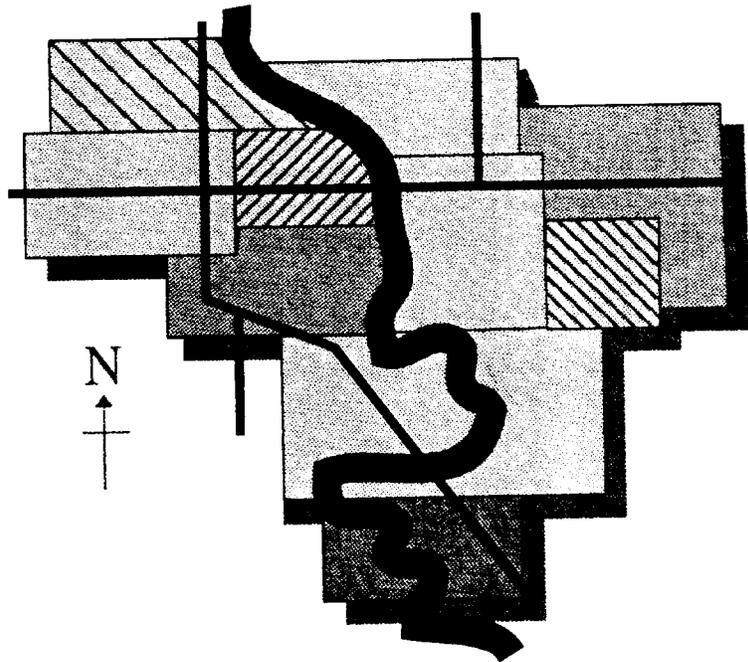

What about Real Estate?



As discussed previously, under CERCLA, persons responsible for costs of cleaning up contaminated properties includes the owner or operator of the facility and any person who at the time of disposal owned or operated the facility. For this reason, it is important that as a division/district commander, you be aware of:

- ! the potential liabilities associated past property ownership,
- ! the liabilities incurred when purchasing contaminated property, and
- ! regulatory requirements related to Federal real estate transactions.

Whenever Federal property is being sold or transferred, CERCLA requires disclosure of hazardous substance activity. If the hazardous substances are known to have been released or disposed of on the property, or if the property was used to store hazardous substances for one year or more, this information is required to be disclosed in the sales contract. The notice is required to include:

- ! the name of the hazardous substance;
- ! the Chemical Abstracts Services Registry Number where applicable;
- ! the regulatory synonym as listed in 40 CFR 302.4;
- ! where applicable, the RCRA hazardous waste number specified in 40 CFR 261.30;
- ! the quantity of the substance in kilograms and pounds; and
- ! the dates that storage, release and/or disposal occurred.

Additionally, the recently passed Community Environmental Response Facilitation Act of 1992 requires uncontaminated property to be identified as such when transferring Federal real estate. The basis of the determination must include at a minimum, the following information concerning the current and previous uses of the property:

- ! a detailed search of Federal Government records pertaining to the property;
- ! recorded chain of title documents regarding the real property;
- ! aerial photographs that may reflect prior uses of the property and that are reasonably obtainable through state or local governments agencies;
- ! a visual inspection of the real property and any buildings, structures, equipment, pipes, pipeline, or other improvements on the property and a visual inspection of properties immediately adjacent to the property;
- ! a physical inspection of property adjacent to the real property, to the extent permitted by owners or operators of such property;
- ! reasonably obtainable Federal, state, and local government records of each adjacent facility where there has been a release of any hazardous substance or any petroleum product on the property;
- ! interviews with current or former employees involved in operations on the real property; and
- ! sampling if appropriate.

The deed for uncontaminated property is required to contain:

- ! a covenant warranting that any response action or corrective action found to be necessary after the date of sale or transfer shall be conducted by the United States and
- ! a clause granting the U.S. access to the property in any case in which a response action or corrective action is found to be necessary.

Real estate records play a critical part in establishing liability for remediation costs. Section 107 of CERCLA defines persons responsible for the costs of cleaning up hazardous substances and includes past and present property owners and operators. For this reason, real estate records play a major role in all remediation projects.

- ! Under the Superfund program, EPA is authorized to force potentially responsible parties (PRPs) to clean up sites and to seek cost recovery from the PRPs.
- ! Under the Base Realignment and Closure Program, sites slated for closure are required to be remediated prior to disposition.
- ! Under the Formerly Used Defense Site Program, the Corps of Engineers is responsible for assessing whether contamination resulted from Federal activities and if so to ensure remediation.