

TJAGSA Practice Note

Faculty, The Judge Advocate General's School, U.S. Army

Contract & Fiscal Law Note

Make Your Friends "Green" With Envy Environmental Law Basics For Installation Contract Law Personnel

Introduction

Today's military emphasizes "buying green;" that is, acquiring goods and services that are "friendly" to the environment. Today's military also emphasizes administering contracts in an environmentally conscious way. Because of this emphasis, many environmental traps exist for the installation contracting officer and the contract law attorney. In fact, there are probably more environmental surprises for the contract law attorney than there are contracting surprises for the environmental law attorney. This note highlights basic environmental law concepts relevant to the contracting process to help contracting personnel avoid falling into those traps.

This note analyzes the basics of environmental contracting at both the formation and administration stages. It focuses on the formation stage because that is where most environmental contracting requirements exist. The note discusses several environmental statutes which contracting officers and their legal advisors must understand when analyzing contracting issues. The note will not discuss clean up and restoration of environmentally damaged sites, but will focus on basic environmental issues present in routine contract actions. The note concludes with a checklist of environmental issues for contracting officers and contract law attorneys to consider when analyzing prospective and existing contracts.

Background

Congress often implements its social policies through its government contracting rules and regulations. For example, Congress requires the government to show a preference for small business contractors.¹ Like its small business preferences, Congress also implements its environmental policies

through its government contracting rules and regulations. Running through these contracting rules and regulations are two overarching environmental themes: (1) eliminating hazardous substances from procured goods and services; and, (2) using recycled materials to the maximum extent practical. These two environmental themes are present during both contract formation and contract administration.

Formation

Generally speaking, contracting officers shall promote full and open competition through the use of competitive procedures in soliciting offers and awarding government contracts.² When specifying their needs, agencies must draft specifications that permit full and open competition and include restrictive provisions only to the extent necessary to meet the minimum needs of the agency or as permitted by law.³ Therefore, the general requirement of full and open competition must sometimes give way to particular agency needs or to statutory and regulatory exceptions.

Such particular agency needs and legal exceptions often arise out of environmental issues. When analyzing how to comply with environmental preference requirements, one of the simplest solutions is to restrict competition to those sources that can supply items meeting the environmental requirements. This could occur either through full and open competition after exclusion of sources, or through simply specifying needs that eliminate a pool of contractors who cannot meet the environmental requirements.

Contracting officers may therefore restrict competition in order to further environmental goals.⁴ The authority for this restricted competition derives from *Executive Order 13,123, Greening the Government Through Efficient Energy Management*, which challenges agencies to promote the increased use of "energy-savings performance contracts."⁵ Likewise, *Executive Order 13,101, Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition*, also restricts competition by requiring agencies to procure recycled and environmentally sound products.⁶ This order expresses a strong federal policy that justifies use of environmental specifications

1. The Small Business Act, 15 U.S.C. §§ 631-650 (2000); GENERAL SERVS. ADMIN. ET AL., FEDERAL ACQUISITION REG. 19.201 (June 1997) [hereinafter FAR]; see also, H&F Enters., B-251581.2, July 13, 1993, 93-2 CPD ¶ 16 (approving federal policy of preserving inner cities by limiting competition for leased office space to cities with "inner cities.").

2. 10 U.S.C. § 2304(a)(1) (2000); 41 U.S.C. § 253(a)(1) (2000); FAR, *supra* note 1, subpt. 6.1.

3. 10 U.S.C. § 2305(a)(1); 41 U.S.C. § 253a(a); FAR, *supra* note 1, at 10.002.

4. See, e.g., American Can Co., B-187658, Mar. 17, 1977, 77-1 CPD ¶ 196 (upholding requirement for reclaimed fiber content).

