



The many phases of environmental due diligence when purchasing a property

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The phase one Environmental Site Assessment (ESA) which was once considered the end all report in due diligence is just the beginning in many cases today. Designed to uncover Recognized Environmental Conditions (REC's) as defined by the American Society for Testing and Materials (ASTM) much more goes into today's reports. The standards of the "phase one" were revised in 2013 and now known as ASTM E1527-13 and introduced some new categories. Most notable is the Vapor Encroachment (VE) requirement. VE is the process by which volatile chemicals that may be found in contaminated soil or groundwater can off-gas into subsurface soil and potentially migrate into structures causing indoor air quality issues.

Consultants are now tasked under the scope of this standard to identify if this condition may exist on the subject site or result from contaminated adjoining properties. The two biggest culprits for a vapor encroachment scenario to be present are gasoline stations and drycleaners that use the solvent perchloroethylene (perc).

When a commercial real estate asset is to be acquired, the potential purchaser should conduct some level of due diligence of the property. The most common approach to start with is the phase one which is designed to identify if a REC exists. When one or several are identified, what happens next? Typically a phase two scope is performed to address those "red flag" items. A well thought out scope should take into consideration several factors such as, what equipment is appropriate, Is there adequate access, is the site being redeveloped", will urban fill material be disturbed, are you seeking financing, and are there any regulatory hurdles to overcome such as a New York City E-designation on the property"? Asking these questions will help provide the answers most needed after the work is completed. Over the years I have reviewed phase 2 reports that discuss impacted soil but do not include any groundwater data. If this media is only another few feet away, it helps to obtain that information. How impacted soil and groundwater are addressed vary greatly in scope and cost. In addition, groundwater provides a pathway for contaminants to migrate off-site and therefore important to understand. The phase 2 should also in most instances be able to provide an estimate for any remedial efforts that may be required. Some refer to this remediation stage as a phase 3.

Phase 1 and 2 reports take time to complete. From the first contact of hiring a consultant until the laboratory data is reviewed after the phase 2 is conducted can take 2-6 weeks depending on the motivation. Laboratories can provide results in as quickly as 24 hours in many instances but charge a premium for this service. This extra time may not have been factored into the contract of sale. The buyer's attorney may need to get an extension in order to complete the recommended investigation; will the seller grant this request? Depending on the issue being vetted, an environmental attorney may be a welcomed advocate at this point for the buyer. This specialty niche brings an extra level of expertise as the potential liability associated with investigations and remedial efforts as well as the

role a regulatory agency may play is not to be taken lightly

Most of these real estate purchases end up at the doorstep of a lender as the purchaser will seek financing. The lending community has also gained a better understanding of the environmental component of due diligence since its inception. These phased reports provide lenders the comfort of having more data prior when making a loan. The same data can provide them the ability to decline a loan and not inherit a potential environmental issue in the future. Many larger lending institutions now have in house environmental consultants who understand the potential risk the bank may take on and can advise senior management properly. The more data they are equipped with, the better the chances of an expeditious approval.

At the completion of each phase, the client should be able to make more informed decisions such as whether or not to proceed to a phase 2 (based on the phase one findings), does the budget to remediate make the property still attractive from a financial standpoint, can I wait for the seller to remediate the impact; will my lender be comfortable with the situation? These are all good questions and all in a day's work for those in the environmental consulting field. The objective of the environmental consultant hired for a real estate transaction comes down to answering a few questions: Is there a potential impact at the site, If so, what will it cost to address, how long will it take and who is paying for the work required. How many phases this takes depends on the property, its history and the history of its neighbors.

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