

LIQUIDATION: Obtaining SBA Approval of Loan Actions with Environmental Risk

- 1) SBA's prior written approval must be obtained from the appropriate SBA Loan Center prior to:
 - a) *Taking title to the Property*
 - b) *Taking control of a business that handles hazardous substances*

- 2) Request approval by providing the appropriate SBA Loan Center (and copy to the SBA District Counsel responsible for the geographic area where the Property or business is located) with:
 - a) *Appraised Value of Collateral to be Acquired (supported by a copy of the post-default appraisal)*
 - b) *Liquidation Value of Collateral to be Acquired (explain the basis for the estimate)*
 - c) *SBA Loan Balance (supported by a copy of the transcript of account or other credible evidence of the loan balance)*
 - d) *Amount Owed on Senior Liens (Schedule B of post-default title report; Current UCC lien search; lienholder agreements)*
 - e) *Foreclosure Costs (including any extraordinary expenses such as the legal fees/administrative expenses of receivership)*
 - f) *Nature and Extent of the Contamination (summary of nature & extent of Contamination. Include Environmental reports)*
 - g) *Clean-up Costs and Liability*
 - 1) If Remediation is not required attaché a copy of the NFA letter, closure letter, or functional equivalent from the responsible Government Entity.
 - 2) If Remediation is recommended attach a copy of any document that: (a) provides a description of the recommended method and cost of remediation and anticipated completion date; (b) that establishes the identity of those responsible for remediation (e.g., Superfund consent decree); or (c) that demonstrates the ability of the responsible party to pay for the cost of remediation.
 - 3) If Remediation is on-going attaché a copy of any document that shows the progress of the cleanup, or that the person conducting the cleanup has sufficient financial resources to complete it.
 - h) *Secured Creditor Liability Exemptions (see SOP 50 57 pg 39 h)*
 - i) *Mitigating Factors,(examples below)*
 - 1) An SBA Environmental Indemnification Agreement executed by a person who possesses sufficient financial resources to cover the cost of remediation,
 - 2) A written statement from the responsible government entity that active remediation is complete and the results of any ongoing monitoring are acceptable,
 - 3) A "no further action letter" from the responsible government entity stating that no further remediation or monitoring is required
 - 4) Documentation showing that contamination and cost of remediation is minimal or insignificant compared to the recoverable value of the property
 - 5) Availability of Government Clean-up Fund has unconditionally agreed to cover the cost of Remediation, or
 - 6) Documentation showing an escrow account containing a minimum of 150% of total cost of remediation, and that SBA, the 7a lender or CDC is a party to the agreement governing the account
 - 7) Documentation showing that the contamination consists solely of groundwater contamination that originated from another property, and:
 - j) *Tort Liability (status and anticipated outcome of any known litigation due to contamination at the property)*

- k) *Exceptions to Title that Impact Marketability (any recorded covenant, deed restriction or other exceptions to title)*
- l) *Alternative Methods of Recovery (list and analyze the feasibility of alternative methods of collecting the loan balance)*
- m) *Acquired Collateral Divestiture Plan (description of plan for disposing of any collateral & how easy/difficult to resell)*
- n) *Other Relevant Facts or Expenses (example; Remediation by secured creditor; Receivership proceedings; UST Closures)*
- o) *Estimated Net Recovery (Provide the estimated net recovery from taking the proposed action based on the analysis of factors “a” through “n” above.*

Note: General questions concerning SBA’s environmental policy and procedures should be directed to SBA District Counsel for the geographic area where the property is located.

REFER TO SOP 50 57 LOAN LIQUIDATION CHAPTER 5 PGS. 33 – 41, ENVIRONMENTAL RISK MANAGEMENT