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Environmental due diligence tools: Which site assessment tools fit your needs

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Those involved in the sale, financing, development and management of commercial and industrial real estate must routinely making decisions based on the findings of pre-acquisition environmental site assessments (ESAs). The scope and value provided by these ESAs varies widely and the type of ESA required for a given property is typically determined by the loan amount and a lending institution's commercial loan policy. The following is intended to provide a brief overview of the various phases of ESAs, the value of information provided by each, their respective advantages, limitations and typical costs.

The least expensive tool for assessing potential environmental liability is known as a database search and is performed either by consultants or internally by a lending institution. Costs typically range from $100 to $400 and involve a review of on-line environmental databases to identify nearby sites with known or potential environmental problems. The scope of this assessment tool may also include a "drive by" review of the target property. However, these database searches are of little real value in that they only identify properties that are known to state/federal environmental regulatory agencies and may miss problems that haven't been properly reported or that are more than 90 days old. Results of database searches should be reviewed with caution.

The next level of ESA was developed by the American Society for Testing and Materials (ASTM) and is termed a Transaction Screen Questionnaire. A Transaction Screen consists of a site walkover inspection, a database search, limited inquiries of local municipal authorities, and completion of a questionnaire by a site contact and consultant. Costs typically range from $750 to $1,000 and although they do include a walkover property inspection, their value is limited if the available "site contact" has no real knowledge of site activities or the history of use is complex.

A more familiar term generally used to describe the next level of ESAs is the Phase I. Phase I ESAs were initially used in the late 1980s as a tool by banks attempting to manage potential cleanup liability. To help standardize the Phase I methodology, ASTM developed and has periodically updated the Phase I ESA process including a recent revision that complies with new EPA requirements known as "All Appropriate Inquiry" (AAI). The federal AAI rule was the result of 2002 federal Brownfields amendments. Phase I AAI-ESAs must now be conducted by qualified "environmental professionals" and the methodology must include more detailed site inspections, interviews, historical research and regulatory/municipal research. The objective of Phase I AAI- ESAs is to identify actual or potential releases of hazardous substances/waste at a property known as "potential environmental concerns" that may have adversely impacted environmental media. Phase I AAI-ESAs typically cost between $1,800 and $2,200 but vary depending on a property's size and historical activities. As no sampling/testing of environmental media is conducted during a Phase I, confirmation of subsurface contamination is usually deferred to a Phase II.

If there is a reasonable basis to suspect one or more releases of hazardous substances at a site, a Phase II ESA is typically recommended. Although ASTM does offer guidance for Phase II ESAs (not to be confused with a Mass. Phase II Comprehensive Site Assessment), the Phase II scope varies widely due to site-specific circumstances and consultant's professional judgment. A Phase II ESA cost also varies widely from $4,500 to well over $20,000 depending on a site's size and complexity. Phase II ESAs typically include drilling, sampling of environmental media and laboratory testing for contaminants of concern. As it is cost prohibitive to complete analytical tests for every conceivable contaminant, professional judgment is key to striking a balance between risk management and cost. A Phase II should confirm if a release has occurred, whether environmental media has been impacted and if it is jurisdictional to environmental regulators. However, a Phase II is typically not sufficiently detailed to delineate the extent of contamination or human health risks.

The term "Phase III ESA" is less defined as it's meaning differs among states and between consultants. Generally, a Phase III scope is based on preceding ESA information that is used to develop a conceptual model of how and where contaminant releases have occurred. The objective of a Phase III should be to fully define the distribution of contaminants at each point of release as well as potential migration pathways to other areas on or off the property. The cost of a Phase III ESA also varies widely ranging from $10,000 to over $100,000 depending on the size and complexity of environmental issues. A Phase III should be detailed to permit an evaluation of remedial alternatives and their associated costs.

The bottom line for those relying on ESA information is that a logical sequence exists for conducing environmental due diligence that should begin with a detailed site inspection, interviews and historical research followed by focused sampling/testing at areas of concern and, if jurisdictional contamination is confirmed, a full delineation of the extent of impacts such that applicable cleanup remedies can be evaluated.

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