

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

January 31, 2017

www.mcguirewoods.com

James A. Thornhill
McGuireWoods LLP
jthornhill@mcguirewoods.com
804.775.7739

McGUIREWOODS

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.”

- 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”

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



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

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

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

Also available as part of the eCourse

[Answer Bar: Navigating a Renewable Energy Project](#)

First appeared as part of the conference materials for the
2017 Renewable Energy Law session

"Regulatory Due Diligence Issues in Energy Financing"