

APPENDIX 2: DEFINITIONS

For purposes of the environmental portions of this SOP, the following definitions apply. Terms that are not defined below but are defined in CERCLA, 13 CFR or 40 CFR shall have the meaning provided in CERCLA, 13 CFR or 40 CFR.

“Acquisition” or **“Acquisition Date”** means the date on which a Person acquires title to the Property.

“Adjoining Properties” means any real property or properties the border of which is (are) shared in part or in whole with that of the Property, or that would be shared in part or in whole with that of the Property but for a street, road, or other public thoroughfare separating the properties (See 40 CFR § 312.20).

“All Appropriate Inquiries” (AAI) means the standards and practices set forth in 40 CFR § 312.20.

“ASTM” refers to ASTM International. www.astm.org

“At”, whether capitalized or not, when used with respect to the Property or Adjoining Properties, means "at, on, in, into, under, above, from or about."

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq.

“Contamination” means the presence of any Hazardous Substance at or affecting the Property, including any Hazardous Substances that have migrated to or from the Property, in such quantities or under such conditions as to render the Property or the operations conducted thereon subject to, or potentially subject to, a directive or order from a Governmental Entity.

“Engineering Control” means a device or structure constructed at the Property to prevent people from coming into contact with Contamination or to prevent mobile Contamination such as groundwater Contamination from moving off site. Examples include asphalt or concrete caps, fences, extraction wells, trenches and subsurface barrier walls.

“Environmental Investigation” refers to the process of assessing the environmental conditions at a Property. For example, an Environmental Investigation may include one or more of the following: an Environmental Questionnaire, Records Search with Risk Assessment, Transaction Screen Analysis, Phase I Environmental Site Assessment (Phase I ESA) or Phase II Environmental Site Assessment (Phase II ESA).

“Environmental Investigation Report” (or the **“Report”**) means the written account of the Environmental Investigation of the Property prepared by the Person who conducted the Environmental Investigation.

“Environmental Laws” means any and all applicable federal, state, tribal and local statutes, laws, rules, regulations, ordinances, codes, judicial or administrative orders, consent decrees, judgments, or other binding determinations of any judicial or regulatory authority, now or hereafter in effect, imposing liability, establishing standards or otherwise relating to protection of the environment, health and safety.

“Environmental Professional” means a person who meets the requirements set forth in 40 CFR § 312.10(b). The All Appropriate Inquiries standards defines an Environmental Professional as “a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases...on, at, in, or to a property, sufficient to meet the objectives and performance factors [of the rule].” [40 CFR 312.10\(b\)](#). An Environmental Professional must:

1. Hold a current Professional Engineer’s or Professional Geologist’s license or registration from a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) and have the equivalent of three (3) years of full-time relevant experience; or
2. Be licensed or certified by the federal government, a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) to perform environmental inquiries as defined in § 312.21 and have the equivalent of three (3) years of full-time relevant experience; or
3. Have a Baccalaureate or higher degree from an accredited institution of higher education in a discipline of engineering or science and the equivalent of five (5) years of full-time relevant experience; or
4. Have the equivalent of ten (10) years of full-time relevant experience.

Further, SBA requires that an Environmental Professional be impartial and maintain a minimum coverage of one million dollars per claim (or occurrence) in errors and omissions insurance.

“Environmental Questionnaire” means the questionnaire used by a Lender to determine the likelihood that Contamination may be present at Property offered to secure an SBA guaranteed loan. Environmental Questionnaires must be completed or reviewed by a Lender that has made at least one site visit to the Property and a good faith effort to conduct an interview with the current owner or operator of the Property. An Environmental Professional may, but is not required to, assist with the responses to the questionnaire. An Environmental Questionnaire may be considered if it was completed up to one year prior to submission. The current owner or operator of the Property must sign the Environmental Questionnaire. If the current owner or operator of the Property will not sign the Environmental Questionnaire it cannot be used and lender must then, at a minimum, obtain a Transaction Screen.

