

RESPONSE TO COMMENT DOCUMENT
ALL APPROPRIATE INQUIRIES REGULATION

October 2005

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Background and Purpose of Document

Background

On January 11, 2002, President Bush signed into law the Small Business Liability Relief and Brownfields Revitalization Act (the Brownfields Amendments). The Brownfields Amendments amend the Comprehensive Environmental Recovery, Compensation, and Liability Act (CERCLA) by increasing funding for assessing and cleaning up brownfields sites, clarifying CERCLA liability protections for certain landowners, and enhancing State and Tribal response programs.

The Brownfields Amendments require the Environmental Protection Agency (the Agency) to develop regulations establishing standards and practices for conducting "all appropriate inquiries" and promulgate the standards within two years of its enactment. The AAI standards and practices provide a framework for assessing the previous ownership, uses, and environmental conditions of a property. The standards and practices are applicable to any prospective commercial property owner who may want to claim liability protection for a release or threatened release of a hazardous substance as an innocent landowner, a contiguous property owner, or a bona fide prospective purchaser. The standards and practices also are applicable to persons conducting site characterizations and assessments with the use of Federal brownfields grants.

Congress included in the Brownfields Amendments a list of criteria that the Agency must address in developing standards and practices for conducting all appropriate inquiries (section 101(35)(2)(B)(ii)). In addition, as part of the Brownfields Amendments, Congress established the ASTM International Standard E1527-97 (entitled "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process") as an interim standard for all appropriate inquiries, until the Agency promulgates final federal regulatory standards.

The Agency determined that the regulatory negotiation process was the best way to develop the proposed Federal standards and practices for conducting all appropriate inquiries and established the Negotiated Rulemaking Committee for All Appropriate Inquiries. The Committee, composed of 25 members representing parties of interest in the rulemaking, held six multiple-day meetings over the course of seven months, beginning in April 2003. During the Committee's deliberations, the general public had many opportunities to comment on the Committee's draft regulatory language, including the opportunities to provide written comments and make oral presentations to the Committee. On November 14, 2003, the Committee arrived at a consensus document representing its recommendation for a proposed regulation.

The Agency used the Committee's consensus language as a basis for the All Appropriate Inquiries proposed rule and published the proposed rule in the Federal Register on August 26, 2004 (69 **FR** 52542). The Agency also established a 90-day comment period requesting comments from the public on the proposed requirements for conducting all

appropriate inquiries and the Agency's analysis of the potentially impacted entities. The proposed rule and the background documents were made available to the public in the Agency's docket. During the public comment period, the Agency held three public meetings on the proposed All Appropriate Inquiries rule, in St. Louis on September 22, Washington D.C. on October 20, and San Francisco on November 18.

During the comment period, which ended on November 30, 2004, the Agency received 430¹ comments from interested stakeholders, including the comments submitted during the three public meetings. Commenters who indicated that they currently are performing environmental site assessments (ESAs) submitted over 70 percent of the public comments. Close to 40 percent of those commenters were members of professional organizations which have educational and certification requirements for their members. Less than 10 percent of the comments received by the Agency were submitted by Federal, State, Tribal, and Local governments, environmental groups, and academic institutions. Approximately the same number of comments was submitted by businesses which solicit or provide services to the ESA industry and/or real estate industry (e.g., lawyers, appraisers, financial institutions, developers). The rest of the comments were submitted by anonymous commenters.

The Agency received the highest number of comments on the proposed definition of environmental professional (EP). Although a large number of commenters agreed that the rule should establish some minimum requirements for EPs, they disagreed on how stringent those requirements should be. The Agency received comments on all of the proposed requirements for performing all appropriate inquiries with the highest number of comments addressing the requirements for considering the relationship of the purchase price to the value of the property.

The Agency reviewed and considered all public comments received in response to the proposed rule. Based upon input provided in the public comments, the Agency made some modifications to the regulatory language and the Economic Impact Analysis (EIA). An explanation of the regulatory changes is included in the preamble to the final rule. A summary of the changes made to the EIA are provided in an Addendum to the EIA developed for the proposed rule. The Addendum and the EIA are available in the docket for the final rule.

Purpose of Document

This document presents the public comments received in response to the proposed All Appropriate Inquiries rule and the Agency's response to each comment. The comment response document is organized by category of issues raised by the public in response to the proposed rule, preamble, and the EIA.

This document does not present the comments in their entirety. Rather, each issue section contains relevant excerpts of the comments that address each particular issue. For clarity, every comment excerpt is identified by: (1) the name of the person or

¹ The Agency received 439 comment letters of which nine letters were duplicates.

organization that submitted the comment, (2) the unique comment number assigned to each comment by the Agency, and (3) an unique comment excerpt number.

Each comment excerpt is followed by the Agency's response. The responses clarify how the comments were considered in the final rule.

The public can view the comment letters in their entirety at the Agency docket. The comment letters are available electronically in the EDOCKET index at <http://www.epa.gov/edocket>, under Docket ID No. SFUND-2004-0001. The public also can view the comment letters in hard copy at the EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Ave., N.W., Washington, D.C. This docket facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OSWER Docket is (202) 566-0276.

SECTION 1: Proposed Rule – General Opinion

1.1 General Opinion of the Proposed Rule

1.1.1 General Support of the Proposed Rule

Commenter Organization Name: Dailey, Christopher W

Comment Number: 0036

Excerpt Number: 1

Excerpt Text:

As an environmental professional I would like to extend my support to the proposed All Appropriate Inquiry (AAI) rule published in the Federal Register on August 26, 2004. While the ASTM E-1527-2000 Phase I Environmental Site Assessment (ESA) Standard served well as an interim measure, it allowed too much interpretation over who could perform a Phase I ESA and how it should be done. The AAI rule will set a high benchmark for the brownfield industry and help ensure environmental protection for developers who wish to pursue redevelopment of potentially contaminated properties.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: TXU

Comment Number: 0268

Excerpt Number: 1

Excerpt Text:

TXU supports EPA's development of all appropriate inquiries standards. Most of the proposed regulatory language is acceptable and will be beneficial in TXU's conduct of all appropriate inquiries.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Albin, Dave

Comment Number: 0325

Excerpt Number: 1

Excerpt Text:

We have long needed to establish a minimum level of qualifications for individuals performing environmental assessments, particularly those done in preparation for property transactions. The proposed rule accomplishes that goal and for this reason I support it.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Cassidy, Daniel

Comment Number: 0389

Excerpt Number: 1

Excerpt Text:

The EPA's proposed rules for All Appropriate Inquiry (AAI) transfer criteria for due diligence activity from the current private sector consensus standards of practice to federal government regulation. I fully support this transfer which will help ensure a level of professionalism and quality appropriate for this very important type of environmental investigation.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Kehres

Comment Number: 0395

Excerpt Number: 1

Excerpt Text:

The EPAs proposed rules for All Appropriate Inquiry (AAI) transfer criteria for this due diligence activity from the current private sector consensus standards of practice to federal government regulation. I enthusiastically support this transfer, which will help ensure a level of professionalism and quality appropriate for this important type of environmental investigation.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: MBA

Comment Number: 0401

Excerpt Number: 2

Excerpt Text:

MBA and its members support EPA's proposed regulation, which establishes that AAI is met through the performance of an ASTM Phase I environmental site assessment.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Morse, Catherine

Comment Number: 0413

Excerpt Number: 1

Excerpt Text:

This is to advise that I support the proposed rules for All Appropriate Inquiry (AAI) which transfers criteria for this due diligence activity from the current private sector consensus standards of practice to federal government regulation. I believe that this change will assist in bringing a high degree of professionalism to this type of environmental inquiry.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Freeman & Giler

Comment Number: 0417

Excerpt Number: 10

Excerpt Text:

The new AAI Rule will require more time to conduct environmental due diligence, more rigorous pre-qualification of EPs, increased collaboration between the User and the EP and greater disclosure of detailed transactional information to the EP (e.g., purchase price, title, commonly known information, specialized knowledge of the parties). We support USEPA's efforts to standardize the AAI process, and we encourage USEPA to ensure that the final AAI Rule will allow AAI to dove-tail with other environmental assessments relevant to property transactions (e.g., asbestos inspections, radon testing, wetlands delineations, regulatory compliance audits) so that AAI can continue to be a relevant, worthwhile exercise.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Hoskins, Herbert

Comment Number: 0428

Excerpt Number: 1

Excerpt Text:

The EPA's proposed rules for All Appropriate Inquiry (AAI) transfer criteria for this due diligence activity from the current private sector consensus standards of practice to federal government regulation. I enthusiastically support this transfer, which will help ensure a level of professionalism and quality appropriate for this important type of environmental investigation. In general the transition is coherent and reasonable;

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Mittelholzer, Michael

Comment Number: PM-0207-0002

Excerpt Number: 1

Excerpt Text:

However, before I discuss some of the merits of the proposed rule for the land development and construction industry, it is important to remember the importance of today's proposed rule to the implementation of a significant environmental statute, the Small Business Liability and Brownfields Revitalization Act, commonly referred to as the Brownfields Law. NAHB supports the proposed rule for three main reasons:

First: The proposed rule implements a key provision of the recently passed brownfields law that clarifies what specific actions a landowner must take prior to taking title to a property to determine the potential presence of environmental contamination.

Second: The proposed rule is consistent with the criteria established by Congress under the recently enacted brownfields law. I believe that's found in Section 223(d).

Three: Promulgation of the rule will provide landowners with the means to demonstrate they qualify for the important federal liability protections CERCLA Super Fund granted under the brownfields law.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

1.1.1.1 *Adopt the Rule as Proposed*

Commenter Organization Name: Malivuk, John

Comment Number: 0060

Excerpt Number: 2

Excerpt Text:

In summary, I favor the AAI rule as proposed. I urge the Agency to adopt the rule as proposed.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule to address concerns raised by public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Van Reenen, Dirk

Comment Number: 0070

Excerpt Number: 1

Excerpt Text:

I fully support the All Appropriate Inquiry rule.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: None

Comment Number: 0082

Excerpt Number: 1

Excerpt Text:

I support AAI!!

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Jeffers, Larry A

Comment Number: 0084

Excerpt Number: 1

Excerpt Text:

As a Professional Engineer who provides and uses environmental services, I am in full

support of this proposed rule. This proposed AAI rule under consideration here does the following: "Encourages project/client/public sensitivity by permitting the flexibility derived from a performance-based approach instead of a prescriptive approach. The rule would be applicable to any type of property." Sets minimum qualification criteria for environmental professionals (EPs). "Allows for professional judgment, which is critical in the proper evaluation of the risk associated with a particular site." Requires a broader scope of environmental inquiry by building on and significantly improving the existing process (ASTM E-1527) that is familiar to many clients (users) who have all appropriate inquiry studies performed. This approach enhances the process and the familiarity will help avoid 'confusion' among users and will also help reduce or limit the cost impacts. "Provides the public with the confidence that AAI studies will be protective of human health and the environment that does not currently exist with the ASTM process." While not perfect, this rule would result in 'raising the bar' on the quality of AAI studies, as there are enough safeguards and protections within the proposed rule. We urge you to pass and implement this rule in the best interest of the public at large.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: McHugh, Dan

Comment Number: 0085

Excerpt Number: 2

Excerpt Text:

In my opinion, the proposed AAI rule should be approved as is with no changes. Negotiated rules all have some weaknesses depending on the point of view but this proposed rule seems reasonable and will definitely improve the quality of ESAs in the industry.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Fulk, Kevin J

Comment Number: 0086

Excerpt Number: 1

Other Sections: NEW - 2.1.1.2 - The proposed minimum requirements will improve quality of ESAs

Excerpt Text:

I support the proposed rule because it establishes minimum qualifications for an

environmental professional and will provide a better approach for developers / landowners to handle redevelopment on brownfield sites in our nations urban areas than what currently exists.

The minimum qualifications for an environmental professional will help the industry apply a higher level of qualifications/experience to solve environmental issues for real estate development and redevelopment. This EPA legislation should also give developers a higher level of confidence to tackle brownfields sites, which will significantly aid in "protecting human health and the environmental" for generations to come.

I urge the Agency to adopt the rule as proposed.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: CERCLA Research Center Subcommittee

Comment Number: 0103

Excerpt Number: 1

Excerpt Text:

The Focus Group stands in support of the proposed rule for all appropriate inquiries as written. It is reflective of the issues and concerns identified and addressed in the negotiated rulemaking process, and as such represents a step forward in protecting human health and the environment in a manner that does not hinder the productive reuse of properties at which the perception of risk poses a barrier.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Crocetti, Charles

Comment Number: 0110

Excerpt Number: 3

Other Sections: NEW - 6.7 - Negotiated rulemaking committee/process

Excerpt Text:

The proposed rule was developed based on the work of a Negotiated Rulemaking

Committee represented by a wide spectrum of interests, including the American Society of Civil Engineers, the National Groundwater Association, and ASFE. The latter groups represent, I believe, some of the premiere technical/trade organizations in the environmental industry, and each serves as a valuable resource for the dissemination of technical information and research relative to environmental work.

In summary, I urge EPA to adopt the All Appropriate Inquiry rule as proposed. I very much appreciate the opportunity to comment on the proposed rule.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: ASCE

Comment Number: 0126

Excerpt Number: 1

Excerpt Text:

The American Society of Civil Engineers (ASCE) is pleased to comment in strong support of the regulation proposed on August 26, 2004, to establish federal standards and practices for conducting "all appropriate inquiries" required under sections 101 (35)(B)(ii) and (iii) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). U.S. EPA, Proposed Rule, Standards and Practices for All Appropriate Inquiries, 69 Fed. Reg. 52,542.

The proposed rule would establish specific regulatory requirements and standards for conducting all appropriate inquiries into the previous ownership, uses, and environmental conditions of a property for the purposes of meeting the all appropriate inquiries provisions necessary to qualify for certain landowner liability protections under CERCLA. The standards and practices proposed today also would be applicable to persons conducting site characterization and assessments with the use of grants awarded under CERCLA Section 104(k)(2)(B).

ASCE was privileged to participate in the consensus process established by the Agency to draft the proposed rule to be adopted in compliance with the Small Business Liability Relief and Brownfields Redevelopment Act, Pub. L. 107-118, Jan. 11, 2002, 115 Stat. 2356. The regulation proposed on August 26 fairly represents the interests of a broad coalition of engineering, commercial professional, technical, and environmental organizations. When fully implemented, the regulation will ensure the expeditious cleanup of thousands of abandoned properties that then will be safely returned to productive use.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Anonymous

Comment Number: 0281

Excerpt Number: 1

Excerpt Text:

I am an environmental professional working in the Brownfields industry. I want to offer my support for the AAI proposed rule. We need to maintain a strong standard that is implemented by environmental professionals.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Webster, O. Christopher

Comment Number: 0285

Excerpt Number: 2

Excerpt Text:

I urge the Agency to adopt it as proposed.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Engels, Joseph

Comment Number: 0287

Excerpt Number: 2

Excerpt Text:

Please adopt the rule as written.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Foppe Technical Group

Comment Number: 0289

Excerpt Number: 1

Other Sections: NEW - 2.1.1.2 - The proposed minimum requirements will improve quality of ESAs

Excerpt Text:

As an environmental company that performs AAI, we would like to add our voice in support of the proposed rule. It is imperative that the technical nature of a Phase I be performed by well trained, competent professionals. The proposed rules elevated the requirements to a necessary level to ensure that competent work is performed.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Less, James

Comment Number: 0290

Excerpt Number: 5

Excerpt Text:

In summary, I am in favor of the AAI rule as proposed, and I urge the Agency to adopt it as proposed.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Moors, Scott

Comment Number: 0298

Excerpt Number: 3

Excerpt Text:

I am in favor of the AAI rule as proposed, and I urge the Agency to adopt it as proposed.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Farnsworth, Sam

Comment Number: 0299

Excerpt Number: 1

Excerpt Text:

I support the implementation of the Proposed Rule for AAI.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: QORE, Inc

Comment Number: 0307

Excerpt Number: 1

Other Sections: NEW - 2.1.1.2 - The proposed minimum requirements will improve quality of ESAs

Excerpt Text:

I think this is a good and necessary standard. Minimum qualification criteria for environmental professionals must be set. The public will be provided with the confidence that AAI studies will be protective of human health and the environment that does not currently exist with the ASTM process. I am pleased to support the AAI rule.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Privette, Kevin

Comment Number: 0309

Excerpt Number: 1

Excerpt Text:

As a professional engineer and practicing consultant for 16 years, I request that the proposed AAI rule be approved and implemented.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: May, Thomas

Comment Number: 0310

Excerpt Number: 3

Excerpt Text:

I am in favor of the AAI rule as proposed, and I urge the Agency to adopt it as proposed.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes the today's final rule includes a few revisions from the proposed rule to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Griebel, Russell

Comment Number: 0316

Excerpt Number: 2

Excerpt Text:

I am in favor of the AAI rule as proposed, and I urge the Agency to adopt it as proposed.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: CE&MT

Comment Number: 0318

Excerpt Number: 1

Excerpt Text:

I do agree with the proposed rules. As the president of a geotechnical engineering firm routinely engaged in ESA's, we support the proposed rules.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: QORE, Inc

Comment Number: 0324

Excerpt Number: 1

Other Sections: NEW - 2.1.1 - Support of the proposed minimum requirements

Excerpt Text:

We have long needed to establish a minimum level of qualifications for individuals performing environmental assessments, particularly those done in preparation for property transactions. The proposed rule accomplishes that goal and for this reason I support it.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Schultz, Michael

Comment Number: 0331

Excerpt Number: 5

Excerpt Text:

In summary, I am in favor of the AAI rule as proposed, and I urge the Agency to adopt it as proposed.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Lourie Consultants

Comment Number: 0353

Excerpt Number: 1

Excerpt Text:

Patricia, as you know, I represented ASFE/The Best People on Earth and environmental professionals on the negotiated rulemaking committee that developed the language in the proposed AAI rule. As such, I support the proposed rule and urge its adoption by the EPA.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Lourie Consultants

Comment Number: 0353

Excerpt Number: 7

Excerpt Text:

In summary, I am in favor of the AAI rule as proposed, and I urge the EPA to adopt it as proposed.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Denton, Robert

Comment Number: 0381

Excerpt Number: 5

Excerpt Text:

In summary, I am in favor of the AAI rule as proposed, and I urge the Agency to adopt it as proposed.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Gallagher, Paul

Comment Number: 0383

Excerpt Number: 2

Excerpt Text:

I am in favor of the AAI rule as proposed. I urge the Agency to adopt it as proposed.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Dohms, Peter

Comment Number: 0384

Excerpt Number: 5

Excerpt Text:

In summary, I am in favor of the AAI rule as proposed, and I urge the Agency to adopt it as proposed.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Stejer, Warham

Comment Number: 0385

Excerpt Number: 1

Excerpt Text:

I would like voice my support for the All Appropriate Inquiry (AAI) Standard proposed by the EPA.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Stejer, Warham

Comment Number: 0385

Excerpt Number: 2

Excerpt Text:

It would be a mistake to abandon enactment of the All Appropriate Inquiry standard based on the negative sentiments expressed by individuals who would no longer qualify as "environmental professionals," because they lack the education and/or experience that would be needed to conduct brownfield studies.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule, including the proposed definition of environmental professional to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Heywood, Johanna

Comment Number: 0387

Excerpt Number: 5

Excerpt Text:

In summary, I am in favor of the AAI rule as proposed, and I urge the Agency to adopt it as proposed.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for

the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Alizadeh, Ed

Comment Number: PM-0127-0001

Excerpt Number: 1

Excerpt Text:

I want to just give a couple of comments regarding the rule. First of all, I think it provides clarity for purchasers. The creation of the bona fide prospective purchaser of defense and contiguous property owner of defense will promote property transfers and redevelopment of properties to their best use.

Those have been considerable hindrances to development in the past, and I think clarifying that in this rule is of benefit to prospective purchasers. I also think the rule enhances public confidence in environmental assessments and redevelopment of brownfields by creating a definition for environmental professional, which I know is a difficult definition to arrive at, but by creating specific education, experience, and certification requirements, the rule provides the public with confidence that the studies will be protective of human health and the environment.

I also think it provides public confidence because the rule expands the database review requirements and provides for a nonprescriptive approach and allows for engineering or professional judgment in terms of what assessments should be done.

That will result in more data being reviewed, which will provide more confidence in the findings and conclusions and recommendations that are put forward, based on these assessments.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Alizadeh, Ed

Comment Number: PM-0127-0001

Excerpt Number: 2

Other Sections: NEW - 3.13.4 - Shelf life should be extended beyond 180 days/one year

Excerpt Text:

Lastly, I think the rule -- By extending the time period that the inquiries were good from six months to a year will result in being a benefit for developers. Frequently developers from start to finish take much longer than six months before the deal is finalized, and by extending that to a year, will provide a benefit to developers who are trying to redevelop

brownfield properties. In summary, the rule makes redeveloping brownfields sites more attractive to potential developers. It sets minimum criteria for environmental professionals, which enhances the public confidence, and although through the AAI studies, the fees will potentially increase due to the added research requirements, it will enhance the confidence and will be protective of human health and the environment.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule. The final rule retains and clarifies the requirement that all appropriate inquiries be conducted within one year prior to the date of acquisition of the property, with certain aspects updated within 180 days.

1.1.1.2 Support of the Performance Standard

Commenter Organization Name: Franz, Barry

Comment Number: 0068

Excerpt Number: 1

Other Sections: NEW - 6.1 - EPA should adopt ASTM standard rather than develop separate regulations

Excerpt Text:

Some key points of the AAI rule that I like is the fact that the AAI rule encourages a performance-based approach rather than a "prescriptive/mandatory" application of a standard (e.g. ASTM E1527-00). This approach allows an environmental professional to resolve data gaps based upon the professional's experience. Another critical aspect of the AAI rule that I like and appreciate, is the definition of what constitutes an environmental professional and what qualifications one should have.

However, I am not entirely convinced that we need the AAI rule. The ASTM Standard, E1 527-00, has served as the de facto standard for a number of years and is recognized by the real estate and financial communities as an acceptable demonstration for environmental due diligence. Although I have a number of issues with the ASTM Standard, I can not state that it has not worked to the satisfaction of my clients, and the real estate and financial communities. It has performed reasonable in defining the overall environmental risk posed by a site.

In summary, if we must have a promulgated regulation, then the AAI rule as proposed is acceptable. However, I believe that the clarifications made in the rule could be adopted into the existing ASTM standard and this standard would serve just as well.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

With regard to the use of the ASTM E1527-2000 standard, prior to the development of the proposed rule, EPA determined that the ASTM E1527-2000 standard was inconsistent with applicable law. Since publication of the proposed rule, ASTM International has updated its E1527 Phase I Environmental Site Assessment Process to address the inconsistencies. EPA has determined that the updated standard is compliant with the statute criteria and consistent with the final rule. Therefore, in the final rule, EPA is referencing the standards and practices developed by ASTM International and known as Standard E1527-05 and entitled "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process." Persons conducting all appropriate inquiries may use the procedures included in the ASTM E1527-05 standard to comply with the final rule.

Commenter Organization Name: Van Reenen, Dirk

Comment Number: 0070

Excerpt Number: 2

Excerpt Text:

I am pleased that the proposed AAI rule establishes definitions of "environmental professional" and encourages use of professional judgment. I have seen too many examples of environmental site assessments performed by marginally or unqualified individuals that seem to consider an assessment to be little more than filling out a checklist. I believe that the proposed rule will improve the quality of environmental site assessments. I also am pleased that the proposed rule encourages a performance-based approach rather than the mandatory use of a standard. In my opinion, this will result in a higher quality assessment and fewer reports that are merely the regurgitation of a checklist.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

It is the Agency's contention that the performance-based approach effectuates Congressional intent. The language used by Congress in describing the action to be taken under this rule is "all appropriate inquiries." Because each property for which all appropriate inquiries is undertaken is unique, "appropriate" inquiries for one property may not be "appropriate" for another. This uniqueness requires differing approaches. Therefore, the final rule is promulgated in a manner that allows the flexibility needed to engage in all appropriate inquiries for any property. The purpose behind establishing a performance standard for the conduct of all appropriate inquiries is to allow for a comprehensive assessment of available information about the potential environmental conditions at a property, while avoiding duplicative requirements. Sections 312.20(e) and (f) of the final rule set forth objectives for the all appropriate inquiries investigation and performance factors for obtaining the information established within the objectives. As explained in the preamble to the proposed rule, the advantage of a performance-based approach over a checklist approach to conducting the inquiries is that multiple sources of information need not be consulted for the same information.

The final rule (as did the proposed rule) encourages environmental professionals to use discretion and professional judgment in determining the best sources of information and the best manner in which to obtain information, given the objectives of the regulations and the specific characteristics of the property being assessed. EPA anticipates that this flexible approach will encourage the efficient use of resources in the case of properties that may not require as rigorous of an investigation due to available information about a property or particular knowledge about a property that may not be available in the case of other properties, while at the same time maintaining adequate standards to ensure environmental protection in the case of all properties.

Commenter Organization Name: Thacker, Barry K

Comment Number: 0071

Excerpt Number: 3

Other Sections: NEW - 3.12.2 - The rule should not require sampling and analysis

Excerpt Text:

Furthermore, I support the AAI rule changes because they encourage a performance-based approach, rather than a prescriptive "mandatory" application of a "standard," and allow for the environmental professional to resolve data gaps based on his or her experience.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Please also see response to comment number 0070, excerpt 2.

Commenter Organization Name: Freitag, George A

Comment Number: 0072

Excerpt Number: 3

Excerpt Text:

The proposed rule also is vastly superior to what is currently performed for property transactions because it: (1) uses a performance-based approach instead of a prescriptive approach, and (2) broadens the scope of the environmental inquiry on those sites where it is beneficial or needed.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Please also see response to comment number 0070, excerpt 2.

Commenter Organization Name: Engels, Joseph G

Comment Number: 0088

Excerpt Number: 1

Excerpt Text:

As a practicing environmental professional with close to 25 years of experience evaluating and remediating brownfield sites, I am encouraged by the proposed All Appropriate Inquiry rule. In particular, I am encouraged by the performance based approach that is proposed, rather than the current prescriptive ASTM approach. As proposed, AAI investigations should be designed by qualified professionals based on specific circumstances, site conditions and past and future uses of the property. Qualified

professionals provide their opinions based on their education, experience and technical expertise. The establishment of minimum education and experience standards for environmental professional qualifications are long overdue in this area of practice. Recognition of licensing/certification by state or federal agencies is also a very positive aspect of the rule because it adds the aspect associated with protecting the public welfare that is intrinsic to these licensing programs.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Please also see response to comment number 0070, excerpt 2.

Commenter Organization Name: Simon, Richard M

Comment Number: 0089

Excerpt Number: 4

Other Sections: NEW - 3.12.2 - The rule should not require sampling and analysis

Excerpt Text:

I like the fact that the AAI rule encourages a performance-based approach, rather than a prescriptive 'mandatory' application of a 'standard,' and allows for the environmental professional to resolve data gaps based on his or her experience. I also believe that the broader scope of environmental inquiry and wider application of the rule will result in the development of more thorough scopes of services, contracts, and reports. This result will be of significant benefit to my firm, the client, and most of all, the public.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: Sanborn, Head & Associates, Inc

Comment Number: 0090

Excerpt Number: 1

Excerpt Text:

We support EPA's proposed rule based on the following reasons: 'The proposed rule clearly establishes minimum qualification criteria for environmental professionals that are consistent with the level of education/experience typically necessary to collect and interpret environmental data, and develop conclusions and recommendations based on analysis of the data collected.' The proposed rule builds upon and advances the standard of practice for environmental inquiry related to property transactions, and allows for the exercise of professional judgment in evaluating the environmental risks potentially posed by conditions at a Site, rather than following a prescriptive approach. 'The proposed rule

was developed based on the work of a Negotiated Rulemaking Committee represented by a wide spectrum of interests, including the American Society of Civil Engineers, the National Groundwater Association, and ASFE.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Crocetti, Charles

Comment Number: 0110

Excerpt Number: 2

Excerpt Text:

The proposed rule builds upon and advances the standard of practice for environmental inquiry related to property transactions, and allows for the exercise of professional judgment in evaluating the environmental risks potentially posed by conditions at a Site, rather than following a prescriptive approach.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: NSPE

Comment Number: 0230

Excerpt Number: 12

Excerpt Text:

The proposed objectives and performance factors for an all appropriate inquiries requirements (page 52558-52559).

The objectives and performance factors described in the proposed rule (§312.20(d), §312.20 (e), §312.23(a), §312.23(c), §312.23(d), §312.24, §312.26, §312.27, and §312.30) are generally in keeping with the standards currently utilized by environmental professionals to perform all appropriate inquiries and therefore are reasonable.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: Diamond, Jason

Comment Number: 0251

Excerpt Number: 1

Excerpt Text:

Overall, I support the AAI rule, as I believe it will significantly improve the environmental inquiry process by providing performance-based requirements and broadening the scope of an environmental inquiry to a degree that will be much more protective of human health and the environment, while promoting the productive use of properties subject to the Brownfields Revitalization Act.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: NGWA

Comment Number: 0265

Excerpt Number: 1

Excerpt Text:

The proposed rules emphasize a site-specific, performance based approach that provides for flexibility and the exercise of professional judgment. The rule's approach achieves environmental and public health protection while moving sites into productive use efficiently and cost effectively.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: Belaire, Kent

Comment Number: 0267

Excerpt Number: 4

Excerpt Text:

The AAI rule improves the existing environmental inquiry process because it encourages a performance-based approach instead of a prescriptive approach and broadens the scope of the environmental inquiry where it is needed. The performance-based approach provides for flexibility by allowing studies to be designed for the specific circumstances associated with a property. The broader scope will result in studies that will be protective of human health and the environment and promote the productive use of properties subject to the Brownfields Revitalization Act.

In summary, I support the AAI rule.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: GZA GeoEnvironmental

Comment Number: 0279

Excerpt Number: 1

Excerpt Text:

I support adoption of the proposed all appropriate inquiry rule because it emphasizes a performance based approach, sets minimum criteria for environmental professionals (it is about time this was implemented) and allows for professional judgement. With over 20-years of experience in environmental and engineering consulting, I find it refreshing that USEPA has established minimum requirements for an environmental profession. It is important that these minimum standards not be relaxed.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: Billington, Edward

Comment Number: 0284

Excerpt Number: 2

Other Sections: NEW - 3.12.2 - The rule should not require sampling and analysis

Excerpt Text:

I also support the fact that the AAI rule encourages a performance-based approach, rather than a mandatory application of a prescriptive standard, and allows for the environmental professional to resolve data gaps based on his or her experience. The broader scope of environmental inquiry and wider application of the rule should result in the development of more thorough scopes of services, contracts, and reports. I believe the result will be of significant benefit to the public.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: Webster, O. Christopher

Comment Number: 0285

Excerpt Number: 1

Excerpt Text:

As a professional engineer I support the proposed rule. The proposed rule uses a performance-based approach instead of prescriptive-based approach, and as such, recognizes that the professional needs to develop the AAI studies to address the specific circumstances posed by the property and past uses.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: Willis, George

Comment Number: 0288

Excerpt Number: 1

Other Sections: NEW - 2.1.1.2 - The proposed minimum requirements will improve quality of ESAs

Excerpt Text:

I like the fact that it sets a minimum qualification and criteria level for the professionals in the environmental practice area. It is performance based and includes an education component which is not unlike the successful professional practices found in the engineering industry. The use of professional judgement in evaluating site risk is imperative and supported by the rule. If adopted, the All Appropriate Inquiry Rule should go a long way towards improving the quality of the practitioners in the field and more significantly, actually protecting human health and the environment.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: Less, James

Comment Number: 0290

Excerpt Number: 4

Other Sections: NEW - 1.1.1.4 - The proposed rule balances concerns of the stakeholders without compromising the environment

Excerpt Text:

The proposed rule also is vastly superior to what is currently performed for property transactions because it: (1) uses a performance-based approach instead of a prescriptive

approach, and (2) broadens the scope of the environmental inquiry on those sites where it is beneficial or needed. The rule's performance-based approach recognizes that AAI studies must be designed for the specific circumstances posed by a property and its past uses. This approach also makes the rule flexible so that it can be applied to any type of property. The broader scope of the environmental inquiry provides users (our clients) and the public with the confidence that AAI studies will be protective of human health and the environment and promote productive use of properties subject to the Brownfields Law. Thus, it appears that the proposed rule balances the concerns of the many parties involved in property transactions without compromising the environment now or in the future.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: Whitaker, Robert

Comment Number: 0297

Excerpt Number: 1

Other Sections: NEW - 1.1.1.3 - The proposed rule will improve quality of ESAs

Excerpt Text:

I urge you to adopt the proposed Rule. It will serve to raise the bar for personnel credentials and establish a performance based approach to environmental services that promotes professional judgment instead of a one size fits all "cookbook" approach. The environmental professional services industry has taken an unfortunate turn toward becoming a cottage industry in recent years and it is in the public interest to curtail this trend. The proposed rule will build on the success of the process established in the current ASTM standard and provide the public and end users of these services with a better understanding of what the process entails. In summary approving this rule is a win-win proposal for the profession and the public.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Please also see response to comment number 0070, excerpt 2.

Commenter Organization Name: Moors, Scott

Comment Number: 0298

Excerpt Number: 1

Other Sections: NEW - 2.1.1 - Support of the proposed minimum requirements

Excerpt Text:

I support the proposed rule and I urge the Agency to adopt it as proposed. The proposed AAI rule: ?? Encourages project/client/public sensitivity by permitting the flexibility derived from a performance-based approach instead of a prescriptive approach. The rule would be applicable to any type of property. ?? Sets minimum qualification criteria for environmental professionals (EPs). ?? Allows for professional judgment, which is critical in the proper evaluation of the risk associated with a particular site. ?? Requires a broader scope of environmental inquiry by building on and significantly improving the existing process (ASTM E-1527) that is familiar to many clients (users) who have all appropriate inquiry studies performed. This approach enhances the process and the familiarity will help avoid ?gconfusion?h among users and will also help reduce or limit the cost impacts.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Please also see response to comment number 0070, excerpt 2.

Commenter Organization Name: Davis, Colin

Comment Number: 0300

Excerpt Number: 1

Other Sections: NEW - 2.1.1 - Support of the proposed minimum requirements

Excerpt Text:

I am in support of the proposed AAI rule due to: It establishes minimum qualification criteria for environmental professionals. Allows for professional judgement in evaluation of risk associated with a site. Encourages project/client/public sensitivity by permitting the flexibility derived from a performance based approach instead of a perspective approach. Broader scope of study by improving the current standard defined in ASTM E1527.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule, including

revisions to the proposed definition of an environmental professional, to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Please also see response to comment number 0070, excerpt 2.

Commenter Organization Name: Erb, Ronald

Comment Number: 0301

Excerpt Number: 1

Other Sections: NEW - 2.1.1 - Support of the proposed minimum requirements

Excerpt Text:

I would like to add my support to the proposed rule for Standards and Practices for All Appropriate Inquiry. I believe this service should be handled by persons with a minimum of training and expertise as outlined in the proposed rule. Site specific, performance based approaches are important in the type of work performed by environmental professionals.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule, including revisions to the proposed definition of an environmental professional, to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Please also see response to comment number 0070, excerpt 2.

Commenter Organization Name: Anonymous

Comment Number: 0303

Excerpt Number: 1

Other Sections: NEW - 2.1.1 - Support of the proposed minimum requirements

Excerpt Text:

I approve of the proposed rule for AAI. The prescriptive approach currently used in the ASTM method is not applicable to many projects/sites; therefore, a more flexible approach, as is proposed in the AAI is an improvement. The AAI proposed rule also sets minimum qualifications for professions conducting the inquiries that are more appropriate to the inquiry process.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: May, Thomas

Comment Number: 0310

Excerpt Number: 2

Excerpt Text:

I also support the proposed rule because it uses a performance-based approach instead of a prescriptive approach. The rule's performance-based approach recognizes that AAI studies must be designed for the specific circumstances posed by a property and its past uses. This approach also makes the rule flexible so that it can be applied to any type of property.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: Schultz, Michael

Comment Number: 0331

Excerpt Number: 4

Other Sections: NEW - 1.1.1.4 - The proposed rule balances concerns of the stakeholders without compromising the environment

Excerpt Text:

The proposed rule is also vastly superior to what is currently performed for property transactions for two reasons: 1. A performance-based approach instead of a prescriptive approach is employed, which recognizes that AAI studies must be designed for the specific circumstances posed by a property and its past uses. This approach also makes the rule flexible so that it can be applied to any property type. 2. It broadens the scope of the environmental inquiry on those sites where it is beneficial or needed. The broader scope of the environmental inquiry provides users (our clients) and the public with the confidence that AAI studies will protect human health and the environment and promote productive use of properties subject to the Brownfields Law. The proposed rule appears to balance the concerns of many parties involved in property transactions without compromising the environment now or in the future.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: McKerr, Thomas

Comment Number: 0347

Excerpt Number: 8

Excerpt Text:

Objectives and Performance Factors. Well done.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Lourie Consultants

Comment Number: 0353

Excerpt Number: 6

Other Sections: NEW - 1.1.1.4 - The proposed rule balances concerns of the stakeholders without compromising the environment

Excerpt Text:

I am convinced that the proposed AAI rule is vastly superior to what is currently performed for property transactions because it: (1) uses a performance-based approach instead of a prescriptive approach, and (2) broadens the scope of the environmental inquiry on those sites where it is beneficial or needed. The broader scope of the environmental inquiry provides users and the public with the confidence that AAI studies will be protective of human health and the environment and promote productive use of properties subject to the Brownfields Law. Thus, it appears that the proposed rule balances the concerns of the many parties involved in property transactions without compromising the environment now or in the future.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: Smith, Michael

Comment Number: 0360

Excerpt Number: 4

Excerpt Text:

I like the fact that the AAI rule encourages a performance-based approach, rather than a prescriptive "mandatory" application of a "standard," and allows for the environmental professional to resolve data gaps based on his or her experience. I also believe that the broader scope of environmental inquiry and wider application of the rule will result in the development of more thorough scopes of services, contracts, and reports. This result will be of significant benefit to my firm, the client, and most of all, the public.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: SCANA

Comment Number: 0373

Excerpt Number: 8

Excerpt Text:

In the preamble (page 52559, 1st column), the Agency states that the proposed performance factors in §312.20(e) are "guidelines to be followed in conjunction with the performance objectives for the all appropriate inquiries." It is recommended that the Agency incorporate language in the regulation to clearly state that these are guidelines.

Response:

The regulatory language at 40 CFR 312.20(f) states "In performing each of the standards and practices set forth in this subpart and to meet the objectives stated in paragraph (e) of this section, the persons identified under section 312.1(b) or the environmental professional as defined in section 312.10 (as appropriate to the particular standard and practice) **must seek to...**" (emphasis added). By including in the regulatory language the phrase "must seek to" the Agency designates the performance factors as guidelines or objectives for how to perform the all appropriate inquiries in compliance with the statutory criteria and the regulatory objectives established in the final rule.

Commenter Organization Name: Denton, Robert

Comment Number: 0381

Excerpt Number: 4

Other Sections: NEW - 1.1.1.4 - The proposed rule balances concerns of the stakeholders without compromising the environment

Excerpt Text:

The rule's performance-based approach recognizes that AAI studies must be designed for the specific circumstances posed by a property and its past uses. This approach also makes the rule flexible so that it can be applied to any type of property with sufficient specificity to focus on the relevant environmental conditions that may exist at that property. The broader scope of the environmental inquiry provides users (our clients) and the public with the confidence that AAI studies will be protective of human health and the environment and promote productive use of properties subject to the Brownfields Law. Thus, it appears that the proposed rule balances the concerns of the many parties involved in property transactions without compromising the environment now or in the future.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: Dohms, Peter

Comment Number: 0384

Excerpt Number: 4

Other Sections: NEW - 1.1.1.4 - The proposed rule balances concerns of the stakeholders without compromising the environment

Excerpt Text:

The proposed rule also is vastly superior to what is currently performed for property transactions because it: (1) uses a performance-based approach instead of a prescriptive approach, and (2) broadens the scope of the environmental inquiry on those sites where it is beneficial or needed. The rule's performance-based approach recognizes that AAI studies must be designed for the specific circumstances posed by a property and its past uses. This approach also makes the rule flexible so that it can be applied to any type of property. The broader scope of the environmental inquiry provides users (our clients) and the public with the confidence that AAI studies will be protective of human health and the environment and promote productive use of properties subject to the Brownfields Law. Thus, it appears that the proposed rule balances the concerns of the many parties involved in property transactions without compromising the environment now or in the future.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: Heywood, Johanna

Comment Number: 0387

Excerpt Number: 4

Other Sections: NEW - 1.1.1.4 - The proposed rule balances concerns of the stakeholders without compromising the environment

Excerpt Text:

The proposed rule also is vastly superior to what is currently performed for property transactions because it: (1) uses a performance-based approach instead of a prescriptive approach, and (2) broadens the scope of the environmental inquiry on those sites where it is beneficial or needed. The rule's performance-based approach recognizes that AAI studies must be designed for the specific circumstances posed by a property and its past uses. This approach also makes the rule flexible so that it can be applied to any type of

property. The broader scope of the environmental inquiry provides users (our clients) and the public with the confidence that AAI studies will be protective of human health and the environment and promote productive use of properties subject to the Brownfields Law. Thus, it appears that the proposed rule balances the concerns of the many parties involved in property transactions without compromising the environment now or in the future.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: Intertox

Comment Number: 0396

Excerpt Number: 5

Excerpt Text:

-The proposed objectives and performance factors for the all appropriate inquiries requirements.

--While we agree it is important to approach an all appropriate inquiry with a concise set of objectives and performance factors, we believe that too much stress is placed here on the approach rather than stressing the quality of investigation. It is our experience that information relevant to one criterion is rarely collected more than once. Therefore, we believe it is sufficient to establish in a final rule that the environmental professional will determine the best process and sequence for collecting and analyzing all required information. We are aware, however, from years of experience that the sequence of information gathering is more efficient if historical resources are reviewed first, followed by a review of government databases and records, and then the site visit. Characterizing the historic uses of a site and identifying listed sites within a ½ mile radius of the subject property sets the stage for a more complete site visit. In addition, although Intertox opposes this, if sampling and analysis is determined to be an acceptable activity in the all appropriate inquiry, then knowing the background of the site will help determine where sampling should occur on a property.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Please see response to comment number 0070, excerpt 2.

The Agency notes that the final rule includes no requirements to conduct sampling and analysis as part of the all appropriate inquiries investigation.

Commenter Organization Name: Rybak, John Thomas

Comment Number: 0412

Excerpt Number: 4

Excerpt Text:

3) Proposed objective and performance factors for AAI

a) Page # 52578

b) View: I support the objective and performance factors. Objective and performance factors are designed to achieve a higher standard of Phase I report, and more consistent Phase I product in order to allow the legal system to apply an AAI standard for purchasers of contaminated land.

c) Assumptions: The current voluntary standard (ASTM) is not sufficient for AAI and not consistently applied in the practice of Phase I reports.

d) Burden: Will require the EP firms to reformat their Phase I reports and alter their report preparation process. This may increase report costs slightly.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Please see response to comment number 0070, excerpt 2.

EPA agrees with the commenter that the requirements included in the final rule will slightly increase the costs of performing an environmental site assessment over the current cost of performing an assessment in compliance with the ASTM E1527-2000 standard.

Commenter Organization Name: Tryon, Bill

Comment Number: 0418

Excerpt Number: 1

Excerpt Text:

Discussion of Scope - One positive outcome of EPA's development of a definition of AAI is promotion of industry discussion. In recent years, much of the environmental industry has moved toward a formulaic approach to environmental investigation, frequently completing certain steps without an apparent understanding for the significance of the findings of the investigation. Hopefully, the implementation of EPA's standard will result in completion of more thoughtful investigations.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Haley and Aldrich

Comment Number: 0432

Excerpt Number: 1

Excerpt Text:

In general, we support the All Appropriate Inquiry rule; in particular the performance based approach that is proposed, rather than the current prescriptive ASTM approach. We support the notion that the proposed rule requires that the opinions provided should be by qualified professionals and not just anyone with limited training can conduct such an assessment contains. We also agree with the lack of requirements regarding the length, structure, or specific format of a written report;

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule, including revisions to the proposed definition of an environmental professional, to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: McLeod, Jeff

Comment Number: 0444

Excerpt Number: 5

Excerpt Text:

312.24, 312.25 and 312.26

Each of these sections addresses documents to be reviewed in conducting AAIs. It is refreshing to have some latitude in the regulations to exercise professional judgement as to how to conduct the inquiries addressed in these Parts. However I can foresee circumstances where EPs could reach different conclusion based on their professional judgement which could lead to legal battles.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Please see response to comment number 0070, excerpt 2.

If more than one environmental professional conducts environmental inquiries at a particular property and the environmental professionals reach different conclusions regarding conditions indicative of releases or threatened releases of hazardous substances at the property, it is the responsibility of prospective landowner, with whom the liability

for releases may rest, to resolve the differences in opinion. In such cases, the prospective landowner may want to evaluate the merits of conducting additional investigations.

Commenter Organization Name: Grissom, Glen

Comment Number: PM-0127-0009

Excerpt Number: 1

Excerpt Text:

I believe the standard has several good points to offer, including the definition of environmental professional, as a very positive step, to keep work product high.

I also move that if it was a positive step that these standards were specifically designed to meet the CERCLA's all appropriate inquiries standard, so there can be no question down the road on a project, whether they're going to be covered under this standard, like under the current ASTM standard.

I believe it's also positive that the standard emphasizes several information sources that aren't currently stressed, such as low purchase price, environment liens, and engineering controls, especially given the changes that are going in the environmental field, before moving toward corrective actions, where things such as environmental liens and engineering controls are becoming much more common.

And lastly, I believe that it is positive, it is a result based standard, rather than simply a checklist of items to review, and you just - you go through the checklist, you did everything that was there, and you're done, whether you actually produced a good product or not.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule, including revisions to the proposed definition of an environmental professional, to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Please see response to comment number 0070, excerpt 2.

1.1.1.3 The Proposed Rule Will Improve Quality of Environmental Site Assessments

Commenter Organization Name: Virginia Geotechnical Services

Comment Number: 0034

Excerpt Number: 1

Other Sections: NEW - 2.1.1.2 - The proposed minimum requirements will improve quality of ESAs

Excerpt Text:

I am in support of the proposed rule for Standards and Practices for AAI. The qualifications section, in particular, has long been needed and will vastly improve the quality of environmental assessments by setting an appropriate level of qualifications and experience for persons holding themselves out as an "environmental professional." Because ASTM has proven it cannot address the qualifications issue, EPA is the only appropriate venue that can set this standard.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule, including revisions to the proposed definition of an environmental professional, to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Cooper, Ivan A

Comment Number: 0047

Excerpt Number: 3

Excerpt Text:

Third, the proposed rule builds on and significantly improves the existing environmental inquiry process for property transactions. This will allow me to continue to be able to provide the expertise and experience that I have gained doing ASTM E-1527 studies, and therefore continue to enhance my value to my firm. Not having to learn a whole new process will also ensure the cost-effectiveness of my services.

Fourth, those who perform the best are likely to get the most work. I believe that the Rule will be successful in "raising the bar" on the quality of AAI studies, because there are enough safeguards and protections within the proposed rule to make clients far more concerned about peoples' qualifications.

In summary, I am in favor of the AAI rule as proposed.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for

the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule, including revisions to the proposed definition of an environmental professional, to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Vellone, Daniel A

Comment Number: 0048

Excerpt Number: 3

Excerpt Text:

The proposed rule also is vastly superior to what is currently performed for property transactions because it broadens the scope of the environmental inquiry on those sites where it is beneficial or needed. The rule's performance-based approach recognizes that AAI studies must be designed for the specific circumstances posed by a property and its past uses. This approach also makes the rule flexible so that it can be applied to any type of property. The broader scope of the environmental inquiry provides users and the public with the confidence that AAI studies will be protective of human health and the environment and promote productive use of properties subject to the Brownfield's Law. This can only be accomplished effectively if licensed Professional Engineers and Geologists are in Responsible Charge of the AAI process.

In summary, I am in favor of the AAI rule as proposed, and I urge the Agency to adopt it as proposed.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule, including revisions to the proposed definition of an environmental professional, to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions. The final rule, as did the proposed rule, allows for persons who are not a licensed professional engineer or a licensed professional geologist to qualify as environmental professionals if they meet certain educational and experience qualifications.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: Tedlock, Rowley R

Comment Number: 0051

Excerpt Number: 1

Excerpt Text:

I support the proposed rule for many reasons including the minimum education and

experience qualifications for "environmental professionals" conducting AAI studies. The proposed rule builds on and improves the existing environmental inquiry process for property transactions.

I am in favor of the AAI rule as proposed, and I urge the Agency to adopt it as proposed.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule, including revisions to the proposed definition of an environmental professional, to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Worcester, Alfred P

Comment Number: 0065

Excerpt Number: 1

Other Sections: NEW - 1.1.1.5 - The cost impacts of the proposed rule will not be significant

Excerpt Text:

I support the proposed rule for many reasons, some of which are expressed here.

The proposed rule builds on and significantly improves the existing environmental inquiry process for property transactions. This is a wise and important approach for many reasons. Because the general concept will be familiar to the service providers ("environmental professionals") and the users, the transition to the new rule should be relatively straightforward and result in a minimum of disruption to the marketplace. Also, while the cost of conducting an inquiry according to the proposed AAI rule will likely be a little more than the cost associated with the current process, the cost impacts should be minor and the resulting benefits will be significant.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule, including revisions to the proposed definition of an environmental professional, to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Roark, Michael

Comment Number: 0081

Excerpt Number: 1

Excerpt Text:

I believe the proposed AAI rule will be a great improvement over the existing ASTM Phase I ESA standard.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Cheeks, J. Richard

Comment Number: 0083

Excerpt Number: 3

Excerpt Text:

Third, the proposed rule builds on and significantly improves the existing environmental inquiry process for property transactions. This will allow me to continue to be able to provide the expertise and experience that I have gained doing ASTM E-1527 studies, and therefore continue to enhance my value to my firm. Not having to learn a whole new process will also ensure the cost-effectiveness of my services.

Fourth, those who perform the best are likely to get the most work. I believe that the Rule will be successful in "raising the bar" on the quality of AAI studies, because there are enough safeguards and protections within the proposed rule to make clients far more concerned about peoples' qualifications.

In summary, I am in favor of the AAI rule as proposed. I urge the Agency to adopt it as proposed.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule, including revisions to the proposed definition of an environmental professional, to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Ferguson, Jim

Comment Number: 0203

Excerpt Number: 1

Excerpt Text:

It is high time that the technical soundness of Phase I Environmental Site Assessments is brought up to an acceptable standard. The proposed rule for All Appropriate Inquiries (AAI) as published in the August 26th Federal Register is a major improvement toward that end.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Roeser, Daniel

Comment Number: 0249

Excerpt Number: 1

Excerpt Text:

The EPA's proposed rules for All Appropriate Inquiry (AAI) transfer criteria for this due diligence activity from the current private sector consensus standards of practice to federal government regulation. I enthusiastically support this transfer, which will help ensure a level of professionalism and quality appropriate for this important type of environmental investigation. In general the transition is coherent and reasonable

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: NW EnviroSearch

Comment Number: 0272

Excerpt Number: 1

Excerpt Text:

Thank you for developing criteria and I standards on a national basis for the completion of Phase I Environmental Site Assessments. For many years we have observed the disparity between the quality and competency [of the reports and those preparing the documents within the environmental industry.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Whitaker, Robert

Comment Number: 0297

Excerpt Number: 1

Other Sections: NEW - 1.1.1.2 - Support of the performance standard

Excerpt Text:

I urge you to adopt the proposed Rule. It will serve to raise the bar for personnel credentials and establish a performance based approach to environmental services that promotes professional judgement instead of a one size fits all "cookbook" approach. The environmental professional services industry has taken an unfortunate turn toward becoming a cottage industry in recent years and it is in the public interest to curtail this trend. The proposed rule will build on the success of the process established in the current ASTM standard and provide the public and end users of these services with a better

understanding of what the process entails. In summary approving this rule is a win-win proposal for the profession and the public.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule, including revisions to the proposed definition of an environmental professional, to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Moors, Scott

Comment Number: 0298

Excerpt Number: 2

Excerpt Text:

Provides the public with the confidence that AAI studies will be protective of human health and the environment that does not currently exist with the ASTM process. While not perfect, will be successful in raising the bar on the quality of AAI studies, as there are enough safeguards and protections within the proposed rule.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Griebel, Russell

Comment Number: 0316

Excerpt Number: 1

Other Sections: NEW - 1.1.1.5 - The cost impacts of the proposed rule will not be significant

Excerpt Text:

I support the proposed rule for many reasons, some of which are expressed here. The proposed rule builds on and significantly improves the existing environmental inquiry process for property transactions. This is a wise and important approach for many reasons. Because the general concept will be familiar to the service providers (environmental professionals) and the users, the transition to the new rule should be relatively straightforward and result in a minimum of disruption to the marketplace. Also, while the cost of conducting an inquiry according to the proposed AAI rule will likely be a little more than the cost associated with the current process, the cost impacts should be minor and the resulting benefits will be significant.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule, including revisions to the proposed definition of an environmental professional, to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Herin

Comment Number: 0329

Excerpt Number: 1

Excerpt Text:

I have been involved with as many as 300 environmental due diligence projects a year. As part of this I have seen a wide range of due diligence products provided by consultants. In particular, I have been concerned with the "bargain basement" Phase I ESA (claiming to meet ASTM E1527 standards) which probably does little to protect the user. In fact, typical reasons these products are so inexpensive include: the preparer has limited experience; the preparer takes advantage of the vagueness of the ASTM standard by "cutting corners" to keep the price down; and the user is an uninformed buyer (thus, some users unwittingly treat due diligence services as a commodity).

I applaud EPA's efforts for helping to better define AAI and, thereby, to protect the user.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Lourie Consultants

Comment Number: 0353

Excerpt Number: 2

Excerpt Text:

My firm and I personally provide a variety of environmental services for our clients; these services cover a broad range of project types with various degrees of complexity for clients in the commercial, retail, municipal, and industrial sectors. I know better than most that even the apparently simplest brownfield engagement or environmental site assessment can pose latent risks. The only way that I've found to deal effectively with those risks is by relying on professionals who have the education, training, experience, and good judgment needed to know what to do when the situation they encounter differs from one described in some guide or standard or that is outside the specific range of past experience. For that reason, I fought for and am pleased that the proposed rule establishes realistic near- and long-term definitions of "environmental professional." Furthermore, the proposed rule allows for and even requires the application of the professional judgment needed to help consider and safeguard the public trust. Overall, the proposed AAI rule "raises the bar" such that better assessments will be performed.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for

the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule, including revisions to the proposed definition of an environmental professional, to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: Osuch, Debra

Comment Number: 0365

Excerpt Number: 1

Excerpt Text:

I support the EPA's proposed rules for All Appropriate Inquiry (AAI). The proposed rules transfer criteria for this due diligence activity from private sector consensus standards of practice to federal government regulation. I believe the proposed rules will help ensure a higher level of professionalism and quality needed for this type of environmental property assessments.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule, including revisions to the proposed definition of an environmental professional, to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Commenter Organization Name: Intertox

Comment Number: 0396

Excerpt Number: 6

Other Sections: NEW - 3.12 - Data gaps

Excerpt Text:

-The proposed provisions for addressing data gaps.

--Lack of information or the inability to obtain information on a site is a common problem. This is often caused by project limitations as reflected in scope and budget. However, Phase I ESA reports have traditionally not included detail about data gaps. Therefore, we believe this proposed requirement will result in better reports and provide report recipients with greater detail upon which liability minimizing decisions can be made.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for

the proposed rule.

