



## **The Role of the Environmental Professional in Risk Management**

### **Introduction**

The Trojan War had raged for 10 years. The city of Troy, protected by its impregnable walls had withstood the assaults of the Greek Army and the Myrmidons of Achilles. One morning, the Trojans awoke to find that the Greek forces had boarded their ships during the night and withdrawn from the fields before Troy. Where once the mighty Greek army had camped, there stood a wooden horse perhaps 30 ft tall. Struck by the magnificence of the horse and flush with their victory, the Trojans opened the city gates and paraded the horse through the streets of Troy. That evening Greek warriors emerged from their hiding place within the horse's belly. They crept to the city gate and flung open the doors to the waiting Greek army, which had secretly returned during the night. The city of Troy was taken in less than an hour.

### **Environmental Liability: The Trojan Horse of Real Estate**

The Iliad is a classic work of Greek literature, and its lessons echo down through history. It is easy for us, thousands of years removed, to shake our heads and wonder how the Trojans could have been so easily duped. But this year alone, hundreds of otherwise savvy companies will welcome Trojan Horses within their corporate walls in the form of environmental liability. Like the Greek warriors hidden within the wooden statue, a real estate transaction completed without appropriate inquiry may expose a company to thousands, even millions of dollars worth of cost, reduced property value, and lost productivity.

### **The Cost**

What will it cost the company that does not conduct an appropriate property risk assessment? Let us assume for the sake of example that the property in question has been impacted by petroleum, either from a gasoline station, farm operation, or poor housekeeping. An initial investigation of petroleum impacted soil or ground water may cost \$10,000-\$15,000 depending largely upon State regulations. Full-scale remediation systems may run from \$100,000-\$500,000. Moreover, depreciated property values may result and litigation may be initiated by adjacent property owners whose properties become affected. A risk management evaluation such as a Phase I Environmental Site Assessment (ESA) can expose the risk. The cost of such an investigation often represents less than one week's payment on the property purchase price. But how do you know that the ESA is properly addressing your risk?

### **The Environmental Professional: Defeating the Trojan Horse**

In recognition of the important role of appropriate inquiry in risk management, the Federal Environmental Protection Agency (EPA) on November 1, 2005 released the final All Appropriate Inquiry (AAI) rule. With this step, The EPA took the first action towards codifying environmental due diligence procedures. Previously, environmental due diligence investigations

followed guidance established by the American Society for Testing and Materials (ASTM) and general industry practice. Environmental assessments conducted for the purpose of providing environmental liability protection must now conform to the provisions of the code of federal regulations (40 CFR Part 312) – Standards and Practices for All Appropriate Inquiries. In essence, where before there was guidance that *suggested* how to conduct an inquiry, now there are regulations which dictate how an inquiry *must* be conducted.

One of the positive benefits of AAI for the client is the definition of an environmental professional, or EP. Previously, anyone could hang up a shingle and conduct ESAs whether they were experienced or not. Under AAI, an individual must meet minimum education and experience requirement to be considered an EP. An EP may qualify with a bachelor's degree in engineering or science and 5 years experience conducting ESAs. Others will meet the standard by having a professional geologist or engineer's certification and 3 years experience.

The EP utilizes the methodology of AAI to conduct an ESA and reduce your risk of environmental liability. The selection of a qualified EP is crucial as many of the provisions in AAI defer to the EP to decide what level of investigation is appropriate. Examples include:

- EPs determine whether data gaps exist and whether the gaps are significant.
- The appropriate level of detail for the historical data search is up to the discretion of the EP.
- “Commonly known or reasonably attainable information within the local community about the subject property” must be utilized by the EP. The EP is responsible for locating these information sources and determining what additional resources are relevant to the investigation.

### **The Bottom Line**

Who is ultimately responsible for assuring a proper investigation is completed? The EP is responsible but in a sense, the person who contracts the EP is ultimately left with the financial loss resulting from a poorly conducted ESA. You can no longer view the ESA service as a commodity by conveniently choosing the low-cost provider. The ESA is more than just a “necessary evil” or a “speed bump” in the property purchase process. Simply hiring a consultant on a low-price, quick turn-around basis is not good risk management. You must ensure the professional you contract is experienced. Ask the EP about their project experience. Verify that the EP has conducted investigations for properties similar to yours. Ask about the EPs quality assurance procedures. An EP will be happy to discuss these items as they reflect positively on their professionalism.