

Hazardous Materials in Project Development

Additional Guidance

Contents:

FHWA Guidance2

AASHTO Guidance3

USDOT Brownfields Guidance.....4

ASTM Standard Practices6

FHWA Guidance

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FHWA Interim Guidance of 1988

Access the FHWA's Interim Guidance of 1988 at:
<http://environment.fhwa.dot.gov/guidebook/vol1/doc7g.pdf>.

Land Acquisition and Relocation Assistance

Source: Federal Highway Administration, Region 6, Report No. R6-FH-4-010, April 18, 1994

Conclusions: States acquired right-of-way property without considering contamination in assessing property value or holding property owners responsible for cleanup costs. As a result, Federal Highway Administration (FHWA) participated in property acquisition without price adjustments for contamination, and construction on Federal-aid highway projects was delayed for environmental remediation.

Monetary Impact: This report contains no monetary recovery. Our recommendations were made to ensure FHWA does not participate in unnecessary acquisition and cleanup costs for properties with contamination.

Recommendations: We recommend the FHWA Regional Administrator (i) require states to adopt procedures for holding property owners responsible for cleaning up hazardous waste sites or reducing fair market value of contaminated property during the appraisal process, (ii) deny Federal participation in remediation of hazardous materials when state so not consider contamination when acquiring property and do not seek recovery of cleanup costs from responsible parties, and (iii) implement procedures for monitoring state compliance with hazardous materials guidelines during FHWA process reviews.

Management Position: FHWA Region 6 concurred with Recommendations 1 and 3. Actions taken and planned were reasonable. Concerning Recommendations 2, FHWA concurred, but actions planned did not address the intent of our recommendation. We asked FHWA to clarify its position on this recommendation.

AASHTO Guidance

Disclaimer

The American Association of State Highway & Transportation Officials has published the document *Hazardous Waste Guidance for Project Development*.

To obtain a copy of this document, contact the American Association of State Highway & Transportation Officials (AASHTO) at 444 North Capitol Street N.W., Suite 249, Washington, DC 20001, Telephone: (202) 624-5800, Fax: (202) 624-5806, e-mail: info@aaashto.org.

The AASHTO web page is: <http://www.transportation.org/aaashto/home.nsf/FrontPage>.

USDOT Brownfields Guidance

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USDOT Policy on Brownfields Redevelopment

Source: USDOT Policy on Brownfields Redevelopment, News Release, Rodney E. Slater, The Secretary of Transportation, United States of America Department of Transportation, Washington, D.C. 20590, April 22, 1998.

Issued by: United States of America Department of Transportation, The Secretary of Transportation, Washington, D.C. 20590

USDOT Policy on Brownfields Redevelopment: Protect and enhance communities and the natural environment affected by transportation U.S. Department of Transportation Strategic Goal.

The Department of Transportation is committed to supporting transportation-related redevelopment of brownfields -- lightly contaminated, abandoned, industrial or commercial properties -- as part of our efforts to improve communities through transportation investments.

Through leadership and financial assistance programs, the Department of Transportation encourages state and local transportation agencies to address community brownfields redevelopment in transportation planning, and other project redevelopment processes. Transportation agencies should ensure that planning considers: access to planned brownfield redevelopment; and new partnerships with state and local environmental and economic development entities to attract additional resources and leverage transportation funds.

States, localities, and transit agencies are provided the flexibility to participate, where appropriate, in transportation projects that include the reuse of brownfields sites. This changes the long-standing policy that called for avoiding contaminated sites where possible. Instead, brownfields sites can be used if they meet all other appropriate criteria and are consistent with a specific transportation project. Federal and state policy changes have reduced liability concerns and stringent cleanup requirements that long discouraged use of these properties.

