



## **Howard Stern - Do your due diligence on the environmental history of property you own or plan to own**

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Environmental concerns regarding your property have never been more important than they are today. In any project it is essential that your team include an environmental expert and a person fully familiar with local laws concerning environmental issues.

Anyone of you who have recently made application to your local planning or zoning boards are well aware of what I mean.

Environmental concerns run the entire gamut. They run from concerns over light pollution to water run off. Light pollution is simply the brightness, direction and timing of lights used at your premises. Water run off includes potential run of problems with neighbors problems to the oils and other potential "pollutants" that motorized vehicles leave when parked. Motor oils, anti-freeze, brake fluid, automatic transmission and other road related items drip off of vehicles all the time. Should any of these items run into a stream or water supply the damage can be cumulatively problematic.

Ever have a run-in with the likes of the NYC DEC over a run-off into their water supply system? A mother grizzly bear seems tame by comparison. And probably rightfully so. Fines and penalties on top of the sots are high.

Insurance companies now pretty much refuse to insure properties with underground oil tanks. Gas stations have one underground storage tank for every grade of gasoline they carry. Add for diesel or flex fuels and there are five tanks to consider. Today mega gas stations exist with multiple tanks for each grade. You don't need to have one for an actual tenant to be concerned. One with a leak nearby can cause problems from migrating leaks. Leaks have been found considerable distances from leaking tanks.

Auto body shops use not only potential pollutants-and are now required to have separate closely monitored and specially built spray booths-but can store on their premises flammable liquids as well. Have a picture development booth for old time film? Well, potential pollutants there.

Restaurants have special grease traps to trap their greases to be removed by experts. Not a pollutant you say? Well, ever see a grease fire?

Was your property once used as a chemical plant, or have property near one? Where was your land fill for your building project obtained from? There are many instances where land fill contained contaminants.

Many manufacturing plants and small stores of various kinds of makes use of potential environmental pollutants in their manufacturing process including the chemicals used for cleaning their products.

Buy some property lately? Or just look to refinance some property or building that you've owned for some time. Be prepared to do a Phase I environmental. That is only the simplest of onsite tests. It is not uncommon to have to do more detailed searches know as Phase II or Phase III or IV or V. The

more in-depth, the more serious the potential issue is. The more serious it is the costlier the corrective measures are. Know the history of the use of your property. Many lenders will insist on deep research into the usage of your property before you can obtain financing. A purchaser should insist on environmental guarantees when purchasing your land and buildings.

This is because government regulations hold the owner as well as prior owners liable for environmental issues. Since many of the prior owners are no longer in business you, as current owner can be held liable for the damages and most definitely for the clean up of polluted land and buildings even if you literally just bought the building the day before the pollutants are found. Banks are leery about foreclosing certain land and buildings where pollutants may be present because the liability for the premises, including clean up costs can and is forced upon them.

Do your due diligence before you even sign your contracts. It is prudent to require seller provide you with a Phase I environmental before you enter into the contract. In those instances it is not unusual for the cost to be split by the parties or even paid for in full by the buyer when the closing takes place.

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