

23

(COPY:LK)

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON 25, D. C.

DEC 27 1955

Sirs:

With regard to your resolution No. 55-98, adopted on November 22, 1955, and transmitted to this Department on November 23, 1955, a copy being furnished the Commissioner of Reclamation on the same day, the twenty-five houses in question will be the subject of a formal withdrawal petition to the General Services Administration. Once this petition has been approved, and we are confident that it will be approved, care, operation and maintenance of this housing will be transferred to your District.

The actual details and formal notice of this transfer will be arranged after the General Services Administration has relinquished jurisdiction.

It should be understood, of course, that the conclusion that the housing continues to constitute project works, with the result that their care, operation and maintenance may be transferred to the District, springs from the fact that their transfer to the District will facilitate the District's care, operation and maintenance of the works heretofore transferred to it. Consequently, if, in the future, any of the units no longer serve this purpose, their status would change and we would be required to dispose of them under the usual surplus property procedures.

Sincerely yours,

/s/ Fred G. Aandahl

Assistant Secretary of the Interior

Board of Directors
Coachella Valley County
Water District
Coachella, California

Copy to: Regional Director, Boulder City, Nevada
Regional Solicitor, Los Angeles, California

COPY:EH

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON 25, D. C.

Air Mail MAY 3 1956
Registered
Return Receipt Requested

Gentlemen:

Notice is hereby given, in pursuance of the All-American Canal contracts between the United States and Coachella Valley County Water District dated, respectively, October 15, 1934, and December 22, 1947, and subject to the terms and conditions set out below, that the United States, not later than the expiration of sixty days from the date of this letter, will transfer to the District, and the District will be expected to assume, as of that date, the care, operation and maintenance of the following described property:

Parcel 1

A parcel of land situated in Lot Seventeen (17) of Coachella Land and Water Company subdivision of Section Five (5), Township Six (6) South, Range Eight (8) East, San Bernardino Base and Meridian, as shown in Book 4, Page 53 of Maps, records of Riverside County, California, particularly described as follows:

Beginning at a point located North two degrees, forty-one minutes, forty-nine seconds ($2^{\circ}41'49''$) West, a distance of six hundred thirty-seven and sixty-four hundredths (637.64) feet from the Southeast corner of said Section Five (5); thence South eighty-nine degrees, forty-six minutes, thirty seconds ($89^{\circ}46'30''$) West, five hundred (500) feet; thence due North four hundred eighty-three (483) feet; thence North eighty-nine degrees, forty-six minutes, thirty seconds ($89^{\circ}46'30''$) East, one hundred (100) feet; thence due North one hundred seventeen (117) feet to a point on the North Boundary line of said Lot Seventeen (17); thence North eighty-nine degrees, forty-six minutes, thirty seconds ($89^{\circ}46'30''$) East along last-mentioned boundary line a distance of four hundred (400) feet; thence due South a distance of six hundred (600) feet to the point of beginning, containing Six and sixty-two hundredths (6.62) acres, more or less.

Parcel 2

A parcel of land situated in Lot Seventeen (17) of Coachella Land and Water Company subdivision of

Section Five (5), Township Six (6) South, Range Eight (8) East, San Bernardino Base and Meridian, as shown in Book 4, Page 53 of Maps, records of Riverside County, California, particularly described as follows:

Beginning at a point located North twenty-one degrees, one minute, fifty-three seconds ($21^{\circ}01'53''$) West, a distance of one thousand one hundred ninety-eight and seventeen hundredths (1198.17) feet from the southeast corner of said Section Five (5); thence South eighty-nine degrees, forty-six minutes, thirty seconds ($89^{\circ}46'30''$) West, one hundred (100) feet; thence due North one hundred seventeen (117) feet to a point on the North boundary line of said Lot Seventeen (17); thence North eight-nine degrees, forty-six minutes, thirty seconds ($89^{\circ}46'30''$) East along last-mentioned boundary line, a distance of one hundred (100) feet; thence due South a distance of one hundred seventeen (117) feet, to the point of beginning, containing twenty-seven hundredths (0.27) acres, more or less;

together with the improvements heretofore erected, constructed or installed by the United States on the above-described property, consisting of twenty-five dwelling houses and appurtenant facilities and utilities, all of said property being hereinafter referred to as "housing."

