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Environmental Management

SITE ASSESSMENTS: Disclosing potentially costly liability

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Due to federal legislation and recent legal decisions, it has become more common for parties involved in the transfer of real estate to acquire the liability for environmental cleanup costs associated with the property if there has been a release or there exists the threat of a release of hazardous substances. The Comprehensive Environmental Response, Compensation and Liability Act (referred to as CERCLA or Superfund) imposes this liability on those who hold title to the property, regardless of whether or not the landowners have been responsible for the past activities that have affected the site.

A comprehensive Phase I Environmental Site Assessment (ESA) is the first step toward ascertaining the condition of real estate and avoiding this potentially costly liability. There are two basic parts of a Phase I ESA. The first, a records review, includes a chain-of-title audit and an evaluation of various local, state and federal agency files. These activities generally reveal relevant site history, past owners and operators, past land usage, the possible presence of underground storage tanks and hazardous substances, and potential or actual soil and groundwater contamination within the vicinity of the site. The second part of the Phase I ESA is an actual inspection of the site to ascertain sources of potential environmental concern. Usually the site inspection consists of the following components as a minimum: a visual survey of the grounds, a review of building materials, observations of adjacent land, and interviews with individuals knowledgeable about the site and neighboring properties.

A visual survey of the grounds helps

reveal readily apparent contaminated areas, areas of suspected contamination or areas that have the potential of becoming contaminated. Ground coverings should be carefully analyzed. Discolored soils, or stained or eroded concrete, all indicate possible exposure to hazardous substances. Likewise, stressed vegetation (e.g., plants that are wilted, stunted or discolored) or the unexplainable absence of vegetation also indicates a problem potentially related to hazardous substance exposure. The presence of hydrophytes (vegetation adapted to wet conditions) is one of three distinguishing features of a wetland. While purchasing wetland property is not a liability in and of itself, the land would be subject to regulations hindering or preventing any development.

Second, the runoff characteristics of the property should be evaluated. Relief (i.e., elevation variations), topography and the presence of surface bodies of water on or flowing through the property should be noted. If the property sits lower than other land in its vicinity, surface or groundwater contaminants could migrate onto the site from adjacent properties. On the other hand, if the property elevation is higher than neighboring areas, the subject site has the potential to contaminate surrounding areas, or to be isolated from nearby contamination.

The third area of concern addressed during the visual survey is the presence of both underground and aboveground storage tanks. Underground storage tanks (USTs) are a serious environmental concern because of the high potential for soil and groundwater contamination from past tank or associated piping leakage. Evidence of past or present underground storage tank

locations include, but are not limited to, the following: concrete islands or past existence of islands; pumps, dispensers, vent pipes and fill caps; unusual or mismatched patching of paved areas; unexplained piping emerging from the ground or cut off at or above the ground; unusual mounds of soil or excavated areas on the property; and buildings that resemble service stations even though the present site is not used as such.

Aboveground storage tanks (ASTs) are typically located on agricultural, commercial and industrial properties. They are usually noticeable and relatively easy to locate since they are commonly associated with outdoor storage areas or combustion engines. If a site is identified as being free of ASTs, but the land use dictates the potential past existence, signs of staining or old support structures should be sought.

The fourth item to be considered is the present use of the site. A thorough understanding of on-site operations could reveal chemical activities or potential areas of concern. Special considerations need to be taken into account when the site is used for manufacturing rather than as office or storage space. In addition to the possible use of hazardous chemicals, a manufacturing operation could generate regulated quantities of hazardous wastes. In any event, the hazardous chemical and hazardous waste handling practices and procedures of the facility should be defined, in addition to its non-hazardous waste handling practices. This can be accomplished by locating and inspecting solid waste receptacles; noting the condition, nature and type of materials stored and generated on site; documenting poor storage techniques, debris or evidence of spills; and perusing shipping manifests, when applicable.

Following a visual survey of the grounds, a visual review of the building materials should be performed. The primary goal of this aspect of the Phase I ESA See **ASSESS** on back