

Seller Beware: The Indiana Responsible Property Transfer Law

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To respond to mounting public concern about contaminated property, Congress adopted Superfund in 1980.¹ It soon became clear that remedying contaminated property under Superfund would be a long, expensive process. States began to consider additional procedures for addressing contaminated property, procedures that might be potentially more efficient than Superfund.

In 1983, New Jersey broke new ground in this effort by adopting a law that imposed a precondition on the transfer of certain properties: the seller must declare that no hazardous substances or wastes remain on the property or the seller must execute an approved cleanup plan for the property.² Since the New Jersey law was adopted, other states have adopted laws that, at the least, seek to have sellers identify contaminated property before transferring it to a new owner.³

In 1989, Indiana joined the trend when the Indiana General Assembly adopted the Indiana Responsible Property Transfer Law (the "Transfer Law").⁴ As adopted and amended in 1990,⁵ the Transfer Law applies to certain transfers of certain real estate that become final on or after January

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The views expressed in this Article are solely those of the authors and do not reflect the views of their employers. The opinions expressed in this Article are not intended to be legal advice.

1. The Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675 (1980), also popularly known as "Superfund."

2. Environmental Cleanup Responsibility Act, N.J. STAT. ANN. § 13:K-6-35 (West 1990).

3. See, e.g., CONN. GEN. STAT. ANN. §§ 22a-114 to -134hh (West Supp. 1985); Illinois Responsible Property Transfer Act, ILL. ANN. STAT. ch. 30, para. 901-07 (Smith-Hurd Supp. 1990).

4. Pub. L. No. 166-1989, 1989 Ind. Acts 1438 (codified at IND. CODE § 13-7-22.5 (Supp. 1990)).

5. Pub. L. No. 19-1990, §§ 24-35, 1990 Ind. Acts 946-959.

1, 1990,⁶ and provides generally that: (1) the transferor of certain subject properties shall provide an environmental disclosure document (Disclosure Document) to the transferee and to the lender;⁷ (2) prior to closing, the transferee and lender have the opportunity to void the transaction if previously unknown "environmental defects" are revealed by the Disclosure Document,⁸ or, within certain limits, if the transferee fails to provide the Disclosure Document in a timely manner;⁹ (3) the Disclosure Document shall be recorded in the office of the recorder of the county in which the property is located and a copy must be filed with the Indiana Department of Environmental Management.¹⁰

This Article provides an overview of the types of transactions and properties that are subject to the Transfer Law and an overview of the general requirements of the Transfer Law. The Article then provides a more detailed discussion of how to determine if a particular property is subject to the Transfer Law. In conclusion, the impact of the Transfer Law on buyers' and sellers' environmental law liabilities is discussed briefly.

I. FRAMEWORK OF THE TRANSFER LAW

The Transfer Law affects only certain transfers of certain types of property. Two questions must be addressed to determine whether a particular transaction is subject to the Transfer Law: first, is the "transfer" covered by the Transfer Law; and second, is the "property" subject to the Transfer Law. To answer these questions, the Transfer Law's definitions for the terms "transfer" and "property" must be considered.

A. *Transactions Subject to the Transfer Law*

The term "transfer" is defined as "a conveyance of an interest in property" by any of several methods, including a deed conveying fee title, a mortgage, a lease with a term of more than forty years, a lease with an option to purchase, or an installment contract for the sale of land.¹¹

6. Pub. L. No. 166-1989, § 2, 1989 Ind. Acts 1449.

7. *See generally* IND. CODE § 13-7-22.5-10(a) (Supp. 1990).

8. *Id.* § 13-7-22.5-11.

9. *Id.* § 13-7-22.5-12.

10. *Id.* § 13-7-22.5-16.

11. The definition of the term "transfer" is as follows:
A conveyance of an interest in property by any of the following:

- (1) A deed or other instrument of conveyance of fee title to property.
- (2) A lease whose term if all options were exercised, would be more than forty (40) years.
- (3) An assignment of more than twenty-five percent (25%) of the ben-

The term "transfer" specifically does not include certain conveyances, such as deeds of partitions and easements.¹²

It is important to note that *not* all types of transactions are expressly addressed by the statutory definitions for the term "transfer." For example, a transfer of corporate property by acquisition of stock or a sale/leaseback financing transaction is neither specifically included nor specifically excluded from the definition of the term "transfer." Thus, the applicability of the Transfer Law is subject to interpretation for any transaction outside the express parameters of the defined term "transfer."

B. Properties Subject to the Transfer Law

The Transfer Law defines the term "property" as a "specific and

official interest in a land trust.

- (4) A collateral assignment of a beneficial interest in a land trust.
- (5) An installment contract for the sale of property.
- (6) A mortgage or trust deed.
- (7) A lease of any duration that includes an option to purchase.

Id. § 13-7-22.5-7(a).

This definition reflects amendments made by the General Assembly in 1990 to clarify the applicability of the Transfer Law to mortgages and leases with an option to purchase, as well as to clarify that installment contracts are "contracts for sale" covered by the Transfer Law. Pub. L. No. 19-1990, § 26, 1990 Ind. Acts 947-48.

12. The term "transfer" does *not* include a conveyance of an interest in property by any of the following:

- (1) A deed or trust document, which without additional consideration, confirms, corrects, modifies, or supplements a deed or trust document that was previously recorded.
- (2) A deed or trust document that, without additional consideration, changes title to property without changing beneficial interest.
- (3) A tax deed or a deed from a county transferring property the county received under I.C. 6-1.1-25-5.5.
- (4) An instrument of release of an interest in property that is security for a debt or other obligation.
- (5) A deed of partition.
- (6) A conveyance occurring as a result of the foreclosure of a mortgage or other lien on real property.
- (7) An easement.
- (8) A conveyance of an interest in minerals, gas, or oil (including a lease).
- (9) A conveyance by operation of law upon the death of a joint tenant with right of survivorship.
- (10) An inheritance or devise.
- (11) A deed in lieu of foreclosure.
- (12) A Uniform Commercial Code sale or other foreclosure of collateral assignment of a beneficial interest in a land trust.
- (13) A deed that conveys fee title under an installment contract for the sale of property.
- (14) A deed that conveys fee title under an exercise of an option to purchase contained in a lease of property.

IND. CODE § 13-7-22.5-7(b) (Supp. 1990).

identifiable parcel of real property, including any improvements"¹³ that (1) "contains one (1) or more facilities that are subject to reporting under Section 312 of the federal Emergency Planning and Community Right-to-Know Act of 1986,"¹⁴ (2) is the site of one (1) or more underground storage tanks ("UST") for which notification is required,¹⁵ or, (3) "is listed on the Comprehensive Environmental Response, Compensation and Liability Information System ("CERCLIS"),"¹⁶ but, does not include any property that (4) has been subject to, and released from, financial assurance requirements.¹⁷

Thus, to be subject to the Transfer Law, the "property" must meet one of the first three requirements listed above *and* not be excluded by the fourth requirement.

