



What about environmental due diligence for my home? The tools to determine potential issues - by Chuck Merritt

June 06, 2017 - Long Island (<https://nyrej.com/section/LI>)

The world of environmental consulting has primarily been designed around the commercial real estate market, but why? Mainly because lenders are the drivers of ordering environmental reports and since the lenders don't see much of a financial risk for the one to four-family market, they don't require them as part of the loan consideration. Buyers of homes have been fixated for decades on getting a home inspection to advise them on things like the remaining life of the roof and appliances. Most times these inspection reports don't cover environmental items such as asbestos, lead paint and underground storage tanks (UST'S) that hold heating oil. Add in neighboring commercial properties that may be close enough to a property (sometimes several hundred feet away) and you can have potential costly problems that are not apparent to the untrained eye. Environmental concerns within a house are mostly visible (you can see peeling paint, mold growing on organic surfaces or damaged asbestos pipe wrap). However, the potential problems with tanks beneath the surface or a drycleaner along the retail corridor in town are harder to evaluate.



**Chuck Merritt,
Merritt Environmental
Consulting Corp.**

Home buyers are not without some tools to assist them in determining if such problems exist. With buried oil tanks, an experienced home inspector may be able to determine if a boiler supplied by natural gas now, was dependent on oil in the past and "verbally" point that out. Fill and vent pipes may still be visible on the interior or exterior of a house as evidence that a buried oil tank is no longer in use. A contract of sale asking a seller to disclose this kind of information can also be helpful. The other tool available to home buyers is a database report which is an integral part of environmental reports on commercial real estate. A database report will list many sites that may have had environmental releases in the past. Gasoline stations with large buried tanks housing a variety of petroleum products as well as information about drycleaners that have regulatory interaction due to past releases to the soil and groundwater as well as spills from small oil tanks can be garnered from one of these reports. The New York State Department of Environmental Conservation (NYSDEC) does not currently require tanks under 1,100 gallons to be registered with their department. The average home is equipped with oil tanks that range in size from 275-550 gallons. However any time a tank is determined to have leaked (regardless of size) it is required to be reported to their department.

Several times a year, I get a call (usually from a friend or business colleague) about such a situation where they start to notice oil trickling into the basement, start smelling a noxious odor or a neighbor points out how the new coffee house down the block was once a gas station. Since Superstorm Sandy, many of these inquiries are about homes near the shoreline where the salt water from the storm surge interacted with the steel in which older oil tanks are constructed from. This interaction of salt water and steel causes them to rust out and lose their structural integrity. Sometimes the new home owner gets an official letter outlining how the previous owner was put on notice to address a tank that had leaked and ignored the situation. It's important to point out that New York is a strict liability state. This means the current owner is responsible for any conditions caused by that property regardless of who caused it. Neighboring properties whose contamination has migrated off site are responsible for the cleanup of the properties they have impacted.

The key is to avoid these problems in the first place and the database is a good place to start. If a purchaser had some information about the commercial sites nearby that have caused problems to the environment or could determine that an old oil tank leaked at the property they want to buy they would be in a better position. Equipped with that information, their advocates such as the real estate attorney representing them can find out what happened, have the seller address the issue, or advise the client to look for another home. Database reports are available from environmental consultants or companies that provide them direct to the public and generally cost several hundred dollars. The information provided has been an invaluable tool for the commercial real estate industry for decades and can provide the same assistance to people buying homes.

Chuck Merritt, LEED AP, is the president of Merritt Environmental Consulting Corp., Hauppauge, N.Y.