

Compliance Headliner

PHASE I Property Assessment- BUYER BEWARE

PLANTING THE SEEDS FOR SECURE COMMERCIAL PROPERTY TRANSACTIONS

Because of the expansive environmental liability provisions contained in CERCLA regulations, commercial buyers should be aware that they may be held responsible for environmental contamination on property they purchase. This responsibility arises even if the buyer did not cause the contamination. And even though certain “safe harbor” opportunities exist for commercial buyers under CERCLA, the buyer must conduct the proper due diligence before purchasing the property in order to qualify for these limited liability defenses and protections. Environmental due diligence is an investigation process that identifies environmental concerns associated with a site.

On August 26, 2004 the U.S. Environmental Protection Agency (“EPA”) published in the Federal Register its proposed rule setting forth standards for conducting “all appropriate inquiry” into the previous ownership, uses, and environmental conditions of a property (the “Proposed AAI Rule”). Conducting all appropriate inquiry prior to acquisition of a property is a required component of qualifying for liability protection under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”). The Proposed AAI Rule is in response to the 2002 amendments to CERCLA, which among other things, created additional liability protections and required EPA to devise a uniform standard as to what constitutes all appropriate inquiry.

The Proposed AAI Rule would have a *significant impact on commercial real estate transactions*, as it calls for a more rigorous investigation than the American Society of Testing and Materials’ Phase I Standard (E-1527-2000) (the “ASTM Phase I Standard”) and establishes specific requirements as to the qualifications of the environmental professional who conducts the investigation. The Proposed AAI Rule may also impact recipients of Brownfield’s grants from EPA, as grant recipients may be obligated to evaluate releases or threatened releases of both hazardous substances and other pollutants and contaminants (e.g. petroleum). Such additional evaluation would be subject to the standards set forth in the Proposed AAI Rule.

There may be some questions posed during a property ownership and/or business operator transaction. Whether real or perceived contamination exists on site, properties associated with such a stigma can carry a high risk for the owner, business operator, and their customer/client. Most people who are involved in commercial or industrial operations are aware of the strict environmental regulations that can greatly impact the financial condition of a business.

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WHERE ARE YOUR BATTERIES STORED???

Are Your Batteries Stored Properly?

The storage and disposal of automotive batteries is an issue of concern for all automotive dealerships. Batteries are considered a Universal Waste by the Environmental Protection Agency and must be recycled and stored in an appropriate manner.

The EPA requires that all batteries that show evidence of leakage or damage must be stored in a manner that will prevent a release of the contents of the battery into the environment. Additionally, if it is foreseeable that a battery may leak, the battery must also then be stored in an appropriate manner. If a battery is left outside, it is possible that it may leak. Rainwater aids in the corrosion of the battery, making it more likely that the contents may leak and enter into the environment. Often the most effective way of containing these batteries is to store them in a closed plastic container. It is important that the batteries not be stored in metal, as metal will corrode if a battery leaks, releasing the acid into the environment. The container must have sides high enough to prevent the release of any acid that has spilled and have a lid and walls that will prevent the entry of rainwater into the container and protect people working in the area in the event that a battery sprays. OSHA also requires that batteries both used and new, be stored in this manner. The container should also be labeled “Universal Waste—Batteries,” or “Waste Batteries,” or “Used Batteries.”

The EPA enforces these rules because sulfuric acid has the potential to cause a great deal of harm to the environment if it is released. Any plants or animals that come into direct contact with the acid could be severely burned. Acid that has been spilled is likely to mix with rain and make its way into a nearby stream. If large amounts of sulfuric acid have been spilled, the pH of the stream or other waterway can be drastically altered, having a huge impact on the plant and animals that use that waterway for a home.

OSHA regulates battery storage because sulfuric acid from a battery can also have a significant impact on human health. The acid severely burns the skin on contact. It will also cause blindness upon contact with the eyes. This is why it is so important to have lid on batteries to protect employees in case a battery sprays and why employees are required to wear chemical goggles and a chemical face shield, as well as chemical resistant gloves, when working with batteries. Contact with small amounts of sulfuric acid, such as a mist suspended in the air, can cause irritation of the eyes, nose, and throat.

Batteries should be removed from a facility in a timely manner in order to prevent accidents that can occur if a battery leaks. While on site, batteries should be stored in a central, labeled location, in a manner that will prevent the release of acid if a battery sprays or leaks.

