



Lender and Development Company Loan Programs
U.S. Small Business Administration
Office of Financial Assistance
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APPENDIX 5

REQUIREMENTS PERTAINING TO GAS STATION LOANS

The following requirements apply to all loans secured by any interest in real or personal property currently or formerly associated with the operation of a gas station ("Gas Station Loans"). No exceptions are allowed.

1. Initial Eligibility Determination.
 - a. Relevant Document Review. All Relevant Documents must be reviewed to determine whether any provisions could create one or more of the unacceptable results listed below. For purposes of this paragraph, the term "Relevant Documents" includes but is not limited to (a) the report containing the preliminary results of a search of the title to the Property including the documents listed in the abstract of title (hereafter the "Title Report"), (b) the small business concern's oil company supply agreement, if any, and (c) if the loan is to purchase the Property, all purchase and sale documents including the exhibits, addendums, amendments, etc., (hereafter the "Purchase and Sale Documents").
 - b. Examples of Relevant Documents. While titles vary, examples of Relevant Documents that must be reviewed include: the Real Estate Sale Agreement; Terms and Conditions of Sale Contract; Escrow Instructions; Escrow Agreement; Franchise Agreement; Contract Dealer Gasoline Agreement; Branded Reseller Agreement; Memorandum of Gasoline Agreement for Dealer-Owner, Franchisee-Operated Facility; Branded Gas Sales Restriction and Covenant; Special Warranty Deed; Bill of Sale; Use Restriction Addendum; Right of First Refusal Agreement; Repurchase Option; Subordination Agreement; Environmental Release; Environmental Declaration; Environmental Matters, Remediation and Indemnification Addendum; and Site Access Agreement.
 - c. Subordination is not sufficient to overcome the unacceptable results of objectionable provisions that are of record or to be recorded. This is because to clear the title, SBA's lien would need to be foreclosed and doing so would

prevent the small business concern from selling the gas station as a going concern and significantly diminish SBA's recovery in the event of default.

d. Unacceptable Results

1. Affiliation. A small business concern affiliated with a non-small business concern is not eligible for SBA financing. See 13 CFR § 121.103(i). All Relevant Documents must be reviewed to determine whether based on the totality of the circumstances the small business concern is affiliated with an oil company or any other Person.
2. Institutional or Engineering Controls That Could Significantly Impair the Collateral Value and Marketability of the Property or small business concern's Repayment Ability. Lender must ensure that there are no Institutional or Engineering Controls in place or required that could significantly impair the collateral value and marketability of the Property or the small business concern's repayment ability. This requirement applies even if the collateral consists solely of personal property, such as buildings and trade fixtures located on leased land, since they would ordinarily be sold in-place in the event of foreclosure, e.g., a carwash, mini-mart, or fuel pumping equipment. Examples of unacceptable Institutional and Engineering Controls include:
 - i. Deed restrictions, covenants, easements, reversionary interests and other provisions that restrict the use of the Property for the benefit of the seller, an oil company, or any other Person such as those that restrict the brand of fuel that can be sold on the Property or impose unreasonable liquidated damages in the event the small business concern or a subsequent owner sells the Property to any Person other than a specific oil company; and
 - ii. Provisions that require the small business concern or subsequent owners to install costly Engineering Controls prior to constructing a building, remodeling or otherwise improving the Property.
 - iii. "Repurchase Options" which allow a major oil company or jobber to repurchase the applicant's primary business asset (e.g., real estate) due to violation of any condition, covenant or restriction in any agreement between the oil company or jobber and the applicant business. (Please note that "Rights of First Refusal," which allow an oil company or jobber to match future third party offers for the purchase of the gas station, are generally acceptable to SBA.
3. Alteration of SBA or Lender's Legal Rights, Remedies or Responsibilities. Lender must ensure that there are no provisions in the Relevant Documents that:
 - i. Alter SBA or Lender's legal rights or remedies. These include, for example, provisions that require (a) subsequent owners of the

Property to waive their legal rights and remedies or release all claims against the seller, an oil company or other Person; or (b) subordination of SBA's lien.

- ii. Impose additional duties on SBA or Lender. These include, for example, provisions that (a) require subsequent owners of the Property to indemnify the seller, an oil company or any other Person; or (b) require SBA or Lender to provide the seller, an oil company or any other Person with special notice of default or foreclosure, or a forbearance period before initiating liquidation activities.

2. Environmental Investigation. The environmental investigation for all Gas Station Loans must cover both the land (the "Site") and the equipment located thereon.

