



Environmental Issues in Real Estate

Foreclosures and lender liability—Who gets it??

In this time of financial turmoil, banks are faced with an increasing number of defaults and foreclosures. Many banks will want to be cautious on properties that could be contaminated or have the potential for contamination. Under Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) the current owner of the property can be held liable for cleanup costs of a contaminated property regardless of fault or negligence. CERCLA does provide an exclusion for lenders with the Secured Creditors Exemption. For eligibility of this exclusion, the bank must be able to demonstrate that they did not participate in the management of the company. There are past lawsuits that have found the lending institution liable for environmental cleanup due to the methods they employed during the foreclosure proceedings.

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Hazardous/Regulated Materials left behind can be VERY costly to remove and represent a potential contamination issue.

EPA Fines Companies for Storm Water Pollution Prevention Violations

A Fortune 100 company was recently fined \$1.3M for not controlling storm water discharge during the construction phase of multiple locations throughout the US. Another Fortune 100 company received a similar fine in 2005 for also not implementing plans proactively. The violations varied from preventing polluted storm water from leaving the site, to failure to develop Storm Water Prevention Plans (SWPPP) and Best Management Plans (BMP). These types of discharges have the potential to impact human health, the environment and natural resources. An information sheet provided by the EPA and the first company in question states, "Several studies reveal that storm water runoff from urban areas can include a variety of pollutants, such as sediment, bacteria, organic nutrients, hydrocarbons, metals, oil and grease." Dry wells have the potential to introduce the same type of contaminant to aquifers. This is a prime example where an ounce of prevention would have been a lot easier to swallow than the EPA sanctioned cure.

Dry well discharges

Dry wells have the potential to introduce contaminants quickly and without prejudice to sub surface soils and eventually to aquifers all over Arizona and several other states who use similar storm water discharge methods.



Green House Gas Emissions are targeted for reduction by the Western Climate Initiative.

Air Quality: Air Emissions laws are going to get stricter

On January 31, 2008 Governor Janet Napolitano hosted a seminar forecasting the future of Arizona's Climate Change and Global Warming. Arizona is currently a part of a multi state law suit against the EPA regarding stricter green house gas regulations. Several states are currently or are seeking to adopt the California Clean Air Rules. The Western Climate Initiative is a program aimed squarely at reducing green house gas emissions. This plan includes several western states, parts of Canada and Mexico. The Arizona Climate Change Action Plan, which is Arizona's contribution to the Western Climate Initiative, is a detailed plan in Arizona that will include stricter laws on green house gases starting sometime in 2009. For more information on this, please visit Fennemore Craig's web site.

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