

U.S. SBA RELEASES SOP 50 10 5 J

Here's What You Need to Know

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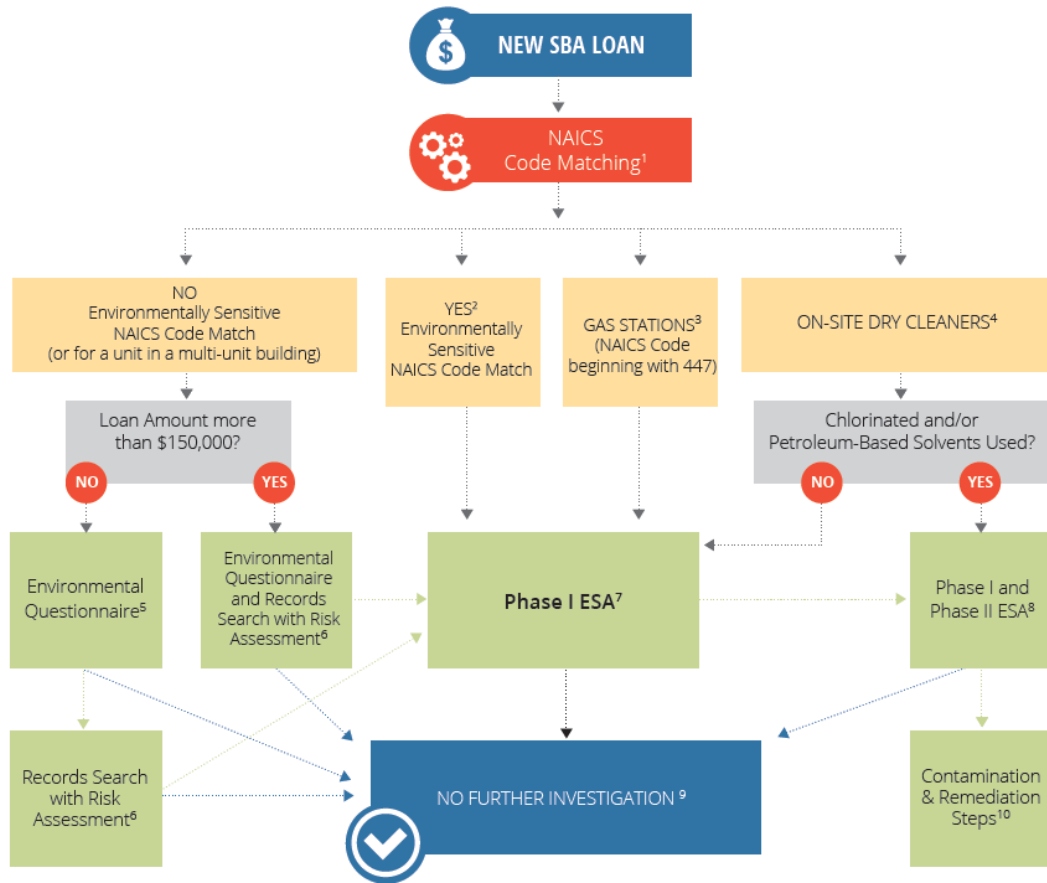


Today's Agenda



- Refresher on the SBA's Environmental Procedures
- What Changed?
- What You Need to Do to Prepare

Overview: SBA's Environmental Requirements



Key Areas of Change

1. RSRA definition
2. Dry cleaner requirements
3. Gas station tank testing
4. Reliance letter
5. Phase I recommendations
6. NAICS code list
7. Shelf life
8. E&O insurance
9. Historic Places

#1: DEFINITION:

“Records Search with Risk Assessment”

SOP 50 10 5(J)

“**Records Search with Risk Assessment**” means and includes (1) a search identified in 40 CFR § 312.266² for an AAI compliant Phase I as well as a search of records (for example, aerial photography, city directories, reverse directories and other records pertaining to the Property and Adjoining Properties; and (2) a risk assessment by an Environmental Professional based on the results of the records search as to whether the Property is “elevated risk” or “high risk” for Contamination. While the choice of historical records on any particular site is at the discretion of the Environmental Professional, the report must identify property uses back to the property’s first developed use, back to 1940, whichever is later. The report must identify by name the Environmental Professional who performed the risk assessment and must include all of the database reports and historical records relied upon. (Note that this report need not be addressed to the SBA and need not be accompanied by a Reliance Letter.) A Records Search with Risk Assessment may be considered if it was completed up to one year prior to submission.

