



United States Department of the Interior

NATIONAL PARK SERVICE

P.O. BOX 37127

WASHINGTON, D.C. 20013-7127

IN REPLY REFER TO:

L14(767)

MAY 6 1985

Memorandum

To: ~~Regional Directors and Project Manager, Appalachian
National Scenic Trail~~ *7/15/10*

From: Acting Director

Subject: Hazardous Waste Law and Land Acquisition

Attached for your information and guidance is Assistant Solicitor David A. Watts' April 23 memorandum on the above subject.

The existence of hazardous waste sites must be taken into consideration not only at the time of acquisition of land but also, and more importantly, during the preparation of Land Protection Plans. Wherever a plan may have been adopted without due regard to waste sites, that plan should be revised to consider the question of whether waste sites should be acquired and, if so, how the issue of liability will be addressed.

Land acquisition personnel, contract appraisers, contract surveyors, and others who have occasion to view parcels of land in the course of acquisition should be asked to be on the alert for waste sites and to report any findings.

Please forward a copy of this memorandum and the attachment to field managers and land acquisition officers.

Stanley T. Albright

Attachments



United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

APR 23 1985

In Reply Refer To:
NPS.CW.0206

MEMORANDUM

TO: Director National Park Service
Attn: Land Acquisition

FROM: Assistant Solicitor, Parks and Recreation

SUBJECT: Hazardous Waste Law and Land Acquisition

This memorandum is intended to provide some background information on the hazardous waste laws and the implication these laws may have for the National Park Service when acquiring property by purchase or condemnation.

The principal hazardous waste law is the Comprehensive Environmental Responses, Compensation and Liability Act of 1980 (CERCLA), often called "Superfund". Congress enacted this law to control hazardous waste which has been improperly disposed. The other major hazardous waste law is the Resource Conservation and Recovery Act (RCRA), which is intended to insure that hazardous waste is properly treated, stored and disposed.

CERCLA provides the means and authority for cleaning up past and present mistakes in the disposal of hazardous waste. The methodology adopted by the law is to impose liability for the cleanup on those persons involved with the hazardous waste. The law imposes liability on owners and operators of vessels or facilities as well as on transporters, and persons who arrange for transport or disposal of the hazardous waste. The courts have interpreted the law as imposing strict liability, as the standard of liability for a release or threatened release of hazardous waste. This standard means that no showing of fault or negligence is required to impose liability. In addition, the courts have applied the legal concept of joint and severally liable to impose the entire cost of the judgment on a single party, even if multiple parties are responsible. This occurs mainly where some of the responsible parties are no longer in existence or are bankrupt.

The law seeks to cleanup the hazardous waste immediately and minimize legal delays as much as possible. This approach is justified on the basis of a need to protect the public health and the environment. To avoid delay, the law shifts the burden of proof and requires that the Service, as the defendant,

demonstrate to the court that there are other responsible parties and that the damage is divisible and can be apportioned among all the responsible parties.

As such, the Service could be held fully liable by a court for a release or threaten release of hazardous waste simply because it is the owner of property, even if the Service had only recently acquired the site. The Service would be responsible for seeking reimbursement from the truly responsible parties, the operator of the site, the generators of the waste, or the haulers of the waste. If recovery of money from these entities is unsuccessful, the Service will have to pay for the cleanup itself from appropriated funds.

Under the strict liability principle of Superfund, the Service is subject to significant liability potential as the owner of property, if hazardous wastes are discovered on the land. While it is difficult to completely avoid this liability, the Park Service should consider measures to minimize the risk of acquiring property which may be a potential "Superfund" site. These measures could include, among others, a review of sites reported to EPA as having a release or threat of a release of hazardous waste; a check with State environmental offices for records of any hazardous waste sites in the area of the property to be acquired; conduct an on the ground survey of the property to determine the existence of any traces of hazardous waste; and decide whether it is necessary to test the subsurface region.

The Superfund law creates a major potential for liability for landowners such as the Service, as a means of enforcing the proper disposal of hazardous waste. This memorandum seeks to assist the Service in addressing this potential liability and to guard against the liability in the acquisition practices.



David A. Watts