

At your side
brother



Learn more

**Fast Color Laser
Printers and All-In-Ones**
Starting around \$399



Xtreme Entrepreneurs

See xtreme athletes turn their passion into success.

[Read Profiles >>](#)

[Franchises for Sale](#) | [Entrepreneur en Español](#) | [Subscribe](#) | [Newsletters](#) | [Special Offers](#)

Entrepreneur.com

Search

Search

Entrepreneur.com Web

[Home](#) | [Ask Entrepreneur](#) | [Grow Your Biz](#) | [Business Ideas](#) | [Franchises & Opportunities](#) | [Video](#) | [Tools & Services](#) | [Resource Center](#)

Entrepreneur Assist

Free Tools

[Sign In](#) | [Join Now](#)

[Take the tour](#)

presented by **VISA**

Starting a Business

Money

Marketing

Sales

Advertising

Franchises

Biz Opportunities

Home Based Biz

E-Business

Management

Human Resources

Technology

Work Life

Automotive

Magazine

Special Listings

More Resources

Business Blog

Columnists

Podcasts

Business Forms

Resource Centers

Startup Books

Special Offers

Products & Services

Real Estate Listings

Free Trade

Magazines

Classifieds

Trade Journals

Encyclopedia

Slideshows

Get the Magazine

[Home](#) > [Business Journals](#) > [Mortgage Banking](#)

New environmental concerns: commercial real estate lenders nationwide need to be aware of new due-diligence requirements critical to protecting their interests prior to closing. Contamination caused by illicit meth labs and other property uses are creating lingering liability.

by Ezovski, Derek
[Mortgage Banking](#) • Nov, 2007 • Commercial/Multifamily

If it seems like the ink on your environmental risk-management policy barely has time to dry before new developments make it obsolete, you're not imagining things. An increasing focus on environmental issues, coupled with a better understanding of the way contamination impacts human health and property values, has recently put environmental due diligence squarely in the spotlight. [??] The bad news is that it's time to update your environmental policy once again. But the good news is that today, when it comes to cost-effective, comprehensive environmental due-diligence tools, lenders have more choices than ever before. [??] So get that red pen ready: You'll want to factor the following into future commercial real estate due-diligence decisions to keep risk to a minimum.

All appropriate inquiries

On Nov. 1, 2006, the Environmental Protection Agency (EPA) codified the steps that purchasers of commercial real estate must take to qualify for liability protection under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The codification came in the form of a federal regulation entitled Standards and Practices for All Appropriate Inquiries, known as the AAI rule (visit www.edrnet.com/aa1 for more information).

By raising the bar in terms of who can conduct an environmental site assessment (ESA), what data must be researched, how long the assessment is valid and more, the AAI rule marks a significant departure from the previously accepted protocol. West Conshohocken, Pennsylvania-based ASTM International's E 1527-00 Phase I standard. Given the rule's implications on a borrower's exposure to CERCLA liability, every lender should take note.

ARTICLE TOOLS

TEXT SIZE: [T](#) | [T](#)

[Print](#)



[E-Mail](#)



presented by **VISA**

Grow Your Business

[America's Business Bank](#)

[Free Business Checking](#)

[Free Online Payroll](#)

[Small Business Forum](#)

[Expert Business Advice](#)

presented by **Bank of America**

Today on Entrepreneur



[Politically Speaking](#)
[Maximum Customer Reach in 2008](#)
[6 Technology Rules to Thrive](#)
[10 HR Resolutions for 2008](#)
[Online Storage Options](#)

[More Stories >](#)

TOYOTA moving forward

THE ALL-NEW 2008
SEQUOIA
ANYTHING BUT ORDINARY.

[EXPERIENCE SEQUOIA](#)

Vehicle shown with available equipment.
[*Rollover to view disclaimer here.](#)

Sponsored Links

"We recommend that all lending institutions understand the new AAI requirements and, based on their business profile, determine when to require AAI for their client base," says Daniel Grogan, an environmental professional in the Atlanta office of Alpharetta, Georgia-based MACTEC Engineering and Consulting. Grogan says that most, if not all, of the large lending institutions he works with have updated their environmental policies to consider AAI.

Alan Agadoni, a senior vice president in the Marietta, Georgia, office of Boston-based ATC Associates Inc., agrees. "Most lenders we work with have adopted ASTM 1527-05 [AAI's acceptable alternative]; however, we occasionally get requests for ASTM 1527-00 [the old standard] and modified transaction screens." Agadoni adds, however, that his company recommends clients comply with the new rule by following ASTM E 1527-05.

Of course, not all real estate deals are conducted with CERCLA liability in mind. Furthermore, with an AAI-compliant Phase I environmental site assessment carrying a price tag of at least \$3,000 (depending on property type and location), not all transactions can support such an assessment.

A more practical approach for lenders is to decide whether to require AAI on a case-by-case basis. While more conservative lenders require adherence to AAI on every transaction, reasoning that if the borrower is protected the lender is as well, others base their decision on business considerations and risk-tolerance levels. Environmental consultants and attorneys can offer invaluable advice to lenders that take this approach.

Larry Schnapf, environmental attorney with Schnapf Environmental Law Center, New York, points out that AAI is not a requirement for banks to obtain a secured creditor exemption under CERCLA, but, like Agadoni, he recommends that lenders follow the rule anyway.

"If a lender is going to take actions that could cause it to lose immunity from liability--for example, if it forecloses on contaminated property and does not take steps to sell it in a commercially reasonable manner--then the lender would be like any property owner and would want to ensure that he or she complies with AAI. Bankers wishing to remain conservative should exercise caution, so that if they lose their secured creditor defense, they have another to fall back on," he says.

