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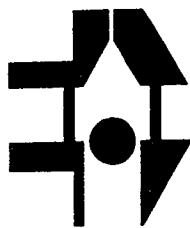
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Agriculture & Natural Resources

# AGRICULTURAL ECONOMICS

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## Environmental Liability For Alabama Agricultural Landowners: A Preliminary Environmental Site Assessment Guide

**T**his guide is intended to help Alabama agricultural landowners collect a file of background information needed to prepare a Preliminary Environmental Site Assessment (PESA). This document may be helpful should the property ever be sold. The file should be maintained so that, as records are lost and recollections fade, vital information will be readily available to help preserve the full value of the property.

Federal and state environmental regulations have mushroomed over the past decade and have significantly influenced real estate transactions. Regulation of wetlands and petroleum storage tanks and disposal of hazardous wastes must all now be considered in any land transaction. The most important regulations involved are the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), The 1990 Food Agriculture and Trade Act (FACTA), the 1972 and 1977 Clean Water Acts (CWA), and the Resource Conservation and Recovery Act (RCRA).

The impact of environmental legislation is significant for Alabama owners of rural land as well as commercial property. Prospective landowners in Alabama should protect themselves from unintentional expo-

sure to "environmental liability." In other words, new landowners may find themselves liable for thousands of dollars in cleanup costs if illegal waste dumping is discovered on their property. Many lending institutions in Alabama already have taken steps to reduce their risk of acquiring such tainted property. In fact, prospective landowners who intend to finance land purchases through one of these banks should already be at least partially protected by actions taken by the bank before any funds are advanced.

All of the laws mentioned above affect landowners by impacting on both the current and future value of real property. The banking community is concerned that potential environmental risks associated with real estate may restrict or increase the cost of credit. The steps suggested in this publication should help landowners do what they can to avoid environmental liability. Some of these steps should be taken whether or not the owner ever intends to sell the land.

### What Is A PESA?

In a recent survey of Alabama bankers, 44 percent indicated that their institution had a written environmental liability policy. Almost all of the banks

and all the "institutional" lenders (PCA, FmHA, FLB) relied on "Preliminary Environmental Site Assessments" (PESA's) to determine whether or not a particular property was likely to be subject to environmental liability for cleanup costs. A recent survey of bankers indicated that environmental audit or site assessment costs averaged about \$1,000, but costs can commonly run as high as \$2,500.

These site assessments or PESA's generally involve several simple steps. Any property owner can collect most of the information needed for a PESA. Even if you already own property and don't presently plan to sell it, you may consider collecting some of the information required in a typical PESA. If you or your heirs ever consider selling, the information you collect now could save thousands of dollars. You may use the forms provided here or get the forms used by a local bank or other lending agency (FmHA, FLB, or PCA).

Agricultural property may be contaminated by the accumulation of pesticides and fertilizer residues that are applied in normal agricultural practices, but this is very unlikely. Unfortunately, other sources of contamination are much more common.

Improper disposal of pesticide containers, sprayer mixing and filling sites, oil storage sites, and improper storage of fertilizer can result in "hot" spots on the farm. Farms commonly have one or more gas or oil storage tanks. Leaks from these tanks can contaminate surrounding soil. Finally, septic tanks and livestock waste lagoons may fail, damaging the surrounding environment. PESA's for agricultural land should take these unique risks into account.

## **Components Of A PESA**

**A. A historical review of use and improvements to the property; verification of whether past owners or tenants have stored, created, or discharged hazardous materials or petroleum products; a review of procedures used to handle such materials where appropriate.**

One of the main parts of a PESA can be completed without visiting the property. A history concerning uses of the property is needed, showing who has owned the property and how they used it. This record should go back 50 years, if possible. A list of previous owners can be retrieved from courthouse records. Records should be examined for any uses that might have involved hazardous materials. A list of names and addresses of previous owners should be maintained. These persons should be contacted, if possible, and asked to describe their uses of the property. For a suggested list of questions to use in these interviews, see page 4, Interview With Previous Owner, and page 3, Interview With Tenants And Neighbors.

**B. A review of building, planning, zoning, sewer, water, fire, environment, and other departmental records, both**

**for subject property and adjoining sites.**

The historical record review should also include records of various government agencies that might have records of the property. The Department of Health, Zoning Board, Highway Department, or other state and local agencies are among those that should be contacted.

**C. A review of Alabama Department of Environmental Management (ADEM) records.**

The ADEM hotline number is 800-533-2336. A call to ADEM will let you know if there are any hazardous waste sites or clean water act violations, such as lagoon overflows, on or near your property. ADEM can also tell you if your property, or any previous owner, was ever the subject of action or proposed action related to environmental concerns.

