



U.S. Small Business  
Administration



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# Environmental Updates

Office of Field Operations (OFO)

April 3, 2018

# Lender Relations Contacts

You should always contact your local district office for questions and concerns.

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## Presenter

# Stephen Olear, Chief Franchise Counsel

- Mr. Olear is a graduate of Rutgers University, The State University of New Jersey, with a BA Degree in Music performance and education.
- He also received a J.D. Degree from Southwestern University School of Law in Los Angeles, CA.
- Mr. Olear joined the Small business Administration in 1987 as a Liquidation Attorney.
- Throughout his career with the Agency, Mr. Olear has worked in the liquidation division handling both commercial and disaster loans, as well as the finance division.
- Mr. Olear is a member of the Environmental Appeals Committee where he works with a team of other OGC attorney's on environmental issues.
- Most recently Mr. Olear accepted SBA's Chief Franchise Counsel position where he addresses franchise issues for the Agency on a national level.
- In May 2013, Mr. Olear was the recipient of the SBA IKE Award in the category of Administrator's Award for Excellence.

# Environmental Updates

## Significant Changes:

- 1 year shelf life for Phase I Reports (*for SBA's purposes*)  
(Parties may still wish to comply with EPA's regulatory guidelines to avoid jeopardizing legal and regulatory protections)
- SBA recognition of state equivalent “No Further Action” and “Closure” letters and procedures

The “No Further Action” mitigating factor for disbursement in the presence of contamination now reads as follows:

“No Further Action”. If a CDC obtains a “no further action letter” or “closure letter” from a Governmental Entity (*or state equivalent of a “no further action letter” or “closure letter”*) stating that no further Remediation or monitoring of Contamination previously found is required, approval or disbursement may be considered. *A state equivalent of a closure letter includes a written determination from a licensed professional in those jurisdictions that delegate authority to such professionals for site closures.*

*(Emphasis added)*

# Environmental Updates

## Significant Changes, Continued:

- Prohibition on CDCs entering into any agreements that alter the terms of SBA's template reliance letter.

In addition to adding this prohibition, SBA simultaneously modified the template Reliance Letter to waive time limitations on liability. This was done because we discovered that some environmental firms were placing these time limitations on liability within the reports themselves. For example, one large environmental firm was placing a 180 day limitation on liability in the "Terms and Conditions" section of the their environmental reports.

# Environmental Updates

## Other Changes:

- Dry Cleaning Facility (including historical use at the property)
  - The SOP was modified to require a Phase II testing for “*any Property with on-site dry cleaners, whether currently in operation or operated historically at the site, that did, do or likely used chlorinated and/or petroleum-based solvents*” (in addition to a Phase I which would be required due to the NAICS code match). Additionally, SBA requires that any soil and groundwater contamination and soil vapor intrusion be addressed.
- Gas Station Loans (Appendix 5)
  - SBA now requires that Phase I reports for gas station loans “*include documentation supporting the Environmental Professional’s determination of compliance with all regulatory requirements, if any, pertaining to tank and equipment testing.*”

# Environmental Updates

## Other Changes, Continued:

- **Record Search with Risk Assessment (RSRA)**
  - The “look back” period for the historical records component of RSRA was amended to ensure that Environmental Professionals are choosing historical records that identify property back to the property’s first developed use, or back to 1940, whichever is earlier. Additionally, SBA clarified that the underlying database reports relied upon must be included in the RSRA.
- **Reliance Letter - Formatting Changes**
  - The format of the template Reliance Letter was modified make it clear that for 504 loans, the CDC is the lender for the purposes of this letter.
- **Reliance Letter - Phase I Addendums**
  - The Phase I section was amended to include not only Phase I reports, but also “any addendum(s) thereto”



# Environmental Updates

## Other Changes, Continued:

- Release of Rights to Indemnification from SBA/CDC
  - SBA added a new paragraph to the SOP that previously existed only in Appendix 5 (Gas Station Loans). This paragraph is designed to protect both SBA and CDCs from lawsuits, which can occur if SBA or a CDC foreclosure upon a property where such covenants “run with the land.”

“I. Release of Rights to Indemnification from SBA/CDC:

If any Person has a right to indemnification from subsequent owners of the Property (e.g., SBA/CDC after acquiring Property through foreclosure or other means), then they must execute either the SBA Indemnification Agreement or another document 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 CDC related to Contamination at the Property including the right to indemnification. CDCs must submit all waiver and release documents to the SBA center processing the loan for review and approval by SBA counsel, along with a copy of the title report, the document providing for indemnification, and the purchase and sale documents, if any. PCLP CDCs must also submit the waiver and release to the SBA for review and approval prior to a request that SBA fund the loan. The document containing the waiver and release must be recorded.”

# Environmental Updates

## Other Changes, Continued:

- Changes to Mitigating Factors
  - “Minimal Contamination *with Minimal Remediation.*”
  - “Other factor(s)” – SBA clarified when the SBA Environmental Committee considers the existence of environmental insurance to be persuasive when evaluating disbursement under this factor. Brownfield agreements were also added as another example of an “Other Factor” that can be considered.
  - Reminder: Requests for exceptions to SBA’s environmental policies and procedures go *directly* to [EnvironmentalAppeals@sba.gov](mailto:EnvironmentalAppeals@sba.gov) – don’t send them to the SLPC. Additionally, *always* provide justification for not wanting to follow an Environmental Professional’s recommendations. E-mails to the committee can now be up to 15 MB (with attachments).

