

**Utah Department of Environmental Quality**  
**Division of Environmental Response and Remediation (DEQ/DERR)**  
**Common Enforceable Written Assurance (EWA) Issues and Road Blocks**

The following list summarizes the most common errors found in Enforceable Written Assurance (EWA) Applications, Phase I Environmental Site Assessments (Phase I), and Phase II Environmental Site Assessments (Phase II) that delay or prevent an EWA from being issued. Please refer to the EWA Checklists for more detailed information or contact a DERR representative. The checklists are located on the VCP/EWA website: <https://deq.utah.gov/environmental-response-and-remediation/enforceable-written-assurancesvoluntary-cleanup-program>.

This factsheet is not expected to cover all situations that may be encountered and therefore is not all encompassing since it is intended to be used only for guidance. This factsheet is for informational purposes and should not be considered professional or legal advice. This factsheet does not replace an applicant's obligation to ensure they have met all relevant requirements, state and/or federal statutes, rules, standards and procedures applicable to an EWA.

**Common Administrative Errors Relating to the Overall EWA Application**

- The Applicant does not leave sufficient time for the DERR to process the EWA Application and issue the EWA prior to acquiring the property.
- The Applicant was a previous owner/operator or has already acquired the property prior to the EWA Application.
- There is more than one Applicant on the Application. An EWA can only be issued to one Applicant. If there are multiple entities who need EWAs, each entity needs to fill out a separate Application and include a Phase I and supporting information.
- The legal description (acreage, parcel numbers, etc.) is not consistent between the Phase I and the EWA Application (Application).
- The Applicant has not coordinated with other agencies. If another agency is the lead on a project, the Applicant should obtain a Reasonable Steps or equivalent letter from that agency prior to an EWA being issued. Applications can be submitted concurrently.
- The Phase I and Phase II are not complete. Please review the Phase I and Phase II for completeness and consistency with R311-600 prior to submitting the Application to ensure it contains the necessary information.
- The Evaluation Principles in R311-600 have not been met.

**Common Errors and/or Road Blocks with the Phase I ESA**

- The User(s) of the Phase I is not the same as the Applicant in the EWA Application.
- The Phase I has required elements (as defined in the Code of Federal Regulations and outlined in the EWA Checklists) that are expired or will be expiring before acquisition of the property.
- Dates were not included for the required elements in the Phase I.
- Results from the Activity and Use Limitations (AUL) and the Lien search are not discussed or included.

- Recognized Environmental Conditions (RECs) are not consistent throughout the Phase I and supporting documents.
- Vapor Intrusion or Vapor Encroachment concerns are not assessed in the Phase I.
- Data gaps are not included. If a required element was not completed or only partially completed, it needs to be identified as a data gap with the ramifications on the conclusions fully explained.

#### **Common Errors and/or Road Blocks with the Phase II ESA**

- The Phase II does not evaluate all of the RECs identified in the Phase I or indicate why the RECs were not evaluated.
- The site has not been sufficiently characterized to establish Reasonable Steps, data gaps remain.
- The Phase II asserts that contamination on the property is from an offsite source, but site specific groundwater flow direction has not been established to make this assertion.
- Samples were not collected under building foundations and there are no recommendations for an environmental professional or other party to evaluate the soils as the foundations are removed.
- The Phase I identifies actual RECs as Business Environmental Risks instead, and they are not sampled in the Phase II.
- Text, tables, and figures are not consistent with the data analytical packages.
- Conclusions do not match with the laboratory data.