

General Information & Requirements



Environmental Requirements & Helpful Tips:

SBA environmental requirements for its various Loan programs, may differ from your own policies. Here are some tips to make the process work effectively:

The Approval Process:

- ✓ Before an SBA 504 Loan can be disbursed, SBA and CDC must agree either that there is no risk of environmental contamination at the Property or that the risk has been sufficiently minimized, based on the Environmental Report.
- ✓ Order the appropriate Environmental Investigation and share the results with us.
 - If we conclude that no further investigation is required, then we will submit the Environmental Investigation to SBA with the recommendation that it be approved. SBA, however, retains the final decision on whether there is a need for additional investigation.
 - If we or SBA conclude that further investigation is required, then we will work with you and the applicant to obtain what is needed.

Tips for Timing of Environmental Investigation:

- ✓ The 504 Loan application and SBA Loan Approval can occur *prior* to receipt and review of the Environmental Investigation, but we do want to address any environmental concerns as early as possible in the process.
- ✓ It is strongly recommended that you work with us to have SBA approve the Environmental Investigation *before you close and disburse your Interim and/or Third Party Loans*.
- ✓ We want to make certain that SBA has no further requirements before you are committed to your loan. In addition, early attention to environmental issues will protect both you and the small business applicant from getting stuck with an environmentally-contaminated Property.

Which Environmental Investigation is Required:

Under SBA's policy, the first step in deciding which Environmental Investigation to order is whether the Property is a *unit in a multi-unit building* such as an office condominium or, for any other type of Property, determining the NAICS Code for *all present and former known uses* of that Property.

- ✓ If any of the NAICS Codes are a match for an “environmentally sensitive” industry as defined on the included list, then a Phase I Environmental Site Assessment is required. Certain uses – gas stations, dry cleaners, buildings constructed prior to 1978, etc. – have additional requirements which we will be glad to discuss with you. (For example, equipment testing is required for gas station properties and Phase II testing is required for on-site dry cleaners that are five or more years old.)
- ✓ If there is no NAICS Code match or the Property is a unit in a multi-unit building, then for loans over \$150,000, you may be able to proceed with an Environmental Questionnaire and Records Search with Risk Assessment. SBA also has certain minimum requirements for Environmental Questionnaires, including that the current (pre-Project) owner or operator of the site, the applicant and the lender sign the questionnaire. ***Please contact us to discuss the details before ordering your Environmental Investigation.***

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Environmental Requirements & Helpful Tips

Ordering the Environmental Investigation:

When you commission an Environmental Investigation, please make sure that the Environmental Professional adds the following parties as addressees of the report:

Indiana Statewide Certified Development Corp. and U.S. Small Business Administration
4181 E. 96th Street, Ste. 200
Indianapolis, IN 46240

Environmental Professionals:

Any Environmental Investigation other than an Environmental Questionnaire requires an impartial Environmental Professional who meets the educational and experiential requirements of EPA's AAI regulation. Most Environmental Professionals on your approved list will be acceptable to SBA, but we also can recommend professionals who are familiar with SBA procedures and can address SBA issues effectively.

- ✓ For a Phase I or Phase II, the Environmental Professional must provide the **SBA Reliance Letter*** and evidence of errors & omissions liability insurance of at least \$1 million per claim or occurrence.

Needed Conclusion:

For all Environmental Investigations including an Environmental Questionnaire and Records Search with Risk Assessment, the Environmental Professional will need to conclude in writing either

- The Property has a minimal or low risk of contamination and no further investigation is warranted
- There is risk of contamination sufficient to warrant additional investigation.

In the latter situation, the Environmental Professional will need to provide recommendations as to further investigation. Again SBA has requirements for what areas the Environmental Professional must document.

Handling Miscellaneous Recommendations:

Environmental Professionals may offer recommendations on changes to the Property that do *not* require further investigation; for example, they may recommend the removal of old tanks or 55-gallon barrels.

