

Clean Land: Hazardous Waste and Sites

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July 10, 2012

OVERVIEW

- Topics to be Covered
 - Who we are
 - Our Practice
 - How we ended up as environmental attorneys
 - CERCLA
 - Background and Goals
 - Liability for Contaminated Sites
 - Contribution and Cost Recovery Actions
 - Managing CERCLA Risk in Practice
 - RCRA
 - Background and Goals
 - What is “Hazardous Waste?”
 - Regulating solid waste landfills
 - Underground Storage Tanks
 - Enforcement and Corrective Action under RCRA

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Who We Are

WHO WE ARE

- Michael Lukens
- Jeffrey Allmon
 - Associates at Paul Hastings LLP
 - Environmental Practice Group
 - Transactional and Regulatory Practice
 - Focus on:
 - Leverage financed transactions;
 - Deal-work and compliance advice in the solid waste industry;
 - Project development; and
 - Environmental compliance counseling.

CERCLA and RCRA – OVERVIEW

CERCLA – Background and Goals

- The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA” or “Superfund”) generally addresses abandoned hazardous waste sites.
- Superfund is the name of the cleanup “trust fund” established by CERCLA. Also, the common nickname for CERCLA.

CERCLA – Background and Overview

- Goals of CERCLA:
 - Goal: address contaminated properties by (i) empowering the EPA to address dirty sites; (ii) allocating liability for contamination; (iii) allowing the government and private parties to recover cleanup costs from responsible parties.
 - Goal: make contaminated property viable for reuse.
- Stats:
 - Since 1980, the Superfund program and its state and tribal partners have investigated nearly 44,700 potentially contaminated sites.
 - Since 1980, \$20.6 billion from potentially responsible parties (PRPs) has been committed for Superfund cleanups.
 - One in four Americans lives within 3 miles of Superfund Site.

CERCLA – Background and Overview

- Liability for “response costs” associated with a “release” of “hazardous substances” at a “facility”
 - 4 Types of Potentially Responsible Parties:
 - Current owners & operators
 - Past owners & operators at the time of disposal
 - Arrangers
 - Transporters
- Hammer: Joint and several liability
- Very few defenses: (Acts of god/war; innocent purchasers, Lenders)

RCRA– Background and Overview

- RCRA is a groundwater protection statute
 - Treatment of hazardous waste preferred over land disposal
 - “Minimum technology requirements” for land-based units
- RCRA creates a very prescriptive set of practices
 - It tells facilities how to manage the waste they generate (“cradle”)
 - It imposes detailed record keeping requirements; most notably the manifest
 - It compels ultimate management in prescribed manner (“grave”)
- RCRA focuses on BEFORE
 - Control waste streams to prevent contamination, through regulation.
 - CERCLA focuses on AFTER
 - Dealing with sites that have already been contaminated by hazardous waste, through liability.

- **Three Major Programs**

- Subtitle C –Hazardous Waste

- Cradle-to-grave tracking system for hazardous waste
- Standards for generators and transporters of hazardous waste, and for operators and facilities that treat/store/dispose of hazardous waste

- Subtitle D –Nonhazardous Waste

- State-run permitting program for owners/operators of municipal landfills

- Subtitle I –Underground Storage Tanks

- Protect underground drinking water from contamination from underground storage tanks

**CERCLA and RCRA – A Story in Three
Parts**

CERCLA and RCRA – A Story

- The People in our Story:
 - **Walter:** Owns a boutique chemical company in New Mexico; *White Pharmaceuticals*
 - **Jesse:** Owns a hazardous waste hauling business, also in New Mexico; *Pinkman Waste Hauling*
 - **Gus:** Owns his own farm outside of Santa Fe; *Los Pollos Hermanos Farms*

