



## THE UNDERGROUND CHALLENGES OF AN INDUSTRIAL RECEIVERSHIP – ENVIRONMENTALLY SPEAKING



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**A**s the Commercial Real Estate industry begins its recovery from the economic downturn of the past several years, receiverships have only just begun. Commercial foreclosures, now in their infancy stages, will continue for another three to five years. The underlying cause being that the values of the majority of these properties, with loans due to mature between now and 2015, do not support the outstanding loans. So what are some of the common issues facing receivers of industrial properties?

While many of the issues facing industrial buildings are similar to all other commercial property types, some of the more prevalent issues that receivers can face with regard to industrial properties are environmental issues which can take anywhere from a few months, to a few years to resolve. A few examples of the concerns that may be a consideration for some industrial properties are whether or not the site or its users are operating in compliance with the multitude of environmental laws (i.e. RCRA, CERCLA, CWA, etc.) promulgated over the last 40 years. Do the buildings or operations pose an imminent risk with respect to asbestos, lead paint, mold, leaking underground storage tanks, groundwater contamination or sick-building syndrome?

While these are just a few examples of the maladies property managers and receivers may be faced with, it is their responsibility to stabilize the distressed entity by recognizing and repairing the practices that most likely created the reasons for establishing the receivership in the first place. In some instances there are no environmental issues, but in other cases the receiver will deal with a variety of concerns, mold growth being a more common example. Mold growth is especially prevalent in vacant buildings. When buildings are vacated and the utilities are turned off, the lack of ventilation, coupled with moist conditions and a lack of heating can promote the growth of mold within the building.

Other environmental issues that receivers may face while handling industrial properties can be more substantial and complex. Many industrial properties have underground storage tanks (UST's), groundwater contamination, or may even require intense environmental monitoring on a periodic basis along with direct oversight by the government. Some properties are subject to existing government approved remediation plans that must be adhered to in order to maintain compliance with the terms of those plans. No matter what the issue, it will be the receiver's responsibility to remedy the situation.

The most unique challenges that a receiver can face are typically those that deal with large-scale environmental Superfund (CERCLA) issues. As a receiver, it is necessary to retain the services of qualified contractors that are experts in environmental issues in order to accurately quantify potential environmental liabilities. At JCF Real Estate, we often engage the services of environmental consultant, Conestoga-Rovers & Associates (CRA), to help facilitate the assessment, monitoring and reporting needs of specific receivership properties that have large-scale environmental issues.

"It can be advantageous to utilize the services offered by an experienced environmental contractor when concerns are evident at a newly assigned industrial receivership or REO property," says Bruce Clegg of Conestoga-Rovers & Associates. "From the initial property environmental assessment (done through an ASTM-compliant Phase I Environmental Site Assessment) to Phase II site investigation activities, and on through the evaluation and quantification of remedial alternatives and attendant costs, a qualified consultant can help a receiver determine strategic alternatives for the best future use of the property based on the assessment."

A receiver's objective is to manage the receivership property professionally, responsively, aggressively and proactively in order to stabilize the asset and maintain the value of the property throughout the receivership period. Therefore determining the property's best future use helps to position the asset in a way that will maximize its potential; and when large-scale environmental concerns are prevalent, it is often best to partner with an experienced environmental specialist. Remediating or removing environmental issues at a property can potentially increase the value of the property to a point that is greater than the

cost of the remediation itself.

The best examples of value enhancement are often realized through the recognized closure of environmental issues (typically containing a contaminated groundwater component) through a state environmental agency. Many states (including Illinois) have programs that allow for creative approaches for the attainment of cost-effective environmental remedies that result in a "sign-off" from the government. In many cases, these programs are known by the general term "voluntary." This term is used because the properties are voluntarily brought to the attention of the State and the State provides input on the approach for investigating and remedying environmental problems prior to declaring that no further action is necessary.

As a property moves through the receivership process, it is imperative that the receiver properly identify and address the myriad environmental issues that can impact an industrial building. By properly assessing the environmental condition of each property, the receiver informs all stakeholders to the transaction from the judge, to the lender, to the borrower of the impact that any environmental issues have on the asset so that critical decisions can be made with full-knowledge.

When looking to utilize a receiver for an industrial property, particularly one that has potential environmental issues, the process will flow more professionally and successfully if the receiver has both the experience and knowledge specific to industrial properties. As the number of receiverships is on the rise and environmental issues are at the forefront of international dialogue, the process to fully maximize a property's current and future potential is wrought with complexity. The decision to appoint a receiver is not one that should be made lightly, but rather with due diligence. Experience and expertise will impact the ultimate result.

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*Since 1993, JCF Real Estate, through John Fitzmaurice, has been entrusted as a court-appointed receiver on hundreds of office, industrial, retail, multi-family and land assets on behalf of dozens of the area's law firms, lenders and banks. Fitzmaurice, Goebig and the dedicated receivership staff at JCF Real Estate, currently manage more than 75 properties within the current assignment group and possess a comprehensive understanding of the receivership process.*