Determining whether a particular property is subject to the Transfer Law requires a basic understanding of certain substantive areas of environmental law and specific knowledge about the transfer property. It is likely that a transferor may not know whether the property and its improvements are subject to the environmental regulatory programs that trigger the Transfer Law. Specialized legal and/or technical assistance may be necessary to determine whether a particular property is subject to the Transfer Law. The legal analysis for determining whether a particular property is subject to the Transfer Law is discussed in detail below.¹⁸

C. *Obligations and Liabilities Under the Transfer Law*

1. *Delivery of the Disclosure Document.*—In general, the "transferor" of the property (e.g., the seller) is required to deliver the Disclosure Document to the "transferee" (e.g., the buyer) and to the lender at least *thirty days prior to the transfer*.¹⁹ The transferor must sign this Disclosure Document and certify that the information contained therein is true and accurate to the best of the transferor's knowledge and belief.²⁰ The transferee must also sign and date the Disclosure Document, acknowledging its delivery.²¹

The 1990 amendments to the Transfer Law clarify that if a lender is not identified to the transferor at least thirty days in advance of the

13. *Id.* § 13-7-22.5-6.

14. *Id.* § 13-7-22.5-6(1).

15. *Id.* § 13-7-22.5-6(2).

16. *Id.* § 13-7-22.5-6(3).

17. *Id.* § 13-7-22.5-6.

18. *See infra* notes 57-102 and accompanying text.

19. IND. CODE § 13-7-22.5-10(a) (Supp. 1990).

20. *Id.* § 13-7-22.5-15. See the disclosure form provided in Appendix A to this Article.

21. IND. CODE § 13-7-22.5-15 (Supp. 1990). The signature of the transferee is not

transfer, the thirty-day deadline to provide the Disclosure Document is not applicable.²² However, once the lender is identified, the transferor is required to provide the document to the lender immediately.²³

The amended Transfer Law also clarifies the roles of the buyer/borrower and the lender in an "acquisition" transaction versus a "financing" transaction.²⁴ In an "acquisition" transaction, a buyer/borrower who finances a purchase of real property with a mortgage is not a "transferor" required to provide the Disclosure Document to the lender, nor is the lender a "transferee" required to record or file such document. The *seller* is the only transferor who must provide the Disclosure Document to the buyer *and* the lender.²⁵ In contrast, in a "financing" transaction when a borrower seeks a loan from a lender and offers *already-acquired* property as collateral, the borrower is the "transferor" and the lender is the "transferee," and each has the respective obligations of a transferor and transferee. Even under these circumstances, however, the lender, as a transferee, does *not* have an obligation to record the Disclosure Document with the county recorder's office.²⁶

If all of the parties to the transfer agree, the transferor is not required to deliver the Disclosure Document thirty days prior to the transfer.²⁷ In order to waive this requirement, the parties' agreement must be in writing. The parties must indicate in the waiver that they are aware of the purpose and intent of the Disclosure Document, and the waiver must be signed by all the parties. If a written waiver of the thirty-day requirement is obtained, the Transfer Law then requires that the Disclosure Document be provided to the parties to the transaction "on or before the date on which the transfer of property is to become final"²⁸ (that is, at or before closing). The Transfer Law does *not* allow the parties to waive the transferor's obligation to deliver the Disclosure Document; they may only waive the requirement that it be delivered thirty days before the transfer.

2. The Disclosure Document.—The Transfer Law prescribes the form of the Disclosure Document.²⁹ The Disclosure Document is provided in Appendix A to this Article. In addition to general information regarding

required on a document delivered to a lender, presumably in an acquisition transaction. *Id.* § 13-7-22.5-10(a).

22. Pub. L. No. 19-1990, § 29, 1990 Ind. Acts 949-50 (codified at IND. CODE § 13-7-22.5-10(c) (Supp. 1990)).

23. *Id.*

24. See IND. CODE § 13-7-22.5-19.5 (Supp. 1990).

25. *Id.* § 13-7-22.5-19.5(b).

26. *Id.* § 13-7-22.5-19.5(c).

27. *Id.* § 13-7-22.5-10(b).

28. *Id.*

29. *Id.* § 13-7-22.5-1 to -15.

the transfer, the Disclosure Document contains a series of questions regarding the transferor's activities on the property which may have created an adverse environmental condition. For example, the transferor must disclose whether any operations it conducted on-site involved hazardous wastes, hazardous substances, or petroleum, and whether such materials have been stored, treated, or disposed of on-site.³⁰ The transferor must disclose any environmental permits held for discharging pollutants into the air or the water, or for waste treatment, storage, or disposal.³¹ The transferor must also disclose whether the transferor ever conducted an activity at the property *without* the required environmental permits.³² The transferor is also required to disclose environmental enforcement actions taken against the transferor and any environmental releases at the property that have occurred during transferor's ownership.³³

The Disclosure Document requires disclosures from the transferor regarding environmental activities on the property by prior owners or tenants. However, such disclosures appear to be limited to the known existence of any on-site facilities to store, treat, or dispose of substances or wastes.³⁴

The format of the Disclosure Document generally consists of "yes or no" questions. The answers to these questions provide information regarding certain activities related to the property. However, the Disclosure Document may not give the transferee or lender sufficient information to evaluate the environmental conditions of the property. For example, the transferee or lender may want to know the quantity and type of any hazardous substances identified as used on-site, or whether the activities identified in the Disclosure Document (such as underground storage tanks) caused any actual environmental contamination. In sum, the Disclosure Document provides notice of environmentally related activities, but may not disclose the effect of those activities on the property. As discussed in Section III below, the Disclosure Document should not be the sole, or even the primary, source of information about the property.

3. *Voiding the Transaction for Disclosed Environmental Defects.*—If the Disclosure Document reveals "environmental defects" that were previously unknown to the transferee or lender, that party is relieved of any obligation to accept the transfer or to finance the transfer.³⁵ This opportunity, however, expires once the property is transferred: the transferee

30. Disclosure Document, Part III, A, *infra* app. A.

31. *Id.* at question 5.

32. *Id.* at question 11. Note: a positive response to this question may expose the transferor to civil and criminal liability under the environmental laws.

33. *Id.* at questions 8 and 9.

34. *Id.* at Part III, B.

35. IND. CODE § 13-7-22.5-11 (Supp. 1990).

and the lender may *not* void their obligations regarding the transaction "after the transfer of property has taken place."³⁶

As adopted, the Transfer Law did not define what may constitute an "environmental defect." As a result, an "environmental defect" appeared to be a negotiable term among the parties. In 1990, the Transfer Law was amended by adding a definition for the term "environmental defect"³⁷ *and* including on the Disclosure Document a question asking whether there is an "environmental defect" on the property. Obviously, if the transferor now responds on the Disclosure Document that there is an environmental defect on the property, the transferee or lender may have an opportunity to void the transaction.

Except for this type of disclosure, arguably the transferee is in no better position than before to determine if the Disclosure Document reveals an "environmental defect." The definition for this term is broad and appears to be subjective. For example, if the transferor discloses that it managed hazardous waste at the site, would this activity alone present a "substantial endangerment" to the value of the property? Because determining what constitutes the disclosure of an "environmental defect" under the Transfer Law could result in a long and expensive legal battle, the parties may still benefit by setting forth more specifically in the purchase agreement what type of environmental conditions at the property would provide the transferee or lender the opportunity to void the transaction.

