

Land Contamination Solution For Residential Real Estate



TARGET BUILDING INSPECTIONS

3947 E. Vaughn Ave. Gilbert, AZ 85234

Tel: 480-228-6165 Fax: 480-336-2262

TargetInspect@gmail.com www.TargetBuildingInspections.com

By:

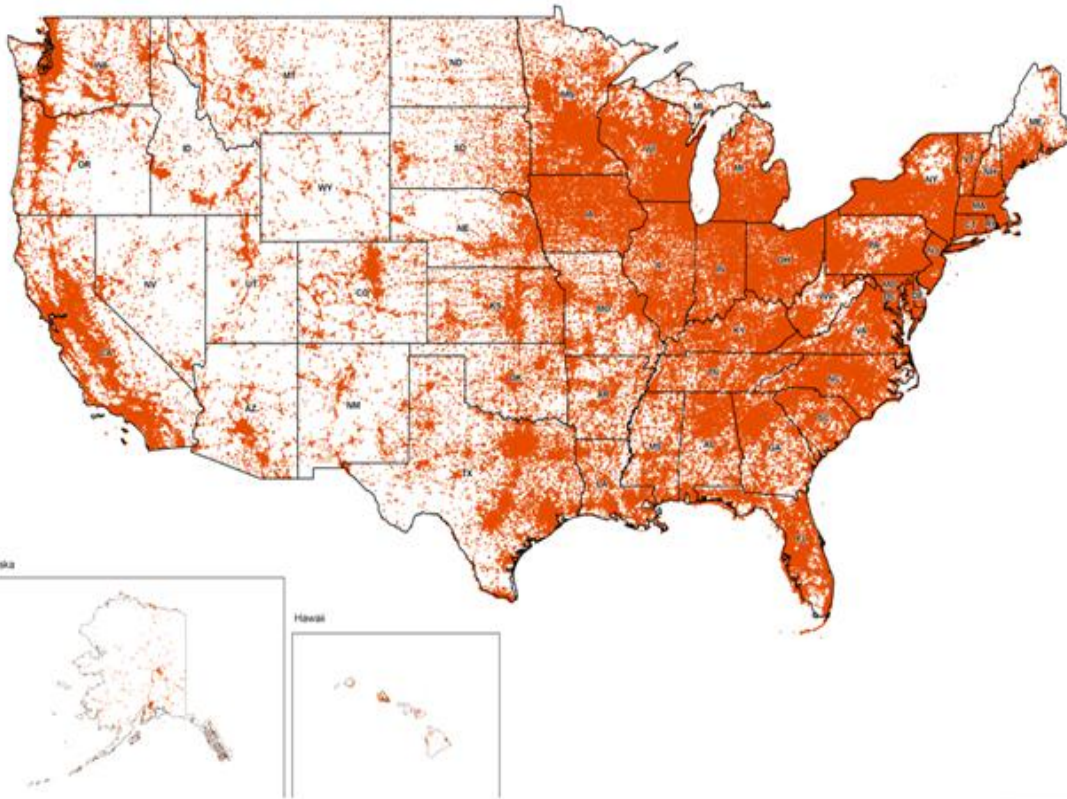
Ben Schern AZBTR#50397

Date:

January 2012

National Property Environmental Risk

Toxic Sites Across U.S.



- 23 million records of property contamination
- Includes:
 - Superfund sites
 - Brown fields
 - Old gas stations
 - Landfills
 - Meth labs
 - Spills
 - State hazardous waste sites
 - And more

Real Estate and Environmental Data

- For over 25 years environmental due diligence (Phase Is) have been performed on commercial property
- These records are readily available but often not known by the seller or others involved in the transaction
- Courts have ruled in both commercial and residential that ignorance is an acceptable defense
- Vapor intrusion is now mandated by HUD on multi-family and this trend is likely to continue to single family residential

Emerging Trend – Opinions on Residential

	Nothing	Records Review	Interviews	Site Visit	Opinion
Residential	X →	X			X
Commercial		X	X	X	X

Why discuss?

