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With Pollution Experts, Look Before You Leap

Experience Counts; Bargains Can Prove Costly

By HELEN I. HODGES

Nowadays, U.S. bankers are well aware of the importance of looking for environmental hazards in evaluating property and assessing the risk for a lender.

But for too many bankers, dealing with the problem means hiring an environmental "professional" — often without adequate attention to credentialing. The error is often compounded by accepting his or her assurances, after just a cursory assessment, that there are no environmental problems.

Comment

Austin, Tex., environmental attorney Roliff Purrington of Mayor, Day, Caldwell & Keeton says:

"Choosing an environmental consultant is like choosing any goods or services in the marketplace. There are good ones, bad ones, and mediocre ones, and often the talent varies even within well-known consulting firms.

"Because the consultant plays such a critical role, choosing the correct one is critical and justifies the time and attention required for careful selection at the start of the process."

There's a convenient tendency to assume that if an environmental site assessment has been done and the consultant says everything's all right, then there's no need to worry.

Bankers need to ask more questions, demand more information — and beware of the following common assumptions, which can prove costly down the road.

Fallacy: A limited asbestos survey is sufficient to determine the presence of asbestos.

To reduce the cost of a Phase I environmental site assessment (ESA), many environmental firms will offer a limited asbestos survey on properties which contain structures.

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Don't assume that everything is all right just because a consultant says so.

The survey will typically include an examination of one sample of easily accessible material that might contain asbestos.

The risk in collecting only one sample of a particular suspect material depends on the type of material, but it can be enormous.

For example, blown-on ceiling and wall texture may vary in asbestos content from 0% to 30% within a homogeneous sampling area! Ceiling tile may also vary from one tile to the next by a factor of 5%.

Asbestos in foot-square floor tiles may not even show up when the preferred method of analysis, polarized light microscopy, is used. Negative results in analyzing this type of tile usually need to be confirmed using the more expensive TEM (transmission electron microscopy) method.

Asbestos in insulation tends to be relatively uniform, but insulation is usually not visible or readily accessible — and, therefore, is often not sampled.

Other potentially asbestos-containing materials that are usually not sampled in a limited survey are trowel-on acoustical plaster, sprayed-on fireproofing material on hidden beams, and roofing material.

Asbestos-containing roofing material may not be a source of concern during the normal life of the building, but by law the material must be properly removed and disposed of prior to renovation or demolition.

In the worst case, the end report following a limited asbestos survey may say the property does not include asbestos-containing materials, when, in fact, it does.

This can be a monumentally costly mistake for the property owner, the lender, or both.

Fallacy: Environmental regulations are the same in every state.

With regard to basic issues like air, soil, and water contamination, the Environmental Protection Agency usually provides the minimum standards with which the states must comply and that they must enforce.

In many cases, however, state regulation are more stringent than federal regulations. Most states, for instance, follow EPA guidelines for the registration and upgrading of underground storage tanks, but cleanup levels and reimbursement procedures vary wildly from one state to another.

Regulations affecting lead in paint also vary widely, not only from state to state, but

from city to city. If the recommendations of an environmental professional are to be reliable, he or she must be well-versed in all regulations — federal, state, and local — that might govern a particular environmental problem.

Fallacy: A consultant who has identified an environmental problem with a Phase I assessment can then just clean it up; there is no need to pay for a Phase II assessment.

Generally speaking, a Phase I environmental site assessment is a cursory investigation to determine the existence or potential existence of hazardous materials on a property.

When serious problems are missed, regulators aren't impressed by the excuse that corners were cut to save money.

A Phase II assessment determines if these materials are actually present and in what quantity.

It is the Phase III assessment that involves the remediation of identified contamination, usually through the removal and disposal of regulated materials.

Disposal of regulated materials varies greatly in terms of cost.

For example, waste oil is a regulated material which can be recycled, at a relatively low cost.

TCE (tetrachloroethene), on the other hand, is a lubricant for heavy machinery that can be disposed of only at certain designated facilities; the cost of disposal may be hundreds of dollars per drum.

The environmental consultant who does not know how much of the material is present must charge a worst-case fee, which may be far more than is necessary.

Fallacy: Historical use of the property is not a source of concern.

Properties that look "clean" may still have buried underground storage tanks or contamination of ground water and soil, which will be detected only through research into the historic use of the property.

A property, for instance, might have once been a mom-and-pop gas station that was closed in the 1950s and 1960s.

At the time, there were no regulations requiring the removal of underground storage tanks.

Therefore the tanks, probably still containing leaded gasoline, were left in the ground.

As the tanks rusted away, the leaded gasoline leaked out into the soil and ground water, contaminating the property in question and adjacent properties as well.

If this history is known, a lender might, to say the least, think again before making the loan.

Fallacy: If the environmental consultant makes no recommendations for further study or cleanup, there are no problems.

That depends on the environmental consultant.

Unless the person preparing the environmental site assessment report is highly trained and has substantial experience in environmental matters, the conclusion reached may be suspect.

There are no regulations determining who can perform an environmental assessment. Consultants should be hired on the basis of experience and reputation.

Price should not be the only criterion. A cheap report is not a good deal if the it must be redone, or worse, if its errors lead to decisions about a property. That corners were cut in environmental due diligence in order to save money is not an acceptable excuse to regulatory agencies if serious problems have been missed in the process.

A slipshod or otherwise inadequate analysis of possible environmental problems affecting a piece of property can result in enormous, even crippling costs to a financial institution. A small institution could conceivably be ruined by the discovery of unexpected environmental problems after a loan has been made.

Supposedly foolproof seals of approval have come back to haunt more than one loan officer.

As Mr. Purrington says, the tendency to hire an environmental consultant without proper analysis of qualifications and then accept the consultant's report "as some foolproof seal of approval has come back to haunt more than one loan officer."

It is essential to identify a qualified, experienced, thoroughly credentialed environmental consultant to perform site assessments on collateral property. The health and reputation of a financial institution may depend on his or her knowledge, thoroughness, and judgment. □