



**Lender and Development Company Loan Programs
U.S. Small Business Administration
Office of Financial Assistance
August 1, 2008**

ENVIRONMENTAL POLICIES AND PROCEDURES FOR 7A LOANS

These environmental policies and procedures apply to all lenders on all 7(a) loan programs, except where otherwise indicated. Failure to comply with the provisions of this paragraph may result in a denial of SBA's guaranty.

a) Definitions

Terms that are capitalized in this paragraph are defined in the "Definitions" section in Appendix 2.

b) The Risks of Environmental Contamination include:

1. The costs of Remediation could impair the borrower's ability to repay the loan and/or continue to operate the business;
2. The value and marketability of the Property could be diminished. If the borrower defaults, lender or SBA might have to abandon the Property to avoid liability or accept a reduced price for the Property;
3. Lender or SBA could be liable for environmental clean-up costs and third party damage claims arising from Contamination if title to contaminated Property is taken as a result of foreclosure proceedings and/or lender or SBA exercises operational control at the Property; and
4. If a Governmental Entity cleans a site, it may be able to file a lien for recovery of its costs which may be superior to SBA's lien.

c) Environmental Investigations

SBA requires an Environmental Investigation of all commercial Property upon which a security interest such as a mortgage, deed or trust, or leasehold deed of trust is offered as security for a loan or debenture. The type and depth of an Environmental Investigation to be performed varies with the risks of Contamination. This paragraph provides minimum standards. Prudent lending practices may dictate additional Environmental Investigations or safeguards.

d) Submission of Environmental Investigation Reports

Lender (except on PLP, SBA Express and Pilot Loan Program loans) must submit the Environmental Investigation Report to the SBA Center processing the application. 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.

e) The Steps of an Environmental Investigation

NAICS Codes. For all Property *except* units in a multi-unit building, Lender 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 multiunit building, Lender may proceed directly to paragraphs 2(i) and (ii) 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), lender must comply with "Requirements Pertaining to Gas Station Loans" in Appendix 5.

2. If there is not a NAICS code match to an environmentally sensitive industry, the lender must proceed as follows:
 - i. If the loan amount is **up to and including** \$150,000, the Environmental Investigation may begin with an Environmental Questionnaire.
 - ii. 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.

Environmental Questionnaire Results. If the Environmental Questionnaire reveals it is unlikely that there is environmental contamination At the site and that no further investigation is warranted, lender 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, lender must obtain, at a minimum, a Transaction Screen.

Environmental Questionnaire & Records Search with Risk Assessment Results

1. If the Environmental Questionnaire reveals that it is unlikely that there is environmental contamination at the site and that no further investigation is warranted, and the Records Search with Risk Assessment concludes that the Property is a "low risk" for Contamination, lender must submit

the results of the Environmental Investigation to SBA with recommendations and seek SBA's concurrence.

2. If the Records Search with Risk Assessment concludes that the Property is a "high risk" for Contamination, lender must obtain a Phase I ESA.

Transaction Screen Results

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

Phase I ESA Results

1. If the Environmental Professional conducting the Phase I ESA concludes that no further investigation is warranted, the lender must submit the results of the Environmental Investigation to SBA with recommendations and seek SBA's concurrence.
2. If the Environmental Professional conducting the Phase I ESA concludes that further investigation is warranted (typically a Phase II), and the lender still wants to make the loan, the lender 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, lenders must provide a rationale for not wanting to follow the Environmental Professional's recommendation.

Phase II ESA Results

1. If the Environmental Professional conducting the Phase II ESA concludes that no further investigation is warranted, the lender must submit the results of the Environmental Investigation to SBA with recommendations and seek SBA's concurrence.
2. If the Phase II ESA reveals Contamination and the lender still wishes to make the loan, lender must ensure that the Environmental Professional has documented:

- i. Whether the Contamination quantities exceed the reportable or actionable levels;
 - ii. Whether Remediation is necessary;
 - iii. An estimate of any Remediation costs (Environmental Professionals may use ASTM E2137-01 Standard Guide for Estimating Monetary Costs and Liabilities for Environmental Matters); and
 - iv. The projected completion date of any Remediation.
3. If the Environmental Investigation reveals Contamination, the lender should determine whether disbursement is appropriate under one or more of the factors identified in subparagraph “g.,” “Approval and Disbursement of loans when there is Contamination or Remediation at the Property”.

