

Understanding Environmental Risk



PRESENTED TO:



Presented by:

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Environmental Risk Management Overview

Environmental Risk



Risk associated with

1. The threat of contamination from the use, storage, handling and disposal of chemicals including petroleum and hazardous materials at a property.
2. Liability for known or potential contamination conditions.
3. Financial obligations for correcting compliance violations or remediating contamination.
4. Third party claims for causing unsafe health conditions for site occupants or for causing off-site impacts.

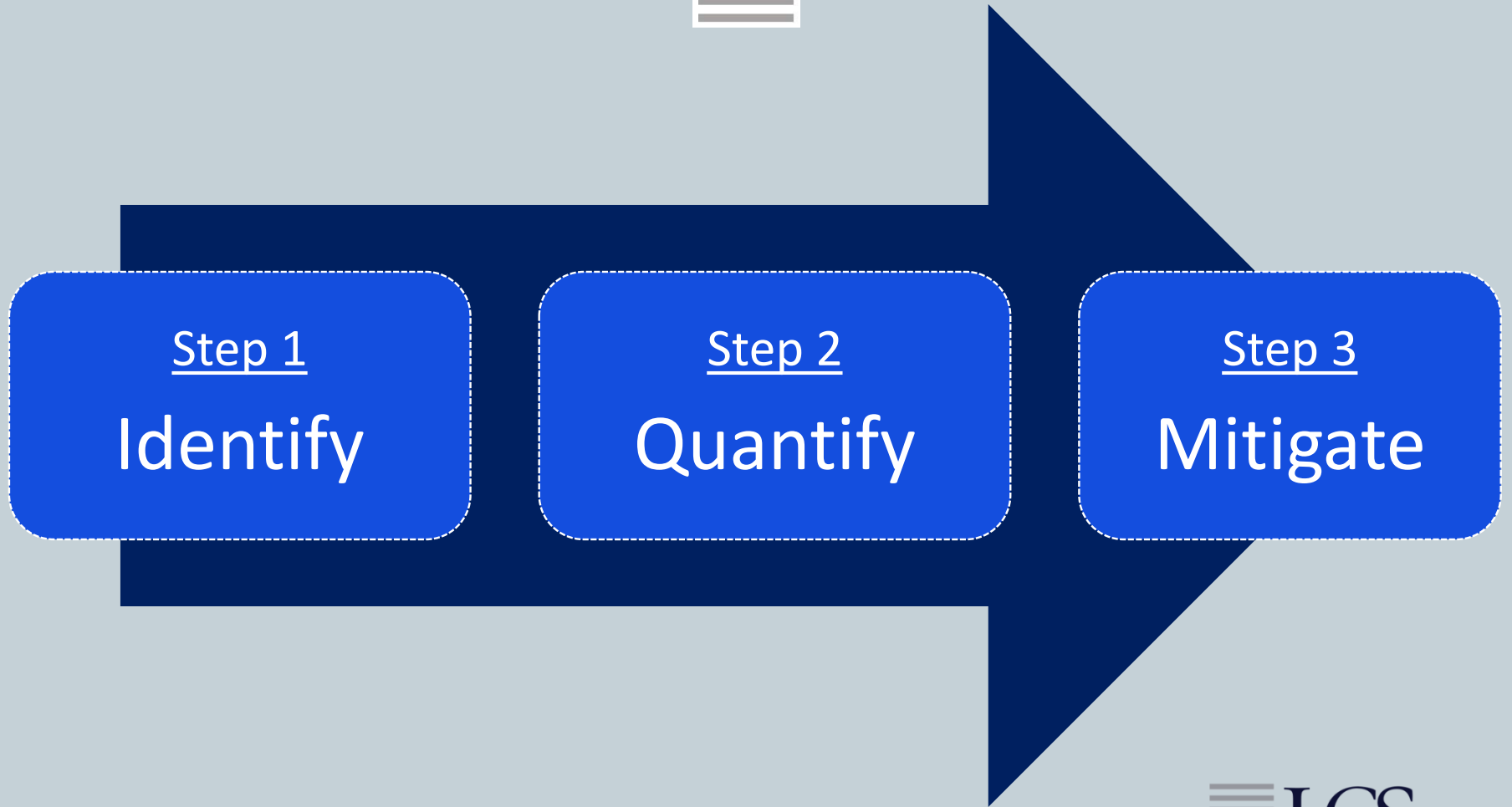
Lending & Environmental Risk



Environmental conditions can result in:

