

Environmental Liabilities Associated Real Estate Transitions



LIFE SCIENCES

Agenda

- Presentations on Limiting Liability
When Engaged in Property Transactions
– Focus on Lab Decommissioning
- Panel Discussion

Panel Members

- Kevin Brayton, New England Director – Life Sciences
- Ross Hartman, Corporate Services Director
- Craig Sasse, Senior Engineer
- Sandy Perry, Consulting Division Manager
- Ann M. Sobolewski, Posternak Blankstein and Lund

Liability in Transactions

Understanding Liability Entering or Leaving Space

- Lease obligations
- Real Estate
- Unknowns when occupying
- Address regulatory requirements
- Community reaction – bad press

Real Estate Liabilities

- Liability Under the Lease
- Indemnification Requirements
- Statutory Liability as an Operator
- Tort Claims-Health and Safety

Common Scenarios

- Owned vs. Non-Owned
- Lessee or Lessor or Sub-Lessee
- Lab Relocation from One Site to Another
- Internal Move inside a Facility –
 - Build-Out and Move into another area
- Renovation
- Closure of Facility



Liabilities When Entering Space

- Previous use?
- Poor housekeeping by previous occupants
- Residual chemicals (surfaces, drains, HVAC, etc.)
- Unknown or poorly documented decontamination activities
- Exposures to renovation contractors or new occupants

Liabilities When Leaving Space

- Lease obligations – What standards?
- Uncertainly if space is “clean”
- Renovating contractor safety
- Liabilities associated with re-cleaning
- Claims after vacating space
- Unexpected costs!

ANSI Standard, August 2008

ANSI Laboratory Decommissioning Standard is a new industry standard.

- Decommissioning Assessment Report
- Conduct sampling and analysis and prepare Decommission Plan
- Remediate and decontaminate
- Completion of Final Decommission Report

Benefits of ANSI

1. Accurate assessments
2. Ensures proper decontamination in accordance with developed plan
3. Establishes performance standards for defining “clean”
4. Mitigates additional costs for re-cleaning
5. Document provides protections

EH&S Initial Assessment & Needs Analysis

- Site specific investigations (inspection, interviews, government review, etc.)
- Past activities determined and future use
- Identification of potential contaminants
- Identify all stakeholders
- Regulatory requirements
- Financing

EH&S Initial Assessment & Needs Analysis

- Initial lab closeout
 - Bulk chemical removal
 - Radiation survey
 - Biological decontamination
 - Intrinsic hazardous materials
 - Lead paint, PCBs, asbestos containing materials, mercury, etc.
- Assess for remaining EH&S Concerns
- Initial Assessment Report

EH&S Site Investigation

- Coordination with all Stakeholders
- Develop Site Investigation
 - Scope of Work
 - Field Sampling Plan
 - EH&S Plan
 - QA/QC
- Perform Site Investigations
 - General observations
 - Sample collection
 - Instrumentation
 - Analytical
- Assess investigation data
 - Documents likely contamination, if any
 - Used to develop decontamination contract and plan

EH&S Decommissioning Plan

- Scope of Work
- List applicable regulatory compliance
- EH&S Plan
- QA/QC
- Design remediation
 - Areas of decontamination or remediation
 - Outline schedule for contamination of areas
 - Specific work activity procedures
 - Waste management
- Verification sampling & analysis
 - Compare to risk criteria and QA/QC plan

EH&S Decommissioning Plan - Cont

Sampling & Analysis

- Site Specific Chemicals of Concern
- RCRA Metals
- PCBs
- Perchloric Acids (Fume Hoods)
- Picric Acids
- Pesticides
- Dioxins

Decontaminations

Chemical



Radioactive



Biological



All Decontaminations

- Typical Decontamination Areas to consider:
 - Fume Hoods & Bio-Cabinets
 - Bench Tops – Drawers & Cabinets
 - Floor and Wall area's
 - Instrumentation
 - Sink Traps - Possible Mercury
 - Chemical Storage Areas
 - Cold Storage Rooms
 - Neutralization Tanks



