



ERAS Environmental, Inc.

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

Environmental Real Estate Newsletter

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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.

SPECIAL PHASE 2 ISSUE

- **BREAKING NEWS**
- [Does an Incomplete Phase 2 Expose You to Liability?](#)
- [Will Your Phase 2 Pass Regulatory Scrutiny?](#)
- [Index of Past Articles](#)
- **HAPPY HOLIDAYS FROM ERAS**

BREAKING NEWS

Based on recent ERAS Phase 2 projects and discussions with environmental agency personnel, any detectable concentrations of contaminants must be reported to regulatory agency as a release.

The published California Regional Quality Control Board environmental screening levels (ESLs) are used as a tool to decide whether additional investigation at a Property is warranted. However, the ESLs assume you have discovered the most contaminated or worst spot at the site.

The “worst spot” is easily identified in the case of a known location of a source such as an underground tank, sump pit, clarifier, lift or other buried object.

This does not apply to a spill where the detected contamination is considered to possibly be the ‘tip of the iceberg’. This is an important and compelling reason to avoid random P-2 investigations. *See next article below.*

[Does an Incomplete Phase 2 Expose You to Liability?](#)

Key conclusion: A non-specific or incomplete Phase 2 investigation can uncover contamination from an unidentified source which could be off-site.

The finding could permanently damage an owner’s property and open up all parties to significant legal liability. Poorly researched and implemented Phase 1 projects can often lead to poorly justified Phase 2’s.

Poor language in Phase 1 reports have been discussed previously in ERAS newsletters, Feb, 2008, Aug 2009, Sept 2011. *See index on next page.*

A Phase 2 investigation designed to randomly search for unknown contamination in unjustified locations can have disastrous results. All involved parties in a sale could be affected in the following ways:

- Detection of unknown contamination could lead to further recommendations for additional expensive investigation;
- Any detected chemical may require the consultant and owner to report a leak to a regulatory agency;
- The owner of the Property could end up with a disclosure problem that could render their Property no longer marketable;
- Contamination of the Property, even if minor, and possibly from off-site sources could entangle the owner in environmental regulatory requirements for expensive investigation and/or remediation.

Are bankers, brokers and buyers potentially responsible for destruction of an owner’s property value? Be very certain you know the objectives and potential effects of a P-2 investigation before setting the environmental consultant loose.

ERAS recommends that bankers, who require Phase 2 investigations, notify the parties involved they may not lend on a property if contamination is found.

All involved parties should insist their environmental consultant declare and identify the consequences of detection at the Property of any specific contaminant in the specific locations being investigated.

Will Your Phase 2 Pass Regulatory Scrutiny?

Phase 2 soil and/or groundwater investigations are subject to strict and well defined regulatory requirements.

The requirements for individual Phase 2 soil and groundwater investigations are highly variable with some general guidelines as follows.

- ❖ Specific numbers of samples apply for Underground Storage Tank (UST) sites that include former or operating gasoline stations.
- ❖ Specific analyses are mandated for specific types of situations, for example in subsurface investigations of waste oil tanks or clarifiers.
- ❖ Guidelines also apply to minimum numbers of samples required to properly investigate areas of spills.

In many cases it is advantageous and sometimes required to negotiate proper scope of work with local environmental regulators. If the required investigation is not performed to their satisfaction, time and money may be wasted.

ERAS recommends your environmental consultant be able to answer the following questions. Will your Phase 2 investigation pass regulatory scrutiny if contamination is found? Will a regulatory agency accept the scope of work as sufficient? Have the appropriate professionals been involved so the Phase 2 report can be forwarded, if necessary, to an environmental agency for review?

Index of Past Articles

- Announcing ERAS NEW Service - Hazardous Materials Management – Aug 2009
- ASTM Questionnaires for Due Diligence – Dec 2010
- Bank Lending for Property Contaminated from Offsite – Dec 2010
- Environmental due diligence projects on condominium developments – Sept 2011
- ERAS Free Training and Information Services – Aug 2009
- ERAS Project Capabilities - July 2010
- ESA Projects and Relation to Phase 2 Projects Aug 2008
- ETS, ESA and Innocent Landowner Defense – Feb 2008

- Evaluation of ESA and ETS reports – Feb 2008
- Hazardous Materials Closures and Close of Escrow – Dec 2010
- Phase 1 language alert – Sept 2011
- Regulatory agency comfort letters – Sept 2011
- Risk Based Case Closures – July 2011
- Sales of Contaminated Property Made Easier by SBA – Aug 2009
- Sanborn Maps and Gas Stations – July 2011
- Site Case Closures and Closure Letters – Feb 2008
- Soil Vapor and Indoor Air Sampling – July 2011
- UST and Facility Versus Leak Closures – July 2011
- “We Want a Phase 2 and the Scope Doesn’t Matter” – Aug 2009

HAPPY

HOLIDAYS

FROM ALL OF US

at

ERAS Environmental, Inc.

David Siegel, REA II, CAC

William (Skip) McIntosh, REA

Andrew Savage

Kasey Cordoza

Curtis Payton, PG

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