CERCLA, Corrections and Critters: Three Areas to Address in Development of Renewable Energy Projects

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What are Phase I Environmental Site Assessments?

Review of a property by an environmental consultant for "recognized environmental conditions" or "RECs" which are "the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: (1) due to any release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment."

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- > A Phase I includes four basic components:
 - >(1) historical review of the property usage back to 1940 or the first developed use,
 - ➤ (2) agency record review for indications of use or release of possible contaminants,
 - > (3) site visit to assess the site for evidence of releases of contaminants, and
 - ➤ (4) interviews with individuals with knowledge of the current and past use of the property, including past and present owners and occupants
 - Include a key site manager with "good knowledge of the uses and physical characteristics of the property"

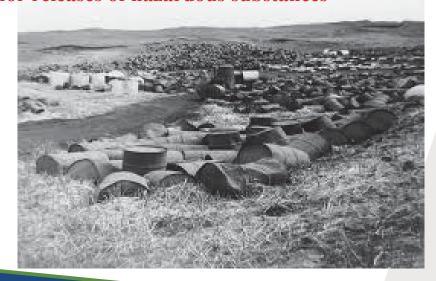
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So why is a Phase I necessary for a renewable energy project?

- Phase Is are completed in most commercial real estate transactions to identify concerns for releases of hazardous substances and petroleum products
- It is on every lender's checklist as a deliverable
- Provides certain liability protections under the Comprehensive Environmental Response, Compensation and Liability Act or "CERCLA"

Phase I's: The Beginning

CERCLA (1980): Owners and operators liable for releases of hazardous substances



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Superfund Amendment and Reauthorization Act (1986) amending CERCLA

Added the innocent purchaser defense by a purchaser who acquires the facility:

- After the release of hazardous substances; and
- The purchaser "did not know and had no reason to know" of the presence of hazardous substances

Show this by having completed prior to acquisition "all appropriate inquiries" into the past uses of the property

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