It is important to note that the Transfer Law provides an opportunity for the lender and/or the transferee to void the transaction *only* if the Disclosure Document reveals "previously unknown" environmental de-

36. *Id.* § 13-7-22.5-14.

37. The term "environmental defect" is defined in the amended Transfer Law as an environmentally related commission, omission, activity, or condition that:

- (1) constitutes a material violation of an environmental statute, regulation, or ordinance;
- (2) would require remedial activity under an environmental statute, regulation, or ordinance;
- (3) presents a substantial endangerment to:
 - (A) the public health;
 - (B) the public welfare; or
 - (C) the environment;
- (4) would have a material, adverse effect of the market value of the property or of an abutting property; or
- (5) would prevent or materially interfere with another party's ability to obtain a permit or license that is required under an environmental statute, regulation, or ordinance to operate the property or a facility or process on the property.

Pub. L. No. 19-1990, § 24, 1990 Ind. Acts 946-47 (codified at IND. CODE § 13-7-22.5-1.5 (Supp. 1990)).

fects.³⁸ Thus, the issue may arise as to what the transferee or lender knew about the environmental condition of the property prior to receiving the Disclosure Document. Because the Transfer Law does not define "previously unknown," if the transferee or lender obtains information about environmental defects from other sources before receiving the Disclosure Document (e.g., from an environmental audit report by an independent environmental consultant), such information may constitute prior knowledge of environmental defects. Arguably, this would preclude the transferee or lender from voiding the transaction under the Transfer Law.

4. *Voiding the Transaction for Failure to Provide the Disclosure Document.*—Under the amended Transfer Law, if the transferor fails to provide the Disclosure Document at least thirty days prior to the transfer, any party to the transfer may demand that a Disclosure Document be produced within the following ten days.³⁹ Similarly, if the transferor has obtained a waiver of the thirty-day deadline, but the Disclosure Document is not provided to the other parties before the date when the transaction is to become final, a party may demand that the Disclosure Document be provided within the following ten days.⁴⁰ Under either scenario, if the Disclosure Document is not delivered within ten days of the demand, the transferee or lender may void its obligation to accept the transfer or to finance the transfer, respectively. However, if a Disclosure Document is delivered within the ten-day period, the transferee and lender have additional time to evaluate the Disclosure Document. At that point, the transferee or lender *may void* its obligation to accept or to finance the transfer, respectively, *only* if the Disclosure Document reveals previously unknown environmental defects.

5. *The Parties' Obligations to Record and File the Disclosure Document.*—Within thirty days after the effective date of the transfer, the *transferor* or *transferee* is required to record the Disclosure Document, along with any site plan prepared with the Disclosure Document, in the county recorder's office in the county where the property is located.⁴¹ The *transferor* also has an obligation to file a copy of the Disclosure Document with the Indiana Department of Environmental Management.⁴²

The amended Transfer Law provides that if a recorded Disclosure Document reports the existence of an environmental defect on the property, then a person who has a financial interest in the property may record, in the same recorder's office in which the Disclosure Document is recorded, a document reporting that the environmental defect has been *eliminated*

38. IND. CODE § 13-7-22.5-11 (Supp. 1990).

39. *Id.* § 13-7-22.5-12.

40. *Id.* § 13-7-22.5-13.

41. *Id.* § 13-7-22.5-16(a) to (b).

42. *Id.* § 13-7-22.5-16(a)(2).

from the property.⁴³ This document must be certified by a registered professional engineer who does not have a financial interest in the property.⁴⁴ The ability to record the elimination of an environmental defect may provide an opportunity to clarify uncertainty regarding the environmental condition of the property. However, an issue likely to arise is what level of "clean-up" is sufficient to "eliminate" a recorded environmental defect.

6. *Penalties for Failure to Comply with the Transfer Law.*—The General Assembly established criminal sanctions for violating the Transfer Law.⁴⁵ The failure of the transferor to deliver a Disclosure Document is a Class B infraction, carrying a maximum fine of \$1,000.⁴⁶ Knowingly making a false statement in the Disclosure Document is a Class A infraction, carrying a maximum fine of \$10,000.⁴⁷ Failure by the transferee or transferor to record the Disclosure Document is also a Class A infraction.⁴⁸ However, a transferee is not liable for failing to record the Disclosure Document if the transferee did not receive a Disclosure Document, or if the Disclosure Document contains one or more false statements.⁴⁹

In addition to these sanctions, the Transfer Law provides a civil cause of action that allows any party to a transfer to bring an action against any other party to the transfer to recover consequential damages for violations for the Transfer Law.⁵⁰ Although these violations are not explicitly set forth in the law, it appears that failure to provide a timely Disclosure Document, knowingly making a false statement in the Disclosure Document, and failing to record the document would constitute violations for which a lawsuit could be brought.

II. HOW TO DETERMINE IF PROPERTY IS SUBJECT TO THE TRANSFER LAW

One of the more difficult aspects of implementing the new Transfer Law is determining what property is subject to the requirements of the Transfer Law. This determination generally requires consideration of whether the property is subject to certain environmental regulatory programs. This Article will suggest a procedure, from an environmental law perspective, for determining whether a particular property is subject to the Transfer Law.

43. *Id.* § 13-7-22.5-22.

44. *Id.*

45. *See id.* §§ 13-7-22.5-17 to -19.

46. *Id.* § 13-7-22.5-17.

47. *Id.* § 13-7-22.5-18.

48. *Id.* § 13-7-22.5-19.

49. *Id.*

50. *Id.* § 13-7-22.5-21.

In determining what properties are subject to the Transfer Law, an important caveat should be kept in mind: not all properties that pose environmental risks, and thus represent potential liability for a buyer, will be subject to the Transfer Law. One should not rely on the Transfer Law to act as the sole indicator of whether a property is potentially contaminated. The process of determining whether there are environmental liabilities associated with a property should be separate and distinct from determining the applicability of the Transfer Law.

As discussed above, the Transfer Law does *not* apply to all transfers of real property.⁵¹ It does apply to the transfer of certain parcels of real estate subject to the environmental regulatory or enforcement programs described in the Transfer Law, which may include real estate on the CERCLIS list, real estate on which regulated underground storage tanks ("USTs") are located, or real estate upon which is located a facility subject to reporting under Section 312 of the federal Emergency Planning and Community Right-to-Know Act ("Section 312").⁵² It has been estimated, assuming there are no overlaps between the categories, that over 41,000 Indiana properties might be affected by the Transfer Law.⁵³

A. *General Considerations in Determining Whether Property is Subject to the Law*

To determine if a property is subject to the Transfer Law, it is necessary to determine whether the property falls within one of the three environmental regulatory categories described in the Transfer Law, and whether the property is excluded from the Transfer Law because of the release of legally required financial assurance mechanisms under certain environmental programs. This Article will first outline each of the three environmental regulatory programs that would subject the property to the Transfer Law and then will address the exclusion. This format is followed because the exclusion depends upon the release of certain financial assurance requirements and, due to the extended time before such releases become effective, it appears that this "exclusion" may not have a practical impact on transfers of property subject to the Transfer Law for some years to come.