As you have been previously informed through the office of Representative John Phillips, our acquiescence in the request for transfer of this housing to the District has necessitated property reclassifications to reflect the change in status of the housing from a construction facility, as the housing was formerly regarded and treated, to project works eligible for transfer to the District. Necessary recordations resulting from this change in status are being made in the All-American Canal system accounts. In turn, this change in status of the housing and the transfer thereof to the District require that, within the maximum limitation thereon, the District's repayment obligation under its All-American Canal contract of October 15, 1934, be restated to include an amount equal to that part of the undepreciated investment in the housing which is allocable to the Main Canal. That amount has been determined to be \$48,547.56. Accordingly, the District's repayment obligation under the 1934 contract, originally stated at \$13,410,014.47 in the notice given by this department to the District under date of July 14, 1954, has been and is hereby redetermined and restated as \$13,458,562.03, less the three semiannual payments of \$67,050.07 each, credited to the District on March 1 and September 1, 1955, and March 1, 1956. Payments coming due from the District on September 1, 1956, and

thereafter will be calculated in accordance with the provisions of Article 12 of the 1934 contract and on the basis of the total amount to be repaid, herein restated at \$13, 458,562.03. The three semiannual payments heretofore made will be adjusted by increasing the payment due September 1, 1956, to the sum of \$68,021.03, payment of which amount will place the District on a current repayment basis with respect to the restated total amount to be repaid. The amount to be repaid by the District under the distribution system contract of December 22, 1947, is unaffected.

As the purpose of the transfer of the housing to the District is to facilitate the care, operation and maintenance by the District of the other works heretofore constructed by the United States and transferred to the District under the provisions of the 1934 and 1947 contracts, the District's custody and use of the housing will be governed by the provisions of both of those contracts relating to the care, operation and maintenance of the transferred works.

If the foregoing terms and arrangements respecting the transfer of the housing are satisfactory to you, it is requested that your Board adopt a resolution expressing its agreement therewith and furnish this Department with a certified copy of such resolution well in advance of the expiration of the sixty day period specified in the first paragraph of this letter. Should the District desire that the transfer of the housing be effected prior to the expiration of the sixty day period, it is suggested that the resolution of your Board designate such earlier date as may be desired, include a waiver by the District of the provisions of the 1934 contract which require sixty days' written notice of transfer from the Secretary of the Interior, and agree that the District will respect the provisions of existing Government leases of the housing units pending the ability of the Government to terminate the leases in accordance with the terms thereof, which require 30 days' written notice of termination.

Sincerely yours,

(Sgd.) Fred G. Aandahl

Acting Secretary of the Interior

Board of Directors
Coachella Valley County
Water District
Coachella, California

Copied for: Acting Project Manager, Yuma, Arizona
820
300
200

Reg.Sol.Draft 4-5-56
COPY to: Regional Director, Boulder City, Nevada
Regional Solicitor, Los Angeles, California

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United States Department of the Interior

1/15 Eaten

BUREAU OF RECLAMATION

YUMA PROJECTS OFFICE
LOWER COLORADO REGION
BIN 5569
YUMA, ARIZONA 85364

IN REPLY
REFER TO: 303-800

OFFICIAL FILE COPY

Date	Surname	Code
1/15	car	110
1/15	D. Krull	100

JAN 16 1976

Mr. Lowell O. Weeks
General Manager-Chief Engineer
Coachella Valley County Water
District
Post Office Box 1058
Coachella, California 92236

subject: Buildings and Structures Inventory

Dear Mr. Weeks:

Reference is made to your letter of December 22, 1975, regarding the possible acquisition of the Government residences and buildings turned over to the Coachella Valley County Water District for care and maintenance and title remaining with the Government.

We have made an inquiry regarding this matter and find no avenue available to us that would permit transfer of title to these facilities while an obligation remains under your repayment contract.

Sincerely,
D. L. KRULL

FOR
T. H. Moser
Project Manager

303

FA:oten:jr 1/15/76



WORK ORDER REQUEST AND AUTHORIZATION

Function Code _____

Work Order Number 110.254

Class 4

Cost Center 7972

BUD. -0-

Function:

- Domestic Water
- Drainage
- Irrigation
- Sanitation
- Stormwater
- Water Conservation

Purpose of Request
 New Project
 Other

Date 7/2 1985
 File No. _____
 Spec. No. _____
 Est. Total Cost \$ _____

Other ~~Demolition of District Housing~~

Name of Project (Job Title) Demolition and removal of District housing, #2 thru #26

(As they become empty)

Location District housing Sec. _____, T. _____ S. _____ R. _____ E. SBM

Description Demolition and removal of District employee housing, District H.Q.

