ENVIRONMENTAL EVALUATION OF REAL PROPERTY: 
PURPOSE, PERILS AND PITFALLS

January 17, 2017

Union League Club
Chicago, Illinois
8:00 a.m. – 12:30 p.m.

7:30 am Full Buffet Breakfast Served

8:00 am Introduction

Speaker David Rieser, K&L Gates, LLC on behalf of James Harrington
Scope of the problem and the program

8:15 am Legal Panel

Moderator: David Rieser, K&L Gates, LLC

CERCLA and amendments including Basis for property owner liability and potential defenses
Ken Anspach, Anspach Law Offices

A Federal Perspective—Continuing Liability Despite Defenses
Thomas Krueger, Office of Regional Counsel, Region 5, USEPA

A State (Illinois) Perspective including
Differences in requirements for All Appropriate Inquiry
No Further Remediation Letters
A lawyer’s perspective on hiring an environmental consultant for site evaluation
Philip Van Ness, Webber & Thies P.C., Urbana, IL

Thank you for joining us on behalf of the Union League Club and A&WMA Lake Michigan States Section
ENVIRONMENTAL EVALUATION OF REAL PROPERTY:  
PURPOSE, PERILS AND PITFALLS

9:45 am  Technical Panel  
Moderator:  Andrew Dorn, EDI

Phase I Basics

Case Studies
• Case 1 - Russ Chadwick, Mostardi Platt - additional research uncovers hidden issues
• Case 2 - Marita Stollenwerk, TRC Solutions - site visit identifies unpermitted activities
• Case 3 - Judy Freeman, Gabriel Environmental Services. - sub consultant providing false-positive results for environmental investigation

Site Hypothetical - Each Panel Participant is given a role (buyer, seller or bank) and asked to evaluate several issues for a hypothetical transaction. Through this study, we will demonstrate how different professionals can look at the same data and come to different, reasonable conclusions.

11:15 am  Due Diligence in Practice  
Moderator:  David Rieser, K&L Gates, LLC

A panel of industry experts will discuss the nuts and bolts of how practitioners review and use environmental assessments, with emphasis on how their role in the transaction and potential liability affects their perspective on due diligence.

The panel will include:

• Michael Reese, Senior Environmental Analyst for First Industrial Realty Trust
• Jim King, Vice President and Environmental Risk Manager with Fifth Third Bank
• Max West, Senior Vice President, Aon Risk Services, Inc.
ENVIRONMENTAL DUE DILIGENCE: LIABILITY RISK MANAGEMENT IN COMMERCIAL REAL ESTATE TRANSACTIONS

by Kenneth Anspach
The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)

- CERCLA has had the greatest effect on business and industry in general, and on real estate investment in particular. CERCLA has been characterized as retroactively imposing strict liability on innocent landowners or operators for acts of property owners, operators, or tenants that were neither illegal nor negligent at the time of their occurrence.

Material in this presentation taken from ENVIRONMENTAL DUE DILIGENCE: A GUIDE TO LIABILITY RISK MANAGEMENT IN COMMERCIAL REAL ESTATE TRANSACTIONS
The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)

- This liability is perpetual and unlimited. Upon acquisition of an interest in real property, a purchaser risks more than the market value of the property. Significant business costs and liabilities attach to recognized environmental conditions including: the cost of compliance with applicable laws, the cost of remediation, business interruption costs, the loss of asset value as a direct result of the environmental condition, the loss of asset value due to market reaction to publicity about a possible or actual environmental condition, liability to third parties (for example, toxic tort or adjacent property damage), and legal costs associated with litigation. Thus, the economic consequences of a recognized environmental condition could be catastrophic.

• CERCLA recognizes three statutory defenses to liability: acts of God, acts of war, and acts or omissions of noncontractual third parties. In practice, however, these defenses generally provide little comfort to investors. Although the act or omission of a third party would seem to be a readily available defense to liability, the defense is eliminated if the party asserting the defense has a contractual relationship with the third party (for example, land contract, deed, lease, option, mortgage, easement, etc.) or if the third party is an employee or agent of the party claiming the defense.
Superfund Amendments and Reauthorization Act of 1986 (SARA)

