

Why cities can't skip Phase I environmental due diligence

Municipalities acquiring property for public projects often overlook a critical step—skipping a Phase I ESA can lead to liability, hidden contamination and missed chances for crucial funding.

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At a recent workshop on land reuse and redevelopment, it became clear that many municipalities are unclear about when and why environmental due diligence is necessary, especially the importance of a Phase I Environmental Site Assessment (ESA) that meets federal requirements for All Appropriate Inquiries (AAI).

This lack of clarity can lead to costly missteps and lost opportunities. Municipalities often acquire properties for redevelopment, public infrastructure, affordable housing or open space. They may not realize that skipping a Phase I ESA can expose them to cleanup liability, unexpected contamination and missed funding opportunities.

What is a Phase I Environmental Site Assessment (Phase I ESA)?

A Phase I ESA is a standard tool used to identify potential or existing environmental contamination on a property. It is typically conducted before a real estate transaction and protects the buyer, whether a private developer or a public agency, from unknowingly inheriting environmental liability.

A Phase I ESA should follow the ASTM International (ASTM) E1527-21 standard to meet the requirements of the EPA's AAI rule to qualify for liability protections under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).



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The assessment includes:

- A review of historical records to identify past uses that could have caused contamination (e.g., gas stations, dry cleaners, industrial use, etc.)
- A site inspection to observe current conditions and look for signs of environmental concern (e.g., staining, vent pipes, drums, fill dirt, etc.)
- Interviews with current and past property owners or occupants, and local officials
- A review of regulatory databases to identify known contamination on-site, or which could migrate to the subject property from a nearby site

Importantly, a Phase I ESA is non-invasive, taking no soil, water or air samples. If the Phase I ESA indicates a Recognized Environmental Condition (REC), additional investigation through a Phase II ESA, which includes sampling, may be recommended.

Why cities should care

For municipalities, conducting a Phase I ESA isn't just a best practice; it's a critical safeguard. Without it, a city could unknowingly assume environmental liability that can derail redevelopment efforts, increase project costs and significantly delay timelines.

Legal liability protection: Under CERCLA, property owners, including local governments, can be held responsible for cleaning up contamination, even if they didn't cause it. A properly completed Phase I ESA that meets EPA's AAI requirements is the first step in securing liability protections. A party that appropriately performs a Phase I ESA is protected from CERCLA liability if it proceeds with a purchase knowing or suspecting the site has contamination.

Eligibility for Brownfields and cleanup grants: Many federal and state funding sources, such as the EPA's Brownfields Program, require documentation of due diligence, including a current Phase I ESA. Without it, your city risks disqualification from grants that would otherwise help fund assessment, cleanup and redevelopment efforts.

For properties acquired by a local government after Jan. 11, 2002, the EPA generally requires documentation of AAI completion before acquisition to qualify for liability protections and funding eligibility. Properties acquired before this date may be exempt, but a clear record of ownership and documentation is still essential.

Informed decision-making: A Phase I ESA helps cities understand site history and environmental risks before acquisition, supporting better budgeting, timelines and public communication. Use it to negotiate the terms of a Purchase and Sale

Agreement for an environmentally impacted property.

Risk to public trust and redevelopment goals: If contamination is discovered post-acquisition, the city may face backlash from the community and disruption of planned projects. Conducting due diligence shows accountability and safeguards public investments.

When to conduct a Phase I ESA

Conducting a Phase I ESA before a city acquires a property to qualify for liability protections and funding. Key scenarios include:

Before acquiring property: This includes purchases, donations, land swaps and acquisitions through foreclosure or tax default. It is especially important to highlight that cities face significant risk when receiving property through donations or tax default, as a common reason for properties to end up in default is due to contamination and diminished value. Without proper due diligence, municipalities may unknowingly inherit substantial environmental liabilities. Early assessment helps cities understand these risks and put protections in place before acquisition.

Before redevelopment or disposition: Even for properties a city already owns, a new Phase I ESA

may be needed before transferring to a developer or beginning new construction, especially if the last assessment is outdated.

Before applying for grants: Programs like EPA's Brownfields Cleanup Grants require a current Phase I ESA to demonstrate site readiness and compliance.

When environmental conditions may have changed: If incidents like spills or illegal dumping have occurred, a new Phase I ESA may be necessary to reflect current conditions.

How long is a Phase I ESA valid?

A Phase I ESA must be no more than 180 days old at the time of acquisition to qualify for CERCLA liability protections. While it can technically remain valid for up to one year, certain components, such as interviews, site visits and regulatory reviews, must be updated after 180 days. Without those updates, the Phase I ESA is no longer compliant. To stay on track, cities should aim to begin the process three to four months before closing.

Best practices for municipal due diligence

Municipalities can strengthen their property acquisition practices by embedding environmental due diligence into their standard procedures.

Make Phase I ESAs part of every acquisition checklist, engage qualified environmental professionals early, and ensure legal, planning and public works departments are aligned on requirements. Keep environmental records well-organized and accessible for grant applications or audits. Never assume a property is contamination-free, as past uses may tell a different story. When in doubt, consult legal counsel to protect your city from unnecessary risk.

Environmental due diligence isn't just a box to check; it's a critical tool for protecting public funds, advancing community redevelopment and avoiding costly surprises.

For cities, conducting a timely and compliant Phase I ESA can mean the difference between a successful project and a long-term liability.

Whether acquiring a site for housing, parks, infrastructure or economic development, municipalities should treat environmental risk as a core part of the transaction process. By embedding best practices into your workflows and working with qualified professionals, your city can reduce risk, strengthen grant eligibility and demonstrate responsible stewardship to your community. Before you acquire your next property, make sure environmental due diligence is high on the checklist.

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