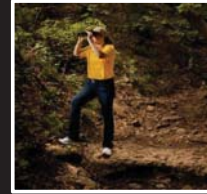


Navigating the Muddy Waters of Environmental Investigations in Land Use

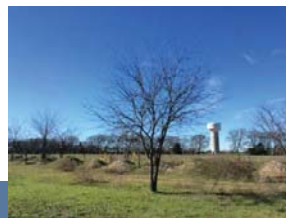
21st Annual Land Use Conference-University of Texas School of Law
April 7, 2017



Phase I/Phase II ESA



Why get a Phase I/II ESA?



What IS and IS NOT in a Phase I ESA



Included

- Review of all available records
- Site inspection-surface only
- Interview with owners, occupants, neighbors, and local government officials

Not Included

- Subsurface sampling and testing
- Waters of the United States delineation
- Endangered species assessment
- Cultural resources investigation
- Asbestos
- Radon
- Noise studies
- Lead paint/Drinking water

Phase I Site Assessments should be conducted pursuant to ASTM E1527-13 standards

When do you need a Phase II ESA?



0.0-5.5' CLAYEY SAND: Sand with little clay grading into some clay. Brown grading to reddish orange, slightly moist, soft grading to firm.	SC		None	0.0	0
-Grades to a mottled orangish red and yellow, firm, slightly moist.			None	0.0	0
5.5-6.5' FINE GRAIN SAND: fine grain sand with a trace of clay, firm, slightly moist, light yellow to tan.	SW/SP		None	0.0	0
-6.5-7.5' medium grained sand with shell fragments and coarse sands, poorly sorted, slightly moist.			None	0.0	0
-7.5-8.0' very fine grained sand, some clay, moist, pale yellow to a light tan in color.			None	0.0	0
9.0-12.5' SILTY SAND: very fine grained, trace of clay, light brown to off-white, slightly moist, soft.	SM		None	0.0	0
-Grading into a pure off-white silty sand with trace clay laminations interbedded.			None	0.0	0
12.5-14' SILTY CLAY: fat clay and silt with a trace of very fine grain sand, greenish yellow grading to a greenish brown, firm, slightly moist.	CH		None	0.0	0
14-16.5' SILTY SAND: very fine grained, light brown with greenish grey streaking, moist.			None	0.0	0
-Grades into a silty sand with trace clay laminations, moist, firm.	SM		None	0.0	0
16.5-19.0' SILTY CLAY: with little very fine grained sand, greenish grey to dark brown, interbedded sand lenses approximately 2 inches thick, firm, slightly moist.			None	0.0	0
-Grades to a light brown.	CL/CH		None	0.0	0

Phase I vs Phase II

Phase I

- Standard research and site investigation
- Records review of known environmental conditions
- Used for liability protection under CERCLA
- Used as a go/no go for property purchase
- Assess *POTENTIAL* for CERCLA and petroleum products to impact property

Phase II

- Intrusive study where physical environmental samples are collected and analyzed
 - ✓ Soil samples
 - ✓ Water samples
 - ✓ Drum testing
- Used to determine whether a release has occurred, extent of release, and provide baseline



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