- In October 1986, Congress acknowledged the unfairness of the statutory scheme and amended CERCLA through the Superfund Amendments and Reauthorization Act of 1986 (SARA). SARA provided, among other things, a clarification of the third party defense to allow an owner to defend against liability for the act or omission of a third party even if a contractual relationship did exist, provided the owner or operator claiming the so-called innocent landowner defense demonstrated that it acquired the property after disposal or placement of the hazardous substance; had no part in causing the problem; did not know and had no reason to know of the problem at the time of acquisition; exercised due care with respect to hazardous substances; and took precautions against foreseeable acts or omissions of third parties and the consequences of such acts and omissions.'
Superfund Amendments and Reauthorization Act of 1986 (SARA)

- For an owner "[t]o establish that [it] had no reason to know" about the hazardous substance, the owner must have "on or before the date on which [it] acquired the facility, . . . carried out all appropriate inquiries... into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices."
Superfund Amendments and Reauthorization Act of 1986 (SARA)

• “SARA offers five factors for the courts to consider in interpreting the duty to inquire into previous ownership and uses of the property:
• (1) Any specialized knowledge or experience on the part of the defendant; (2) The relationship of the purchase price to the value of the property if uncontaminated; (3) Commonly known or reasonably ascertainable information about the property;
• (4) The obviousness of the presence or likely presence of the contamination at the property; and "[T]he ability to detect such contamination by appropriate inspection."
Small Business Relief and Brownfields Revitalization Act (Brownfields Amendments)

- In January 2002, the Small Business Relief and Brownfields Revitalization Act (Brownfields Amendments) amended CERCLA. In addition to clarifying the innocent landowner liability protection, the Brownfields Amendments added protections for contiguous property owners and bona fide prospective purchasers (BFPP). The BFPP provisions provide an unprecedented liability limitation. For the first time, a prospective purchaser who knows a property is contaminated with hazardous substances can avoid liability under CERCLA, provided that the purchaser qualifies as a BFPP.
Bonafide Prospective Purchasers (BFPP)

- To qualify as a BFPP, the disposal of hazardous substances at the property must predate the acquisition, and the purchaser:
- Must have acquired the property after the January 11, 2002 enactment of the Brownfields Amendments; Must have conducted pre-acquisition all appropriate inquiry (AAI) into ownership and uses of the facility in accordance with the new AAI standards; Must not be a potentially liable party for response costs at the contaminated site or be affiliated with any party that is; and Must take appropriate care with respect to the hazardous substances after acquisition.
ASTM International

• In March 1990, the informal group established the Subcommittee on Environmental Assessment of Commercial Real Estate Transactions (Subcommittee) to develop a due diligence standard for commercial real estate transactions' under ASTM (formerly American Society for Testing and Materials). ASTM provides a system for the development of voluntary standards that have undergone a thorough review process. One practice adopted by ASTM is the Phase I environment assessment, which offers an investor a exhaustive and comprehensive level of due diligence than the Transaction Screen. This Standard was revised in 2013 to comply with the EPA's AAI Rule, which clarified the scope of inquiry required to qualify for the innocent landowner, contiguous property owner, and bona fide prospective purchaser defenses to CERCLA liability.
EPA Final Rule

- The specific reporting requirements for all appropriate inquiries are provided in 40 CFR §312.21 (Results of Inquiry by an Environmental Professional) and §312.31 of the final rule and in §12 of ASTM E1527-05 and ASTM E1527-13. This fact sheet summarizes the required reporting requirements and provides a checklist to assist Brownfields grantees in assuring compliance with the provisions of the AAI final rule.
EPA Final Rule

• As of November 1, 2006, parties must comply with the requirements of the All Appropriate Inquiries Final Rule, or follow the standards set forth in the ASTM E1527-05 or ASTM E1527-13 Phase I Environmental Site Assessment Process, to satisfy the statutory requirements for conducting all appropriate inquiries. All appropriate inquiries must be conducted in compliance with either of these standards to obtain protection from potential liability under CERCLA as an innocent landowner, a contiguous property owner, or a bona fide prospective purchaser.
EPA Final Rule

• Many of the rule’s required activities must be conducted by, or under the supervision or responsible charge of, an individual who qualifies as an “environmental professional” as defined in the final rule.