If at any stage of the Environmental Investigation SBA concurs with a lender’s recommendation that **environmental risk has been sufficiently minimized** and that **no further investigation is required**, the loan may be disbursed.

f) Legal Responsibilities of SBA Field Counsel and Center Counsel

With respect to environmental investigations that are required to be submitted to an SBA Loan Processing Center, SBA loan processing personnel must obtain field counsel or center counsel’s opinion as to the adequacy of an Environmental Investigation and whether the risk of Contamination, if any, has been sufficiently minimized.

g) Approval and Disbursement of loans when there is Contamination or Remediation at the Property

Loans may not be approved or disbursed if there is Contamination or on-going Remediation at the Property unless the risks have been minimized to the satisfaction of SBA Loan Processing Center personnel after consulting with and obtaining the concurrence of SBA field counsel or center counsel. Lenders seeking loan approval or disbursement authority despite Contamination or on SOP going Remediation at the Property must submit a recommendation to SBA that includes, at a minimum, a discussion of the following:

Nature and Extent of the Contamination including copies of the following documents pertaining to the Property:

1. All relevant Environmental Investigation Reports;
2. All Government Entity correspondence;

Remediation

1. Recommended method of Remediation;
2. Status of on-going Remediation, if any;
3. Environmental Professional’s estimated cost of Remediation;

4. Environmental Professional's estimated completion date;
5. Government Entity's designation of responsible Person(s);
6. Person(s) paying for on-going Remediation;

Collateral Value

1. Proposed loan amount and proposed use of proceeds;
2. Appraised or the estimated value of the Property;
3. Institutional Controls and Engineering Controls, if any, and their impact on repayment ability, collateral value and marketability of the Property; and

Mitigating Factors

1. Indemnification. If the seller or any other Person, who possesses sufficient financial resources to cover the costs of completing Remediation and any potential third-party claims, executes the SBA Environmental Indemnification Agreement in Appendix 6, approval or disbursement may be considered.

Lender must conduct an analysis of the proposed indemnitor to ensure that it has sufficient assets to honor an indemnification agreement, and this analysis must include, at a minimum, a review of its financial statements.

The SBA Environmental Indemnification Agreement:

- i. cannot be modified;
- ii. must be executed by the Small Business Concern;
- iii. must be executed by the seller, if the loan is to purchase the Property;
- iv. must have a copy of the Environmental Investigation Report attached to it; and
- v. must be properly recorded in the memorandum format in Exhibit C to Appendix 6.

All lenders (except when submitting requests through PLP, SBA Express and the Pilot Loan Programs) must submit the finalized SBA Environmental Indemnification Agreement to SBA for review and approval prior to a request that SBA fund the loan.

2. Completed Remediation. If the Governmental Entity has affirmed in writing that active Remediation is complete but additional monitoring is required, approval or disbursement may be considered after the following occurs: (a) monitoring results for the first year are obtained; (b) an Environmental Professional concludes that the results show no unacceptable increase in Contamination since Remediation; and (c) Environmental Professional concludes that the owner/operator of the Property is in compliance with any continuing obligations, including

activity and use limitations, Engineering and Institutional Controls, and post-Remedial monitoring required by the Governmental Entity.

3. “No Further Action”. If a lender obtains a “no further action letter” or “closure letter” from a Governmental Entity stating that no further remediation or monitoring of contamination previously found is required, approval or disbursement may be considered.
4. “Minimal Remediation”. If the extent of Contamination and cost of Remediation is minimal in relation to the value of the Property and/or the resources of the Person responsible for Remediation, and the Remediation is projected to be completed within one year, approval or disbursement may be considered. The lender should identify the Environmental Professional that will supervise the Remediation and discuss: (a) the nature of the Contamination; (b) the reliability of the Remediation estimates; (c) the projected completion date; and (d) the duration of ongoing monitoring.
5. Clean-up Funds. If lender provides evidence from a Governmental Entity that the borrower or Property has been approved by a fund to pay for or reimburse Remediation costs, and the amount allocated is sufficient to cover the costs of Remediation, approval or disbursement may be considered. Lender must also address any conditions of Remediation that might preclude payment or reimbursement and the financial capability of the fund.
6. Escrow Account. If an escrow account is available which (a) equals a minimum of 150 percent of the total estimated cost of required Remediation and (b) is controlled by a 7(a) lender or first mortgage holder in a 504 loan as trustee, approval or disbursement may be considered. The Governmental Entity must concur with the Remediation’s scope. The Loan Authorization must ensure that escrow funds will only be used for Remediation costs. Depending upon the circumstances, an escrow account with more than 150 percent of the estimated costs of Remediation may be appropriate. Any remaining funds in the account may not be released until the appropriate “closure letter” or “no further action letter” is received or, in the case of monitoring, when all monitoring wells related to the Property have been decommissioned.