Type of Authorization

- 1. Engineering (may include preparation of Plans and Specifications and a call for bids).
- 2. Purchase of Materials
- 3. Construction by District:
 - A. Direct Labor
 - B. Equipment Usage
- 4. Award of Construction Contract
 To District funds
 Engineer's Estimate \$ _____
- 5. Award of Consulting Services
 To _____
- 6. Acquire Rights-of-Way Purchase Condemnation Other _____
- 7. Other _____

Financing

Budgeted
 Item No. _____ \$ _____
 Item No. _____ \$ _____
 Item No. _____ \$ _____
 Item No. _____ \$ _____

Bonds - I.D. No. _____
 Other 5625299
619872

Applicant Financing \$ _____
 Deposit _____
 MCR No. _____ Date _____ 1985
 Name _____
 Address _____
 City _____
 State _____ ZIP _____

Bill To
 Name _____
 Address _____
 City _____
 State _____ ZIP _____

Prepared by Nat Barnes Reviewed by Irv Risley Dept Oper Date 7/2 1985

Submitted by Department Head [Signature] Date 7/3 1985

Approved by General Manager [Signature] Date 7/3 1985

JUL 03 A.M.

INITIATING DEPARTMENT ONLY
Initial Authorization

Date 7/2 198 5

Resolution No. _____
Cert. of Aud. _____

Estimated Cost

1. Engineering	\$	_____
2. Material	\$	_____
3A. Direct Labor	\$	31,000.00
3B. Equip. Usage	\$	19,950.00
4. Contract Const.	\$	_____
5. Consult. Svcs.	\$	_____
6. Right-of-way	\$	_____
Subtotal	\$	50,950.00
Admin. & G.O.		
@ 5 %	\$	2,547.50
TOTAL	\$	53,497.50

(\$2,139.90 each)

Date _____ 198
Revision No. _____

Resolution No. _____
Cert. of Aud. _____

Estimated Cost

1. Engineering	\$	_____
2. Material	\$	_____
3A. Direct Labor	\$	_____
3B. Equip. Usage	\$	_____
4. Contract Const.	\$	_____
5. Consult. Svcs.	\$	_____
6. Right-of-way	\$	_____
Subtotal	\$	_____
Admin. & G.O.		
@ _____ %	\$	_____
TOTAL	\$	_____

ACCOUNTING ONLY

Date _____ 198 Date _____ 198
Revision No. _____ Revision No. _____

Resolution No. _____ Resolution No. _____
Cert. of Aud. _____ Cert. of Aud. _____

1. \$	_____	1. \$	_____
2. \$	_____	2. \$	_____
3A. \$	_____	3A. \$	_____
3B. \$	_____	3B. \$	_____
4. \$	_____	4. \$	_____
5. \$	_____	5. \$	_____
6. \$	_____	6. \$	_____
\$	_____	\$	_____
\$	_____	\$	_____
\$	_____	\$	_____

Date _____ 198 Date _____ 198
Revision No. _____ Revision No. _____

Resolution No. _____ Resolution No. _____
Cert. of Aud. _____ Cert. of Aud. _____

1. \$	_____	1. \$	_____
2. \$	_____	2. \$	_____
3A. \$	_____	3A. \$	_____
3B. \$	_____	3B. \$	_____
4. \$	_____	4. \$	_____
5. \$	_____	5. \$	_____
6. \$	_____	6. \$	_____
\$	_____	\$	_____
\$	_____	\$	_____
\$	_____	\$	_____

Accounting Approvals

General Accounting _____
Finance Director _____

[Handwritten Signature]

JUL 08 P.M.

25



COACHELLA VALLEY WATER DISTRICT

Post Office Box 1058

Coachella, California 92236

Telephone No. (760) 398-2651

Fax Nos. (760) 398-3711 - Administration

(760) 391-9637 - Engineering

_____ GM-CE
 _____ Asst. GM
 _____ Asst. to GM
 _____ Dept. Head
 _____ Originator
 _____ File

FACSIMILE TRANSMITTAL INFORMATION SHEET

File: _____

Name Leslie Stephens

Firm USBR

City Boulder

Telecopier No. (702) 293-8774 or Speed Dial No. _____

From Dan Parks Authorized by DP

Total number of pages sent (including transmittal) 3

_____ Please review and call

Original to follow by mail

X Per your request

___ Yes X No

_____ For your information

Remarks: _____

If you do not receive all pages or they are not legible, please call as soon as possible.

