The Risks and Rewards Of Dry Cleaners

Minimizing the risk when purchasing a center with a dry cleaner.

Nicole Moore

Dry cleaners are often anchors or prime tenants in shopping centers. While dry cleaner tenants may be a draw for other businesses, the presence of one can expose the shopping center owner to significant environmental risk. Dry cleaners have historically used hazardous chemicals and are a common source of pollution. There are many steps a prospective purchaser of a shopping center can take to help minimize their risk.

A LAUNDRY LIST OF CHEMICALS

A slew of different chemicals have historically been used in dry cleaning operations. Throughout the years, dry cleaners have used kerosene, benzene and petroleum naptha as dry cleaning solvents. Between 1930 and 1960, carbon tetrachloride and trichloroethylene (TCF) were also used. Around 1950, petroleum naptha was replaced by Perchloreoethylene (PCE). While Freon 113 and 1,1,1-trichloroethane (TCA) were used briefly between 1960 and 1980, PCE remains the most widely used dry cleaning solvent today. According to the United States Environmental Protection Agency (US EPA), approximately 90 percent of dry cleaners were using PCE as of 2004. These chemicals each represent potential health concerns if handled improperly or released into the environment.

PCE, which is also known as "Perc" or tetrachloroethylene, is a carcinogen and is toxic at low levels. It is also a highly mobile chemical, meaning that it can penetrate concrete relatively easily and travel through soil and groundwater at a rapid pace. And, unlike petroleum products, it is heavier than water so contamination from PCE can cause very large and very deep plumes (i.e., much harder and more expensive to clean up).

DIRTY LAUNDRY, DIRTY SITE?

Dry cleaners are somewhat notorious for causing soil and groundwater contamination. Some in the environmental industry have estimated that about 75 percent of drycleaners in operation in the 1990s had caused contamination, and estimates are higher (up to 90 percent) for those in operation in the 1980s or earlier.

Contamination can occur from obvious sources such as spills, to less obvious sources such as leakage from old sewer lines that service the dry cleaner. Even when properly stored and disposed, these chemicals can be released in small, frequent amounts through floor drains and cracked concrete. And while I'm sure most dry cleaner operators are careful and practice proper housekeeping and disposal methods, it is not all that uncommon for a careless employee to dumb waste solvents out the back door.

Contamination can impact a variety of media including soil, groundwater and indoor air.

One of the primary concerns to regulators is to prevent contamination from impacting drinking water supplies, which could clearly cause a major health concern. However, many states do not take into account the risk for vapor intrusion, which is process of a volatile chemical in soil or groundwater vaporizing and migrating into the interior of a building. PCE is a volatile organic compound (VOC) that vaporizes quickly.

Thus, a state's regulations may allow a release site to be closed if there is no risk of PCE contaminating the drinking water supply (perhaps groundwater in that area is not used for drinking), even if contamination remains in the soil or groundwater. But, the residual contamination left in place could still represent a vapor intrusion risk, even at relatively low concentrations.

While vapor intrusion is not a new concept, it is making waves in the consulting industry and causing environmental professionals to reconsider sites of contamination that they otherwise may have written off as not a significant concern. Several states are moving to adopt more stringent laws to better regulate vapor intrusion, and down the road closed cases may be reopened to address these concerns.

So, if you are a shopping center investor, what can you do to minimize your risk?

Thorough environmental due diligence is of the utmost importance before purchasing a shopping center property, even if there is no dry cleaner currently present. You don't want to inherit the cost of cleaning up someone else's release. (There are of course many other environmentally sensitive operations that are common at shopping centers, including gas stations and auto servicing centers to name a few.)

A Phase I Environmental Site Assessment (ESA) is the gold standard for due diligence and will identify if a dry cleaner (or other environmentally risky operation) ever has existed at the property, and if so, whether any release has been reported for the property. The Phase I ESA includes a

What About "Green" Dry Cleaners?

Many dry cleaners these days are advertising the use of "green" dry cleaning chemicals. One solvent alternative used in dry cleaning is liquid carbon dioxide, which poses no health risk. Another alternative is a silicone based solvent (Siloxane D5) that is chemically inert and appears to be relatively risk. Though the EPA has not conducted a risk assessment of Siloxane D5, it noted that there may be a cancer hazard associated with elevated exposure based on a study conducted by its manufacturer. Beware of other cleaners that advertise as "organic" of "environmentally friendly" – many of these may use a petroleum-based solvent which still poses some environmental risk. I have also come across a dry cleaner that falsely claimed to be using the silicone-based method.

The bottom line is: be careful not to take the "green" claim at face value.

-- Nicole Moore

site inspection and review of current and prior regulatory records and historic information regarding the property use, as well as that of nearby properties.

If a dry cleaner has existed at the subject property, all possible information regarding that operation should be gathered. If a release has been reported, a file review should be conducted to determine what the status of that release is – whether it is closed, undergoing further assessment, or if there is a cleanup progress. Has the responsible party for the release been identified? If so, perhaps you can secure an environmental indemnification agreement releasing you from responsibility for the cleanup of the release.

Just because no release has been reported doesn't mean no release has occurred. If you want to go beyond the Phase I ESA and conduct a Phase II ESA, which involves soil, soilgas and/or groundwater sampling, to determine whether a release has occurred. If you are financing the purchase with a loan, the lender may require this next phase anyways – many banks do.

The decision whether to conduct Phase testing is often based on how long the dry cleaner has been in operation at the subject property. Older dry cleaners have a higher potential for having had a release due in part to the type of equipment that was used. Older machines were less self-contained and had a higher risk of releasing dry cleaning solvents. It is also important to consider what period the dry cleaner was in operation and what cleaning agent was typically used during that timeframe. This will affect what contaminants the consultant should look for during the Phase II.

If a release is identified during the Phase II ESA, then further testing or site characterization will likely be necessary to determine how big the problem is, and how much it will cost to clean it up. In some states a baseline environmental assessment may be required to determine what contamination already existed prior to the purchase, to compare with any future releases that could occur under the new ownership and operation (to determine who is responsible for what). Many investors may still want to purchase a property with environmental impacts, so long as they are comfortable with the cleanup costs, or can arrange for indemnification.

Another option available to shopping center investors is to require that the dry cleaning tenant purchase environmental insurance -- this can be included in the lease agreement. While this will not prevent a release from occurring, it provides reassurance that the remedial costs will be covered to some extent.

The existence of a dry cleaner in a shopping center shouldn't necessarily kill a deal, but the risks need to be weighed carefully. The shopping center investor should keep a few takeaways in mind:

- The older the facility, the higher the risk of contamination, but even new facilities represent some environmental risk.
- Human health concerns should be evaluated – even closed cases may represent a risk
- A Phase I ESA is a minimum during due diligence – A Phase II may also be warranted
- Options such as insurance, indemnification and remedial costing can help facilitate the transaction of a contaminated site **SCB**

Nicole Moore is technical director of Partner Engineering and Science, Inc.