

# COMMON ENVIRONMENTAL ISSUES AND HOW TO DEAL WITH THEM: A PLAYBOOK FOR CORPORATE COUNSEL

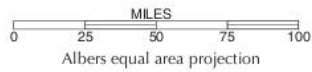
DECEMBER 10, 2020 | PRESENTED BY: CHRIS THOMAS,  
ANDREA DRIGGS, AND JANET HOWE



### FEDERAL LANDS AND INDIAN RESERVATIONS

- Bureau of Indian Affairs
- Bureau of Land Management / Wilderness
- Bureau of Reclamation
- Department of Defense (includes Army Corps of Engineers lakes)
- Fish and Wildlife Service / Wilderness
- Forest Service / Wilderness
- National Park Service / Wilderness

Some small sites are not shown, especially in urban areas.



#### Abbreviations

- AFB Air Force Base
- IR Indian Reservation
- NCA National Conservation Area
- NF National Forest
- NHP National Historic Park
- NHS National Historical Site
- NM National Monument
- NP National Park
- NRA National Recreation Area
- NWR National Wildlife Refuge
- Res Reservoir



# Parties and Agencies

- Environmental Protection Agency
- Army Corp. of Engineers
- U.S. Department of Interior
- Bureau of Land Management
- USDA National Resource Conservation Service
- U.S. Fish and Wildlife
- Arizona Department of Environmental Quality
- Arizona Department of Water Resources

# Key Laws

- Federal
  - Clean Water Act
  - Clean Air Act
  - National Environmental Protection Act
  - Endangered Species Act
  - CERCLA
- State/Local
  - WQARF
  - Aquifer Protection Permit
  - Arizona Pollution Elimination System Program
  - State Air Programs

# What Is CERCLA?

Federal law that establishes program for remediating “hazardous substance” sites, generally caused by historic contamination, and sets forth a liability scheme that can be invoked by anyone.

Companion to the Resource Conservation and Recovery Act (“RCRA”), which regulates ongoing treatment, waste, storage and disposal of “hazardous wastes.”



# Elements of Liability

Applies to *releases* or *threatened releases* of *hazardous substances* from a *facility* into the *environment*.



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Release = any outdoor spill, emission, or discharge.

Threatened release = deteriorating barrels.

Hazardous substance = most chemicals except for petroleum plus most metals.

Facility = any area where hazardous substances are found.

Environment = everything outdoors.

# What Happens if there is a Release? Section 103(a)

- Release
- Of a Hazardous Substance
- Equal to greater than reportable quantity (RQ)  
[See 40 CFR 302/Table 302.4]
- From a vessel or facility
- Within a 24-hour period
- Into the environment