Ask for Vic

Date 3/14/06 Time 10:55 AM

26



United States Department of the Interior
Office of Inspector General

INVESTIGATIVE ACTIVITY REPORT

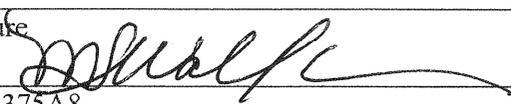
Case Title BOR Whistleblower Complaint	Case Number PI-PI-07-0260-I
Reporting Office Washington, D.C.	Report Date May 9, 2007
Report Subject Interview of Dan Parks, Assistant to General Manager, Coachella Valley Water District on May 3, 2007	

On May 3, 2007, at approximately 3:30 p.m., Special Agent (SA) Megan Wallace of the Office of the Inspector General (OIG), Program Integrity Division, Department of Interior (DOI) telephonically interviewed Daniel Parks (Parks), Assistant to General Manager, Coachella Valley Water District (CVWD). Parks has worked at CVWD since approximately October 1995 as the Director of Engineering and is now the Assistant to the General Manager.

Parks recalled being contacted by a Bureau of Reclamation (BOR) employee in or about March 2006 to confirm the disposition of 25 residences formerly located at CVWD. Parks provided a copy of a work order dated July 1985 but recalled during the course of his research, "there was not a lot there (in the file)." Parks stated that the demolitions did not happen all at once. The district employees that were leasing the residences had an opportunity to stay through the lease or until such a time that other living arrangements could be made. Parks advised that he would try to locate one of these former residents who is still a district employee and see if they remember when the demolition began and ended and whether they used a bulldozer or some other means to demolish the buildings. Parks stated that he was sure that there was no profit gained by CVWD or the BOR as a result of the demolitions.

According to Parks' understanding, BOR's involvement in CVWD's day to day activities is non-existent. Parks confirmed that CVWD has paid the construction note but has not and probably will never request title to the lands. Parks opined that geographically speaking, based on the fact that a large part of the canal follows the San Andreas Fault line, it is not a matter of if, but more a matter of when there will be a catastrophic earthquake. When asked what his understanding of the O&M contract pursuant to title and ownership of the buildings, structures and lands Parks responded, "...the government absolutely retains title to the lands..." Parks indicated that currently there is only one BOR owned building and it is checked occasionally for seismic stability.

Parks added that with respect to other projects like right of way issues, construction, irrigation or maintenance issues, CVWD interacts routinely with the BOR and obtains proper consents. Parks stated that currently, many bridges within the district are being widened. According to Parks, CVWD just finished installing new lining in the middle part of the canal and all of these activities went through

Reporting Official/Title Megan E. Wallace, Special Agent	Signature 
Authentication Number: 9B32022CB77EBDEC97D2DAA6192375A8	

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OFFICIAL USE ONLY

OI-003 (04/07)

the BOR.

Parks stated that he personally has not had any further contact with BOR personnel regarding this matter until this interview. Parks added that subsequent to providing the work 'demolition' order, the district did not receive any correspondence from the BOR indicating that were in violation of the O&M contract.

Parks stated that he was not personally aware of any hazardous materials issues with respect to these buildings. Nothing was indicated in the file in terms of materials used to construct the buildings however, Parks opined that, "...not great attention was paid to these matters in the 1980's like they are now."

Undeveloped Leads:

Parks indicated that he was going to try and identify and locate a district employee who was a former resident of the aforementioned houses and get their recollection of how and when these buildings were destroyed.

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United States Department of the Interior

BUREAU OF RECLAMATION
Lower Colorado Regional Office
P.O. Box 61470
Boulder City, NV 89006-1470

IN REPLY REFER TO:

LC-4400
WTR-4.00 - Irrigation District
CVWD
- 11r-781

OCT 11 1995

Mr. Tom Levy
General Manager-Chief Engineer
Coachella Valley Water District
PO Box 1058
Coachella CA 92236

Subject: Repayment Contract No. 11r-781, Dated October 15, 1934, Between the United States and the Coachella Valley Water District (District)
(Your Letter Dated September 12, 1995)

Dear Mr. Levy:

We are pleased to acknowledge that the District has fully repaid its obligation to the United States under contract No. 11r-781, Construction of Capacity in Diversion Dam, Main Canal and Appurtenant Structures and for the Delivery of Water, dated October 15, 1934. The total amount of the repayment obligation was \$13,458,562.03. Three cents were written off due to a rounding adjustment, making the total amount repaid equal to \$13,458,562.00. The District's final payment was received by the Bureau of Reclamation, on behalf of the United States, on September 25, 1994.