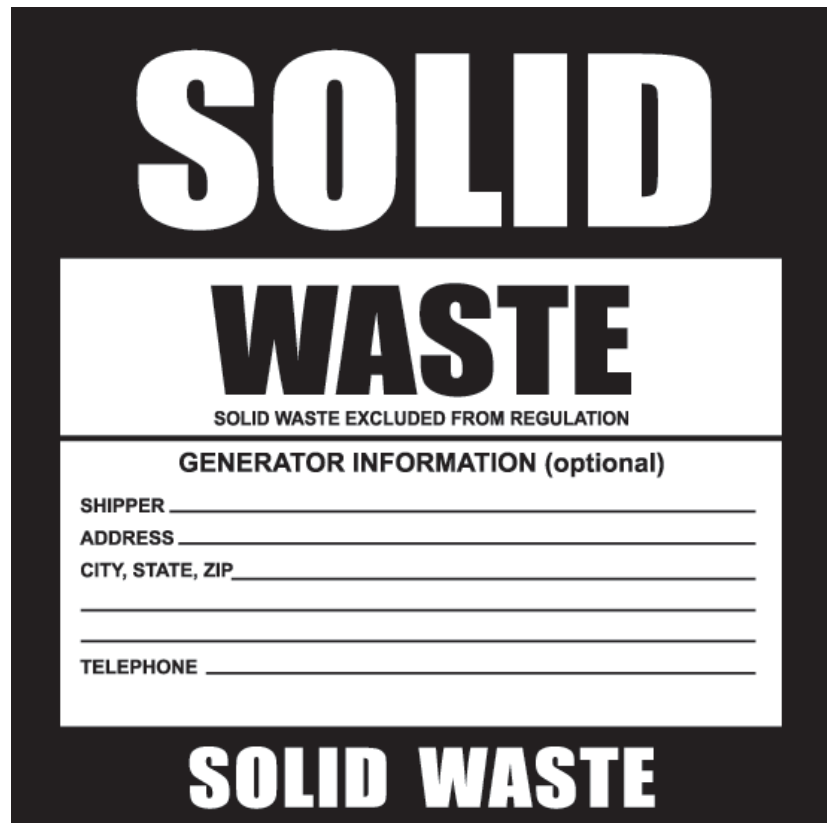
CERCLA and RCRA – A Story

- As with all great stories, our story starts with:



CERCLA and RCRA – A Story

- Walter does not know what he should do with his barrel. His first step, he figures, is to determine what exactly he has:



Excluded



Recycling

- Use or Reuse
- Secondary Material used as Generated

VS.

