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Why Go 'E' When You Can Go 'BCP'?

An E-Designation is a New York City (NYC) zoning map designation that indicates the presence of an environmental requirement pertaining to potential Hazardous Materials Contamination, Window/Wall Noise Attenuation, or Air Quality impacts on a particular tax lot. E-Designations are established on the Zoning Map by the NYC Department of City Planning (DCP) and the City Council as a part of a zoning change/action. A Restrictive Declaration (RD) is an Institutional Control on a property assigned by a lead Agency in order to allow a zoning/variance action to be certified.

Having an E-Designation or an RD requires a developer to conduct an investigation, which typically results in the developer being required to conduct remedial activities and maintain certain long-term institutional and en-



gineering controls. Besides the complexities regarding implementation of an investigation and possible time delays, satisfaction of these investigative and remedial requirements results in additional upfront capital and construction costs which can be quite significant especially for larger projects.

While New York City's Office of Environmental Remediation's (OER's) Brownfield Incentive Grant (BIG) program offers a \$5,000 grant to E-designated sites, the

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The 'Vapors'

By Richard Izzo

If we could journey back in time and interview a doctor from the 17th century, he may tell us, with some degree of certainty, that 'Vapors' are a fit of fainting or hysteria attributable to exhalations from the stomach or other organs affecting the brain. So probably the best way to protect against vapor intrusion back then was to pass on the left-over mutton.

Nowadays, the issue of vapor intrusion (VI) is a bit more complicated. The regulations and guidance surrounding the subject (including "re-opening" sites for VI investigations that had long ago been put to bed as "closed" under Superfund) has caused no small amount of headache and hysteria within the regulated community (lending a certain ironic credence to our 17th century doctor).

Case in point: back in 2008, ASTM issued a new guidance document on "Vapor Encroachment Screening" to support their E-1527-05 Phase-I Standard (Ed. Note: "vapor intrusion" is soil vapor finding its way into a building, whereas "vapor encroachment" is soil vapor migrating beneath a property from an off-site source). The 2008 Vapor Encroachment (VE) guide was a bit



complicated - raising more questions among lenders and consultants than answers and, as such, was not widely accepted. Less than a year ago, in response, ASTM revised its VE guidelines and re-issued them to the regulated community-at-large. This more recent guide, a noticeable improvement, is ASTM E 2600-10, entitled:

"Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions".

This latest Standard is less ambiguous than its predecessor and involves a two-tiered approach to evaluating the potential for VE on a property that is the subject of an ASTM Phase-I Environmental Site Assessment. The first tier is virtually identical to how an Environmental Professional (EP) identifies potential sources of groundwater contamination and relies solely upon the identification of surrounding 'flagged' sites from a rec-

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grant money provides minimal relief as compared to the actual costs for compliance with the E-program. In addition, simply having an E-Designation or RD does not qualify the project for the incentives offered under the NYSDEC Brownfield Cleanup Program (BCP) and neither the E nor RD programs offer liability protection.

In 2010, OER launched the New York City BCP to help land owners and developers remediate contaminated property and facilitate redevelopment in response to the Brownfield problem outlined in PlaNYC. E-designation or RD sites are eligible to enter the BCP.

Why transfer? Since 2010, the BCP, E-Designation (Hazmat), and RD programs all have the same investigative and remedial requirements. But where the E-Designation BIG is limited to \$5K, BCP projects can receive grants of up to \$135K.



In addition, BCP properties that are remediated through the NYC BCP receive a Notice of Completion, which includes a New York City liability release; a statement from New York State that the NYSDEC has no further interest and does not plan to take enforcement or require remedial action for the property under CERCLA or the Environmental Conservation Law; and issuance of a NYC Green Property Certification signifying the City's confidence that the property is protective of public health and the environment.

CA RICH recently helped a Client (whose redevelopment site in Manhattan was E-Designated for Hazmat) transfer to the NYC BCP, to capitalize on the Brownfield Incentive Grants. The redevelopment plan called for a site-wide excavation to remove all soil above NYS



Part 375 Track 1 Soil Cleanup Objectives; included an affordable housing component; and provision that all environmental work be performed by a Qualified Vendor (CA RICH), thus qualifying the project for up to \$125,000 in grant money.

CA RICH's expertise in developing E-Designated Sites coupled with our knowledge of the NYCBCP enabled our staff to complete the requisite Remedial Investigation, issue public notices, and obtain approval for the Remedial Action Work Plan (RAWP) in less than three months after first discussing the project with OER.

The approved RAWP enabled the Client to obtain the required Notice to Proceed from the NYCDob and allowed construction to begin without any delay to the original schedule. To date, CA RICH's efforts have resulted in the client being reimbursed approximately \$25,000 for the Remedial Investigation and enabled the Client's eligibility for an additional \$100,000 to assist with soil disposal costs incurred during the excavation necessary to install the new building's foundation.

