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Property Transactions – Hidden Waste Issues



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Property Transactions - Hidden Waste Issues

- **The Due Diligence Process**
- **Items NOT Covered by a Phase I (Due Diligence)**
- **Case Study 1: A Parking Garage Nightmare**
- **Case Study 2: The Hidden Tanks**
- **Case Study 3: Why is Lead a Hazardous Metal**
- **How do I Prevent Environmental Surprises**

The Due Diligence Process

- **Wikipedia – Definitions**
- **Diligence** - [conscientiousness](#) or [determination](#) or [perseverance](#) when doing something.
- **Due Diligence** - (law) A legally binding [process](#) during which a potential [buyer](#) evaluates the assets and liabilities of a [company](#).



The Due Diligence Process

- **Right location**
- **Perfect Size**
- **Right Price**
- **Passes Building Inspection**
- **Right Financing**
- **Need to Close in Three Weeks**
- **Time to order my Phase I (“I hope they don’t find a problem...”)**



The Due Diligence Process

- **Phase I Standard**
- Inquiry: by **environmental professional (EP)**;
- Interviews: past/present owners/operators/occupants;
- Review: historical sources, i.e. chain of title;
- Review: aerial photos, building department/land use records to determine previous uses and occupants;
- Search: recorded environmental cleanup liens;
- Review: government records, i.e. waste disposal, USTs and hazardous waste handling and management;



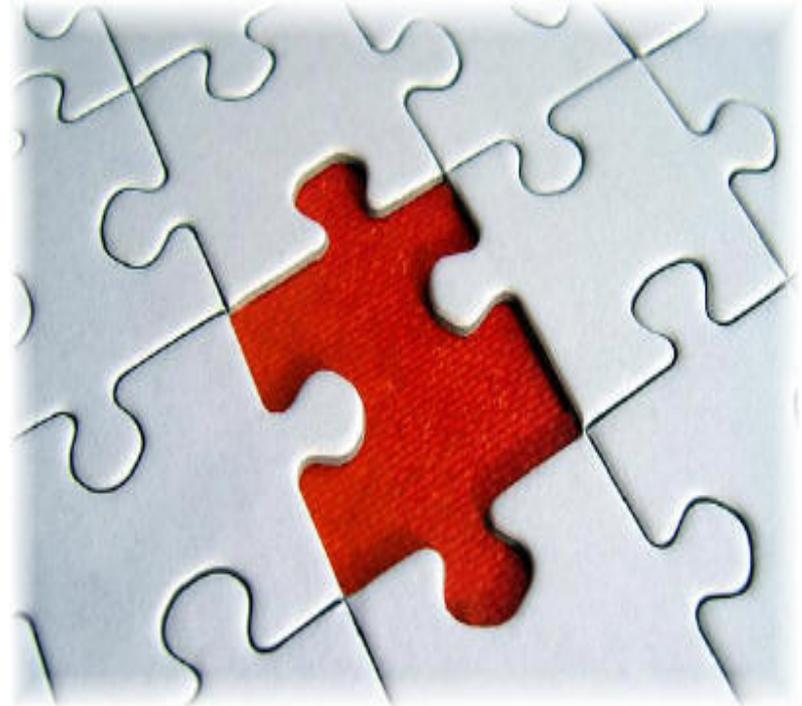
The Due Diligence Process



- **Phase I Scope of Work**
- Visual inspection: of site and adjoining properties;
- Consider: knowledge/experience of the potentially responsible party;
- Consider: relationship between the purchase price and the value of the property if the property was not contaminated;
- Consider: commonly known or reasonably ascertainable information about the property;
- Consider: degree of the obviousness of the presence or likely presence of contamination and the ability to detect the contamination by appropriate investigation.

Items NOT Typically Covered by the Phase I

- **Asbestos Containing Materials**
- **Lead Based Paint**
- **Lead in Drinking Water**
- **Mold/Water Intrusion**
- **Offsite Disposal History**
- **Regulatory Compliance Issues**
- **Soil or Groundwater Testing**



Case Study 1: A Warehouse Nightmare

- **Former Commercial Warehouse – Approximately 500,000 Square Feet**
- **Standard Phase I Performed**
- **Asbestos Survey Performed**
- **RECs Identified**
- **Bunkered Heating Oil Tanks Assessed**
- **Future Plan to Renovate into Condominiums**