Thank you very much.

Sincerely,

STEVEN C. HVINDEN

Steven C. Hvinden
Manager, Water Administration

bc: ✓ Area Manager, Yuma AZ
Attention: XAO-1000, -6050

OCT 13 1995		
ACTION CODE		
REPLY DATE		
DATE ACTION TAKEN		
DATE	INITIALS	CODE
10/16	JJS	1000
10/16	JJS	1100
10/18	DA	6000
10/18	DA	6050
10/19	DA	6000
10/20	DA	3000
10/20	DA	3050
Classification		
Project		
Contract No.		
Folder I.D.		
Keyword		

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United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, DC 20240

JUN 11 2007

Memorandum

To: Megan Wallace
Special Agent

Through: Bruce Delaplaine 
General Counsel

From: Dee Thompson 
Deputy General Counsel

Subject: PI-PI-07-0260-I, Disposal Requirements for Asbestos and Lead
Contaminated Debris

Issue:

What were the legal disposal requirements applicable in July 1985 and January 1992 to the demolition and disposal of Bureau of Reclamation (BOR) owned building debris that may have contained asbestos and lead?

Short Answer:

Since no testing was done in 1985 and no records were maintained by Coachella Valley Water District (CVWD), it is not ascertainable whether the waste streams generated during the demolition of twenty-five (25) BOR owned buildings contained friable asbestos or regulated amounts of lead. For purposes of this opinion, we assume that some asbestos and lead were present, based upon the information obtained during investigative interviews.

Both asbestos and lead are regulated under the Clean Air Act if they are generated from a stationary source. Although the generation of demolition debris is not considered to be an emission from a stationary source under the Clean Air Act, when friable or non-friable asbestos materials are damaged or are likely to become damaged during demolition activities, they must be handled in accordance with the National Emission Standards for Hazardous Air Pollutants (NESHAP) applicable to asbestos. Both asbestos and lead are also classified as hazardous wastes under the Resource Conservation and Recovery Act (RCRA). The RCRA mandates strict controls over the treatment, storage, and disposal of hazardous waste. The RCRA would only apply if the waste stream generated during the demolition contained regulated quantities of lead and friable asbestos.

With respect to the two (2) buildings "donated" by Wellton Mohawk Irrigation & Drainage District (WMIDD), the investigation disclosed their whereabouts. One was donated to a church; the other to a WMIDD employee. The church building may be demolished soon, and the other building is being used for habitation. Interviews revealed that these buildings are likely of the type that could generate asbestos and lead contaminated waste streams if demolished. Whether or not these amounts fall within the regulation remains to be ascertained. BOR officials may want to consult both the Solicitor's Office and BOR/Departmental environmental staff: (1) to sort through the legality of the alleged transfers; (2) to determine whether the building currently inhabited by a WMIDD employee poses any health risks; and (3) to determine whether the WMIDD's disposition of these buildings constituted arrangements for disposal under RCRA and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Background:

The Office of Inspector General (OIG) Office of Program Integrity Division (PID) is investigating allegations concerning the handling of BOR owned buildings. Specifically, OIG is investigating whether twenty-seven (27) BOR owned buildings located in the Yuma Area Office Lower Colorado Region remain unaccounted for as noted during BOR's 2003 inventory of 100% of BOR owned real property.

