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# Environmental Risk Management for Credit Unions

Building a Regulatory Compliant Program

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## Housekeeping

- Q&A
- Presentation materials/recording
- Additional Session



# What to Expect

Environmental Risk

Regulators

Environmental Regulations

Assessment Tools

Establishing a Matrix

Program Considerations

Bringing it Together



# Environmental Risk



## THREAT OF CONTAMINATION

From the use, storage, handling and disposal of chemicals at a property.



## POTENTIAL LIABILITY

For known or potential contamination conditions. Can be Legal (third party claims) or Regulatory (cleanup).



## POTENTIAL FINANCIAL OBLIGATION

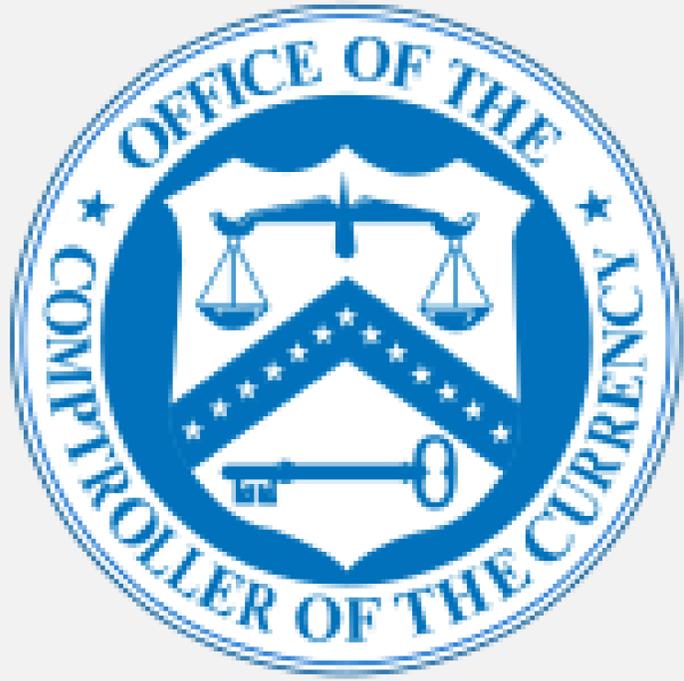
For cleanup of adverse conditions.



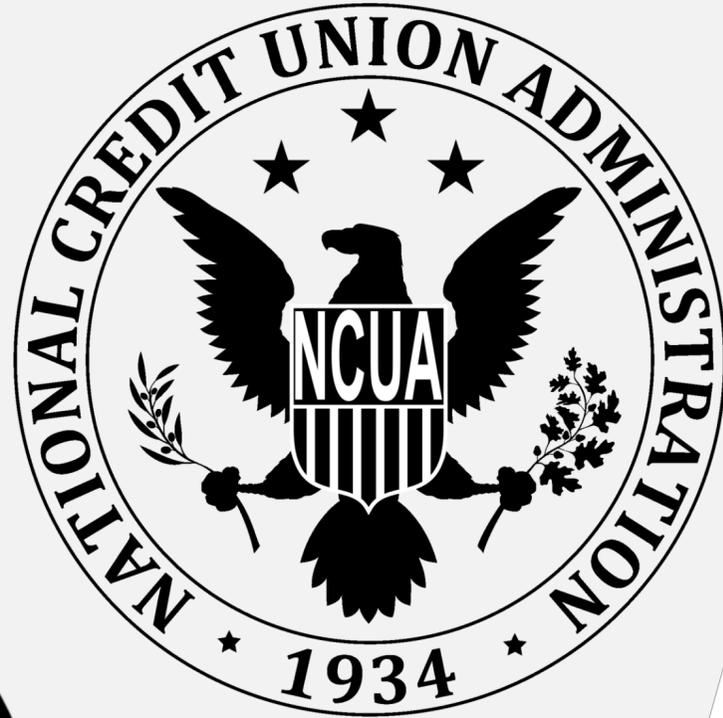
## MARKETABILITY, REDEVELOPMENT & RESALE

Impacts at a property can make it difficult to market and sell a property at full market value.

# Environmental Risk & Lending



# FDIC



## Regulators

Regulatory guidelines issued by different agencies include provisions for the following program components:

- Policies & Procedures
- Risk Review & Analysis
- Training
- Qualifications of Staff
- Collateral Monitoring
- Loan Documentation
- Foreclosure
- Vendor Management
- Program Auditing

# Regulatory Guidance Comparison

## **NCUA** (2008)

[LCU2008-13ENC Guidance for an Environmental Risk Management Program](#)

## **OCC** (updated 3/2022)

[Comptroller's Handbook A-CRE](#)