Before reviewing the details of the regulatory programs, however, it is important to note several general matters that may affect the analysis under each regulatory program. As a general rule, the determination of the Transfer Law's applicability depends on the characteristics of the

51. See *supra* notes 13-14 and accompanying text.

52. *Id.*

53. See L. Kane, *Enactments of the 1989 General Assembly Affecting Environmental Issues*, at 5 (presented to the Indiana Bar Association, July 12, 1989).

property, not the activities of the seller. Thus, for example, the Transfer Law applies to a property that is the "site of one or more underground storage tanks for which notification is required" ⁵⁴ The *transferor* may not have installed the USTs, may not own the USTs, and may not have had the responsibility to comply with the UST notification requirements, yet the *property* may be the site of a UST subject to notification; thus, the transfer of the property is subject to the Transfer Law. Therefore, it is not only the activity of the transferor that may make the property subject to the Transfer Law; the activities of prior or present lessees, as well as any prior owners, may cause the property to be subject to the Transfer Law.

It is also important to note that the Transfer Law applies not only to properties subject to, and in compliance with, the trigger environmental regulatory programs, but also to those properties which are *subject to* those requirements and are *not* in compliance.⁵⁵ Of course, if the transferor is aware that the property is subject to any of these regulatory programs and is already in compliance, the determination regarding the applicability of the Transfer Law is greatly simplified. Based on the authors' experience, however, it is not unusual for a transferor to be unaware that the property is listed on the CERCLIS list, that there are USTs at the property, or that the Section 312 reporting requirements apply to the property.

In contrast, there also may be properties that are *not* legally subject to the UST or the Section 312 regulatory programs, but owners or operators may have filed the notification or reporting forms anyway. This phenomenon is often referred to as "protective notification" or "protective filing." Because the penalties for violating these environmental regulations can be so severe (such as civil penalties ranging from \$10,000-25,000 per day of violation, and criminal penalties for certain violations)⁵⁶ and because it can be quite time-consuming and complex to determine if the rules apply to a particular property, some owners and operators of properties simply file the required notifications to protect against the possibility of future government enforcement action. The filing of such protective notifications does not affect whether the property is actually subject to the trigger environmental regulatory programs.

In sum, in order to draw a conclusion regarding whether a property is subject to the Transfer Law, it is necessary to evaluate whether the *property* is subject to one of the three specified regulatory programs. A careful evaluation would require an investigation of the property as well

54. IND. CODE § 13-7-22.5-6(2)(B) (Supp. 1990).

55. If the transferor is subject to these programs but not in compliance, the transferor should be made aware of the potential liabilities for noncompliance with such environmental regulatory programs.

56. See IND. CODE §§ 13-7-13-1, -3 (1988).

as the activities of the transferor and any lessees or prior owners at the property.

B. Suggested Procedure for Determining Applicability of the Transfer Law

Because property is subject to the Transfer Law if it fits in only one of the three statutorily described categories, and is not excluded by the release of financial assurance mechanisms, it appears to be more efficient to review the three categories systematically. Unless it is already known that the property is subject to one of the relevant regulatory categories, the following sequence of inquiry may be useful:

1. Is the property listed on the CERCLIS list?
2. Is the property subject to UST notification?
3. Is the property subject to the Section 312 reporting requirements?

If the answer to any of these questions is yes, the property is covered by the Transfer Law, unless it has been subject to financial assurance requirements that have been released.

The suggested review begins with what is typically the most straightforward, easily determinable category: determining whether the property is on the CERCLIS list. Then, if necessary, the review would proceed to determine if there are USTs at the property subject to notification. Finally, if necessary, the review must address whether the property is subject to Section 312 reporting requirements. Each of the three regulatory programs, as well as the exclusion for release of financial assurances, is discussed in detail in the following sections.

1. Is the Property Listed on the CERCLIS List in Accordance with Section 116 of CERCLA?—Property that is “listed on the Comprehensive Environmental Response, Compensation and Liability Information System (“CERCLIS”) in accordance with Section 116 of CERCLA (42 U.S.C. 9616)” is subject to the Transfer Law.⁵⁷

CERCLIS is a list of contaminated or potentially contaminated sites maintained by the United States Environmental Protection Agency (“EPA”) and the Indiana Department of Environmental Management (“IDEM”). The compilation of this list began under the authority of the Resource Conservation and Recovery Act (“RCRA”).⁵⁸ RCRA required each state to “compile, publish, and submit” to EPA an inventory of sites “at which hazardous waste has at any time been stored or disposed of.”⁵⁹

57. *Id.* § 13-7-22.5-6(2)(C) (Supp. 1990).

58. *See* 42 U.S.C. § 6901, 6933 (1988).

59. *Id.* § 6933.

Initially, no appropriation was made by Congress to fund the hazardous waste inventory program under RCRA.⁶⁰ In 1982, Congress appropriated ten million dollars to the program from the Hazardous Substances Response Trust Fund established under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA or Superfund").⁶¹ EPA interpreted Congress's action of appropriating Superfund monies to fund the inventory program as an indication that Congress intended the program "to benefit the purpose of both RCRA and CERCLA."⁶² The list of sites developed under RCRA became the core of the Superfund review process. This list eventually came to be referred to as the Comprehensive Environmental Response Compensation & Liability Information System or "CERCLIS" list.

The first statutory reference to CERCLIS was in the Superfund Amendments and Reauthorization Act of 1986 ("SARA").⁶³ Congress established deadlines by which EPA was to complete preliminary assessments, in accordance with Superfund, of "all facilities that are contained (as of October 17, 1986) in the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS)."⁶⁴ As for a site added to the CERCLIS list after October 17, 1986, SARA also provides that such site shall be evaluated for Superfund clean-up, based on the criteria of the National Contingency Plan, within four years of the site being listed on the CERCLIS list.⁶⁵

The Transfer Law's reference to sites listed on "CERCLIS in accordance with § 116 of CERCLA"⁶⁶ is mystifying. CERCLA section 116 merely establishes deadlines for EPA to evaluate sites already on the CERCLIS list. It does not discuss any procedure for listing sites "in accordance with § 116."

In the National Contingency Plan, EPA has provided the following information about sites on the CERCLIS list:

"CERCLIS" is the abbreviation of the CERCLA Information System, EPA's comprehensive data base and management system that inventories and tracks releases addressed or needing to be addressed by the Superfund program. CERCLIS contains the official inventory of CERCLA sites and supports EPAs site planning and tracking functions. Sites that EPA decides do not warrant

60. See 48 Fed. Reg. 5684 (1983).

61. 42 U.S.C. §§ 9601-9675 (1988). See 48 Fed. Reg. 5689 (1983).

62. 48 Fed. Reg. 5684 (1983).

