



## ERAS Environmental, Inc.

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# Environmental Real Estate Newsletter

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### Introduction

ERAS Environmental, Inc. (ERAS) publishes this Newsletter from time to time to discuss developing environmental issues. It is distributed for the benefit of the clients of and other interested persons. Its' focus is on environmental issues pertaining to due diligence for environmental assessment of commercial real estate. Many of these issues come up regularly during our business interactions.

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### Due Diligence Turnaround Time

Due diligence projects are necessarily performed on a time sensitive basis. ERAS "normal" turnaround time for Phase 1 Environmental Site Assessment (ESA) projects is 10-15 working days and for Environmental Transaction Screen (ETS) projects is 5-10 working days. The "normal" turnaround time should be considered in the same category as a "normal" project cost. That is it should be taken loosely with a "grain of salt"

The time necessary to complete due diligence projects is dependent on access to certain key regulatory agency records. This is particularly true for ESA projects where perhaps the most important research records are the local building and hazardous materials (fire or health department) records. In fact, the latest 2005 standards for ESA projects mandate the review of these records.

There is an ongoing challenge to meet two to three week turnaround in certain local areas due to understaffed agencies and limited appointment windows. If there is a question regarding estimated turnaround time for a particular site, please contact ERAS.

ERAS will always expedite these projects, but the buyer should beware of accepting Phase 1 reports when the information from these local records is not included in formulating the conclusions and recommendations. A claim of "guaranteed" two week turnaround for ESA projects should be viewed with extreme caution.

### Due Diligence is a Regulated Activity

Due diligence projects are subject to an array of

regulations as well as professional standards of care and practice. State Registered Environmental Assessors (REA) are usually required for certification of projects (such as in California) or by the requirements of financial lending institutions.

ERAS is contacted from time to time by brokers and buyers who say "there is no bank involved". It is implied that therefore, not as much due diligence is required. ERAS believes that due diligence may be even more important in these cases because there has been no screening of the report by bank trained reviewers.

There are American Society of Testing and Materials (ASTM) standards for due diligence projects as follows.

- 1) Environmental Transaction Screens (ETS, sometimes referred to as Transaction Screen Analysis or TSA), ASTM 1528-06;
- 2) Environmental Site Assessment (ESA or Phase 1), ASTM 1527-05.

In addition, there is an Environmental Protection Agency (EPA) standard known as All Appropriate Inquiry (AAI) (40 CFR 312) finalized on November 1, 2005. Note the deadline for compliance with AAI was to be November 1, 2006. The EPA determined that a Phase 1 prepared in compliance with ASTM 1527-05 would meet the AAI requirements.

Above all, there is the Standard of Care and Practice for conducting due diligence that all parties, brokers, banks and consultants must adhere to in order to minimize financial and legal liability, both professional and personal.

### Environmental Transaction Screen

The following is a brief synopsis of the changes to the ETS due diligence process based on the new ASTM standard.

The ETS project is designed for environmental assessments of properties that are considered to be "low risk". The scope of these projects are performed following the guidelines of 2006 standard ASTM 1528-06 which replaces the previous ASTM standard dated in 2000. Although there has been much fanfare about how the new ETS removes the protection of the "innocent landowner defense" liability protection, the bottom line is: will the ETS project minimize, to the extent possible, the risk of financing a given property?

ERAS will carefully follow the new standard that dictates the historical sources of information to be used, that is either Sanborn Fire Insurance Maps or city street directories (published by, among others, Polk and Haines).

Due to a lack of these sources in many areas, it will be necessary to either supplement these sources, by review of more traditional building department records or substitute the traditional historical sources. There may be additional cost for some projects to follow the new standard as well as continuing to provide sufficient due diligence.

#### Phase 1 Site Environmental Site Assessment

The Phase 1 ESA is the standard for due diligence to reduce risk and provide an owner the EPA innocent landowner defense from environmental liability. The current ASTM standard of 2005 supersedes the 2000 ASTM standard.

The most significant changes to the standard can be summarized as follows.

- 1) Increases the number and scope of interviews that may be necessary;
- 2) Must perform appropriate historical research to search for liens or other controls associated with environmental conditions and/or the presence or cleanup of contamination;
- 3) Increases the historical sources of information for the Property that must be reviewed. Additional possible sources of information include additional interviews, specifically of government official or others who have knowledge of the past uses of the Property;
- 4) Data gaps of historical information must be specified, along with a professional evaluation of their significance.

The new standard for ESA projects essentially provides new guidance to help the environmental professional performing ESA projects to obtain necessary information. However, the professional still has the responsibility to decide what the necessary research information is to evaluate environmental conditions.

The standard provides specific new guidance to environmental professionals to follow to minimize risk for owners of real property. ERAS does not believe the new standard will greatly affect the cost or turnaround time for ESA projects. ERAS has always met or exceeded the current standards. Additional research or investigation has and will be recommended, if necessary, to adequately assess environmental risk.

**HAPPY**

**HOLIDAYS**

**FROM ALL OF US**

**at ERAS Environmental, Inc.**

*David Siegel*

*Gail Jones*

*William (Skip) McIntosh*

*Andrew Savage*

*Casey Wheable*

*Kasey Cordoza*

*Nissa Nack*

*Caroline Abellar*

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*If you have any questions regarding the information in this newsletter, ERAS services, or if you have a subject you would like to read about in a future newsletter, please call David Siegel at 510.247.9885 (ex. 304) or send us email at [info@eras.biz](mailto:info@eras.biz)*

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