Property Transactions – Hidden Waste Issues

September 1, 2015

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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

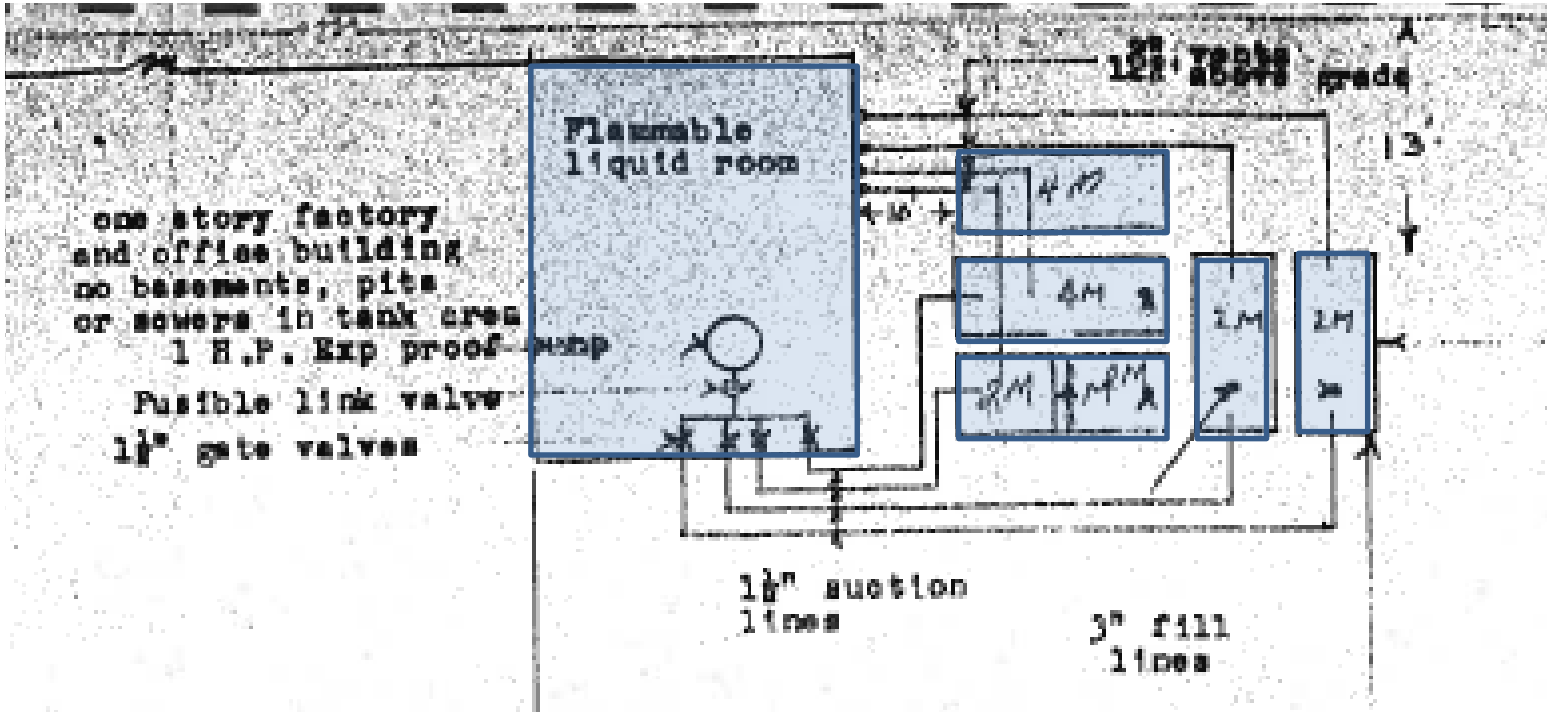
- **Review of Local Fire Department records**

