

Revitalizing New England: NEWMOA Brownfields Summit 2022

The Evolving World of Environmental Due Diligence: Strategies for a Changing World

Private vs. Brownfields Phase I ESAs

Rick Vandenberg

May 19, 2022

Phase I ESAs are Industry Accepted for:

Assessing commercial property to identify Recognized Environmental Conditions (RECs) that accomplish the following:

- ▲ Demonstrating first step in meeting Innocent Landowner Defense (ILD) for existing property owners
- ▲ Providing other Landowner Liability Protections (LLPs) for parties seeking to get in the chain-of-title on contaminated property

To acquire and meet eligibility requirements for EPA Brownfields Grants

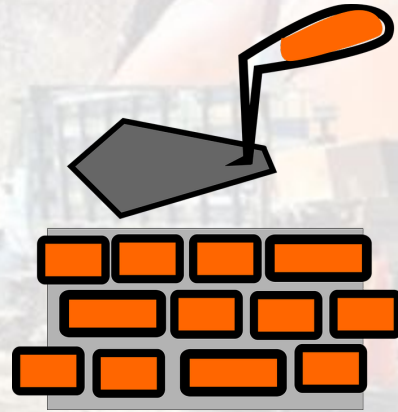
To meet lender requirements

Other needs (see Jon Kitchen's presentation)

Phase I ESAs are the Foundation of EPA Work

Phase I Environmental Site Assessments (ESAs) 'set the stage' for ALL follow-on work (good or bad) including:

- ▲ Site-specific Quality Assurance Project Plan (SSQAPP)
- ▲ Phase II ESA
- ▲ Analysis of Brownfields Cleanup Alternatives (ABCA)
- ▲ Cleanup
- ▲ Redevelopment



Why Quality Phase I ESAs are Important

Without a good AAI/ASTM compliant Phase I ESA on a Brownfields project, you may experience the following:

- ▲ Out-of-compliance and ineligible for EPA Funding
- ▲ Going to be spending more money on all subsequent Phases of work
- ▲ Going to be giving money back to EPA (Yikes!)
- ▲ Absolutely and Positively LOST!

Why Quality Phase I ESAs are Important

Without a good AAI/ASTM compliant Phase I ESA on a Brownfields project, you may experience the following:

- ▲ Out-of-compliance and ineligible for EPA Funding
- ▲ Going to be spending more money on all subsequent Phases of work
- ▲ Going to be giving money back to EPA (Yikes!)
- ▲ Absolutely and Positively LOST!



Important Phase I-Related Legislation

Resource Conservation Recovery Act (1976)

- ▲ Cradle to grave waste management requirements established

Comprehensive Env. Response, Compensation & Liability Act (1980)

- ▲ Passed in 1980 in response to Love Canal

Superfund Amendments and Reauthorization Act (1986)

- ▲ Clarified concept of "acquisition w/o knowledge" & articulated AAI is needed

Lender Liability Amendments to CERCLA (1996)

- ▲ Described what activities a lender can take w/o incurring CERCLA liability



Important Phase I-Related Legislation Cont.:

Small Business Liability Relief and Brownfields Revitalization Act (2002)

- ▲ Referred to a Brownfields Amendments
- ▲ Title I – Small Business Liability Protection Act
- ▲ Title II – Brownfields Revitalization and Environmental Restoration Act of 2001
 - **Subtitle B – Brownfields Liability Clarifications**
 - ▲ Added two additional defenses to Superfund liability
 - **Contiguous Property Owner**
 - ▲ Bona Fide Prospective Purchaser (BFPP)
 - ▲ Instructed EPA to develop standards and practices for AAI
 - **Continuing Obligations**

