmental liability, or the amount of time such a review can take.3 All reviews comprise and compromise these goals. The review set forth here is more for the purpose of illustrating what may be done than what should be done in all situations.

Environmental liabilities are like icebergs: a great deal that needs to be known about them is not immediately open to inspection, and what is unknown can be very dangerous. For example, the level of liability at a Superfund site4 may be inferred from the estimates of the cost of cleanup of the 1800 Superfund sites targeted by the Environmental Protection Agency (EPA) on the National Priority List ($14.6 billion)5 and the length of time it takes

to clean them (only 27 cleanups were completed between 1980 and 1990).6
Certain facts reliably indicate the presence of environmental liabilities: underground storage tanks; hazardous materials or hazardous wastes on site or disposed of by the target; discolored or potentially contaminated soils, ponds, basins, or lagoons; spills and runoffs on the property; manufacturing processes; permits for processes; chemical usage; asbestos-containing materials and PCBs;7 and hazardous substances on adjacent properties. Any review that indicates the presence of any of these may lead to a reassessment of the terms, or viability, of the transaction.
Environmental liabilities are triggered by the presence of regulated substances, and therefore the first part of any review must attempt to discover their presence and extent. This review is not primarily legal in nature and can be conducted with the services of an industrial hygienist and/or an environmental assessor. Once the materials are located, or the processes that produce the regulated materials are determined, then the legal review of permits, liabilities, and compliance becomes meaningful. The two reviews can proceed in tandem, the existence of permits alerting reviewers to the existence of regulated substances, but such a procedure is not recommended. It raises the possibility of missing substances or processes that should have permits, but do not.
This discussion begins with a brief review of some of the major environmental statutes. It is assumed that one or more environmental professionals have been hired to advise of chemicals and processes used by the target, and to review the contamination status of the properties that are or have been owned or used by the target corporation.

Legal Background

Several major federal acts are implicated in most reviews of environmental liability. Many other federal environmental statutes may apply in specific cases, and some of them are listed in the Statutory Appendix at the end of this chapter. This chapter is primarily concerned with liabilities under Superfund, TSCA, RCRA, the Clean Water Act, and the Clean Air Act, because they apply across a wide range of acquisitions.8

Superfund (CERCLA)

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)9 was enacted in December 1980 to deal with the problem of old disposal sites for hazardous wastes. The act was designed to encourage quick cleanup of sites and to hold a broad range of responsible parties liable for the costs of cleaning up the sites.10 The "Superfund Amendments and Reauthorization Act of 1986" (SARA or Superfund) amended CERCLA to provide additional (but still very inadequate) funding, address major issues under CERCLA, and reinforce the model of the "strong plaintiff" contained in the original legislation.11 Its inadequate funding12 gives the EPA and the courts an incentive to expand liability for all phases of cleanup, which they have acted on.

The range of entities liable for cleanup is set out in 42 U.S.C. Section 9607: current owners13 or operators of a place where hazardous waste14 has been disposed of;15 any person owning or operating a facility at the time hazardous wastes were disposed16 of there; any person who transported waste for disposal or treatment at that location; and any person who arranged to have hazardous waste taken to the site for disposal or treatment.17 CERCLA has a strict joint and several liability scheme and it is retroactive. Because this retroactivity has no limit, it will include properties previously owned by the target corporation and properties at which the target corporation has previously disposed hazardous materials.18 Managers, officers, major stockholders, and others who could have controlled the disposal of wastes under the act have been held liable.19 CERCLA also requires any person in charge of a hazardous waste facility to notify the National Response Center in Washington, D.C., of releases of significant quantities, and prescribes criminal penalties for failure to do so.20 Possible exclusion from liability may occur for those who bought the facility after a reasonable commercial investigation without discovering the wastes. This is the "innocent purchaser" defense,21 and is largely hypothetical, given the lack of favorable case law22 and the disinterest of the EPA.23 The "innocent purchaser" defense does not purport to modify the rule under common law that the acquisition of a corporation transfers all the liabilities of that corporation, and is therefore only applicable to asset purchases.

TSCA

The Toxic Substances Control Act24 (TSCA) was enacted in 1976 to establish a regulatory mechanism for industrial chemicals that represent an "unreasonable risk" to the environment. The statute allows extensive data collection by the government, with some protection for trade secrets. TSCA explicitly incorporates a cost-benefit rationale.25 It covers the processing, manufacture, distribution, and use of chemical substances and mixtures for commercial purposes.26

Section 4 of TSCA allows the EPA to require manufacturers to test chemicals for their impact on the environment or public health. Regulatory enforcement is expedited if the new chemical proves to have potential for chronic public health effects. Section 5 of TSCA describes the system for the regulation of new chemicals and requires a premanufacture notification to the EPA at least ninety days before commercial manufacture begins. Section 6 of TSCA contains the authority for EPA to regulate the manufacture, distribution, use, or disposal of a chemical to prevent unreasonable risks. Section 8 gives the EPA broad power to collect information on chemicals, including production and process information, as well as health and safety data. Under this section, manufacturers must submit to the EPA any new information revealing that a substance or mixture may represent a substantial risk of injury to the environment. TSCA is the primary act used in the regulation of asbestos and polychlorinated

biphenyls (PCBs) at the federal level.
Violations of TSCA may lead to civil penalties of up to $25,000 for each violation. Criminal penalties are prescribed for knowing violations.27

RCRA

The Resource Conservation and Recovery Act of 197628 (RCRA) sets up a comprehensive program for the "cradle to grave" management of hazardous wastes.29 The generation, transport, and disposal of hazardous wastes is regulated with a system of permits and licenses.30 The act consists of a number of self-executing provisions31 and involves extensive reporting obligations. The definition of the substances regulated is deliberately designed to be "open ended" under the statute, and encompasses all substances with the appropriate degree of ignitability, corrosivity, reactivity, and toxicity.32 Sites for hazardous wastes must have permits and are extensively regulated.33 Transportation of hazardous materials is controlled by a system of Hazardous Waste Manifests, which must be completed and retained by all parties to the disposal. Civil penalties (up to $25,000 per day), injunctions, and administrative enforcement orders are all available under RCRA.34 Criminal penalties are also available, and knowledge is not a required element of the offense.35 As amended in 1984, RCRA also regulates underground storage tanks (USTs), with an extensive program of testing and notification.36 States may administer some parts of RCRA,37 and states may impose higher standards.38 Because of this "dual administration," joint permitting may be necessary in some states.39

