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Why Accept a Bad Environmental Report? Home of the Free Second Opinion

Key Conclusions: The commercial market appears to contain an abundance of Phase 1 and Phase 2 reports that demonstrate a clear lack of understanding of the purpose and scope of due diligence projects. Parties involved in real estate transactions may desire a second professional opinion.

ERAS has reviewed many due diligence reports that illustrate a number of recurring problems with their quality. There seems to be an increasing number of consultants who use inconsistent interpretations of what constitutes a *recognized environmental condition (REC)*. When a REC **is** identified, many consultants cannot determine an appropriate regulatory agency based additional scope of work. The quality problems commonly observed by ERAS can be summarized as follows.

- Conclusions of the consultant are not communicated clearly so that the reviewer has no doubt whether there is a true *REC* present that requires additional investigation. **(Photo below shows messy automotive repair operation that could have a REC)**



- Insufficient research or site work has been performed to fully determine whether there is a *REC* present. For example, for businesses that use hazardous materials, inspection records were not carefully checked for problems and the site was not evaluated for full hazardous materials compliance.

- Recommendations for Phase 2 investigations are not supported by understandable and clear justification for specifically **why** a Phase 2 is necessary, specifically **where** the sampling should be conducted and specifically **what** should be tested for.

- Scope of the phase 2 recommendation is too broad based on the justification for the work and not sufficiently focused or not designed to follow applicable regulatory agency requirements or expectations.

Recommendation - ERAS recommends that we be consulted if there is 1) any question about the completeness of the Phase 1, 2) the wording of justification for additional work or 3) the scope for a recommended Phase 2 investigation or the findings of an investigation. Continuing down the road of implementing poor Phase 1 recommendations can have disastrous consequences for future value of the real estate.

ERAS will generally review your Phase 1 or Phase 2 reports for 1-2 hours for no charge to evaluate it's quality. If more time is required or additional work is necessary to supplement the previous work, a proposal for a Technical Review project or Regulatory Review project may be necessary, as appropriate.

Providing Previous Environmental Reports

Key Conclusions: It is very important that previous environmental reports be made available for current due diligence projects. Previous Phase 1 information can provide historical and nearby site information which may not be currently available. Previous Phase 2 information may resolve potential issues at the Property assuming the work was performed correctly.

Providing previous environmental reports is usually part of the standard disclosure process for real estate transactions. Previous Phase 1 reports are usually confidential to the individual or institution that paid for the project. In addition, Phase 1 projects are usually considered to be out of date after only one year. However, these reports provide a snapshot of the condition of the Property at the time of the project. They may contain historical information that can be useful for a new Phase 1 project. They may even contain research materials from agencies where the information is no longer available or is difficult to obtain.

In the case of Phase 2 information, if it was performed for due diligence purposes it may not be available anywhere else as public information. Furthermore, Phase 2 sampling, assuming it was performed correctly and focused properly on the specific issue being investigated, is always valid information. If done properly, a previous Phase 2 can potentially save a large amount of time and money. The information becomes a permanent and integral part of the real estate and should be treated as such. Unfortunately information from poorly designed and implemented Phase 2 can also significantly damage the value of the real estate.

Recommendations - ERAS recommends that all previous available environmental reports be provided even if these reports are considered to be substandard or negative. In the case of Phase 2 recommendations, the need for a Phase 2 should be very clear. The scope of any Phase 2 should not only be clearly justified to all parties in an understandable manner but the scope be sufficient to address specific issues and not performed for the benefit of the environmental consultant.



Low Threat Case Closure

The California State Resources Control Board has developed criteria and tools for case closure of leak cases that are considered "low risk" or "low threat". These criteria can be used to demonstrate that many leak cases can be closed usually with a deed restriction. Although deed restrictions limit some activities that can be conducted on a given Property, if the Property use will remain as commercial/industrial, the closure can allow the Property to be sold or refinanced. The closure process is implemented locally by the Regional Water Quality Control Boards (RWQCB). Links to the policy documents are provided below.

ERAS has recently worked with the RWQCB to close sites in Santa Clara and Sunnyvale based on the Low Threat Closure Assessment Tool for VOC (solvent) leak sites. The closure policies are being considered for applicability for a fuel leak case in San Jose **(Photo above shows UST fill pipe inside sidewalk at the San Jose site, a REC)** and for a chemical leak site in Richmond.

Recommendations - ERAS recommends that you contact us to evaluate your Property for the applicability of low threat closure. We might recommend a Technical Review or Regulatory Review project depending on the history and complexity of the leak case.

Petroleum Case Closure - http://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2012/rs2012_0016atta.pdf

Solvent Case

Closure http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/sitecleanup/Low_Threat_Closure_Assessment_Tool.pdf

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