

CERCLA and MTCA

What are these Statutes?

MTCA and CERCLA are both “cleanup” laws.

- Love Canal
- Requires those involved to take cleanup seriously

The Two Statutes

Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

- Federal Law
- Passed in 1980, amended in 1986

Model Toxics Control Act (MTCA) (typically pronounced “Mott-Ka”)

- State Law
- Passed by Citizen’s initiative in 1988

To whom do they apply?

Facilities:

- Includes buildings, structures, installations, land, pipes, ponds, etc.
- If you're talking about real estate, you're probably covered.

4 Categories of liable parties

The Four Categories

1. Current Owners or Operators
2. Owners or Operators at the time of release
3. “Arrangers”
4. “Transporters”
5. Under MTCA, writing bad instructions and selling the goods.

Liability Categories

Liability is strict

- No causation or intent requirement
- Innocence is no defense

First category is current owners

- Buying property makes you liable

What does liability entail?

PRP for CERCLA or PLP for MTCA

- Strict, Joint, and Several
- Litigation
- Cleanup

Remedy determination

Determined legally

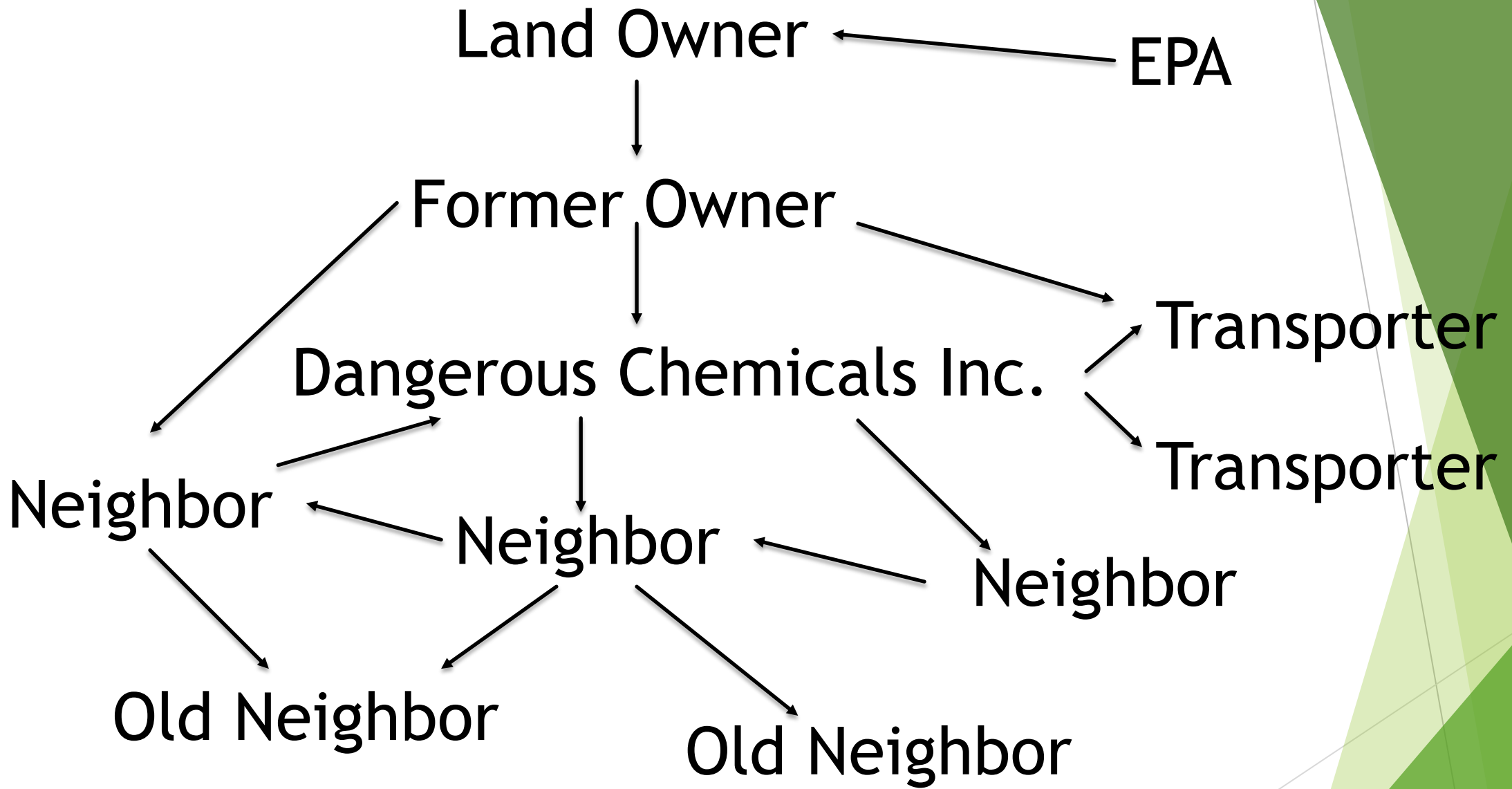
- Litigation or mediation

Process

Suit initiated

- By Agency
- By Contribution action

Joining other parties



Process

- Site inspection
- Filing Suit
- Hiring consultants, joining parties,
- Remedial Investigation and Feasibility Study
 - Extensive Sampling and Risk Assessment
 - Remediation alternatives
- Notice and Comment
- Record of Decision
- Remedial Design and Action

Allocation

Parties allocate share of costs and performance

- Lots of factors
- Bigger sites are more expensive

Allocation Factors

- Extent to which costs are attributable to a party's wastes
- Party's general level of Culpability
- Extent to which party benefited from contamination
- Party's ability to pay
- Anything else
- Gore Factors

Legal Defenses

- Act of God
- Act of War
- Residents using substance without negligence
- Farmers using pesticides without negligence
- Owners who do not know about contamination
 - Not as helpful as it sounds
 - Environmental Due Diligence
- No Petroleum under CERCLA

Managing the Risk

- Don't buy
- Get an indemnity
 - Watch out for solvency

Cases

United States v. Davis, 31 F. Supp. 2d 45, 63 (D.R.I. 1998)

- Origin of the factors
- Based decision on “volume contributed” to “witches’ brew”

Weyerhaeuser Co. v. Koppers Co., 771 F. Supp. 1420 (1991)

- Precedes factors
- Bases decision on Benefits to parties and acquiescence

Boeing Co. v. Cascade Corp., 207 F.3d 1177, 1180 (9th Cir. 2000)

- Courts will avoid double recovery
- Divided based on volume contributed

Questions?