

## **25. THE ENVIRONMENT AND HAZARDOUS WASTE**

### **Background and Purpose**

Investors, fiduciaries, and other successors-in-interest who acquire legal title after the property has been contaminated may be liable for clean-up costs and penalties if they do not satisfy all the criteria and obligations for statutory exemptions or defenses specified under the law.

Two federal statutes create the greatest potential liability in connection with real estate transactions. They are:

1. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund), as amended by the
  - A. Superfund Amendments and Reauthorization Act of 1986 (SARA), the
  - B. Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996 (Asset Conservation Act 1996), and the
  - C. Small Business Liability Relief and Brownfields Revitalization Act of 2002 (Brownfields Act); and
2. The Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA).

These statutes create liability in slightly different manners, but both involve the cleanup of hazardous materials already released into the environment.

In instances of environmental contamination that have not been addressed by Congress in a specific environmental statute, common-law liability for environmental contamination of property may also arise.

CERCLA (federal “Superfund”) is the most significant of these environmental laws. It imposes strict and retroactive liability on all “potentially responsible parties” (PRPs), including the current owners and operators (e.g., tenants) of the contaminated property even if they did not contribute to the contamination. A charitable organization that purchases real estate with contamination, receives contaminated property as a gift, or as a trust asset may be held liable for clean-up costs under this law as a PRP.

### **Potentially Responsible Parties**

There are four broad categories of “Potentially Responsible Parties” (PRP):

1. Current owners or operators of a facility where hazardous substances were released or are in danger of being released
2. Owners or operators of a facility at the time hazardous substances were disposed of at the facility
3. Persons or entities that arranged for the treatment or disposal of hazardous substances (Generators)
4. Persons or entities that transported the hazardous substances to a facility they selected (Transporters)

CERCLA defines an “owner or operator” as the “person” owning or operating a facility or, if the facility has been abandoned, as a “person who owned, operated, or otherwise controlled activities at such facility immediately prior to the abandonment.” This definition has been interpreted by the EPA and the courts to include owners of property during times when no hazardous waste was disposed of during their ownership. Moreover, a person holding equitable title to property may be deemed an owner. It is even possible that a person who merely signs an agreement to purchase contaminated property could face liability under CERCLA. Courts have ruled that lessees fall within the statutory definition of “owner.” In addition, officers and employees of companies operating a facility may be treated as owners or operators and in some cases held personally liable even when they were working for their employers.

The definition of “facility” is also very broad, covering any location where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located. A facility is any building, structure, well, pit, lagoon, ditch, or installation, or any site or area where a hazardous substance has been deposited or stored. So think not of just dump sites, but roads, drag strips, horse arenas, residential developments and even individual homes where workers carried contaminants on their work clothes.

Cleaning up contaminated real estate can cost a small fortune, in some cases more than the property may be worth. For this reason, church organizations must be extremely careful when accepting real estate as a gift or trust asset, and must make every effort to fit real estate transactions into an exception or defense which is allowed under CERCLA’s strict liability rules. In addition, because many state superfund laws have different tests for qualifying for an exemption or defense, church organizations must also make every effort to avoid potential state superfund claims even if they qualify for a CERCLA exemption.

## **LIABILITY RELIEF FOR FIDUCIARIES**

Prior to the Asset Conservation Act of 1996 amendment to CERCLA, there was considerable concern among fiduciaries as to whether the fiduciary's own assets could be at risk as "owners and operators" of contaminated property. There was no clear statutory relief for fiduciaries.

The Asset Conservation Act 1996 added to CERCLA and to the petroleum underground storage section of RCRA a new subsection on fiduciaries. The amendments do not create a defense against liability, but rather they protect fiduciaries (e.g., trustees, executors, administrators) from personal liability in certain situations. The Act clarifies that "the liability of a fiduciary...for the release or threatened release of a hazardous substance...shall not exceed the assets held in a fiduciary capacity." In other words, a fiduciary who is liable as a “owner/operator” can only be liable to the extent of the assets held in a fiduciary capacity and may not be personally liable. For example: if a certain trust holds contaminated property as an asset, assuming no negligence by the trustee, the liability for cleanup is limited to the trust value.

However, the fiduciary's relief from personal liability does not apply "if negligence of a fiduciary causes or contributes to the release or threatened release;" or if "a person is liable under this Act

independently of the person's ownership of a vessel or facility as a fiduciary or actions taken in a fiduciary capacity."