The Clean Water Act

The Clean Water Act40 has five elements: setting water quality standards, issuing discharge permits, setting industry standards for effluent levels, establishing chemical and oil spill provisions, and maintaining a program encouraging public water treatment facilities.41 One of the most frequently encountered aspects of the program in an investigation is the National Pollutant Discharge Elimination System (NPDES). All discharges of pollutants into water are prohibited unless done under an NPDES permit. The EPA shares authority with thirty-seven of the states in the issuance of these permits. Routine monitoring is part of all permits, and notification of discharges in violation of the permit or unpermitted discharges is mandatory. Violators face civil penalties of up to $25,000 per day, plus criminal penalties.42 There is a citizen suit (private attorney general) provision in the law allowing citizens to sue for injunctions to enforce the conditions of permits.43 One class of permits--for dredged or fill material--is exempt from the NPDES, falling instead under the mixed jurisdiction of the states, the EPA, and the Corps of Engineers.44 These have recently come into prominence because of the scope of the prohibited areas for discharge, including the "wetlands."45 While federal water regulation originally was designed to extend only to "navigable waters," the definition of that term has broadened over time to the point that this

section is routinely read to be the maximum constitutional reach of federal jurisdiction.46

The Clean Air Act

In the version operative until the amendments in 1990,47 the Clean Air Act48 was divided into three basic subject areas: stationary sources of pollution, mobile sources of pollution, and the standards for judicial review. Under Section 108 of the Act, the pollutants are listed; Section 109 sets the National Ambient Air Quality Standard for the pollutants. There is no economic balancing test for the standards set under the Act; it was intended to be a radical approach favoring public health above all other goals. In any area in which the standards are not met (a nonattainment area), regulatory requirements for specific control technologies will be imposed on both new sources of air pollution and any source that has undergone a modification. Each state must have its own implementation plan (SIP) under the act. These SIPs will be determinative only if their standards are tougher than those of the EPA.

The Clean Air Act Amendments of 199049 amend, rather than supersede, the Clean Air Act.50 The act clarifies the manner in which areas are designated and redesignated "attainment," allows the EPA to define boundaries of nonattainment areas, and imposes various classifications to determine whether Best Available Control Measures or Reasonably Available Control Measures must be used.51 The act contains a comprehensive plan requiring the EPA to publish a list of source categories that emit certain pollutants within one year after the law is passed, including both major sources (such as major industries) and area sources (such as bakeries and dry cleaners).52 Maximum Achievable Control Technology standards for these sources will be issued by the EPA, with some sources gaining compliance extensions due to early efforts. Eight years after the technology is installed, the EPA must reevaluate the remaining risk from emissions at that source.53 Acid rain is addressed by an allowance system keyed to fuel use in 1985-1987, with special exceptions for coal burning plants in certain states. Certain plants will have allowances above the amount of pollutants that they produce, and these allowances can be traded or sold to other businesses within the same administrative area.54 The act introduces a permit program similar to that under the Clean Water Act, requiring state enforcement.55 Enforcement provisions under the act include administrative fines up to $200,000, civil and criminal penalties, and a "private attorney general" provision.56

Given the nature of the law and the range of sources to be included, most commercial and industrial operations of any size will be required to obtain permits within the next decade.

New Jersey Industrial Site Recovery Act and Other State Laws

The states have generally adopted statutes that parallel the major federal statutes, though the states may have stricter standards. Certain kinds of

state law, such as New Jersey's Industrial Site Recovery Act (formerly known by the acronym "ECRA"),57 have no federal counterpart and influence all negotiated acquisitions in the state. The states have become more involved in environmental regulation, and a reviewer should be alert to the possibility that local regulatory authorities may have significant power. A local expert may be employed with regard to applicable state law to ensure that no troublesome compliance issues exist.

PROCESS OF REVIEW

The review is divided into two categories: those documents and reviews that may be conducted by nonlegal, outside professionals58 and those documents and reviews that must be conducted by a legal professional.59

Specification of Review by Nonlegal Professionals

Environmental consultants are sensitive to the costs of their work, and will give you only what you ask for. Several treatises have presented specifications of an environmental site assessment.60 Any specification for site review tends to be shaped by the experiences that went into its compilation and the specific sites concerned. Because of the individual nature of each business and the differing backgrounds of the professionals involved, conducting an environmental review is an art, not a science.61 This section will examine a hypothetical "general" assessment by an environmental assessor and will discuss some issues for an environmental professional conducting a regulatory compliance review.62 It is generally advisable in preparing for a specific audit to discuss needs that may be industry- or site-specific with the client and appropriate professionals.63

The Site Assessment

The form of this assessment was originally shaped by the requirements of CERCLA's "innocent purchaser defense" to environmental liability. The "commercial reasonability" standard in that defense makes it eminently suitable for an acquisition review.64 The example set forth here has been modified to include elements not included in the typical assessment, because in most acquisitions other laws in addition to CERCLA are involved. The "Transaction Screen" of the ASTM standard referred to in note 1 would, for that reason, usually be insufficiently inclusive. Generally the site assessment will include an on-site reconnaissance, a review of the uses of the surrounding land, a site history review, a survey of geological and hydrogeological conditions to the extent they can be ascertained from available records, and a review of governmental records (including both agencies charged with the regulation of the activities on the site and a review of nearby hazardous waste sites).65

Other environmental reports of the site generated by the target may serve to raise useful issues; but it may not be prudent for the purchaser to rely upon them without independent confirmation. These include studies of asbestos in buildings and tests of underground storage tanks.

