

## The Environmental Corner

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### Remediation of PCE and TCE Impacted Soil and Groundwater Requires Teamwork and Coordination

Cleaning up soil and groundwater contamination from a release of chlorinated solvents, such as tetrachloroethylene (PCE) and trichloroethylene (TCE) can be a time consuming and complicated process. That's why it is so important for you to build the right team to represent you during this process. That team should understand what your business plans are and your schedule for implementing those plans. Dealing with environmental contamination is a crossroads of where you have been and where you are going with your business and your future. It can be an opportunity that forces you to make decisions that you may not have considered, like, "What do I want to do with the business? What about the property?" If you don't develop the right team, you could spend a great deal of money addressing the cleanup without having a road map as to what to expect. If you do not have the right team you could have business interruptions from drilling activities, and face a parade of activities that seem never ending.

With the right team, you don't need to become an expert on environmental matters – that's what you have them for. They're the experts and they communicate with you so you know what's going on without needing to take chemistry classes. You should be able to focus on your business, while your team focuses on how to move your project through the site closure process.

The most important thing to understand about this concept of building the right team, is that the team must represent the outcome that you desire,

within your expectations, and the team that you rely on needs to be strong enough to give you the truth and their best professional opinions, even when the news is bad. The second most important point is that your team needs to have a good working relationship with one another. Your consultant and your attorney need to be on the same page as to the Site Closure strategy. Depending on the business owner's future plans, site closure strategies might vary significantly. Your strategy might be to sell your business, but

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while the property is being remediated, you can't. You may own the property and want to refinance it, but most banks are reluctant to loan on the property as long as it is impaired. You may have no immediate plans to change your business at all and you just want to control the outflow of cash while you focus on growing your business. These are all different business scenarios that I've seen and they all directly affect the site closure strategy.

Now that you understand the importance of having the right team to represent your needs and site closure strategy, the following things can happen that will help you evaluate potential project funding, assess whether immanent health risks might exist, determine the magnitude of the problem, and give you some time-frame for getting the site through the closure process:

- All responsible parties have to be identified (current and past owners and operators);
- Your historical insurance or the insurance of other RPs should be evaluated and, if it's possible, used to fund required activities;
- Assess the immediate health exposure risks to neighboring building occupants (commercial and residential);
- Investigate the parameters of the source area (size, depth and concentration of the contamination);
- Evaluate the magnitude of the offsite migration;
- Develop preliminary remedial alternatives and cost estimates.

The next thing that will be helpful to understand is how will your business be affected by the field investigation and remediation operations. We are always sensitive as to how the

investigation and remediation activities might affect business operations. Drill rigs can be noisy, can block access, and take up valuable parking spaces, while traffic congestion and activities can result in a reduction of customers. For these reasons, we try to schedule work in the evenings and on weekends if that will help our client. Additionally, it's helpful to your team if you communicate to them what your plans are with the store - are you considering remodeling the store or replacing or changing out major pieces of equipment? There may be some remodeling or equipment changes that you had contemplated that can be coordinated with various investigative and remediation activities. We had one client that decided to shut his business down over the 4th of July weekend, so we moved all of the equipment out, conducted hot spot soil excavation, repoured the concrete pad and reinstalled the equipment over about four (4) days! Our client was busily painting the inside of his counter area and plant during our remedial activities.

On the other hand, we once embarked on the remediation of a site using an approach that was minimally invasive only to learn that within three months of implementing this technology, the client took out his old perc machine and replaced it with a new machine. That would have been an excellent opportunity to have conducted hot spot soil excavation, which would have shortened the remediation time by several years and, in the end, may have saved hundreds of thousands of dollars.

Another important point of having the right team representing you is that you will need to deal with the regulatory agency and a Project Manager. The personalities of Regulatory

Agency Project Managers can run the gamut. Some PMs are experienced and some are not, some are cordial and some are more cerebral and come off cold, some are understanding of your circumstances and financial situation and some don't seem to care. You have little choice in which Project Manager you get, but making certain that your team is well respected by the regulatory agency can be important. You won't agree to everything that the PM wants you to undertake in order to obtain site closure, but your team needs to know what battles to fight, because if you fight every battle, you will lose in the long run by getting delays and obfuscation when it comes time to request site closure.

If you are utilizing historical insurance to defend a claim asserted against you by a regulatory agency or third party, dealing with your insurance carriers and the insurance claims handlers can be complicated. Claims management approaches vary from carrier to carrier, with some carriers fighting every step of the way and others agreeing to fund reasonable and necessary work. Claims handlers vary as widely as Project Managers - some are responsive and some won't ever return a phone call or email. It is important that your team take strong actions when a carrier is denying you a proper defense or is dictating how that defense should be conducted. In most instances, if you have a claim that is being defended by your carrier(s), you have the right to retain counsel and experts to defend you against those claims. The carriers can weigh in on the reasonableness of the costs and work associated with the defense, but they cannot tell you how to defend the claim. If your team does not have a lot of experience dealing with insurance

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carriers and claim handlers, then you will be at the mercy of the insurance carriers to get the site to closure. It is my experience that projects being run by insurance carriers or where the insurance carriers question every step and decision, cleanups take five (5) to 10 years longer than if they had a smaller and less constraining role. Further, it has been my experience that the longer a project remains open the more the project will cost, even if nothing is happening for long periods of time. So, again it is very important that your team has your interests above all other interests when dealing with your insurance carriers.

The best thing that you can do now is to evaluate whether you have the right team representing you and to make sure that the consultant and the attorney are keeping you apprised of the project and that you have a realistic expectation as to the site closure schedule. Your team needs to speak for you and they need to know what your future business plans are. Site closure can take on a lot of different looks and be crafted to meet certain business objectives. Site investigation activities can be conducted during off hours and remodeling and equipment changes can be incorporated into the site investigation and remedial activities, so your team needs to know what your plans are. They need to be strong enough to give you the tough answers, even when it is not what you want to hear. Cleaning up soil and groundwater contaminated with PCE and TCE is complicated and having the right team is critical to the outcome. The right team for you and your circumstances may not be the same as a team built by your colleague, but several key factors are noteworthy. The right team is built on experience, trust and integrity. Your team needs to have your back.

*With 30 years of experience, Steve 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, litigation support and insurance coverage matters. He has acted as Project Manager or Client Manager on several hundred projects involving dry cleaners, manufacturers, landfills, refineries, foundries, metal plating shops, food processors, wood treating facilities, chemical blenders and transportation facilities. Henshaw has built a leading edge environmental engineering company that specializes in finding the funding to pay for environmental liabilities. By combining responsible party searches with insurance archeology investigations, EnviroForensics has been successful at remediating and closing sites for property owners and small business owners across the country, with minimal capital outlay from clients. He is a regular contributing writer for several dry cleaning trade publications on environmental and regulatory issues and remains active with dry cleaning associations by providing insight on changes in law and policy. Contact [www.enviroforensics.com](http://www.enviroforensics.com); e-mail: [shenshaw@enviroforensics.com](mailto:shenshaw@enviroforensics.com).*