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HAPPY HOLIDAYS

FROM ALL OF US

at

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WHAT IS A RECOGNIZED ENVIRONMENTAL CONDITION (REC)?

The **main purpose** of a Phase 1 Environmental Site Assessment (ESA) is to discover *recognized environmental conditions (RECs)*. RECs require some additional investigation that MAY OR MAY NOT include Phase 2 subsurface investigation.

The ASTM Standard (E1527, latest version dated 2013) defines a *REC* as the presence of likely presence of any *hazardous substances or petroleum products* on a *property* under conditions that indicate an existing release, a past release, or a *material threat* of a release of any *hazardous substances or petroleum products* into structures on the *property* or into the ground, ground water, or surface water of the *property*.

Some environmental consultants assume that ALL Properties are contaminated unless you can prove otherwise. This idea negates the very purpose and scope of the ESA process.

The definition of a REC is **complicated**, so complicated and subject to opinion that even experienced environmental professionals differ as to its meaning. However, the environmental professional must make a judgement that could lead to unnecessary or unjustified, Phase 2 recommendations that are costly and potentially **harmful***.

The following is a list of questions that should be asked when evaluating a leak:

- Do you observe a chemical leak from the site inspection or identify a leak from historical records?
- Has the leak affected buildings on the Property or entered ground water or surface water on the Property?
- Would this leak constitute a *de minimis* condition that would likely not present a threat to human health or the environment? Even if there is a leak is it SIGNIFICANT or is it just poor housekeeping that can be easily corrected?
- If the leak was brought to the attention of appropriate governmental agencies, would the agency open the case as a leak site?

Some environmental consultants want to consider ANY leak or **potential** leak to be a significant leak that requires Phase 2 investigation.

WHAT is NOT a REC?

The following are **NOT RECs**, although some consultants identify these as RECs to recommend Phase 2 investigations.

- The current or historical presence of hazardous materials at a Property. This is **NOT a REC** in the absence of evidence of a leak or spill.
- The existence of a spill is **NOT a REC** unless it is documented that it could impact subsurface soil or groundwater. Minor spills are **NOT RECs**.
- Bad housekeeping issues alone are **NOT RECs** in the absence of proper justification that the leak would (SIGNIFICANTLY) threaten human health or the environment.
- Problems with non-compliance regarding hazardous materials that require correction are **NOT RECs** that require Phase 2 investigation.

The bottom line is the Environmental Professional must take responsibility to properly evaluate the findings from an ESA to properly document what is and what is not a REC. The users of Phase 1 reports should DEMAND proper justification for Phase 2 recommendations.

***Harm from poorly justified Phase 2 project.** It may 1) not provide scientifically defensible data that properly clears the Property of contamination, 2) find

minor or even *de minimis* conditions that are improperly interpreted as significant contamination, 3) put the owner on the regulatory agency hook for contamination, since the owner must report ANY release of chemicals within 30 days.

Do you have proper basis to justify Phase 2?

KEY CONCLUSION: Due diligence Phase 2 investigations do NOT follow a different set of environmental regulations.

Due diligence Phase 2 investigations should be approached the same as sites that are already leak sites. Findings may later be submitted to the agency. The investigation should follow all the same requirements even if for a Property transfer.

Environmental agencies REQUIRE the basis for assertions that there has been a leak or spill to justify Phase 2 investigations. Agencies require 1) documentation of chemical releases, 2) SPECIFIC locations where spills are considered a REC, 3) documentation of WHAT the contaminant is that requires testing. Proper justification is key.

If a consultant does not provide specific reasons for the Phase 2, **beware!** To “determine the past impact of unknown commercial or industrial activities at a Property” **IS NOT** sufficient justification. To “determine if hazardous materials have leaked at a Property at some time in the past” **IS NOT** sufficient justification.

HAPPY HOLIDAYS AND BEST TO ALL IN 2017



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