5. Exec. Order No. 13,123, 64 Fed. Reg. 30,851 (June 3, 1999).

that may narrow the competition for federal requirements.⁷ In fact, contracting officers may draft specifications that are more environmentally restrictive than required by law.⁸ Moreover, the GAO normally will not disturb a government decision to restrict competition for environmental reasons even when a protester alleges that the required product actually harms the environment.⁹

Having established that contracting officers may narrow competition, how do they actually do so? They do so primarily by considering energy conservation and efficiency data when developing purchase requests and solicitations.¹⁰ They accomplish this by: (1) using product descriptions and specifications that reflect cost-effective use of recycled products, recovered materials, remanufactured products, and energy-efficient goods and services;¹¹ (2) requiring offerors to certify the percentage of recovered materials used when the agency awards contracts at least partially on the basis of use of recovered materials;¹² and, (3) using life-cycle cost analysis whenever possible to assist in making source selection decisions.¹³

Use of these energy conservation and efficiency factors is mandated. *Executive Order 13,148, Greening the Government Through Leadership in Environmental Management*, requires agency heads to integrate environmental accountability into daily decision-making and long-term planning.¹⁴ Moreover,

contracting officers must develop a Preference Program to implement these mandates.¹⁵ Preference Programs must: (1) provide open competition between products made of virgin materials and products containing recovered materials and provide a preference to the latter; or (2) establish minimum content standards that identify the minimum content of recovered materials that an item must contain.¹⁶

To help establish Preference Programs, the Environmental Protection Agency has established five “guiding principles” for contracting officers to use when building environmental preferences into their acquisitions.¹⁷ Those principles are: (1) considering environmental factors as a routine part of the acquisition; (2) rooting environmental purchasing strategies in the “ethic of pollution prevention;” (3) considering the life-cycle stages of a product or service; (4) comparing the environmental impacts of competing products and services to select the one that is most environmentally preferable; and (5) gathering comprehensive, accurate, and meaningful information about the environmental performance of products or services.¹⁸

Along with developing Preference Programs using the EPA’s guiding principles, agencies must also develop Affirmative Procurement Programs.¹⁹ Each Affirmative Procurement Program must ensure that agencies purchase items composed of recovered materials to the maximum extent possible.²⁰ To

6. Exec. Order No. 13,101, 63 Fed. Reg. 49,643 (Sept. 14, 1998). The final rule implementing Executive Order 13,101 increased the contracting officer’s authority and specifically applied the order to simplified acquisitions. Federal Acquisition Circular 97-18; Introduction, 65 Fed. Reg. 36,012 (June 6, 2000).

7. See *American Can Co.*, 77-1 CPD ¶ 196; *Quality Lawn Maint.*, B-270690, June 27, 1996, 96-1 CPD ¶ 289; *Integrated Forest Mgmt.*, B-204106, Jan. 4, 1982, 82-1 CPD ¶ 6.

8. *Trilectron Indus.*, B-248475, Aug. 27, 1992, 92-2 CPD ¶ 130.

9. See *Integrated Forest Mgmt.*, B-204106, Jan. 4, 1982, 82-1 CPD ¶ 6.

10. Office of Federal Procurement Policy, Policy Letter 92-4: Procurement of Environmentally-Sound and Energy-Efficient Products and Services, para. 6(a), 57 Fed. Reg. 53,362 (Nov. 9, 1992) [hereinafter Policy Letter 92-4]; FAR, *supra* note 1, at 7.103. Agencies must also develop and promote biobased products and bioenergy to the extent possible. Exec. Order No. 13,134, 64 Fed. Reg. 44,639 (Aug. 12, 1999). Biobased products are products that use renewable agricultural or forestry materials. *Id.* Bioenergy is energy generated by any organic matter available on a renewable basis. *Id.*

11. See Exec. Order No. 13,101, § 501, 63 Fed. Reg. at 49,647; Policy Letter 92-4, *supra* note 10, para. 7a(4), 57 Fed. Reg. at 53,362; FAR, *supra* note 1, at 23.401(b).

12. 42 U.S.C. § 962c(3)(A) (2000); Policy Letter 92-4, *supra* note 10, para. 7a(6), 57 Fed. Reg. at 53,362; FAR, *supra* note 1, at 52.223-4, -9.

13. Policy Letter 92-4, *supra* note 10, para. 7a(3), 57 Fed. Reg. at 53,362.

14. 65 Fed. Reg. 24,595 (Apr. 22, 2000).

15. 42 U.S.C. § 6962(i)(3); Policy Letter 92-4, *supra* note 10, para. c(1)(e), 57 Fed. Reg. at 53,362. For detailed information regarding practicing environmentally preferable purchasing, see Office of Pollution Prevention and Toxics, Environmental Protection Agency, *Environmentally Preferable Purchasing*, at <http://www.epa.gov/oppt/epp/sitemap.htm> (last visited July 10, 2001).