## **FDIC** (11/2006)

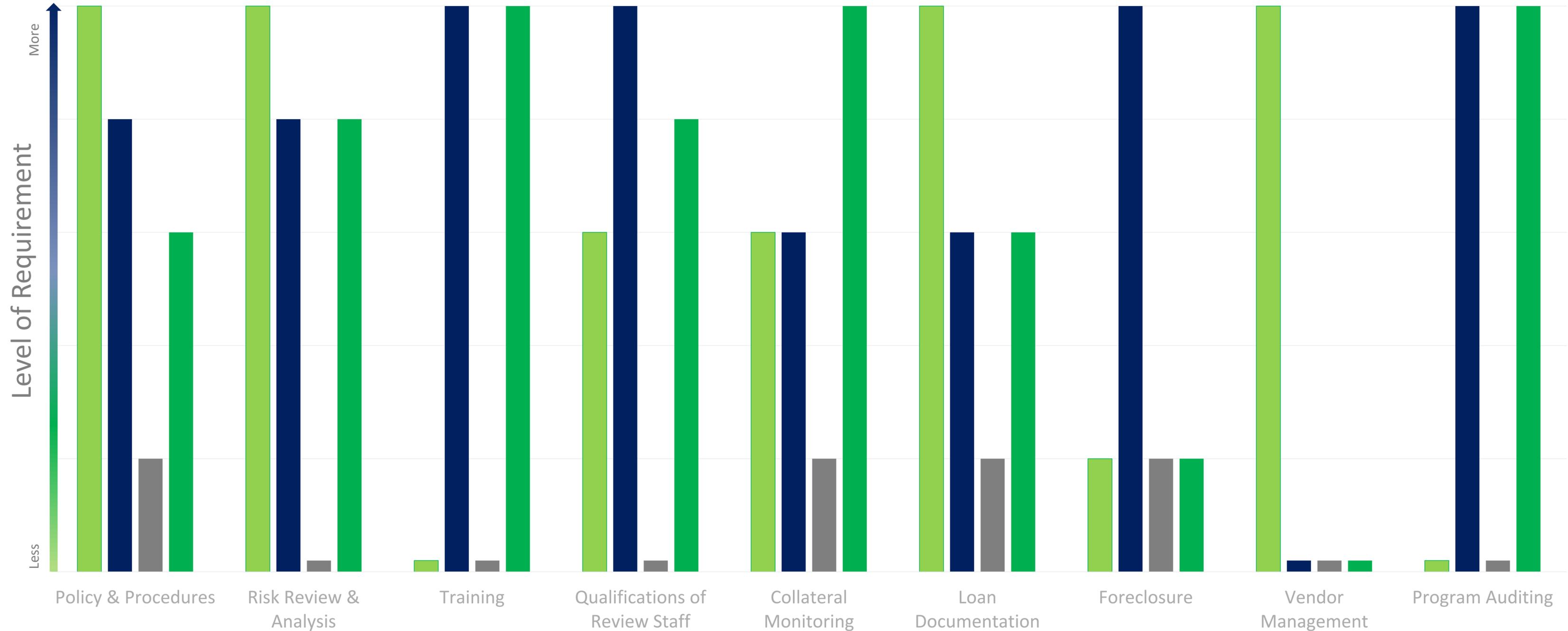
[Statements of Policy - Guidelines for an Environmental Risk Program](#)

## **Federal Reserve** (10/1991)

[SR 91-20](#)

# Requirement Intensity by Regulator

OCC FDIC Federal Reserve NCUA



## OCC

### Leader

- Policy & Procedures
- Risk Review & Analysis
- Loan Documentation
- Vendor Management

### Moderate

- Qualifications
- Collateral Monitoring

### Fewer

- Foreclosure

### None

- Training
- Program Auditing

## FDIC

### Leader

- Training w/ NCUA
- Qualifications of Staff
- Foreclosure
- Program Auditing w/ NCUA

### Moderate

- Policy & Procedures
- Risk Review & Analysis
- Collateral Monitoring
- Loan Documentation

### Fewer

### None

- Vendor Management

## Federal Reserve

### Leader

### Moderate

### Fewer

- Policy & Procedures
- Collateral Monitoring
- Loan Documentation
- Foreclosure

### None

- Risk Review & Analysis
- Training
- Qualifications
- Vendor Management
- Program Auditing

## NCUA

### Leader

- Training w/ FDIC
- Collateral Monitoring
- Program Auditing w/ FDIC

### Moderate

- Policy & Procedure
- Risk Review & Analysis
- Qualifications
- Loan Documentation

### Fewer

- Foreclosure

### None

- Vendor Management

# Policy & Procedures

	OCC	FDIC	Federal Reserve	NCUA
<b>Environmental Issues &amp; Lending</b>	Reflect potential environmental risks associated with lending in markets and to industries served by the bank.	Loan policies, manuals and written procedures should address environmental issues pertinent to the institution's specific lending activities.		the Policies loan policy may identify the types of environmental risks associated with industries and real estate in the credit union's trade area.
<b>Statement re: Risk Analysis</b>	Procedures include guidelines that the lending staff should follow in conducting an initial analysis of potential environmental impact	Provide guidelines for conducting an analysis of potential environmental liability.	Conducting an appropriate analysis of potential environmental liability. Such analysis should be more rigorous as the risk of hazardous substance contamination increases.	Provide guidelines for conducting an analysis of potential environmental liability and describe procedures for the resolution of potential environmental concerns.
<b>Procedures</b>	Establish procedures for assessing environmental concerns associated with assets before acquisition by the bank in workout or foreclosures as well as the bank's investment in real estate assets for its own use.	An institution's environmental risk program may be tailored to the lending practices of the institution. Thus, an institution should make its decision concerning when and under what circumstances to require a borrower to perform an environmental property assessment based on its own environmental risk program as tailored to the needs of the lending practices of the institution.	Establishing guidelines and procedures for dealing with new borrowers and real property offered as collateral.	Procedures for the resolution of environmental concerns might also be developed for credit monitoring, loan workout situations, and foreclosures.
<b>Requirement for Risk Determination</b>	Specify the bank's requirements for determining potential environmental concerns.			
<b>Environmental Regulations Affecting lender</b>	An analysis of current environmental laws and due diligence requirements for borrowers and the bank lender			
<b>Appraisal Considerations</b>	Specify appraisal requirements for disclosing and taking into consideration any environmental risk factors			
<b>Criteria for Evaluating Env Risk</b>	Specify criteria for evaluating environmental risk factors and costs in the loan approval process			
<b>Criteria for Declination</b>	Specify criteria for determining the circumstances in which the bank would normally decline loan requests based on environmental factors			
<b>Procedures for Mitigation</b>		Describe procedures for the resolution of potential environmental concerns. Procedures for the resolution of environmental concerns might also be developed for credit monitoring, loan workout situations, and foreclosures.		

# Risk Review & Analysis

	OCC	FDIC	Federal Reserve	NCUA
<b>Review Before Lending</b>	Provide for the receipt and evaluation of environmental risk assessment reports before the bank's final commitment to lend on a transaction.	An environmental risk program should be designed to ensure that the institution makes an informed judgment about potential environmental risk and considers such risks in its overall consideration of risks associated with the extension of credit.	When reviewing individual credits, examiners should determine that the loan policy has been complied with, particularly where the borrower's activities or industry are associated with hazardous substances or environmental liability.	Prior to making a loan, an initial environmental risk analysis should be conducted during the application process. Most of the information needed may be gathered by the loan officer when interviewing the loan applicant concerning his or her business activities...  ... Whenever the application, interview, or site visit indicates a possible environmental concern, a more detailed investigation by a qualified individual may be necessary.
<b>Policy &amp; Procedure</b>	Provide means of evaluating potential environmental liability risk and environmental factors that could impact the ability to recover loan funds in the event of a foreclosure.	Institutions should maintain an environmental risk program in order to evaluate the potential adverse effect of environmental contamination on the value of real property and the potential environmental liability associated with the real property.		The credit union's policies and procedures should reflect adequate consideration of the EPA's AAI Rule. The decision to require a member to perform a property assessment that meets the requirements of the EPA AAI Rule should be made in the context of the credit union's overall environmental risk management program and should be made on a case-by-case basis.
<b>Asbestos &amp; Lead</b>	Evaluate the potential for significant impact resulting from the presence of hazardous building material such as asbestos and lead-based paint.			