The investigation revealed that the BOR contracted with CVWD and WMIDD to operate and maintain BOR owned real property. Both CVWD and WMIDD are local government agencies. CVWD demolished twenty-five BOR owned buildings via bulldozer beginning in 1985 and into the early 1990s apparently without BOR personnel's knowledge or consent. WMIDD donated two buildings to a WMIDD employee and a church, again, apparently without the BOR personnel's knowledge or consent. As part of the investigation, Special Agent (SA) Wallace asked what legal requirements were applicable in July 1985 and January 1992 relevant to the demolition and disposal of buildings that contained asbestos and lead.¹

Discussion:

Environmental Laws Applicable to Asbestos and Lead and Disposal

Asbestos² refers to a number of naturally occurring, fibrous silicate minerals mined for their useful properties such as thermal insulation and chemical and thermal stability.³ It is composed of microscopic bundles of fibers that are very durable, heat resistant and noise absorbing. Because of these properties, asbestos is commonly used as an acoustic insulator, as thermal insulation, as fire proofing and in other building materials. Asbestos' microscopic bundles of fibers can become airborne when asbestos-containing materials are damaged or

¹ The facts presented raise serious questions concerning whether federal property was either improperly or illegally converted to private use. This opinion does not address these issues.

² For purposes of this discussion, we assume that the asbestos that was generated was friable asbestos as opposed to nonfriable asbestos.

³ From EPA's website at <http://www.epa.gov/asbestos/>.

disturbed. When these fibers get into the air they can be inhaled into the lungs where they can cause significant health problems.

Asbestos materials are divided into two categories: friable and non-friable.⁴ "Friable asbestos is asbestos material that can be reduced to powder by hand pressure such as pipe insulation or sprayed on ceiling material and can become air-borne by touch."⁵ "Non-friable asbestos is any material containing more than one percent (1%) asbestos as determined using the method specified in Appendix A, Subpart F, 40 CFR Part 763, Section 1, Polarized Light Microscopy (PLM), that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure."⁶ "When non-friable asbestos is subjected to intense mechanical forces, such as those encountered during demolition or renovation, it can be crumbled, pulverized, or reduced to powder, and thereby release asbestos fibers. When non-friable materials are damaged or are likely to become damaged during such activities, they must be handled in accordance with the Asbestos NESHAP."⁷

Asbestos products are very resilient and have been used in building products since the late 1800's.⁸ In 1971, after years of studying the health effects of workers who made or installed asbestos products, the United States Environmental Protection Agency (EPA) declared asbestos unsafe and listed it as a hazardous air pollutant under the Clean Air Act.⁹ Because of its deleterious health impacts, asbestos transportation, treatment storage and disposal is governed by several federal laws and implementing regulations, including those indicated below.¹⁰

⁴ See EPA website at <http://www.epa.gov/region4/air/asbestos/asbmatl.htm>.

⁵ Id.

⁶ Id.

⁷ Id. There are two categories of non-friable materials: Category I non-friable ACM and Category II non-friable asbestos containing materials. Category I non-friable ACM is any asbestos-containing packing, gasket, resilient floor covering or asphalt roofing product which contains more than one percent (1%) asbestos as determined using polarized light microscopy (PLM) according to the method specified in Appendix A, Subpart F, 40 CFR Part 763. (Sec. 61.141). Category I non-friable ACM must be inspected and tested for friability if it is in poor condition before demolition to determine whether or not it is subject to the Asbestos NESHAP. If the ACM is friable, it must be handled in accordance with the NESHAP. Asbestos-containing packings, gaskets, resilient floor coverings and asphalt roofing materials must be removed before demolition only if they are in poor condition and are friable. <http://www.epa.gov/region4/air/asbestos/asbmatl.htm>

Category II non-friable ACM is any material, excluding Category I non-friable ACM, containing more than one percent (1%) asbestos as determined using polarized light microscopy according to the methods specified in Appendix A, Subpart F, 40 CFR Part 763 that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure. (Sec. 61.141). Category II non-friable ACMs (cement siding, transite board shingles, etc.) subjected to intense weather conditions such as thunderstorms, high winds or prolonged exposure to high heat and humidity may become "weathered" to a point where they become friable. <http://www.epa.gov/region4/air/asbestos/asbmatl.htm>

⁸ From Home Heating InfoSite at <http://www.homeheatinginfosite.com/asbestos-insulation.html>.

⁹ 36 FR 5931 (Mar. 31, 1971)

¹⁰ The treatment, storage and disposal is also governed by state and local laws and regulations as well.

The original Clean Air Act of 1963 established funding for the study and the cleanup of air pollution; but there was no comprehensive federal response to address air pollution until Congress passed a much stronger Clean Air Act in 1970. That same year Congress created the EPA and gave it the primary role in carrying out the law. Since 1970, EPA has been responsible for a variety of Clean Air Act programs to reduce air pollution from hazardous air pollutants.