16. 42 U.S.C. § 6962(i)(3); Policy Letter 92-4, *supra* note 10, para. c(1)(e), 57 Fed. Reg. at 53,362.

17. Office of Pollution Prevention and Toxics, Environmental Protection Agency, *Environmentally Preferable Purchasing*, at <http://www.epa.gov/oppt/epp/fivegp.htm> (last visited July 10, 2001).

18. *Id.*

19. 42 U.S.C. § 6962(i); Exec. Order No. 13,101, 63 Fed. Reg. 49,643 (Sept. 14, 1998); Policy Letter 92-4, *supra* note 10, para. 7c, 57 Fed. Reg. at 53,362; 40 C.F.R. § 247.6 (2000).

ensure this, the Environmental Protection Agency has listed many products containing recycled materials that agencies must try to purchase.²¹ These products include engine coolants, cement, traffic cones, playground equipment, garden hoses, and plastic trash bags.²² Installation contract law attorneys would be wise to review proposed contracts to determine if they contain any of these items. However, although contracting officers must purchase items that contain these recycled materials, this requirement only applies to procurements over \$10,000, or where the purchased quantity of such items procured in the fiscal year exceeds \$10,000.²³

As with many government requirements, there are exceptions to the Affirmative Procurement Program. Under the Resource Conservation and Recovery Act (RCRA),²⁴ the contracting officer may deviate from the EPA list if the procured items: (1) are not reasonably available within a reasonable period of time; (2) fail to meet the performance standards set forth in the specifications or fail to meet the reasonable performance standards of the procuring agency; or (3) are only available at an unreasonable price.²⁵

Along with these general environmental guidelines, contracting officers must also be aware of some specific environmental mandates. For example, the President has required all agencies to purchase energy efficient computer equipment.²⁶ When purchasing motor vehicles, installations must select "clean fuel" or "alternate fuel" vehicles.²⁷ Furthermore, each agency must reduce its vehicles' fuel consumption by certain targeted percentages.²⁸ Finally, installations should ensure that

they do not award contracts to vendors who have been convicted of a criminal violation of the Clean Air Act (CAA) or Clean Water Act (CWA).²⁹

Contracting officers and their installation contract law attorneys must therefore keep several environmental considerations in mind during the contract formation stage.

Administration

Contracting officers and their installation contract law attorneys must also keep several environmental considerations in mind during the contract administration stage. Though not as extensive as the formation list, the list of environmental issues during contract administration is also extensive. Contracting officers and their attorneys must continue to "think green" during the administration stage.

To comply with the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986,³⁰ installations must provide local officials information on the storage and use of hazardous chemicals affecting the local community.³¹ Installations must also establish reporting and notification requirements to assist state and local governments in their efforts to prepare for an emergency caused by the release of hazardous chemicals.³²

Consistent with fiscal law principles, contracting officers must also ensure that all environmental costs are allowable and allocable to the contract,³³ and funded with the right "color of

20. 42 U.S.C. § 6962(i).

21. 40 C.F.R. §§ 247.10-247.17 (2000). These products are organized by paper and paper products, vehicular products, construction products, transportation products, park and recreation products, landscaping products, non-paper office products, and miscellaneous products. *Id.* Agencies must also use paper with a minimum of 30% recycled content. Exec. Order 13,101, § 505, 63 Fed. Reg. at 49,649. For additional information on qualifying products, see the U.S. Environmental Protection Agency, Office of Pollution, Prevention and Toxics' Web site at <http://www.epa.gov/oppt/epp/database.htm>.

22. Exec. Order No. 13,101, § 505, 63 Fed. Reg. at 49,649.

23. *Id.* The \$10,000 per-fiscal-year amount is the aggregate of all purchases within the agency, for that guideline item, each fiscal year. 42 U.S.C. § 6962(a). *See generally* Policy Letter 92-4, *supra* note 10, 57 Fed. Reg. 53,362.

24. 42 U.S.C. §§ 6901-6991(h).

25. *Id.* § 6962(c)(1)(A)-(C); FAR, *supra* note 1, at 23.404(b)(1)-(3).

26. Exec. Order No. 13,123, § 403(b), 64 Fed. Reg. 30,851, 30,854-55 (June 3, 1999).

27. 42 U.S.C. § 7588.