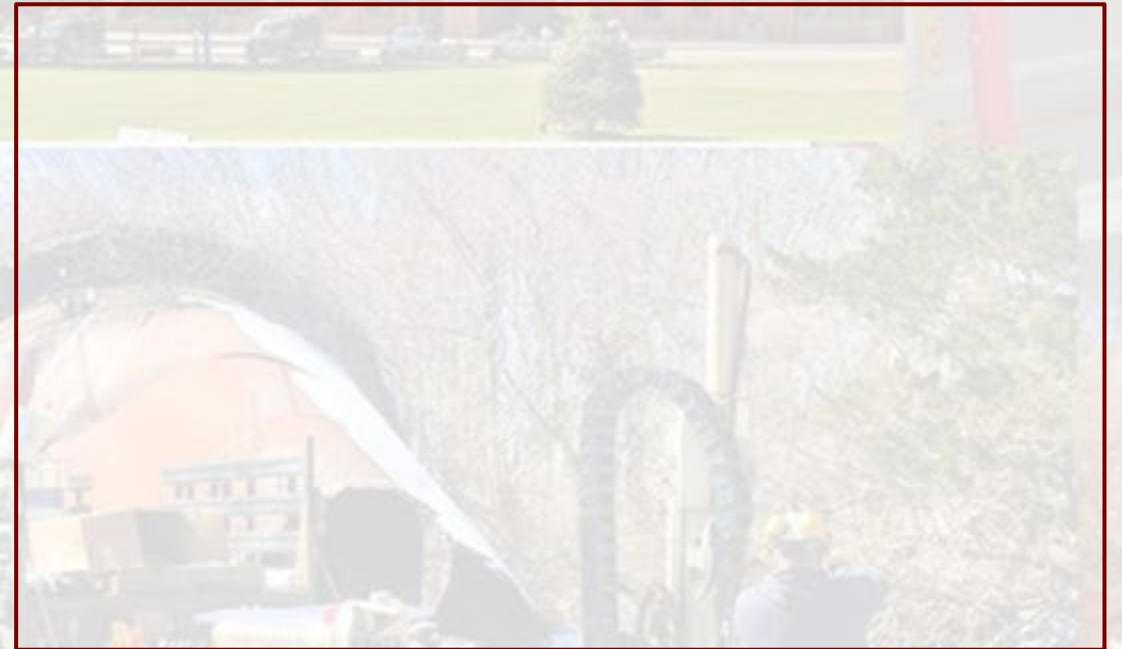


Differences Between Private and Brownfields

Private Phase I ESAs



EPA Brownfields Phase I ESAs



Differences Between Private and Brownfields

Private Phase I ESAs

- ▲ User Responsibilities
- ▲ Physical Site Setting
- ▲ Government Records Review
- ▲ Historical Records Review
- ▲ Site Reconnaissance
- ▲ Interviews
- ▲ Report

EPA Brownfields Phase I ESAs

- ▲ User Responsibilities
- ▲ Physical Site Setting
- ▲ Government Records Review
- ▲ Historical Records Review
- ▲ Site Reconnaissance
- ▲ Interviews
- ▲ Report

But Wait, You Said There are Differences?!



EPA Brownfields Phase I ESAs

- ▲ User Responsibilities
- ▲ Physical Site Setting
- ▲ Government Records Review
- ▲ Historical Records Review
- ▲ Site Reconnaissance
- ▲ Interviews
- ▲ Report

But Wait, You Said There are Differences?!



EPA Brownfields Phase I ESAs

- ▲ User Responsibilities
- ▲ Physical Site Setting
- ▲ Government Records Review
- ▲ **Historical Records Review** ←
- ▲ Site Reconnaissance
- ▲ **Interviews** ←
- ▲ **Report** ←

It's All About the History...

Objectives of the historical research portion of a Phase I ESA are:

- ▲ *"...developing a history of the previous uses of the subject property, adjoining properties, and surrounding area"...to help identify the likelihood of past uses having led to recognized environmental conditions in connection with the subject property"*
- ▲ *"The environmental professional **shall** exercise judgement and consider possible releases that might have occurred at the subject property, adjoining properties, and surrounding area in light of the historical uses"*

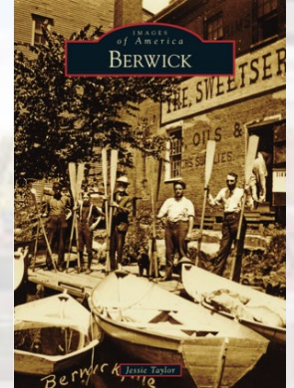


It's All About the History...

Historical* research for an EPA Brownfields Phase I ESA should differ from a private one where possible.

