

# Selection and Auditing of TSDFs

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# Overview

- History
- Why deal with this?
- Selection and Audit Criteria

# Historical Selection of Waste Vendors

- 1980s and earlier
  - Liability
  - Service
  - Price Point
- 1990s to present
  - TSDFs becoming CERCLA Sites reduces, making liability much less significant.

# Liability Matters, Again...

- Deregulation of some wastes (hazardous secondary materials rule and other recycling) allows sites to operate without the rigor of a permit.
- Sarbanes-Oxley Act requires inclusion of environmental risks into financial reporting
- Environmental Insurance more costly than ever – think AIG failure

# More Liability

- PRP liability is based on Hazardous Substance releases, not regulated materials.
- Several States are moving to be more aggressive than CERCLA for site cleanups.

# Recycling Liability Defense

- Superfund Recycling Equity Act of 1999
- Allows for the exemption of certain recyclable materials from Superfund liability
- Contains particular statutory criteria that must be satisfied in order to qualify for the exemption including Due Diligence on receiving facility
- Documentation of the Due Diligence is key for the waste generators to use the defense

# How to become a CERCLA Site

- Bankruptcy
- Inadequate Insurance
- Irresponsible Practices
- Accidental Releases
- Changes in local cleanup levels

# Example

- Non-Hazardous Industrial Waste Incinerator in Arkansas
- Operational Issues and opposition from local groups forced closure in December 2002
- Owner bankrupt
- Over 4000 drums of waste left on the site
- Arkansas DEQ pursued actions against waste generators to pay for cleanup

# Auditing is Key

- RCRA regulations only require that a generator confirm the TSD is permitted.
- Audit to avoid the Potential of:
  - CERCLA and State PRP Liability
  - RCRA & CERCLA Citizen suits
  - Brand Image Protection

# Audit Programs

- Self Audit
  - Depends on internal resources to complete audit package
  - Limited to knowledge base and experience
- Group Audit
  - Scope may be appropriate
  - Often based on limited information
  - Audits are often dated

# Audit Programs

- Consultancy
  - Scope made to fit risk needs
  - Often experienced staff

# Audit items

- Permits
- Compliance Status
- Reliable Insurance Package
- Closure Financial Assurance
- Good Housekeeping / Work Practices
- Releases off-site
- Comprehensive Environmental Management System
- Safety Record

# Permits

- Are they appropriate?
- Current?
- Are the units covered by the permit?

# Compliance Status

- Review inspection reports and responses from previous 3-5 years
- Are there unresolved violations? If so, what are the circumstances?
- Have the underlying issues been addressed or is the dispute strictly legal in nature?
- Is there an action plan in place to address violations?
- Has the site been disbarred tom manage CERCLA or Government Wastes?

# Company Financial Strength

- Use commonly accepted ratings
  - Moody's
  - Dunn & Bradstreet
- Use a predictive model such as Altman Z test of financial strength
  - Tested to predict bankruptcy with 85% confidence

# Insurance

- Need to obtain certificates of insurance
- Check adequacy of coverage, minimums of \$1,000,000 to \$2,000,000 is low for environmental claims
- Rating of the carrier
- Claims history
- Deductibles

# Closure Financial Assurance

- Closure plan cost estimate amount
  - Is it reasonable?
  - Basis should be maximum inventory with costs of 3<sup>rd</sup> party management
- Are the costs real for current economic trends?
- How are the costs assured? Use same tests as insurance.
- Any estimates < \$1,000,000 is worth questioning

# Good Housekeeping / Work Practices

- Housekeeping is one of the best indicators of quality management
- Storage compatibility
- Waste tracking / Inventory Control
- Documentation of disposal
- Knowledge level of employees
- Training program and records

# Releases Off-Site

- Does site contamination of soil/groundwater exist
- Is it off-site? If so, evaluate thoroughly.
- What stage is the site in? PA, RFA, RFI/RA, CMS, NFA
- Have interim measures been initiated or is active remediation in progress.
- Do financial assurances cover corrective action?

# EMS

- EHS staffing and reporting relationships
- Program reviews and accountability
- ISO Registration

# Safety Record

- Check Experience Modifier Rate,  $>1$  is cause for concern
- Review accident reports for exposure cases
- Review 300 log

# Other information

- Understand how waste will be treated, is treatment technology reasonable?
- What secondary waste will be generated?
- Understand is other parties will be used?
- Does facility audit downstream facilities, if not you should consider.