

# Phase I Environmental Site Assessments

Are They Enough?

BY RON GARFIELD

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*This article discusses Phase I Environmental Site Assessments, focusing on the scope of protections they offer in real property transactions.*

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**T**ransactional attorneys and lenders often rely exclusively on a Phase I Environmental Site Assessment (ESA) as part of their due diligence. However, this reliance may be misguided, depending on the anticipated future use of the property and the lenders', tenants', or purchasers' expectations. For this reason, it is imperative to ensure that clients understand the scope of the ESA so they can evaluate whether additional due diligence is necessary.

ESA reports are prepared in compliance with the American Society for Testing Materials (ASTM) Standard E-1527-13. As more fully

described below, the ASTM standard satisfies the Environmental Protection Agency (EPA) All Appropriate Inquires (AAI) rule codified at 40 CFR Part 312. The AAI rule generally provides purchasers of real estate with a safe harbor against federal liability for environmental hazards, which is an important protection from a federal liability standpoint. However, federal liability for environmental remediation is not the only potential environmental issue when purchasing real property. There is much that an ESA does not address that can be problematic for lenders, tenants, or purchasers of the real estate. While the ESA can provide important

information, it is not a proactive investigation. Rather, the ESA comprises a historical document or records search and limited visual inspection.

This article addresses what information the ESA does and does not provide, what protection an ESA may provide, and what kinds of environmental investigations should be considered in addition to obtaining a basic ESA. While the title "Environmental Site Assessment" sounds comforting, a whole host of potential environmental problems are not addressed by this kind of evaluation. Parties that consider a basic ESA to be sufficient for all their environmental due diligence proceed at their own peril.

Readers should be aware of two caveats about this article: The author practices primarily on Colorado's Western Slope, so his environmental due diligence experiences are derived predominantly from parcels earmarked for commercial or residential development, ranch and farm properties, areas impacted by historic mining activity (i.e., gold and silver), and new and historical hotel properties and commercial buildings. Second, the article's focus is narrow; it does not address a host of federal and state environmental laws, rules, and regulations that may be implicated in any transaction.

### Why is an ESA Required?

Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in 1980.<sup>1</sup> CERCLA, commonly referred to as the Superfund Act, establishes a basis for liability of potentially responsible parties (PRPs) to the cleanup of hazardous sites. CERCLA is a strict liability statute, which imposes liability on a PRP regardless of negligence or intent, and further imposes joint and several liabilities.<sup>2</sup> CERCLA's strict liability reaches many PRPs, including former owners or operators of the property. Thus, the third-party defense of an "innocent purchaser" or "innocent landowner" developed. Initially a creature of common law, and later codified in the 1986 amendments to CERCLA,<sup>3</sup> the innocent purchaser defense developed to exempt PRPs who did not know or have reason to know of site contamination from cleanup costs associated with the property. A purchaser may claim this defense to avoid liability under CERCLA<sup>4</sup> by demonstrating that it was "innocent" of the contamination through a showing that it performed the requisite due diligence with respect to the property at the time of acquisition, whether through a sale or lease transaction.<sup>5</sup> The ESA emerged from the requisite due diligence of the innocent purchaser defense.<sup>6</sup>

The due diligence required under CERCLA is "all appropriate inquiries" into the property,<sup>7</sup> and the ESA generally constitutes such AAI.<sup>8</sup> Therefore, the ESA is necessary to prove the innocent purchaser defense. Lenders are specifically exempt from CERCLA liability so long as they do not participate in the management of the facility or property.<sup>9</sup> However, with every

real estate loan the lender must consider that it will end up owning the property if the loan defaults. For that reason, a lender will want a clean ESA as a funding condition. If a default occurs years later, an update of the ESA should be obtained before acquiring the property by foreclosure, by deed in lieu of foreclosure, or out of a bankruptcy. It may be cost effective to have the environmental consultant who prepared the original ESA also perform the update.