Hazardous air pollutants, also known as toxic air pollutants or air toxics, are those pollutants that cause or may cause cancer or other serious health effects, such as reproductive effects or birth defects, or adverse environmental and ecological effects. EPA is required to control 188 hazardous air pollutants, including asbestos.¹¹

EPA has implemented a variety of programs under the Clean Air Act that focus on:

- reducing outdoor, or ambient, concentrations of air pollutants that cause smog, haze, acid rain, and other problems;
- reducing emissions of toxic air pollutants that are known to, or are suspected of, causing cancer or other serious health effects; and
- phasing out production and use of chemicals that destroy stratospheric ozone.

Air pollutants regulated under the Clean Air Act come from stationary sources (like chemical plants, gas stations, and powerplants) and mobile sources (like cars, trucks, and planes).¹² Although the buildings in question do not qualify as stationary sources under the regulations, the Clean Air Act could be implicated during the disposal of demolition debris from housing and industrial structures because, as noted, demolition projects involving asbestos are subject to regulation under the NESHAP standards. In addition to the possible applicability of the Clean Air Act, both asbestos and lead are regulated under the Solid Waste Disposal Act amendments, commonly referred to as RCRA.¹³

On October 21, 1976, Congress passed the RCRA as the nation's primary law governing the disposal of solid and hazardous waste.¹⁴ Under RCRA, Congress amended the Solid Waste Disposal Act of 1965 to address the increasing problems surrounding the nation's growing volume of municipal and industrial waste. RCRA set national goals for:

- Protecting human health and the environment from the potential hazards of waste disposal.
- Conserving energy and natural resources.
- Reducing the amount of waste generated.

¹¹ See EPA websites <http://www.epa.gov/ttn/atw/pollsour.html> and <http://www.epa.gov/ttn/atw/orig189.html>.

¹² In 1990, Congress dramatically revised and expanded the Clean Air Act, providing EPA even broader authority to implement and enforce regulations reducing air pollutant emissions. Pursuant to this more robust authority, the EPA issued standards for asbestos under the National Emission Standards for Hazardous Air Pollutants (NESHAP). National Emission Standards for Hazardous Air Pollutants; Asbestos NESHAP, 40 CFR Part 61; See 55 FR 48406-01, Nov. 20, 1990, 1990 WL 348333 (F.R.).

¹³ 42 U.S.C. § 6901 et. seq.

¹⁴ From the EPA's website at <http://www.epa.gov/epaoswer/osw/laws-reg.htm#history>.

- Ensuring that wastes are managed in an environmentally-sound manner.¹⁵

RCRA banned all open dumping of waste, encouraged source reduction and recycling, and promoted the safe disposal of municipal waste. RCRA also mandated strict controls over the treatment, storage, and disposal of hazardous waste. The first RCRA regulations, "Hazardous Waste and Consolidated Permit Regulations," published in the Federal Register on May 19, 1980 (45 FR 33066; May 19, 1980), established the basic "cradle to grave" approach to hazardous waste management that exists today.

Subtitle C of RCRA regulates hazardous waste generators. A generator is any person, or site, including the federal government, whose processes and actions create hazardous waste.¹⁶ Generators are divided into three categories (large, small, and conditionally exempt) based upon the quantity of waste they produce per month. Each class of generator is obligated to comply with a varying number of requirements. The regulations applicable to generators of hazardous waste are located in 40 CFR Part 261 and Part 262. The degree of regulation to which each generator is subject depends to a large extent on how much waste each generator produces every calendar month.

Under regulations promulgated by the EPA,¹⁷ a solid waste that exhibits the characteristic of toxicity is called a "D listed" waste, and is assigned the EPA Hazardous Waste Number specified in Table 1 of 40 C.F.R. § 261.24. This number corresponds to the toxic contaminant that causes the substance to be hazardous. Lead is listed as D008 and would be regulated as a solid waste if, using the Toxicity Characteristic Leaching Procedure, test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," the extract from a representative sample of the waste stream is at or above a concentration equal to or greater than the value given in that table.¹⁸

A solid waste like lead is also a hazardous waste if it is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b); and, relevant to this inquiry, it exhibits any of the characteristics of hazardous waste identified in subpart C of 40 C.F.R. Part 261. Lead is not excluded from regulation under 261.4(b), and in fact is specifically listed as a hazardous waste in subpart C of 40 C.F.R. § Part 261.