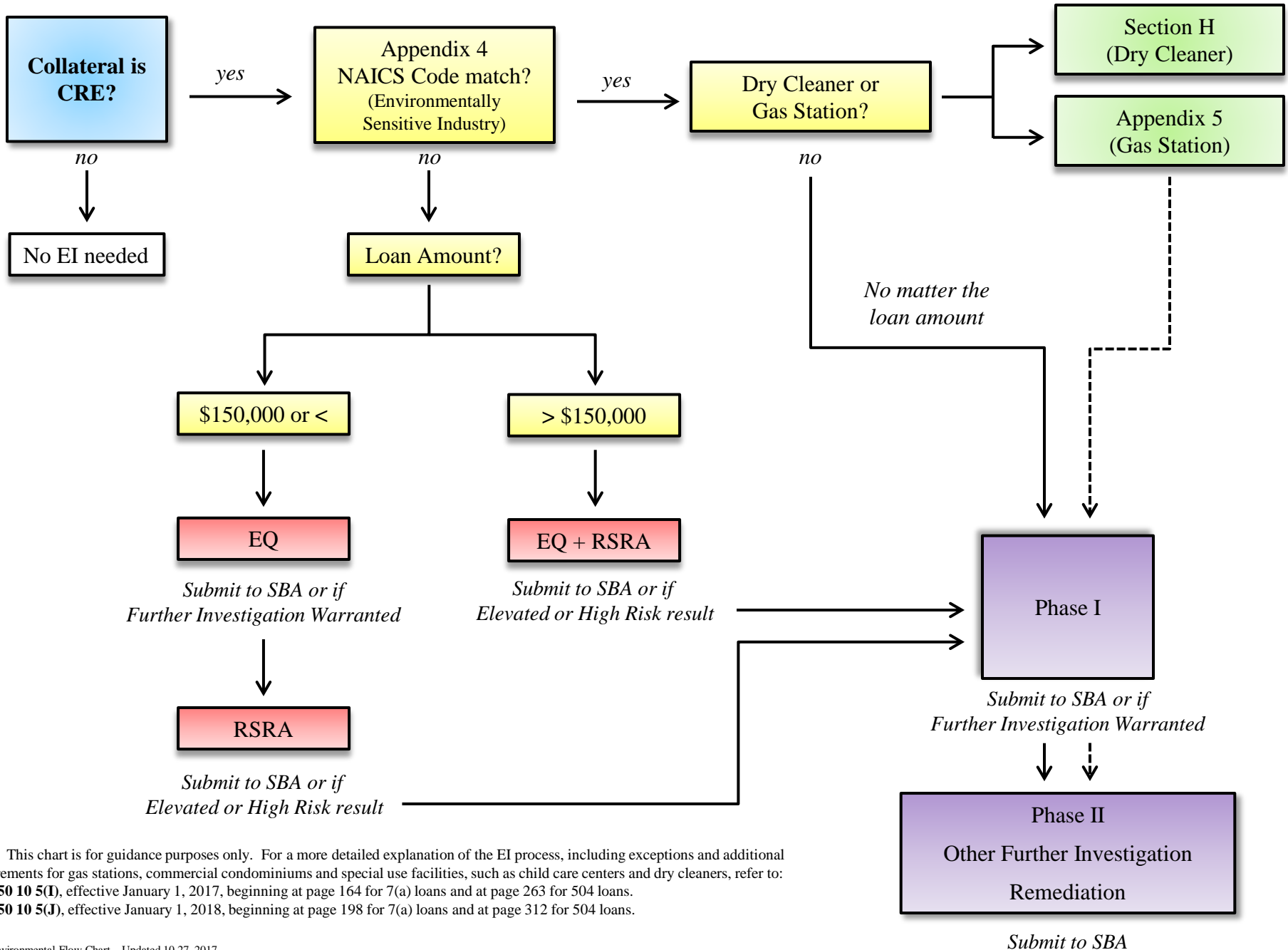
The SBA requires confirmation that the applicant has addressed these recommendations prior to approving the report.

