

**ALL APPROPRIATE INQUIRIES
PROPOSED FEDERAL
STANDARDS**

U.S. Environmental
Protection Agency
Office of Brownfields
Cleanup and Redevelopment

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What is “All Appropriate Inquiries?”

- “All Appropriate Inquiries,” or due diligence, is the process of evaluating a property for potential environmental contamination and assessing potential liability for any contamination present at the property.

Small Business Liability Relief and Brownfields Revitalization Act

- Congress mandated that EPA promulgate regulations establishing federal standards for all appropriate inquiries
- Statute lists ten criteria EPA must include in regulations
- Statute establishes interim standard

Applicability

- The All Appropriate Inquiries standards will apply to:
 - Property owners asserting CERCLA liability limitations
 - Persons receiving brownfields grants for site characterization and assessment under CERCLA 104(k)(2)(B)

CERCLA Liability

- The Brownfields Amendments provide liability limitations for landowners who qualify as:
 - contiguous property owners,
 - bona fide prospective purchasers,
or
 - innocent landowners.

CERCLA Liability (cont.)

- To qualify for the liability limitations, landowners must:
 - Meet certain threshold criteria
 - Satisfy certain continuing obligations.

Threshold Criteria

- No affiliation with liable party
- Conduct all appropriate inquiries prior to date property is acquired

Continuing Obligations

- Comply with land use restrictions
- Do not impede effectiveness or integrity of institutional controls
- Take “reasonable steps”
- Provide cooperation, assistance and access
- Comply with CERCLA information requests and subpoenas

Innocent Landowner

- Did not know and “had no reason to know” of contamination prior to purchase
- Must acquire property after all disposal of hazardous substances at the property

Contiguous Property Owner

- Did not cause, contribute, or consent to any release or threatened release of hazardous substances
- No reason to know of contamination prior to acquiring property
- Contamination from real property that is not owned by same person

Bona fide Prospective Purchaser

- Can purchase property with knowledge of contamination
- Must have bought property after January 11, 2002
- All disposal of hazardous substances must occur prior to acquisition of the property

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Property Owners Must Comply with ALL Criteria

- Must comply with all Statutory Criteria to obtain liability protection
- Failure to identify a release or threatened release during conduct of AAI does not relieve property owner from compliance with continuing obligations

Interim Standard for AAI

- Congress established an interim standard that is in effect until EPA issues a final rule.
- Interim standard was clarified in final rule published May 9, 2003 (68 FR 24888).
- Interim standard is ASTM E1527-00 (or E1527-97) for properties purchased after May 31, 1997.

Negotiated Rulemaking

- EPA developed proposed AAI regulatory language using a Negotiated Rulemaking process
- Negotiated Rulemaking Committee
 - Composed of interested stakeholders
 - Decisions made by consensus

Benefits of Negotiated Rulemaking

- Solicit direct input from informed, interested, and affected parties prior to publishing proposed rule
- Make good use of outside expertise
- Reduce number of significant public comments
- Increases ease of implementation

Negotiated Rulemaking Committee for AAI

- 25 members representing a balance of interests
- EPA has one seat and represents all federal government interests

Committee Members

- Representatives from:
 - Environmental interest groups
 - Environmental justice community
 - Tribal governments
 - State government
 - Local government
 - Real estate developers
 - Bankers and lenders
 - Environmental professionals

Schedule

- Negotiated Rulemaking Committee reached consensus on recommended regulatory language on November 14, 2003.
- Winter 2004 – EPA drafted preamble and regulatory impact analysis
- Proposal to OMB Spring 2004
- Publication of proposed rule – July 2004 (tentative)

Schedule (cont.)

- 60-day public comment period following publication of proposed rule in Federal Register
- Final rule will be developed by EPA after considering and responding to all public comments

Highlights of Consensus-based Language

- Structured around 10 statutory criteria
- Objectives and performance standards
- Report of findings

Objectives of AAI

- Identify conditions indicative of releases or threatened releases
- Identify particular information:
 - Uses and occupancies of property
 - Uses of hazardous substances
 - Waste management activities
 - Corrective actions and response activities
 - Institutional and engineering controls
 - Nearby and adjoining properties with environmental conditions

Performance Factors

- Gather information that is:
 - Publicly available
 - Obtainable from its source within reasonable timeframe and cost constraints
 - Can be practicably reviewed
- Review and evaluate thoroughness and reliability
- Identify data gaps and their significance

AAI Report of Findings

- Results of AAI must be documented in report that is signed by EP
- Report must include:
 - Opinion regarding conditions
 - Identification of releases or threatened releases
 - Data gaps and their significance
 - Signature of EP
 - Declaration of EP qualifications

Highlights of Consensus-based Language (cont.)

- AAI must be conducted within one year prior to acquiring property (title transfer)
- May use information contained in previous inquiries (must be collected in compliance with regulations)
- AAI may be conducted by third party
 - Person acquiring property responsible for specialized knowledge and purchase price requirements

Highlights of Consensus-based Language (cont.)

- Certain aspects of AAI must be updated after 180 days:
 - Interviews
 - Cleanup liens
 - Government records
 - Visual inspection
 - Changes in conditions of property must be noted

Highlights of Consensus-based Language (cont.)

- Definition of Environmental Professional
- Interviews
 - Current and past owners and occupants
 - Neighbors, if property abandoned
- On-site Visual Inspection
- Purchase price and property value
- Commonly known or reasonably ascertainable information
- **No** requirements for sampling

Definition of Environmental Professional

- Recognizes P.E., P.G. and other state-certified or licensed environmental professionals with 3 years experience as environmental professional
- Education and experience qualifications for others
 - Degree in relevant discipline of science or engineering, plus
 - Five years of relevant full time experience
- Persons with 10 years experience grandfathered

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Interviews

- Must interview current and past owners and occupants
- Must interview owners or occupants of neighboring properties, if purchasing an abandoned property

On-site Visual Inspection

- Must conduct on-site visual inspection
- Limited exemption from “on-site” inspection, if good faith efforts result in no access to property
 - Must document efforts taken
 - Must conduct inspection from nearest vantage point
 - Must document impacts of limited access

Purchase Price versus Value of Property

- Persons must consider whether the purchase price reflects the fair market value of the property, if not contaminated
- If price does not reflect value, persons should consider whether differential is due to presence of contamination

Commonly Known or Reasonably Ascertainable Information

- Must consider information that is commonly known and reasonably ascertainable information within the local community
- Information may be obtained from:
 - Current owners or occupants
 - Local and state government officials
 - Other sources (e.g., newspapers, local libraries, historical societies)

Sampling and Analysis

- No requirements to conduct sampling and analysis
- AAI must include documentation of data gaps
- Sampling and analysis may be used to address data gaps – not required

Additional Information

- Information on Negotiated Rulemaking, including consensus-based language can be found on our website:

www.epa.gov/brownfields/regneg.htm

- For additional information, contact Patricia Overmeyer at overmeyer.patricia@epa.gov

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Thank You

After viewing the links to additional resources, please complete our online feedback form.

Thank You

[Links to Additional Resources](#)

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