

Property Transfers and Environmental Site Assessments

Environmental site assessments can help you determine if the property you want to purchase has environmental contamination. Although performing an environmental site assessment does not guarantee the property is clean, it can help minimize the risk.

Purchasing property to start or expand your business might come with risks and liabilities. Some properties can come with larger environmental liabilities than others. Abandoned underground storage tanks, buried drums, contaminated soil or ground water and chemical spills are examples of environmental liabilities you could inherit when you purchase property. Under Ohio and federal law, property owners can be held liable for the cleanup of environmental contamination on their property even if they did not cause the contamination.

How will I know if the property is contaminated?

Ohio EPA recommends that you hire a professional consultant to conduct an environmental site assessment to determine if a property is likely to have environmental contamination. There can be two parts or phases to an assessment. Phase I determines if the property could be contaminated. If no potential contamination issues are identified, the assessment is complete. If potential issues are identified, then a Phase II assessment is conducted to determine the type and extent of contamination.

Most environmental site assessments follow the standardized procedures developed by the American Society for Testing and Materials (ASTM). ASTM (astm.org) has developed standards for conducting Phase I (E1527-05 and E1528-06) and Phase II (E1903-97(2002)) environmental site assessments.

What does a Phase I assessment include?

A Phase I assessment is a screening of available information. It does not include any soil, water, waste sampling or analysis. There are four components to a Phase I:

- 1) Records review — The records review helps to identify past uses of the property and adjoining properties that could cause environmental contamination. These publicly available records may include: environmental records (past spills, violations); title history; building permits; insurance records and maps (Sanborn maps); city directories; historical maps; aerial photographs; and other information.
- 2) Site inspections — Site inspections look for indications of past spills or practices that may have caused environmental contamination. These might include the presence of storage tanks, drums, wells, sumps, solid waste piles, stained soil, stressed vegetation, septic tanks, industrial or commercial activities and disposal areas.
- 3) Interviews — Interviews should be conducted with the current owner, tenant, local government officials and other knowledgeable people to determine historical events that may have contributed to environmental problems on the site.
- 4) Written report — Your consultant will prepare a written report that documents the information and findings of the Phase I assessment. The report will identify potential significant environmental concerns and include recommendations to address those concerns.



Properties you want to purchase might have environmental contamination issues like this abandoned underground storage tank.

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What if the Phase I indicates potential environmental contamination?

If you still want to purchase the property, your consultant should conduct a Phase II environmental site assessment to confirm and further evaluate the presence of the suspected contamination. A Phase II includes sampling suspected contaminated areas to confirm the presence, type and levels of the contaminants. Samples may be taken from localized areas or across the entire property of the soil, surface water, ground water and the contents of any tanks and containers. A Phase II report will include the results of the sampling. It will also provide suggestions for the cleanup of any confirmed contamination that may cause future liability if it is left in place.

What if the Phase II shows the property is contaminated?

You have numerous options if the property is contaminated.

- Don't purchase the property.
- Request that the current owner clean up the contamination before selling the property.
- Negotiate a lower purchase price to reflect the cleanup costs.
- Discuss the purchase of the property with an attorney to get a better understanding of the environmental contamination and liability.
- Investigate options such as Ohio EPA's Voluntary Action Program (VAP) for resources to help facilitate cleanup at the property.

How do I find someone to conduct a Phase I?

Many consultants and professionals can assist you. Use the Internet or look in your telephone directory under environmental or engineers with subheadings of environmental or geotechnical. Word of mouth may also lead to a consultant. Speak with other small business owners that have gone through this experience. If you are applying for a loan, your financial institution may know of consultants. Environmental consulting is a business. Get bids, check references and make an informed decision. The least expensive consultant may not be the best choice. Make sure you select a consultant experienced in conducting environmental site assessments.

How much do environmental site assessments cost?

A typical ASTM Phase I may cost \$5,000 to \$8,000. Costs for a Phase II will vary depending on the amount and type of sampling involved and the size of the property.

Do I have to conduct an environmental site assessment?

Ohio EPA's regulations do not require this. However, many banks will require you to have an assessment done before they will lend you money. Some property sellers may conduct a Phase I or Phase II assessment, or even a cleanup to help sell their property. However, your bank may still require you to conduct an independent assessment.

