

Due Diligence Report

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Special points of interest:

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- REC or no REC
- PME News

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Federal Bank and Thrift Agencies Propose Guidance On Commercial Real Estate (CRE) Lending

[January 26, 2006] The federal bank and thrift regulatory agencies recently issued for comment proposed guidance on sound risk management practices for concentrations in commercial real estate lending (CRE).

The agencies have observed that some institutions have high and increasing concentrations of commercial real estate loans where repayment primarily is dependent on rental income or from the proceeds of the sale, refinancing, or permanent financing of the property. Such concentrations may expose institutions to unanticipated earnings and capital volatility in the event of adverse changes in the general commercial real estate market.

The proposed guidance—from the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Office of Thrift Supervision—reinforces existing guidelines for real estate lending and safety and soundness. It provides criteria for identifying institutions with

commercial real estate loan concentrations that may warrant greater supervisory scrutiny. As provided in the guidance, such institutions should have robust risk-management systems in place and capital levels higher than the regulatory minimums and appropriate to the risk associated with these concentrations.

Comments are due by March 14, 2006. For the Federal Register announcement see:

<http://www.occ.treas.gov/fr/fedregister/71fr2302.pdf>



Learn more about the Association for Corporate Growth at www.ACG.org

They have West Michigan and Detroit Chapters. This is a great organization.

Environmental Due Diligence—EPA AAI Rule

The Environmental Protection Agency published a final rule setting **federal standards** for the conduct of all appropriate inquiries. The rule was published in the Federal Register on November 1, 2005. The final rule and preamble is available below. The all appropriate inquiries standards and practices are relevant to:

- ♦ the innocent landowner defense
- ♦ the contiguous property exemption
- ♦ the bona fide prospective purchaser exemption
- ♦ the Brownfields grant programs

The final rule establishes specific regulatory requirements for conducting all appropriate inquiries into the previous ownership, uses, and environmental conditions of a property for the purposes of qualifying for certain landowner liability protections under CERCLA. The final rule will be effective on **November 1, 2006**, one year following the date of publication.

After November 1, 2006, parties must comply with the requirements of All Appropriate Inquiries Final Rule, or follow the standards set forth in the **ASTM E1527-05 Phase I Environmental Site Assessment Process**, to satisfy the statutory requirements for conducting all appropriate inquiries. All appropriate inquiries must be conducted in compliance with either of these standards to obtain protection from potential liability under CERCLA as an innocent landowner, a contiguous property owner, or a bona fide prospective purchaser.

Conclusions:

The AAI rule primarily effects the level of due diligence required for new real estate purchases and it can protect both the bank and new purchaser. Bankers need to verify that the consulting firm conducting their due diligence is complying with the new standard. Most consulting firms will use the new 2005 ASTM (E1527-05) standard to meet the requirements of AAI.

PM Environmental, Inc.

PME's Clients Include:

- Comerica Bank
- Fifth Third Bank
- National City Bank
- Huntington Bank
- Republic Bank
- Chemical Bank
- JP Morgan Chase
- LaSalle Bank
- Flagstar Bank
- Citizens Bank
- CIT Small Business
- Key Bank
- Independent Bank
- Charter One
- Retail Petroleum Marketers
- Developers
- Attorneys
- Manufacturing

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PM Environmental, Inc. (PME) is an environmental due diligence firm that has been serving banking and developer clients since 1992. PME's success is based on our ability to assess environmental risks and help our client's minimize these risks. We help simplify the technical issues so our clients can make sound business decisions. We do over 500 Phase I ESA's per year and have evaluated thousands of sites through out the Midwest.

Our due diligence services include:

- Bank specific Due Diligence/Risk Assessments
- Transaction Screens (ASTM E1528)
- Phase I Environmental Site Assessments (ASTM E1527)
- Phase II Environmental Site Assessments
- Property Condition Assessments (PCA)
- Baseline Environmental Assessments
- Brownfield Redevelopment Planning
- Environmental Liability Assessments
- Asbestos Inspections and Abatement
- Lead Paint Inspections
- Mold Inspections and Remediation



PME operates our own sampling equipment. This reduces our costs and makes us more responsive!! We just added a 3rd geo-probe to better serve our clients.

REC or no REC

One of the most debated issues in doing environmental due diligence is whether an observation constitutes an **Recognize Environmental Concern** (or REC). The following is a real life case study:

Subject Site: 10 Acres Vacant Land

Issue: Adjacent Site is Gasoline Station (across 2 lane road). 10 years ago the site had a release and the site obtain closure from MDEQ.

Discussion: An adjacent operating service station is always a concern that must be reviewed to determine the potential impact to the subject property. The fact that the site has had a known release that MDEQ has agreed met the Part 213 closure standards does not mean this site poses no potential risk. Since receiving closure, the site had had an additional 10 years of operation where deminimus spills associated with normal

operations could impact groundwater and migrate off site.

A review of the MDEQ file showed a predominately sand geology and groundwater at 30 feet flowing away from the subject site. The impacted soils and groundwater from the earlier release had been delineated. The groundwater plume had migrated off-site but away from the subject site.

Closure of the old release by MDEQ did not eliminate this as a REC because of the current operations of the site. However, a review of the regional geology and detailed hydrogeologic studies document groundwater flow is away from the subject site .

Based on the well documented direction of groundwater flow this site was not considered a REC.

PME News

New District Manager

PME has hired **James Charles, PE** as their new District Manager for West Michigan. Mr. Charles brings over 20 years of environmental experience in site remediation, due diligence, and environmental compliance. He will be responsible for growing PME's business in West Michigan and expanding PME's compliance services.

7 Gas Station Deal

PME just completed a quick turn around (**2.5 weeks!!!**) environmental review of 7 Gas Station/Convenience store locations. This included doing a historical records review, expedited Phase II investigations, and compliance inspections of the tank systems.

PME joins the Association for Corporate Growth Western Michigan