

The 10 C's of Environmental Risk Management
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The industry of property assessment and remediation has evolved and matured since its conception in the 1970's. Any property can be subjected to regulation, and many land uses can impact environmental quality. The 10 C's of Environmental Risk Management provides an interesting perspective of a healthy and necessary environmental market.

1. Common Sense

An old joke states that most people have an enormous amount of common sense because they haven't used any of it yet. While I do not prescribe to this theory, it does seem that common sense tends to improve over time as lessons are learned. For example, storing petroleum products in single-walled steel tanks in our drinking water reserves did not make much sense. Requiring double-walled fiberglass tanks and encouraging above ground storage is evidence of a lesson learned.

Common sense tells us that there are three keys to effective environmental management: storage, handling, and disposal. If hazardous materials were stored, handled and disposed of properly, then there would not be much of a cleanup industry. There would be no releases of product. Proper storage, handling, and disposal require training and material expenses. It takes time and money. Environmental risks are created by the human desires of cutting costs and corners, or careless handling of contaminants. The first step of any risk management plan should be the implementation of common sense storage, handling and disposal practices.

2. Caveat Emptor

Webster defines caveat emptor as a warning principle in trading that the buyer should be alert to see that they get the quantity and quality paid for. The principle is better known as "buyer beware". The United States Congress in 1986 drafted the Superfund Amendments and Reauthorization Act, which set forth the Innocent Landowner Defense. This defense is available to purchasers of property who conduct "all appropriate inquiry consistent with good commercial practice". This legislation created the multi-phased environmental site assessment industry. Practicing due diligence and assessing environmental quality prior to involvement with property makes sense.

3. Contracts

There are several types of contracts that apply to environmental risk management. Purchase and sale agreements should address any issues associated with environmental liability from previous land uses. Sellers desire a release and buyers desire indemnification from existing risks. This dichotomy prevents many transactions involving properties with potentially hazardous land uses from closing. The buyer and seller should each have their own risk management strategy prior to entering an agreement, and the financial terms of the transaction will dictate how far they are willing

to deviate from their strategy. Resolving these issues smoothly is the key to closing loans and real estate transactions.

Landlord and tenant lease agreements should be carefully reviewed. Each party should claim protection from liabilities. Tenants should not be responsible for previous land uses, and owners should not be responsible for environmental impacts created by the tenant. The standard hazardous materials clause in lease agreements should be reviewed by each party and their attorney prior to engaging a lease involving past or present hazardous land uses.

Service contracts between environmental firms and clients should contain a detailed, clear, and appropriate scope of work. The means of quality assurance should be defined and the Standard Operating Procedures to be used should be listed. In many cases, clients consider environmental assessments a closing cost that is only necessary to secure funding, so price is their determining factor. Consultants should balance the cost and time requirements against the diligence necessary to professionally complete the task before accepting an assignment.

4. Communication

Every class or seminar involving risk management of any kind will stress communication and documentation as the key aspects to managing liability. In a real estate transaction involving impacted property, communication between the buyer, seller, attorneys, lenders, tenants, consultants, realtors, and regulators may be required. Consultants must communicate with clients, staff, subcontractors, owners, operators, and regulators. The quality of communications is a good indicator of the level of service and professionalism being provided by the communicator.

There are two key aspects of communication: trust and significance. Communicatees must trust the communicators, especially in the world of environmental assessment, which can be a self-serving industry. The significance of the information is important. Trivial and insignificant issues can delay or cancel transactions.

5. Civilization

There must be a balance between economic development and environmental protection to sustain the quality of life enjoyed by our civilization. The economy would recede significantly if the environment was ignored. Maintaining a high quality environment reinforces a sound economy. As a society, we are dependent upon chemicals that are hazardous to our health. Gas stations, dry cleaners, agricultural facilities, golf courses, automotive facilities, print shops, photo labs, and most industrial land uses involve potentially harmful materials. A diligent environmental management strategy to prevent pollution should be employed at all facilities with potential sources of contamination.

6. Conservation

Webster defines conservation as the planned management of natural resources. The FDEP mission is to protect, conserve, and restore the air, water, and natural resources of the state. Environmental regulations create headaches for some whose wallets are impacted, but for society in general, the environment is being protected.

Consider the following: the EPA was not formed until 1969. Fuel tanks were not registered or regulated in Florida until 1985. It takes some time for the true impact of rules to be understood by the market, then economic forces create some adjustments to the rules.

There are government programs or market influences in place to clean up past problems; there are containment and pollution prevention rules to minimize current and future releases; and there is a growing insurance industry to cover the cost of current and future problems. We have come a long way in a short period of time. The future looks good for the environment, given the existing regulatory format.

7. Contamination

The primary liability or risk that we try to manage is the cost of contamination assessment and remediation. There are thousands of contaminated properties in Florida. Real estate transactions and financing associated with contaminated properties are more complicated than non-impacted sites. There are hundreds of properties that could be refinanced or sold if the property owner employed an appropriate risk management strategy. There are many transactions that fall apart because evidence of insignificant contamination was improperly communicated. The method of communication and the type of response made by the assessor when evidence of contamination is discovered can be the key to resolving the issues appropriately.

8. Contiguous Property

Off-site sources of contamination can be damaging. There are numerous third party liability court cases involving adjacent property owners. Many Phase II Environmental Site Assessments are recommended for sites where the only evidence of contamination is several hundred feet from the subject property. Sampling near the property boundary to establish background concentrations or to determine current impact is good risk management. But in many cases, such sampling may not be necessary. Distance, groundwater flow direction, source concentrations, quantity of material discharged, and subsurface conduits should be evaluated to assess the potential for impact from an off-site source. Monitoring over time will help determine if an impact has occurred.

9. Cost

Business decisions need to be made by investors to determine the cost efficiency of assessment and monitoring to minimize a potential risk. This cost benefit analysis

determines the extent of services performed in the market. Closing costs may impact the scope of assessment. Inflated remediation cost estimates may scare potential purchasers away. Environmental services are performed for conservative risk managers who wish to avoid enforcement and liability.

10. Compliance

The act of consenting to a demand, or compliance, is the purpose of an environmental risk management plan. If the facility is in and stays in compliance with the environmental laws, the environmental risks are managed. Compliance audits are a critical element for risk management at industrial facilities. Many fines and enforcement actions could have been prevented through compliance auditing.

Conclusion

The environmental assessment and remediation profession will exist as long as our civilization is dependent upon hazardous materials, as long as economic development continues, and as long as the quality of life that we enjoy is sustained. The future looks good because the risks are being managed and the environment is being protected.

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