

DEALING WITH DIRTY DIRT - A GUIDE TO ENVIRONMENTAL DUE DILIGENCE

BAKER DONELSON



IN THE BEGINNING



CERCLA LIABILITY

- **Strict**
- **Joint & Several**
- **Retroactive**



WHY OBTAIN A PHASE I ESA ?

- **Due Diligence**
 - **Liability Protection**
 - **Lease Agreements**
 - **Refinancing**
 - **Foreclosure**
- **Lender Requirement**
- **Pre-Construction**



SURPRISES CAN BE VERY COSTLY!



- **COLLATERAL IMPACTS TO DEVELOPMENT SCHEDULE**
- **ENVIRONMENTAL REMEDIATION COSTS**
- **CONTINUING OBLIGATIONS / DUE CARE RESPONSIBILITIES**

PHASE I ESA STANDARDS



Designation: E1527 – 13

Standard Practice for
Environmental Site Assessments: Phase I Environmental
Site Assessment Process¹

ALL-APPROPRIATE INQUIRY (AIA) ASPECT TO CERCLA

ENVIRONMENTAL PROFESSIONAL:

■ **HOLD A PROFESSIONAL LICENSE (PG, PE) AND HAVE 3 YEARS EXPERIENCE**

OR

■ **HAVE AT LEAST A BS IN SCIENCE AND 5 YEARS EXPERIENCE**

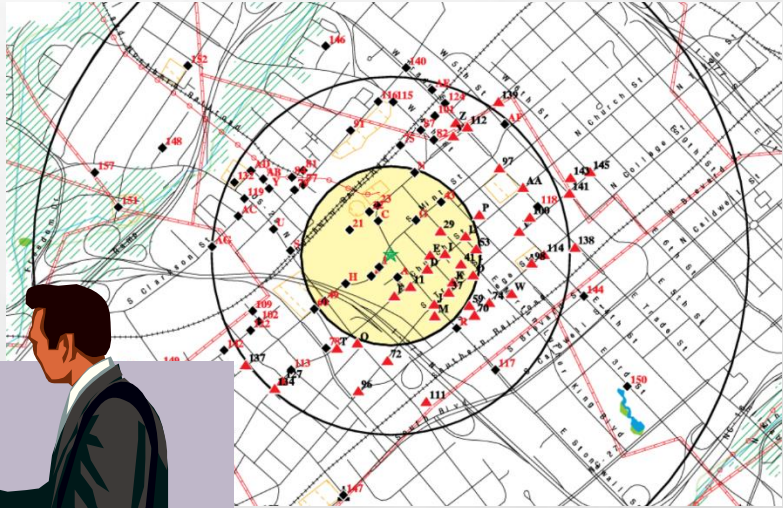
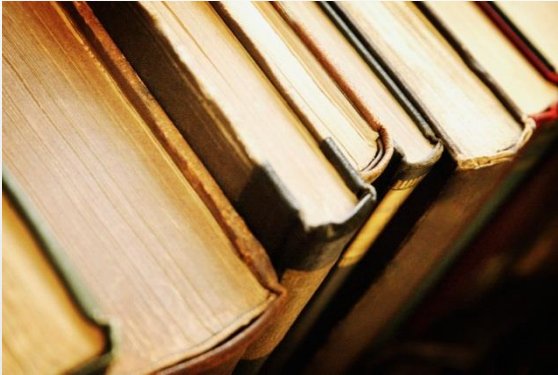
OR

■ **HAVE 10 YEARS EXPERIENCE**

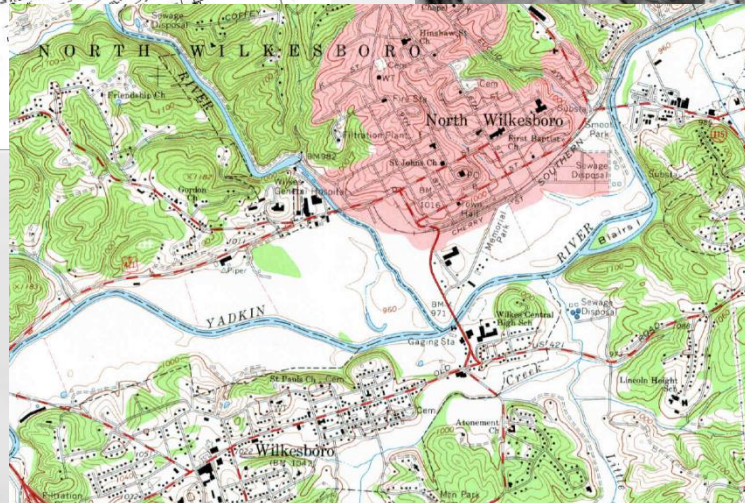
ASSESSOR MAY BE SUPERVISED BY AN ENVIRONMENTAL PROFESSIONAL



INTERVIEW, RECORDS AND DATABASE REVIEWS



HISTORICAL MAPS REVIEW



VISUAL INSPECTION



PHASE I ESA VIABILITY

A PHASE I ESA IS CONSIDERED "VALID":

- **1 YEAR PRIOR TO THE DATE OF TRANSFER OF TITLE**
- **180 DAYS OF CLOSING**

POTENTIAL NON-ASTM CONCERNS

- **Asbestos**
- **Lead Based Paint**
- **Wetlands**

HOW TO USE THE PHASE I REPORT

- **Evaluate risk**
- **Plan for construction**
- **What if additional investigations are recommended?**

PHASE II ESA

- **MAY ONLY NEED ADDITIONAL FILE REVIEW**
- **IDENTIFIES POTENTIAL CONTAMINATION**
 - **SURFICIAL SOIL/WATER**
 - **SUBSURFACE SOIL/GROUNDWATER**
 - **DRUM SAMPLING**
 - **FLOOR DRAINS/CATCH BASINS**
 - **TRANSFORMERS**
 - **UNDERGROUND STORAGE TANKS**



Now you know you have dirty dirt – what's next?



TDEC BROWNFIELD PROGRAM



ENVIRONMENTAL INSURANCE: ANOTHER PIECE OF THE PUZZLE



BEFORE



AFTER



BEFORE



AFTER



BEFORE



AFTER



QUESTIONS

BAKER DONELSON

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