- Liability to the Bank.
- Diversion of client's funds away from the Bank to pay for remediation.
- Diminution of property value.
- Cost-recovery obstacles and difficulty with resale.
 - Clean up costs can exceed property value.
 - Liens for reimbursement of government-funded clean up.
 - Limitations on future uses of property.
- Negative impact on marketability and redevelopment potential for the property.

Environmental Risk Management



Step 1
Identify

Step 2
Quantify

Step 3
Mitigate

Making Informed Decisions



- Risk management does not require elimination of risk.
- In most cases, environmental risks can be overcome through exercising simple measures.
- Informed decision-making leads to sound risk management.

Environmental Risk Management Programs



- Depend on:
 - Institution's risk tolerance
 - Portfolio content
- Commonly based on a matrix involving:
 - Loan amount
 - Loan Type (New, Renewal, Foreclosure)
 - Property Use (Low Risk v. High Risk)
 - SBA involvement
- Requires strong partnership between Credit, LOB and Environmental Risk Reviewer (in-house or outsourced)



Regulatory Forces Behind Environmental Risk Management

Banking Regulatory Overview



- OCC - [Comptroller's Handbook A-CRE](#)
- FDIC - [Statements of Policy - Guidelines for an Environmental Risk Program](#)
- Federal Reserve - [SR 91-20](#)

These documents outline the expected elements to be incorporated into a lender's Environmental Risk Program. Including but not limited to:

- ✓ Policies & Procedures
- ✓ Due Diligence Criteria
- ✓ Assessments & Reports
- ✓ Internal Risk Evaluation
- ✓ Loan Documentation
- ✓ Loan Monitoring
- ✓ Criteria for Acceptability
- ✓ Circumstances for Declination

United States Small Business Administration (SBA)



- SBA - [SOP 50 10 5\(h\)](#)
 - Loans over \$150,000 require “outside” due diligence.
 - Four phases of investigation:
 - Records Search with Risk Assessment
 - Transaction Screen Assessment (ASTM E 1528-14)
 - Phase I Environmental Site Assessment (ASTM E1527-13)
 - Phase II Environmental Site Assessment
 - Environmentally-sensitive property uses must start with a Phase I.
 - Recommendations for Phase II must be followed.
 - Consultants must carry a minimum of \$1 Million insurance coverage.

Environmental Program Audits



- Examiners are placing increased scrutiny on the quality and substance of Environmental Risk Management Programs.
- Common deficiencies:
 - Inadequate risk analysis
 - Inadequate documentation
 - Inadequate follow up
- Completing an environmental assessment is no longer enough. Banks must prove they have assessed, understand and accounted for their environmental risks.

Participations



Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Financial Institution Letter
FIL-49-2015
November 6, 2015

Advisory on Effective Risk Management Practices for Purchased Loans and Purchased Loan Participations

- **Institutions should underwrite and administer loan and loan participation purchases as if the loans were originated by the purchasing institution.** This includes understanding the loan type, the obligor's market and industry, and the credit models relied on to make credit decisions.

- Before purchasing a loan or participation or entering into a third-party arrangement to purchase or participate in loans, financial institutions should:
 - ensure that loan policies address such purchases,
 - understand the terms and limitations of agreements,
 - **perform appropriate due diligence,** and
 - obtain necessary board or committee approvals.

Participants are responsible for making their own underwriting decisions.
Deferring to the Lead Bank is not sufficient.