# Training

	OCC	FDIC	Federal Reserve	NCUA
<b>Program Implementation Training</b>		The environmental risk program should incorporate training sufficient to ensure that the environmental risk program is implemented and followed within the institution.		The environmental risk management program should incorporate training sufficient to ensure that the program is implemented and followed within the credit union, and the appropriate personnel have the knowledge and experience to determine and evaluate potential environmental concerns that might affect the credit union.

# Qualifications of Review Staff

	OCC	FDIC	Federal Reserve	NCUA
<b>Relevant Knowledge</b>	Ensure that persons responsible for evaluating environmental risk possess relevant knowledge, skill, and competence.	Appropriate personnel have the knowledge and experience to determine and evaluate potential environmental concerns that might affect the institution.		Appropriate personnel have the knowledge and experience to determine and evaluate potential environmental concerns that might affect the institution.
<b>Third Party Engagement</b>		Whenever the complexity of the environmental issue is beyond the expertise of the institution's staff, the institution should consult legal counsel, environmental consultants, or other qualified experts.		Whenever the complexity of the environmental issue is beyond the expertise of credit union staff, the credit union should consult legal counsel, environmental consultants, or other qualified experts.
<b>Program Owner</b>		Designate a senior officer knowledgeable in environmental matters responsible for program implementation.  Individuals involved in administering an institution's environmental risk program should become familiar with environmental statutory elements.		

# Collateral Monitoring

	OCC	FDIC	Federal Reserve	NCUA
<b>Monitoring</b>	Provide guidelines that the lending staff should follow for monitoring potential environmental concerns for the duration of loans held in the bank's loan portfolio.	The environmental risk assessment should continue during the life of the loan by monitoring the borrower and the real property collateral for potential environmental concerns. The institution should be aware of changes in the business activities of the borrower that result in a significant increased risk of environmental liability associated with the real property collateral. If there is a potential for environmental contamination to adversely affect the value of the collateral, the institution might exercise its rights under the loan to require the borrower to resolve the environmental condition and take those actions that are reasonably necessary to protect the value of the real property.	Reviewing existing loans to identify credits having potential environmental problems.	The environmental risk assessment should continue during the life of the loan by monitoring the member and the collateral for potential environmental concerns. The credit union should be aware of changes in the business activities of the member that result in a significant increased risk of environmental liability associated with the collateral. If there is a potential for environmental contamination to adversely affect the value of the collateral, management might exercise its rights under the loan to require the member to resolve the environmental condition and take those actions that are reasonably necessary to protect the value of the real property.
<b>Higher Risk Properties</b>	Include periodic inspection requirements throughout the loan term for properties with higher environmental risk			In monitoring a loan for potential environmental concerns, and resolving those environmental situations as necessary, a credit union should evaluate whether its actions may constitute "participating in management" Involvement in the Member's Business Operations 3 of the business located on the real property collateral within the meaning of CERCLA. A lender "participates in management" (and may not qualify for the exemption) if the lender "actually" participates in the management or operational affairs of a property. Merely having the capacity to influence or the unexercised right to control the property does not constitute "participating in management."

# Loan Documentation

	OCC	FDIC	Federal Reserve	NCUA
<b>Safeguarding</b>	<p>Maintain guidelines for loan documentation that protect the bank from environmental liability and related losses</p> <p>Loan documentation should ensure that contractual provisions, including rights of access, are sufficient to facilitate AAI-compliant evaluations. A bank's policies and procedures should reflect adequate consideration of the EPA's AAI rule.</p>	<p>Loan documents should include language to safeguard the institution against potential environmental losses and liabilities. Such language might require that the borrower comply with environmental laws, disclose information about the environmental status of the real property collateral and grant the institution the right to acquire additional information about potential hazardous contamination by inspecting the collateral for environmental concerns.</p> <p>Loan documents might also provide that the institution has the right to call the loan, refuse to extend funds under a line of credit, or foreclose if the hazardous contamination is discovered in the real property collateral. The loan documents might also call for an indemnity of the institution by the borrower and guarantors for environmental liability associated with the real property collateral.</p>	<p>Developing recordkeeping procedures to document the due diligence efforts taken at the time of making loans or acquiring real property.</p> <p>Including warranties, representations, and indemnifications in loan agreements designed to protect the banking organization from losses stemming from hazardous substance contamination. (Although such provisions provide some protection for the lender, these agreements are not binding against the government or third parties. Such contractual protections are only as secure as the borrower's financial strength.)</p>	<p>Loan documents should include language to safeguard the credit union against potential environmental losses and liabilities. Such language could include requiring the member to comply with environmental laws, disclosure of information about the environmental status of the collateral and granting the credit union the right to acquire additional information about potential hazardous contamination by inspecting the collateral for environmental concerns.</p> <p>The loan documents may also require that the credit union has the right to call the loan, to refuse to extend funds under a line of credit, or to foreclose if the hazardous contamination is discovered in the real property collateral. The loan documents may call for an indemnity of the credit union by the member and any loan guarantors for environmental liability associated with the collateral. Credit unions are encouraged to consult with an attorney knowledgeable in federal and state environmental laws to help ensure loan documents are properly worded to help safeguard against environmental liability.</p>
<b>Manage Expectations</b>	<p>Provide environmental provisions for incorporation into transaction documentation:</p> <ul style="list-style-type: none"> <li>– for commitment letters: extent of due diligence required, borrower costs, approval contingencies, reporting obligations, documentation requirements.</li> <li>– for loan documentation: representations and warranties, inspection requirements, reporting requirements, lien covenants, indemnification provisions, and provisions allowing for the acceleration of the loan, refusal to extend funds under a line of credit, or exercise other remedies in the event of foreclosure.</li> </ul>			