**D. A review of Environmental Protection Agency (EPA) superfund records.**

A call to the EPA Hazardous Waste and Superfund hotline at 800-424-9346 will provide information about how to check your area for hazardous waste hotspots. The National Priorities List of Superfund Sites is published periodically in the Federal Register and is available in most libraries. The list is also available in "State Books," which not only list the sites in Alabama, but provide a brief description. They are published annually and are available for a fee from the National Technical Information Service (800-553-6847). Ask for publication number PB 93-963 for Alabama.

**E. An on-site inspection, documenting any of use of hazardous materials in buildings.**

If a PESA is ever performed on your property, the assessor will be looking for specific

things. The following list is typical.

1. Bad "housekeeping" or general lack of sanitation.
2. Aboveground or underground storage tanks.
3. Chemical or waste storage areas.
4. Drums or other containers of agricultural chemicals, other hazardous materials, or waste materials.
5. Containment systems to control potential spills or unintentional releases of agricultural chemical or petroleum products.
6. Any evidence of spills or leaks of agricultural chemicals or petroleum products.
7. Floor drains in buildings.
8. Condition of ponds and lagoons, lakes, streams, or other surface water.
9. Pollution control facilities and equipment, especially livestock waste handling systems.
10. Waste debris piles or accumulations for recycling or resale.
11. Stained or discolored soils, buildings, floors, or other interior or exterior surfaces.
12. Evidence of hazardous materials on neighboring property.
13. Land disposal areas, such as dumps, trenches, or landfills.
14. Presence of dead or stressed vegetation, chemical odors.
15. Existence of wetland areas.
16. Presence of suspected asbestos materials.

The landowner should begin now to document the present condition of the property as it relates to hazardous waste. A map or current aerial photo may be used to denote present uses of the land, as well as to locate buildings and improvements and livestock waste facilities, if any.

One of the major sources of potential contamination is livestock manure lagoons. The condition of these should be noted, along with a record of past clean-outs.

The location of barns and equipment buildings should also be noted, along with ag-chemicals and pesticide storage areas. For each present building, list construction date and the date of any renovations or additions, along with present and previous uses of the structure. Above-ground and underground petroleum storage tanks should also be identified.

**G. Analysis of old aerial photos to determine construction or destruction of buildings and the existence and loca-**

**tion of ponds, buildings, and potential disposal areas over time.**

**H. Interviews with neighbors to determine prior uses of the property.**

A list of tenants or neighbors should also be developed. These should be contacted and asked to describe previous uses of the property. A form for conducting these interviews is also provided on page 3.

**I. Review of building records and inspection of buildings for asbestos.**

**Farmland Environmental Checklist**

Landowners should complete a Farmland Environmental Checklist after the information

noted above has been collected. A sample checklist is included on pages 6-8, or one can be obtained at a local lending institution. This document will provide a "snapshot" of the environmental condition of the land at the present time. As subsequent checklists are completed over succeeding years, evidence of the environmental health and safety of the property will be assured. Environmental checklists should be completed whenever any event with environmental significance occurs. For example, when fuel tanks are removed or livestock feeding operations cease.

## Interview With Tenants And Neighbors

Date \_\_\_\_\_ Time \_\_\_\_\_

Interviewer \_\_\_\_\_

Type Interview:  Tenant  Neighbor

1. Time in residence: Moved near or on property: \_\_\_\_\_ (date)

Have knowledge of property since: \_\_\_\_\_ (date)

2. Previous owners and uses of property:

Previous Owner \_\_\_\_\_

Dates \_\_\_\_\_

Uses \_\_\_\_\_

3. To your knowledge, have any hazardous materials or toxic substances been used, stored, or disposed of on the subject property?

No  Yes  If yes, describe:

4. To your knowledge, have any oil, gas, or other petroleum products been stored or disposed of on the subject property?

No  Yes  If yes, describe:

5. To your knowledge, have any oil, gas, or other petroleum products been stored or disposed of on adjoining property?

No  Yes  If yes, describe:

6. Do you know of any underground storage tanks?

No  Yes  If yes, please describe their location:

# Interview With Previous Owner

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Phone \_\_\_\_\_

1. Dates of ownership \_\_\_\_\_

2. Please describe your use of the property:

3. To your knowledge, have any hazardous materials or toxic substances been used, stored, or disposed of on the subject property?

No  Yes  If yes, describe:

4. To your knowledge, have any oil, gas, or other petroleum products been stored or disposed of on the subject property?

No  Yes  If yes, describe:

5. To your knowledge, have any hazardous materials, oil, gas, or other petroleum products been stored or disposed of on adjoining property?

No  Yes  If yes, describe:

6. Do you know of any underground storage tanks on the subject property?

No  Yes  If yes, please describe their location:

7. Was the subject property ever used for any non-agricultural purpose?

No  Yes  If yes, describe:

8. Are there any past, pending, or threatened actions by any federal, state, or local enforcement agencies involving environmental conditions on the property?

No  Yes  If yes, please explain:

9. Do you know of any past, pending, or threatened actions by any federal, state, or local enforcement agencies involving environmental conditions on any adjacent property?

