

Don't Let the Past Catch Up with You

Learn as much as you can about the environmental history of each property in a transaction

By **Derek Ezovski**, vice president of business development, Environmental Data Resources

WHEN ACCEPTING A SITE AS collateral, many financial institutions often don't learn that it is environmentally contaminated until after they have secured the loan. Stories abound about lenders foreclosing on toxic sites such as former dairy facilities with cattle-dipping vats (pesticide-filled pits used to "dip" cows for tick and parasite prevention), restaurants with petroleum-contaminated soil from old underground tanks and apartment complexes built on former chemical-manufacturing operations, to name a few.

These problems could have been avoided had there simply been a more thorough historical investigation. With land continually recycled as available space shrinks, and with current laws often holding owners responsible for cleanup regardless of causation, property-background checks are more important than ever. Even an innocuous-looking piece of rural property could be contaminated with pesticides from agricultural operations.

Although current government records, questionnaires and site visits are important, they should only be part of the research. Historical sources of information



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are excellent environmental-due-diligence tools that chronicle growth and change over time, and therefore can help uncover prior land uses.

Know the rules

The Federal Deposit Insurance Corporation, Freddie Mac, the U.S. Small Business Administration and other organizations publish guidelines for environmental site assessments. Before proceeding with a site investigation, become familiar with your bank's internal environmental policy as well as with the guidelines of the organizations with which you work.

The American Society for Testing and Materials (ASTM), a nonprofit international standards-setting organization, developed the current, widely accepted environmental-site-assessment standard. The ASTM's outlined protocol is sufficient to satisfy the courts under the Comprehensive Environmental Response, Compensation and Liability Act. It is important to note, however, that a new federal site-assessment standard, likely to pass before the year's end, is in the works by the Environmental Protection Agency (EPA).

Whether you want to gain a better understanding of your environmental consultant's findings or do the research yourself, start by reading ASTM's guidelines (www.astm.org). According to current industry standards, the research you conduct on a property must date back to 1940 or to the first developed use, whichever is earlier — even if the property was developed after 1940. You never know if there was dumping on the property before it was developed.



Know the tools

The ASTM standard recognizes the following eight historical sources:

- **Fire-insurance maps** were originally produced to help insurance underwriters evaluate the fire risks of buildings. These maps, which date from the 1800s and chronicle cities block by block, can show a wealth of helpful information for environmental investigations, including data about building-construction materials, former business names, use of storage tanks and more.
- **City directories**, published for U.S. cities and towns since the 18th century, identify a property's name and use (e.g., gas stations, dry cleaners, etc.).
- **Historical aerial photographs** can show changes in an area over time. Some aerial photos date back to the 1930s.
- **Topographic maps** can date back to the early 20th century and can show

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geological information, changes in land use and areas of potential environmental concern.

- **Building department records** contain property notations, including past violations, changes in heating systems, the presence of pipes and tanks and locations of various structures if the building has been torn down.
- **Property-tax files** indicate a property's past owners.
- **Land-title records** also indicate a property's past owners.
- **Zoning/land-use records** contain data about past owners, land use and zoning. If the property was zoned as industrial, it is important to check whether an industrial facility was once located there.

Because of their level of detail, the first four sources are the most widely consulted for environmental due diligence. They can be found at local libraries and government offices or easily ordered from commercial database vendors. Aerial photos are available from many sources and can be found in public and private collections.

Additional sources of historical records are universities, which often carry city directories, aerial photos and old maps. The local courthouse or town hall will have plat maps and deeds, and the local planning department or department of agriculture may have aerial photographs. Building managers and others familiar with the property can often offer additional insight.

Aerial photographs and historical topographic maps date back to 1940 and can show changes in surface topography, such as where filling may have taken place. Most environmental consultants check such sources at five-year intervals, a time frame that many feel allows for adequate assessment of changes in a site's history. This practice may change if the EPA's federal rule passes.

Get started

First, look at the property in its current state. Is it industrial? Rural? A combination of the two? This will help determine which historical sources are likely to be most informative. For example, fire-insurance maps and city directories are excellent sources of information and can provide useful detail down to building-level data but typically are only available for urban areas. Aerial photos and historical topographic maps, on the other hand, usually are available for most rural areas and can show land changes over time. These do not provide an up-close property view that a fire-insurance map provides or the documented site uses found in a city directory.