# Foreclosure

	OCC	FDIC	Federal Reserve	NCUA
<b>CERCLA Liability</b>	Provide guidelines for maintaining lender liability exemptions, avoiding owner/operator liability, and for qualifying for Landowner Liability Protections under CERCLA and AAI if the bank acquires ownership of the property	<p>A lender's exposure to environmental liability may increase significantly if it takes title to real property held as collateral. An institution should evaluate the potential costs and liability for environmental contamination in conjunction with an assessment of the value of the collateral in reaching a decision to take title to the property by foreclosure or other means. Based on the type of property involved, a lender should consider including as part of this evaluation of potential environmental costs and liability an assessment of the property that meets the requirements of the EPA All Appropriate Inquiry Rule.</p> <p>An institution should evaluate whether its actions may constitute "participating in the management" of the business located on the real property collateral within the meaning of CERCLA. If its actions are considered to be participation in the management, the institution may lose its exemption from liability under CERCLA or similar state statutes.</p>	Banking organizations must be careful that the actions undertaken to make, administer, and collect loans--including assessing and controlling environmental liability--cannot be construed as taking an active role in participating in the management or day-to-day operations of the borrower's business, which could lead to potential liability under CERCLA	A credit union's exposure to environmental liability may increase significantly if it takes title to real property held as collateral. A credit union should evaluate the potential costs and liability for environmental contamination in conjunction with an assessment of the value of the collateral in reaching a decision to take title to the property by foreclosure or other means. Based on the type of property involved, a credit union should consider including as part of this evaluation of potential environmental costs and liability an assessment of the property that meets the requirements of the EPA AAI Rule.
<b>Operational Control</b>		An institution should evaluate the potential costs and liability for environmental contamination in conjunction with an assessment of the value of the collateral in reaching a decision to take title to the property by foreclosure or other means. Based on the type of property involved, a lender should consider including as part of this evaluation of potential environmental costs and liability an assessment of the property that meets the requirements of the EPA All Appropriate Inquiry Rule.		*see Collateral Monitoring

## Vendor Management

	OCC	FDIC	Federal Reserve	NCUA
<b>Performance</b>	Program should specify selection criteria to evaluate and monitor the performance of third-party professionals, such as environmental experts or legal counsel, who may be consulted to assess environmental risk			

## Program Auditing

	OCC	FDIC	Federal Reserve	NCUA
<b>Auditing</b>		Examiners will review an institution's environmental risk program as part of the examination of its lending and investment activities. When analyzing individual credits, examiners will review the institution's compliance with its own environmental risk program. Failure to establish or comply with an appropriate environmental program will be criticized and corrective action required.		

# Environmental Agency Regulations

# Federal Environmental Regulations

## CERCLA (aka Superfund)

### Comprehensive Environmental Response, Compensation & Liability Act

- 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.
- Secured Creditor Exemption (aka Lender Safe Harbor)

## 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.

# CERCLA Secured Creditor Exemption

Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996

Lenders that hold property as security for a debt may be spared CERCLA liability in the event of foreclosure provided that:

## No Operational Control

Lender does not participate in the management of the facility prior to its foreclosure.

## Timely Disposal of Facility

Lender offloads the facility at the “earliest practicable, commercially reasonable time, on commercially reasonable terms,” after foreclosure.

Important to note :

## Spared Liability Doesn't Guarantee No Cost to Lender

Regulatory agencies may require actions to prevent exacerbation of a condition or maintain minimal safety levels for the community.

Example: [https://www.epa.gov/sites/production/files/2014-03/documents/component\\_concepts\\_155.pdf](https://www.epa.gov/sites/production/files/2014-03/documents/component_concepts_155.pdf)

# Fun Facts

## **NCUA** (2008)

Predates existing ASTM standard. References AAI but not the ASTM.

## **OCC** (updated 3/2022)

Although the most recent of documents, still references an outdated ASTM standard for Phase I ESAs.

## **FDIC** (11/2006)

Predates existing ASTM standard.

## **Federal Reserve** (10/1991)

Predates AAI and ANY ASTM Phase I ESA Standard.

# Where To Begin

# Step 1 - Define Your Limits

# tolerance noun

- 1 : capacity to endure pain or hardship
- 2 : the allowable deviation from a standard

## Acceptable

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Collateral presents acceptable risk based initial screening parameters.



## Questionable

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Collateral presents unquantified risk based initial screening parameters.



## Unacceptable

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Collateral presents unacceptable risk based initial screening parameters.



# Common Issues & Contaminants

## Gasoline Station

### Common Issues

- USTs (current & former)
- Multiple Tank Beds
- Site Reconfiguration
- Auto Repair

### Likely Contaminants

- Total Petroleum Hydrocarbons (TPH)
- PAHs
- SVOCs
- VOCs
- Metals

## Auto Repair

### Common Issues

- USTs /ASTs
- Drum Storage
- Housekeeping
- Waste Handling, Storage & Disposal
- Hydraulic Lifts
- Oil/Water Separators

### Likely Contaminants

- TPH
- PAHs
- SVOCs
- VOCs
- Metals

## Dry Cleaners

### Common Issues

- Solvent Use
- Waste Handling, Storage & Disposal

### Likely Contaminants

- VOCs
- SVOCs
- PAHs

## Manufacturing

### Common Issues

- Industrial Processes
- Waste Handling, Storage & Disposal
- Wastewater Treatment Lagoons
- Septic Systems, Cesspools
- Oil/Water Separators
- Drums
- Landfilling

### Likely Contaminants

- TPH
- PAHs
- SVOCs
- VOCs
- Metals, RCRA 8 & PP13
- PFAS

## Agricultural

### Common Issues

- Agricultural Wells
- Waste Handling, Storage & Disposal
- Equipment Maintenance
- Equipment Fueling
- Application of Crop Chemicals
- Landfilling

### Likely Contaminants

- TPH
- PAHs
- SVOCs
- VOCs
- Metals, RCRA 8 & PP13
- Pesticides
- Herbicides

# Where Do You Stand?



**Bulk Chemical Waste Storage/ Poor Material Handling**



**Staining/Poor Housekeeping**



**Septic Systems, Wells & Floor Drains at High-Risk Properties**



**Inadequate Tank Documentation**



**Unresolved Regulatory Issues Compliance Violations**



**Offsite-Migration and Vapor Risks**

# Step 2 - Build A Matrix

Understandable

tolerance

Efficient

communicate

Clear

**RISK**

foreclosure

**MONITORING**

Renewal

New Loan

**SBA**

USDA

DEFAULT RATES BY PROPERTY TYPE

Portfolio Analysis

property use

loan amount

default rates by loan amount

foreclosure trends

abundance of caution

exceptions

**Consistent**

Easily Implemented

# Risk Assessment Tools



### Questionnaire

Questionnaire completed by current owner/operator

### Database Report

Public record search of environmental, health, chemical/waste regulatory databases for listings associated with site and surrounding area. Usually in accordance with ASTM 1527/1528 radii.