"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…"*

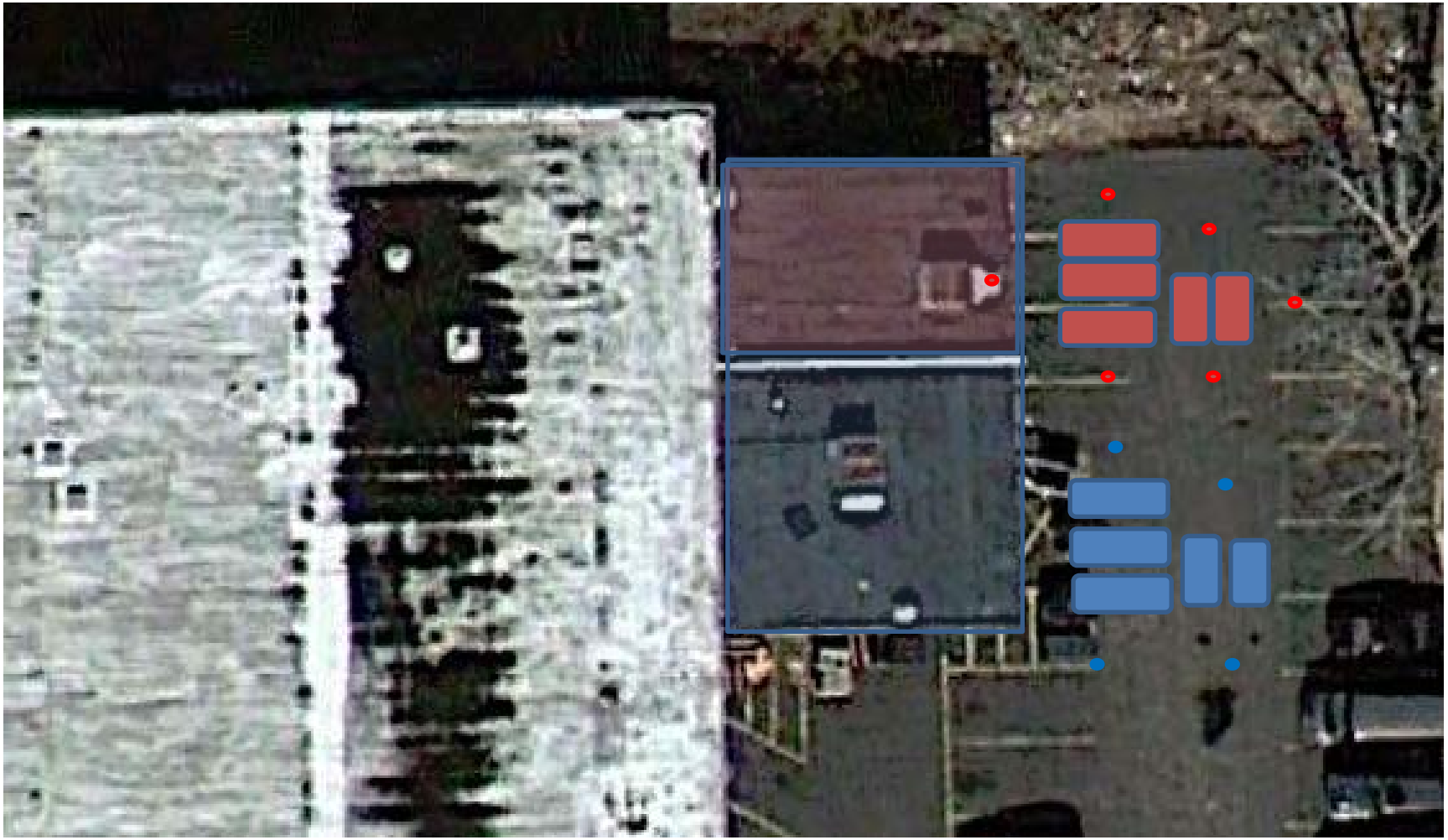
- **Fire Department records did not indicate that the tanks had been properly abandoned**