According to Hank Burnham, a historical researcher in Connecticut, fire-insurance maps, site-specific aerial photographs, plat maps, deeds, topographic maps and city directories are all good places to start, depending on property type. He also says that other great sources include local government records found at fire departments, building departments and various state-run reports from Departments of Environmental Protection or Departments of Environmental Quality.

"These sources often have documents of specific leaks or contaminants on or near a property," Burnham says.

Consider a few tips

For urban properties, fire-insurance maps are a good historical source to consult for environmental due diligence. Available at many public and private libraries as well as through commercial vendors, they provide a wealth of useful information. With such maps, you can quickly and easily detect the presence of operations such as gas stations, auto-repair shops and industrial sites that may have caused contamination, as well as the specific operations associated with industrial sites and their respective locations. And because the detail goes down to building level, you can determine the presence of underground storage tanks, asbestos and flammable materials.

It is important to note whether the target property rests on a county line

or on a street whose name has changed. Without this information, it is easy to miss important data. For example, with fire-insurance maps, researching the map index by town name is sometimes inadequate. If a town name is not in the index, it does not necessarily mean that there are no maps available for that town. It is possible that the maps may be listed under another town's name.

City directories, also available for urban sites, sometimes can be tricky to research. Published since the late 1800s, they can be found if you know your site's city or outlying city area. Several cities usually were published together.

In the mid-1950s, however, several companies published suburban-area directories, which made the research trickier. For example, a site in Forest Park, Ga., will never be located under that name; it can only be found using the Fulton County, Ga., directories from more-recent years or Atlanta suburban directories from earlier years. Further complicating historical research are street-name changes. From the 1950s until the '90s, especially, many streets saw name changes. To overcome this obstacle, use commercially available mapping software to search aliases for highways and major roads.

If a site is more rural than urban, and you are starting your research with historical topographic maps or aerial photos, it is critical to look at bordering counties. Sites can be located on the edge of a map quadrant, necessitating a review of adjacent quadrants to better understand the use of surrounding properties. Contamination from nearby properties can migrate and affect the target property. Most aerial indexes are countywide, documenting a lineup of photos as they relate to their actual location within the county. However, there usually is overlap from county to county for areas close to a border. It is therefore necessary to check bordering counties to see if they have more-thorough information.

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In the historical context, most properties are a mix of urban and rural. If possible, consult as many available resources as you can to get the most accurate picture of a property's past. Keep in mind that when cataloguing data, libraries tend to side with historical relevance rather than research convenience.

Know what to look for

Even if you check all available historical sources, there may be gaps in data.

The ASTM standard's intent is that as many sources as necessary are consulted to determine a property's past use, says Anthony Buonicore, professional engineer and former president of the Air & Waste Management Association.

"However, if any standard historical source is not reasonably ascertainable or if experience suggests that the resource is not likely to provide useful data," he says, "then that specific source does not need to be consulted."

If historical research indicates that there are or were areas of potential concern, investigate further. These areas can include industrial and manufacturing areas or sites located on facilities that conducted such operations in the past. Such facilities include former dry cleaners, gas stations, auto-repair shops, photo-development sites or other operations that make use of hazardous chemicals. Convenience stores, too, should be investigated. Most contain underground gasoline and/or fuel-oil-storage tanks.

In addition, knowing what is on neighboring properties can be just as important as what is on the target property. Contamination can migrate through soil and groundwater. It is therefore extremely important to investigate neighboring properties as part of your research.

Call in the experts

If you run into a potential area of concern, or if you're not sure what to look for, consult an environmental professional. One caveat: Make sure you review your potential consultant's qualifications. A recent industry survey by a national

environmental-information firm showed that incomplete historical research is the No. 1 reason a Phase I report is deemed unsatisfactory.

If your research determines that there are potential contaminants, go to the next level of environmental due diligence before taking the title to the property or signing off on the loan.

Finally, consider the level of risk your bank is willing to tolerate, and factor that into the equation. Your effort today will pay off throughout the term of your loan. **■**

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