Note: Lender’s role as trustee of the escrow account is solely to release funds upon the satisfactory completion of Remediation work – the lender must not control or manage the Property being Remediated.

7. Groundwater Contamination Originating from Another Site. If groundwater Contamination on the Property is shown to have come from another property, and lender can demonstrate that the Contamination has not caused significant damage to the collateral value and marketability of the Property, approval or disbursement may be considered if another

Person with sufficient resources is performing Remediation pursuant to a Remediation action plan that has been approved by the appropriate Governmental Entity and:

- a) The state has laws or regulations that provide that an owner or operator of property will not be responsible for Contamination from another site; or
- b) The Governmental Entity provides satisfactory written assurance that it will not hold the Property owner liable for the Contamination. Lender should attempt to have lender and SBA included by name in the letter along with the Property owner and future purchasers.

- 8. Additional or Substitute Collateral. If additional or substitute collateral is being pledged, or an additional equity contribution is being made, sufficient to overcome the potential loss due to Contamination, then approval or disbursement may be considered.
- 9. “Other Factor(s)”. Lender and SBA may rely on factors other than or in addition to the eight referenced above when considering approval or disbursement. For example, the existence of adequate environmental insurance, bonds, agreements not to sue present and future property owners from the Governmental Entity, Engineering and Institutional Controls, etc. However, reliance solely upon “Other Factor(s)” requires clearance from the SBA Environmental Committee. This requirement extends to PLP, SBA Express and Pilot Loan Program lenders. PLP, SBA Express and Pilot Loan Program lenders must follow these guidelines, but they do not have to submit documentation or obtain SBA’s concurrence prior to approval or disbursement of the loan, unless they are relying solely upon the “Other Factor(s)” in subparagraph g. (9), above.

h) Special Use Facilities

Prudent lending practices dictate that specific environmental assessments be performed for certain special use facilities. For example, Property constructed prior to 1978 that will be used for daycare or child care centers or nursery schools must undergo a lead risk assessment (for lead based paint, lead in drinking water) and the results of this assessment must be submitted to the SBA. Disbursement will not be authorized unless the risk of lead exposure to infants and small children has been sufficiently minimized. Individuals living in residential care facilities constructed prior to 1978 may also be at increased risk for lead exposure and prudent lending practices dictate that these facilities also undergo a lead risk assessment. On-site dry cleaning facilities, which may have utilized tetrachloroethene (PCE) and trichloroethene (TCE) in the course of their business operations, may present significant clean-up costs if these contaminants have entered the soil or groundwater. Prudent lending practices dictate that on-site dry cleaners in operation for more than five years undergo a Phase II Environmental Site Assessment. Gasoline stations also present significant clean-up costs if contaminated (for specific requirements pertaining to gasoline states, please refer to Appendix 5). Asbestos

surveys, radon, lead risk and/or other assessments should be conducted by lenders on other Property if warranted under the circumstances or if recommended by an Environmental Professional. Lenders must follow prudent lending practices in making this determination for each Property.

i) Brownfields Sites

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 9 factors in subparagraph g. of this paragraph.

j) Questions on SBA's Environmental Policy, Requests for Reconsideration, and Appeals

Questions on SBA's Environmental Policy should be directed to local field counsel for the area where the Property is located.

Lenders who believe that an environmental decision that has been rendered by SBA is inconsistent with this SOP may appeal the decision by forwarding a copy of the decision, along with an explanation of how the determination is perceived to be inconsistent with this SOP to EnvironmentalAppeals@sba.gov. Environmental appeals will be reviewed by the SBA Environmental Committee comprised of OGC attorneys appointed by the Associate General Counsel for Litigation, who may consult with an environmental engineer. The Associate General Counsel for Litigation would retain the authority to overrule decisions rendered by the SBA Environmental Committee.