

STATE SYSTEM OF HIGHER EDUCATION  
COMMONWEALTH OF PENNSYLVANIA

STANDARD FORM OF AGREEMENT  
FOR  
PROFESSIONAL CONSTRUCTION MANAGEMENT SERVICES

RIDER A

SCOPE AND SPECIFICATIONS OF WORK TO BE PERFORMED

The intent of this work order is to obtain a Phase I Environmental Site Assessment (ESA) Report of the property, and improvements thereon, located at \_\_\_\_\_, Harrisburg, Pennsylvania 17110, known as the \_\_\_\_\_. The purpose of the ESA is to determine whether the potential exists that the site is contaminated with hazardous substances that require remedial action for continued use of the property in accordance with state, federal or local statutes.

The ESA will be conducted in accordance with ASTM E1527-13 (or current version) guidelines and establish the intent that the State System of Higher Education attempted to exercise due diligence in investigating the site prior to acquisition of the property.

The ESA Report should cite the expected hazardous substance and the estimated (order of magnitude) degree of risk associated with ownership, investment and development of the property for conducting administrative and educational instruction in renovated or newly constructed facilities located or placed on the site. An asbestos survey has previously been conducted and an assessment of the location and/or quantity of asbestos present is not included in the scope of work.

The ESA shall, at a minimum, accomplish three goals: (1) identify sources of contamination; (2) locate pathways of contamination; and (3) identify receptors of contamination. In addition, a risk assessment shall be indicated. A risk assessment shall determine the extent and severity of actual or threatened environmental hazards. The risk assessment shall identify whether particular substances pose a health risk in the context of particular sites. The risk assessment shall be presented in a manner which will also assist in developing remedial alternatives.

Sources of contamination can be any instrumentality or area utilized for the handling, storage, treatment or disposal of hazardous substances or wastes. In particular, storage facilities, underground and above ground tanks, equipment rinse areas, drum storage areas, lubrication sites, floor drains and trenches, surface impoundments, storm-water runoff areas and conduits, refuse collection and storage areas, sanitary sewers, etc.

Pathways of contamination should include ground-water, surface water, ambient air, storm lines and other media by which contaminants can be transported from their source to other areas of the site, and to off-site areas.

A receptor is the population, environmental resource or property that may be negatively affected by the contaminants. Receptors could include nearby property owners, a drinking water aquifer or anything else which could be harmed by the contaminants.

In addition, particular attention must be paid to past practices which may have resulted in the deposition of hazardous substances on-site prior to the enactment of environmental laws.

The ESA Report should, as a minimum, include a review of Historic Records, Environmental Agency data, and a detail inspection of the site. University Center historic files will be made available and access to the facilities will be provided as required.

A preliminary or draft ESA Report shall be provided to \_\_\_\_\_ not later than \_\_\_\_\_ 2021. The Contracting Officer for this work order is \_\_\_\_\_, phone (xxx) xxx-xxxx.

(Refer to the attached property transfer environmental audit guide for additional items for the scope of work.)

## PROPERTY TRANSFER ENVIRONMENTAL AUDIT GUIDE

Environmental Audit is an all encompassing term which includes Plant Audits, Hazardous Waste Audits, Industrial Hygiene Audits and others. In Property Transfer Environmental Auditing, we may do a little of each. The primary focus of a property transfer is to review the prior and current use of the property in question, determine regulatory compliance of activity, assess the impact and risk of such activity on future use or activity, and provide the buyer with factual information which can be used in making an informed decision.

Property Transfer Environmental Audits involve several steps:

- A. Review of applicable regulations- primarily OSHA and EPA. The normal non industrial property transfer will probably require only a check with the local or regional EPA office and the local fire department or emergency coordinator.
- B. Review of Records.
  1. Ownership and prior use.
    - a. Where possible get a copy of the last property title search, then go to county assessors office and review the records.
    - b. If you are unable to get a clear picture of prior use you may have to visit the local newspaper or historical society and use the archives.
    - c. If there is no clear trail, go to c below.
  2. Licenses and permits.  
Check city, county and State License
  3. Chemical inventories.  
Check purchasing records, look at storage facilities, interview employees. Check listings from EPA to determine if any controlled items. Also check with local emergency planning coordinator and Fire Department.
  4. Get owner to furnish:
    - a. Construction documents and specifications.
    - b. Geological Survey records.
    - c. Aerial Photographic records. If none furnished, locate and purchase-check yellow pages for local aerial photographic service or local and regional geological survey offices (USGS). Also US Corps of Engineers may have aerial photographic records of the area.
- C. Interviews with prior and current owners, staff and others. Determine scope of activity and elicit any significant information regarding use of the property. (See relevant SOP.)