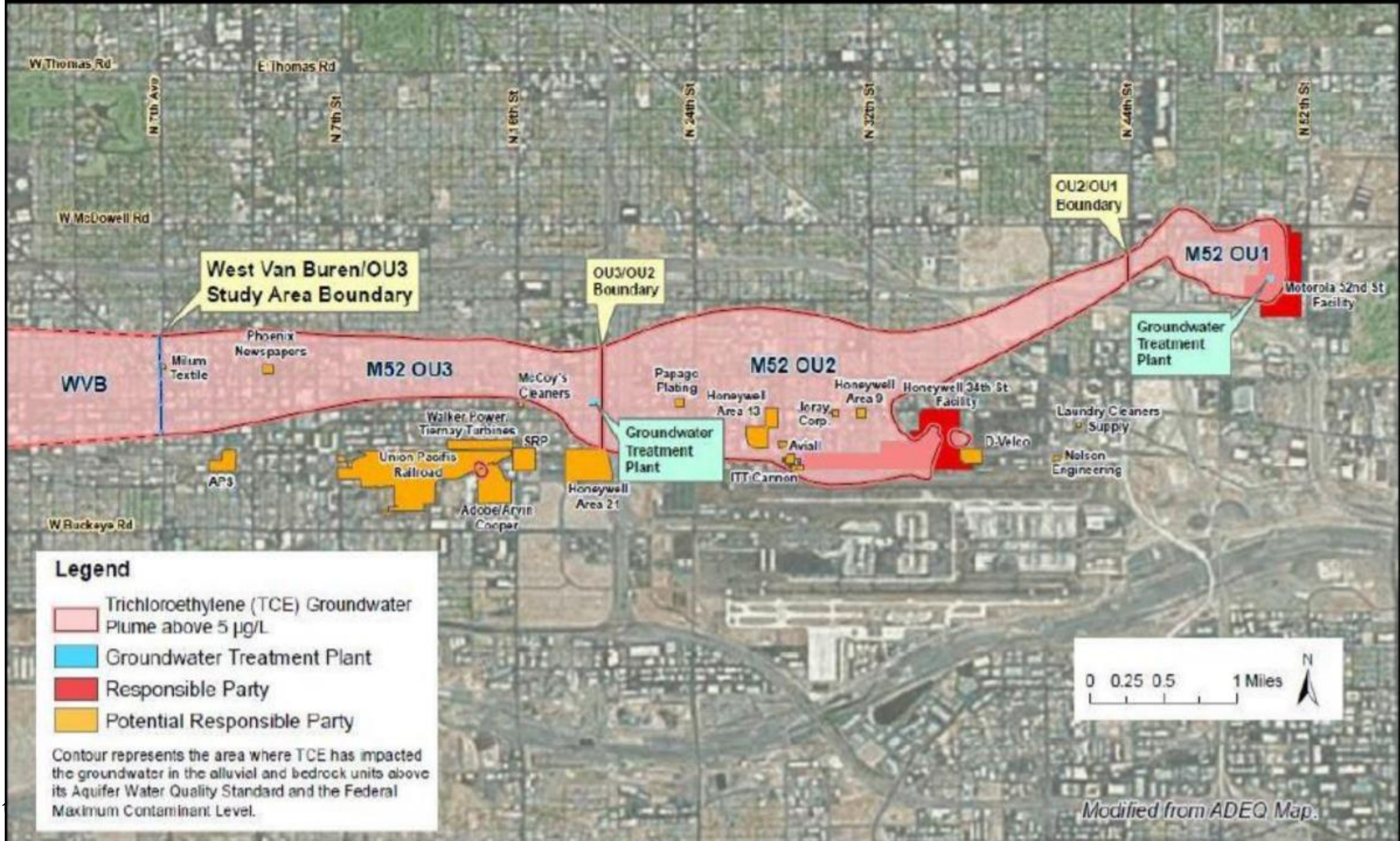


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NAME	CAS/313 Category Codes	Section 302 (EHS) TPQ	Section 304 EHS RQ	CERCLA RQ	Section 313	RCRA CODE	CAA 112(r) TQ
Triaziquone	68-76-8				313		
Triazofos	24017-47-8	500	500				
Tribenuron-methyl	101200-48-0				313		
Tribromomethane	75-25-2			100	X	U225	
Tributyltin fluoride	1983-10-4				313		
Tributyltin methacrylate	2155-70-6				313		
S,S,S-Tributyltrithiophosphate	78-48-8				313		
Trichlorfon	52-68-6			100	313		
Trichloroacetyl chloride	76-02-8	500	500		313		
1,2,4-Trichlorobenzene	120-82-1			100	313		
Trichloro(chloromethyl)silane	1558-25-4	100	100				
Trichloro(dichlorophenyl)silane	27137-85-5	500	500				
1,1,1-Trichloroethane	71-55-6			1,000	313	U226	
1,1,2-Trichloroethane	79-00-5			100	313	U227	
Trichloroethylene	79-01-6			100	313	U228	
Trichloroethylsilane	115-21-9	500	500				



Dimethylamine	124-40-3			1,000	313	U092	10,000
Methanamine, N-methyl-	124-40-3			1,000	X	U092	10,000
Sodium methylate	124-41-4			1,000			
Chlorodibromomethane	124-48-1			100			
Sodium cacodylate	124-65-2	100/10,000	100				
Dibromotetrafluoroethane	124-73-2				313		
Halon 2402	124-73-2				X		
Picrotoxin	124-87-8	500/10,000	500				
Tris(2,3-dibromopropyl) phosphate	126-72-7			10	313	U235	
Methacrylonitrile	126-98-7	500	1,000	1,000	313	U152	10,000
2-Propenenitrile, 2-methyl-	126-98-7	500	1,000	1,000	X	U152	10,000
Chloroprene	126-99-8			100	313		
Perchloroethylene	127-18-4			100	X	U210	
Tetrachloroethylene	127-18-4			100	313	U210	
Zinc phenolsulfonate	127-82-2			5,000	313c		



