

ENVIRONMENTAL CONTAMINATION: WHAT GENERAL CONTRACTORS NEED TO KNOW

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Environmental Contamination: Waste Management Issues That May Impact General Contractors.

Environmental contamination at a project site raises a variety of issues. One issue concerns the applicability of waste management requirements to contaminated material that is excavated.

Contractors usually become aware of environmental contamination at a project site in one of two ways. First, the contractor is told environmental contamination exists before work begins. Second, environmental contamination is discovered during field activities.

Why Does Environmental Contamination Raise Waste Management Issues? As a general rule, excavating contaminated soil results in the generation of waste. Depending on the nature of that waste, it may be subject to hazardous waste, solid waste, or other state or federal requirements.

What Information Should Contractors Obtain If the Project Site Has Known Environmental Contamination? Knowing contamination exists at a project site before commencing field work is beneficial in many ways. If the site has known contamination, the facility manager or property owner already may have sufficient information to determine how contaminated materials that may be removed should be managed. In these cases, contractors should obtain as much information as possible from the owner or facility manager regarding the nature of the contamination (e.g., what chemicals or wastes are involved) and the location and levels of contamination. This information is necessary to properly manage any contaminated material that may be removed and to safeguard site workers.

What If the Project Is Outside the Contaminated Area? Even if the project occurs outside the contaminated area, it still could impact any planned or ongoing cleanup activities. For example, soil vapor extraction or groundwater pump and treat systems will include a network of underground pipes that may extend outside the contaminated area. Therefore, the contractor needs to know the location of those pipes so its activities do not interfere with or damage the system. By understanding how cleanup systems operate, contractors can minimize the potential that their activities will adversely impact any planned or ongoing cleanup projects.

What Are the Waste Management Issues? Waste management issues may arise if environmental contamination is discovered during the project or if the project will occur in an area with known

contamination. The following is a brief discussion of some of those issues.

a. Characterizing the contaminated material. If contaminated material will be removed, it must be characterized so it can be managed appropriately. Characterization usually involves sampling the contaminated material to identify the chemicals and other materials (e.g., asbestos) that are present. Before obtaining samples, contractors should work with the facility or the owner to determine who will be responsible for characterizing the waste. Generally, property owners and facility managers are in a better position to perform the characterization because of their knowledge of historic site activities.

b. What if the material is hazardous waste? As previously stated, the general rule is once contaminated soil is excavated, it is considered generated and must be managed in compliance with the hazardous waste regulations if it is a hazardous waste. The hazardous waste regulations include requirements that apply to how the waste is stored, limits on storage time, and requirements that apply to waste disposal. By excavating contaminated material or performing other activities that cause a waste to be generated, contractors can be subject to the hazardous waste requirements. For this reason, contractors should work with the facility manager or property owner to determine who will be responsible for complying with these requirements.

c. What if the material is not hazardous waste? Even if the contaminated material is not hazardous waste, it still may be subject to other federal or state requirements, such as PCB or asbestos regulations or state solid waste disposal requirements. Therefore, waste characterization can not solely focus on hazardous waste issues. Even if the waste is nonhazardous and is not subject to other federal requirements, individual states may have their own unique requirements governing the management and disposal of contaminated material.

If you have any questions or would like additional information on Superfund, hazardous waste, or Brownfields, please contact the author of this article, Michael T. Scanlon, Esq., Barnes & Thornburg, at (317) 231-7387 or via e-mail at michael.scanlon@btlaw.com.

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