### CERCLA Liability Exemptions

In 2002, the Small Business Liability Relief and Brownfields Revitalization Act<sup>10</sup> was passed, which amended CERCLA. In relevant part, the Act provided additional exceptions to CERCLA liability, namely the contiguous properties exemption and the bona fide prospective purchaser exemption (BFPP).<sup>11</sup> The contiguous properties exemption provides that a person who owns property contiguous with a contaminated property will not be liable under CERCLA if the person:

- did not cause or contribute to the release;
- is not a PRP through any affiliation (contractual, familial, corporate, or financial);
- takes reasonable steps to stop and prevent any future release;
- provides all legally required notices regarding discovery or release of hazardous substances and cooperates in full with the recovery and cleanup effort; and
- conducted an AAI at the time of acquisition and did not know or have reason to know at that time of contamination from the contiguous real property not owned by that person.<sup>12</sup>

The BFPP is separate from the innocent purchaser defense and provides purchasers and tenants another avenue to avoid CERCLA liability. As discussed above, the innocent purchaser defense is available to only those purchasers who conducted AAI into the property and who did not have, or did not have any reason to have, knowledge of contamination by a release or threatened release of hazardous substances. The BFPP is available to those purchasers who *did* have knowledge or reason to have knowledge of contamination, but who also conducted AAI and who:

- acquired ownership of the property after January 11, 2002;
- establish that all disposal of hazardous substances occurred before acquiring ownership;
- show that the AAI was conducted in accordance with generally accepted good commercial and customary standards and practices;
- provide all legally required notices regarding discovery or release of hazardous substances; and
- exercise appropriate care and take steps to prevent any further releases and harm, and fully cooperate with the recovery and cleanup effort.<sup>13</sup>

In short, the BFPP is available to those purchasers and tenants who satisfy these conditions, including the AAI requirement; who do not impede cleanup efforts; and who are not impermissibly affiliated with a PRP.

### EPA Guidance

In 2012, the EPA released a guidance memorandum that provides for enforcement of the BFPP as applied to tenants.<sup>14</sup> In this memorandum, the EPA was clear that it did not create new rights and liabilities and did not establish a new rule; rather, it was merely shedding light on how it intended to enforce the BFPP provisions with respect to tenants. Tenancy is tricky with respect to BFPPs because a lease most likely falls within the affiliations that are prohibited under the BFPP exception. That said, the EPA chose to treat leases as not prohibited affiliations, but on a site-specific basis—that is, the EPA will make these determinations on a case-by-case basis.<sup>15</sup> For tenants of properties whose owners meet the BFPP status, the EPA will attribute the BFPP status to the tenant as well—so long as the owner maintains that status. Tenants have no independent duty to satisfy the BFPP requirements, including conducting an AAI. However, if the owner loses the BFPP status, it is likely that the tenant would also lose the BFPP status. But the EPA may choose to treat the tenant as a BFPP if the tenant was not at fault in the owner losing the BFPP status and the tenant meets all the requisite BFPP criteria. Additionally, if the owner never had BFPP status,

but the tenant meets all the criteria, the EPA may treat the tenant as a BFPP.<sup>16</sup>

### The Phase I ESA

A Phase I ESA is limited in its scope and coverage. The ESA's purpose is to identify "recognized environmental conditions" (RECs). An REC is the presence or likely presence of hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of hazardous substances or petroleum products into structures on the property or into the ground, groundwater, or surface water of the property.<sup>17</sup> The term is not intended to include de minimis conditions that do not present a material risk of harm to public health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate government agencies.<sup>18</sup> Examples of de minimis conditions are routine soil stains found in a parking lot, "ranch style" landfills with no indication of petroleum hydrocarbons or potentially hazardous materials, and heavy equipment hydraulic line failure where any impacted soil was immediately removed.<sup>19</sup>

If an ESA identifies an REC, without more information, it may not satisfy the AAI standard. For example, if an REC is identified and testing can determine that the condition does not pose an environmental hazard, the original ESA should be replaced with an updated version that clears the REC. Where the AAI standard is met and "innocent purchaser" status is available, there can still be environmental conditions that are only discovered post-closing of the transaction. Such a discovery cannot be ignored. While there may be recourse against the ESA preparer or under an environmental indemnification or insurance coverage (discussed below), the party making the discovery may still have affirmative obligations under state or federal laws. At a minimum, the environmental condition cannot be perpetuated or made worse by any activities of the new owner.

### How an ESA is Performed

An ESA must be conducted by an environmental professional and the inquiry is site-specific, applicable only to commercial real estate.<sup>20</sup> The

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objectives of an ESA are to gain information about current and past uses and occupancies, current and past uses of hazardous substances, and any conditions indicative of releases of hazardous substances on the property.

