Overview

The Office of Inspector General (OIG) conducted a Review of Environmental Site Assessments (ESA). This review included tests of the Division of State Lands records and procedures, as well as interviews from appropriate personnel. This review was initiated as a result of the FY 2010-2011 audit plan.

We identified noteworthy accomplishments that should be continued and also identified areas to consider for improvement and made recommendations to Division management for strengthening policy practices.

We recommend:

- The Division take preliminary steps internally such as creating a threshold limit on land value, risk assessments, etc on the acquired lands to determine whether a Transaction Screen/ESO or Phase I ESA should be ordered. The Division should take into consideration whether or not the Board of Trustees’ acquisitions need landowner liability protection under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA). If approved for an ESO, the Division could realize further costs savings by utilizing agency biologists to conduct the ESOs.

Scope & Objectives

The scope of this review included contracts for environmental site assessments over the past two fiscal years (2010-2011 and 2009-2010) and other time periods necessary given circumstances.

The objectives of this review were to determine whether:

1. Contract deliverables meet the contract scope of work,
2. Environmental site assessment reports address all requirements in the contract scope of services,
3. Contracts require compliance
4. with environmental site assessment professional standards associated with federal regulated requirements or the State standards, and
5. Division methods of ordering environmental site assessment reports are cost-effective.

Methodology

Promoting Accountability, Integrity and Efficiency
This review was conducted under the authority of Section 20.055, Florida Statutes (F.S.) and was a component of the Office of Inspector General's annual audit plan. The review was conducted according to the *International Standards for the Professional Practice of Internal Auditing*, published by the Institute of Internal Auditors. This review included tests of Division of State Lands' records and procedures as well as interviews and representations from appropriate personnel as determined necessary under the circumstances.

Review Procedures:

- Reviewed the contracts to determine the scope of services and deliverables.
- Examined the site assessments performed during FY 2009-2010 and 2010-2011.
- Developed a spreadsheet to document the site assessments compliance with ASTM standards, contract requirements, and scope of services.
- Reviewed the State and Federal requirements and determined the minimum report criteria.
- Determined the basis for the Division's decisions to order the site assessments.
- Analyzed the difference between the industry cost standards for environmental site assessments and the amount the Division pays.
- Conducted interviews with appropriate Division personnel.

Background

According to Section 259.041(8) (b) Florida Statutes regarding properties acquired on behalf of the Board of Trustees of the Internal Improvement Trust Fund (BOT) of the State of Florida, the Department may contract for real estate acquisition services, including environmental audits.

As part of the acquisition closing process, the Division contracts for Environmental Site Assessments in order to assess environmental contamination of potential land acquisition projects. These ESAs normally consider the history of activity and environmental impacts of prior land use of a subject property and surrounding area. Currently, the contract manager issues a task assignment for the contractor to prepare a Phase I ESA, or Phase II if necessary, regardless of the acreage, land value, and environmental risk. The Phase I ESAs conducted over the past two fiscal years (2010-2011 and 2009-2010) ranged between $1,050 and $3,200. The Phase II ESAs ranged between $2,625 and $173,500 depending on the contractor, environmental conditions, and sampling conducted. The Division currently has four contractors conducting ESAs for the agency. They are as follows:

- Contract PL078 – WRS Infrastructure & Environmental, Inc.
- Contract PL079 – Professional Services Industries, Inc. (PSI)
- Contract PL080 – Mactec Engineering and Consulting, Inc.
- Contract PL081 – Aerostar Environmental Services, Inc.

There are three types of ESA's that may be performed by the contractor:

- **Environmental Site Observation/Transaction Screen:** Limited review and does not provide the User with CERCLA landowner liability protection. The reports include ground observations and the completion of an ESO guide checklist. These are currently not used by the Division.

- **Phase I ESA:** Report identifies potential or existing environmental contamination liabilities on a property. This includes a site visit to view present conditions, hazardous substances, or petroleum products usage, and evaluation of any likely environmentally hazardous site history.

- **Phase II ESA:** Report will help confirm or deny the presence of each of the
recognized environmental conditions whose potential was identified during the Phase I inspection. Phase II assessment can encompass surface and subsurface sampling, verification of the presence or absence of various forms of contamination, visual and laboratory analysis of samples, and documentation of the findings.

