



# Due Diligence Report

Spring 2007

## Key Items to Consider When Conducting Environmental Due Diligence - Pete Bosanic, President



Environmental due diligence is required for nearly every commercial and industrial property transaction that takes place in the new millennium. **PM Environmental, Inc. (PME)** has completed thousands of due diligence projects at all types of properties for various types of transactions. The following are some key issues that should be considered and can impact the transaction:

**Hire Environmental Consultants who Specialize in Due Diligence on Property Transactions!** Not all consultants understand due diligence, yet most profess to. There is a reason that the major banks have spent a lot of time and money developing approved consultant lists. The banks have a rigorous process of evaluating consultant's understanding of due diligence; their past performance and experience; the staff they employ; making sure they have the necessary insurances; and that they are likely to be in business for a long period of time. PME has been involved in numerous transactions where adequate due diligence has not been conducted by a consultant who doesn't specialize in it, yet the customer has been billed for the services and additional work has to be completed to fill in data gaps to make reliable conclusions.

**Effective November 1, 2006, a Phase I Environmental Site Assessment (ESA) Should be Conducted for All New Purchases** based upon the federal government's **All Appropriate Inquiry (AAI) rule**. Other options may exist for people who already own property and for refinances. The goal of environmental due diligence is to determine whether **Recognized Environmental Conditions (RECs)** exist that could impact the property. *(Article Continued on Page 2)*

## PM Environmental Recognized of the 2007 Michigan SBA Lender's Conference



**PM Environmental, Inc.** honored for continuing Participation in the **Michigan SBA Lender's Conference** at the March 22, 2007 annual conference.

Pictured is Mr. Richard Temkin, the United States Small Business Administration (SBA) Michigan District Director, presenting an award to Mr. Michael T. Kulka, Vice President and Principal honoring PM Environmental, Inc. for their continued participation and contribution to the annual Michigan SBA lenders conference.

For the fourth consecutive year, PME has presented an SBA workshop titled "Environmental Considerations II". The workshop addresses the more complex environmental obstacles involved with SBA commercial real estate financing and how to navigate towards a successful closing.

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## Due Care Obligations Subject to Enforcement - Michael T. Kulka, Vice President

The MDEQ has recently issued enforcement letters for failure to implement Due Care Obligation. Pursuant to Section 20107a of the NREPA, Part 10, Compliance with Section 20107a, of the Part 201 Administrative Rules (Part 201 Rules); and other state of Michigan (state) and federal laws, a person who owns or operates property that he or she has knowledge is a facility is required to undertake due care with respect to any hazardous substances at the facility.

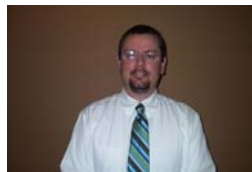
1. Rule 1003(5) requires an O/O to maintain documentation of compliance with Section 20107a and to provide that documentation to the DEQ upon request.

5. Rule 1019(1) requires an O/O who is obligated to mitigate a fire or explosion hazard under Section 20107a(1)(b) to immediately notify the local fire department of the hazard and take any other steps as are reasonable and prudent under the circumstances to mitigate or eliminate the hazard. If the initial actions do not permanently abate the fire and explosion hazard, then, pursuant to Rule 1019(2), within seven-days after notice is provided under sub rule (1) of this rule, the O/O shall provide written notice to the department. *(Article Continued on Page 3)*

## New Office Opening:

PM Environmental, Inc. is pleased to announce the opening of our Fort Wayne, Indiana Office. Mr. Doug McVey will manage this operation. Doug and his wife are native to Indiana and the Fort Wayne area. Mr. McVey has over 10 years of environmental consulting experience. Please feel free to contact Doug if you need a quotation.

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## Key Items to Consider on Environmental Due Diligence (continued from Page 1)

**What Steps Does a Buyer Have to Take When RECs are identified?** If the Phase I ESA identifies concerns, a Phase II ESA (soil borings) needs to be completed to assess the concerns. **The future use of the property needs to be clearly identified** to properly determine the scope of work, which can vary significantly from completing a limited Phase II ESA that may consist of drilling only a few soil borings to a more extensive Phase II ESA including geophysical survey to investigate buried vessels. Typically, when the future use will involve the storage and handling of chemicals a more extensive Phase II ESA is required.

**When Contamination is Discovered can a Buyer Purchase the Property and will a Bank Loan on the Transaction?** Since 1995, buyers in Michigan can purchase contaminated properties and not be liable for existing contamination by conducting a **Baseline Environmental Assessment (BEA)** and most banks are comfortable with the BEA process, provided an adequate scope of work has been completed to evaluate the risk associated with the property. Remember BEAs are for buyers and protect them from liability; however,

BEAs are submitted to the Michigan Department of Environmental Quality (MDEQ), which means they now know about the contamination. The MDEQ often considers the sellers liable parties for the contamination. **A common misconception about BEAs is that they can be transferred.** BEAs are legal documents that are completed for specific entities and only those entities are protected. A new BEA must be completed each time a contaminated property changes hands.