- ✓ Historical research going back to 1940/first developed use.
- ✓ Mandatory supporting documentation.

#2: On-Site Dry Cleaner

New Phase II ESA Requirements

H. Special Use Facilities:

Prudent lending practices dictate that specific additional performed for certain special use facilities. For example will be used for daycare or child care centers or nur occupied by children must undergo a lead risk as lead in drinking water, and the results of these a Disbursement will not be authorized unless the r children has been sufficiently minimized. On-site di utilized chlorinated solvents such as perchloroeth petroleum-based solvents courts their bu clean-up costs if these contaminants have entered t Prudent lending practices dictate and SBA requires th facilities, whether currently in operation or operated historical used chlorinated and/or petroleum-based solvents undergo a Phase Assessment in addition to a Phase I which would be required due to the NAICS code ma Any soil and groundwater contamination and soil vapor intrusion must be addressed. A Phase II performed in connection with an on-site dry cleaning facility must be conducted by an

- ✓ Mandatory Phase II for any on-site dry cleaning facilities using chlorinated and/or petroleum-based solvents...regardless of years in operation.
- ✓ Adds soil vapor pathway to soil and groundwater considerations.
- ✓ Any soil, groundwater, contamination and soil vapor intrusion needs to be addressed.

#3: Gas Station Tank and Equipment Testing

OLD	NEW
<p>Environmental Site Assessment. The Environmental Investigation for all Gas Station Loans (including those secured by gas station equipment only) must: (1) begin with a Phase I ESA with the additional requirement that it be conducted by an independent Environmental Professional; (2) include an analysis of all relevant environmental records concerning the Property and Adjoining Properties, including any records provided by the seller if the loan is to purchase the Property; (3) include the equipment testing described in b. below (even if the loan is secured by real property only); (4) include the results of any further investigation, which may include a Phase II, recommended by the Environmental Professional (Any Phase II performed in connection with a Gas Station Loan must be conducted by an independent Environmental Professional who holds a current Professional Engineer's or Professional Geologist's license and</p>	<p>A. Environmental Site Assessment. The Environmental Investigation for all Gas Station Loans (including those secured by gas station equipment only) must: (1) begin with a Phase I ESA with the additional requirement that it be conducted by an independent Environmental Professional; (2) include an analysis of all relevant environmental records concerning the Property and Adjoining Properties, including any records provided by the seller if the loan is to purchase the Property; (3) include documentation supporting the Environmental Professional's determination of compliance with all regulatory requirements, if any, pertaining to tank and equipment testing (see paragraph b. below) (even if the loan is secured by real property); (4) include the results of any further investigation, which may include a Phase II, recommended by the Environmental</p>

✓ Mandatory supporting documentation on EP's determination of tank and equipment testing compliance.

#4: Reliance Letter Definition

“Reliance Letter” means SBA’s standard reliance letter pertaining to Environmental Investigation Reports, a copy of which is located in Appendix 3. The language in SBA’s standard reliance letter may not be modified. Additionally, Lenders and CDCs should not enter into any agreement that alters the terms of SBA’s standard reliance letter.

- ✓ No flexibility in reliance letter language to be signed by the environmental professional.