W Thomas Rd

E Thomas Rd

N 7th Ave

N 7th St

N 16th St

N 24th St

N 32th St

N 44th St

N 52th St

W McDowell Rd

**West Van Buren/OU3 Study Area Boundary**

**OU3/OU2 Boundary**

**OU2/OU1 Boundary**

**M52 OU1**

**Motorola 52nd St Facility**

**Groundwater Treatment Plant**

**M52 OU3**

**M52 OU2**

Milum Textile

Phoenix Newspapers

McCoy's Cleaners

Papago Plating

Honeywell Area 13

Jerzy Corp.

Honeywell Area 9

Honeywell 34th St Facility

Laundry Cleaners Supply

AP3

Walker Power Turbine Turbines

SRP

**Groundwater Treatment Plant**

Union Pacific Railroad

Avial

ITT Cannon

D-Velco

Nelson Engineering

W Buckeye Rd

Adobe/Arvin Cooper

Honeywell Area 21

**Legend**

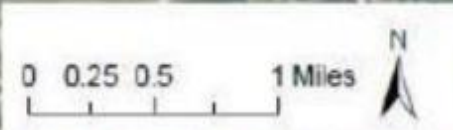
Trichloroethylene (TCE) Groundwater Plume above 5 µg/L

Groundwater Treatment Plant

Responsible Party

Potential Responsible Party

Contour represents the area where TCE has impacted the groundwater in the alluvial and bedrock units above its Aquifer Water Quality Standard and the Federal Maximum Contaminant Level.



*Modified from ADEQ Map.*

**Chart Summarizing Applicability of “Common Elements” and Other Requirements to Bona Fide Prospective Purchasers, Contiguous Property Owners, and Section 101(35)(A)(i) Innocent Landowners**

<b>Common Elements and other Requirements</b>	<b>Bona Fide Prospective Purchaser</b>	<b>Contiguous Property Owner</b>	<b>Innocent Landowner Section 101(35)(A)(i)</b>
	Can acquire with knowledge of contamination	Cannot acquire with knowledge of contamination	Cannot acquire with knowledge of contamination
<b>Threshold Criteria</b>			
<b>Perform All Appropriate Inquiries</b>	✓ 101(40)(B)(ii)	✓ 107(q)(1)(A)(viii)	✓ 101(35)(A)(i),(B)(i)
<b>“No Affiliation” demonstration</b>	✓ 101(40)(B)(viii)	✓ 107(q)(1)(A)(ii)	<i>See supra note 23, at 7</i>
<b>Acquisition after January 11, 2002</b>	✓ 101(40)(A)(i)(I)		

Common Elements and other Requirements	Bona Fide Prospective Purchaser	Contiguous Property Owner	Innocent Landowner Section 101(35)(A)(i)
		Can acquire with knowledge of contamination	Cannot acquire with knowledge of contamination
Continuing Obligations			
No disposal after acquisition	✓ 101(40)(B)(i)		✓ 101(35)(A)
Compliance with land use restrictions and not impeding institutional controls	✓ 101(40)(B)(vi)	✓ 107(q)(1)(A)(v)	✓ 101(35)(A)
Taking "reasonable steps" to manage releases	✓ Exercise appropriate care 101(40)(B)(iv)	✓ 107(q)(1)(A)(iii)	✓ 101(35)(B)(i)(II)
Providing full cooperation/assistance/access	✓ 101(40)(B)(v)	✓ 107(q)(1)(A)(iv)	✓ 101(35)(A)
Compliance with information requests and administrative subpoenas	✓ 101(40)(B)(vii)	✓ 107(q)(1)(A)(vi)	See supra note 89, at 21
Providing legally required notices	✓ 101(40)(B)(iii)	✓ 107(q)(1)(A)(vii)	See supra note 90, at 21
No impeding performance of response action or natural resource restoration	✓ 107(r)(1)		
Did not cause/contribute to contamination		✓ 107(q)(1)(A)(i)	
Third-Party Defense requirements (due care and precautions)			✓ 107(b)(3)