### RSRA

SBA SOP 50 10 6

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Questionnaire

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Database

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Historical Records

### Transaction Screen

ASTM 1528-22

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Questionnaire

---

Database

---

Historical Records

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Site Visit

### Phase I ESA

ASTM 1527-13 \*  
ASTM 1527-21

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Questionnaire

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Database

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Historical Records

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EP Site Visit

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In-depth Regulatory File Review

**Innocent Landowner Defense**

### Phase II ESA

Site-specific

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Sample Collection

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Laboratory Analysis

# Sample Matrices

**SIMPLE MATRIX**

	Risk Level	Loan Amount	Requirement		
			Lenient	Moderate	Conservative
<b>New Loans &amp; Renewals w/ New Money</b>	Low	≤\$5MM	Database Report	RSRA-Equivalent	Transaction Screen Assessment
		>\$5MM	RSRA-Equivalent	Phase I ESA	Phase I ESA
	High	≤\$5MM	Transaction Screen Assessment	Transaction Screen Assessment	Phase I ESA
		>\$5MM	Transaction Screen Assessment	Phase I ESA	Phase I ESA
<b>Renewals w/ No New Money</b>	Low	Any	Questionnaire	Database Report	RSRA-Equivalent
	High	Any	Database Report	Database Report	Transaction Screen Assessment
<b>Pre-Foreclosure</b>	Any	Any	Phase I ESA	Phase I ESA	Phase I ESA
<b>Abundance of Caution</b>	Any	Any	Nothing	Nothing	Nothing

**COMPLEX MATRIX**

	Risk Level	Loan Amount	Requirement		
			Lenient	Moderate	Conservative
<b>New Loans &amp; Renewals w/ New Money</b>	Low	<\$1MM	Database Report	RSRA-Equivalent	Transaction Screen Assessment
		\$1MM - \$5MM	RSRA-Equivalent	RSRA-Equivalent	Phase I ESA
		>\$5MM	Transaction Screen Assessment	Phase I ESA	Phase I ESA
	High	<\$1MM	Database Report	Phase I ESA	Phase I ESA
		\$1MM - \$5MM	Transaction Screen Assessment	Phase I ESA	Phase I ESA
		>\$5MM	Transaction Screen Assessment	Phase I ESA	Phase I ESA
<b>Renewals w/ No New Money</b>	Low	Any	Questionnaire	Database Report	RSRA-Equivalent
	High	Any	Database Report	Database Report	Transaction Screen Assessment
<b>Pre-Foreclosure</b>	Any	Any	Phase I ESA	Phase I ESA	Phase I ESA

# **Step 3 - Outline Expectations**

# Policy Document

## WHY

- Mission Statement: Identify the purpose of the policy
- Regulatory drivers (NCUA, Federal Reserve, FDIC, OCC)

## WHO

- Party/Position responsible for owning /implementing the Policy
- LOBs which must adhere to Policy Requirements
- Party/Position responsible for tracking/maintaining Policy updates

## WHAT

- Definitions (risk, report types, environmental terms, acronyms)
- Policy Matrix
- Criteria for Acceptability
- Procedures (conventional lending, SBA, foreclosure, deviations)

