

## The Environmental Corner

*By: Steve Henshaw*



### You Sold Your Business And You're In The Clear.....Not So Fast

You worked hard to grow your business and you had the good fortune to sell it for a profit. You had your lawyer look over the sale contract and you even had the buyer indemnify you for future environmental claims, should they ever arise. You did everything right and now it's time to relax and enjoy the fruits of your labor.

Several years pass and one day you get a letter in the mail. The letter is sent "certified" and you have to sign for it. You open the letter, it's from the state environmental regulatory department informing you that as a past owner and/or operator of the sold business, you are responsible for groundwater contamination.

While I don't want to come off as an alarmist and be the bearer of bad news, I feel an obligation to tell my readers the truth. The truth is, that if you owned or operated a dry cleaner that used solvents and those solvents are found in soil or groundwater you are, more likely than not, legally liable for investigating and remediating the contamination.

I've seen this happen more times than I care to remember. I've seen situations where perc shows up in a municipal well and the regulators research old city directories and old telephone books to find all of the past dry cleaners that operated in the area of the well. I've seen landlords and neighboring property owners find perc in soil and groundwater when they were conducting due diligence activities during property refinancing and transaction activities. I've seen perc discovered in soil and groundwater when streets are widened or

new utility lines are installed. I've seen insurance companies look for old owners and operators in an effort to have those former parties contribute toward the cleanup that the carriers have been paying on. All of these situations have one thing in common; the former dry cleaners are brought in to pay for or share in the cost of the environmental cleanup activities.

We talk often to dry cleaners about being proactive. Many times those same dry cleaners have responded that they do not own the property so they believe the potential problem is not theirs. Or their rebuttal is that

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# Cleaner & Launderer

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they ran a clean operation so they are not concerned. They believe the blame will fall on the previous operator, but we have to tell them that the problems related to perc contamination will not go away.

While you can't foresee the future and you can't go along every day worrying about the threat of a lawsuit or cleanup demand, you can do some things to provide some protection against such demands. How you have your business structured is one important issue. Do you own the business personally or is it held as a company where your personal assets can be protected? Did you buy the assets of a company or did you buy the business itself, including the stock? If you bought the company and not just the assets, you likely also own the historical insurance policies of the purchased entity and that can be worth millions of dollars down the road. When you sold the business did you get an indemnification agreement from the buyer? While an indemnity agreement may not matter to a regulator looking for responsible parties, indemnities are still worth having in a sales contract.

Another area that can provide you with protection against future cleanup demands are your old records. You want to locate and keep old records that show you ran a good operation and that you followed the regulations. Will your old inspection records, maintenance logs and monitoring reports support your position that you ran a clean operation? If the answer is yes, then those records should be copied or scanned and stored in a safe, dry place. You also want records that show who you bought your equipment and solvent from and how much you purchased. You want records that show who

disposed of your waste solvent and filters. You want to hold onto your old equipment manuals for the dry cleaning machine, distillation columns, misters and filtration systems. Write on the manual the years that the specific equipment was used. You want to keep a copy of your sale contract and you want to find as much information as possible regarding the people that sold you the business. Try to keep records that include the sellers' name(s) and social security numbers in the event that you need to find them years down the road.

Find, locate and securely store copies of your old insurance policies or any evidence that documents who your carrier was during given years. Old insurance policies can be worth millions of dollars years from now. If you can't find your old policies, look through your old accounting ledgers and check books for information about your insurance. Keep any document that pertains to your old insurance, whether it's a certificate of insurance, an old payment stub, cancelled checks, accounting ledgers, check books, and any correspondence from the carriers. If you can't find your old insurance, research what you can. Don't be shy, call your old broker, the one you left five years ago and haven't spoken to and ask for copies of your old policies or documentation regarding the name of the insurance company, the years of coverage, the type of policy, the policy limits and the policy number. The policy number is very important. If he does not have records, but recalls the name of the carriers and coverage periods ask him to put that information in a letter for you.

If you know the person you bought the business from, ask him if he has old policies or evidence of

coverage. Go through the same steps just discussed in an effort to locate that information. I'll say it again, old insurance records could be worth millions of dollars to you.

While I understand that the IRS only requires you to keep records for 7 years, some records are worth keeping for good. Old insurance policies and records should always be saved. When it comes to protecting yourself from unforeseen future liabilities, more often than not, there are golden nuggets buried in your old records.

***Stephen R. Henshaw, P.G. President & CEO - With over 20 years of experience, Mr. Henshaw holds professional geology registrations in numerous states. As President and CEO of EnviroForensics, Henshaw serves as a client and technical manager on projects associated with site characterization, remedial design, remedial implementation and operation, and litigation support and insurance coverage matters. He has acted as Project Manager or Client Manager on over 200 projects. These projects have included landfills, solvent and petroleum refineries, foundries, metal plating shops, food processors, wood treating facilities, chemical manufacturers and distributors, mines and quarries, heavy equipment manufacturers, computer manufacturers, and transporters. He has also served as a testifying expert on behalf of individual landowners and facility operators at several sites impacted by industrial activities and continues to provide technical and litigation support services. Contact him via e-mail: shenshaw@enviroforensics.com.***