• The inquiry of the environmental professional must include:
  • Interviews with past and present owners, operators and occupants;
  • Reviews of historical sources of information
  • Reviews of federal, state, tribal and local government records
  • Visual inspections of the facility and adjoining property
  • Commonly known or reasonable ascertainable information; and
  • Degree of obviousness of the presence or likely presence of contamination at the property and the ability to detect the contamination.
EPA Final Rule

• “Additional inquiries” that must be conducted by or for the prospective landowner or grantee include: searches for environmental cleanup liens; assessments of any specialized knowledge or experience of the prospective landowner (or grantee); an assessment of the relationship of the purchase price to the fair market value of the property, if the property was not contaminated; and commonly known or reasonably ascertainable information.
Phase 1 Environmental Site Assessment – Review of Records

- The 2013 Standard provides four components of any Phase I environmental site assessment:
- Pursuant to the record review component of a Phase I, the environmental consultant must review the enumerated standard federal and state environmental record sources. This record review extends beyond the property to an identified "approximate minimum search distance" to cover contamination migration.
Phase 1 Environmental Site Assessment – Site Reconnaissance.

• The second component of a Phase I under the 2013 Standard is a site reconnaissance. The environmental consultant must physically visit the property and "visually" observe the physical site and structures, to the extent not obstructed. This physical observation should include the exterior and interior of all structures on the property and, to the extent possible, the uses of adjoining properties should be determined.

• The environmental consultant's report must detail the methodology of the physical investigation and the circumstantial limitations on the ability to view the site (for example, no access to areas or structures). The environmental consultant need not, however, visit the site more than once.
Phase 1 Environmental Site Assessment- Site Reconnaissance

• The consultant may use a prior Phase I report site reconnaissance as a guide but may not rely upon it without a new site visit." Uses and conditions noted in the site visit should also be the subject of the owner/occupant interviews.

• The consultant should identify the general site setting, including: current uses of the property; past uses of the property; current uses of adjoining properties; past uses of adjoining properties; current or past uses in the surrounding area; geologic, hydrogeologic, hydrologic, and topographic conditions; general descriptions of structures; roads; potable water supply; and sewage disposal system."
Phase 1 Environmental Site Assessment- Site Reconnaissance

- The consultant should also observe the interior and exterior of the property, including: current uses of the property; past uses of the property; hazardous substances and petroleum products in connection with identified uses; storage tanks; odors; pools of liquid; drums; hazardous substance and petroleum products containers (not necessarily in connection with identified uses); unidentified substance containers; and PCBs.'
- In addition, the consultant should observe the interior of the property for heating/cooling, stains or corrosion, and drains and sumps. Also, the consultant should observe the exterior of the property for pits, ponds or lagoons, stained soil or pavement, stressed vegetation, solid waste, waste water, wells, and septic systems.
Phase 1 Environmental Site Assessment - Interviews

- The third component of the Phase I involves an environmental consultant's interview of the owners and occupants of a property about their knowledge of the property's uses and physical condition.
- Except as noted below, the timing, manner, and method of this process are at the discretion of the environmental consultant who can conduct the interviews in face-to-face meetings, by telephone, or through correspondence at any time before, during, or after a site visit.'
- The 2013 Standard, however, specifically identifies the parties to be interviewed in the conduct of a Phase I.
Phase 1 Environmental Site Assessment- Interviews

• Before arranging to visit the property, the environmental consultant should request that the owner identify someone as the key site manager. The key site manager can be an individual, employee, supervisor, manager, or third party independent contractor who has "good knowledge" of the uses and physical condition of the site.
• "Once this person has been identified, the environmental consultant should attempt to interview the key site manager at the property during the site visit." If such a meeting cannot be arranged, the environmental consultant can attempt to identify and interview another person who has appropriate knowledge.
Phase 1 Environmental Site Assessment

- The AAI Rule and 2013 Standard provide a detailed process to develop and report the findings of the Phase I conducted by the environmental consultant. The AAI Rule requires that the results of the inquiry by an environmental consultant be documented in a written report that, at minimum, includes: an opinion as to whether releases or threatened releases of hazardous substances exist; an identification of data gaps that affect the environmental professional's ability to identify releases or threatened releases of hazardous substances and comments regarding the significance of such data gaps; and the qualifications of the environmental consultant.
Phase 1 Environmental Site Assessment - Finding Report

The 2013 Standard requires that a report of the findings of a Phase I meet the following criteria:

• (1) Contain the documentation supporting the environmental consultant's analysis, opinions, and conclusions;
• (2) Sufficiently identify all sources (including indeterminate sources) to memorialize the process undertaken and permit the later retrieval of information allowing reconstruction of the inquiry;
• (3) Encompass all of the due diligence performed in conformance with the 2013 Standard;
Phase 1 Environmental Site Assessment- Finding Report

The 2013 Standard requires that a report of the findings of a Phase I meet the following criteria:

• (4) "Identify the environmental professional and the person(s) who conducted the site reconnaissance and interviews;"
• (5) Separately identify any information reported by the user;
• (6) Clearly "describe all services performed;"
• (7) Include "a findings section which identifies known or suspect recognized environmental conditions, and historical recognized environmental conditions, and de minimis conditions;"
The 2013 Standard requires that a report of the findings of a Phase I meet the following criteria:

- (8) Contain "the environmental professional's opinion(s) of the impact on the property of conditions identified in the findings section .... The opinion shall specifically include the environmental professional's rationale for concluding that a condition is or is not currently a recognized environmental condition;"
- (9) Provide an opinion regarding additional appropriate investigation, such as a Phase II environmental site assessment;
- (10) "[I]dentify and comment on significant data gaps that affect the ability of the [environmental professional]. to identify recognized environmental conditions and identify the sources of information that were consulted to address the data gaps;"
The 2013 Standard requires that a report of the findings of a Phase I meet the following criteria:

- (10) (cont.) Contain one of the following as a conclusion: We have performed a Phase I Environmental Site Assessment in conformance with the scope and limitations of ASTM Standard Practice E 1527 of [insert address or legal description], the property. Any exceptions to, or deletions from, this practice are described in Section [ ] of this report. This assessment has revealed no evidence of recognized environmental conditions in connection with the property. We have performed a Phase I Environmental Site Assessment in conformance with the scope and limitations of ASTM Practice E 1527 of [insert address or legal description], the property. Any exceptions to, or deletions from, this practice are described in Section [ ] of this report. This assessment has revealed no evidence of recognized environmental conditions in connection with the property except for the following: (list);
Phase 1 Environmental Site Assessment-Finding Report Conclusion

The 2013 Standard requires that a report of the findings of a Phase I meet the following criteria:

- (12) Separately list and detail all deletions and deviations from the Practice;
- (13) List all additions to the Practice;
- (14) "[l]nclude a references section to identify published... sources relied upon in preparing the Phase I;
- (15) Be signed by the environmental professional(s) responsible for the Phase 1;
- (16) Include the certifications required by 40 C.F.R. 312.21(d), as described above.
Innocent Landowner Defense

- U.S. v. 150 Acres of Land in Medina County, 204 F.3d 698 (6th Cir., 1999)
- “Ethel and the other Bohaty defendants had inherited undivided interests constituting a large majority of the ownership of the parcel. Three other heirs had inherited very small portions, less than two years before the other fractional interests were bequeathed to Ethel. A year later, while the estate of Ethel's husband was still in probate, the three other relatives sold their fractional interest to Ethel. Under these circumstances, where one part-owner by inheritance acquires an interest from another part-owner by inheritance, apparently merely to consolidate the inherited ownership interest, the level of "appropriate inquiry" is a very fact-specific question. We see no evidence in the record of what is "customary practice" in connection with such family transactions. There is also no evidence of the specific purchase price and the "value of the property if uncontaminated" or other factors mentioned in the definition. Under these circumstance we hold simply that, at this time, we cannot state as a matter of law that Ethel's actions were not "appropriate inquiry" under the circumstances at the time of the sale of the other fractional interests.”
Innocent Landowner Defense

- Innocent landowner defense did not apply. Court applied a negligence standard to defendant’s actions after it accidentally split open a wooden box filled with creosote mixed with benzene and allowed the mixture to flow 45 feet through an open sewer trench to find it “cannot conclude that CFA acted with due care with respect to the contamination.”
Innocent Landowner Defense

- CERCLA provides "a limited affirmative defense based on the complete absence of causation," known as the "innocent landowner defense." The elements of this "third party defense" are the following, each of which must be proven by the defendant by a preponderance of the evidence: (1) that another party was the "sole cause" of the release of hazardous substances and the damages caused thereby; (2) that the other, responsible party did not cause the release in connection with a contractual, employment, or agency relationship with the defendant; and (3) that the defendant exercised due care and guarded against the foreseeable acts or omissions of the responsible party. 42 U.S.C. Sec. 9607(b)(3). We find that WSSC failed to produce sufficient evidence of the "due care" element of the defense.
Innocent Landowner Defense