There is also no relief for a "person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, one or more estate plans or because of the incapacity of a natural person."

Finally, the ACA 1996 provides no express relief and has no effect if a person:

1. Acts in a capacity other than that of a fiduciary or beneficiary capacity, and in that other capacity, directly or indirectly benefits from a trust or fiduciary relationship, or
2. Is a beneficiary and a fiduciary with respect to the same fiduciary estate, and as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under applicable law.

The ACA 1996 does not preclude a claim against the assets of an estate or trust administered by the fiduciary, or against a non-employee agent or independent contractor retained by the fiduciary.

This liability limitation applies only to CERCLA and the underground storage tank (UST) sections of RCRA. It does not cover the more than two dozen other federal laws and accompanying regulations that impose civil environmental penalties and possible remedial costs. Nor does it cover other RCRA sections dealing with solid or other wastes. In addition, other uncontaminated trust assets are exposed to liability for costs associated with a contaminated trust asset. Such potential costs may also create third party rights of action in income and remainder beneficiaries for allowing waste of trust assets.

The Brownfields Act, signed into law January 11, 2002 further amended CERCLA creating new conditional exemptions from CERCLA "owner/operator" liability for contiguous property owners and bona fide prospective purchasers. For the first time, Congress limited the CERCLA liability of a party who purchases real property, even with knowledge of the contamination, to a potential "windfall lien" (if the EPA has unrecovered response action costs and the response action increased the fair market value of the property), provided that this person meets the criteria for a bona fide purchaser and does not impede a response action. In addition, the 2002 amendments clarified the pre-existing innocent landowner defense.

Notably, the innocent landowner defense, the new contiguous property owner exemption, and the definition of what constitutes a "bona fide prospective purchaser" ("BFPP") all contain the following common obligations which persons seeking these exemptions must meet:

- Conduct "all appropriate inquiry" (AAI) prior to purchase of the property;
- Not be potentially liable or affiliated with any person potentially liable;

- Exercise appropriate care by taking reasonable steps to “stop any continuing release; prevent and threatened future release; and prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous substance;”
- Provide full cooperation, assistance, and access to persons undertaking a response action or natural resource restoration;
- Comply with all governmental informational requests;
- Comply with land use restrictions and not impede the performance of institutional controls; and
- Provide all legally required notices regarding releases of hazardous substances.

### **All Appropriate Inquiry Defined**

The 2002 Brownfields Law changes CERCLA Section 101(35)(B) to now define “all appropriate inquiries” for purposes of all three exemption provisions. It specifies an interim standard for conducting all appropriate inquiry and requires the federal Environmental Protection Agency (EPA) to promulgate regulations that establish federal standards and practices for conduct of all appropriate inquiry.

Under the Brownfields Act EPA regulations defining all appropriate inquiry must specifically include,

1. The results of an inquiry by an environmental professional
2. Interviews with past and present owners, operators and occupants
3. Reviews of historical sources, such as chain of title documents
4. Search for recorded environmental cleanup liens
5. Review of governmental records
6. Visual inspection
7. Specialized knowledge on the part of the defendant
8. The relationship of the purchase price to the value of the property if uncontaminated
9. Commonly known or reasonably ascertainable information about the property
10. The obviousness of the presence or likely presence of contamination

### **All Appropriate Inquiry For Residential Property**

The Brownfields amendments to CERCLA provide relief for bona fide prospective purchasers of residential property by a person who is not a government or commercial entity. Under Brownfields a facility inspection and a title search satisfy the appropriate inquiry requirement.

Section 223 (2) “(v) SITE INSPECTION AND TITLE SEARCH.—In the case of property for residential use or other similar use purchased by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.”

## **Final EPA Rule**

On November 1, 2005 the EPA published its final rule setting federal standards for the conduct of “all appropriate inquiry” noting that the 2005 version of the ASTM (American Society for Testing and Materials) Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment E1527-05 satisfied the requirement for “all appropriate inquiry.” The final rule became effective November 1, 2006.