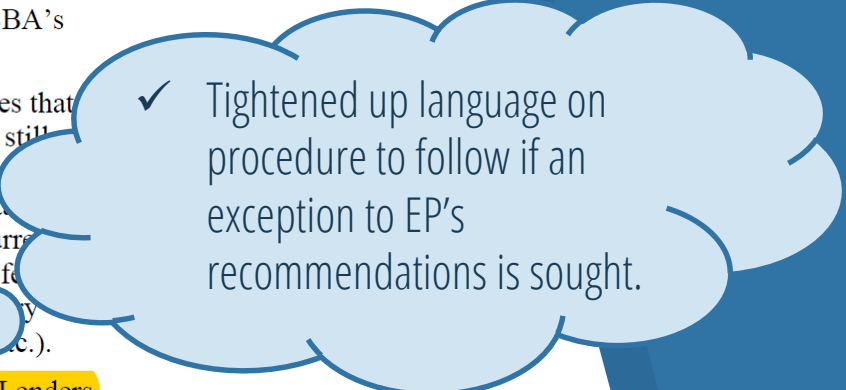
#5: Phase I ESA Recommendations

5. Phase I ESA Results:

a) If the Environmental Professional conducting the Phase I ESA concludes that no further investigation is warranted, the Lender must submit the results of the Environmental Investigation to SBA with recommendations and seek SBA's concurrence.

If the Environmental Professional conducting the Phase I ESA concludes that further investigation is warranted (typically a Phase II), and the Lender still to make the loan, the Lender must proceed as recommended by the Environmental Professional, or in the alternative submit the results of the Environmental Investigation to the SBA with recommendations and seek SBA's concurrence. In general, SBA will require compliance with all of an Environmental Professional's recommendations (including "housekeeping measures," such as secondary containment, decommissioning monitoring wells, sealing floor drains, etc.).

b) In the rare instance where an exception to policy may be warranted, Lenders must provide the SBA Environmental Committee with justification for not wanting to follow the Environmental Professional's recommendations and obtain committee approval.



✓ Tightened up language on procedure to follow if an exception to EP's recommendations is sought.

#6: Changes to the NAICS Codes of “Environmentally Sensitive Industries”

“Does investigation begin with a Phase I ESA?”

(NEW) Yes, if:

484 Trucking (if service bays, truck washing or fuel tanks present)

713990 Other Recreational Industries (indoor and outdoor shooting ranges only)

Yes (with new clarifications):

316 Leather/Allied Product Mfg (not required if assembly only)

326 Plastics and Rubber Products Mfg (not required if assembly only)

332 Fabricated Metal Product Mfg (not required if assembly only)

8122 Death Care Services (unless no embalming or cremation at the property)

#7: E&O Insurance

- ✓ E&O required on date of environmental investigation.
- ✓ EP waives time limitations on liability.

Insurance Coverage. Environmental Professional (and/or Environmental Professional's firm, where applicable) certifies that he or she or the firm was covered **as of the date of the Environmental Investigation** by errors and omissions liability insurance with a minimum coverage of \$1,000,000 per claim (or occurrence) and that evidence of this insurance is attached. As to the Lender and SBA, Environmental Professional (and Environmental Professional's firm, where applicable) specifically waive(s) any dollar amount limitations on liability up to \$1,000,000 as **well as any time limitations on liability**.

#8: Phase I ESA Shelf Life

- ✓ One-year shelf life for Phase I ESAs.
- ✓ No longer 180-day updates for certain sections.
- ✓ Recognizes that CERCLA liability protection requires 180-day updates.
- ✓ New language does not apply to SBA loan liquidation.

Environmental Professional as to whether the inquiry has releases at the Property. Additionally, SBA Environmental Professional that performs the Property is so minimal that no further warrant additional investigation. may include a similar statement to this effect. If further Environmental Professional should provide a detailed description of the

Protection Agency (EPA) sets for the viability of Phase I ESAs (2.20.) For SBA's purposes, and notwithstanding EPA's regulations on updating after 180 days, SBA will accept for review an otherwise AAI compliant Phase I ESA if it was performed within one (1) year of the date upon which it was submitted to a SBA loan processing center as part of an Environmental Investigation. Lenders or CDCs using their delegated authority may accept for review an otherwise AAI compliant Phase I ESA if it was performed within one (1) year of the date of approval of its Environmental Investigation. ***Parties may still wish to strictly comply with EPA's regulatory timeframes to avoid jeopardizing legal and regulatory protections.***

Note: The immediately preceding paragraph does not apply to liquidation situations under SOP 50 55 or SOP 50 57.