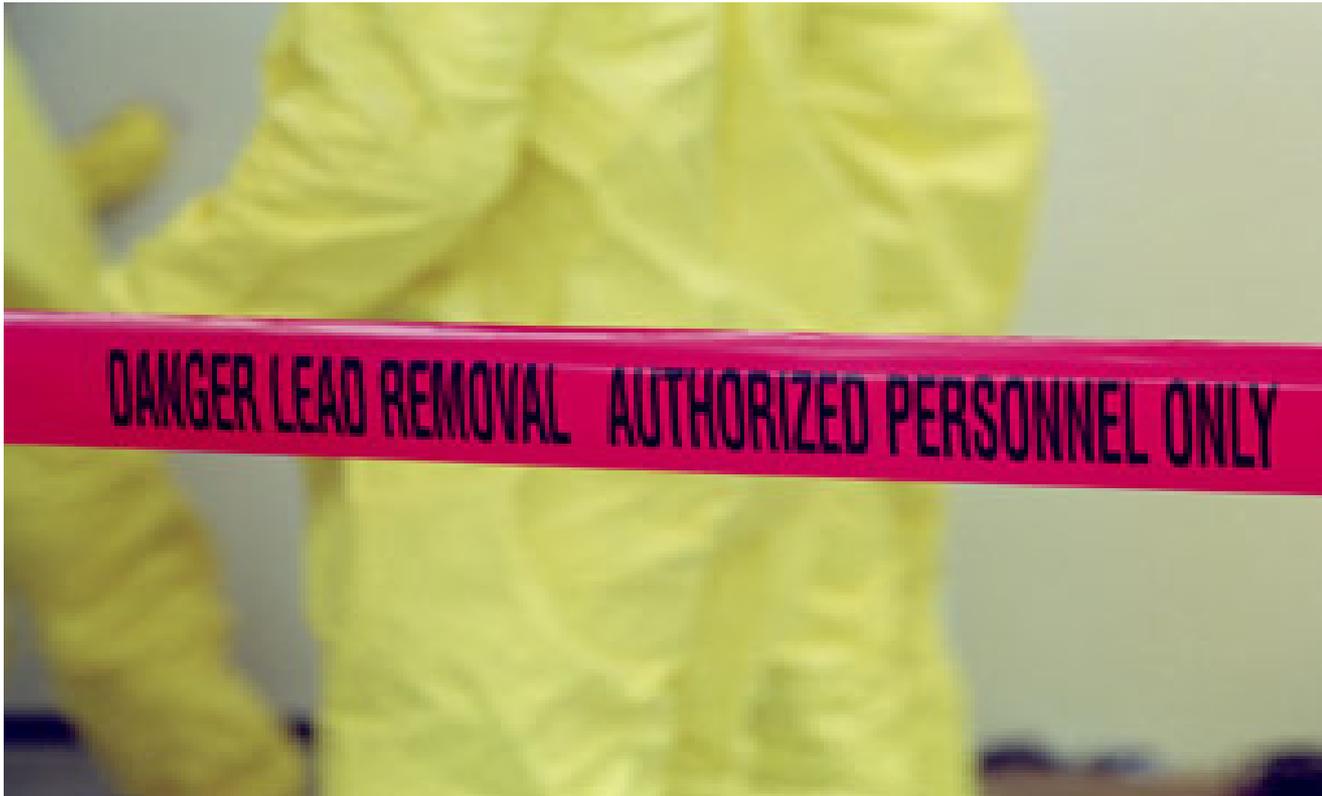
Case Study 1: A Warehouse Nightmare



- **Based on Phase I and Asbestos Survey – Assess potential Environmental Costs**
- **Deal Closes**
- **Renovation Moves Forward**
- **During Renovation – Contractor has Painted Surfaces Analyzed**
- **Discover Leaded Paint on all Surfaces**

Case Study 1: A Warehouse Nightmare

- **Cost to Remove Lead Paint Exceeded \$1,000,000.**



Case Study 2: The Hidden Tanks

- Potential Buyer Provided with a Phase I and Phase II Report
- Phase I Identified 5 USTs – “Properly Abandoned in Place” in 1985
- Conducted a Phase II – No Contamination Detected
- Real Estate Broker: *“This is a Clean Site – No Recognized Environmental Conditions”*



