

A Guide to Understanding SBA Environmental Due Diligence for Commercial Properties



PARTNER Engineering and Science

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Partner Engineering and Science
has prepared this guide to provide you with
information that explains;

- Why SBA requires Environmental Due Diligence
- How SBA determined the report type required for various property types
- What is included in a Phase I Report
- What protections come with a Phase I Report
- What is included in a Transaction Screen Report (TSA)
- What is included in a Records Search with Risk Assessment Report (RSRA)
- What the lenders responsibilities are when ordering a RSRA Report
- When Reliance Letters are required by SBA
- Scope of work for Phase II investigations
- Asbestos, lead, radon, costs, turnaround times and other misc information

Why SBA Requires Environmental Due Diligence

In order to qualify for SBA's guaranty for 7a and 504 loans, the SBA requires certain levels of environmental due diligence be performed to provide assurance that the property site value is not hampered by previous contamination or environmental degradation.

Reasons for this would include:

- The costs of remediation could impair the borrower's ability to repay the loan and/or continue to operate the business
- The value and marketability of the property could be diminished
- Lender or SBA could be liable for environmental clean-up costs and third-party damage claims arising from contamination

With certain property types being - or having been - used by Environmentally Sensitive Industries, SBA requires the engagement of federal protection against CERCLA (Comprehensive Environmental Response, Compensation and Liability Act) liability. They also require the engagement of an Environmental Firm's *Errors & Omissions* Insurance to help protect the buyer, the lender, and the SBA.

How SBA Determines the Report Type

SBA requires an Environmental Investigation of all commercial property upon which a security interest such as a mortgage, deed or trust, or leasehold deed of trust is offered as security for a loan or debenture. The type and depth of an Environmental Investigation to be performed varies with the risks of

contamination. The higher the risk for contamination the more in-depth study will be required. (See flowchart back page)

Scope of Work for AAI Compliant Phase I ESA

The Phase I ESA is a non-intrusive study of the environmental condition of a property site. The goal of the study is to identify any Recognized Environmental Conditions (RECs) in connection with the property – if any exist.

The American Society for Testing and Materials (ASTM) has created a standardized scope of work describing the preparation of a Phase I ESA (ASTM 1527 05). The requirements for a Phase I may include:

- **A Regulatory Agency Records Review**
 - Fire department records
 - Dept of Toxic Substances Control
 - Regional Water Quality Control Board
 - Environmental Health Services Dept
- **Site History Survey**
 - Historical aerial photographs
 - Building & planning department records
 - Sanborn Maps
 - Historical business directories
 - Interviews with past and present owners/occupants of property & surrounding properties
- **Regulatory Agency List Review**
 - State & Federal regulatory agency review of properties within one mile that may affect subject property due to spills or releases of hazardous substances and/or petroleum products

- **Site Reconnaissance**
- Visual inspection of subject property
- Visual inspection of surrounding properties
- **Finalized Report**
- A summary that includes SBA's verbiage that no further investigation is warranted, or, that there are suspect environmental conditions or REC's connected with the property and further investigation (usually Phase II) is required by the U.S. SBA.

Protections Afforded Through ASTM 1527 05 Phase I

The AAI protections allow buyers to be free of potential liability if and when all parts of the AAI are met. Performing the AAI provides expanded CERCLA landowner liability protections that include:

- Bona Fide Prospective Purchaser: where a purchaser may knowingly acquire contaminated property while limiting future CERCLA liability.
- Contiguous Property Owner: a new defense category which provides protection for contamination caused by a neighbor's actions, and
- Innocent Landowner Protection: to those who have performed an AAI and at a later date discover that they have unknowingly acquired contaminated property.

Scope of Work for Transaction Screen

- A site reconnaissance
- The completion of the ASTM 1528 06 Transaction Screen Environmental Questionnaire
- Obtaining and reviewing environmental databases for the subject property and nearby surrounding areas/properties
- Review of reasonable ascertainable historic Sanborn Fire Insurance maps and local city/street directories.