There are four main components of an ESA: records review, site reconnaissance, interviews, and the final report. The records review includes historical sources, government records, and any recorded environmental cleanup liens. The site reconnaissance is simply a visual inspection of the surface level. There is no testing or sampling during an ESA. The environmental professional merely performs a visual and physical inspection from all angles, including indoors, but is

not required to take any soil or groundwater samples or to look under floors, above ceilings, or behind walls. Any limiting conditions such as weather that get in the way of the inspection are merely noted in the report and don't have to be overcome. Interviewees may include past and present owners, operators, and occupants of the property, as well as government officials who may have common knowledge or reasonably ascertainable knowledge about the property. The environmental professional then makes a recommendation regarding the property in the final written report. The environmental consultant should inform the client of any potential REC while the ESA evaluation is being performed and before submitting the final written report.

### Negotiating Due Diligence

In many transactions there can be an inherent tension between the parties regarding due diligence. The seller, borrower, or landlord may resist any environmental due diligence in favor of "as is, where is, without all faults" type of language. The party on the other side of the transaction does not want to close, be bound by a lease, or have any money "go hard" without knowing enough about any environmental risks associated with the property. It is a good idea to require that any prior ESA performed with respect to the property be provided. At a minimum the prospective buyer, lender, or tenant should require the following language in the transaction documents:

**Due Diligence.** In the event a Phase I ESA is to be obtained for the property, the property owner agrees to promptly provide answers to questions about the property from the preparer of the assessment in accordance with ASTM E 15-27, Section 9, Interviews with Owners and Occupants.

The environmental professional will not be able to complete the ESA without cooperation from the property owner. If the property owner does not want to complete the questionnaire, this may be good reason to not proceed with the transaction. Parties to a transaction where more invasive due diligence investigations are desired may negotiate provisions that can protect the interests of both sides. Some issues

that may come up in these negotiations include:

- whether to allow and what kind of invasive testing (e.g., borings or drillings),
- responsibility for any damages,
- by whom and when the invasive testing may occur,
- insurance and permits,
- rights of tenants in possession,
- who pays for the testing,
- who may be present to observe when the testing occurs, and
- confidentiality.

If an REC is detected, the prospective buyer, lender, or tenant should always have the right to terminate the transaction.

There are always risks with invasive testing. If invasive testing results in the discovery of any hazardous conditions, the property owner may face reporting and remediation requirements as well as the loss of the prospective buyer, lender, or tenant. Where invasive testing is refused, the transaction might still proceed where the potential hazard is known (e.g., asbestos or lead paint) and the cost of remediation can be factored into the purchase price.

### **Conditions Outside the ESA Scope**

Many conditions that could be considered environmental or hazardous in nature are not addressed by a basic ESA. These items include, but are not necessarily limited to, mine tailings, mine shafts, floodplain, wildfire or geographic hazard, lead-based paint, lead in drinking water, carbon monoxide, methane, air or noise pollution, radon, asbestos, vapor intrusion, mold, regulatory compliance, cultural and historic resources, industrial hygiene, health and safety, ecological resources, endangered species, indoor air quality, audits or compliance-related issues, construction defects that can create an environmental hazard, expansive soils, formaldehyde in construction materials, high-voltage power lines, wetlands, avalanche, mudslide, ditch or reservoir failure, buried utility lines, and anything not within the CERCEA description of what constitutes a hazardous substance. Risks related to some of these items can be mitigated through requiring representations from the seller, landlord, or borrower. However, while a misrepresentation as to an



environmental condition may give a lender, tenant, or purchaser a right to demand that the problem be remediated, this is not necessarily a solution. The party obligated to remediate may not be financially capable of doing so, or remediation may take a long time or be too expensive. Thus, it is important that the lender, tenant, or purchaser discuss with legal counsel any potential site-specific concerns; whether an ESA scope of services should be expanded to include, among other items, laboratory analysis of soil or groundwater samples, suspected asbestos-containing materials, potential mold conditions, and radon and vapor intrusion; and what environmental indemnifications to include in the transaction documents for problems that arise post-closing.

