

Commercial Property: **Hazardous Materials**

It Pays to Hire Experts to Look for Contamination

Realty Investors
And Lenders Try
To Reduce Risks

By MARK McCAIN

BARRY WEINER is spending nearly \$25,000 to search for tainted soil, toxic chemicals and asbestos in and around an industrial building he hopes to buy near New Haven.

Like more and more other real-estate investors, Mr. Weiner fears buying a toxic trouble spot. And he considers \$25,000 a small price for information that might convince him to back out of the deal.

"We've become very cautious over the past year because there's a real body of law developing as to who is responsible for all this terrible stuff in buildings and in the soil," said Mr. Weiner, president of Vestpro Corporation, a Manhattan company that converts industrial buildings into self-storage warehouses.

Property buyers no longer simply walk the boundaries and check for liens. They hire experts who climb into and around heating ducts in search of asbestos, who study historical records for signs of past trouble, who extract columns of soil to test for contaminants, who use gas chromatometers to sniff out chemical spills.

"The big boys are moving quickly to protect themselves, but the people who don't understand the issues are going to get hurt," said Martin S. Baker, a Manhattan lawyer who specializes in land-use issues. "They don't realize when they buy a store where a dry cleaner once operated that dry-cleaning fluids are registered hazardous chemicals. They don't realize that gas stations, warehouses, even vacant land can pose similar problems."

The biggest danger in buying contaminated property is the likelihood of getting stuck, at some point, with a bill for cleaning up the mess.

Some buyers are not even bothering to consider old industrial areas," said Dr. David Lipsky, a hazardous-waste expert for the Dynamac Corporation, an environmental consulting company in Fort Lee, N.J. "You could spend an entire life just trying to clean up sites in places like Newark."

Only two states have regulations to identify contaminated properties before they change hands.

Connecticut has a narrowly focused program staffed by just one full-time employee. New Jersey has a far more ambitious pro-



The New York Times/Peter Freed Alan Zale

Barry Weiner, left, outside the storage facility he owns on John Street in Brooklyn. He is checking for toxicity a site he hopes to buy in New Haven; Dr. David Lipsky, hazardous-waste expert with the Dynamac Corporation, in his Fort Lee, N.J., office.

gram, with a staff of nearly 100 to enforce it.

The seller of a contaminated property in either Connecticut or New Jersey must submit a detailed analysis of the problem, accompanied by an acceptable clean-up strategy. But even with those safeguards, a buyer may still inherit undetected problems.

"The people who do the field work and interpret the data are often young and inexperienced because the marketplace is expanding wildly," Dr. Lipsky said. "Firms just can't find experienced people, so not infrequently, people do things incorrectly."

Even though a seller in New Jersey or Connecticut "is supposed to accurately assess the situation," he added, "as in any field, a second opinion is advisable."

Asbestos, which has frequently been used as an insulating material, is less dangerous than other toxic substances in old buildings. It can be evaluated and, if necessary, removed from a vacant building without substantial difficulty. The cost, however, may exceed the value of the property.

"If there's a significant amount of asbestos, the removal could cost \$35 a square foot," said Mr. Weiner of Vestpro, "in a build-

ing that we wouldn't even buy for \$25 a foot."

More vexing problems can lie underfoot. When fuel oil, mercury, chromium or any of more than 100 other hazardous elements listed by Federal regulators taint the soil, simple solutions are rare and regulatory indecision is rampant.

NEW JERSEY is a leader in assessing tainted soil, yet now, four years into its environmental review process for industrial property transactions, "we're still working out the issue of how clean is clean," said Lance R. Miller, assistant director of the Industrial Site Evaluation Unit in the Department of Environmental Protection. "So far, no standards have been proposed or adopted."

For buyers and sellers, the New Jersey program can delay property transactions for up to a year and generate a maze of conflicting mandates.

"We've been accused of making policy on individual cases and changing it whenever we feel like it," Mr. Miller said. "People say you never know what decision we'll give out on any given day."

By the end of the year, however, the agency intends to adopt a set of revised regulations that, while not clarifying the issue of acceptable levels of contamination, "will provide a lot of clarity and guidance that the interim regulations have not," according to Mr. Miller.

Part of New Jersey's problem has been bureaucratic overload. The state expected to process about 100 transactions a year; the actual volume has been eight times greater. Seeking to avoid some of New Jersey's mistakes, Connecticut adopted a deliberately limited program two years ago.

Until a few weeks ago, Connecticut only reviewed property transactions involving facilities that generate more than 220 pounds of hazardous wastes a month or accept hazardous waste shipments. Now, dry cleaners, furniture strippers and auto repair shops that generate less than 220 pounds of waste also fall under the state's responsibility.

"We wanted to start off within a very narrowly defined universe, then slowly expand it," said Edward C. Parker, assistant director of hazardous-waste management for the Connecticut Department of Environmental

Protection. "We're trying to focus our attention on the most likely trouble spots."

SOLUTIONS vary for dealing with contaminated soil. Covering it with a layer of clay or asphalt may be sufficient. Also, several inches of soil may be scraped off and trucked to a hazardous-waste site; or the soil may be baked in a kiln to burn off its toxicity.

As reflected by the Federal Superfund program, from which Congress authorized \$9.5 billion last year to decontaminate sites through 1991, clean-up costs can sometimes overwhelm, and bankrupt, a property owner. Mindful of that danger, lenders are investigating properties more fully before they agree to financing.

There have been no definitive court rulings yet, but lenders fear they could be pulled into the chain of liability if they foreclose on properties that turn out to be contaminated.

"Not surprisingly," said Lawrence P. Schnapf, a real-estate lawyer in Manhattan, "prudent banks and title-insurance companies are requiring some kind of environmental audit before they will book a loan."