Solid Waste



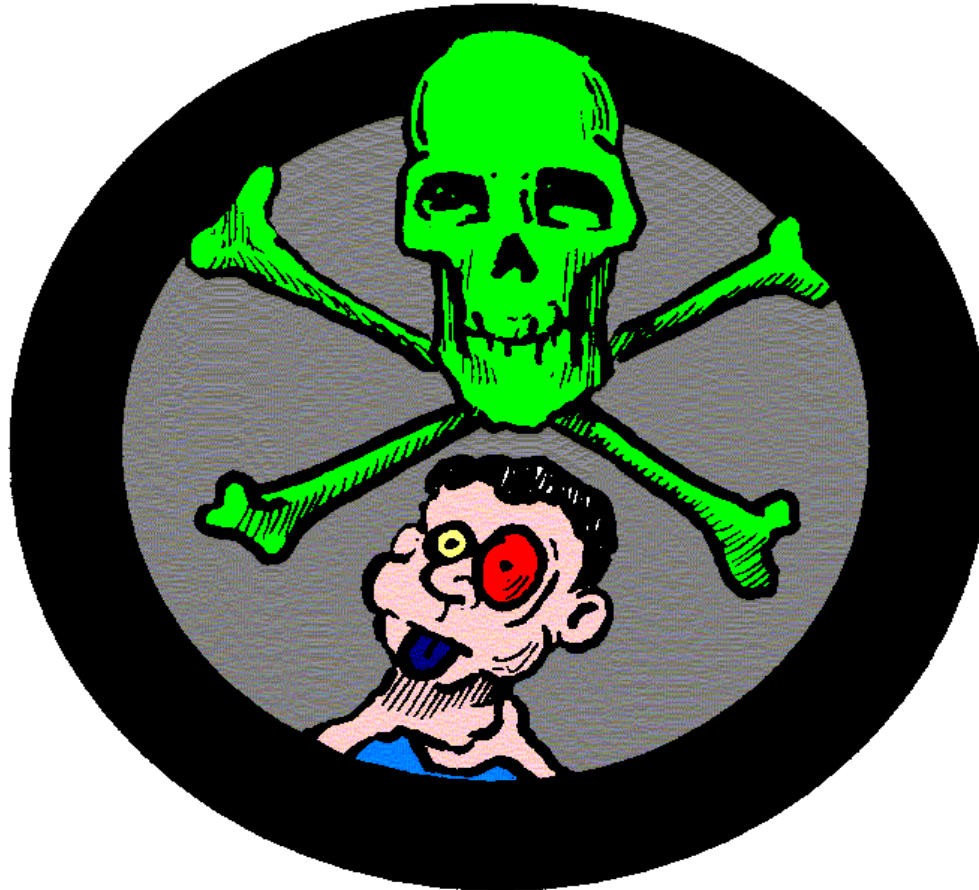
Discarding

- Reclamation
- Extraction from Secondary Material

– Finalized Revisions to Definition of Solid Waste, 73 Fed. Reg. 64667 (Oct. 30, 2008); *but see* Proposed Revisions to Recycling Reclamation Standards, 76 Fed. Reg. 44094 (July 22, 2011)

CERCLA and RCRA – A Story

- So Walter knows his barrel has solid waste inside, but is it:



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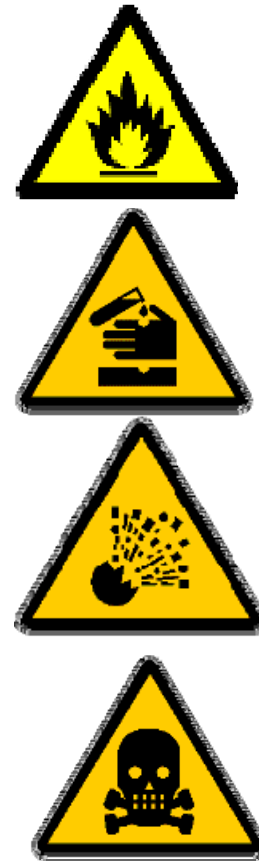
Is Walter's waste
either:

Listed



or

Characteristic



CERCLA and RCRA – A Story

- So now that Walter knows that his barrel is full of hazardous waste, he calls Jesse.



- Jesse says he can not pick up the barrel for 45 days.

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Walter is worried. Can he keep his barrel for 45 days?

- It all depends on how much total hazardous waste Walter generates, regardless of type or classification:

Conditionally Exempt
Small Quantity
Generators



= Indefinitely

Small Quantity
Generators



= 180/270
Days

Large Quantity
Generators



= 90 Days

CERCLA and RCRA – A Story

- 45 Days of a Barrel

Hazardous Waste	
FEDERAL LAW PROHIBITS IMPROPER DISPOSAL	
If found, contact the nearest police or public safety authority, and the Washington State Department of Ecology or the Environmental Protection Agency	
Accumulation Start Date:	Generator Name:
Reportable Quantities (RQ): lbs <i>40 CFR Subchapter J, Part 302, Table 302.4</i>	Address:
Manifest Document #:	City:
Emergency Response Guide #:	State:
EPA Waste Code(s) and/or Characteristic(s)	Zip:
	EPA ID #:
EPA/DOT Shipping Name:	
Hazard Class:	
UN/NA #:	
Packing Group (PG):	
In the event of a spill or release of this hazardous waste, contact the US Coast Guard National Response Center at 1-800-424-8802 for information and assistance.	

