

# ENVIRONMENTAL LAW – WHAT THE GENERAL PRACTITIONER NEEDS TO KNOW

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# Topics

**Overview of Environmental Law**

**Property and Transaction Issues**

**Chemical Safety Laws**

**Issues for business operations: Wastes,  
Water and Stormwater, Air**

**Development Issues, Wetlands**

**Your Questions**

**WHAT YOU AND YOUR CLIENTS DON'T  
KNOW, CAN HURT YOU**

# Environmental Laws

- **Federal AND state laws**
- **Complicated, confusing, illogical**
- **Entities and individuals liable**
- **Cleanup costs can be significant, not limited to value of property**
- **Strict liability, 6 year stat. of limitations**
- **Penalties: \$37,500 per violation/per day, Minimum State penalty \$100/day**
- **Criminal penalties possible**
- **Citizen suits, Whistleblower protections**
- **Issues can impact value of property, business**

# Contaminated Property – Superfund and State Law

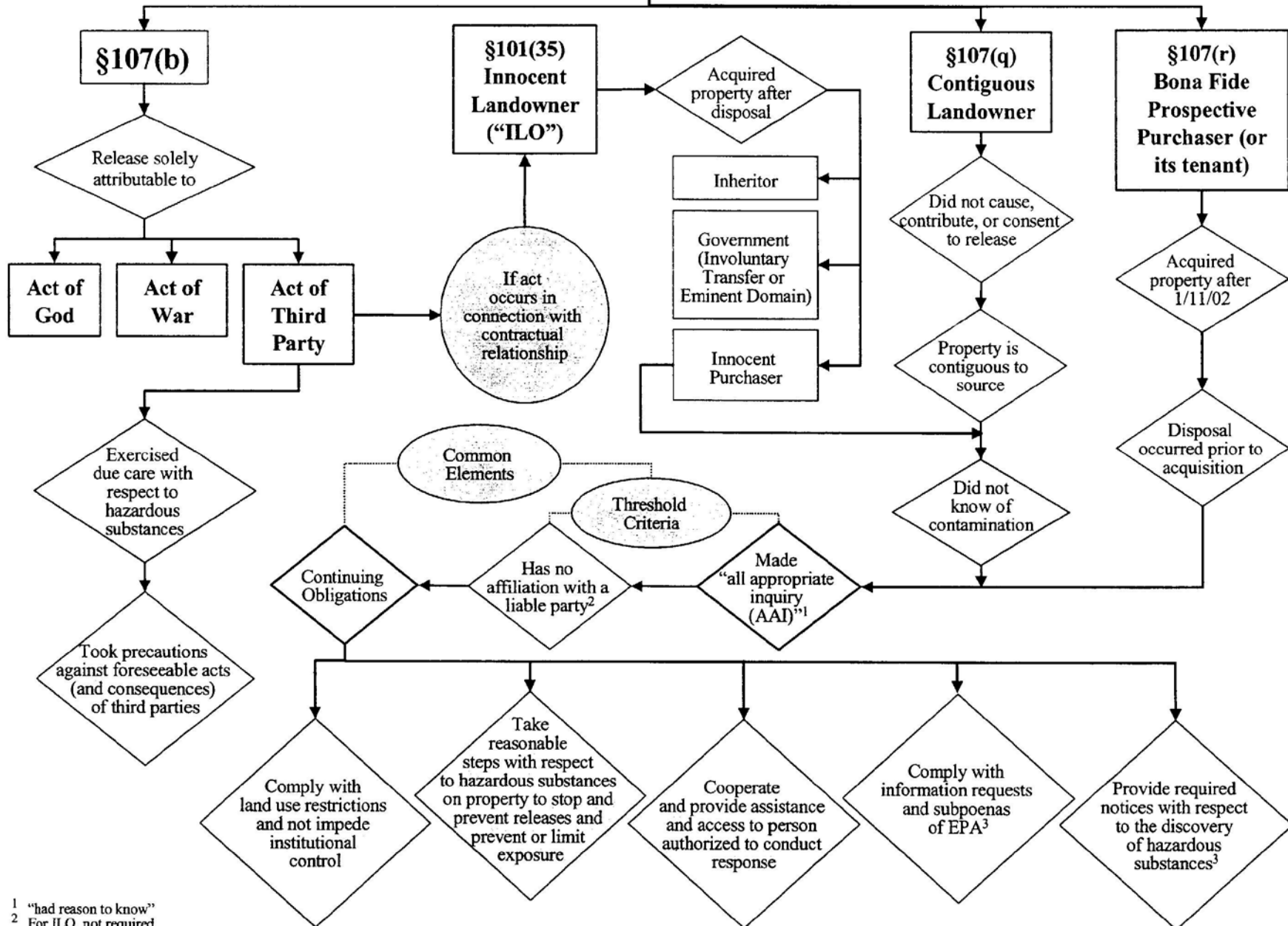
## Persons:

- Generator/Arranger for Disposal – off site or on site
- Current Owner/Operator of Contaminated Property
- Owner/Operator at Time of Disposal
- Owner/Operators in between

## Liability:

- Joint and Several Liability
- Retroactive and No Fault
- No Useful Statute of Limitation

# Superfund Defenses



1 "had reason to know"  
 2 For ILO, not required.  
 3 For ILO, not explicitly required.

