



## DUE DILIGENCE – DO’S AND DON’TS

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### DO - Convenience Store/Gasoline Station - Leesburg, Florida

FER performed a Phase I Environmental Site Assessment on an active gasoline station with two reported discharges. The earliest discharge had received eligibility for the State of Florida’s Early Detection Incentive (EDI) petroleum cleanup program and the second discharge was deemed eligible for the Petroleum Cleanup Participation Program (PCPP). Petroleum cleanup funding under the EDI program does not have a cap or copay whereas the funding under the PCPP is limited to \$300,000 and requires a 25% copay by the site owner. FER informed the client that he would be taking on potentially \$100,000 or more of liability for petroleum cleanup at the facility if he purchased the property under the current cleanup funding scenario.

FER reviewed the discharge information and found that the second PCPP discharge was located in the tankhold where the previous EDI discharge had occurred. We contacted Florida Department of Environmental Protection (DEP) personnel to request that both discharges be combined for cleanup under the EDI program because they could not be distinguished. Our request was granted in an expedited fashion so our client could close on the property in a timely manner.

Because full funding was provided for cleanup of the petroleum discharges and no other recognized environmental conditions were observed, FER did not recommend a Phase II Environmental Site Assessment. The client completed his due diligence to support his ability to qualify for the landowner liability protection (LLP) to CERCLA liability and saved \$100,000 or more for petroleum cleanup. FER later received eligibility for the facility in the Limited Source Removal Initiative (LSRI) program and the owner saved additional monies relative to the upgrading of the underground storage tanks.

### DON’T - Convenience Store/Gasoline Station - Sanford, Florida

FER was asked by a client to perform a Phase I Environmental Site Assessment at an active gasoline station that had underground storage tanks since 1966. It was understood that no discharges had been reported at the facility. We explained to the client that we would likely be recommending a Phase II Environmental Assessment because of the historical nature of the gasoline station. The client said that he had purchased numerous gasoline stations over the past few years and had not performed Phase II Assessments on any of the properties. FER told the client that he could contract with another environmental consulting firm that may not recommend a Phase II Assessment, but given the nature of the site we would have to. The client decided to contract with another consultant who did not recommend a Phase II Assessment.

A few months after the property closing FER was involved with removal and closure assessment of the underground storage tanks at this facility. Petroleum contaminated soils were observed during the tank removal. The petroleum impacted soils were excavated for proper disposal. FER explained to the client that the regulators would require a site assessment and cleanup of any groundwater contamination, and we recommended that a claim be filed with the pollution insurance carrier for the site. The client did not believe that a site assessment would be required and did not file a claim with his insurance carrier. After several months, the regulatory authorities sent a site assessment order to the client.

A Phase I Environmental Site Assessment followed by a Phase II Environmental Site Assessment performed by a reputable and knowledgeable environmental consulting firm following ASTM Standards and the EPA’s All Appropriate Inquiry (AAI) would have discovered the contamination prior to the property purchase. The property owner is now required to perform site assessment and remediation of the property that could cost in excess of \$200,000.



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### DO - Food Service Distributor - Gainesville, Florida

FER performed a Phase I Environmental Site Assessment on an undeveloped piece of property in the Airport Industrial Park. The assessment was requested by a client who operates a food distribution facility and office in the park. Our client wanted to expand their current facility onto the undeveloped property and perform due diligence in the process prior to moving forward with the expansion. FER's staff was aware of historic environmental issues in the vicinity and suggested that the historical information be reviewed along with a complete current environmental database search to review the current regulatory status of all properties in the vicinity. We met with officials with the City of Gainesville who provided our project manager with reports relating to several environmental studies that had been performed in the park. The majority of these studies detailed contamination that was observed in the vicinity, however none of the documents clearly stated the origin or solutions to resolving the problem. Based on this information and other historical issues of potential concern which included a former gas station, photo laboratory, munitions holding buildings, a paint shop and a motor repair shop; FER recommended and performed a Phase II Environmental Site Assessment. Our approach was to perform a direct-push assessment to thoroughly assess the subject property in a grid-like fashion. We obtained soil samples to confirm that a source was not present on the subject property and collected groundwater samples to determine if groundwater was impacted by an off-site source as we assumed would be the case. FER was also concerned with obtaining intermediate and deep groundwater samples as part of this assessment because we believed that solvent-related constituents may have impacted groundwater from an offsite source. The cost to install deep wells of this nature would have been very expensive to pay for as part of a Phase II Assessment. We determined that two wells had been installed as part of a prior assessment and were granted permission

to sample these wells which saved our client significant money.

