

Environmental Considerations for the Transfer of Property

Some cities and counties have specific procedures for you to follow when closing a facility, but what if you're just transferring operations to a new tenant? If you're looking for maximum protection under the law read on...

It's in your best interest to document the condition of the property at the time of transfer, in some cases proper documentation can even provide you legal protections. This documentation can be as simple as a photo essay of the facility conditions at your time of departure or can involve a much more detailed process. Some local jurisdictions have a formal closure process that ensures hazardous materials at your former facility have been properly transported, disposed of, or reused. It is important to ensure that you follow all local guidelines but keep in mind that typical closure reports for a small facility usually include:

- A formal application, written closure plan and fee submittal
- A schedule indicating proposed onsite activities
- A description of tanks, containers and other vessels being emptied or removed
- Procedures to be used to clean pavement and other contaminated surfaces
- A post closure report including supporting waste disposition documentation

While these items are required by local jurisdictions it is KPA's experience that the most important element of a closure report is photographic documentation. Photograph every area of your former business. Pay special attention to areas where hazardous materials and wastes were stored. Ensure that the photographs clearly identify the boundaries of any contamination. When in doubt take more pictures. Provide a copy of your photographs and documentation to the current landowner and the new tenant at the time of your departure. While it is unlikely that anyone will pursue legal action against you, the photographic evidence will go a long way to supporting your position should you need it.



Environmental Site Assessments

When a real estate transaction occurs that involves possible environmental concerns, financial institutions involved in the transaction typically require an Environmental Site Assessment, of the property. Environmental Site Assessments, (ESA's) are broken into three phases:

1. Phase I ESA's involve an above ground investigation of the property and are limited to current and historical records reviews, interviews of relevant parties and physical observations.
2. Phase II ESA's involve subsurface investigation, typically including the drilling of several core samples, or monitoring wells.
3. Phase III ESA's include the cleanup of any found environmental contamination.

Documenting the environmental disposition of your former business at the time of your departure is important and can prevent future headaches. If you'd like assistance with this or any other Environmental, Health, Safety, or HR compliance assistance please contact KPA at 1-866-356-1735.



Do you need to conduct an Environmental Site Assessment?

The Comprehensive Environmental Response, Compensation, and Liability Act, (CERCLA) was passed in 1980 and was designed to ensure the cleanup of environmentally contaminated property. Its implementation authorized the Environmental Protection Agency, (EPA) to identify parties responsible for contamination of sites and compel the parties to clean up the sites. As a landowner or tenant that has not contaminated your property, you do not want to be responsible for any possible future cleanup. Qualifying for protections under CERCLA as an “innocent landowner”, (implying you have no knowledge of environmental contamination), protects you from future liability. To qualify the following activities must be completed during a real estate transaction:

1. An **Environmental Site Assessment** conducted by an environmental professional including:
 - Visual inspections
 - Interviews
 - Reviews of historical sources
 - Reviews of government records
2. Either the environmental professional or the person seeking protection must:
 - Search for environmental cleanup liens
 - Consider “specialized knowledge”
 - Consider the relationship of the purchase price to the fair market value of property.
3. Both the environmental professional and the person seeking protection must:
 - Consider the “degree of obviousness of contamination”
 - Consider “commonly known” information



About KPA

KPA is the nation's compliance expert on safety, environmental and human resources, serving more than 3,000 clients in 43 states since 1986.

KPA's onsite, on-call, and online environmental and safety services reduce accidents and associated costs while ensuring the highest level of compliance with EPA and OSHA regulations.

HotlinkHR™ is an online system that cuts legal and administrative costs, forces compliance with state and