Case Study 2: The Hidden Tanks

- Review of Local Fire Department records

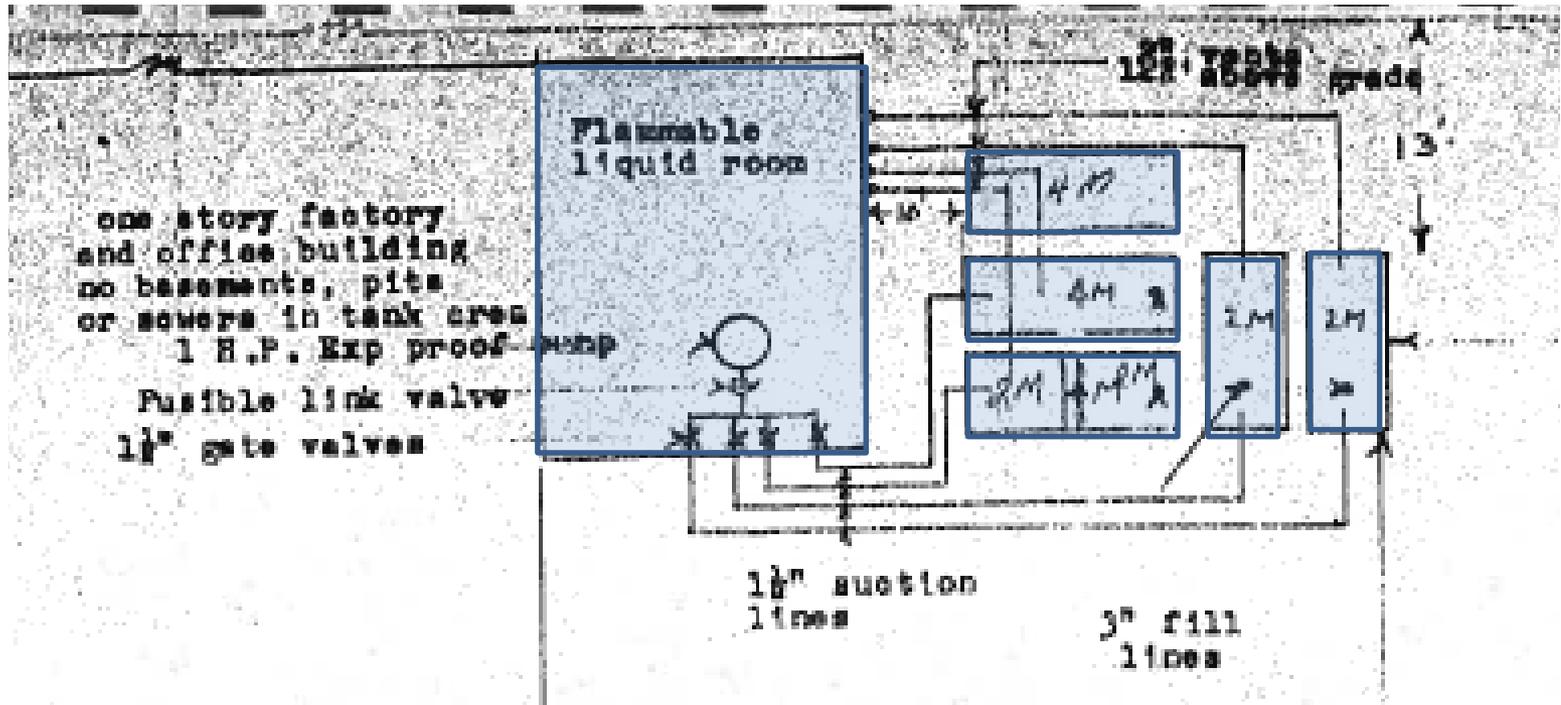
*“Reported to location to determine that underground tank to be abandoned were filled with dirt material. **Work was completed prior to arrival** and tanks were covered with earth...”*

- Fire Department records did not indicate that the tanks had been properly abandoned



Case Study 2: The Hidden Tanks

- Fire Department Records included a Map of the UST Locations



Case Study 2: The Hidden Tanks



Case Study 2: The Hidden Tanks

- **Potential buyer required removal of USTs prior to sale**
- **USTs never actually abandoned – all still filled with liquid**
- **Total UST Removal and Remediation Costs Approximately \$250,000**



Case Study 3: Why is Iron a Hazardous Metal?

- **Spent Pickle Liquor (SPL)
Steel Mill Hazardous Waste
Stream (K062)**
- **Acquisition of SLP
Reclamation Operations**
- **Reclamation of Regenerated
Acid and Iron Oxide**
- **Since SPL is a Hazardous
Waste – Byproducts released
to the Environment become
Hazardous Waste**



Case Study 3: Why is Iron a Hazardous Metal?



- **Phase I Inspection**
- **Operation having Financial Problems**
- **Dust Control Equipment in the Bag House not Working**
- **Iron Oxide Dust Covers Entire Property**

Case Study 3: Why is Iron a Hazardous Metal?