Prudent lending practices dictate that an Environmental Questionnaire must, at a minimum, inquire into the following areas:

- Past and present uses of the Property and Adjoining Properties, with particular attention paid to those uses by environmentally sensitive industries;
- Past and present identification of any Hazardous Substances at the Property and Adjoining Properties;

- Storage, generation, treatment, emission or disposal of Hazardous Substances at the Property and Adjoining Properties;
- Possession of permits to use, store, generate, treat, emit or dispose of Hazardous Substances by businesses operating at the Property and Adjoining Properties;
- Evidence of Contamination at the Property and Adjoining Properties;
- Potential sources of Contamination⁴ at the Property and Adjoining Properties;
- Knowledge on the part of the borrower, seller or Lender of any past evidence of Contamination or sources of Contamination at the Property and Adjoining Properties;
- Knowledge on the part of the borrower, seller or Lender of any past, threatened or pending lawsuits or administrative proceedings concerning a Release or threatened Release at the Property and Adjoining Properties;
- Existence of any regulatory actions by any Governmental Entity for environmental conditions at the Property and Adjoining Properties;
- Identification of any previously performed environmental risk studies environmental documents pertaining to the Property (attach copies); and
- Presence of lead paint, asbestos, or Polychlorinated Biphenyls (“PCBs”) at the Property.

As an alternative, SBA will accept the ASTM questionnaire utilized for Transaction Screens (currently ASTM E1528-06) for all purposes that an EQ is required by this SOP. (ASTM licenses the use of these forms, which can be obtained through www.astm.org.)

“Good Faith” means the absence of any intention to seek unfair advantage or to defraud another party; and honest and sincere intention to fulfill one’s obligations in the conduct or transaction concerned.

“Governmental Entity” means any federal, state, commonwealth, tribal or local government branch, authority, district, agency, court, tribunal, department, officer, official, board, commission or other instrumentality that exercises any form of jurisdiction or authority under any Environmental Law.

“Hazardous Substance” means and includes any substance, material or waste regulated by CERCLA or any other Environmental Law, and specifically includes petroleum products.

“Institutional Control” means a legal or administrative action or requirement imposed on the Property to minimize the potential for human exposure to Contamination or to protect the integrity of Remediation. Examples include deed notices, deed restrictions, and long-term site monitoring or site security requirements.

⁴ Sources of Contamination may include, but are not limited to, the following: (1) damaged or discarded automotive or industrial batteries; (2) pesticides, paints or other chemicals stored in individual containers greater than 5 gallons in volume or 50 gallons in the aggregate; (3) chemicals in industrial drums or sacks; (4) pits, ponds or lagoons used for waste disposal or storage; (5) fill dirt from a contaminated or unknown source; (6); underground or above-ground storage tanks; (7) vent pipes, fill pipes or access ways indicating a fill pipe protruding from the ground; (8) flooring drains or walls within a facility that are stained by substances other than water and/or are emitting noxious odors; (9) clarifiers, pits or sumps; (10) dry wells

“Lender” refers to banks, non-bank lenders, credit unions, certified development companies, and any other entities that participate as a lender in SBA programs. The term Lender does not include the Third Party Lender on a 504 loan.

“Multi-Unit Building” means any non-industrial, multi-unit building that is comprised of four or more individual units.

“Person” means an individual, firm, corporation, limited liability company, limited liability partnership, association, partnership, consortium, joint venture, commercial entity, tribe or trust, public, governmental or interstate body, agency or instrumentality.

“Phase I Environmental Site Assessment” (Phase I ESA) means an AAI compliant Phase I ESA conducted by an Environmental Professional in accordance with the most recently adopted standard for a Phase I ESA established by ASTM International, currently ASTM E1527-05.

A person who does not qualify as an Environmental Professional may assist in the conduct of All Appropriate Inquiries if such person is under the supervision or responsible charge of a person meeting the definition of an Environmental Professional when conducting such activities, provided an Environmental Professional reviews and signs the Phase I ESA.