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- 45 Days of a Barrel



CERCLA and RCRA – A Story

- 45 Days of a Barrel



CERCLA and RCRA – A Story

- While waiting for his 45 Days of a Barrel to end, Walter takes a long walk through his factory and trips over:



A pile of batteries....

And almost falls into a box of spent light bulbs.



CERCLA and RCRA – A Story

- Finally...45 days has passed and Jesse is on his way. What must Walter do?



CERCLA and RCRA – A Story

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- The Manifest



Please print or type. (Form designed for use on elite (12-pitch) typewriter.) Form Approved. C

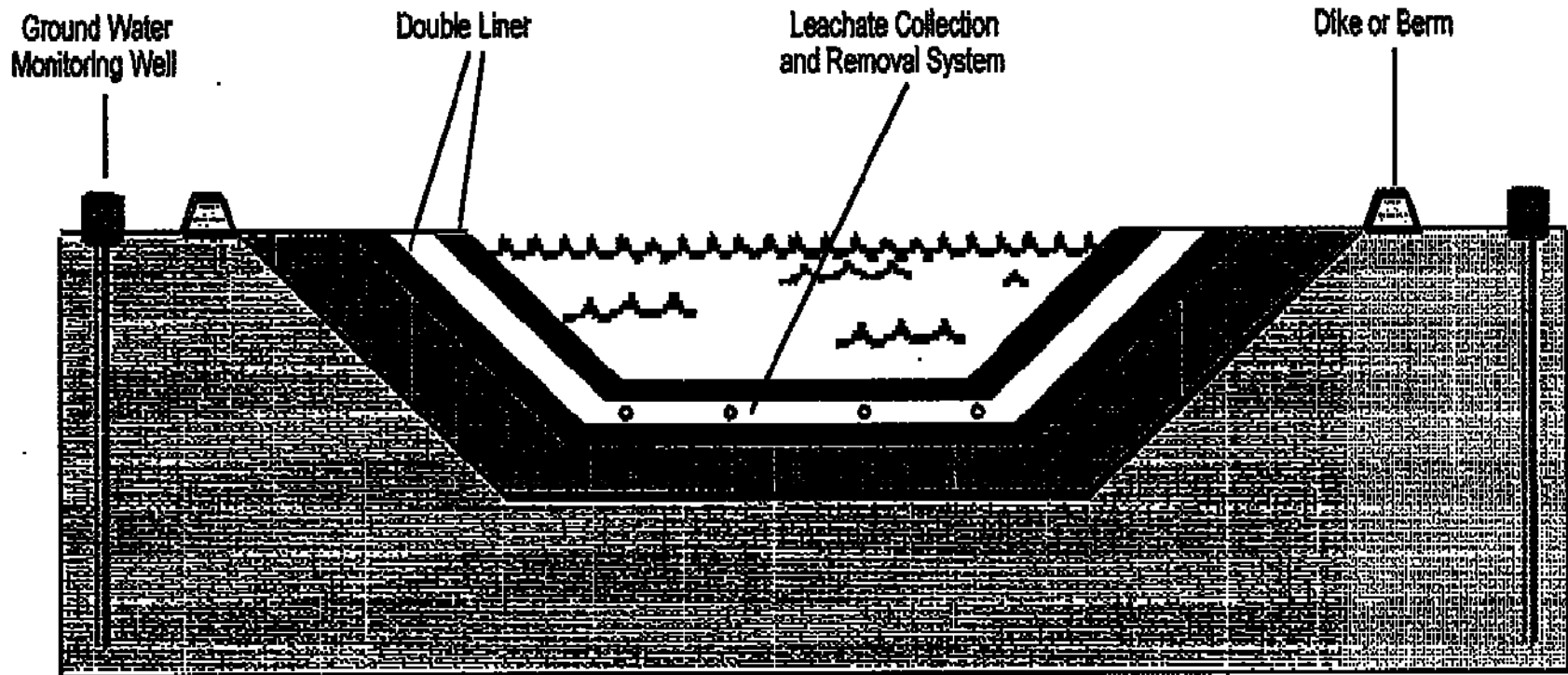
UNIFORM HAZARDOUS WASTE MANIFEST		1. Generator ID No. GAD004157418	2. Page 1 of 1	3. Emergency Response Phone 561 222-1212	4. Manifest Tracking Number	
5. Generator's Name and Mailing Address Acme Chemical Manuf. P.O. Box 134 West Palm Beach, TX 33416				Generator's Site Address (if different than mailing address) Acme Chemical Manuf. 8901 N. Flagler Drive West Palm Beach, TX 33416		
Generator's Phone: 561 387-0134 Attn: Joe Winslow						
6. Transporter 1 Company Name AGGREGATE HAULERS				U.S. EPA ID Number TR123456789X		
7. Transporter 2 Company Name				U.S. EPA ID Number		
8. Designated Facility Name and Site Address SOUTHDOWN ENV SYS. (ALLWORTH-TN) 101 S. PARK DRIVE PO BOX 12345 MT. PLEASANT, OK 38474				U.S. EPA ID Number TND982920119		
Facility's Phone: 615 379-3215						
9a. HM	9b. U.S. DOT Description (including Proper Shipping Name, Hazard Class, ID Number, and Packing Group (if any))	10. Containers		11. Total Quantity	12. Unit Wt./Vol.	13. Wa
		No.	Type			
X	¹ UN3165, Aircraft hydraulic power unit fuel tank (c containing a mixture of anhydrous hydrazine and monomethyl hydrazine) (M86 fuel), 3, PG I Waste Profile # CH4134134F	1	DM	12	G	D001 D004 ST67B
X	² RO WASTE FLAMMABLE LIQUID, N.O.S. (BENZENE, TETRAETHYL LEAD), 3, UN1993, I (D001) (D008) (D018)	1	DM	40	G	D001
X	³ RO WASTE FLAMMABLE LIQUID, N.O.S. (BENZENE, TETRAETHYL LEAD), 3, UN1993, I (D001) (D008) (D018)	1	TT	100	P	D001
14. Special Handling Instructions and Additional Information Call Alcon Manufacturing Company in case of an emergency. Phone: (800) 433-0988 - Regional Dispatcher						
				2) WASTE OIL		
				3) WASTE OIL		