Commenter Organization Name: Templeton, Sharon

Comment Number: 0407

Excerpt Number: 1

Other Sections: NEW - 1.1.1.5 - The cost impacts of the proposed rule will not be significant

Excerpt Text:

The proposed rule builds on and significantly improves the existing environmental inquiry process for property transactions. While the cost of conducting an inquiry according to the proposed AAI rule will likely be a little more than the cost associated with the current process, the cost impacts should be minor and the resulting benefits will be significant.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA agrees with the commenter that the requirements included in the final rule will only slightly increase the costs of performing an environmental site assessment over the current cost of performing an assessment in compliance with the ASTM E1527-2000 standard.

Commenter Organization Name: Rybak, John Thomas

Comment Number: 0412

Excerpt Number: 1

Excerpt Text:

It is Branch Bank and Trust's general position of support for the proposed AAI Phase I Standards. Since its inception approximately 15 years ago the Environmental Phase I industry has been without a regulatory standard for these reports, and this has lead to a vast array of report types, quality, and professionals preparing these reports. ASTM has been a good guidance document, but it contains many vague areas, lacks a standard in other areas, and is only voluntarily adhered to. Not all users of the Phase I possess the expertise to evaluate if their Phase I report meets the current guideline, or if the consultant the hired adequately represented their interests. Many users of the report simply mark a task completed, that the Phase I has been done. But to what standard, and is that standard even applicable or sufficient to cover their risks and preserve the various CERCLA Defenses? How can a CERCLA Defense be sufficiently developed based on a suspect foundation? The simple task of obtaining a Phase I under the current guidelines, especially one of poor quality, may not prove adequate in a court of law, and certainly may not sufficiently evaluate the environmental risks at the real property.

Over the past ten years I've personally reviewed thousands of Phase I reports for several National Financial Lending Institutions. Not all Phase I reports are created equal. In the

vacuum of a Regulatory Standard quality and consistency vary greatly. There are many good and ethical firms conducting high quality Phase I report for a fair price. However there are also many firms who don't fit that definition of quality and ethics. It is our hope that through the AAI Phase I process the industry will see equalization in the Phase I Report Standard, and an increase in overall quality of this product. We may experience an increase in cost or timing, but this would be reasonable for a higher quality product. For a long time the Appraisal Industry has been regulated, leaving no question as to the Standards that need to be met. The Environmental Phase I industry faces many of the report quality and consistency problems that faced the appraisal industry prior to being regulated.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA agrees with the commenter that the requirements included in the final rule will only slightly increase the costs of performing an environmental site assessment over the current cost of performing an assessment in compliance with the ASTM E1527-2000 standard.

EPA agrees that the performance standards will increase the standard by which Phase I reports are conducted. However, the Agency also notes that there may still be varying degrees of quality in Phase I reporting and encourages prospective landowners to carefully select who they trust or employ to conduct all appropriate inquiries. Also, merely conducting all appropriate inquiries will not satisfy the provisions of CERCLA necessary to establish a defense to liability relief. Once acquiring a property, landowners must comply with the continuing obligations established in the statute to qualify for liability protection as a bona fide prospective purchaser, innocent landowner or contiguous property owner.

Commenter Organization Name: Langston, Jeff

Comment Number: PM-0127-0006

Excerpt Number: 1

Other Sections: NEW - 2.1.1.2 - The proposed minimum requirements will improve quality of ESAs

Excerpt Text:

And I just want to mention that I'm in favor of the proposed rule, and for the reasons - the favorable reasons that have been mentioned by others. I don't want to restate those, but specifically, I do want to comment on the definition of the environmental professional that the rule would require, and I believe that that definition for the environmental professional would result in increased quality of the environment assessment and the due diligence reports.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for

the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule, including revisions to the proposed definition of an environmental professional, to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

1.1.1.4 *The Proposed Rule Balances Concerns of the Stakeholders without Compromising the Environment*

Commenter Organization Name: Cooper, Ivan A

Comment Number: 0047

Excerpt Number: 2

Excerpt Text:

Second, I live and work in communities that have environmentally impacted sites. The broader scope of the environmental inquiry provides users (our clients) and the public with the confidence that AAI studies will be protective of human health and the environment, and promote productive use of properties consistent with the intent of the Small Business Liability Relief and Brownfields Revitalization Act (the Act). In other words, it appears that the proposed Rule balances the concerns of the many parties involved in property transactions without compromising the environment now or in the future.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Thacker, Barry K

Comment Number: 0071

Excerpt Number: 1

Excerpt Text:

I have reviewed your proposed All Appropriate Inquiry (AAI) rule changes and I support them. Cleaning up brownfields so they can be returned to productive use is an important national effort. I think your proposed changes will enable brownfields to be revitalized while taking care of environmental issues, too.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Cheeks, J. Richard

Comment Number: 0083

Excerpt Number: 2

Excerpt Text:

Second, I live and work in communities that have environmentally impacted sites. The broader scope of the environmental inquiry provides users (our clients) and the public with the confidence that AAI studies will be protective of human health and the environment, and promote productive use of properties consistent with the intent of the Small Business Liability Relief and Brownfields Revitalization Act (the Act). In other words, it appears that the proposed Rule balances the concerns of the many parties

involved in property transactions without compromising the environment now or in the future.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Simon, Richard M

Comment Number: 0089

Excerpt Number: 1

Excerpt Text:

Your proposed All Appropriate Inquiry (AAI) rule seems to accomplish what America needs: Revitalizing brownfields while taking care of environmental issues, too.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

Commenter Organization Name: Less, James

Comment Number: 0290

Excerpt Number: 4

Other Sections: NEW - 1.1.1.2 - Support of the performance standard

Excerpt Text:

The proposed rule also is vastly superior to what is currently performed for property transactions because it: (1) uses a performance-based approach instead of a prescriptive approach, and (2) broadens the scope of the environmental inquiry on those sites where it is beneficial or needed. The rule's performance-based approach recognizes that AAI studies must be designed for the specific circumstances posed by a property and its past uses. This approach also makes the rule flexible so that it can be applied to any type of property. The broader scope of the environmental inquiry provides users (our clients) and the public with the confidence that AAI studies will be protective of human health and the environment and promote productive use of properties subject to the Brownfields Law. Thus, it appears that the proposed rule balances the concerns of the many parties involved in property transactions without compromising the environment now or in the future.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule, to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: Schultz, Michael

Comment Number: 0331

Excerpt Number: 4

Other Sections: NEW - 1.1.1.2 - Support of the performance standard

Excerpt Text:

The proposed rule is also vastly superior to what is currently performed for property transactions for two reasons: 1. A performance-based approach instead of a prescriptive approach is employed, which recognizes that AAI studies must be designed for the specific circumstances posed by a property and its past uses. This approach also makes the rule flexible so that it can be applied to any property type. 2. It broadens the scope of the environmental inquiry on those sites where it is beneficial or needed. The broader scope of the environmental inquiry provides users (our clients) and the public with the confidence that AAI studies will protect human health and the environment and promote productive use of properties subject to the Brownfields Law. The proposed rule appears to balance the concerns of many parties involved in property transactions without compromising the environment now or in the future.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule, to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: Lourie Consultants

Comment Number: 0353

Excerpt Number: 5

Excerpt Text:

-Other objections falsely claim the proposed EP definition, if promulgated, will lead to substantially increased costs, business failures, and/or some other form of business disruption, e.g., the rule will put small firms out of business or the cost of complying with the AAI rule will be too great. The composition of the AAI rulemaking committee included parties that represented all types and sizes of firms over a large geographic area that are involved with real estate transactions. As such, great efforts were made to accommodate many business-related concerns, while still holding paramount the need to protect the public and environment.

The proposed EP definition probably received the most discussion of any one issue during the rulemaking process. The proposed EP definition, like the rest of the proposed

rule, contains compromises.

Response:

EPA thanks the commenter for the stated support of the proposed rule. As the commenter states and as the Agency pointed out in the preamble to the proposed rule, the proposed definition of environmental professional represented a balance of interests held by EPA and the other members of the Negotiated Rulemaking Committee. EPA notes that the final rule includes revisions to the proposed definition of environmental professional to reflect issues raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these changes.

Commenter Organization Name: Lourie Consultants

Comment Number: 0353

Excerpt Number: 6

Other Sections: NEW - 1.1.1.2 - Support of the performance standard

Excerpt Text:

I am convinced that the proposed AAI rule is vastly superior to what is currently performed for property transactions because it: (1) uses a performance-based approach instead of a prescriptive approach, and (2) broadens the scope of the environmental inquiry on those sites where it is beneficial or needed. The broader scope of the environmental inquiry provides users and the public with the confidence that AAI studies will be protective of human health and the environment and promote productive use of properties subject to the Brownfields Law. Thus, it appears that the proposed rule balances the concerns of the many parties involved in property transactions without compromising the environment now or in the future.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule, to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: Smith, Michael

Comment Number: 0360

Excerpt Number: 1

Excerpt Text:

I appreciate all the hard work provided by the committee and EPA staff in developing a workable All Appropriate Inquiry (AAI) rule that will allow professional judgment while requiring the professional has the experience to make the judgment call. Cleaning up brownfields is vitally important to the United States. Doing so will revitalize decayed,

often inner-city areas, bringing jobs and opportunities there, which will help reduce the need for more roads, more public transit, and cars. The social consequences can be tremendous. So can the economic impact and the valuable dampening effect brownfields revitalization can have on urban sprawl. As valuable as all these objectives may be, however, achieving them at the expense of the environment would be unacceptable. Your proposed All Appropriate Inquiry rule seems to accomplish what America needs: Revitalizing brownfields while taking care of environmental issues, too.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule, to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: Denton, Robert

Comment Number: 0381

Excerpt Number: 4

Other Sections: NEW - 1.1.1.2 - Support of the performance standard

Excerpt Text:

The rule's performance-based approach recognizes that AAI studies must be designed for the specific circumstances posed by a property and its past uses. This approach also makes the rule flexible so that it can be applied to any type of property with sufficient specificity to focus on the relevant environmental conditions that may exist at that property. The broader scope of the environmental inquiry provides users (our clients) and the public with the confidence that AAI studies will be protective of human health and the environment and promote productive use of properties subject to the Brownfields Law. Thus, it appears that the proposed rule balances the concerns of the many parties involved in property transactions without compromising the environment now or in the future.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule, to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: Dohms, Peter

Comment Number: 0384

Excerpt Number: 4

Other Sections: NEW - 1.1.1.2 - Support of the performance standard

Excerpt Text:

The proposed rule also is vastly superior to what is currently performed for property transactions because it: (1) uses a performance-based approach instead of a prescriptive approach, and (2) broadens the scope of the environmental inquiry on those sites where it is beneficial or needed. The rule's performance-based approach recognizes that AAI studies must be designed for the specific circumstances posed by a property and its past uses. This approach also makes the rule flexible so that it can be applied to any type of property. The broader scope of the environmental inquiry provides users (our clients) and the public with the confidence that AAI studies will be protective of human health and the environment and promote productive use of properties subject to the Brownfields Law. Thus, it appears that the proposed rule balances the concerns of the many parties involved in property transactions without compromising the environment now or in the future.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule, to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Please see response to comment number 0070, excerpt 2.

Commenter Organization Name: Heywood, Johanna

Comment Number: 0387

Excerpt Number: 4

Other Sections: NEW - 1.1.1.2 - Support of the performance standard

Excerpt Text:

The proposed rule also is vastly superior to what is currently performed for property transactions because it: (1) uses a performance-based approach instead of a prescriptive approach, and (2) broadens the scope of the environmental inquiry on those sites where it is beneficial or needed. The rule's performance-based approach recognizes that AAI studies must be designed for the specific circumstances posed by a property and its past uses. This approach also makes the rule flexible so that it can be applied to any type of property. The broader scope of the environmental inquiry provides users (our clients) and the public with the confidence that AAI studies will be protective of human health and the environment and promote productive use of properties subject to the Brownfields Law. Thus, it appears that the proposed rule balances the concerns of the many parties involved in property transactions without compromising the environment now or in the

future.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule.

EPA notes that the final rule includes a few revisions from the proposed rule, to address concerns raised by other public commenters. Please see section III of the preamble to the final rule for a summary of these revisions.

Please see response to comment number 0070, excerpt 2.

1.1.1.5 The Cost Impacts of the Proposed Rule Will Not Be Significant

Commenter Organization Name: Vellone, Daniel A

Comment Number: 0048

Excerpt Number: 2

Excerpt Text:

The proposed rule builds upon, and significantly improves, the existing environmental inquiry process for commercial property transactions. I believe this to be a wise and important approach for many reasons. Because the general concept will be familiar to the service providers ("environmental professionals") and the users, the transition to the new rule should be relatively straightforward and result in a minimum of disruption to the marketplace. Furthermore, while the economic cost of conducting an inquiry according to the proposed AAI rule may be slightly more expensive than the current process, the cost impacts should be negligible in comparison to the resulting benefits.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule. EPA agrees that the cost of complying with the final rule will not be significantly different from the cost of complying with the ASTM E1527-2000 standard.

Commenter Organization Name: Worcester, Alfred P

Comment Number: 0065

Excerpt Number: 1

Other Sections: NEW - 1.1.1.3 - The proposed rule will improve quality of ESAs

Excerpt Text:

I support the proposed rule for many reasons, some of which are expressed here.

The proposed rule builds on and significantly improves the existing environmental inquiry process for property transactions. This is a wise and important approach for many reasons. Because the general concept will be familiar to the service providers ("environmental professionals") and the users, the transition to the new rule should be relatively straightforward and result in a minimum of disruption to the marketplace. Also, while the cost of conducting an inquiry according to the proposed AAI rule will likely be a little more than the cost associated with the current process, the cost impacts should be minor and the resulting benefits will be significant.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule. EPA agrees that the cost of complying with the final rule will not be significantly different from the cost of complying with the ASTM E1527-2000 standard.

Commenter Organization Name: Freitag, George A

Comment Number: 0072

Excerpt Number: 1

Excerpt Text:

I support the proposed rule for many reasons, some of which are expressed here. The proposed rule builds on and significantly improves the existing environmental inquiry process for property transactions. This is a wise and important approach for many reasons. Because the general concept will be familiar to the service providers ('environmental professionals') and the users, the transition to the new rule should be relatively straightforward and result in a minimum of disruption to the marketplace. Also, while the cost of conducting an inquiry according to the proposed AAI rule will likely be a little more than the cost associated with the current process, the cost impacts should be minor and the resulting benefits will be significant.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule. EPA agrees that the cost of complying with the final rule will not be significantly different from the cost of complying with the ASTM E1527-2000 standard.

Commenter Organization Name: Less, James

Comment Number: 0290

Excerpt Number: 1

Excerpt Text:

The proposed rule builds on and significantly improves the existing environmental inquiry process for property transactions. This is a wise and important approach for many reasons. Because the general concept will be familiar to the service providers ("environmental professionals") and the users, the transition to the new rule should be relatively straightforward and result in a minimum of disruption to the marketplace.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule. EPA agrees that the cost of complying with the final rule will not be significantly different from the cost of complying with the ASTM E1527-2000 standard, resulting in minimum disruption of the marketplace.

Commenter Organization Name: Less, James

Comment Number: 0290

Excerpt Number: 2

Excerpt Text:

Also, while the cost of conducting an inquiry according to the proposed AAI rule will likely be a little more than the cost associated with the current process, the cost impacts should be minor and the resulting benefits will be significant.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule. EPA agrees that the cost of complying with the final rule will not be significantly different from the cost of complying with the ASTM E1527-2000 standard.

Commenter Organization Name: Griebel, Russell

Comment Number: 0316

Excerpt Number: 1

Other Sections: NEW - 1.1.1.3 - The proposed rule will improve quality of ESAs

Excerpt Text:

I support the proposed rule for many reasons, some of which are expressed here. The proposed rule builds on and significantly improves the existing environmental inquiry process for property transactions. This is a wise and important approach for many reasons. Because the general concept will be familiar to the service providers (environmental professionals) and the users, the transition to the new rule should be relatively straightforward and result in a minimum of disruption to the marketplace. Also, while the cost of conducting an inquiry according to the proposed AAI rule will likely be a little more than the cost associated with the current process, the cost impacts should be minor and the resulting benefits will be significant.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule. EPA agrees that the cost of complying with the final rule will not be significantly different from the cost of complying with the ASTM E1527-2000 standard.

Commenter Organization Name: Schultz, Michael

Comment Number: 0331

Excerpt Number: 1

Excerpt Text:

The proposed rule builds on and significantly improves the existing environmental inquiry process for property transactions. This is a wise and important approach for many reasons. Because the general concept will be familiar to the service providers ("environmental professionals") and the users, the transition to the new rule should be relatively straightforward and result in minimum disruptions to the marketplace.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule. EPA agrees that the cost of complying with the final rule will not be significantly different from the cost of complying with the ASTM E1527-2000 standard, resulting in minimum disruptions to the marketplace.

Commenter Organization Name: Schultz, Michael

Comment Number: 0331

Excerpt Number: 2

Excerpt Text:

Although the cost of conducting an inquiry according to the proposed AAI rule will likely be slightly more than the cost associated with the current process, the cost impacts should be minor and the resulting benefits will be significant.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule. EPA agrees that the cost of complying with the final rule will not be significantly different from the cost of complying with the ASTM E1527-2000 standard.

Commenter Organization Name: Denton, Robert

Comment Number: 0381

Excerpt Number: 1

Excerpt Text:

-The proposed rule builds on and significantly improves the existing environmental inquiry process for property transactions. This is a wise and important approach for many reasons. Because the general concept will be familiar to the service providers ("environmental professionals") and the users, the transition to the new rule should be relatively straightforward and result in a minimum of disruption to the marketplace.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule. EPA agrees that the cost of complying with the final rule will not be significantly different from the cost of complying with the ASTM E1527-2000 standard, resulting in minimum disruptions to the marketplace.

Commenter Organization Name: Denton, Robert

Comment Number: 0381

Excerpt Number: 2

Excerpt Text:

Also, while the cost of conducting an inquiry according to the proposed AAI rule will likely be a little more than the cost associated with the current process, the cost impacts should be minor and the resulting benefits will be significant.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule. EPA agrees that the cost of complying with the final rule will not be significantly different from the cost of complying with the ASTM E1527-2000 standard.

Commenter Organization Name: Dohms, Peter

Comment Number: 0384

Excerpt Number: 1

Excerpt Text:

The proposed rule builds on and significantly improves the existing environmental inquiry process for property transactions. This is a wise and important approach for many reasons. Because the general concept of AAI will be familiar to the service providers ("environmental professionals") and the users, the transition to the new rule should be relatively straightforward and result in a minimum of disruption to the marketplace.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule. EPA agrees that the cost of complying with the final rule will not be significantly different from the cost of complying with the ASTM E1527-2000 standard, resulting in minimum disruption to the marketplace.

Commenter Organization Name: Dohms, Peter

Comment Number: 0384

Excerpt Number: 2

Excerpt Text:

Also, while the cost of conducting an inquiry according to the proposed AAI rule will likely be a little more than the cost associated with the current process, the cost impacts should be minor and the resulting benefits will be significant.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule. EPA agrees that the cost of complying with the final rule will not be significantly different from the cost of complying with the ASTM E1527-2000 standard.

Commenter Organization Name: Heywood, Johanna

Comment Number: 0387

Excerpt Number: 1

Excerpt Text:

The proposed rule builds on and significantly improves the existing environmental inquiry process for property transactions. This is a wise and important approach for many reasons. Because the general concept will be familiar to the service providers ("environmental professionals") and the users, the transition to the new rule should be relatively straightforward and result in a minimum of disruption to the marketplace.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule. EPA agrees that the cost of complying with the final rule will not be significantly different from the cost of complying with the ASTM E1527-2000 standard, resulting in a minimum disruption to the marketplace.

Commenter Organization Name: Heywood, Johanna

Comment Number: 0387

Excerpt Number: 2

Excerpt Text:

Also, while the cost of conducting an inquiry according to the proposed AAI rule will likely be a little more than the cost associated with the current process, the cost impacts should be minor and the resulting benefits will be significant.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule. EPA agrees that the cost of complying with the final rule will not be significantly different from the cost of complying with the ASTM E1527-2000 standard.

Commenter Organization Name: Templeton, Sharon

Comment Number: 0407

Excerpt Number: 1

Other Sections: NEW - 1.1.1.3 - The proposed rule will improve quality of ESAs

Excerpt Text:

The proposed rule builds on and significantly improves the existing environmental inquiry process for property transactions. While the cost of conducting an inquiry according to the proposed AAI rule will likely be a little more than the cost associated with the current process, the cost impacts should be minor and the resulting benefits will be significant.

Response:

The Environmental Protection Agency thanks the commenter for the stated support for the proposed rule. EPA agrees that the cost of complying with the final rule will not be significantly different from the cost of complying with the ASTM E1527-2000 standard.

1.1.2 General Opposition to the Proposed Rule

Commenter Organization Name: Hullinger, Jeffrey P

Comment Number: 0057

Excerpt Number: 1

Excerpt Text:

I don't think there needs to be such a rule. In the past, ASTM Standard 1597 has served as the de facto standard by which the real estate and environmental communities evaluated whether "adequate environmental' due diligence has been exercised. The objective has been to establish the "innocent landowner defense" under CERCLA. And although ASFE has routinely objected to the ASTM standard (it wishes to elevate the level of effort, qualifications criteria, and consequently price for a typical Phase I assessment), I believe it has generally worked well in defining overall level of environmental risk posed by sites.

What does the new proposed AAI rule really do? It removes the standard from being a guide to proper conduct of an ESA to being a promulgated regulation. Based upon nearly 30 years of environmental engineering, my experience with promulgated regulations is that they are most commonly used by the agencies as bludgeons to punish the "guilty," rather than as constructive tools to support redevelopment. And brown field redevelopment needs to focus far more on providing carrots, far less on wielding sticks. I fear that future developments on brownfields will be thrown into turmoil if and when EPA decides to disqualify a property from future protections in the event the environmental professional has deviated in minor, meaningless ways from this regulation.

In closing, I will say that if there is truly a need for a promulgated regulation on how to conduct All Appropriate Inquiry, the proposed standard is a good one. But there really is no such need, and for that reason I oppose its promulgation.

Response:

CERCLA §§ 101(35)(B)(ii) and (iii), contain congressional direction requiring EPA to promulgate federal standards and practices for the conduct of all appropriate inquiries and also establishes the criteria EPA must include in the final rule. The ASTM E1527 standard was established by Congress as an interim standard, to be replaced by EPA's duly implemented rule. There was no EPA discretion exercised as to whether or not to provide this regulation, rather EPA is following the command of Congress.

The intent of the final rule is to establish clear standards for conducting all appropriate inquiries and thus allow for more certainty with regard to what a prospective property owner must do, prior to purchasing a property, to obtain protection from liability for releases and threatened releases of hazardous substances under CERCLA. The final rule (as did the proposed rule) encourages environmental professionals to use discretion and professional judgment in determining the best sources of information and the best manner in which to obtain information, given the objectives of the regulation and the specific characteristics of the property being assessed. EPA anticipates that this flexible approach

will encourage the efficient use of resources while protecting human health and the environment.

With regard to the use of the ASTM E1527-2000 standard, prior to the development of the proposed rule, EPA determined that the ASTM E1527-2000 standard was inconsistent with applicable law. Since publication of the proposed rule, ASTM International has updated its E1527 Phase I Environmental Site Assessment Process to address the inconsistencies. EPA has determined that the updated standard is compliant with the statute criteria and consistent with the final rule. Therefore, in the final rule, EPA is referencing the standards and practices developed by ASTM International and known as Standard E1527-05 and entitled “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.” Persons conducting all appropriate inquiries may use the procedures included in the ASTM E1527-05 standard to comply with the final rule.

Commenter Organization Name: City of Jacksonville, Florida

Comment Number: 0095

Excerpt Number: 10

Excerpt Text:

The proposed rule could be the death knell for the Brownfields Program. It is overly costly and, with so many things to review, at the end of the day, the developer could still be denied protection from liability because he overlooked some small detail. This regulation does little to encourage Brownfield redevelopment, and provides little comfort for people who want to renew underused property.

Response:

In addressing the cost issue, we note that the Agency’s cost analysis indicates that the cost of complying with the final rule will not be significantly different from the cost of complying with the ASTM E1527-2000. The Agency encourages the commenter to refer to the Economic Impacts Analysis provided in the docket for the proposed rule.

The Agency disagrees with the commenter’s assertion that the all appropriate inquiries requirements published as the proposed rule would discourage redevelopment of brownfields and increase developer liability. As explained in the preamble to the proposed rule, the standards and practices proposed were not significantly different from the generally accepted good commercial and customary standards and practices in use prior to publication of the final rule. In fact, EPA believes that publication of the final rule setting federal standards and practices for the conduct of all appropriate inquiries provides a level of certainty regarding the procedures necessary for the conduct of all appropriate inquiries prior to the purchase of commercial properties, including brownfields, and therefore may have the effect of encouraging the redevelopment of contaminated properties. The Agency also points out that the final rule setting federal standards and practices for the conduct of all appropriate inquiries does not alter the liability provisions established by Congress in CERCLA (as amended by the Small Business Liability Relief and Brownfields Revitalization Act). Today’s final rule merely

establishes standards for conducting all appropriate inquiries, which is only one of the criteria established in CERCLA for obtaining protection from liability.

Commenter Organization Name: Young, Richard

Comment Number: 0243

Excerpt Number: 3

Excerpt Text:

NREP's core argument is that the any environmental regulation in their current formats that isolates other environmental professions unfairly empowers single two professions. This unfair empowerment will lead to environmental injustice, price controls, and degraded economic revival. These issues are the exact things that the United States Environmental Protection Agency (EPA) and various State environmental agencies are chartered to prevent and protect.

Response:

The final rule, as did the proposed rule, allows for individuals who are not licensed professional engineers or licensed professional geologists to qualify as environmental professionals. The final rule does not unfairly empower any particular categories of professionals. Rather, the final rule sets some minimum qualifications, including education and experience requirements, for the individual who is responsible for supervising the all appropriate inquiries activities and signing the written report of findings. EPA believes that by establishing these minimum qualifications for the individual overseeing the all appropriate inquiries activities the final rule establishes a necessary standard for ensuring that high quality investigations are performed and that prospective landowners are aware of the potential environmental conditions of a property prior to acquiring a property. The availability of a quality pre-purchase investigation may provide a prospective landowner with the information necessary to comply with all of the statutory criteria or continuing obligations required to obtain protection from CERCLA liability.

Commenter Organization Name: PIRG

Comment Number: 0258

Excerpt Number: 1

Excerpt Text:

While representatives from U.S. PIRG played an integral role during the rulemaking process, we believe it is important to emphasize that U.S. PIRG dissented from the draft document and withdrew entirely from the rulemaking process. We feel that AAI requirements that are weaker than the 1997 American Society for Testing and Materials (ASTM) standards are unacceptable, as they pose a greater risk to human health and environment quality.

Furthermore, U.S. PIRG is deeply troubled by EPA's unwillingness to publish our reasons for dissension in the appendices of the final AAI draft language. In a letter dated December 19, 2003 U.S. PIRG outlined its reasons for dissent and withdrawal from the rule making process, yet EPA continued to portray U.S. PIRG as a supporter of the final draft document. In a later correspondence, dated February, 17 2004, addressed to

Assistant Administrator Marianne Horinko, U.S. PIRG's Executive Director, Gene Karpinski once again emphasized that our organization does not support the draft regulations.

The public has the right to know if a key stakeholder in the rulemaking process has severe and justified misgivings concerning the finality of the overall group's decision. Tactics designed to mislead or obfuscate a member's final opinion on the draft document, serves no further purpose other than to prevent the public's right to unabridged and unfettered access to all sides of story. Allowing U.S. PIRG to publish its reasons for dissension in the appendices of the AAI draft document would have met the degree of transparency expected in EPA's rulemaking process. We sincerely hope that EPA strives for greater openness and candor in future instances of rulemaking.

Response:

EPA acknowledges that US PIRG withdrew from the negotiated rulemaking process after the process was over. US PIRG initially negotiated with the full committee in good faith and agreed to the consensus regulatory language. The letters from US PIRG and Mr. Karpinski were sent to the Agency after all negotiations were finished and agreed to by all members of the negotiated rulemaking committee, including US PIRG.

EPA notes that in the preamble to the proposed rule, EPA acknowledged that US PIRG had changed its position with regard to the agreed upon consensus. In addition, EPA noted that US PIRG's letters to EPA were available in the rulemaking docket. EPA did nothing to "mislead or obfuscate" any member of the negotiated rulemaking committee's position. EPA disclosed US PIRG's change in position and provided public access to the letters that US PIRG provided to EPA.

Commenter Organization Name: Rose and Westra

Comment Number: 0320

Excerpt Number: 22

Other Sections: NEW - 6.1 - EPA should adopt ASTM standard rather than develop separate regulations

Excerpt Text:

In summary, R&W believes that the NRA/FACA process has created redundant, expensive, and unworkable Proposed Rules. The EIA ignores increased requirements of the Proposed Rules and their associated costs. Therefore, R&W requests that the EPA withdraw the Proposed Rules and continue its historical cooperation with ASTM to tweak the E 1527-00 Standard Practice, if necessary, to comply with the legislative requirements.

Response:

Please see response to comment number 0057, excerpt 1.

Commenter Organization Name: Anonymous

Comment Number: 0322

Excerpt Number: 1

Excerpt Text:

I am opposed to the proposed rule, as it is currently written. I think that those who have a four year degree with five years of relevant experience should qualify as an environmental professional. Also, I think that there should be a provision for those currently working in the field who may be near the ten year experience requirement to become qualified. The proposed rule states that those who have ten years of experience on the effective date of the rule would be qualified. This does not address those who have several years of experience who would reach the ten year benchmark in the future.

Response:

Based upon input provided in public comments, EPA amended the proposed definition of an environmental professional to allow for individuals with a bachelor's degree in science or engineering and five years of full time relevant experience to qualify as an environmental professional. In addition, the definition of environmental professional in the final rule does not include the proposed grandfather clause, but allows for individuals with 10 or more years of full time relevant experience to qualify as an environmental professional, even if they do not have a college degree.

Commenter Organization Name: Greenlining Institute

Comment Number: 0354

Excerpt Number: 3

Excerpt Text:

Because we present a perspective that was not adequately represented on the rulemaking committee, and our members will be harmed if the rule goes into effect as proposed, we appreciate the opportunity to present these comments and thank you in advance for considering our views in reaching your ultimate decision [Footnote: Some of our members will be prevented from carrying out development projects, and will incur the increased costs of the rule and exposure to liability where development goes forward. Community members, who are members of Greenlining, will be harmed by the chilling effect on development and concomitant lack of services and continued blight in their neighborhoods].

And, to end where we began, the point of the new rule was to provide certain and clear liability relief to prospective developers of idle or abandoned property. The rule does exactly the opposite, exposing would-be developers to virtually open-ended liability. It simply will not be worth the risk to develop brownfields in our communities. Developers will look to the suburban edge, where there has been no industrial activity and there is no risk of contamination, exacerbating sprawl and hobbling investment in communities that need it most. We think EPA should consider the environmental impacts of increased sprawl that will be caused by the new rule.

Response:

EPA appreciates your concern regarding the representation of differing perspectives on the Negotiated Rulemaking Committee. In 1982, the Administrative Conference of the United States established criteria and recommendations for using the negotiated rulemaking process that in 1990 was established in the Negotiated Rulemaking Act (Recommendation 82-4, 1 CFR §305.82-4 and Recommendation 85-5, 1 CFR §305.85-5). Among other things, the Administrative Conference recommended that reasonable efforts be made to secure a balanced group of interests on a negotiated rulemaking committee. To this end EPA went to substantial lengths, including hiring an independent convener to identify interested stakeholders and who interviewed over 60 individuals representing potential stakeholders, to ensure that differing stakeholders were afforded an opportunity to participate meaningfully. The Negotiated Rulemaking Committee for the all appropriate inquiries rule was assembled to effectuate the diverse perspectives of stakeholders, or those parties having an interest in or who potentially would be affected by the rulemaking. After EPA went to considerable lengths to identify the spectrum of stakeholders, the Agency published a “Notice of Intent to Negotiate” in the Federal Register on March 6, 2003 (68 FR 10675) which identified the Agency’s preliminary list of interests and requested public comment on that list of potential interests or stakeholder groups to include in the negotiated rulemaking process. Following publication of this notice, EPA held a public meeting to discuss its intent to negotiate the proposed rule and to provide interested parties with another opportunity to comment on the Agency’s preliminary list of committee members. Following the public comment period, and based upon input received in the public comments, EPA added additional stakeholder members to its additional list of potential members and initiated the negotiated rulemaking process.

Once the Negotiated Rulemaking Committee on All Appropriate Inquiries was established, the Committee conducted all of its business publicly and affording members of the general public ample opportunity to participate in that regard. EPA published notices announcing the date of each Committee meeting in the Federal Register and accepted written public comment on the Committee’s negotiations throughout the Committee’s negotiations. In addition, the Committee reserved time during every day of the Committee’s negotiations for members of the general public to address the Committee. The Agency made every effort to be inclusive in this transparent negotiated rulemaking process. For further information concerning this process please see the preamble to the proposed All Appropriate Inquiries rule published in the Federal Register (40 CFR Part 312).

The Agency disagrees with the commenter’s assertion that the all appropriate inquiries requirements published as the proposed rule would discourage redevelopment of brownfields and increase developer liability. As explained in the preamble to the proposed rule, the standards and practices proposed were not significantly different from the generally accepted good commercial and customary standards and practices in use prior to publication on the final rule. In fact, EPA believes that publication of the final rule setting federal standards and practices for the conduct of all appropriate inquiries provides a level of certainty regarding the procedures necessary for the conduct of all appropriate inquiries prior to the purchase of commercial properties, including brownfields, and therefore may have the effect of encouraging the redevelopment of

contaminated properties. The Agency also points out that the final rule setting federal standards and practices for the conduct of all appropriate inquiries does not alter the liability provisions established by Congress in CERCLA (as amended by the Small Business Liability Relief and Brownfields Revitalization Act). Today's final rule merely establishes standards for conducting all appropriate inquiries, which is only one criterion established in CERCLA for obtaining protection from liability.

Commenter Organization Name: EAA

Comment Number: 0366

Excerpt Number: 1

Excerpt Text:

After a diligent review of the proposed AAI standard at the recent Las Vegas annual meeting, it is the general and very strong consensus of the members that the proposed rule lacks sufficient fairness to the industry, lack of complete study of the user market, and consideration of legal and regulatory issues with regard to other industries.

Response:

It is EPA's position that every effort was taken to create a fair rule that both increases certainty for the purposes of spurring redevelopment and is protective of human health and the environment. The Agency went to great lengths to produce a rule that is comprehensive and well thought out. To this end, a negotiated rulemaking approach was undertaken and professionals in the industries affected were consulted and unanimously supported the proposed rule.

1.1.2.1 Opposition to the Performance Standard

Commenter Organization Name: City of Jacksonville, Florida

Comment Number: 0095

Excerpt Number: 1

Excerpt Text:

Fundamental difficulties with the proposed regulation are that EPA provides not "bright line test" for how much inquiry is appropriate. As a result there is no reasonable assurance that the inquirer will get any liability relief even though he has done what to a reasonable person would appear to be an exhaustive search. Also, the regulation relies on vague terms: after conducting "appropriate inquiries" a person seeking to be treated as a "bona fide prospective purchaser" must "exercise [] appropriate care...by taking reasonable steps" to prevent releases of and limit exposures to hazardous substances. By simply parroting the obscure language of the Brownfields Amendment, EPA does nothing to clarify for the public how, with confidence, it can comply and get the benefits Congress allows.

Response:

The final does provide a finite list of activities that must be conducted to meet the requirements for "all appropriate inquiries," or the pre-purchase due diligence that a prospective landowner must undertake to ensure compliance with the statutory criteria for all appropriate inquiries. However, the final rule is structured around a set of objectives and performances standards and does not provide a "bright line test" for how extensively the inquiries must be conducted because the extent of investigation that needs to be conducted at any given property may vary depending upon the past uses and ownerships of the property.

By establishing clear objectives and setting parameters to the investigation through a set of performance factors that include gathering information that is publicly available (or otherwise obtainable), obtainable from its source within reasonable time and cost constraints, and which can practicably be reviewed, the approach taken in the final rule provides reasonable goals and endpoints to the information collection requirements. The proposed objectives provide a discrete list of the types of information that must be collected as part of the all appropriate inquiries investigation. In addition, the performance factors set boundaries around the efforts that must be taken and the cost burdens that must be incurred to obtain the required information. The fact that the rule is framed within a primary objective, to "identify conditions indicative of releases and threatened releases of hazardous substances," actually reduces the open-ended nature of the investigation and establishes an overall goal for the inquiries.

The commenter may have misunderstood the statutory requirements that must be met to obtain a defense to CERCLA liability and may be incorrectly assuming that the completion of the all appropriate inquiries investigation is all that is required to obtain liability protection under CERCLA. The conduct of all appropriate inquiries is only one requirement for obtaining relief from CERCLA liability. Prospective landowners must

conduct all appropriate inquiries prior to acquiring a property to qualify for a defense to CERCLA liability as an innocent landowner, bona fide prospective purchaser or contiguous landowner. However, once a property is acquired, the property owner must comply with all of the other statutory criteria necessary to qualify for the liability protections. In particular, landowners must undertake “reasonable steps” to “stop any continuing releases.” Therefore, the final rule’s objective of identifying conditions indicative of releases and threatened releases of hazardous substances on, at, in, or to a property to links appropriately with the statutory criteria requiring the landowner to address such releases to qualify for the liability protections.

EPA notes that the regulations established today only address the all appropriate inquiries provisions of CERCLA Sections 101(35)(B)(i)(I) and 101(35)(B)(ii) and (iii). Today’s rule does not address the requirements of CERCLA Section 101(35)(B)(i)(II) for what constitutes “reasonable steps.”

Commenter Organization Name: Rose and Westra

Comment Number: 0320

Excerpt Number: 2

Excerpt Text:

The E 1527-0 process states specific performance requirements while allowing the Environmental Professional (EP) sufficient leeway to use professional judgement. The Proposed Rules set vague performance standards without providing sufficient guidance for the EP. This will create chaos in the Phase I ESA/AAI marketplace.

Response:

The final rule is very similar to the ASTM E1527-2000 Phase I Environmental Site Assessment Process. The final rule establishes clear objectives and sets parameters to the investigation through a set of performance factors that include gathering information that is publicly available (or otherwise obtainable), obtainable from its source within reasonable time and cost constraints, and which can practicably be reviewed, the approach taken in the final rule provides reasonable goals and endpoints to the information collection requirements. The proposed objectives provide a discrete list of the types of information that must be collected as part of the all appropriate inquiries investigation. In addition, the performance factors set boundaries around the efforts that must be taken and the cost burdens that must be incurred to obtain the required information. The final rule is framed within a primary objective, to “identify conditions indicative of releases and threatened releases of hazardous substances.” Given that the final rule is very similar to the ASTM E1527-2000 standard, EPA disagrees with the commenter’s assertion that the rule will create chaos in the market place.

With regard to the use of the ASTM E1527-2000 standard, prior to the development of the proposed rule, EPA determined that the ASTM E1527-2000 standard was inconsistent with applicable law. Since publication of the proposed rule, ASTM International has updated its E1527 Phase I Environmental Site Assessment Process to address the inconsistencies. EPA has determined that the updated standard is compliant with the

statute criteria and consistent with the final rule. Therefore, in the final rule, EPA is referencing the standards and practices developed by ASTM International and known as Standard E1527-05 and entitled “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.” Persons conducting all appropriate inquiries may use the procedures included in the ASTM E1527-05 standard to comply with the final rule.

Commenter Organization Name: Congressmen Dingell, Boxer, et al

Comment Number: 0332

Excerpt Number: 7

Excerpt Text:

We are also concerned about the vague performance standards relied on in the rule that are no substitute for the specific criteria and benchmarks that were crafted in the statute to ensure clear and consistent requirements. Significant changes must be made for this rule to meet the minimum standards required in the Brownfields law.

Response:

Please see response to comment number 0095, excerpt 1.

Commenter Organization Name: FAA

Comment Number: 0334

Excerpt Number: 4

Excerpt Text:

EPA ASSURANCE OF APPROPRIATE AAI

1) The proposed AAI regulations require a report describing AAI conducted and requires the EP to sign the report. If EPA is going to require a tougher standard to demonstrate that AAI have been conducted, then FAA, as the purchaser of many properties, would like a greater degree of EPA concurrence that the investigations carried out were appropriate.

Response:

The Small Business Liability Relief and Brownfields Revitalization Act requires EPA to promulgate federal standards and practices for the conduct of all appropriate inquiries. The statute requires that the rule include an inquiry conducted by an environmental professional. EPA does not believe that requiring an environmental professional to sign the written report of the inquiries represents “a tougher standard,” than the current ASTM E1527 Phase I Environmental Site Assessment Process. Determining if a party has adequately carried out the inquiries is for a court to decide and is outside of EPA’s purview.

Commenter Organization Name: CBPA

Comment Number: 0344

Excerpt Number: 9

Excerpt Text:

The basic approach to current Phase I site assessment (ASTM E1 527) is that of a procedural checklist. A specified list of records must be reviewed, and specified inspections and interviews conducted. Once these procedures are completed, the prospective purchaser is protected from liability for hidden pollution not discovered at the time of purchase but that may later come to light. ASTM E1 527 requires review of a long list of sources, but there is also an end to the inquiry-you know when you are done and there is reasonable protection from courtroom second guessing so long as the checklist is followed and the results properly memorialized.

The proposed new rule, on the other hand, adopts open-ended, catch-all liability provisions. Under the new rule it will be difficult to know how much inquiry is adequate and it may be impossible to achieve liability protection for contamination that is not discovered during the pre-purchase Phase I, no matter how diligently the Phase I was conducted.

Response:

The proposed rule in no way alters the liability scheme established by Congress in the CERCLA legislation. EPA recognizes that complying with the final rule alone brings no liability relief. Only when actors undertake all appropriate inquiries before purchasing property AND comply with all of the additional continuing obligations Congress has set out will they be eligible for liability relief. It is with this knowledge that EPA has attempted to specify steps that, if followed, constitute all appropriate inquiries. However, it should be noted that compliance with the final rule does not provide liability relief unless the continuing obligations established by Congress in the Small Business Liability Relief and Brownfields Revitalization Act also are met. The Agency believes this view accurately reflects the intent of Congress. The commenter's assertion that "under the new rule it will be difficult to know how much inquiry is adequate and it may be impossible to achieve liability protection..." is inaccurate. Congress established within the legislation what constitutes protection from CERCLA liability. All appropriate inquiries is merely one criteria established by Congress for obtaining certain protections from liability.

See also the response to comment number 0095, excerpt 1.

Commenter Organization Name: Greenlining Institute

Comment Number: 0354

Excerpt Number: 5

Excerpt Text:

-A. EPA Improperly Rejected the Clear and Definite Industry Standard Checklist Approach of ASTM E1527 and Adopted a New "Performance Based" Approach with Vague and Broadly Worded Objectives and Performance Factors Inconsistent with Congressional Intent

The current industry standard for conducting AAI is ASTM E1527. ASTM E1527's basic

approach to site assessment is that of a procedural checklist. A specified list of records must be reviewed, and specified inspections and interviews conducted. Once these procedures are completed, the prospective purchaser is protected from liability for hidden pollution not discovered at the time of purchase but that may later come to light. ASTM E1527 requires review of a long list of sources, but there is also an end to the inquiry—you know when you are done. Although some judgment calls on the part of the environmental professional conducting the inquiry are inherent in the process, there is reasonable protection from courtroom second guessing so long as the checklist is followed and the results properly memorialized.

The committee has abandoned the checklist approach in favor of what it has described in public meetings as the "performance based" approach of the proposed rule. Although the words "performance based" have a ring of reasonableness about them, they cloak an attempt to saddle developers who wish to put brownfields back into productive use with unreasonable liability exposure. The performance based approach is embodied in the "objectives," "performance factors," and "data gaps," sections of the proposed rule. These sections are so broadly worded that they may reasonably be construed as requiring prospective purchasers to prove a negative: that there is no undisclosed contamination present on the subject site. At best, they are vague and leave the courtroom door wide open to second guessing should contamination not discovered by the AAI subsequently come to light p[Footnote: Negotiated rulemaking committee members were aware that the "checklist approach" represents industry standard and that they were abandoning it in favor of a new "performance based approach" that would require proving a negative, i.e., that there are no indications of contamination, or, as one committee member understood it, "leaving no rock unturned" until it is proved that "the property is indeed clean." In a series of memos documenting the committee's work, one participant noted the following: "Existing methodologies, such as ASTM Phase I, provide reliable checklists for collecting information on property ownership and use, the presence and release of hazardous substances, and past efforts to address such releases. But they aren't as helpful if information sources are incomplete or the goal is to show that the property is indeed 'clean'." Lenny Siegel, Center for Public Environmental Oversight, All Appropriate Inquiry Committee Update, July 1, 2003, available at <http://www.cpeo.org/lists/brownfields> ("Committee Update"). "[T]hose who emphasize the need to leave no rock unturned in the search for contamination are glad that the environmental professional conducting the inquiry will be required to keep looking until those answers are found." Committee Update, September 12, 2003.].

Proposed § 312.20(d) "Objectives" requires that purchasers "seek to identify" a list of conditions indicative of contamination. Standards and Practices for All Appropriate Inquiries, 69 Fed. Reg. 52542, 52577 (proposed August 26, 2004) (to be codified at 40 C.F.R. pt 312). Proposed § 312.20(e) "Performance factors" in turn requires that purchasers must seek to gather information that will meet the objectives set out in section d, and must "evaluate the thoroughness and reliability of the information" gathered. If there is "a lack of or inability to obtain information required," 65 Fed. Reg. at 52576, to meet the objectives then the environmental professional must "comment upon the significance of such data gaps with regard to the ability to identify conditions indicative

of releases or threatened releases of hazardous substances." Proposed § 312.20 (f), 69 Fed. Reg. at 52578. Further, if there are data gaps "such that the environmental professional cannot reach an opinion regarding the identification of conditions indicative of releases and threatened releases, such data gaps must be noted in the environmental professional's opinion." Proposed § 312.21, 65 Fed. Reg. at 52578.

Taken together, the practical result of these provisions is to give the environmental professional a Hobson's choice: he must either say that he has enough information to conclude that all conditions indicative of contamination have been identified (i.e., in the environmental professional's opinion a negative has been proven: there is no undiscovered indication of contamination) or must state that there are "data gaps" that prevent reaching a definitive conclusion. The committee intentionally left ambiguous the status of "data gap qualified" reports in order to reach final agreement [Footnote: Mr. Siegel's running commentary reveals that "This issue emerged as a potential dealbreaker when one environmental group participant indicated plans to dissent unless the rule included language disqualifying a party from liability relief if the environmental professional found that he/she had insufficient data to determine whether an environmental release might have occurred. At the last minute, this difference was overcome by the insertion, into the draft rule, of language saying (this might not be the final wording), 'If there are data gaps such that the environmental professional cannot reach an opinion regarding the identification of conditions indicative of releases and threatened releases, such data gaps must be noted in the report.'" Committee Update, November 14, 2003. The language cited by Mr. Siegel was incorporated verbatim into the proposed rule. However, it leaves unanswered the question of whether data gap qualified reports do or don't provide liability protection.]. EPA concluded that "data gap qualified" reports should provide definitive liability protection but bowed to the wishes of committee members and agreed to vague consensus language in order to reach unanimous agreement [Footnote: "EPA and several of the other committee members argued that the Inquiry still may be complete, even if there are major data gaps." Committee Update, November 14, 2003.]. It is one thing to strike "a balance of certainty for prospective purchasers, developers and others while ensuring protection of public health" by making balanced policy determinations and embodying them in clearly worded regulations. S. Rep. 102-2 at 4. It is quite another to adopt intentionally vague regulations that leave policy disputes unresolved and leave it to the parties to fight it out in court another day.

In the real world, although pre-purchase site assessments are an invaluable tool, no matter how thorough a phase one (or even phase two, for that matter) it is possible that sources of contamination on the subject property will remain undiscovered. Even if the site investigation identifies contamination, it may not identify all of it. It is common to discover additional materials not disclosed in the best site investigation reports once excavation for a construction project begins. Environmental professionals know this and are unlikely to go out on a liability limb by stating that their report has disclosed all indications of contamination. The result will be highly "data gap qualified" reports that make liability protection uncertain at best.

This is not what Congress intended. There is no indication that Congress intended a shift to a "performance based" approach. There is no indication that Congress intended to hold developers liable for finding all contamination that might be present. Indeed, such a requirement would defeat the entire purpose of the legislation. The negotiated rulemaking committee created these previously unknown catch-all liability provisions from whole cloth. We suggest that the "performance based" approach is unworkable in the context of Congressional directive to "clarify the obligations of any party who seeks to use the [innocent purchaser] defense," S. Rep. 102-2 at 13, and to "provide protection to persons who wish to purchase contaminated property." Id. at 11.

Response:

The language used by Congress in describing the action to be taken under this rule is "all appropriate inquiries." Because each property for which AAI is undertaken is unique, "appropriate" inquiries for one property may not be "appropriate" for another. This uniqueness requires differing approaches. Therefore, the final rule has been promulgated in a manner that allows the flexibility needed to engage in all appropriate inquiries for any property. The purpose behind establishing a performance standard for the conduct of all appropriate inquiries is to allow for a comprehensive assessment of available information about the potential environmental conditions at a property, while avoiding duplicative requirements. Sections 312.20(d) and (e) of the final rule set forth objectives for the all appropriate inquiries and performance factors for obtaining the information established within the objectives. As explained in the preamble to the proposed rule, the advantage of a performance-based approach over a checklist approach to conducting the inquiries is that multiple sources of information need not be consulted for the same information.

The final rule (as did the proposed rule) encourages environmental professionals to use discretion and professional judgment in determining the best sources of information and the best manner in which to obtain information, given the objectives of the regulations and the specific characteristics of the property being assessed. EPA anticipates that this flexible approach will prevent a waste of resources in the case of properties that may not require as rigorous of an investigation due to available information about a property or particular knowledge about a property that may not be available in the case of other properties, while at the same time maintaining adequate standards to ensure environmental protection in the case of all properties. Inherent in this approach is less specificity than otherwise could be developed. However, the types of information that must be collected as part of the all appropriate inquiries and as listed in §312.20(d) of the final rule, are essentially the same types of information included in the "checklist" referred to by the commenter. EPA believes that good faith compliance with the standards set forth in final rule will provide the same level of knowledge and information about a property as was previously available under the interim standard established by Congress.

Commenter Organization Name: NPCA

Comment Number: 0403

Excerpt Number: 2

Excerpt Text:

Fundamental difficulties with the Proposed Rule's AAI content and performance requirements exist. As outlined in more detail below, the content requirements are extremely burdensome and costly and the performance requirements are in some cases infeasible. Furthermore, even undertaken in good faith to the best of one's ability, fulfilling the AAI standards does not guarantee the supposed benefits of the rule. In short, there is no conclusive test to determine how much inquiry and post acquisition action is appropriate. Consequently, there is no reasonable assurance that the inquirer/purchaser will get any liability relief even after exercising what as drafted will be an exhaustive and costly analysis. Because the standards and practices for AAIs under the Proposed Rule will increase the cost and burden of Phase I ESAs, without providing an equitable guarantee that the purchaser will in fact get liability protection, the Proposed Rule actually discourages development of brownfield properties.

Response:

Please see responses to comment numbers 0344 (excerpt 9) and 0354 (excerpt 3).

Commenter Organization Name: NPCA

Comment Number: 0403

Excerpt Number: 10

Excerpt Text:

What are reasonable efforts? What about "No Further Action" determinations? As discussed below, the Proposed Rule's performance requirements also leave a potential purchaser with little to no clarification on how and when the liability protection proffered by the new standards will actually be afforded.

Response:

Please see response to comment number 0354 (excerpt 5).

Commenter Organization Name: NPCA

Comment Number: 0403

Excerpt Number: 11

Excerpt Text:

As stated above, even if the content requirements under the Proposed Rule's AAI standards are met, purchasers have continuing obligations, which can lead to the loss of liability protection. As drafted, a lack of information or an inability to obtain information, including the information outlined above, for identified and unidentified data gaps under the Proposed Rule, will threaten a potential owner's ability to claim liability protection under the new standard. CERCLA mandates post-acquisition obligations, including requirements to take reasonable steps to stop or prevent releases and threatened releases. Consequently, if a potential owner does not identify a release or threatened release, even though they fulfilled the requirements of AAIs, they will not be entitled to liability protection should that release or threatened release materialize after acquisition.

Similarly, if an existing institutional control was not identified during AAI, a landowner would not be exempt from complying with the control after acquisition and failure to do so would bar a claim for liability protection. In addition, because of the requirement to identify controls on and within one-half mile of the subject property, even if a control is identified, under the continuing performance requirements, what recourse does the subject property owner have in assuring that controls on other properties are in conformance? If an owner identifies a release or a potential release on an adjacent property, do they have the continuing obligation to stop or prevent it from coming on to the subject property? It would appear then, that despite best efforts and compliance with, as drafted, extremely burdensome and costly AAI standards, the primary goal of this effort - liability protection under CERCLA - would still not be realized in many cases. Thus, the protection envisioned by the Act and the incentive for redevelopment of unused and abandoned property will not be realized.

Response:

The final rule does not include a requirement to search for institutional controls within ½ mile from the subject property. However, the requirement to search for institutional controls affecting the property in question is retained. Further, the final rule establishes standards for one requirement established under CERCLA for obtaining protection from CERCLA liability. The need for a property owner to comply with the continuing obligations set forth in CERCLA do not result from a discretionary decision by the EPA, rather they exist because of Congressional mandate. The continuing obligations do not include stopping releases from adjoining or nearby properties. However, if such releases are discovered, it may be prudent to report them.

Commenter Organization Name: CCLR

Comment Number: 0415

Excerpt Number: 1

Excerpt Text:

Our conclusion, and the conclusion of all we have consulted, is that the proposed rule takes a big step backwards in providing clarity and certainty for the brownfield redeveloper. The obligations of prospective purchasers seeking CERCLA liability protection are significantly less clear under the proposed rule. The proposed rule appears to make it much more difficult to determine what must be done in the conduct of a pre-purchaser inquiry in order to achieve liability protection. We also note that the cost of implementing the new rule will be significantly greater than the \$47 estimate provided by the Economic Impacts Analysis (EIA).

CCLR has carefully reviewed the familiar ASTM E1527-00 standard with an eye to the requirements of the Brownfields Amendments. It is our position that ASTM E1527-00 actually meets the criteria required by the Brownfield Amendments. While adopting the proposed "performance based" approach to site assessment would likely result in a reduction of brownfield conversion, we urge EPA to adopt the well understood and time proven checklist approach of ASTM E1527-00 as the standard for all appropriate inquiry, an approach that will meet the Congressional goal of simplification, clarity, and increased

brownfield reuse.

Response:

Please see Responses to comment numbers 0320 (excerpt 2) and 0354 (excerpt 5).

Commenter Organization Name: CCLR

Comment Number: 0415

Excerpt Number: 2

Excerpt Text:

The proposed rule abandons the generally accepted practice of ASTM E1527-00, and instead adopts an open-ended and expanded scope of inquiry that diminishes the certainty of liability protection.

ASTM E1527's basic approach to site assessment is that of a procedural checklist. A specified list of records must be reviewed, and specified inspections and interviews conducted. Once these procedures are completed, the prospective purchaser is protected from liability for hidden pollution not discovered at the time of purchase but that may later come to light. ASTM E1527 requires review of a long list of sources, but there is also a definite and readily identifiable end to the inquiry. Although some judgment calls on the part of the environmental professional conducting the inquiry are inherent in the process, there is reasonable protection from courtroom second guessing so long as the checklist is followed and the results properly memorialized.

