



ERIS
WEBINARS

Let's Talk About:
**Environmental Due Diligence
for SBA Loans**

Q&A - April 29, 2021

1. Many banks say they want to use local knowledge environmental experts but if we are not on their list they will not even consider our company. Any thoughts or is there a site that we can be pre-approved for a Phase I ESA writer?

This seems to be more of an issue with creating a relationship with the lender vs. anything SBA related.

2. Doesn't that get in the way since E-1527 specifically states 180 day shelf life?

SBA's requirements are separate and distinct from the shelf life requirements of the ASTM and EPA standards. SBA's environmental policies and procedures are minimum requirements. The borrower/lender may wish to comply with ASTM and EPA standards to provide the borrower with All Appropriate Inquiries innocent landowner protections. The important thing to remember is that the SBA SOP is the minimum standard to meet. If a lender has a more stringent policy, they should follow that.

3. Does the RSRA need to be performed by a third-party vendor or can a lender with EPs onstaff conduct the RSRA?

SBA may consider RSRAs conducted by on-staff EPs on a case-by-case basis, however, SBA's definition of Environmental Professional requires the EP to be impartial and this may prevent use of in-house Environmental Professionals in certain circumstances.

4. Is there a standard for the RSRA, if not, does the SBA have a preferred example format?

The definition of RSRA in Appendix 4 outlines SBA's requirements for an RSRA. SBA does not have a specific template.

5. Do RSRA assessments require the SBA Reliance Letter?

No

6. How does SBA define an environmental professional?

The definition of an Environmental Professional can be found in Appendix 4 of SOP 50 10 6.

7. Would the questionnaire be rejected if it's not completed by the lender/CDC? (For example, if the lender/CDC could not visit the property due to COVID)

A full explanation of the requirements for the Environmental Questionnaire can be found in Appendix 4 under the definition of Environmental Questionnaire.

8. Is the "false statement" only required in the environmental questionnaire scope?

The False Statement Certification was added as a requirement to be included in the Environmental Questionnaire in SOP 50 10 6. SBA's Template Reliance Letter also contains a false statement certification requirement.



9. With respect to migration, if the only identified REC is possible migration from an off-site source, will SBA always require that to be investigated even with state migration exemptions?

The answer to this would largely depend on the circumstances.

10. For active gas stations is there specific language the SBA needs when a Phase II ESA is not recommended and the USTs are considered a BER based on the lack of indication of a release. I have seen many reports come back looking for very specific wording regarding compliance and testing.

Other than the requirement that the EP reach a conclusion in a Phase I, which is described in SOP 50 10 6 at page 541, SBA does not require any specific language. The recommendation should be thoroughly explained.

11. If reliance to SBA is stated in report, why do you need an independant reliance letter?

The Reliance Letter requirement applies to all Transaction Screens, Phase Is and Phase IIs. Environmental firms may not place limits on the ability to rely upon environmental reports or limits on liability for an erroneous report. Environmental firms also sometimes include indemnification provisions in their service contracts that could potentially violate the federal anti-deficiency act. The Reliance Letter standardizes matters and spares SBA from the time consuming effort of scrutinizing individual reports for this language. The Reliance Letter holds all Environmental Professionals to the same standard.

12. Are there any guidelines to consultants for 'low risk' vs 'elevated risk' vs 'high risk' conclusions in an RSRA?

No, SBA relies on the Environmental Professional's judgment with respect to the risk determination.

13. If there are previous environmental reports, clean Phase I ESA and clean Phase II ESA, can you still do a RSRA? No environmental sensitive NAICs code. Do the RSRA, summarize previous environmental reports within the RSRA, good?

If RSRA is the correct starting point for the investigation pursuant to SBA's Environmental Policies and Procedures, and there are older Phase I and Phase II reports available to the EP, the EP can address those reports and use that information in the RSRA to come to a conclusion.

14. Who is responsible for the section E6 write up, the lender or the consultant?

The lender is the party that submits the E.6 write-up to SBA but the consultant could prepare or assist the lender in preparing the E.6. write-up.

15. Can you provide an electronic link to download the SOP that is being referenced?

Lender and Development Company Loan Programs ([sba.gov](https://www.sba.gov))



16. Does not groundwater contamination originating from an offsite source decrease the collateral value of the SBA loan you are trying to make?

Groundwater contamination originating offsite could potentially impact the value of the collateral. The specific impact on the collateral value would be a loan underwriting issue to be analyzed.