• The "due care" element of the third party defense requires the defendant to prove that it "exercised due care with respect to the hazardous substance concerned," and that it "took precautions against foreseeable acts or omissions of any ... third party." Id. WSSC claims that IFI's acts of dumping PCE into the sewers were unforeseeable, and therefore due care did not require WSSC to take any precautions. As we previously have explained in connection with a landowner's claim that a tenant's waste disposal was unforeseeable, CERCLA does not sanction "willful or negligent blindness."
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Comfort/Status Letters, Reasonable Steps, and Protections for Brownfields Buyers

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January 17, 2017
2002 Brownfield Amendments

Self-Implementing Landowner Liability Protections
  - Bona Fide Prospective Purchasers (BFPPs)
  - Contiguous Property Owners (CPOs)
  - Innocent Landowners

Enforcement Bar and State Voluntary Cleanup Programs

Brownfield Grants Program
Enforcement Guidance

• Contiguous Property Owner Guidance (2004)
• Windfall Lien Resolution Procedures (2008)
• Model CPO Assurance Letter (2009)
• Affiliation Guidance (2011)
• Tenants as BFPPs Guidance/ Model Renewable Energy Letters (2012)
  https://www.epa.gov/enforcement/guidance-revised-policy-issuance-superfund-comfortstatus-letters
Types of Comfort/Status Letters

Superfund

- Good Samaritan Letter (2007)
  
  http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/index.cfm?action=3&sub_id=1222


RCRA

  
Why Does EPA Issue Comfort/Status Letters?

• To facilitate the cleanup and reuse of contaminated or formerly contaminated properties when there is a realistic perception or probability of Superfund liability and no other private party mechanism adequately addresses a party’s concerns.

• To provide a party with information the EPA currently has about the their property and applicable Agency policies to help the party make informed decisions as they move forward with reuse of the property.

• When EPA determines that a letter is warranted.
What Can a Comfort/Status Letter Do?

• Provide information that EPA has about the property and the cleanup progress at the site
• Share EPA’s present involvement at a property
• Identify statutory protections and enforcement discretion guidance that may be potentially available at the property
• Suggest “reasonable steps” and continuing obligations that should be undertaken at a site to ensure protectiveness and achieve or maintain CERCLA liability protection as a BFPP
• Provide links to additional resources and tools that may be useful or pertinent to the redevelopment effort
Reasonable Steps

• Related to stopping continuing releases, preventing threatened future releases, and preventing or limiting human, environmental, or natural resources exposure to earlier releases

• Site-specific physical steps to be taken to maintain BFPP status
Continuing Obligations required by CERCLA

- Provide all legally required notices with respect to the discovery of any hazardous wastes at the site
- Provide full cooperation, assistance and access to the property to EPA and authorized representatives
- Comply with Institutional Controls for the property
- Comply with any information requests issued by EPA
What Does a Comfort Letter Not Do?

• Does not include a determination of a party’s liability or provide the recipient with a no action assurance (Policy Against “No Action” Assurances to CERCLA (June 16, 2000))

• Does not include any definitive or conclusory statement that a particular statutory or regulatory provision, EPA policy or guidance is applicable to the party

• Does not provide explicit approval for a project design or end use, although it may identify obvious incompatibilities between the remedy for the site and the intended land use
When Does EPA Enter Into Site-Specific Agreements?

• Given the self-implementing landowner liability protections, an agreement is not needed at most sites
  - At a site where a non-liable party is willing to perform cleanup work under EPA oversight, a site-specific agreement may be appropriate to address potential liability concerns
    - Site of federal interest
    - Work exceeds what would be required to maintain the liability protection (more than BFPP “reasonable steps”)
Sites of Federal Interest

- Sites on the National Priorities List
- Sites where EPA is undertaking or has completed CERCLA cleanups, e.g., removal or remedial actions
- Facilities subject to RCRA corrective action/post-closure
- Contaminated sites in Indian country
Site-Specific Agreements

- BFPP Doing Work
- Contiguous Property Owner
- Windfall Lien Resolution
- Prospective Purchaser/Prospective Lessee
BFPP Doing Work Agreements