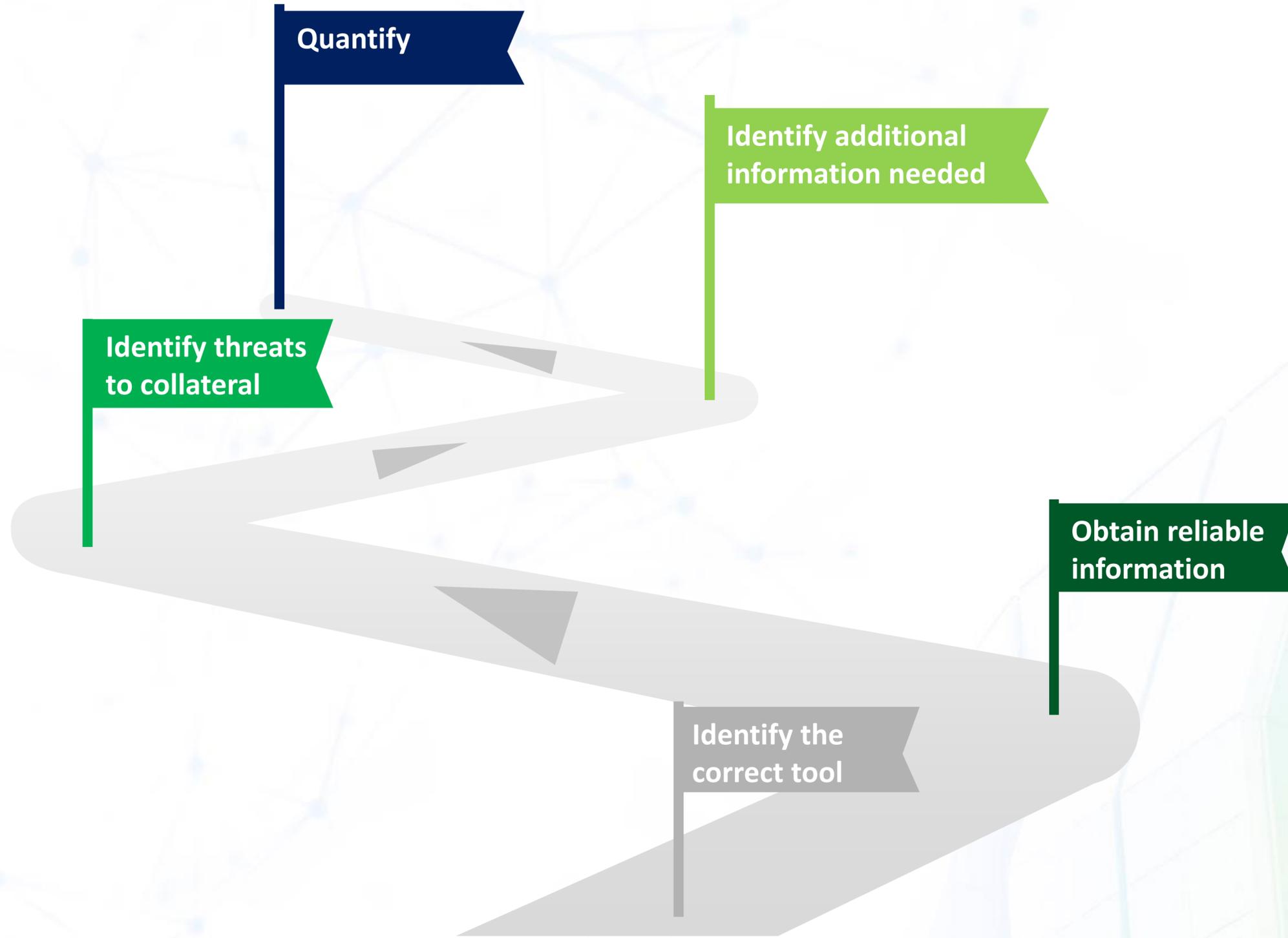
## WHEN

- Effective date of policy
- Policy review and updates (annual, bi-annual, 5-year)
- Revisions dates of policy

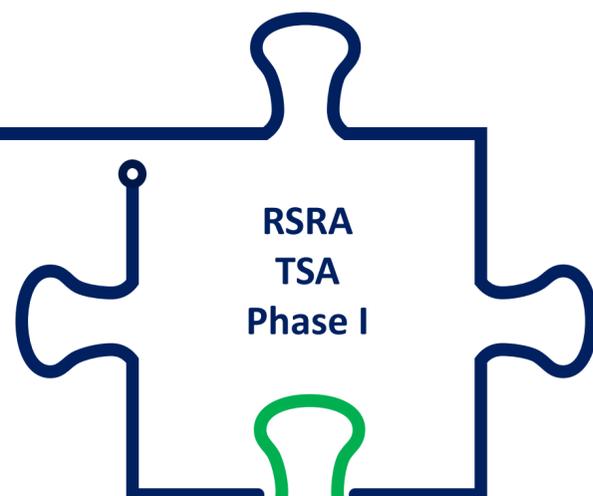
## WHERE

- Organizational structure
- Location of Policy (intranet, credit resources)

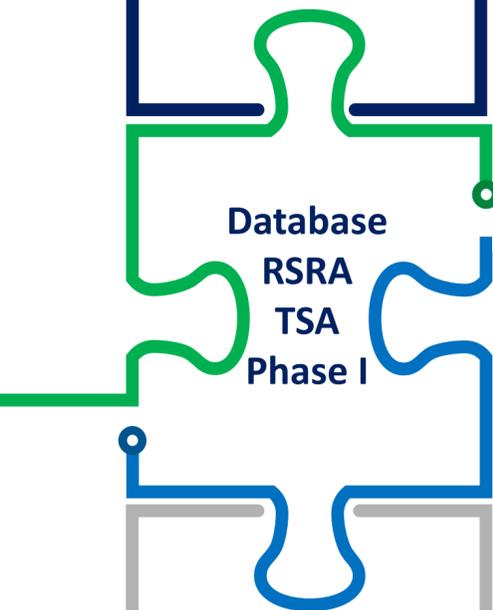
# Step 4 - Analyze Risk



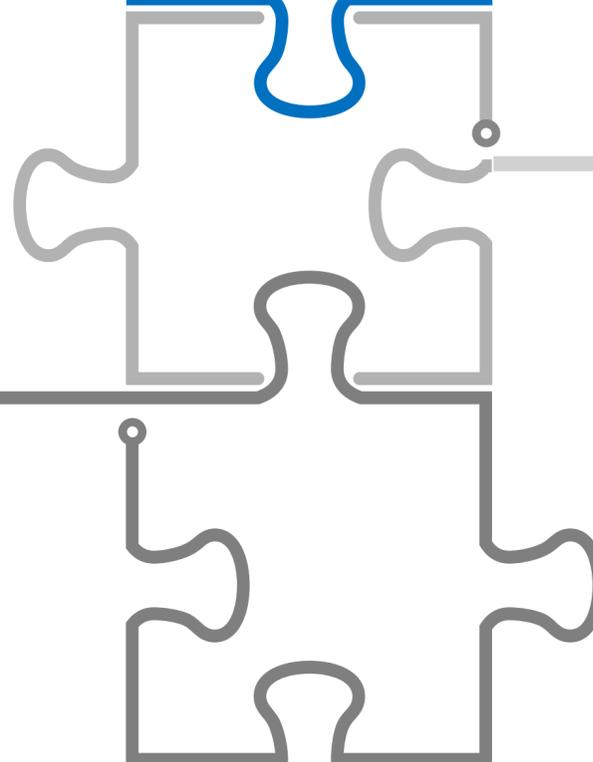
WAS there a risk?



IS there a risk?



WILL there be a risk?



Environmental Review

# How much of a risk?



# Risk Analysis - Questionnaire



**Who completed the document?**

Banker? Current Owner (Refinance v. Seller)? Prospective Purchaser?

**Complete answers provided?**

**Adequate understanding of the past, present and future property uses?**

**Follow up documentation provided where indicated?**

**Photographs consistent with answers?**

**Missing signatures?**

**Unresolved red flags?**

# Risk Analysis - RSRA



## Findings

Supported by research? Able to reference sources?



## Conclusions

Supported by findings? Able to reference support?



## Recommendations

Clear next steps? Do the recommendations make sense?



**Less than 1 year old (for SBA)?**



**Data gaps adequately explained?**



**Risks to subject property?**



**Risks from off-site?**

# Risk Analysis – TSA & Phase I ESA



## Findings

Supported by research? Able to reference sources?



## Conclusions

Supported by findings? Able to reference support?



## Recommendations

Clear next steps? Do the recommendations make sense?



**Data gaps adequately explained?**



**Risks to subject property from on-site sources?      Risks to subject from off-site sources?**



**Oversights? Check your Appendices!**



## General Report Considerations

Report meets standards listed? Still current? Limitations?