On-Site Reconnaissance

___ 1. Review the current use of the site, noting whether the proposed use of the site is different, and whether current structures are to be preserved or destroyed in the takeover process.

___ 2. Any potential issues of concern observable on-site should be discussed:66

___ a. discolored soil or fill dirt

___ b. vegetation that either is unhealthy or typically occurs only in swampy areas67

___ c. roads or tracks with no discernible destination

___ d. recent paving

___ e. transformers that may contain PCBs (which will include the ballast of fluorescent lights)

___ f. underground or aboveground storage tanks

___ g. odors

___ h. unlabeled drums

___ i. employees wearing protective clothing

___ 3. Discuss the results of any record review on-site or any interviews.

___ 4. Asbestos may be surveyed by sampling in all buildings that may be destroyed after the takeover, and surveyed by inspection, building age, and plans for all buildings that will not be destroyed.68

Land Use Survey for Surrounding Land

___ 1. Review surrounding uses for one mile from the nearest property line for possible spreading of environmental contamination or dangerous sites near69 contaminated property. This review may be tied in with the review of local agency records for all surrounding sites.

___ 2. Provide a map showing the surrounding sites, potential problems, and, if available without drilling, the direction of groundwater flow (from the hydrogeological section of the report).

___ 3. Provide an evaluation of the likely impact of surrounding uses on the site.

Site History Review

___ 1. Review the uses of the site for as far back as good records exist. No good cutoff period can be suggested here. Indeed, because of the environmental destructiveness of some older uses (such as a tannery), investigation should go as far back as the consultant deems prudent. Aerial photographs have proved useful in the hands of professionals. The use of City Directories to determine prior uses is strongly recommended.

___ 2. Discuss prior building permits, listing owner, purpose, and effect on the site.

___ 3. Report the results of interviews concerning site use both with those on the site and with neighbors.

___ 4. Discuss any information concerning fill dirt brought in from off-site, specifically including its source.

Geological and Hydrogeological Conditions
[To the extent that ascertaining these conditions would require soil sampling or drilling of groundwater wells, this would ordinarily be beyond the scope of a site assessment unless specifically requested by the client; but in many cases, the information is readily available from state agencies in the area.]

___ 1. Describe the geological conditions of the area.
___ 2. Describe the kind of soil at the site and whether it is permeable or impermeable.
___ 3. State the depth to groundwater (all aquifers) and the direction that groundwater flows in the area generally.
___ 4. State the results of a review of public records concerning known water quality problems and the uses of the water in the area.
___ a. If the groundwater is contaminated, public agencies in charge of water may be consulted to determine its extent and the allocation of responsibility for cleanup.
___ b. Contamination may affect future construction and use of the site: vapor barriers may be required, some clean source of water will be required to meet OSHA standards, etc. State the probable restrictions on the site.
___ 5. State whether the condition of the soils and the vegetation give any indication that this area is a federally protected wetland.

Governmental Records
This is a difficult part of the report to specify. There may be many agencies with some control over the environmental management of a site. The following list is not exhaustive, but it may serve as a basic checklist.

___ 1. Air quality authorities
___ a. State administration: investigate both the attainment status of the air basin and any information on the site.
___ b. Environmental Protection Agency: investigate both the attainment status of the air basin and any record of the site.
___ 2. Building department
___ a. Building permits
___ b. Construction dates/architects/contractors
___ c. Underground tank permits
___ 3. Department of sanitation
___ a. Permits
___ b. Inspection records
___ c. Violations/compliance record
___ 4. Planning department
___ a. Zoning history
___ b. Current status of zoning
___ 5. Department of food and agriculture
___ a. History of pesticide use

___ b. Regional contamination problems and the method currently being used to deal with them
___ 6. State environmental department/natural resources department/ conservation department
___ a. Wetlands maps
___ b. Flood maps
___ 7. Environmental Protection Agency
___ a. CERCLIS--the list of potentially responsible parties for the target, and the list of properties for the site or neighboring sites
___ b. NPL--the National Priorities List, a useful, if slightly outdated, list of CERCLA sites across the nation
___ c. EPA summary report on Clean Air Act violators
___ d. EPA summary report on Clean Water Act violators
___ e. EPA summary report on RCRA violators
___ 8. Fire department
___ a. The county or city fire department that serves the area will generally have current records concerning on-site use of chemicals that are volatile, toxic, or explosive.
___ b. Current records on neighboring properties; frequently, it is the local fire department that implements the SARA Title III disclosures.70
___ 9. Local and state health departments
___ a. Records of current actions. The records in the health department are generally current, rather than historical, and are useful in determining the chemicals that need to be investigated at the site. Some state health departments have become the primary agencies for environmental cleanups and hazardous waste and will have data for this and surrounding sites.
___ b. Some exploration of bordering properties may also be undertaken.
___ 10. Securities filings
___ a. 10-K submissions for the last five years
___ b. 10-Q submissions for the last five years
Companies are required to disclose environmental contingencies as part of the securities filing, although it is unlikely that most do so. Many environmental assessors are unfamiliar with these records. It may serve as a collateral source for the reviewing lawyer.
___ 11. State priority list
This list may be explored for close and neighboring locations. It may be more current than the National Priority List of the EPA. Frequently, local planning offices have a copy.
___ 12. Title reports
___ a. Title Report on the property. These are records of the chain of title and documents discovered in the title search process. It is not a preliminary title report (such reports do not cover prior uses, and tend to ignore certain kinds of problems that the title company feels they can "insure over"71).
___ b. District Court Records. Any environmental lien affecting the title will be separately recorded in the records of the federal district court

having jurisdiction over the site. To search these records effectively, you need the names of all prior industrial owners and operators.
___ 13. Underground storage tanks
___ a. Environmental Protection Agency
___ b. State administrative agencies
USTs tend to be regulated separately in many jurisdictions, and records of them can be located with any of the agencies listed above.
___ 14. Local utility companies
These will have data on the use of transformers on the site and their configuration. Many will also test for the presence of PCBs in the transformers on the site.
___ 15. Water quality authority
___ a. Records concerning target property
___ b. Records concerning surrounding property

Other Material
___ 1. Site illustration, including the surrounding land uses, the buildings, and other features of the site identified on the walk-through.
___ 2. Color photographs of the entire installation.
___ 3. Material relating to samples taken at the site (reason for sample, map of location, kind of analysis, chain of custody, laboratory reports, and evaluation of results).
___ 4. Name of the client requesting the report, and a description (with address or legal description) of the property evaluated.
___ 5. Proposed use of the site if it is different from the present use.
___ 6. The report must be dated and signed, and it must indicate for whom it was prepared and give the telephone number and address of the preparer.