“In today’s final rule, EPA is referencing the standards and practices developed by ASTM International and known as Standard E1527–05 (entitled “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process”) and recognizing the E1527–05 standard as consistent with today’s final rule. The Agency determined that this voluntary consensus standard is consistent with today’s final rule and is compliant with the statutory criteria for all appropriate inquiries. Persons conducting all appropriate inquiries may use the procedures included in the ASTM E1527–05 standard to comply with today’s final rule.” Fed Reg Vol 70, No 210, p. 13 (66081), Nov 1, 2005.

## **Current Standard**

After November 1, 2006 only those requirements set forth in the AAI rule or in ASTM Standard E1527-05 will constitute all appropriate inquiry.

## **Environmental Professional Defined**

An important feature of the EPA Final Rule is the definition of “environmental professional.” For the purposes of the all appropriate inquiry rule an environmental professional is

(1) a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases(see [40 CFR] § 312.1(c)) on, at, in, or to a property, sufficient to meet the objectives and performance factors in § 312.20(e) and (f).

(2) Such a person must:

(i) Hold a current Professional Engineer’s or Professional Geologist’s license or registration from a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) and have the equivalent of three (3) years of full-time relevant experience; or

(ii) Be licensed or certified by the federal government, a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) to perform environmental inquiries as defined in § 312.21 and have the equivalent of three (3) years of full-time relevant experience; or

(iii) Have a Baccalaureate or higher degree from an accredited institution of higher education in a discipline of engineering or science and the equivalent of five (5) years of full-time relevant experience; or

(iv) Have the equivalent of ten (10) years of full-time relevant experience.

(3) An environmental professional should remain current in his or her field through participation in continuing education or other activities.

(4) The definition of environmental professional provided above does not preempt state professional licensing or registration requirements such as those for a professional geologist, engineer, or site remediation professional. Before commencing work, a person should determine the applicability of state professional licensing or registration laws to the activities to be undertaken as part of the inquiry identified in § 312.21(b).

(5) A person who does not qualify as an environmental professional under the foregoing definition may assist in the conduct of all appropriate inquiries in accordance with this part if such person is under the supervision or responsible charge of a person meeting the definition of an environmental professional provided above when conducting such activities. (Fed Reg Vol 70, No 210, p. 40 (66108), Nov 1, 2005)

### **How Much Is Enough?**

The most difficult question is how much “due diligence” is enough. The short answer lies in the complex factors governing the nature and value of the property, the value of the transaction to the parties, and the comfort sought by the buyer. It would be prudent for the church organization to seek to qualify for all available defenses/exemptions against environmental liability: the innocent landholder defense, the bone fide prospective purchaser exemption, and the contiguous property owner exemption by compliance with the all appropriate inquiry standard, which will change with time.

### **Additional Considerations**

In addition, because certain important areas of inquiry are not required under the ASTM or the AAI rule, it may be prudent for the church organization to enhance the property evaluation to include an analysis of certain “non-scope considerations” such as wetlands, asbestos containing materials, lead (paint or in plumbing), other indoor air quality issues (radon, mold), and environmental compliance. These issues may affect the amount of the subject property that can be developed, the habitability of a building, and/or the construction costs of a building’s conversion.

In addition, these procedures also may be used by church organizations for the environmental assessment of donated property and real estate purchased by church entities.

### **Classification of Real Estate**

Prior to acceptance for management or ownership, the property should be identified as one of the following types:

1. Residential—this includes typical residential property located in a residential neighborhood consisting of lots that are less than five acres in size. This type of property may be considered low risk recognizing the potential clean-up cost is not likely to exceed the fair market value of the contaminated property. It is recommended that a site/facility inspection and title search be performed by trained

personnel in satisfaction of the all appropriate inquiry requirement for residential property under the Brownfields Act of 2002.

2. **Acreage**—this includes lots of five or more acres which may be unimproved, residential, or used for agricultural purposes. This type of real estate may be considered low to moderate risk with the potential clean-up cost likely to equal or exceed the fair market value of the contaminated property. It is recommended that a site/facility inspection and title search be performed by trained personnel in satisfaction of the all appropriate inquiry requirement for residential property under the Brownfields Act of 2002. If concerns exist then it is strongly recommended that an environmental site assessment be obtained from an environmental professional as defined under the All Appropriate Inquiry Rule or ASTM E1527-05.
3. **Industrial/Commercial**—this includes property where manufacturing and other activities that might involve the use of chemicals and toxic materials are likely to take place. This type of property may be considered high risk. The potential clean-up cost and penalties may greatly exceed the fair market value of the contaminated property. It is strongly recommended that an environmental site assessment be obtained from an environmental professional as defined under the All Appropriate Inquiry Rule or ASTM E1527-05.