Solvent contamination was confirmed during the Phase II Assessment. In fact, the deepest monitoring well sampled, (screened between 100'-110' below land surface (bls) had a Trichloroethene concentration of 7.4 ug/l, over double that of the state standard. The soil at the subject property was not impacted and we confirmed that the contamination was migrating from an off-site source to the north. We recommended that our client seek some type of indemnification from the City of Gainesville and the state Florida Department of Environmental Protection (FDEP). FER also recommended that a complete assessment be performed by a responsible party and that our client seek a reduced price on the property because of the contamination in the vicinity.

Our client received indemnification from the City of Gainesville and purchased the property at a significant reduction because of the contamination in the vicinity. In 2007, the FDEP filed suit against the Federal Government who own the property that the contamination appears to be migrating from. When the assessment and cleanup is complete, our client's property value will increase significantly, probably in the range of hundreds of thousands of dollars.

### DON'T - Convenience Store/Gasoline Station - Orlando, Florida

FER performed a storage tank closure assessment during the removal of several underground storage tanks at a gasoline station and convenience store in Orlando, Florida. Petroleum contamination was discovered during the tank removal and the petroleum contaminated soil was excavated for proper disposal. FER recommended that a claim be filed with the pollution insurance carrier for the site and assisted in its' filing. We asked the client if due diligence was performed prior to their recent acquisition of the property. The client explained that they were given a Phase I Environmental Site



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Assessment by the former property owner. They also said that the former owner said that a Phase II Environmental Site Assessment was previously performed on the property. FER requested copies of the reports to review their conclusions and findings to look into all potential funding options for the client. The reports were not certified to our client and the supposed Phase II Environmental Site Assessment was not called a Phase II Assessment and was very limited in scope.

A Phase I Environmental Site Assessment followed by a Phase II Environmental Site Assessment performed by a reputable and knowledgeable environmental consulting firm following ASTM Standards and the EPA’s All Appropriate Inquiry (AAI) would have discovered the contamination prior to the property purchase. Reports not performed in accordance with ASTM standards and not certified to the property owner do not provide due diligence.

The client is currently working with an environmental attorney and FER in the dispute of a denied claim by the pollution insurance carrier. The regulatory authorities are requiring assessment and cleanup of the facility regardless of the denied claim.

### [DO - Lumber Company- Orlando, Florida](#)

FER performed a Phase I Environmental Site Assessment on an active gasoline station with a reported discharge that had received a “No Further Action” from the State of Florida. We reviewed petroleum assessment documents for the facility and discovered that the facility was given a “No Further Action” even though groundwater contamination was reported in site monitoring wells when the site was closed. FER recommended and performed a Phase II Environmental Site Assessment. Petroleum contamination was confirmed during the Phase II Assessment. The discharge reported at the facility had eligibility for the Petroleum Liability Insurance Restoration Program (PLIRP). FER requested that the Florida Department of Environmental Protection (DEP) reopen eligibility for program funding based on our Phase II results. The DEP rescinded the “No

Further Action” status for the discharge. The client closed on the property with the knowledge that funding was available through the State of Florida preapproval petroleum cleanup program.

FER was designated as the preapproval petroleum cleanup contractor, and continues to perform natural attenuation monitoring to this date. A Phase I Environmental Site Assessment followed by a Phase II Environmental Site Assessment performed by a reputable and knowledgeable environmental consulting firm following ASTM Standards provided due diligence to support our clients’ ability to qualify for the landowner liability protection (LLP) to CERCLA liability and saved \$100,000 or more on petroleum cleanup costs.

### [DON’T - Historic Hotel - Ocala, Florida](#)

FER performed a Phase I Environmental Site Assessment at a historic hotel in Ocala, Florida. FER personnel discovered that an underground storage tank was previously located on the property. The underground storage tank was never registered with the Florida Department of Environmental Protection (DEP) and no closure assessment had been performed to verify that the site was clean. FER recommended a Phase II Environmental Site Assessment to investigate potential contamination relative to the historical underground storage tanks. Soil contamination was observed in the first boring performed during the Phase II Assessment. FER contacted the client and the field work was suspended to save the client monies relative to the Phase II.

