



Carolinas

Environmental Consultants & Contractors

SELLERS BILL OF RIGHTS - PART IV PHASE I ESA MISTAKES

As stated in the first Seller's "Bill of Rights" article, it is in your best interest to contractually obligate the buyer to provide the Phase I ESA in draft form.

When reviewing a draft Phase I ESA be on the look-out:

- If there are not sections about city directories, aerial photographs, insurance maps, and at least four or five interviews, including an interview from you, the seller, the ESA is not complete.

You should have been interviewed, received requests for access to your property, and asked for the contact information about site occupants.

While you typically do not care that a buyer's consultant is doing a bad job, their lack of research can lead to misinformation about your property. A recently reviewed report stated that a property was an illegal dump, while the property owner had a state permit to fill the site with construction debris. The consultant who proposed the ESA had not interviewed the property owner.

- Another common issue is the assumption that nearby sites represent a source of impact and sampling must be done.

Gas stations and other sites that handle chemicals are typically not a problem if groundwater does not carry contaminants toward your property. Have your consultant confirm groundwater flow direction with DHEC before allowing another consultant to drill on your site.

You may be able to avoid an intrusive investigation at the cost of thousands of dollars.

Have your consultant conduct an ESA or conduct the ESA research of your site prior to placing it on the market, to prevent surprises or to be forewarned of possible problems.

You may even want to consider having some samples collected and compared to appropriate standards. Nothing stops questions from the buyer's consultant like hard analytical data.

If you choose to prepare a Phase I ESA to provide to the buyers, make sure that the consultant will transfer reliance on the report. While it is likely that the buyer will still want their own consultant to look at the site, you have already braced yourself for the worst, if your consultant has done their job.

The important thing to take away from this is that you should not leave yourself to the mercy of the buyer and their consultant.

Remember: Have your contracts drawn with your rights clearly stated to prevent a buyer or their consultant from turning your life and your property's reputation into a nightmare.

Call Nina Marshtein for more information and the next time you need an environmental consultant or assessment on property that you intend to purchase or sell: 843-746-8525

SCS Engineers delivers a full spectrum of solid waste services and, as a pioneer in developing solutions to solid waste, hazardous waste, and Superfund problems, has set the industry standards for risk based cleanups, voluntary cleanups, accelerated investigations, presumptive remedies, strategic environmental management, and waste minimization.

SCS Engineers Carolinas specializes in environmental due diligence compliance and permitting projects including process safety management, air quality permitting, NPDES permitting and stormwater pollution plans, SPCC plans, EPCRA and CERCLA compliance, and emergency action plans.

SCS SECURE, a full-service Brownfield's redevelopment group, offers clients integrated real estate, site renewal, and risk transfer solutions including mitigation design, construction, operations, maintenance, and monitoring of environmental systems.

For more information on the environmental responsibilities and implications of purchasing or selling commercial property, please contact: [Nina G. Marshtein, P.G.](mailto:nmarshtein@scsengineers.com) nmarshtein@scsengineers.com www.scsengineers.com