### **Property Evaluation**

As a first step in pre-acceptance environmental evaluation, the ownership history and previous uses of a parcel of real estate must be determined by requiring the current owner to complete an Environmental Questionnaire. A questionnaire has been designed for each classification of property, based on risk potential.

Trustors, donors, and other potential transferors should be asked to provide answers to the questions to the best of their ability and knowledge. If, after making reasonable efforts to obtain an answer to a question, the current owner still does not have the requested information or can only give a partial response, he or she should simply answer to the best of his or her ability and so indicate. It is important that the owner provide a response to every item on the questionnaire.

### **Site Inspection**

After the property is classified (residential or non-residential) and a history of its ownership and uses is obtained, an on-site inspection is necessary. The inspection should be performed by a church organization staff member who has been trained to evaluate property. The site inspection should be performed according to an environmental inspection checklist/procedures approved by the respective organization's legal counsel

The questionnaire and inspection checklist are intended as screening tools and not as a substitute for conducting an ASTM Phase I Environmental Site Assessment for purposes of satisfying CERCLA's "all appropriate inquiry" requirements and establishing an exemption or defense.

The ASTM Phase I assessment and report should be performed by an independent environmental professional qualified to conduct such an assessment.

The following list includes various features that may be indicative of environmental hazards and contamination. They are included on typical site inspection checklists and their presence on a subject property should be noted and further investigated. At the very least their presence should lead to additional interview with property owners to ascertain as much information about the feature as possible. The presence of these features may indicate the need for an ASTM Phase I Environmental Site Assessment before the property is accepted by the church organization outright or as a fiduciary. Consultation with legal counsel and an environmental professional is essential.

1. Evidence of asbestos (sprayed on fireproofing, pipe wrap, friable ceiling tiles, and acoustical plaster). Only an EPA trained inspector can make a definitive opinion as the presence of asbestos. Sample testing is generally required.
2. Discolored soil or pavement areas.
3. Recently disturbed soil area.
4. Areas of sparse, sick, or dead vegetation.
5. Discolored standing water.
6. Unusual or noxious odors.
7. Groundwater monitoring wells.
8. Roads or tire tracks with no apparent destination.
9. Drums or storage tanks.
10. Evidence of PCBs (electrical transformers, capacitors).
11. Septic system.
12. Evidence of petroleum products.
13. Evidence of chemical spills/leaks (stains on floor, discolored paint)
14. Any source of air emission (paint booths, smoke stacks, chimneys).
15. Above or underground storage tanks, vents, or filler pipes.



Certain activities may generate hazardous substances or contribute to pollution and/or contamination. Among them are:

1. Building cleaning/maintenance
2. Chemical manufacturing
3. Furniture/wood refinishing
4. Dry cleaning
5. Laboratories
6. Metal manufacturing
7. Paint shop or paint manufacturing
8. Vehicle maintenance (automotive)
9. Wood preserving

It is important that every item on the checklist be completed during the inspection. Your “due diligence” is based on strict adherence to your organization’s procedural standards.

### **Acceptance/Rejection**

Only property that has passed preliminary screening and site assessment by an environmental professional should be recommended for acceptance by the organization. When questions or concerns arise about a particular parcel of property and if the organization wants to potentially qualify for available defenses or exemptions from liability it will be necessary to obtain an assessment by a qualified environmental professional.

Property with obvious or potential environmental contamination should not be accepted by the organization until government-approved clean up has taken place (at the expense of the owner) and potential liability is eliminated.