A Phase I ESA must contain an opinion by the Environmental Professional as to whether the inquiry has identified conditions indicative of Releases or threatened Releases at the Property. Additionally, SBA requires that all Phase I ESAs contain a conclusion by the Environmental Professional that performs the assessment that either: (1) the risk of Contamination at the Property is so minimal that no further investigation is warranted; or (2) there is risk sufficient to warrant additional investigation. Alternatively, the Environmental Professional may include a similar statement to this effect. If further investigation is warranted, the Environmental Professional should provide a detailed description of the recommendation.

All Phase I ESAs must be performed within the Environmental Protection Agency’s AAI regulatory time frames. A Phase I ESA may be relied upon if it was completed less than 180 days prior to the Acquisition Date. A Phase I ESA performed within one year of the Acquisition Date may be updated by an Environmental Professional if the following requirements are met:

- The Phase I ESA was prepared as part of a previous All Appropriate Inquiries investigation of the Property; and
- Components of the previously conducted Phase I ESA are conducted or updated within 180 days prior to the Acquisition Date of the Property. (See 40 CFR § 312.20 for the specific requirements for updating a Phase I ESA.)

“Phase II Environmental Site Assessment” (Phase II ESA) means an Environmental Investigation, which at a minimum, is conducted by an Environmental Professional in accordance with the most recently adopted standard for a Phase II ESA process established by ASTM International, currently ASTM E1903-97 (2002). SBA will recognize a Phase II ESA conducted in accordance with generally-accepted industry standards of practice and consisting of

a scope of work that would be considered reasonable and sufficient to identify the presence, nature and extent of a Release.

“Property” means any interest in commercial real estate upon which a security interest such as a mortgage, deed of trust, or leasehold deed of trust is required as collateral for a loan or debenture.

“Records Search with Risk Assessment” means and includes (1) a search of the government databases identified in 40 CFR § 312.26⁵ for an AAI compliant Phase I as well as a search of historical use records (for example, aerial photography, city directories, reverse directories and/or fire insurance maps) pertaining to the Property and Adjoining Properties; and (2) a risk assessment by an Environmental Professional based on the results of the records search as to whether the Property is either “low risk” or “elevated risk” or “high risk” for Contamination. The choice of historical records to be reviewed on any particular site is at the discretion of the Environmental Professional. The report must identify by name the Environmental Professional that performed the risk assessment. (Note that this report need not be addressed to the SBA and need not be accompanied by a Reliance Letter.) A Records Search with Risk Assessment may be considered if it was completed up to one year prior to submission.

“Release” means the presence of or any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping or disposing of any Hazardous Substance into the environment including the abandonment or discarding of barrels, drums, tanks, and similar receptacles and containers, containing Hazardous Substances.

“Reliance Letter” means SBA’s standard Reliance Letter pertaining to Environmental Investigation Reports, a copy of which is located in Appendix 3.

“Remediation” or **“Remedial Action”** and their derivatives (such as **“Remediate”**) means and includes any clean-up, corrective action or monitoring required to comply with applicable Environmental Laws including all actions within the definition of “removal” and “remedial” actions as those terms are defined in applicable Environmental Laws.

“SBA Environmental Indemnification Agreement” or **“SBA Indemnification Agreement”** means SBA’s standard environmental indemnification agreement, a copy of which is located in Appendix 6.

“Transaction Screen” means an Environmental Investigation pursuant to the most recently adopted standard practice for limited environmental due diligence established by ASTM International, currently ASTM E1528-06. The basic elements of a Transaction Screen include: (1) an interview with the owner or operator of the Property; (2) a visit to the Property; (3) completion of an environmental questionnaire, and (4) a review of government records and historical sources. Additionally, SBA requires that an Environmental Professional supervise the site reconnaissance and conclude either (a) the risk of contamination at the site is so minimal that no further investigation is warranted; or (b) there is risk sufficient to warrant additional

⁵ For a detailed list of databases to be searched, lenders may go to http://edocket.access.gpo.gov/cfr_2007/julqtr/pdf/40cfr312.26.pdf.

investigation. Alternatively, the Environmental Professional may include a similar statement to this effect. If further investigation is warranted, the Environmental Professional should provide a detailed description of the recommendation. A Transaction Screen may be considered if it was completed up to one year prior to submission.