More Involved Situations:

If the Property is a gas station or the Environmental Investigation shows contamination in excess of actionable or reportable levels, the need for additional testing, or other situations where there could be potential liability for environmental cleanup, please contact us **immediately**. Each situation will present different issues and have different solutions. Approval and disbursement of the 504 Loan is possible even when there is contamination which is or will be remediated, but we will need to work closely with you and the Environmental Professional to develop possible solutions and prepare recommendations for SBA.

It is our job to help you and the 504 Loan applicant to understand and address SBA's environmental requirements. Please do not hesitate to contact us if you need further guidance or have any questions whatsoever about these requirements or environmental conditions at the Property.

SBA Environmental Flow Chart



Note: This chart is for guidance purposes only. For a more detailed explanation of the EI process, including exceptions and additional requirements for gas stations, commercial condominiums and special use facilities, such as child care centers and dry cleaners, refer to: **SOP 50 10 5(I)**, effective January 1, 2017, beginning at page 164 for 7(a) loans and at page 263 for 504 loans. **SOP 50 10 5(J)**, effective January 1, 2018, beginning at page 198 for 7(a) loans and at page 312 for 504 loans.

APPENDIX 4: NAICS CODES OF ENVIRONMENTALLY SENSITIVE INDUSTRIES

NAICS CODES OF ENVIRONMENTALLY SENSITIVE INDUSTRIES*

How to determine if an industry is included on this list:

A 3 digit NAICS code includes all industries beginning with those 3 digits.

A 4 digit NAICS code includes all industries beginning with those 4 digits.

A 5 digit NAICS code includes all industries beginning with those 5 digits.

A 6 digit NAICS code includes only that industry under that industrial code.

- 211 OIL & GAS EXTRACTION
- 212 MINING (EXCEPT OIL & GAS)
- 213 SUPPORT ACTIVITIES FOR MINING
- 237 HEAVY & CIVIL ENGINEERING CONSTRUCTION
- 311 FOOD MANUFACTURING (*if underground fuel tanks present*)
- 312 BEVERAGE & TOBACCO PRODUCT MANUFACTURING
- 313 TEXTILE MILLS (*not required if sewing, weaving, or hemming only*)
- 314 TEXTILE PRODUCT MILLS (*not required if sewing, weaving, or hemming only*)
- 316 LEATHER & ALLIED PRODUCT MANUFACTURING (*not required if assembly only*)
- 321 WOOD PRODUCT MANUFACTURING (*if finishing occurs on site*)
- 322 PAPER MANUFACTURING
- 323 PRINTING & RELATED SUPPORT ACTIVITIES
- 324 PETROLEUM & COAL PRODUCTS MANUFACTURING
- 325 CHEMICAL MANUFACTURING
- 326 PLASTICS & RUBBER PRODUCTS MANUFACTURING (*not required if assembly only*)
- 327 NONMETALLIC MINERAL PRODUCTS MANUFACTURING
- 331 PRIMARY METAL MANUFACTURING
- 332 FABRICATED METAL PRODUCT MANUFACTURING (*not required if assembly only*)
- 333 MACHINERY MANUFACTURING (*not required if assembly only*)
- 334 COMPUTER & ELECTRONIC PRODUCT MANUFACTURING (*not required if assembly only*)
- 335 ELECTRICAL EQUIPMENT, APPLIANCE & COMPONENT MANUFACTURING (*not required if assembly only*)
- 336 TRANSPORTATION EQUIPMENT MANUFACTURING
- 337 FURNITURE & RELATED MANUFACTURING (*if finishing occurs on site*)
- 339 MISCELLANEOUS MANUFACTURING (*only required if hazardous materials are involved*)
- 42311 AUTOMOBILE & OTHER MOTOR VEHICLE MERCHANT WHOLESALERS (*if service bays present*)
- 42314 MOTOR VEHICLE PARTS (USED) MERCHANT WHOLESALERS
- 4235 METAL & MINERAL MERCHANT WHOLESALER
- 42393 RECYCLABLE MATERIAL MERCHANT WHOLESALER
- 4246 CHEMICAL & ALLIED PRODUCTS MERCHANT WHOLESALERS
- 4247 PETROLEUM & PETROLEUM PRODUCTS MERCHANT WHOLESALERS
- 441 MOTOR VEHICLE AND PARTS DEALERS (*if service bays present*)
- 447 GASOLINE STATIONS
- 45431 FUEL DEALERS (*not required for propane or firewood dealers*)