Following a Review of Environmental Site Assessment Contracting in March 2008, the Division now conducts Phase I ESAs in accordance with the American Society for Testing and Materials (ASTM) standard 1527-05 to receive Comprehensive Environmental Response Compensation and Liability Act (CERCLA) landowner liability protection regardless of acreage or land value.

Comprehensive Environmental Response Compensation and Liability Act (CERCLA), was enacted by Congress in 1980. The 1986 amendments to the CERCLA known as the Superfund Amendments Reauthorization Act (SARA), introduced the idea of an innocent landowner defense to liability for the cost of cleaning up "superfund" sites. Eligibility for the innocent landowner defense to CERCLA liability required that “on or before the date on which the defendant acquired the property, the defendant carried out all appropriate inquiries into the previous ownership and uses of the property in accordance with generally accepted good commercial and customary standards and practices. One of the most important criteria to acquire the protection is to perform an all appropriate inquiry (AAI) prior to purchasing the property. ASTM 1527-05 is referenced by the EPA as a means for satisfying the requirements found in the EPA All Appropriate Inquiry Regulation.

The Division is not currently conducting ESOs. However, in the recent past, the Division has requested site assessment walkthroughs for small areas to be completed by state agency biologists. The Biologist conducts site visits and evaluates the site for how it will fit into the management plan as well as inspects the land for contamination, underground wells, archeological sources, hydrological alterations, exotic plants and animals, site quality, restorability, etc. The most recent site visit by an agency biologist was for Etoniah Creek-Cearley in March 2011. The parcel consisted of 1.5 acres. The walkthroughs conducted by the biologists are similar to ESOs and can be completed in about a day; however, they do not currently have a standardized reporting criteria. The Department would realize significant cost savings by using a biologist from a state entity on an acquisition that is simply an addition/in holding when possible.

**Noteworthy Accomplishments**

A number of noteworthy accomplishments were identified during our review, including:

- The Division has realized cost savings for Contracts PL078, PL079, PL080 and PL081 due to the Senate Bill 44A reduction request in 2009, the 2010-151 Florida Law, and Florida Statute 216.011. The contract manager met with the contractors to discuss ways to renegotiate the contract terms and implement cost saving changes. As a result, all four contractors have reduced their ESA rates between 1-3% for 2009, 2010, and 2011.

- The Government Operations Consultant I reviewed all Phase I and Phase II ESAs in detail to ensure their accuracy, compliance with the contract requirements, and to limit the Department's liability.

**Results & Conclusions**

As the representative for the BOT, the Division is faced with the challenge of assessing potential environmental liabilities based on the results of environmental assessment reports. Obtaining the appropriate level of assessment necessary for
decision making is a key component for acquisition program effectiveness. For this purpose, Division staff have established and maintained working relationships with contractors that provide environmental assessment to serve the acquisition needs of the Division.

Based on this review, it is our opinion that the Division would benefit from refining its contracting and review processes so that decisions made and actions taken during the acquisition process reflect a balance between cost-effectiveness and sufficient environmental contamination knowledge and liability protection.

**Contract Deliverables**

Based on our review, all reviewed contract deliverables met the contract scope of work. Thirty four (34) site assessments were examined to determine if the deliverables met the scope of work as identified in the Task Assignments. Twenty One (21) of the reviewed site assessments were Phase I ESAs, Twelve (12) were Phase II ESAs, and One (1) was an Updated ESA.

**Contract Scope of Services**

All reviewed Environmental Site Assessments were in compliance with the contract’s scope of services requirements and the ASTM 1527-05 Phase I ESA standards.

**Contract Compliance Requirements**

The current ESA contracts require compliance with both the ASTM standards and State standards. Some State standards, such as the required fifty year chain of title, were omitted on the Task Assignments to realize cost savings. Based on interviews with Division staff, the State standards were created in the nineties prior to the Division’s knowledge of the ASTM standards. The Division plans to follow the ASTM standards for the 2013 ESA contracts.

**Minimum Report Criteria**

We spoke with staff from the Office of General Council (OGC) regarding requirements for liability protection. According to OGC, for the sake of environmental liability, in order for the Department to be able to present an “innocent owner” defense, the Department would need an assessment conducted with CERCLA compliance. Having a CERCLA compliant assessment completed prior to purchase would give the Department a defense if ever there was a case brought against the Department for environmental contamination to private property stemming from state property. However, we found no mandated requirement to have these assessments done.