28. Exec. Order No. 13,149, 65 Fed. Reg. 24,607 (Apr. 21, 2000).

29. U.S. DEP'T OF DEFENSE, DEFENSE FEDERAL ACQUISITION REG. SUPP. 209.405(b) (Apr. 1, 1984) [hereinafter DFARS]; *see also* Major Louis A. Chiarella et. al., *Contract and Fiscal Law Developments-The Year in Review*, ARMY LAW., Jan. 2001, at 76. The Clean Air Act is codified at 42 U.S.C. §§ 7401-7671q. The Clean Water Act is codified at 33 U.S.C. §§ 1251-1387 (2000).

30. 42 U.S.C. §§ 11001-11050.

31. *Id.* §§ 11021-11022.

32. *Id.* §§ 11003-11004.

money.” Installations fund environmental compliance with operation and maintenance (O&M) funds, environmental restoration accounts,³⁴ and specific statutory spending authority.³⁵

Installation contracting officers and their attorneys must therefore be aware of the many environmental issues present during contract administration.

Environmental Statutes

There are several environmental statutes that contracting officers and contract attorneys must understand when analyzing contract issues. Although contract law attorneys and contracting officers do not need to become experts in these statutes, they should at least be aware of their existence and understand their basic impact on the procurement process.

Congress passed the National Environmental Policy Act (NEPA)³⁶ so that agencies would conduct a thorough analysis of the likely environmental impacts of their proposed actions before taking those actions. For installation contracting officials, NEPA may require an Environmental Assessment and an Environmental Impact Statement before carrying out a proposed contract. The CWA³⁷ may also impact installation contracting actions. Worded very broadly, the CWA prohibits anyone, including the government, from discharging pollutants into navigable waters without a permit.³⁸ Permit requirements are especially stringent for agencies when working with wetlands. Like the CWA, the Safe Drinking Water Act (SDWA)³⁹ protects surface water supplies. Unlike the CWA, however, the

SDWA also protects groundwater supplies. Procurement officials must therefore be aware of these statutes when contracting for goods or services that trigger these statutory requirements.

Closely related to the SDWA and the CWA is the CAA.⁴⁰ The CAA requires all “sources” of pollutants (including the government) to meet air quality standards. Installations must also protect their cultural resources, including historic properties and Native American sites within their borders.⁴¹ Finally, installation contracting activities must avoid harming endangered animals and plants. The Endangered Species Act⁴² and the Sikes Act⁴³ require the military to manage the natural resources at installations to provide for “sustained multiple purpose uses” and public access “necessary or appropriate to those uses.”⁴⁴

Although not an exhaustive list of relevant environmental statutes, these citations should give installation contracting personnel an idea of how environmental laws can permeate many proposed and existing contracts.

Conclusion

There are many environmental traps for installation contracting personnel. Through a basic familiarity with environmental laws and regulations, however, contracting officers and contract attorneys can assure environmental compliance for their contracting programs. The mantra for all installation contracting personnel should be “think green” at all stages of the contracting process. Major Siemietkowski and Major Walker.

33. FAR, *supra* note 1, at 31.201-2.

34. 10 U.S.C. § 2703 (2000).

35. For example, see the Noise Control Act of 1972, 42 U.S.C. § 4901.

36. 42 U.S.C. §§ 4321-4370d.

37. 33 U.S.C. §§ 1251-1387 (2000).

38. The EPA administers the CWA through an extensive permitting system.

39. 42 U.S.C. §§ 300f to 300j-26.

40. *Id.* §§ 7401-7671q.

41. See National Historic Preservation Act, 16 U.S.C. § 470 (2000); Archeological Resources Protection Act, *id.* § 470aa; Antiquities Act, *id.* §§ 431-433; Archeological and Historic Preservation Act, *id.* § 469; Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001-3013 (2000); American Indian Religious Freedom Act, 42 U.S.C. § 1996. All of these statutes impose requirements that may impact on the federal agency or its contractors.

42. 16 U.S.C. §§ 1531-1544.

43. *Id.* §§ 670a-f.

44. *Id.*

Appendix: Environmental Compliance Checklist⁴⁵

The breadth of environmental issues impacting on contracting actions can be overwhelming. What follows is a suggested checklist for installation contracting officers and contract law attorneys to consider when reviewing contract actions for environmental compliance. CAUTION! This is not an exclusive list of possible environmental issues. Contract law attorneys should consult their environmental law experts when they think they have spotted an environmental issue in a contract.

