

Arranging liability--A waste is a terrible thing to mind

Facts

A. Ranger acquired Process Control Equipment, Inc. ("PCE") in a stock purchase. PCE designed, manufactured and sold equipment used for the cleaning of various computer parts with solvents. A. Ranger did standard environmental due diligence, reviewed documents, looked at where PCE sent wastes from its manufacturing, and even went so far as to sample the soil and groundwater at PCE's locations. All looked well.

Consequence

Not very long after the acquisition, A. Ranger received a complaint naming it as a defendant in a Superfund action related to contamination at Total Computer Equipment LP (TCE's) site. TCE was one of PCE's customers.

Lesson

A. Ranger was being sued as an "arranger" under the federal and state Superfund statutes. The Superfund statutes impose liability on, among others, *those who arrange for the disposal of a hazardous substance* (or, under Texas law a solid waste) at a facility from which there is a release or threat of release of a hazardous substance (solid waste). It came to light during the litigation that PCE had provided an instruction manual to its customers directing them to dispose of solvent waste by pouring it down the sink. TCE had a septic system and the solvents ultimately contaminated the septic drain field, requiring remediation. Some courts have held even if a company had no control over a waste, it still may be liable under Superfund if it had a say in how those wastes were disposed.