Chemical Decontamination

- Chemical inventory review
- Chemical move
- Duct
- Staining
- How clean is clean
- Benchtop streaking
- Security and signage

Biological Decontamination

- Agents Used
- Safety Protocols
- Hoods/Cabinets
- Appropriate Disinfectants

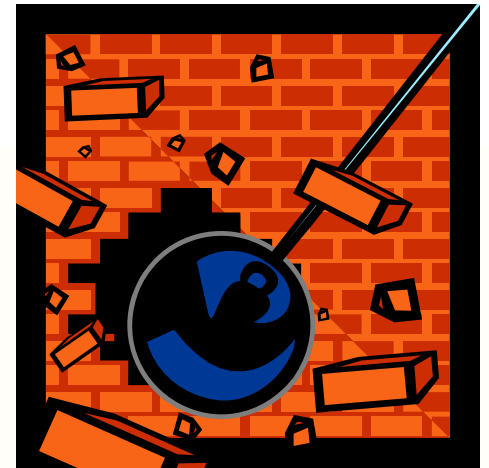
Radiological Decontamination

- Time Issues
 - Stop all activities
 - Allow >45 days
- Submittals
- Survey Plan
- Survey
 - Stickers/Traffic
 - Scintillation equipment
- Final Status Review Report

Demolition Considerations

- **Waste in Need of Special Attention:**

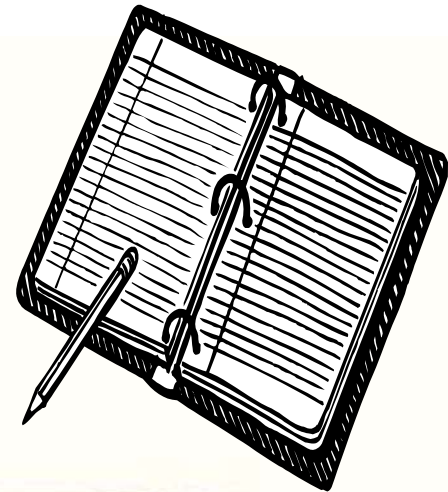
- Lead Paint
- Asbestos (flooring, tiles, etc.)
- PCB Material (capacitors, transformers, caulking, etc.)
- Mercury containing devices
- CFC Devices (ACs, refrigerators, etc.)
- Exit Signs – Possible Radiation



Post Decommissioning Report

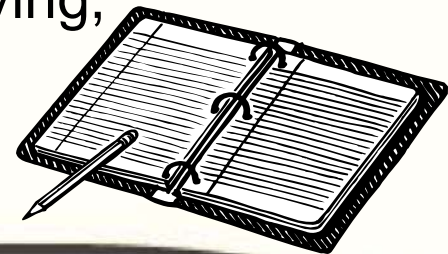
Report to Include the Following:

- Verification work was conducted in accordance with Decommissioning Plan
- Visual Inspections
- Before/After Pictures
- Clearance Sampling Documentation
- “Chain of Custody”
- Waste Disposal Paperwork
- Post –Decontamination Surveys



Post Decommissioning Report – Cont.

- Statement of “*Acceptable Level of Risk*”
 - Signed by CIH
 - Review of Plan & Report
 - “acceptable level of risk”
- Confirm ANSI Standards
- Records of decontamination Activities For Future Reference
- Reports limit potential liability when occupying, Lesseing or leaving space



Real Estate Transfer

- Lenders and purchasers perform due diligence investigations on real estate prior to transfer
- CERCLA Liability Protections through All Appropriate Inquiry
- Investigations lead to understanding a property's environmental liability.
- Parties negotiate equitable property value and conditions of the transaction if the sale proceeds.

Property Assessment

- Environmental consultants for buyers and sellers scrutinize and document property use to identify through Phase I's or Phase II's and "*Recognized Environmental Conditions*"
- Clear documentation of laboratory decontamination eliminates concern during real estate due diligence.

Thank You!!

Panel Discussion

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