

# THE WEBINAR WILL BEGIN SHORTLY



**The Dirty Side of  
Dry Cleaning:**  
Liabilities & Transaction  
Considerations

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# WELCOME

## The Dirty Side of Dry Cleaning: Liabilities & Transaction Considerations



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# THE DIRTY SIDE OF DRY CLEANING: LIABILITIES & TRANSACTION CONSIDERATIONS

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# Introduction

- Past Presentation:  
[erisinfo.com/webinars/dry-cleaning/](http://erisinfo.com/webinars/dry-cleaning/)
- Types of Dry Cleaners
- Common Due Diligence Issues with Dry Cleaners
  - Sources and Waste Issues
  - Investigation Considerations for Dry Cleaners
  - Remedial Design/Response Action Considerations
  - Emerging Issues with Dry Cleaners
- Now for the rest of the story...
  - Liability & Transaction Considerations



# Liability & Transaction Considerations

- ▶ Hidden liabilities associated with historical dry cleaners
- ▶ CERCLA liability
- ▶ RCRA liability
- ▶ Common law liabilities

# Dry Cleaners: Scourge of Commercial Property

- ▶ 75% have had releases that have impacted soil or groundwater
- ▶ Principal source of PCE contamination in California is dry cleaners discharging to sewers (Izzo 1992)
- ▶ Dry cleaners are now leading cause of new federal superfund listings
- ▶ Over 200 dry cleaners on NY Superfund list
- ▶ Long Plumes



# Regulatory Applicability

- ▶ RCRA Corrective Action
  - EI (Current Human Exposure Under Control )
  - RFI/CA
  - Listed vs characteristic waste
- ▶ CERCLA
  - Removal/Remedial Actions/UAOs
  - Pre-remedial and Remedial Investigations
  - Five Year Reviews
  - NPL Scoring
- ▶ State Remedial Programs (e.g., RCRA) and State Superfund Listing
- ▶ Common Law Liability?

# Diligence Challenges

- ▶ Historic Uses
- ▶ Need to re-evaluate prior diligence
- ▶ Urban “Rogue” Plumes
- ▶ Off-site Sources
- ▶ Dry Cleaner Funds Limitations
  - Listed vs characteristic wastes
- ▶ Often the Only Completed Pathway
- ▶ Access Issues (decliners)
- ▶ Sample or Insurance?

# Common Challenges

- ▶ Varying state standards or no standards
- ▶ Evolving standards
- ▶ Complexity of pathway
- ▶ Confusion of consultants and clients
  - Risk tolerance of client
- ▶ Remedy uncertainty
  - Costs
  - Delays
  - Change in use
  - Construction (expose pathway, damage membrane/SSDS)
- ▶ Mitigation handoffs

# CERCLA

- ▶ Exclusion for Releases:
  - Exposures to persons solely in workplace
  - For claims asserted against employer (workers compensation?)
- ▶ Facility- where hazardous substances come to rest
- ▶ Unilateral Administrative Orders
- ▶ Cost Recovery

# CERCLA Continued

- ▶ Owner of Property
  - Equipment/vessels
  - Stormwater and sewer lines
- ▶ Operators
  - Tenants
- ▶ Generators
  - Franchisors/equipment manufacturers

# CERCLA Continued

- ▶ Third Party Defense
  - Due Care Element
  - Precautionary Element
- ▶ ILO, BFPP and CPO
  - Appropriate Care

# EPA Preamble to Recognition of E1527-13

78 Fed. Reg. 79319 (December 30, 2013)

- ▶ “all appropriate inquiries and phase I environmental site assessments **must include**, within the scope of the investigation, an **assessment** of the real or potential occurrence of **vapor migration and vapor releases** on, at, in or to the subject property.”
- ▶ “EPA notes that both [AAI and E1527-05] **already** call for the identification of potential **vapor releases or vapor migration** at a property, to the extent they are indicative of a release or threatened release of hazardous substances.”
- ▶ “...EPA wishes to be clear that, in its view, **vapor migration has always been** a relevant potential source of release or threatened release that, depending on site-specific conditions, may warrant identification when conducting all appropriate inquiries....”
- ▶ “**Neither** the All Appropriate Inquiries Rule nor the ASTM E1527-05 standard **excludes** the identification of **vapor releases** as a possible type of release.”