5. Check waste disposal systems. Sewer- septic tanks, trash or solid waste etc.
  6. If multiple occupancy building get list of tenants, occupancy date, type of business, and if tenant renovations made or permitted. Make a preliminary evaluation of possible hazards and do inventories as deemed necessary. (See appendix B)
  7. Check below ground levels for water seepage, standing water etc. In areas with known problems with Radon, we may want to arrange for Radon testing. (Check with regional EPA)
- F. For sites or buildings with occupants engaged in manufacturing, a more in-depth compliance type audit is necessary.
- G. Evaluation of Risks.
1. Review possible sources of contamination.
  2. Study pathways from and within the site.
  3. Determine the end points of the pathways.
- H. Review and list the surrounding properties and determine any possible environmental concerns which may impact on property being surveyed. Gas stations, auto repair facilities, junkyards, light industry, dental labs and offices, garden shops, farm supply outlets, grain elevators, fertilizer and pesticide applicators are a few seemingly innocent places which may pose problems.
- I. Check with OSHA and EPA regional Office to determine if there are any current citations or other enforcement activities for industries in the area or current listings on National Priorities List, state or other CERCLA or Superfund lists or consideration for future inclusion on these lists.
- J. Report findings and recommendations. Include photo documentation (at least 1- 24 exp. roll), maps with geological data.

These generally provide what is commonly called Phase I audit. If one desires, a more in depth study may be conducted in a follow up or phase II audit which may include soil sample, soil borings leak testing of underground storage facilities.

The Property Transfer Environmental Audit differs from others in that one is not tracking continuous regulatory compliance but rather attempting to present factual records of prior and current use, regulatory impact, and the general conditions and impact on suitability for future use.

## **UNDERGROUND STORAGE TANKS**

If tanks are not visible on the site, a check of the Fire Marshall's records for any registered UST may be helpful.

The state may also have a UST coordinator who may have data on existing tanks.

Again, obtain copies of any records available.

If site personnel have knowledge of onsite tanks, permits and any test data, obtain copies of any of these records, or find out where such records could be obtained.

(A sample of a state permit and a state regulation is in Appendix-B. Be aware that not all states have regulations yet, and that such permits may not always be available.)

Local area emergency committees.

Information about Extremely Hazardous Chemicals and other hazardous and toxic chemicals may be available from these Local groups soon as a result of SARA III.

## **SOILS SURVEYS, AERIAL PHOTOGRAPHS**

Soils surveys may be available from the USDA and/or the local Soil Conservation Service. The potential for the penetration of surface contaminants into the water table can be determined by reviewing the soil types and topography of the area. Investigation into local drainage patterns can also be conducted by reviewing these documents.

They also have aerial photographs of the area back through several years.

Other sources for aerial photographs for review are:

The US Army Corps of Engineers, The State Geological Survey, and the local Soil Conservation Service.

## **PROPERTY TRANSFER ENVIRONMENTAL AUDIT OVERVIEW**

I. There are various types of environmental risks with which a buyer or seller may be faced.

A. Examples of liability or loss relating to environmental matters which may be incurred by an owner (buyer or seller) or a business or property.

2. Section 106 of CERCLA provides that the EPA may seek injunctive relief to compel responsible parties to take appropriate remedial action.
  3. See *New York v. Shore Realty Corp.*, 759 F.2d 1032 (2d Cir. 1985).
2. State Law.
- (a) *State Superfund Statutes.* Many states have enacted superfund statutes that impose liability upon landowners for hazardous conditions existing upon their property.
  - (b) *“Superlien” Statutes.* Some states (e.g., Massachusetts, New Jersey) have enacted, either separately or as part of the State superfund statute, laws which contain provisions that allow a priority lien to be placed upon the property in order to cover the cost of any cleanup of the property which may be required. The lien is not removed until the liability for cleanup expenses is extinguished.
  - (c) Various states impose joint and several liability on current and former owners of waste disposal sites for cleanup and damages.
  - (d) Many states (e.g., Michigan, Minnesota) have enacted statutes which create private rights of action to enforce environmental laws.
  - (e) An owner of property may be subject to third party liability for carrying on an activity which is an environmental hazard under several common law theories. These theories may include negligence, nuisance and strict liability.
    1. Section 839, Restatement 2d of Torts, provides that a purchaser of land is liable for failing to abate a harmful physical condition on the land after he takes possession of the land and becomes aware of the condition.
    2. Strict liability may be imposed for carrying on an abnormally dangerous activity.

II. A prospective buyer or seller should be aware of and consider the types of environmental risks which may be associated with the business or property.

A. The buyer should determine as much as possible about the environmental risks which the seller may have and should attempt to obtain assurances for the seller that the seller will correct or retain these risks.

1. A thorough investigation should be made of the business practices of the seller, including the following matters:

(a) The method of manufacturing, processing, storing, disposing and transporting of hazardous or toxic substances on premises should be understood.