FER recommended that a soil source removal be performed in an effort to clean up the site and obtain a “No Further Action” from the DEP prior to closing the loan on the property. The client closed the loan despite the known contamination. Due diligence was not provided to the buyer. The owner has since tried to sell the property, but is bound to disclose the site contamination to prospective buyers.



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### DO - Former Gasoline Station - Leesburg, Florida

FER performed a Phase I Environmental Site Assessment at a bar in Leesburg, Florida. City Directories indicated that a historical gasoline station was located on the property. The underground storage tanks were never registered with the Florida Department of Environmental Protection (DEP) and no closure assessment had been performed to verify that the site was clean. FER recommended a Phase II Environmental Site Assessment to investigate potential contamination relative to the historical underground storage tanks. Soil and groundwater contamination was observed during the Phase II Assessment.

FER recommended that the current site owner file application for the Innocent Victim Storage System Restoration Program with the analytical data obtained from the Phase II. The Florida Department of Environmental Protection (DEP) granted eligibility for the Innocent Victim Program. The program provides petroleum cleanup funds for the assessment and cleanup with no cap on the funding and a \$500 deductible. A Phase I Environmental Site Assessment followed by a Phase II Environmental Site Assessment performed by a reputable and knowledgeable environmental consulting firm following ASTM Standards provided due diligence to support our clients' ability to qualify for the landowner liability protection (LLP) to CERCLA liability and saved \$200,000 or more on petroleum cleanup costs.

### DON'T - Golf Course - Eustis, Florida

FER was contacted by a lending institution to perform a limited soil investigation at the former location of underground storage tanks on a golf course. The underground storage tanks were previously removed and a closure assessment had not been performed. Petroleum contamination was observed during the limited soil investigation. FER recommended a soil source removal to remove the contaminated soil. Approximately \$250,000 was

spent removing the contaminated soil. The property owner is now required to perform site assessment and complete remediation of the property that could cost in excess of \$300,000. A property transaction was pending on this property prior to the discovery of the contamination. The prospective buyer decided not to purchase the property.

A Phase I Environmental Site Assessment was performed by another consulting firm two years prior to our limited soil investigation. The consulting firm did not recommend a Phase II Assessment even though underground storage tanks were located on the property that had not been assessed. A Phase I Environmental Site Assessment followed by a Phase II Environmental Site Assessment performed by a reputable and knowledgeable environmental consulting firm following ASTM Standards and the EPA's All Appropriate Inquiry (AAI) would have discovered the contamination prior to the property purchase.

### DO AND DON'T - Former Industrial Properties - Orlando, Florida

FER performed a Phase I Environmental Site Assessment at a former industrial property in Orlando, Florida. City Directories indicated that a historical gasoline station was located on the property. The underground storage tanks were never registered with the Florida Department of Environmental Protection (DEP) and no closure assessment had been performed to verify that the site was clean. Historical industrial businesses occupied properties in the vicinity of the property. FER recommended a Phase II Environmental Site Assessment to investigate potential contamination relative to the historical underground storage tanks and industrial businesses in the area. The client requested that we perform the Phase II Assessment and include the adjacent property that he purchased two years earlier. Soil and groundwater contamination was observed on both properties during the Phase II Assessment.



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FER recommended that the current site owner file application for the Innocent Victim Storage System Restoration Program with the analytical data obtained from the Phase II relative to the contamination that was observed on the parcel to be purchased. The Florida Department of Environmental Protection (DEP) granted eligibility for the Innocent Victim Program. The program provides petroleum cleanup funds for the assessment and cleanup with no cap on the funding and a \$500 deductible. Following additional assessment and the Innocent Victim program eligibility, the buyer was able to close on the property. A Phase I Environmental Site Assessment followed by a Phase II Environmental Site Assessment performed by a reputable and knowledgeable environmental consulting firm following ASTM Standards provided due diligence to support our clients' ability to qualify for the landowner liability protection (LLP) to CERCLA liability and saved \$200,000 or more on petroleum cleanup costs.

Petroleum, petroleum solvent and chlorinated solvent contamination was observed on the parcel previously purchased by the client. A Phase I and Phase II Assessment was not performed prior to the purchase of this property. Based on the date of purchase and the lack of due diligence, the property does not qualify for funding under any State of Florida clean up programs. The client will be responsible for assessment and remediation of the property and the costs could exceed \$300,000.