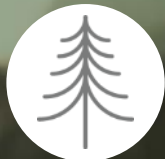
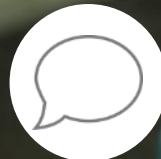


# The Basics of Environmental Due Diligence

ONE COMPANY, MANY SERVICES



ENVIRONMENTAL



CONSULTING



ECONOMIC



**PM**  
ENVIRONMENTAL  
Risk Well Managed

# What is Environmental Due Diligence?

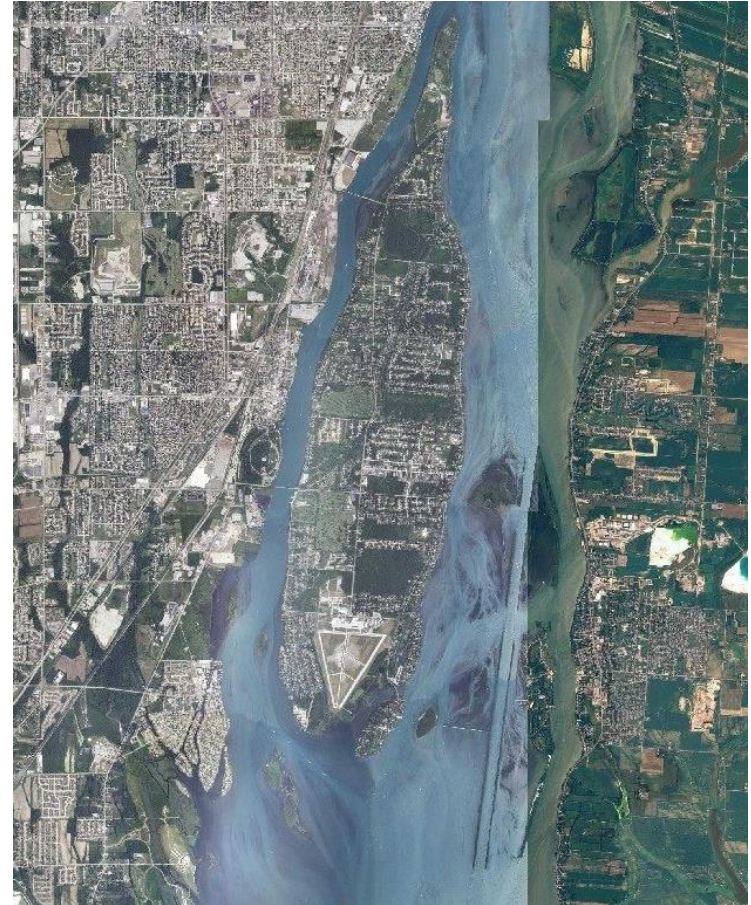
- Environmental Due Diligence is the process of assessing a property for environmental contamination.
- This Due Diligence depends on the transaction type, whether it is a new purchase or refinance, and comes in different forms.
- Common types of Environmental Due Diligence include:
  - Environmental Questionnaires
  - Transaction Screens
  - Phase I & Phase II ESAs.
- Only a Phase I Environmental Site Assessment (ESA) will establish innocent landowner protection if the right process is followed.



# What is a Phase I ESA?

A Phase I ESA is a tool to determine whether a property may be contaminated. The Phase I's purpose is to identify Recognized Environmental Conditions (RECs), Controlled RECs and Historical RECs. Common components of a Phase I ESA include:

- Records Review
  - Environmental Database Radius Map Report (i.e. EDR report)
  - Review Government Records (local, State, Federal)
- Historical Sources
  - Aerial Photographs, Topographic Maps, Sanborn Maps, City Directories, etc.
- Interviews with current/former owners and operators
- Site Reconnaissance
- Preparing a comprehensive report, which includes data summary, location/site maps, photographs, and appropriate appendices



# Why is a Phase I Needed?

- Environmental laws impose potential cleanup liability upon owners and operators of a property, regardless of whether the parties were involved in causing the contamination, unless proper due diligence is conducted.
- The Phase I ESA establishes landowner liability protections and compliance with “All Appropriate Inquiry” (AAI). AAI is a precondition for one of three CERCLA landowner liability protections:
  - Innocent Landowner - “I did not know and had no reason to know my site was a source.”
  - Contiguous Property Owner – “I did not know and had no reason to know my site was affected by an off-site source.”
  - Bona Fide Prospective Purchaser – “I have reason to know that my site is or is likely to be impacted by an on-site or off-site source, and I will be prepared to take reasonable steps and adhere to any continuing obligations.






# What's Next?

- If any RECs are identified in the Phase I ESA they must be further investigated. This is usually done by completing a Phase II ESA.
- A Phase II ESA assesses RECs through:
  - Soil, groundwater or vapor sampling at locations most likely to be contaminated, as outlined in the Phase I ESA report.
  - For example, former underground storage tanks, drums, or a dry well location.
  - Geophysical surveys can also be conducted and evaluate suspect, buried objects of environmental concern, such as orphan USTs, piping or drums.
- If a Phase II is clean, the due diligence is complete. If samples confirm contamination, then further cleanup must occur.



# What Does the Environmental Due Diligence Process Look Like for Both a Buyer and a Lender?



A close-up portrait of a woman with short, dark brown hair, smiling warmly at the camera. She has light-colored eyes and is wearing a dark blue, ribbed top. The background is a soft, out-of-focus light blue.

This is  
Susan

She's a  
Commercial  
Loan Officer at  
ABC Bank

A close-up portrait of a man with dark, wavy hair and a light beard, smiling slightly. He is wearing a bright blue dress shirt and a red and white striped tie. The background is a solid light blue.

This is Bill

He's a Real  
Estate  
Developer





Bill wants to get a loan from ABC Bank so he can purchase a piece of property and build an office building



# Both parties want to determine the environmental condition of the property



The lender needs to determine if there are any environmental concerns that could affect the use of the property, the actual or perceived value or if there are any regulatory issues that could divert borrower's cash flow, thereby affecting loan repayment.



Bill wants to determine if there are any environmental concerns prior to purchasing as well. As a new purchaser, he qualifies for innocent landowner protections and, if he follows the right process, can have an exemption to cleanup/closure costs if the property is contaminated. It is the borrower's responsibility to follow the correct All Appropriate Inquiry (AAI) process to obtain State/Federal protections.



A close-up photograph of a person's hands wearing blue nitrile gloves, operating a piece of equipment used for soil sampling or environmental testing. The person is holding a black handle of a probe. The machine has a blue panel with several probes inserted into slots labeled 'AUGER', 'PROBE', and 'HAMMER'. The background is a blurred outdoor setting with soil and rocks.

**So how does Bill determine if environmental conditions exist and how can he protect himself from environmental liability?**



# Environmental Due Diligence must be conducted



State and federal environmental laws impose potential cleanup liability upon owners and operators of property, regardless of whether the parties were involved in causing the contamination, unless proper environmental due diligence is conducted.



State and federal laws allow for an "**innocent purchaser defense**," which exempts a purchaser from liability if the person can demonstrate that the property was acquired **after** the hazardous substance release occurred and....



...that **before** the acquisition, the buyer had neither knowledge of nor reason to suspect the contamination after having conducted "**all appropriate inquiry**" (AAI) into the property's environmental condition.





For Bill's purchase transaction, a **Phase I Environmental Site Assessment** is necessary to properly assess risk and provide desired protections.

The Phase I ESA will also provide Susan with the information she needs to make an informed risk decision for her loan.

# We're Here to Help!

Are you ready to get started on your  
Environmental Due Diligence?

Contact our qualified professionals or  
request a quote today!