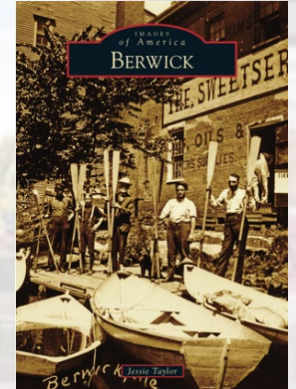
Standard Sources (ASTM 1527-13)

- ▲ Aerial Photographs
- ▲ Fire Insurance Maps
- ▲ Local Street Directories
- ▲ Topographic Maps
- ▲ Building Dept. Records
- ▲ Interviews
- ▲ Property Tax Records
- ▲ Zoning/Land Use Records



It's All About the History...

Historical* research for an EPA Brownfields Phase I ESA should differ from a private one where possible.



Standard Sources (ASTM 1527-13)

- ▲ Aerial Photographs
- ▲ Fire Insurance Maps
- ▲ Local Street Directories
- ▲ Topographic Maps
- ▲ Building Dept. Records
- ▲ Interviews
- ▲ Property Tax Records
- ▲ Zoning/Land Use Records

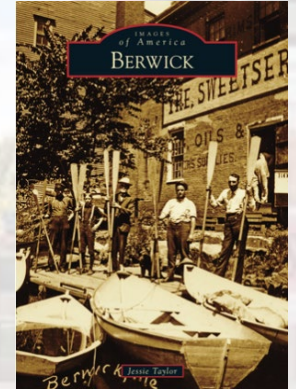
Consider these too!



- ▲ Owners or Occupant of adjoining property
- ▲ Historical Maps
- ▲ News Articles
- ▲ Historical books (History Press Ltd.)
- ▲ Internet Sites
- ▲ Local libraries
- ▲ Historical Society Information

It's All About the History...

Historical* research for an EPA Brownfields Phase I ESA should differ from a private one where possible.



Standard Sources (ASTM 1527-13)

- ▲ Aerial Photographs
- ▲ Fire Insurance Maps
- ▲ Local Street Directories
- ▲ Topographic Maps
- ▲ Building Dept. Records
- ▲ Interviews
- ▲ Property Tax Records
- ▲ Zoning/Land Use Records

Consider these too!



- ▲ Owners or Occupant of adjoining property
- ▲ Historical Maps
- ▲ News Articles
- ▲ Historical books (History Press Ltd.)
- ▲ Internet Sites
- ▲ Local libraries
- ▲ Historical Society Information

*** = Historical sources can include information from both tables.**

It's All About the History...

Historical research for an EPA Brownfields Phase I ESA should differ from a private one in that:

▲ The Environmental Professional should attempt to review as many of the ASTM defined historical sources (and other historical sources) as possible to definitively do the following:

- **Document where exactly identified high-risk uses occurred on the subject property, adjoining properties, and surrounding area, and**
- **Document if, and where, the identified high-risk uses moved around**

...And the Interviews

Interviews are the piece of a Phase I most often glossed over! Interviews can be a source of rich information. Spend the extra time necessary to interview the following individuals:

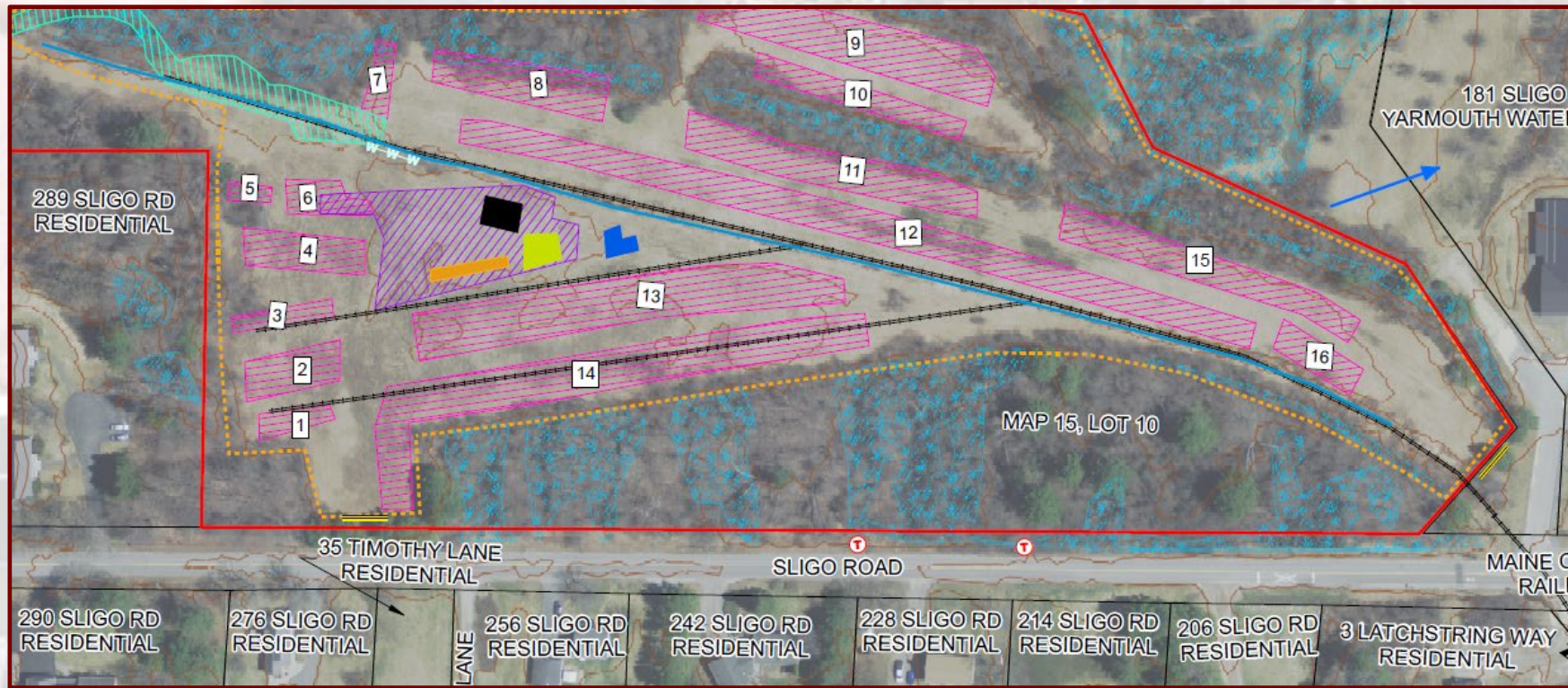
They are ALL required...so consider doing them ALL!



- ▲ Key Site Manager
- ▲ Major Occupants
- ▲ Past Owners, Operators, and Occupants
- ▲ Occupants of Adjoining or Nearby Properties (when subject property is abandoned)
- ▲ Local Fire Dept. Representatives
- ▲ State and/or Local Health Agency Representatives
- ▲ State and/or Local Representatives w/ Jurisdiction over Haz. Waste
- ▲ State and/or Local Representatives Responsible for Issuance of Building Permit

Do this in the Report !

For complex sites, insert a site figure into the report overlaying your historical research results



Conclusions

A good 'Brownfields' AAI/ASTM E 1527 compliant Phase I ESAs will accomplish the following for the user:

- ▲ Serve as the first step in developing CERCLA LLPs
- ▲ Helps define the universe of contaminants of concern for the QAPP
- ▲ Defines potential release areas
- ▲ Defines potential areas to be assessed during Phase II
- ▲ Assists with performing and estimating cleanup costs

A good 'Private' AAI/ASTM E 1527 compliant Phase I ESAs will accomplish the following for the user:

- ▲ Serve as the first step in developing CERCLA LLPs
- ▲ Probably won't narrow down the potential contaminants of concern for the QAPP
- ▲ Won't generally define potential release areas
- ▲ Won't generally define potential areas to be assessed during Phase II
- ▲ Will not assist with performing and estimating cleanup costs

Conclusions

Yes, good Brownfields Phase I ESAs cost more upfront, but they can save money on subsequent project phases...

Which could lead to sites like these.!





Thanks !

Contact Information



Rick Vandenberg, LG, PG

Creder Associates, LLC
776 Main Street
Westbrook, Maine 04092
(207) 828-1272; ext. 30
(603) 312-8824 (cell)