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Although not always initiated by property/business ownership transactions, most Environmental Assessments are conducted to satisfy legal agreements or regulatory requirements, such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). ***To qualify as an “innocent landowner” or “non-responsible party”, the potential buyer/ new operator must conduct all appropriate inquiries into the previous uses of a property, specifically related to hazardous materials, in order to identify environmental conditions.***

Crandall Corporation's highly qualified staff of Environmental Professionals have completed site assessments for private owners, potential buyers, municipalities, public universities and financial lending institutions. All environmental projects are completed in a timely manner and are accompanied by a professional report, detailing the process, scope of work, findings, conclusion and recommendations. When necessary, a Professional Engineer or Geologist will review and approve the report

The Great Bulb Debate

Have you ever touched a recently lit light bulb and burned your fingers? Then you know just how hot household light bulbs can get. Normal household, or incandescent, bulbs produce a great amount of heat—up to 500°F—and for that reason should not be used around flammable or combustible materials.

Imagine this scenario: a shop light is left under a vehicle, on an oily floor, with a multitude of dirty rags nearby, and the technician walks away to ask a question. In just the time it takes to check a diagram, this scenario could burst into flames.

A flammable liquid, such as brake cleaner or gasoline, can ignite at less than 100°F. A combustible liquid, such as oil, diesel fuel, and propane, ignites between 100° and 200°F. Normal paper burns at 450°F. These substances will burn at well below the average heat produced by an incandescent bulb. That shop light under the vehicle can prove to be more dangerous than you think.

Household light bulbs are designed to be used in mounted light fixtures and table lamps, not in the workplace. Around 95% of the output of all incandescent bulbs is emitted as heat. Many technicians argue that they have “industrial strength” light bulbs, which they claim to be “OSHA approved”. This is not the case. Those light bulbs may be shatter resistant, but they still get extremely hot. Wire guards around most hand lamps are large enough to allow objects to touch the hot light bulb. In many cases this guard is not even present.

Cool light sources, such as enclosed fluorescent hand lamps, should always be used in the shop. Fluorescent bulbs produce only a fraction of the heat of incandescent bulbs, reaching only 100°F. Fluorescent bulbs are also much more energy efficient and last up to twenty times longer than incandescent bulbs. Since incandescent bulbs produce about six times as much heat as a fluorescent bulb, switching to fluorescent will keep your work area much cooler in the summer.

A simple switch to a fluorescent hand lamp could save your life or your business. Remember that there are many flammable and combustible materials in your workplace. Incandescent shop lights are just an accident waiting to happen.



EPA's Final Rule Governing Freon and Refrigerant Recover/Recycling in Motor Vehicle Air Conditioners (MVACs)

Under the Clean Air Act, effective 1992, [Section 608](#) of the Act prohibits individuals from knowingly venting [ozone-depleting compounds](#) used as refrigerants into the atmosphere while maintaining, servicing, repairing, or disposing of air-conditioning equipment. Additional restrictions were implemented in 1995 prohibiting the release of non-ozone-depleting refrigerants such as HFC-134a into the atmosphere under Section 609 of the Act.

Equipment Certification

To ensure these requirements are met, the EPA has issued standards by which individuals involved in recovery and recycling must comply. First, the EPA requires that recovery and recycling equipment manufactured on or after November 15, 1993, be tested and certified by an EPA-approved organization. Furthermore, reusable Freon and refrigerant cylinders must be tested every 5 years to ensure hydrostatic pressure and detect potential leaks. Service shops must certify to EPA that they have acquired and are properly using approved refrigerant recovery equipment, and that each person using the equipment has been properly trained and certified. The certification statement shall include the name and address of the service establishment, the name of the equipment manufacturer, equipment model and serial number, and equipment date of manufacture. Crandall Corporation provided the USEPA Refrigerant Recovery or Recycling Device Acquisition Certification Forms, and they can be obtained at http://www.epa.gov/ozone/title6/609/mvac_recover.PDF

Employee Certification

In addition, the EPA has established a technician certification program for persons ("technicians") who perform maintenance, service, repair, or disposal that could be reasonably expected to release refrigerants into the atmosphere. Technicians are required to pass an [EPA-approved test](#) given by an [EPA-approved certifying organization](#) to become certified under the mandatory program. Go to <http://www.epa.gov/docs/ozone/title6/608/technicians/608certs.html> to see a list of approved organizations. In this rule, the EPA also describes its intention to grandfather automotive service technicians currently certified under section 609, so that they will not need to be recertified in order to operate recover/recycle equipment designed to service motor vehicle air conditioning (MVAC) systems that use refrigerants other than CFC-12. Presumably, the ASE and other recognized technician training organizations offer MVAC certification courses. However, please inquire to your dealer representative to ensure these courses meet EPA's rules. Documentation of technician training must also be maintained for anyone who works on MVAC equipment.

Please contact Crandall at 800-248-4801 or visit the EPA's website for more information at <http://www.epa.gov/docs/ozone/title6/608/technicians/index.html>.

Source: Environmental Protection Agency, Complying -With -The-Section-608-Refrigerant-Recycling-Rule. <http://www.epa.gov/docs/ozone/title6/609/subsumm.html>

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