Evaluation of the Site Assessment by the Lawyer
Evaluation of an environmental report is much like the evaluation of a tort case: the facts are the key to the analysis.72 The important questions for the purchaser's lawyer to ask in evaluating the report are the following:

1. What was the scope of the report? If the report does not examine the property generally for all probable contamination, but only for specific contaminants, the report may not be useful.
2. What was the history of the site? Identify commercial or industrial uses that might indicate past contamination.
a. Keep in mind that not all material has a written record. For example, underground storage tanks were not commonly part of records in many areas until 1984.
b. Aerial photos indicate prior uses and pertinent geographical knowledge (e.g., seasonal streams, riverbeds, or other indications of wetlands may indicate trouble spots and possible future action).
3. Where the lawyer is evaluating a report involving sampling, the following points should be noted:

a. Review the site maps in connection with the sampling description to determine where the samples were taken and whether there are unexplained gaps in the testing or logic used.
b. Analyze the depth sampled as well as the location of the samples.
c. Review the kinds of testing undertaken with the environmental assessor, asking specifically:
(1) What are the substances tested for under this protocol?73
(2) What substances that might be present on the site would not be uncovered in this test?
i. What other testing was used to fill in the gaps?
ii. Is there any reason to believe that certain substances are so unlikely that they need not be tested for? Is this reflected in the report?
(3) What were the detection limits? Are they below any "action level"74 on this substance? If so, by what margin of safety?
(4) Were samples taken of areas unlikely to be contaminated for "background" purposes75?
(5) Who handled and tested the samples? Were they certified? How long did the samples "wait" before testing?
(6) Do any results indicate the samples obtained were tested "as composites"?76
4. Has this site or a neighboring site been identified as contaminated? Are there particular findings requiring further attention?
a. Review the characteristics of the soils on the location with the assessor. Specifically address the question of soil permeability or impermeability.77
b. Review the report of the direction of groundwater flow with the assessor. Have enough samples been taken so that the direction is definitely known? What possibly contaminated sites are upstream of the site under consideration?
c. Does the report draw any conclusions about the acceptability of the contaminants found? What standard was used?
d. What regulatory actions have been taken with regard to the site? Will the regulators agree with the extent of the problem as set forth in the report?
e. Evaluate the need for further study carefully. If there is a problem, it is possible that further study will require cleanup sooner.
f. Any contamination identified should, if possible, include an estimated cleanup cost. If not, ask the assessor to supply one.78
(1) What were the parameters of the cleanup assumed in the cost estimate? Are they best-case? Worst-case?
(2) Are there other methods of disposing of the contaminants that are less costly (e.g., the reuse of hydrocarbon contamination in roadbeds, or the disposal to out-of-state hazardous waste handlers)?
5. Will the writer of a prior report prepared for another party give the purchaser a reliance letter addressed to the purchaser and on which the purchaser can rely?79

Survey of the Target Company's Operations by an Environmental Professional
Is it necessary to have an environmental professional review the target company's compliance? Generally, an environmental professional will be useful when dealing with complex manufacturing operations or particularly hazardous manufacturing operations (computer chips, for example).80 The environmental professional's mandate has no statutory or customary basis but may extend to a report on the following matters:81

1. What is produced, and by what process, at the site?
2. What hazardous materials are used at the site?
3. What is the normal waste stream of these materials?
4. Have the wastes been disposed of according to industry custom?
5. What does a review of the hazardous waste manifests indicate about the waste stream?
6. What is the average cost of disposal? Is it in line with known costs of disposal in the region?82
7. What sites have been recipients of this corporation's wastes? What is their status?
8. Are there lurking OSHA liabilities from the use of hazardous materials? What is indicated on the Hazard Communication Regulation Report? On the OSH 200 logs?83
9. Are the Material Safety Data Sheets84 accurate? Have they been maintained?
10. Are the Emergency and Hazardous Chemical inventory forms complete?
11. What Premanufacture Notifications have been filed under TSCA?

Legal Review
The prior reports help to equip an environmental lawyer for the main legal tasks of an environmental acquisition review: an evaluation of potential liabilities inherent in the site, and the review of all permits and other regulatory communications dealing with environmental matters. An environmental professional can tell you that substances are regulated but cannot verify the status of a permit and its transferability from a legal perspective. Inexperienced lawyers may find that local environmental counsel are particularly useful in evaluating the permits and assessing their transferability.

Liabilities Inherent in the Site
The environmental assessor's report should indicate any concerns about contamination of the site by various pollutants. The extent of the contamination is only conjectural at the level of the site assessment, but it may raise a red flag to discuss with the purchaser. The issue is whether to institute a more time-consuming and expensive assessment involving sampling. Cost estimates of further study and the possible liabilities need to be evaluated in light of the risk tolerance of the client in the

particular transaction, and, if further environmental studies are indicated, there inevitably is discussion with the sellers as to allocation of the costs of such studies. In evaluating the liabilities presented, inexperienced lawyers may find that local consultants and environmental lawyers may have useful perspectives on ways to circumvent or deal with problems, as mentioned in the introduction to this chapter.

Permit Review

Robert C. Thompson has broken down the key aspects of legal permit review into three inquiries. The lawyer must ascertain (1) that the business being acquired has all the permits it needs to operate its business; (2) that the permit conditions do not create hidden liabilities or unduly restrict business operations now or in the future; and (3) that the permits are ultimately transferable to the buyer.85 Not all transactions justify the effort it takes to review the permit status of the target; the lawyer must make the client aware of the potential costs involved and the time needed to review the permits. Some clients may prefer to take warranties and settle the question of transferability after the acquisition. This approach will lead to problems if the permits are nontransferable, and clients should be advised of the risks of that approach.