(note: Transaction Screens afford no Federal Liability Protection)

Records Search with Risk Assessment (RSRA)

Record Search with Risk Assessment means and includes:

- A search of the government databases identified in 40 CFR § 312.265 for an AAI compliant Phase I as well as a search of historical use records (for example, aerial photography, city directories, reverse directories and/or fire insurance maps) pertaining to the Property and Adjoining Properties; and
- A risk assessment by an Environmental Professional based on the results of the records search as to whether the Property is either "low risk" or "elevated risk" or "high risk" for Contamination. The choice of historical records to be reviewed on any particular site is at the discretion of the Environmental Professional. The report must identify by name the Environmental Professional that performed the risk assessment.

Lender Responsibilities When Ordering a RSRA

It is the responsibility of the lender to perform a site visit, and fill out the Environmental Questionnaire with the property owner/occupant when a Records Search with Risk Assessment is ordered from the Environmental Professional. From the SBA SOP: "Environmental Questionnaire" means the questionnaire used by a Lender to determine the likelihood that Contamination may be present at Property offered to secure an SBA guaranteed loan. Environmental Questionnaires must be completed or reviewed by a Lender that has made at least one site visit to the Property and a good faith effort to conduct an interview with the current owner or operator of the site. An Environmental Questionnaire may be considered if it was completed up to one year prior to submission. The current owner or operator of the site must sign the Environmental Questionnaire. (For a free EQ template contact Partner)

Reliance Letters

R/L's are only required with TSA's, Phase I's & Phase II's. They are not required for Records Search with Risk Assessment Reports (RSRA's).

Phase II Scope of Work

In the current SOP 5010 5 (A) there are certain situations that require that a Phase II be performed. A Phase II Environmental Site Assessment is a subsurface investigation sometimes referred to as a physical, intrusive investigation.

Prior to a Phase II investigation a Phase I is ordered to direct the Phase II investigation.

The purpose of the Phase II Environmental Site Assessment (ESA) is to quantify the existence and extent of environmental hazards on a property. The Phase II investigation begins after the identification of possible or actual site contamination. The Phase II ESA utilizes site exploration, sampling, monitoring, and laboratory analysis to quantify and classify the potential contamination. Its objectives include:

- Confirming or refuting the existence of a suspect environmental hazard on the property
- Quantifying the extent, if any, of the environmental hazard
- Developing a cost-effective remediation plan

Phase II's may include the following:

- Comprehensive Asbestos Surveys
- RCRA Audits of chemical or industrial plants
- Subsurface Investigations for encroaching contamination
- Air sampling
- Chemical analyses of suspected hazardous waste contamination
- Soil borings and exploration of suspected fill areas
- Sampling of contents from tanks, drums, and sumps
- Sampling of areas which have had past spills
- Liquid and sediment sampling in ponds, ditches, and streams
- Soil vapor studies
- Tank leakage testing
- Radon measurements
- Asbestos surveys

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Not only do we thoroughly understand SBA Environmental Requirements – we provide exceptional service NATIONWIDE for our clients – at fair and reasonable prices.

We actively work with and teach at various NAGGL (National Association of Government Guaranteed Lenders) and NADCO (National Association of Development Companies) conferences each year.

By partnering with us you will have confidence in our ability to perform your work with speed and accuracy, utilizing the correct verbiage and report structure that allows our reports to pass through SBA without hold ups.

Turnaround times for our reports are as follows:

- RSRA's are 5 business days
- TSA's are 10 business days
- Phase I's are 10 to 15 business days (depending on your need)
- Phase II's vary depending on scope of work required

Our E & O Insurance surpasses those requirements set out by the SBA.

Costs are a flat fee anywhere in the continuous United States, slightly higher in Alaska and Hawaii. For current pricing contact Gary Reynolds at greynolds@partneresi.com or Marshall Stanclift at mstanclift@partneresi.com.

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