Summary of Shelf Life Revisions

	Previous SBA SOP 50 10 5	New SOP Version J
Environmental Questionnaire	If completed up to one year prior to submission	No change
RSRA	If completed up to one year prior to submission	No change
Transaction Screen	If completed up to one year prior to submission	No change
Phase I ESA	If completed less than 180 days prior to acquisition date. Reports completed within one year were acceptable if the EP updated certain sections to within 180 days (per the AAI rule)	If performed within one year of the date submitted to an SBA loan processing center
Appraisal report	Not specified	Dated no more than twelve months prior to the date of application

#9: National Consideration of “Historic Places”

E. Special Requirements For Loans Where Collateral May Be Included In The National Register Of Historic Places (Historic Properties).

Section 106 of the National Historic Preservation Act mandates Federal agencies under review process for all federally funded projects that potentially impact sites listed or eligible to be listed on the National Register of Historic Places (“NRHP”). If a loan will in any way affect such properties, the Lender (on delegated loans) and LGPC (on non-delegated loans) must consult with local SBA counsel for further guidance. Local SBA counsel will be required to notify the Associate General Counsel for Litigation or designee, and OFA.

If there is no potential to cause effect on historic properties, there are no further requirements under Section 106. For example, if the proceeds of the loan are to be used solely for the purchase of the property and no renovations or changes are anticipated, the SBA can make the determination that no further Section 106 review is required.

If the local SBA counsel determines that the undertaking is the type of activity that has the potential to cause effects on historic properties, then SBA is required to consult with the relevant State Historic Preservation Officer (“SHPO”) to determine if the undertaking and the proceeds of the loan will have an adverse effect on the historic nature of the property in question.

If SBA finds no adverse effect and the SHPO agrees or does not disagree within 90 days, the loan can proceed with the collateral of the loan. If the SHPO disagrees that there will be an adverse effect on the historic nature of the property, SBA must consult with SHPO to attempt to resolve the issue. This consultation will result in Memorandum of Agreement between Agency and SHPO regarding the resolution of the adverse effect.

Once local SBA counsel has made a no adverse effect determination or resolved any adverse effect issues with the SHPO, the decision must be signed off by the Associate General Counsel for Litigation or designee.



✓ More specific procedural language involving sites on the National Register of Historic Places.

What You Can Do to Prepare?

Summary of Key Changes



		Referenced Section	Impacts:
#1	RSRA Definition	Appendix 2-DEFINITIONS (p. 357)	Timeframe of historical research, documentation
#2	On-Site Dry Cleaner Phase I/Phase II	H. Special Use Facilities (p. 204, 318)	Mandatory Phase I and Phase II for on-site dry cleaners using chlorinated and/or petroleum-based solvents, added vapor pathway, all soil/vapor/groundwater issues must be addressed
#3	Gas Station Tank Testing	Appendix 5. Gas Station Loans	Added documentation requirements for compliance testing by EP
#4	Reliance Letter	Appendix 2-DEFINITIONS (p. 357)	Language cannot be modified
#5	Phase I recommendations	E. 5. Phase I ESA Results (p. 200)	Lender must follow or seek SBA approval
#6	NAICS code list	Appendix 4 NAICS CODES (p. 360)	2 additions, 4 clarifications
#7	E&O insurance	Appendix 3 (p. 359)	Allows time limits on liability
#8	Phase I ESA Shelf life	Appendix 2-DEFINITIONS (p. 356)	Phase I acceptable within one year
#9	Historic places	E. Special Requirements (p. 118, 294)	SHPO consult required

How to Prepare for a Seamless Transition

- Will apply to all applications received by SBA on or after January 1, 2018.
- Update all bank scopes of work, policy documents and templates to reference SOP 50 10 5 (J).
- Educate internal staff.
- Alert bank's environmental consultants of changes.
- Work with consultants who understand vapor risk.
- Determine bank's position on Phase I shelf life language.

For More Information

- Link to [SBA SOP 50 10 5 J](#)
- Download EDR's reference documents:
 - Flow chart
 - NAICS code list
- Read EDR [Insight's brief](#)
- Listen to the [replay of our two part series](#)
- Heads up on liquidation deadline of December 1
- Email questions to James: jhaberlen@edrnet.com

Q&A

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