

APPENDIX 5: REQUIREMENTS PERTAINING TO GAS STATION LOANS**ENVIRONMENTAL INVESTIGATION REQUIREMENTS
FOR GAS STATION LOANS**

NOTE: Lenders are reminded that documentation associated with gas station loans can be voluminous and complex. Apart from environmental concerns there are affiliation and credit issues that Lenders must analyze in order to make the initial loan eligibility determination.

The Environmental Investigation requirements set forth below apply to all loans secured by a lien or security interest on real property (a fee simple or leasehold mortgage, deed of trust, etc.) *or* personal property (gas station fixtures or equipment such as tanks, pumps, lines, etc.) currently used to operate a gas station or commercial fueling facility ("Gas Station Loans"). These requirements would not apply when the applicant operates a business, such as a convenience store associated with a gas station, in which the applicant only leases the real or personal property and neither the real nor personal property is used as collateral for the loan. Nor do these requirements apply to situations where the only collateral for the loan is something other than gas station equipment (for example, food inventory, shelving, etc.).

- a. Environmental Site Assessment. The Environmental Investigation for all Gas Station Loans (including those secured by gas station equipment only) must: (1) begin with a Phase I ESA with the additional requirement that it be conducted by an independent Environmental Professional; (2) include an analysis of all relevant environmental records concerning the Property and Adjoining Properties, including any records provided by the seller if the loan is to purchase the Property; (3) include the equipment testing described in b. below (even if the loan is secured by real property only); (4) include the results of any further investigation, which may include a Phase II, recommended by the Environmental Professional (Any Phase II performed in connection with a Gas Station Loan must be conducted by an independent Environmental Professional *who holds a current Professional Engineer's or Professional Geologist's license and has the equivalent of three (3) years of full time relevant experience.*); and (5) if the Property is Contaminated, include a detailed description of and cost estimate for the recommended Remediation.
- b. The Environmental Investigation performed by the Environmental Professional must include a determination whether or not the gas station is in compliance with all state requirements, if any, pertaining to tank and equipment testing. A loan may not be disbursed until full compliance is achieved. Further, any leaking or otherwise defective equipment, systems, containment devices, etc., must be replaced or repaired prior to disbursement.

c. Results of Environmental Investigation.

(1) Property is not Contaminated. If the Environmental Professional concludes that the Property is not Contaminated, the Lender (except on PLP, SBA Express, Export Express, Patriot Express and PCLP loans) must submit the results of the Environmental Investigation to SBA with recommendations and seek SBA's concurrence.

(2) Property is Contaminated. If the Environmental Professional concludes that the Property is Contaminated, Lender can either: (1) decline the loan; or (2) follow the requirements set forth in paragraph III.G. of the Environmental Policies and Procedures sections of this SOP entitled, "Approval and Disbursement of loans when there is Contamination or Remediation at the Property," *provided that at a minimum, the SBA Indemnification Agreement as described at paragraph G.4.a) must always be obtained and signed by the seller.* (There may be situations where it is not practical to require the seller to sign the indemnification agreement; for example, the property is being sold from a probate estate or through a trustee in bankruptcy. Waivers may be sought from the SBA Environmental Committee at environmentalappeals@sba.gov on a case-by-case basis. A mere unwillingness on the part of a seller to execute the indemnification agreement is not a sufficient basis for a waiver. PLP, SBA Express, Export Express and Patriot Express Lenders and PCLP CDCs do not have the authority to grant a waiver and are also required to follow this procedure.) In addition, prudent lending practices may require a Lender to utilize some of the other listed mitigating factors such as requiring additional collateral.

d. When Waiver and Release of Right to Indemnification from SBA/Lender Required. If any oil company or other Person has a right to indemnification from subsequent owners of the Property (e.g., SBA/Lender after acquiring Property through foreclosure or other means), then they must execute either the SBA Indemnification Agreement or another document in which they waive all known and unknown rights and release all claims and causes of action whether now or hereafter in existence against SBA and Lender related to Contamination at the Property including the right to indemnification. The document containing the waiver and release must be recorded. Lenders and CDCs, except when submitting requests through PLP, SBA Express, Export Express and Patriot Express, must submit all waiver and releases to the SBA center processing the loan for review and approval by SBA counsel, along with a copy of the title report, the document providing for indemnification, and the purchase and sale documents, if any. PCLP CDCs must also submit the waiver and release to the SBA for review and approval prior to a request that SBA fund the loan.