



nyrej

EPA announces new toxicity reassessment of dry cleaning solvents

December 26, 2011 - Long Island

In September 2011, the United States Environmental Protection Agency (EPA) released their final health assessment for perchloroethylene (PCE) or more commonly referred to as PERC. The findings concluded that PCE causes cancer in people and poses a variety of non-cancer health hazards. Although this is not surprising to people who study the impacts of dry cleaners, the report has the potential of regulatory agencies re-visiting the standards currently used to determine if elevated levels of the solvent is present in the soil/groundwater.

Since the beginning of the environmental due diligence industry, dry cleaners have been at the top of the list of potential users that have impacted the soil and groundwater beneath a property. Many sites that have not housed a dry cleaning tenant for many years are still a concern because the PERC lingers in soil and groundwater for many years.

Migration of PERC with groundwater flow off-site to neighboring properties can significantly increase cleanup costs and financial exposure. PERC is highly mobile in groundwater and has a higher specific gravity than water, which creates a vertical component to contaminant migration unlike gasoline or other petroleum products.

Evaluating a potential impact that may be present can be costly. Most times within the scope of a phase one environmental site assessment (ESA) it is difficult to ascertain if the dry cleaner has caused a problem. Absent a listing in a regulatory agency database report outlining a prior impact that has been addressed, the consultant conducting the ESA will invariably identify the presence or historical presence of a dry cleaner as a Recognized Environmental Condition (REC). This situation commonly arises during the sale of a property or a re-finance in which the lender has retained a consultant to represent them during the loan process.

Once the REC has been identified, the next step typically includes a subsurface investigation including soil and groundwater sample collection with laboratory analysis and possible air testing within a structure. Sites connected to on-site sanitary systems such as cesspools and septic tanks are more susceptible to impacts by PERC because the waste does not get carried off site when a property is connected to a municipal sewer system. However, properties with dry cleaning operations that are connected to sewer systems have also been found to be contaminated by PERC. Such a condition can be caused by improper handling of raw PERC, or spent PERC and dry cleaner filters, and/or leaks from dry cleaning machines over time. If a baseline subsurface investigation identifies PERC or its degradation products in soil or groundwater above applicable regulatory limits, delineation of the extent and severity of such a condition needs to be conducted. A delineation study typically allows the consultant to better gauge the potential remediation cost. Determining if PERC contamination is localized or more widespread, is a key part of the delineation

study.

The lending community has also gained a better understanding of the potential dry cleaning impacts. Recommendations to sample on-site sanitary structures connected to dry cleaning tenants or advancing soil borings around the dry cleaning equipment has provided many lenders the comfort of having more data prior to making a loan or the ability to decline a loan and not inherit the management of an environmental issue. Larger lenders have in-house environmental risk officers looking very closely at these issues while local community banks typically rely on outside approved environmental consultants to guide them. A recent national database provider listed the top ten environmental examples impacting lenders in which six were dry cleaning sites taken back in a foreclosure.

The extent of regulatory interaction can vary depending on the geographical location of a property contaminated by PERC. Lead agencies can consist of local health departments handling oversight of the remediation to state-run environmental regulators. Further, regulators may impose rather onerous and complicated requirements for investigations, remediation, and reporting, which can substantially increase total cost. As the toxicity of the PERC is better understood the exposure and/or contaminant concentration thresholds currently permitted may be reduced. Consequently, the EPA toxicity reassessment may add to the already large list of commercial/retail properties where financing or sale is complicated due to environmental impact caused by dry cleaning operations.

Chuck Merritt, LEED AP, is the president of Merritt Environmental Consulting Corp., Hauppauge, N.Y.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540