### **Forms**

1. **Residential Property**  
Residential Environmental Questionnaire  
Residential Environmental Inspection Checklist
2. **Commercial/Industrial/Agricultural Property**  
Non-residential Environmental Questionnaire  
Non-residential Environmental Inspection Checklist

## RESIDENTIAL ENVIRONMENTAL QUESTIONNAIRE

OWNER: \_\_\_\_\_

PROPERTY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

1. Type of Structure: (brick, frame, etc.)

Evidence of Asbestos

Siding

Insulation

Pipe wrap

Evidence of underground storage tanks

Other evidence of contamination or "hazardous substances" as defined in item 12 below (including, without limitation, radon or mold)

YES	NO
YES	NO
YES	NO

If any questions are "YES" please describe:

2. Please describe current use(s) if other than residential:

3. When did you acquire the property?

a. Bought land and buildings in \_\_\_\_\_ (year)

b. Bought land in \_\_\_\_\_ (year) and added buildings in \_\_\_\_\_ (year)

4. Please provide the following names, addresses and telephone numbers.

FORMER OWNER (land and building)

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

5. Describe all prior uses of the building and land of which you have knowledge (e.g. agricultural land), and the approximate dates of such uses:

6. Do you have any reason to believe that asbestos was in the past or currently is present in any form in, on or about the property?

YES	NO
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7. Do you have any reason to believe that the property, including the land and any existing or prior buildings, was at any time in the past or currently contaminated by any “hazardous substances” as defined in item 12 below?  
If “YES”, explain:
- |     |    |
|-----|----|
| YES | NO |
|-----|----|

8. The following are situations that pose a higher risk of contamination. Check if present on the site or in the subject building:

	Lead paint
Stored batteries	Urea formaldehyde foam insulation
Stored electrical or hydraulic equipment (transformers, oil-filled switches or ballasts, etc.)	Liquid or solid waste disposal area (debris piles, burn dumps, etc.)
Above ground tanks	Septic system, cesspool, drywell, sump, leach field or other subsurface disposal

Explain in detail and give exact location of items checked.

9. Do any current occupants, or did any prior occupants of the property use, handle or store any “hazardous substances” as defined in item 12 below?  
If “YES”, explain:
- |     |    |
|-----|----|
| YES | NO |
|-----|----|

10. Is there now, or has there been, any underground tanks or pipelines (other than water, sewer, and natural gas utility lines) on the property?  
If “YES”, explain:
- |     |    |
|-----|----|
| YES | NO |
|-----|----|

11. Please **list** the names of adjoining landowners and, if such land is other than residential, specify the nature of the use of that land, including the name(s) of any businesses operated thereon, which border the property on all sides:

EAST

WEST

NORTH

SOUTH

12. To the best of your knowledge, have any of these adjoining businesses or landowners been involved in any matter in Questions 6 – 10?

YES	NO
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As used herein, the term “hazardous substance” includes any chemical, substance, oil, petroleum product, pollutant, waste or material defined, designated, or otherwise regulated as hazardous, toxic, or dangerous (or any similar term) to health, safety, public welfare or the environment by any federal, state or local statute, regulation, rule or ordinance now or hereafter in effect.

As owners of that real property which is the subject of this questionnaire, I/we are familiar with the property and the uses and operations presently conducted in the property, and I/we represent and certify for the benefit of the \_\_\_\_\_ Association of Seventh-day Adventists, that to the best of my/our knowledge:

- 1) The property and all operations thereon comply with applicable environmental laws, regulations, and court or administrative orders;
- 2) There are no pending or threatened private or governmental claims, or judicial or administrative actions or environmental liens relating to environmental impairment on the property;
- 3) There are no areas on the property where “hazardous substances” (as defined in item 12, above) have either been released, disposed of, or found, other than those that are disclosed in this Questionnaire or in the Reports attached hereto; and
- 4) True and correct copies of all Reports and Permits pertaining to the property are attached hereto. I have no knowledge that any of the information in the Reports or Permits is false or misleading in any respect.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

## RESIDENTIAL ENVIRONMENTAL INSPECTION CHECKLIST

INSPECTED BY: \_\_\_\_\_

OWNER: \_\_\_\_\_

PROPERTY: \_\_\_\_\_ ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

This property is: \_\_\_\_\_ Rural \_\_\_\_\_ Urban (within incorporated city limits)

Title Search/Ownership 50 Year Chronology (Attach additional sheet if necessary):

Date of Transfer	New Owner	Previous Owner	Recorded	
			Book	Page

List any encumbrances/liens (easements, licenses, environmental/windfall liens, etc):

- An onsite inspection revealed evidence of the following:
  - Asbestos (sprayed on fireproofing, pipe wrap, friable ceiling tiles, acoustical plaster, siding, roofing, insulation.
  - Discolored soil or pavement areas.
  - Recently disturbed soil area.
  - Areas of sparse, sick or dead vegetation or unusual bare spots.
  - Discolored standing water or oil sheens.
  - Ponds, lagoons, or unidentified pits and depressions.
  - Maintenance areas (shops and/or auto/truck operations)
  - Proximity of property to dump/landfill, known hazardous waste sites, or high risk industries.
  - Unusual or noxious odors.
  - Groundwater monitoring wells or other wells.