- There is a definite shift as it relates to the use of environmental data in the homeownership segment
- Access to environmental information is trending up
- Media companies are reporting on instances of contamination
- Data companies are providing environmental data to real estate related shoppers and buyers
- Liability to brokers is increasing
- EDR has a solution that includes Environmental Professionals if needed (10,000 around the country)

Current

Residential Real Estate Due Diligence

- Title Search > **Title Report**
 - Accessing the records of a national title plant as reviewed by a professional title officer
- Appraisal > **Appraisal Report**
 - Measurement of financial risk with property value as determined by a licensed appraiser
- Home Inspection > **Home Inspection Report**
 - Condition of the foundation, structural and internal mechanical systems as determined by a licensed home inspector
- Soils Stability > **Geological Report**
 - Determination of stability of related soils determined by a licensed geological engineer
- Pest Control > **Pest Control Report**
 - Determination of the existence of harmful pests and the impact on a home's structure as determined by a licensed pest control inspector



Emerging

Residential Real Estate Due Diligence

- Natural Hazards > **Natural Hazards Disclosure Report**
A report compiled by various licensed data aggregators related to zones of a high incidence of hazards such as; floods, earthquakes, fire occurrences mandated to be rendered for all residential closings in CA
- Environmental Hazards > **Neighborhood Environmental Report**
A study of the condition of the soil underneath and near the home for potential environmental issues as evaluated by a licensed environmental consultant



New Entrants Informing Consumers



Insurance Claim Information,
Environmental Risk, Natural Hazard
Information, Building Department
Records



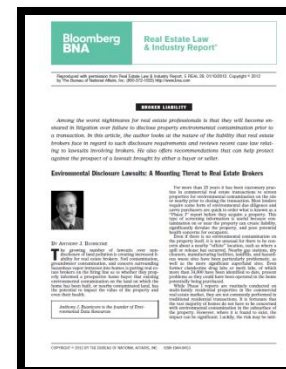
Crime, Drinking Water, Resources,
Environmental Risk, Schools,
Police, Airports, more

Media Informing Consumers

- CT POST – Residential property disclosure with regards to land contamination nearby homes
<http://www.ctpost.com/news/article/Keep-focus-on-the-real-hazards-2341161.php>
- HERALD NEWS – 68 properties in Tiverton, RI require soil excavation
<http://www.heraldnews.com/features/x1744870427/Contaminated-soil-cleanup-has-been-a-mess-for-Tiverton-residents>
- MOBILITY MAGAZINE - Avoiding Environmental Contamination of Residential Properties
<http://www.worldwideerc.org/Resources/MOBILITYarticles/Pages/1009-pantano.aspx>
- GAINSVILLE SUN – High levels of contamination in soils have FL residents protesting
<http://www.gainesville.com/article/20090901/ARTICLES/909011007/1002?Title=Meeting-offers-few-answers-on-Koppers>
- RUTLAND HERALD – 36 VT homes affected by gasoline tank leak
<http://www.rutlandherald.com/apps/pbcs.dll/article?AID=/20070519/NEWS04/705190358/1024/NEWS04>
- ARIZONA REPUBLIC – Old mining operations affecting local residents
<http://www.azcentral.com/news/green/articles/0820superfund0817.html>

Liability to Brokers

- Environmental issues can prove to be a liability for brokers even if they are unaware the contamination exists
- Cited lawsuits
 - Strawn v. Canuso, 140 N.J. 43 Weichert Realtors
 - Venezia v. Coldwell Banker Sammis Realty, 270 A.D.2d 480
 - Chase v. Coldwell Banker Residential, WL 34685236
 - Vastrano v. Killington Valley Real Estate, 996 A.2d 170
 - Welch v. Bueler, et.al, 481 N.W.2d 856
 - Haberstick v. Gordon A. Gundaker Real Estate, 921 S.W. 2d 104
 - Grube v. Daun, 496 N.W. 2d 106
 - Bloor v. Fritz, 143 Wash.App. 718
 - Alfieri v. Bertorelli, Case No. 07-056919-CH



NJ Supreme Court:

In one of the more well-known cases, *Strawn v. Canuso*, home purchasers brought a class action lawsuit against the home builders and brokers alleging fraud and negligent misrepresentation arising from failure to disclose the existence of a nearby closed landfill. Most interesting was the fact that the New Jersey Supreme Court ruled that the broker:

“is not only liable to the purchaser for affirmative and intentional misrepresentation, but is also liable for nondisclosure of off-site physical conditions known to it and unknown and not readily observable by the purchaser if the existence of those conditions is of sufficient materiality to affect the habitability, use, or enjoyment of the property and, therefore, renders the property substantially less desirable or valuable to an objectively reasonable purchaser.”

