

# Envir INSIGHT

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## Environmental Changes in the New SBA SOPs

**E**ffective October 1, 2010, the SBA issued changes to the environmental due diligence Standard Operating Procedures (SOPs) process in the new SBA SOP 50 10 (C). From an environmental due diligence perspective, there were several changes that can impact a bank's process.

The Environmentally Sensitive Industries table now clarifies that a property with a history of dry cleaning is considered Environmentally Sensitive, even if dry cleaning is not currently performed at the property. As a result, the SBA SOPs require a full Phase I Environmental Site Assessment at any collateral site with a historic dry cleaning operation regardless of loan size.

In many scenarios, the new SBA SOPs lower the total cost of the environmental due diligence process when an Environmental Questionnaire identifies a potential environmental concern. In the previous SOPs, when environmental concerns were identified on the Environmental Questionnaire, a Transaction Screen Assessment (TSA) prepared to ASTM 1528-06 standard was the next level of minimum due diligence. While TSAs are not eliminated from the SBA process, the minimum requirement is now a Records Search with Risk Assessment (RSRA) when environmental concerns are identified on the Environmental Questionnaire. Considering that a TSA can cost on average between \$900 to \$1,500 per site, and a RSRA can cost on average between \$500 to \$750 per site, this change does represent an overall reduction in environmental due diligence costs.

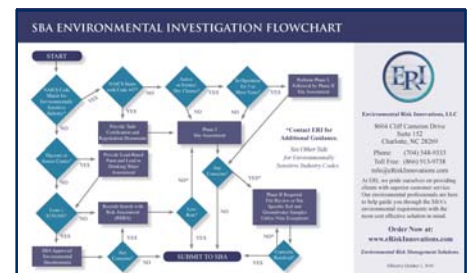
The TSA is still an important part of the environmental due diligence process for SBA transactions. When a potential environmental concern is identified on the questionnaire, an Environmental Professional should be consulted to determine which level of due diligence (RSRA, TSA or Phase I Environmental Site Assessment) is the most appropriate for the type of environmental concern identified.

The new SOPs also clarify what type of Environmental Professional is required to complete a Phase II Subsurface Environmental Site Assessment at a dry cleaning facility. Only an Environmental Professional who holds a current Professional Engineer or Professional Geologist license and has the equivalent of three years of full time relevant experience is allowed to conduct a Phase II under the SBA SOPs.

Overall, the changes that were included in the new SBA SOPs should result in a reduction in costs for many small business borrowers. A PDF copy of the new SOP 50 10 5 (C) can be found at <http://www.sba.gov/tools/resourcelibrary/sops/index.html>.

*For assistance addressing the SBA's new requirements, contact us at 866.913.9738. ■*

**Request Your Free SBA Flowchart Today!**  
See Page 2 for details.



**Environmental Risk Innovations, LLC**  
8604 Cliff Cameron Drive  
Suite 152  
Charlotte, North Carolina 28269

Phone: 866.913.9738  
Fax: 704.593.1650

Web: [www.eRiskInnovations.com](http://www.eRiskInnovations.com)  
email: [info@eRiskInnovations.com](mailto:info@eRiskInnovations.com)



# SBA Lead Testing Requirements

**D**ue to the hazards associated with lead, the federal government banned lead-based paint from housing in 1978. Peeling and chipping paint and lead dust pose serious health hazards if not addressed. Homes and businesses with lead pipes and/or lead solder provide a pathway for lead to be released into drinking water.

The Small Business Administration (SBA) Standard Operating Procedures (SOPs) require lead assessments for “Special Use Facilities” constructed prior to 1980. Special Use Facilities include facilities used as childcare centers or nursery schools. The SBA also recognizes residential care facilities constructed prior to 1980 as facilities having increased lead exposure risk.

The required lead assessments include a lead-based paint risk assessment and testing for lead in drinking water. Lead risk assessments should be conducted based on guidelines established by the U.S.