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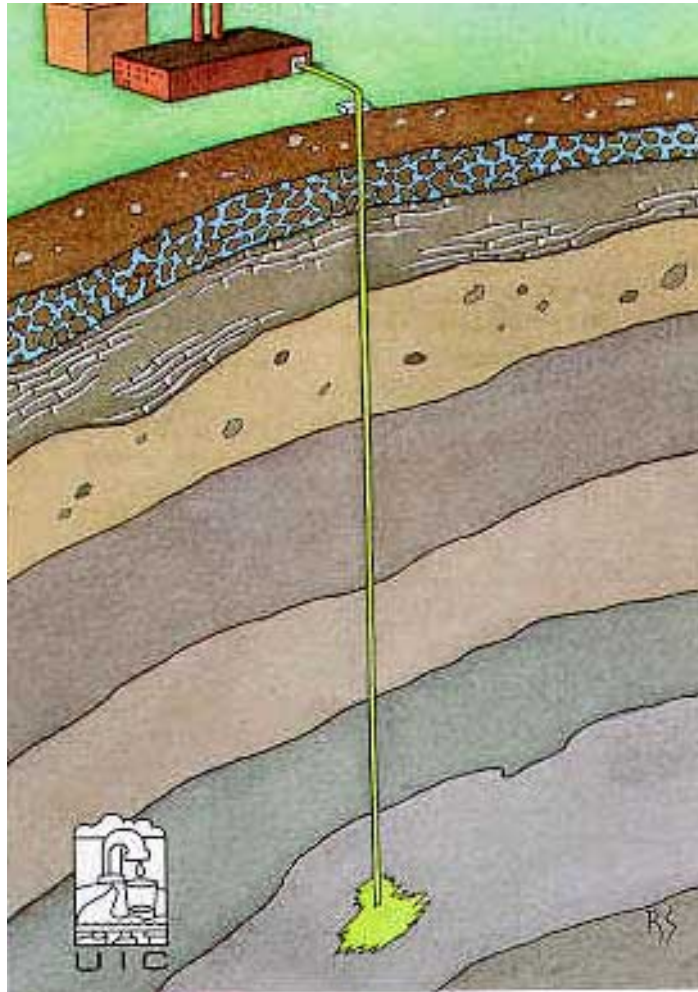
- As Walter watches Jesse take his barrel away, he daydreams about his barrel's new home...