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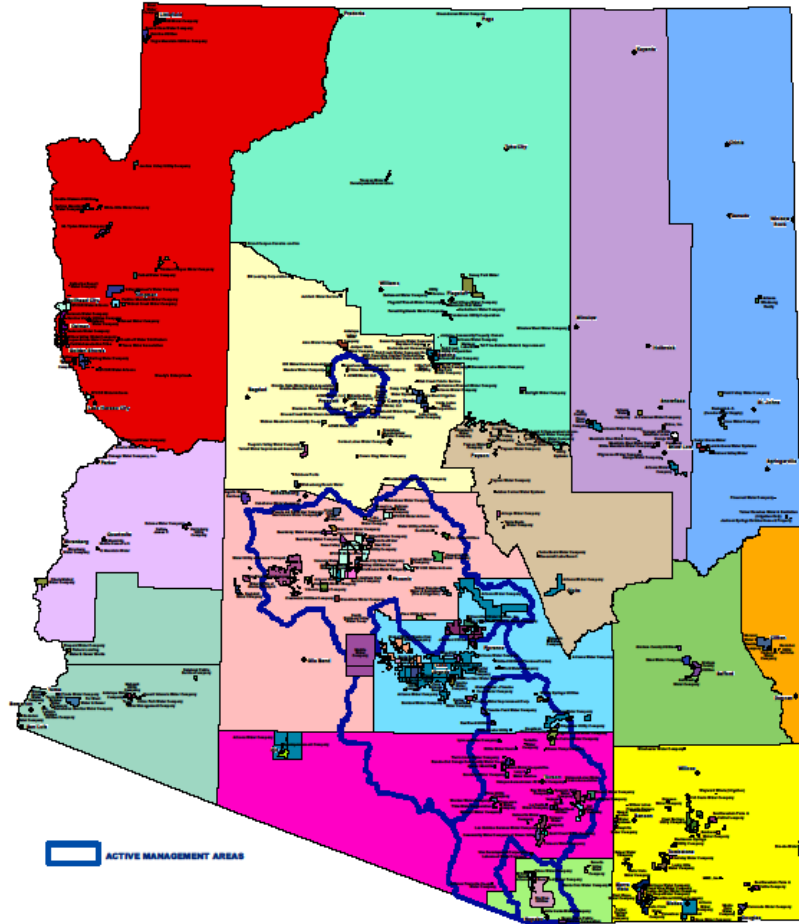
# Water Law

- Due Diligence in Real Estate
  - Types of Rights
  - Establishing or Transferring Water Service
  - Wells
    - Transfers
    - New Application
  - Surface Water Rights
    - Types of Surface Water
    - Adjudication
- New Construction
  - Assured and Adequate Supply
- Potential Issues
  - Federal Rights
  - Subflow



*Discussing Water Rights, A Western Pastime*

<https://blog.nationalgeographic.org/2013/02/18/discussing-water-rights-a-western-pastime/>



Revised July 1, 2018

**STATE OF ARIZONA**  
**WATER COMPANIES REGULATED BY THE**  
**CORPORATION COMMISSION**

Source: <https://www.azcc.gov/utilities/water>

# What Comes Next?

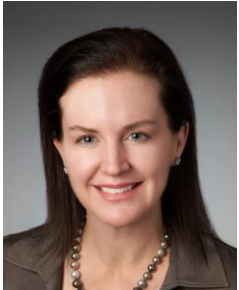


[https://hamiltonmusical.fandom.com/wiki/I\\_Know\\_Him](https://hamiltonmusical.fandom.com/wiki/I_Know_Him)

- Climate Change/Environmental Issues
- Biden Administration
  - Heavier Climate Change Regulation
  - Focus on Zero Emissions and Fuel Efficiency
  - Restoration of methane regulation
  - Focus on green energy
  - Protect Biodiversity
  - Arctic Protections
  - Environmental Justice Communities
  - Restoration of Protections under Clean Water Act and Clean Air Act



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