

March 1999

Re: NEPA Call-In Technical Inquiry 0497 - Does a Phase I Environmental Site Asses

This letter is in response to your March 31, 1999 request for guidance on Phase I Environmental Site Assessments (ESA). Specifically, you wanted to know if a Phase I ESA was required under the National Environmental Policy Act (NEPA) when GSA is performing new construction. You also stated that GSA currently owns this land.

SUMMARY OF FINDINGS

NEPA Call-In determined that a Phase I ESA is not required on land already owned by GSA, but that GSA assess the prior use of the property and if any hazardous materials were used on the property. Our detailed findings are provided below.

DETAILED FINDINGS

NEPA Call-In searched the GSA NEPA Desk Guide, Interim Guidance, September 1997 for information regarding your inquiry. Chapter 9, "Special Studies" states that Due Diligence describes the responsibilities of a landowner to "conduct an appropriate inquiry prior to purchase or development of a parcel of commercial real estate and ensure that all recognized environmental conditions have been identified." The Desk Guide further states that by exercising Due Diligence, such as a Phase I ESA, GSA gains two benefits:

1. The agency identifies any hazardous materials on the site that may need remediation; and
2. GSA has access to the "innocent landowner defense" under CERCLA.

The NEPA Call-In fact sheet "Environmental Site Assessments" (enclosed) further discusses innocent landowner defense under CERCLA.

NEPA Call-In then reviewed the Council on Environmental Quality (CEQ) regulations for NEPA, found in Title 40 of the Code of Federal Regulations (CFR) Sections 1500-1508. The regulations do not state that a Phase I ESA is required as part of the NEPA process, but that the lead agency must "identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement," (40 CFR 1501.7 (a) (6)).

Therefore, as part of the NEPA process, GSA should determine the prior use of the property and if hazardous materials are present. This may be accomplished by reviewing previous site operations to determine any evidence of hazardous use or chemicals. For example, if the proposed action is one that normally requires completion of a categorical exclusion (CATEX) Checklist under NEPA, then Checklist Question C is the appropriate level of analysis. Question C states, "Is the action likely to result in the use, storage, release and/or disposal of toxic, hazardous, or radioactive materials, or in the exposure of people to such materials?" If the proposed action requires preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS), then more detailed analysis may be required. Also, a Phase I ESA should have been performed prior to GSA purchasing the property.

The materials in this TI have been prepared for use by GSA employees and contractors and are made available at this site only to permit the general public to learn more about NEPA. The information is not intended to constitute legal advice or substitute for obtaining legal advice from an attorney licensed in your state and may or may not reflect the most current legal developments. Readers should also be

aware that this response is based upon laws, regulations, and policies in place at the time it was prepared and that this response will not be updated to reflect changes to those laws, regulations and policies.

Sincerely,

(original signed)

NEPA Call-In Researcher