



What does a “clean” phase one Environmental Site Assessment (ESA) mean? - by Chuck Merritt

June 07, 2016 - Long Island (<https://nyrej.com/section/LI>)

Over the years I have heard from lenders and real estate investors that they have in their possession a “clean” phase one Environmental Site Assessment (ESA). Upon review, many times it turns out they have something less. The idea that a phase one is “clean” is somewhat of a misstatement. The better way to describe that report is, “I have a phase one report in which the consultant who prepared the report does not believe any further evaluation (phase two investigation) is necessary” How a consultant arrived at that conclusion can be based on many factors including experience, understanding the intent of their client, amount of research done regarding regulatory agency records that may be available regarding the past history of a site, etc.



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The environmental consulting industry and those that prepare phase one ESA's generally follow the American Society of Testing Materials (ASTM) standards. The first standard was released in 1994 and was designed to create an apples to apples approach as to what should be included in the ESA. The standard has been amended several times over the past few decades with the latest version being released in the fall of 2013 (implementation date of October 2015). So if a report pre-dates the latest version, or was not prepared in accordance with that standard, it may not meet all the nuances required in today's phase one reports. So that “clean” phase one would need to be looked at again.

As the ASTM standards have evolved, so has the expectation of what an ESA should include has. When looking at that “clean” phase one, the question needs to be asked who it was prepared for? For example, the same vacant parcel of land in a metropolitan area can have two different outcomes depending on who the client may be. In a refinance of a property for a lending institution, the results may very well state no Recognized Environmental Conditions (REC's) were discovered based on the parameters of the standard. A consultant representing a purchaser of the same parcel of land may have a different outcome in the report or provide a statement about the Business Environmental Condition (BREC) that may exist.

A BREC is defined as a risk which can have a material environmental or environmentally-driven impact on the business associated with the current or planned use of a parcel of commercial real estate not necessarily limited to those environmental issues required to be investigated in this

practice. Consideration of business environmental risk issues may involve addressing one or more non-scope considerations.

This is where a consultant is communicating that the property did not demonstrate the existence of any Recognized Environmental Concerns (REC's) such as an historical gasoline station or current dry-cleaning tenant using the solvent perchloroethylene or PERC. Yet outlining that should a development take place in the future the client needs to understand what lies beneath the surface. Issues that may not be uncovered in the scope of the phase one, such as historic urban fill material may be present and need to be addressed as part of the excavation and disposal can escalate the costs. Although not typically required to be reported to any environmental regulatory agency if present, the material cannot usually be disposed of as normal construction debris. Buyers of property should be interested in this information as it can impact the cost of development.

In a recent foreclosure situation, a "clean" phase one report prepared for a lending institution several years ago during a loan origination did not recommend any additional evaluation of a property with an active dry cleaning tenant. As it turned out, the owner of the property who also owned the dry cleaning business had several violations for improperly storing the toxic solvent on site. A review of the local health department records revealed that the drums leaked into the soil and groundwater migrating to adjacent properties in the neighborhood. This had been occurring for several years before the environmental report had been prepared. However, since no local regulatory files were requested by the consultant, the report submitted did not point out this condition. This is a situation that occurs frequently for a variety of reasons. During a foreclosure is not the time a lender wants to find out about this kind of impact at the site. The reason the lender ordered the phase one was in case of a foreclosure they would be confident no environmental conditions (contamination) existed

So beware of the "clean" phase one report and understand that it boils down to one person or one firm's opinion on whether or not further investigation is warranted. Only a comprehensive phase two investigation including soil, groundwater and air samples can truly determine if a site is "clean."

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