# Superfund Defense? All Appropriate Inquiry and Continuing Obligations

## Landowner Liability Protections

### 1. Defenses:

- a. Innocent Landowner/Contiguous Landowner – no knowledge of contamination
- b. Bona Fide Prospective Purchaser, if knowledge (federal only)
- c. Voluntary Response Action Plan (“VRAP” if knowledge (Maine only)

### 2. Conditions

- a. **All Appropriate Inquiry**
- b. EPA Rule – **Environmental Site Assessment (“Phase I”)**
- c. Continuing Obligations and Due Care



← HOMEHOLE



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# Business Transaction Issues

GOALS: Identify and address potential compliance issues and contamination, smooth path to closing

- ❖ Due diligence?
  - ✓ In compliance? Upcoming requirements?
  - ✓ Getting all information, and an **Envir Site Assessment**
- ❖ Reps, warranties, indemnifications? – YES!
- ❖ Voluntary Response Action Plan – No Further Action or Certificate of Completion?
- ❖ Who's responsible for what after closing?



# Buildings and Drinking Water Issues -- 2013 Concerns, and Management Requirements or Tort Liability

- Asbestos
- Lead paint, including remediation activities
- Vapor intrusion (solvents, petroleum)
- Lead pipes and drinking water impacts
- PCB transformers, PCB paint
- Arsenic in drinking water
- Radon in air, drinking water
- Mold



"NEVER MIND HOW FAR IT IS FROM THE RAILROAD STATION. WE WANT TO KNOW ABOUT ASBESTOS, RADON, WATER POLLUTANTS AND FORMALDEHYDE."

# The Most Widely Applicable Oil & Chemical Safety Laws

## Oil Storage Requirements – Above + Underground

- Underground – DEP registration, regulation
- Aboveground – NFPA codes, Maine Fire Marshal registration, no min. thresholds...
- “SPCC” plan and engineering requirements if 1,320 gallons or more
- Spill reporting

## Hazardous Chemical Exposure

- OSHA Hazard Communication Plan for informing employees of chemical hazards
- OSHA rules for lead, asbestos, other chemicals

# What?! Anything wrong?





# Hazardous Materials Shipping

- ✓ DOT regulations: shipments by air, highway, water, rail
- ✓ Lots of hazardous materials = samples, wastes, batteries, flammable liquids
- ✓ 850,000 shipments daily
- ✓ Enforced by State Police, FAA, DOT, Rail
- ✓ Training requirements
- ✓ Penalties

# THE "PONTOON BOAT"



# Common Wastes

## “Universal Waste” – Can’t go in Trash

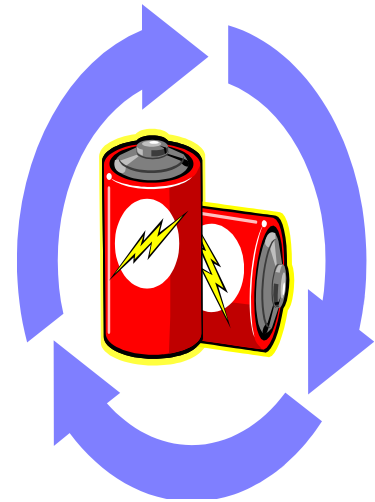
- › Cathode ray tubes – TVs
- › Fluorescent bulbs
- › Batteries

Office – paper recycling requirement

## Special Wastes – Can’t go in Trash

- Asbestos, sludges, boiler ash, non-hazardous waste spills, non-liquid paint waste, contaminated soils
- Special waste landfill or other treatment

EPA Asbestos and lead paint renovation rules, OSHA & DEP worker rules



# Boys will be boys?





# It Happened in Rockland....



## Hazardous Waste

- Multiple categories, include ignitable, corrosive liquids, metals, pesticides, commercial chemicals
- Follow waste management rules; also register if generate >100 kgs/mo or storage > 55 gals.
- State law more stringent than federal law
- Treatment, Storage, Transport prohibited unless licensed
- Disposal or Treatment only in Licensed facility



# Ad from “Uncle Henry’s Swap or Sell It Guide”

**“Free for the taking:**

**40 gallons acetone, 30 gal. of 50% liquid caustic soda, 40 gal. ammonia, 55 gal. trichloroethylene, 55 gal. undercoat acrylic sealant: will make over 130 gals. Of 55 gal. High-spnd. Floor finish. All in 55 gal. original containers. 947-XXXX Bangor”**

**DEP called ....**

# Water Discharges Issues

- ❖ No “point source” discharge of “pollutants” unless licensed
- ❖ Discharge to surface water or publicly owned treatment works
- ❖ Leachfields, Septic locally regulated but state standards

## Stormwater:

- Key industrial sectors regulated under MSGP; also stormwater law applies to 1+ acre of disturbance
- 2013 FEMA Maps – significant changes in flood zone – insurance, construction, value impacts

# Construction Issues

## DEVELOPMENT – Site Location of Development Law

- Does Law apply? Structure: 3 acres. Subdivision: 5 lots & 20 acres (15/30 for single-family). Land/Water Area: more than 20 acres
- Eight Criteria to be addressed through a permit
- Issues: Jurisdiction Forever, application materials become requirements

## WETLANDS – What's NOT a wetland?!

- ◇ “Activities” in, on, over, adjacent to resource
- ◇ No dredge or fill, unless permit
- ◇ Permitting – least damaging, no practical alternative, compensation

## Air Discharges – “Emissions”

- ✓ May be licensed, have operating requirements, maintenance
- ✓ Boilers/space heating may be covered, Process operations/furnaces may be covered
- ✓ Painting/solvent use regulated
- ✓ Stationary emergency generators covered
- ✓ Size matters (BTU), fuel sources too
- ✓ Any change in activity or fuel may require license change, stricter standards





# Thank you!

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# Any Questions??

