



REAL ESTATE
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On the Surface, Everything Looks Good. *But what dangers lurk below?*



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- **Routine Investigations** – Whether they are a long-term tenant, buyer, developer or lender, prudent parties dealing with real estate conduct thorough due diligence of the property at issue, including obtaining a Phase I Environmental Site Inspection.
- **Ancient History** – A property with a commercial business operating today may have had an industrial businesses operating years ago. The property where a bank presently operates may have been a gas station decades ago. A Phase I performed on the bank site may reveal that 20 years ago an underground storage tank on the property had a release, but that it was cleaned up. The seller, borrower or other interested party asserts that everything is good now. They even received a “No Further Action” letter from the state. They argue that nothing involving what was cleaned up twenty years ago could impact you today, and assert the No Further Action letter as evidence of that. A party evaluating risks today cannot, however, let a historic No Further Action Letter lull them into a false sense of security.
- **Maybe not so Ancient History** – Even some seasoned real estate professionals are surprised to learn that all environmental conditions and cleanups exist under the ever present threat of the regulatory reopener. A “reopener” is the enforcement authority’s right to revisit an environmental condition or cleanup based on a change in circumstance, possibly requiring further investigation or cleanup. A reopener can make what was once a resolved historic matter a very unresolved present day problem.
- **Reopening a Can of Worms** – The world of environmental compliance regulations and enforcement changes with new political administrations, budgetary issues and scientific advances.



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- **Reopening a Can of Worms (cont.)** – One current moving target are vapor intrusion (VI) standards for indoor air quality. Many states have reduced their VI thresholds in recent years, making environmental cleanups that once met regulatory guidelines (and were issued “No Further Action letters”) likely non-compliant – and those letters no longer applicable.
- **Urban Landscape** – Sometimes the changed circumstance isn’t a new indoor air threshold but rather a change to the area around the property. Maybe in the years since a No Further Action letter was issued, a neighboring parcel dug a well for water access. Or the regional telecommunications giant rewired the neighborhood with new fiber optic cable. Perhaps the local day care center did some renovations to their building and put in a below-grade basement where the kids have their nap time.
- **No Guarantees** – Evidence of a historic remediation, even one meeting the then-existing requirements for a “No Further Action” letter is no guaranty that a property has no risk for environmental issues. When an environmental consultant performs its Phase I investigation, the consult can check to see if any federal or state compliance standards have been modified over the years since the property’s cleanup and review the State’s enforcement file for the property.

When considering a real estate purchase, lease or financing of a property with historic environmental issues, a prudent party will consider whether changes in environmental laws and/or changes in the locality may cause an enforcement agency to revisit a historic environmental condition.

Before you open the door to an unknown risk, close the door on the reopener.