### **Environmental Questionnaires**

Many potential environmental or hazardous conditions not addressed by the ESA are site specific. For this reason, lenders and ASTM have developed environmental questionnaires for site owners or users to complete that seek information about potential environmental hazards. Typically, the questions relate to industry uses, discharges of oil or gas, petroleum products, mining tailings or other fill, underground storage tanks, odors, and polychlorinated biphenyls

(PCBs) (e.g., chloride or benzene used in electrical equipment). However, questionnaires can be customized depending on the nature of the property. The Colorado Real Estate Commission has promulgated residential and commercial forms (Seller's Property Disclosure) that are mandated when brokers prepare offers and include questions about environmental conditions.<sup>21</sup> The questionnaires are meant to be answered to the best of one's knowledge. Depending on specific site conditions and historical use, the environmental consultant will rely on the completed questionnaires to varying degrees.

Questionnaires may be helpful but should be relied upon cautiously. Typically, they are not completed by experts and can be misleading. For example, the author knows of one case where the questionnaire was completed by a property manager who mentioned that a certain site had formerly been a dry cleaner. This delayed a closing because the purchaser then required a Phase II ESA (discussed below). It was ultimately determined that the site was only a drop-off and pick up for dry cleaning and that the actual cleaning was performed off-site many miles away. Further, a questionnaire is usually based on the best knowledge of the person completing it and may not survive the closing as a document that can be relied upon.

In addition, a current owner of real property may not be aware of all of a property's historical uses. Finally, any wrong answers to questions are usually not discovered until sometime after closing when the lender or purchaser has already inherited the problem.

**Assessments Based on Construction Dates**

With respect to improved property, certain potentially hazardous conditions can be assessed by the date a building was constructed. This generally applies to lead, asbestos, and PCBs. Because these toxic materials were deemed to pose an unreasonable risk to human health and the environment through their manufacture, processing, and distribution in commerce, use, or disposal, Congress took action to phase out and ban their use.

**Lead.** In 1971 Congress passed the Lead-Based Paint Poisoning Prevention Act,<sup>22</sup> which banned the use of lead-based paint in residential structures, among other products and places. In 1978, the Consumer Product Safety Commission implemented regulations concerning the ban of lead-based paint.<sup>23</sup> Buildings constructed after 1978 would have had to comply with these regulations and likely would not raise a concern for lead.

**Asbestos.** The Toxic Substances Control Act (TSCA),<sup>24</sup> Clean Air Act,<sup>25</sup> and Consumer Product Safety Act<sup>26</sup> addressed different asbestos-containing materials throughout the 1970s. The federal government banned spray-applied surfacing ACM for fireproofing and insulating purposes in 1973; it banned installation of asbestos pipe insulation and asbestos block insulation on facility components such as broilers and hot water tanks in 1975; it banned the use of asbestos in artificial fireplace embers and wall patching compounds in 1977; and it banned spray-applied surfacing ACM for purposes not already banned and “decorative” purposes in 1978.<sup>27</sup> Thus, buildings constructed after 1978 would likely not raise a concern for asbestos.

**PCBs.** Congress banned all manufacture, processing, and distribution in commerce of all PCBs by 1979 under TSCA.<sup>28</sup> The statutory phase-out of PCBs occurred over a two-year period, with very few exceptions. Therefore,

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Testing should be considered for buildings constructed before these dates, because these hazards are not addressed by an ESA, and an owner, landlord, or borrower may not know about the presence of these hazards.

**Phase II and Phase III ESAs**

A Phase II ESA is a more thorough assessment of the property that includes sampling and laboratory analyses performed in accordance with ASTM standards.<sup>29</sup> A lender may request a Phase II ESA if the Phase I identified potential REC on the property, if there are data gaps in the Phase I, or simply because they want a more thorough assessment. A Phase II tests for the presence of hazardous substances, pollutants, contaminants, petroleum and petroleum products, and con-

trolled substances in “environmental media” on the property. “Environmental media” includes soil, rock, groundwater, surface water, and air.<sup>30</sup> A Phase II may include, but is not limited to, the following samples and tests: surface soil and water samples; subsurface soil borings; groundwater monitoring; drum sampling if drums are left on the property; sampling of dry wells, floor drains, and catch basins; transformer or capacitor sampling for PCBs; geophysical testing for buried tanks and drums; and testing of known underground storage tanks.<sup>31</sup> For example, if the site in question was formerly a gas station or dry cleaner, a Phase II would typically be required.