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**

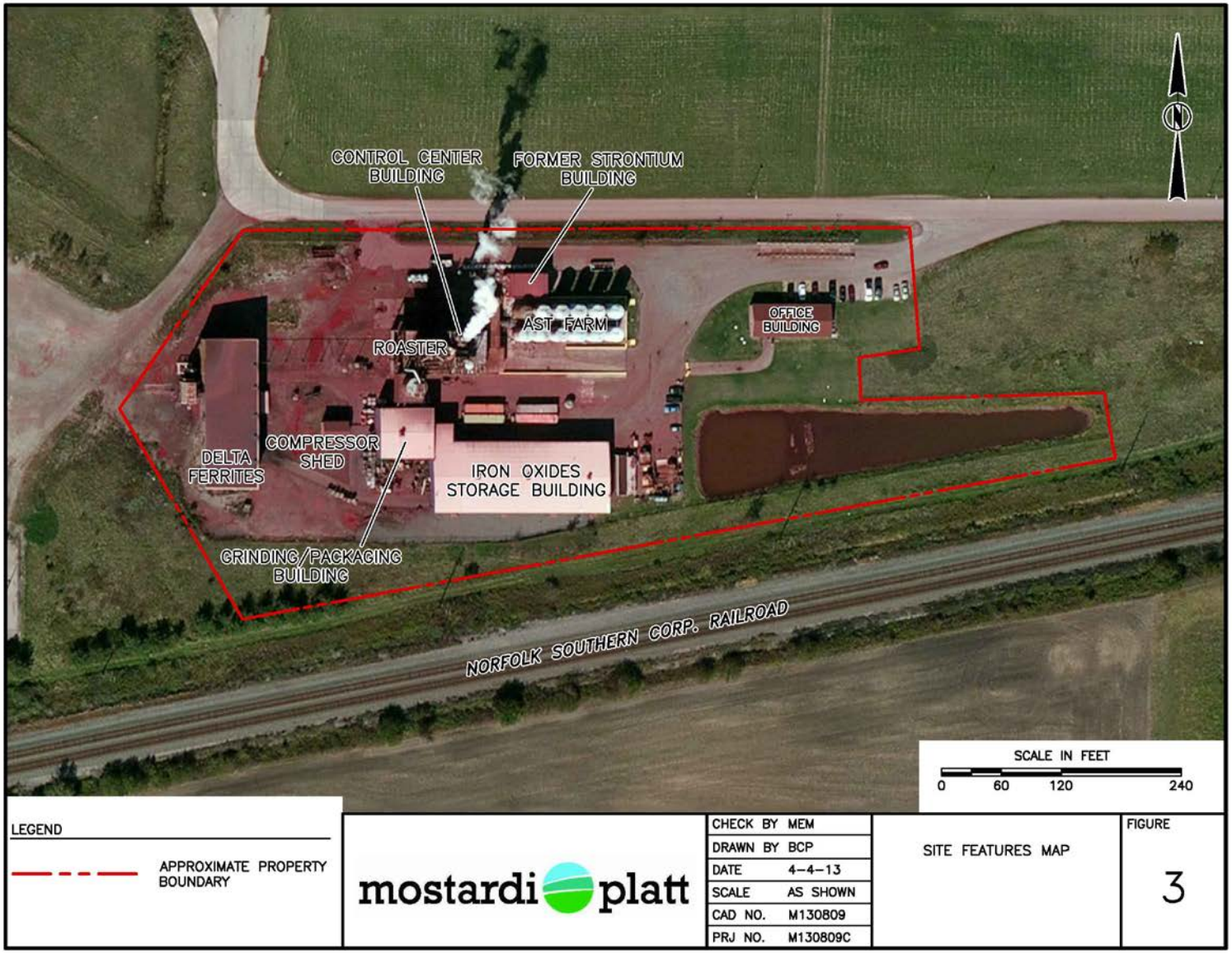
Case Study 3: Why is Iron a Hazardous Metal?