<u>YES</u>	<u>NO</u>

- Roads or tire tracks with no apparent destination.
- Drums or storage tanks (note type):
- PCBs (electrical transformers; oil-filled electrical equipment such as switches or light ballasts; hydraulic systems)
- Septic system, cesspool, drywell, sump, leach field, or other subsurface disposal system.
- Liquid or solid waste disposal area.
- Petroleum or oil products.
- Chemical spills/leaks (floor stains, discolored paint).
- Source of air emission (paint booths/smoke stacks/chimneys).
- Above or underground storage tanks, vent or filler pipes.
- Piles of waste or trash or unidentified mounds.
- Floodplain or coastal exposure.
- Earthquake potential.
- Extensive wetlands or drainage problems.
- Endangered plants or wildlife.
- Adjacent potentially contaminated property.
- Lead paint (in pre-1978 homes).
- Previous tests indicating radon.
- Mold or mold-inducing conditions.
- Prior or current non-residential use (industrial, commercial, agricultural, manufacturing, or otherwise).


If any of the above items are marked “YES”, explain details and exact location:

2. Note any information that could be helpful for further investigation, such as names of people you spoke with at the site, exact locations of suspect contamination, etc.
3. Please note any other observations you have regarding past, current, or possible future contamination.
4. All adjacent properties should be viewed. If any evidence of oil or hazardous substances was discovered, please describe. (Attach a plat showing (a) adjacent properties, and (b) all commercial activities within a five (5) block radius).

5. I viewed all of the site, including yard areas, vacant land, etc.

YES	NO
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If "NO" list areas not seen.

6. Based on the evaluation of known environmental factors, there is no evidence of environmental contamination on this or neighboring properties, and no further action is recommended.

7. Based on the evaluation of known environmental factors, there is evidence of environmental contamination on this or neighboring properties, and further investigation is recommended.

Reported:

By: \_\_\_\_\_  
Type name and title                      Signature                      Date

By: \_\_\_\_\_  
Type name of legal counsel                      Signature of legal counsel                      Date

## NON-RESIDENTIAL ENVIRONMENTAL QUESTIONNAIRE

OWNER: \_\_\_\_\_  
PROPERTY \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

1. Type of Business:  
(industrial, retail, office, agricultural, other commercial, medical, educational, etc.)
2. Products or services:
3. When did you acquire the property?
  - a. Bought land and buildings in \_\_\_\_\_ (year)
  - b. Bought land in \_\_\_\_\_ (year) and added buildings in \_\_\_\_\_ (year)
  - c. Leased building in \_\_\_\_\_ (year)
4. Please provide the following names, addresses and telephone numbers.

### FORMER OWNER (land and building)

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

### BUILDING ARCHITECT

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

### GEOTECHNICAL (SOILS) ENGINEER

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_



5. Describe all prior uses of the building and land of which you have knowledge (e.g. agricultural, building used for vehicle maintenance, multi-tenant industrial occupancy, etc.), and the approximate dates of such uses:

6. Do you have any reason to believe that asbestos was in the past or currently is present in any form in, on or about the property? YES NO

7. Do you have any reason to believe that the property, including the land and any existing or prior buildings, was at any time in the past or currently contaminated by any "hazardous substances" as defined in item 19 below? YES NO  
If "YES", explain:

8. The following are situations that pose a higher risk of contamination. Check if present on the site or in the subject building:

<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="height: 20px; width: 20px;"></td><td>Drums or other containers stored of hazardous substances stored on site</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Stored batteries</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Stored electrical or hydraulic equipment (transformers, oil-filled switches or ballasts, etc.)</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Above ground tanks</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Railroad or pipeline easements</td></tr> </table>		Drums or other containers stored of hazardous substances stored on site		Stored batteries		Stored electrical or hydraulic equipment (transformers, oil-filled switches or ballasts, etc.)		Above ground tanks		Railroad or pipeline easements	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="height: 20px; width: 20px;"></td><td>Septic system, cesspool, drywell, sump, leach field or other subsurface disposal</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Urea formaldehyde foam insulation</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Liquid or solid waste disposal area (debris piles, burn dump, landfill, etc.)</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Mold</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Lead paint</td></tr> </table>		Septic system, cesspool, drywell, sump, leach field or other subsurface disposal		Urea formaldehyde foam insulation		Liquid or solid waste disposal area (debris piles, burn dump, landfill, etc.)		Mold		Lead paint
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Explain in detail and give exact location of items checked.

