



# Environmental Due Diligence

## Phase I & II ESAs for Commercial Property

### What is Environmental Due Diligence?

Environmental due diligence can take many forms, and depends upon the transaction type and environmental risk of the property. Types of due diligence can include:

- Environmental Questionnaires
- Transaction Screens
- Environmental Risk Reviews
- Records Search with Risk Assessment (RSRA)
- Phase I ESAs and Phase II ESAs

All Appropriate Inquiry (AAI) is the formal process of assessing properties for the presence or potential presence of environmental contamination. It involves evaluating the current and historical uses of the subject property in an effort to identify recognized environmental conditions (RECs) and historical recognized environmental conditions (HRECs) in connection with the subject property.

AAI is obtained by completing a **Phase I Environmental Site Assessment** in accordance with the ASTM Standard E-1527-13 and/or the Small Business Liability and Brownfield Revitalization Act (Brownfield Amendments) of 2002 (the federal law which describes what constitutes AAI).

### What is a Phase I ESA and Why Are They Needed?

A Phase I Environmental Site Assessment (ESA) is a tool to determine whether a property may be contaminated. Prior to the purchase or occupancy of a property, the purchaser or future tenant has the option to complete a Phase I ESA to investigate the current and historical use of that property.

The Phase I ESA utilizes a variety of historical resources, including local, state, and federal records, to identify past uses and/or occupants of the property that may present an environmental risk.

Certain users of Phase I ESAs (i.e., new purchasers of property) may be able to satisfy one of the environmental due diligence requirements to qualify for the **bona fide prospective purchaser, contiguous landowner, or innocent landowner liability protections** available under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, the Superfund Amendments and Reauthorization Act (SARA) of 1986.

AAI is intended to reduce, but not eliminate, uncertainty regarding the potential for RECs, and Controlled Recognized Environmental Condition (CRECs) in connection with the subject property.

**Know your Risk.  
Take Control.  
Work with the Experts.**

**Our comprehensive suite of services** lets us guide your project from start to finish.

**We own and operate our own equipment** to ensure projects are done properly and on time.

**Our qualified staff is** comprised of engineers, architects, geologists, and former bank environmental risk managers.

**We have extensive experience** completing Environmental Site Assessments and Engineering Reports.



Many banks, and the US Small Business Administration, require environmental due diligence be completed before they will issue commercial loans. Additionally, it is a good idea to complete environmental due diligence, even if a bank is not involved, to prevent future liability for existing contamination on the property in question.

### What If the Phase I ESA Reveals RECs?

The next step is to investigate the RECs. This is usually done by completing a Phase II ESA.

The process usually involves:

- **Sample Collection:** A Phase II ESA often involves the collection and analysis of soil and/or groundwater samples from the highest risk areas of the property to determine if contamination is actually present.
- **Comparison:** Each state has pre-determined "cleanup criteria" for various contaminants. The samples collected from the property will be compared to these criteria to determine if contamination is present at concentrations that present environmental or health risks.
- **Geophysical surveys** can also be performed to investigate RECs, if they involve the potential for buried drums, underground storage tanks, etc.

If a Phase II ESA determines that contaminants are NOT present above cleanup criteria, a report is issued, and the purchaser's environmental due diligence is complete.

### What If Contamination is Identified Above the Applicable Cleanup Criteria?

Some states offer liability protection for purchasers/new tenants if contamination is documented prior to their purchase/occupancy.

If this is the case, often a report is required to be filed with that state documenting what contamination is present and at what concentrations. In Michigan, for example, this is known as a **Baseline Environmental Assessment**, and is a separate report from a Phase II ESA.

A purchaser of a contaminated property is also often required to adhere to certain "Due Care" obligations, depending on the concentration and type of contamination present (i.e., the purchaser may not be able to install a drinking water well on the property).

If the above situation applies, and the purchaser applies for and is approved for state liability protection with the above documents, their environmental due diligence is complete.

In states that do not offer liability protection for purchasers of contaminated property, several options are available:

- The purchaser can apply for local, state, or federal Brownfield funding for cleanup activities necessary at the property.
- The purchaser can enroll in a voluntary cleanup program administered by the state, which may provide match funds or tax credits for cleanup activities.
- The purchaser can pay for cleanup activities out-of-pocket or negotiate these costs with the seller.
- The purchaser can purchase the property and assume liability for the existing contamination.
- The purchaser can decide not to purchase the property, if the above options are not fiscally viable for the transaction.

Remember, each situation is different.

**PM Environmental can provide assistance with all steps of the due diligence process.**

