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SUMMARY

- Why
- What
- How

Start with Why by Simon Sinek (YouTube)
WHY HAVE A PROGRAM/POLICY?

- 1. FDIC
- 2. OCC
- 3. Lender Risk
- 4. Borrower Risk
WHY - FDIC

- FDIC FIL-98-2006 Updated Guidelines for An Env Risk Program
  - Lenders should have an Environmental Risk Program
  - Value
  - Liability
WHY - OCC

- OCC Comptrollers Handbook
  - Credit Risk
  - Compliance Risk
  - Risk by Property Type
  - Quality Risk Management
WHY – REG AGENCIES COMMENT ON LENDER RISK

- Fleet Factors – 1st direct liability case for a Lender

- The 1996 reauthorization of CERCLA included a “lender liability exclusion”

- State law may hold lenders liable.
WHY - UNDERSTANDING LENDER RISK

- Collateral Risk (Value)
- Regulatory Risk (Fines and Compliance)
- Reputational Risk (Owning Contaminated Property)
- Secured Creditor does not cover everything
- Credit Risk - Borrower Remediation Cost

(7)
WHY - UNDERSTAND BORROWER RISK

- AAI
- Purchase Price/Value
- Liability
  - EPA & State
WHAT - RISK MANAGEMENT PROGRAM

- Policy
- Staff
- Consultants/Attorneys
- Quality Program
WHAT - POLICY

WHAT - STAFF
WHAT - CONSULTANTS
WHAT – QUALITY PROGRAM (FEEDBACK)
WHAT - UNDERSTANDING ENVIRONMENTAL RISK

How to Accomplish your Mission?

Order ESA
Evaluate/Quantify Risk
Develop Solutions

How do you add value?
HOW

- Training of Staff
  - What Type of Assessment to use and when
  - Risk Mitigation Options

- Training of Bankers
  - Why Env. Risk Matters
  - What is an REC

- Training of Consultants
  - Manageable number of firms
  - Defined Expectations
  - Extension of Bank
  - Consult don’t Default
  - Feedback Loop
HOW - TYPES OF ASSESSMENTS

Ph2
E1 903

Ph1
ASTM 1527

TSA
ASTM 1528

Database/EQ
HOW - RISK MITIGATION STRATEGIES

Environmental Options:
- Additional Due Diligence (Phase II)
- Remediation in the case of foreclosure
- De minimis Conditions, NFA or Engineering Controls with Agency Approval

Other Tools:
- Reject Collateral/Substitute Collateral
- Escrow, Loan Proceed Hold Backs, Insurance.
- Borrower Agreements: Remediation, & Indemnification
**HOW: TRAINING LENDERS WHAT’S A REC AND WHAT IS RISK?**

Recognized Environmental Condition: Industry term meaning a Risk is identified per ASTM Standards.

- Banks often have concerns beyond typical RECs.

- But the report did not recommend any additional investigation, so why should we be concerned?

- I have an NFA from the State, is that not adequate?

- Why can we not rely on a Seller Prepared Report?
HOW – CONSULTANTS

Manageable and Meaningful number of Consultants

• Invest Your Time
• Develop a Relationship
• Cultivate Trust

Rely on Consultants for direction:
• Communication is an Asset
• Set the Expectation for Recommendations
• Conduct Additional Investigation
HOW - THE BIG QUESTIONS

- What is the Cost to Cure vs. Asset Value & Borrower Equity?

- In the event of default => would the Bank want to own this property?

- Potential Liabilities?
  - Regulatory?
  - Third Party?
  - What would we have to do to own the property?

- Is there an Environmental Market Stigma reducing perceived value?
RISKS - TYPICAL RECS & RED FLAG ISSUES

- **Dry Cleaners:** Consultants find subsurface impacts at approximately 50% to 75% of the dry cleaners where we perform Phase II sampling.

- **Risk factors:** duration of occupancy, type of machine in use, age of machine, housekeeping and compliance history, depth to groundwater, etc.
RISKS - TYPICAL RECS & RED FLAG ISSUES

Gas Stations
RISKS - TYPICAL RECS & RED FLAG ISSUES

- USTs
Hazardous materials risk factors: Housekeeping types of materials, is secondary containment present? Duration of use of these materials onsite, and presence of potential conduits to the subsurface (drains, cracks, seams, etc).
Above ground storage tanks risk factors: Contents of tank, age of tank, housekeeping, staining (evidence of spills), and is there a secondary containment present?
RISKS - OTHER TYPICAL RECS & RED FLAG ISSUES

• Print shops, machine shops
• Circuit board manufacturing
• Auto repair/servicing
• Some agricultural uses
• Long-term industrial occupancy
• Septic systems at industrial sites
• Oil/water separators
• Oil and natural gas wells
TIPS FOR SMOOTH SAILING

Helpful Hints

- Start the environmental review process as early as possible
- Give your consultant good information, good contacts, and provide all available environmental documents to consultant
- For Agency (Fannie, Freddie, SBA) work, use consultants that are familiar with the requirements
- Environmental review should be viewed as a [Resource] not a [Roadblock]
Environmental Case Studies
FORECLOSURE: LIABILITIES TO TAKING TITLE
HISTORICAL USE (WHAT WAS HERE IN THE PAST)
FORECLOSURE - MARKET STIGMA

Case:
- Education Station former Day Care
- Bank Foreclosed

Environmental Narrative:
- Realtor showed property and left water on.
- Pipes burst, water flooded inside the property.
- Mold damage was extensive.

Decision/Status:
- Spent $150,000 +/- in Mold Remediation
- Sold the property for less $150,000
Do Not Enter

Mold Contamination
Personal Protective Equipment Required

In case of Emergency Contact: Troy Forte
BMS CAT
512-497-5557
That was hard!