In this proposed rule, the checklist approach has been eliminated and shifted to a "performance based" approach. The performance based approach is instituted by the "objectives," "performance factors," and "data gaps," sections of the proposed rule. These sections may be construed to require prospective purchasers to prove a negative: that there is no undisclosed contamination present on the subject site. It is our opinion that these requirements introduce a high level of ambiguity, and with this lack of clarity, leave brownfield redevelopers exposed to CERCLA litigation.

Response:

Please see response to comment number 0057, excerpt 1.

Commenter Organization Name: CCLR

Comment Number: 0415

Excerpt Number: 3

Excerpt Text:

The status of "data gap qualified" reports is ambiguous. Liability protection is not clearly articulated here.

No matter how thorough a phase I (or even phase II, for that matter) it is possible that sources of contamination on the subject property will remain undiscovered. Even if the site investigation identifies contamination, it may not identify all of it. Additional

contamination not disclosed in the best site investigation reports are often unearthed once excavation for a construction project begins. Environmental professionals know this and are unlikely to go out on a liability limb by stating that their report has disclosed all indications of contamination. The result will be highly "data gap qualified" reports. This would make liability protection uncertain at best, even where sampling and analysis is conducted.

This all represents a sweeping increase in the scope of work required by a phase I site investigation and without language that provides a guarantee, a commensurate decrease in the potential for liability protection. This is not the "balance of certainty for prospective purchasers, developers and others" intended by Congress. S. Rep. 107-2 at 4. This rule does not appear to reduce the likelihood of CERCLA liability risk. Congress did not intend to hold brownfield redevelopers liable for finding all contamination that might be present. If the proposed changes are implemented, such a requirement would defeat the intended purpose of the legislation. We suggest that the novel "performance based" approach is antithetical to the intent, in the context of Congressional directive to "clarify the obligations of any party who seeks to use the [innocent purchaser] defense," S. Rep. 102-2 at 13, and to "provide protection to persons who wish to purchase contaminated property." Id. at 11.

Response:

Please see response to comment number 0057, excerpt 1.

Commenter Organization Name: Small, Arthur

Comment Number: 0424

Excerpt Number: 1

Excerpt Text:

My comments focus on the open-ended nature of the proposed AAI standards. I believe that the open-ended nature of the new standard may create negative consequences both for economic development and for public health.

Response:

Please see response to comment number 0057, excerpt 1.

Commenter Organization Name: Small, Arthur

Comment Number: 0424

Excerpt Number: 3

Excerpt Text:

Potential effects of the open-ended search requirements on public health.

Do the open-ended search requirements nonetheless create important benefits for public health? Might these benefits be large enough to outweigh the costs?

There is reason to be skeptical. If the open-ended rules inhibit transactions and development, they will inhibit the subsequent development of the real estate. The process

of development - the sending in of bulldozers and backhoes - will often itself provide the best opportunity to discover contamination. By discouraging development, the rules simultaneously discourage the information discovery that development brings. Contamination problems that might have been discovered will then instead fester. On-going threats to public health may then continue undetected, untreated.

In sum: The open-ended search requirements look, in economic terms, like a bad idea. They do not appear justified, either on economic or health grounds. I urge you to drop these, and replace them with closed-ended, specifically enumerated requirements.

Response:

Please see response to comment number 0057, excerpt 1.

In addressing the cost issue, we note that the Agency's cost analysis indicates that the cost of complying with the final rule will not be significantly different from the cost of complying with the ASTM E1527-2000 standard. We encourage you to refer to the economic impacts analysis included in the docket for the proposed rule.

Commenter Organization Name: Anonymous

Comment Number: 0427

Excerpt Number: 3

Excerpt Text:

It seems to me that the agency is opening a Pandora's box of possible information that is simply going to confuse the industry, make property inquiry's so expensive that Banks and Lenders will simply forego the process and assume or insure the risk, which will increase the damage done to the environment _ with after the fact research, instead of catching problems before they occur.

I don't like the All Appropriate Inquiries proposal as I've seen so far.

Response:

Please see response to comment number 0057, excerpt 1.

In addressing the cost issue, we note that the Agency's cost analysis indicates that the cost of complying with the final rule will not be significantly different from the cost of complying with the ASTM E1527-2000 standard. We encourage you to refer to the economic impacts analysis included in the docket for the proposed rule.

Commenter Organization Name: Dannatt, Georgina

Comment Number: PM-0359-0004

Excerpt Number: 1

Excerpt Text:

One thing that is often lacking is common sense. Unfortunately, I do not believe the performance-based standards approach will remedy many of the current problems. In some cases, it may be necessary for the proposed rule to be prescriptive, rather than

leaving it up to the judgement of the provider.

Frequently, the consultant meets only the minimum requirements due to time and pricing pressures, failing to answer some of the obvious questions. There is too much focus on what the current site is, and past uses may be completely overlooked. Additionally, there is no proper investigation of current uses, such as the basic regulatory compliance status. When data failure is encountered, no effort is made to obtain data from an alternate source.

Response:

Please see response to comment number 0057, excerpt 1.

1.1.2.2 The Proposed Rule Is Not Protective of Human Health and Environment

Commenter Organization Name: PIRG

Comment Number: 0258

Excerpt Number: 2

Excerpt Text:

I. Historical Context for Objections and Withdrawal

After years of debate, analysis, and deliberation, Congress passed H.R. 2869, the Small Business Liability Relief and Brownfields Revitalization Act in 2001 ("Brownfields Law"). While U.S. PIRG neither supported nor opposed enactment of the Brownfields law, we consistently worked with members of Congress and the Administration to maintain protections for public health and environmental quality under the law. The minimally adequate criteria for AAI were a central topic during these negotiations.

U.S. PIRG's position -then, as now-is that the criteria of the Brownfields Law and the "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, E 1527-97" (97 ASTM standards) provide the minimum level of protection for AAI. Congress also determined in Section 223 of the Brownfields Law that the 97 ASTM standards should be utilized to satisfy the AAI requirement for properties purchased after May 1997, until the new regulations are promulgated. AAI requirements that are weaker than the 97 ASTM standards increase the potential that people and the environment will continue to be exposed to unsafe levels of contamination without notice of such dangers.

Without such notice, contamination can spread-endangering the community and driving up clean up costs. Weaker standards can also allow sellers of contaminated property to profit without consideration of the condition of the property. In addition, holding sellers responsible for contaminated property may become more difficult after transfer because profits may be put out of reach after the sale. Finally, purchasers may be unaware that they do not have the resources to manage the contaminated property, if they do not have adequate notice of the property's condition.

Response:

The Agency disagrees with the commenter's notion that the All Appropriate Inquiries rule is less stringent than the ASTM guidance. We believe that the final rule is more comprehensive in protecting human health and the environment because it is based upon clear objectives and establishes a performance-based approach to conducting all appropriate inquiries. The advantage of this approach is that a party cannot simply perform each action independently and gain liability protection; rather they must complete the investigation in good faith, in compliance with clear objectives, and by using the performance standards as guidelines. In addition, the final rule establishes a far more stringent definition of environmental professional and requires that an individual meeting this definition oversee the conduct of all activities and review and sign the written report of findings.

EPA notes that the statute does not provide liability protection for sellers of contaminated property, or any party that is a potentially responsible party.

Commenter Organization Name: PIRG

Comment Number: 0258

Excerpt Number: 7

Excerpt Text:

It is for the aforementioned reasons that U.S. PIRG withdrew from the negotiated rule making and opposes the AAI final language. It is of great concern to our organization that public health and environmental quality have been sacrificed for substandard regulations that will likely do more harm than good.

Response:

EPA notes that the commenter did participate in the Negotiated Rulemaking Process, did agree to the consensus regulatory standards developed by the Negotiated Rulemaking Committee, and then several weeks following its agreement to the consensus notified EPA by mail that the organization wished to withdraw from its agreement.

Commenter Organization Name: Congressmen Dingell, Boxer, et al

Comment Number: 0332

Excerpt Number: 2

Excerpt Text:

A weak standard for the environmental inquiry provided in the AAI rule in connection with the sale or transfer of property will result in more contaminated sites going undiscovered, allowing the contamination to go unaddressed and allowing a continuing threat to public health and the environment. Sellers of contaminated property may take excess profits from the sale of the property and put those profits out of reach before the need for cleanup is known. Taxpayers are then more likely to bear the cost of cleanup.

In addition, purchasers may find after acquiring a property that it is contaminated and not suitable for the planned redevelopment. Moreover, purchasers who would otherwise be required to take reasonable steps to mitigate the environmental harm on the property to obtain a liability exemption may argue that it is not reasonable to expect such steps when the contamination is not known and the AAI standard has nevertheless been met.

Response:

Sellers of contaminated property and other potentially responsible parties are not provided with protection from CERCLA liability. The final rule provides absolutely no protection for any party who is potentially responsible for releases or threatened releases of hazardous substances. Further, purchasers also must take reasonable steps when contamination is found. The fact that a property owner missed a release during all appropriate inquiries does not provide them with immunity from complying with all the other "continuing obligations" once a release is discovered. In addition, an inadequately

performed all appropriate inquiries investigation will not be sufficient defense to violating the continuing obligations.

Commenter Organization Name: NPCA

Comment Number: 0403

Excerpt Number: 17

Excerpt Text:

NPCA strongly recommends EPA review and revise the AAIs content in order to more appropriately commensurate the cost and burdens associated with the standards to the environmental benefit and actual liability protection afforded potential property owners,

Response:

The Agency believes that the balance between protecting human health and the environment and promoting development by keeping costs reasonable has been found. The final rule has incorporated several suggestions made by commenters and has better effectuated this balance. For example, the definition of environmental professional has been broadened to allow qualified individuals who would have otherwise been shut out of the profession to participate in AAI investigations. Also, the requirement to search for institutional controls on neighboring properties has been removed as the Agency views this as an unnecessary burden without sufficient benefits.

Commenter Organization Name: Wilson, Shawn

Comment Number: 0440

Excerpt Number: 1

Excerpt Text:

Please scrap the Proposed Rule on Standards and Practices for All Appropriate Inquiries.

FIRREA created appraisal certification and appraisal standards for a very good reason: to protect the public.

Response:

Please see response to comment number 0212. EPA agrees with the commenter that there is an opportunity to coordinate appraisal activities in a better organized fashion. It is the Agency's hope that the appraisal industry will be recognized by environmental professionals and owners/grantees of property as valuable partners in many instances. However, we reiterate that the use an appraisal is within the discretion of the owner of the property (or the grantee).

1.1.2.3 *The Proposed Rule Is Inconsistent with the Brownfields Amendments and/or the ASTM Standard*

Commenter Organization Name: PIRG

Comment Number: 0258

Excerpt Number: 4

Other Sections: NEW - 2.1.6 - Revise educational requirements to allow individuals with substantial relevant work experience to qualify as EPs

Excerpt Text:

II. Examples of Weaknesses in the Draft Proposed AAI Rule

The examples set forth below demonstrate just a few of the ways the draft proposed AAI rule weakens current protections for public health and environmental quality. The draft proposed AAI rule contains numerous inconsistencies with the Brownfields Law and provides a less effective process for assessing the condition of a site than the 97 ASTM standard. A comprehensive description of the inconsistencies between the Brownfields Law and the draft AAI proposed rule, and all of the ways in which the proposed rule is weaker than the 97 ASTM standard are outside the scope of this letter. The examples are provided as an illustration of the problem with the draft proposed rule.

Response:

Please see response to comment number 0258, excerpt 2.

Commenter Organization Name: Congressmen Dingell, Boxer, et al

Comment Number: 0332

Excerpt Number: 1, 3 and 6

Excerpt Text:

A central purpose of the Brownfields law is to encourage the redevelopment of contaminated sites, without sacrificing public health, the environment, or the principle that polluters, not taxpayers, should pay for the cleanup. These are the core principles of the law. As members of the Committee[s] with jurisdiction over Superfund and Brownfields programs, we are commenting on this rule because of our concern that portions of it are inconsistent with the intent of Congress and are unauthorized by the Brownfields law. Portions of the rule are weaker than what was required by statute and do not reflect the careful balance struck in the law.

Specific criteria were required in the Brownfields law to ensure clear and consistent standards in the AAI rule. These criteria were required to ensure that a strong environmental inquiry would be conducted before the sale or transfer of a property and before the AAI condition of the liability exemptions provided for in the Brownfields law would be satisfied. Key elements have not been included in the proposed rule as required. The Brownfields law contains specific criteria to be included in the standards and practices required in the AAI rule. The failure to incorporate these criteria in the rule is contrary to the intent of Congress and is not authorized by the statute.

Response:

The final rule addresses each of the criteria included in the statute. In fact, the final rule is organized around the ten criteria provided by Congress in CERCLA.

Commenter Organization Name: CBPA

Comment Number: 0344

Excerpt Number: 1

Excerpt Text:

CBPA members are involved in the redevelopment of environmentally distressed properties. After reviewing the new proposed standard, we have come to the conclusion that the proposed rule obscures the obligations of prospective purchasers and increases uncertainty, rather than clarifying the obligations of purchasers and providing certainty as was intended by the Brownfields Act of 2002. We believe that the net effect of the new standard would be to discourage development of brownfields, rather than encouraging their development as Congress intended in the Brownfields Act.

Response:

Please see response to comment number 0057, excerpt 1.

Commenter Organization Name: CBPA

Comment Number: 0344

Excerpt Number: 7

Excerpt Text:

We believe the proposed rule obscures the obligations of prospective purchasers and greatly increases uncertainty, rather than clarifying the obligations of purchasers and providing certainty as was intended by the Brownfields Act.

Response:

Please see response to comment number 0057, excerpt 1.

Commenter Organization Name: Greenlining Institute

Comment Number: 0354

Excerpt Number: 2

Excerpt Text:

When we apply the proposed rule to sites that we are familiar with, small idle or underutilized parcels in economically depressed communities, we see the new rule to be problematic. We believe it will discourage redevelopment of brownfields in economically depressed neighborhoods by increasing developer liability, rather than encouraging development by decreasing liability exposure as Congress intended. This will undermine the reforms of SB 32 that we worked so hard to achieve.

Response:

Please see responses to comment numbers 0057 (excerpt 1) and 0354 (excerpt 3).

Commenter Organization Name: Greenlining Institute

Comment Number: 0354

Excerpt Number: 7

Excerpt Text:

C. EPA'S Task is Largely to Describe Industry Customary Practice and the Criteria Included in the AAI Rule Must be Applied in a Manner Consistent with Customary Practice

The negotiated rulemaking committee applied their charge in a largely prescriptive manner: that the government should dictate to the real estate market what the content of an appropriate pre-purchase inquiry shall be. This is not the task Congress assigned to the agency. Rather EPA's role in promulgating standards and practices for All Appropriate Inquiry is largely descriptive. Congress intended EPA to clarify and codify what the real estate industry considers to be good commercial practice with respect to All Appropriate Inquiry. The statutory definition of All Appropriate Inquiry is an investigation "into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices." 42 U.S.C. § 9601 (35)(B)(i)(I) (emphasis added). The criteria provided by Congress for inclusion in the regulation at section 9601(35)(B)(iii) are provided in the context of describing their role in generally accepted practice.

If EPA discards customary standards and practices in favor of new procedures that committee has devised, it will render a significant provision of the statute surplusage. The Supreme Court has often advised that it is "reluctant to treat statutory terms as surplusage in any setting." *Duncan v. Walker*, 533 U.S. 167, 174 (2001). This is especially so "when the term occupies so pivotal a place in the statutory scheme." *Id.* "Generally accepted good commercial and customary standards and practices" have been the polestar of All Appropriate Inquiry since 1986. Moreover, the statute commands EPA to promulgate regulations "to carry out all appropriate inquiries under clause (i)" and clause (i) describes all appropriate inquiries as being "in accordance with generally accepted good commercial and customary standards and practices." 42 U.S.C. § 9601(B).

In the following sections we analyze provisions of the proposed rule in which we believe that the committee applied the statutory criteria of 42 U.S.C. § 9601 (35)(B)(iii) in a manner inconsistent with Congressional intent because inter alia the committee failed to properly consider factors Congress deemed relevant, including generally accepted industry standards. See *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 42-43 (1983).

Response:

EPA disagrees with the commenter. The Agency points out that the final rule is not significantly different than the procedures included in the interim standard, which the commenter contends is "generally accepted good commercial practice." EPA points out that in addition to establishing that all appropriate inquiries would be conducted in "accordance with generally accepted good commercial and customary standards and

practices, Congress established ten criteria in that statute that EPA must include in the federal regulations for all appropriate inquiries. As EPA pointed out in the preamble to the proposed rule, the current interim standard, the ASTM E1527 Phase I Environmental Site Assessment Process, does not fully address each of the statutory criteria. Congress did not intend for EPA to merely clarify and codify current industry practice. By including environmental professionals with first hand experience in conducting environmental site assessments on the Negotiated Rulemaking Committee, EPA ensured that generally accepted good commercial practices were considered during the development of the proposed rule. The Agency points out that these stakeholders' expertise and knowledge of industry practices and standards and the technical know how possessed by them was a very positive force in guiding the development of the proposed rule. Further, the current interim standard, implemented by Congress, was meant to be temporary. Arguably, by definition, the standards and practices contained in the Agency's proposed rule is an industry standard based upon generally accepted good commercial and customary standards and practices due to the fact that it was developed in large part by industry leaders and other users who were members of the Negotiated Rulemaking Committee, including the National Association of Homebuilders, The Real Estate Roundtable, National Association of Industrial and Office Properties, International Council of Shopping Centers, National Brownfields Association, the National Ground Water Association, American Society of Civil Engineers, and Wasatch Environmental, Inc., to name a few. (40 CFR Part 312, p. 52550).

Commenter Organization Name: Eden Housing

Comment Number: 0380

Excerpt Number: 1

Excerpt Text:

After reviewing the new proposed standard, we have come to the conclusion that the proposed rule obscures the obligations of prospective purchasers and increases uncertainty, rather than clarifying the obligations of purchasers and providing certainty as was intended by the Brownfields Act of 2002. We believe that the net effect of the new standard would be to discourage development of brownfields, rather than encouraging their development as Congress intended in the Brownfields Act.

Response:

Please see response to comment number 0057, excerpt 1.

Commenter Organization Name: Eden Housing

Comment Number: 0380

Excerpt Number: 8

Excerpt Text:

We believe the proposed rule obscures the obligations of prospective purchasers and greatly increases uncertainty, rather than clarifying the obligations of purchasers and providing certainty as was intended by the Brownfields Act.

Response:

Please see response to comment number 0057, excerpt 1.

Commenter Organization Name: NPCA

Comment Number: 0403

Excerpt Number: 16

Excerpt Text:

The Proposed Rule's standards, particularly those standards outlined herein, are costly, burdensome and in some cases may be unachievable. Thus, the primary purpose of the Act, to exempt from liability under CERCLA certain owners of real property and contiguous property on which there has been a hazardous substance release or threatened release has been thwarted. While clarification on requirements for the innocent landowner defense as well as standards for contiguous property and bona fide purchaser defenses would have provided much needed incentive and assurance to potential purchasers and lessees of industrial properties, particularly brownfield properties, as currently drafted, the Proposed Rule does not serve that purpose.

Response:

Please see response to comment number 0057, excerpt 1.

Commenter Organization Name: Sierra Club & NET

Comment Number: 0419

Excerpt Number: 1

Excerpt Text:

The Brownfields Law carefully strikes a balance between the need to encourage the redevelopment of contaminated sites while at the same time ensuring that public health and the environment are protected and that those responsible for the harm, not the taxpayer, are held responsible for the cleanup. Unfortunately, the proposed AAI rule fails to meet even the minimum criteria specifically required by the Brownfields Law.

The proposed AAI rule is also weaker than the interim standards established in the Brownfields law-the "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, E 1527-97" (the "97 ASTM Standard"). The general performance standards contained in the proposed AAI rule are no substitute for the specific criteria contained in the Brownfields Law and the specific procedures and rigorous documentation requirements contained in the interim 97 ASTM Standard.

The net effect of these deficiencies is that the proposed AAI rule makes it more likely contamination will not be identified before the sale or transfer of property. This endangers public health and may allow sellers to profit from a sale while placing those profits out of reach before the need for cleanup is even known - making it more likely that taxpayers will end up paying the cleanup costs. Purchasers may also purchase properties without adequate investigation only to find out later that those sites may not be suitable for the planned future use.

In addition, the low threshold established in the proposed AAI rule could allow the purchaser to argue that they followed CERCLA, including the AAI rule, and failed to find contamination. Then, they could claim entitlement to liability relief under CERCLA while arguing that they are not responsible for taking the steps necessary to mitigate the harm as required in the statute because it would not be reasonable for them to have to address contamination that was not discovered during the AAI investigation.

Response:

Please see responses to comment numbers 0258 (excerpt 2) and 0332 (excerpt 2).

Commenter Organization Name: Sierra Club & NET

Comment Number: 0419

Excerpt Number: 6

Excerpt Text:

--Landowners and Environmental Professionals Must Achieve Compliance with All Statutory and Valid Regulatory Requirements

Establishing protocols in document review is an essential aspect of many professional activities that deal with property transactions. EPA's vague statements in the proposed rule's preamble appear to undermine the need for such vitally needed-and legally required-protocols to establish AAI. In particular, EPA's statements that "the landowner and the environmental professional must 'seek to achieve' the proposed objectives and performance factors..." (emphasis added) undermine the importance that Congress placed on certain key activities in the Brownfields Law and on the commonsense need to investigate, access and utilize key sources of information that can inform that determination of whether a site is contaminated.

The EPA should strive to increase protections by promoting precision in decision making, rather than reducing clarity in the regulatory process. Ambiguous objectives and standards are an inadequate surrogate for establishing minimum requirements for the review of documents and investigation of property. Such requirements increase certainty for businesses, expedite the safe development of properties and facilitate business and judicial review of decisions. EPA should hold parties who are interested in receiving a liability exemption responsible for investigating all potentially conditions at a site. However, the final rule must-at a minimum-also require the investigation of all documents and undertaking of all activities described in section 223 of the Brownfields Law.

-Conclusion

Establishing weak standards in the AAI rule provides an incentive for the seller and purchaser alike to "speak no evil, hear no evil" about these sites, so that the sale can proceed which benefits the seller, while the purchaser gets liability relief. It is quite clear that the Brownfields Law establishes specific criteria to prevent just this result. The failure of the proposed AAI rule to meet these criteria and otherwise protect human

health, the environment and the taxpayer, will require that substantial changes be made to the proposed AAI rule before it moves further in the process. In light of these serious flaws, we felt it was prudent to notify EPA of these concerns as quickly as possible.

Response:

Please see responses to comment numbers 0258 (excerpt 2) and 0332 (excerpt 2).

The Agency has established in the final rule very clear guidelines including interview requirements for both abandoned and non-abandoned properties, interview requirements for current and past owners/operators, a review of historical sources of information, a search for recorded environmental cleanup liens, a review of federal, state, local and tribal records, a comparison of the property value and the purchase price, consideration of commonly known or reasonably ascertainable information about the property, documentation of data gaps and much more. These steps are very specific. Further, the liability scheme established by Congress in the CERCLA legislation, which requires a land owner to comply with institutional controls and acknowledges continuing obligations is not changed by this rule.

In addition to prescribing the types of activities that must be conducted to address each of the statutory criteria, the proposed rule established clear objectives for the inquiries and a set of performance factors that must be met in carrying out the requirements of each criteria. The objectives clearly establish the types of information that must be collected during the conduct of the inquiries (see section 312.20(d)). The performance factors establish quality parameters that must be met when collecting the information and undertaking the activities required by the statutory criteria (see section 312.20(e)).

The objectives and performance factors are not vague and can not be followed in lieu of the statutory criteria. The objectives and performance factors are in addition to the criteria. They serve to guide the conduct of all activities required by the statutory criteria and ensure that all activities are conducted with clear objectives and to a standard of high quality.

1.1.2.4 The Proposed Rule Will Negatively Impact Small Businesses

Commenter Organization Name: Young, Richard

Comment Number: 0243

Excerpt Number: 8

Excerpt Text:

Antitrust Implications

The regulation in current format potentially violates US antitrust law such as the Sherman Antitrust Act by providing engineers and geologists with an unfair competitive advantage by providing an endorsement of a particular profession without examining the other environmental professions around it. The regulation in its proposed format also will enable engineers to fix prices for services since other environmental professions will expire. Simply put, there will be shortage of labor in one small area of the economy. Since there will be a shortage of labor, existing engineer service organizations will be "licensed" to set whatever price they choose for their services since there will not be any competition.

The environmental clean-up industry had global revenues last year of \$12 billion globally with \$7 billion directly in the US [Footnote: Industrial Survey: Environmental and Waste Management, (New York; Standard and Poors, October 7) 11.]. The remediation/Brownfields property renovation industry is highly fragmented and very competitive. As a result of these economics, the top five engineering firms of the US control close to 35% of gross US revenues for remediation and engineering work. [Footnote: *ibid*] The next ten control 30%, and hundreds of small firms competing for the other 35% [Footnote: *ibid*]. The regulation in its current format will wipe out the smaller firms due to a legalized monopoly and bankruptcy from resulting impacts. Therefore, EPA will be providing 15 engineering firms across the country with nearly 100% of all the environmental remediation work in the US. These firms could easily consolidate further without antitrust controls. They may also fold into the five larger engineering firms that already control 35% of the market share.

Response:

The Agency disagrees with the commenter's assertion that requiring environmental professionals to meet certain requirements constitutes a potential antitrust violation. There is no unfair advantage provided to Professional Engineers or Professional Geologists. The definition of environmental professional in the final rule allows for individuals who are not P.E.s or P.G.s to qualify as environmental professionals.

The definition of an environmental professional in the final rule includes individuals who hold a Baccalaureate or higher degree from an accredited institution of higher education in engineering or science and have the equivalent of five (5) years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries. In addition, individuals with ten years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries qualify as environmental

professionals for the purpose of conducting all appropriate inquiries. Individuals with these qualifications most likely will possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases to the surface or subsurface of a property, sufficient to meet the objectives and performance factors included in §§312.20(e) and (f) of the final rule.

In addition to the qualifications for environmental professionals mentioned above, EPA is retaining the proposed provision to include within the definition of an environmental professional individuals who are licensed to perform environmental site assessments or all appropriate inquiries by the Federal government (*e.g.*, the Bureau of Indian Affairs) or under a state or tribal certification program, provided that these individuals also have three years of full-time relevant experience. We contend that individuals licensed by state and tribal governments, or by any department or agency within the federal government, to perform all appropriate inquiries or environmental site assessments, should be allowed to qualify as an environmental professional under today's regulation. State and tribal agencies may best determine the qualifications defining individuals who "possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases...to the surface or subsurface of a property, sufficient to meet the rule's objectives and performance factors" within any particular state or tribal jurisdiction.

In the preamble to the final rule, EPA clarifies that only the individual overseeing the conduct of an all appropriate inquiries investigation must qualify as an environmental professional, as defined in the final rule. Other individuals may contribute to the investigation as long as their activities are conducted under the supervision or responsible charge of the individual qualifying as an environmental professional. In today's final rule, the Agency is retaining the recommendation that an individual who qualifies as an environmental professional conduct, or closely oversee the conduct of, the required on-site visual inspection of the property.

Commenter Organization Name: Young, Richard

Comment Number: 0243

Excerpt Number: 9

Excerpt Text:

Discrimination Issues

The law in current format potentially violates US Antidiscrimination laws and has a significant reduction impact on minority business in the environmental profession. The total number of non-engineering environmental professionals in the United States is estimated at 1,120,584 [Footnote: Employed and Unemployed Persons by Occupation: Not Seasonable Adjusted, Database (Washington: Bureau of Labor Statistics, September 2004).]. The total number of black non-engineering environmental professionals is estimated at 100,853 [Footnote: Employment Status of Civilian Population by Race Sex

and Age, Database (Washington: Bureau of Labor Statistics, September 2004).].

The total number of Hispanic/Latin non-engineering environmental professionals is estimated at 123,264 [Footnote: Employment Status of By Hispanic or Latino Population by Race Sex and Age, Database (Washington: Bureau of Labor Statistics, September 2004).]. The total number of Asian non-engineering environmental professionals is 44,823 [Footnote: Employment Status of Civilian Population by Race Sex and Age, Database (Washington: Bureau of Labor Statistics, September 2004).]. The total number of female environmental professionals is 437,028 [Footnote: Ibid]. The total number of non-engineering minority environmental professionals is 705,968 [Footnote: Ibid]. From a statistical perspective, roughly 63% of the non-engineering environmental profession programs are comprised of minorities. This number will be significantly reduced by a legalized monopoly given to the engineers and enforced by EPA.

Response:

The commenter cites statistics regarding the demographics or heritage of non-engineering environmental professionals without providing any information regarding what specific types of environmental activities these professionals are currently performing. The environmental services industry comprises much more than the market for Phase I environmental site assessments. The final rule in no way provides a monopoly for any profession. There is no unfair advantage provided to Professional Engineers or Professional Geologists. The definition of environmental professional in the final rule (as did the definition in the proposed rule) allows for individuals who are not P.E.s or P.G.s to qualify as environmental professionals. In addition, persons who do not qualify as environmental professionals may contribute to the required investigations as long as their activities are conducted under the responsible charge of the environmental professional.

Commenter Organization Name: Miles & Stockbridge

Comment Number: 0277

Excerpt Number: 3

Excerpt Text:

In closing, Miles & Stockbridge is concerned that the proposed regulation will negatively impact small businesses. We urge a more thorough analysis by EPA to address these issues.

Response:

EPA estimates that the impacts of the final rule, on the whole, will not be significant for small entities. We estimate that, for the majority of small entities, the average incremental cost of the final rule relative to conducting an ASTM E1527-2000 Phase I Environmental Site Assessment will be between \$52 and \$58. When we annualize the incremental cost of \$58 per property transaction over ten years at a seven percent discount rate, we estimate that the average annual cost increase per establishment per property transaction will be \$8. Thus, the cost impact to small entities is estimated to not be significant. A more detailed summary of our analysis of the potential impacts of

today's rule to small entities is included in "Economic Impacts Analysis of the Final All Appropriate Inquiries Regulation." This document is included in the docket for today's rule.

Commenter Organization Name: Greenlining Institute

Comment Number: 0354

Excerpt Number: 18

Excerpt Text:

-B. The New Rule Will Disproportionately Impact Low Income and Minority Communities and Small Entities

Commercial real estate transactions involving large deals and prime commercial real estate will be affected by the new rule but the additional cost, time, and exposure to liability can be absorbed by the upper strata of the market because the potential profits outweigh the risks and transaction costs.

For those transactions that the Brownfields Revitalization Act was intended to encourage-redevelopment of idle or abandoned parcels in economically depressed neighborhoods-the rule will have a significant chilling effect. These parcels are located primarily in low income and minority communities and are often developed by small entities. Additional upfront costs for conducting the site assessment running into thousands of dollars can be a deal-breaker where profit margins are already thin or, in the case of non-profit development, non-existent. The time involved in conducting all of the exhaustive searches and interviews required by the new rule will also be a deal-breaker in many instances. Real estate deals often come together under intense time pressure. The additional weeks required to conduct the new site assessment will often not fit within the time constraints of sellers and lenders. Our developers often do not have the market power to influence closing deadlines imposed by lenders. Nor do they have the resources to buy extensions from lenders or sellers.

Response:

The Agency based its cost estimates on an evaluation of the differences between the proposed standards for AAI and the content of the ASTM E1527-2000 standard. EPA identified the technical differences between the proposed rule and the interim standard and then estimated the costs associated with conducting those regulatory activities that represented tasks over and above those conducted in implementing the interim standard. As the commenter points out, the ASTM E1527-2000 in many ways includes the same standards and practices that Congress intended and that EPA included in the proposed and final rule. As explained in the Agency's Responses to other points asserted by the commenter above, the Agency disagrees with the commenter's assertions with regard to increased burdens associated with the final rule, over and above the ASTM standard. For example, for reasons outlined above, the Agency disagrees with the commenter's assertion that the proposed rule requires the conduct of an elaborate market analysis for compliance with the requirement to consider the relationship between the purchase price of the property and the fair market value of the property, if it were not contaminated.

EPA estimates that the impacts of the final rule, on the whole, will not be significant for small entities. We estimate that, for the majority of small entities, the average incremental cost of the final rule relative to conducting an ASTM E1527-2000 Phase I Environmental Site Assessment will be between \$52 and \$58. When we annualize the incremental cost of \$58 per property transaction over ten years at a seven percent discount rate, we estimate that the average annual cost increase per establishment per property transaction will be \$8. Thus, the cost impact to small entities is estimated to not be significant. A more detailed summary of our analysis of the potential impacts of today's rule to small entities is included in "Economic Impacts Analysis of the Final All Appropriate Inquiries Regulation." This document is included in the docket for today's rule.

Commenter Organization Name: NPCA

Comment Number: 0403

Excerpt Number: 1

Excerpt Text:

While NPCA applauds this effort to clarify the "innocent landowner defense" under CERCLA and provide viable protection from CERCLA liability for bona fide prospective purchases and contiguous property owner claims, the Proposed Rule's often stringent and prescriptive methods may prove too burdensome to realize. The Proposed Rule is; in Response to the Small Business Liability Relief and Brownfield's Revitalization Act of 2001 (hereinafter referred to as the Act)[Footnote: Pub. L. 107-118]. The purpose of the Act, among other things, was to amend CERCLA in order to provide certain relief for potential owners from liability and to promote the cleanup and reuse of brownfields. As drafted, however, the Proposed Rule may actually act as a disincentive to potential owners from purchasing, cleaning up and reusing property that may be environmentally contaminated.

By providing specific regulatory requirements and standards to be followed when conducting all appropriate inquiries (AAIs), a prerequisite to liability protection under CERCLA, the Proposed Rule attempts to provide certainty to potential purchasers of contaminated property. Instead, some of the Proposed Rule's standards present a significant hurdle to potential owners that might otherwise be inclined to revitalize contaminated property. This is particularly true for small businesses, many of which are NPCA members. The Proposed Rule makes significant changes to the way Phase I Environmental Site Assessments (ESAs) have been traditionally conducted for land purchases. These changes are likely to not only increase the cost of a typical Phase I ESA, but lengthen the amount of time needed to complete routine environmental evaluation: thereby discouraging potential owners from pursuing purchase of brownfield properties. This is particularly disconcerting as many of the Proposed Rule's increased obligations and costs are not commensurate with environmental benefit.

Response:

Please see response to comment number 0057, excerpt 1. In addressing the cost issue, we note that the Agency's cost analysis indicates that the cost of complying with the final

rule will not be significantly different from the cost of complying with the ASTM E1527-2000 standard.

EPA estimates that the impacts of the final rule, on the whole, will not be significant for small entities. We estimate that, for the majority of small entities, the average incremental cost of the final rule relative to conducting an ASTM E1527-2000 Phase I Environmental Site Assessment will be between \$52 and \$58. When we annualize the incremental cost of \$58 per property transaction over ten years at a seven percent discount rate, we estimate that the average annual cost increase per establishment per property transaction will be \$8. Thus, the cost impact to small entities is estimated to not be significant. A more detailed summary of our analysis of the potential impacts of today's rule to small entities is included in "Economic Impacts Analysis of the Final All Appropriate Inquiries Regulation." This document is included in the docket for today's rule.

Commenter Organization Name: NPCA

Comment Number: 0403

Excerpt Number: 3

Excerpt Text:

This is especially true for small site purchases or leases and multi-purpose development sites. The Proposed Rule appears to be designed solely for large and single property acquisitions as it does not address lessee/landlord issues. An NPCA member evaluating the purchase or lease of space - for example as a retail outlet - as part of a larger brownfield property development, would be more likely to pursue greenfield opportunities in lieu of the cost and risks associated with the Proposed Rule's standards. Companies may engage in these type of property transactions hundreds of times a year. In light of the relative size and nature of these transactions, companies will not want to expend the enormous amount of resources the proposed AAIs entail, particularly with the likely risk that even if expended, the developer could still be denied protection from liability because of some minor oversight. Unless EPA can give the developers and stakeholders some confidence that undertaking AAIs will provide the benefit Congress intended under the Act - liability protection - there will not be any incentive to redevelop brownfield sites.

In addition, the proposed AAIs do not take into account confidentiality and liability issues with regard to commercial purchase and lease transactions. Traditionally, a Phase I ESA is used as a screening tool, so that a potential property can be quickly evaluated and a decision to move forward or to pursue other opportunities can be made without triggering confidentiality or liability claims. Under current Phase I ESAs a potential purchaser can quickly ascertain whether or not a property is worth pursuing. This can generally be done in confidence and without triggering environmental liability on the part of the current property owner. The Proposed Rule's requirements will not allow this same outcome. In fact, because of the depth of the new standards requirements, basically Phase II ESAs, a prospective purchaser's inquiries will in all likelihood be readily perceptible and may expose environmental liabilities which were previously unknown.

Thus, a prospective seller may be put in an untenable position by a prospective purchaser that undertakes the new AAIs, yet decides not to purchase or lease the property.

Furthermore, a prospective lessee is not given any liability protection under the proposed AAIs, and duplicative inquiries may be made. The Proposed Rule's liability protections are only afforded to the owner of the property. As CERCLA liability is strict, lessees are also legally responsible. Does EPA intend on granting a lessee of property covered by the innocent, bona-fide or contiguous property liability protection the same protection afforded the property owner? Lessee's undertake the same Phase I ESAs as purchasers, and under the Proposed Rule's requirements, this will be elevated to a Phase II in-depth analysis, yet, they are still left with indemnification as their only means of liability relief. Owners are extremely reluctant. to provide CTIRCLA indemnification - thus, lessees will duplicate an owner's AAIs efforts in this case, for no meaningful liability relief. Again, the practical consequences of the Proposed Rule's uncertainties and inequities will lead potential purchasers as well as lessees away from brownfield properties.

Response:

Please see response to comment 0057, excerpt 1.

In addressing the cost issue, we note that the Agency's cost analysis indicates that the cost of complying with the final rule will not be significantly different from the cost of complying with the ASTM E1527-2000 standard. We encourage you to refer to the economic impacts analysis included in the proposed rule.

As for confidentiality issues, EPA disagrees with the commenter's assertion that a need to keep a potential transaction confidential outweighs the benefit of obtaining necessary information about the environmental conditions of a property. The primary purpose of conducting all appropriate inquiries is to identify conditions indicative of releases or threatened releases of hazardous substances. If such conditions are not investigated and identified prior to purchasing a property, it may be difficult for a property owner to assert that he or she is not a potentially responsible party should a release be identified after the property is purchased.

Concerning the lessee issue, the language of CERCLA addresses lessee liability with regard to the definition of a bona fide prospective purchaser. Section 101(40), which sets out the criteria for the liability protections afforded a bona fide prospective purchaser, says that the liability protection is available to a "person (or a tenant of a person) who acquires ownership after the date of the enactment of this paragraph..." and meets all other criteria established by the statute. EPA interprets that provision to mean that the status of a tenant's liability protection or a tenant's status with regard to being a bona fide prospective purchaser is dependent upon the status of the property owner.

Commenter Organization Name: NPCA

Comment Number: 0403

Excerpt Number: 18

Excerpt Text:

In addition, EPA must revise the AAIs to better address leaseholders and small property development. The traditional Phase I ESA screening analysis can not be consumed by EPA's new standards - varying options for the type of property and its use must be taken into consideration.

Response:

Please see response to comment 0403, excerpt 3.

EPA estimates that the impacts of the final rule, on the whole, will not be significant for small entities. We estimate that, for the majority of small entities, the average incremental cost of the final rule relative to conducting an ASTM E1527-2000 Phase I Environmental Site Assessment will be between \$52 and \$58. When we annualize the incremental cost of \$58 per property transaction over ten years at a seven percent discount rate, we estimate that the average annual cost increase per establishment per property transaction will be \$8. Thus, the cost impact to small entities is estimated to not be significant. A more detailed summary of our analysis of the potential impacts of today's rule to small entities is included in "Economic Impacts Analysis of the Final All Appropriate Inquiries Regulation." This document is included in the docket for today's rule.

EPA sees no reason to vary the standards for all appropriate inquiries based upon property size.

Commenter Organization Name: West Berkeley Association

Comment Number: 0430

Excerpt Number: 2

Excerpt Text:

The result is a rule that appears to impose an impossible retroactive burden on small existing owners and has a significant disparate negative impact on small entities. If existing small property owners had been represented on the committee, we do not think this would have happened. And we do not think EPA itself wants to impose an unfair burden on small property owners. However, we are concerned that the text of the regulation produced by the committee does not reflect this fact.

Response:

In addressing the cost issue, we note that the Agency's cost analysis indicates that the cost of complying with the final rule will not be significantly different from the cost of complying with the ASTM E1527-2000 standard.

EPA estimates that the impacts of the final rule, on the whole, will not be significant for small entities. We estimate that, for the majority of small entities, the average incremental cost of the final rule relative to conducting an ASTM E1527-2000 Phase I Environmental Site Assessment will be between \$52 and \$58. When we annualize the

incremental cost of \$58 per property transaction over ten years at a seven percent discount rate, we estimate that the average annual cost increase per establishment per property transaction will be \$8. Thus, the cost impact to small entities is estimated to not be significant. A more detailed summary of our analysis of the potential impacts of today's rule to small entities is included in "Economic Impacts Analysis of the Final All Appropriate Inquiries Regulation." This document is included in the docket for today's rule.

Small business and small community interests were represented on the Negotiated Rulemaking Committee.

Commenter Organization Name: Young, Richard

Comment Number: PM-0207-0001

Excerpt Number: 7

Excerpt Text:

The law in its current form violates U.S. antitrust laws. The regulation reduces the competition by providing preferred economic treatment of engineers and geologists.

As noted by the Bureau of Labor Statistics, other environmental professionals comprise a total portion of the--a significant portion of the economy and employment. Because of economic preferential treatment, geologists and engineers could effectively create a monopoly over all brownfields projects and set unfair price controls that would impact the real estate market.

Response:

The Agency disagrees with the commenter's assertion that requiring environmental professionals to meet certain requirements constitutes a potential antitrust violation. There is no unfair advantage provided to Professional Engineers or Professional Geologists. The definition of environmental professional in the final rule (as did the definition in the proposed rule) allows for individuals who are not P.E.s or P.G.s to qualify as environmental professionals. In addition, persons who do not qualify as environmental professionals may contribute to the required investigations as long as their activities are conducted under the responsible charge of the environmental professional.

SECTION 2: Definition of Environmental Professional

Commenter Organization Name: Lourie Consultants

Comment Number: 0353

Excerpt Number: 4

Excerpt Text:

From attending a public meeting in St. Louis on the proposed rule as well as reading and listening to comments offered during the rulemaking process and during the public comment period, I recognize that a few entities oppose the proposed rule. Most of these objections seem to focus on the definition on an environmental professional (EP).

Examples of some of the types of objections follow:

-There are objections that apparently are for self-serving reasons, e.g., these comments usually come from those who are not explicitly listed in the EP definition, but who may satisfy the EP definition anyway. Therefore, this is really a non-issue.

-Some are based on misconceptions and/or misunderstandings about the rule, e.g., the EP must do all aspects of an AAI study; another misconception is that only a licensed engineer and/or geologist can be an EP. This statement or understanding is absolutely incorrect. In practice today, very few site assessment studies are conducted entirely by one person. Instead, firms typically assign multidisciplinary project teams to conduct site assessments. These teams consist of individuals with various types of education, experience, and training. Therefore, project teams that conduct AAI can and should draw upon the talents and unique skills that others have that are well suited to the site that is being assessed.

-These objections reflect a fundamental lack of understanding about CERCLA liability and they confuse other environmental or business issues with CERCLA issues, e.g., many studies are conducted on wooded properties or agricultural properties so biology, agronomy, or forestry degrees are essential. While individual with those types of degrees may have value on those types of properties for non-CERCLA issues, those degrees do not necessarily provide the required skills associated with evaluating the presence or influence of releases or potential releases of hazardous materials on a subject site or bordering sites.

Response:

In the preamble to the final rule, EPA clarifies that only the individual overseeing the conduct of an all appropriate inquiries investigation must qualify as an environmental professional, as defined in the final rule. Other individuals may contribute to the investigation as long as their activities are conducted under the supervision or responsible charge of the individual qualifying as an environmental professional. In today's final rule, the Agency is retaining the recommendation that an individual who qualifies as an environmental professional conduct, or closely oversee the conduct of, the required on-site visual inspection of the property.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

2.1 License, Educational, and Relevant Experience Requirements

2.1.1 Support of the Proposed Minimum Requirements

Commenter Organization Name: Freitag, George A

Comment Number: 0072

Excerpt Number: 2

Excerpt Text:

My experience makes it clear to me that, unless they are handled properly, many types of properties, including brownfield sites, can pose a real danger to public health, safety, and welfare. And handling them properly is not easy. The person who designs and leads the AAI study must have the requisite education, training, experience, and judgment. For that reason, I am glad to see that the Agency has established minimum education and experience qualifications for 'environmental professionals' involved with AAI studies. This important feature is missing from the current process.

Response:

EPA thanks the commenter for the stated support of the proposed rule. Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out all appropriate inquiries.

Commenter Organization Name: Crocetti, Charles

Comment Number: 0110

Excerpt Number: 1

Excerpt Text:

The proposed rule clearly establishes minimum qualification criteria for environmental professionals that are consistent with the level of education/experience typically necessary to collect and interpret environmental data, and develop conclusions and recommendations based on analysis of the data collected.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Diamond, Jason

Comment Number: 0251

Excerpt Number: 2

Excerpt Text:

The AAI rule takes into account both academic background and professional experience in the definition of the environmental professional (EP) and encourages the application of professional judgement. I am pleased to see that the AAI rule establishes a specific definition of an EP and requires certain educational requirements, in addition to standards regarding the amount and type of training for professionals conducting an AAI. This provides for an objective standard to measure the credentials of a prospective environmental assessment provider. This is an improvement from the American Society for Testing and Materials (ASTM) E-1527-00 definition of an EP, which only refers to "training and experience" and makes no mention of education.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Diamond, Jason

Comment Number: 0251

Excerpt Number: 6

Excerpt Text:

Again, I would like to express my support for the proposed AAI rule. The environmental assessment process needs to be held to a standard that establishes minimum education and experience qualifications for persons conducting AAI studies.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: NGWA

Comment Number: 0265

Excerpt Number: 2

Excerpt Text:

NGWA, in particular, wants to go on record as supporting the definition of Environmental Professional as proposed in the August 26, 2004 Federal Register. The definition of an Environmental Professional is especially critical given the proposed rule's performance based approach and its heavy reliance on the judgment of the Environmental Professional. The Environmental Professional definition was reached after extensive negotiations that considered, among other things, the interests of current practitioners who may have varying backgrounds, education and training. The negotiations resulted in a proposed rule that provides three different options for meeting the definition of Environmental Professional. Additionally, the proposed rule includes a grandfather provision that specifically balances the interest in continuing to perform site assessments of an individual, who does not meet one of the three options, against concerns that public health and environmental protection are achieved. The proposed rule also provides that individuals who do not meet either the definition of Environmental Professional or the grandfather provision may assist in the conduct of the inquiry under the responsible charge or supervision of an Environmental Professional.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Engels, Joseph

Comment Number: 0287

Excerpt Number: 1

Excerpt Text:

As a practicing environmental professional with over 25 years of experience evaluating and remediating brownfields sites, I would like to comment that I strongly support the proposed All Appropriate Inquiry Rule. I am particularly encouraged by the establishment of minimum education and experience standards for environmental professional qualifications that are long overdue in this area of engineering and scientific practice. From my experience, persons who do not have an appropriate technical college degree relevant to this area of practice are not qualified to make sound technical decisions and to offer opinions of a technical nature. For example, we do not allow persons with just a high school education or an English degree to offer legal or medical opinions. This is an issue of protection of the public welfare.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Less, James

Comment Number: 0290

Excerpt Number: 3

Excerpt Text:

My experience makes it clear to me that, unless they are handled properly, many types of properties, including brownfield sites, can pose a real danger to public health, safety, and

welfare. And handling them properly is not easy. The person who designs and leads the AAI study must have the requisite education, training, experience, and judgment. For that reason, I am glad to see that the Agency has established minimum education and experience qualifications for "environmental professionals" involved with AAI studies. This important feature is missing from the current process.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Anthony, Tony, et.al.

Comment Number: 0292

Excerpt Number: 1

Excerpt Text:

We support the definition of an Environmental Professional.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Moors, Scott

Comment Number: 0298

Excerpt Number: 1

Other Sections: NEW - 1.1.1.2 - Support of the performance standard

Excerpt Text:

I support the proposed rule and I urge the Agency to adopt it as proposed. The proposed AAI rule: ?? Encourages project/client/public sensitivity by permitting the flexibility derived from a performance-based approach instead of a prescriptive approach. The rule would be applicable to any type of property. ?? Sets minimum qualification criteria for environmental professionals (EPs). ?? Allows for professional judgment, which is critical in the proper evaluation of the risk associated with a particular site. ?? Requires a broader scope of environmental inquiry by building on and significantly improving the existing process (ASTM E-1527) that is familiar to many clients (users) who have all appropriate inquiry studies performed. This approach enhances the process and the familiarity will help avoid ?gconfusion?h among users and will also help reduce or limit the cost impacts.

Response:

In the preamble to the final rule, EPA clarifies that only the individual overseeing the conduct of an all appropriate inquiries investigation must qualify as an environmental professional, as defined in the final rule. Other individuals may contribute to the investigation as long as their activities are conducted under the supervision or responsible charge of the individual qualifying as an environmental professional. In today's final rule, the Agency is retaining the recommendation that an individual who qualifies as an environmental professional conduct, or closely oversee the conduct of, the required on-site visual inspection of the property.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

We agree with the commenter's assessment of the strengths of the performance based approach. It is the Agency's contention that the performance based approach effectuates Congressional intent. As explained in the preamble to the proposed rule, the advantage of a performance-based approach over a checklist approach to conducting the inquiries is that multiple sources of information need not be consulted for the same information.

The final rule (as did the proposed rule) encourages environmental professionals to use discretion and professional judgment in determining the best sources of information and the best manner in which to obtain information, given the objectives of the regulations and the specific characteristics of the property being assessed. EPA anticipates that this flexible approach will prevent a waste of resources in the case of properties that may not require as rigorous of an investigation due to available information about a property or particular knowledge about a property that may not be available in the case of other properties, while at the same time maintaining adequate standards to ensure environmental protection in the case of all properties.

Commenter Organization Name: Davis, Colin
Comment Number: 0300
Excerpt Number: 1
Other Sections: NEW - 1.1.1.2 - Support of the performance standard

Excerpt Text:

I am in support of the proposed AAI rule due to: It establishes minimum qualification criteria for environmental professionals. Allows for professional judgement in evaluation of risk associated with a site. Encourages project/client/public sensitivity by permitting the flexibility derived from a performance based approach instead of a perspective approach. Broader scope of study by improving the current standard defined in ASTM E1527.

Response:

Please see response to comment number 0298, excerpt 1.

Commenter Organization Name: Erb, Ronald

Comment Number: 0301

Excerpt Number: 1

Other Sections: NEW - 1.1.1.2 - Support of the performance standard

Excerpt Text:

I would like to add my support to the proposed rule for Standards and Practices for All Appropriate Inquiry. I believe this service should be handled by persons with a minimum of training and expertise as outlined in the proposed rule. Site specific, performance based approaches are important in the type of work performed by environmental professionals.

Response:

Please see response to comment number 0298, excerpt 1.

Commenter Organization Name: Anonymous

Comment Number: 0303

Excerpt Number: 1

Other Sections: NEW - 1.1.1.2 - Support of the performance standard

Excerpt Text:

I approve of the proposed rule for AAI. The prescriptive approach currently used in the ASTM method is not applicable to many projects/sites; therefore, a more flexible approach, as is proposed in the AAI is an improvement. The AAI proposed rule also sets minimum qualifications for professions conducting the inquiries that are more appropriate to the inquiry process.

Response:

EPA appreciates the outpouring of support received for the performance based approach to All Appropriate Inquiries. It is the Agency's contention that the performance based approach effectuates Congressional intent. As explained in the preamble to the proposed rule, the advantage of a performance-based approach over a checklist approach to conducting the inquiries is that multiple sources of information need not be consulted for the same information.

The final rule (as did the proposed rule) encourages environmental professionals to use discretion and professional judgment in determining the best sources of information and the best manner in which to obtain information, given the objectives of the regulations and the specific characteristics of the property being assessed. EPA anticipates that this flexible approach will prevent a waste of resources in the case of properties that may not require as rigorous of an investigation due to available information about a property or particular knowledge about a property that may not be available in the case of other properties, while at the same time maintaining adequate standards to ensure environmental protection in the case of all properties.

Please also see response to comment number 0072, excerpt 2.

Commenter Organization Name: QORE Property Sciences

Comment Number: 0304

Excerpt Number: 1

Excerpt Text:

It is essential that when establishing a Standard for All Appropriate Inquiry that there also be a minimum standard of expertise of the person performing the investigation. As a professional engaged with performing and reviewing due diligence reports, I have seen far too many reports that did not address all the essential issues on a site and many omissions that could have resulted in danger to the public. I believe a college degree in an engineering or environmental field and at least one year experience performing due diligence work under the supervision of a more experienced professional should be the minimum required credentials for the individual performing the work.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: May, Thomas

Comment Number: 0310

Excerpt Number: 1

Excerpt Text:

I support the proposed rule. Of particular note is the education and training requirement for persons conducting AAI that I wish to single out as particularly important. The person who designs and leads the AAI study must have the requisite education, training, experience, and judgment. For that reason, I am fully supportive of the establishment of minimum education and experience qualifications for “environmental professionals” involved with AAI studies. This important feature is missing from the current process.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Rose and Westra

Comment Number: 0320

Excerpt Number: 8

Excerpt Text:

R&W supports and commends the EPA for allowing persons not meeting the definition of EP to contribute to AAI investigations. This is necessary to provide an efficient Phase I ESA/AAI market and maintain reasonable costs to prospective purchasers.

Response:

EPA thanks the commenter for the stated support of the proposed provision. In the preamble to the final rule, EPA clarifies that only the individual overseeing the conduct of an all appropriate inquiries investigation must qualify as an environmental professional, as defined in the final rule. Other individuals may contribute to the investigation as long as their activities are conducted under the supervision or responsible charge of the individual qualifying as an environmental professional. In today's final rule, the Agency is retaining the recommendation that an individual who qualifies as an environmental professional conduct, or closely oversee the conduct of, the required on-site visual inspection of the property.

Commenter Organization Name: QORE, Inc

Comment Number: 0324

Excerpt Number: 1

Other Sections: NEW - 1.1.1.1 - Adopt the rule as proposed

Excerpt Text:

We have long needed to establish a minimum level of qualifications for individuals performing environmental assessments, particularly those done in preparation for property transactions. The proposed rule accomplishes that goal and for this reason I support it.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Mille Lacs Ojibwe

Comment Number: 0330

Excerpt Number: 5

Excerpt Text:

The Band agrees that an undergraduate or graduate degree in any of the relevant disciplines of engineering, environmental or earth science is appropriate.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Schultz, Michael

Comment Number: 0331

Excerpt Number: 3

Excerpt Text:

I support the minimum education and experience qualifications for "environmental professionals" involved with AAI studies. This important feature is missing from the current process. From my experience, unless many types of properties, including brownfield sites, are handled carefully, they can pose a real danger to public health, safety, and welfare. The person who designs and leads the AAI study must have the requisite education, training, experience, and judgment to effectively deal with these sites.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: DWR Consultants

Comment Number: 0349

Excerpt Number: 1

Other Sections: NEW - 2.3.8 - To ensure that EPs are qualified, a national test and/or training should be established

Excerpt Text:

I fully support the enhancement for qualifications of Environmental Professionals. However, I think some sort of national test should be integrated into the process to ensure the "professionals" are qualified.

