The Environmental Perspective of Mergers and Acquisitions Part 1: Environmental Due Diligence – What is a Phase I ESA and why do I need one?

By Tom Culp, SCS BT Squared

Are you thinking of growing your business? Pursuing a merger or an acquisition may be the best way to help your business grow quickly and easily. Aside from the obvious economic and legal tasks associated with mergers and acquisitions, there are some technical areas that need addressing and they can be the most important steps for a successful transaction.

This article will be the first of three in a series explaining these technical areas. The three steps to a successful transaction include addressing: 1) Environmental Due Diligence; 2) Compliance; and 3) Facility Energy Efficiency and Condition Evaluation.

A critical (but often overlooked) component of the merger and acquisition process is environmental due diligence. Typically a Phase I Environmental Site Assessment (ESA) is completed as part of the environmental due diligence. A Phase I ESA provides information about environmental conditions of the property, as well as practices of the business you wish to acquire. They are generally completed in about 1 to 3 weeks, at fairly low cost, and have the potential to save you a lot of money and liability headaches in the future.

A proper Phase I ESA is conducted under a process outlined by the Environmental Protection Agency (EPA) Standards and Practices for All Appropriate Inquiry (AAI) and/or the American Society of Testing and Materials (ASTM) International. A Phase I ESA that is consistent with the EPA and/or ASTM standards also satisfies one of the requirements necessary to qualify for certain landowner liability protections under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Do I need a Phase I ESA?

In a time when investors have little, if any, tolerance for risk, the environmental due diligence demonstrated in the form of a Phase I ESA can provide significant risk reduction for a relatively small cost.

Whether you are a buyer or a seller, you should complete a Phase I ESA for the propert(ies). Identifying and cleaning up environmental issues associated with your property before selling can make your property more attractive to a prospective purchaser, provide you with liability protections, and allow for transactions to occur in a more timely matter. As a purchaser, a Phase I ESA can not only protect you from environmental liabilities, but also considerably decrease the amount of hidden expenses associated with the cleanup of unplanned environmental issues on the property.

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What is a Phase I ESA?

A properly performed Phase I ESA will consist of:

- A historical review of the property and adjacent properties, based on government records, aerial photographs, topographic maps, historical research, and personal interviews.
- A visual site inspection of the property and property structures to identify environmental concerns.
- An evaluation by an environmental professional of acquired information and the presentation of findings and recommendations in a written report.
- Optional services conducted can include lead paint, asbestos, radon, and radioactive (radon) assessments.

Phase I ESAs and other environmental due diligence can identify concerns early enough in the process to be solved prior to transaction completion and can potentially save money and future liabilities. Phase I ESAs should be an integral part of the due diligence process during a merger or acquisition to make sure environmental issues associated with a property are identified early in the deal and don't become a last minute issue that holds up a strategic opportunity.

Keep an eye out for Part 2: Compliance of this series of the Environmental Perspective of Mergers and Acquisitions to learn more about the next step to ensure a successful transaction.

If you would like to learn more about Phase I ESAs and environmental due diligence, please contact Tom Culp at SCS BT Squared, 608.216.7340 or tculp@scsengineers.com ■

Demand for corn falls, food prices could level off

From The Country Today

Food prices could level off at the end of the year because farmers are seeing less demand for corn and are expecting a big crop.

The U.S. Department of Agriculture said Thursday that farmers expect 940 million bushels to be left over when the harvest begins this fall. That's up from last month's estimate of 880 million bushels.

Record-high corn prices forced many ranchers to seek cheaper alternatives for feeding their livestock, such as wheat. The drop in demand, combined with the big corn crop, is likely to force prices down.

Corn is used in everything from beef to cereal to soft drinks. It typically takes six months for a change in corn prices to affect products on supermarket shelves. For all of 2011, the USDA predicts food prices will rise 3 percent to 4 percent.

Worries over the size of the corn supply pushed corn prices sharply higher this year. They reached a record price of $7.99 a bushel in early June.

Hoping to capitalize on that high price, farmers planted the second-largest corn crop since World War II. But less demand and a huge harvest in August could lead to greater corn surpluses, which would ultimately slow food inflation.

The key factor that drove corn prices higher was a historically low surplus level. Global demand for corn, soybeans and wheat has outstripped production for the last 10 years, drawing down surplus levels that are key to a stable food supply.

Earlier this year, the USDA estimated there would be fewer than 700 million bushels of corn left over at the end of this year. That is less than enough to satisfy demand for 20 days. A 30-day supply is the level considered healthy by most investors.

A surplus of 940 million bushels is enough to satisfy demand for 27 days. While not ideal, that level should calm worries of an imminent global food shortage.

When surpluses get as low as they are now, even relatively small supply shocks can send crop prices sharply higher on global commodities markets. Traders have been nervously watching every USDA crop report this summer, looking for any sign that the crop harvested this fall will be smaller than expected.

Those worries have been stoked by a hot summer. Overnight temperatures in key corn states like Iowa and Illinois were stubbornly high through July. That can stunt corn plants at a crucial phase - when they pollinate and set their kernels.

But it appears that high production will overcome demand this year. The latest USDA estimate didn't forecast that the hot weather will significantly cut the size of this year's harvest, which is projected to be 12.45 billion bushels. ■