



**Lancaster, Brooks & Welch LLP**  
BARRISTERS AND SOLICITORS

**Business Bulletin, December 2005**  
**Environmental Assessments - Part One**  
**by Bruce Smith**

The terms are verbally agreed and you will be purchasing commercial or industrial property. Now you must negotiate the agreement of purchase and sale. Should you insert a clause making the agreement conditional upon receiving satisfactory results from an environmental assessment or environmental audit ("EA"). Why would you want an EA and what is it?

**WHY THE NEED FOR AN EA?**

Most institutions which finance commercial or industrial properties (or even some environmentally riskier farm) will demand that an EA be carried out on the property as a condition of financing. In that situation the decision will be out of your control. Even if an EA is not required by the financial institution, you may still want to have an EA done depending on the previous or current uses of the subject property. An EA is necessary to determine what environmental problems, if any, may be associated with the subject property. It is one further tool to determine if the risks warrant buying the property or if further negotiations are necessary to deal with any potential cleanup or remediation of the property.

**WHAT IS AN EA?**

There are basically three aspects of an EA: a Phase 1 EA, Phase 2 EA and a Phase 3 EA. The need for one or all of these will depend on the seriousness of any problems uncovered.

**PHASE 1 EA**

The purpose of this is to look at the past and present use of the property and to determine the potential presence of hazardous substances and soil and/or groundwater contamination on the property. The company carrying out a Phase 1 EA will attend physically at the property and surrounding area. As well a property history including a search of the Ministry of Environment's records and a review of the files of any other relevant agencies will be undertaken. The company will determine whether there are any contaminated properties located within the area. Finally a report of its findings, conclusions and recommendations will be prepared. If the report from the Phase 1 EA is satisfactory no further action will be necessary. If potential contamination is found then a Phase 2 EA will be recommended.

Next month's bulletin will highlight the difference between a Phase 2 and Phase 3 EA and the circumstances in which they may be required.

*The foregoing is provided to you for information purposes only. We caution you to obtain legal advice specific to your situation in all circumstances.*

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