Response:

Please see response to comment number 0072, excerpt 2.

EPA determined that the educational and professional experience qualifications included in the final definition of environmental professional are sufficient without the added burden of a testing requirement. Such a requirement would not only place additional burden upon qualified individuals, but the Agency or state governments would have the added burden of establishing scoring procedures and recordkeeping processes.

Commenter Organization Name: Smith, Michael

Comment Number: 0360

Excerpt Number: 2

Excerpt Text:

As an owner of a 200 employee firm that performs environmental site assessments, I understand that even the apparently simplest brownfield engagement or environmental site assessment can pose latent risks. The only way to deal effectively with those risks is by relying on professionals who have the education, training, experience, and good judgment needed to know what to do when the situation they encounter is not identical to one described in a guide of some kind, or contemplated in a "one-size-fits-all" standard.

For that reason, I am pleased that the proposed rule establishes realistic near- and long-term definitions of "environmental professional," allows for and even encourages the application of the professional judgment needed to help consider and safeguard the public trust, and, in general, "raises the bar" such that better assessments will be performed, without necessarily increasing costs.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Denton, Robert

Comment Number: 0381

Excerpt Number: 3

Excerpt Text:

-My experience makes it clear to me that, unless they are handled properly, many types of properties, including brownfield sites, can pose a real danger to public health, safety, and welfare. And handling them properly is not easy. The person who designs and leads the AAI study must have the requisite education, training, experience, and judgment. For that reason, I am glad to see that the Agency has established minimum education and experience qualifications for "environmental professionals" involved with AAI studies. Professional qualifications are de facto requirements in every discipline of modern science and engineering, and it is appropriate that the same standard should apply to those practicing one of the cornerstones of environmental inquiry as well. As a State of West Virginia Licensed Remediation Specialist (L.R.S.) I am a strong supporter of standardized, minimum qualifications in all stages of environmental practice.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Gallagher, Paul

Comment Number: 0383

Excerpt Number: 1

Excerpt Text:

I am an environmental professional who currently performs environmental assessments. I am glad to see that the Agency has established minimum education and experience qualifications for "environmental professionals" involved with AAI studies. This important feature is missing from ASTM E-1527 process. I am a Certified Professional in the State of Ohio, which has a privatized program. If EPA continues to rely on the private sector to address environmental legacy issues, establishing the minimum criteria for those people that will provide opinions that affect public health and safety is essential.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Dohms, Peter

Comment Number: 0384

Excerpt Number: 3

Excerpt Text:

My experience makes it clear to me that, unless they are handled properly, many types of properties, including brownfield sites, can pose a real danger to public health, safety, and welfare. Properly handling such sites is not easy. The person who designs and leads the AAI study must have the requisite education, training, experience, and judgment. For that reason, I am glad to see that the Agency has established minimum education and experience qualifications for "environmental professionals" involved with AAI studies. This important feature is missing from the current process.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Heywood, Johanna

Comment Number: 0387

Excerpt Number: 3

Excerpt Text:

My experience makes it clear to me that, unless they are handled properly, many types of properties, including Brownfield sites, can pose a real danger to public health, safety, and welfare. And handling them properly is not easy. The person who designs and leads the AAI study must have the requisite education, training, experience, and judgment. For that reason, I am glad to see that the Agency has established minimum education and experience qualifications for "environmental professionals" involved with AAI studies. This important feature is missing from the current process.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Intertox

Comment Number: 0396

Excerpt Number: 2

Excerpt Text:

-The proposed qualifications included in the definition of an environmental professional and the provisions allowing for individuals who do not qualify as environmental professionals to contribute to inquiry activities.

--Intertox applauds the U.S. EPA for providing the most comprehensive definition of an environmental professional. Especially significant is acknowledging that registered geologists and engineers are not the only professionals providing environmental assessment services. This proposed rule also allows non-qualified environmental professionals to work under the supervision of qualified environmental professionals.

This should be of financial benefit to consultants and their clients as it is frequent practice of consultants to utilize the least experienced, least trained, and least compensated individual to conduct environmental site assessments.

-The proposed division of responsibilities for conducting all appropriate inquiries.

--The proposed rule allows for a reasonable division of responsibility in conducting all appropriate inquiries. As is common practice in consulting, the least experienced, least trained, and least compensated individual conducts the actual environmental site assessment with a final report review by a P.E. or geologist at a senior staff level or higher in a company. The proposed rule will allow this practice to continue.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Rybak, John Thomas

Comment Number: 0412

Excerpt Number: 3

Excerpt Text:

Proposed Qualifications

a)Page # 52576

b)View: I support the EP Qualifications. The proposed qualifications EP are appropriate and reasonable. These essentially match what the requirements Lending Institution Phase I users require.

c) Assumptions: Some level of educational and job training experience is relevant to performing Phase I assessments. The more education and/or training should lead to better quality reports.

d) Burden: Some professionals will not qualify for EP under the AAI status, and will need to obtain more education and/or experience. AAI does not preclude such individuals from obtaining the proper qualifications.

Response:

Please see response to comment number 0072, excerpt 2.

2.1.1.1 *The License Requirement Should Not Be Revised to Allow Individuals Other than Professional Engineers and Professional Geologists to Qualify as EPs*

Commenter Organization Name: Vellone, Daniel A

Comment Number: 0048

Excerpt Number: 1

Other Sections: NEW - 2.1.1.2 - The proposed minimum requirements will improve quality of ESAs

Excerpt Text:

In my experience, unless environmental inquiries are handled properly, many types of properties, including Brownfield sites, can pose a potential threat to public welfare, safety, and health. Therefore, the person (or firm) who is designated as being in "Responsible Charge" of the design and/or leading the AAI study should have a minimum requisite education, training, experience, and judgment. For that reason, It is encouraging to see that the EPA has established minimum education and experience qualifications for "environmental professionals" involved with AAI studies. This important feature is missing from the current process, allowing otherwise "unqualified" persons acting in the public interest. As an "environmental professional" having education, experience, and professional licensure, I believe it is only those holding licensure as Professional Engineers or Professional Geologists who can be held accountable to the highest standards of professional conduct and place the public welfare above all other considerations.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Anonymous

Comment Number: 0209

Excerpt Number: 1

Excerpt Text:

The current language is appropriate. Requiring PE or PG certification for professionals conducting investigations will improve the quality and reliability of the process. Since Professional Engineers are prevented by law from practicing outside of their area of expertise, previous comments seeking to change this language have no basis. Furthermore, stringent licensing and education requirements are present in PE and PG certification that are not present in other certifications. Changing this language to include other groups of certified professionals will only serve to dilute the effectiveness of the current regulation.

Response:

EPA disagrees with the commenter's assertion that only licensed or certified Professional Engineers (P.E.s) and Professional Geologists (P.G.s) should be included in the definition of environmental professional for the purposes of conducting all appropriate inquiries. EPA determined that the types of activities included in the standards established by the

final rule may be performed by individuals with a broader range of qualifications. The final rule, while recognizing that P.E.s and P.G.s with three or more years of relevant full-time experience meet the qualifications for an environmental professional, provides minimum educational and experience qualifications for additional individuals who qualify to oversee the conduct of all appropriate inquiries investigations. EPA believes that the qualifications included in the definition of environmental professional provide a good balance of educational and professional experience requirements.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: Anonymous

Comment Number: 0210

Excerpt Number: 1

Excerpt Text:

Comments by CHMM, REP, REM and other groups seeking to revise this definition as proposed only serve to undermine the rule's effectiveness. None of these certifications contain the stringent review and testing present in P.E. or P.G. The fractured state of certification and licensing in this field is the root problem driving this rule. Please do not allow these organizations to hijack this standard. If the industry was capable of certifying and regulating itself, there would be no need for this proposed rule.

Response:

EPA determined that the types of activities included in the standards established by the final rule may be performed by individuals with a broader range of qualifications than those championed by the organizations cited by the commenter. The final rule, while recognizing that P.E.s and P.G.s with three or more years of relevant full-time experience meet the qualifications for an environmental professional, provides minimum educational and experience qualifications for additional individuals who qualify to oversee the conduct of all appropriate inquiries investigations. EPA believes that the qualifications included in the definition of environmental professional provide a good balance of educational and professional experience requirements.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: NSPE

Comment Number: 0230

Excerpt Number: 1

Excerpt Text:

We would like to address section D of the rule (page 52552-52555), which defines the proposed qualifications for an "environmental professional." We recommend the following revisions:

1. The proposed definition of an environmental professional should be restricted to

individuals who have demonstrated that they possess the necessary education, examination, and experience to assure that all appropriate inquiries and environmental site assessments are undertaken in the fair and objective fashion intended by Congress.

2. The definition of environmental professional should be limited to individuals who hold a professional engineers or professional geologists license and/or registration from a state, tribe, or U.S. territory and have the equivalent of three years of full-time relevant experience. While fiscal protections of certain sectors of the market may be appropriate in some rulemakings, it seems ironic that the EPA is promoting a rule that may not aid in protecting the environment. In fact, it appears that certain protections may be reduced in the interests of broadening the market.

In the rule, EPA acknowledges that professional engineers and professional geologists have the specific education and training necessary to develop opinions and conclusions regarding the presence of releases or threatened releases as envisioned by the proposed regulation, especially when coupled with three years of appropriate experience. EPA correctly references the rigors of the licensing and/or certification processes employed for both professions. The Agency further acknowledges that these professionals are held responsible (both legally and ethically) for safeguarding the public health, safety, and welfare by the governmental authorities issuing the respective professional credentials. Additionally, the Agency cites the ongoing and plenary supervisory role taken by the states to police professional misconduct.

Professional engineers have been licensed in the United States for over 70 years and have a well-deserved reputation for undertaking their duties with professionalism and honesty. The Engineer's Creed expressly states that engineers should "place service before profit, the honor and standing of the profession before personal advantage, and the public welfare above all other considerations."

NSPE's goal is to advance public health, safety, and welfare; not to displace individuals mid-career. Individuals not licensed as professional engineers or professional geologists are at liberty to seek licensure in either of these fields. Also, those that are not licensed also have the opportunity to collaborate with someone who is already licensed, such as working as a sub-consultant. This would also afford them the opportunity to work under the supervision of a qualified environmental professional. This compromise was not thoroughly explored by the working group that prepared these remarks, but there is no data to support the theory that the current market conditions related to professional site assessment services would be affected by this collaboration.

Many people who possess the qualifications outlined in the proposed rule would likely be allowed to sit for a licensing exam. This licensing examination process would provide some objectivity in determining whether a candidate possessed the minimum abilities to perform the functions regulated by the proposed rule. By adding an objective basis to measuring the qualifications of an individual (i.e., a combination of education, experience, and licensure) the public would be afforded the same protections used as justification for originally listing professional engineers and professional geologists as acceptable providers.

Response:

Please see response to commenter number 0209, excerpt 1.

Commenter Organization Name: NSPE

Comment Number: 0230

Excerpt Number: 3

Excerpt Text:

Since enforcement and oversight is minimal in the proposed rule, the use of state-licensed professionals would ensure that only duly qualified professionals are performing these services.

The Negotiated Rulemaking Committee is to be commended for its decision to not include certifications from independent professional certification organizations to define an environmental professional. While many such organizations may satisfy certain legitimacy concerns, it would seem that EPA's core purpose could be usurped by the administrative functions related to determining qualifications. Additionally, we feel that such a function is already being performed by government, albeit state governments, and this additional oversight function is simply unnecessary.

Response:

Thank you for your comment. The final rule does not reference any private party professional certification standards. Such an approach would require that EPA review the certification requirements of each organization to determine whether or not each organization's certification requirements meet or exceed the regulatory qualifications for an environmental professional. Given that there may be many such organizations and given that each organization may review and change its certification qualifications on a frequent or periodic basis, we conclude that such an undertaking is not practicable. EPA does not have the necessary resources to review the procedures of each private certification organization and review and approve each organization's certification qualifications. Therefore, the final rule includes within the regulatory definition of an environmental professional, general performance-based standards or qualifications for determining who may meet the definition of an environmental professional for the purposes of conducting all appropriate inquiries. These standards include education and experience qualifications. The final rule does not recognize, or reference, any private organization's certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in the final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Please also see response to comment number 0209, excerpt 1.

Commenter Organization Name: NSPE

Comment Number: 0230

Excerpt Number: 5

Excerpt Text:

EPA has said in their rulemaking that they do not want to have to go through the vetting process, so it is NSPE's ultimate recommendation that the definition of an environmental professional continue to be limited to a professional engineer or professional geologist. This would ensure that there would be objective criteria established regarding the qualifications of environmental professionals and that there would be governmental entities at the state level in place to regulate those individuals.

Response:

Please see response to comment number 0209, excerpt 1.

Commenter Organization Name: Williams, Brian

Comment Number: 0282

Excerpt Number: 1

Excerpt Text:

I am a registered professional engineer and a registered professional geologist practicing in Montana, Idaho, and Washington states. I have worked within the ASTM standard E-1527 for many years, and I am glad that EPA is finally putting forth a rule to set standards for those persons defined as "environmental professionals". The current ASTM standard does not specify the level of education of those persons who perform the environmental studies governed by the proposed rule. As a professional engineer and geologist, I have seen MANY such reports developed by persons who were (and continue to be) TOTALLY UNQUALIFIED to perform such services. In particular, many of those persons who are listed as CHMM's (Certified Hazardous Materials Managers) have no formal education in the sciences on which they base their "opinions" . I attended one of the formative meetings of the CHMM "registration" committee, and none of those present was registered as an engineering or science professional in any state. Most had only a high school or 2-year college degree and only basic instruction in hazardous materials. At best, these people can be regarded only as trained technicians. Again, in particular, the CHMM organization "certifies" its members based on their payment of an organizational fee. There is no level of testing for technical or professional competence, such as is required for persons seeking licensure as engineers or geologists. In closure, I concur with the All Appropriate Inquiry rule proposed by the Agency. Absent adoption of this rule, it is my opinion that any nitwit who wants to call himself/herself an "environmental professional" can do so, with the ability to make decisions regarding some of the most dangerous materials known to mankind.

Response:

Please see response to comment number 0209, excerpt 1.

Commenter Organization Name: OSBGE

Comment Number: 0291

Excerpt Number: 1

Excerpt Text:

OSBGE's opinion is that the EPA's proposed document in its current form will impede the State of Oregon's effectiveness in public protection from1 unqualified and non-registered environmental practitioners who offer or provide the public practice of geology. As the draft is written, OSBGE is concerned about encouraging non-registered individuals to undertake geologic services, under the guise of "environmental services", in violation of Oregon State law.

Certain types of professional services covered by the proposed EPA definition of "environmental professional" may fall; within the public practice of geology in Oregon, including areas described within the "aill appropriate inquiry" language. For example, interpretation of geologic conditions used to determine 1) geologic or hydrogeologic conditions of the subject property and surrounding environment or 2) potential migration pathways (e.g., groundwater flow direction) constitute the public practice of geology in Oregon. The practice of geology is regulated in Oregon and in most other States. OSBGE's statutory authority makes it clear that only Oregon Registered Geologists can provide these types of services.

During the past six years, several environmental reports (prepared by unregistered "environmental professionals") that were referred to OSBGE for compliance review contained the public practice of geology, as defined by Oregon law. These reports can typically include contaminant fate and transport assessments, and the interpretation of groundwater conditions, gradient calculations, flow directions, etc., all of which constitute the practice of geology in Oregon. The public practice of geology by unregistered individuals is an actionable offense.

OSBGE's mission is to protect the public. Unregistered "environmental professionals" are not obligated to follow a regulated "Code of Conduct", nor have they demonstrated the education and minimal competence necessary to provide the public practice of geology (including hydrogeology). No regulatory body charged with public protection exists to test whether an environmental professional's work meets an acceptable standard. To encourage unregistered individuals to provide geologic services to the public breaches a legislative mandate established in 1977 in Oregon.

Response:

The rule should not have the consequences described by the commenter. The final rule does not preempt state certifications for geologists or other professionals. The final rule at section 312.10(b)(4) states, "The definition of environmental professional provided above does not preempt state professional licensing or registration requirements such as those for a professional geologist, engineer, or site remediation professional. Before commencing work, a person should determine the applicability of state professional licensing or registration laws to the activities to be undertaken as part of the inquiry identified in §312.21(b).

Commenter Organization Name: DE Board of Geologists

Comment Number: 0337

Excerpt Number: 1

Excerpt Text:

The Delaware Board strongly agrees' with Section 312.10(b)(4) of the proposed rule stating:

The definition of environmental professional provided above does not preempt state professional licensing or registration requirements such as those for a professional geologist, engineer, or site remediation professional. Before commencing work, a person should determine the applicability of state professional licensing registration laws to the activities to be undertaken as part of the inquiry identified in Section 312.21(b).

Delaware requires licensing of geologic and engineering professionals, and it would be inappropriate and possibly illegal for EPA defined "environmental professionals" to perform geologic or engineering characterizations involved in remediation of Brownfield sites.

The Delaware Board is opposed to any clauses included in the proposed rulemaking that involve grandfathering and references to unlicensed individuals that are somehow qualified by the federal government [EPA or others] to perform this type of work and suggest that these references and clauses be removed entirely. The Board feels that professional licensure/registration is best left to the states to regulate, not the federal government.

Response:

Please see responses to comment numbers 0209 (excerpt 1) and 0291 (excerpt 1).

Commenter Organization Name: Foth & Van Dyke

Comment Number: 0339

Excerpt Number: 1

Excerpt Text:

"Environmental Professional" is broadly defined to include certain persons who are not licensed professional engineers or professional geologists. In fact, the definition includes persons who do not even have a baccalaureate or higher degree in engineering or in any environmentally-related field. We believe that allowing such inquiries be done by non-licensed persons places consumers of these services in serious jeopardy-of losing what would otherwise be a critical defense to potential liability for CERCLA-imposed response costs. Without some licensing requirement, these consumers are-left to fend for themselves when contracting for these services. On the other hand, requiring these environmental inquiries be done by licensed professional engineers or geologists provides these consumers the opportunity to, at the very least, check the persons credentials with the independent licensing entities, typically state or tribal licensing. boards, prior to the services being provided.

Accordingly, we recommend that the proposed definition of "Environmental

Professional" be limited to individuals who have demonstrated that they possess the necessary education, examination, and experience and who hold a professional engineers or professional geologists license and/or registration from a state, tribe, or U.S. territory and have the equivalent of three years of full-time relevant experience.

Response:

Please see response to comment 0209, excerpt 1.

Commenter Organization Name: ASBOG

Comment Number: 0364

Excerpt Number: 1

Excerpt Text:

The ASBOG® Executive Committee and its Member Boards strongly concurs in Section 312.10(b)(4) of the proposed rule which states:

"The definition of environmental professional provided above does not preempt state professional licensing or registration requirements such as those for a professional geologist, engineer, or site remediation professional. Before commencing work, (emphasis added), a person should determine the applicability of state professional licensing or registration laws to the activities to be undertaken as part of the inquiry identified in Section 312.21 (b)."

All 29 of the ASBOG® Member Board States require licensure/registration for the professional practice of geology. It is inappropriate, and in some states possibly illegal, for the proposed "environmental professionals" to engage in the practice of geology in the environmental characterization and remediation of Brownfield sites.

Response:

Please see response to comment numbers 0072 (excerpt 2) and 0291 (excerpt 1).

Commenter Organization Name: Hambley, Douglas

Comment Number: 0394

Excerpt Number: 1

Excerpt Text:

While I am sure that many comments have been received that recommend that the proposed definition of Environmental Professional (EP) be watered down, I would submit that there are very good reasons for the definition as it stands.

First and foremost, Phase II of an Environmental Site Assessment (ESA) consists of a site investigation concerning soil and groundwater. Such soil investigations are performed by environmental geologists and in states where there is licensing or certifications of geologists, such work is defined as requiring supervision by a licensed geologist.

Second, Phase I of an ESA includes a site visit where the primary focus is to identify

spills, stained soils, stressed vegetation, and chemical usage. This part of the work should be performed by an engineer or geologist. (Although identification of stressed vegetation, which would require a biologist, was included in the above list, stressed vegetation is probably the least frequently encountered indicator of environmental problems.

The most compelling reason for the preference that the Environmental Professional should be a licensed Professional Engineer (PE) or Professional Geologist (PG) is the fact that by virtue of the licensing, a PE or PG can be held legally responsible for the validity of their work. Moreover, protection of the public is the *raison d'etre* for the licensing. Such legal responsibility is not provided with other certifications.

Finally, there are unfortunately already too many persons performing Phase-I ESAs who have neither the training nor the expertise to perform them correctly. Their attraction is primarily that they are generally inexpensive. Unfortunately, however, such ESAs are also quite often incomplete. Indeed, I have myself done ESAs that were required as follow-ups because the initial submission (by someone else) was found to be inadequate. Diluting the qualifications for the EP would send a strong signal that slipshod and unprofessional work is not only tolerated but encouraged. If the Agency is serious about requiring "All Appropriate Inquiry" it should also be adamant that the work be performed by properly qualified practitioners.

Response:

Please see response to comment number 0209, excerpt 1.

Commenter Organization Name: Geomatrix Consultants

Comment Number: 0433

Excerpt Number: 1

Excerpt Text:

We agree with the proposed AAI requirements for qualifying practitioners especially with the requirement that a qualified EP perform the site visit. ESA's are frequently complicated enough that oversight by a professional engineer or geologist is crucial. This is particularly true because preliminary interpretations of contaminant fate and transport are made as part of any effort to evaluate risk from offsite sources. Furthermore, only someone trained and experienced in environmental science, hydrogeology, or engineering is qualified to make specific recommendations for remedial investigations and remedial options, in the event that contamination is strongly suspected.

Response:

Please see response to comment number 0353, excerpt 4.

Commenter Organization Name: Ruhmann, Karl

Comment Number: PM-0127-0002

Excerpt Number: 1

Excerpt Text:

In saying that, the assessments that we see that were performed by nonengineers, or nonengineering firms, those companies are generally no longer in business. That would be my first comment.

My second comment was that when the ESA was performed by a registered engineer, we rarely take issue with their findings, and I can say that for several of the companies that are in this room.

In summary, excellence and due diligence is dependent upon the person performing the assessment. This is beneficial to the buyer of the property, the regulator, and the brownfields community, as a whole.

Response:

Please see response to comment number 0209, excerpt 1.

2.1.1.2 *The Proposed Minimum Requirements Will Improve Quality of ESAs*

Commenter Organization Name: Virginia Geotechnical Services

Comment Number: 0034

Excerpt Number: 1

Other Sections: NEW - 1.1.1.3 - The proposed rule will improve quality of ESAs

Excerpt Text:

I am in support of the proposed rule for Standards and Practices for AAI. The qualifications section, in particular, has long been needed and will vastly improve the quality of environmental assessments by setting an appropriate level of qualifications and experience for persons holding themselves out as an "environmental professional." Because ASTM has proven it cannot address the qualifications issue, EPA is the only appropriate venue that can set this standard.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Cooper, Ivan A

Comment Number: 0047

Excerpt Number: 1

Excerpt Text:

First, ASTM E-1527 in fact does not specify any qualifications necessary to be an environmental professional. Therefore I am glad to see that the Agency has established minimum education and experience qualifications for "environmental professionals" involved with AAI studies. This important feature is missing from the current process.

The definition of environmental professional proposed in the rule would prevent from leading AAI studies those who do not have the appropriate education, training, and experience. I understand that my registrations, certifications, and direct experience will allow me to serve as an environmental professional under the rule, and it will allow me to train others and share my experience and knowledge to supply the next generation of environmental professionals to perform these services.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Vellone, Daniel A

Comment Number: 0048

Excerpt Number: 1

Other Sections: NEW - 2.1.1.1 - The license requirement should not be revised to allow individuals other than professional engineers and professional geologists to qualify as EPs

Excerpt Text:

In my experience, unless environmental inquiries are handled properly, many types of properties, including Brownfield sites, can pose a potential threat to public welfare, safety, and health. Therefore, the person (or firm) who is designated as being in "Responsible Charge" of the design and/or leading the AAI study should have a minimum requisite education, training, experience, and judgment. For that reason, It is encouraging to see that the EPA has established minimum education and experience qualifications for "environmental professionals" involved with AAI studies. This important feature is missing from the current process, allowing otherwise "unqualified" persons acting in the public interest. As an "environmental professional" having education, experience, and professional licensure, I believe it is only those holding licensure as Professional Engineers or Professional Geologists who can be held accountable to the highest standards of professional conduct and place the public welfare above all other considerations.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Malivuk, John

Comment Number: 0060

Excerpt Number: 1

Excerpt Text:

ASTM E1527 does not specify qualifications and I am glad that the Agency has established minimum education and experience requirements for professionals engaged with AAI studies. This important feature is currently missing from the process. The definition of environmental professional proposed in the rule would prevent those without appropriate education, training and experience from performing such services. Next, my part of Ohio has environmentally impacted sites and the broader scope of the environmental inquiry provides users and the public with confidence that AAI studies will be protective of human health and the environment and thusly promote productive use of properties consistent with the Small Business Liability Relief and Brownfields Revitalization Act. In other words, it appears that the proposed Rule balances the concerns of the many involved parties without compromising the environment now or in the future. Third, the proposed rule significantly improves the existing environmental inquiry process for property transactions. This permits environmental professionals to continue to provide the expertise that those performing ASTM E1527 studies. Not having to learn a new process will ensure cost effectiveness in consultant services. Last, the rule will help the best performers obtain the most work, by raising the standards for those performing AAI services. It should raise the level of awareness of those who procure such services that qualifications matter

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Thacker, Barry K
Comment Number: 0071
Excerpt Number: 2

Excerpt Text:

As an owner of a firm that performs environmental site assessments, I understand that brownfield engagements and environmental site assessment can pose latent risks. The only way to deal effectively with those risks is by relying on professionals who have the education, training, experience, and good judgment needed to know what to do when the situation they encounter is not identical to one in a "cook-book" guide. For that reason, I am pleased that the proposed rule establishes realistic near- and long-term definitions of "environmental professional" and encourages the application of the professional judgment needed to help consider and safeguard the public trust. I think that the change "raises the bar" such that better assessments will be performed in a cost-effective manner.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Cheeks, J. Richard
Comment Number: 0083
Excerpt Number: 1

Excerpt Text:

First, ASTM E-1527 in fact does not specify any qualifications necessary to be an environmental professional. Therefore I am glad to see that the Agency has established minimum education and experience qualifications for "environmental professionals" involved with AAI studies. This important feature is missing from the current process.

The definition of environmental professional proposed in the rule would prevent from leading AAI studies those who do not have the appropriate education, training, and experience. I understand that, while my certifications will not allow me to serve as an environmental professional under the rule, they will allow me to continue to work under qualified environmental professionals in my firm and continue to increase my knowledge. In fact, the proposed regulations create an incentive for excellence, which I appreciate.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: McHugh, Dan
Comment Number: 0085
Excerpt Number: 1

Excerpt Text:

I am particularly pleased with these items in the rule: Defined Environmental

Professional (EP): Persons with less than the required experience, as stated clearly in the rule, should not be evaluating site data to determine due diligence implications. Each day, I utilize experience I have gained over 10 years to decide if additional inquiry is warranted. A clear definition of EP has been a glaring weakness in the industry. The science background is controversial but reasonable. Understanding chemical properties, degradation, movement, and impacts are aspects of ESAs that are not easily understood by people with non-science backgrounds. Someone who has a business background may not understand chemical properties and may not fully understand which facilities should be a concern Data Gap Identification: This will provide clear information as to the completeness of each report and improve the quality of the reports.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Fulk, Kevin J

Comment Number: 0086

Excerpt Number: 1

Other Sections: NEW - 1.1.1.1 - Adopt the rule as proposed

Excerpt Text:

I support the proposed rule because it establishes minimum qualifications for an environmental professional and will provide a better approach for developers / landowners to handle redevelopment on brownfield sites in our nations urban areas than what currently exists.

The minimum qualifications for an environmental professional will help the industry apply a higher level of qualifications/experience to solve environmental issues for real estate development and redevelopment. This EPA legislation should also give developers a higher level of confidence to tackle brownfields sites, which will significantly aid in "protecting human health and the environmental" for generations to come.

I urge the Agency to adopt the rule as proposed.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Simon, Richard M

Comment Number: 0089

Excerpt Number: 2

Excerpt Text:

As an owner and President of a firm that performs environmental site assessments, I know better than most that even the apparently simplest brownfield engagement or environmental site assessment can pose latent risks. The only way to deal effectively with those risks is by relying on professionals who have the education, training, experience, and good judgment needed to know what to do when the situation they encounter is not

identical to one described in a guide of some kind, or contemplated in a standard of one kind or another. For that reason, I am pleased that the proposed rule establishes realistic near- and long-term definitions of 'environmental professional,' allows for and even encourages the application of the professional judgment needed to help consider and safeguard the public trust, and, in general, 'raises the bar' such that better assessments will be performed, and for not that much more money.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Belaire, Kent

Comment Number: 0267

Excerpt Number: 1

Excerpt Text:

The proposed AAI rule significantly improves the existing environmental inquiry process for real estate transactions. Many types of properties, including Brownfield sites can pose a danger to public health, safety, and welfare. The professional responsible for designing and overseeing the AAI study must have the requisite education, training, experience, and judgment to effectively deal with those potential risks. The AAI rule takes into account both academic background and experience in the definition of the environmental professional (EP). The AAI rule requires specifics regarding the educational requirements as well as the amount and type of training that is required to conduct an assessment. The AAI rule also requires the EP to remain current in his field through continuing education or training and to be able to demonstrate such effort. This provides for an objective standard to measure the credentials of a prospective environmental assessment provider. This is a much better than the ASTM definition of EP which only refers to "training and experience" and makes no mention of education.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Billington, Edward

Comment Number: 0284

Excerpt Number: 1

Excerpt Text:

I am particularly supportive of establishing minimum licensing, education, and experience requirements for Environmental Professionals and in encouraging a performance-based approach, rather than a prescriptive approach. The public is best served by having minimum criteria for those who conduct environmental investigations for brownfields. The risks to the public in the resulting use of the properties can be high and need to be mitigated by having trained and experienced professionals in a direct role. The use of licensed engineers and geologists, who have already met a minimum standard for this type of work, is the logical criteria to use.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Anonymous

Comment Number: 0286

Excerpt Number: 1

Excerpt Text:

I understand that this docket sets minimum qualification criteria for environmental professionals. I strongly endorse the creation of qualification criteria as described in this docket. I feel that the public is owed the assurance that the individual conducting the work has a proven track record of professional judgment, which is critical in the proper evaluation of the risk associated with a particular site.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Willis, George

Comment Number: 0288

Excerpt Number: 1

Other Sections: NEW - 1.1.1.2 - Support of the performance standard

Excerpt Text:

I like the fact that it sets a minimum qualification and criteria level for the professionals in the environmental practice area. It is performance based and includes an education component which is not unlike the successful professional practices found in the engineering industry. The use of professional judgement in evaluating site risk is imperative and supported by the rule. If adopted, the All Appropriate Inquiry Rule should go a long way towards improving the quality of the practitioners in the field and more significantly, actually protecting human health and the environment.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Foppe Technical Group

Comment Number: 0289

Excerpt Number: 1

Other Sections: NEW - 1.1.1.1 - Adopt the rule as proposed

Excerpt Text:

As an environmental company that performs AAI, we would like to add our voice in support of the proposed rule. It is imperative that the technical nature of a Phase I be performed by well trained, competent professionals. The proposed rules elevated the requirements to a necessary level to ensure that competent work is performed.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Anonymous

Comment Number: 0302

Excerpt Number: 1

Excerpt Text:

Please count this as a message in support of the proposed AAI rule. I am an environmental professional and see a broad range of environmental services provided. Not requiring professional credentials to provide these services has been a mistake and the public is not served by subprofessional opinions on the environmental condition of sites. The public will be better protected by professionals providing these services.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: QORE, Inc

Comment Number: 0307

Excerpt Number: 1

Other Sections: NEW - 1.1.1.1 - Adopt the rule as proposed

Excerpt Text:

I think this is a good and necessary standard. Minimum qualification criteria for environmental professionals must be set. The public will be provided with the confidence that AAI studies will be protective of human health and the environment that does not currently exist with the ASTM process. I am pleased to support the AAI rule.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: QORE Property Sciences

Comment Number: 0308

Excerpt Number: 1

Excerpt Text:

Brownfields often have complex histories and potentially severe health and safety implications if not managed professionally. Only individuals that have substantial expertise in geology, hydrology, chemistry, engineering and risk assessments should be allowed to perform All Appropriate Inquiries. Personnel without this background have no basis for determining if a site is appropriate for brownfield development. In order to keep the public's trust in this critical decision making process, let's keep the bar high on those responsible for performing AAI's.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Lampkin, Charles

Comment Number: 0376

Excerpt Number: 1

Excerpt Text:

I have read the proposed new regulations on CERCLA and approve of the changes. I currently serve on the ASTM E 50 Committee that wrote the ASTM 1527 Guidelines. I particularly support the new requirements on the Environmental Professional. During the course of my environmental practice I am asked to update Phase Is that have been prepared by others. I find that when the reports have been prepared by subprofessionals there is not much information that I can use in the updates. I receive advertisements from several licensing organizations that will issue a license after taking a 24 hour course. There are very few requirements on experience and education. I think that by requiring a Registered Engineer or Geologist to prepare the Phase Is, the quality of the reports will improve.

Response:

Please see response to comment number 0209, excerpt 1.

Commenter Organization Name: Templeton, Sharon

Comment Number: 0407

Excerpt Number: 2

Excerpt Text:

Currently there are individuals and companies without sufficient experience and qualifications who are providing environmental due diligence studies for simple and complex properties. Unless these studies are performed properly, many types of properties, including brownfield sites, can pose a real danger to public health, safety, and welfare. The person who designs and leads the AAI study must have the requisite education, training, experience, and judgment. For that reason, I am glad to see that the Agency has established minimum education and experience qualifications for "environmental professionals" involved with AAI studies.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Wike, Dennis

Comment Number: PM-0127-0003

Excerpt Number: 1

Excerpt Text:

So one of the things that I see from this standpoint is that the requirement to have environmental professionals have minimum qualifications is a very good one, and I

welcome it.

What I have seen, I have worked on the industry side, as well as the consulting, and have reviewed thousands of Phase I's. And unfortunately, the general mind public looks for a piece of paper or a report and doesn't know anything about the quality of what they have received.

I'm very happy to see the EPA's comments on the transaction screen and its lacking in ability to protect from the CERCLA liability. I think these unqualified folks that do Phase I's are doing a disservice to their clients.

Having minimum standards is good. There might be some consideration that, well, there will be a lack of folks that can do this work. I don't think that's the case. I think what has happened is that many of the folks that can do the work have just decided not to do the work, because of the fact that there are so many people out there that will do it for next to nothing, and the general public, the client -- not the sophisticated client, but the general client out there doesn't know the difference.

So from this standpoint, I do believe that we are making great improvements, getting it in the proposed standard. I think we're moving in the right direction. I think the EPA has done a very good job.

Response:

Please see response to comment number 0072, excerpt 2.

Commenter Organization Name: Langston, Jeff

Comment Number: PM-0127-0006

Excerpt Number: 1

Other Sections: NEW - 1.1.1.3 - The proposed rule will improve quality of ESAs

Excerpt Text:

And I just want to mention that I'm in favor of the proposed rule, and for the reasons - the favorable reasons that have been mentioned by others. I don't want to restate those, but specifically, I do want to comment on the definition of the environmental professional that the rule would require, and I believe that that definition for the environmental professional would result in increased quality of the environment assessment and the due diligence reports.

Response:

Please see response to comment number 0072, excerpt 2.

2.1.2 Revise the License Requirement to Include Licensed or Certified Professionals Other than Professional Engineers and Professional Geologists

Commenter Organization Name: Lind, Peter A

Comment Number: 0052

Excerpt Number: 1

Excerpt Text:

I encourage you to allow qualified licensed design professionals, not simply PE's and PG's, to be a part of the solution.

I strongly support changing the proposed regulation to allow "licensed design professionals" qualified for conducting AAI's. Then add a definition for "licensed design professional" as commonly written in state statutes. Recognize states are responsible for licensing professionals, not feds.

Response:

The final rule recognizes, and includes within the definition of environmental professional, any individual licensed or certified by a state or tribal government to perform site assessments, provided the individual also has three or more years of full-time relevant experience.

EPA notes that based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on

this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

In the preamble to the final rule, EPA clarifies that only the individual overseeing the conduct of an all appropriate inquiries investigation must qualify as an environmental professional, as defined in the final rule. Other individuals may contribute to the investigation as long as their activities are conducted under the supervision or responsible charge of the individual qualifying as an environmental professional. In today's final rule, the Agency is retaining the recommendation that an individual who qualifies as an environmental professional conduct, or closely oversee the conduct of, the required on-site visual inspection of the property.

Commenter Organization Name: American Institute of Architects

Comment Number: 0102

Excerpt Number: 1

Excerpt Text:

AIA is concerned that this restrictive definition excludes architects and other design professionals who, through their specialized training and relevant professional experience, have achieved the requisite skills and credentials to manage and oversee "all appropriate inquiries." Architects and other design professionals with specialized environmental training commonly investigate, conduct, supervise and manage environmental site assessments, building renovations and site remediations involving asbestos, lead paint, radon, and other toxic and environmentally harmful materials; as well as underground storage tank removals and the recycling of ozone depleting refrigerants. Architects with specialized environmental training are commonly acknowledged by the other professionals in the field to have the technical education, skills and environmental sensitivity to undertake these activities and deliver superior results. Should the definition currently proposed become final, these practitioners will no longer be able to practice their trade. Building owners, their representatives, lawyers, real estate managers and financial institutions will no longer be able to retain them to do the work they have studied for and practiced effectively to date.

AIA requests that the definition of "environmental professional" be revised to include individuals with relevant experience and holding a baccalaureate or higher degree in architecture or a similar design-related field, and individuals with relevant experience and holding a current license in architecture or a design-related field.

Response:

The definition of environmental professional in the final rule does not specifically recognize architects as environmental professionals. The Agency does not support a conclusion that all architects meet the qualifications necessary to oversee and supervise all appropriate inquiries investigations based merely upon the fact that an individual holds a degree in architecture or practices as an architect. However, the final rule includes in the final definition of environmental professional experience and educational qualifications that many practicing architects may possess. In addition, the final rule

provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments.

Commenter Organization Name: Lind, Peter

Comment Number: 0107

Excerpt Number: 1

Other Sections: NEW - 2.3.1 - Professional engineer certification and professional geologist certification do not ensure high level of professional ability

Excerpt Text:

The present definition for "environmental professional" in the PROPOSED REGULATION is too restrictive by omitting the words, "licensed architects" and "architectural accredited institutions". Similar to licensed engineers and licensed geologists, licensed architects are design professionals.

To simply allow the grandfathering of, for example; a licensed "electrical engineer" to conduct surface and subsurface investigations because the "engineer" is licensed and has had three years of AAI relevant experience is NOT fair to a licensed architect having similar AAI relevant environmental experience. Nor is it appropriate for the client and general public to feel safe that a licensed geologist is absolutely qualified to sign-off on an environmental site assessment of a "facility" or "building structure" on the subject site. Think about it, a licensed architect having specialized environmental training may be better qualified in ESA matters concerning facility, function and their processes that may, or may not, have contaminated site surface or subsurface, yet is not expressly "qualified" under any of the four proposed qualifications by the exclusion of these terms, including the grandfather provisions.

Response:

Please see response to comment number 0102, excerpt 1.

Commenter Organization Name: Lind, Peter

Comment Number: 0107

Excerpt Number: 3

Excerpt Text:

Therefore, may I recommend consideration of the following changes to the 312.10 definitions:

1. Add "licensed architect" to section 312.10 (b)(2)(i) and (b)(4)
2. Add "architectural accredited institution" to section 312.10 (b)(2)(iii)

Response:

Please see response to comment number 0102, excerpt 1.

Commenter Organization Name: Fishman, Betty

Comment Number: 0138

Excerpt Number: 2

Excerpt Text:

The credential I work with-the Certified Hazardous Materials Manager® (CHMM®)-is a professional credential that is accredited by the Council of Engineering and Scientific Specialty Boards and adheres to the stringent ASTM E1929-98 Standard Practice for Assessment of Certification Programs for Environmental Professionals. CHMMs are bound by their Code of Ethics to practice only within their areas of expertise.

Furthermore, all CHMMs are required to remain current by qualifying for recertification every five years.

A Master-Level CHMM must have an appropriate accredited baccalaureate or higher degree and at least seven (7) years of relevant experience, which exceeds the experience level in this proposal. We would be pleased to see EPA recognize the Master-Level CHMM as a means of qualifying for the Environmental Professional, along with the licenses and registrations already included in the proposed rules. If it cannot be adopted at this late date into the rule itself, we would be pleased to see reference to the Master-Level CHMM as a qualifying credential in EPA guidance materials.

Response:

The definition of an environmental professional in the final rule includes individuals who hold a Baccalaureate or higher degree from an accredited institution of higher education in engineering or science and have the equivalent of five (5) years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries. In addition, individuals with ten years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries qualify as environmental professionals for the purpose of conducting all appropriate inquiries. Individuals with these qualifications most likely will possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases to the surface or subsurface of a property, sufficient to meet the objectives and performance factors included in §§312.20(e) and (f) of the final rule.

In addition to the qualifications for environmental professionals mentioned above, EPA is retaining the proposed provision to include within the definition of an environmental professional individuals who are licensed to perform environmental site assessments or all appropriate inquiries by the Federal government (*e.g.*, the Bureau of Indian Affairs) or under a state or tribal certification program, provided that these individuals also have three years of full-time relevant experience. We contend that individuals licensed by state and tribal governments, or by any department or agency within the federal government, to perform all appropriate inquiries or environmental site assessments, should be allowed to qualify as an environmental professional under today's regulation. State and tribal agencies may best determine the qualifications defining individuals who "possess sufficient specific education, training, and experience necessary to exercise

professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases...to the surface or subsurface of a property, sufficient to meet the rule's objectives and performance factors" within any particular state or tribal jurisdiction.

The final rule does not recognize or reference any private party professional certification standards. Such an approach would require that EPA review the certification requirements of individual organizations to determine whether or not each organization's certification requirements meet or exceed the regulatory qualifications for an environmental professional. Given that there may be many such organizations and given that each organization may review and change its certification qualifications on a frequent or periodic basis, we conclude that such an undertaking is not practicable. EPA does not have the necessary resources to review the procedures of each private certification organization and review and approve each organization's certification qualifications. Therefore, the final rule includes within the regulatory definition of an environmental professional, general performance-based standards or qualifications for determining who may meet the definition of an environmental professional for the purposes of conducting all appropriate inquiries. These standards include particular education and experience qualifications. The final rule does not recognize, or reference, any private organization's certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in today's final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Commenter Organization Name: Peyton, J.

Comment Number: 0216

Excerpt Number: 3

Other Sections: NEW - 2.1.3 - Revise the rule to exclude the license requirement from the definition of the EP

Excerpt Text:

Also, please consider accepting the Certified Environmental Professional, Qualified Environmental Professional, Registered Environmental Manager, and Certified Industrial Hygienist certifications as equivalent to engineering and geology certifications. These 4 certifications are recognized by the Council of Science and Engineering Certification Board, which means that EPA can rely on the rigor of these certifications without having to monitor them. It is simply unfair to recognize some politically connected certifications but not others that are even more appropriate. Or, do not recognize any certifications, including the engineering and geology ones.

Response:

Please see response to comment number 0138, excerpt 2.

Commenter Organization Name: Stevens, Scott

Comment Number: 0225

Excerpt Number: 4

Other Sections: NEW - 2.3.1 - Professional engineer certification and professional geologist certification do not ensure high level of professional ability

Excerpt Text:

It is important that professional designations for conducting inquiries be placed on the same level. Engineers should not be given special status in this industry as that designation does automatically bring with it the needed skill set to protect the public health. Instead, place all professional designations on the same level and make level of experience the deciding factor.

Response:

Please see response to comment number 0138, excerpt 2.

Commenter Organization Name: Kamiya, Mark

Comment Number: 0248

Excerpt Number: 1

Excerpt Text:

I would also suggest that the rule (312.10) include state recognized license or certification in the definition which is consistent with the PE and PG designations. This additional language would clarify what the states current responsibilities are and allow the states to license/certify environmental professionals to their appropriate standards.

Response:

EPA is retaining the proposed provision to include within the definition of an environmental professional individuals who are licensed to perform environmental site assessments or all appropriate inquiries by the Federal government (*e.g.*, the Bureau of Indian Affairs) or under a state or tribal certification program, provided that these individuals also have three years of full-time relevant experience. We contend that individuals licensed by state and tribal governments, or by any department or agency within the federal government, to perform all appropriate inquiries or environmental site assessments, should be allowed to qualify as an environmental professional under today's regulation. State and tribal agencies may best determine the qualifications defining individuals who "possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases...to the surface or subsurface of a property, sufficient to meet the rule's objectives and performance factors" within any particular state or tribal jurisdiction.

Commenter Organization Name: Roeser, Daniel

Comment Number: 0249

Excerpt Number: 2

Excerpt Text:

I strongly recommend that non-governmental, professional organization certifications, such as the Certified Hazardous Materials Manager (CHMM) credential, be recognized as qualification equivalent to the PE or PG credential. As a basis for relevant knowledge, it is hard to imagine that a CHMM who has demonstrated capabilities in the specific areas of practice pertinent to AAI by experience, study and test is any less qualified than a registered professional mechanical or electrical engineer, each of which is automatically qualified (with three years experience) to perform AAI assessments. The CHMM certification is based on testing, a strict Code of Ethics, and the loss of certification if that Code is violated. The effectiveness, and acceptance by the EPA, of non-governmental, professional organization standards is demonstrated in the designation of ASTM standards as interim criteria for AAI.

Response:

Please see response to comment number 0138, excerpt 2.

Commenter Organization Name: AIPG

Comment Number: 0253

Excerpt Number: 2

Excerpt Text:

The profession of geology is not regulated in every state, tribe, or U.S. territory. Unlike some professions, many states do not have a registration or licensure program for Professional Geologists. Therefore, the rule as it is written will place the burden of certification upon the individual professional geologist to apply for the Environmental Professional credential. The U.S. EPA will be required to process and verify the accuracy and completeness of each application. To alleviate some of the burden on the profession and the agency, and to move toward a nation-wide level of coherence of professional capabilities, AIPG recommends that the rule be modified to include the AEPG credential Certified Professional Geologist (CPG) in the definition of Environmental Professional.

In 1963, AIPG established baseline qualifications for granting the Certified Professional Geologist (CPG) title. The CPG title attests to the public that those geologists who hold this title have undergone peer review, and have been deemed competent practitioners who are worthy of public trust. The high standards for obtaining the title have earned it wide recognition. The primary purpose of AIPG, to strengthen geological science as a profession, remains undiminished. AIPG is organized into thirty-six Sections nationwide and has certified almost 11,000 CPGs since its founding. The CPG credential is recognized not only in the U.S. but also internationally; the CPG credential is recognized by the European Federation of Geologists, by the Canadian Securities Administrators under National Instruments 43-101 and 51-101, and by the Australian Stock Exchange as a "Recognized Overseas Professional Organization."

By including the CPG credential in the definition of Environmental Professional, the U.S. EPA can be assured of the consistent application of high standards in those states that do not have registration or licensure programs, while allowing for the mobility of highly credentialed professionals across state boundaries. Approximately 40% of ADPG

membership is in states without programs, and approximately 75% of AIPG membership identifies itself as engaged in environmental practice. EPA can minimize duplicative effort required to process the credentials of individual applicants (i.e. the professional geologist that does not live in a state with a registration or licensure program) by listing the CPG credential in the rule itself. In this way, much of the EPA administrative burden is obviated.

AIPG does not review and modify its certification qualifications on a frequent or periodic basis. Since its inception more than 40 years ago, AIPG has maintained a high standard for the CPG title. The education and experience requirements for AIPG certification meet or exceed those of all of the state registration and licensure programs. These include: a baccalaureate or higher; minimum of 36 semester hours in geological sciences; a minimum of 8 years experience with a bachelor degree, 7 years with a master degree, 5 years with a doctorate; and adherence to the AIPG Code of Ethics.

Response:

Although the final rule recognizes tribal and state-licensed P.E. and P.G.s and other such government licensed environmental professionals with three years of experience to be environmental professionals, the rule does not restrict the definition of an environmental professional to these licensed individuals. The definition of an environmental professional also includes individuals who hold a Baccalaureate or higher degree from an accredited institution of higher education in engineering or science and have the equivalent of five (5) years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries. In addition, individuals with ten years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries qualify as environmental professionals for the purpose of conducting all appropriate inquiries. Individuals with these qualifications most likely will possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases to the surface or subsurface of a property, sufficient to meet the objectives and performance factors included in §312.20(e) and (f).

In addition to the qualifications for environmental professionals mentioned above, EPA is retaining the proposed provision to include within the definition of an environmental professional individuals who are licensed to perform environmental site assessments or all appropriate inquiries by the Federal government (*e.g.*, the Bureau of Indian Affairs) or under a state or tribal certification program, provided that these individuals also have three years of full-time relevant experience. We contend that individuals licensed by state and tribal governments, or by any department or agency within the federal government, to perform all appropriate inquiries or environmental site assessments, should be allowed to qualify as an environmental professional under today's regulation. State and tribal agencies may best determine the qualifications defining individuals who "possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases...to the surface or subsurface of a property, sufficient to

meet the rule’s objectives and performance factors” within any particular state or tribal jurisdiction.

In the case where a state or tribal government does not have a professional licensing or certification program, the final rule provides other options for qualifying as an environmental professional (i.e., experience and educational requirements). EPA does not have an environmental professional licensing program and has no plans to establish such a program. The commenter is incorrect in asserting that in those cases where a state does not have a licensing program for professional geologies, “the U.S. EPA will be required to process and verify the accuracy and completeness of each application.”

Also, in the final rule, EPA is not recognizing private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Such an approach is not necessary and would require that EPA review the certification requirements of each organization to determine whether or not each organization’s certification requirements meet or exceed the regulatory qualifications for an environmental professional. Given that there may be many such organizations and given that each organization may review and change its certification qualifications on a frequent or periodic basis, we conclude that such an undertaking is not practicable. EPA does not have the necessary resources to review the procedures of each private certification organization and review and approve each organization’s certification qualifications. Therefore, the final rule includes within the regulatory definition of an environmental professional, general performance-based standards or qualifications for determining who may meet the definition of an environmental professional for the purposes of conducting all appropriate inquiries. These standards include education and experience qualifications. The final rule does not recognize, or reference, any private organization’s certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization’s certification qualifications include the same or more stringent education and experience requirements as those included in today’s final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Based upon the input received from the public commenters, EPA determined that the definition of environmental professional included in today’s final rule establishes a balance between the merits of setting a high standard of excellence for the conduct of all appropriate inquiries through the establishment of stringent qualifications for environmental professionals and the need to ensure that experienced and highly competent individuals currently conducting all appropriate inquiries are not displaced.

Commenter Organization Name: AIPG
Comment Number: 0253
Excerpt Number: 4

Excerpt Text:

Adding also to the importance of this issue is the proliferation of automated, Internet-based platforms for creating data summaries and maps of the subject area. These give the erroneous impression of thoroughness to the point of even showing groundwater flow direction and the relative elevation of surrounding sites that have the potential to impact the subject site. These presentations can be very misleading and, if used by an unqualified EP, may lead to serious oversights with significant consequences. The judgment of a qualified geologist, taking advantage of all available geologic and hydrogeologic information sources, is necessary for this purpose.

Response:

Please see response to comment number 0209, excerpt 1.

Commenter Organization Name: Wallace, Ronald

Comment Number: 0254

Excerpt Number: 1

Excerpt Text:

My comments pertain to 40 CFR Part 312 Subpart B - Definitions and References.

Professional Engineers (P.E.) and Professional Geologists (P.G.) with three years of relevant, full-time experience are currently deemed to meet the definition of Environmental Professional. The public can inquire through the individual state boards to verify that a particular individual is properly licensed.

For unlicensed individuals who qualify for Environmental Professional based on five years of relevant experience, and for individuals who will qualify under the "grandfather" clause based on ten years of relevant experience, there is no proposed system for the public to verify these credentials.

I strongly recommend that the Rule be written to specifically recognize and accept holders of the AIPG Certified Professional Geologist (CPG) designation as Environmental Professionals, AIPG's CPG meets the educational and exceeds the work experience of a licensed P.G. The individual would still be required to demonstrate three years of relevant, full-time experience under these proposed rules.

Response:

Please see response to comment number 0253, excerpt 2.

Commenter Organization Name: IPEP

Comment Number: 0266

Excerpt Number: 3

Excerpt Text:

Professional Certifications

The Negotiated Rulemaking Committee that developed the proposed regulation for conducting AAIs is to be commended for its efforts to include a broad spectrum of the stakeholders and require that only highly qualified and competent environmental professionals be specified for the performance of such real property environmental assessments. However, the outcome of the effort failed to adequately address a number of major issues related to (i) the specification of objective criteria and procedures for use in bestowing professional credentials on environmental professionals, and (ii) the established credentialing mechanism that is already in place at the national level that will better protect the public's interest regarding the performance of AAI activities than the proposal embodied in the subject docket. This letter addresses these issues, and points out the specific strengths and weakness of the proposal with regard to the definition of Environmental Professional as defined in §312.10 (b)(1). It recommends that the definition be made more objective and directly tied to environmental professionals who will have met national competency standards which are compliant with ASTM E1929-98, Standard Practice for the Assessment of Certification Programs for Environmental

Professionals: Accreditation Criteria.

IPEP strongly endorses the EPA concept of defining an Environmental Professional, as discussed in Section III(D) of the October 23, 2003 NODA regarding the proposed Burden Reduction Rule, and believes that the comments IPEP submitted to that proposed rule have equal merit with regard to the subject proposed rule. In particular, IPEP believes that the following quote from the preamble to the EPA's October 23, 2003 proposed regulations, is equally applicable to the proposed AAI regulations, such that EPA should

"... establish an environmental professional performance standard based on membership in a recognized professional organization. This would be consistent with our principle of allowing the regulated community to meet our standards at the lowest possible cost. The challenge we faced in developing a performance standard was determining which professional organizations are legitimate. Commenters helped by offering the suggestion that we recognize only the organizations which meet the criteria for assessing certification programs for environmental professionals established by the American Society for Testing and Materials (ASTM). ASTM is a nonprofit organization that provides a forum for the development and publication of voluntary, consensus standards for materials, products, systems, and services. The advantage of an ASTM standard is that it is developed by individuals with a diversity of backgrounds, expertise, and knowledge. Through a consensus approach, the standards that are developed reflect the needs of all the stakeholders."

"ASTM E1929-98, Standard Practice for the Assessment of Certification Programs for Environmental Professionals: Accreditation Criteria assesses the credibility of certification programs for environmental professionals. Under these standards, the certifying body must have a program to evaluate individual competence for certification that is objective and based on the knowledge, skills, and abilities needed to function in the specialty area. Applicants must document their level of education, supply reference

materials, sign and abide by a code of ethics established by the certifying body, and pass a comprehensive examination. The ASTM standard also requires that environmental certification programs be accredited by an independent entity...."

"Therefore, we are considering allowing only professionals certified by organizations meeting the ASTM standard to conduct a limited number of the certifications. Under this standard, anyone who certifies the operation of facilities must (a) be licensed to practice in the state where the facility is located or recognized by a certification program that is compliant with ASTM E1929-98 Standard Practice for the Assessment of Certification Programs for Environmental Professionals: Accreditation Criteria, and (b) have the knowledge and experience to undertake the tasks required for the certification."