Contracting for the Environmental Site Assessments has been a decision by the Department to limit and mitigate liability. If the Department has a desire to qualify for the innocent landowner liability defense, a Phase 1 ESA should be completed which meets the ASTM 1527-05 standards. If through an initial assessment, the Department deems the acquisition to be low-risk, a Transaction screen or ESO can be conducted. ASTM 1528-06 details the process for Transaction Screens. The Transaction Screen does not require an Environmental Professional and is typically used on potentially low cost and low impact properties. The results of the Transaction screen/ESO should allow the User to determine if further inquiry is necessary. If further inquiry is necessary, the Department could proceed to a Phase 1 ESA compliant with ASTM 1527-05.

**Methods of Ordering Site Assessments**

In the past, the Division conducted ESOs, which are modified transaction screens and did not require an Environmental Professional. The Division does not currently conduct ESOs due to a lack of CERCLA landowner liability protection. Currently, parcels donated and bought by the Department are assessed using a Phase I ESA. Exceptions for waivers of ESAs can be made by Division management. The exceptions are usually granted based upon a site visit conducted by an agency biologist. The Biologist will conduct walkthroughs on small parcels for land acquisitions. The properties assessed have usually been surveyed prior to the Biologist’s assessment. The
Biologist conducts site visits and evaluates the site for how it will fit into the management plan as well as inspects the land for contamination, underground wells, archeological sources, hydrological alterations, exotic plants and animals, site quality, restorability, etc. Following the site visit, a report of the findings is sent to the land acquisition agent.

As of Fiscal year 2010-2011, the biologists have not recommended further review following the walkthroughs. In addition, to date, there have been no known cases of claims against the department for environmental contamination to private lands from publicly purchased lands.

If contamination is found during the Phase I ESA, the Division issues a task order for the contractor to conduct a Phase II ESA. Phase 1 ESAs require no advice from the contractors. These are dictated by the ASTM standards. With Phase 2 ESAs, the contractor submits a scope of work and cost estimate which is reviewed by the Division and modified or approved. Currently the Division has a Governmental Operations Consultant with the Division of State Lands review the Phase II reports. ASTM 1903-97 is the guide for Phase II testing. However, the Department does not currently adhere to this standard.

**ESA Contract Costs**

The Division spent $468,319.00 on the 34 Environmental Site Assessments conducted over the past two fiscal years (2009-2010 and 2010-2011). See the table below for the amount paid per contractor.

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Contract</th>
<th>Amount Paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>WRS</td>
<td>PL078</td>
<td>$398,250.00</td>
</tr>
<tr>
<td>PSI</td>
<td>PL079</td>
<td>$12,779.00</td>
</tr>
<tr>
<td>Mactec</td>
<td>PL080</td>
<td>$43,928.00</td>
</tr>
<tr>
<td>Aerostar</td>
<td>PL081</td>
<td>$13,362.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$468,319.00</strong></td>
</tr>
</tbody>
</table>

Of the ESAs reviewed, 19% (4 out of 21) Phase I assessments recommended a Phase 2 Assessment to be conducted. Of the Twelve (12) Phase II ESAs conducted in FY 2009-2010 and 2010-2011, 83% (10) were conducted by WRS.

Phase I ASTM compliant ESAs currently cost an average of $2,700.00. The averages of the contractors are as follows:

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Average Price Phase I ESA</th>
<th>Average Price ESO</th>
</tr>
</thead>
<tbody>
<tr>
<td>WRS</td>
<td>$2,900.00</td>
<td>$837.50</td>
</tr>
<tr>
<td>PSI</td>
<td>$2,758.00 w/ title search</td>
<td>N/A</td>
</tr>
<tr>
<td>Mactec</td>
<td>$2,428.75 w/o title search</td>
<td>$1,521.75</td>
</tr>
<tr>
<td>Aerostar</td>
<td>$3,025.00</td>
<td>$902.50</td>
</tr>
</tbody>
</table>

*These rates took effect in October 2010, following the state’s budget reduction.

In our opinion, the State could realize cost savings by conducting ESOs in the case of acquisitions that are deemed to be low risk of environmental contamination. Further cost savings could be realized by requesting Agency biologists to conduct the ESOs when possible.