63. Pub. L. No. 99-499, 100 Stat. 1613. See 42 U.S.C. § 9616 (1988).

64. 42 U.S.C. § 9616(a)(1) (1988).

65. *Id.* § 9616(b).

66. IND. CODE § 13-7-22.5-6(3) (Supp. 1990); see 42 U.S.C. § 9616.

moving further in the site evaluation process are given a "No Further Response Action Planned" (NFRAP) designation in CERCLIS. This means that no additional federal steps under CERCLA will be taken at the site unless future information so warrants. Sites are not removed from the data base after completion of evaluation in order to document that these evaluations took place and to preclude the possibility that they be needlessly repeated. Inclusion of a specific site or area in the CERCLIS data base does not represent a determination of any party's liability, nor does it represent a finding that any response action is necessary.⁶⁷

In sum, properties included on the CERCLIS list are not necessarily contaminated: the list is used as a management tool by EPA and IDEM to keep track of both contaminated and potentially contaminated sites. A site may be listed on CERCLIS due to, *inter alia*, reports submitted by a property owner, investigations by state officials, or complaints from neighboring landowners. The sites on the CERCLIS list are systematically reviewed by state and federal officials to determine which sites are contaminated to such a degree that remedial action under CERCLA is warranted.

When EPA proposed its CERCLIS definition, it provided the following discussion:

CERCLIS contains *active and inactive* (i.e., previously addressed) sites. EPA archives inactive sites in CERCLIS as a historical record of accomplishment. *For informational and dissemination purposes, EPA considers only active sites.*⁶⁸

This approach would suggest that inactive sites are not to be included on the CERCLIS list distributed to the public. However, CERCLIS sites designated for "no further action" are not excluded from the CERCLIS list that EPA and IDEM make available to the public. Thus, any site on the CERCLIS list, even one that has been cleaned-up, is arguably a property subject to the Transfer Law.

2. *Does the Property Contain Underground Storage Tanks for Which Notification is Required?*—Property that is the site of a UST for which notification is required under federal and state law is subject to the Transfer Law.⁶⁹ Two issues are posed by this section of the Transfer Law:

67. 40 C.F.R. § 300.5 (1990).

68. 53 Fed. Reg. 51,399 (1988) (emphasis added).

69. See IND. CODE § 13-7-22.5-6(2) (Supp. 1990). Indiana's UST statute authorizes IDEM to issue rules requiring notification "of operational and nonoperational underground storage tanks as required under 42 U.S.C. 6991a(a)." *Id.* § 13-7-20-13(8)(a). However, such rules have not been promulgated. Thus, the only UST notification requirements currently in effect are the federal requirements under RCRA. However, IDEM is the state agency in Indiana designated to receive the federal UST notification forms.

is there a UST, as that term is defined by law and, if so, is that UST subject to the relevant notification requirements?

a. What is a UST?

The term "underground storage tank" is defined by federal and state law as:

[A]ny one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of *regulated substances*, and the volume of which (including the volume of underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground.⁷⁰

Thus, a regulated UST is an underground tank used to store certain regulated substances.

The term "regulated substances" includes two classes of materials: (1) hazardous substances as defined under Superfund,⁷¹ but not including hazardous wastes regulated by federal law, and (2) petroleum.⁷² In summary, an underground tank must contain a hazardous substance or petroleum to be a regulated UST, and thus to be subject to the UST notification requirements.⁷³

Several types of tanks are specifically excluded from the statutory definition of a UST.⁷⁴ Such excluded tanks include certain farm and residential tanks, certain heating oil tanks, and septic tanks.⁷⁵ Thus, the

70. 42 U.S.C. § 6991(1) (1988) (emphasis added); *see also* IND. CODE § 13-7-20-11 (1988) (similar definition).

71. *See* 42 U.S.C. § 9601(14) (1988). Hazardous substances as defined under CERCLA comprise a list of approximately 1,000 individual chemicals. *See* 40 C.F.R. § 302.4 (1988), List of Hazardous Substances.

72. *See* RCRA, 42 U.S.C. § 6991(2) (1988). The term "petroleum" is defined as including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). *Id.* § 6991(8). The term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils. *Id.* § 6991(2).

73. Note that hazardous *waste* tanks regulated under RCRA are not regulated as USTs and are not subject to UST notification. *See* 40 C.F.R. §§ 264.190-.199 (1989).

74. *See* 42 U.S.C. § 6991(1) (1988).

75. *Id.* *See also* 40 C.F.R. § 280.12 (1990). The following are *not* regulated USTs:

- a. farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
- b. tank used for storing heating oil for consumptive use on the premises where

presence of such "excluded" tanks on a property would not subject the property to the Transfer Law.

In some circumstances, it may be necessary to hire an environmental consultant to investigate the facts surrounding the tank so that a determination can be made as to whether the tank is a UST (or indeed, whether any tanks are presently on the property).

b. What USTs are subject to notification?

Once it is determined that a UST, as defined by statute, is on the property it must be determined if the UST is subject to notification. Owners of regulated USTs were to report to state authorities by May 8, 1986 the existence of such USTs, specifying the age, size, type, location, and uses of any such tank.⁷⁶

The UST notification requirement applied not only to USTs currently in use (that is, as of May 8, 1986), but to USTs that were taken out-of-operation *after January 1, 1974*, but were *not* removed from the ground. Out-of-operation USTs that are still in the ground may be subject to the notification requirements, even though they are not currently subject to the substantive, technical UST regulations.⁷⁷ EPA regards the duty to notify as a continuing obligation of the tank owner.⁷⁸ In addition, any new UST brought into service after May 8, 1986 is subject to the notification requirements.

In sum, if there is any UST at the site that is subject to the UST notification requirement, the property is subject to the Transfer Law.

c. Who must submit notification?

The federal notification requirements provide generally that the *owner* of a UST, who may not be the owner of the property, is required to

-
- stored;
 - c. septic tank;
 - d. pipeline facility (including gathering lines) . . . ;
 - e. surface impoundment, pit, pond, or lagoon;
 - f. storm water or wastewater collection system;
 - g. flow-through process tank;
 - h. liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;
 - i. storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

42 U.S.C. § 6991(1) (1988); 40 C.F.R. § 280.12 (1990).

76. 42 U.S.C. § 6991a(a) (1988); *see also* 40 C.F.R. § 280.22 (1990).

77. 42 U.S.C. § 6991 (1988); *see also* 40 C.F.R. § 280.12 (1990).

78. *See* 40 C.F.R. § 280.22 (1990).

notify IDEM.⁷⁹ For USTs taken out of operation *before* November 8, 1984 (the date the notification requirements under RCRA were adopted), the owner is the person who owned the UST immediately before use of the UST was discontinued.⁸⁰ For USTs in use on or after November 8, 1984, the owner is any person who owns a UST.⁸¹

The transferor may not be the owner of the tank, and thus may not be subject to the notification requirements. However, the Transfer Law applies to *property* that is the site of a UST subject to notification. Thus, investigation of USTs owned by current or prior lessees and prior owners may be necessary to determine if the *property* is subject to the Transfer Law.⁸²

3. *Is the Property the Site of a Facility That is Subject to Section 312 Community Right-to-Know Reporting?*—Property that contains a facility “subject to reporting under Section 312 of the federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11022),” is subject to the Transfer Law.⁸³

Section 312 establishes a complex scheme of reporting the storage, use, and manufacturing of so-called “hazardous chemicals.”⁸⁴ If such “hazardous chemicals” are present in certain quantities at a facility, the owner or operator of the facility is subject to Section 312 reporting.⁸⁵ Thus, the first step in determining the applicability of Section 312 is determining whether such “hazardous chemicals” are present at the property.