• Removal Work Agreement Model (2006)
  - Sites of federal interest
  - Work is more than obligations imposed by BFPP protection (more than reasonable steps)
  - Federal covenant not to sue, contribution protection, and waiver of windfall lien
  - EPA oversight
  - Financial assurance

• Remedial Work Agreement
  - Based on removal model
  - Include additional provisions appropriate for performing remedial work
Other Non-Liable Party Agreements

• Contiguous Property Owner Agreements
  - Explicit statutory authority under 107(q)
  - No model, but similar to BFPP Doing Work Agreements

• Windfall Lien Resolution Agreements
  - Applicable to BFPPs
  - Resolves EPA’s potential windfall lien on the property
  - Generally does not involve performance of work so no federal covenant not to sue included
Prospective Purchaser Agreements/ Prospective Lessee Agreements

- The statutory landowner liability protections have eliminated the need for PPAs at most sites
- Where a party is willing to perform work, a BFPP work agreement typically is used
- EPA will consider the use of a PPA/PLA in limited circumstances where appropriate and subject to regional resource constraints
  - Significant environmental benefits in terms of cleanup
  - Unique, site-specific circumstances in the public interest
Some regions use a list of questions to be answered to assist EPA in drafting a proper response:

- Location
- Ownership
- Past Uses
- Intended uses and benefits of re-use
- Acquisition details
- Relevant audits
- Affiliation-related details
- State contact and involvement
- Transaction timing
The 2014 Revitalization Handbook

• Summarizes the federal statutory provisions and EPA policy and guidance documents that address potential liability concerns of parties involved in reuse of contaminated sites

• Provides a basic description of the site-specific tools that may be used to address liability concerns

• The Handbook can be found on EPA’s website at: www2.epa.gov/enforcement/revitalization-handbook
EPA Websites

• Superfund Enforcement:  
  www2.epa.gov/enforcement/superfund-enforcement

• Brownfields and Land Revitalization Enforcement:  
  www2.epa.gov/enforcement/brownfields-and-land-revitalization-cleanup-enforcement

• Brownfields generally: http://epa.gov/brownfields/

• Model documents: https://cfpub.epa.gov/compliance/models/

• Reasonable Steps Letter Examples:
  http://www2.epa.gov/sites/production/files/documents/fedint-cf-mod-2012_0.pdf (model)
Can we talk?
An Illinois Lawyer’s perspective on hiring and working with environmental consultants on Environmental Site Assessments [ESAs]

Air & Waste Management Association - Lake Michigan States Section Conference
January 17, 2017

Phillip R. Van Ness
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Common Mistake #1

- Trusting the Client
  - Clients aren’t always truthful
  - Clients aren’t always “complete”
  - Clients *usually* don’t have a clue
    - The Environmental vocabulary isn’t in English
    - Environmental Liability isn’t Conventional, or even logical
  - Clients can be unreliable “errand boys”
Common Mistake #2

- Ignoring the “Real World” pressures on Environmental Consultants
  - Note the inherent conflict of interest
  - Resist the temptation to use “weasel words”
  - Avoid evasive “gaps” and omissions
  - Articulate the basis for conclusions
Common Mistake #3

- Ignoring the Law[s]
  - Note the two warring versions of AAI
  - The federal regulatory AAI requirements are now adopted as the new ASTM standard (E1527-13), USEPA and ASTM are on the same page
  - Illinois’ ESA provisions [Sect. 22.2(j)(6)] have been amended, too – but are still not identical to the Federal & ASTM standard
Common Mistake #3 [cont’d]

Some possible consequences of ignoring the fact that the USEPA/ASTM Phase I Standard is not = to the Illinois Standard:

- Missing “Mandatory” Signatures
- NOT EVERY ENVIRONMENTAL CONSULTANT QUALIFIES AS AN “ENVIRONMENTAL PROFESSIONAL” UNDER BOTH SETS OF REQUIREMENTS
- Some Phase I’s may qualify under one, but not both, standards – a hazard for Illinois clients
Common Mistake #4

• Failing to Disclose what isn’t in the ESA
• Contrasting the Phase I and Phase II
• Understanding the difference between “hazardous conditions” and “Recognized Environmental Conditions [RECs]”
• Understanding what the Phase I “looks for” and what it doesn’t
• Client may need to know more than what AAI will disclose
THANK YOU!

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Environmental Evaluation of Real Property: 
*Purpose, Perils and Pitfalls*
Technical Panel

*January 17, 2017*

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