

THE STATE OF FLORIDA'S ENVIRONMENTAL  
ASSESSMENT INDUSTRY

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The quality and expertise of the environmental labor force determines the overall health and sustainability of the environmental consulting industry. Knowledge is power, and the application and interpretation of data is the skill that makes a valuable consultant.

In order to assess the current quality of the environmental assessment and remediation labor force in Florida, we should review some significant historical events that have shaped the industry. The EPA was formed in 1969, and very comprehensive and general legislation such as the Clean Water Act, the Clean Air Act, and the Resource Conservation Recovery Act were passed in the 1970's. The battle between environmental regulation and economic development was underway.

The Love Canal issue surfaced in 1976 prompting the Comprehensive Environmental Response Compensation and Liability Act of 1980, which is commonly known as Superfund. In the 1980's the Florida Department of Environmental Regulation (FDER) was empowered to regulate storage tanks and petroleum contaminated properties. The Superfund Amendments and Reauthorization Act of 1986 defined the innocent land owner defense (A.K.A. innocent purchaser status) and formed the basis for the Phase I Environmental Site Assessment industry, which exists to provide liability protection for those who diligently investigate property prior to purchase.

Based on the emergence of environmental assessment and petroleum cleanup industries in Florida in the late 1980's, geologists and engineers and other trained scientists were in great demand, and Florida's environmental industry began to grow.

A group of dedicated professionals who were concerned about the state of the Phase I Environmental Site Assessment industry formed the Florida Environmental Assessors' Association (FEAA) in 1990 to promote professionalism, establish the appropriate standard of care for environmental assessments in Florida, and provide a certification program for trained environmental assessment professionals. The FEAA was initiated and motivated because an untrained labor force (i.e. landscaping companies) were among those conducting Phase I Environmental Site Assessments. Unqualified companies claimed to be environmental professionals.

Also in the early 1990's, the Florida Petroleum Cleanup Program (A.K.A. Reimbursement Program) enabled contractors to assist owners of petroleum contaminated properties with state funded cleanups. Contractors would approach gas station owners, explain that they would assess and remedy the petroleum contamination problem on their property and their fees would ultimately be paid by the State of Florida. Numerous six figure remediation contracts were

signed and a nine figure environmental industry emerged. Trained scientists were in very high demand. Thousands of environmental firms opened and many of these firms became very large. Many well trained and qualified scientists moved to Florida and the quality of the labor force improved to meet demand. But, there were still numerous untrained staff performing technical services and other management issues created by an industry with companies that grew very large, very quickly.

Significant modifications had to be made to the reimbursement program. The growth of the industry exceeded the government's ability to manage and regulate the program. In March 1995, the reimbursement program crashed and a petroleum cleanup industry producing well over one hundred million dollars worth of annual revenue was put on hold. Numerous firms shut down and numerous branch offices were retracted. Thousands of trained scientists moved to other states such as Texas where the assessment and remediation industry was thriving.

For assessment and remediation consultants, there are generally two sources of work. The first comes from government programs and the second is driven by real estate transactions. After the reimbursement program crashed, the professionals that remained in Florida looked to the transaction environmental assessment market for revenues to stay in business.

Competition in the Phase I Environmental Site Assessment industry increased very significantly in the mid to late 1990's. This brought the price of environmental assessment services down. In order to make a profit, project managers needed to reduce project expenses, including the number of hours spent on each project. Firms needed to cut overhead and higher salaried employees were let go in favor of a lower salaried and inexperienced labor force. The reduced hours spent on projects reduced the diligence of investigations, and the reduced experience in the labor force reduced the quality of the final product.

In the late 1990's, the environmental insurance industry emerged. Many lenders purchased secured creditor policies to insure their loan against environmental risks.

Also in the late 1990's, the commercial lending industry became increasingly competitive. Lenders were minimizing closing costs and borrowers were aggressively shopping for the best financing terms. These factors further influenced the price of Phase I Environmental Site Assessments and reinforced the need for environmental business managers to manage their expenses in this increasingly challenging market. Managing expenses often results in a damaging reduction of diligence, professionalism, and quality of environmental assessment services.