The term “hazardous chemicals” is defined generally by what constitutes a “hazardous chemical” under OSHA’s Hazard Communication Standard⁸⁶ and by the “extremely hazardous substances” found in a

79. *Id.*

80. *See id.*

81. *Id.* § 280.12.

82. If the investigation under the Transfer Law finds that there are USTs at the property but the USTs are not in compliance with the notification requirements, notification forms can be filed now. *See* 53 Fed. Reg. 37,199 (1988). Owners who knowingly fail to notify or who submit false information may be subject to civil penalties of up to \$10,000 per UST. 42 U.S.C. § 6991(e), (d)(1) (1988); *see also* IND. CODE § 13-7-20-27(a) (1988).

Note also that the Transfer Law’s Disclosure Document requests information regarding any underground storage tanks that “are or were used by the transferor,” *id.* § 13-7-22.5-15 (Supp. 1990) (Part III A, 4 of Disclosure Form), and whether the transferor has knowledge of USTs that “existed under prior ownerships,” *id.* (Part III B.2 of the Disclosure Form). Because the Disclosure Document must be filed with IDEM, if it reveals USTs for which notifications were not filed, IDEM may pursue the transferor, the transferee, or prior owners for failure to notify.

83. IND. CODE § 13-7-22.5-6(2) (Supp. 1990).

84. 42 U.S.C. § 11022 (1988); *see also* 40 C.F.R. § 370 (1989).

85. 42 U.S.C. § 11022 (1988); *see also* 40 C.F.R. § 370 (1989).

86. *See* 29 C.F.R. § 1910.1200 (1990).

separate list of chemicals that was developed under Section 311 of the Community-Right-to-Know Act.⁸⁷ Unfortunately, there is no comprehensive "list" of OSHA hazardous chemicals. Instead, the OSHA standard relies on a narrative definition that requires each employer⁸⁸ to evaluate on a case-by-case basis the chemicals present in the workplace. It has been estimated that there may be over 500,000 hazardous chemicals under the OSHA definition.

Hazardous chemicals under this OSHA program include chemicals that constitute "physical hazards" and "health hazards."⁸⁹ Physical hazards include combustible and flammable materials, compressed gases, and explosives.⁹⁰ Health hazards are chemicals for which there is scientific evidence of acute or chronic health effects, such as carcinogens.⁹¹ The OSHA standard excludes various substances from the definition of hazardous chemical, such as tobacco, food, drugs, cosmetics, alcoholic beverages, and consumer products.⁹²

Under Section 312, Congress also excluded additional substances from the scope of "hazardous chemicals," including substances used in research laboratories and hospitals, agricultural products, and consumer products packaged as they would be for distribution to the general public.⁹³

If a facility is subject to Section 312 reporting requirements because of the use of a hazardous chemical, the owner or operator must submit the following to the State Emergency Response Commission, the Local Emergency Planning Committee, and local fire department: (1) On a one-time basis, a copy of each MSDS or a list of MSDSs;⁹⁴ and (2) an annual inventory form covering hazardous chemicals and also "extremely hazardous substances."⁹⁵

87. 40 C.F.R. § 355 (1989).

88. The Occupational Safety & Health Act (OSH Act) defines an employer as a "person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State." See 29 U.S.C. § 652(6) (1988). The Occupational Safety & Health Administration (OSHA) has issued regulations to clarify the scope of this definition. See 29 C.F.R. pt. 1975 (1990). "Any employer employing one or more employees" is considered an employer subject to the OSH Act. *Id.* § 1975.4(a). Professionals who have employees, agricultural employers, Indians and Indian tribes, and nonprofit and charitable organizations are all covered employers under the OSH Act. *Id.* § 1975.4(b). In addition, OSHA requires each state with an OSHA-approved state plan to regulate state and local government employers in the same way as other employers. Indiana has such an OSHA plan.

89. 29 C.F.R. § 1910.1200(c) (1990).

90. *Id.*

91. *Id.* Appendices A and B of the Hazard Communication Standard give additional guidance in determining whether a particular chemical is a hazardous chemical.

92. *Id.* § 1910.1200(b)(6); see also *id.* § 1910.1200(c).

93. 42 U.S.C. § 11021(e) (1988); see also 40 C.F.R. § 370.2 (1989).

94. Manufacturers were required to comply with the one-time submission by October 17, 1987; nonmanufacturers were to comply by September 24, 1988.

95. See 42 U.S.C. § 11022(c) (1988); 40 C.F.R. § 370 (1989). Manufacturers were

The EPA has authority to establish reporting thresholds for Section 312 reporting.⁹⁶ Currently, the Section 312 reporting requirements apply only to facilities that use hazardous chemicals or extremely hazardous substances in relatively large quantities.⁹⁷ The facilities subject to the Section 312 reporting requirements are those which use

- (a) hazardous chemicals in quantities greater than or equal to 10,000 pounds, or
- (b) extremely hazardous substances in quantities greater than or equal to 500 pounds (or 55 gallons), or in quantities greater than the "threshold planning quantity" established for that substance at 40 C.F.R. Part 355, Appendix A, whichever is less.⁹⁸

The quantity of chemicals present must be below the threshold *at all times* for the facility to be excluded from reporting. Thus, for example, chlorine may never be present in excess of 100 pounds, the threshold planning quantity for chlorine. If chlorine is present in quantities greater than 100 pounds, the facility may be subject to Section 312 reporting.

A determination of the applicability of the Hazard Communication Program and the Section 312 reporting requirements can be quite time-consuming and complex. It may be necessary to hire an environmental consultant or industrial hygienist to determine if hazardous chemicals are present at the facility.

4. Has the Property Been Released from Financial Assurance Requirements?—Even if the property appears to be subject to the Transfer Law because it is on the CERCLIS list, it is the site of USTs subject to notification, or it contains a facility subject to Section 312 reporting, the release of applicable financial assurance requirements will exclude the property from the requirements of the Transfer Law.⁹⁹ Financial assurance or bonding requirements are included in the environmental regulatory programs for hazardous waste treatment, storage, disposal facilities,¹⁰⁰ underground storage tanks,¹⁰¹ and surface coal mining.¹⁰² The Transfer Law does not specifically limit the bonding or financial assurance me-

required to comply beginning on March 1, 1988, and annually thereafter; nonmanufacturers were required to comply beginning on March 1, 1989, and annually thereafter. Covered facilities must be determined in accordance with the reporting thresholds.

