



ERAS Environmental, Inc.

1533 B Street, Hayward, CA 94541
Phone (510) 247-9885 Fax (510) 886-5399

Environmental Real Estate Newsletter

Volume 10, No. 1

September 2011

ERAS Environmental, Inc. (ERAS) publishes this Newsletter from time to time to discuss developing environmental issues. It is distributed for the benefit of our clients of and other interested persons. It focuses on environmental issues pertaining to due diligence for environmental assessment of commercial real estate. Many of these issues come up regularly during our business interactions with our clients.

IN THIS ISSUE

- [Regulatory agency comfort letters](#)
- [Phase 1 language alert](#)
- [Environmental due diligence projects on condominium developments](#)

Regulatory agency comfort letters

KEY CONCLUSION: Comfort letters from regulatory agencies are required for financing of properties contaminated by migration from offsite sources. Obtaining a letter could cost \$1,000-\$30,000 and require approximately 3-4 months.

A Comfort Letter, sometimes known as a Property Status Letter, has become an essential part for financing of properties contaminated from an off-site source. This letter is issued by a regulatory agency Regional Water Quality Control Board (RWQCB), Department to Toxics (DTSC) and the Environmental Protection Agency (EPA), depending on which agency provides oversight for the site which caused the contamination.

This letter is issued by a regulatory agency and specifies that the subject Property is not the source of contamination in groundwater beneath it but is from an off-site source (known or unknown).

The United States Small Business Administration (SBA) requires this letter for financing contaminated properties and many conventional lenders are following suit if contamination has impacted the subject Property.

The agencies usually require a comprehensive Phase 1 Environmental Assessment (ESA) to carefully document the previous uses of the Property.

The agency will want to know whether the previous uses could have involved the uses of the same solvents that are in the groundwater from the off-site source.

Besides summarizing the complete history, the regulatory agency will usually want verification that the Property is contaminated and therefore it is often necessary to perform Phase 2 soil and groundwater investigation. Historical Phase 2 information may also be valuable for agency determination.

See next page for recent sample projects:

Information for Due Diligence Project Scope

As you may know, ERAS attempts to tailor the scope (thus the cost) of due diligence projects to what is required to reduce the risk to the buyer and lender for an individual Property.

Based on a number of factors, the users of ERAS report may need more or less due diligence on any given Property. Besides the location, the following is important information required for each Property.

- ❖ Size of the Property and number and type of building(s) and useable spaces
- ❖ All current and historic street addresses for the Property
- ❖ Current uses and proposed future use (including planned change of use, remodeling or demolition)
- ❖ Previous Phase 1, Phase 2 or remediation work
- ❖ Known off-site sources of contamination

This information will enable ERAS to provide the due diligence services you require in the most cost effective manner.

Comfort letters continued:

ERAS has significant recent experience in obtaining comfort letters and the following is a summary of several recent projects:

1500-1501 Space Park Drive, Santa Clara

ERAS transmitted ESA report to representative of RWQCB. The Property was located in a well known plume of volatile organic compounds (VOC) aka solvents. Historical research indicated no historical use of these chemicals at the Property. No further documentation was required to obtain letter.

Total time to obtain Letter: 3 Months

Total cost:~\$2,500

3266-3324 Investment Boulevard, Hayward

Monitoring wells were discovered near the up-gradient and down-gradient borders of Property. Samples collected from wells indicated solvents in the up-gradient well but not the down-gradient well. Results of Phase 1 and Phase 2 monitoring results were provided to representative at the RWQCB.

Total time to obtain Letter: 2 ½ months

Total cost:~\$7,000

462-472 Vista Way, Milpitas

Contamination by solvents detected on up-gradient Property line. After review of ESA by RWQCB six soil borings and two sub-slab vapor sample borings were proposed and agreed to by RWQCB.

Total time to obtain Letter: 2 ½ Months

Total cost:~\$11,000

Note that comfort letters CANNOT be negotiated from city or county agencies if they are the oversight agency for the leak case. This excludes most properties contaminated by gasoline station leaks.

Phase 1 language alert

KEY CONCLUSION: Buyers and lenders should be aware of unspecific language in Phase 1 reports that can be used to justify unnecessary or insufficient Phase 2 investigations.

Buyers and lenders should be aware of possibly manufactured environmental issues that may be very difficult or impossible to resolve. If your report contains non-specific language such as the following

in your Phase 1 report you may want to seek a second opinion from ERAS (at no charge) or another qualified consultant.

“Based on the long commercial and industrial history and uses of the property, we recommend a Phase 2 investigation to investigate the subsurface for petroleum hydrocarbons, solvents, metals and other contaminants”

This recommendation is far too general. It does not provide sufficient justification or specific information on **why** testing is required, **where** to collect samples and specifically **what** contaminants are to be tested.

ERAS welcomes the opportunity to provide a second opinion for your Phase 1 or Phase 2 project. ERAS will evaluate the data obtained during the ESA to assess the scientific and regulatory justification for the recommendation. If Phase 2 work was performed ERAS will evaluate the data for technical objectivity.

Environmental due diligence projects on condominium developments

KEY CONCLUSION: Condominiums owners share ownership with others but still have possible significant financial liability and should demand complete due diligence.

Commercial and industrial condominiums are individually owned portions of commercial properties that have shared legal and environmental liabilities. The shared ownership reduces the individual liability of each owner.

However, there are numerous examples of condominium complexes that have been constructed on former factory or other industrial sites and gasoline stations. There are also numerous cases of large environmental remediation costs that can exceed the value of the Property.

Therefore it is still important to determine historical uses and potential liabilities associated with the entire condominium complex. The condominium association should be made aware of environmental issues and should disclose previous environmental investigations to all prospective purchasers.

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 send us email at info@eras.biz