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Tips for a More Efficient Closing: Environmental Review

- The Phase I Assessment: a necessary element of due diligence.
 - Insure that it complies with the federal “All Appropriate Inquiries” rule, a.k.a. “AAI.” AAI is set forth at 40 CFR 312.1 *et seq.* (available at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>)
 - EPA specifically stated that a Phase I that complies with ASTM E1527-05 (or E2247-08 for rural or forestland), complies with AAI.
 - Common pitfalls: lack of a search for recorded environmental cleanup liens (must be specifically requested/authorized by the user); a report that is more than 180 days old at the time of the transaction; an attempt to “update” a report that is more than one year old at the time of the transaction.
- Environmental Issues: what to do if they are identified?
 - If a Phase I identifies any recognized environmental conditions (“RECs”), further investigation may be warranted. The environmental professional performing the Phase I should provide specific recommendations.
 - This may include, for example, a Phase II environmental investigation, i.e., soil and/or groundwater sampling, or further assessment of available documents.
 - Though things like asbestos, radon, lead-based paint, PCBs, wetlands, and floodplains are outside the scope of a Phase I review, a Phase I report may flag these issues if noted. If flagged, or if otherwise known about, further assessment and investigation should be performed.
- Examples of common issues at urban or already-developed property:
 - Lead-based paint, if constructed before 1978.
 - Asbestos-containing material.
 - PCBs if there are or were any transformers or hydraulic equipment on site.
- Examples of common issues at rural property:
 - Underground and aboveground storage tanks.
 - Endangered species habitat.
 - Wetlands.