Returning brownfields to productive use creates a foundation for new economic opportunities and revitalized communities. Transportation can be key in the redevelopment of brownfields for several reasons. First, redeveloped brownfields need good transportation access. Second, transportation-related uses should be among the possibilities considered for brownfields site redevelopment. Third, in many cases, redevelopment allows the use of existing infrastructure and services,

eliminating the cost of new public investment. Fourth, partnerships between Federal, state and local transportation, economic development and environmental interests can leverage additional funding resources for transportation-related brownfields redevelopment.

Transportation is more than asphalt, concrete and steel. We must ensure that our transportation investments not only promote mobility, but also strong economies and healthy natural environments valued by our communities. This policy will contribute to the reuse of idle, blighted land, conservation of open space, better transportation and the economic growth and health of our Nation's communities.

USDOT FHWA Policy Revision

Access the U.S. Department of Transportation's FHWA Policy Revision at:
<http://www.fhwa.dot.gov/environment/bnflmem.htm>

FHWA and FTA Policy and Information

Access the U.S. Department of Transportation's FHWA and FTA Policy and Information at:
http://www.fhwa.dot.gov/environment/bf_disc.htm.

ASTM Standard Practices

Environmental Site Assessment Process

The American Society of Testing and Materials (ASTM) established the following standard or practice for environmental site assessments (ESAs) in commercial real estate transactions to standardize "Environmental Due Diligence" or "All Appropriate Inquiry":

- ◆ ASTM E 1528-00 Standard Practice for Environmental Site Assessments: Transaction Screen Process (Transaction Screen)
- ◆ ASTM E 1527-05 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process (Phase I ESA).

This ASTM standard was established to define the extent and limit of "all appropriate inquiry" as indicated in the phrase "good commercial or customary practice in the marketplace," which is defined in 42 U.S.C. §9601(35)(B) for CERCLA liability and defense provisions. The ASTM standard was established to identify recognized environmental conditions in connection with property, to the extent feasible pursuant to ASTM E 1527. ASTM defines the term "recognized environmental condition" as

the presence or likely presence of any 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 any hazardous substances or petroleum products into structures on the property or into the ground, groundwater, or surface water of the property .

Additionally, ASTM standard practices for environmental site assessments do not address every environmental concern that could be encountered. Additional services outside the scope of the ASTM standards must be specified in the terms of the contract or proposal for the environmental site assessment. Examples of services outside the scope of work for ASTM standards include: a broader scope of assessment, more detailed conclusions, liability/risk evaluations, recommendations for further testing, remediation techniques, asbestos surveys and lead-based paint testing.

The ASTM E 1528-00 Standard Practice for Environmental Site Assessments is an assessment to be utilized for limited environmental due diligence. It does not meet the requirement of "all appropriate inquiry."

ASTM has developed the following guide for further testing:

- ◆ ASTM E 1903-97 Standard Guide for Environmental Site Assessments: Phase II Environmental Site Assessment.

ASTM E 1528 Transaction Screen Process

The ASTM E 1528 Transaction Screen Process (Transaction Screen) standard practice consists of a questionnaire and corresponding guide. The questionnaire includes three areas of inquiry: 1) interviews with the owner and/or operator of the property, 2) site visit and 3) review of government records and historical sources. The Transaction Screen may be conducted either by the user (including an agent or employee of the user) or an environmental professional. ASTM defines the term "environmental professional" as one with sufficient training and experience to investigate a site in accordance with the standard practice and the ability to draw conclusions regarding the site's environmental condition.

According to ASTM, if a Transaction Screen is conducted on a pristine property the user should be able to answer all questions in the negative and reasonably conclude that no further inquiry is necessary. The user must exercise "business judgment" to determine whether the environmental condition of the property has been adequately assessed. When there is no response or an unknown or affirmative response, the user must decide whether further inquiry is warranted. The reason for this conclusion must be documented. If further inquiry is needed, then the user should proceed with the advice and guidance of an "environmental professional."