Department of Housing and Urban Development. The risk assessment focuses on the potential dust hazards that may result from peeling or damaged paint. An inspection for lead based paint, although not specifically required, includes surveying a facility and testing building components such as walls, doors and windows with an X-Ray Fluorescence analyzer (XRF). Paint or other coatings with lead levels above an established threshold are considered lead-based paint. Water samples should be collected from drinking water outlets and analyzed in a certified laboratory for lead.

SBA SOPs state, “disbursement will not be authorized unless the risk for lead exposure to infants and small children has been sufficiently minimized.” Compliance with the new SOPs will help ensure a smooth closing process while reducing the health risks to occupants at collateral property.

*For additional information regarding lead-based paint, contact us at 866.913.9738. ■*



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# How Old is Too Old for Environmental Reports?

**C**ommercial lenders often receive dated environmental reports on proposed collateral real estate. Often these reports are two or more years old and prepared for the borrower or third parties. Lenders often question whether a new Phase I environmental site assessment (ESAs) is necessary or if an older Phase I will satisfy the bank’s due-diligence needs.

The industry standard for Phase I ESAs, ASTM E-1527-05, indicates that a Phase I requires an update after 6 months, and lenders are generally required to adhere to that timeline for loans involving the SBA. The primary objective of the ASTM standard is to ensure that purchasers of real estate qualify for legal protections from environmental liability. However, in a pre-lending situation for non-SBA loans, banks are generally focused on determining the environmental risk to collateral value.

Although the 6-month shelf life may be appropriate for real estate acquisitions, SBA loans, and foreclosures, lenders have generally extended the shelf life of Phase I ESAs. Even in the conservative CMBS market, a one-year shelf life is commonly used by CMBS underwriters and rating agencies.

How long can the shelf life be extended for commercial real estate transactions? The answer depends on the bank’s internal policies, the collateral property type, and transaction specific information such as loan size.

Many smaller banks do not have internal or outsourced environmental risk managers. For these banks, the optimal policy is generally more stringent to ensure consistency throughout the bank. A one-year shelf life may be an appropriate guideline for many transactions within these smaller institutions.

Banks that maintain internal or outsourced environmental risk managers can prudently allow more flexibility on dated reports. An environmental risk manager may utilize available online services and other current property information to update some information in an older Phase I. Upon acquiring this updated information, the environmental risk manager can use his or her independent, professional judgment to determine whether the existing assessment is sufficient.

While many banks adhere to a one- or two-year shelf life for Phase I ESAs, the decision is ultimately one best addressed by the individual bank during the development of its internal environmental risk policy. ■



## Environmental Risk Innovations, LLC

8604 Cliff Cameron Drive

Suite 152

Charlotte, North Carolina 28269

### ABOUT US

ERI is the nation's premier environmental risk management consulting firm, specializing in risk management services for commercial lenders. ERI's environmental risk professionals all have extensive experience in the area of commercial lending. Our expertise in the evaluation of environmental risk uniquely qualifies us to assist lenders in the development of environmental policies, custom tailored to their risk tolerance and standard commercial lending practices.

ERI understands that due diligence and risk mitigation is just one small, but important element of real estate transactions. ERI is familiar with the critical deadlines that loan officers face and the challenge to close a transaction in a timely manner. Our professionals are experienced in supplying high quality, rapid response due diligence to meet these deadlines.

ERI prides itself on customer service and flexibility to match each customer's specific needs. Outsourcing environmental risk management services allows our clients to focus on their core competencies and primary business objectives surrounding the successful execution of commercial loans.

Contact Us Today! 866.913.9738

### NEW & NOTEWORTHY



ERI's sister company (The EI Group, Inc.) recently became a member of the U.S. Green Building Council (USGBC)! As a member of the USGBC, we are committed to supporting sustainable practices that are environmentally responsible and profitable as we all strive to live and work in healthier environments. This edition of the **EnviroInsight** was printed on certified sustainable paper, allowing us to reduce our environmental output by:

- **One quarter ton of wood:** Two trees that supply enough oxygen annually for one adult human being!
- **350 gallons of water:** Enough to take 40 average showers!
- Enough **BTUs** of energy to power the average American household for one full week!
- **49 pounds of solid waste:** Enough to fill three 16-gallon garbage cans!



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