Environmental Considerations prior to purchasing Properties

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Purpose of Site Assessments

Identification of Environmental Risk

- avoid taking ownership of contaminated property
- avoid responsibility for cleanup under CERCLA as an "innocent landowner"
- evaluate whether environmental risks are worth accepting in a case where contamination is discovered

Acronym Alert !!!

ESA

stands for

Environmental Site Assessment

Types of ESA's

Phase I ESA – non-intrusive

Phase II ESA – intrusive

Phase III ESA – intrusive Site Characterization

Phase I ESA

(non-intrusive)

Identifies *potential* environmental concerns Also called *recognized environmental conditions*

- Research on historical and current uses and activities of the site and surrounding area
 - Records review
 - Site reconnaissance
 - Interviews

Records Review

- Surrounding area of subject site
 - Search radius varies: between 1/8 mile and 1 mile

> Site specific

Phase I Env. Site Assessment



All Appropriate Inquiry What's that?

Federal standard for conducting environmental site assessments

Refers to the requirements for assessing environmental conditions of a property prior to its acquisition

Why AAI?

➤ AAI provides protection against liability for bona fide prospective purchasers of properties with actual or threatened environmental contamination as well as contiguous landowners

Clarifies the requirements necessary to establish the innocent landowner defense under CERCLA

All Appropriate Inquiry, cont.

Rule was published in the Federal Registry November 1, 2005

The final rule was effective as of November 1, 2006

AAI Compliance

> AAI final rule standards (effective as of 11-01-06

OR

Follow the standards set forth in ASTM E1527-05 Phase I Env. Site Assessment Process

- AAI applicable to commercial real estate, residential used for commercial purposes, residential under gov. ownership
- Identify releases or threatened releases of hazardous substances on subject property
- > AAI report valid for 1 year, after that it becomes invalid
- AAI must be conducted within 1 year prior to purchase of the property with certain aspects conducted or updated within 180 days of purchase date (i.e. site inspection, interviews, local records search, EPs declaration).

AAI Requirements

- Inquiry to be conducted by an "Environmental Professional"
- Interviews with past and present owners, operators, occupants of the facility/site
- Review of historical records since the property was first developed
- Searches for recorded env. clean-up liens against the facility/site filed under federal, tribal, state, or local law

- Reviews of federal, tribal, state, or local government records
- Review of waste disposal records; UST records; haz. waste handling, generation, treatment, disposal records; spill records
- Visual inspection of site plus adjoining properties
- Interview adjoining property owners mandatory if subject property is abandoned

- Responsibility for searching records of engineering and institutional controls falls to the EP (if sources are reasonably ascertainable) – requirement
- Requires written opinion by EP addressing the thoroughness and reliability of the gathered data
- Requires statement re. the EPs credentials and qualifications

Extensive documentation of data gaps; describe efforts to resolve them; EP is required to issue an opinion about the impact of the data gaps on his/her ability to identify conditions indicative of releases or threatened releases of hazardous substances at the subject site

Places extensive reliance on the EPs professional judgment

Phase II ESA

evaluates the recognized environmental conditions identified in the Phase I ESA



Phase II ESA cont. (intrusive)

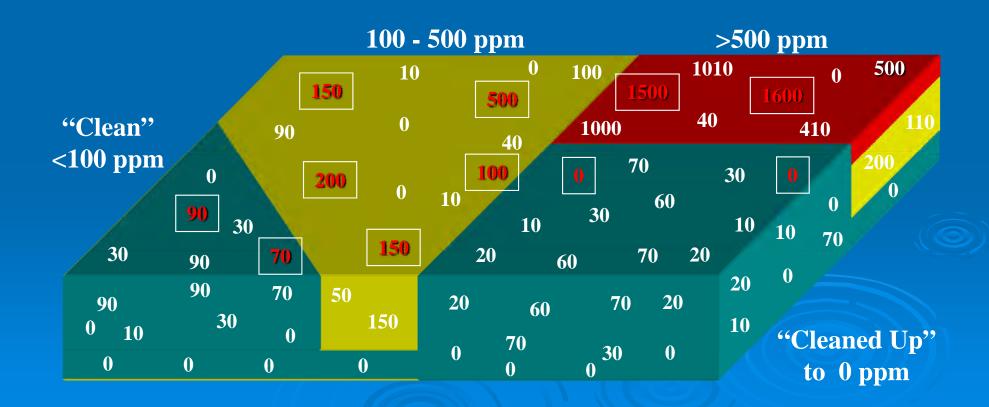
Components:

Sampling and chemical analyses of impacted media (i.e. soil, groundwater, surface water, air, etc.)

Identification of horizontal and vertical extent of contamination — if present

Contaminants are rarely distributed evenly

- Neither horizontally, nor vertically
- Assessment estimates between available sample points



Phase II ESA cont.

Stepwise Approach:

- Development of scope of work
- Assessment activities
- Interpretation of results
- Presentation of findings and conclusions

Phase II ESA Results

- Identified contaminants
- Identified lateral and vertical distribution
- Identified concentrations of contaminants present
- Identified potential receptors
- Identified potential for off-site migration
- > Produced detailed report, incl. detailed maps
- Recommendations for further action, i.e. is remediation necessary

Phase II ESA Results

Results may show:

- Hazardous substances have not been disposed or released
- Environmental condition does exist and information can assist the user in making informed business decisions

Phase III ESA

Also known as "Site Characterization"

Obtain more and detailed data regarding the contaminants and the impacted media

More sampling

Pump tests/slug tests

Detailed geologic cross sections

Phase III ESA Results

- > Identification of source(s) of contaminants
- Identification of migration pattern
- Identification of receptors
- Identification of full extent of contamination
- > Identification of subsurface conditions
- Recommendation of suitable remedial options
- Detailed report

Presentation of Findings

Describe the work performed

- Provide documentation of the data
- Provide evaluation that
 - Constitutes the factual findings
 - Supports the conclusions
 - Facilitates decisions about the transaction
 - Documents the basis for decision whether further assessment is warranted

Assessment Activities

- > Field screening/field analytical methods
- Environmental media sampling (soil, water, air)











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