

cleanup. (The rule of joint and several liability is explained more fully in the Private Regulation section)

Defenses to liability are limited to

1. acts of God,
2. acts of war,
3. actions of a third party,
4. innocent landowner defense, or
5. security interest exemption.

The third party defense is usable only where someone else is entirely responsible for the damage and where there is no contractual relationship between the defendant and the third party. The innocent landowner defense applies when a new landowner did not know and had no reason to know that a previous landowner had contaminated the property. The security interest exemption protects lenders (such as banks) from liability when the lender does not participate in the management of the facility.

What are environmental audits?

An audit is basically an evaluation of the land's condition and an appraisal of the consequent likelihood of the lender becoming subject to some type of enforcement lien which might impair the lender's security. Such a lien might arise, for example, from the liability CERCLA imposes upon owners for hazardous substances buried on their land. CERCLA is threatening even to innocent buyers, since it applies even if the pollution was left by a previous owner and the buyer had no knowledge of it. If the audit reveals that the land is in some way "unclean," the transaction will inevitably be delayed until the lender is reassured that its interest in the land will not be devalued.

Source: 42 U.S.C. § 9601 to 9675.

Safe Drinking Water Act

Overview

The Safe Drinking Water Act (SDWA) was passed in 1974 and has been amended several times to expand both its breadth and the EPA's power to enforce it. The Act's primary purpose of protecting drinking water systems is accomplished by:

- establishing quality standards for drinking water,
- monitoring public water systems, and
- guarding against groundwater contamination from injection wells.

Among the areas of SDWA coverage, the regulation and permitting of injection wells probably has the most direct agricultural implications. Underground injection endangers drinking water sources if such injection results in the presence in underground water of any contaminants which may eventually affect drinking water quality. While injection well usually implies a very deep well, the definition of injection under the Act may encompass several types of runoff, including irrigation return flow, which enters the groundwater.

Who enforces the SDWA?

In virtually all states, including Florida, the EPA has given up enforcement of the SDWA and now serves only to supervise the state programs approved to take its place. The 1986 amendments to the Act, however, gave the EPA increased authority to step in and enforce the Act if the state takes no action within 30 days of receiving notice from the EPA that water quality standards of the Act have been violated.