

**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

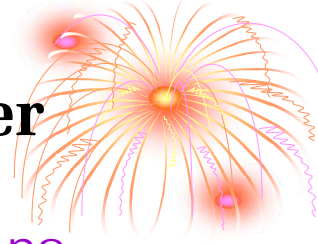
# Continuing Obligations



- 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

# 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

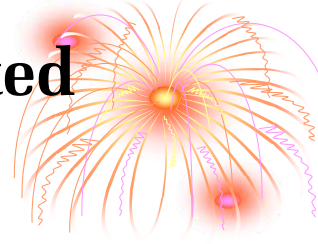


- Congress established an interim standard that is in effect until EPA issues a final rule.
- Interim standard was clarified in final rule published May 9, 2003 (68 FR 24888).
- Interim standard is ASTM E1527-00 (or E1527-97) for properties purchased after May 31, 1997.

# 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

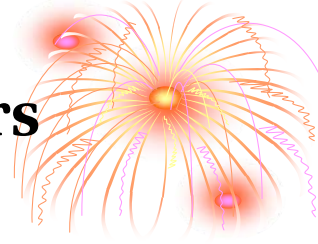
## Negotiated Rulemaking Committee for AAI

- 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



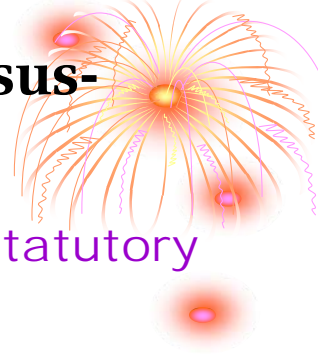
- Negotiated Rulemaking Committee reached consensus on recommended regulatory language on November 14, 2003.
- Winter 2004 – EPA drafted preamble and regulatory impact analysis
- Proposal to OMB Spring 2004
- Publication of proposed rule – July 2004 (tentative)

## 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



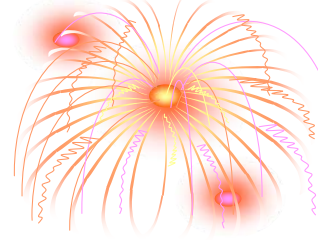
## Highlights of Consensus-based Language (cont.)

- 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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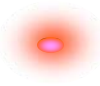
# Interviews



- 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
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## Purchase Price versus Value of Property



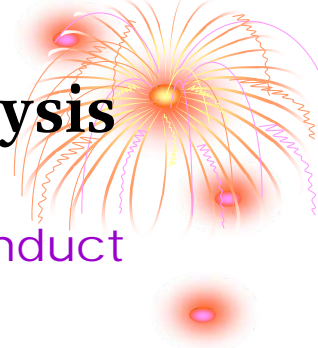
- Persons must consider whether the purchase price reflects the fair market value of the property, if not contaminated
- If price does not reflect value, persons should consider whether differential is due to presence of contamination

## 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



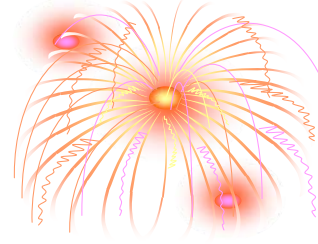
- Information on Negotiated Rulemaking, including consensus-based language can be found on our website:

[www.epa.gov/brownfields/regneg.htm](http://www.epa.gov/brownfields/regneg.htm)

- For additional information, contact Patricia Overmeyer at [overmeyer.patricia@epa.gov](mailto: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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