- 481 AIR TRANSPORTATION
- 482 RAIL TRANSPORTATION
- 484 TRUCKING *(if service bays, truck washing, or fuel tanks present)*
- 486 PIPELINE TRANSPORTATION
- 53212 TRUCK, UTILITY TRAILER, AND RV (RECREATIONAL VEHICLE) RENTAL & LEASING *(if repairs, maintenance or vehicle washing are performed onsite)*
- 53241 CONSTRUCTION, TRANSPORTATION, MINING & FORESTRY MACHINERY & EQUIPMENT RENTAL & LEASING *(if repairs, maintenance or vehicle washing are performed onsite)*
- 53249 OTHER COMMERCIAL & INDUSTRIAL MACHINERY & EQUIPMENT RENTAL & LEASING *(if repairs, maintenance or vehicle washing are performed onsite)*
- 54138 TESTING LABORATORIES
- 56171 EXTERMINATING & PEST CONTROL SERVICES
- 562 WASTE MANAGEMENT & REMEDIATION SERVICES
- 6221 GENERAL MEDICAL & SURGICAL HOSPITALS *(if fuel tanks are present)*
- 713990 OTHER RECREATIONAL INDUSTRIES *(indoor and outdoor shooting ranges only)*
- 71391 GOLF COURSES & COUNTRY CLUBS
- 71392 SKIING FACILITIES
- 71393 MARINAS
- 7212 RV (RECREATIONAL VEHICLES) PARKS & RECREATIONAL CAMPS *(if fuel tanks are present or if vehicle repairs or maintenance is performed onsite)*
- 8111 AUTOMOTIVE REPAIR & MAINTENANCE *(except for "car wash only" facilities, for which a Transaction Screen is an acceptable starting point)*
- 8112 ELECTRONIC & PRECISION EQUIPMENT REPAIR & MAINTENANCE *(not required if assembly only)*
- 8113 COMMERCIAL & INDUSTRIAL MACHINERY & EQUIPMENT REPAIR & MAINTENANCE
- 8122 DEATH CARE SERVICES *(unless no embalming or cremation at the Property)*
- 8123 LAUNDRY & DRY CLEANING SERVICES *(if dry cleaning operations have ever existed on site)*
- 812921 PHOTOFINISHING LABORATORIES *(except one hour)*

*A Phase I should always be obtained if the business sells, supplies or dispenses fuel, gasoline, heating oil, even if the NAICS code for the business is not identified on this list of environmentally sensitive industries.

A complete list of industries and corresponding NAICS codes is available online at <http://www.census.gov/eos/www/naics/>.

SPECIAL USE FACILITIES

Prudent lending practices dictate that specific additional environmental assessments be performed for certain special use facilities.

Daycare or Child Care Centers Built prior to 1980

Property constructed prior to 1980 that will be used for daycare or child care centers or nursery schools or residential care facilities occupied by children must undergo a lead risk assessment (for lead based paint) and testing for lead in drinking water, and the results of these assessments must be submitted to the SBA. Disbursement will not be authorized unless the risk of lead exposure to infants and small children has been sufficiently minimized.

Dry Cleaning Facilities (Prior or Existing)

On-site dry cleaning facilities, which may have utilized chlorinated solvents such as tetrachloroethene (PCE) and trichloroethene (TCE) and/or petroleum-based solvents in the course of their business operations, may present significant clean-up costs if these contaminants have entered the soil, soil vapor and/or groundwater. Prudent lending practices dictate and SBA requires that any Property with on-site dry cleaners, whether currently in operation or operated historically at the site, that did, do or likely used chlorinated and/or petroleum-based solvents undergo a Phase II Environmental Site Assessment in addition to a Phase I which would be required due to the NAICS code match. 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 independent Environmental Professional *who holds a current Professional Engineer's or Professional Geologist's license and has the equivalent of three (3) years of full time relevant experience.*

Gasoline Stations

A. 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 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 has the equivalent of three (3) years of full time relevant experience.*); and
- (5) if the Property is Contaminated, include a detailed description of and cost estimate for the recommended Remediation.

