

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Training

The Environmental Protection Agency establishes specific regulatory requirements and standards for conducting all appropriate inquiries into previous ownership and uses of a property for the purposes of meeting the all important inquiries provisions necessary to qualify for certain landowner liability protections under CERCLA. The regulation that went into effect 11/1/06 may affect most directly those persons and businesses purchasing commercial property or any property that will be used for commercial or public purposes and who may, after purchasing the property, seek to claim protection from CERCLA liability for releases or threatened releases of hazardous substances. To gain such relief, such persons and businesses must conduct all appropriate inquiries prior to or on the date the property is purchased.

What this means to loan officers and potential customers.

Any commercial property that is being considered as collateral for a loan, must be looked at to determine whether there could have been hazardous chemicals manufactured, used, spilled, or disposed of on this property or **any adjoining property**. If the answer could be yes, then a Phase 1 environmental assessment should be done to protect the applicant and the bank.

Here is an example. A customer wishes to purchase a commercial building for \$500,000 that used to have a dry cleaner next to it. The dry cleaner had a spill of solvent 5 years ago, and the solvent flowed under the ground onto the property being considered for the loan. The EPA got involved and cleaned up the site where the dry cleaner was, but didn't get cooperation from the owner of the commercial property, so it was never cleaned up. If no investigation is done on the property before we make the loan, and the loan is granted, the customer will have no rights under CERCLA to get around the liability of the clean up. After the title is transferred, the EPA contacts the new owner telling him of the spill. The cleanup now costs \$2,000,000 so the customer defaults on the loan. The bank gets the property back as OREO, and now owes the EPA the cleanup cost. If the phase one would have been done before the loan went through and the spill was discovered, the customer could have gotten relief through CERCLA and would not have been liable for the cleanup.

How to protect the customer and the bank.

When considering doing any commercial loan, consider what the proposed property, and any adjoining property (especially ones up gradient) have been used for, have manufactured, or have had stored on them. If there is any history of any contamination where the EPA could get involved, a Phase 1 should be performed.

What sites to consider for Phase 1 (THIS IS NOT AN ALL INCLUSIVE LIST)

- Gas Stations
- Dry Cleaners
- Oil Refineries
- Manufacturing Plants of any kind
- Power Plants