You may also want to conduct an environmental site assessment to avoid liability under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, also known as Superfund). Superfund was enacted to help clean up environmental contamination and places the liability for the cleanup on potentially responsible parties. You can be liable for cleaning up your property under Superfund even if you did not cause the contamination.

However, Superfund provides liability protections for innocent purchasers/landowners, contiguous property owners and prospective purchasers. To be eligible for these liability protections, the property owner must determine if there is environmental contamination prior to purchase. The potential buyer must make this determination or show due diligence by conducting a Phase I environmental site assessment, or all appropriate inquiries.

What are all appropriate inquiries?

All appropriate inquiries (AAI) is the process of evaluating a property's environmental conditions and assessing potential liability for any contamination. U.S. EPA issued standards and practices for conducting all appropriate inquiries that became effective on November 1, 2006. The AAI requirements are applicable to any party who may potentially claim protection from CERCLA liability as an innocent landowner, a bona fide prospective purchaser or a contiguous property owner. U.S. EPA recognizes the ASTM E1527-05 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process as fully compliant with the AAI final rule. More information on the AAI requirements is available at epa.gov/brownfields/aai/index.htm.

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Do environmental site assessments cover all the property's environmental issues?

No. The purpose of the environmental site assessment is to identify environmental contamination. The assessment is not designed to determine if the property or the business operating on the property complies with all environmental regulations. The assessment won't uncover other issues, such as if wetlands or asbestos are present on the property. You will need to conduct separate assessments for these other environmental issues.

Does Ohio EPA provide a Certificate of Clean?

No. This is a question often asked by individuals that are looking to purchase a contaminated property or a property that has been cleaned up (remediated). Ohio EPA does not issue any such certificates. However, documents known as a Covenant Not to Sue or a No Further Action Letter are sometimes misinterpreted as some type of EPA clean certificate.

Under Ohio's Voluntary Action Program (VAP), a property owner or prospective owner can voluntarily work with an Ohio EPA-certified professional to investigate possible environmental contamination and clean it up to certain standards. The certified professional can submit to Ohio EPA a No Further Action (NFA) Letter that describes the contamination and cleanup activities. If the NFA is approved, Ohio EPA issues a Covenant Not to Sue that protects the property owner or operator and future owners from being legally responsible to the State of Ohio for further investigation and cleanup. It is important to know the author and origin of any document purported to be a clean certificate so its meaning and use can be properly assessed.

Does Ohio have programs to help with environmental site assessments?

The State of Ohio has several programs that may provide assistance/guidance for environmental site assessments.

- Ohio EPA's Voluntary Action Program (VAP) — Offers technical assistance with assessments and cleanup strategies to sites enrolled in the VAP. For more information, visit epa.ohio.gov/derr/volunt/volunt.aspx.
- Ohio EPA's Site Assistance and Brownfield Revitalization (SABR) Program — SABR serves as the contact for brownfields or contaminated sites not yet in any cleanup program (for example, VAP, remedial response, Superfund, RCRA corrective action). SABR is also the point of coordination for grant issues. For more information, visit epa.ohio.gov/derr/SABR/sabr.aspx.
- Bureau of Underground Storage Tank Registration (BUSTR), State Fire Marshal — BUSTR registers and oversees cleanup on sites having leaking petroleum underground storage tanks, or USTs. For more information, visit com.state.oh.us/fire.

Does Ohio EPA offer financial assistance with environmental site assessments?

A number of grants and loans are available at both state and federal levels to assist in the assessment and cleanup of contaminated properties. SABR is Ohio EPA's point of contact for such financial assistance in Ohio. Local governments are often supportive of business's plans to characterize, clean up and reuse property, and may be willing to partner with you on grants and loans.

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Columbus, OH 43215
(614) 644-3020

Central District Office

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, OH 43215
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(800) 686-2330

Northwest District Office

347 N. Dunbridge Rd.
Bowling Green, OH 43402
(419) 352-8461
(800) 686-6930

Southeast District Office

2195 E. Front Street
Logan, OH 43138
(740) 385-8501
(800) 686-7330

Northeast District Office

2110 E. Aurora Rd.
Twinsburg, OH 44087
(330) 963-1200
(800) 686-6330

Southwest District Office

401 E. Fifth St.
Dayton, OH 45402
(937) 285-6357
(800) 686-8930

*Toll-free numbers are for citizens with questions or concerns about environmental issues.
The regulated community should use the business line for routine business.
Spills and emergencies should be reported to (800) 282-9378.*