¹⁵ To achieve these goals, RCRA established three distinct, yet interrelated, programs:

- (1) The solid waste program under RCRA Subtitle D encourages states to develop comprehensive plans to manage nonhazardous industrial solid waste and municipal solid waste, sets criteria for municipal solid waste landfills and other solid waste disposal facilities, and prohibits the open dumping of solid waste.
- (2) The hazardous waste program under RCRA Subtitle C establishes a system for controlling hazardous waste from the time it is generated units its ultimate disposal – in effect, from "cradle to grave".
- (3) The underground storage tank (UST) program, under RCRA Subtitle I, regulates underground storage tanks containing hazardous substances and petroleum products.

From the EPA's website at <http://www.epa.gov/epaoswer/osw/laws-reg.htm#history> .

¹⁶ 40 C.F.R. § 260.10.

¹⁷ 40 C.F.R. Part 261 at 261.24.

¹⁸ 40 C.F.R. § 261.24.

Likewise, friable asbestos is also a "hazardous waste" within the meaning of the RCRA, even though it is not listed as hazardous waste in administrative regulations promulgated pursuant to RCRA.¹⁹ When lead and asbestos are encountered for removal and disposal, special and expensive requirements for treatment, storage, transportation, and disposal are triggered under RCRA.

The first step in the process under the RCRA, however, is to determine that regulated quantities of materials are present under 40 C.F.R. § 262.11.²⁰ This did not occur. Furthermore, regulations at 40 C.F.R. Part 61 describe the process for handling asbestos containing materials in demolition projects.²¹ There is no record to verify whether CVMD handled the asbestos containing debris in accordance with these regulatory requirements. Since CMVD conducted no testing in 1985 and did not maintain records, we conclude that it failed to follow regulations applicable to the handling of asbestos and lead containing debris during a demolition operation.

Conclusion:

If regulated quantities of lead and asbestos were generated during the demolition of the twenty-seven BOR owned buildings, their treatment and disposal would have been subject to the requirements of the RCRA and the regulations in effect at the time of the disposal. However, because no testing was done in 1985 and no records were maintained by CVWD, we are unable to ascertain whether the waste streams generated during the demolition of 25 BOR owned buildings contained friable asbestos or regulated amounts of lead.²² Interviews revealed that all of the buildings in question are likely of the type that would generate asbestos and lead contaminated waste streams if demolished. Whether or not these amounts fall within the regulation remains to be ascertained.

¹⁹ See *Metal Trades, Inc. v. U.S.*, 810 F.Supp. 689,697- 699 (D.S.C. 1992) (term "hazardous waste" as defined by statute embraces waste asbestos as hazardous waste, and asbestos causes or significantly contributes to an increase in mortality and increase in serious irreversible or incapacitating reversible, illness.)

²⁰ See 40 C.F.R. § 262.11 which provides:

262.11 Hazardous waste determination.

A person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste using the following method:

- (a) He should first determine if the waste is excluded from regulation under 40 CFR 261.4.
- (b) He must then determine if the waste is listed as a hazardous waste in subpart D of 40 CFR part 261.

NOTE: Even if the waste is listed, the generator still has an opportunity under 40 C.F.R. § 260.22 to demonstrate to the Administrator that the waste from his particular facility or operation is not a hazardous waste.

²¹ See also, EPA "Guidance for Controlling Asbestos-Containing Materials in Buildings," EPA 560-85-024.

²² The Occupational Safety and Health Administration (OSHA) also has regulations in effect to protect employees working with or around asbestos. See 29 C.F.R. § 1910.1001, asbestos, and 1910.1026.62, Safety regulations for construction.

BOR officials may wish to consult both the Solicitor's Office and BOR/Departmental environmental staff: (1) to sort through the legality of the alleged transfers; (2) to determine whether the building currently inhabited by a WMIDD employee poses any health risks; and (3) to determine whether the WMIDD's "donations" of these buildings constituted arrangements for disposal under RCRA and CERCLA.²³

²³ CERCLA defines "disposal" for purposes of § 9607(a) with reference to the definition of "disposal" in RCRA, *see* 42 U.S.C. § 9601(29). This section defines "disposal" as follows:

The term "disposal" means the *discharge, deposit, injection, dumping, spilling, leaking, or placing* of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters. 42 U.S.C. § 6903(3).