

Environmental review is a must  
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The Record – Ask The Experts

**Q. I am purchasing a small commercial property. Do I really need to spend additional money on environmental due diligence?**

The cost of conducting proper environmental due diligence on a property, no matter what the purchase price, is money well spent. The potential costs of an environmental remediation in connection with a leaking underground storage tank ("UST") or other environmental concern may far exceed the cost of the environmental due diligence.

A Phase I Environmental Site Assessment/Preliminary Assessment ("Phase I") performed by an experienced environmental consulting firm is usually the first step in any thorough environmental examination.

The Phase I consists of a visual site inspection and historical records review to identify areas of environmental concern at a property, including the possible presence of an underground tank, which may adversely impact the subsurface.

A purchaser should not simply rely on a seller's representations that it is unaware of any tanks or other environmental concerns. Often, the seller's predecessor-in-interest ceased using the underground tank prior to the seller's ownership of the property and the seller may be unaware of its existence.

In addition, one of the seller's predecessors-in-interest may have caused an improper discharge of hazardous substances and the seller may not have conducted adequate due diligence when it purchased the property.

In the event a seller discloses the existence of an environmental concern, such as an underground storage tank, or if an environmental concern is identified during the purchaser's due diligence, a properly drafted purchase agreement should provide the purchaser with adequate protections.

As the circumstances relating to every property acquisition differ, a purchaser should consult with an attorney to ensure the contract protects its interests and to determine the best strategy for conducting its environmental due diligence.

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