This 1995 ruling set the stage for a number of subsequent lawsuits that followed. The phrase “unknown

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Offer a Solution

- **EDR is trying to assist the residential real estate broker** by providing a comprehensive solution to address with this new category of potential broker liability and risk
- Liability for disclosing the presence of such hidden environmental conditions is no longer avoidable by the residential real estate brokerage industry
- Case law has shown that brokerages are *“liable for nondisclosure of off-site physical conditions known to it and unknown and not readily observable by the purchaser if the existence of those conditions is of sufficient materiality to affect the habitability.”*

Home Inspectors can offer the NER

Mr.
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EDR Neighbor

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MR AND MRS SMITH
785 MAIN STREET
MALDEN, MA 02148

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Section C provides info
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EXPLANATION AND FOLLOW-UP DISCUSSION

Information in the EDR Neighborhood Environmental Report™ is gathered from certain Government agencies and proprietary sources. For each of the databases searched, the following section provides a:

- description of the database
- contact number and web site for more information (where available)
- version date of the database searched (where available)

EXPLANATION: SITES WITH KNOWN CONTAMINATION

Leaking Underground Tanks Database (LUST)

The Bureau of Waste Site Cleanup's Response and Remediation Division is responsible for statewide implementation of Massachusetts Contingency Plan's (MCP) Waste Site Cleanup Program activities. These responsibilities focus on coordinating and implementing responses to oil and hazardous material spills, as well as assessment and cleanup of hazardous waste sites and spills across the state, auditing private sector compliance with site and spill assessment and cleanup regulations, and initiating appropriate enforcement actions when violations are discovered.

Status Field definitions:

- ADQREG
Adequately Regulated
- DEPMOU
DEP Memorandum of Understanding
- DEPND
Not a Disposal Site (DEP)
- DEPNTA
No Further Action (DEP Determined)
- DPS
Downgradient Property Status
- DPSTRM
Downgradient Property Status Terminated
- INVSUB
Submittal Invalidated by DEP
- LSPNTA
LSP No Further Action
- PENNDS
Pending Not a Disposal Site
- PENNTA
Pending No Further Action
- RAO
Release Action Outcome, a site/release where an RAO Statement was submitted. An RAO Statement asserts that response actions were sufficient to achieve a level of no significant risk or at least ensure that all substantial hazards were eliminated.
- RAONR
Response Action Outcome Not Required
- REMOPS

If there are questions about the NER,
there are Environmental Professionals
that can help give answers and
solutions.

REQUEST A PROFESSIONAL OPINION

- Connect with a local qualified Environmental Professional (EP)
- Get peace of mind

[CLICK HERE TO ORDER NOW](#)

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Impressions Provided by an Environmental Professional

- Type of Record (permit vs. spill)
- Distance to Property
- Type of Pollutant (Oil, Gas, Solvent)
- Amount of Pollutant (5 gallons, 5000 gallons)
- Amount of Cleanup/Residual Contamination
- Type of Soil (Clay, Sand)
- Depth to Groundwater (10 feet, 100 feet)
- Direction of Groundwater Flow (toward or away)
- Private vs. Municipal well

Probable Remedy Recommendations

- Potential Issue with **drinking water**
suggest sampling and filtration system if necessary
- Potential issue with **vapor intrusion**
suggest installation of a “radon-like” system
- Potential issue with **contaminated soil**
suggest sampling and potential excavation and new top soil
- Former **drug lab**
recommend that the house be rebuilt from the studs out (rare but there are 33,000+ in the U.S.)

Most of these are a few thousand dollars or less to fix!

The company behind the data: Environmental Data Resources (EDR)

- EDR is a 21 year old firm
- A subsidiary of DMGI a \$600MM US data company
- DMGT a \$3.2B UK media company
- Leading provider of environmental data and records for commercial real estate
- EDR accesses more than 1400 environmental databases
- Total of more than 23MM active environmental records
- Federal, State, local, tribal and proprietary records