

How Can a Superfund Site Affect My Property?

GI-286, PDF version
(December 2002)

Introduction

If you are like most people, the prospect of living near property contaminated with any type of hazardous substance raises many questions about what is happening and how you will be affected. The purpose of this fact sheet is to answer questions about how your property may be affected by other property that has been identified as a state Superfund site.

You may have many questions. How does a contaminated site become a Superfund site? What exactly *is* a Superfund site? Will the hazardous material be cleaned up, and who is responsible? Who can I contact for help?

This fact sheet will answer many of your questions. Learning more about the problem in your community will help you take an active role in protecting your health and the value of your property. In this publication, “you” and “I” refer to the property owner.

What is a Superfund site?

A Superfund site is a facility—often abandoned—where hazardous substances have been released into the environment either through misuse, or improper disposal, or both. At these sites, the threat is sufficient to warrant a cleanup to levels that will protect the public and the environment.

The primary goal of the Superfund program is to protect human health and the environment. At Superfund sites, either the federal or state government directs the cleanup. The federal agency is the Environmental Protection Agency (EPA).

The Texas agency in charge of Superfund activities is the Texas Commission on Environmental Quality (TCEQ). The information in this fact sheet applies only to state Superfund sites under TCEQ supervision.

What is the TCEQ’s role in Superfund?

The state Superfund program responds to threats posed by releases of hazardous substances into the air, water, and soil. These sites have been identified as areas where other regulatory methods, such as enforcement, have proven to be ineffective or inadequate. The TCEQ determines if an immediate action is needed to prevent potential exposure,

or if an extensive long-term cleanup of hazardous substances is more appropriate.

Twice a year, the TCEQ publishes a list of such sites that may constitute an imminent and substantial endangerment to public health and safety or the environment. This list is referred to as the State Registry of Superfund Sites (Registry). It includes sites that require both immediate and long-term cleanup.

When a site is on the Registry, it undergoes a comprehensive evaluation to determine the nature and extent of contamination. The following assessments are made:

- an estimate of current and future risks posed by the contamination,
- an analysis of cleanup alternatives, and
- the design and execution of the selected cleanup.

The TCEQ works to ensure that sites are cleaned up to a level that protects the people who live, work, or play on or around the site. The agency recognizes the importance of working closely with affected residents to provide accurate information about the site and to respond to community concerns. The TCEQ is always willing to answer any of your questions and invites your feedback. For information on contacting the TCEQ, see the last section of this fact sheet.

How is my property affected by a Superfund cleanup?

While the Superfund program focuses on protecting a community’s health and surroundings, the TCEQ understands that cleanup activities may directly affect individual properties. Within the limits of the state Superfund law, the TCEQ works with the affected community to find a cleanup solution that is safe, effective, and, to the extent possible, minimally disruptive to ongoing activities.

The following sections provide the answers to questions most commonly asked about the effects of hazardous substance sites on people’s property. The questions are divided into four areas: rights of the property owner, property values, buying and selling property, and liability. The answers will help you understand how the TCEQ can assist you and where to find other resources that are available to help you with your questions.

Rights of the Property Owner

If you are a property owner in a community near a state Superfund site, you may be concerned about the potential effects the hazardous substance may have on your property and your daily routine. The TCEQ assists neighborhoods by informing citizens about cleanup activities on or around a site, and by giving community members opportunities to voice their opinions and concerns. The following questions and answers provide information for property owners on private property rights, protection from liability, and TCEQ assistance.

My property is located near a state Superfund site. How can I find out if the TCEQ has ever investigated pollution problems on my property?

The TCEQ is responsible for keeping the community informed about site investigations and cleanup activities on or around the site. The TCEQ requests permission from property owners before collecting soil, water, and air samples from any property. If the sampling was done before you acquired the property, you can call the TCEQ at 1-800-633-9363 and ask to talk with the project manager of the site.

The TCEQ sets up an information *repository* for each state Superfund site. These files allow interested community members to review information about a particular site in their neighborhood. Information repositories are usually kept at a local library or government office.

The state of Texas has laws—called *disclosure* laws—that require owners of residential property to give information on known pollution problems on their property to any purchaser of the property.

My property is located near a Superfund site. Will the TCEQ take samples on my property upon my request?

Living near a state Superfund site does not necessarily mean that your property is contaminated. If you suspect that contamination from a state Superfund site is on your property, you should contact the TCEQ Community Relations Team at 1-800-633-9363.

The TCEQ will work with you and other individual property owners to determine if there is a need to sample your property. If necessary, this sampling would usually take place during the investigation of a state Superfund site, when the TCEQ is determining exactly where the contamination is located and how far it extends.

Will the TCEQ release specific addresses where samples have been taken?

Reports with address information and all other sampling data are made part of the public record and can be released upon request. Call 1-800-633-9363 to place such a request. If the TCEQ does not receive a specific request for this information, the agency will send letters with the sample results only to those whose property was sampled.

Can I refuse or limit TCEQ access to my property?

