

Real Estate Environmental Risk Review Programs - A Decade of Lessons Learned

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Lessees or tenants on railroad-owned property have been an important revenue source since the inception of the railroads. Tenant business classifications span the spectrum of SIC codes, from bulk storage facilities to packaging plants, from lumber yards to scrap yards, and so on. Such leased properties number in the thousands and many of the leases date back to predecessor rails. Often times lessee operations may also change over the years without full disclosure to the railroad. In many cases, tenant operations may seem relatively innocuous from an environmental standpoint. However, changes in operations, poor housekeeping, or other factors may create cleanup liabilities for the railroad. To monitor these tenants, many Class 1 Railroads, including Norfolk Southern, utilize risk review or auditing programs that attempt to assess potential liability through inspections of leased properties.

In Norfolk Southern's case, these risk reviews primarily focused on the presence of hazardous substances and petroleum products. The process entails a desktop review to determine the nature of the lease and operations at the tenant property. The types of properties are prioritized to determine the order and frequency of monitoring. Site inspections are then conducted. Brief findings reports are generated to allow for the prioritization of sites and findings for follow up action.

This presentation will describe the process utilized by Norfolk Southern to screen tenant lease properties and determine the order and frequency of monitoring. The focus of the discussion will be on the lessons learned during the first decade of Norfolk Southern's Risk Review Program. First, certain types of tenants warrant more frequent monitoring than others; therefore, the lease review selection process is paramount to the success of the program. Second, after risk reviews are completed, findings should be managed through categorization, prioritization, and follow-up to maximize the value of program while minimizing risk.

Case studies will be included to highlight common misconceptions and pitfalls that can be encountered during the monitoring process. Finally, the presentation will discuss examples of when and how findings transition from being a tenant issue to a railroad liability that warrants disclosure as an Asset Retirement Obligation under Sarbanes-Oxley. Though a relatively low percentage of leased property becomes remediation liability, for properties that do, the risk review process has been shown to give the railroad a head start on planning and appropriately managing such liabilities.