96. See 42 U.S.C. 11022(b) (1988).

97. 40 C.F.R. § 370 (1989).

98. See generally 40 C.F.R. § 370.20(b) (1990).

99. IND. CODE § 13-7-22.5-6 (Supp. 1990).

100. See 40 C.F.R. §§ 264.144-.145 (1990).

101. IND. ADMIN. CODE tit. 329, r. 2-12 (Supp. 1990); see also IND. CODE §§ 13-7-20-14, -15 (1988).

102. IND. CODE §§ 13-4.1-6-1 to -9 (1988).

chanisms to those intended to provide funds for environmental impairments; however, that interpretation would seem to be consistent with the intent of the Transfer Law. Because some of the financial assurance requirements extend long after the activities at the facility cease, through a period of post-closure care, these requirements may not have an impact on the majority of transfers in the next few years.

The intention behind this provision of the Transfer Law appears to be that if financial assurances have been released, the property no longer poses an environmental threat. This conclusion should not be assumed, particularly if the financial assurance applied only to part of the property, for example, an underground storage tank. Other parts of the property may still pose an environmental concern. Thus, even though the property may not be subject to the Transfer Law, a thorough environmental audit is likely to be appropriate.

III. IMPACT OF TRANSFER LAW ON PARTIES' ENVIRONMENTAL LAW LIABILITIES

Although buyers' and sellers' liabilities for the environmental condition of the transfer property could be the subject of another article, a brief discussion of such liability is helpful to put the Transfer Law in perspective.

Prior to the Transfer Law, sellers of Indiana real estate had no legal obligation to investigate or disclose to buyers the environmental conditions on their property. This was known as the common law doctrine of *caveat emptor* — let the buyer beware of the property's condition.¹⁰³ Now, the seller has a statutory obligation under the Transfer Law to investigate certain environmental matters related to the property and to disclose such information regarding the environmental activities at the property.¹⁰⁴

With regard to the buyer's environmental liabilities, the amended Transfer Law requires the Disclosure Document to carry the following warning:

A WARNING TO THE PARTIES TO A TRANSFER OF PROPERTY: It is highly unlikely that the single act of reading this document would be found to constitute "all appropriate inquiry into the previous ownership and uses of the property" so as to protect you against liability under the "innocent purchaser" provision of the federal Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601(35)(B) ("Superfund"). You are strongly encouraged not only to read this document

103. See generally *Anderson Drive-in Theatre, Inc. v. Kirkpatrick*, 123 Ind. App. 388, 110 N.E.2d 506 (1953).

104. See *supra* notes 29-34 and accompanying text.

carefully but also to take all other actions necessary to the exercise of due diligence in your inquiry into the previous ownership and uses of the property.¹⁰⁵

This warning emphasizes that the buyer's qualifying for the "innocent landowner defense" under Superfund¹⁰⁶ is likely to require more than simply reviewing the Disclosure Document provided by the seller. Briefly summarized (and overly simplified), the innocent landowner defense is available to the buyer if the buyer can establish that:

- (i) the facility was acquired after the hazardous substances were placed at the property;
- (ii) at the time of acquisition, the buyer had no reason to know of the hazardous substances at the property; and
- (iii) prior to acquisition, the buyer had made all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize buyer's environmental liability.

As a general rule, the "good commercial or customary practice" for environmental audits is to seek more information than is provided in the Transfer Law's Disclosure Document.¹⁰⁷ An environmental audit might involve, for example, a search of the public environmental records relevant to the property, a review of aerial photographs of the property, and an on-site inspection. In some instances, sampling the soil or groundwater at the property for contamination might also be appropriate.

In sum, if the buyer limits its environmental audit to examining only the Disclosure Document provided under the Transfer Law, such environmental audit generally will not qualify as an audit of "good commercial or customary practice." Thus, what constitutes an appropriate environmental audit to preserve the buyer's innocent landowner defense under Superfund should be evaluated as a matter distinct from the parties' compliance with the Transfer Law.

105. IND. CODE § 13-7-22.5-15 (Supp. 1990).

106. See 42 U.S.C. § 9607(b) (1990).

107. See, e.g., *United States v. Serafini*, 711 F. Supp. 197 (M.D. Pa. 1988); *Wickland Oil Terminals v. ASARCO, Inc.*, 15 Chem. Waste Lit. Rep. 1255 (N.D. Cal. 1988).

Appendix A

A WARNING TO THE PARTIES TO A TRANSFER OF PROPERTY: It is highly unlikely that the single act of reading this document would be found to constitute "all appropriate inquiry into the previous ownership and uses of the property" so as to protect you against liability under the "innocent purchaser" provision of the federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601(35)(B). You are strongly encouraged not only to read this document carefully but also to take all other actions necessary to the exercise of due diligence in your inquiry into the previous ownership and uses of the property.

ENVIRONMENTAL DISCLOSURE DOCUMENT FOR TRANSFER OF REAL PROPERTY

The following information is provided under IC 13-7-22.5, the Responsible Property Transfer Law.	<u>For Use By County Recorder's Office</u>

I. PROPERTY IDENTIFICATION

A. Address of property: _____
Street

_____ City or Town Township

Tax Parcel Identification No. (Key Number): _____

B. Legal Description:
 Section _____ Township _____ Range _____
 Enter or attach complete legal description in this area:

LIABILITY DISCLOSURE

Transferrors and transferees of real property are advised that their ownership or other control of such property may render them liable for environmental cleanup costs whether or not they caused or contributed to the presence of environmental problems in association with the property.

C. Property Characteristics:

Lot Size _____ Acreage _____

Check all types of improvement and uses that pertain to the property:

- Apartment building (6 units or less)
- Commercial apartment (over 6 units)
- Store, office, commercial building
- Industrial building
- Farm, with buildings
- Other (specify)

II. NATURE OF TRANSFER

- | | Yes | No |
|-----------------------------------------------------------------------------------------------|--------------------------|--------------------------|
| A. (1) Is this a transfer by deed or other instrument of conveyance of fee title to property? | <input type="checkbox"/> | <input type="checkbox"/> |
| (2) Is this a transfer by assignment of over 25% of beneficial interest of a land trust? | <input type="checkbox"/> | <input type="checkbox"/> |
| (3) A lease exceeding a term of 40 years? | <input type="checkbox"/> | <input type="checkbox"/> |
| (4) A collateral assignment of beneficial interest? | <input type="checkbox"/> | <input type="checkbox"/> |
| (5) An installment contract for the sale of property? | <input type="checkbox"/> | <input type="checkbox"/> |
| (6) A mortgage or trust deed? | <input type="checkbox"/> | <input type="checkbox"/> |
| (7) A lease of any duration that includes an option to purchase? | <input type="checkbox"/> | <input type="checkbox"/> |

B. (1) Identify Transferor:

 Name and Current Address of Transferor

Trust No.

 Name and Address of Trustee if this is a transfer of beneficial interest of a land trust.

(2) Identify person who has completed this form on behalf of the Transferor and who has knowledge of the information contained in this form:

 Name, Position (if any), and address

Telephone No.