(Vapors... Continued from page 1)

ognized environmental database. These database companies have updated their deliverables and now offer (for an additional fee) a listing of sites which may be potential VE sources. If the first tier of the screening process cannot eliminate concern over potential VE sites within the specified search radius, then the screening takes you to a second tier of investigation. Tier two of the screening process concerns itself with evaluating the nature and extent of the contaminant plume emanating from the identified suspect VE source(s). Tier two requires additional research of existing files (at the local, State or Federal level) to obtain readily-available information on the contaminant plumes from the identified source(s). If this Agency information is not forthcoming on a timely basis (e.g. 'real estate transactional time'), or deemed insufficient to make a final determination, then further site-specific "invasive data collection" is required. This may include on-site or off-site sampling & analysis of soil, soil gas and/or ground water.

The issue of vapor encroachment (and vapor intrusion) has arrived. It is now at the forefront of agency-regulated and lender-driven investigations and remedial actions. Virtually all State and City Brownfield cleanups that CA RICH has been involved with over the past several years have involved some measure of soil vapor intrusion testing (along with monitored indoor air quality) and remediation ranging from simply improving interior ventilation, and/or the installation of simple vapor barriers, to the long-term operation & maintenance of mechanical soil vapor extraction and/or sub-slab depressurization systems.

This most recent ASTM E-2600-10 Vapor Encroachment Standard is gaining traction among lenders. For example, this requirement has now been added to all Phase-Is requested by the Federal Department of Housing and Urban Development (HUD). Likewise, the USEPA recently announced it is considering adding a vapor intrusion component to the Federal Hazard Ranking System.

As the importance of soil vapor encroachment and its impact upon human health increases in the regulated community, it is important to note that ASTM's E2600-10 is drafted in such a manner as to rely heavily upon the professional judgment of the Environmental Professional performing the VE screening. Needless to say, the current trend of lowest-cost provider, or one-size-fits-all 'commodity' Phase-I ESA will undoubtedly be re-examined by the users of environmental due diligence either commercially or in the courts. Our advice for dealing with vapor encroachment or vapor intrusion (to avoid problems or hysteria) is to put your trust in an experienced and competent Environmental Professional...doing it right the first time, oh, and to lay off the week-old mutton.

The NYC Brownfield Partnership 2011 Big Apple Brownfield Awards



On May 25th, the NYC Brownfield Partnership hosted its 3rd annual Big Apple Brownfield Award Ceremony at Vanderbilt Hall, NYU School of Law, Manhattan.

CA RICH is pleased to announce that two of our valued Client Groups were honored with awards for residential developments in which we participated through provision of brownfield-related investigation and cleanup services.

L&M Development Partners, pictured above with our own Steve Malinowski (left) and Deborah Shapiro (right), received the Affordable Housing Award for the La Terraza Development in the Bronx. Between Steve and Deborah in the above photo (from left to right) are Messrs. Perry Winston and Magnus Magnusson of Magnusson Architecture & Planning and Ms. Debbie Kenyon and Mr. Tell Metzger of L&M.

Fifth Avenue Committee, pictured below with our own Eric Weinstock (left-center) received the Green Building Award for the Atlantic Terrace Development in Brooklyn. Pictured to Eric's right once again is Mr. Magnusson, and to Eric's left are Ms. Michelle de la Uz of Fifth Avenue Committee and Mr. Hercules Argyriou of Mega Contracting, Inc.



What's New at CA RICH

On May 12th, CA RICH was proud to be a sponsor of the well-attended New York State Association for Affordable Housing (NYSAAFH) 12th Annual Conference. The Conference, entitled "Building an Affordable New York" was held at The Marriott Marquis Times Square, Manhattan. It was great seeing so many of our friends there!

On May 25th, CA RICH participated in the NYC Brownfield Partnership's 3rd Annual Big Apple Brownfield Awards Ceremony during which two of our valued Clients were honored with awards (see pg. 3 and the June/July issue of the NY Real Estate Journal for details).

Sustainable Long Island recently issued their widely referenced Brownfields Manual entitled: "**Brownfields to Greenfields**". CA RICH is pleased to have been invited to actively serve on their Brownfields Task Force, authoring the new NYC Brownfields Section of the Manual. For more information, visit their website (sustainableli.org).

On behalf of our valued Client Courtlandt Crescent Associates, L.P. (CCA), CA RICH expeditiously performed a Remedial Investigation and quick turnaround of an RI Report, RA Work Plan and BCP Application. As a result, CCA's entire South Bronx redevelopment Plan will take advantage of the NYS Brownfield Cleanup Program.

Congratulations to Deborah Shapiro, newly-appointed First Chair of the NYC Partnership of Brownfield Practitioner's Membership Committee.

*For more information about CA RICH or the **ENVIRONMENTAL BULLETIN**, please call (516) 576-8844 or write to:*

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CA RICH CONSULTANTS, INC.

A full-service environmental consulting firm providing strategic consulting and on-site support to help business owners manage all their environmental issues. CA RICH, independently-owned since 1982, is staffed by experienced environmental professionals skilled at understanding the intent behind environmental regulations, balancing business needs with environmental practicalities.

The Company supplies environmental consulting; Phase I & II assessments; compliance audits; investigation; remediation; groundwater resource management; storage tank; indoor air quality & hazardous waste management; soil vapor intrusion mitigation; brownfield redevelopment; sustainability, expert testimony; strategic thinking; dispute resolution; and all other professional services related to meeting evolving environmental regulations within the Firm's service area.

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