**Once a BEA is Complete can a Buyer do what they want with the Property?** The MDEQ requires that **Due Care** be exercised at all contaminated properties to ensure that the contamination is not worsened and that exposure to unacceptable levels of contamination does not occur. **The MDEQ recently issued enforcement letters for failure to implement due care obligations.** A buyer should carefully consider what their future use will be and if any development activities will take place where the contamination is located. **Contamination can impact how a property is used regardless if a BEA has been done.**

## PME Decatur News:

*John Hargraves: Southeast Regional Manager*

PME closed a dual phase extraction remediation system after a "No Further Action" letter was received by the client. The impact was in an aquifer that is used as a primary drinking water source by the City of Bethel Springs, Tennessee. PME had operated and maintained the system for 3.5 years, treating and discharging over 9,000,000 gallons of groundwater.

Crystal Bailey has joined PME as a Staff Scientist in the Decatur Alabama office. She has 4 years experience in NEPA documentation and groundwater monitoring.

Suzy Evans (Decatur AL office) has completed training on Alabama Risk Based Corrective Action (ARBCA) for hazardous waste projects. This is in addition to her experience with ARBCA procedures for petroleum releases.

PME has begun work on two projects in Alabama's Drycleaner Trust Fund. Currently one project is requiring Full delineation of impact,

and the second is awaiting approval for initial investigation.

This summer, PME's Decatur Alabama office will be preparing Corrective Action Plans for two projects in the Alabama UST Trust Fund. The plans will involve the design of active remediation systems using the injection of oxygenated water or ozone into the impacted areas.

PME is entering into a Professional Services Agreement with the City of Florence, Alabama to assist with preparing Brownfield grants for the City, and consulting on other redevelopment programs and alternate funding sources. The highest priority sites include a 125-year old foundry and a 55-year old metal plating facility with hexavalent chromium impact.



## PM Environmental, Inc.

PM Environmental, Inc. (PME) is an environmental due diligence firm that has been serving banking and developer clients since 1992. PME's success 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
- Phase II Environmental Site Assessment
- ASTM Property Condition Assessment (PCA)
- Baseline Environmental Assessment (BEA)
- Brownfield Redevelopment Planning
- Environmental Liability Assessments
- Asbestos Inspections and Abatement
- Lead Paint Inspections
- Mold Inspections and Remediation
- Leaking Underground Storage Tank Assessment and Remediation



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

### Due Care Obligations Subject to Enforcement (Continued from Page 1)

Pursuant to Section 20107a(2) of the NREPA, a person who violates Section 20107a(1) is liable for response activity costs and natural resources damages attributable to any exacerbation of existing contamination and for any fines or penalties that may be imposed under Part 201. Section 20137(1)(f) of the NREPA provides for a civil fine of up to \$10,000 for each day of violation of Part 201 of the NREPA and the Part 201 Rules.

## PME NEWS

### PME Delivers for MDOT

PME completed a Preliminary Site Investigation (PSI) for the Michigan Department of Transportation (MDOT) to investigate potential contamination along an approximately 2.0 mile stretch of Business I-94 in Benton Harbor, Berrien County, Michigan. The job consisted of over 150 soil borings and was completed in less than one month from authorization.

The job was completed using PME's two 6610 Geoprobes through the first major snowfall of November 2006.

-Brian Chmielewski



### Dewitt to Present at NGWA

Grant W. DeWitt and James S. Smith will be presenting First-Order Exponential Regression of Ethylbenzene/Xylenes Ratios for Estimating Release Date to:

National Ground Water Association (NGWA) 4th Annual Ground Water and Environmental Law Conference, July 7, 2006, Chicago, Illinois.

Michigan Basin Geological Society Meeting, September 13, 2006, Dimondale, Michigan

American Academy of Forensic Sciences (AAFS) 59th Annual Meeting, February 22, 2007, San Antonio, Texas

NGWA 2007 Ground Water Summit, May 1, 2007, Albuquerque, New Mexico



## PME's Clients Include

- Comerica Bank
- Fifth Third Bank
- National City Bank
- Huntington Bank
- Mercantile Bank
- Macatawa Bank
- Capmark
- Chemical Bank
- Chase Bank
- LaSalle Bank
- Flagstar Bank
- Citizens Bank
- CIT Small Business
- Key Bank
- Independent Bank
- Charter One Bank
- Retail Petroleum Marketers
- Developers
- Attorneys
- Manufacturing
- TCF Bank
- Franklin Bank
- Bank of Birmingham
- Clarkston State Bank

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