

# Long Island Business NEWS

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## ENVIRONMENT

# Hidden hazards

LI industry leaders discuss the risks and liabilities of what lies beneath

By LIBN STAFF

What you don't know can hurt you. That's one of the takeaways from a wide-ranging discussion with environmental industry leaders during a participant-sponsored roundtable event held at LIBN offices last month.

Contaminated soil that can impact water quality and potentially emit toxic gases is often discovered at many Long Island commercial sites, once the property is being sold or redeveloped.

Attorney Charlotte Biblow, an environmental law specialist and partner at Uniondale-based Farrell Fritz, and Chuck Merritt, president of Hauppauge-based Merritt Environmental Consulting Corp., say site testing is usually required by lending institutions involved in a property sale, because they want to reduce any potential liability down the road.

"Our primary function is working through lending institutions, law firms like Charlotte's, or individual investors buying commercial real estate," Merritt said. "We go out and kind of kick the tires looking for environmental issues. It's not that much different from an appraiser looking for a value of property."

Biblow, who also has a bachelor's degree in chemistry, said it's not just the banks that can have liability from tainted properties, but landlords and tenants as well. There are dry cleaners, printers, even art studios that may be responsible for environmental issues under their locations.

"On Long Island, a lot of the properties don't have sewers so everything gets dumped down sinks, which isn't supposed to be done, and it goes into the dry wells and it doesn't take long to cause a problem," Biblow said. "Smaller businesses don't have the wherewithal to do an environmental audit. If you are connected to the site, whether you own it or not, you can be liable and on the hook for a multi-million dollar cleanup."

Biblow added that some landlords are getting smart by looking at who they're leasing to. Even tenants in office buildings, like doctors or dentists, could be causing problems, so landlords are sending in environmental consultants, sometimes annually, to do an audit of their tenants.

"They're keeping track of what their tenants are doing, so if the Department of Environmental Conservation or Suffolk County comes in they have a record of what was done," Biblow said. "Someone like Chuck can go in and give advice to the tenant about what they're doing wrong."

For a lot of properties, it's not always the uses of tenants or owners that can cause an environmental issue. Many commercial buildings on Long Island still have 10,000-gallon oil tanks buried beneath the soil. And whether they remain in use or not, Merritt says they can cause big problems.

"Single-wall steel will rot and rust," Merritt said, "and anything in the tank is going to leak into the ground and affect the water."

It's not only the property owners who need to be vigilant about hidden hazards at commercial sites, but the businesses that lease the space, too.

"There are some sophisticated tenants who will do environmental audits before they lease," Biblow said. "Some property managers do environmental audits. Also, you could get a knock on the door

from the DEC saying 'we have a weird finding across the street but we don't think it's coming from them because they don't use this chemical, can we do some testing?'"

Biblow and Merritt said that it happens quite a bit. Government agency officials find something like a plume of contamination, or someone complains they have a smell in their building, or someone is doing routine cleaning of dry wells and something shows up when they do sampling.

Being proactive can help when it comes to avoiding future environmental problems and the financial risks attached. However, for non-apparent legacy issues, one of the best solutions for tainted sites is redevelopment.

"Redevelopment is a good solution to getting properties cleaned up," Merritt said.

Biblow agrees.

"You have property that no one wants to clean up and reuse, like Wyandanch Rising," Biblow said. "That was a public-private partnership working really well."

Toward that end, the state's brownfields program can be a big help.

"It takes a while to get into the brownfield program," Merritt said. "You do need legal representation. Consultants like ours identify the problem, come up with a strategy, and if you're accepted in, one of the benefits is it limits your liability."

Besides limiting liability, another plus for property purchasers and developers who can get into the brownfields program is the economic incentives in the form of tax credits that are available to assist in cleaning up the site.

"Under the old program it was unlimited tax credits for the cost to remediate and people were getting hundreds of millions in tax credits on projects," Biblow said. "They changed it because the state realized they were on the hook for billions of dollars so now there's a \$35 million cap on certain projects."

Will Flower, vice president of corporate and public affairs for Winter Bros. Waste Systems, agrees that redevelopment of commercial sites is a good way to deal with environmental issues.

"In terms of the remediation of older sites, redevelopment of the property is a quick and effective way to get sites cleaned up and return the property to its highest and best use," he said.

Flower added that there should be more economic incentives for these kinds of redevelopment projects from local industrial development agencies.

"We work with contractors and developers across Long Island and realize that remediation of old buildings and soil cleanup projects are expensive projects," Flower said. "Incentives in the form of tax breaks would be an excellent way to encourage additional cleanups through redevelopment efforts."

Companies like Winter Bros. focus on prevention to avoid environmental issues in the first place. Flower said having a strong and effective regulatory program is critical.

"Recently, the DEC issued new regulations that affect every aspect of waste management services," Flower said. "These programs will increase the cost of waste management services. However, they are necessary to ensure waste materials are properly managed and never become environmental hazards."



Photo by Judy Walker

**CHARLOTTE BIBLOW:** The sooner you come to grips with what you have there, the easier it would be to clean it up. An environmental problem doesn't usually get better over time.



Photo by Judy Walker

**CHUCK MERRITT:** Efforts of environmental consultants, the legal community and developers can do really good things to improve the quality of natural resources.



Photo courtesy of Winter Bros.

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