# Risk Analysis – Phase II ESA



## Scope

What was the scope requested? Did you outline the scope? Was the scope followed?



## What was found?



## Where was it found?



## How much was found?



## Can remedial costs be estimated?



## Migration of contamination beyond property boundaries?



## Check your appendices!

# Considerations by Transaction Type

- **New Loan**
  - What risks can the purchaser be liable for if not investigated prior to closing?
- **Refinance**
  - Are there any significant risks that should be addressed before new money is advanced?
- **Construction**
  - Does the construction budget include a dedicated line item for addressing environmental concerns at the property?
    - What is the basis for the figure? Proposed scope of work with associated fees? "Guesstimate"?
  - Is there a clear Materials Management Plan in place that outlines how contaminated materials are handled if encountered?
- **Non-Real-Estate-Secured, Abundance of Caution, Negative Pledge**
  - Be clear about requirements in event value is assigned to the property.

# Considerations by Transaction Type (cont'd)



- **Leases**

- Carefully read the lease agreement provisions regarding Environmental Liability.
- What is the likelihood the borrower can impact the property?
- Is it possible that a previous tenant may have impacted the site prior to the borrower's tenancy?

- **SBA Lending**

- 7a v. 504

- **Participations and Syndications**

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

- **Foreclosures**

- Was due diligence performed at loan origination? If yes, what was the outcome?
- Is the site a high-risk property use?
- Is the borrower cooperating? Full-access is needed to adequately investigate site and qualify for AAI.
- Is there a risk of contamination?

# Document Your Findings

## Policy Followed

Tools used consistent with policy matrix.



## Risk Evaluated

Potential environmental risks were evaluated and identified.



## Risk Quantified & Understood

Informed Decision.



# Knowledge is Power

Know and understand your risk so your decisions will be **informed, defensible, and replicable.**

# Document Your Findings

## Clarity

- Be Concise
- Avoid the “Copy & Paste”

## Compliance

- Confirm the document’s compliance with Policy Matrix.
- Confirm the document followed the appropriate Scope.
- Confirm the collateral’s acceptability (risk tolerance).

## Analysis

- List the primary risks identified.
- Indicate whether any of the risks had been sufficiently mitigated and why/how.
- For unmitigated risks, indicate whether they have been sufficiently quantified.

## Conditions Precedent

- List steps required prior to closing.

## Exceptions

- Identify mitigating factors that offset the identified risk.
- Cite documentation supporting the decision.
- Use with caution.

# Step 4 - Mitigation

# mitigation noun

- 1 : the act of mitigating something or the state of being mitigated : the process or result of making something less severe, dangerous, painful, harsh, or damaging

## Financial

- Escrow
  - Liquidity
  - Lending Cap
  - Loan Type
- 

## Collateral

- Alternative Collateral
  - Unsecured/Secured
  - Negative Pledge
  - Abundance of Caution
- 

## Legal

- Indemnification
    - Financial Strength of Indemnitor
    - Transferability
    - Third Party Claims
- 

## Regulatory

- No Further Action
    - Incident Specific
    - Conditions of Closure
  - Cleanup Agreements
    - Remedial Action Plan
    - Budget
- 

## Insurance

- Additional Insured v. Mortgagee
- Duration of Policy
- Maintenance of Policy (escrow renewal premium for life of loan?)
- Transferability

# Potential Mitigation Strategies

- **Escrow**
  - Can the seller or borrower set aside funds in escrow until the environmental issues are resolved?
- **Loan-To-Value**
  - Can the LTV be capped to limit exposure?
- **Alternative Collateral**
  - Does the borrower have alternative or supplemental collateral to further offset the potential environmental risks?
- **Environmental Insurance**
  - Can the Bank be named as Mortgagee or Additional Insured?
- **Client Experience & Business Knowledge\***
  - Does the borrower have adequate experience in managing their environmental risks? (in-house environmental officer, proper budget, etc.)
- **Indemnification Agreement\***
  - Is an acceptable Indemnification Agreement available?
- **No Further Action Letter**
  - Limiting conditions?

All that glitters...

# Indemnification Agreements

- **Financial strength of the Indemnitor**  
Escrowed funds may need to be considered.
- **Transferability**  
Ideally should extend sufficiently to cover the sale of the property in the event of foreclosure.
- **Third-party claims**  
Should cover exposure due to potential third party lawsuits.
- **Time restrictions**  
Beware that a time restriction does not limit ability to claim indemnified status.
- **Restrictive conditions**  
Can the agreement be easily annulled due to restrictions on property?

# Cleanup Fund

- **Eligibility does not guarantee funding**
- **Solvency of the fund**  
Has the fund gone bankrupt? How often?
- **Funding criteria & prioritization**  
Will your collateral realistically be remediated?
- **Out-of-pocket expenditures**  
Are there any shared costs between the property owner and the agency?
- **Transferability**  
Does the funding continue with property transfer?

# NO Further Action Letter - True or False



- Issued to specific releases/incidents only
- **True**
- **Guarantee the case will never be reopened.**
- **False**  
Cases can be reopened at the discretion of the regulatory agencies.
- **Guarantee no contamination is present onsite.**
- **False**  
NFA is often granted with contamination left on-site; sometimes above regulatory standards resulting in Deed Restrictions.
- **Guarantee additional work won't be required in the future.**
- **False**  
Regulatory agencies have been known to re-open closed cases and require further remedial actions.
- **May be subject to limitations or conditions.**
- **True**  
NFA may be conditional upon several factors. Most commonly, a requirement to abandon monitoring wells within 30 days of the letter.
- **Endure any changes in property use.**
- **False**  
There are different regulatory standards for different property uses. If a site was granted NFA as an industrial site, but is to be redeveloped into a residential property, additional work may be required.

# Step 5 - Bring it Together

# Final Program Considerations

Regulators are looking for adherence and consistency in policy implementation.

Develop a regular monitoring plan to review the policy effectiveness.

Document the rationale for all decisions.

## Vendor Management

- Collecting SOQs, Errors & Omissions or Professional Liability Insurance Certificates
- Clear terms of engagement and scopes of work.
- Scoring
- Managing Terms & Conditions

## LOB Training

- Review Staff Training
- Policy Training
- Subject Matter/"Topic" training.