When lenders do require an AAI-compliant Phase I or its acceptable alternative, an ASTM E 1527-05 Phase I, they should be aware of the following:

Not every environmental consultant who hangs a shingle is qualified to conduct an AAI-compliant Phase I environmental site assessment. On the contrary--only inquiries conducted by environmental professionals who meet EPA's strict definition for experience, education and certification will qualify an individual for CERCLA liability protection.

AAI calls for extensive research. EPA's new rule requires a search of all ASTM E 1527-00 required records (the previously accepted protocol) in addition to new requirements for records from local government agencies and Indian tribes. What's more, the environmental professional must search for engineering and institutional controls.

In terms of historical research, AAI requires that the research go back as far as "it can be shown that the property contained structures, or from the time the property was first used for residential, agricultural, commercial, industrial or governmental purposes."

The environmental professional must also address and explain any gaps in data encountered during his or her research. This underscores the need to use consultants who will conduct thorough research that taps into state and local sources of property information.

Phase I site assessments expire. Like the previous ASTM standard, the AAI rule assigns a six-month shelf life to the site visit, interviews and government-records-review components. If the environmental inquiry is more than one year from the property's purchase date, however, all information must be "collected or updated within one year prior to the purchase date of the subject property." This language has implications for the banking sector's common practice of updating old Phase Is. Under AAI, every component must be current to within one year of the purchase date.

[Phase 1 Site Assessments](#)


Environmental property inspections Phase I, Phase II, Hlth & Sft Plans
www.atlenv.com/propasseesm.html

[Phase 1 Esa](#)

Use a qualified environmental pro. Anything less is risky business!
www.brownfieldpros.org

Ads by Google

Entrepreneur Newsletters

 Sign up for the latest on:

- Starting a Business
- e-Business & Technology
- Sales & Marketing
- Franchise News
- Growing a Business
- Business Book Sampler

E-mail*:

Zip Code*:

Submit

FREE
E-Book with
Your Subscription
A \$15 Value

Qualifying for CERCLA liability protection does not end with pre-purchase screening. An AAI Phase I is the first step, but an owner could forfeit liability protection if applicable "continuing obligations" under CERCLA are ignored over the course of property ownership. These obligations begin the day the owner takes title to the property. They include such actions as ongoing compliance with any land-use restrictions on the property; stopping any continuing release; preventing any threatened future release; and preventing or limiting human, environmental or natural-resource exposure to earlier hazardous-substance releases.

With the additional requirements necessary for complying with the new federal regulation, lenders should be sure to choose help wisely. At the very minimum, a consultant must meet EPA's definition of an environmental professional, as the consultant will have to attest to his or her qualifications when signing off on the report. Additionally, a consultant who recognizes the nature of the particular deal, has worked with the type of property in question and who will see the transaction through its life cycle is preferable.

As with any business relationship, look for a consultant who understands your needs before you engage him or her in any actual work, says LaNeicia Stone, director of operations for EMG Corporation, Hunt Valley, Maryland.

"The key is to find someone who understands the business of real estate finance and has a good reputation in the industry," says Agadoni. "Lenders should review the consultant's implementation of AAI in their report template and scope of work to ensure compliance."

He adds that a national lender might want to work with a larger firm that has the ability to staff multiple projects or portfolios using local resources.

Grogan says lenders should select a consultant who has experience with the following:

- * performing Phase I environmental site assessments;
- * scoping and performing Phase II ESAs;
- * local and state regulations where the property is located;
- * developing a comprehensive risk profile based on regulatory drivers and the client's business needs;
- * commonly requested assessment activities such as lead-based paint, asbestos, vapor intrusion, etc.; and
- * site development/redevelopment activities and other associated services (geotechnical, civil site design, land planning, etc.) for cost efficiencies.

Finally, he offers, "Make sure to check the consultants' cost of services and capacity to meet deadlines."

If turnaround time is an issue, lenders should facilitate site access and consider asking whether the environmental professional uses Phase I report-writing software. These simple steps could shave days off turnaround time.

FDIC updates guidelines

Another reason for lenders to consider updating their environmental policies is that the Federal Deposit Insurance Corporation (FDIC) recently updated its Guidelines for an Environmental Risk Program to include the new protocol, after leaving it untouched for 13 years. The update not only recommends that banks establish formal environmental due-diligence policies in every instance of extending credit, but urges them to consider adopting AAI where appropriate. (For more information on FDIC's environmental guidelines, visit www.edrnet.com/index.php?option=com_content&task=view&id=67&Itemid=157.)



permission of the copyright holder. Further reproduction or distribution is prohibited without permission.

Copyright 2007, Gale Group. All rights reserved. Gale Group is a Thomson Corporation Company.

NOTE: All illustrations and photos have been removed from this article.

Browse by Journal Name:

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

[Small Business - Home](#) | [Small Business Search](#) | [Women Entrepreneurs](#) | [Business Startup Guides](#) | [Business Bookstore](#) | [En Español](#) | [Magazine Subscriptions](#)
[Contact Us](#) | [Help](#) | [Newsletters](#) | [Affiliate Programs](#) | [Advertising Info](#) | [Special Offers](#) | [RSS Feeds](#) | [Site Map](#) | [Reprints & Permissions](#)

Copyright © 2008 Entrepreneur.com, Inc. All rights reserved. [Privacy Policy](#)