# Relationship to AAI

- ▶ AAI goal:
  - Conditions indicative of release or threatened release of
  - Hazardous substances
- ▶ Vapors may be part of a CERCLA “release”
- ▶ CERCLA Facility includes where Hazardous Substances come to be located



# AAI Relationship Cont'd

- ▶ AAI APPLIES to gaseous forms of hazardous substances
- ▶ AAI NOT limited to on-site releases
- ▶ AAI NOT limited to target property
- ▶ AAI APPLIES to migration pathways

# Interplay with ASTM E1527-21

- ▶ Definition of “migration” refers to movement of hazardous substances or petroleum products in any form, including...vapor in the subsurface.
  - References that vapor migration in the subsurface is described in Guide E2600
  - Nothing in this practice should be construed to require use of E2600 standard to achieve AAI
  - Legal appendix clarifies scope of indoor air exclusion
  - ASTM says VI Evaluation not part of E1527
  - Vapor migration just like any other pathway
- ▶ But look at EPA preamble—could jeopardize AAI compliance of E1527 reports that did not consider VI!!!

# RCRA

- ▶ Corrective Action 3004 (u) and (v)
- ▶ Closure (TSD and Generator)
  - Listed vs characteristic waste
- ▶ Section 3013 AO
- ▶ Section 7002
- ▶ Section 7003
- ▶ Section 3008 (h)

# Common Law

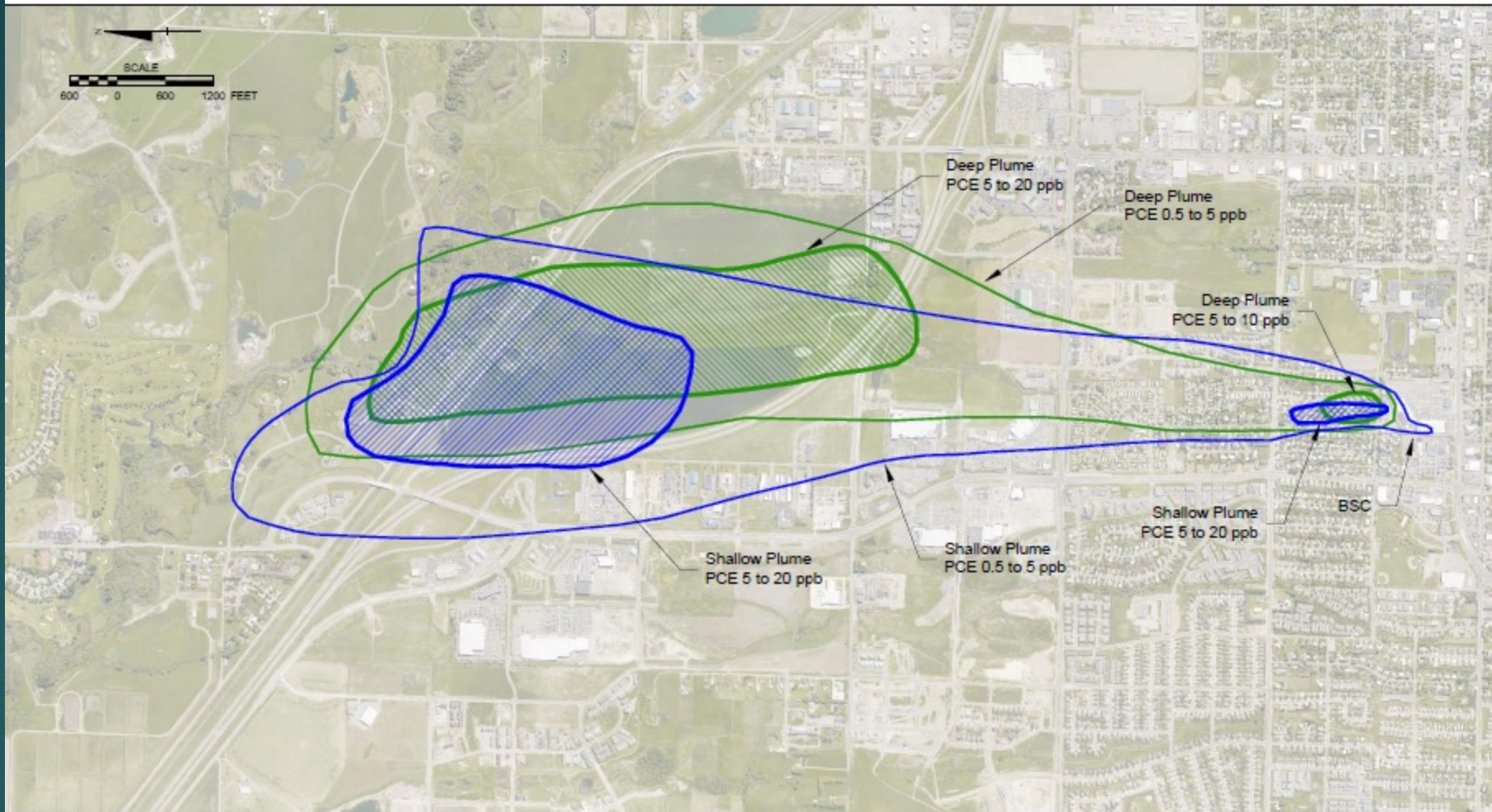
- ▶ Negligence
- ▶ Trespass
- ▶ Nuisance
- ▶ Strict Liability
- ▶ Misrepresentation
- ▶ Fraud
- ▶ Negligent Non-Disclosure
- ▶ Professional Malpractice
- ▶ State Disclosure



