How can you protect yourself against these potential liabilities?

By hiring a well-qualified environmental consultant to perform a thorough site investigation that follows ASTM E1527-2000 Standard Practice for Environmental Site Assessments: Phase I ESA and the VT DEC Site Investigation Guidance before any sales transaction takes place:

Site investigations require one or more visits to the property to collect samples, typically of soil, groundwater, and sometimes soil gas, water, and/or air. Sample locations are selected based on your consultant’s evaluation of your property’s use and history. Samples are sometimes screened in the field and then analyzed by a laboratory. The analytical results help determine which contaminants (if any) are present, their location, and what their characteristics are.

At the end of every investigation that finds contaminants at levels above reportable concentrations, the consultant must submit a Site Investigation (SI) report to VT DEC. The consultant’s report must evaluate the data collected, compare results to accepted state regulatory standards, and assess potential risks. The final report must also propose alternatives for protecting human health and the environment. If the consultant fails to collect data from enough locations, analyze samples for enough parameters, or adequately present and analyze the investigation results, VT DEC will be compelled to require that more work be done.

Bottom line: Inadequate investigations can add thousands of dollars and months of delays to a project. It’s just good business to hire a well-qualified environmental consultant who will:

- thoroughly research the property’s historical use;
- conduct a site investigation that is well planned and properly executed;
- perform the data collection correctly and thoroughly—the first time; and
- submit a technically sound and thorough SI report.

What You Don’t Know Can Hurt You – A Case Study

As part of a pending property sale, the owner of a commercial property removed a fuel oil underground storage tank (UST) from behind a building where a dry cleaner had operated. The soil removed was found to contain tetrachloroethene (also known as perchloroethylene, perc, or PCE). The first consultant the owner hired assumed the source of the PCE was eliminated when the UST soils were removed from the area and did not further evaluate specific to the PCE contamination. When monitoring wells were installed to verify cleanup, additional PCE was detected. The property owner then requested an aggressive short-term cleanup effort so that he could sell the property. The consultant used site chemical soil from the assumed PCE source area outside the back door—an effort that failed because they were in the wrong location.

As a result:

- The sale of the property was lost.
- The failed cleanup effort alone cost $30,000 and the owner was still required to pay for an appropriate cleanup.
- A second consultant had to be hired to find the actual source of the contamination—a foundation drain that created a pathway for the PCE to spread into the soil.

After You Hire a Consultant

Make every effort to provide the consultant access to the entire property being investigated. If some portion of the site is inaccessible for any reason, make sure the consultant is advised before submitting a proposal and that this inaccessibility is noted in the Site Investigation report submitted to VT DEC.

You should also supply all relevant historical information, such as past site operational records, building records, and construction drawings—particularly “as-builts.”

Execute a property access agreement with the consultant and all other parties that may enter the property. This agreement should include appropriate who might be necessary, such as from the municipality, particularly for cleanup work. Be very clear that no additional work outside the original scope of work and cost estimate/contract can be performed without your written authorization.

Avoid Problems with Your Site Investigation Report Submittal

When information is missing or not presented and explained clearly, VT DEC is obligated to request clarification—potentially leading to project delays and additional expenses. Make sure your Site Investigation report:

1. addresses each of the reporting requirements in the VT DEC Site Investigation Guidance;
2. includes a clear explanation of what potential source areas were addressed and what investigation activities were done at the site, and most importantly—why;
3. presents the technical information clearly— particularly the effective use of maps and tables can improve communication.

What You Don’t Know Can Hurt You – A Case Study

Pay for a quality investigation and good report preparation option and avoid project delays and cost increases later.

Remember—before submitting the Site Investigation report to VT DEC, make sure it contains all of the elements required in the Site Investigation Guidance.

For further information, please contact:

Vermont Department of Environmental Conservation Waste Management Division
(802) 241-3888
www.anr.state.vt.us/wmd.htm

Online Resources

EPA has developed two handbooks to assist you in defining the scope of work for a site investigation and hiring an environmental consultant:

- Assessing Contractor Capabilities for Showcased Site Investigations (www.clu-in.org/download/rfcformularioapp.pdf)
- Brownfields Technology Primer: Requesting and Evaluating Proposals that Encourage Innovative Technologies for Investigation and Cleanup (www.theis.org/download/rfc/rtofinal.pdf)

Printing on recycled paper with soy-based ink.

Waste Management Division
Vermont Department of Environmental Conservation
(802) 241-3888
www.anr.state.vt.us/dec/wmd.htm

Taking the mystery out of dealing with contaminated property in Vermont
Playing It Smart
Property with a commercial or industrial past can be a great investment, as long as you know what you are getting into beforehand. Both buyers and sellers need to know that state and federal laws hold owners responsible for cleaning up contamination—regardless of whether you created or contributed to the problem. If you are buying a property and are conducting an environmental investigation (also known as completing due diligence), it is important to be thorough. If you miss contamination and it is found later, you may be liable for cleanup.

