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 remedi-
ated, 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 busi-
ness. These are all different business
scenarios that I’ve seen and they all
directly affect the site closure strategy.

Now that you understand the im-
portance 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 busi-
ness be affected by the field investiga-
tion and remediation operations. We
are always sensitive as to how the
investigation and remediation activi-
ties 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 cli-
ent. 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 activi-
ties. 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 equip-
ment 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 em-
barked on the remediation of a site
using an approach that was minimally
invasive only to learn that within three
months of implementing this technol-
yogy, the client took out his old perc
machine and replaced it with a new
machine. That would have been an ex-
cellent 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 hav-
ing the right team representing you
is that you will need to deal with the
regulatory agency and a Project Man-
ger. 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 insur-
ance 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; e-mail: shenshaw@enviroforensics.com.