Sufficiency of Current Permits

The report of the environmental professional will acquaint the reviewing lawyer with the basic hazardous waste problems of the plant.

___ 1. Acquire a copy of all outstanding permits used by the facility. Keep a log of these.

___ 2. Review all self-monitoring and compliance data compiled by the business.

___ 3. Review all inspection reports, notices of violation, complaints, court documents, and consent decrees.

___ 4. Discuss with the environmental professional and at least one other lawyer versed in state and local environmental laws the permit requirements of the wastes and processes identified. If there are any questions, contact the regulatory agency involved for an interpretation.86

___ 5. Watch for odd "permits"87:

___ a. Zoning requirements

___ b. Land development conditions

___ c. Mitigation measures imposed after an Environmental Impact Report

___ d. Risk Management Prevention Plan risk-reduction measures (may be unique to California)

___ e. Safe harbors in the permit regulations or statute

Review of Permit Conditions

___ 1. Review the permit for inconsistencies based on what is known about the business from the reports. The permit may have been applied for and not updated with the business changes.

___ 2. Verify all expiration dates.
___ 3. Verify compliance with permit conditions (this may require further work by the environmental professional).
___ 4. Review the general conditions on each permit before reviewing the particular conditions. The general conditions will have to comply with regulations and the statute. The particular conditions may go beyond them.
___ 5. Do not accept tentative agency determinations. These can be delayed without cause and without right to operate the facility.88
___ 6. Determine whether the acquisition transaction will require transfer of the permit to the purchaser, or approval of the purchaser, and, if so, whether the purchaser will qualify for the transfer.

Regulatory Communications

In addition to the permit review outlined above, the lawyer may review all communications with regulatory agencies by the target. The purpose of the review is to establish both the scope of regulatory action against the target company and the relationships likely to be inherited by the acquiring company. It is likely that the same people will be interfacing with the regulatory body, and a poor relationship is easy to carry over and difficult to overcome.

NOTES

1. Besides the discussion contained in the article, a number of standard-setting organizations have been engaged in developing standards regarding the scope of a site investigation in the context of the Superfund law. One of the most significant is ASTM's Subcommittee on Environmental Assessments in Commercial Real Estate Transactions E.50.02, and lawyers unfamiliar with the issues involved in a Phase I assessment in the Superfund context may want to consult Standard E.50.02.2 on environmental site assessments. Since it is tailored only to the Superfund context, it may need to be supplemented when other laws are involved.
2. See the discussion of Superfund infra.
3. One consultant has aptly summarized the dilemma in this way: "Everyone wants the audit to be fast, cheap, and excellent. Pick two."
4. See the discussion of Superfund infra.
5. Insurance Issues and Superfund: Hearing Before the Senate Committee on Environment and Public Works, 99th Cong., 1st Sess. 134 (1985). More recent estimates by the General Accounting Office were that the number of sites could reach 400,000 and that the cleanup costs (for the government) could reach $39 billion, while the Office of Technology Assessment predicts that 10,000 sites will need cleaning over the next fifty years at a cost of approximately $100 billion (Andrea Golaine, Superfund--Much Ado About Very Little, L.A. DAILY J., March 10, 1992, at 6).
6. Holland, Superfund Liability Law Prevents Cleanups, reprinted in Superfund: Is It Super? Does It Fund?, 1990 Annual Meeting Program of the ABA. Section of Public Contract Law.

7. PCBs (polychlorinated biphenyls) are toxic chemicals used in transformers (including fluorescent light "ballasts"). They decompose slowly, and exposure can cause skin rashes, vomiting, abdominal pain, temporary blindness, and cancer.
8. For a general introduction to environmental law, see D. SIVE AND F. FRIEDMAN, A PRACTICAL GUIDE TO ENVIRONMENTAL LAW (1987); J. MACKLIN & T. YOUNG, MANAGING ENVIRONMENTAL RISK: REAL ESTATE AND BUSINESS TRANSACTIONS (1991); and J. ARBUCKLE, M. BOSCO, D. CASE, E. LAWS, J. MARTIN, M. MILLER, R. MORAN, R. RANDLE, D. STEINWAY, R. STOLL, T. SULLIVAN, T. VANDERVER & P. WILSON, ENVIRONMENTAL LAW HANDBOOK (11th ed., 1991) [hereinafter HANDBOOK].
9. 42 U.S.C. ßß 9601-9675.
10. Several kinds of costs are included: response costs incurred by the EPA, response costs incurred by private parties, natural resource damage claims, and the costs of health assessments or health effects studies.
11. The essence of the "strong plaintiff" model was that all costs incurred should be privatized to the extent possible, and the only statutory defenses available were an act of God, an act of war, or certain third-party acts or omissions. See Cummings, Completing the Circle, ENVTL. F., Nov.-Dec. 1990, at 10-17.
12. CERCLA was reauthorized by the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, 104 Stat. 1388 (November 5, 1990), setting a budget of $5.1 billion. The committee cited the spiraling costs of supporting the EPA staff investigating the problem.
13. The "owner" of a facility may include the stockholders or parent corporation. See, e.g., United States v. Kayser-Roth Corp., 910 F.2d 24 (1st Cir. 1990) (parent corporation liable); United States v. Fleet Factors Corp., No. CV687-070 (S.D. Ga., Dec. 12, 1988) (shareholders of company liable). But see Joslyn Mfg. Co. v. T.L. James & Co., 893 F.2d 80 (5th Cir. 1990) (traditional concepts of "corporate veil" prevent reaching parent); Riverside Market Dev. Corp. v. Int'l Bldg. Prod., Civ. No. 88-5317 (E.D. La. May 23, 1990) (major shareholder uninvolved in operations held not liable).
14. Certain substances, such as petroleum, are excluded by statute, see 42 U.S.C. ßß 9601(14), 9601(33), & 9604(a)(2), but otherwise the list includes any substance designated for special consideration under the Clean Air Act, Clean Water Act, TSCA, and any "hazardous waste" under RCRA, as well as any substances designated by the EPA (the list is maintained in 40 C.F.R. part 302).
15. The disposal "creates" the facility. There is no current legally recognized definition of the boundaries of a facility; it appears that in a disposal on a portion of a large parcel, the facility may include the whole parcel. See, e.g., United States v. Metate Asbestos, 584 F. Supp. 1143 (D. Ariz. 1984); T & E Ind. v. Safety Light Corp., 680 F. Supp. 696 (D.N.J. 1988). Other cases have disregarded property lines altogether. See, e.g., United States v. Stringfellow, 661 F. Supp. 1053 (C.D. Cal. 1987). One case, out of an abundance of caution, followed the letter of the statutory