For those of you who want to sell a property—complete information about contamination can actually make potential buyers more comfortable. The discovery of contamination problems after the sale can lead the new owners to take up a legal battle—at significant cost to everyone—to force you to pay for the cleanup. Legally, you can still be liable for cleanup even after you no longer own or operate at the site. So developing a comprehensive understanding of the environmental conditions at the property is the best way to ensure a successful property transfer!

Ignorance at the time of sale is no excuse for either party, Find the Expertise You Need
There are five basic steps to identifying an environmental consultant who is likely to complete the site investigation in an efficient and professional manner.
1. Clarify why a site investigation is necessary and what reports the VT DEC requires.
2. Request proposals from several companies.
3. Understand the requirements and what reports the VT DEC requires.
4. Determine who will work on your project.
5. Review past performances and ALWAYS check references.

Innovative Technologies Can Save You Time and Money
Ask the consultants about the innovative technologies their firms have experience with. Can they explain the pros and cons of each in relation to use at your site? Innovative technologies previously accepted include:
- direct push technologies such as GeoSpade,
- microwave, soil or ground water sample collection,
- x-ray fluorescence,
- field portable gas chromatograph (GC) and/or mass spectrometer (MS),
- immunosorbent and/or other portable field test kits, and
- soil gas surveys.

The discovery of contamination—regardless of whether you created or contributed to the problem—may lead you to understand the reasons why you should undertake a site investigation and what your legal requirements are. You also need to define the scope of work the consultant is to perform. Some companies specialize in investigating specific types of contamination, such as petroleum releases from underground storage tanks or from industrial operations. If you are unsure whether contamination is present, you may want to limit the scope of work to characterizing the site. After you learn more about the site, you can then obtain competitive bids for the cleanup portion, potentially lowering your overall costs.

If you already know that cleanup is required, however, you might look for a consultant who can assist you in the entire process from investigation through cleanup. This knows the time and effort of hiring a second firm. Having a relation-ship with just one company may be more cost efficient overall.

2. Request proposals from several companies.
Ask for referrals from your trade organization and/or your legal counsel, insurance firm, or mortgage lender. Once you have identified several recommended consultants, request a written pro-posal from at least three.

No matter how small your job, every consultant who submits a proposal should provide the following information:
- Experience in performing similar projects in Vermont within the last three to five years;
- Qualifications of key personnel, including subcontractors;
- Organizational chart showing the responsibilities and lines of authority for project staff and subcontractors;
- Description of each task to be performed (including objectives, methods to be used, and description of the deliverable);
- Project schedule indicating the timeframe for each task. Regulatory deadlines, including estimated VT DEC review times, should be included. Due to the uncertainty in DEC review times, the consultant should also attempt to keep VT DEC review periods off your project’s critical path;
- Clear explanation of what the costs cover and how additional expenses would be billed, including the firm’s fees for schedule and cost subconsultants and subcontractor management;
- Information on quality assurance/quality control (QA/QC) procedures for collecting and analyzing soil, groundwater, and other samples;
- Evidence of adequate and appropriate insurance coverage;
- References from recent clients.

Ask the consultants about the innovative technologies their firms have experience with. Make sure that key people are available to complete your project in a timely manner. You should also check their insurance coverage. You or your consultant should be comfortable in contacting your insurance company to review the policy in detail. This is critical because the consultant could overlook something, women the existing contamination, cause new contamination, or damage a third party’s property. If the con-sultant lacks coverage for these types of incidents, you may be liable.

5. Review past performances and ALWAYS check references.
Contact at least two former clients and ask about the scope and nature of the services provided and their satisfaction with the work performed. Keep in mind, however, that even the best consultant can- not predict all of the site circumstances and project outcomes. Good questions to ask about the client’s experience include:
- Was the consultant timely in completing all elements of the work?
- Were the final project costs in line with the original estimate?
- Did the scope of work change significantly during the project? If so, why?
- Did the consultant work effectively with the client and the VT DEC project manager?
- Did VT DEC approve the initial SI report, or did the consultant have to resubmit informa-tion? If resubmission was necessary, how much additional information was required?
- How many times did the consultant have to collect additional samples or other information to answer VT DEC questions, and did the initial work plan and cost estimate cover that work?
- Did the people who worked on the project change over time? If so, was the transition handled smoothly?
- Also check the company’s insurance coverage. You or your consultant should be able to contact the insurance company in case of a question or claim.

You Time and Money
The skills and experience of the individuals assigned to your project directly affect its success. Before you hire a consultant, make sure you know which specific project manager will work on your site investigations, including the individual responsible for responding to state regulatory requests. Make sure that key people are available to com- plete your project in a timely manner. You should also check out the training and experi- ence of each team member. Ask for resumes and look for professional licenses, such as Professional Engineer (PE) and Certified Professional Geologist (CPG). Make sure they have worked on similar sites and have a thorough knowledge of Vermont regulatory requirements. The Vermont Sites Manage- ment Section Site Investigation Guidance is on the VT DEC website at www.state.vt.us/deq/ wmd/ems/djwill/05%20Guidance%2030.pdf.