B. The Environmental Investigation performed by the Environmental Professional must include a determination whether or not the gas station is in compliance with all regulatory requirements, if any, pertaining to tank and equipment testing. A loan may not be disbursed until full compliance is achieved. Further, any leaking or otherwise defective equipment, systems, containment devices, etc., must be replaced or repaired prior to disbursement.

[Letterhead of Environmental Professional or Environmental Professional's Firm]

RELIANCE LETTER

[Date]

To: [For 7(a) loans, insert name and address of participating Lender here] ("Lender")
or
[For 504 loans, insert name and address of CDC here] ("Lender")

and

U.S. Small Business Administration ("SBA")

Re: Borrower Name:
Project Address ("Property"):
Environmental Investigation Report Number(s):

Dear Lender and SBA:

[Name of Environmental Professional] ("Environmental Professional") meets the definition of an Environmental Professional as defined by 40 C.F.R. § 312.10(b) and has performed or supervised the performance of the following "Environmental Investigation(s)" (check all that apply):

____ A Transaction Screen of the Property dated _____, 20____, and any addendum(s) thereto, conducted in accordance with ASTM International's most recent standard (currently ASTM E1528-14);

____ A Phase I (or an Updated Phase I) Environmental Site Assessment of the Property dated _____, 20____, and any addendum(s) thereto, conducted in accordance with ASTM International's most recent standard (currently ASTM E1527-13). In addition, the Environmental Professional has addressed the performance of the "additional inquiries" set forth at 40 C.F.R. § 312.22;

____ A Phase II Environmental Site Assessment of the Property dated _____, 20____, and any addendum(s) thereto, conducted in accordance with generally-accepted industry standards of practice and consisting of a scope of work that would be considered reasonable and sufficient to identify the presence, nature and extent of a Release as it impacts the Property.

Reliance by SBA and Lender. Environmental Professional (and Environmental Professional's firm, where applicable) understand(s) that the Property may serve as collateral for an SBA guaranteed loan, a condition for which is an Environmental Investigation of the Property by an Environmental Professional. Environmental Professional (and Environmental Professional's

firm, where applicable) authorize(s) Lender and SBA to use and rely upon the Environmental Investigation. Further, Environmental Professional (and Environmental Professional's firm, where applicable) authorize(s) Lender and SBA to release a copy of the Environmental Investigation to the borrower for information purposes only. This letter is not an update or modification to the Environmental Investigation. Environmental Professional (and Environmental Professional's firm, where applicable) makes no representation or warranty, express or implied, that the condition of the Property on the date of this letter is the same or similar to the condition of the Property described in the Environmental Investigation.

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.

Waiver of Right to Indemnification. Environmental Professional and Environmental Professional's firm waive any right to indemnification from the Lender and SBA.

Impartiality. Environmental Professional certifies that (1) to the best of his or her knowledge, Environmental Professional is independent of and not a representative, nor an employee or affiliate of seller, borrower, operating company, or any person in which seller has an ownership interest; and (2) the Environmental Professional has not been unduly influenced by any person with regard to the preparation of the Environmental Investigation or the contents thereof.

Acknowledgment. The undersigned acknowledge(s) and agree(s) that intentionally falsifying or concealing any material fact with regard to the subject matter of this letter or the Environmental Investigations may, in addition to other penalties, result in prosecution under applicable laws including 18 U.S.C. § 1001.

Environmental Professional
Printed Name:

(Note: The Environmental Professional must always sign this letter above. If the Environmental Professional is employed or retained by an Environmental Firm, then an authorized representative of the firm must also sign below).

Signature of representative of firm who is authorized to sign this letter
Printed Name & Title:
Name of Environmental Firm:

Enclosure: Evidence of Insurance