

Selecting a Treatment, Storage and Disposal Facility

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Choosing the right Treatment, Storage and Disposal Facility (TSDF) for your wastes is often a tricky undertaking. There are many important factors to consider. What kinds of wastes are involved? How much does it cost? How far is it from your plant?

But the most important consideration should be: What are the chances that this site will turn into a Superfund Site and how can you minimize your company's liability?

Many companies simply rely on their waste brokers or transporters to select their hazardous wastes' final destination. That's probably not a good idea. You should at least perform some kind of due diligence on your own. This article describes some of the practical steps you can take to reduce your liability.

Superfund (also known as CERCLA – Comprehensive Environmental Response Compensation Liability Act) is the federal law passed by Congress in 1980 that contains “joint and several” liabilities for waste generators. More about these liabilities later.



Obtaining an audit package

If you are considering a TSDF as the final destination for your wastes, the first thing to

A Case Study: The writer had an experience with a large TSDF in Puerto Rico several years ago. The facility was audited by its own corporate staff and found to be in violation of numerous conditions of its RCRA Permit. The company self-disclosed these violations to EPA and the Puerto Rico Environmental Quality Board and settled the case by paying over \$1 million to the agency. Part of the settlement included a Consent Decree with the agency agreeing to correct all the problems uncovered in the self-audit. The facility was not able to service its regular customers for several months while correcting those problems. Once the problems had been addressed, the company approached its customers again to ask for business. Several clients in Puerto Rico asked the writer whether they should use this TSDF again or not. The writer requested a copy of the Consent Decree from the corporate office and reviewed it with several attorneys. The Consent Decree contained some very severe penalties for future violations and the collective judgment was made that the performance of the facility would most likely improve significantly as a result of this settlement. The recommendation was to use this facility again.

do is call the facility and request an audit package. This is a package prepared by the TSDF that should contain specific permit information, EPA ID#, insurance coverage, compliance records, etc. Make sure the company has adequate insurance to cover some of the initial

cleanup costs. If the company is reluctant or refuses to provide an audit package for you, take your business some place else.

Review the facility's own compliance records. What you are looking for is not necessarily a perfect clean bill of health from the agencies. It is rare to see a TSDF that does not have some past violations. What you want to focus on is the nature of the violations **and** how the facility has dealt with those violations. Are they adequately addressing those violations in a timely manner? Or do they simply just pay the fines and treat them as another cost of doing business? Do you see a pattern of repeat violations? How serious are those violations? Call the facility and ask questions. There are no hard and fast rules on how many violations are deemed acceptable. It is a matter of judgment.

If you want additional information about the compliance history of the TSDF, you can always contact your local enforcement agency and ask for public records or ask to speak with the inspector who is assigned to that facility. DTSC does not maintain a central file of compliance records for all TSDFs. The individual records are kept in the DTSC regional offices so you will need to know which office has jurisdiction over your TSDF. You can request records by phone, fax or letter. The California Public Records Act requires the Department of Toxic Substances Control (DTSC) to respond to your request for non-confidential public records with 10 working days. You are not allowed to take files from the office but you can request copies (15 cents per page for a maximum of 50 pages) be sent to you.

DTSC Regional Offices:

Sacramento:	Tel: 916-255-3545 Fax: 916-255-3785
Clovis:	Tel: 559-297-3901 Fax: 559-297-3904
Berkeley:	Tel: 510-540-2122 Fax: 510-540-3738
Glendale:	Tel: 818-551-2800 Fax: 818-551-2841
Cypress:	Tel: 714-484-5300 Fax: 714-484-5302
San Diego:	Tel: 619-278-3734 Fax: 619-278-3736

In other states, you should be able to obtain enforcement records through state laws similar to the federal Freedom of Information Act.

Another source of enforcement records is the Right-To-Know Network. Go to this website: <http://d1.rtknet.org/rcr/fac> and type in the facility's name or

EPA ID number. Once linked, you will see a summary of the facility's treatment unit processes as well as a listing of recent violations and amounts of penalty paid.

Obtain a share risk profile

Given the "joint and several" liability aspect of the Superfund Law, it is critical for you to know what companies ship what wastes to the TSDF. Why? In the event that this site turns into a Superfund site, you and ALL the other companies that ship wastes to this site (collectively known as Potentially Responsible Parties - PRPs) will be held "jointly and

severally” liable for the ENTIRE cleanup cost of the site. You want to make sure that many other financially viable companies also ship wastes to this site. The more viable PRPs there are at the site to share the cleanup cost, you less you need to pay out. On the other hand, if you are the only financially viable PRP and all the other PRPs are small companies that may go out business, you will most likely be left holding the bag for the entire cost.

So how do you find out who shipped what wastes to the TSDF you are considering?

In California, you can contact DTSC and request a CD-ROM containing listings of companies that ship wastes to that site as well as the amount and type of wastes shipped. This information comes from the waste manifests DTSC collects. The most current file covers calendar year 2000. To obtain the CD-ROM, you need to send \$25 with your mailing address to the attention of Ivy Abesamis, DTSC, PO Box 806, Sacramento, CA 95812-0806. Mention in a note that you are requesting the “TanGen Reports”. Once your check is cleared, someone at DTSC will mail you the CD-ROM. You will need to open those files as data files using Microsoft Access. You cannot use your Excel spreadsheet because it is not large enough to hold all the entries. There are close to 240,000 separate entries for calendar year 1999.

Now what do you do with this information? Let’s look at two examples: One large and one small TSDF in California. At the large TSDF, wastes from over 1900 generators were received in 1999 with 15 generators each shipping more than 40 tons. The largest amount was 221 tons from a major pharmaceutical company. The CD-ROM also shows that the 30 largest generators made up 50% of the total waste shipment received at this site and that these large generators are mostly major corporations and/or government agencies. If this TSDF were to turn into a Superfund site later, the probability that these large generators and contributors would default on the cleanup costs is relatively low. That means you would not likely be held liable for their shares of the cleanup costs under Superfund’s joint and several liability provision. (Note again that you can never eliminate your Superfund liability as a generator). But you can sure minimize it.

On the other hand, the small TSDF example received hazardous wastes from only 540 generators and most of the major generators are small companies. If these small companies were to default on their shares of the superfund liability, you would be left holding the bag. You should avoid sending your wastes to such a site.

Third Party Audits

If you plan to ship a lot of wastes to a TSDF, you might want to consider doing an audit of the facility. You can visit the site yourself and review their records and observe how they store and manage their hazardous wastes. If the place has poor general housekeeping and there is evidence of spills everywhere, you might want to look elsewhere.

Another approach is to hire outside consultants to audit the site for you. Make sure the consultant you hire is experienced in doing TSDF audits.

There are also companies out there that audit major TSDFs on their own and then offer to sell their audit reports to generators. Their reports will also include publicly available information and summaries of who are shipping what type of wastes to that site.

For additional information about the process of selecting TSDF, contact Norman Wei at norman@proactenv.com. He is the principal of Environmental Management and Training, LLC. – a firm that provide consulting services and environmental compliance seminars to major corporations. Website is www.proactenv.com.