Monitoring



- Environmental screening should be updated over the life of the loan.
 - Questionnaires
 - Regulatory Records Update
 - Municipal Research
 - Site Inspection
- If potential for an environmental issue is identified, additional action may be necessary to further evaluate the degree of risk involved.

Environmental Regulations that Affect Lending



- **Liability/Property Transfer/Redevelopment**
 - **CERCLA – Comprehensive Environmental Response, Compensation & Liability Act (aka Superfund)**
 - Clean up uncontrolled or abandoned hazardous-waste sites as well as accidents, spills, and other emergency releases into the environment. EPA will seek out those responsible parties for any release and assure their cooperation in the cleanup.
 - **EPA All Appropriate Inquiry- 40CFR 312**
 - Help prospective purchasers of a property preserve their “Innocent Landowner Defense” under CERCLA.
 - **Small Business Liability Relief and Brownfields Revitalization Act (aka “Brownfields Law)**
 - Amendment to CERCLA to provide funding for cleanup and redevelopment of contaminated sites.



Environmental Investigations

Non-Intrusive Desktop Investigations



- **Regulatory Database Review**
 - Database search for environmental listings at or nearby the subject property
 - Only identifies what has been reported to an agency
 - No listings ≠ No problems
- **Environmental Questionnaire and RSRA (SBA)**
 - Owner/operator questionnaire
 - Regulatory Database Review
 - Historical records review (city directories, Sanborn maps, aerial photographs)

Best used as an initial screening tool for a property that, based on current and historical property use, is not likely to have contamination on-site.

Non-Intrusive On-site Investigations



- **Transaction Screen Assessment (ASTM E1528-14)**
 - Owner/operator/assessor questionnaire
 - Regulatory Database Review
 - Site visit by environmental consultant
 - Does not satisfy Innocent Landowner Defense
- **Phase I Environmental Site Assessment (ASTM E1527-13)**
 - Must be prepared by an Environmental Professional as defined by 40 CFR 312.10
 - Site visit
 - Regulatory Database Review
 - Historical research of property use and occupancy.
 - Satisfies Innocent Landowner Defense

Best used as a screening tool for a property that, based on current and historical property use, is likely to have contamination on-site.

Intrusive On-site Investigations



- **Collection of samples for scientific or laboratory analysis**
 - Soil, Groundwater, Drinking water, Air
 - Building materials
- **Also known as Phase II Environmental Site Assessment**
- **Used to identify the presence/absence of contaminants**
- **Used to quantify the extent of contaminants**

Best used when, based on previous levels of screening, a property is determined likely to have contamination on-site.

Common Phase II Triggers



- Bulk storage of chemicals
- Presence of poorly documented or aged Underground Storage Tanks (USTs)
- Poor housekeeping
- Staining and evidence of leaking chemicals
- High risk property uses by NAICS or SIC code with:
 - Floor drains, Septic systems, Wells
- Unresolved spill incidents
- Compliance violations

Phase IIs are required by the SBA when recommended by a Phase I or Transaction Screen Assessment.

Banker Beware!



- **Common Phase I deficiencies:**

- Property history not researched to the earlier date of 1940 or first developed use.
- Inappropriate recommendations
- Data Gaps
 - Insufficient time for vendor to complete report
 - Laziness
- The “get it done” guy
- Use of the wrong ASTM standard
- Insufficient rationale for conclusions
- No supporting documentation
- Vendor does not have adequate Errors & Omissions insurance
- Reliance v. Reliance with Limitations



**Free
Environmental Information
Resources**

“W’s” of Free Resources



- **What type of information is available for free?**
 - Mostly comprised of public records on file with local, state or federal regulatory agencies.
- **Who provides the information?**
 - United States Environmental Protection Agency (US EPA)
 - New York State Department of Environmental Conservation (NYSDEC)
 - Cities and Counties
 - Private Companies
- **When should this information be used?**
 - Initial screening tool only
 - Litmus test for additional due diligence