In a previous audit (IA-03-03-2008-024 March 2008), we found where Division contract managers had been ordering multiple ESOs on individual parcels within a large contiguous area, thereby paying more for multiple ESO assessments than they would have, had they ordered a phase I ESA on the entire track. Since that time, the Division no longer orders ESOs. ESOs can serve a cost-effective purpose on low-risk acquisitions. However, if the Division opts to order an ESO, rather than a full ESA on a low-risk acquisition, care should be taken so that the division does not repeat the former practice of ordering multiple ESOs on a large contiguous track of land.
In order to further improve the use of Environmental Site Assessment contracts, the OIG offers the following findings and recommendations for management’s consideration.

Findings & Recommendations

**Finding: Environmental Site Assessment Cost Effectiveness:**

Based on our research and interviews with Department staff, as well as an agency biologist, the Division does not currently have a process in place to order Environmental Site Assessments or identify low-risk acquisitions that could be assessed internally prior to contracting for ESA services. Currently, the Division is ordering Phase I ESAs solely and not using ESOs or internal assessments which could realize a cost savings to the Division.

In a previous audit (IA-03-03-2008-024 March 2008), we found where Division contract managers had been ordering multiple ESOs on individual parcels within a large contiguous area, thereby paying more for multiple ESO assessments than they would have, had they ordered a phase I ESA on the entire track. Since that time, the Division no longer orders ESO. ESOs can serve a cost-effective purpose on low-risk acquisitions. However, if the Division opts to order an ESO, rather than a full ESA on a low-risk acquisition, care should be taken so that the division does not repeat the former practice of ordering multiple ESOs on a large contiguous track of land.

We recommend the Division take preliminary steps internally such as creating a threshold limit on land value, preliminary acquisition research, owner interview, and risk assessments, etc on the acquired lands to determine whether an internal assessment, a Transaction Screen/ESO, or Phase I ESA should be conducted. The Division should take into consideration whether or not the Board of Trustees acquisitions need landowner liability protection under CERCLA. If acquisition is deemed to be low risk and alternative assessments are approved, the Division could realize costs savings by using an agency biologist to conduct the assessments as well as ordering ESOs. ASTM standard 1528-06 details the process for Transaction Screens and would be useful in providing a minimum reporting criteria for the Transaction Screens/ESOs.

We recommend the Division ensure decisions regarding environmental assessments be tasked based on project analysis and contamination risk in a cost-effective manner. The Division should refine its contracting and task assignment processes so that decisions made and actions taken during the acquisition process reflect a balance between cost-effectiveness and environmental impact liability. To accomplish this, we recommend the Division develop a more formal risk process. If the Division chooses to order ESOs, management should limit or prevent contractors from dividing acquisition tracks of land in small increments, thereby increasing the number repetitive ESOs conducted on a large track of land.

**Closing Comments**

The Office of the Inspector General would like to recognize and acknowledge the Division of State Lands and staff for their assistance during the course of this review. Our fieldwork was facilitated by the cooperation and assistance provided by all personnel involved. We were impressed with the professionalism and dedication of the organization.

Promoting Accountability, Integrity and Efficiency
To promote accountability, integrity and efficiency in state government, the OIG completes audits and reviews of agency programs, activities, and functions. Our audit was conducted under the authority of section 20.055, F.S., and in accordance with the International Standards for the Professional Practice of Internal Auditing, published by the Institute of Internal Auditors, and Principles and Standards for Offices of Inspector General, published by the Association of Inspectors General. The review was conducted by Tiffany Hurst and supervised by Valerie Peacock.

Please address inquiries regarding this report to the OIG’s Audit Director by telephone at (850) 245-3151. Copies of final reports may be viewed and downloaded via the internet at http://www.dep.state.fl.us/ig/reports/default.htm. Copies may also be obtained by telephone (850) 245-3151, by fax (850)245-2970, in person or by mail at Department of Environmental Protection, Office of Inspector General, 3900 Commonwealth Boulevard, Mail Station #41, Tallahassee, FL 32399.

Joseph Aita, Director of Auditing
Major Roy C. Dickey, Interim Inspector General
Department of Environmental Protection
Office of Inspector General
Report Number A-1011 DEP-067

Department of Environmental Protection, Division of State Lands
Response to Review of Environmental Site Assessments

**Recommendation:** The Division should take preliminary steps internally such as creating a threshold limit on land value, preliminary acquisition research, owner interview, and risk assessments, etc. on the acquired lands to determine whether an internal assessment, a transaction screen/ESO, or Phase I ESA should be conducted.