4. The seller may have concerns that the buyer will not have the financial ability to fulfill the obligations which it assumes contractually.
- III. Once a buyer or seller has assessed its potential liability for environmental matters it should then decide how it wishes to allocate these risks in the purchase contract and conduct its negotiations accordingly.
- A. A buyer should ensure that the purchase agreement contains contractual language which defines and limits the extent of its environmental liability.
    1. A buyer should consider having the seller retain all of the liability for environmental matters arising out of its or the former owner's activities and the seller should indemnify purchaser for all liabilities associated with such activities.
      - (a) The indemnification, representation and warranties should survive the closing of the transaction for as long a period as possible. The presence of and/or extent and degree of harm caused by contamination may not be measurable for several years. Technical and medical advances may allow for the detection of previously undetectable contamination.
      - (b) With respect to certain potential liability, the indemnification should be permanent. Because of the impending rise in the incidence of claims for damages and the unpredictable and escalating costs associated with the cleanup of hazardous waste contamination, in connection with certain potential liability, the buyer should insist on an indemnity provision which is unlimited and which includes indemnity against all expenses, including legal fees and related litigation expenses.
    2. The buyer should require adequate disclosures, representations and warranties from the seller.
      - (a) If the purchaser plans to continue the seller's operation, the seller should represent that it has all required federal, state or local environmental permits and authorizations. The agreement should contain a list of such permits and authorizations and a representation that the list is complete.
      - (b) The seller should represent that it is and has been in full compliance with all applicable federal, state and local environmental statutory and regulatory requirements. Any exceptions should be fully disclosed.
      - (c) The agreement should contain a representation that there are no environmental, criminal, civil or administrative proceedings pending or threatened against the seller or its predecessors other than those, if any, disclosed in the agreement.
      - (d) The seller should represent that it knows of no facts or situations or otherwise which may give rise to any criminal, civil or

2. Seller may try to get buyer to assume as much environmental liability as possible. If seller agrees to indemnify buyer, seller should try to establish a high threshold and maximum limit on its total liability.
  - (a) Buyer should assume liability for any activity which it continues, contributes to, or aggravates an environmental problem. [sic] this would be especially relevant where purchaser continues seller's operations.
  - (b) Seller should disclaim any liability arising out of the activities of its predecessors.
3. The length of seller's indemnity, representations and warranties should be as short as possible.
4. A definition of "seller" if required, should be limited to management's knowledge.
5. Seller should arrange for confidentiality with respect to information disclosed to buyer.
6. Seller should ensure that any consent or approval needed (under State superfund laws, etc.), of the property before transfer is made a condition of seller's obligation to close.

-excerpted from "Considerations Relating to  
Environmental Risks in the Purchase and  
Sale of Businesses or Property"  
by Thomas J. Baechle, Esq.



## Virgin Land Environmental Assessment

Key issues of this type of review or assessment should include a comprehensive review of the type of land being investigated.

In certain areas, undisturbed land is rare; based on this premise, one must investigate the reasons why this land has remained undeveloped.

Once a good understanding of the history or past use of the land is available, an in depth review of the property, covering the following topics, should be conducted.

Location of Property - geographic definition/type of ecosystem.

- A. Coastal wetland
- B. Inland wetland
- C. Grassland Biome
- D. Forest Biome
- E. Other or mixture

Once this definition is established, a review of Federal, State, or local regulations pertaining to the protection or maintenance of this ecosystem must be conducted.

Outline of the present type of use.

- A. Wildlife preserve
- B. Land reserve
- C. Unused forest or timberland
- D. Private Estate
- E. Fallow or uncultivated farmland
- F. Other

Investigation of the present uses may uncover several limitations or restrictive covenants that would restrict future development. An interpretation of these limitations would be necessary.

Although the land in question may not be regulated, often adjacent property, and its proximity, may be a limiting factor.

A thorough description of adjacent property and its characteristics.

A land use evaluation of adjacent land to determine if there are any potential sources of contamination which would impact the property in question.

The existence of rivers, streams or lakes on the land under investigation.

What activities exist upstream or along a common shore line, that might impact the property in question.

A brief description of the climate of the area which should include at minimum:

- Average rainfall or precipitation
- Average temperatures
- Extreme temperatures
- An in depth description of the wildlife in the area is necessary. A complete review of the animals, birds, fish, and insects prevalent in the area, along with their density and average numbers is helpful in understanding building impact.
- Specific information concerning any known endangered species or protected animal in the area.

An overview of prevalent vegetation types and distribution information.

Describe soil types and condition in the area.

Describe the geology of the region.

The presence of any known aquifers that extend beneath the property in question.

Investigate the presence of precious metals or minerals on the property and ownership rights that correspond to them.

Permitting required or use restricted based on land type, vegetation type, proximity to protected area, etc.

Overall, the focus of this type of Environmental Assessment should be geared toward two main areas. First, confirmation should be made regarding past land use, if any, and the impact that those uses may have had on the property under consideration. Second, a deep understanding of the land in question must be reached prior to any plans for development being finalized. This includes a survey of what vegetation and wildlife exist on the site, and their roles in the ecosystem. Particular attention should be paid to the impact of any development of the land in question on the property itself and the surrounding areas.