Section I—General Contract Procedures for Environmental Issues

1. References. Ensure availability of the following reference tools:
 - a. Statutes: Resource Conservation and Recovery Act, 42 U.S.C. § 6962
 - b. Executive Orders: Executive Order 13,101, Greening the Government
 - c. Policy Letters: Office of Federal Procurement (OFPP) Policy Letter 92-4, Procurement of Environmentally Sound and Energy Efficient Products and Services
 - d. Federal Acquisition Regulation (FAR)
2. Acquisition Planning.
 - a. Has the activity considered all environmental issues as part of the acquisition planning for the buy? These issues include requirements to procure recycled and environmentally sound products. Executive Order 13,101, § 410; FAR pt. 7.
 - b. Has the contracting officer conducted market research to obtain information on the availability of environmentally sound products and services that meet the agency needs? FAR 10.001.
 - c. Has the contracting officer conducted a market survey to find sources for environmentally sound products and services? FAR 7.101.
3. Drafting Specifications.
 - a. Has the activity chosen the procurement method (sealed bidding versus negotiated acquisition) that best promotes the environmental factors for the acquisition?
 - b. Has the activity defined adequately its minimum needs to include, where appropriate, environmental factors?
 - c. Where appropriate, has the activity included relevant performance specifications? OFPP Policy Letter 91-2.
 - d. Do the specifications promote full and open competition without being unduly restrictive?
 - e. If the specifications limit competition, do they promote a collateral policy of protecting the environment? *See* Quality Lawn Maint., B-270690, June 27, 1996, 96-1 CPD ¶ 289; Integrated Forest Mgmt., B-204106, Jan. 4, 1982, 92-1 CPD ¶ 6; American Can Co., B-187658, Mar. 17, 1977, 77-1 CPD ¶ 196.
4. Responsibility and Award.
 - a. Do the evaluation factors in the solicitation consider:
 - (1) The offeror's overall environmental stewardship?

45. Students of the Environmental Contracting elective, 48th Graduate Course, The Judge Advocate General's School, U.S. Army, compiled the original version of this checklist, under the direction of Lieutenant Colonel (then Major) Mary Beth Harney, United States Air Force.

(2) The offeror's past performance to determine if the offeror is environmentally competent? *See* Fed. Envtl. Services, B-250135, May 24, 1993, 93-1 CPD ¶ 398.

(3) The offeror's ability to find, evaluate, and obtain environmentally sound products and services?

b. Has the contracting officer made a determination of the bidder's overall responsibility by considering the general responsibility factors in FAR 9.1?

(1) Has the contracting officer conducted a pre-award survey?

(2) Has the contracting officer considered the bidder's past environmental performance record, such as observing environmental standards, using environmentally sound products and services, and minimizing environmental damage? *See* Standard Tank Cleaning, B-245364, Jan. 2, 1992, 92-1 CPD ¶ 3.

c. Is the bidder or offeror on the GSA list of Parties Excluded from Federal Procurement and Nonprocurement Programs? (For criminal violations of the Clean Air Act and Clean Water Act.) *See* DFARS 209.405(b).

Section II: Substantive Areas

1. Ozone-Depleting Substances (ODS).

a. References.

(1) National Defense Authorization Act for FY 1993, Pub. L. No. 102-484, §§ 325-326.

(2) Executive Order 12,843, 58 Fed. Reg. 21,881 (1993), Procurement Policies and Requirements for Federal Agencies for Ozone-Depleting Substances.

b. Contract Screening.

(1) Does the contract contain a military specification (MILSPEC) or standard that requires the use of a Class I ODS or can only be met through the use of an ODS?

(2) If the contract does contain a MILSPEC or standard requiring the use of an ODS, has the contracting officer forwarded the file to the Approved Technical Representative (ATR) for review?

c. Approved Technical Representative Review.

(1) Did the ATR find that the contract does not require ODS? If so, did the ATR forward the file back to the contracting officer for processing?

(2) Did the ATR find that the contract does require ODS? If so, did the ATR forward the file back to the contracting officer with direction to amend the solicitation? Did the ATR include a certification in the file stating that either an ODS substitute exists or no known ODS substitute exists?

(3) Upon receiving the file from the ATR, did the contracting officer amend the solicitation to remove the use of ODS?