IPEP endorses incorporation into the AAI regulations such a performance standard for Environmental Professional Certifications. Further, as discussed in more detail below, based on concerns raised by others in their comments on EPA's original Burden Reduction Rule proposal, IPEP suggests that condition (b) be modified to read: (b) have the knowledge, experience and, where required by local or state regulation, appropriate license or registration under applicable law or regulation, to undertake the tasks required for the certification.

As licenses for registered professional engineers and registered professional geologists issued by the individual states and territories do not specify the practice discipline of the individual registrant, it is critical that there be linkage between the holding of a license and the qualifications and experience required to conduct AAI to qualify for certain landowner liability protections under CERCLA. It should also be recognized that granting of licensure by a state or territory or certification by an accredited certification program only assures that a practicing environmental professional has met the minimum criteria necessary for such licensure or certification, and does not provide assurance that the individual is highly competent or expert in the conduct of AAI at CERCLA or Brownfields sites or other properties previously developed and used for commercial or industrial purposes.

Response:

EPA is not recognizing private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Therefore, there is no need to reference or depend upon a standard that assesses professional certification standards. Given the performance-based qualifications provided in the final definition of an environmental professional, such an approach is not necessary. The final rule does not recognize, or reference, any private organization's certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in today's final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out all appropriate inquiries.

Commenter Organization Name: IPEP

Comment Number: 0266

Excerpt Number: 7

Excerpt Text:

Appendix A

The Institute of Professional Environmental Practice and The Qualified Environmental Professional and Environmental Professional Intern Credentials

The Institute of Professional Environmental Practice (IPEP), which is headquartered in Pittsburgh, PA, is an independent, not-for-profit certifying organization for the Qualified Environmental Professional (QEP) and the Environmental Professional Intern (EPI) certifications. More information on these two credentials is included below. Additional information can be found at www.ipep.org. IPEP's mission is to improve the practice and educational standards of environmental professionals and to administer the QEP and EPI application, examination, and certification process. The Institute is governed by a Board of Trustees and conducts business in accordance with the Board's adopted Bylaws and Policies & Procedures for Certification.

Individuals certified by the Institute agreed to abide by the IPEP Code of Ethics, which requires certificants to:

- (1) Hold paramount protection of human health and natural environment;
- (2) Comply with applicable statutes, regulations, and standards;
- (3) Undertake and accept responsibility for professional assignments only when qualified;
- (4) Provide professional opinion based on adequate knowledge derived from good science, thoughtful deliberation, and honest conviction;
- (5) Act as faithful agent, maintain confidentiality and avoid conflict of interest but, where potential arises, disclose circumstances expediently and fully
- (6) Avoid professional practice while under the influence of thought- impairing substance;
- (7) Maintain competence through continuing professional development;
- (8) Act with fairness, courtesy and good faith; give credit where due; and accept/give constructive, honest, and fair professional comment;
- (9) Communicate clearly the potential consequences if professional decisions or judgments are overruled or disregarded; and
- (10) Exercise honesty, objectivity, and diligence.

The Qualified Environmental Professional (QEP®) credential administered by IPEP is one of only a select handful of certification programs in the environmental profession that comply with ASTM E1929-98 Standard Practice for the Assessment of Certification Programs for Environmental Professionals: Accreditation Criteria [Footnote: Other CESB-accredited certification programs that meet the ASTM standard: Certified Environmental Professional (CEP) by the Academy of Board Certified Environmental Professionals (ABCEP), Diplomate Environmental Engineer (DEE) by the American Academy of Environmental Engineers (AAEE), Certified Industrial Hygienist (CIH) by the American Board of Industrial Hygiene (ABIH), Certified Safety Professional (CSP) by the Board of Certified Safety Professionals (BCSP), Certified Professional Environmental Auditor (CPEA) by the Board of Environmental, Health & Safety Auditor Certifications (BEAC), and Certified Hazardous Materials Manager (CHMM) by the Academy of Certified Hazardous Materials Management (ACHMM).]. The QEP® is the only such credential that requires a certificant to comprehend the multi-media relationships among air, land, and water and is multi-discipline with regard to the qualifications and experience of its members. There are more than 1000 QEPs and 100 EPIs in 22 countries around the world.

Response:

In the final rule, EPA is not recognizing private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Such an approach is not necessary and would require that EPA review the certification requirements of each organization to determine whether or not each organization's certification requirements meet or exceed the regulatory qualifications for an environmental professional. Given that there may be many such organizations and given that each organization may review and change its certification qualifications on a frequent or periodic basis, we conclude that such an undertaking is not practicable. EPA does not have the necessary resources to review the procedures of each private certification organization and review and approve each organization's certification qualifications. Therefore, the final rule includes within the regulatory definition of an environmental professional, general performance-based standards or qualifications for determining who may meet the definition of an environmental professional for the purposes of conducting all appropriate inquiries. These standards include education and experience qualifications. The final rule does not recognize, or reference, any private organization's certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in today's final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Based upon the input received from the public commenters, EPA determined that the definition of environmental professional included in today's final rule establishes a balance between the merits of setting a high standard of excellence for the conduct of all appropriate inquiries through the establishment of stringent qualifications for environmental professionals and the need to ensure that experienced and highly competent individuals currently conducting all appropriate inquiries are not displaced.

Commenter Organization Name: Rose and Westra

Comment Number: 0320

Excerpt Number: 7

Excerpt Text:

R&W further recommends the addition of certifications from the following organizations as sufficient to meet the "Environmental Professional" standard: a "Qualified Environmental Professional" by the Institute of Professional Environmental Practice and persons on the National Registry of Environmental Professionals. These organizations are both nationally recognized. Requirements for certification include a baccalaureate or higher degree related to science and engineering. In addition, an applicant for certification under these organizations must possess 4 to 15 years of experience. These requirements for certification are entirely consistent with the qualifications that the Proposed Rules, § 312.10(2), currently finds sufficient to meet the "Environmental Professional" definition.

Response:

Please see response to comment number 0266, excerpt 7.

Commenter Organization Name: FAA**Comment Number:** 0334**Excerpt Number:** 8**Excerpt Text:**

4) FAA believes that it is unreasonable for EPA to accept certifications by states and tribes to meet the definition of an EP, but not to accept the certifications of private organizations in the environmental business. Stating that EPA lacks the resources to review the requirements for private organizations' certifications is not an acceptable reason for excluding private organization-certified individuals from the definition of an EP.

Response:

In the final rule, EPA is not recognizing private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Such an approach is not necessary because the definition of an environmental professional in the final rule provides a clear set of qualifications, based upon educational and experience levels. Individual private certification organizations can simply compare their organization's certification requirements with the qualifications including in the final rule and determine whether or not their certification programs are equivalent or more stringent than the definition in the final rule.

Based upon the input received from the public commenters, EPA determined that the definition of environmental professional included in today's final rule establishes a balance between the merits of setting a high standard of excellence for the conduct of all appropriate inquiries through the establishment of stringent qualifications for environmental professionals and the need to ensure that experienced and highly competent individuals currently conducting all appropriate inquiries are not displaced.

Commenter Organization Name: Auditing Roundtable, BEAC**Comment Number:** 0363**Excerpt Number:** 1**Excerpt Text:**

The proposed auditor qualifications should not single out a particular professional license for recognition without creating a mechanism for recognizing all potential professional licensures potentially providing adequate qualifications, such as a highly reputable accreditation body.

The three organizations applaud EPA's recognition of the importance of establishing threshold qualifications for auditors as a means of ensuring a high level of professional ability and the overall quality of the work product. All three organizations have been

dedicated to promoting the increased "professionalization" of auditors and have established rigorous professional certification programs specifically in the field of auditing and site assessment.

EPA's proposal explicitly recognizes the "Professional Engineer" or "Professional Geologist" license or registration in satisfaction of one of the educational requirements. However, both licenses cover extremely diverse educational training, which can be primarily focused on areas completely unrelated to the disciplines that are essential to an understanding of the issues involved in site assessment. There is no practical basis upon which to recognize these two particular licensing programs over others that are more specifically focused on the skill sets required for site assessment and auditing.

The organizations joining in these comments recognize that EPA is justifiably reluctant to embark on a path of having to evaluate the myriad of state and private licensure programs against the professional criteria specified in the rule. However, EPA can define certain foundation criteria in the proposed regulation and recognize one or more accreditation bodies to differentiate between programs which impose rigorous educational, training, examination and experience requirements as a condition of licensure and ones which are fly-by-night diploma or license mills.

The Council of Engineering & Scientific Specialty Boards ("CESB") is an example of such an accreditation organization. It is the recognized accreditation body for engineering and scientific certification programs. It is an independent, voluntary membership body for organizations that recognize, through specialty certifications, the expertise of individuals practicing in engineering and related fields. It was formed in the early 1990's as the result of a National Conference on Engineering Specialty Certification, and one of its missions is to inform employers, specifiers, public officials, the public and engineering and related practitioners about technical credentialing. It has accredited professional engineering programs such as the American Academy of Environmental Engineers, the Council on Certification of Health, Environmental and Safety Technologists, the Academy of Board Certified Environmental Professionals (Certified Environmental Professional), American Board of Industrial Hygiene (Certified Industrial Hygienist) and the Board of Environmental Health & Safety Auditor Certifications (Certified Professional Environmental Auditor) to name just a few. Its member boards, associate and affiliate organizations represent a full spectrum of engineering, scientific or engineering-related organizations, which have developed professional certifications. Its web site contains detailed information on the extensive requirements that certification programs must meet in order to be accredited by the CESB. For more information please visit the website: www.cesb.org.

The accreditation process enables the legitimacy of private certification organizations to be recognized and approved, widening the pool of auditors capable of leading the audits. Although the licensing for a professional engineer is rigorous, it should in no way be construed as providing the necessary skills and knowledge appropriate to identifying and quantifying environmental site concerns. Indeed, without additional training, many professional engineers would lack an understanding of the true site conditions necessary

for an appropriate assessment of the environmental liabilities. The PE license becomes no more valuable to the process of assessing the environmental conditions of a property than any other degree when appropriate training and knowledge are lacking. This is a further reason to require accreditation specific to the site assessment skill set rather than a blanket statutory recognition of any one type of educational degree.

EPA's preamble states that "any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in the federal regulation will meet the definition of an environmental professional for purposes of this regulation." [69 Fed.Reg. 52555] However, requiring confirmation by a widely recognized scientific accreditation body helps ensure to the public that an independent body has confirmed the self-declaration of qualification.

Response:

The basis for recognizing the P.E. and P.G. licensing programs within the final definition of environmental professional is that they are state professional licensing programs. In the final rule, EPA is retaining the proposed provision to include within the definition of an environmental professional individuals who are licensed to perform environmental site assessments or all appropriate inquiries by the Federal government (*e.g.*, the Bureau of Indian Affairs) or under a state or tribal certification program, provided that these individuals also have three years of full-time relevant experience. State and tribal agencies may best determine the qualifications defining individuals who "possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases...to the surface or subsurface of a property, sufficient to meet the rule's objectives and performance factors" within any particular state or tribal jurisdiction.

In the final rule, EPA is not recognizing private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Such an approach is not necessary because the definition of an environmental professional in the final rule provides a clear set of qualifications, based upon educational and experience levels. Individual private certification organizations can simply compare their organization's certification requirements with the qualifications included in the final rule and determine whether or not their certification programs are equivalent or more stringent than the definition in the final rule.

Based upon the input received from the public commenters, EPA determined that the definition of environmental professional included in today's final rule establishes a balance between the merits of setting a high standard of excellence for the conduct of all appropriate inquiries through the establishment of stringent qualifications for environmental professionals and the need to ensure that experienced and highly competent individuals currently conducting all appropriate inquiries are not displaced.

Commenter Organization Name: Anonymous

Comment Number: 0371

Excerpt Number: 3

Excerpt Text:

While there are a number of certifications available for environmental professionals to obtain, the Certified Hazardous Materials Manager (CHMM) is the most established and recognized in the field. In order to obtain the CHMM credential, one must meet most of the requirements already listed in the proposed rule for education and experience and unlike the CPG, an examination must be passed to evaluate competence in the field. CHMMs are also required to remain current in their field through continuing education or they lose the credential, unlike both the CPG and PE.

The EPA should take note of the fact that individuals seeking to demonstrate competency in their field take the time and effort to obtain valid certifications and maintain these certifications. As there is not state or national certification body for environmental professionals, private organizations have had to step in. I think the EPA should reevaluate their position of not relying on private organizations or they should seek to develop such certification at the national level. The Occupational Safety and Health Administration has referenced certifications from private organizations in their regulations, specifically the CIH in asbestos regulations. Therefore, if one governmental agency can recognize a private organization's certification, it would seem logical that another could as well.

Response:

In the final rule, EPA is not recognizing private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Such an approach is not necessary and would require that EPA review the certification requirements of each organization to determine whether or not each organization's certification requirements meet or exceed the regulatory qualifications for an environmental professional. Given that there may be many such organizations and given that each organization may review and change its certification qualifications on a frequent or periodic basis, we conclude that such an undertaking is not practicable. EPA does not have the necessary resources to review the procedures of each private certification organization and review and approve each organization's certification qualifications. Therefore, the final rule includes within the regulatory definition of an environmental professional, general performance-based standards or qualifications for determining who may meet the definition of an environmental professional for the purposes of conducting all appropriate inquiries. These standards include education and experience qualifications. The final rule does not recognize, or reference, any private organization's certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in today's final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Based upon the input received from the public commenters, EPA determined that the definition of environmental professional included in today's final rule establishes a balance between the merits of setting a high standard of excellence for the conduct of all appropriate inquiries through the establishment of stringent qualifications for environmental professionals and the need to ensure that experienced and highly competent individuals currently conducting all appropriate inquiries are not displaced.

Commenter Organization Name: Walsh, Gregory

Comment Number: 0378

Excerpt Number: 1

Excerpt Text:

Problem:

As the Senior Environmental Protection Specialist for TRIDENT Refit Facility, Kings Bay GA, I have sought out and secured Professional Certification as desired by the Department of the Navy. My job classification as designated by the Office of Personnel Management (OPM) designates my series and grade as professional. TRIDENT Refit Facility is the U.S. Navy's east coast home for the TRIDENT Nuclear Powered Submarine Fleet. I was the first at this Command and the first in Southeast Georgia to achieve this certification. In obtaining the CHMM Certification, The information I provide to the Command carries the same weight as other professional's in this community, such as: The Certified Industrial Hygiene and the Certified Safety Specialist. Relegating my CHMM designation to a statue of less than Professional would negate the value of my 5 years of fulltime experience, 15 years of (daily) part-time experience and hundreds of hours of education to wasted time.

I received my B.B.A. from the University of North Florida in 1989. In 1994 Marques, Who Who's in Science and Engineering , included my work, in the optical field, in their publication, my educational background was not a limiting factor even tough I was only one of fifty listed world wide with a Business Degree.

Background:

- 1) Per the classification manual from the OPM my series and grade place me in a Professional classification as directed by Title 5 of the Code of Federal Regulations.
- 2) The United States Navy and the Air Force have both acknowledged the CHMM as a Professional Program. Doing more with less requires personal to have a broader base of knowledge and experience to be effective.
- 3) In October 1998, The Department of The Air Force, Headquarters Air Force Personnel Center reviewed the CHMM program and added this to the "approved" list of certifications for the Air Force Civil Engineering Career Program. As noted in the text of the letter "Individuals will be able to include this certification in resumes used to select candidates for referrals to vacancies based on best knowledge, skills and ability."
- 4) In July 2002 The Certified Hazardous Material Manager, CHMM, was added

- OPNAVINST 5100.23F, Chapter 6, "Certification of individuals in their
- professional specialty is highly desirable and fully supported by the U.S. Navy."
- OPNAVINST 5100.23F, Chapter 6, Acknowledge and supports the need for
- Professionals to maintain Continuing Education Units (CEU).

Ramifications:

If the CHMM is not classed as a Professional:

- a) Organizational structure could change and require Organizations to employ a Professional Engineer (P.E.) to head-up an Engineering Department currently best management practices are to reduce the overhead and place Environmental, Safety and Occupational Health in one operational code.
- b) As a productive member of society, my current transferable skills would no longer be applicable and would require retraining.
- c) A change of tax status to non-exempt from exempt.

Proposed Amendment to the Definition (312.10 EP)

If a person has the minimum educational level (1) an accredited baccalaureate degree or higher (2) and has demonstrated a working knowledge in the Environmental field through third party testing, such as achieving the CHMM credential and has 5 or more cumulative years working in the field then the person has demonstrated the Knowledge, Skills and Ability to be considered an Environmental Professional.

Response:

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior

in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

In the final rule, EPA is not recognizing private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Such an approach is not necessary because the definition of an environmental professional in the final rule provides a clear set of qualifications, based upon educational and experience levels. Individual private certification organizations can simply compare their organization's certification requirements with the qualifications including in the final rule and determine whether or not their certification programs are equivalent or more stringent than the definition in the final rule.

Based upon the input received from the public commenters, EPA determined that the definition of environmental professional included in today's final rule establishes a balance between the merits of setting a high standard of excellence for the conduct of all appropriate inquiries through the establishment of stringent qualifications for environmental professionals and the need to ensure that experienced and highly competent individuals currently conducting all appropriate inquiries are not displaced.

Commenter Organization Name: Walsh, Gregory

Comment Number: 0378

Excerpt Number: 2

Excerpt Text:

- 1) Would a Code of Ethics apply to the CHMM if it is down graded?
- 2) If the EPA takes a myopic viewpoint how would this effect other Professionals? Such as: Physician Assistances, LPN RN, Mid-wives, Para-legal, etc?

Response:

The final rule has no effect upon the CHMM's certification program.

Commenter Organization Name: Wood, George

Comment Number: 0379

Excerpt Number: 1

Excerpt Text:

The new Federal "All Appropriate Inquiries" standard requires "an inquiry by an environmental professional." "Environmental Professional" has a lengthy definition under the proposed rule. An Environmental Professional is generally defined as "[a] person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases to the surface or subsurface of a property." Specifically, an "Environmental Professional" includes persons that possess a professional engineering, professional geologist or state/federal environmental assessment licenses and three years

of experience, a Bachelor's degree in engineering, environmental science or earth science and 5 years of experience, or a Bachelor's degree in a non-engineering, science or environmental discipline and 10 years of experience.

This definition excludes many existing "Nationally Recognized" Environmental Professionals such as the "Certified Environmental Professional" designation offered by the Academy of Board Certified Environmental Professionals (ABCEP) www.abcep.org.

In addition to those noted in the proposed rule, the definition of "Environmental Professional" should include those individuals who have qualified as "Certified Environmental Professional" under the auspices of the Academy of Board Certified Environmental Professionals (ABCEP). ABCEP administers the Certified Environmental Professional (CEP) Program which provides environmental professionals who possess special qualifications of education, experience, and accomplishment with the opportunity to be judged by a board of peers. Those individuals awarded the Certified Environmental Professional credential may use the designation "CEP" after their name.

Minimum requirements for CEP certification include:

The applicant must possess a Bachelor's Degree and a minimum of nine years of applicable professional environmental experience. Five of the nine years must be in a position of responsible charge and/or responsible supervision. Responsible charge is defined as: the direction of environmental work by an environmental professional to the extent that successful completion of the work is dependent on the decisions made by the environmental professional without advice or approval of others. Responsible supervision is defined as: the supervision of another professional person's work by an environmental professional to the extent that the environmental professional assumes the professional responsibility for the work.

A Master's Degree may be substituted for one year of the nine years of professional experience and a Doctorate may be substituted for two of the nine years of professional experience. However, no such substitution will apply to the requirement for the five years in responsible charge and/or responsible supervision. Degrees claimed must be from fully accredited college or university (certified transcripts are required). The written portion of the examination consists of mandatory and elective essay questions designed to test the communication skills and technical experience of the applicant.

The applicant must subscribe to the ABCEP Code of Ethics and Standards of Practice for Environmental Professionals, established by NAEP and adopted by the Academy;

These certification requirements exceed those proposed by the U.S. Environmental Protection Agency (USEPA) and therefore should be judged as at least equivalent to a Professional Engineer or Professional Geologist designation.

We understand the USEPA's concern about not having the resources or staff to verify third-party certification programs but the certification of such programs is not part of the

USEPA's mission. There are already third-party certification organizations like the International Standards Organization (ISO) that independently review and evaluate the CEP program. The ABCEP's CEP Program is third-party certified by the Council of Engineering and Scientific Specialty Boards (CESB) www.cesb.org.

CESB is an independent, voluntary membership body created for its member organizations who recognize, through specialty certification, the expertise of individuals practicing in engineering and related fields. Its creation on April 24, 1990 was the culmination of organizing work by volunteers from among the 130 attendees (23 organizations represented) who participated in the April 1988 National Conference on Engineering Specialty Certification.

CESB, as an accrediting body, provides: basic criteria and guidelines for the establishment and operation of specialty certification programs for engineers, technologists, technicians, and related scientific

it serves as a recognizing body for organizations that certify individuals

it represents its members in communications and, when appropriate, in negotiations with public and private agencies, groups, and individuals with respect to matters of common interest and it informs employers, specifiers, public officials, the public, and engineering and related practitioners of the benefits of specialty certification.

We ask that the definition of an "Environmental Professional" under the "All Appropriate Inquiries" standard be revised to include an individual designated as a Certified Environmental Professional.

Response:

EPA is not recognizing in the regulatory language of the final rule private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Given the performance-based qualifications provided in the final definition of an environmental professional, such an approach is not necessary. Therefore, there is no need to reference or depend upon an independent standard that assesses professional certification standards. The final rule does not recognize, or reference, any private organization's certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in today's final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and

did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out all appropriate inquiries.

Commenter Organization Name: McGucken, Richard

Comment Number: 0382

Excerpt Number: 1

Excerpt Text:

The new Federal All Appropriate Inquiries standard requires "an inquiry by an environmental professional." Under the proposed rule, there is a lengthy definition of "environmental professional." In addition to those persons noted in the proposed rule, I suggest that those persons who have qualified as Certified Environmental Professional under the auspices of ABCEP should be included. ABCEP administers the Certified Environmental Professional (CEP) program which provides environmental professionals who possess special qualifications of education, experience, and accomplishment with the opportunity to be judged by a board of their peers. Those persons who have been tested and awarded the Certified Environmental Professional credential may use the designation "CEP" after their name.

The qualifications for a CEP exceed the requirements proposed by the U.S. Environmental Protection Agency and thus should be judged as being at least equivalent to a Professional Engineer or Professional Geologist designation.

I join my colleagues in the NAEP and ABCEP in requesting that the definition of an "Environmental Professional" under the "All Appropriate Inquiries" standard be revised to include an individual designated as a certified Environmental Professional (CEP).

Response:

Please see response to comment number 0371, excerpt 3.

Commenter Organization Name: Burke, Richard

Comment Number: 0388

Excerpt Number: 1

Excerpt Text:

I am the former chair of the Academy of Board Certified Environmental Professionals (ABCEP) www.abcep.org. ABCEP administers the Certified Environmental Professional (CEP) Program which provides environmental professionals who possess special qualifications of education, experience, and accomplishment with the opportunity to be judged by a board of peers. Those individuals awarded the Certified Environmental Professional credential may use the designation "CEP" after their name. I have the following comments on the proposed "Standards and Practices for All Appropriate Inquiries" (69 Fed. Reg. 52542, August 26, 2004).

This definition excludes many existing "Nationally Recognized" Environmental Professionals such as the "Certified Environmental Professional" designation offered by ABCEP. The new Federal "All Appropriate Inquiries" standard requires "an inquiry by an environmental professional." "The definition of "Environmental Professional" should include those individuals who have qualified as "Certified Environmental Professional" under the auspices of ABCEP.

ABCEP's certification requirements exceed those proposed by the U.S. Environmental Protection Agency (USEPA) and therefore should be judged as at least equivalent to a Professional Engineer or Professional Geologist designation.

ABCEP's CEP Program is third-party certified by the Council of Engineering and Scientific Specialty Boards (CESB) www.cesb.org. CESB is an independent, voluntary membership body created for its member organizations who recognize, through specialty certification, the expertise of individuals practicing in engineering and related fields.

I request that the definition of an "Environmental Professional" under the "All Appropriate Inquiries" standard be revised to include an individual designated as a Certified Environmental Professional.

Response:

The definition of environmental professional in the final rule does not exclude existing nationally recognized environmental professionals such as the "Certified Environmental Professional" designation offered by ABCEP. As the commenter points out, the ABCEP's certification requirements exceed the environmental professional qualifications in the final rule. As long as that remains the case, any person receiving certification from ABCEP as a "Certified Environmental Professional" will meet the definition of environmental professional for the purposes of conducting all appropriate inquiries investigation.

EPA is not recognizing in the regulatory language of the final rule private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Given the performance-based qualifications provided in the final definition of an environmental professional, such an approach is not necessary. Therefore, there is no need to reference or depend upon an independent standard that assesses professional certification standards. The final rule does not recognize, or reference, any private organization's certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in today's final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out all appropriate inquiries.

Commenter Organization Name: Cohen, Irving

Comment Number: 0391

Excerpt Number: 1

Other Sections: NEW - 2.3.1 - Professional engineer certification and professional geologist certification do not ensure high level of professional ability

Excerpt Text:

However, I feel that the definition is excluding an important sector of the environmental practice community and places heavy reliance on recognition on professional licensure that may not actually be relevant to environmental disciplines.

The mere fact that a person is a licensed professional engineer does not necessarily indicate professional competence in the field of environmental practice; your proposed certification does not preclude that potential. I do not question the ethics of a PE in not attempting to accept any responsibility that he is not professionally competent to undertake, however your definition allows a de facto acceptance of a PE as an "environmental professional". I wish to point out to you that there are certifications, such as the ABCEP certification of "Certified Environmental Professional (CEP)" that clearly addresses the knowledge base requirement of such an individual. Moreover, our certification program is accredited by the same accreditation body for a variety of PE subspecialties, the Council of Engineering & Scientific Specialty Boards (CESB).

I therefore request that you consider my comments as well as my support of the comments of the National Association of Environmental Professionals (NAEP) as well as my colleagues in ABCEP requesting the word changes to include "Certified Environmental Professionals (CEP)" to your definition of an "Environmental Professional".

Response:

The definition of environmental professional in the final rule does not exclude individuals with private party certifications, if the certification programs have requirements that meet or exceed the qualifications including in the final definition of environmental professional. The final rule recognizes state and tribal professional certification and licensing programs, but requires that in addition to being a P.E. or P.G. (or having another state- or tribal-issued certification) the individual have three or more years of relevant full-time experience to qualify as an environmental professional. In addition, the definition of an environmental professional in the final rule provides minimum educational and experience qualifications for additional individuals who qualify to oversee the conduct of all appropriate inquiries investigations. EPA believes that the qualifications included in the definition of environmental professional provide a good balance of educational and professional experience requirements.

EPA is not recognizing in the regulatory language of the final rule private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Given the performance-based qualifications provided in the final definition of an environmental professional, such an approach is not necessary. The final rule does not recognize, or reference, any private organization's certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in

today's final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

Commenter Organization Name: Lessig, Dennis

Comment Number: 0392

Excerpt Number: 1

Excerpt Text:

This definition excludes the existing nationally recognized environmental professional certification the "Certified Environmental Professional" conferred by the Academy of Board Certified Environmental Professionals(ABCEP: www.abcep.org), whose certification program is accredited by the "Council of Engineering and Scientific Specialty Boards". ABCEP's CEP is conferred on those individuals applying who possess special qualifications of education, experience, and accomplishment and only after a stringent review by a seven members committee assigned from the Certification Review Board (CRB). The CRB is composed of accomplished CEPs under a Director appointed by the ABCEP Board of Trustees.

Minimum requirements for the CEP designation include:

The applicant must possess a Bachelor's Degree and a minimum of nine years of applicable professional environmental experience. Five of the nine years must be in a position of responsible charge and/or responsible supervision. Responsible charge is defined as: the direction of environmental work by an environmental professional to the extent that successful completion of the work is dependent on the decisions made by the environmental professional without advice or approval of others.

Responsible supervision is defined as: the supervision of another professional person's work by an environmental professional to the extent that the environmental professional assumes the professional responsibility for the work.

A Master's Degree may be substituted for one year of the nine years of professional experience and a Doctorate may be substituted for two of the nine years of professional experience. However, no such substitution will apply to the requirement for the five years in responsible charge and/or responsible supervision. Degrees claimed must be from fully accredited college or university (certified transcripts are required). The written portion of the examination consists of mandatory and elective essay questions designed to test the communication skills and technical experience of the applicant.

The applicant must subscribe to the ABCEP Code of Ethics and Standards of Practice for Environmental Professionals, established by the National Association of Environmental Professionals (NAEP) and adopted by the Academy.

Having worked with Federal environmental regulations over my 34-year environmental career, I recognize that sometimes definitions are rule specific, in other words, the definition is only applicable and appropriate under the rule in which it is defined. It is my understanding that this is the case herein. However, because the definition of "Certified Environmental Professional" exists by virtue of the ABCEP CEP program, the fact that the requirements for certification as CEP by ABCEP exceed those proposed by the U.S. Environmental Protection Agency (USEPA), and to avoid confusion between the two designations, the CEP should be judged as at least equivalent to a Professional Engineer or Professional Geologist working under this proposed standard.

During the majority of my 34-year environmental career because of the all encompassing definition of the word "Environmental", I have sought out and worked toward the achievement of an environmental certification credential that truly covered the environmental profession, the environmental professional, and which possession of provided acceptance of my expertise and knowledge by others working in the field, particularly my peers. For the reasons stated herein, I ask that the definition of an "Environmental Professional" under the "All Appropriate Inquiries" standard be revised to include an individual designated as a "Certified Environmental Professional".

Response:

Please see response to comment number 0388, excerpt 1.

Commenter Organization Name: CONNOR

Comment Number: 0398

Excerpt Number: 1

Excerpt Text:

--Environmental Professional - if the proposed rule could be used to conduct inquiries that will include structures, the definition should be expanded to include individuals with certifications/licenses to perform lead-based paint, asbestos containing materials, and radon gas related activities (i.e. surveys and sampling). Under the proposed definition, expertise and training in these areas is not taken into account. Assessments of multifamily residential properties in particular require expertise and experience with lead-based paint, asbestos-containing materials, and radon gas related activities.

Response:

Although expertise and training in performing testing and removal activities related to lead-based paint, asbestos containing materials and radon gas contamination may be useful for inspecting and cleaning up structures on contaminated properties, these skills alone are not sufficient to meet the definition of an environmental professional for the purposes of overseeing all appropriate inquiries investigations.

In the preamble to the final rule, EPA clarifies that only the individual overseeing the conduct of an all appropriate inquiries investigation must qualify as an environmental professional, as defined in the final rule. Other individuals may contribute to the investigation as long as their activities are conducted under the supervision or responsible charge of the individual qualifying as an environmental professional. In today's final rule, the Agency is retaining the recommendation that an individual who qualifies as an environmental professional conduct, or closely oversee the conduct of, the required on-site visual inspection of the property.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: Andrews, Douglas

Comment Number: 0399

Excerpt Number: 1

Excerpt Text:

(2)(i) I strongly recommend that non-governmental, professional organization

certifications, such as the Certified Hazardous Materials Manager (CHMM) credential, be recognized as qualification equivalent to the PE or PG credential. As a basis for relevant knowledge, it is hard to imagine that a CHMM who has demonstrated capabilities in the specific areas of practice pertinent to AAI by experience, study and test is any less qualified than a registered professional mechanical or electrical engineer, each of which is automatically qualified (with three years experience) to perform AAI assessments. The CHMM certification is based on testing, a strict Code of Ethics, and the loss of certification if that Code is violated. The effectiveness, and acceptance by the EPA, of non-governmental, professional organization standards is demonstrated in the designation of ASTM standards as interim criteria for AAI.

Response:

The basis for recognizing the P.E. and P.G. licensing programs within the final definition of environmental professional is that they are state professional licensing programs. In the final rule, EPA is retaining the proposed provision to include within the definition of an environmental professional individuals who are licensed to perform environmental site assessments or all appropriate inquiries by the Federal government (*e.g.*, the Bureau of Indian Affairs) or under a state or tribal certification program, provided that these individuals also have three years of full-time relevant experience. State and tribal agencies may best determine the qualifications defining individuals who “possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases...to the surface or subsurface of a property, sufficient to meet the rule’s objectives and performance factors” within any particular state or tribal jurisdiction.

In the final rule, EPA is not recognizing private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Such an approach is not necessary because the definition of an environmental professional in the final rule provides a clear set of qualifications, based upon educational and experience levels. Individual private certification organizations can simply compare their organization’s certification requirements with the qualifications including in the final rule and determine whether or not their certification programs are equivalent or more stringent than the definition in the final rule.

Based upon the input received from the public commenters, EPA determined that the definition of environmental professional included in today’s final rule establishes a balance between the merits of setting a high standard of excellence for the conduct of all appropriate inquiries through the establishment of stringent qualifications for environmental professionals and the need to ensure that experienced and highly competent individuals currently conducting all appropriate inquiries are not displaced.

Commenter Organization Name: Kentuckiana Chapter ACHMM

Comment Number: 0405

Excerpt Number: 1

Other Sections: NEW - 2.1.4 - Revise educational requirements to allow individuals with Baccalaureate or higher degrees in areas other than engineering, environmental science, and earth science and five or more years of relevant experience to qualify as EPs

Excerpt Text:

As background, all CHMMs must pass a rigorous exam administered by the Institute of Hazardous Waste Management, ACHMM's third-party accrediting organization, and demonstrate an understanding of the basic principles involved in technologies pertaining to hazardous materials management, knowledge of the sciences, including chemistry, radiology, physical sciences, geology/hydrology, toxicology and engineering, knowledge of the regulations, such as TSCA, RCRA, CERCLA, OSHA, DOT and EPA, that govern environmental and hazardous materials management, and competence and maturity of judgment managing environmental program resources. To qualify at the Master Level, new members must have a degree in engineering or a field related to hazardous materials management, seven (7) years experience in the field with responsibility for developing, implementing and directing or evaluating hazardous material management programs. New Senior Level members must have a degree in engineering or a field related to hazardous materials management and three (3) years of experience in the field of hazardous materials management or engineering, including related graduate studies at an accredited college Or university which may substitute for field experience on a year-for-year basis. Prior to 2003, Senior Level members with eleven (11) years of field experience could sit for the exam without a baccalaureate degree upon recommendation by other environmental professionals.

As defined in the proposed All Appropriate Inquiry Rule, an "environmental professional" must meet the following requirements:

-(iii) have a Baccalaureate or higher degree from an accredited institution of higher education in a relevant discipline of engineering, environmental science, or earth science and the equivalent of five (5) years of full-time relevant experience;

40 CFR §312.10(2)(iii). In keeping with the EPA's goal that environmental professionals must "possess significant specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases ... to the surface or subsurface of a property, sufficient to meet the objectives and performance factors' that are provided in the proposed regulation," 69 Fed. Reg. 52452, 52552 (Proposed Rule, August 26, 2004), KCHMM recommends that the definition of environmental professional in 40 CFR §312.10(2)(iii) be amended to include professionals with degrees in physical or natural sciences, such as chemistry or biology, and certification from a third-party accrediting organization as follows:

-have a Baccalaureate or a higher degree from an accredited institution of higher education in relevant disciplines of engineering, environmental, earth, physical, or natural sciences and the equivalent of five (5) years of full-time relevant experience; or have a

Baccalaureate or higher degree from an accredited institution of higher education in relevant disciplines of engineering, environmental, earth, physical, or natural sciences, three (3) years of full-time relevant experience, and be an individual certified by a professional organization with third party accreditation.

In the case of a CHMM, such an individual would have the following qualifications: (1) a Baccalaureate or higher degree in engineering or a field related to hazardous materials management; (2) at least three years experience in the field of managing hazardous materials; (3) demonstrated knowledge and understanding of the basic principles involved in hazardous materials management, including an understanding of the regulations governing sites, (4) passed a rigorous exam; and (5) pledged to maintain the highest standards of integrity through the CHMM Code of Ethics, a copy of which is attached for your convenience.

Response:

EPA is not recognizing in the regulatory language of the final rule private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Given the performance-based qualifications provided in the final definition of an environmental professional, such an approach is not necessary. The final rule does not recognize, or reference, any private organization's certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in today's final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

Commenter Organization Name: Kentuckiana Chapter ACHMM

Comment Number: 0405

Excerpt Number: 5

Excerpt Text:

KCHMM believes that CHMMs are uniquely qualified to conduct professional site assessment services at a high standard of technical and scientific quality. On that basis, KCHMM believes that the proposed rule, in excluding CHMMs, will result in increased transactional costs by creating uncertainty about who may conduct a site assessment. KCHJVIM is equally concerned that the proposed rule will result in uncertainty about how site assessments are to be conducted because EPA is abandoning ASTM 1527 as the basis for site assessments. For these reasons, KCHMM recommends that EPA amend the definition of "environmental professional" as proposed above and incorporate the ASTM 1527 standard for conducting site assessments by reference.

Response:

Please see response to comment number 0388, excerpt 1.

Today's rule incorporates by reference the updated (2005 version) of the ASTM E1527 Phase I Environmental Site Assessment Standard. Prospective property owners may comply with the final rule by following the requirements of this standard.

Commenter Organization Name: Yawn, Jim

Comment Number: 0409

Excerpt Number: 1

Excerpt Text:

My comments on the Environmental Professional (EP) definition pertain to recognizing and including persons of the appropriate and relevant backgrounds to conduct the relevant environmental inquiries. The definition should be revised to recognize individuals with relevant skills, background, and experience, whose expertise is required to be kept current. The definition, as written, excludes many "nationally-recognized" accredited organizations, including the Academy of Board Certified Environmental Professionals (ABCEP). ABCEP administers the Certified Environmental Professional (CEP) program, providing environmental professionals with qualifications of education, experience, and accomplishment a nationally-recognized credential. These individuals are judged by a board of peers, and must maintain their skills through formal training, and work experience.

The CEP program began in 1979, in response to the need for interdisciplinary certification in the environmental field. CEPs include mid-level and senior environmental specialists in government, military, educators, consultants, plant operators, and industry. The program is fully accredited by the Council of Engineering and Scientific Specialty Boards (CESB). Among the advantages to customers using a CEP is assurance of confidence in the professional's services addressing a broad array of environmental planning, analysis, education and documentation. It provides an assurance of engaging competent environmental professionals.

Minimum requirements for CEP certification include:

The applicant must possess a Bachelor's Degree and a minimum of nine years of applicable professional environmental experience. Five of the nine years must be in a position of responsible charge and or responsible supervision. Responsible charge is defined as: the direction of environmental work by an environmental professional to the extent that successful completion of the work is dependent on the decisions made by the environmental professional without advice or approval of others. Responsible supervision is defined as: the supervision of another professional person's work by an environmental professional to the extent that the environmental professional assumes the professional responsibility for the work.

The written portion of the exam consists of mandatory and elective essay questions designed to test the communication skills and technical experience of the applicant. The exam is reviewed independently by a team of seven peer reviewers.

The applicant must subscribe to the ABCEP Code of Ethics and Standards of Practice for Environmental Professionals, established by the National Association of Environmental Professionals (www.naep.org), and adopted by ABCEP.

The applicant must document evidence of continuing professional development, including continuing education, and work experience on a yearly basis to maintain the CEP credential.

The ABCEP CEP program is third-party accredited by the Council of Engineering and Scientific Specialty Boards (CESB) (www.cesb.org), meeting nationally-recognized credential standards. The CESB is an independent, voluntary membership organizations created for its member organization who recognize through specialty certification, the expertise of individuals practicing in engineering and scientific related fields.

The certification requirements of ABCEP currently exceed those stated in the proposed rule, and should be judged as at least equivalent to that of a Professional Engineer or Professional Geologist. We request that the definition of "Environmental Professional" be revised to include persons recognized as Certified Environmental Professionals (CEP), and that the definition be revised to assure that persons with appropriate background and training be specified in this rule for the purpose of conducting All Appropriate Inquiries.

Response:

Please see response to comment number 0388, excerpt 1.

Commenter Organization Name: Morse, Catherine

Comment Number: 0413

Excerpt Number: 2

Excerpt Text:

First, in 312.10 (2)(i), I recommend that the rule be changed to address the following: Non-governmental, professional organization certifications, such as the Certified Hazardous Materials Manager (CHMM) credential, should be recognized as qualification

equivalent to the PE and PG credential. The CHMM certification is based on testing and a strict Code of Ethics. If that Code is violated, certification is lost.

Response:

Please see response to comment number 0405, excerpt 1.

Commenter Organization Name: Froehlich, R A

Comment Number: 0438

Excerpt Number: 1

Excerpt Text:

Under the definition of "environmental professional", I strongly recommend the addition of environmental professionals certified under ASTM E1929 98 "Standard Practice for the Assessment of Certification Programs for Environmental Professionals: Accreditation Criteria" compliant programs. ASTM E1929 98 certification programs represent the consensus of the environmental professional community as to the appropriate qualifications for an environmental professional, and are supported by the major environmental professional associations such as the Air & Waste Management Association, the Water Environment Federation, the Solid Waste Association of North America. These professional societies, representing the scientists and engineers active in the environmental arena, date to the early decades of the 20th century and are responsible for a majority of the professional advances in environmental health. ASTM E1928 98 compliant certification ensures that the certified professional has the required education, experience, ethical background, and expertise to accurately perform environmental site assessments. All certified professionals are independently tested to ensure that they not only meet the rigorous education (minimum bachelor's degree in science or engineering) and experience (minimum five years of experience in the field) requirements, but that the professional can demonstrate expertise in environmental affairs. Certifications are not granted in perpetuity, as are Professional Engineering licenses, but must be maintained through continuing education requirements. In particular, Qualified Environmental Professionals (QEPs), Diplomates in Environmental Engineering (DEEs), and Certified Industrial Hygienists (CIHs) have the demonstrated expertise to identify and anticipate the presence of environmental contamination on target properties based on the site history. These certifications, in particular, should be separately identified in the final regulations as recognized "environmental professionals."

Response:

EPA is not recognizing in the regulatory language of the final rule private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Given the performance-based qualifications provided in the final definition of an environmental professional, such an approach is not necessary. Therefore, there is no need to reference or depend upon an independent standard that assesses professional certification standards. The final rule does not recognize, or reference, any private organization's certification program within the context of the regulatory language. However, the Agency notes that any individual

with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in today's final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

Commenter Organization Name: Young, Richard

Comment Number: PM-0207-0001

Excerpt Number: 1

Excerpt Text:

I would like to bring to the attention of the committee that there are 787 colleges and universities that offer environmental science bachelor degrees. This is compared to 72 universities and colleges that offer environmental engineering degrees. There are 33 disciplines--33 engineering disciplines in which people may obtain their professional engineer's license. And this includes--I won't read the whole list but this includes agricultural engineering, ceramics engineering, ocean engineering, and many more that are not related at all to the environment but yet would be qualified to sit for the professional engineer's license, then have three years of work experience in the environmental field, and qualify as an environmental professional.

Likewise, there are 18 geology disciplines which include such things as petroleum geologists, hydro-geologists, geochemists, coal geologists. Again people who--these are separate degrees that are available from universities. They would be able to take and qualify for their professional geologist license, come up with three years of some kind of environmental experience and be qualified to practice at a brownfield site.

Based on these disciplines, someone may obtain a PE or PG license and then be considered by EPA as being qualified to conduct environmental work with only three years of environmental experience. These are people, I'm saying, that have no experience. They have had nothing in their school year or nothing in their work practice afterwards and they do not have to take any single question--they do not have to pass any

single question on their PE license or their PG license and yet they can be considered as qualified.

In 1987, or I should say since 1987, our organization, the National Registry of Environmental Professionals, has credentialed approximately 15,000 individuals to be environmental managers and environmental property assessors.

Our programs, depending on which one, the REPA, the Registered Environmental Property Assessor, requires a bachelor's degree, requires four years of environmental property assessment.

An environmental manager, on the other hand, who manages environmental projects such as brownfields projects, requires five years of environmental practice plus their bachelor's degree.

The Resolution Trust Corporation with its responsibility for billions of dollars in land value has recognized that requirement and to ensure that individuals remain current with their changes in environmental technology and processes they have to maintain their proficiency by completing a minimum of 15 continuing education hours annually.

I'm asking the committee to level the playing field. There have been thousands of resumes that NREP has reviewed from people who want to be considered as qualified to practice and we have rejected a large number of them.

As the economy has shifted, major shifts in employment with engineers in aerospace, chemical, pulp and paper and other fields, understandably, have attempted to find work and shift their work, and most of them over to the environmental field.

The National Registry of Environmental Professionals, along with the Florida Environmental Assessors Association, and also in conjunction with the National Association of Environmental Risk Assessors or Risk Auditors, I should say, agree with the EPA there are too many people in the environmental field with inadequate environmental education and little or no practical field experience. This is the reason why certification programs have been developed to credential people for conducting BSA, Phase I/Phase II work.

Response:

The basis for recognizing the P.E. and P.G. licensing programs within the final definition of environmental professional is that they are state professional licensing programs. In the final rule, EPA is retaining the proposed provision to include within the definition of an environmental professional individuals who are licensed to perform environmental site assessments or all appropriate inquiries by the Federal government (*e.g.*, the Bureau of Indian Affairs) or under a state or tribal certification program, provided that these individuals also have three years of full-time relevant experience. State and tribal agencies may best determine the qualifications defining individuals who “possess sufficient specific education, training, and experience necessary to exercise professional

judgment to develop opinions and conclusions regarding the presence of releases or threatened releases...to the surface or subsurface of a property, sufficient to meet the rule's objectives and performance factors" within any particular state or tribal jurisdiction.

In the final rule, EPA is not recognizing private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Such an approach is not necessary because the definition of an environmental professional in the final rule provides a clear set of qualifications, based upon educational and experience levels. Individual private certification organizations can simply compare their organization's certification requirements with the qualifications including in the final rule and determine whether or not their certification programs are equivalent or more stringent than the definition in the final rule.

Based upon the input received from the public commenters, EPA determined that the definition of environmental professional included in today's final rule establishes a balance between the merits of setting a high standard of excellence for the conduct of all appropriate inquiries through the establishment of stringent qualifications for environmental professionals and the need to ensure that experienced and highly competent individuals currently conducting all appropriate inquiries are not displaced.

Commenter Organization Name: Testa, Steve

Comment Number: PM-0359-0002

Excerpt Number: 1

Excerpt Text:

The profession of geology is not regulated in every state, however, or U.S. territory. In fact, about 28 states have some form of licensure or registration; the other 22 do not. Unlike some professions, many states do not have a registration or licensure program for Professional Geologists. Therefore, the rule as it is written will place the burden of certification upon the individual professional geologist to apply for the Environmental Professional credential. The U.S. EPA will be required to process and verify the accuracy and completeness of each application. To alleviate some of the burden on the profession and the agency, and to move toward a nationwide level of coherence of professional capabilities, AIPG recommends that the rule be modified to include the AIPG credential "Certified Professional Geologist" in the definition of Environmental Professional.

In 1963, AIPG established baseline qualifications for granting the Certified Professional Geologist title, referred to as "CPG." The CPG title attests to the public that those geologists who hold this title have undergone peer review, and have been deemed competent practitioners who are worthy of public interest and trust. The high standards for obtaining the title have earned it wide recognition. The primary purpose of AIPG, to strengthen geological science as a profession, remains undiminished, and it's recognized by the European Federation of Geologists, the Canadian Securities Administrators under

National Instruments 43-101 and 51-101, and by the Australian Stock Exchange as a "Recognized Overseas Professional Organization."

By including the CPG credential in the definition of Environmental Professional, the U.S. EPA can be assured of the consistent application of high standards in those states that do not have registration or licensure programs, while allowing for the mobility of highly credentialed professionals across state boundaries.

Approximately 40 percent of AIPG members, out of a total of 4500 members, are in states without registration or licensure programs, and about 75 percent of its membership identifies itself as engaged in environmental practice. EPA can minimize duplicative effort required to process the credentials of individual applicants, i.e. the professional geologist that does not live in the state with a registration or licensure program, by listing the CPG credential in the rule itself. In this way, much of the EPA administrative burden is obviated.

AIPG does not review or modify certification qualifications on a frequent or periodic basis. Since its inception more than 40 years ago, AIPG has maintained a high standard for the CPG title. The education and experience requirements for AIPG certification meet or exceed those of all the state registration or licensure programs. These include: A bachelor or higher degree, minimum of 36 semester hours in geological sciences; a minimum of eight years' experience with a bachelor's degree; seven years with a master's, and five years with a Ph.D.

Response:

Although the final rule recognizes tribal and state-licensed P.E. and P.G.s and other such government licensed environmental professionals with three years of experience to be environmental professionals, the rule does not restrict the definition of an environmental professional to these licensed individuals. The definition of an environmental professional also includes individuals who hold a Baccalaureate or higher degree from an accredited institution of higher education in engineering or science and have the equivalent of five (5) years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries. In addition, individuals with ten years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries qualify as environmental professionals for the purpose of conducting all appropriate inquiries. Individuals with these qualifications most likely will possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases to the surface or subsurface of a property, sufficient to meet the objectives and performance factors included in §312.20(e) and (f).

In addition to the qualifications for environmental professionals mentioned above, EPA is retaining the proposed provision to include within the definition of an environmental professional individuals who are licensed to perform environmental site assessments or all appropriate inquiries by the Federal government (*e.g.*, the Bureau of Indian Affairs) or under a state or tribal certification program, provided that these individuals also have

three years of full-time relevant experience. We contend that individuals licensed by state and tribal governments, or by any department or agency within the federal government, to perform all appropriate inquiries or environmental site assessments, should be allowed to qualify as an environmental professional under today's regulation. State and tribal agencies may best determine the qualifications defining individuals who "possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases...to the surface or subsurface of a property, sufficient to meet the rule's objectives and performance factors" within any particular state or tribal jurisdiction.

In the case where a state or tribal government does not have a professional licensing or certification program, the final rule provides other options for qualifying as an environmental professional (i.e., experience and educational requirements). EPA does not have an environmental professional licensing program and has no plans to establish such a program. The commenter is incorrect in asserting that in those cases where a state does not have a licensing program for professional geologies, "the U.S. EPA will be required to process and verify the accuracy and completeness of each application."

Also, in the final rule, EPA is not recognizing private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Such an approach is not necessary and would require that EPA review the certification requirements of each organization to determine whether or not each organization's certification requirements meet or exceed the regulatory qualifications for an environmental professional. Given that there may be many such organizations and given that each organization may review and change its certification qualifications on a frequent or periodic basis, we conclude that such an undertaking is not practicable. EPA does not have the necessary resources to review the procedures of each private certification organization and review and approve each organization's certification qualifications. Therefore, the final rule includes within the regulatory definition of an environmental professional, general performance-based standards or qualifications for determining who may meet the definition of an environmental professional for the purposes of conducting all appropriate inquiries. These standards include education and experience qualifications. The final rule does not recognize, or reference, any private organization's certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in today's final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Based upon the input received from the public commenters, EPA determined that the definition of environmental professional included in today's final rule establishes a balance between the merits of setting a high standard of excellence for the conduct of all appropriate inquiries through the establishment of stringent qualifications for

environmental professionals and the need to ensure that experienced and highly competent individuals currently conducting all appropriate inquiries are not displaced.

2.1.3 Revise the Rule to Exclude the License Requirement from the Definition of the EP

Commenter Organization Name: Schafer, Marc

Comment Number: 0188

Excerpt Number: 1

Other Sections: NEW - 2.3.1 - Professional engineer certification and professional geologist certification do not ensure high level of professional ability

Excerpt Text:

The Minimum Qualifications for those conducting the All Appropriate Inquiry work which specifically states that a Professional Geologist of a Professional Engineer is acceptable is objectionable for the following reasons: 1.) A Professional Engineer (PE) and Professional Geologist (PG) receive no additional experience as compared to an engineer with a Baccalaureate degree over a three year period when both groups work in environmental investigations. Those successfully receiving PE or PG status will not have garnished additional experience in their studies relative to environmental releases or the causes of such releases by virtue of studying for the PE and PG exams. The additional requirement of two years to be placed on the Baccalaureate is therefore arbitrary. 2.) By specifically labeling that a Professional Engineer (PE) and Professional Geologist (PG) may conduct the All Appropriate Inquiry work, it appears that these titles are a preferred class and therefore more desirable. This causes confusion with the user where they must compare various categories. It would be easier for the user to eliminate the PE and PG titles and use only the experience and educational qualifications.

Response:

The basis for recognizing the P.E. and P.G. licensing programs within the final definition of environmental professional is that they are state professional licensing programs. In the final rule, EPA is retaining the proposed provision to include within the definition of an environmental professional individuals who are licensed to perform environmental site assessments or all appropriate inquiries by the Federal government (*e.g.*, the Bureau of Indian Affairs) or under a state or tribal certification program, provided that these individuals also have three years of full-time relevant experience. State and tribal agencies may best determine the qualifications defining individuals who “possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases...to the surface or subsurface of a property, sufficient to meet the rule’s objectives and performance factors” within any particular state or tribal jurisdiction.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of

the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: Outsource Environmental Company

Comment Number: 0211

Excerpt Number: 1

Excerpt Text:

It is our view as an environmental consulting firm doing business with many facilities that will be affected by this rule, that the definition of "Environmental Professional" should not include any particular licensed specialties such as "Professional Engineer", "Professional Geologist", "Registered Environmental Professional", "Registered Environmental Manager", "Certified Hazardous Materials Manager" etc.

We strongly support the sole reliance upon the experience and educational criteria in the proposed rule. Although perhaps adequate as written in the proposed rule, these criteria could be improved by including specific areas of knowledge and experience utilized in superfund and other site investigations. For example, include as examples of relevant experience the following: RCRA/CERCLA regulatory application knowledge, environmental field/site investigation experience, property transfer "due diligence" investigation experience, and industrial facility environmental and hazardous materials management experience.

Response:

See response to comment number 0188, excerpt 1.

Commenter Organization Name: Peyton, J.

Comment Number: 0216

Excerpt Number: 3

Other Sections: NEW - 2.1.2 - Revise the license requirement to include licensed or certified professionals other than professional engineers and professional geologists

Excerpt Text:

Also, please consider accepting the Certified Environmental Professional, Qualified Environmental Professional, Registered Environmental Manager, and Certified Industrial Hygienist certifications as equivalent to engineering and geology certifications. These 4 certifications are recognized by the Council of Science and Engineering Certification Board, which means that EPA can rely on the rigor of these certifications without having to monitor them. It is simply unfair to recognize some politically connected certifications but not others that are even more appropriate. Or, do not recognize any certifications, including the engineering and geology ones.

Response:

In the final rule, EPA is not recognizing private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Such an approach is not necessary and would require that EPA review the certification requirements of each organization to determine whether or not each organization's certification requirements meet or exceed the regulatory qualifications for an environmental professional. Given that there may be many such organizations and given that each organization may review and change its certification qualifications on a frequent or periodic basis, we conclude that such an undertaking is not practicable. EPA does not have the necessary resources to review the procedures of each private certification organization and review and approve each organization's certification qualifications. Therefore, the final rule includes within the regulatory definition of an environmental professional, general performance-based standards or qualifications for determining who may meet the definition of an environmental professional for the purposes of conducting all appropriate inquiries. These standards include education and experience qualifications. The final rule does not recognize, or reference, any private organization's certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in today's final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Based upon the input received from the public commenters, EPA determined that the definition of environmental professional included in today's final rule establishes a balance between the merits of setting a high standard of excellence for the conduct of all appropriate inquiries through the establishment of stringent qualifications for environmental professionals and the need to ensure that experienced and highly competent individuals currently conducting all appropriate inquiries are not displaced.