provisions and defined the entire property containing drums of hazardous waste and each of the drums, as a facility. See United States v. Vertac Chem. Corp., 671 F. Supp. 595 (E.D. Ark. 1987).

16. "Disposal" under hazardous waste laws may mean spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandoning, or disposing into the environment. See, e.g., CAL. HEALTH & SAFETY CODE ß 25113 (West 1991). Leaching and escaping include such "activities" as leaks from an underground tank and the migration of contaminants, which are hard to verify by simple observation.

17. This would include, for example, the sale of waste oil to a recycler.

18. Disposal sites that are off premises have become more prominent as a source of liability for corporations in the past two years.

19. Kelley v. ARCO Indus. Corp., 723 F. Supp. 1214 (W.D. Mich. 1989); United States v. NEPACCO, 810 F.2d 726 (8th Cir. 1986).

20. This obligation is imposed on the owner and operator of the property, and hence would not include the acquiring company except for issues created by the acquiring company's notifying the target of its discoveries. See the discussion of "sensitive inquiries" in the introduction.

21. Also called the "innocent landowner" defense, it is based upon 42 U.S.C. ß 9607(b)(3), in which liability is excluded if caused by "an act or omission of a third party other than an employee or agent of the defendant, or one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly with the defendant . . ., if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned,. . . and (b) he took precautions against foreseeable acts or omissions of any such third party. . . ." as interpreted and modified by 42 U.S.C. ß 9601(35) defining the term "contractual relationship." In this scheme, deeds are contractual relationships, and the definition permits a subsequent landowner to show that after all appropriate inquiry into the previous ownership and uses of the property consistent with "good commercial practice in an effort to minimize liability," he still did not know "and had no reason to know" that a disposal had taken place on the property.

22. Only a few cases give examples of this defense's succeeding: United States v. Pac. Hide & Fur Depot, Inc., 716 F. Supp. 1341 (D. Idaho 1989); International Clinical Laboratories, Inc. v. Stevens, 20 Envtl. L. Rep. (Envtl. L. Inst.) 20560, 30 ERC 2066 (E.D.N.Y. 1990); Westwood Pharmaceuticals v. National Fuel Gas Distribution Corp., 767 F. Supp 456 (W.D.N.Y. 1991) and 737 F. Supp. 1271 (W.D.N.Y. 1990), aff'd 964 F.2d 85 (2d Cir. 1992).

23. The EPA has decided that the rules for de minimis settlements apply in these situations, and it requires parties asserting the innocent purchaser defense to either support it in court or pay a de minimis settlement. Superfund Program; De Minimis Land Owner Settlements, Prospective Purchaser Settlements, 54 Fed. Reg. 34,235 (1989).

24. 15 U.S.C. ßß 2601-2654.
25. Section 6(c) of TSCA (42 U.S.C. ß 2605(c)). The regulatory process must consider the benefits of the chemical, the costs of the regulation, and the effects of the chemical on human health and the environment. Because the law allows the EPA to consider the cost of alternatives, regulations have tended toward economic efficiency rather than sweeping prohibitions.
26. A good general introduction to TSCA is contained in 3 W. RODGERS, ENVIRONMENTAL LAW, 370-501 (1988).
27. 15 U.S.C. ß 2615.
28. RCRA is part of the Solid Waste Disposal Act (42 U.S.C. ßß 6901-6991i).
29. In one sense, the phrase "cradle to grave" is misleading: RCRA and CERCLA combine to ensure that all environmental liabilities do not have an expiration date, but last as long as the substance, its effect, or its facility. The key to interpreting these statutes is to remember that under environmental law, things cannot be thrown away--there is no such place as "away."
30. For an overview of RCRA, a good introduction is KNOX ET AL., RCRA ORIENTATION MANUAL (Environmental Protection Agency, periodically updated and reissued).
31. These provisions are designed to shape, and substitute for, the normal regulatory implementation mechanisms in federal environmental law. They cover a wide range of topics, from measures of toxicity to the desirability of curbing certain kinds of disposal. For the history of the self-executing provisions, see Fortuna, The Birth of the Hammer, ENVTL. F., Sept.-Oct. 1990, at 18-23.
32. 40 C.F.R. ßß 261.3, 261.20.
33. Such sites are called TSD facilities (for "Treatment, Storage, and Disposal"). All TSD facilities must have permits, and this includes any facility that treats, stores, or disposes of certain minimum amounts of hazardous wastes.
34. 42 U.S.C. ßß 6928, 6971, & 6973.
35. United States v. Hoflin, 880 F.2d 1033 (9th Cir. 1989).
36. 42 U.S.C ßß 6991-6991g.
37. See 40 C.F.R. Part 271.
38. See, e.g., 42 U.S.C. ß 6992f(c).
39. This "dual permitting" was necessary in California during the period that the legislature delayed in amending the state version of RCRA.
40. The Clean Water Act is otherwise known as the Federal Water Pollution Control Act, 33 U.S.C. ßß 1251-1387.
41. A comprehensive treatment of the Act and its enforcement is contained in 2 W. RODGERS, ENVIRONMENTAL LAW (1986 & Supp. 1992).
42. 33 U.S.C. ß 1319.
43. 33 U.S.C. ß 1365.
44. 33 U.S.C. ß 1344, Federal Water Pollution Control Act ß 404.
45. "The term `wetlands' means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to