**Agency Response:** The Division will implement a new process that will enable contract managers to order a complementary product in regards to each proposed acquisition, donation or land exchange. This process will include communication between the Division and the landowner prior to the closing portion of any type of land transaction in order to better assess the contamination risk on the subject property. This fresh approach to the land transaction process will involve a specific set of questions (ASTM User Questionnaire, attached) posed to the landowner that will enable the Division to better determine what level of environmental investigation is necessary prior to closing the transaction. This User Questionnaire is currently being used by the Division to comply with current EPA All Appropriate Inquiry Rule and ASTM E 1527-05; however, the Division will begin using this tool earlier in the land transaction process so that it is not only a tool for the ESA consultant, but also a useful tool for Division staff.

**Recommendation:** The Division should take into consideration whether or not the Board of Trustees’ acquisitions need landowner liability protection under CERCLA.

**Agency Response:** The Division’s management team does take into consideration whether or not any land transaction resulting in title being vested in the Board of Trustees needs landowner liability protection under CERCLA. The Division does evaluate many aspects of every parcel that moves through the acquisition closing process, including acreage size, location, approximate distance to potentially harmful areas, known prior ownership, etc., prior to issuing a request or tasking out for an environmental assessment product. The Division will continue to carefully evaluate, as best is afforded to it, each transaction prior to issuing a request for an environmental assessment product.

In terms of which type of environmental assessment product the Division will require for each land transaction, a plethora of products will be considered in the future. These products include the assessments under current contract (ESAs and ESOs) and the Transaction Screen Questionnaire, an ASTM standard (E 1528-06).

**Recommendation:** The Division should ensure decisions regarding environmental assessments are tasked based on project analysis and contamination risks in a cost-effective manner.
Agency Response: The Division currently tasks for environmental assessments on land value and acreage. The Division will begin to take into consideration the knowledge it will gain, once the User Questionnaire is utilized by the Bureau of Land Acquisition, early on in the land acquisition process. This more-detailed knowledge will provide Division staff with enhanced information that will better guide the environmental assessment ordering process in the future.

Recommendation: The Division should refine its contracting and task assignment processes so that decisions made and actions taken during the acquisition process reflect a balance between cost-effectiveness and environmental impact liability. To accomplish this, it was recommended that the Division develop a more formal risk process.

Agency Response: The Division will implement a more formal risk process as noted above. The process whereby a large tract of land is segmented into many smaller increments on which ESOs are completed on all smaller segments of land is no longer a process utilized by the Division of State Lands.
X3. USER QUESTIONNAIRE

(1) Environmental cleanup liens that are filed or recorded against the site (40 CFR 312.25).

- Are you aware of any environmental cleanup liens against the property that are filed or recorded under federal, tribal, state or local law?

(2) Activity and land use limitations that are in place on the site or that have been filed or recorded in a registry (40 CFR 312.26).

- Are you aware of any AULs, such as engineering controls, land use restrictions or institutional controls that are in place at the site and/or have been filed or recorded in a registry under federal, tribal, state or local law?

(3) Specialized knowledge or experience of the person seeking to qualify for the LLP (40 CFR 312.28).

- As the user of this ESA do you have any specialized knowledge or experience related to the property or nearby properties? For example, are you involved in the same line of business as the current or former occupants of the property or an adjoining property so that you would have specialized knowledge of the chemicals and processes used by this type of business?

(4) Relationship of the purchase price to the fair market value of the property if it were not contaminated (40 CFR 312.29).

- Does the purchase price being paid for this property reasonably reflect the fair market value of the property? If you conclude that there is a difference, have you considered whether the lower purchase price is because contamination is known or believed to be present at the property?

(5) Commonly known or reasonably ascertainable information about the property (40 CFR 312.30).

- Are you aware of commonly known or reasonably ascertainable information about the property that would help the environmental professional to identify conditions indicative of releases or threatened releases? For example, as user,

  (a) Do you know the past uses of the property?

  (b) Do you know of specific chemicals that are present or once were present at the property?

  (c) Do you know of spills or other chemical releases that have taken place at the property?

  (d) Do you know of any environmental cleanups that have taken place at the property?
(6) The degree of obviousness of the presence of likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation (40 CFR 312.31).

- As the user of this ESA, based on your knowledge and experience related to the property are there any obvious indicators that point to the presence or likely presence of contamination at the property?

________________________________________________________________________.

Name (Authorized User Representative)  Title

________________________________________________________________________.

Signature  Date