

Environmental consulting first half of 2026 is in the books - by Chuck Merritt



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As we reach the halfway point of 2026, there are some observations about environmental consulting and the commercial real estate industry that are worth pointing out. Activity has been increasing for a variety of reasons, including the fact that interest rates have been stable (although still a bit high for many), real estate investors don't like sitting on the sidelines for too long, and the fact that there will not be another presidential election until 2028. In addition, many deals with low-interest loans from right after the pandemic are being re-priced at a much higher interest rate, in which owners may be faced with the prospect of selling the property.

As previously outlined, the current ASTM E1527-21 standard went live in February of 2024 and just reached its second anniversary in the marketplace. As activity has picked up for both investors and lending institutions, there is more awareness of the new standard and what is required. Those changes have been discussed in previous articles I have written for NYREJ, but to paraphrase, purchasers have

more tools than ever before to utilize as part of their environmental due diligence. Technology, awareness that the past ASTM E-1527 standard needed updating, and the potential of forever chemicals such as PFAS and PFOA being used in the past are all part of this "better consulting" taking place. The phase 1 Environmental Site Assessment (ESA) is being looked at more as the starting point vs the end-all report for a buyer. Even with what is deemed a "Clean" ESA, consultants are having conversations with their clients about conducting more investigation (the phase 2).

For example, a vacant lot in the five boroughs that will be developed is a candidate for additional investigation. Soil and groundwater samples should be considered, as excavation of soil to be disposed of will face greater scrutiny. Disposal facilities require sampling before accepting material, and manifesting of the material being disposed is now required by many building departments as well as environmental regulatory agencies. Understanding what is in that soil while conducting due diligence and negotiating with the seller is a better time to have this data. Groundwater sampling (depending on the depth) can help determine if any impact (contamination) exists under the property from prior historical operations, but at the property and nearby operations. Although the buyer may not be required to clean up contamination caused by others, there can still be concerns. Will a ventilation system known as a Sub Slab Depressuriza-

tion System (SSDS) be required to protect occupants of the new structure from dangerous vapors emanating from beneath the site? Will a lender be concerned and decide not to make the loan, or require a large escrow to be established until the issue is resolved?

Lenders have different tools at their disposal for understanding and ultimately mitigating their risk when it comes to environmental concerns. When entertaining a loan on a purchase, the lender may rely on the reports prepared directly for the borrower with a reliance letter addressed to them. In addition, lenders may seek a firm on their list to review phase 1 and 2 reports and opine to their client. Larger lending institutions may also have the capacity to review the reports with In-house staff who have this expertise. In my opinion, this should be a cooperative effort between the borrowers' and lenders' advocates to achieve the objective of closing the loan. In some situations, environmental insurance may be the tool everyone agrees with.

A common mistake in the industry is utilizing older environmental reports to mitigate a buyer and their lender's concerns. To start, any report not adhering to the most current standard will not meet the All-Appropriate Inquiry (AAI) definition and provide the CERCLA protection a buyer should be seeking. Real estate attorneys preparing contracts will be familiar with this. Typically, when a newer ESA points out an issue, a seller may present a report from a prior refinance that did not identify any environmental concerns,

defined as Recognized Environmental Concerns (RECs). Many times, these reports were prepared for lenders that no longer exist by consulting firms that also no longer exist. Even if the consulting firm is still in business, the chances that they will stand behind that report (with new standards in place) are pretty slim. Sellers are naturally skeptical of letting buyers conduct a phase 2 investigation in any case, let alone when they believe from a past report that a lender commissioned and closed on without any recommendations. Consultants operating in 2026 have the challenge of explaining to their clients the benefit of conducting the extra investigation. The common example I use with clients is that of an old roof survey. If a seller presented such a report that was 10 years old, would a buyer believe the roof is still in the same condition today? No, they would want their own expert to advise them, as a new roof can be expensive. So can environmental issues that may not have yet been discovered.

As we celebrate America's 250th birthday and begin the second half of the year, commercial real estate should remain a strong investment, and lenders of all shapes and sizes appear more eager to entertain commercial real estate loans. By the time everyone gets used to this ASTM environmental standard, the next one should be rolling out sometime in 2029-2030.

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