9. Do any current occupants, or did any prior occupants of the property use, handle or store any "hazardous substances" as defined in item 19? YES NO  
If "YES", explain:

10. The following are situations that pose a higher risk of contamination. Check if present on the site or in the subject building:

<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="height: 20px; width: 20px;"></td><td>Service/Gas Station</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Chemical Manufacturing</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Dry Cleaners</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Metal Manufacturing or Processing</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Waste Treatment, Storage, Disposal or Recycling</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Oil or Gas Operations</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Photo Developing</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Junkyard/Landfill</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Wood Preserving</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Other (please explain)</td></tr> </table>		Service/Gas Station		Chemical Manufacturing		Dry Cleaners		Metal Manufacturing or Processing		Waste Treatment, Storage, Disposal or Recycling		Oil or Gas Operations		Photo Developing		Junkyard/Landfill		Wood Preserving		Other (please explain)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="height: 20px; width: 20px;"></td><td>Building Cleaning/Maintenance</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Furniture/Wood Refinishing</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Laboratories</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Paint Shop Manufacturing</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Vehicle Maintenance or Repair/ Automotive</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Agricultural</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Commercial Printing</td></tr> <tr><td style="height: 20px; width: 20px;"></td><td>Filling</td></tr> </table>		Building Cleaning/Maintenance		Furniture/Wood Refinishing		Laboratories		Paint Shop Manufacturing		Vehicle Maintenance or Repair/ Automotive		Agricultural		Commercial Printing		Filling
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11. Is there now, or has there been, any underground tanks or pipelines (other than water, sewer, and natural gas utility lines) or railroads on or adjacent to the property? YES NO  
 If "YES", explain:

Provide evidence of permits.

12. List all occupants of the property (owner and/or tenants). Nature of business and products produced in each business on the property.

	Name of Occupant	Nature of Business	Products Produced
a.			
b.			
c.			
d.			
e.			

- 12A. For each occupant listed above, attach copies of all applicable permits which are required for the operation of the occupant's business on the property.

13. Please **list** the names of adjoining landowners and the names and natures of businesses which border the property on all sides:

EAST

WEST

NORTH

SOUTH

14. To the best of your knowledge, have any of these adjoining businesses or landowners been involved in any matter in Questions 7 – 10? YES NO
15. Does any portion of this property lie within a 100 year flood plain? YES NO
16. Are there any streams which cross property? YES NO
17. Are there any wells on the property? YES NO  
 Use of water: \_\_\_\_\_drinking \_\_\_\_\_process\_\_\_\_\_agricultural?

18. If this property is/has been a landfill, what kind of records (permits, manifests, etc.) were kept?

19 Are you aware of any reports, surveys, investigations or test results (the "Reports") for this property? YES NO

If "YES", please list and attach copies of any such items which are in your possession.

Name of Report

Prepared By

Date

As used herein, the term "hazardous substance" includes any chemical, substance, oil, petroleum product, pollutant, waste or material defined, designated, or otherwise regulated as hazardous, toxic, or dangerous (or any similar term) to health, safety, public welfare or the environment by any federal, state or local statute, regulation, rule or ordinance now or hereafter in effect.

