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## No Further Action Letter's Status Can Change

by Allen Keiter, MAI

Many appraisers feel that after a No Further Action letter is issued by a state environmental agency the responsible party and future property owners are absolved of financial responsibility for remediating the previous environmental contamination. But, at the Environmental Bankers Association conference held in January 2002, several bank environmental officers commented on the increasing number of state environmental agencies that are reopening files, reinvestigating sites, finding contamination from a previous spill, and requiring the responsible party to remediate the contamination.

Many of the investigation procedures used years ago by state agencies are incomplete. For example, when removing an underground storage tank, one state's EPA procedures required soil testing only if the tank displays obvious holes. No Further Action letters were then issued on the contaminated sites, and recently, contamination was found. The agency reopened the files, reinvestigated the sites, and if contamination was found, the responsible party was required to remediate.

Advances in science allow a greater understanding of the migration abilities of certain contaminants. For example, gasoline additives migrate much farther and deeper than the gasoline itself. As these sites are reinvestigated, monitoring wells are drilled farther away from and deeper than the original contamination.

Many of these recently reopened sites were independently owned gas stations. Finding the responsible party, usually the previous property owner, may be difficult. It is even more difficult to find a responsible party with adequate financial resources and who is willing to pay for the cleanup.

Unfortunately, many buyers, sellers, and appraisers expect a No Further Action letter to guarantee that the state agency has tested all of the surrounding areas promising no contamination. Essentially, a No Further Action letter means no further action is needed on that site at the time the letter is issued.

If another hot spot of the previous contamination is discovered later at another location on the site, it will have to be remediated at the expense of the responsible party. In many states if the responsible party cannot fund the remediation, the current property owner becomes financially responsible for remediating the existing contamination even though a No Further Action letter was issued prior to the property's purchase.

### Recommendations

How can an appraiser gauge the potential of previously existing contamination resurfacing on a property where a No Further Action Letter was issued by the EPA? Many property purchasers are using environmental insurance to transfer this risk from the property owner to the environmental insurance company. The cost of environmental insurance is a realistic method of recognizing the impact on value. With environmental insurance two components must be considered:

1. The present value of the environmental insurance premiums.
2. The present value of the environmental insurance deductible, which can be \$100,000 or more. Since the deductible, is incurred only in the event of a claim, some probability of a claim should be applied to the amount of the deductible to develop this component.

**Allen C. Keiter, MAI**, practice specializes in complex appraisals, especially properties impacted with environmental contamination. His extensive real estate experience includes building single-family homes, developing residential subdivisions, and extensive experience in construction management on high-rise buildings. Contact: [keiter@msn.com](mailto:keiter@msn.com)