Revised 2-10-2010

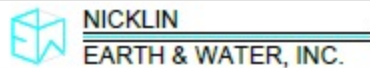






Note: Refer to F&T model update in Appendix D about development of interpretive plume distribution.

Issue: Final FS  
 Date: 8/15/11 Revision: 00  
 Project: BSS Drawn: JC  
 File: FS\_F05.dwg Approved: MEN

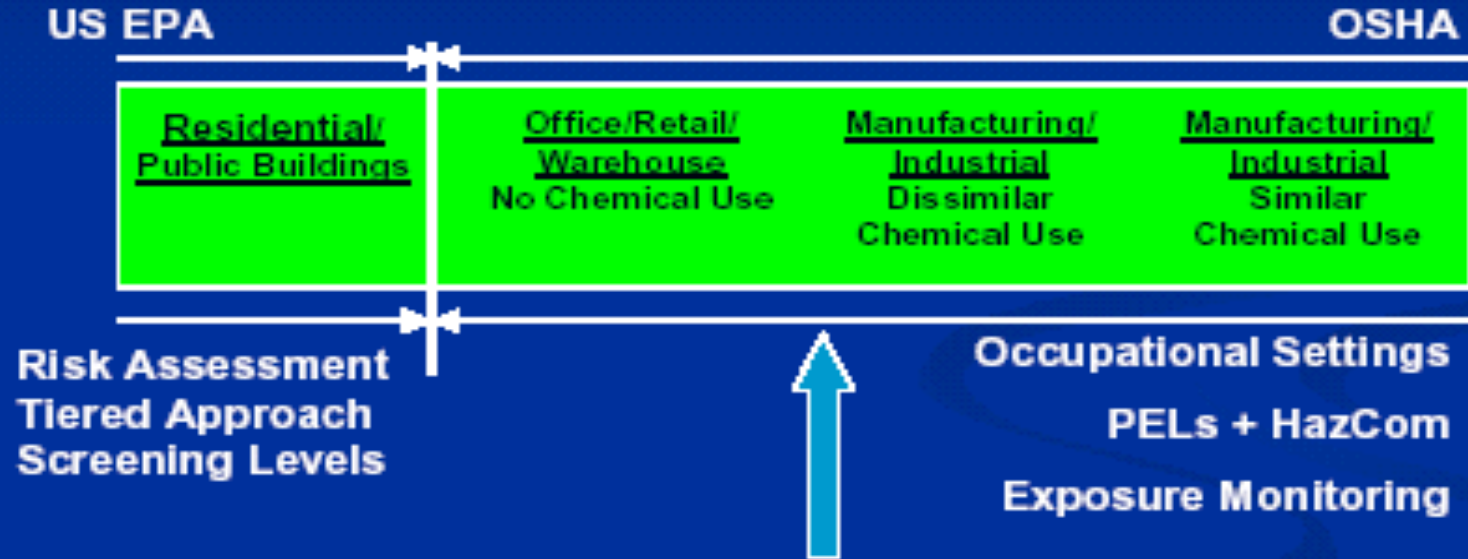


Approximate Extent of Dissolved Plume  
 Bozeman Solvent Site

Figure 5

# OSHA and EPA/State VI Jurisdictional Issue

## Federal Guidance

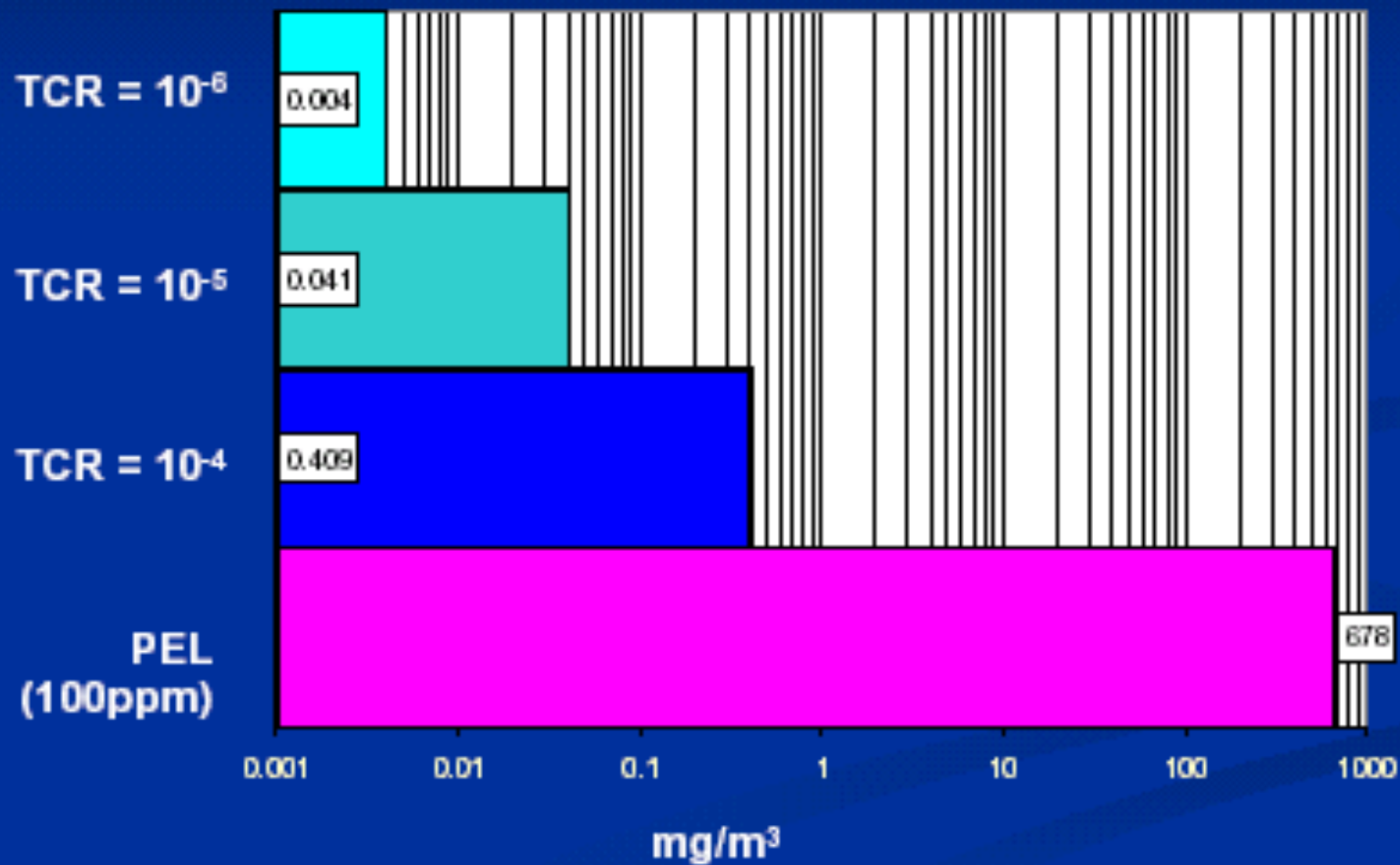


"... there may be instances (under CERCLA and other cleanup programs) where standards other than the OSHA standards are used to determine whether the exposure pathway presents a risk to human health."



# Tetrachloroethene (PCE)

5 Orders Different



# QUESTIONS



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A screenshot of the ERIS website. The top navigation bar includes "ABOUT", "PRODUCTS & SERVICES", "infoHUB", "FAQS", "CONTACT", and "SCRIVA". The "infoHUB" menu is open, showing options: "ERIS Blog", "News & Updates", "Learning Resources", "Webinars", "Podcasts", and "Videos". Below the navigation, there are two main content areas. The left area features a "SmartCD" introduction and a webinar titled "Integrating CLIMATE RISK ASSESSMENT with Environmental Due Diligence" scheduled for February 23, 11 AM ET. The right area features the "SCRIVA BY ERIS" logo and the text "Our new report authoring platform" and "ROCK YOUR REPORT CREATION".

# UPCOMING WEBINARS

April 11



Integrating **CLIMATE RISK ASSESSMENT** with Environmental Due Diligence in Canada

May 17



**ERIS' New Report Authoring Platform: SCRIVA**

# THANK YOU

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