As owners of that real property which is the subject of this questionnaire, I/we are familiar with the property and the uses and operations presently conducted in the property, and I/we represent and certify for the benefit of the \_\_\_\_\_ Association of Seventh-day Adventists, that to the best of my/our knowledge:

1) The property and all operations thereon comply with applicable environmental laws, regulations, and court or administrative orders;

2) There are no pending or threatened private or governmental claims, or judicial or administrative actions or environmental liens relating to environmental impairment on the property;

3) There are no areas on the property where "hazardous substances" (as defined in item 19, above) have either been released, disposed of, or found, other than those that are disclosed in this Questionnaire or in the Reports attached hereto; and

4) True and correct copies of all Reports and Permits pertaining to the property are attached hereto. I have no knowledge that any of the information in the reports or Permits is false or misleading in any respect.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**NON-RESIDENTIAL  
ENVIRONMENTAL INSPECTION  
CHECKLIST**

INSPECTED BY: \_\_\_\_\_

OWNER: \_\_\_\_\_

PROPERTY \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

This property is:

\_\_\_\_\_ Rural \_\_\_\_\_ Urban (within incorporated city limits)

\_\_\_\_\_ Zoned Commercial \_\_\_\_\_ Zoned Industrial

\_\_\_\_\_ No Improvements \_\_\_\_\_ Improved

\_\_\_\_\_ Developed (Describe type and extent of development):  
\_\_\_\_\_  
\_\_\_\_\_

Type of Business: \_\_\_\_\_

Describe Structure: \_\_\_\_\_

Briefly describe business activity:  
\_\_\_\_\_  
\_\_\_\_\_



If any of the above items are marked “YES”, explain details and exact location:

2. The following types of activities may generate hazardous substances. Check if any are present in the property:

<input type="checkbox"/>	Service/Gas Station	<input type="checkbox"/>	Building Cleaning/Maintenance
<input type="checkbox"/>	Chemical Manufacturing	<input type="checkbox"/>	Furniture/Wood Refinishing
<input type="checkbox"/>	Dry Cleaners	<input type="checkbox"/>	Laboratories
<input type="checkbox"/>	Metal Manufacturing or Processing	<input type="checkbox"/>	Paint Shop Manufacturing
<input type="checkbox"/>	Waste Treatment, Storage, Disposal or Recycling	<input type="checkbox"/>	Vehicle Maintenance or Repair/ Automotive
<input type="checkbox"/>	Oil or Gas Operations	<input type="checkbox"/>	Agricultural
<input type="checkbox"/>	Photo Developing	<input type="checkbox"/>	Commercial Printing
<input type="checkbox"/>	Junkyard/Landfill	<input type="checkbox"/>	Filling
<input type="checkbox"/>	Wood Preserving	<input type="checkbox"/>	
<input type="checkbox"/>	Other (please explain)	<input type="checkbox"/>	

- a. List all products, services manufactures, services sold:
  - b. List all by-products created:
  - c. List all waste products:
3. Note any information that could be helpful for further investigation, such as names of people you spoke with at the site, exact locations of suspect contamination, etc.
  4. Please note any other observations you have regarding past, current, or possible future contamination.
  5. All adjacent properties should be viewed. If any evidence of hazardous substances was discovered, please describe. (Attach a plat showing (a) adjacent properties, and (b) all commercial activities within a one (1) mile radius).

6a. I viewed all tenant spaces.

YES	NO
-----	----

List tenants and nature of business:

- a.
- b.
- c.
- d.

List spaces not seen (Tenant Name – Suite No.)

- a.
- b.
- c.
- d.

6b. I viewed all of the site, including yard areas, vacant land, etc.

YES	NO
-----	----

If “NO” list areas not seen.

7. Interviewed Fire Department

YES	NO
-----	----

Interviewed Health Department and Conservation Commission

YES	NO
-----	----

If “YES”, results:

8. Are aerial photos and Sanborn Insurance Maps available?

YES	NO
-----	----

If “YES”, dates of photos/maps:  
Have they been reviewed?

9. Does current occupant have any permits from:

State Water Pollution Control       State Air Pollution Control       EPA

If any, describe purpose.

10. How is wastewater handled?

11. Are any hazardous substances/waste stored on site:

YES	NO
-----	----

If “YES”, explain:

12. Does the property or any site within 1 mile of the property appear on any state or federal list of hazardous substance/waste site (i.e., National Priorities List)?

YES	NO
-----	----

Based on the evaluation of known environmental factors, there is no evidence of environmental contamination on this or neighboring properties, and no further action is recommended.

Based on the evaluation of known environmental factors, there is evidence of environmental contamination on this or neighboring properties, and further investigation is recommended.

Reported:

By: \_\_\_\_\_  
Type name and title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Type name of legal counsel

\_\_\_\_\_  
Signature of legal counsel

\_\_\_\_\_  
Date