# Environmental Updates

## Other Changes, Continued:

- Changes were made to the NAICS Codes of Environmentally Sensitive Industries (Appendix 4)

SBA added the following NAICS codes:

484 - TRUCKING (*if service bays, truck washing, or fuel tanks present*)

713990 - OTHER RECREATIONAL INDUSTRIES (*indoor and outdoor shooting ranges only*)

# Environmental Updates

## Other Changes, Continued:

- SBA modified the following NAICS codes (*new language in italics*):

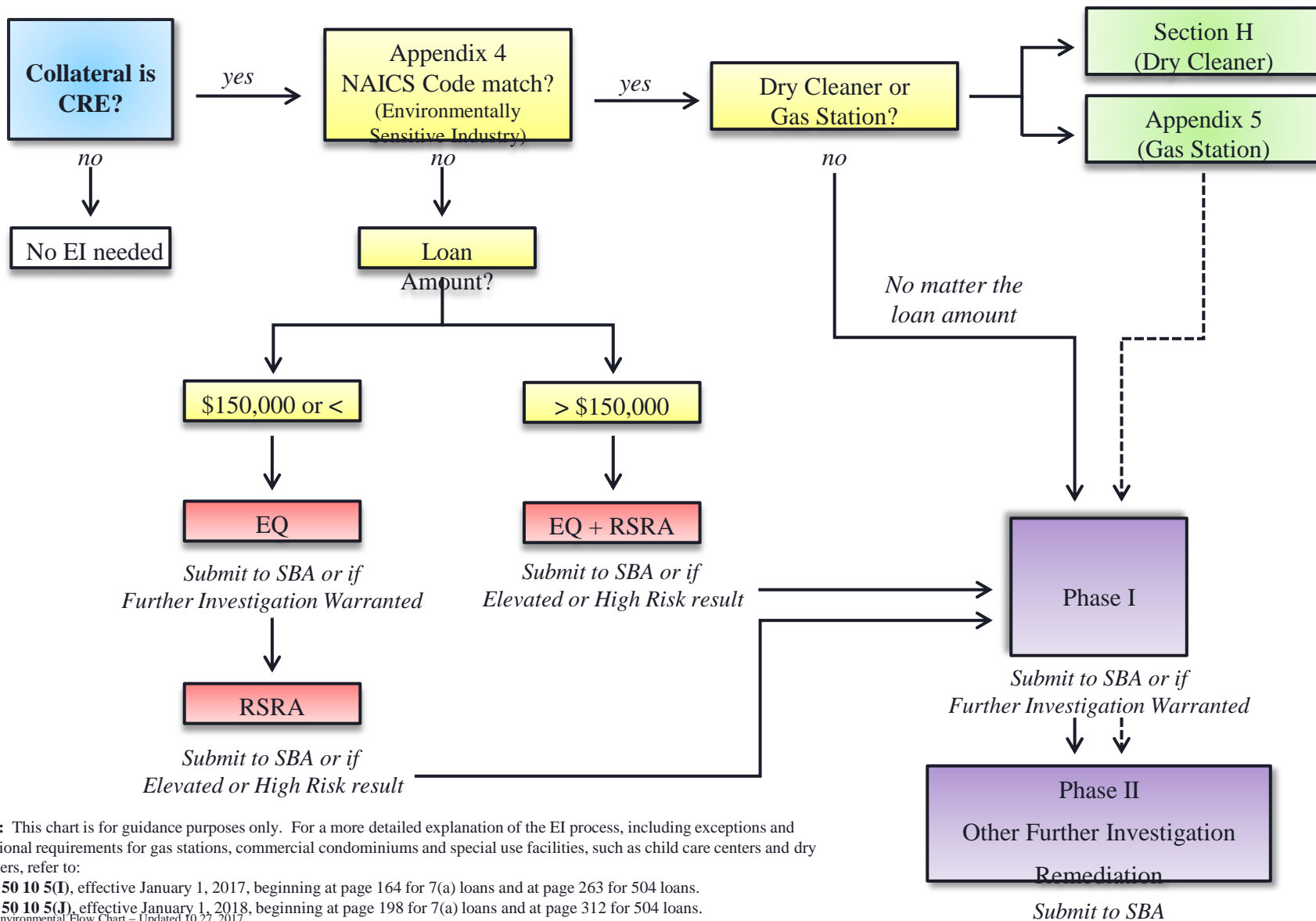
316 – LEATHER & ALLIED PRODUCT MANUFACTURING  
*(not required if assembly only)*

326 – PLASTICS & RUBBER PRODUCTS MANUFACTURING  
*(not required if assembly only)*

332 – FABRICATED METAL PRODUCT MANUFACTURING  
*(not required if assembly only)*

8122 – DEATH CARE SERVICES  
*(unless no embalming or cremation at the Property)*

# SBA Environmental Flow Chart



**Note:** This chart is for guidance purposes only. For a more detailed explanation of the EI process, including exceptions and additional requirements for gas stations, commercial condominiums and special use facilities, such as child care centers and dry cleaners, refer to:  
**SOP 50 10 5(I)**, effective January 1, 2017, beginning at page 164 for 7(a) loans and at page 263 for 504 loans.  
**SOP 50 10 5(J)**, effective January 1, 2018, beginning at page 198 for 7(a) loans and at page 312 for 504 loans.  
 SBA Environmental Flow Chart – Updated 10.27.2017





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