support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas." 33 C.F.R. ß 323.2(c).
46. The administrative definition of "waters of the United States" extends to all waters, including lakes, streams, mudflats, wetlands, and sloughs "the use, degradation or destruction of which" could affect interstate or foreign commerce, including wetlands adjacent to these waters. 33 C.F.R. ß 323.2. The courts have accepted this reach. See United States v. Byrd, 609 F.2d 1204 (7th Cir. 1979); Leslie Salt Co. v. Froehlke, 578 F.2d 742 (9th Cir. 1978).
47. Commentators and judges have repeatedly stressed that interpretation of the law must take into account its gradual evolution and prior versions. For an overview of its history, see HANDBOOK, supra note 8, at 525-527.
48. 42 U.S.C. ßß 7401-7642.
49. Pub. L. No. 101-549, 104 Stat. 2399 (1990).
50. For a good introduction to the amendments, see 1 W. RODGERS ENVIRONMENTAL LAW 21-95 (Supp. 1992). Because of the broad scope of the Clean Air Act, it may be advisable to obtain expert advice in this area.
51. 42 U.S.C. ßß 7401-7411.
52. 42 U.S.C. ß 7412.
53. Id.
54. 42 U.S.C. ßß 7651-7651o.
55. 42 U.S.C. ßß 7661-7661f.
56. 42 U.S.C. ßß 7601-7607.
57. N.J. STAT. ANN. ßß 13:1K6-13 (West Supp. 1993). The Industrial Site Recovery Act prohibits the transfer of certain kinds of property without preclearance from the state of New Jersey.
58. This review encompasses two distinct classes of nonlegal professional: the engineer, industrial hygienist, or other professional, who is able to understand the processes producing possible environmental contamination on a particular property (whether now or previously owned by the company) (hereafter the "environmental professional"), and the environmental assessor, whose primary obligation is a review of the records and an examination of the site for contamination (the "environmental assessor").
59. "Duo genera hominum sunt: qui ut duo genera hominum esse credunt, et qui hoc non credunt." PLINIUS SEXTUS, SCRIPTA VARIA.
60. See, e.g., THE BUREAU OF NATIONAL AFFAIRS, ENVIRONMENTAL DUE DILIGENCE GUIDE (1992); J. MACHLIN & T. YOUNG, MANAGING ENVIRONMENTAL RISK: REAL ESTATE AND BUSINESS TRANSACTIONS (1991) (combines an overview of environmental laws with questions to be answered in a site assessment); Union Bank, Attachment 6--Information Required by Union Bank in a Full Preliminary Site Assessment (1990) (available upon request) (a complete specification for a preliminary site assessment on which much of the structure of this section is based); S. TASHER, J. DEAN, J. OSTER & B. KAUFMAN, ENVIRONMENTAL LAWS AND REAL ESTATE HANDBOOK (1988) (reviews keyed

to law triggering liability) and ENVIRONMENTAL EVALUATIONS FOR REAL ESTATE TRANSACTIONS (F. Goss, ed., 1989) (which contains checklists and leads the reader through an evaluation process); J. Hoskins, Environmental Considerations in the Disposal or Acquisition of Corporate Real Estate, INDUS. DEV., Nov.-Dec. 1987, at 1-6 (a sample acquisition presented with legal background).

61. The experience-linked factors in a site assessment generally require that any specification for review be undertaken in consultation with the environmental assessor or environmental professional who will conduct that aspect of the review.

62. Under some circumstances it may be appropriate to have the entire review performed by the environmental professional conducting the compliance review, since many have also been trained in the procedures of a site assessment.

63. One fact about the reports compiled by environmental assessors concerning properties should be noted--many environmental assessors routinely share the results of their reports with any person inquiring about the property, whether private or governmental.

64. The site assessment is also referred to as a Phase I or Level I assessment because of its historical connection with the CERCLA defense. These assessments will generally take between thirty and forty-five days to perform and evaluate. Costs will generally range between $2,700 and $4,500 for small operations (1990 dollars). Environmental assessors will perform Level II and Level III evaluations as well; these occur when cause for concern has been noted in the earlier evaluations. In general, each level costs seven to ten times the cost of the prior level.

65. This framework is more elaborate than that generally proposed for Phase I assessments, primarily because more laws than CERCLA are being encompassed in this review. Some discussion of the scope of work may be necessary with the environmental assessor.

66. Many of these will lead to recommendations for further testing; if the environmental assessor can notify you of these when discovered, the process will be shortened considerably.

67. This test of vegetation is designed to look for "wetlands" that may affect the ability of the owner to develop the property.

68. This recommendation depends on the risk that the acquiring company is willing to take with asbestos and should be reviewed with the lender in many cases.

69. Of necessity, "near" is an imprecise term. Some states, such as California, define "near" as 2,000 yards for particular uses (schools, hospitals, and similar facilities). CAL. HEALTH & SAFETY CODE ß 25221. Certain groundwater problems, such as toxic plumes, can be longer than a mile in an unconfined aquifer (such as the groundwater contamination in Pinedale, California, from the Vendo Company and Industrial Waste Processing sites). Most surveys stop at a half-mile radius, whereas Chase Manhattan Bank has recently insisted on a radius of two miles. CHASE

MANHATTAN BANK, GUIDELINES FOR THE ASSESSMENT OF ENVIRONMENTAL CONDITIONS FOR REAL ESTATE TRANSACTIONS 2 (1990) (available upon request).

70. These are disclosures of hazardous materials used on the site.

71. For example, the preliminary title report will usually not list leases the title company believes to be of improbable assertion against title, but these leases may identify environmentally deleterious users of the target's property.

72. The review of an environmental report can be made considerably easier for lawyers who are new to the process if an independent environmental assessor is engaged to discuss each report with the lawyers involved.

73. Curtis & Tompkins, Ltd., of Los Angeles publishes a wall chart listing the tests by method and chemicals to be detected.