A Phase III ESA is a name given by the environmental industry to what is really a cleanup plan to be approved by state or federal agencies having jurisdiction over the particular environmental hazard. Typically, the hazard has been identified in the Phase II. An example of a Phase III would be a cleanup plan to satisfy a regulator such as the Colorado Department of Public Health and Environment or Colorado Department of Labor and Employment Division of Oil and Public Safety.

**Engaging an Environmental Professional**

Federal statutes state that to be an environmental professional a person must have a state engineer or geologist license and three years relevant experience.<sup>32</sup> The engineer or geologist can satisfy the relevant experience criteria by working under the supervision of someone that meets the criteria.<sup>33</sup> The Colorado statute states that an environmental professional is simply “a person with education, training, and experience in preparing environmental studies and assessments.”<sup>34</sup> It is prudent to ask for an environmental professional’s credentials when first engaging that person.

**Liability Issues**

The most common claims against environmental professionals are for negligence based on some environmental condition present at the time of inspection that was not included in the ESA and is discovered later. When obtaining an ESA, parties should always request proof

of appropriate insurance and a certificate naming the client as an additional insured. Retention letters submitted by environmental professionals typically have a limit of liability provision for the cost of the ESA or for a stated dollar amount. The liability limits should be reviewed carefully. Requests can be made to remove the limits or increase the limits to the amount of the insurance.

### **Using Survey or Title Insurance to Address Environmental Concerns**

In addition to Phase I, II, and III ESAs, parties to real property transactions can guard against CERCLA liability through additional surveys and insurance policies.

#### *Surveys*

The American Land Title Association/National Society of Professional Surveyors (ALTA/NSPS)<sup>35</sup>

survey is a thorough and comprehensive boundary survey that requires records research, on-site fieldwork, preparation of a plat or map, and a certification. The survey standards<sup>36</sup> detail what is required in the survey and provide for a list of optional additions that clients may negotiate and include in the survey. Depending on the location of the property, different standards (e.g., urban, suburban, rural or mountain, or marshland) can be required. The main aspects of an ALTA/NSPS survey include marking monuments, lines of possession, buildings and dimensions of buildings, features of the property (e.g., water features, access points, encroachments, fences, drives, utility features, and parking lots), and easements or servitudes. In the environmental hazard context, an ALTA/NSPS survey may cover whatever the client requesting a survey would like it to cover. Among the required aspects of the survey,

any overhead utility lines that are potentially hazardous (i.e., high voltage) will be marked per the easements and servitudes fieldwork standard.<sup>37</sup> Among the optional additions, a client may request flood zone classification and delineation of wetlands. If wetlands are shown to be located on the property, further investigation would be warranted to determine if the wetlands fall under the jurisdiction of any governmental authority and, as such, whether they have been properly developed and maintained in compliance with applicable regulations. Surveyors can also opt to use drones or other technologies to laser scan or digitally map the property, which can show evidence of past natural disasters or hazards on the property.

#### *Insurance Options*

Environmental insurance policies emerged



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from the practice of allocating environmental risks and liability in real estate transactions, especially with regard to potential CERCLA liability. Because pollution liability claims are typically excluded from general liability policies, environmental insurance policies developed to fill the gaps.<sup>38</sup>

One type of policy relevant to this article is lender liability or secured creditor coverage. Lender liability policies provide coverage only to lenders and typically cover: the loan amount if the borrower defaults and there is pollution at the property; third-party claims arising from pollution at the property; and cleanup costs incurred by the lender after foreclosure.<sup>39</sup> Lender liability policies provide greater protection to lenders than reliance solely on an ESA. However, the premium for such a policy, which normally is passed through to the borrower, can be quite expensive. There may also be first party coverage where a lender can be added as an additional insured or the

policy can be assigned to a prospective buyer.

In addition, when obtaining title insurance on behalf of a lender for residential property, an ALTA Endorsement 8.1-06 can be obtained. This endorsement protects against environmental liens that may be filed against the property by a governmental agency. Also, ALTA Endorsement 8.2-06 is available for purchasers of or lenders for commercial property. This endorsement is not available to purchasers of residential property.

### Conclusion

Arguably, there is no such thing as foolproof environmental due diligence. Rather, these investigations are about risk management. An ESA and related environmental questionnaires are a good first step to reducing risk, but the sufficiency of such diligence depends on the anticipated use of the property. When necessary, the ESA process can be expanded based on known site conditions or concerns, and ALTA/NSPS surveys can be performed. Learning when

a building was constructed may also help rule out certain potential environmental hazards. Finally, insurance can be purchased to cover liability. 