(4) If the contracting officer did not amend the solicitation to remove the use of ODS, did the contracting officer request a waiver from the Senior Acquisition Official?

d. Waiver and Senior Acquisition Official Review.

(1) Did the SAO review the solicitation and waiver request to determine whether or not a suitable substitute for the ODS is available?

(2) Is the waiver request submitted to negate a specific prohibition against using ODS? If so, the waiver request is improper.

(3) Is the ODS available off-the-shelf? If so, a waiver is not required.

2. Affirmative Procurement.

a. References.

(1) Resource Conservation and Recovery Act, 42 U.S.C. § 6962.

(2) Executive Order 13,101, Greening the Government.

(3) OFPP Policy Letter 92-4, Procurement of Environmentally Sound and Energy Efficient Products and Services.

(4) Environmental Protection Agency Comprehensive Procurement Guidelines.

(5) Environmental Protection Agency Guidance on Environmentally Preferable Purchasing, 64 Fed. Reg. 45,810 (1999).

b. Has the contracting officer considered the purchase of environmentally preferable products as part of the procurement? 42 U.S.C. § 6962; FAR 23.403.

c. Are the specifications drafted to comply with the goals of affirmative procurement? *See* OFPP Policy Letter 92-4. Review the specifications for the following points:

(1) Whether the specifications exclude improperly the use of recovered materials;

(2) Whether the specifications do not unnecessarily require the item to be manufactured from virgin materials; and

(3) Whether the specifications require the use of recovered materials to the maximum extent practicable without jeopardizing the end use of the item.

d. Does the value of the procurement exceed \$10,000? If so, has the contracting officer complied with the requirement to purchase EPA Comprehensive Procurement Guideline items?

e. If the contracting officer has not complied with the EPA Comprehensive Procurement Guideline items, does an exception apply, which is documented in the contract file? *See* 42 U.S.C. § 6901. The exceptions are as follows:

(1) The items are not available in a reasonable period of time;

(2) The items fail to meet the performance standards in the specifications or fail to meet the reasonable performance standards of the procuring agencies;

(3) The items are available only at an unreasonable price; or

(4) The items are not available from a sufficient number of sources to maintain a satisfactory level of competition.

f. Has the contracting officer considered the EPA's Guidance on Environmentally Preferable Purchasing during the solicitation process? *See* 64 Fed. Reg. 45,810 (1999). The five key principles from the EPA's Guidance are as follows:

(1) Agencies should consider environmental factors as a routine part of the acquisition;

(2) Agencies should ground their environmental purchasing strategies in the "ethic of pollution prevention" by reducing waste and pollution at the source;

(3) Agencies should consider life-cycle costs of a product or service to determine its overall positive and negative environmental impact;

(4) Agencies should compare the environmental impacts of competing products and services to select the one that is most environmentally preferable; and

(5) Agencies should gather comprehensive information about the environmental performance of products and services.

3. Environmental Clean-Up.

a. References.

(1) Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9670.

(2) Defense Environmental Restoration Program, 10 U.S.C. § 2701.

(3) Executive Order 12,580.

(4) Resource Conservation and Recovery Act, 42 U.S.C. § 6901.

b. Does the solicitation contain requirements for environmental clean-up?

c. Has the CERCLA environmental response action process been completed? This includes the following procedures:

(1) Removal process;

(2) Remedial action process;

(3) Remedial investigation;

(4) Feasibility study;

(5) Proposed plan;

(6) Responsiveness summary;

(7) Record of decision;

(8) Remedial design; and

(9) Remedial action.

d. Is there any potential regulatory overlap between CERCLA and RCRA that may impact the solicitation?

e. Have all potentially responsible parties (PRP) under CERCLA been identified? *See Cheryl Lynch Nilsson, Defense Contractor Recovery of Cleanup Costs at Contractor Owned and Operated Facilities*, 38 A.F. L. REV. 1 (1994). These include the following:

(1) Current owners and operators of the facility (current owners and operators);

(2) Former owners and operators of the facility during the time any hazardous substance was disposed of at the facility (former owners and operators);

(3) Persons who arranged for the disposal or treatment of hazardous substances that they owned or possessed at a facility (generators and arrangers); and

(4) Persons who accepted hazardous substances for transport to disposal or treatment facilities (transporters).