Commenter Organization Name: Mille Lacs Ojibwe

Comment Number: 0330

Excerpt Number: 1

Excerpt Text:

The Mille Lacs Band of Ojibwe considers the definition of an Environmental Professional as a person who must be a Professional Engineer or Professional Geologist to be excessive in the conduct of Phase I assessments. Since Phase I assessments primarily involve observations and the gathering of information, the Band believes that such highly qualified Professionals would be too costly and would strain the tribal resources of those tribes who cannot afford them yet need Phase I assessments conducted. In the alternative, the Band recommends the minimum of an undergraduate degree in engineering, environmental or earth science or certification program. If an assessment moved into Phase II and III, the Band then believes it is appropriate for a Professional Engineer or Geologist since conclusions would be made from the information gathered, and activities such as sampling, chemical analysis, and cleanup would occur.

Response:

Although the final rule recognizes tribal and state-licensed P.E. and P.G.s and other such government licensed environmental professionals with three years of experience to be environmental professionals, the rule does not restrict the definition of an environmental professional to these licensed individuals. The definition of an environmental professional also includes individuals who hold a Baccalaureate or higher degree from an accredited institution of higher education in engineering or science and have the equivalent of five (5) years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries. In addition, individuals with ten years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries qualify as environmental professionals for the purpose of conducting all appropriate inquiries. Individuals with these qualifications most likely will possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases to the surface or subsurface of a property, sufficient to meet the objectives and performance factors included in §312.20(e) and (f).

In addition to the qualifications for environmental professionals mentioned above, EPA is retaining the proposed provision to include within the definition of an environmental professional individuals who are licensed to perform environmental site assessments or all appropriate inquiries by the Federal government (*e.g.*, the Bureau of Indian Affairs) or under a state or tribal certification program, provided that these individuals also have three years of full-time relevant experience. We contend that individuals licensed by state and tribal governments, or by any department or agency within the federal government, to perform all appropriate inquiries or environmental site assessments, should be allowed to qualify as an environmental professional under today's regulation. State and tribal agencies may best determine the qualifications defining individuals who "possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of

releases or threatened releases...to the surface or subsurface of a property, sufficient to meet the rule’s objectives and performance factors” within any particular state or tribal jurisdiction.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today’s final rule does not include the proposed “grandfather clause.”

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional’s ability to carry out an all appropriate inquiries.

Commenter Organization Name: Mille Lacs Ojibwe

Comment Number: 0330

Excerpt Number: 2

Excerpt Text:

As to years of relevant experience, the Band recommends that all enumerated years be reduced by half. Because many tribes frequently do not have resources to hire or contract with highly educated Professionals, tribes may usually hire college graduates who may not have many years of experience but at an entry-level position are capable of conducting Phase I assessments. This type of arrangement maximizes tribal resources, where a tribe can have a Phase I conducted without incurring the prohibitive expense of the Professional Engineer/Geologist.

Response:

The Agency believes that it is essential that the person overseeing an all appropriate inquiries investigation have sufficient education and experience to recognize adverse environmental conditions and render sound opinions with regard to the potential for

environmental concerns at a property or the need for further investigation. In the preamble to the final rule, EPA clarifies that only the individual overseeing the conduct of an all appropriate inquiries investigation must qualify as an environmental professional, as defined in the final rule. Other individuals may contribute to the investigation as long as their activities are conducted under the supervision or responsible charge of the individual qualifying as an environmental professional.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

2.1.4 Revise Educational Requirements to Allow Individuals with Baccalaureate or Higher Degrees in Areas Other than Engineering, Environmental Science, and Earth Science and Five or More Years of Relevant Experience to Qualify as EPs

Commenter Organization Name: Paxton, Stephen D

Comment Number: 0099

Excerpt Number: 1

Excerpt Text:

The qualifications outlined in the proposed rule eliminate a significant portion of private sector consultants. As a non-engineer/geologist, my college degree in biology, environmental training, and experience in investigating and remediating contaminated sites has made myself and other "scientists" integral parts of the environmental industry. Private organizations with certification programs, such as Certified Hazardous Materials Manager (CHMM), have opened avenues for the non-engineer/geologist to progress in careers in the environmental industry that have been closed in the past. All scientists including engineers, geologists, chemists, biologists, physicists, mathematicians, etc., have been educated and trained in the scientific process to objectively evaluate conditions and draw conclusions based on evidence. We all require further training that is not part of a college curriculum. All scientists are capable of continuing to learn after college. The proposed qualifications indicate a lack of understanding of science education and scientists. Eliminating entire disciplines from qualification is a dis-service to our institutes of higher learning as well as the science-educated individuals and will create another barrier for the non-engineer/geologist in the industry.

Response:

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. EPA agreed with commenters who pointed out that the requirement that environmental professionals hold specific types of science or engineering degrees was too limiting. In the final rule, persons with any science or engineering degree (regardless of specific discipline in science or engineering) can qualify as an environmental professional, if they also have five (5) years of full-time relevant experience.

In addition, many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site

assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: Zutz

Comment Number: 0104

Excerpt Number: 3

Excerpt Text:

Subsection (4) says that state professional licensing rules may apply to PEs, PGs or other site remediation professionals. Note that in South Dakota, for example, a PE would need to be state licensed to conduct the work as a PE. However, the same individual would not have to be licensed if he conducted the work having a college degree and 5 or 10 years of experience.

South Dakota requires PEs to have at least three to five years of relevant experience. Most states have a professional licensing reciprocity agreement with other states. Neighboring Nebraska requires those registered by reciprocity to have 15 years of experience. For a South Dakota licensed PE to work in Nebraska as a PE would require 15 years of experience (because of state requirements), not three (as stated in the proposed rule).

Therefore, PEs have an additional (state by state) licensing burden above and beyond that required for those without such education and experience. There is a cost in time and money to both the PE and their customers for the PE to be licensed in multiple states.

Consider an example of a biologist (with no other licenses) who has been conducting environmental work for four years. Under the proposed rules, he would not be qualified to continue work regulated by these proposed rules until he has five years of experience. The additional experience requirement costs both time and money to the environmental professional and their customers .

The proposed rule puts an additional burden on those with greater certifications or experience. It also will exclude some qualified individuals. For these reasons, we strongly suggest the definition of an environmental professional be expanded to those persons with a college degree and three years of relevant experience.

Response:

After considering all public comment, it is the Agency's decision that it is essential for all environmental professionals overseeing the conduct of all appropriate inquiries to have at least three years of full-time relevant experience, despite the level of education attained by any individual. The definition of an environmental professional in the final rule does take into account that most state licensing and certification programs require a certain number of years of experience. Therefore, the definition of environmental professional in the final rule provides that state and tribal licensed or certified environmental professionals need to have only three years of full time relevant experience to meet the definition. Persons with college degrees in science or engineering must have five years of full time experience and persons without college degrees in science or engineering must have ten years of full time relevant experience.

In the preamble to the final rule, EPA clarifies that only the individual overseeing the conduct of an all appropriate inquiries investigation must qualify as an environmental professional, as defined in the final rule. Other individuals may contribute to the investigation as long as their activities are conducted under the supervision or responsible charge of the individual qualifying as an environmental professional.

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: Fishman, Betty

Comment Number: 0138

Excerpt Number: 1

Excerpt Text:

The published notice says the All Appropriate Inquiries Committee's intent is to "ensure that all inquiries are conducted at a high level of professional ability and ensure the overall quality of both the inquiries conducted and the conclusions or opinions rendered" (page 52552). It also states: "Committee members believed that individuals trained in science and engineering are best qualified to understand how to interpret information collected about a property in light of the environmental conditions and site-specific situations at the property" (page 52553).

Given these statements, it would seem that individuals trained in science and engineering are the logical choices to be designated as "Environmental Professionals." However, the proposed language has taken "trained in science" and severely limited its application. It defines an Environmental Professional as a P.E., a P.G., or one who is licensed by the

federal government, a state, tribe, or U.S. territory to perform environmental inquiries, plus 3 years of full-time relevant experience, OR one who has:

-a Baccalaureate or higher degree from an accredited institution of higher education in a relevant discipline of engineering, environmental science, or earth science and the equivalent of five (5) years of full-time relevant experience; or

-a Baccalaureate or higher degree from an accredited institution of higher education and the equivalent of ten (10) years of fulltime relevant experience.

There are many professionals with degrees in chemistry, biology, microbiology, and geology who are successfully conducting environmental assessments such as those referenced in this proposal. Unless chemistry and biology are included under "environmental science" and geology is recognized as "earth science" (which is not explicitly stated), these individuals do not fit into the first definition above; they are shunted into the category of non-relevantly trained persons under the last paragraph.

This seems inequitable and short-sighted. The conditions and types of problems Environmental Professionals are expected to recognize under this rule are chemical, biological, and geological in nature. Furthermore, although this proposal is designed for a rule dealing with evaluation of brownfields, it is likely that once a definition of "Environmental Professional" has been promulgated in this standard, it will be adopted for use in other rules and standards. Therefore, the definition should be crafted to apply to all types of environmental conditions.

For that reason, I urge the inclusion of explicit language in the definition to recognize the qualifications of those trained in chemistry, biology, and the other natural and physical sciences, as follows:

-have a Baccalaureate or a higher degree from an accredited institution of higher education in a relevant discipline of engineering or environmental, earth, physical, or natural science and the equivalent of five (5) years of full-time relevant experience;

Response:

Please see response to comment number 0099, excerpt 1.

Commenter Organization Name: Academy of Certified Hazardous Materials Managers

Comment Number: 0140

Excerpt Number: 1

Excerpt Text:

We strongly suggest that within the definition of Environmental Professional the wording in section §312.10 (2)(iii) be amended to the following:

§312.10 EP Definition, section (2)(iii) have any Baccalaureate or a higher degree from an accredited institution of higher education in relevant disciplines of engineering, environmental, earth, physical, or natural sciences and the equivalent of five (5) years of full-time relevant experience;

As the current proposed rule is worded EPA, through the adoption of the third party ASTM derived definition of an Environmental Professional, has proposed a definition that is not congruent with today's educational systems demands, applications, or competencies. Further EPA has by the specific rule language labeled an EP as being applied only to the Appropriate Inquiries rule; this is a very narrowly limited valuation of an environmental professional's duties or service offerings. EPA has by default said that any chemist or biologist or individuals with other types of Bachelors of Science degrees are not competent or capable of making environmental decisions. As an example, it should be noted by EPA that many of its own employees carry a degree in Biology; does this mean that they cannot be considered as Environmental Professionals?

The wording of the EP definition section §312.10 (2)(iii) and (iv) needs to be changed to be an inclusive term that truly will define those individuals that hold themselves to be EPs within the broad field of environmental endeavors. The definition wording needs to be such that the Environmental Professional definition can be applied and used as a equivalent term by all who are true environmental professionals and in all rule sites where work is required that demands an environmental professional designation.

Response:

Please see response to comment number 0099, excerpt 1.

Commenter Organization Name: Kay, Michael

Comment Number: 0142

Excerpt Number: 1

Other Sections: NEW - 2.1.5 - Revise the minimum requirements to allow individuals certified by a professional organization that is third party accredited and have ten years of full-time relevant experience to qualify as EPs

Excerpt Text:

Further, I would like to make these additional comments: My Sc.D. is an earned Doctor of Science in Chemistry from the Massachusetts Institute of Technology, 1970. I am an analytical chemist. I earned the Certified Hazardous Materials Manager certification in 1991 and have kept my certification current. I consider my education and CHMM certification ample evidence to support my claim to be an Environmental Professional.

Response:

Please see responses to comment numbers 0216 (excerpt 3) and 0099 (excerpt 1).

Commenter Organization Name: Anonymous

Comment Number: 0148

Excerpt Number: 1

Excerpt Text:

Amend the wording to read "...relevant disciplines of engineering, environmental, earth, physical or natural sciences..."

Response:

Please see response to comment number 0099, excerpt 1.

Commenter Organization Name: Frick, John H

Comment Number: 0173

Excerpt Number: 1

Excerpt Text:

The published notice says the All Appropriate Inquiries Committee's intent is to "ensure that all inquiries are conducted at a high level of professional ability and ensure the overall quality of both the inquiries conducted and the conclusions or opinions rendered" (page 52552). It also states: "Committee members believed that individuals trained in science and engineering are best qualified to understand how to interpret information collected about a property in light of the environmental conditions and site-specific situations at the property" (page 52553).

Given these statements, it would seem that individuals trained in science and engineering are the logical choices to be designated as "Environmental Professionals." However, the proposed language has taken "trained in science" and severely limited its application. It defines an Environmental Professional as a P.E., a P.G., or one who is licensed by the federal government, a state, tribe, or U.S. territory to perform environmental inquiries, plus 3 years of full-time relevant experience, OR one who has:

- a Baccalaureate or higher degree from an accredited institution of higher education in a relevant discipline of engineering, environmental science, or earth science and the equivalent of five (5) years of full-time relevant experience; or
- a Baccalaureate or higher degree from an accredited institution of higher education and the equivalent of ten (10) years of full-time relevant experience.

There are many professionals with degrees in chemistry, biology, microbiology, and geology who are successfully conducting environmental assessments such as those referenced in this proposal. Unless chemistry and biology are included under "environmental science" and geology is recognized as "earth science" (which is not explicitly stated), these individuals do not fit into the first definition above; they are shunted into the category of non-relevantly trained persons under the second paragraph.

This seems inequitable and short-sighted. The conditions and types of problems Environmental Professionals are expected to recognize under this rule are chemical, biological, and geological in nature. Furthermore, although this proposal is designed for a rule dealing with evaluation of brownfields, it is likely that once a definition of

"Environmental Professional" has been promulgated in this standard, it will be adopted for use in other rules and standards. Therefore, the definition should be crafted to apply to all types of environmental conditions.

For that reason, I urge the inclusion of explicit language in the definition to recognize the qualifications of those trained in chemistry, biology, and the other natural and physical sciences, as follows:

- have a Baccalaureate or a higher degree from an accredited institution of higher education in a relevant discipline of engineering or environmental, earth, physical, or natural science and the equivalent of five (5) years of full-time relevant experience; ...

Response:

Please see response to comment number 0099, excerpt 1.

Commenter Organization Name: Farrell, Margaret

Comment Number: 0192

Excerpt Number: 1

Excerpt Text:

Please do not exclude natural scientists, which are vitally important to environmental projects, from your definition. Environmental projects are unique in requiring multidisciplinary experience. Do not forget the vast number of experts that are in the environmental business.

Response:

Please see response to comment number 0099, excerpt 1.

Commenter Organization Name: Appraisal Institute

Comment Number: 0212

Excerpt Number: 6

Excerpt Text:

we recommend that §312.10(b)(1)(i-iv) of the EPA proposed rule be amended to state that all requirements to conduct All Appropriate Inquiries set forth for engineers be the same as those with a BA or BS level degree in an environmentally concentrated field;

Response:

Please see response to comment number 0099, excerpt 1.

Commenter Organization Name: Peyton, J.

Comment Number: 0216

Excerpt Number: 2

Excerpt Text:

Also please specify "any bachelors degree in the physical or biological sciences" so as to be inclusive of every experienced practitioner.

Response:

Please see response to comment number 0099, excerpt 1.

Commenter Organization Name: Stevens, Scott

Comment Number: 0225

Excerpt Number: 5

Other Sections: NEW - 2.1.8.1 - The grandfather clause is too stringent

Excerpt Text:

I support the changes put forward by the National Registry of Environmental Professionals - in that §312.10(b)(1)(i-iv) of the EPA proposed rule be amended to state all requirements set forth for engineers to conduct all appropriate inquiries be the same as those with a BA or BS level degree in an environmentally concentrated field in conducting the same inquiries; and, the experience requirement for those with no degree in an environmentally concentrated field be reduced from 10 years to 5 years.

Response:

Please see response to comment number 0099, excerpt 1.

Commenter Organization Name: Myers, Steve

Comment Number: 0242

Excerpt Number: 1

Excerpt Text:

1 Steve Myers

EP Definition 312.10(c)(2)iii The qualifications to be an environmental professional should be changed to include a BA or BS in chemistry, physics and/or the life science degree plus 5 years experience. Limiting the title to just engineers, geologists, and people with earth science and environmental science degrees arbitrarily punishes people who entered the business prior to most schools establishing environmental science programs but do not yet have the requisite 10 years experience.

Response:

Please see response to comment number 0099, excerpt 1.

Commenter Organization Name: Roeser, Daniel

Comment Number: 0249

Excerpt Number: 3

Excerpt Text:

As currently written, paragraph (2)(iii) only qualifies persons having a Baccalaureate or higher degree in "... a relevant discipline of engineering, environmental science, or earth

science ..." as an EP. This definition appears to omit persons with degrees in chemistry, physiology, biology, etc., all fields of study pertinent and appropriate to the conduct of environmental investigations. The apparent omission of chemistry as a "relevant discipline" is particularly egregious since the pertinent environmental issues associated with AAI are the use and release of chemicals. Therefore, I recommend the following wording for (2)(iii):

Have a Baccalaureate or higher degree from an accredited institution of higher education in a relevant discipline of engineering, environmental science, or natural science and the equivalent of five (5) years of full-time relevant experience;

The use of "natural science" instead of "earth science" is inclusive of the relevant scientific disciplines for AAI, including the earth sciences.

Response:

Please see response to comment number 0099, excerpt 1.

Commenter Organization Name: Christensen, Mark

Comment Number: 0260

Excerpt Number: 1

Excerpt Text:

As an environmental professional, I hold a Master of Science degree in Environmental Management. According to the proposed EPA definition of an Environmental Professional, this degree does not meet the technical definition because it is not specifically an environmental science or earth science degree, although the curriculum therein was environmental science. I am therefore concerned that many practicing environmental professionals such as myself will be excluded from practicing in some areas or signing-off certain documents.

Response:

Please see response to comment numbers 0104 (excerpt 3) and 0099 (excerpt 1).

Commenter Organization Name: Anonymous

Comment Number: 0276

Excerpt Number: 1

Excerpt Text:

The Academy of Certified Hazardous Materials Managers (ACHMM) representing the 6,000 individuals who hold the professional designation of the Certified Hazardous Materials Managers (CHMM) certificate while commending EPA for its efforts in developing a "negotiated" credible definition concerning who is a qualified "Environmental Professional" (EP) have serious concerns with the explicit wording within the proposed definition and how this definition may be applied to environmental work practices and products. Those individuals who consider themselves as EPs and have input and impact concerning environmental decisions and issues are most critical to the

present and future condition of the local, national, and global environs in which we as human beings co-exist with those other non-human inhabitants of this planet. The value of these Environmental Professionals cannot be measured, however their decisions and professional input demands that those individuals who hold themselves to be an EP conduct their business affairs with the highest integrity and professional credibility. We also can foresee that EPA may use this definition not only within the Inquiry or Brownfields rules but also as an inclusive equivalent replacement term to define credible individuals in all of EPA's rules and regulations where now specific professional designation requirements are sited. We could agree with EPA using the EP language in this way, but only if the EP definition is appropriately worded to include a broader educational requirement definition than is currently proposed and contains language that is broader and relates more appropriately to the entire environmental field.

Response:

The definition of environmental professional in the final rule pertains only to individuals overseeing all appropriate inquiries investigations in compliance with the final rule. The definition is not applicable for any other purpose. EPA has no plans to apply the definition of environmental professional in this final rule to any other environmental program.

Please also see response to comment number 0099, excerpt 1.

Commenter Organization Name: ENSR International

Comment Number: 0314

Excerpt Number: 6

Other Sections: NEW - 2.3.1 - Professional engineer certification and professional geologist certification do not ensure high level of professional ability

Excerpt Text:

The EP is defined in § 312.10 (b)(1) and (2). Essentially, the qualifications involve either holding a PE or PG certification and three years of full time relevant experience; or holding a Baccalaureate or higher degree in the relevant disciplines of engineering, environmental science, or earth science plus five years of full time relevant experience.

Comment: We disagree with the minimum qualifications for an EP. The current language is far too restrictive. Having the specified professional certifications or degrees has no relevance, in our professional opinion. In our more than 20 years of experience in performing Phase I investigations, we have seen no correlation between certifications or degree fields and the competent undertaking of a site investigation. There is an important thought process that is necessary in order to complete a quality Phase I investigation. In part, it requires knowledge about commercial and industrial processes and activities, including by-products. But it also requires an ability to comb through municipal records, historical sources, and other reference material in an effort to put together an historical use puzzle. PE certifications or degrees in engineering or specific sciences have little bearing on the ability of the professional to appropriately conduct such research. We strongly recommend broadening the criteria to a single one (beyond the grandfathering

threshold) involving a Baccalaureate or higher degree from an accredited institution and three years of relevant full-time experience.

Response:

In the preamble to the final rule, EPA clarifies that only the individual overseeing the conduct of an all appropriate inquiries investigation must qualify as an environmental professional, as defined in the final rule. Other individuals may contribute to the investigation as long as their activities are conducted under the supervision or responsible charge of the individual qualifying as an environmental professional.

EPA is retaining the proposed provision to include within the definition of an environmental professional individuals who are licensed to perform environmental site assessments or all appropriate inquiries by the Federal government (*e.g.*, the Bureau of Indian Affairs) or under a state or tribal certification program, provided that these individuals also have three years of full-time relevant experience. We contend that individuals licensed by state and tribal governments, or by any department or agency within the federal government, to perform all appropriate inquiries or environmental site assessments, should be allowed to qualify as an environmental professional under today's regulation. State and tribal agencies may best determine the qualifications defining individuals who "possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases...to the surface or subsurface of a property, sufficient to meet the rule's objectives and performance factors" within any particular state or tribal jurisdiction.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (*i.e.*, do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on

this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: Kane Environmental

Comment Number: 0317

Excerpt Number: 1

Excerpt Text:

From our experience, a total of 4 years is sufficient time for an individual with a BA or BS degree or higher to be considered as an Environmental Professional (EP). 4 years working with an EP is the equivalent time for a second undergraduate degree at a 4-year university.

Response:

In the preamble to the final rule, EPA clarifies that only the individual overseeing the conduct of an all appropriate inquiries investigation must qualify as an environmental professional, as defined in the final rule. Other individuals may contribute to the investigation as long as their activities are conducted under the supervision or responsible charge of the individual qualifying as an environmental professional.

The Agency is retaining the requirement that individuals with college degrees in science and engineering have five years of full-time relevant experience to qualify as an environmental professional for the purpose of overseeing the conduct of all appropriate inquiries. However, based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on

this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: FAA

Comment Number: 0334

Excerpt Number: 6

Other Sections: NEW - 2.3.1 - Professional engineer certification and professional geologist certification do not ensure high level of professional ability

Excerpt Text:

2) FAA believes that the qualifications for an EP should also include those with a Bachelor's (BA or BS) in chemistry, physics, and/or the life sciences plus years of relevant experience. Limiting the title to just engineers, geologists, and people with earth and environmental science degrees arbitrarily punishes those who entered the business prior to most schools establishing environmental science programs but who do not yet have the requisite 10 years of experience before the publication of the final rule. Also, there is no reason to assume that someone with a professional engineer's (PE) or professional geologist's (PG) certification will better understand and judge a property's likelihood of contamination after three years of relevant experience than someone with a BS in a relevant degree and five years of experience. Therefore, FAA believes that it is arbitrary and capricious to require those with a BS to have two extra years of relevant experience than a PE or PG must have in order to qualify as an EP.

Response:

Please see responses to comment numbers 0099 (excerpt 1) and 0314 (excerpt 6).

Commenter Organization Name: Anonymous

Comment Number: 0348

Excerpt Number: 2

Excerpt Text:

The regulation such clearly state that any environmental science degree is relevant, including degrees in chemistry, biology, natural resources, toxicology, geology, and engineering. The regulation should be worded to NOT imply any preference for any specific science degrees - Phase I's have a long history of multidisciplinary, interdisciplinary input. Do not let any single profession(s) try to appropriate the field for themselves - lest the interdisciplinary expertise that is the hallmark of environmental consulting will be replaced with professional bias.

Response:

Please see response to comment number 0099, excerpt 1.

Commenter Organization Name: Potter and Adams

Comment Number: 0351

Excerpt Number: 2

Excerpt Text:

The definition of EP is overly narrow and does not support what we believe is the intent of the rule. A suggested alternative wording is "Have a Baccalaureate or higher degree from an accredited institution of higher education in relevant disciplines of engineering, environmental, earth, physical, or natural sciences and the equivalent of five (5) years of fulltime relevant experience;".

Response:

Please see response to comment number 0099, excerpt 1.

Commenter Organization Name: Baker Petrolite

Comment Number: 0352

Excerpt Number: 2

Excerpt Text:

1. The proposed rule should be amended so that the definition of Environmental Professional includes professionals with other science degrees (e.g., chemistry, biology, agronomy, wildlife & fisheries, forestry) who have five years of relevant, full-time experience.

Response:

Please see response to comment number 0099, excerpt 1.

In addition, based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on

this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: Kehres

Comment Number: 0395

Excerpt Number: 2

Excerpt Text:

--As currently written, paragraph (2)(iii) only qualifies as an EP persons having a Baccalaureate or higher degree in "... a relevant discipline of engineering, environmental science, or earth science . . .". This definition appears to omit persons with degrees in chemistry, physiology, biology, etc., all fields of study pertinent and appropriate to the conduct of environmental investigations. The apparent omission of chemistry as a "relevant discipline" is particularly egregious since the pertinent environmental issues associated with AAI are the use and release of chemicals. Therefore, I recommend the following wording for (2)(iii):

Have a Baccalaureate or higher degree from an accredited institution of higher education in a relevant discipline of engineering, environmental science, or natural science and the equivalent of five (5) years of full-time relevant experience;

The use of "natural science" instead of "earth science" is inclusive of the relevant scientific disciplines for AAI, including the earth sciences. An alternative wording could be "physical and biological sciences."

Response:

Please see response to comment number 0099, excerpt 1.

Commenter Organization Name: Andrews, Douglas

Comment Number: 0399

Excerpt Number: 2

Excerpt Text:

(2)(iii) As currently written, paragraph (2)(iii) only qualifies as an EP persons having a Baccalaureate or higher degree in "... a relevant discipline of engineering, environmental science, or earth science ...". This definition appears to omit persons with degrees in chemistry, physiology, biology, etc., all fields of study pertinent and appropriate to the conduct of environmental investigations. The apparent omission of chemistry as a "relevant discipline" is particularly egregious since the pertinent environmental issues associated with AAI are the use and release of chemicals. Therefore, I recommend the following wording for (2)(iii):

Have a Baccalaureate or higher degree from an accredited institution of higher education in a relevant discipline of engineering, environmental science, or natural science and the equivalent of five (5) years of full-time relevant experience;

The use of "natural science" instead of "earth science" is inclusive of the relevant scientific disciplines for AAI, including the earth sciences. An alternative wording could be "physical and biological sciences."

Response:

Please see response to comment number 0099, excerpt 1.

Commenter Organization Name: Kentuckiana Chapter ACHMM

Comment Number: 0405

Excerpt Number: 1

Other Sections: NEW - 2.1.2 - Revise the license requirement to include licensed or certified professionals other than professional engineers and professional geologists

Excerpt Text:

As background, all CHMMs must pass a rigorous exam administered by the Institute of Hazardous Waste Management, ACHMM's third-party accrediting organization, and demonstrate an understanding of the basic principles involved in technologies pertaining to hazardous materials management, knowledge of the sciences, including chemistry, radiology, physical sciences, geology/hydrology, toxicology and engineering, knowledge of the regulations, such as TSCA, RCRA, CERCLA, OSHA, DOT and EPA, that govern environmental and hazardous materials management, and competence and maturity of judgment managing environmental program resources. To qualify at the Master Level, new members must have a degree in engineering or a field related to hazardous materials management, seven (7) years experience in the field with responsibility for developing, implementing and directing or evaluating hazardous material management programs. New Senior Level members must have a degree in engineering or a field related to hazardous materials management and three (3) years of experience in the field of hazardous materials management or engineering, including related graduate studies at an accredited college Or university which may substitute for field experience on a year-for-year basis. Prior to 2003, Senior Level members with eleven (11) years of field experience could sit for the exam without a baccalaureate degree upon recommendation by other environmental professionals.

As defined in the proposed All Appropriate Inquiry Rule, an "environmental professional" must meet the following requirements:

-(iii) have a Baccalaureate or higher degree from an accredited institution of higher education in a relevant discipline of engineering, environmental science, or earth science and the equivalent of five (5) years of full-time relevant experience;

40 CFR §312.10(2)(iii). In keeping with the EPA's goal that environmental professionals must "possess significant specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases ... to the surface or subsurface of a property, sufficient to meet the objectives and performance factors' that are provided in the

proposed regulation," 69 Fed. Reg. 52452, 52552 (Proposed Rule, August 26, 2004), KCHMM recommends that the definition of environmental professional in 40 CFR §312.10(2)(iii) be amended to include professionals with degrees in physical or natural sciences, such as chemistry or biology, and certification from a third-party accrediting organization as follows:

-have a Baccalaureate or a higher degree from an accredited institution of higher education in relevant disciplines of engineering, environmental, earth, physical, or natural sciences and the equivalent of five (5) years of full-time relevant experience; or have a Baccalaureate or higher degree from an accredited institution of higher education in relevant disciplines of engineering, environmental, earth, physical, or natural sciences, three (3) years of full-time relevant experience, and be an individual certified by a professional organization with third party accreditation.

In the case of a CHMM, such an individual would have the following qualifications: (1) a Baccalaureate or higher degree in engineering or a field related to hazardous materials management; (2) at least three years experience in the field of managing hazardous materials; (3) demonstrated knowledge and understanding of the basic principles involved in hazardous materials management, including an understanding of the regulations governing sites, (4) passed a rigorous exam; and (5) pledged to maintain the highest standards of integrity through the CHMM Code of Ethics, a copy of which is attached for your convenience.

Response:

The definition of environmental professional in the final rule does not exclude existing nationally recognized environmental professional programs such as the Certified Hazardous Materials Manager (CHMM) program. As long as the certification program's requirements meet or exceed the qualifications in the final rule's definition of environmental professional, any person receiving certification from the CHMM program will meet the definition of environmental professional for the purposes of conducting all appropriate inquiries investigation.

EPA is not recognizing in the regulatory language of the final rule private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Given the performance-based qualifications provided in the final definition of an environmental professional, such an approach is not necessary. Therefore, there is no need to reference or depend upon an independent standard that assesses professional certification standards. The final rule does not recognize, or reference, any private organization's certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in today's final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out all appropriate inquiries.

Commenter Organization Name: Georgia Power

Comment Number: 0423

Excerpt Number: 2

Excerpt Text:

§312.10 Definitions (b), Environmental Professional

The Environmental Professional definition in (2) (iii) and (iv) should be changed to read:

-Environmental Professional means:

--(iii) Have a Baccalaureate or higher degree from an accredited institution of higher education in a relevant discipline of engineering, environmental science, or earth or natural sciences and the equivalent of five (5) four (4) years of full-time relevant experience; or

--(iv) As of the date of the promulgation of this rule, have a Baccalaureate or higher degree from an accredited institution of higher education and the equivalent of ten (10) five (5) years of full-time relevant experience.

Rationale:

-The number of years of full-time relevant experience for a Baccalaureate or higher degree in a relevant discipline should be modified in (2)(iii) to be more consistent with (2)(i) PE and PG and (2)(ii) licensed and certified Environmental Professionals. There were apparent interests being protected during the drafting of this definition to give PEs and PGs preferential positions in this definition. An unfounded distinction has been made between the number of years of experience necessary for PEs/PGs and licensed/certified versus Baccalaureate or higher degrees in relevant disciplines. A defensible explanation of this distinction is not apparent.

-Ten years of relevant full-time experience for degree holders in non-relevant disciplines is an unnecessarily high entrance level to be considered qualified as an Environmental Professional in this category. A Grandfather Clause, by its nature, should be more lenient and accessible. Baccalaureate or higher degree holders of all disciplines who have been performing environmental site assessments or other related work for five years, should be considered qualified.

Response:

Please see response to comment number 0099, excerpt 1.

In addition, based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: Hoskins, Herbert

Comment Number: 0428

Excerpt Number: 2

Excerpt Text:

As currently written, paragraph (2)(iii) only qualifies as an EP persons having a Baccalaureate or higher degree in "... a relevant discipline of engineering, environmental science, or earth science ...". This definition appears to omit persons with degrees in chemistry, physiology, biology, etc., all fields of study pertinent and appropriate to the conduct of environmental investigations. The apparent omission of chemistry as a "relevant discipline" is particularly egregious since the pertinent environmental issues associated with AAI are the use and release of chemicals. Therefore, I recommend the following wording for (2)(iii):

Have a Baccalaureate or higher degree from an accredited institution of higher education in a relevant discipline of engineering, environmental science, or natural science and the equivalent of five (5) years of full-time relevant experience;

The use of "natural science" instead of "earth science" is inclusive of the relevant scientific disciplines for AAI, including the earth sciences. An alternative wording could be "physical and biological sciences."

Response:

Please see response to comment number 0099, excerpt 1.

Commenter Organization Name: Haley and Aldrich

Comment Number: 0432

Excerpt Number: 2

Excerpt Text:

We concur that AAI investigations should be designed by qualified professionals and that a minimum education and experience standards for environmental professional standard should be required. However, the definition of an Environmental Professional (EP) as provided does have some ambiguities. In general, and except where grandfathered, we concur that an environmental professional should have a Baccalaureate or higher degree from an accredited institution of higher education in a relevant discipline of engineering, environmental science or earth science and the equivalent of five years of full time relevant experience. The definition of what constitutes an "environmental science", however, is not clear. We assume that a degree in chemistry would suffice as an environmental science, but it is not clear.

Response:

Please see response to comment number 0099, excerpt 1.

Commenter Organization Name: Anonymous

Comment Number: 0439

Excerpt Number: 1

Excerpt Text:

In response to [SFUND 2004 0001; FRL 7815 2] Standards and Practices for All Appropriate Inquiries (AAI) I disagree with the proposed definition of environmental professional as drafted. After carefully reviewing the standards for conducting appropriate inquiries into previous ownership, uses; and environmental conditions of property I support the body of the text, but not the proposed definition of environmental professional.

Overall, I believe the notice provides a framework to build upon, perhaps over a specified period of time, however I do not concur with the proposed definition: Environmental Professional as drafted.

More importantly, environmental practitioners today (seasoned veterans and college graduates) even though competent and skilled may not "qualify" based on the proposed definition. As an example, environmental conditions today have a much broader reach as we enter into the topic of bio terrorism and chemical agents that may have a direct impact to response and recovery actions outlined within the revised National Response Plan (NRP).

For these reasons, I disagree with the proposed definition of environmental professional, but support the efforts of this proposal.

Response:

Please see response to comment number 0099, excerpt 1.

In addition, based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned

changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: Greenwood, Harriet

Comment Number: PM-0127-0008

Excerpt Number: 2

Excerpt Text:

Investigative skills, interview skills, interpretation of the importance of existing data or gaps in the data are key requirements for environmental professionals.

Currently, there is no one educational program that teaches all of these skills. A scientific education provides an excellent background and this includes the life sciences, biology, agronomy, toxicology, forestry. Bachelor degrees in life sciences, including toxicology, should be included in the definition in 312.10(B)(2)(iii), if I've got that right.

Response:

Please see response to comment number 0099, excerpt 1.

In addition, based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior

in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

2.1.5 Revise the Minimum Requirements to Allow Individuals Certified by a Professional Organization that is Third Party Accredited and Have Ten Years of Full-Time Relevant Experience to Qualify as EPs

Commenter Organization Name: Anonymous

Comment Number: 0129

Excerpt Number: 1

Excerpt Text:

I am familiar with the comments that have been submitted by Mr. Tom Brown of the Academy of Certified Hazardous Materials Managers concerning the proposed definitions of "Environmental Professional". Despite the fact that I am a Professional Geologist, and the language proposed by EPA will include me in any case, I strongly support the comments made by Mr. Brown and the ACHMM. When you have stringent 3rd party accreditation that requires some mastery of all areas of environmental practice, as with the CHMM credential, it is difficult to see a valid reason to restrict the definition as you have proposed.

Response:

Please see response to comment number 0405, excerpt 1.

Commenter Organization Name: Academy of Certified Hazardous Materials Managers

Comment Number: 0140

Excerpt Number: 2

Excerpt Text:

As stated in the FR notice there is a "grandfathering" clause but that only applies to the inquiry rule activities specifically. We propose that the wording should be as follows:

§312.10 EP Definition, section (2)(iv) As of the date of promulgation on this rule, have a Baccalaureate or higher degree from an accredited institution of higher education, or be individuals that are certified by a professional organization that is third party accredited and have ten (10) years of full-time of relevant experience.

We continue to suggest that EPA consider and support those professional designations that are third party accredited as being the designations that are the most credible and viable for the mentioned professional service provisions. As you are aware, third party accreditation moves any designation further towards a true professional stature with the associated accrediting party's initial qualifications requirements, continuing educational requirements, and with the inclusive "Code of Ethics" that any professional association or organization, as well as the states, requires and enforces. The institute of Hazardous Materials Managers which provides the Certified Hazardous Materials Managers certification to individuals is accredited, similar to accreditation EPA is correctly requiring in the proposed rule language from the University and College system, by the Council of Engineering and Scientific Specialty Boards which adheres to the stringent

ASTM E1929-98 standard for personal certifications accrediting requirements in reference to its organizational members that are certifying bodies for their members.

Response:

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

EPA is not recognizing in the regulatory language of the final rule private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Given the performance-based qualifications provided in the final definition of an environmental professional, such an approach is not necessary. Therefore, there is no need to reference or depend upon an independent standard that assesses professional certification standards. The final rule does not recognize, or reference, any private organization's certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in today's final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Commenter Organization Name: Anonymous

Comment Number: 0141

Excerpt Number: 1

Excerpt Text:

By this statement I would like to voice my support for the comments submitted by Tom Brown for the Academy of Certified Hazardous Materials Managers (ACHMM). Mr Brown's comments on how the definition of a qualified environmental professional should be changed are relevant, important and should be incorporated into the definition. In my own case despite sciences degrees, 18 years of relevant experience and certification as a CHMM at the masters level I could be considered NOT qualified as an environmental professional under the proposed definition.

Response:

Please see responses to comment number 0405, excerpt 1.

Commenter Organization Name: Kay, Michael

Comment Number: 0142

Excerpt Number: 1

Other Sections: NEW - 2.1.4 - Revise educational requirements to allow individuals with Baccalaureate or higher degrees in areas other than engineering, environmental science, and earth science and five or more years of relevant experience to qualify as EPs

Excerpt Text:

Further, I would like to make these additional comments: My Sc.D. is an earned Doctor of Science in Chemistry from the Massachusetts Institute of Technology, 1970. I am an analytical chemist. I earned the Certified Hazardous Materials Manager certification in 1991 and have kept my certification current. I consider my education and CHMM certification ample evidence to support my claim to be an Environmental Professional.

Response:

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. EPA agreed with commenters who pointed out that the requirement that environmental professionals hold specific types of science or engineering degrees was too limiting. In the final rule, persons with any science or engineering degree (regardless of specific discipline in science or engineering) can qualify as an environmental professional, if they also have five (5) years of full-time relevant experience.

In addition, many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and

health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

EPA is not recognizing in the regulatory language of the final rule private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Given the performance-based qualifications provided in the final definition of an environmental professional, such an approach is not necessary. Therefore, there is no need to reference or depend upon an independent standard that assesses professional certification standards. The final rule does not recognize, or reference, any private organization's certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in today's final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Commenter Organization Name: Frick, John H

Comment Number: 0173

Excerpt Number: 2

Excerpt Text:

The credential I work with-the Certified Hazardous Materials Manager (CHMM)-is a professional credential that is accredited by the Council of Engineering and Scientific Specialty Boards and adheres to the stringent ASTM E1929-98 Standard Practice for Assessment of Certification Programs for Environmental Professionals. CHMMs are bound by their Code of Ethics to practice only within their areas of expertise. Furthermore, all CHMMs are required to remain current by qualifying for recertification every five years.

A Master-Level CHMM must have an appropriate accredited baccalaureate or higher degree and at least seven (7) years of relevant experience, which exceeds the experience level in this proposal. We would be pleased to see EPA recognize the Master-Level CHMM as a means of qualifying for the Environmental Professional, along with the licenses and registrations already included in the proposed rules. If it cannot be adopted at this late date into the rule itself, we would be pleased to see reference to the Master-Level CHMM as a qualifying credential in EPA guidance materials.

Response:

EPA is not recognizing in the regulatory language of the final rule private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Given the performance-based qualifications provided in the final definition of an environmental professional, such an

approach is not necessary. Therefore, there is no need to reference or depend upon an independent standard that assesses professional certification standards. The final rule does not recognize, or reference, any private organization's certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in today's final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Commenter Organization Name: National Association of Environmental Professionals

Comment Number: 0193

Excerpt Number: 1

Excerpt Text:

This definition excludes many existing "Nationally Recognized" Environmental Professionals such as the "Certified Environmental Professional" designation offered by the Academy of Board Certified Environmental Professionals (ABCEP) www.abcep.org. ABCEP administers the Certified Environmental Professional (CEP) Program which provides environmental professionals who possess special qualifications of education, experience, and accomplishment with the opportunity to be judged by a board of peers. Those individuals awarded the Certified Environmental Professional credential may use the designation "CEP" after their name.

The new Federal "All Appropriate Inquiries" standard requires "an inquiry by an environmental professional." "Environmental Professional" has a lengthy definition under the proposed rule. An Environmental Professional is generally defined as "[a] person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases to the surface or subsurface of a property." Specifically, an "Environmental Professional" includes persons that possess a professional engineering, professional geologist or state/federal environmental assessment licenses and three years of experience, a Bachelor's degree in engineering, environmental science or earth science and 5 years of experience, or a Bachelor's degree in a non-engineering, science or environmental discipline and 10 years of experience.

In addition to those noted in the proposed rule, the definition of "Environmental Professional" should include those individuals who have qualified as "Certified Environmental Professional" under the auspices of the Academy of Board Certified Environmental Professionals (ABCEP). ABCEP administers the Certified Environmental Professional (CEP) Program which provides environmental professionals who possess special qualifications of education, experience, and accomplishment with the opportunity to be judged by a board of peers. Those individuals awarded the Certified Environmental Professional credential may use the designation "CEP" after their name.

Minimum requirements for CEP certification include:

- The applicant must possess a Bachelor's Degree and a minimum of nine years of applicable professional environmental experience. Five of the nine years must be in a position of responsible charge and/or responsible supervision. Responsible charge is defined as: the direction of environmental work by an environmental professional to the extent that successful completion of the work is dependent on the decisions made by the environmental professional without advice or approval of others. Responsible supervision is defined as: the supervision of another professional person's work by an environmental professional to the extent that the environmental professional assumes the professional responsibility for the work.

- A Master's Degree may be substituted for one year of the nine years of professional experience and a Doctorate may be substituted for two of the nine years of professional experience. However, no such substitution will apply to the requirement for the five years in responsible charge and/or responsible supervision. Degrees claimed must be from fully accredited college or university (certified transcripts are required). The written portion of the examination consists of mandatory and elective essay questions designed to test the communication skills and technical experience of the applicant.

- The applicant must subscribe to the ABCEP Code of Ethics and Standards of Practice for Environmental Professionals, established by NAEP and adopted by the Academy;

These certification requirements exceed those proposed by the U.S. Environmental Protection Agency (USEPA) and therefore should be judged as at least equivalent to a Professional Engineer or Professional Geologist designation.

We understand the USEPA's concern about not having the resources or staff to verify third-party certification programs but the certification of such programs is not part of the USEPA's mission. There are already third-party certification organizations like the International Standards Organization (ISO) that independently review and evaluate the CEP program. The ABCEP's CEP Program is third-party certified by the Council of Engineering and Scientific Specialty Boards (CESB) www.cesb.org.

CESB is an independent, voluntary membership body created for its member organizations who recognize, through specialty certification, the expertise of individuals practicing in engineering and related fields. Its creation on April 24, 1990 was the culmination of organizing work by volunteers from among the 130 attendees (23 organizations represented) who participated in the April 1988 National Conference on Engineering Specialty Certification.

CESB, as an accrediting body, provides:

- basic criteria and guidelines for the establishment and operation of specialty certification programs for engineers, technologists, technicians, and related scientific
- it serves as a recognizing body for organizations that certify individuals

- it represents its members in communications and, when appropriate, in negotiations with public and private agencies, groups, and individuals with respect to matters of common interest
- and it informs employers, specifiers, public officials, the public, and engineering and related practitioners of the benefits of specialty certification.

We ask that the definition of an "Environmental Professional" under the "All Appropriate Inquiries" standard be revised to include an individual designated as a Certified Environmental Professional.

Response:

Please see response to comment number 0405, excerpt 1.

Commenter Organization Name: Appraisal Institute

Comment Number: 0212

Excerpt Number: 4

Excerpt Text:

Definition of Environmental Professional

Finally, we believe the definition of "environmental professional" should be reserved for those persons properly trained and licensed to perform environmental assessments, including individuals who have earned professional designations in the environment assessment industry.

Some real estate professionals have taken courses such as the joint Appraisal Institute/National Association of Environmental Risk Auditors (NAERA) seminar entitled Introduction to Environmental Issues for Real Estate Appraisers. In this seminar students learn to use forms such as the Appraisal Institute's Property Observation Checklist and NAERA's Uniform Environmental Risk Screening Report. Some have chosen to pursue certification in this area through courses and other requirements offered by NAERA and the National Registry of Environmental Professionals.

Response:

Please see responses to comment 0173, excerpt 2.

Commenter Organization Name: GAEP

Comment Number: 0224

Excerpt Number: 1

Excerpt Text:

This definition excludes many existing "Nationally Recognized" Environmental Professionals such as the "Certified Environmental Professional" designation offered by the Academy of Board Certified Environmental Professionals (ABCEP) www.abcep.org. ABCEP administers the Certified Environmental Professional (CEP) Program which

provides environmental professionals who possess special qualifications of education, experience, and accomplishment with the opportunity to be judged by a board of peers.

GAEP agrees with NAEP's suggestion that the proposed "All Appropriate Inquires" definition of "Environmental Professional" should include individuals that have been awarded the CEP credential. The proposed "All Appropriate Inquiries" definition of "Environmental Professional" includes persons that possess a professional engineering, professional geologist or state/federal environmental assessment licenses and three years of experience, a Bachelor's degree in engineering, environmental science or earth science and 5 years of experience, or a Bachelor's degree in a non-engineering, science or environmental discipline and 10 years of experience.

The Academy of Board Certified Environmental Professionals (ABCEP) administers the Certified Environmental Professional (CEP) Program which provides environmental professionals who possess special qualifications of education, experience, and accomplishment with the opportunity to be judged by a board of peers. Those individuals awarded the Certified Environmental Professional credential may use the designation "CEP" after their name.

Minimum requirements for CEP certification include:

-A Bachelor's Degree and a minimum of nine years of applicable professional environmental experience. Five of the nine years must be in a position of responsible charge and/or responsible supervision. Responsible charge is defined as: the direction of environmental work by an environmental professional to the extent that successful completion of the work is dependent on the decisions made by the environmental professional without advice or approval of others. Responsible supervision is defined as: the supervision of another professional person's work by an environmental professional to the extent that the environmental professional assumes the professional responsibility for the work. A Master's Degree may be substituted for one year of the nine years of professional experience and a Doctorate may be substituted for two of the nine years of professional experience. However, no such substitution will apply to the requirement for the five years in responsible charge and/or responsible supervision. Degrees claimed must be from fully accredited college or university (certified transcripts are required). The written portion of the examination consists of mandatory and elective essay questions designed to test the communication skills and technical experience of the applicant. The applicant must subscribe to the ABCEP Code of Ethics and Standards of Practice for Environmental Professionals, established by NAEP and adopted by the Academy;

These certification requirements exceed those proposed by the U.S. Environmental Protection Agency (USEPA) and therefore should be judged as at least equivalent to a Professional Engineer or Professional Geologist designation.

We understand the USEPA's concern about not having the resources or staff to verify third-party certification programs but the certification of such programs is not part of the USEPA's mission. There are already third-party certification organizations like the

International Standards Organization (ISO) that independently review and evaluate the CEP program. The ABCEP's CEP Program is third-party certified by the Council of Engineering and Scientific Specialty Boards (CESB) www.cesb.org.

We ask that the definition of an "Environmental Professional" under the "All Appropriate Inquiries" standard be revised to include an individual designated as a Certified Environmental Professional.

Response:

Please see response to comment 0405, excerpt 1.

Commenter Organization Name: Thunderbird Chapter ACHMM

Comment Number: 0231

Excerpt Number: 1

Excerpt Text:

The Thunderbird Chapter urges EPA to support those professional designations that are third party accredited as being the designations that are the most credible and viable for the above-mentioned professional service provisions. As you are aware, third party accreditation indicates professional acceptance and stature with the associated accrediting party's initial qualifications requirements, continuing educational requirements, and with the inclusive "Code of Ethics" that the professional association endorses. The Institute of Hazardous Materials Managers, which provides the Certified Hazardous Materials Managers certification to individuals, is accredited by the Council of Engineering and Scientific Specialty Boards (CESB). Other well-known CESB-accredited professional programs include the Certified Industrial Hygienist (CIH), the Certified Safety Professional (CSP), the Qualified Environmental Professional; (QEP), and the Diplomate Environmental Engineer. The CESB adheres to ASTM E1929-98, the stringent standard for personal certification accrediting requirements. This accreditation is very similar to the accreditation EPA is requiring in the proposed rule language from the University and College system, and should be included to ensure that any professionals who have many years of experience in performing due diligence inquiries, but who may not have the required educational background, are not unfairly deprived of their livelihood. As such, we request that you add the proposed language to the rule.

Should you have any questions or request any information please feel free to contact either the Academy or myself.

Response:

Please see response to comment number 0173, excerpt 2.

Commenter Organization Name: Roeser, Daniel

Comment Number: 0249

Excerpt Number: 4

Excerpt Text:

Paragraph (2)(iv) also should include certifications from relevant professional

organizations as a qualification for the "grandfathering" provision of AAI. Therefore, I propose the following wording for this paragraph:

As of the date of promulgation of this rule, have a Baccalaureate or higher degree from an accredited institution of higher education, or be certified in the management of hazardous materials or other relevant field of practice by a third- party accredited professional organization, and have ten (10) years of full-time relevant experience.

Response:

Please see response to comment number 0142, excerpt 1.

Commenter Organization Name: IPEP

Comment Number: 0266

Excerpt Number: 1

Excerpt Text:

Environmental Professional means:

(1) a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases (per §312.1(c)) to the surface or subsurface of a property, sufficient to meet the objectives and performance factors in §312.20(d) and (e). And

(2) Such a person must:

- (i) Hold a current Professional Engineer's or Professional Geologist's license or registration from a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico), or a current certification issued through a program that is compliant with ASTM E1929-98 Standard Practice for the Assessment of Certification Programs for Environmental Professionals: Accreditation Criteria and have the equivalent of three (3) years of full-time relevant experience ; or
- (ii) Be licensed or certified by the federal government, a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) to perform environmental inquiries as defined in §312.21 and have the equivalent of three (3) years of full-time relevant experience; or
- (iii) Have a Baccalaureate or higher degree from an accredited institution of higher education in a relevant discipline of engineering, environmental science, or earth science and the equivalent of five (5) years of full-time relevant experience; or
- (iv) As of the date of the promulgation of this rule, have a Baccalaureate or higher degree from an accredited institution of higher education and the equivalent of ten (10) years of full-time relevant experience.

The Need for Consistency Between EPA Regulatory Programs

The concerns expressed herein are similar to those expressed by IPEP to EPA in December 2003 in response to the October 29, 2003 Notice of Data Availability ("NODA") regarding its pre-rulemaking associated with the qualifications of environmental professionals who are to be designated for certifying specific tasks at

RCRA-permitted treatment, storage, and disposal (TSD) facilities for hazardous waste. That proposed rulemaking is designated the RCRA Burden Reduction Rule, Docket ID Number RCRA-1999-0031. In brief, IPEP is concerned that EPA may be considering inconsistent regulatory approaches to establishing what qualifications an environmental professional bring to their compliance-related work.

Although IPEP endorses the approach embodied in the proposed rule to limit the field of eligible persons to perform AAIs to those qualified and experienced in the performance of real property environmental site assessments (ESAs), the definition of Environmental Professional in the proposed rule is overly restrictive in some aspects and lacking in linkage to nationally recognized credentialing standards and generally accepted independent accreditation criteria, including adherence to codes of ethical conduct and requirements for continuing professional development. Adoption of the modifications recommended in this comments letter, which are similar to those previously recommended to EPA in April 2002 concerning the pending Burden Reduction Rule, will better serve both the AAI stakeholders and the public at large. Our proposed modifications would result in the utilization of an existing national credentialing (licensure and certification) and accreditation system for environmental professionals, and would place the burden of demonstrating appropriate competence, not just minimum qualifications and experience, for performing AAI work on those offering such services to the satisfaction of the potential users of such services.

Response:

EPA is not recognizing in the regulatory language of the final rule private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Given the performance-based qualifications provided in the final definition of an environmental professional, such an approach is not necessary. Therefore, there is no need to reference or depend upon an independent standard that assesses professional certification standards. The final rule does not recognize, or reference, any private organization's certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in today's final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Commenter Organization Name: ABCEP

Comment Number: 0271

Excerpt Number: 2

Excerpt Text:

You want persons with the appropriate background in terms of education, experience and skills. One way to achieve this is to recognize those organizations whose members are certified, and are accredited by recognized third-party certification organizations. Members of these organizations are certified to have met nationally-recognized

standards. Not all recognized credentials are the same and to treat them as such will not ultimately meet the Agency's goal of protecting human health and the environment.

The definition should be revised to recognize individuals with relevant skills, background, and experience, whose expertise is required to be kept current. The definition, as written, excludes many "nationally-recognized" accredited organizations, including the Academy of Board Certified Environmental Professionals. A BCEP administers the Certified Environmental Professional (CEP) program, providing environmental professionals with qualifications of education, experience, and accomplishment a nationally-recognized credential. These individuals are judged by a board of peers, and must maintain their skills through formal training, and work experience.

The CEP program began in 1979, in response to the need for interdisciplinary certification in the environmental field. CEPs include mid-level and senior environmental specialists in government, military, educators, consultants, plant operators, and industry. The program is fully accredited by the Council of Engineering and Scientific Specialty Boards (CESB). Among the advantages to customers using a CEP is assurance of confidence in the professional's services addressing a broad array of environmental planning, analysis, education and documentation. It provides an assurance of engaging competent environmental professionals.

Minimum requirements for CEP certification include:

-The applicant must possess a Bachelor's Degree and a minimum of nine years of applicable professional environmental experience. Five of the nine years must be in a position of responsible charge and or responsible supervision. Responsible charge is defined as: the direction of environmental work by an environmental professional to the extent that successful completion of the work is dependent on the decisions made by the environmental professional without advice or approval of others. Responsible supervision is defined as: the supervision of another professional person's work by an environmental professional to the extent that the environmental professional assumes the professional responsibility for the work.

The written portion of the exam consists of mandatory and elective essay questions designed to test the communication skills and technical experience of the applicant. The exam is reviewed independently by a team of seven peer reviewers.

The applicant must subscribe to the ABCEP Code of Ethics and Standards of Practice for Environmental Professionals, established by the National Association of Environmental Professionals (www.naep.org), and adopted by ABCEP.

The applicant must document evidence of continuing professional development, including continuing education, and work experience on a yearly basis to maintain the CEP credential.

The ABCEP CEP program is third-party accredited by the Council of Engineering and Scientific Specialty Boards (CESB) (www.cesb.org), meeting nationally-recognized credential standards. The CESB is an independent, voluntary membership organizations created for its member organization who recognize, through specialty certification, the expertise of individuals practicing in engineering and scientific related fields.

The certification requirements of ABCEP currently exceed those stated in the proposed rule, and should be judged as at least equivalent to that of a Professional Engineer or Professional Geologist. We request that the definition of "Environmental Professional" be revised to include persons recognized as Certified Environmental Professionals (CEP), and that the definition be revised to assure that persons with appropriate background and training be specified in this rule for the purpose of conducting All Appropriate Inquiries.

