



Chuck Merritt - How much time should you allot for environmental due diligence?

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This is typically the second question we are asked after how much will it cost. The answer can vary from property to property, asset type to asset type and contract to contract. Typically a phase one environmental site assessment (ESA) can be completed within two weeks. This should include the site, reconnaissance (including an interview with persons familiar with the property), as well as the database and historical sources being searched. The local agency searches and freedom of information (FOIA) requests can take longer depending on the municipality being petitioned.

Many times consultants can provide their findings sooner in the form of an "executive summary." Timelines on the closing or financing arrangements may require a faster turnaround time than the normal 2-3 weeks. The summary can point out some red flags to the client without waiting for the final version of the report. For instance, a current or historical dry-cleaning operation that is identified early in the process can be disseminated to the client in advance. This information may prompt a client to go further with his due diligence in the form of a phase two investigation. Any time saved in providing this information can hopefully be transferred to the time required to implement additional testing. This can help reduce the need for expedited laboratory turnaround time which can add to the cost.

The scope of the phase two investigation hopefully should come from the findings of the phase one ESA. Most times this will include soil/groundwater sampling to determine if any contamination exists. Old buried oil/gasoline tanks, former/current manufacturing sites, commercial printers, historic dry-cleaning operations, etc. all fall into this category. A seasoned environmental consultant should be able to advise their clients on the scope, cost and timing of the phase two investigation. Sites that are above sole source aquifers like Long Island can impact the drinking water supply and need to be properly evaluated. Regulatory bodies on the local and state level have ramped up their enforcement divisions over the past two decades. Once a site is placed on a regulatory list for a contamination issue, a comprehensive remedial approach will be required by the governing agency. So how much time should a perspective buyer allot for these assessments? Typically all contracts allow for some due diligence whether it is a zoning change inquiry, evaluating the leases, environmental issues, etc. My advice to the perspective buyer is to budget 3-4 weeks. This will allow enough time to visit the property and "kick the tires" as well as obtain that database and historical information. Upon receipt of this information, the consultant and client should have a discussion on these findings as well as determine the risk associated with any issues that are uncovered.

Purchasers need to keep in mind that their risk tolerance may be different from the lender they are seeking financing from as well as potential partners/investors and the entity who may want to buy the property in the future. In addition, different lenders can have different thresholds of comfort. Some lenders base the scope of the due diligence required on the dollar amount of the loan. Others

may use the asset class of commercial vs. multifamily to decide what type of report they will require. Therefore the more due diligence applied to a property, the more data available to help in making a better business decision. The time to discover if there is an environmental impact to a property is during your due diligence time frame and not the next person's due diligence in which you are now the owner of the property.

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