C. Identify Transferee:

 Name and current address of Transferee

III. ENVIRONMENTAL INFORMATION

A. Regulatory Information During Current Ownership

1. Has the transferor ever conducted operations on the property which involved the generation, manufacture, processing, transportation, treatment, storage, or handling of "hazardous substance," as defined by IC 13-7-8.7-1? This question does not apply to consumer goods stored or handled by a retailer in the same form and approximate amount, concentration, and manner as they are sold to consumers, unless the retailer has engaged in any commercial mixing (other than paint mixing or tinting of consumer sized containers), finishing, refinishing, servicing, or cleaning operations on the property.

Yes No

2. Has the transferor ever conducted operations on the property which involved the processing, storage, or handling of petroleum, other than that which was associated directly with the transferor's vehicle usage?

Yes No

3. Has the transferor ever conducted operations on the property which involved the generation, transportation, storage, treatment, or disposal of "hazardous waste," as defined in IC 13-7-1?

Yes No

4. Are there any of the following specific units (operating or closed) at the property that are used or were used by the transferor to manage hazardous wastes, hazardous substances, or petroleum?

	Yes	No
Landfill	<input type="checkbox"/>	<input type="checkbox"/>
Surface Impoundment	<input type="checkbox"/>	<input type="checkbox"/>
Land Application	<input type="checkbox"/>	<input type="checkbox"/>
Waste Pile	<input type="checkbox"/>	<input type="checkbox"/>
Incinerator	<input type="checkbox"/>	<input type="checkbox"/>
Storage Tank (Above Ground)	<input type="checkbox"/>	<input type="checkbox"/>
Storage Tank (Underground)	<input type="checkbox"/>	<input type="checkbox"/>
Container Storage Area	<input type="checkbox"/>	<input type="checkbox"/>
Injection Wells	<input type="checkbox"/>	<input type="checkbox"/>
Wastewater Treatment Units	<input type="checkbox"/>	<input type="checkbox"/>
Septic Tanks	<input type="checkbox"/>	<input type="checkbox"/>
Transfer Stations	<input type="checkbox"/>	<input type="checkbox"/>
Waste Recycling Operations	<input type="checkbox"/>	<input type="checkbox"/>
Waste Treatment Detoxification	<input type="checkbox"/>	<input type="checkbox"/>
Other Land Disposal Area	<input type="checkbox"/>	<input type="checkbox"/>

If there are "YES" answers to any of the above items and the transfer of property that requires the filing of this document is other than a mortgage or trust deed or collateral assignment of beneficial interest in a land trust, you must attach to the copies of this document that you file with the county recorder and the department of environmental management a site plan that identifies the location of each unit.

5. Has the transferor ever held any of the following in regard to this real property?

(A) Permits for discharges of wastewater to waters of Indiana.

Yes No

(B) Permits for emissions to the atmosphere.

Yes No

(C) Permits for any waste storage, waste treatment, or waste disposal operation.

Yes No

6. Has the transferor ever discharged any wastewater (other than sewage) to a publicly owner treatment works?

Yes No

7. Has the transferor been required to take any of the following actions relative to this property?

(A) Filed an emergency and hazardous chemical inventory form pursuant to the federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11022).

Yes No

(B) Filed a toxic chemical release form pursuant to the federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023).

Yes No

8. Has the transferor or any facility on the property or the property been the subject of any of the following state or federal governmental actions?

(A) Written notification regarding known, suspected, or alleged contamination on or emanating from the property.

Yes No

(B) Filing an environmental enforcement case with a court or the solid waste management board for which a final order or consent decree was entered.

Yes No

(C) If the answer to question (B) was Yes, then indicate whether or not the final order or decree is still in effect for this property.

Yes No

9. Environmental Releases During Transferor's Ownership.

(A) Has any situation occurred at this site which resulted in a reportable "release" of any hazardous substances or petroleum as required under state or federal laws?

Yes No

(B) Have any hazardous substances or petroleum which were released come into direct contact with the ground at this site?

Yes No

If the answer to question (A) or (B) is Yes, have any of the following actions or events been associated with a release on the property?

Use of a cleanup contractor to remove or treat materials including soils, pavement, or other surficial materials?

Assignment of in-house maintenance staff to remove or treat materials including soils, pavement, or other surficial materials?

Sampling and analysis of soils?

Temporary or more long term monitoring of groundwater at or near the site?

Impaired usage of an onsite or nearby water well because of offensive characteristics of the water?

Coping with fumes from subsurface storm drains or inside basements?

Signs of substances leaching out of the ground along the base of slopes or at other low points on or immediately adjacent to the site?

(C) Is there an environmental defect (as defined in IC 13-7-22.5-1.5) on the property that is not reported under question (A) or (B)?

Yes No

If the answer is Yes, describe the environmental defect: _____

10. Is the facility currently operating under a variance granted by the commissioner of the Indiana department of environmental management?

Yes No

11. Has the transferor ever conducted an activity on the site without obtaining a permit from the U.S. Environmental Protection Agency, the commissioner of the department of environmental management, or another administrative agency or authority with responsibility for the protection of the environment, when such a permit was required by law?

Yes No

If the answer is Yes, describe the activity: _____

12. Is there any explanation needed for clarification of any of the above answers or responses?

B. Site Information Under Other Ownership or Operation

1. Provide the following information about the previous owner or about any entity or person to whom the transferor leased the property or with whom the transferor contracted for the management of the property:

Name: _____

Type of business _____

or property usage _____

2. If the transferor has knowledge, indicate whether the following existed under prior ownerships, leaseholds granted by the transferor, or other contracts for management or use of the property:

	Yes	No
Landfill	<input type="checkbox"/>	<input type="checkbox"/>
Surface Impoundment	<input type="checkbox"/>	<input type="checkbox"/>
Land Application	<input type="checkbox"/>	<input type="checkbox"/>
Waste Pile	<input type="checkbox"/>	<input type="checkbox"/>
Incinerator	<input type="checkbox"/>	<input type="checkbox"/>
Storage Tank (Above Ground)	<input type="checkbox"/>	<input type="checkbox"/>
Storage Tank (Underground)	<input type="checkbox"/>	<input type="checkbox"/>
Container Storage Area	<input type="checkbox"/>	<input type="checkbox"/>
Injection Wells	<input type="checkbox"/>	<input type="checkbox"/>
Wastewater Treatment Units	<input type="checkbox"/>	<input type="checkbox"/>
Septic Tanks	<input type="checkbox"/>	<input type="checkbox"/>
Transfer Stations	<input type="checkbox"/>	<input type="checkbox"/>
Waste Recycling Operations	<input type="checkbox"/>	<input type="checkbox"/>
Waste Treatment Detoxification	<input type="checkbox"/>	<input type="checkbox"/>
Other Land Disposal Area	<input type="checkbox"/>	<input type="checkbox"/>

IV. CERTIFICATION

- A. Based on my inquiry of those persons directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true and accurate.

TRANSFEROR (or on behalf of Transferor)

- B. This form was delivered to me with all elements completed on _____, 19__

TRANSFeree (or on behalf of Transferee)