- a) Site Assessment.

1. Investigation Requirements.

- i. Stations Less than One Year Old. If the station associated with the Property is less than one year old and the NAICS codes for the former known uses of the Property do not match any of those listed in Appendix 4, the Environmental Investigation of the Site may begin with an Environmental Questionnaire, provided that if the loan is for \$150,000 or more, a Records Search with Risk Assessment is also required.
- ii. Stations Less Than Five Years Old. If the station associated with the Property is less than five years old and the NAICS codes for the former known uses of the Property do not match any of those listed in Appendix 4, the Environmental Investigation of the Site must begin, at a minimum, with a Phase I ESA conducted by an independent Environmental Professional who holds a current Professional Engineer's or Professional Geologist's license and has the equivalent of three years of full-time relevant experience. The Phase I ESA must include an analysis of all relevant environmental records concerning the Property and Adjoining Properties including any records provided by the seller if the loan is to purchase the Property; and may not contain any data gaps with regard to environmental cleanup liens or Institutional and Engineering Controls. If the Phase I ESA indicates soil or groundwater Contamination, a Phase II ESA is also required along with a detailed estimate of the cost of Remediation.
- iii. Stations More than Five Years Old. If the station associated with the Property is five years old or more, the Environmental Investigation of the Site must begin with a full Phase II ESA conducted by an Environmental Professional who holds a current Professional Engineer's or Professional Geologist's license and has the equivalent of three years of full-time relevant experience, and must include

groundwater. If groundwater is not encountered, sampling must be taken as recommended by the Environmental Professional to a minimum depth of 25 feet.

2. Investigation Results. If the Environmental Investigation Report indicates that the Property is Contaminated, Lender can either (1) decline the loan, or (2) in addition to the requirements of this Appendix, follow those set forth in the paragraph in this SOP entitled, "Approval and Disbursement of loans when there is Contamination or Remediation at the Property."

1. Equipment Testing.

1. Investigation Requirements. All USTs, lines and related equipment located on the Property must be tested within six months prior to loan closing by an independent contractor using a methodology acceptable to the Government Entity with UST System oversight authority; and include tightness tests of all USTs and lines; functional testing of any vapor recovery (Stage 2) systems and monitoring systems; and hydrostatic testing of all containment devices.
2. Investigation Results. All leaking or otherwise defective equipment, systems, containment devices, etc., if any, must be replaced or repaired prior to disbursement. Provisions in the Purchase and Sale Documents that allow the seller to provide the small business concern with a credit towards the purchase price, pay a lump sum, or otherwise avoid repairing defective equipment, are not acceptable.

3. SBA Environmental Indemnification Agreement.

- a) When Required. Except as provided below, all Gas Station Loans must be secured by an SBA Environmental Indemnification Agreement (see Appendix 6) executed by a third party indemnitor, i.e., a Person other than the borrower with sufficient financial resources to cover the cost of Remediation and third party claims for bodily injury and property damages associated with Contamination. The Indemnification Agreement must be executed by the seller if the purpose of the loan is to facilitate the purchase and sale of the station. An Indemnification Agreement is not required in the following circumstances:
 1. The loan is for the construction of a new station and the NAICS codes for the former known uses of the Property do not match any of those listed in Appendix 4.
 2. The loan is fully collateralized by assets other than the Site or equipment associated with the gas station.
 3. The loan does not involve a change of ownership and the Environmental Investigation establishes that the equipment is in good repair and the Property is free of Contamination.

- b) Waiver and Release of Right to Indemnification by SBA or Lender. Any oil company or other Person with a right to indemnification by subsequent owners of the Property must either execute the SBA Indemnification Agreement or a similar document, which must be properly recorded, in which they waive all known and unknown rights and release all claims and causes of action whether now or hereafter in existence against SBA and Lender related to Contamination at the Property including the right to indemnification in the event SBA or Lender acquires title to the Property.

- c) Submission to Processing Center. Lenders, except when submitting requests through PLP, SBA Express and the Pilot Loan Programs, must submit all waiver and releases as well as SBA Indemnification Agreements to the SBA center processing the loan for review and approval by SBA counsel, along with a copy of (1) the Title Report, (2) the Purchase and Sale Documents, if any, and (3) Lender's financial analysis of the proposed indemnitor(s). (Note that PCLP CDCs must submit the waiver and release and the finalized SBA Environmental Indemnification Agreement to the SBA for review and approval prior to a request that SBA fund the loan).