Incorporating state regulatory database information for Texas, an ASTM 1528 Transaction Screen includes the following:

- ◆ limited records review, including:
 - National Priority List (NPL)
 - Comprehensive Environmental Response Compensation Liability Information System (CERLCIS)
 - Resource Compensation Recovery Act Treatment Storage and Disposal Facility (RCRA TSDF)
 - Texas Superfund
 - Leaking Petroleum Storage Tanks (LPST)
 - Registered Petroleum Storage Tanks (RPST)
 - Municipal Solid Waste Landfills (MSWLF)
- ◆ limited historical land use research, including:
 - fire insurance maps or local fire department interview
- ◆ site visit (reconnaissance)
- ◆ property owner and occupants (if applicable) interviews
 - 20 standardized questions
- ◆ documentation (questionnaire).

Access an online Document Summary of ASTM E 1528 at: http://www.astm.org/cgi-bin/SoftCart.exe/DATABASE.CART/REDLINE_PAGES/E1528.htm?L+mystore+tdfm1152.

ASTM E 1527 Phase I Environmental Site Assessment

According to ASTM, the Phase I Environmental Site Assessment (ESA) is a more comprehensive assessment than the Transaction Screen and should be performed by an environmental professional (as defined earlier). The duties of the environmental professional include three tasks: (1) interviews and site reconnaissance, (2) review and interpretation of information and (3) oversight of writing the report. The Phase I ESA consists of the following four components: (1) a more thorough review of records, (2) site visit, (3) interviews with the owner and/or operator of the property and (4) report documentation.

Incorporating state regulatory database information for Texas, an ASTM 1527 Phase I Environmental Site Assessment includes the following:

- ◆ records review/list search, including:
 - National Priority List (NPL)
 - Comprehensive Environmental Response Compensation Liability Information System (CERCLIS)
 - CERCLIS No Further Remedial Action is Planned (NFRAP) facilities
 - Resource Compensation Recovery Act Treatment Storage and Disposal Facility (RCRA TSD)
 - Resource Compensation Recovery Act Corrective Action Facilities (RCRA CORRACTS)
 - RCRA non-CORRACTS TSD
 - Texas Superfund
 - Leaking Petroleum Storage Tanks (LPST)
 - Municipal Solid Waste Landfills (MSWLF)
 - Resource Compensation Recovery Act Generators
 - Registered Petroleum Storage Tanks (RPST)
 - Voluntary Cleanup Program (VCP)
 - Emergency Response Notification System (ERNS)
- ◆ additional environmental record sources (discretionary), including:
 - physical setting review
 - USGS 7.5 minute topographic map (mandatory)
 - other geologic, hydrogeologic and soil surveys or maps (discretionary)
- ◆ historical land use research (reasonably ascertainable), including:
 - aerial photographs
 - USGS 7.5 minute topographic maps
 - fire insurance maps
 - local street directories
 - property tax files

- building department records
- recorded land title records
- zoning/land use records
- ◆ site visit (reconnaissance)
- ◆ interviews with:
 - owners and occupants
 - local government officials
- ◆ evaluation
- ◆ documentation (written report).

Access an online Document Summary of ASTM E 1537 at: http://www.astm.org/cgi-bin/SoftCart.exe/DATABASE.CART/REDLINE_PAGES/E1527.htm?L+mystore+tdfm1152+1131510313.

ASTM Phase II Environmental Site Assessment

Similar to AASHTO's preliminary site investigation or an environmental site investigation, a Phase II Environmental Site Assessment is a more detailed investigation requiring sampling and analysis. The purpose of the Phase II investigation is to estimate the nature and extent of contamination and to provide the basis for a preliminary assessment of the cost of corrective or preventive action.

ASTM has developed a Standard Guide for Environmental Site Assessments: Phase II Environmental Site Assessment (ASTM E1903-97). This guide provides a framework for employing good commercial and customary practices when performing a Phase II environmental site assessment on a parcel of commercial property.

For More Information

For more information or to purchase copyrighted practices contact ASTM International at 100 Barr Harbor Drive, West Conshohocken, Pennsylvania, USA 19428-2959. The ASTM web page is located at: <http://www.astm.org/>.