

## Environmental Assessment Newsletter

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Former gas station in Concord, CA

### New California Policy for Comfort Letters

**Key Conclusions:** The process of obtaining a “comfort letter” from the State of California for SBA financing has changed. Environmental agencies will open a case for the site and it will require significantly more time and money to request the preparation of a comfort letter.

In the past, Property owners could request a “comfort letter” which is required by the SBA for financing of properties that are affected by contamination from off-site sources. These letters were issued by the State of California Regional Water Quality Control Board (RWQCB), Department of Toxic Substances Control (DTSC) and Environmental Protection Agency (EPA). All that was needed was a written request along with transmittal of investigation reports.

The State has instituted a new policy for the comfort letter that will cost considerably more time and money. The following are the steps that will now be required:

- Complete a Memorandum of Understanding (MOA) and submit to agency
- After a caseworker is assigned provide a retainer (approximately \$6,000) to the agency for costs for oversight
- Transmit applicable reports for review to the selected agency



Hazardous waste in Campbell, CA

Note that a Phase 2 may be necessary to document subsurface environmental conditions to the satisfaction of the environmental agency and to

provide evidence that the Property is not a source of the contamination.

**Recommendations:** Request that ERAS performs an ESA and/or reviews the results of your ESA and Phase 2 report. The interested parties should be notified that total costs for obtaining the comfort letter could be \$10-20K or more, and could take 3-6 months or more.

### *Purpose of Phase 2 Investigations*

**Key Conclusion:** The basic purpose for a Phase 2 investigation is to evaluate specific areas of a Property for contamination and to obtain a closure by the local environmental regulatory agency. Any Phase 2 work that is approved should be made with the understanding of how the findings could affect the value of the Property.

Many environmental consultants appear to believe that the purpose of a Phase 2 investigation is to find any problem. Often their scope for a Phase 2 is to find any contamination at a Property from any source, whether associated with the Property or not. Besides the strong possibility of additional investigation being necessary (which appears to be goal of many environmental consultants), it is possible that the owner of the Property will be left with worthless property.

The basic purpose of a Phase 2 investigation is to determine whether *specific* chemical contamination is present on a Property from a *specific* source in a *specific* location. These issues are only properly addressed with a properly focused investigation. Ultimately the purpose of a Phase 2 is to obtain environmental agency closure if contamination is present. Random Phase 2 investigations are designed to do just the opposite and are unacceptable. The investigations and should be questioned by lenders, owners, buyers and brokers on both sides of the transaction.



for **Dry cleaning machinery**

**Recommendations:** If a Phase 1 report recommends Phase 2 investigation or appears possible to lead to Phase 2 investigation, contact ERAS for a FREE second opinion. Make sure the consultant provides information on how the Phase 2 could affect the status of the Property.

### *Dry Cleaners the Latest Panic?*

ERAS has noticed a significant increase in the number of properties sale that once contained dry cleaners. Former dry cleaners will almost always require a due diligence Phase 2 investigation. Dry cleaners are a special problem because they were so easily installed, moved and many once existed. In addition, the owners of dry cleaners are generally Mom and Pop type folks and there is no State of California program to finance investigation and cleanup.

The current standard for investigation at dry cleaners involves collection of soil vapor samples in the areas of potential impact which includes the machine and chemical storage areas. Owners should expect an investigation to cost approximately \$6,000-8,000 and require at least 4 weeks.

**ERAS is dedicated to solving and resolving environmental issues and problems.**

*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)*