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### NOTES

1. 42 USC §§ 9601 et seq.
2. 42 USC § 9607(a)(1).
3. 42 USC §§ 9601(35) and 9607(b)(3).
4. 42 USC § 9601(35).
5. 42 USC § 9601(35)(B)(i)(I). See *Westwood Pharm., Inc. v. Nat'l Fuel Gas Dist. Corp.*, 964 F.2d 85, 90 (2d Cir. 1992) (“[T]he ‘innocent landowner exception’ is available only to defendants who make appropriate inquiry, at the time of acquisition, into the previous ownership and use of the property.”).
6. Shilling, *Lawyer’s Desk Book* 11-22 (Wolters Kluwer 2016).
7. 42 USC § 9601(35)(B)(i)(I).
8. 40 CFR 312 et seq. The EPA passed a new rule, effective March 14, 2018, that allows the specific ASTM standards for forestland and rural properties to satisfy the AAI requirement under CERCLA. Amendment to Standards and Practices for All Appropriate Inquiries Under CERCLA, Fed. Reg. (Sept. 15, 2017), www.federalregister.gov/documents/2017/09/15/2017-19593/amendment-to-standards-and-practices-for-all-appropriate-inquiries-under-cercla. This is the first time that the EPA has specifically recognized the ASTM standards as satisfying the AAI requirement. However, the rule does not require that parties use the ASTM standards for forestland and rural property, and the general ASTM standards may still satisfy the AAI requirement. *Id.*
9. 42 USC § 9601(20)(E)–(F).
10. Pub. L. No. 107-118, 115 Stat. 2356.
11. 42 USC §§ 9607(q), 9601(40), 9607(q)(1)(C), and 9607(r).
12. 42 USC § 9607(q).
13. 42 USC §§ 9607(q)(1)(C) and 9601(40).
14. Memorandum from the EPA to Regional Administrators, Regions I–X (Dec. 5, 2012), www.epa.gov/sites/production/files/documents/tenants-bfpp-2012\_0.pdf.
15. *Id.*
16. *Id.*
17. ASTM, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process 8 (2013) (designated as E1527-13), https://elibrary.gsfc.nasa.gov/\_assets/doclibBidder/tech\_docs/ASTM%20E1527-13.pdf.
18. *Id.* at 4, 8.
19. See 40 CFR 312.1(c)(2). See also 42 USC § 9601(33).
20. 40 CFR 312.20. See also 40 CFR 312.1(c)(2).
21. *Division of Real Estate Contracts and Forms*, Colo. Dep’t of Reg. Agencies, https://www.colorado.gov/pacific/dora/node/95951 (follow “Disclosure Documents”).
22. 42 USC §§ 4821 et seq.
23. 16 CFR 1303.
24. 15 USC §§ 2601 et seq.
25. 42 USC §§ 7401 et seq.
26. 15 USC §§ 2051 et seq.
27. U.S. Federal Bans on Asbestos, EPA, www.epa.gov/asbestos/us-federal-bans-asbestos.
28. 42 USC § 2605(e).
29. ASTM, Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process (2011) (designated as E1903-11), www.polb.com/civica/filebank/blobload.asp?BlobID=9948.
30. *Id.* at 4.
31. Wis. Dep’t of Nat. Res., Basic Elements of Phase I and II Environmental Site Assessments (2014), http://dnr.wi.gov/files/pdf/pubs/am/am465.pdf.
32. 40 CFR § 312.10(b)(2).
33. 40 CFR § 312.10(b)(5).
34. CRS § 25-16-308(1).
35. NSPS is the legal successor organization to the American Congress on Surveying and Mapping (ACSM).
36. ATLA/NSPS, Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys (Feb 23, 2016).
37. *Id.* at 4–5.
38. Jones, “Environmental Pollution Insurance: A Fluid and Ever-Changing Market,” *Ins. J.* (July 23, 2001), www.insurancejournal.com/magazines/features/2001/07/23/18589.htm.
39. Dahlquist, “Environmental Insurance 101: An Overview for Business Lawyers” (ABA Bus. L. Sec. Nov./Dec. 2002), www.americanbar.org/content/dam/aba/publications/blt/2002/11/environmental-insurance-200211.authcheckdam.pdf.

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