Response:

Please see response to comment number 0173, excerpt 2.

Commenter Organization Name: Anonymous

Comment Number: 0275

Excerpt Number: 1

Excerpt Text:

I support the Academy of Certified Hazardous Materials Managers position on the AAI language. They have provided a letter of basic support.

Response:

Please see response to comment number 0173, excerpt 2.

Commenter Organization Name: Stipe, Roderic

Comment Number: 0295

Excerpt Number: 1

Excerpt Text:

In my own particular case, I hold a degree in business with a minor in chemistry from an accredited state university. I started working in the environmental field while in college and have over 20 years of experience working as a consultant, environmental auditor, environmental manager, and corporate manager of environmental compliance. I am both a CHMM and QEP. I adhere to the code of ethics set forth by both organizations and know that I am bound to work within the limitations of my technical expertise and experience. As long as I continue to do so, I am as qualified as anyone to be considered an Environmental Professional. I hope the EPA will recognize that CHMMs in good standing and integrity can serve a role in this industry equally as well as most licensed professionals.

Response:

Please see response to comment number 0142, excerpt 1.

Commenter Organization Name: Sershen, Dennis

Comment Number: 0311

Excerpt Number: 1

Excerpt Text:

Further I would like to make these additional comments: As a environmental and safety professional in private industry for 23 years, I strongly feel that it is time for EPA and others involved in rulemaking to recognize and seriously include input and direction from the professional members of ACHMM and make a positive move to include the high standards of this professional organization.

Response:

Please see responses to comment number 0173, excerpt 2.

Commenter Organization Name: Howell, Mark

Comment Number: 0336

Excerpt Number: 1

Excerpt Text:

I strongly recommend that the Certified Professional Geologist (CPG) credential issued by the American Institute of Professional Geologists (AIPG) be explicitly listed as an accepted criterion for qualification as an Environmental Professional (EP).

I practice in the state of Ohio, which does not have a registration or licensure program for professional geologists. In lieu of state licensure, I am a member of AIPG because of the recognized quality of their CPG credential. Its recognition is founded on a high standard of practice and experience that is required to obtain a CPG title. The education and experience requirements for the CPG currently meet or exceed those of all state registration and licensure programs. It is recognized overseas by the European Federation of Geologists and by the Canadian and Australian securities commissions.

As the nation's largest organization for certifying professional geologists, AIPG's certification qualifications are not frequently or periodically reviewed or changed. Since establishing baseline qualifications for granting the CPG title in 1963, AIPG has maintained a high standard for the title.

The rule, as it is written, will place a burden upon individual geologic professionals to apply for the EP credential, and upon the USEPA to process and verify the accuracy and completeness of each application. Much of this burden will be alleviated by including the CPG in the definition of the EP. This will allow the USEPA to be assured of the consistent application of high standards in those states that without registration or licensure programs. Administrative burdens will be shifted to AIPG's established screening process, allowing the USEPA to implement their own screening program more efficiently.

The inclusion of professional geologists in the proposed definition of Environmental

Professional demonstrates that the rule making committee and the USEPA recognize the importance of the judgment, knowledge, and experience of our these professionals in evaluating environmental impacts to properties of interest. No other profession is equally qualified to evaluate the impacts of historical operations on a soil, sediment, and ground water. It is therefore critical that the profession and its most widely recognized professional credential be explicitly included in the Environmental Professional definition.

Response:

Although the final rule recognizes tribal and state-licensed P.E. and P.G.s and other such government licensed environmental professionals with three years of experience to be environmental professionals, the rule does not restrict the definition of an environmental professional to these licensed individuals. The definition of an environmental professional also includes individuals who hold a Baccalaureate or higher degree from an accredited institution of higher education in engineering or science and have the equivalent of five (5) years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries. In addition, individuals with ten years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries qualify as environmental professionals for the purpose of conducting all appropriate inquiries. Individuals with these qualifications most likely will possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases to the surface or subsurface of a property, sufficient to meet the objectives and performance factors included in §312.20(e) and (f).

In addition to the qualifications for environmental professionals mentioned above, EPA is retaining the proposed provision to include within the definition of an environmental professional individuals who are licensed to perform environmental site assessments or all appropriate inquiries by the Federal government (*e.g.*, the Bureau of Indian Affairs) or under a state or tribal certification program, provided that these individuals also have three years of full-time relevant experience. We contend that individuals licensed by state and tribal governments, or by any department or agency within the federal government, to perform all appropriate inquiries or environmental site assessments, should be allowed to qualify as an environmental professional under today's regulation. State and tribal agencies may best determine the qualifications defining individuals who "possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases...to the surface or subsurface of a property, sufficient to meet the rule's objectives and performance factors" within any particular state or tribal jurisdiction.

In the case where a state or tribal government does not have a professional licensing or certification program, the final rule provides other options for qualifying as an environmental professional (*i.e.*, experience and educational requirements). EPA does not have an environmental professional licensing program and has no plans to establish such a program. The commenter is incorrect in asserting that in those cases where a state

does not have a licensing program for professional geologies, “the U.S. EPA will be required to process and verify the accuracy and completeness of each application.”

Also, in the final rule, EPA is not recognizing private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Such an approach is not necessary and would require that EPA review the certification requirements of each organization to determine whether or not each organization’s certification requirements meet or exceed the regulatory qualifications for an environmental professional. Given that there may be many such organizations and given that each organization may review and change its certification qualifications on a frequent or periodic basis, we conclude that such an undertaking is not practicable. EPA does not have the necessary resources to review the procedures of each private certification organization and review and approve each organization’s certification qualifications. Therefore, the final rule includes within the regulatory definition of an environmental professional, general performance-based standards or qualifications for determining who may meet the definition of an environmental professional for the purposes of conducting all appropriate inquiries. These standards include education and experience qualifications. The final rule does not recognize, or reference, any private organization’s certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization’s certification qualifications include the same or more stringent education and experience requirements as those included in today’s final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Based upon the input received from the public commenters, EPA determined that the definition of environmental professional included in today’s final rule establishes a balance between the merits of setting a high standard of excellence for the conduct of all appropriate inquiries through the establishment of stringent qualifications for environmental professionals and the need to ensure that experienced and highly competent individuals currently conducting all appropriate inquiries are not displaced.

Commenter Organization Name: Grand Rapids C of C

Comment Number: 0345

Excerpt Number: 2

Excerpt Text:

Under the definition of "Environmental Professional" in Subpart B, § 312.10(2), the Grand Rapids Area Chamber of Commerce recommends the addition of certifications from the following organizations as sufficient to meet the "Environmental Professional" standard:

- As a "Qualified Environmental Professional" by the Institute of Professional Environmental Practice;
- Academy of Certified Hazardous Materials Managers; or
- National Registry of Environmental Professionals.

These organizations are all nationally recognized. Requirements for certification include a baccalaureate or higher degree related to science and engineering. In addition, an applicant for certification under these organizations must possess 4 to 15 years of experience. These requirements for certification are entirely consistent with the other qualifications that the proposed § 312.10(2) currently finds sufficient to meet the "Environmental Professional" standard.

Response:

Please see response to comment number 0173, excerpt 2.

Commenter Organization Name: Anonymous

Comment Number: 0348

Excerpt Number: 1

Excerpt Text:

The regulation should either drop any reference to PEs or PGs, or be inclusive of other relevant 3rd-party certified environmental certifications such as CEP, QEP, REM. CHHP, CIH, etc. Not only are these certifications more relevant than a PE, they are accessible to persons of almost any educational background, are supported by rigorous referencing and testing, and include even stricter codes of ethics than required by state licensing boards.

Response:

Please see response to comment number 0336, excerpt 1.

2.1.6 Revise Educational Requirements to Allow Individuals with Substantial Relevant Work Experience to Qualify as EPs

Commenter Organization Name: CRA

Comment Number: 0030

Excerpt Number: 1

Excerpt Text:

My problem with the AAI is the requirements necessary to complete a Phase I ESA. Take for instance a person that has 14 years experience in completing Phase I ESAs; however, that person does not have a BA/BS degree. Phase I's are not learned in college.

Experience is the best asset in conducting Phase I's. Based on the Inquiry, that person is no longer able to perform their job, which has become their livelihood. I can understand that a peer review would be necessary, which would be acceptable for both parties

Response:

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: Creative Project Management, Inc

Comment Number: 0033

Excerpt Number: 1

Excerpt Text:

I have been doing Phase One's for more than 15 years. Based on what I read in the new law it sounds to me like I will not be considered as an "environmental professional" as I don't have a degree. We do quality work and provide the community with a needed service. I can't afford to go out and hire a "environmental professional" so you are about to put me out of business. I don't really think that is your intent. Please consider modification to include "registered architects or engineers with 10 years of full time relevant experience"

Response:

Please see response to comment number 0030, excerpt 1.

Commenter Organization Name: Connolly, Kelly

Comment Number: 0035

Excerpt Number: 1

Excerpt Text:

My problem with the AAI is the requirements necessary to complete a Phase I ESA. Take for instance a person that has 14 years experience in completing Phase I ESAs; however, that person does not have a BA/BS degree. Phase I's are not learned in college. Experience is the best asset in conducting Phase I's. Based on the Inquiry, that person is no longer able to perform their job, which has become their livelihood. I can understand that a peer review would be necessary, which would be acceptable for both parties.

Response:

Please see response to comment number 0030, excerpt 1.

Commenter Organization Name: Burns, J. David

Comment Number: 0039

Excerpt Number: 1

Excerpt Text:

I do not have a degree but my back ground has been completey Phase I site assessments under ASTM standards. With 20 years of experience I would say and believe that anyone including the clients I have served would classify me as an environmental professional. I believe that the "Grand father" should include persons with my back ground "experience" be considered Environmental Professional. I work under the supervision of degreed personnel and run the Phase I activities completely from start to finish. I have more experinece in the area of visual on-site inspection than the degreed personnel that I report to (who never goes to the field). please consider expansion of the "grand father" based on experinece and not just because some one went to some school for a few years.

Response:

Please see response to comment number 0030, excerpt 1.

Commenter Organization Name: Gasper, Matthew P

Comment Number: 0041

Excerpt Number: 1

Other Sections: NEW - 2.1.8.1 - The grandfather clause is too stringent

Excerpt Text:

Each of the requirements state that the individual performing the assessment must have a four year college degree, and a scaled full time employment experience in order to sign the reports. All that sounds good on the surface, however, the rule does not address individuals like myself, and I am sure many others throughout the United States.

However, the way the proposed rule is written an individual with an accredited degree in anything at all, and ten years working experience would qualify as an environmental professional.

My situation is that I have been conducting environmental assessments for the past 17 years, and been in business for myself since 1996 (tax id 59-3390392). I do not have my college degree.

Response:

Please see response to comment number 0030, excerpt 1.

Commenter Organization Name: None

Comment Number: 0043

Excerpt Number: 1

Excerpt Text:

EPA should strike the degreed requirement, since ESA Phase I, II, and III investigations and corrective actions are not currently taught in unviersites and/or colleges across the country, since RECOGNIZED ENVIRONMENTAL CONDITIONS (REC) are SPECIFIC SITE CONDITIONS and are not always reproduced accurately. Basically, one person may not see a REC as the another and the other person may need more evaluation, to determine what REC presently exists on a proeperty, and if any, its impact to the environment, human health, adjacent properties and more importantly the property value. The resolve to the issue is to have some type of profciency test to detemine if the proposed EP is competent, just like the ACM and LBP regulations. Sure the EPA could set prerequirmentas to sit for the test, but I do not think the requirements should be set at 5-years experinece plus an env. sciences degree, but could be demonstrated practice in the field of environmental assessment/investigation of residential/commercial/industrial/brownfield properties. Please allow undegreed persons the opportunity to test.

Response:

Please see response to comment number 0030, excerpt 1.

Commenter Organization Name: Brenn

Comment Number: 0055

Excerpt Number: 1

Excerpt Text:

I have been an environmental consultant for the last ten years without a degree as a professional engineer and have completed many Phase I and Transaction Screenings for government guaranteed loans; such as USDA Farm Service Agency, the Small Business Administration and Farmer Mac loans associated with FDIC banks and mortgage companies.

I am a Certified Environmental Inspector with the Environmental Assessment Association. I am a certified real estate appraiser licensed in Nebraska, South Dakota and Wyoming. I am also approved fee inspector for HUD, an approved fee appraiser for FHA and an approved consultant for FHA.

The above mentioned back ground in my opinion has given me training to assist in performing Phase I and Site Assessments along with my attendance in several environmental schools offered by different agencies specializing in environmental education.

There is no doubt in my mind that when the final draft is approved that all individuals, professional and non professionals will be required to attend further education in meeting the new requirements. I have no problem with this. However, I do believe that I should be recognized and given equal status.

Response:

Please see response to comment number 0030, excerpt 1.

Commenter Organization Name: Brewer, Jonathan

Comment Number: 0069

Excerpt Number: 1

Excerpt Text:

I feel that the regulation as written, does not take into account professionals who have been doing Phase 1 Site Assessments and the years of practical experience those individuals have obtained. I therefore propose the following addition under Section III D; "or, An individual who through the combination of professional education and practice has accumulated an environmental industry history of practical application and reporting of environmental issues and conditions of potential environmental risk for an accumulated period of 10 years or more. Those individuals as noted, and who are in good professional standing as of the date of the proposed regulation herein, shall be grandfathered into this regulation as "qualified practitioners". Those who do not qualify of the date posted for enactment as listed herein, shall adhere to the "new" standards of the date posted."

Response:

Please see response to comment number 0030, excerpt 1.

Commenter Organization Name: Tucciarone, L W

Comment Number: 0079

Excerpt Number: 2

Excerpt Text:

Section 312.10 definition of an "Environmental Professional" fails to recognize a multitude of persons who have long worked in the environmental field with state accepted certifications. I have been a licensed, professional forester since 1986. Many people in the Environmental field with college degrees in the late 70's and early 1980's received Associate degrees. These degrees combined with hard work and environmental professionalism could take an individual very far and have served me with a rewarding career. I strongly disagree with the proposed changes because they fail to recognize those who may find it hard to go back to school at the present time due to family burden or financial situation. Often changes in regulations are necessary to continue excellence in a field, but I don't think regulations should take away or limit the ability of a professional to continue work in a field that has provided a career for them, and excellent service for those who need it.

Response:

Please see responses to comment numbers 0030 (excerpt 1) and 0099 (excerpt 1).

Commenter Organization Name: None

Comment Number: 0087

Excerpt Number: 1

Other Sections: NEW - 2.1.8.3 - The proposed minimum requirements will have a negative impact on the ESA industry, small businesses, and the real estate market

Excerpt Text:

I think that it is wrong to disregard the many years of experience that lots of professionals have just because they do not have a college degree. There should be some provision in this regulation to allow non-degreed professionals with a certain amount of professional experience in the field to be grandfathered in as "Environmental Professionals". The way this portion of the regulation is now written is unfair and is going to cost alot of highly qualified and experienced people to lose their livelihoods. It is essential that a grandfathering provision be included in this regulation.

Response:

Please see response to comment number 0030, excerpt 1.

Commenter Organization Name: Goodman, J. Dwight

Comment Number: 0097

Excerpt Number: 1

Excerpt Text:

The requirement for the "environmental professional" (EP) being a PE, PG or otherwise degreed person regardless of the minimum amount of experience with ESAs, puts an

undue burden on those persons with ONLY technical training that have been performing ESAs within good customary standards for many years. A "grandfather clause" which qualifies an individual as an environmental professional based on significant years of experience alone should be allowable! The criteria for proof of experience should also be reasonable and not become another undue burden or impossible task to accomplish.

Response:

Please see response to comment number 0030, excerpt 1.

Commenter Organization Name: Duncklee, Drew

Comment Number: 0101

Excerpt Number: 1

Excerpt Text:

I have performed over 600 phase I assessments over the last 13 years. I do not have a college degree and if I cannot have the designation of an environmental professional as it is defined in the rule, then my career might be hindered dramatically. I have a family to take care of I feel that this is unfair for people that have performed these studies for many years. Could the EPA please reconsider letting people without college degrees but with many years experience in the field qualify for this designation?

Response:

Please see response to comment number 0030, excerpt 1.

Commenter Organization Name: Intermountain Environmental Cons

Comment Number: 0106

Excerpt Number: 1

Excerpt Text:

My concern is with the grandfather clause for qualification as an "environmental professional".

An environmental professional is a person with a depth of environmental experience that allows them to make appropriate judgments based on available data. A degree in music or accounting does little to enhance that person's competence in environmental issues. If the degree requirement is intended as a demonstration of writing skill, I would suggest that over ten years experience and hundreds or thousands of report submissions would have weeded out the unskilled.

I would respectfully submit that the grandfather clause be amended to provide that a degree is not required provided the 10 years of experience is valid and documented.

Response:

Please see response to comment number 0030, excerpt 1.

Commenter Organization Name: McClatchy, Billy J

Comment Number: 0124

Excerpt Number: 1

Excerpt Text:

Now that the EPA has published the proposed AAI Rule for comment, I learn that under the proposed Grandfather clause, since I do not possess a Baccalaureate degree, I will not qualify as a environmental professional under EPA AAI. I find this extremely disturbing and potentially injurious to my future in the industry. I do not understand how the committee can determine that someone of my training and overall experience can be considered detrimental to the industry and not be included for Grandfathering which would in no way diminish or distract from the intent of the Rule to establish a baseline for qualifications for new and future environmental professionals. By in large, most persons with over 10 years of environmental professional experience will likely enter retirement within the next 10 years or so and, therefore, render the Grandfather exemption generally mute.

Accordingly, I strongly appeal to the committee to reconsider the Grandfather clause to allow non-degreed, but otherwise qualified persons with over 10 years of documented training and experience to be Grandfathered as a environmental professional under AAI.

Response:

Please see response to comment number 0030, excerpt 1.

Commenter Organization Name: Peyton, J.

Comment Number: 0216

Excerpt Number: 1

Excerpt Text:

Please consider revising the proposed EP definition to present the 5 year experience criterion FIRST, then others.

Response:

Please see response to comment number 0030, excerpt 1.

Commenter Organization Name: Daily, Charles

Comment Number: 0223

Excerpt Number: 1

Excerpt Text:

I am a registered architect with 35 years of experience. For 14 of those years, I have been president of CPM Inc. of Memphis, TN. We are a small firm that has completed more than 3,000 Property Condition and Phase One Environmental Site Assessments in 44 states.

I am a Tennessee registered architect, a member of the American Institute of Architects

and National Council of Architectural Registration Boards. I do not have a degree. I became an architect via an Equivalency Examination which was a national program. You have advised me in previous correspondence that I do not qualify as an Environmental Professional in accordance with AAI proposed regulations because I do not have a degree.

Approximately 10 years ago, the State of Tennessee, like several other states, implemented a Professional Privilege Tax. (Tenn Code Ann Section 67-1701 et seq.) In Section 62 of this law, a professional is defined as "accountants, engineers, architects, and brokers as defined in Tenn Code Ann Section 62-13-102(2)". For 10 years I have received an annual invoice advising me that, as a professional in the State of Tennessee, I owe the state \$400. IE: My state government says I am a "PROFESSIONAL" and I have paid my taxes accordingly.

As a "Professional" with 15 years of experience in doing Phase One Environmental Site Assessments, I consider myself qualified as an Environmental Professional.

Do you agree?

Response:

Please see response to comment number 0030, excerpt 1.

Commenter Organization Name: Myers, Steve

Comment Number: 0242

Excerpt Number: 2

Excerpt Text:

EP Definition 312.10(c)(2) By specifically requiring specific degrees and specialties, this creates a problem for experienced site assessors who may already be working in the field, but do not meet the proposed requirements. Not only would they be forced to find time and money to go back to school to get an appropriate degree in order to continue in their line of work, any tuition reimbursement that an individual might receive from their employer for this purpose would now be taxable by requiring these specific degrees.

Response:

Please see response to comment number 0030, excerpt 1.

Commenter Organization Name: PIRG

Comment Number: 0258

Excerpt Number: 4

Other Sections: NEW - 1.1.2.3 - The proposed rule is inconsistent with the Brownfields Amendments and/or the ASTM standard

Excerpt Text:

II. Examples of Weaknesses in the Draft Proposed AAI Rule

The examples set forth below demonstrate just a few of the ways the draft proposed AAI rule weakens current protections for public health and environmental quality. The draft proposed AAI rule contains numerous inconsistencies with the Brownfields Law and provides a less effective process for assessing the condition of a site than the 97 ASTM standard. A comprehensive description of the inconsistencies between the Brownfields Law and the draft AAI proposed rule, and all of the ways in which the proposed rule is weaker than the 97 ASTM standard are outside the scope of this letter. The examples are provided as an illustration of the problem with the draft proposed rule.

Response:

Responses to the commenter's specific concerns regarding the proposed rule are provided elsewhere in this document. EPA can only respond to those concerns specifically addressed in the commenter's letter to the Agency. EPA cannot respond to the other unnamed "inconsistencies between the Brownfields Law and the draft AAI proposed rule." EPA points out that the proposed rule addressed each of the ten statutory criteria required by Congress in the Small Business Liability Relief and Brownfields Revitalization Act. The proposed rule also provided a definition of environmental professional that is much more stringent than the requirements of the interim standard. EPA disagrees with the commenter's assertion that the proposed (and final) rule "provides a less effective process for assessing the condition of a site than the 97 ASTM standard." In fact, it is EPA's determination that the final rule will serve to increase the caliber and quality of site investigations.

Commenter Organization Name: NW EnviroSearch

Comment Number: 0272

Excerpt Number: 2

Excerpt Text:

We whole heartedly approve and agree with the entire docket except for the definition of the 'environmental professional' as outlined in Section 312.10, specifically relating to the 'grandfathering clause'.

Our disagreement is specifically related to what credentials, educational background or years of experience are deemed sufficient to be 'grandfathered' under these new rules. It appears that they are not broad enough to encompass those of us within the industry that were entering the industry at an early time when there were no formal environmental degree's available.

Over the years the higher education System has increasingly developed environmental related degree's, enhancing the competency of the industry, which we are glad to see that the EPA is integrating into their competent 'environmental professional' definition.

In the mid to late 1980's the Occupational Safety & Health Administration adopted new rules associated with the environmental industry popularly known as the 'Haz-woper' standards (CFR 29, Section 1910.120) for those working in the environmental industry to have '40-hours' of hazardous waste operations training. These were designed to improve

the safety of those working in the industry.

Obviously, with any new rules, there is a 'grandfathering' process whereas those competent persons already operating within the industry are deemed to meet or comply with the new standards. Those same persons are also the senior and more experienced persons involved in providing the training and mentoring to others within the industry. OSHA at that time provided a 'grandfathering' process by whereas the employers had the responsibility of determining if their employee's were competently trained and experienced. That determination process then resulted in persons who developed the public training programs we see today throughout the industry.

We believe that this precedent applicable to the environmental industry should be applied to the process of defining who is qualified as an 'environmental professional' stated in Section 312.10 of the proposed docket.

Surveys completed earlier this year by EDR, Inc. regarding the proposed 'environmental professional' definition found that within the industry respondents, 19% of them did not meet the proposed definition (Source:: EDR, Inc. On-line TrendTrack Survey, April-May 2004).

Recommendation:

With over 21 years of experience in the, industry, we have developed a high level of professional competency, yet lack the educational background proposed. By implementing this proposed standard the EPA would not only risk the closure of our environmental consulting business, but risk declaring the most senior and experienced persons in this industry as not competent, as they would not meet the educational criteria due to the lack of pertinent education available in those early years..

With up to 19% of the' industry potentially impacted, it is imperative that the EPA carefully re-consider the 'grandfathering' clause as noted in Section 312,10 (2)(iv) to read:

"As of the date of promulgation on this rule, have a Baccalaureate or higher degree from an accredited institution of higher education, or be individuals that are certified by a professional, organization that is third party accredited or have 15 years of relevant full-time Experience."

In closing, we would ask that the EPA review committee on this docket consider carefully the definition of the 'grandfathering clause' so as to include those most senior environmental professionals who have obtained their expertise from many years of experience, pioneering this industry from the early 1980's to now. Not only does this apply to us personally and our company, but also many others who chose this career before a formalized education specific to the industry was available.

Thank you for taking the time to hear and consider our comments. Your diligent hard work in developing a fair and affective document is appreciated. The industry sorely needs the increased quality and competency of the Phase I ESA that will arise from your

efforts to develop these standards.

Response:

Please see responses to comments 0142 (excerpt 1) and 0030 (excerpt 1).

Commenter Organization Name: Covington, GR

Comment Number: 0280

Excerpt Number: 1

Excerpt Text:

The grandfathering provision, if their must be one, should be by date only. And should recognize everyone who has been in practice for more than ten years. After that day professional registrations described in the proposed rule might be adequate criteria. Such would be a fair approach in my opinion. Lastly, such professional registrations as a stand alone qualifier, aside from experience does not make one a qualified EP, in my opinion.

Response:

Please see response to comment number 0030, excerpt 1.

Commenter Organization Name: Anonymous

Comment Number: 0326

Excerpt Number: 1

Excerpt Text:

Regarding the definition of an Environmental Professional, the proposed definition as it currently stands is, at best, flawed, and at worst, discriminatory. The definition assumes that there is a direct relationship experience and certain licensing. This is not always true. Comparing requirements b.1 to b.4 the National Rulemaking Committee (NRMC) has indicated that a PE or PG license is equivalent to 7 years of "full-time relevant experience". While there is no question of the importance of a PE in his/her relevant field, the license in no way replaces actual experience, unless of course the relevant field is in the area of hazardous waste management. Too often the PE/PG licence is given the status of the unquestionable authority but in many cases the PE/PG has lacks the direct experience necessary to properly conduct an environmental investigation project. The argument against this statement is that PE/PG's follow a code of conduct and that the three year of direct experience should suffice. This argument itself is flawed.

First, ethics are not dictated by a license, they are an internal part of ones self. A true Environmental Professional must follow a set of ethical values or the simple truth is, he/she will not be in the field for very long. Throughout the history of the current ASTM Environmental Site Assessment Standard, thousands of "qualified professionals" have been conducting ESA's. It is known that over the years, many of these ESAs were performed by individuals who were not qualified to conduct such work. However, throughout the industry, which has been driven by banks, real estate transactions, Brownfield grants, etc., the unqualified individuals have gone away through the natural course of the Client-base becoming more aware.

Second, the proposed definition suggests that an individual who graduated college with a BA in basket-weaving and has 10 years of experience is qualified to conduct AAI work but that an individual who worked in the oil industry for 20 years and then moved into the environmental field and has and 20 years of directly relevant experience is NOT qualified. This is a major flaw since it is readily obvious that this, in most cases, is not true. There are thousands of individuals with these qualifications in the industry and this proposed rule limits their ability to continue in the field. In this respect the proposed rule, as currently written, is discriminatory and arbitrary.

Response:

Although the final rule recognizes tribal and state-licensed P.E. and P.G.s and other such government licensed environmental professionals with three years of experience to be environmental professionals, the rule does not restrict the definition of an environmental professional to these licensed individuals. EPA is also retaining the proposed provision to include within the definition of an environmental professional individuals who are licensed to perform environmental site assessments or all appropriate inquiries by the Federal government (*e.g.*, the Bureau of Indian Affairs) or under a state or tribal certification program, provided that these individuals also have three years of full-time relevant experience. We contend that individuals licensed by state and tribal governments to perform all appropriate inquiries or environmental site assessments, should be allowed to qualify as an environmental professional under today's regulation. State and tribal agencies may best determine the qualifications defining individuals who "possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases...to the surface or subsurface of a property, sufficient to meet the rule's objectives and performance factors" within any particular state or tribal jurisdiction.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (*i.e.*, do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned

changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: Gaugler, Earl

Comment Number: 0327

Excerpt Number: 1

Excerpt Text:

The statutory criteria outlining the elements to be included in an AAI investigation can, and are, being professionally completed by those whose background is not defined by the proposed qualifications. The due diligence criteria, as set forth in CERCLA Section 101(315)(2)(B)(iii), is essentially a basic, non-intrusive study of the property and its history; this information is then used to determine the likelihood of environmental degradation of the site. According to the accepted interim Federal standard ASTM E 1527-97, the assessment can be generally grouped into four major activities:

- Records review
- Site reconnaissance
- Interviews with owners / occupants and government officials
- Preparation and submittal of a written report to the client

This evaluation does not warrant those who have science degrees, a professional engineer or registered geologist license, or even extensive years of practice. Matter-of-fact, most formal engineering and science curriculums do not even cover the due diligence process or environmental assessments. This is not to say that the additional knowledge is not of benefit, only that the proposed .educational background and experience requirement does not automatically qualify one as being competent to perform a phase I-level ESA.

Furthermore, even though one has obtained these general credentials, and meets the definition of "environmental professional" under the new guidelines, it does not serve to indicate specific knowledge, skills and abilities ("KSA's") required of environmental assessors. Neither do these generalized qualifications serve to prove to outside regulators, attorneys and the courts the specific qualifications required to conduct such an assessment.

For example, if an assessor becomes involved in a civil or criminal court proceeding, the opposing counsel's expert witness will claim that the assessor's training or final report was somehow inappropriate, and therefore failed to disclose a property contamination. Only if one qualifies as a professional witness, in a given specialty area, will hinder credibility and testimony be of equal stature with that of the opponent. Whether or not one qualifies as a professional witness, in a certain subject area, is completely within the

discretion of the judge hearing the case. The judge is much more likely to grant one expert witness status in a specific "task" area than in a broad and general category. For example, a judge would accept one as an expert witness in environmental assessment if it can be substantiated that he or she has the proper and specific training / experience in that particular field, and not merely because one has a degree in engineering or geology.

A practical, technician-level education often proves more useful than an extensive science or engineering background for most environmental work. Some of the best training I have had, and most useful, was acquired from various certificate programs, e.g. correspondence and college extension courses. For example, as an environmental health and safety professional, I have to be proficient in hazard assessment and regulatory compliance issues; this is essential to my position. Though I have a good technical background from my college years, this does not necessarily qualify me to conduct sound inspections or interpret regulations. I actually acquired these KSA's from taking topic-specific courses, combined with on-the-job experience, after college. I would also like to state that many of the associates I have worked with through the years have no extensive formal education, and I consider them to have equal or greater assessment skills than myself. Some of these associates have become very proficient and astute professionals by taking courses such as those offered by the Environmental Assessment Association (EM), of which I am proudly a member.

Response:

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: FAA

Comment Number: 0334

Excerpt Number: 5

Excerpt Text:

1) FAA believes that the definition of an EP should clarify that experience in site investigations, release investigations, and site remediations that are conducted for nonreal estate transaction-related property evaluations (such as investigations conducted pursuant to the Resource Conservation and Recovery Act [RCRA] or the Comprehensive Environmental Response, Compensation, and Liability Act [CERCLA]) is also considered relevant experience.

Response:

The Agency believes the following definition included in the final rule is clear in this regard. The definition is below.

Relevant experience, as used in the definition of environmental professional, means: participation in the performance of all appropriate inquiries investigations, environmental site assessments, or other site investigations that may include environmental analyses, investigations, and remediation which involve the understanding of surface and subsurface environmental conditions and the processes used to evaluate these conditions and for which professional judgment was used to develop opinions regarding conditions indicative of releases or threatened releases (per §312.1(c)) to the subject property.

Commenter Organization Name: Montana DEQ

Comment Number: 0335

Excerpt Number: 1

Excerpt Text:

Proposed Section 312.10(b)(1): DEQ does not believe that the proposed definition of an "Environmental Professional" is adequate. DEQ conducts targeted brownfield assessments using its CERCLA Section 128(a) grant funds. Not all of DEQ's project officers would be considered "Environmental Professionals" under the proposed definition. However, all of DEQ's project officers have enough knowledge and experience to conduct AAI investigations. The definition of an "Environmental Professional" assumes that just because a person has a certain degree and number of years experience that they do a good job. Quality of work is not based solely on education and experience but also on each individual person's competencies and abilities to perform the given task. DEQ agrees that a person right out of college with a relevant science degree does not have the appropriate experience to conduct AAI investigations. DEQ believes that three years is a more adequate and realistic number of years of relevant full time experience needed with a science degree to conduct AAI investigations. We request that EPA revise the years of experience from five to three years.

Response:

The Agency believes that it is essential that the person overseeing an all appropriate

inquiries investigation have sufficient education and experience to recognize adverse environmental conditions and render sound opinions with regard to the potential for environmental concerns at a property or the need for further investigation. In the preamble to the final rule, EPA clarifies that only the individual overseeing the conduct of an all appropriate inquiries investigation must qualify as an environmental professional, as defined in the final rule. Other individuals may contribute to the investigation as long as their activities are conducted under the supervision or responsible charge of the individual qualifying as an environmental professional.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: Anonymous

Comment Number: 0348

Excerpt Number: 3

Excerpt Text:

provide a mechanism for non-science degreed and non-degreed persons with 5-10+ years of proven experience to qualify without feeling like the unwanted stepchildren of the field. I think that I have encapsulated most of the comments on the proposed EP definition. It is regrettable that the FACA committee did not include representatives of organizations such as NAEP, IPEP, and ACHMM as well as ASCE - the multidisciplinary history of environmental consulting should not be sacrificed to one or a handful of politically connected professional organizations.

Response:

Please see response to comment number 0030, excerpt 1.

EPA appreciates your concern regarding the representation of differing perspectives on the Negotiated Rulemaking Committee. In 1982, the Administrative Conference of the United States established criteria and recommendations for using the negotiated rulemaking process that in 1990 was established in the Negotiated Rulemaking Act (Recommendation 82-4, 1 CFR §305.82-4 and Recommendation 85-5, 1 CFR §305.85-5). Among other things, the Administrative Conference recommended that reasonable efforts be made to secure a balanced group of interests on a negotiated rulemaking committee. To this end EPA went to substantial lengths, including hiring an independent convener to identify interested stakeholders and who interviewed over 60 individuals representing potential stakeholders, to ensure that differing stakeholders were afforded an opportunity to participate meaningfully. The Negotiated Rulemaking Committee for the all appropriate inquiries rule was assembled to effectuate the diverse perspectives of stakeholders, or those parties having an interest in or who potentially would be affected by the rulemaking. After EPA went to considerable lengths to identify the spectrum of stakeholders, the Agency published a "Notice of Intent to Negotiate" in the Federal Register on March 6, 2003 (68 FR 10675) which identified the Agency's preliminary list of interests and requested public comment on that list of potential interests or stakeholder groups to include in the negotiated rulemaking process. Following publication of this notice, EPA held a public meeting to discuss its intent to negotiate the proposed rule and to provide interested parties with another opportunity to comment on the Agency's preliminary list of committee members. Following the public comment period, and based upon input received in the public comments, EPA added additional stakeholder members to its additional list of potential members and initiated the negotiated rulemaking process. Once the Negotiated Rulemaking Committee on All Appropriate Inquiries was established, the Committee conducted all of its business publicly and afforded members of the general public ample opportunity to participate in that regard. EPA published notices announcing the date of each Committee meeting in the Federal Register and accepted written public comment on the Committee's negotiations throughout the Committee's negotiations. In addition, the Committee reserved time during every day of the Committee's negotiations for members of the general public to address the Committee. The Agency made every effort to be inclusive in this transparent negotiated rulemaking process. For further information concerning this process please see the preamble to the proposed All Appropriate Inquiries rule published in the Federal Register (40 CFR Part 312).

Commenter Organization Name: SCANA

Comment Number: 0373

Excerpt Number: 1

Excerpt Text:

We understand that the Brownfield Amendments state that the AAI process must include "the results of an inquiry by an environmental professional." However, we question the

EPA and Negotiated Rulemaking Committee's use of prescriptive language and stringent qualifications to define environmental professional. The quality and diversity of experience possessed by many environmental professionals will be diminished if this definition is adopted. It has been our experience that a strong regulatory background and a familiarity of likely sources of hazardous substances in various commercial and industrial operations are more reliable in determining an individual's ability to perform a detailed AAI, more so than the prescribed education requirements proposed. We realize that individuals must undergo very stringent requirements to become registered professional engineers and geologists; however, we have also found that it is only with experience that one would know what questions to ask and what signs to look for to help determine the presence or likely presence of contamination at a property and to detect contamination by appropriate investigation. Several years of experience is absolutely necessary to develop opinions and conclusions regarding the presence of a release or threatened releases to the surface or subsurface of a property. The AAI process is more subjective than the areas of engineering or geology and degree programs do not impart knowledge of the AAI process any more than other bachelor of science degree programs, associate of science degree programs, or most importantly, AAI related experience.

Response:

Please see responses to comment numbers 0099 (excerpt 1) and 0030 (excerpt 1).

Commenter Organization Name: Walsh, Gregory

Comment Number: 0378

Excerpt Number: 3

Excerpt Text:

Experience does not matter. If this were the case then why does the Navy recognize there is a bridge between the enlisted man and the officer, the Warrant Officer? This is a commissioned position.

Response:

The Agency believes that it is essential that the person overseeing an all appropriate inquiries investigation have both sufficient education and experience to recognize adverse environmental conditions and render sound opinions with regard to the potential for environmental concerns at a property or the need for further investigation.

Please see response to comment number 0030, excerpt 1.

Commenter Organization Name: Braman, Marshal

Comment Number: 0454

Excerpt Number: 1

Other Sections: NEW - 2.1.8.1 - The grandfather clause is too stringent

Excerpt Text:

I have been conducting Phase 1, 2 and 3 work for the past 15 years (1989). Many of

which I was in a supervisory and project manager responsibility level. I have 2 years of science education from a Community College and 2 years of education in commercial horticulture from a Technical College. I successfully completed the horticultural program although it did not offer a baccalaureate degree. In addition I have attended numerous seminars over the past 15 years to develop skills specific to phase 1 and 2 work, OSHA training, environmental discovery and remediation.

I have personally prepared over 100 phase 1 investigations.

Further, I have also reviewed in a supervisory capacity over 200 phase 1 investigations.

It is my understanding that I would not qualify as an environmental professional under the proposed rules.

In all of the projects that I have been involved in I have never had a phase 1 project in which issues of environmental concern were identified subsequent to completion of the assessment.

I bring this to your attention because I very much enjoy my career choice of being an environmental specialist. If this regulation passes in it's present form I will not be allowed to perform my job. I do not want that to happen.

Please include an additional grandfather provision for a combination of education and experience equal to 14 or 15 years.

Response:

Please see response to comment number 0030, excerpt 1.

2.1.7 Revise the Grandfather Clause to Allow All Individuals Currently Conducting Site Assessments to Qualify as EPs

Commenter Organization Name: Shellhouse, Arthur A

Comment Number: 0046

Excerpt Number: 1

Excerpt Text:

As an environmental inspector with 30 years of experience, I strongly urge that all existing environmental professionals be grandfathered into the proposed law.

Response:

The Agency believes that it is essential that the person overseeing an all appropriate inquiries investigation have sufficient education and experience to recognize adverse environmental conditions and render sound opinions with regard to the potential for environmental concerns at a property or the need for further investigation. In the preamble to the final rule, EPA clarifies that only the individual overseeing the conduct of an all appropriate inquiries investigation must qualify as an environmental professional, as defined in the final rule. Other individuals may contribute to the investigation as long as their activities are conducted under the supervision or responsible charge of the individual qualifying as an environmental professional.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: Appleby, Mark

Comment Number: 0098

Excerpt Number: 1

Excerpt Text:

I am making only one objection to this proposed regulation which is the arbitrary decision to define the background and education needed by persons who conduct the reviews. To regulate the many possible backgrounds and educational experiences which many professionals in this field have is unreasonable and invalid as a standard. I believe it will have an opposite effect from the one desired and open less ethical actions in many cases. I have had my own business which conducts Phase I field assessments for just under 9 years. Prior to that more than 20 years managing persons and fact checking environmental assessments. My company has the highest confidence of my clients and we pursue all avenues of review as a matter of ethical business. This element of an otherwise good regulation will effectively remove my company (as it now operates) from Phase I work. We do not now match the selected educational/background standard listed.

As an aside, and more pointed to my contention this background stipulation will have the opposite of the desired effects; I have had several Public Engineers who have offered to simply sign my reports for \$500. I suggest you are limiting business and offering opportunities for unethical behaviors with the needless attempts to define "competent professionals" who would conduct reviews under the guidelines in AAI.

As a matter of business, those companies who conduct environmental reviews that are not ethical, competent or otherwise effective in their review diligence and format will not receive the confidence or business from customers who require these services. Uniform guidelines are a good step, but unifying background and experience is not only impossible but is detrimental to good effective businesses such as my own.

Response:

Please see response to comment number 0046, excerpt 1.

Commenter Organization Name: EAI

Comment Number: 0109

Excerpt Number: 1

Other Sections: NEW - 2.1.8.3 - The proposed minimum requirements will have a negative impact on the ESA industry, small businesses, and the real estate market

Excerpt Text:

I think you should expand on the proposed grandfathering of current environmental inspectors, the way i understand the current rule proposed ,would put a lot of professionals out of business, this is contrary to what the government should do!

Response:

Please see response to comment number 0046, excerpt 1.

Commenter Organization Name: TXU

Comment Number: 0268

Excerpt Number: 2

Excerpt Text:

However, one portion of the proposed rule is vague. EPA has defined the term "environmental professional" in such a way that may preclude many of TXU's corporate environmental staff from meeting the definition. TXU's environmental specialists are well-qualified and knowledgeable in the environmental issues surrounding real estate transactions and many have been involved in the environmental field for 20 or more years. TXU should be able to continue to utilize its qualified corporate environmental staff to handle all appropriate inquiries in order to qualify for the CERCLA liability protections.

The part of EPA's environmental professional definition that should be revised is the term "full-time relevant experience." EPA defines "relevant experience" as "participation in the performance of environmental site assessments that may include environmental analyses, investigations, and remediation which involve the understanding of surface and subsurface environmental conditions and the processes used to evaluate these conditions and for which professional judgment was used to develop opinions regarding conditions indicative of releases or threatened releases to the subject property."

TXU's environmental specialists fulfill the intent of the proposed requirements because they have the necessary relevant experience. Many have detailed knowledge and experience of environmental analyses, investigations, and remediation which involve the understanding of surface and subsurface environmental conditions. However, environmental site assessments are not their sole responsibility, which is troublesome given the implications of the term "full-time". By including this term, EPA will prevent qualified individuals from signing all appropriate inquiries reports. TXU requests that EPA remove the term "full-time" from the proposed regulation and allow qualified environmental professionals to supervise all appropriate inquiries, even if environmental site assessments are not their sole responsibility. Very few people perform environmental site assessments on a full-time basis and implementing such a requirement will only drive up the cost of environmental site assessments for companies such as TXU, who have qualified environmental experts on staff.

Response:

The use of the phrase "full-time" within the definition of environmental professional and the definition of relevant experience is meant to require that an individual has accumulated the equivalent of 3, 5, or 10 years of experience. An individual may accumulate such experience over a longer length of time than the 3, 5, or 10 years, as long as the total time of accumulated experience would be the equivalent of 3, 5, or 10 years of full-time experience. Even after an individual accumulates the required number of years of full-time experience, that individual does not have to conduct environmental site assessments, or all appropriate inquiries investigations, on a full-time basis to qualify as an environmental professional.

Also see response to comment number 0046, excerpt 1.

Commenter Organization Name: Baker Petrolite

Comment Number: 0352

Excerpt Number: 4

Excerpt Text:

Second, does the definition of "full-time, relevant experience" exclude environmental professionals who are currently working in a managerial position overseeing the work of other environmental professionals and having experience conducting Phase I ESAs, but who no longer participate in the performance of ESAs or All Appropriate Inquiries? BPC believes that the definition should include those professionals who are currently working in a managerial role.

Response:

Please see response to comment number 0268, excerpt 2.

If individuals are currently working in a managerial position overseeing the work of other environmental professionals, it is EPA's hope that these individuals have previous work experience that will satisfy the requirements of the final rule. If this is not the case, they are not qualified to be in a managerial position overseeing the work of others.

Commenter Organization Name: Kammeraad, Norman

Comment Number: 0357

Excerpt Number: 1

Other Sections: NEW - 2.1.8.3 - The proposed minimum requirements will have a negative impact on the ESA industry, small businesses, and the real estate market

Excerpt Text:

The language being used in 312.10 does not provide for Grandfathering of all ready existing individuals who have practiced in the field of environmental assessments for years. If this rule was to take effect, much like the Michigan Act 451, Part 213 QC,CP rules of 1994 which has similar language, EPA will forcefully remove the conduct of 1000's of individuals. This would be a violation of Federal Law U.S.C.A. Const. Amend. 1 Further, there is a requirement to be met by the legislature and Agency in the promulgation and enforcement of legislation which is known as a "compelling state interest test" that would in turn provide the Agency (EPA) authorization to eliminate the free exercise of an individual's conduct. A statutory classification or rule that infringes on a person's exercise of a fundamental right must be justified by a compelling state interest and achieved by narrowly drawn means. *Carey v. Population Services Int'l*, 431 U.S. 678, 97 S.Ct. 2010, 52 L.Ed.2d 675 (1977); A Compelling State Interest must be truly compelling, "threatening safety or welfare of the state in a clear and present manner", for restriction to survive free exercise challenge under the First Amendment. Thus, only the States have the right to enforce and remove a person's conduct via threat to Health and welfare. Many firms (including mine) throughout the US, have worked with either SBA, USDA and Brownfields programs either directly or indirectly. To remove

their conduct by not providing Grandfatherization rules, is the same as removing their conduct and thus income. Thus, language is needed in Section 312.10 of the AAI rules that also includes them by definition to protect them.

Response:

The Agency believes that it is essential that the person overseeing an all appropriate inquiries investigation have sufficient education and experience to recognize adverse environmental conditions and render sound opinions with regard to the potential for environmental concerns at a property or the need for further investigation. In the preamble to the final rule, EPA clarifies that only the individual overseeing the conduct of an all appropriate inquiries investigation must qualify as an environmental professional, as defined in the final rule. Other individuals may contribute to the investigation as long as their activities are conducted under the supervision or responsible charge of the individual qualifying as an environmental professional.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

2.1.8 Comments on the Proposed Minimum Requirements

Commenter Organization Name: NSPE

Comment Number: 0230

Excerpt Number: 4

Excerpt Text:

In the Federal Register (August 26, 2004, Vol. 69, Page 52554), the record indicated that the Negotiated Rulemaking Committee performed a balancing test between the need for "a high standard of excellence" and the need to ensure that competent individuals are not displaced. When the issues relate to hazardous wastes, it is NSPE's belief that the only prudent path for EPA would be to base its rules squarely on objective public health and safety issues. If this rule, in fact, is based upon a societal need to protect the careers of certain individuals, the rulemaking process is flawed. The balancing tests that come out of the rulemaking process must be kept in proper perspective. The proposed rulemaking, however, does not appear to make that objective distinction, and instead it states that this balancing test was for the protection of "competent individuals." NSPE takes issue with the fact that there are no objective methodologies in place that can be used to determine and police the competency of a particular individual. If EPA really wants to protect the public and ensure that only competent professionals provide this service, then it is NSPE's recommendation that EPA:

1. Employ objective criteria to evaluate, discipline, and regulate these individuals (i.e., similar to professional engineers and professional geologists), or
2. Develop a national database that includes experience and qualifications so that objectivity can be used to determine the competency of the environmental professional.

Response:

The Agency believes that it is essential that the person overseeing an all appropriate inquiries investigation have sufficient education and experience to recognize adverse environmental conditions and render sound opinions with regard to the potential for environmental concerns at a property or the need for further investigation. In the preamble to the final rule, EPA clarifies that only the individual overseeing the conduct of an all appropriate inquiries investigation must qualify as an environmental professional, as defined in the final rule. Other individuals may contribute to the investigation as long as their activities are conducted under the supervision or responsible charge of the individual qualifying as an environmental professional.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or

engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

The environmental professional overseeing the conduct of the all appropriate inquiries investigation must indicate when he or she signs the report of findings for the all appropriate inquiries investigation that he or she meets the definition of environmental professional included in the final rule (see final rule section 312.21(d)). EPA is not going to collect, evaluate, or verify the credentials or qualifications of individual environmental professionals, nor is EPA going to develop a data base of information on qualified individuals. If a prospective property owner needs advice on how to find a qualified environmental professional, the prospective property owner may want to request advice from a private professional certification organization or a state licensing board for P.E.s and P.G.s.

Commenter Organization Name: NSPE

Comment Number: 0230

Excerpt Number: 9

Excerpt Text:

1 Most of the 50 states and the District of Columbia require that Professional Engineer candidates submit a "Supplemental Engineering Record," which discusses in detail the types of projects that the candidate worked on during their internship. In addition, candidates must obtain references from their licensed, and unlicensed, co-workers and outside persons who provide information pertaining to the candidate's professional and technical capabilities as well as their moral and ethical framework. This rigorous process does not seem to be too much to ask for those persons seeking to work on hazardous waste projects.

Response:

The environmental professional overseeing the conduct of the all appropriate inquiries investigation must indicate when he or she signs the report of findings for the all

appropriate inquiries investigation that he or she meets the definition of environmental professional included in the final rule (see final rule section 312.21(d)). EPA is not going to collect, evaluate, or verify the credentials or qualifications of individual environmental professionals, nor is EPA going to develop a data base of information on qualified individuals. Should a prospective property owner need advice on how to find a qualified environmental professional, the prospective property owner may want to request advice from a private professional certification organization or a state licensing board for P.E.s and P.G.s.

Commenter Organization Name: IPEP

Comment Number: 0266

Excerpt Number: 2

Excerpt Text:

What Constitutes An AAI Environmental Professional?

IPEP is pleased to see that EPA's CERCLA/Superfund program feels that for AAIs to be valid tools which can shield perspective purchasers from liability, these inquiries must be overseen by appropriately qualified, experienced professionals. We also agree with the concept of a two-tier definition, the first based on attainment of a license (or similar certification) and the second by meeting a set of established criteria. We do think however, that it may be prudent to strengthen the proposed definition language to make sure that in order to qualify as an AAI Environmental professional, the individual must meet not only the criteria in item (2) in the proposed definition, but also have "sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases..." . We feel this link between educational and experience criteria (degree, licenses, certifications years worked etc.) and the performance standard of being able to develop the necessary opinions and conclusions is one that some of the other emerging regulatory and credentialing programs are lacking.

A number of states have developed and promulgated regulations pertaining to environmental practice credentials for the purpose of identifying individuals who are deemed pre-qualified to perform particular tasks in the environmental management field. The programs existing in four states - DE, MA, NJ, and NC -- are presented as examples of how licensure and certification have been applied in the field of environmental management. In each case, registered professional engineers and professional geologists licensed at the state level are among but not necessarily the only recognized credentials. Although the programs are similar in many respects, they are significantly different in others, with a common denominator that there is no uniform set of criteria, such as ASTM E1929-98, Standard Practice for the Assessment of Certification Programs for Environmental Professionals: Accreditation Criteria, used to determine the acceptable qualifications and experience for professionals allowed to oversee and approve the environmental management programs that are covered by the particular regulatory program. The lack of such object criteria in many of the emerging regulations illustrate the issues summarized below regarding the need to set objective, "bright line"

qualification and credentialing requirements for environmental professionals.

In each of these instances, just as in the proposed rule, the qualifications and experience of the applicants are not compared to a set of objective criteria that meets ASTM E1929-98 with respect to nationally-accepted credentialing program guidelines and independent third party accreditation. Additionally, in each of these examples, there is no requirement that the persons employed by the state agency, who review and render judgment on the acceptability of the applications received for the designated credential, have appropriate qualifications, experience, and licensure or certification relevant to the area of environmental professional practice of the applications received for review. Lacking such credentials, the state agency review typically serves primarily as an administrative exercise comparing the information contained in an application to a checklist of requirements. Such an administrative review is not comparable to the rigorous process of licensure or certification used by the states [to register professional engineers, surveyors, and geologists] or by ASTM-compliant environmental certification programs.

Greater detail about the four illustrative programs, their scope, and the details of professional credentialing are included in Appendix C.

Response:

The definition of environmental professional in the final rule (as did the proposed rule) includes a performance standard such as that recommended by the commenter at 40 CFR 312.10, in paragraph (1) of the definition of environmental professional [“(1) a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases...on, at, in or to a property, sufficient to meet the objectives and performance factors in §312.20(e) and (f).”]

EPA is also retaining the proposed provision to include within the definition of an environmental professional individuals who are licensed to perform environmental site assessments or all appropriate inquiries by the Federal government (*e.g.*, the Bureau of Indian Affairs) or under a state or tribal certification program, provided that these individuals also have three years of full-time relevant experience. We contend that individuals licensed by state and tribal governments to perform all appropriate inquiries or environmental site assessments, should be allowed to qualify as an environmental professional under today’s regulation. State and tribal agencies may best determine the qualifications defining individuals who “possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases...to the surface or subsurface of a property, sufficient to meet the rule’s objectives and performance factors” within any particular state or tribal jurisdiction.

EPA is not recognizing in the regulatory language of the final rule private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Given the performance-based

qualifications provided in the final definition of an environmental professional, such an approach is not necessary. Therefore, there is no need to reference or depend upon an independent standard such as the ASTM E1929 standard that assesses professional certification standards. The final rule does not recognize, or reference, any private organization's certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in today's final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Commenter Organization Name: Anonymous

Comment Number: 0273

Excerpt Number: 1

Excerpt Text:

After some 30 years of professional practice as a qualified environmental professional, I feel that it is important that the AAI Definition of Environmental Professional be broadened and strengthened as recommended by the Institute of Professional Environmental Practice in their comments on this rulemaking.

Response:

Please see response to comment number 0266, excerpt 2.

Commenter Organization Name: Mille Lacs Ojibwe

Comment Number: 0330

Excerpt Number: 3

Excerpt Text:

The Band agrees with the proposed language that allows an Environmental Professional to hold a current license and registration from a tribe (where such tribe has the capacity to license or certify).

Response:

EPA is retaining the proposed provision to include within the definition of an environmental professional individuals who are licensed to perform environmental site assessments or all appropriate inquiries by the Federal government (*e.g.*, the Bureau of Indian Affairs) or under a state or tribal certification program, provided that these individuals also have three years of full-time relevant experience. We contend that individuals licensed by state and tribal governments to perform all appropriate inquiries or environmental site assessments, should be allowed to qualify as an environmental professional under today's regulation. State and tribal agencies may best determine the qualifications defining individuals who "possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases...to the surface or

subsurface of a property, sufficient to meet the rule's objectives and performance factors" within any particular state or tribal jurisdiction.

Commenter Organization Name: Mille Lacs Ojibwe

Comment Number: 0330

Excerpt Number: 4

Excerpt Text:

The Band agrees with the proposed language to allow an Environmental Professional who performs environmental inquiries to be licensed or certified with a tribe. Although some tribes like the Mille Lacs Band do not currently license or certify Environmental Professionals, the Band and many other tribes want the authority to license or certify in the future when capacity allows.

Response:

Please see response to comment number 0330, excerpt 3.

Commenter Organization Name: Montana DEQ

Comment Number: 0335

Excerpt Number: 3

Excerpt Text:

In addition, under the currently proposed rules, DEQ will not have the resources to have someone considered an "Environmental Professional" under the proposed rules conduct all of the work necessary. DEQ will need to contract brownfields AAI investigations to an outside contractor, which is an unnecessary expenditure of funds. DEQ personnel who would be excluded from the definition of an "Environmental Professional" can perform the same work as a contractor but at a lower cost. DEQ only receives a limited amount of funds each year through the 128(a) grant and prefers to make the most of those funds.

DEQ also has concerns that the definition of "Environmental Professional" will reduce project officers' credibility who do not meet the proposed definition of "Environmental Professional." Project officers provide comments on documents, conduct oversight, testify in court and conduct many other professional tasks. DEQ believes the AAI rule should clearly state that the definition of an "Environmental Professional" may not be used in any other context.

