**Unit 22 Outline**

**Environmental Issues and Real Estate**

**Outline**

I. Overview

IN ILLINOIS . . . *The Illinois Environmental Protection Agency is charged with maintaining and enhancing the state’s air, land, and water quality through education, inspection, regulation, enforcement, and recycling and prevention activities. The Pollution Control Board and Hazardous Waste Advisory Council are two of the many bodies created to assist the IEPA in specific areas. State agricultural, transportation and energy agencies (among others) also have specific environmental protection responsibilities. Most Illinois environmental regulations are required by statute to be identical in substance to environmental protection regulations established by the U.S. Environmental Protection Agency.*

II. Hazardous Substances

A. Asbestos—Asbestos is a mineral that was once used as insulation because it was resistant to fire and contained heat effectively. Before 1978 (the year when the use of asbestos insulation was banned), asbestos was found in most residential construction.

1. Friable

2. Encapsulation

B. Lead-Based Paint and Other Lead Hazards—Lead was used as a pigment and drying agent in alkyd oil-based paint.

IN ILLINOIS . . . *Anyone who performs lead abatement or mitigation activities without a license is guilty of a Class A misdemeanor. The Department of Public Health (DPH) oversees the qualification, training, and licensing of lead abatement contractors and lead abatement workers in Illinois.*

C. Lead-Based Paint Hazard Reduction Act

1. Residential dwellings built before 1978
2. Landlords must disclose known information
3. Sellers must disclose known information
4. Buyers have up to ten days to conduct a risk assessment
5. Licensees provide buyers and lessees with HUD pamphlet

IN ILLINOIS . . . *The Illinois Lead Poisoning Prevention Act (410 ILCS 45) requires physicians to screen children younger than six years old for lead poisoning when the child lives in an area considered by the state to be at high risk for lead exposure. High risk areas include slum and blighted housing, proximity to highway or heavy local traffic, proximity to a lead-using or lead-generating industry, incidence of elevated blood lead levels, poverty, and the number of young children in the area.*

C. Radon—Radon is a radioactive gas produced by the natural decay of other radioactive substances. When radon is trapped in high concentrations, it can cause health problems.

1. Illinois Radon Awareness Act

IN ILLINOIS . . .*The Illinois Radon Awareness Act, effective January 1, 2008, requires a seller to provide to a buyer, before the buyer is obligated under any contract to purchase residential property, a Disclosure of Information on Radon Hazards form, along with a pamphlet entitled, “Radon Testing Guidelines for Real Estate Transactions.” The disclosure document has a Radon Warning Statement, requires that a seller provide an Illinois Emergency Management Agency pamphlet about general radon information and disclose any radon information to the buyer, and requires that real estate agents sign the disclosure and requires that all parties involved sign the disclosure.*

*The law requires that sellers must disclose that they have no knowledge of elevated radon concentrations or that prior elevated radon concentrations have been mitigated or remediated.*

*The Act does not require that all homes in a real estate transaction be tested or that the home be mitigated if the test results are elevated. It also does not apply to the transfer of any residential dwelling unit located three stories or above in any structure.*

D. Formaldehyde

1. Urea-Formaldehyde Foam Insulation (UFFI)—UFFI is widely in the manufacture of building materials and many household products. Gases leak out of UFFI as it hardens.

E. Carbon Monoxide—Carbon monoxide is a colorless, odorless gas that occurs as a by-product of burning such fuels as wood, oil, and natural gas due to incomplete combustion.

IN ILLINOIS . . . *Illinois requires that all residences be equipped with working carbon monoxide detectors.*

F. Mold—Mold is a fungus. It is impossible for homeowners to distinguish between toxic and benign molds because they come in a variety of colors. Some molds can cause serious health problems. Mold is an increasingly important issue for licensees.

III. Additional Environmental Hazards

A. Groundwater Protection

1. Groundwater is water that exists under the earth’s surface within the tiny spaces or crevices in geological formations. Groundwater forms the water table. Numerous state and federal laws have been enacted to preserve and protect the water supply, led by the Safe Drinking Water Act and its 1996 and 2000 amendments.

2. Many property disclosure forms require sellers to identify the property’s water source, such as well water, municipal water supply, or some other source. Any source other than a municipal water supply should be tested.

B. Underground Storage Tanks (USTs)

1. Over time, neglected tanks may leak hazardous substances into the environment. This permits contaminants to pollute not only the soil around the tank, but also adjacent parcels and groundwater.

a. State and federal laws impose very strict requirements on landowners where underground storage tanks are located to detect and correct leaks in an effort to protect the groundwater.

b. The federal UST program, regulated by the EPA, applies to tanks that contain hazardous substances or liquid petroleum products and that store at least 10% of their volume underground.

c. Certain types of tanks are exempt from the federal regulations.

IN ILLINOIS . . . *The Leaking Underground Storage Tank (LUST) program governs the detection, identification, monitoring, mitigation, and removal of buried underground storage tanks. The program is administered by the state fire marshal and the IEPA and is authorized to disburse money from a special fund to assist property owners in complying with mandatory remediation activities. The fund derives from permit fees, fines and payments required under such acts as the Motor Fuel Tax Law and the Environmental Impact Fee Law.*

C. Waste Disposal Sites

1. A *landfill* is an enormous hole lined with clay or a synthetic liner to prevent leakage of waste material into the water supply. A system of underground drainage and ventilation pipes permits monitoring of leaks and leaching. Waste is layered with topsoil until the landfill is full.

a. *Capping* is the process of laying soil over the top of the site and then planting grass or some other vegetation to enhance the landfill’s aesthetic value and to prevent erosion.

b. Federal, state, and local regulations govern the location, construction, content, and maintenance of landfill sites.

c. Hazardous and radioactive waste disposal sites are subject to strict state and federal regulation.

IN ILLINOIS . . . *The construction and maintenance of waste disposal sites is regulated by statute (415 ILCS 5/20 et seq.).*

D. Brownfields

1. Defined as defunct, derelict, or abandoned commercial or industrial sites, many of which have toxic wastes, *Brownfields Legislation* became law in 2002, giving states and localities up to $250 million a year for five years to clean up polluted industrial sites. The law encourages the development of these properties, some of which are located in prime real estate areas.

VII. Environmental Protection

A. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

1. Created in 1980, CERCLA established a fund of $9 billion called the Superfund to clean up uncontrolled hazardous waste sites and to respond to spills; it also created a process for identifying potential responsible parties (PRPs) and ordering them to take responsibility for the cleanup action.

2. CERCLA is administered and enforced by the EPA.

3. Liability—A landowner is liable under CERCLA when a release or a threat of release of a hazardous substance has occurred on the landowner’s property.

B. Superfund Amendments and Reauthorization Act (SARA)—In 1986, the U.S. Congress reauthorized the Superfund and created the *innocent landowner immunity clause*. The innocent landowner immunity clause established the criteria by which to judge whether a person or business could be exempted from liability.

VIII. Liability of Real Estate Professionals

A. Discovery of Environmental Hazards (or environmental assessors)—An environmental site assessment is often performed on a property to show that due care was exercised in determining if any environmental impairments exist. The assessment can help prevent parties from becoming involved in contaminated property and work as a defense to liability. It is often requested by a lender, developer, or a potential buyer.

B. Phase 1

C. Phase 2

D. Percolation test

E. Environmental Impact Statements (EIS)—A federally-funded project requires that an environmental impact statement (EIS) be performed. These statements detail the impact that the project will have on the environment.