74. An "action level" is the level at which reporting to governmental authorities must occur.

75. There should be some indication of a "background level" of each contaminant presented with the test result. Failure to obtain background samples or "uncontaminated" samples from surrounding soil can lead to errors in understanding the situation. What appears to be a high level of arsenic in the soil around Bakersfield, California, for example, is attributable to natural causes, rather than human contamination.

76. Testing samples as composites, rather than individually, is cheaper but may significantly distort the findings. If one sample is contaminated, testing it with others may move the contamination below the level of detection; conversely, if it is strongly contaminated, it may give a false impression of the scope of the problem.

77. The purpose of this analysis is to determine how vulnerable the site is to nearby contaminants "migrating" onto the site.

78. Because the extent of the problem may not be clear at this level, many assessors are no longer willing to do this except informally.

79. Some lawyers attempt to invoke the attorney-client privilege by having the report directed to them, although there can be no assurance that the claim of privilege will in all instances be appropriate or effective.

80. It is frequently useful to give the target a questionnaire tailored to the target's industry for the use of the environmental professional before the on-site inspection. An example of such a questionnaire is presented in Special Joint Committee of the Maryland State Bar Association and Bar Association of Baltimore City, Special Joint Committee on Lawyer's Opinions in Commercial Transactions, reprinted in 45 Bus. Law. 705-818 (1990). The proposed ASTM Standard E.50.02.2 also contains a questionnaire, with detailed instructions on its use, called the "Transaction Screen Questionnaire."

81. A report by an environmental professional may vary enormously; a basic study of the plant can be generated in a matter of days, and extended work can take as long as thirty to forty-five days, covering many of the same areas as an environmental assessor's report. Some reviews combine these functions for that reason.

82. Some environmental professionals have not had sufficient experience with this question. It is asked because if disposal costs are significantly less than the area norm, wastes probably have been disposed of illegally, dramatically increasing the outstanding liabilities of the target.
83. These report Occupational Safety and Health incidents at the site and may be reviewed to establish that no chemical accidents occurred.
84. Maintained under OSHA regulations, these describe chemicals in use at the plant and first aid for problems.
85. This presentation of the permit review process has been substantially influenced by A Practical Guide to Handling Environmental Permits in Business Transactions: The Due Diligence and Permit Transfer Process from the Buyer's Perspective by Robert C. Thompson, Esq., of Graham and James, San Francisco. That article and several excellent companion pieces on the determination of permit coverage and need are reprinted in 1 P. NUCCIONE, L. BORLAND, N. MANEWITZ, M. BRENNAN & J. BRUEN, THE IMPACT OF ENVIRONMENTAL REGULATIONS ON BUSINESS TRANSACTIONS 1990 (Practising Law Institute B4-6949, 1990).
86. Because of the proliferation of state and local permits in some jurisdictions (notably in California), determining which permits are necessary or which agency to contact may be a difficult process. Many states have developed an information office concerning particular chemicals and the laws covering them. Local permits are best verified in discussions with local agencies. Upon finding permits, approvals, or licenses missing, purchaser's counsel should make a second request of the seller before contacting the agency involved. The absence of certain permits may risk "shutting down" the target.
87. No exact description can be given for these; it will depend at least in part on the experience of the lawyer involved.
88. The Seabrook nuclear power facility is an example.

Statutory Appendix to Chapter 9
An Incomplete List of Federal Laws Dealing with Environmental Subjects
Act to Prevent Pollution from Ships (33 U.S.C. ßß 1901-1912)
Agricultural Act of 1970 (16 U.S.C. ßß 1501-1510)
Atomic Energy Act of 1954 (42 U.S.C. ßß 2014, 2021, 2021a, 2022, 2111, 2113, and 2114)
Aviation Safety and Noise Abatement Act of 1979 (49 App. U.S.C.A. ßß 2101-2125)
Coastal Zone Management Act of 1972 (16 U.S.C. ßß 1451-1464)
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. ßß 9601-9675)
Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. ßß 11001-11050)
Endangered Species Act of 1973 (16 U.S.C. ßß 1531-1544)
Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. ßß

791-798)
Environmental Quality Improvement Act of 1970 (42 U.S.C. ßß 4371-4375)
Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. ßß 136-136y)
Federal Land Policy and Management Act of 1976 (43 U.S.C. ßß 1701-1784)
Federal Water Pollution Control Act (33 U.S.C. ßß 1251-1387)
Geothermal Energy Research, Development, and Demonstration Act of 1974 (30 U.S.C. ßß 1101-1164)
Low-Level Radioactive Waste Policy Act (42 U.S.C. ßß 2021b-2021d)
Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. ßß 1401-1445)
Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. ßß 528-531)
National Environmental Policy Act of 1969 (42 U.S.C. ßß 4321-4370a)
National Ocean Pollution Planning Act of 1978 (33 U.S.C. ßß 1701-1709)
Noise Control Act of 1972 (42 U.S.C. ßß 4901-4918)
Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. ßß 4701-4751)
Nuclear Waste Policy Act of 1982 (42 U.S.C. ßß 10101-10270)
Oil Pollution Act of 1990 (33 U.S.C. ßß 2701-2761)
Organotin Antifouling Paint Control Act of 1988 (33 U.S.C. ßß 2401-2410)
Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. ßß 1801-1866)
Pollution Prevention Act of 1990 (42 U.S.C. ßß 13101-13109)
Public Health Service Act (42 U.S.C. ßß 300f-300j-11)
Renewable Resources Extension Act of 1978 (16 U.S.C. ßß 1671-1676)
Shore Protection Act of 1988 (33 U.S.C. ßß 2601-2623)
Soil and Water Resources Conservation Act of 1977 (16 U.S.C. ßß 2001-2009)
Solid Waste Disposal Act (42 U.S.C. ßß 6901-6991i)
Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. ßß 1201-1328)
Toxic Substances Control Act (15 U.S.C. ßß 2601-2654)
Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. ßß 7901-7942)
Wood Residue Utilization Act of 1980 (16 U.S.C. ßß 1681-1687)