

SBA ENVIRONMENTAL POLICIES AND PROCEDURES

Effective Date: March 1, 2009 SOP 50 10 5(A) Subpart C (Page 280)

All Transaction Screens, Phase I and Phase II ESAs must be performed by an Environmental Professional and be accompanied by the Reliance Letter in Appendix 3. (Note that a Reliance Letter is required even if the Environmental Investigation Report is addressed to the CDC.)

E. The Steps of an Environmental Investigation

NAICS Codes. For all Property except units in a multi-unit building, CDC must begin by making a Good Faith effort to determine the NAICS code(s) for the Property's current and known prior uses and compare the NAICS code(s) to the list of environmentally sensitive industries in Appendix 4. For units in a multi-unit building, Lender may proceed directly to paragraphs 2.a) and b) below.

1. If there is a NAICS code match to an environmentally sensitive industry identified in Appendix 4, the Environmental Investigation must begin with a Phase I, regardless of the amount of the loan.

If the NAICS code begins with 447 (gas stations with or without convenience stores), CDC must refer to, and if applicable comply with, "Environmental Investigation Requirements for Gas Station Loans" in Appendix 5.

2. If there is not a NAICS code match to an environmentally sensitive industry, the CDC must proceed as follows:

a) If the loan amount is up to and including \$150,000, the Environmental Investigation may begin with an Environmental Questionnaire.

b) If the loan amount is more than \$150,000, the Environmental Investigation must, at a minimum, begin with an Environmental Questionnaire and Records Search with Risk Assessment.

3. Environmental Questionnaire Results. If the Environmental Questionnaire reveals it is unlikely that there is environmental contamination at the Property and that no further investigation is warranted, CDC must submit the results of the Environmental Investigation to SBA with recommendations and seek SBA's concurrence.

If at any time an Environmental Questionnaire reveals that further investigation is warranted, CDC must obtain, at a minimum, a Transaction Screen.

4. Environmental Questionnaire & Records Search with Risk Assessment Results

a) If the Environmental Questionnaire reveals it is unlikely that there is environmental contamination at the Property and that no further investigation is warranted, and the Records Search with Risk Assessment concludes that the Property is a "low risk" for Contamination, CDC must submit the results of the Environmental Investigation to SBA with recommendations and seek SBA's concurrence.

b) If the Records Search with Risk Assessment concludes that the Property is an "elevated risk" or "high risk" for Contamination, CDC must obtain a Phase I ESA.

5. Transaction Screen Results

a) If the Environmental Professional conducting the Transaction Screen concludes that no further investigation is warranted, the CDC must submit the results of the Environmental Investigation to SBA with recommendations and seek SBA's concurrence.

b) If the Environmental Professional conducting the Transaction Screen concludes that further investigation is warranted, the CDC must obtain a Phase I ESA.

6. Phase I ESA Results

a) If the Environmental Professional conducting the Phase I ESA concludes that no further investigation is warranted, the CDC must submit the results of the Environmental Investigation to SBA with recommendations and seek SBA's concurrence.

b) If the Environmental Professional conducting the Phase I ESA concludes that further investigation is warranted (typically a Phase II), and the CDC still wants to make the loan, the CDC must proceed as recommended by the Environmental Professional, or in the alternative submit the results of the Environmental Investigation to the SBA with recommendations and seek SBA's concurrence. In general, SBA will require compliance with all of an Environmental Professional's recommendations (including "housekeeping measures," such as secondary containment, decommissioning monitoring wells, sealing floor drains, etc.). In the rare instance where an exception may be warranted, CDCs must provide a rationale for not wanting to follow the Environmental Professional's recommendation.

For further information please contact: New England Certified / BDC Capital -- 500 Edgewater Drive, Suite 555, Wakefield, MA 01880 (781)928-1100 x102 / fax (781)928-1101 www.newengland504.com

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Appendix 3 SOP 50 10 5(A) **APPENDIX 3: RELIANCE LETTER**

[Letterhead of Environmental Professional or Environmental Professional's Firm]

RELIANCE LETTER

[Date]

To: [Lender/CDC Name and Address] ("Lender")

and

U.S. Small Business Administration ("SBA")

Re: Borrower Name:

Project Address ("Property"):

Environmental Investigation Report Number(s):

Dear Lender and SBA:

[Name of Environmental Professional] ("Environmental Professional") meets the definition of an Environmental Professional as defined by 40 C.F.R. § 312.10(b) and has performed the following "Environmental Investigation(s)" (check all that apply):

____ A Transaction Screen of the Property dated _____, 20____, conducted in accordance with ASTM International's most recent standard (currently ASTM E1528-06);

____ An Phase I (or an Updated Phase I) Environmental Site Assessment of the Property dated _____, 20____, conducted in accordance with ASTM International's most recent standard (currently ASTM E1527-05). In addition, the Environmental Professional has addressed the performance of the "additional inquiries" set forth at 40 C.F.R. § 312.22;

____ A Phase II Environmental Site Assessment of the Property dated _____, 20____, conducted in accordance with generally-accepted industry standards of practice and consisting of a scope of work that would be considered reasonable and sufficient to identify the presence, nature and extent of a Release.

Reliance by SBA and Lender. Environmental Professional (and Environmental Professional's firm, where applicable) understand(s) that the Property may serve as collateral for an SBA guaranteed loan, a condition for which is an Environmental Investigation of the Property by an Environmental Professional. Environmental Professional (and Environmental Professional's firm, where applicable) authorize(s) Lender and SBA to use and rely upon the Environmental Investigation. Further, Environmental Professional (and Environmental Professional's firm, where applicable) authorize(s) Lender and SBA to release a copy of the Environmental Investigation to the borrower for information purposes only. This letter is not an update or modification to the Environmental Investigation. Environmental Professional (and Environmental Professional's firm, where applicable) makes no representation or warranty, express or implied, that the condition of the Property on the date of this letter is the same or similar to the condition of the Property described in the Environmental Investigation.

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Insurance Coverage. Environmental Professional (and/or Environmental Professional's firm, where applicable) certifies that he or she or the firm is covered by errors and omissions liability insurance with a minimum coverage of \$1,000,000 per claim (or occurrence) and that evidence of this insurance is attached. As to the Lender and SBA, Environmental Professional (and Environmental Professional's firm, where applicable) specifically waive(s) any dollar amount limitations on liability up to \$1,000,000.

Waiver of Right to Indemnification. Environmental Professional and Environmental Professional's firm waive any right to indemnification from the Lender and SBA.

Impartiality. Environmental Professional certifies that (1) to the best of his or her knowledge, Environmental Professional is independent of and not a representative, nor an employee or affiliate of seller, borrower, operating company, or any person in which seller has an ownership interest; and (2) the Environmental Professional has not been unduly influenced by any person with regard to the preparation of the Environmental Investigation or the contents thereof.

Acknowledgment. The undersigned acknowledge(s) and agree(s) that intentionally falsifying or concealing any material fact with regard to the subject matter of this letter or the Environmental Investigations may, in addition to other penalties, result in prosecution under applicable laws including 18 U.S.C. § 1001.

Environmental Professional
Printed Name:

(Note: The Environmental Professional must always sign this letter above. If the Environmental Professional is employed or retained by an Environmental Firm, then an authorized representative of the firm must also sign below).

Signature of representative of firm who is authorized to sign this letter
Printed Name & Title:
Name of Environmental Firm:

Enclosure: Evidence of Insurance

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APPENDIX 4:

NAICS CODES OF ENVIRONMENTALLY SENSITIVE INDUSTRIES

How to determine if an industry is included on this list:

- A 3 digit NAICS code includes all industries beginning with those 3 digits.
- A 4 digit NAICS code includes all industries beginning with those 4 digits.
- A 5 digit NAICS code includes all industries beginning with those 5 digits.
- A 6 digit NAICS code includes only that industry under that industrial code.