This has created a condition that I call the environmental paradox.

Low budget and poor quality service providers (who occasionally miss contamination evidence) go out of business due to low profit margins. The out of business firms are not available to defend their work and their client is liable for a contamination problem or clients must sue their low budget contractor to protect their interests.

PARADOX: The service designed to protect against contamination liability, if not performed professionally by a financially stable firm, could cause contamination liability for a property owner.

CAUTION: Cursory environmental assessments can be performed at very affordable prices, but such services generally do not meet the level of diligence needed to achieve the purpose of the investigation: to minimize liability risks and obtain an "Innocent Landowner Defense" per 42 USC 9601 (35) (B).

This condition is not true of all lenders or all environmental consultants. There are numerous high quality firms that offer diligent services at a reasonable price. There are numerous lenders who prefer quality over price and purchase assessments for risk management purposes. But there are far too many lenders who purchase based solely on price, and far too many consultants who will compromise their integrity to get the job. This is a dangerous game for lenders and consultants to play, and it is unhealthy for the industry.

Things have improved significantly since the late 1990's. The Florida Legislature and the Florida Department of Environmental Protection reinstated a new and improved petroleum cleanup program which has now grown back into an approximately 120 million dollar per year industry. There are more contracts in the market to sustain the environmental companies in Florida. There is more income for business managers to pay higher salaries, and provide appropriate training to their existing staff. Standard operating procedures for Phase I Environmental Site Assessments have repeatedly been improved to include the appropriate level of inquiry and diligence for environmental assessments. The ASTM Standard E. 1527-00 is a nationally recognized standard that many lenders have used as the basis for their Phase I Environmental Site Assessment purchases. The Florida Environmental Assessors Association is in its 11<sup>th</sup> year training environmental professionals and providing the Certified Florida Environmental Assessor (CFEA) designation. An increasing number of lenders are requiring reports to be certified by either professional geologists, professional engineers, or CFEA's. The CFEA program requires a four year science degree, three years of direct environmental assessment experience, and passing a challenging exam at the end of the CFEA training course. The FEAA is actively promoting the value of CFEA professionals to the lending industry. Environmental insurance has not provided the safeguards and protections as originally anticipated that it would, and more lenders are relying on Phase I environmental assessments again. So the market is very healthy and conditions are improving.

However, the environmental paradox still exists. Market prices do not always provide consultants with resources to deliver the quality report and liability protection that the client desires. The industry that is designed to manage environmental risks and minimize liability has become an industry that needs to do a better job of managing its environmental risks and liabilities. This is the paradox.

The solution to this paradox is clear.

1. Consultants need to continually and repeatedly educate the lending industry about the purpose of Phase I Environmental Site Assessments so that the appropriate diligence can be performed and compensated.

2. Environmental consulting firms must understand the value of diligent research and using experienced trained professionals in the field to help minimize errors and omissions. We as an environmental consulting industry have created our own high professional liability insurance costs based on poor professional performance and numerous lawsuits that arise from an improperly conducted Phase I Environmental Site Assessments. There are excellent training programs available through ASTM, FEAA and other sources, and there are more than enough case studies to educate lenders and environmental consultants about the value of a diligently conducted report. As consultants we need to recognize these market conditions, educate the market, and commit to a higher degree of professionalism.

If these solutions were implemented, the state of Florida's environmental assessment market would improve. Luckily, Florida is a rapidly developing State and there is a very healthy real estate industry. The number of environmental assessments performed will remain strong and the number of contracts will continue to support a healthy environmental market. This will be especially true for as long as the Inland Protection Trust Fund provides a healthy petroleum cleanup market so many firms can focus on petroleum cleanup and environmental assessment services simultaneously.

Market conditions are good. Let's work together to make them better.

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