CERCLA and RCRA – A Story



CERCLA and RCRA – A Story



CERCLA and RCRA – A Story

- Walter is also comforted by the fact that he knows RCRA has both:

Comprehensive Corrective Action Provisions

e.g., Veolia ES
Azusa, CA



A Strict Enforcement Regime

e.g., Waste
Management
Kettleman Hills,
CA

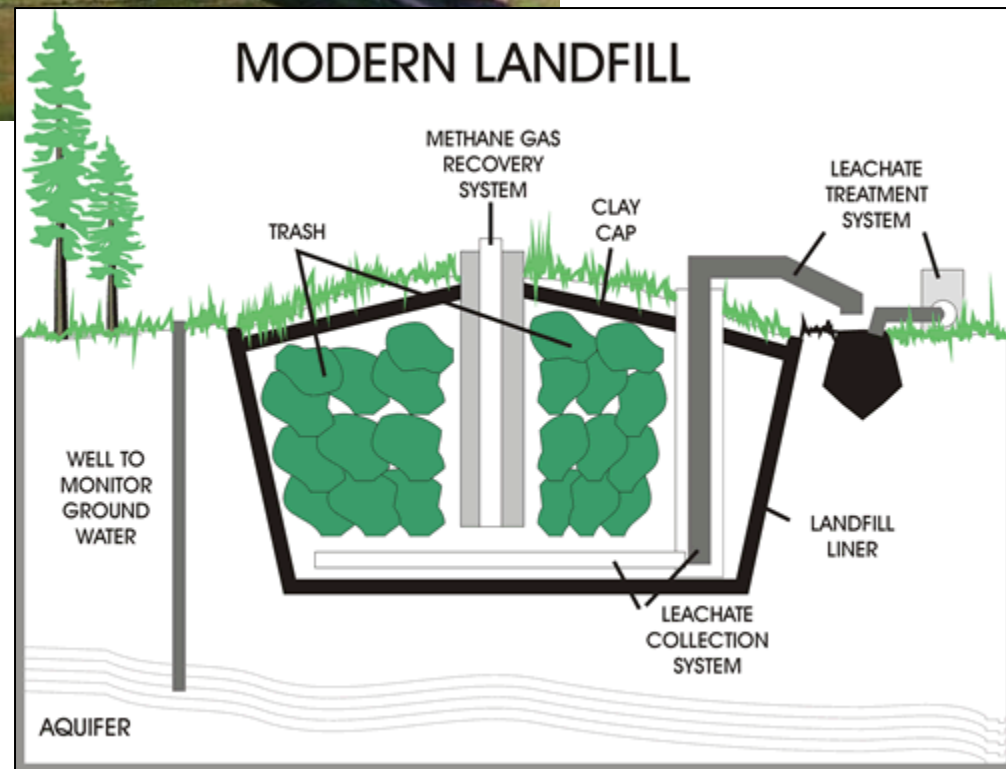


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- Jesse, however, has a different idea. He wants to save some money, so he first tries:

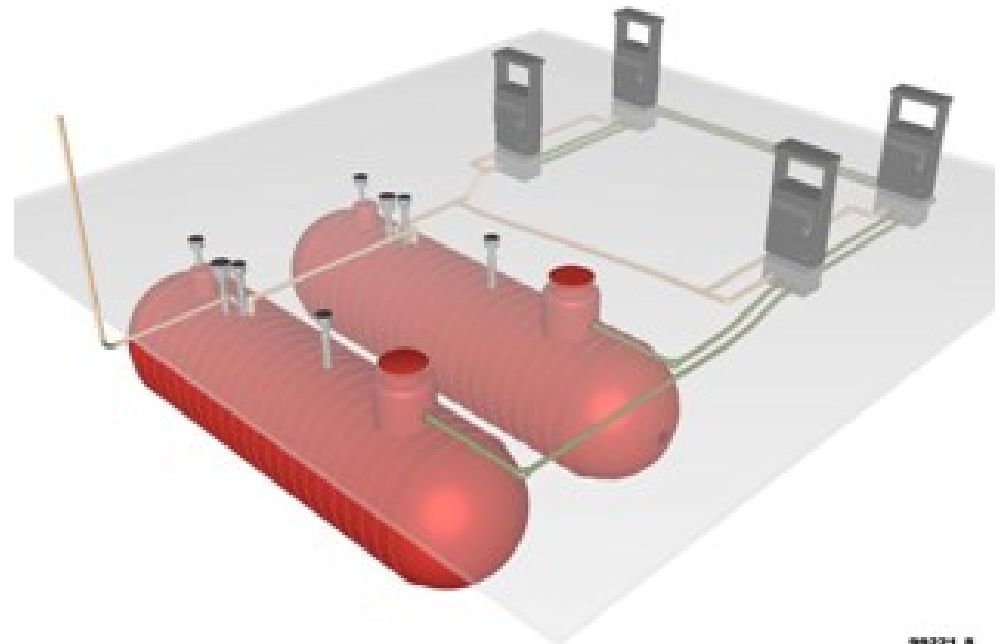


CERCLA and RCRA – A Story



CERCLA and RCRA – A Story

- Having been turned away at the landfill, Jesse continues to drive around (and, of course, stops for gas)...

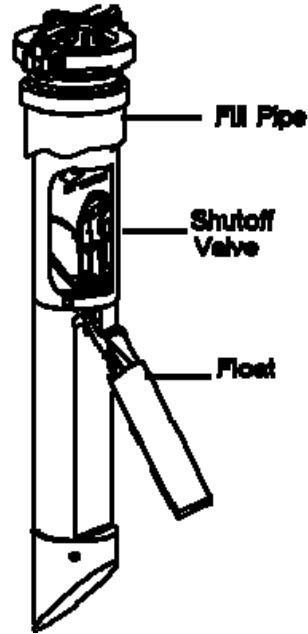
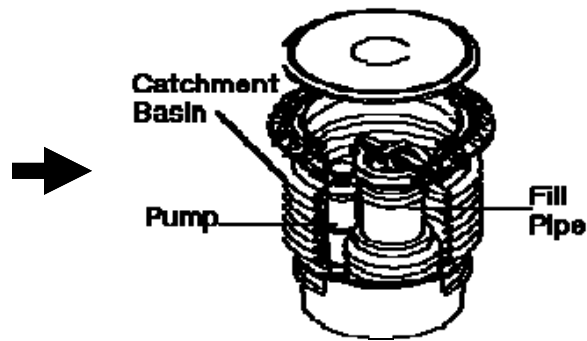