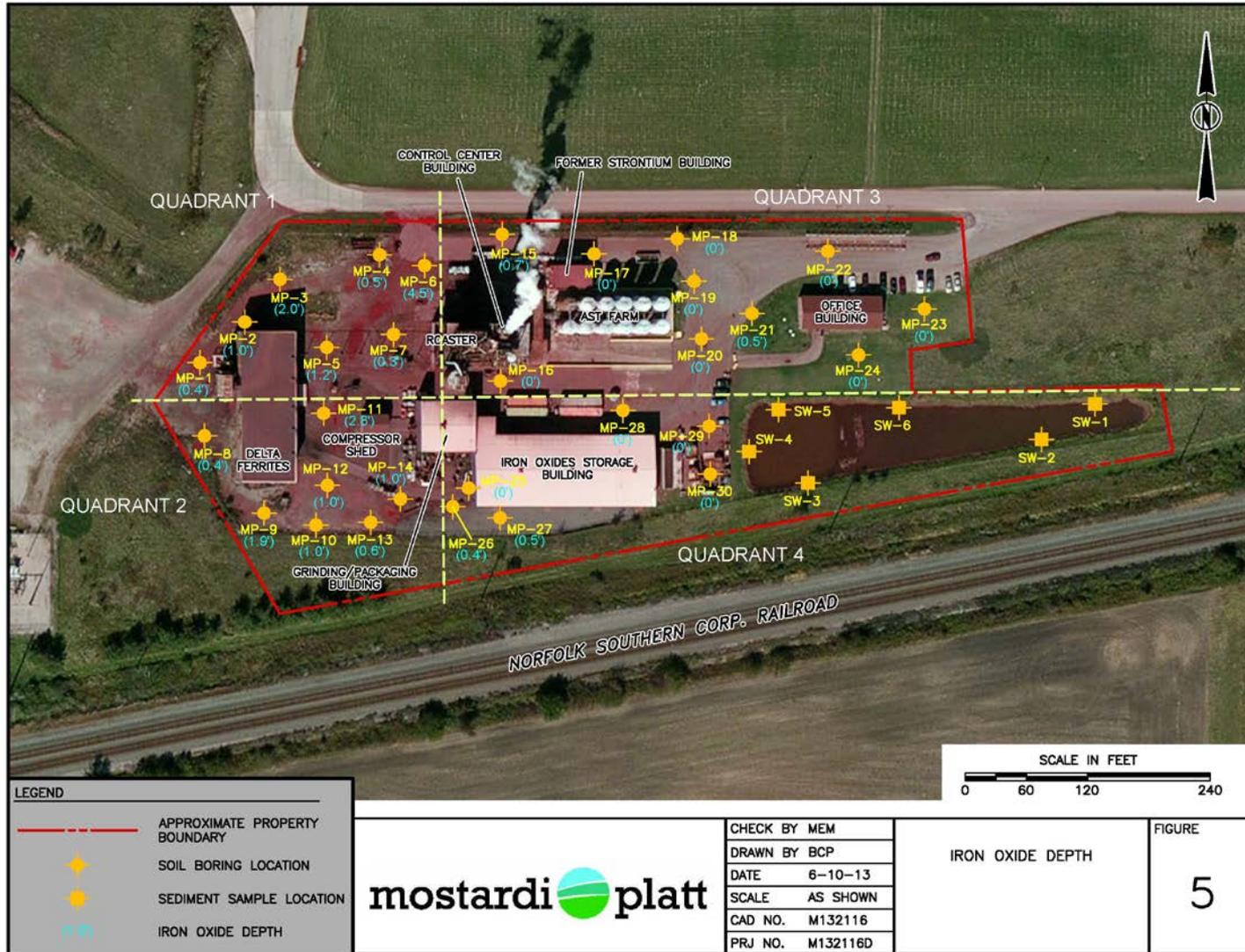


Case Study 3: Why is Iron a Hazardous Metal?



- **Review Records of State Inspection**
- **State Consent Order – Clean Up Iron Oxide “Hazardous Waste”**
- **Assess Potential Cost Exposure for Potential Buyer**

Case Study 3: Why is Iron a Hazardous Metal?



Case Study 3: Why is Iron a Hazardous Metal?

- **Collect Soil Samples**
- **Identify “Visible” Impacts**
- **Confirm No Additional Hazardous Metals**
- **Include Testing for Leachable Metals**
- **Calculate Volume of Material to be Physically Removed**



Case Study 3: Why is Iron a Hazardous Metal?

- **Based on Phase II Data, Evaluate Potential Costs**
- **Reasonable Best Case vs. Reasonable Worst Case Scenarios Considered**
- **Costs Ranged from \$790,000 to \$935,000 to Close out Iron Issue**
- **Cost Evaluation Used to Negotiate Purchase Price**



How Do I Prevent Environmental Surprises

- **Understand how your proposed building use/development can be impacted by environmental factors:**
 - ✓ **Hire qualified consultants/legal counsel**
 - ✓ **Make due diligence a part of the process**
 - ✓ **Understand what is in an Phase I**
 - ✓ **Understand what is not in an Phase I**
 - ✓ **Allow enough time for a Phase II Investigation**



QUESTIONS??

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