# Maintaining A Successful Program

## Define Risk Tolerance

How much can be tolerated without presenting excessive risk to portfolio integrity.

Considerations:

- Portfolio demographics.
- Trends in default
- Recent losses
- Terms for declination
- Reliance
- Outside reports
- Operational control

## Establish A Matrix

Be clear. Simple is best.

Considerations:

- Define “High Risk” list
- Practicality
- Cost
- Sufficiency of information
- New Loans
- Renewals
- Foreclosure
- Construction
- Abundance of Caution
- Condominium
- Waivers

## Implement

A successful program should consider:

- Consult with stakeholders
- Socialize program
- Training
- Accountability
- Vendor vetting
- Tracking
- Consistent application
- Centralization
- Segregation of duties
- Decision authority
- Well-defined waiver process.

## Monitor

- Balanced outcome?
- Waiver frequency
- Policy updates
- Collateral Monitoring

**We can help you.**



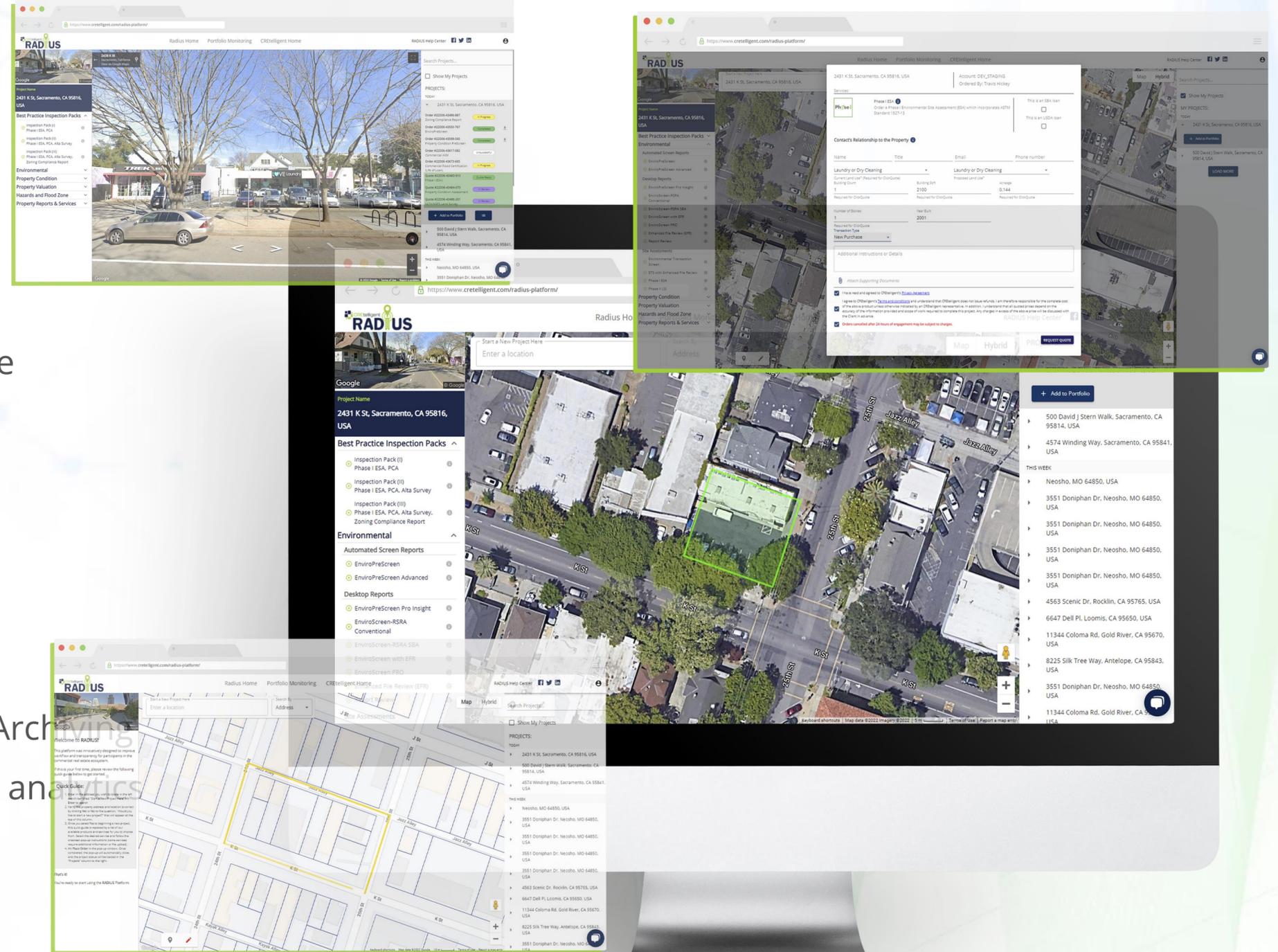
# RADIUS

Platform as a Service (PaaS)

# RADUS

POWERED BY CREtelligent

- End-to-end CRE due diligence solutions: Nationwide
  - Environmental
  - Property Condition
  - Property Valuation
  - ALTA Surveys & Zoning
  - Natural Hazard & Flood Determination
  - + More
- 24/7 Platform-as-a-Service Ordering, Delivery and Archiving
- Automated, manumatic, full-service suite of data & analytics
- CRE asset risk monitoring services
- Subscription-based pricing tiers and bundles





## Early Insights

- EnviroPreScreen
- EnviroPreScreen Advanced
- CRE Property Condition
- Energy & Carbon Footprint
- Climate & Hazard
- CRE Automated Valuation
- Flood Zone Determination
- Asset Risk Monitoring
- Market Drivers/Demographics

## Due Diligence

- EnviroPreScreen – ProInsight
- EnviroScreen RSRA
- Zoning Compliance Reports
- CRE Appraisal Reviews
- Environmental Transaction Screen
- Phase I ESA & Phase II LSI
- Property Condition Assessments
- ALTA Land Title Survey
- BPO, Commercial Evaluations

## Monitoring

- ALLL/CECL
- Portfolio mark to market
- Market/Property Risk Profile Changes
- Environmental, hazard, climate, carbon footprint, CPPI, asset value, building condition, tenant health, demographics, zoning, traffic patterns, duration data, fuel costs

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**QUESTIONS?**



THANK YOU

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