State law gives the TCEQ the authority to enter property to investigate the following matters:

- release or threatened release of a hazardous substance;
- conditions relating to waters in this state, including groundwater; and
- compliance with any rule, regulation, permit, or other order of the TCEQ.

The TCEQ will work to accommodate a property owner's schedule and to conduct activities with as little inconvenience to the property owner as possible. Property owners may refuse to allow the TCEQ onto their property. However, the law does allow for property owners to be fined up to \$10,000 a day for blocking access inappropriately. When a property owner continues to refuse to allow access, the TCEQ usually refers the matter to the Office of the Attorney General for resolution.

If the TCEQ enters my property for sampling, installation of monitoring wells, cleanup, or for any other reason, will I be paid?

The TCEQ does not pay property owners for access to their property. To the extent possible, the TCEQ tries not to disturb the property. If the property is disturbed during sampling or cleanup (for example, grass is damaged or soil is backhoed), the TCEQ will make a reasonable effort to restore the property to its original condition.

Can the TCEQ move me from my property? How long can they keep me away from my property?

While it rarely happens, the TCEQ can move residents as part of a cleanup action to protect human health and the environment. Relocation may be temporary or permanent, depending on the TCEQ's ability to clean the property to a condition where all the contaminants no longer threaten human health or the environment. In such a case, the Superfund will pay for reasonable relocation costs.

Will the TCEQ restrict the use of part or all of my property? Will I be paid if the TCEQ does take my property?

The TCEQ makes every attempt to clean up sites with a minimum of inconvenience to property owners. However, sometimes it is necessary to restrict access to protect citizens' health or the environment and to properly implement the cleanup on the property. In such cases, the property owner's claim of loss of use would be against the persons responsible for the contamination.

In very rare circumstances, the TCEQ may purchase the property. If the TCEQ does buy the property, the TCEQ must pay the property owner fair market value for any land acquired—unless the owner is a responsible party who owes the state more than the value of the property for the required cleanup. (*Fair market value* is what the property would sell for in the local real estate market).

Property Values

Property values may be affected by a number of environmental factors, including the following:

- perceived health risks,
- impacts on safe drinking water,
- air pollution,
- odor,
- construction activity, and
- noise.

Factors that may reduce the impact on property values include the following:

- distance from the site; and
- presence of a geographic buffer, such as a hill, railroad, river, forest, or divided highway.

The following questions and answers provide more information on the effects of Superfund sites on property values.

What is happening to property values in my neighborhood?

The TCEQ suggests you consult a professional in your community for the most up-to-date information. Real estate agents, banks and other lenders, appraisers, and public and private assessors should be able to answer this question for you. Local government agencies—such as your taxing authority or planning commission—may also be able to give you information on property values.

My property values have gone down as a result of being on or near a state Superfund site. Can the TCEQ pay me for the property value I have lost?

The TCEQ is very concerned about potential adverse effects on property value that may result when a state Superfund site exists near a community. However, the state Superfund law does not authorize the TCEQ to compensate individual homeowners for losses of property value or other potential damages associated with designating an area as a Superfund site. State funds will be used by the TCEQ to conduct or oversee the cleanup of a Superfund site, and property values often rebound following completion of these cleanup activities.

What can I do if my property value goes down because of a Superfund site?

You may want to consult with local government officials about the possibility of property tax abatements or adjustments, based on impacts on property values from pollution concerns; however, this is beyond the authority of the state government. In some cases, property owners have consulted an attorney about the possibility of recovering the lost property value from the potentially responsible party or parties (the polluters).

Based on past cleanups, the TCEQ believes that a state Superfund cleanup has an overall beneficial impact on the community, including rebounding property values.

My property sits above contaminated groundwater. How will this affect my property value?

The TCEQ cannot predict how contaminated groundwater will affect individual property values. A good resource for property value information is a local government agency—such as your local taxing authority or planning commission—or a local real estate professional. They are experienced in appraising property values and determining the possible effect of contamination on property values.

Will there be an immediate appraisal of my property to adjust my tax status?

Local tax authorities can best answer this question because they are responsible for tax appraisal activities in your community. It is beyond the TCEQ's authority to appraise property or adjust tax status, and the TCEQ does not request tax authorities to reassess properties. Property owners may want to consult with local government officials about the possibility of property tax abatements or adjustments, based on impacts on property values from pollution concerns; however, this is beyond the authority of the state government.

Will I be able to refinance my loan due to the devaluation of my property?

This is a question that is best answered by your lending institution.

Do property values rebound? How long will it take?

Contaminated sites may affect nearby residential property values. Property values typically rebound following completion of cleanup activities. Property values are most appropriately discussed with local authorities who are knowledgeable about the local economy and other local conditions that may influence property values.

Buying and Selling Property

When buying or selling property, people usually have questions like the following about neighborhood property values:

- How are changes in property value impacting mortgages, taxes, and resale opportunities?
- How can property owners increase their property value?
- What information must a property owner tell a potential purchaser?