211 OIL & GAS EXTRACTION
212 MINING (EXCEPT OIL & GAS)
213 SUPPORT ACTIVITIES FOR MINING
237 HEAVY & CIVIL ENGINEERING CONSTRUCTION
311 FOOD MANUFACTURING (*if underground fuel tanks present*)
312 BEVERAGE & TOBACCO PRODUCT MANUFACTURING
313 TEXTILE MILLS
314 TEXTILE PRODUCT MILLS
316 LEATHER & ALLIED PRODUCT MANUFACTURING
321 WOOD PRODUCT MANUFACTURING (*if finishing occurs on site*)
322 PAPER MANUFACTURING
323 PRINTING & RELATED SUPPORT ACTIVITIES
324 PETROLEUM & COAL PRODUCTS MANUFACTURING
325 CHEMICAL MANUFACTURING
326 PLASTICS & RUBBER PRODUCTS MANUFACTURING
327 NONMETALLIC MINERAL PRODUCTS MANUFACTURING
331 PRIMARY METAL MANUFACTURING
332 FABRICATED METAL PRODUCT MANUFACTURING
333 MACHINERY MANUFACTURING (*not required if assembly only*)
334 COMPUTER & ELECTRONIC PRODUCT MANUFACTURING (*not required if assembly only*)
335 ELECTRICAL EQUIPMENT, APPLIANCE & COMPONENT MANUFACTURING (*not required if assembly only*)
336 TRANSPORTATION EQUIPMENT MANUFACTURING
337 FURNITURE & RELATED MANUFACTURING (*if finishing occurs on site*)
339 MISCELLANEOUS MANUFACTURING (*only required if hazardous materials are involved*)
42311 AUTOMOBILE & OTHER MOTOR VEHICLE MERCHANT WHOLESALERS (*if service bays present*)
42314 MOTOR VEHICLE PARTS (USED) MERCHANT WHOLESALERS
4235 METAL & MINERAL MERCHANT WHOLESALER
42393 RECYCLABLE MATERIAL MERCHANT WHOLESALER
4246 CHEMICAL & ALLIED PRODUCTS MERCHANT WHOLESALERS
4247 PETROLEUM & PETROLEUM PRODUCTS MERCHANT WHOLESALERS
441 MOTOR VEHICLE AND PARTS DEALERS (*if service bays present*)
447 GASOLINE STATIONS 45431 FUEL DEALERS
481 AIR TRANSPORTATION
482 RAIL TRANSPORTATION
486 PIPELINE TRANSPORTATION
53212 TRUCK, UTILITY TRAILER, AND RV (RECREATIONAL VEHICLE) RENTAL & LEASING (*if repairs, maintenance or vehicle washing are performed onsite*)
53241 CONSTRUCTION, TRANSPORTATION, MINING & FORESTRY MACHINERY & EQUIPMENT RENTAL & LEASING (*if repairs, maintenance or vehicle washing are performed onsite*)
53249 OTHER COMMERCIAL & INDUSTRIAL MACHINERY & EQUIPMENT RENTAL & LEASING (*if repairs, maintenance or vehicle washing are performed onsite*)
54138 TESTING LABORATORIES
56171 EXTERMINATING & PEST CONTROL
562 WASTE MANAGEMENT & REMEDIATION SERVICES
6221 GENERAL MEDICAL & SURGICAL HOSPITALS (*if fuel tanks are present*)
71391 GOLF COURSES & COUNTRY CLUBS
71392 SKIING FACILITIES
71393 MARINAS
7212 RV (RECREATIONAL VEHICLES) PARKS & RECREATIONAL CAMPS (*if fuel tanks are present or if vehicle repairs or maintenance is performed onsite*)
8111 AUTOMOTIVE REPAIR & MAINTENANCE
8112 ELECTRONIC & PRECISION EQUIPMENT REPAIR & MAINTENANCE (*not required if assembly only*)
8113 COMMERCIAL & INDUSTRIAL MACHINERY & EQUIPMENT REPAIR & MAINTENANCE
8122 DEATH CARE SERVICES
8123 LAUNDRY & DRY CLEANING SERVICES (*if dry cleaning operations on-site*)
812921 PHOTOFINISHING LABORATORIES (*except one hour*)

***A PHASE I SHOULD ALWAYS BE OBTAINED IF THE BUSINESS SELLS, SUPPLIES OR DISPENSES FUEL, GAS, HEATING OIL OR LIQUEFIED PETROLEUM (LP) GAS, EVEN IF THE NAICS CODE FOR THE BUSINESS IS NOT IDENTIFIED ON THIS LIST OF ENVIRONMENTALLY SENSITIVE INDUSTRIES ***

A COMPLETE LIST OF INDUSTRIES AND CORRESPONDING NAICS CODES IS AVAILABLE ONLINE AT
<http://www.census.gov/naics/2007/NAICOD07.HTM>