- **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**

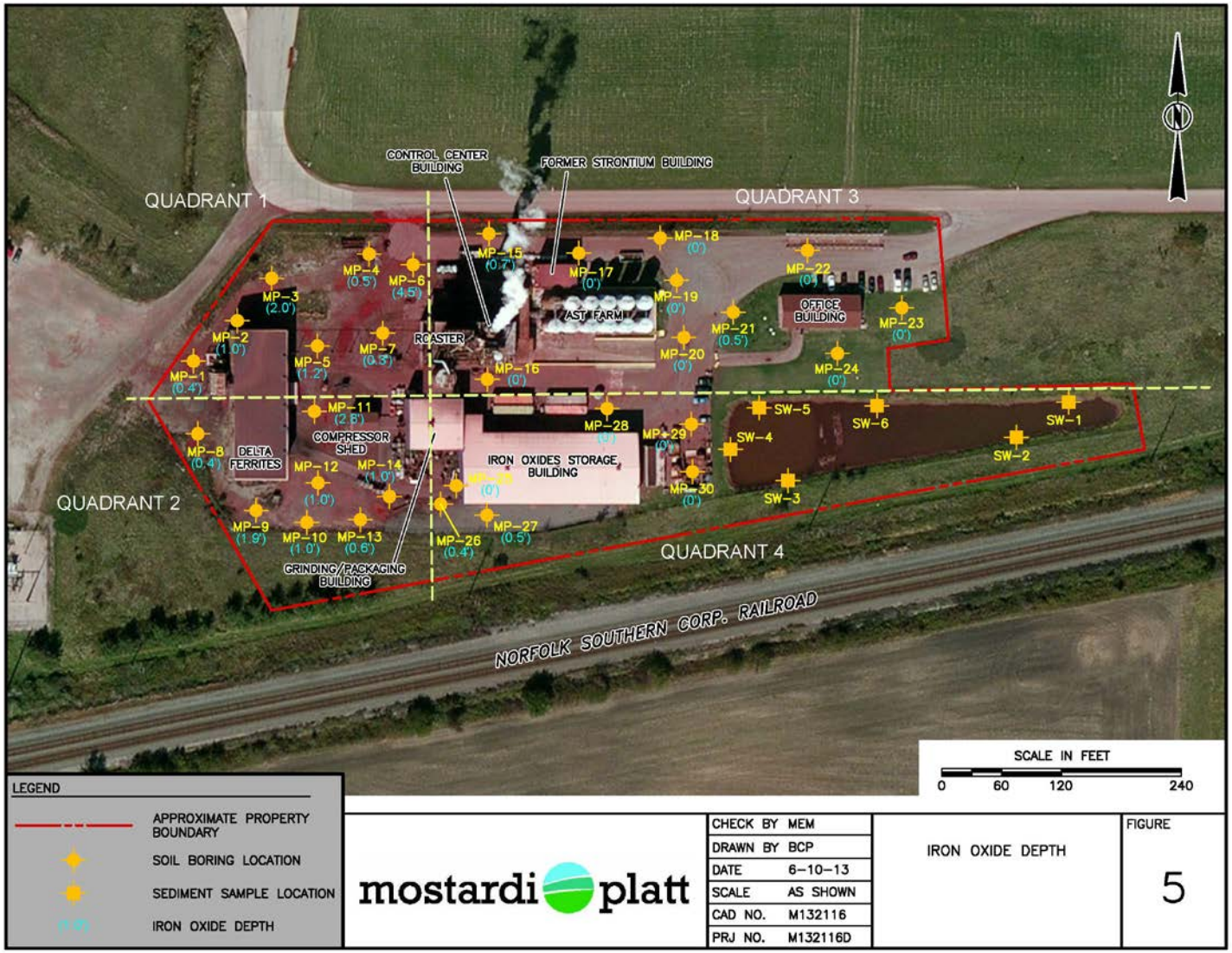
Case Study 3: Why is Iron a Hazardous Metal?



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**

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QUESTIONS??

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