



## ERAS Environmental, Inc.

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# Environmental Real Estate Newsletter

November 2004

### ERAS Celebrates Anniversary

ERAS has celebrated the one year anniversary of moving into it's own office building in Hayward. The new location is equipped with computer networking and server room, and large separate offices for professional staff. The new offices provide space for the previous employees David Siegel, Gail Jones, Skip McIntosh and Kasey Cordoza, as well as the newer employees, geologists Andrew Savage and Nissa Nack.

The improvements also include garage facilities for storage of equipment and supplies for Phase 2 and remediation projects. The facilities significantly increase the operational efficiency of the company and also provides for future growth of the company.

### Brownfields Legislation a Boon for Landowner Protection

In 2002, the Environmental Protection Agency (EPA) passed The Small Business Liability Relief and Brownfields Revitalization Act ("Brownfields Amendments). This legislation amended the CERCLA (Superfund) regulation and **provides statutory protection** to bona fide prospective purchasers, contiguous landowners and innocent landowners.

The legislation provides new Federal (Superfund) exemptions to liability for two very important categories of entities.

- The first exemption to liability is the **Prospective Purchaser** exemption. To qualify for this, the buyer must not have any other liability for pollution at the Property. To qualify the owner must not impede the response action or natural resource restoration. The pollution must have occurred before purchase, the person made "all appropriate inquiry" into the previous ownership and uses, the person cooperated with cleanup, institutional controls, and the person

is not liable or affiliated with any person that is potentially liable.

The second exemption is for **Contiguous Landowners**: owners of land that is "contiguous to or otherwise similarly situated with respect to" land not owned by that person and that is or may be contaminated by pollution that has migrated from the contiguous property. The contiguous land owner must document that they did not cause or contribute to the pollution, is not potentially liable or affiliated with any other person that is potentially liable, took reasonable steps to stop or prevent pollution and fully cooperates with and gives access to those authorized to conduct cleanups.

How does this help us?

- 1) the legislation basically precludes federal enforcement against property that has been cleaned up in accordance with state law;
- 2) the EPA will provide "comfort letters" that name the contiguous landowners or prospective purchasers; and
- 3) the legislation specifically refers to the Phase 1 Environmental Site Assessment ASTM standard for conducting appropriate inquiry.
- 4) The Brownfields Amendments provide significant legal protection for owners, buyers and lenders.

ERAS has recently been involved with an EPA site where a comfort letter was issued that allowed SBA financing. ERAS can discuss these issues and a variety of agency comfort letters with you.

ERAS has almost 15 years experience in conducting Phase 1 Environmental Site Assessments for appropriate inquiry.

ERAS also has extensive experience in conducting Phase 2 remediation projects at Brownfield sites.

### ERAS Increases Asbestos Capabilities

Congratulations to Skip McIntosh for completing the EPA Asbestos Building Inspector course. ERAS has doubled its asbestos certified personnel and now has two employees to provide asbestos surveys for remodeling, renovation or demolition projects. ERAS also provides operations and maintenance plans for managing asbestos in place in commercial buildings. Call us for estimates or if you have any concerns regarding the potential presence of asbestos at your Property that may become an issue during future remodeling, renovation or demolition.

### Hazardous Materials Closures

As part of the Phase 1 Environmental Site Assessment process, ERAS typically reviews hazardous materials management plans (HMMPs) for properties that may in the past have used significant quantities of hazardous materials.

Depending of the local jurisdiction (city/county fire departments or county health department), facilities that have HMMP's on file are required to perform a hazardous materials management facility closure prior to vacating the property. This is significant because the local agency often asks to inspect the property prior to removing and of the equipment or hazardous materials. They may also ask to inspect after the removal of these items.

ERAS has been involved with facilities that have been vacated prior to the proper inspection. Needless to say, the agencies have not reacted favorably to these events. ERAS has also reacted favorably to these events. ERAS has also worked with local fire departments who have requested Phase 2 sampling. Property professionals should be aware that certain facilities may require a Phase 2 project prior to being granted facility closure. ERAS will therefore recommend, in our Phase 1 reports, that facility closure be completed.

If in doubt, check with ERAS regarding these kinds of facilities. ERAS can provide confidential inspection or compliance audits prior to property leasing, sale or change of tenants.

ERAS wishes you or your colleagues nothing but Joy & Happiness in this holiday season and that the coming year is filled with success and prosperity.

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*If you have any questions regarding the information in this newsletter, ERAS services, or if you have a subject you would like to read about in a future newsletter, please call David Siegel at 510.247.9885 (ex. 304) or email us at [info@eras.biz](mailto:info@eras.biz)*

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