Federal On-line Resources



- **Environmental Protection Agency Envirofacts**
 - Search by address
 - Displays Federally-listed properties at/ or surrounding the search address
 - RCRA Hazardous Waste Generators
 - Superfund/National Priority List Sites
 - Toxic Chemical Releases
 - Compliance
 - Federal Brownfields
 - ...and More



Link → <https://www3.epa.gov/enviro/>

State On-line Resources



- **New York State Department of Environmental Conservation (NYS DEC)**
 - Search by address
 - Displays NYS DEC-listed properties
 - Spill Incidents
 - Remedial Sites
 - Bulk Storage Facilities

Link → <http://www.dec.ny.gov/chemical/8437.html>

The screenshot displays the website for the Department of Environmental Conservation (DEC) of New York State. The page is titled "Environmental Site Database Search" and is part of a navigation menu that includes "Recreation", "Nature", "Prevent & Control Pollution", "Regulatory", "News & Learning", and "Search". The main content area features a search bar and a list of links to various databases, including "Spill Incidents Database Search", "Remedial Site Database Search", and "Bulk Storage Database Search". A sidebar on the left contains a "Table of Contents" with links to "Environmental Site Database Search", "DEC Remediation Site Boundaries - Downloadable GIS Files", "NYS En-Zone Boundaries - Downloadable GIS Files", "Glossary - DEC Spill Incident Terms", "Glossary - Site Remediation Terms", "Site Classifications", "Definitions - Types of Institutional Controls", and "Glossary - Bulk Storage Terms". A "This Page Covers" section on the right highlights the "Bulk Storage Database Search" and provides contact information for the DEC. The page also includes a "More about Environmental Site Database Search" section with additional details about the search capabilities and data sources.

Other On-line Resources



- **Local Environmental Listings**

- New York City Environmental Information

- Link → <http://www1.nyc.gov/nyc-resources/categories/environment.page>

- **Maps & Aerial Photographs**

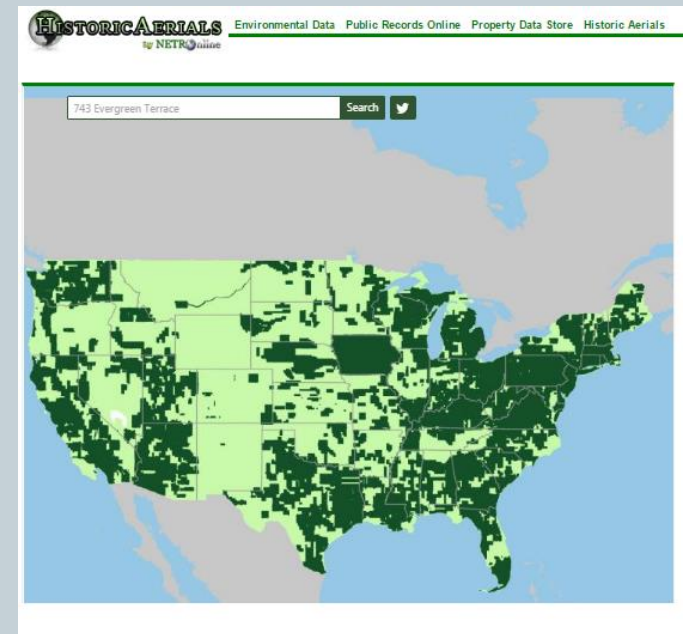
- OasisNYC

- Link → <http://www.oasisnyc.net>

- HistoricAerials

- Historical Aerial Photographs
- Historical Topographic Maps

- Link → <http://www.historicaerials.com/>



Thank You For Your Time



 **LCS** INC.
Environmental and Real Estate Consultants

The logo for LCS INC. features a stylized icon of five horizontal lines of varying lengths to the left of the text "LCS INC.". Below the main logo, the text "Environmental and Real Estate Consultants" is written in a smaller, serif font.