

NewFields Note

Strategic Environmental Baseline Liability Management Years After Property Transfers

NewFields Note: Technical information in a condensed, easily digestible format that is intended to promote environmental science education, knowledge transfer, and empowerment ... *one note at a time.*

Buyer's or Seller's Liability?: Commercial and industrial property acquisitions or divestitures involve risk due to the extant environmental conditions of the property(s) at the time of sale. Sellers and buyers typically negotiate how any existing or future liability will be handled but, despite this forethought and contract terms, disagreements surrounding "old" (pre-sale) *versus* "new" (post-sale) contamination can still promulgate litigation, particularly when the property's use/operation persists during buyer's tenure.

Strategic Environmental Baseline (SEB): Exceeding Phase I and II environmental site assessments (ESA), which rely on ASTM-prescribed methods with no or often minimal conventional (EPA SW-846) data collection efforts, SEB can pro-actively and cost-effectively be used to assess any future allegations made by buyers, sellers, or 3rd parties. Specifically, **chemical fingerprinting** performed at the time of a sale provides the basis to distinguish "old" (pre-sale) *versus* "new" (post-sale) contamination at some future date. Armed with this information both buyers and/or sellers can defend against or avoid future claim(s).

Advantage to New Operators (Buyers)

- Establishing the specific nature of pre-sale contamination left by sellers protects against future claims of a recent release(s) brought by regulators/neighbors.

Advantage to Previous Operators (Sellers)

- Establishing the specific nature of the pre-sale contamination protects against future claims by the buyer that post-sale ("new") contamination is from the seller.

Phase II ESA - Time of Sale

- GRO in soil (1,500 mg/kg)

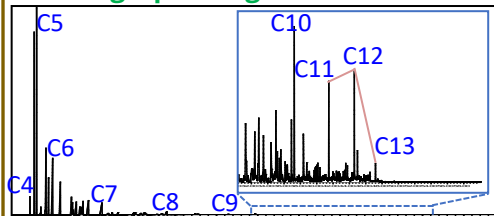
A post-sale release is equivocal.

Conventional Data - 5 Years later

- GRO in soil (2,500 mg/kg)

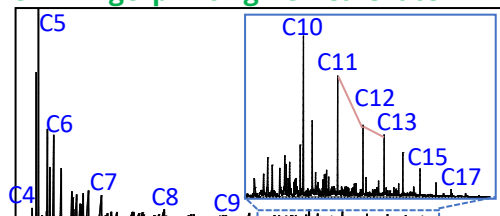
Conventional TPH-GRO concentration data are equivocal as to whether a "new" (post-sale) gas condensate is present 5-years after the sale of a natural gas processing plant.

SEB Fingerprinting - Time of Sale



A post-sale release of a different gas condensate is unequivocal.

SEB Fingerprinting - 5 Years later



Chemical fingerprinting data unequivocally show a "new" (post-sale) gas condensate release had occurred.

For additional information, please contact your NewFields Technical Lead. Or send us an email at

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