

OSBORN

The Environmental Survival Guide For Renovation and Expansion

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The plan to renovate and expand your company's 35-year-old shopping center has just failed to obtain financing and an anticipated major tenant instead signed a lease at a competing center. Why? Because there was an environmental problem. Financing could have been obtained, the tenant could have been signed to a lease, and the project moved forward if the problem had been anticipated. How?

Shopping center renovation and expansion frequently uncover environmental conditions which were not a problem when the center was originally developed. Many shopping centers contain, or previously contained, uses that were largely unregulated until recently. These uses may have included gas stations, transmission repair shops, vehicle repair shops and auto dealerships.

Lenders Require Environmental Studies

Expansion or renovation most often requires refinancing or new borrowing. The lender will typically require an environmental assessment of the property, and prospective tenants will raise concerns about the environmental condition of the site.

The purpose of this article is to provide an approach to expansion or renovation which encompasses adequate consideration of the environmental site conditions resulting from existing or prior uses, and recommends how to approach the lender's and new tenants' demands for cleanup.

The following account examines what is frequently a "true life" situation in which a gas station polluted its site and adjoining property. After stating how the problem developed and was resolved, a checklist of practical tips to follow before taking on renovation or expansion is suggested.

Illustrative Facts

During the 1950s the owner of a parcel of land containing in excess of 100 acres developed portions of the parcel. The development included retail stores, service establishments and a gas station. The gas station,

located along the outer boundary of the development, installed underground storage tanks for the fuel it dispensed to the public. At least one of these tanks began to leak while it was still in service as a diesel fuel storage tank. The tank was taken out of service and abandoned in place in the early 1980's.

When the gas station operator decided to close the facility five years later, contamination was detected in the subsurface soil and ground water. The gas station owner removed the leaking storage tank along with two other tanks that had been abandoned. The owner also removed and stockpiled 20 to 30 cubic yards of soil for subsequent disposal. As part of the remediation process, the gas station owner installed monitoring wells and other groundwater monitoring equipment and performed periodic aquifer testing and evaluations of nearby wells providing drinking water to facilities. Surface water bodies and wetlands were also tested. While the remediation was being performed, additional underground storage tanks remained in service at the gas station. Subsequent testing revealed the presence of additional contamination and approximately 3,000 tons of soil were removed from around the tank fields. This soil, as well as the removed tanks, residue contained within the tanks, and any residue from cleaning the tanks, were to be shipped to approved disposal facilities. Groundwater contamination was detected and subsequently monitored for nearly 10 years.

The station operator has also installed hydraulic lifts for use in its automotive repair business. The pits containing the hydraulic lifts had floor drains which provided for water and other fluids to be pumped to storm sewers. As the hydraulic lifts aged, they began to leak petroleum-based hydraulic fluid and when the lifts stopped working, they were left in place, cemented over and replaced by electric lifts. The hydraulic fluid flowed into the storm drain that was meant to carry off rainwater and water used to wash the floors of the repair shop. As the storm drain flowed into a stream across the road, hydraulic fluid now contaminated the stream as well as a leach field next to the building.

The main shop also had floor drains. These drained to the storm drain when the floor was washed or fluids spilled. Petroleum products, cleaning fluids and detergent from washing cars flowed into the storm drain and ultimately into the leach field and the stream across the street.

Shortly after required cleanups were completed, the property owner decided to develop a large portion of the remaining undeveloped land while redeveloping portions of the previously developed tracts. The owner made arrangements with a developer to build a new power center on the site.

Typical Environmental Problems

- Underground storage tanks
- Floor drains
- Hydraulic lifts
- Above-ground storage of hazardous substances in barrels.

Typical Environmental Remediation Measures

- Tank closure or removal
- Removal and disposition of contaminated soil
- Purification of groundwater and nearby wells and surface water
- Removal and disposition of barrels containing hazardous substances.

Underground storage tanks are strictly regulated with a view towards avoiding leaks in the first place. However, leaks still occur and widespread contamination often results. In fact, a problem may have existed for many years before being discovered. Once discovered, a complete cleanup is invariably required. The cleanup can include soil removal and disposition or incineration followed by clean fill replacement. A cleanup can cause the renovation budget to skyrocket if provision has not been made for these costs when the initial projections are being developed. In addition, delays in the cleanup process may result from required government oversight. The delays can either result in a loan commitment's expiration or loss of a prospective tenant that would have a negative impact on the renovation or expansion plans.

Similar issues arise concerning hydraulic lifts and floor drains. Leakage may require groundwater monitoring and cleanup over extended periods of time. New technology promises to reduce these periods by years.

Sometimes an area reserved or acquired for future expansion is comparatively isolated. As a result, storage or illegal dumping of barrels containing hazardous substances may have occurred. Prior to beginning the expansion phase, these barrels and any substances that leaked from them will need to be removed and the soil and water cleaned up, as described previously.

Even if there is no lender involved in a project, new users of formerly occupied land or a newly developed expansion area will be concerned with the possible presence of hazardous substances on their site and with their potential cleanup liabilities. Today's laws may make these tenants liable for cleanup costs even if they did not cause the contamination. Be prepared for new tenants to conduct environmental assessments, as they will expect the owner to assume responsibility for existing problems and will generally not take occupancy or begin construction until the environmental problems are satisfactorily resolved.

What Can Be Done?

First, identify environmental problems during the planning stage of the project. By identifying environmental problems early, the renovation/expansion project will not be crippled by a loan that cannot close because of unexpected environmental problems, or by causing tenants to miss critical move-in dates.

Second, address environmental problems identified during the planning stage. By performing required cleanups before the renovation/expansion breaks ground, the project budget will be more accurate since it will be based on a realistic starting date, taking into account the potential environmental problems.

Third, use a proactive environmental approach to advantage.

By documenting to lenders and tenants that you have a clean site, loans will be routinely closed and tenants will move into the renovated and expanded center with comfort, confidence and certainty.

Summary

Environmental problems should no longer delay shopping center renovation and expansion projects. Expansion of environmental regulations and liabilities have leveled off or even diminished. Procedures to deal with environmental issues have been regularized.

A significant lesson to be learned is that environmental matters must be taken into account as part of the project's initial planning and not as an afterthought. By taking this approach, you will be in control of the process and will be able to manage environmental problems rather than letting them manage you or your project, and you will be better able to ensure the project's smooth operation by facilitating arrangements with lenders and tenants.