No  Yes  If yes, please explain:

10. Are there any past, pending, or threatened actions by any federal, state, or local enforcement agencies involving environmental conditions against you on any property you own or have owned?

No  Yes  If yes, please explain:

11. Are there any past, pending, or threatened civil lawsuits brought against you or any former owner of this property because of alleged violations of environmental laws?

No  Yes  If yes, please explain:

12. Have you or any previous owner, operator, or tenant received any Requests for Information, Notice, or Demand Letters or administrative inquiries from any governmental agency with regard to environmental practices on the property?

No  Yes

13. Have you or any previous owner, operator, or tenant performed or had performed on your behalf an Environmental Site Assessment?

No  Yes

14. Have any environmentally related insurance claims been made under any insurance policies of the present or previous owners, operators, or occupants of the property?

No  Yes

# Farmland Environmental Checklist

The following information provided by the owners is current as of \_\_\_\_\_, 19\_\_\_\_. It does not reflect any changes after that date. This information is not provided as a warranty of any kind.

1. Are there any active or abandoned wells on the property?  
 Uncertain  No  Yes

2. If the answer to question 1 is yes, describe the age, location, depth, purpose, construction, closure, and any sampling of the wells. Note also the proximity of any wells to fuel tanks, cattle feeding areas, or disposal areas.

3. Has municipal or industrial sludge ever been used for fertilizer on the farm?  
 Uncertain  No  Yes

4. If the answer to question 3 is yes, describe during what years and for how long the sludge was used, the source of the sludge, which fields were fertilized, and whether any permits were obtained.

5. Is there a livestock facility on the property?  
 Uncertain  No  Yes

6. If the answer to question 5 is yes, state whether it meets EPA standards, if it has a discharge to a stream or waterway, whether a permit has been obtained, and the distance to any active or abandoned wells.

7. Has the farm operator disposed of empty or unneeded agricultural chemical containers or their contents?  
 Uncertain  No  Yes

8. If the answer to question 7 is yes, describe the materials disposed of, the location on the farm, the amounts disposed of, and distance of disposal area to any active or abandoned wells.

9. Does the farm house or do other buildings have asbestos insulation or building materials?  
 Uncertain  No  Yes

10. If the answer to question 9 is yes, describe the type, quantity, condition, and location of the buildings which have asbestos.

11. Have you ever suspected, or do you know, that hazardous or toxic substances or petroleum products have been dumped, disposed of, discharged, spilled, or stored on your property?  
 Uncertain  No  Yes

12. If the answer to question 11 is yes, state the basis of your suspicion or knowledge, describe the activity and the location, and describe the distance to any active or abandoned wells.

13. Is there a location described in question 12 above on neighboring or adjacent property?

Uncertain  No  Yes

14. If the answer to question 13 is yes, state the basis of your suspicion or knowledge, describe the activity and the location, and describe the distance to any active or abandoned wells.

15. Are there any discarded or stored containers of agricultural chemicals, either empty, partially full, or full, in barns, sheds, or any other locations of the property?

Uncertain  No  Yes

16. If the answer to question 15 is yes, describe the types of chemicals and containers, describe the location and quantity, and describe the distance to any active or abandoned well.

17. Are there any existing fuel tanks on the property?

Uncertain  No  Yes

18. If the answer to question 17 is yes, describe their use, type, size, location, and age, whether there have been any spills or leaks, and distance to any active or abandoned well.

19. Have any fuel tanks been removed?

Uncertain  No  Yes

20. If the answer to question 19 is yes, describe the tanks and their locations, whether any such tanks were found to be leaking, whether any contamination was found, whether the state was notified, and what cleanup occurred.

21. Has any part of the land been used for any purpose other than farming?

Uncertain  No  Yes

22. If the answer to question 21 is yes, for what purpose was the land used and when.

23. Is there or has there ever been an agricultural chemical plant for herbicide, pesticide, or fertilizer formulation or distribution located on the property?

Uncertain  No  Yes

24. If the answer to question 23 is yes, describe the operation, where it was located, what years it was in operation, when it was removed, and distance to any active or abandoned wells.

25. Is the farm lacking in any areas that would bring it into full compliance with all federal and state laws related to the farm programs?

Uncertain  No  Yes

26. If the answer to question 25 is yes, please explain the deficiencies.

27. Have you ever plowed pasture or tilled or drained wetlands without SCS approval?

Uncertain  No  Yes

28. If the answer to question 27 is yes, describe whether the conversion was in violation of sodbuster/swampbuster regulations and whether the land was restored to ASCS and SCS conditions.

29. Is there endangered species habitat? Are any endangered species present?

Owner verifies that the answers given above are true and accurate to the best of the owner's knowledge at the time of preparation.

Signed \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ Date

\_\_\_\_\_ Owner(s)



**Circular ANR-886**

**Bob Goodman, Extension Economist**

For more information, call your county Extension office. Look in your telephone directory under your county's name to find the number.

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