This section explains what environmental information you and the TCEQ must disclose about a specific site, how the TCEQ can support you through the transfer of property, and what actions you may choose to take to increase the value of your property.

What information can the TCEQ provide to potential buyers of property located near a state Superfund site?

The TCEQ makes a wide variety of information available to the public, including potential buyers. Such information includes background materials on the state Superfund

program, its activities and responsibilities, as well as opportunities for public participation. Site-specific information can be accessed from your neighborhood state Superfund public information repository (usually at the local library or government office).

You can also find information about state Superfund sites on the TCEQ Web site (see the last section in this fact sheet, “Contacting the TCEQ”). Sites are listed for easy reference by city, county, and in alphabetical order by site name.

If my loan is denied because of concerns about contamination, can the TCEQ call my banker or appraiser?

The TCEQ does not become involved in individual real estate transactions. However, agency staffers can conduct presentations or provide information about site cleanup plans for the public, including representatives from community real estate offices and lending and financial institutions.

Do I have to disclose the contamination on my property to potential buyers?

Yes. By law, it is the responsibility of the property owner to disclose to any prospective buyer any known defects of the property, to include environmental contamination.

Can a homeowner perform a cleanup to help ensure the sale of their property?

Yes. A homeowner can perform a cleanup, but the owner must follow the requirements set forth in the TCEQ’s statutes and rules. Additionally, if a homeowner is not otherwise considered liable for the contamination (see the next section in this fact sheet, “Liability”) and takes responsibility for a cleanup, this action may make the owner liable for any future pollution problems (release or threat of release of contaminants) as a result of the cleanup—forever.

Liability

The TCEQ understands that personal liability is also an area of concern when it comes to contamination on or adjacent to private property. This is especially important for new property owners and prospective purchasers, as well as for the lending institutions that will be responsible for the mortgage. The following questions and answers will help residential property owners understand potential liability issues.

I am thinking about buying a piece of property that is on or near a Superfund site. What would my responsibility be for contamination that existed at the time of purchase?

An owner of property contaminated with solid waste is usually liable for the costs to investigate and remediate the property, even though that person did not directly contribute to the contamination. However, there are some defenses to such liability. For example, if the property has become contaminated due to a release from an off-site source, and

the owner did not cause or contribute to the source of the contaminants, then that owner is not considered responsible for the investigation and cleanup of the property under normal circumstances.

If you are not responsible for the contamination on your property, you may want to look into the TCEQ’s Innocent Owner/Operator Program (IOP). Under this program, applicants pay a fee and submit data supporting their innocence and showing that the contamination came from an off-site source. An applicant who successfully completes the program is issued a certificate. It documents that the property owner is not liable for the contamination. The certificate cannot be transferred to another owner.

To find out more about the IOP, call 512/239-5891, or go to the TCEQ Web site. Please see the last section of this fact sheet, “Contacting the TCEQ,” for more specific Web information.

Other defenses—including the importance of an “appropriate inquiry” into the possibility that the land may be contaminated—are listed in Section 361.275 of the Texas Health and Safety Code. Additionally, Subchapter U of the Texas Health and Safety Code addresses lending institutions and limits their liability to specific situations.

To find the Texas Health and Safety Code and other regulations on the state Superfund program, go to the TCEQ Web site. Please see the last section of this fact sheet, “Contacting the TCEQ,” for more specific Web information.

Can I be held responsible for pollution on my residential property?

Yes, depending on the facts of each case. As indicated in the previous answer, an owner of property contaminated with solid waste is usually liable for the costs to investigate and remediate the property, even though that person did not directly contribute to the contamination. This applies to residential as well as commercial property.

However, as noted in an earlier answer, there are defenses to such liability, which are listed in Sections 361.275 and 361.751–.754 of the Texas Health and Safety Code. In such cases, the person owning the residential property must not have caused or contributed to the contamination.

Typical cases in which the owner has a defense include the following examples:

- contamination from an off-site source, such as air contaminants from an industrial facility, falling on the residential property; or
- contaminated groundwater flowing from an off-site source under the residential property.

My property sits above contaminated groundwater. Am I liable?

Yes, you may be held liable for contaminated groundwater under your property unless a specific defense to such

liability applies. Because of the mobility of some contaminants in water, a common argument raised in the area of groundwater contamination is referred to as the Innocent Owner/Operator defense (Sections 361.751–.754 of the Texas Health and Safety Code).

This immunity from liability applies if the property has become contaminated because of a release from an off-site source, and the owner did not cause or contribute to the source of the contaminants (see information about the Innocent Owner/Operator Program in a previous answer).

Contacting the TCEQ

You can reach the TCEQ's Superfund Community Relations Program in the following ways:

By phone: 1-800-633-9363
Texas Superfund Hot Line and Superfund Community Relations

By mail: Superfund Community Relations, MC 225
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

By fax: 512/239-2469

Web site: www.tceq.state.tx.us

Texas Commission on Environmental Quality

Texas Natural Resource Conservation Commission

Same agency, new name!