CERCLA and RCRA – A Story

Spills and Overfilling

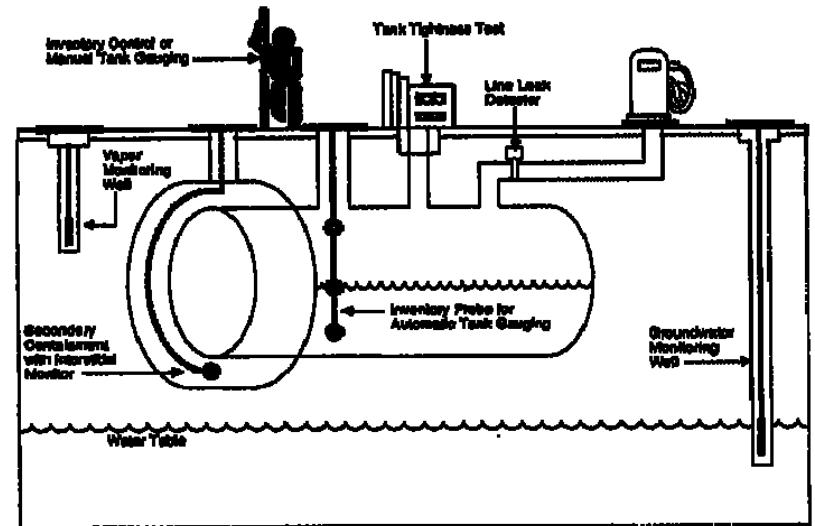
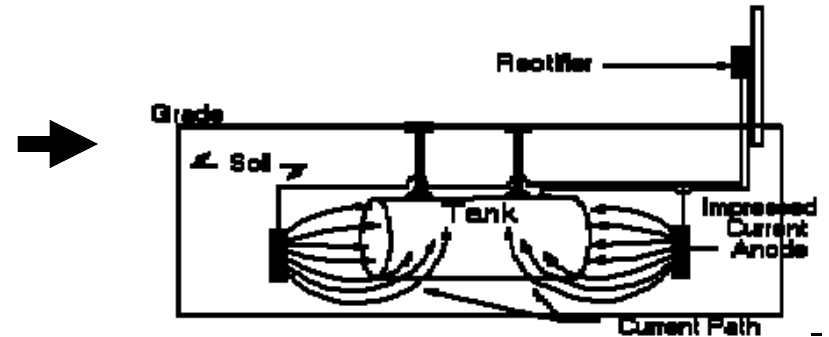
Overfill Prevention

Catchments



Leak Detection Systems

Cathodic Protection



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- All gassed up with no where to go, Jesse remembers an old friend who has a farm out in the sticks.



- The farmer happily lets Jesse drop the barrels off, and then, a few months later, sells the farm to Gus.

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- Two years go by... Gus is out for a walk one day when he finds:



Walter's drum..
Abandoned and empty...



And among friends.

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- Not knowing what to do, Gus calls the EPA, which begins an investigation.



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- In response, the EPA undertakes a cleanup at Gus' farm:



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- Once the EPA is done with the cleanup, they start talking to Gus about who is going to pay for the cleanup:
- So the EPA seeks to recover its costs, under Superfund



CERCLA's Liable Parties

Gus as Current
Owner/Operator

Jesse as Transporter

Old Farmer as Prior
Owner/Operator

Walter as Arranger

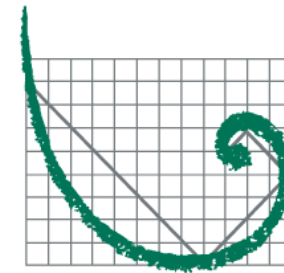
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- Now that Walter, Jesse and Gus have all been judged liable for cleanup costs, they turn to their own lawyer to try and recover some of their costs:



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- Gus is very sad, because he did not take the necessary precautions when buying the property. He knows he should have hired:



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- Gus' lender, however, is not sad at all, because he has lender liability protection:



UBS



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QUESTIONS?

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