



TECHNICAL BULLETIN

ALL APPROPRIATE INQUIRY



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- Interviews with past and present owners and operators of the facility
- Review of historical sources (i.e., chain of title, aerial photos, building permits records etc.) to determine previous uses and occupancies since the property was first developed
- Search for recorded cleanup liens filed against a facility
- Review regulatory records for waste disposal, hazardous waste handling, generation, treatment, disposal and spill records for the site and surrounding areas
- Visual inspection of facility and adjoining properties
- Specialized knowledge or experience on the part of the person claiming the defense
- The relationship of purchase price to value of the property, if the property was not contaminated
- Commonly known or reasonably ascertainable information about the property
- The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect contamination by appropriate investigation
- Results of an inquiry reported by an environmental professional
- Note credentials required for environmental professionals

The U.S Environmental Protection Agency (EPA) has finalized new federal standards for “all appropriate inquiry” (AAI) required as a condition for obtaining defenses to Superfund liability. The new federal standards (40 CFR 312) were promulgated in final form on November 1, 2005, and are required for those seeking Superfund defenses for transactions after November 1, 2006. Either the new AAI rule or ASTM standards E-1527 published in 1997 or 2000 may be used in the interim. A new ASTM standard E-1527 published in 2005 implements AAI and replaces earlier versions.

In essence, the EPA’s new AAI rule will require purchasers and borrowers to conduct a more complete Phase I assessment than was required under the old ASTM standards to avoid liability under the Superfund statute (CERCLA) for releases of hazardous substances after acquiring or making a loan on a property. The new rule is a performance-based standard that increases the requirements for environmental professionals conducting pre-acquisition services and allows for more discretion on the part of the environmental professional.

Prior ASTM Phase I standards were developed to help purchasers to obtain the innocent landowner defense under Superfund. AAI requirements were introduced in Superfund amendments in 2002 that added defenses for bona fide prospective purchasers of contaminated sites, and owners of sites contaminated by releases at contiguous properties.

The new standards will emphasize that the purpose of the property investigation is to identify conditions indicative of releases or threatened releases of hazardous substances rather than recognized environmental conditions. In addition, they will require the environmental professional to recommend appropriate steps to address known or suspected contamination.

In response to AAI, purchasers and their lenders must revise their environmental due diligence programs to reflect the new standards.

Being well qualified in all aspects of AAI, SCS experts stand ready to assist you in addressing the new AAI requirements. More information, including a link to a compilation of AAI documents, is available on our website:

<http://www.scsengineers.com/duedil.html>

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