17. Regarding Mitigating Factor "g," can you discuss why SBA limited this factor to groundwater contamination?

While mitigating factor "g" is presently limited to groundwater contamination, SBA may consider utilizing this mitigating factor for other types of contamination originating off-site on a case-by-case basis through a request to the Environmental Committee

18. We are uncomfortable with the requirement to sign a dictated (non-modifiable) Reliance Letter, one that often exceeds the protections provided to our client. We recently have been threatened to sign the letter with no modifications, or else our client would be told to find another consultant for a new Phase I, one that will sign a reliance letter. This approach is not reasonable or helpful to small consulting firms, just comes across as risk transfer (signed right-to-sue letter, with insurance benefits far in excess of project profits). Do you tell your pharmacist to sign a prescription that they did not prepare? If a consulting firm in not worried about their risks, why would you trust them to review your risks??

The Reliance Letter requirement has been in effect for more ►

► than 13 years. We understand that some Environmental Professionals are uncomfortable with it but there are many willing to sign it. The agency has determined that this is one of the best ways to mitigate the risk to the taxpayer.

19. What about Asbestos Containing Building Materials?

SBA does not have a specific policy regarding asbestos materials. If the EP puts in specific recommendations regarding asbestos materials as a housekeeping measure the borrower must comply with those recommendations. If circumstances warrant, an exception to policy may be sought by reaching out to environmentalappeals@sba.gov.

20. If a Phase II (soil and groundwater testing) indicates that no contamination is present, is a No Further Action Letter from the State required for lending?

Not necessarily, depends on the circumstances.

21. Vapor topic - If the suspected issue is not a SP issue (as confirmed via Phase I) then is a vapor only study acceptable as the Phase II?

The answer is largely dependent on the circumstances and would be better answered by the engineers in the Sacramento Loan Processing Center. If you would like to provide more details please send your question to environmentalappeals@sba.gov.



22. You mentioned a professional geologist; however, how does the SBA handle this in states that don't recognize PGs, such as CT.

A Professional Engineer may also perform the Phase II for a dry cleaner. Outside the drycleaner context, SBA recognizes differences in state requirements in the context of the no further action letter, where SBA allows the "state equivalent" of a no further action letter. A state equivalent of a closure letter includes a written determination from a licensed professional in those jurisdictions that delegate authority to such professionals for site closures.

23. Why is it important to understand soil or groundwater contamination that is contributing vapor? Especially where there is a regulatory exception for groundwater contamination (for instance, in Ohio the entire city of Cleveland has an urban setting designation which means GW does not deal with). If we determine there is soil contamination and its underneath a building - what do we do with those data?

The answer is largely dependent on the circumstances and would be better answered by the engineers in the Sacramento Loan Processing Center. If you would like to provide more details please send your question to environmentalappeals@sba.gov.

24. Does the SBA make their own determination on whether or not RECs exist from a Phase I ESA, or solely rely on the EP determinations? Some consultants in protecting land owners find no RECs (thus no Phase II) when clearly there are associated environmental concerns.

In general, SBA relies on the judgment/conclusions of the Environmental Professional. For certain loan programs, SBA's environmental engineers review the environmental reports and may require additional information or investigation.

25. Loan of 70% is not hard to get, from the lending Bank. But to get 95%, SBA loan is required?

Not sure how to answer this. This appears to be a statement rather than a question

26. Can a PE do a Phase II or just a PG?

A Professional Engineer may also perform the Phase II for a dry cleaner. Outside of the drycleaner context, an Environmental Professional may perform a Phase II. The full definition of an Environmental Professional can be found in Appendix 4 of SOP 50 10 6.

27. Any special requirements to address PFAS or emerging contaminants?

SBA does not currently have any special requirements pertaining to PFAS.



28. Have you updated the NAICS list for potential PFAS sources?

SBA has not yet updated the NAICS Code list for potential PFAS contamination.

29. Our clients agree to Limit of Liability of \$100,000, which is reasonable for Phase I efforts/profits. SBA asks for \$1,000,000 in the RL. Relying on opinion is one thing, but insurance coverage is attainable elsewhere.

Not sure how to answer. This appears to be a statement rather than a question.

30. Can you speak to how SBA views properties in the brownfield program?

SBA encourages the redevelopment of brownfields, and SBA Loan guarantees are available to small businesses interested in locating on revitalized brownfields. Typically, this occurs through utilization of one or more of the nine Mitigating Factors for disbursement in the presence of contamination.

31. We have told clients we will not sign SBA RL, in BOLD and underlined text, but they and the bank do not tell us this is an SBA loan, until the last minute and it becomes a crisis. Then we are the bad guy.

Not sure how to answer. This appears to be a statement rather than a question.





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