Response:

In the preamble to the final rule, EPA clarifies that only the individual overseeing the conduct of an all appropriate inquiries investigation must qualify as an environmental professional, as defined in the final rule. Other individuals may contribute to the investigation as long as their activities are conducted under the supervision or responsible charge of the individual qualifying as an environmental professional. In today's final rule, the Agency is retaining the recommendation that an individual who qualifies as an

environmental professional conduct, or closely oversee the conduct of, the required on-site visual inspection of the property.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

The definitions provided in §312.10(b) of the final rule are applicable only to the all appropriate inquiries regulation in 40 CFR Part 312, as indicated at the beginning of that section.

Commenter Organization Name: McKerr, Thomas

Comment Number: 0347

Excerpt Number: 4

Excerpt Text:

The inclusion of individuals with a degree in a scientific field results in more quandaries. What is a scientific field? Math? Astrophysics? Biology? Which better prepares an individual to perform Phase Is? I think that what you are really looking for is the individual that understands and can apply the scientific principle, which is really a philosophic endeavor, and that may or may not be one of the individuals in the acceptable categories. Anyone with a modicum of training and experience can recognize stains or improper use of hazardous materials. In my role as a trainer of new personnel, I found geography majors to be quickest learners and best all round individuals to perform Phase Is. As far as PEs and PGs being disciplinable by their respective state boards, how many

are actually disciplined? Code of ethics - many disciplines have codes of ethics that are more commonly ignored than observed. I do agree that investigations involving sampling of soil or ground water (in Phase IIs) should properly be under the supervision of a PG or applicable PE. I think that the rule should just list generalities, e.g. "possess sufficient specific education, training and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases [does one have to qualify as a soothsayer to identify threatened releases?] of hazardous substances to the surface or subsurface of a property. The market may not have done as well as some (including me) would like In weeding out unfit producers, but I do not feel that listing all the different categories will be any more effective. Cheaters will still cheat.

Response:

Please see response to comment numbers 0099 (excerpt 1) and 0336 (excerpt 1).

Commenter Organization Name: Baker Petrolite

Comment Number: 0352

Excerpt Number: 3

Excerpt Text:

2. BPC questions the agency's definition of "full-time, relevant experience." BPC believes that the definition of "full-time, relevant experience" should be revised to exclude the requirement for an environmental professional to have an understanding of subsurface environmental conditions. First, in-depth knowledge and evaluation of subsurface conditions is not necessary during the traditional Phase I ESA or site visit. An extensive understanding of subsurface environmental conditions and investigations is required during a traditional Phase II after an environmental concern has been recognized during the Phase I ESA or All Appropriate Inquiry.

Response:

The definition of "relevant experience" in the final rule does not require that an environmental professional have an understanding of subsurface environmental conditions. Although such experience is included as one example of the type of experience that is relevant, the definition does not preclude individuals with other forms of relevant experience and without experience or understanding of surface and subsurface environmental conditions from qualifying as an environmental professional.

Relevant experience, as used in the definition of environmental professional, means: participation in the performance of all appropriate inquiries investigations, environmental site assessments, or other site investigations that may include environmental analyses, investigations, and remediation which involve the understanding of surface and subsurface environmental conditions and the processes used to evaluate these conditions and for which professional judgment was used to develop opinions regarding conditions indicative of releases or threatened releases (per §312.1(c)) to the subject property.

Commenter Organization Name: ASBOG

Comment Number: 0364

Excerpt Number: 2

Excerpt Text:

It is our position that any and all proposed "grandfather" clauses as stated in the proposed rulemaking change should be removed. Further, any references to unlicensed individuals being qualified by the Federal Government to perform this type of work should also be stricken. Again, professional licensure is the only mechanism allowed by law in ASBOG* Member Board States for this type of activity.

Response:

The definition of environmental professional in the final rule does not include the proposed "grandfather clause." EPA is unsure what the commenter is asserting by stating "professional licensure is the only mechanism allowed by law in ASBOG* Member Board States for this type of activity." EPA contends that it clearly has the statutory authority to establish who is qualified to conduct the required activities of the final rule.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: Walsh, Gregory

Comment Number: 0378

Excerpt Number: 4

Excerpt Text:

It is estimated that there are twice as many Environmental Laws on the books as civil laws. It would be prudent of the EPA to have as many Professionals reviewing the subject matter and being held accountable for the same. Doing so would indicate to the regulatory population that the EPA is serious about total quality environmental stewardship.

Response:

Thank you for your comment.

Commenter Organization Name: NPCA

Comment Number: 0403

Excerpt Number: 14 and 20

Excerpt Text:

In addition, the Proposed Rule's four levels of minimum qualifications for EPs are arbitrary, particularly the fourth tier, which allows a professional with an undergraduate degree and 10 years of full-time relevant experience to conduct AAIs prior to the final rule in this regard, but prohibits similarly situated individuals from conducting AAIs after such date.

There are numerous ways to gain the requisite expertise and experience to conduct AAIs and there are various environmental certification, education, and training mechanisms to do so. The definition of EP should not be limited to the stringent and arbitrary qualifications as outlined in the Proposed Rule, clearly favoring Professional Engineers and Geologists, but opened to any EP that can evident specific education, training and experience sufficient to meet the objectives and performance factors outlined in the Proposed Rule. This person will be required to attest to this fact and to conducting the AAIs in conformance with the final regulations - this should be sufficient to meet the objective under the Act that AAIs include an "inquiry by an EP.

Lastly, NPCA urges EPA to redefine EP in order to afford competent environmental experts as well as current environmental employees to serve in this capacity.

Response:

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited

institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: Kentuckiana Chapter ACHMM

Comment Number: 0405

Excerpt Number: 3

Excerpt Text:

Amending the definition as proposed by KCHMM will ensure that All Appropriate Inquiries are "conducted at a high standard of technical and scientific quality, while not significantly disrupting the current market for professional site assessment services," 69 Fed. Reg. 52553, and allow those individuals most qualified to conduct such inquiries to continue doing so.

Response:

Please see response to comment number 0405, excerpt 1.

Commenter Organization Name: RT Environmental Services

Comment Number: 0406

Excerpt Number: 1

Excerpt Text:

-Qualifications- The Agency proposes to establish minimum qualifications for those completing Phase I Environmental Site Assessments. The regulations, however, are unclear, as to the degree peer review is required, and as to the qualifications of the peer reviewers.

Response:

The definition of environmental professional in the final rule does not include a peer review requirement.

Commenter Organization Name: RT Environmental Services

Comment Number: 0406

Excerpt Number: 3

Excerpt Text:

-Recommended Addition to Regulations- The Agency should establish as web page which makes available comprehensive EPA sponsored the 1970's studies of industry waste practices. Establishing minimum qualifications of reviewers will provide no assurance, particularly as time goes on, that the person who prepares or peer reviews the Phase I Environmental Site Assessment is familiar with the industry class which may be currently operated, or which historically operated on a subject property. So long as either the assessor, or peer reviewer has familiarized himself with the relevant industry information, the report will be of acceptable quality. An example of EPA guidance which should be consulted is "Pharmaceutical Industry- Hazardous Waste Generation, Treatment, and Disposal (SW-508), USEPA, 1976."

Response:

Given the great variety of types of properties for which all appropriate inquiries investigations may be carried out, it is not possible for EPA to provide guidance on how to conduct such investigations at each type of property. Prospective property owners may want to consult with professional certification organizations or their state government licensing boards for information on environmental professionals with particular types of expertise.

Commenter Organization Name: Bridges, John

Comment Number: 0426

Excerpt Number: 1

Excerpt Text:

In response to [SFUND-2004-0001; FRL-7815-2] Standards and Practices for All Appropriate Inquiries (AAI) I disagree with the proposed definition of environmental professional as drafted. After carefully reviewing the standards for conducting appropriate inquiries into previous ownership, uses; and environmental conditions of property I support the body of the text, but not the proposed definition of environmental professional.

Overall, I believe the notice provides a framework to build upon, perhaps over a specified period of time, however I do not concur with the proposed definition: Environmental Professional as drafted.

More importantly, environmental practitioners today (seasoned veterans and college graduates) even though competent and skilled may not "qualify" based on the proposed definition. As an example, environmental conditions today have a much broader reach as we enter into the topic of bio-terrorism and chemical agents that may have a direct impact to response and recovery actions outlined within the revised National Response Plan (NRP).

For these reasons, I disagree with the proposed definition of environmental professional, but support the efforts of this proposal.

Response:

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: Froehlich, R A

Comment Number: 0438

Excerpt Number: 3

Excerpt Text:

In closing, I strongly recommend that a more comprehensive definition of environmental professional be adopted to ensure that the environmental professional who certifies the "All Appropriate Inquiry" environmental site assessments have the demonstrated expertise to ensure that potentially contaminated properties are identified and tested adequately rather than being accepted as "uncontaminated" by an unqualified professional.

Response:

In the preamble to the final rule, EPA clarifies that only the individual overseeing the conduct of an all appropriate inquiries investigation must qualify as an environmental professional, as defined in the final rule. Other individuals may contribute to the investigation as long as their activities are conducted under the supervision or responsible charge of the individual qualifying as an environmental professional. In today's final rule, the Agency is retaining the recommendation that an individual who qualifies as an

environmental professional conduct, or closely oversee the conduct of, the required on-site visual inspection of the property.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: Young, Richard

Comment Number: PM-0207-0001

Excerpt Number: 3

Excerpt Text:

Because ASTM has created a list of procedures for conducting Phase I and Phase II environmental site assessments, virtually anybody who is capable of following those procedures should be considered or could be considered as an environmental professional.

Response:

The final rule provides minimum educational and experience qualifications for individuals who qualify to oversee the conduct of all appropriate inquiries investigations. EPA believes that the qualifications included in the definition of environmental professional provide a good balance of educational and professional experience requirements.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: Young, Richard

Comment Number: PM-0207-0001

Excerpt Number: 6

Excerpt Text:

The standard in its present form does not protect the public interest regarding professional engineers and geologists. There is no level of enforcement or back in qualification or back in qualification process delineated in the law. The law in its current form would give government's approval to a profession without enforcement or qualification to the public by restricting it to two professions, which harms the public good. It can be argued that U.S. EPA does not have the legal authority to decide who is an environmental professional. There is no regulation that provides U.S. EPA with authority to regulate a profession or endorse a profession.

The regulation in its current form violates states' rights to protect individuals--to regulate professions at an individual level. There isn't a federally licensed engineer or geologist. It's all done by the state level. If the federal government provides a level of enforcement they are effectively taking away power and funding from states to regulate their professions.

Response:

EPA asserts that the Agency has the authority to establish qualifications for persons conducting all appropriate inquiries. The CERCLA statute at section 101(35)(2)(B)(ii) includes criteria that EPA must include in the regulations governing federal standards and practices for conducting all appropriate inquiries. One criterion is “the results of an inquiry by an environmental professional.”

The final rule recognizes tribal and state-licensed P.E. and P.G.s and other such state and tribal government licensing environmental professional programs. Individuals with a state certification or license and three years of experience to be environmental professionals qualify as environmental professionals for the purposes of the all appropriate inquiries rulemaking. However, the rule does not restrict the definition of an environmental professional to these licensed individuals. The definition of an environmental professional also includes individuals who hold a Baccalaureate or higher degree from an accredited institution of higher education in engineering or science and have the equivalent of five (5) years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries. In addition, individuals with ten years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries qualify as environmental professionals for the purpose of conducting all appropriate inquiries. Individuals with these qualifications most likely will possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases to the surface or subsurface of a property, sufficient to meet the objectives and performance factors included in §312.20(e) and (f).

In addition to the qualifications for environmental professionals mentioned above, EPA is retaining the proposed provision to include within the definition of an environmental professional individuals who are licensed to perform environmental site assessments or all appropriate inquiries by the Federal government (*e.g.*, the Bureau of Indian Affairs) or under a state or tribal certification program, provided that these individuals also have three years of full-time relevant experience. We contend that individuals licensed by state and tribal governments, or by any department or agency within the federal government, to perform all appropriate inquiries or environmental site assessments, should be allowed to qualify as an environmental professional under today’s regulation. State and tribal agencies may best determine the qualifications defining individuals who “possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases...to the surface or subsurface of a property, sufficient to meet the rule’s objectives and performance factors” within any particular state or tribal jurisdiction.

The final rule also includes within the regulatory definition of an environmental professional, general performance-based standards or qualifications for determining who may meet the definition of an environmental professional for the purposes of conducting all appropriate inquiries. These standards include education and experience qualifications. Based upon the input received from the public commenters, EPA

determined that the definition of environmental professional included in today's final rule establishes a balance between the merits of setting a high standard of excellence for the conduct of all appropriate inquiries through the establishment of stringent qualifications for environmental professionals and the need to ensure that experienced and highly competent individuals currently conducting all appropriate inquiries are not displaced.

Commenter Organization Name: Mittelholzer, Michael

Comment Number: PM-0207-0002

Excerpt Number: 4

Excerpt Text:

Number two: The definition of an environmental professional found under 312.10, and I'm specifically referring to subpart 2(i) and (ii), and I apologize for the specificity there, this subsection of the proposed rule creates two different standards regarding the numbers of years of direct working experience required for a professional engineer, PE, and that's three years, versus consultants with all other relevant environmental science backgrounds, which requires them to have five years of professional experience. Also, this category includes engineers who lack a PE's license. NAHB's concern is the proposed rule might have the unintended effect of preventing capable environmental consultants either now or in the future from qualifying as an environmental professional.

Response:

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. EPA agreed with commenters who pointed out that the requirement that environmental professionals hold specific types of science or engineering degrees was too limiting. In the final rule, persons with any science or engineering degree (regardless of specific discipline in science or engineering) can qualify as an environmental professional, if they also have five (5) years of full-time relevant experience.

In addition, many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned

changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. EPA believes the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: Testa, Steve

Comment Number: PM-0359-0002

Excerpt Number: 2

Other Sections: MODIFIED - 2.2.1 - The Agency should clarify what type of training or continuing education would satisfy this requirement

Excerpt Text:

The second recommendation reflects on annual refresher courses or continuing education. AIPG also strongly recommends that an annual refresher course be required for the Environmental Professional. Other programs require annual refresher courses to remain current in their fields of practice, such as the eight-hour OSHA classes and asbestos training. The proposed rule only recommends continuing education, and most state Professional Geologist licenses don't require any. AIPG has instituted a program for continuing professional development for practitioners.

Last, an annual refresher course would give other individuals who are grandfathered, but who are not CPGs or registered, an opportunity to learn more about basic hydrogeology and geologic concepts to which they may not have been exposed previously. Adding also to the importance of this issue is the proliferation of automated, Internet-based platforms for creating data summaries and maps of the subject area. These give the erroneous impression of thoroughness to the point of even showing groundwater flow direction and the relative elevation of surrounding sites that have the potential to impact the subject site. These presentations can be misleading and, if used by an unqualified Environmental Professional, may lead to serious oversights with significant consequences. The judgement of a qualified geologist, taking advantage of all available geologic and hydrogeologic information sources, is necessary for this purpose.

Response:

The definition of an environmental professional in the final rule includes a requirement that an environmental professional remain current in his or her field through participation in continuing education or other activities.

Commenter Organization Name: Dannatt, Georgina

Comment Number: PM-0359-0004

Excerpt Number: 2

Excerpt Text:

Under a performance-based approach, the situation will continue to be largely as it is

now, where unsophisticated property owners do not understand that their due diligence is inadequate, while sophisticated owners, redevelopment agencies, and lenders call for a higher, more thorough level of investigation.

I'm going to comment directly on three aspects of the rule. First, I believe that the definition of Environmental Professional should not be overly restrictive. To do a Phase One, scientific and research skills are necessary, as well as excellent writing and communication skills.

There has been much comment from the engineering community that only licensed professional engineers and geologists are qualified. Numerous educational backgrounds are suitable training in scientific methods, including chemistry, toxicology, industrial hygiene, biology and soil science, as well as the engineering earth science and environmental science disciplines listed in the proposed rule. In addition, people with as diverse backgrounds as history and geography may make excellent assessors. But regardless of the provider's education, the most important factors are on-the-job training and experience.

A professional holding a state license who practices in another specialty area is certainly not more qualified than a person with a life science degree whose entire career is performing due diligence assessments.

Response:

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. EPA agreed with commenters who pointed out that the requirement that environmental professionals hold specific types of science or engineering degrees was too limiting. In the final rule, persons with any science or engineering degree (regardless of specific discipline in science or engineering) can qualify as an environmental professional, if they also have five (5) years of full-time relevant experience.

In addition, many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. EPA believes the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

2.1.8.1 *The Grandfather Clause is Too Stringent*

Commenter Organization Name: Gasper, Matthew P

Comment Number: 0041

Excerpt Number: 1

Other Sections: NEW - 2.1.6 - Revise educational requirements to allow individuals with substantial relevant work experience to qualify as EPs

Excerpt Text:

Each of the requirements state that the individual performing the assessment must have a four year college degree, and a scaled full time employment experience in order to sign the reports. All that sounds good on the surface, however, the rule does not address individuals like myself, and I am sure many others throughout the United States. However, the way the proposed rule is written an individual with an accredited degree in anything at all, and ten years working experience would qualify as an environmental professional.

My situation is that I have been conducting environmental assessments for the past 17 years, and been in business for myself since 1996 (tax id 59-3390392). I do not have my college degree.

Response:

Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today’s final rule does not include the proposed “grandfather clause.”

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional’s ability to carry out an all appropriate inquiries.

Commenter Organization Name: Wolf, Robert

Comment Number: 0195

Excerpt Number: 1

Excerpt Text:

I have been performing ESA since at least 1990 and now all of the sudden this rule comes along I will not be able to perform them since I do not have a college degree. I have done hundreds of ESA all over the US and have never had an issue or complaint that I have not properly performed/evaluated a Site. I agree that some type of Standards need to be established but excluding persons with experience, knowledge and speclilized training, for a degree and a few years experience is not the way.

Response:

Please see response to comment number 0041, excerpt 1.

Commenter Organization Name: Appraisal Institute

Comment Number: 0212

Excerpt Number: 7

Excerpt Text:

the experience requirement for those with no degree in an environmentally concentrated field be reduced from ten years to five years. We agree that when actual testing is required, a higher level of education and experience is appropriate, but for the level of research required under AAI, the public health can be adequately protected at the five-year experience level.

Response:

Please see response to comment number PM-0359-0004, excerpt 2.

Commenter Organization Name: Stevens, Scott

Comment Number: 0225

Excerpt Number: 5

Other Sections: NEW - 2.1.4 - Revise educational requirements to allow individuals with Baccalaureate or higher degrees in areas other than engineering, environmental science, and earth science and five or more years of relevant experience to qualify as EPs

Excerpt Text:

I support the changes put forward by the National Registry of Environmental Professionals - in that §312.10(b)(1)(i-iv) of the EPA proposed rule be amended to state all requirements set forth for engineers to conduct all appropriate inquiries be the same as those with a BA or BS level degree in an environmentally concentrated field in conducting the same inquiries; and, the experience requirement for those with no degree in an environmentally concentrated field be reduced from 10 years to 5 years.

Response:

The definition of environmental professional included in today's final rule establishes a balance between the merits of setting a high standard of excellence for the conduct of all appropriate inquiries through the establishment of qualifications for environmental professionals and the need to ensure that experienced and highly competent individuals currently conducting all appropriate inquiries are not displaced.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. EPA agreed with commenters who pointed out that the requirement that environmental professionals hold specific types of science or engineering degrees was too limiting. In the final rule, persons with any science or engineering degree (regardless of specific discipline in science or engineering) can qualify as an environmental professional, if they also have five (5) years of full-time relevant experience.

In addition, many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. EPA believes the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: SCANA

Comment Number: 0373

Excerpt Number: 4

Excerpt Text:

We strongly urge the EPA to incorporate language in the regulation to grandfather individuals involved in the performance of AAIs prior to the effective date of the final

regulation without regard to the education criteria as proposed. Individuals who become actively involved in AAIs following the effective date of the regulation would then have to meet the definition of environmental professional as proposed. Doing this would minimize the impact to the regulated community and raise the bar as desired by the Agency moving forward. The grandfathered environmental professional could be required to attest to their "grandfathered status" in the report along with the statement required in §312.21(d). Furthermore, it is our position that individuals with 5 years or more of relevant AAI experience who have earned associate of science degrees in an environmental discipline should meet the definition of environmental professional. We are requesting that the EPA amend the proposed definition of environmental professional to reflect this.

Response:

Please see response to comment number 0225, excerpt 5.

Commenter Organization Name: Andrews, Douglas

Comment Number: 0399

Excerpt Number: 3

Excerpt Text:

(2)(iv) Paragraph (2)(iv) also should include certifications from relevant professional organizations as a qualification for the "grandfathering" provision of AAI. Therefore, I propose the following wording for this paragraph:

As of the date of promulgation of this rule, have a Baccalaureate or higher degree from an accredited institution of higher education, or be certified in the management of hazardous materials or other relevant field of practice by a third- party accredited professional organization, and have ten (10) years of full-time relevant experience.

Response:

EPA is not recognizing in the regulatory language of the final rule private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Given the performance-based qualifications provided in the final definition of an environmental professional, such an approach is not necessary. The final rule does not recognize, or reference, any private organization's certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in today's final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Commenter Organization Name: Kentuckiana Chapter ACHMM

Comment Number: 0405

Excerpt Number: 2

Excerpt Text:

KCHMM is encouraged by EPA's decision to "grandfather" individuals who as of the date of promulgation of the final rule "have a Baccalaureate or higher degree from an accredited institution of higher education and have ten (10) years of full-time of relevant experience" as environmental professionals. 40 CFR §312.10 (2)(iv). KCHMM recommends that the definition of "environmental professional" in 40 CFR §312.10 (2)(iv) be amended to include individuals certified by professional organizations, such as ACHMM, as follows:

-As of the date of promulgation on this rule, have a Baccalaureate or higher degree from an accredited institution of higher education and have ten (10) years of full-time of relevant experience, or be an individual certified by a professional organization with third party accreditation and have ten (10) years of full-time relevant experience.

In the case of a CHMM, such an individual would have the following qualifications: (1) be certified prior to 2003, (2) have at least twelve years or more of experience in the field of managing hazardous materials; (3) demonstrated knowledge and understanding of the basic principles involved in hazardous materials management, including an understanding of the regulations governing sites, (4) passed a rigorous exam; and (5) pledged to maintain the highest standards of integrity through the CHMM Code of Ethics.

Response:

Please see response to comment number 0399, excerpt 3.

Commenter Organization Name: Braman, Marshal

Comment Number: 0454

Excerpt Number: 1

Other Sections: NEW - 2.1.6 - Revise educational requirements to allow individuals with substantial relevant work experience to qualify as EPs

Excerpt Text:

I have been conducting Phase 1, 2 and 3 work for the past 15 years (1989). Many of which I was in a supervisory and project manager responsibility level. I have 2 years of science education from a Community College and 2 years of education in commercial horticulture from a Technical College. I successfully completed the horticultural program although it did not offer a baccalaureate degree. In addition I have attended numerous seminars over the past 15 years to develop skills specific to phase 1 and 2 work, OSHA training, environmental discovery and remediation.

I have personally prepared over 100 phase 1 investigations.

Further, I have also reviewed in a supervisory capacity over 200 phase 1 investigations.

It is my understanding that I would not qualify as an environmental professional under the proposed rules.

In all of the projects that I have been involved in I have never had a phase 1 project in which issues of environmental concern were identified subsequent to completion of the assessment.

I bring this to your attention because I very much enjoy my career choice of being an environmental specialist. If this regulation passes in its present form I will not be allowed to perform my job. I do not want that to happen.

Please include an additional grandfather provision for a combination of education and experience equal to 14 or 15 years.

Response:

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. EPA agreed with commenters who pointed out that the requirement that environmental professionals hold specific types of science or engineering degrees was too limiting. In the final rule, persons with any science or engineering degree (regardless of specific discipline in science or engineering) can qualify as an environmental professional, if they also have five (5) years of full-time relevant experience.

In addition, many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. EPA believes the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: Dillman, Malcolm

Comment Number: PM-0359-0001

Excerpt Number: 1

Excerpt Text:

My first concern is with the qualifications for designation of Environmental Professional as defined in Subpart B-312.1 -- or .10 -- excuse me - the requirement of any baccalaureate degree from an accredited institution and ten years of full-time relevant experience.

I must ask the question, what does an individual with a degree in sociology or communications or music offer above an individual without any degree that has the equivalent or greater full-time relevant experience and perhaps more actual field experience?

Under different programs that the EPA has, they provide for experience, completion of a course and/or passing an examination to qualify individuals, regardless of a degree, in areas where the health and welfare of children are at stake.

The EPA requirements for lead-based paint risk assessor are -- and I'm reading from the website - pass an accredited inspector course; pass an EPA-accredited risk assessor course; pass an EPA assessor certification examination; and meet one of the following requirements: A, a bachelor's degree and one year experience; or, an associate's degree and two years of experience in a related field; or C, certification as an industrial hygienist, professional engineer, registered architect and/or certification, registered -- or excuse me -- related engineering health or environmental field; or D, a high school diploma or equivalent diploma, or equivalent, and at least three years' experience in a related field. The lead-based paint risk assessor makes judgments that have implications on the protection of human health; specifically, children under six.

State programs also provide for certifications of Environmental Professional with depth of environmental experience that allows them to make appropriate judgments based on the available data. Some of these states are the Nevada Certified Environmental Manager program. Their requirements: Again, a college degree in environmental science relevant to professional registration, or a combination of education/experience judged by the Division itself. And that's the Environmental Protection Division of Nevada.

In Utah, the U.S.D. Consultant program requires that -- provided its acceptance in this of a bachelor's or advanced degree from an accredited college or university with major study in environmental health, engineering, biological, chemical, environmental or physical science; or equivalent education and experience as determined by the Executive Secretary of the Division of Environmental Response and Remediation in Utah.

California has a program to be a Registered Environmental Assessor. Their program requires a bachelor's or higher degree from an accredited college or university in physical or biological science, engineering or law, or five years of substantial experience acquired within the last eight years performing environmental assessments relating to hazardous

substances and/or hazardous waste management.

I would suggest that over ten years' experience and hundreds or thousands of report submissions would have weeded out the incompetent people in this business.

I would respectfully submit that the grandfather clause be amended to accept those environmental professionals with a minimum of ten years' experience where that experience is valid and can be documented.

Response:

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. EPA agreed with commenters who pointed out that the requirement that environmental professionals hold specific types of science or engineering degrees was too limiting. In the final rule, persons with any science or engineering degree (regardless of specific discipline in science or engineering) can qualify as an environmental professional, if they also have five (5) years of full-time relevant experience.

In addition, many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. EPA believes the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

2.1.8.2 *The Grandfather Clause is Not Stringent Enough*

Commenter Organization Name: Engels, Joseph G

Comment Number: 0088

Excerpt Number: 2

Excerpt Text:

I am discouraged by the grandfather clause designation for persons with 10 years of experience as qualified environmental professionals. From my experience, persons who do not have a college education and degree in a technical area relevant to this practice are not qualified to make sound technical decisions and to offer opinions of a technical nature having to do with groundwater flow, chemical reactions and processes, health risks, etc. As an analogy, is someone with a history or english degree ever qualified to offer legal or medical opinions? Is it really in the public's interest to allow unqualified persons to practice? That being said, the proposed rule does raise the bar for a minimum practice standard and should help to weed out some of the bottom feeders who exist in this industry. All things considered, I support the rule.

Response:

The definition of environmental professional included in today's final rule establishes a balance between the merits of setting a high standard of excellence for the conduct of all appropriate inquiries through the establishment of qualifications for environmental professionals and the need to ensure that experienced and highly competent individuals currently conducting all appropriate inquiries are not displaced.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. EPA agreed with commenters who pointed out that the requirement that environmental professionals hold specific types of science or engineering degrees was too limiting. In the final rule, persons with any science or engineering degree (regardless of specific discipline in science or engineering) can qualify as an environmental professional, if they also have five (5) years of full-time relevant experience.

In addition, many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. EPA believes the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: Simon, Richard M

Comment Number: 0089

Excerpt Number: 3

Excerpt Text:

I am, however, concerned with the 'grandfather' designation of certain environmental professionals. In my firm, we will only allow those who have met the requisite education, training, and experience to practice as environmental professionals.

Response:

Please see response to comment number 0088, excerpt 2.

Commenter Organization Name: Anonymous

Comment Number: 0209

Excerpt Number: 2

Excerpt Text:

Finally, grandfathering of unlicensed individuals who are currently acting in the capacity of Qualified Environmental Professionals will merely carry forward the issues that originally led to this rule being published. Therefore, no individual should be grandfathered.

Response:

Please see response to comment number 0088, excerpt 2.

Commenter Organization Name: NSPE

Comment Number: 0230

Excerpt Number: 2

Excerpt Text:

NSPE is concerned that the rulemaking as it is currently written has little ability to regulate the persons who take on the title of environmental professional. EPA does not specify any monitoring or screening of the environmental professionals' qualifications, and we are concerned that this would open the door for abuse and leave the public with little protection. The rule allows any individual who is under the subjective belief that

they possess the qualification required under the proposed rule to ply their craft on the unwitting public. The public is provided no method with which to objectively measure the abilities or qualifications of these persons or any ability to objectively measure or know that a particular individual actually meets these requirements. A proposed rule that allows environmental professionals to self-police themselves seems contrary to public policy and is something that should be avoided.

Response:

The environmental professional overseeing the conduct of the all appropriate inquiries investigation must indicate when he or she signs the report of findings for the all appropriate inquiries investigation that he or she meets the definition of environmental professional included in the final rule (see final rule section 312.21(d)). EPA is not going to collect, evaluate, or verify the credentials or qualifications of individual environmental professionals. Should a prospective property owner need advice on how to find a qualified environmental professional, the prospective property owner may want to request advice from a private professional certification organization or a state licensing board for P.E.s and P.G.s.

We leave enforcement of this rule up to the courts. However, if a property owner or grantee is seeking liability protection, it is in their best interest that they find an environmental professional who will adequately perform the work. Further, as is the case generally, an individual may have recourse against somebody who misrepresents themselves as an environmental professional who is actually not an environmental professional. However, the commenter's point is a good one—consumers of this service must be selective in their selection of an EP.

Commenter Organization Name: Lindberg, David

Comment Number: 0313

Excerpt Number: 1

Excerpt Text:

I am, however, very concerned with the proposed "grandfather" designation of certain environmental professionals. In our firm, we will only allow those who have met the requisite education, training, and experience to practice as environmental professionals. To do less would be a disservice to those who rely on our expertise.

Response:

Please see response to comment number 0088, excerpt 2.

Commenter Organization Name: Herin

Comment Number: 0329

Excerpt Number: 2

Excerpt Text:

-With respect to the definition of an environmental professional (EP), I'd offer that paragraph 312.10(b)(2)(iv) provides some perhaps unintended loopholes and should be

deleted. Further, regarding the description of "relevant experience", I would offer that EPA consider adding language indicating the EP must be able to demonstrate professional environmental site assessment experience associated with the type of landuse operations which are known to be involved with the site being evaluated.

Response:

Please see response to comment number 0088, excerpt 2.

Given the large variety of uses that may occur at any one property over time and although EPA understands the merits of the commenter's suggested revision to the definition of relevant experience, imposing such a requirement could be overly burdensome to both prospective property owners and businesses that conduct all appropriate inquiries.

Commenter Organization Name: CA Board For Geologists and Geophysicists

Comment Number: 0358

Excerpt Number: 1

Excerpt Text:

The Board strongly concurs in Section 312.10(b)(4) of the proposed rule which states:

-"The definition of environmental professional provided above does not preempt state professional licensing or registration requirements such as those for a professional geologist, engineer, or site remediation professional. Before commencing work (emphasis added), a person should determine the applicability of state professional licensing or registration laws to the activities to be undertaken as part of the inquiry identified in Section 312.21(b)."

The State of California requires licensure for the professional practice of engineering and geology. It is inappropriate, and possibly illegal, for the proposed "environmental professionals" to engage in the practice of geology or engineering in the environmental characterization and remediation of Brownfields sites.

Any and all proposed "grandfathering" clauses as stated in the proposed rulemaking change should be removed. Any references to unlicensed individuals being qualified by the federal Government to perform this type of work should also be stricken. Professional licensure is the only mechanism allowed by law in California for this type of activity.

Response:

The final all appropriate inquiries rule only establishes requirements for the conduct of all appropriate inquiries for the purpose of establishing liability protection under CERLCA, which is a federal statute. States are free to regulate specific actions related to state law more stringently. For instance, states can require individuals who install monitoring devices to be certified geologists or be state certified, etc. However, to comply with the Federal All Appropriate Inquiries Rule and receive federal liability protection, one must meet the standards articulated in the final rule.

Commenter Organization Name: Smith, Michael

Comment Number: 0360

Excerpt Number: 3

Excerpt Text:

I am, however, concerned with the "grandfather" designation of certain environmental professionals. In my firm, we will only allow those who have met the requisite education, training, and experience to practice as environmental professionals.

Response:

Please see response to comment 0088, excerpt 2.

2.1.8.3 *The Proposed Minimum Requirements Will Have a Negative Impact on the ESA Industry, Small Businesses, and the Real Estate Market*

Commenter Organization Name: Gasper, Matthew P

Comment Number: 0041

Excerpt Number: 2

Excerpt Text:

I believe that the proposed rule by the EPA places an undue strain on small businesses like mine.

Response:

EPA estimates that the impacts of the final rule, on the whole, will not be significant for small entities. We estimate that, for the majority of small entities, the average incremental cost of the final rule relative to conducting an ASTM E1527-2000 Phase I Environmental Site Assessment will be between \$52 and \$58. When we annualize the incremental cost of \$58 per property transaction over ten years at a seven percent discount rate, we estimate that the average annual cost increase per establishment per property transaction will be \$8. Thus, the cost impact to small entities is estimated to not be significant. A more detailed summary of our analysis of the potential impacts of today's rule to small entities is included in "Economic Impacts Analysis of the Final All Appropriate Inquiries Regulation." This document is included in the docket for today's rule.

Commenter Organization Name: Brenn

Comment Number: 0055

Excerpt Number: 2

Excerpt Text:

As this proposal is presently being presented, I know that this burden being placed on lenders and property owners will have a big effect on real estate sales and financing. Some areas, such as the area I live in, have very few people that do this type of work and most of them are not engineers. I further believe that the area that I serve; Western Nebraska and the southwestern part of South Dakota have no environmental inspectors that have the knowledge of the area.

Response:

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. EPA agreed with commenters who pointed out that the requirement that environmental professionals hold specific types of science or engineering degrees was too limiting. In the final rule, persons with any science or engineering degree (regardless of specific discipline in science or engineering) can qualify as an environmental professional, if they also have five (5) years of full-time relevant experience.

In addition, many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. EPA believes the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries. The modifications to the definition of environmental professional also should alleviate difficulties in finding qualified individuals to conduct all appropriate inquiries investigations.

Commenter Organization Name: None

Comment Number: 0087

Excerpt Number: 1

Other Sections: NEW - 2.1.6 - Revise educational requirements to allow individuals with substantial relevant work experience to qualify as EPs

Excerpt Text:

I think that it is wrong to disregard the many years of experience that lots of professionals have just because they do not have a college degree. There should be some provision in this regulation to allow non-degreed professionals with a certain amount of professional experience in the field to be grandfathered in as "Environmental Professionals". The way this portion of the regulation is now written is unfair and is going to cost alot of highly qualified and experienced people to lose their livelihoods. It is essential that a grandfathering provision be included in this regulation.

Response:

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. EPA agreed with commenters who pointed out that the requirement that environmental professionals hold specific types

of science or engineering degrees was too limiting. In the final rule, persons with any science or engineering degree (regardless of specific discipline in science or engineering) can qualify as an environmental professional, if they also have five (5) years of full-time relevant experience.

In addition, many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. EPA believes the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Commenter Organization Name: Goodman, J. Dwight

Comment Number: 0097

Excerpt Number: 13

Excerpt Text:

I realize that the task of the AAI committee is a difficult one, but a certain amount of "common sense" regarding the "environmental professional" issue is extremely important and cannot in my opinion be overemphasized. I would dare to estimate how many currently trained individuals such as myself are on the brink of losing some of their workplace flexibility or current "livelihood", especially at my age (53), because they do not have a degree.

I have not even addressed my opinion as to what I feel this new AAI ruling is going to do to the current, very competitive market for ESA costs. I feel that the committee is likely very optimistic that it will not have a significant influence in cost, but I can assure you that in this "real world" where professionally registered persons are used...that service has to be paid for and is not as inexpensive as using technically trained and competent persons. I thank you in advance for your time and attention to my additional comments

and questions.

Further government involvement with already established guidelines which in the "real world" seem to work is often times an unappreciated task at hand, but is necessary to protect both human health and the environment. Proposing rules that are beneficial to those ends expend valuable tax dollars, and take endless hours to prepare. What I feel each individual in preparing those rules should ask themselves is, "Is what is being proposed...reasonable and based on common sense guidelines, and not politically motivated or creating undue burdens?"

Response:

Please see response to comment number 0087, excerpt 1.

Commenter Organization Name: EAI

Comment Number: 0109

Excerpt Number: 1

Other Sections: NEW - 2.1.7 - Revise the grandfather clause to allow all individuals currently conducting site assessments to qualify as EPs

Excerpt Text:

I think you should expand on the proposed grandfathering of current environmental inspectors, the way i understand the current rule proposed ,would put a lot of professionals out of business, this is contrary to what the government should do!

Response:

Please see response to comment number 0087, excerpt 1.

Commenter Organization Name: Stevens, Scott

Comment Number: 0225

Excerpt Number: 1

Excerpt Text:

The EPA has proposed that a professional engineer be placed above all environmental and other professional qualifications in the signing-off on all appropriate inquiry investigations. The current rules only state what one must do to conduct such an inquiry - the proposed rule states who that person has to be. Such an unwarranted elevation of roles endangers the public well-being, hurts small businesses, and could slow down home building - one of the primary engines of our economy.

Response:

Although the final rule recognizes tribal and state-licensed P.E. and P.G.s and other such government licensed environmental professionals with three years of experience to be environmental professionals, the rule does not restrict the definition of an environmental professional to these licensed individuals. The definition of an environmental professional also includes individuals who hold a Baccalaureate or higher degree from an accredited institution of higher education in engineering or science and have the

equivalent of five (5) years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries. In addition, individuals with ten years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries qualify as environmental professionals for the purpose of conducting all appropriate inquiries. Individuals with these qualifications most likely will possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases to the surface or subsurface of a property, sufficient to meet the objectives and performance factors included in §312.20(e) and (f).

In addition to the qualifications for environmental professionals mentioned above, EPA is retaining the proposed provision to include within the definition of an environmental professional individuals who are licensed to perform environmental site assessments or all appropriate inquiries by the Federal government (*e.g.*, the Bureau of Indian Affairs) or under a state or tribal certification program, provided that these individuals also have three years of full-time relevant experience. We contend that individuals licensed by state and tribal governments, or by any department or agency within the federal government, to perform all appropriate inquiries or environmental site assessments, should be allowed to qualify as an environmental professional under today's regulation. State and tribal agencies may best determine the qualifications defining individuals who "possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases...to the surface or subsurface of a property, sufficient to meet the rule's objectives and performance factors" within any particular state or tribal jurisdiction.

In the case where a state or tribal government does not have a professional licensing or certification program, the final rule provides other options for qualifying as an environmental professional (*i.e.*, experience and educational requirements). EPA does not have an environmental professional licensing program and has no plans to establish such a program. The commenter is incorrect in asserting that in those cases where a state does not have a licensing program for professional geologies, "the U.S. EPA will be required to process and verify the accuracy and completeness of each application."

The final rule includes within the regulatory definition of an environmental professional, general performance-based standards or qualifications for determining who may meet the definition of an environmental professional for the purposes of conducting all appropriate inquiries. Based upon the input received from the public commenters, EPA determined that the definition of environmental professional included in today's final rule establishes a balance between the merits of setting a high standard of excellence for the conduct of all appropriate inquiries through the establishment of stringent qualifications for environmental professionals and the need to ensure that experienced and highly competent individuals currently conducting all appropriate inquiries are not displaced.

Commenter Organization Name: Stevens, Scott

Comment Number: 0225

Excerpt Number: 2

Other Sections: NEW - 2.3.1 - Professional engineer certification and professional geologist certification do not ensure high level of professional ability

Excerpt Text:

First, under the proposed rule, an engineer with no environmental training at all can be made responsible for assessing land with significant environmental contamination. "All appropriate inquiries" require data collection and visual inspection. Such duties do not translate into the professional certification of "engineer." Placing someone in charge of evaluating environmental liabilities with no formal environmental training is a risk to the public health.

Response:

The final rule requires professional engineers to have at least three years of full-time relevant experience to meet the definition of an environmental professional.

Please also see response to comment number 0087, excerpt 1.

Commenter Organization Name: Stevens, Scott

Comment Number: 0225

Excerpt Number: 3

Excerpt Text:

Second, land evaluation and appraisal is a business engaged in by many smaller firms and sole proprietorships. Forcing all of these businesses to hire the services of a Professional Engineer for no significant interest of the public good is an undue burden that will force many small businesses out of business.

Thirdly, placing the over-baring requirement of having an engineer as the ultimate stop-gap to all appropriate inquiries could slow down the home building market. If the EPA proposed rules do take affect, all current land evaluations will have to stop while the services of engineers are sought and companies try to figure-out a way to pay for the added cost of more personnel and yet another layer of middle management placed on them by the government that is actually serving to endanger the public health rather than protect it. Even the National Home Builders Association has requested EPA to examine §312.10(b)(1)(i-iv) since listening to the National Registry of Environmental Professionals ("NREP") testimony to EPA.

Fourthly, the bill/rule is discriminatory in nature to other environmental professionals, and will reduce competition among other environmental professions. If competition among the environmental professions is reduced, it will give a select number of geologists and engineers the opportunity to fix prices and maintain a monopoly over assessments of environmentally tainted property.

Response:

It is EPA's opinion that this rule will not affect the market for real estate appraisals. Appraisal firms will certainly not have any requirements to hire the services of a professional engineer to render an appraisal.

The definition of environmental professional included in today's final rule establishes a balance between the merits of setting a high standard of excellence for the conduct of all appropriate inquiries through the establishment of qualifications for environmental professionals and the need to ensure that experienced and highly competent individuals currently conducting all appropriate inquiries are not displaced. The definition of environmental professional in the final rule does not require an individual to be an engineer to qualify as an environmental professional.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. EPA agreed with commenters who pointed out that the requirement that environmental professionals hold specific types of science or engineering degrees was too limiting. In the final rule, persons with any science or engineering degree (regardless of specific discipline in science or engineering) can qualify as an environmental professional, if they also have five (5) years of full-time relevant experience.

In addition, many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. EPA believes the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries. The modifications made to the definition of environmental professional should alleviate the

commenter's concerns regarding the costs associated with finding and employing qualified environmental professionals to conduct all appropriate inquiries investigations.

Commenter Organization Name: Young, Richard

Comment Number: 0243

Excerpt Number: 2

Excerpt Text:

-Employment. If enacted in the current form, the regulation has a potentially severe impact on education and educational employment (short term and long term). There are 787 higher education programs that offer environmental science that will be affected by the regulation.

-Antidiscrimination. The law in its current form potentially violates U.S. Antidiscrimination laws and has a significant reduction impact on minority businesses in the environmental profession. The total number of non-engineering environmental professionals in the United States is estimated at 1,120,584. The total number of black non-engineering environmental professionals is estimated at 100,853.

-Antitrust Implications. The top five (5) engineering firms in the U.S. control close to 35% of the gross U.S. revenues and engineering work of \$7 billion. The next ten (10) control 30% with only 35% left to be split up among all of the rest. This regulation in its proposed form will wipe out the smaller firms due to a legalized monopoly and bankruptcy from resulting impacts.

Response:

EPA disagrees with the commenter's assertion that education and employment will be adversely affected by the final rule. The commenter cites very broad statistics with regard to the market for engineering services. EPA contends that the market for Phase I site assessment services is much more competitive than the commenter is asserting. The definition of environmental professional in the final rule will allow for many practicing professionals to meet the definition or qualify as an environmental professional for the purpose of overseeing all appropriate inquiries investigation without incurring extensive costs or burdens.

The definition of environmental professional included in today's final rule establishes a balance between the merits of setting a high standard of excellence for the conduct of all appropriate inquiries through the establishment of qualifications for environmental professionals and the need to ensure that experienced and highly competent individuals currently conducting all appropriate inquiries are not displaced. The definition of environmental professional in the final rule does not require an individual to be an engineer to qualify as an environmental professional.

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. EPA agreed with commenters

who pointed out that the requirement that environmental professionals hold specific types of science or engineering degrees was too limiting. In the final rule, persons with any science or engineering degree (regardless of specific discipline in science or engineering) can qualify as an environmental professional, if they also have five (5) years of full-time relevant experience.

In addition, many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. EPA believes the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries. The modifications made to the definition of environmental professional should alleviate the commenter's concerns regarding the costs associated with finding and employing qualified environmental professionals to conduct all appropriate inquiries investigations.

We point out that only the individual overseeing the conduct of an all appropriate inquiries investigation must qualify as an environmental professional, as defined in the final rule. Other individuals may contribute to the investigation as long as their activities are conducted under the supervision or responsible charge of the individual qualifying as an environmental professional.

Commenter Organization Name: Young, Richard

Comment Number: 0243

Excerpt Number: 5

Excerpt Text:

Second, land evaluation and appraisal is a business engaged in by many smaller firms and sole proprietorships. Forcing all of these businesses to hire the services of a Professional

Engineer for no significant interest of the public good is an undue burden that will force many small businesses out of business. As these businesses are closed, unemployment in the environmental and property assessment professions will increase. These individuals will also be forced to retrain and build new skill sets that will place a burden on individual State economies in terms of welfare and job-training.

Thirdly, placing the over-bearing requirement of having an engineer as the ultimate stop-gap to all appropriate inquiries could slow down the home building market. If the EPA proposed rule does take affect, then all current land evaluations will have to stop while the services of engineers are sought. Companies will be forced to try to figure-out a way to pay for the added cost of more personnel and yet another layer of middle management placed on them by the government that is actually serving to endanger the public health rather than protect it. The only way around this risk is to grandfather all environmental professionals into the provision of the Federal legislation. Even the National Home Builders Association has requested EPA to examine §312.10(b)(1)(i-iv) if it could be an additional burden on home builders and buyers requiring a Professional Engineer or Professional Geologist. It is important to note that housing starts in the US are expected to fall 7.6% starting in 2005. This regulation will increase this negative impact further. [Footnote: Industrial Survey: Environmental and Waste Management, (New York; Standard and Poors, October 7) 29.]

Fourthly, the bill/rule is discriminatory in nature to other environmental professionals, and will reduce competition among other environmental professions. If competition among the environmental professions is reduced, it will give a select number of engineers the opportunity to fix prices and maintain a monopoly over assessments of environmentally tainted property. Current funding of antitrust regulation enforcement at the Federal level does not take into account antitrust investigation funding needed to police probable abuses that this bill/rule will enable.

Response:

The definition of environmental professional in the final rule is not restricted to engineers.

Please see response to comment number 0225, excerpt 3.

Commenter Organization Name: Young,Richard

Comment Number: 0243

Excerpt Number: 7

Excerpt Text:

If enacted in current form, the regulation has a potentially severe impact on education and educational employment (short term and long term). There are 787 higher education programs that offer environmental science that will be affected by the regulation. On average, 200 students per university will be affected by the regulation over a four year period. This number equates to 50 per year (freshman through senior) for each college.

This estimated number equals 157,400 students, and does not include individuals already employed in the environmental professions (non-engineering/geology). If you include graduate programs, this number could climb as high as 250,000 students. According to the U.S. Department of Education, median college tuition cost for a four-year environmental education degree is about \$10,000 per year, and can go higher in competitive private universities. Potential tuition lost by universities and colleges due to this regulation are nearly \$10,000,000,000.

This number is calculated by taking the number of students and multiplying it by the tuition and length of education. This number could be lower in some areas depending on state and residency requirements imposed by the schools. The impacted number could also be significantly higher depending on residency and duration of education (more than 4 years).

It can also be argued that students under this law will be forced to study engineering and/or geology to become an environmental professional. This action will force students to switch majors of study in 4-year universities. As a result of switched majors, students at these universities will be forced to delay their education by 1 to 2 years depending on the number of science credits that can be applied to an engineering degree. Again, this indirect impact from the regulation will place financial hardship on students and families. Using estimated numbers from the US Department of Education, this cost will exceed \$2,500,000,000 per year (250,000 environmental students times \$10,000).

This rule will be strongly felt on environmental education. It is estimated that 1250 environmental professors at environmental universities nationwide will have to seek work at other universities or remain unemployed. This estimate is based on one professor for every 200 students. The number of unemployed environmental educators coupled with the number of non-engineering environmental students will impact unemployment rates nationwide. This increased number of unemployed non-engineering professionals across the United States will be economically harmed by any rise in the consumer price index.

Response:

The Agency disagrees with the commenter's assertions. The final rule does not require individuals to become PE's or PG's to qualify as an environmental professional. Please see response to comment number 0225, excerpt 3.

Commenter Organization Name: Gaugler, Earl

Comment Number: 0327

Excerpt Number: 2

Excerpt Text:

The negative impact from isolating other groups of professionals will (1) drive costs up for clients as engineer oversight can be costly (especially when all they may do is review the work of others and place their PE stamp on the final report), and (2) restrict the work of individuals fully qualified to conduct a Phase I assessment and other aspects of environmental inspection.

Response:

The final rule does not require individuals to become PE's or PG's to qualify as an environmental professional. Please see response to comment number 0225, excerpt 3.

Commenter Organization Name: Baker Petrolite

Comment Number: 0352

Excerpt Number: 1

Excerpt Text:

Baker Petrolite Corporation (BPC) is concerned that the proposed definition of environmental professional will impose an unnecessary financial burden on businesses which employ full-time environmental staff and occasionally perform Phase I Environmental Site Assessments (ESAs) on prospective properties for purchase or lease. In some cases, BPC conducts environmental assessments per the All Appropriate Inquiry (AAI) requirements in order to qualify as a bona fide prospective purchaser or innocent landowner and obtain liability protection under the 2002 amendments to CERCLA (Small Business Liability Relief and Brownfields Revitalization Act). This proposed rule may force businesses, including BPC, to utilize the services of an external environmental consultant for tasks that have traditionally been handled by qualified environmental staff within the corporation. With regards to the additional cost this will present, BPC requests that EPA consider the following comments and questions.

Response:

Please see response to comment number 0225, excerpt 3.

Commenter Organization Name: Kammeraad, Norman

Comment Number: 0357

Excerpt Number: 1

Other Sections: NEW - 2.1.7 - Revise the grandfather clause to allow all individuals currently conducting site assessments to qualify as EPs

Excerpt Text:

The language being used in 312.10 does not provide for Grandfathering of all ready existing individuals who have practiced in the field of environmental assessments for years. If this rule was to take effect, much like the Michigan Act 451, Part 213 QC,CP rules of 1994 which has similar language, EPA will forcefully remove the conduct of 1000's of individuals. This would be a violation of Federal Law U.S.C.A. Const. Amend. 1 Further, there is a requirement to be met by the legislature and Agency in the promulgation and enforcement of legislation which is known as a "compelling state interest test" that would in turn provide the Agency (EPA) authorization to eliminate the free exercise of an individual's conduct. A statutory classification or rule that infringes on a person's exercise of a fundamental right must be justified by a compelling state interest and achieved by narrowly drawn means. *Carey v. Population Services Int'l*, 431 U.S. 678, 97 S.Ct. 2010, 52 L.Ed.2d 675 (1977); A Compelling State Interest must be truly compelling, "threatening safety or welfare of the state in a clear and present

manner", for restriction to survive free exercise challenge under the First Amendment. Thus, only the States have the right to enforce and remove a persons conduct via threat to Health and welfare. Many firms (including mine) throughout the US, have worked with either SBA, USDA and Brownfields programs either directly or indirectly. To remove their conduct by not providing Grandfatherization rules, is the same as removing their conduct and thus income. Thus, language is needed in Section 312.10 of the AAI rules that also includes them by definition to protect them.

Response:

EPA asserts that the Agency has the authority to establish qualifications for persons conducting all appropriate inquiries. The CERCLA statute at section 101(35)(2)(B)(ii) includes criteria that EPA must include in the regulations governing federal standards and practices for conducting all appropriate inquiries. One criterium is “the results of an inquiry by an environmental professional.”

The final rule recognizes tribal and state-licensed P.E. and P.G.s and other such state and tribal government licensing environmental professional programs. Individuals with a state certification or license and three years of experience to be environmental professionals qualify as environmental professionals for the purposes of the all appropriate inquiries rulemaking. However, the rule does not restrict the definition of an environmental professional to these licensed individuals. The definition of an environmental professional also includes individuals who hold a Baccalaureate or higher degree from an accredited institution of higher education in engineering or science and have the equivalent of five (5) years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries. In addition, individuals with ten years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries qualify as environmental professionals for the purpose of conducting all appropriate inquiries. Individuals with these qualifications most likely will possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases to the surface or subsurface of a property, sufficient to meet the objectives and performance factors included in §312.20(e) and (f).

The definition of environmental professional in the final rule will allow for many practicing professionals to meet the definition or qualify as an environmental professional for the purpose of overseeing all appropriate inquiries investigation without incurring extensive costs or burdens.

We point out that only the individual overseeing the conduct of an all appropriate inquiries investigation must qualify as an environmental professional, as defined in the final rule. Other individuals may contribute to the investigation as long as their activities are conducted under the supervision or responsible charge of the individual qualifying as an environmental professional.

Please also see response to comment number 0225, excerpt 3.

Commenter Organization Name: EAA

Comment Number: 0366

Excerpt Number: 3

Excerpt Text:

Further, from the standpoint of the user, if the current proposed requirements of the EC stand, the availability of the product would be severely impacted. This impact would include the fact that the service providers would be limited on a national level, which would cause a significant increase of price to the user, and a significantly slower process of completion of work and scheduling. Additionally, it is felt that the overall quality of service and product would suffer because of the limited number of service providers being so overextended.

Response:

Please also see response to comment number 0225, excerpt 3.

The definition of environmental professional in the final rule will allow for many practicing professionals to meet the definition or qualify as an environmental professional for the purpose of overseeing all appropriate inquiries investigation without incurring extensive costs or burdens.

We point out that only the individual overseeing the conduct of an all appropriate inquiries investigation must qualify as an environmental professional, as defined in the final rule. Other individuals may contribute to the investigation as long as their activities are conducted under the supervision or responsible charge of the individual qualifying as an environmental professional.

Commenter Organization Name: SCANA

Comment Number: 0373

Excerpt Number: 2

Excerpt Text:

We ask that the EPA/Committee consider that the proposal would detrimentally impact the employment and limit opportunities of employees hired to perform AAIs before the regulation came into existence. It appears that the EPA/Committee is ignoring the ability of employers to select professionals to fill AAI related positions. If the proposed definition is adopted, only 2/3 of our staff performing AAIs will meet the definition of environmental professional. Our staff members who perform AAIs were selected based upon individual experiences, education and other salient skills and knowledge. Please keep in mind that it is an employer's obligation to meet the tenets of all appropriate inquiry and employers are liable if they employ individuals who are not capable of performing AAIs.

Response:

Please also see response to comment number 0225, excerpt 3.

The definition of environmental professional in the final rule will allow for many practicing professionals to meet the definition or qualify as an environmental professional for the purpose of overseeing all appropriate inquiries investigation without incurring extensive costs or burdens.

We point out that only the individual overseeing the conduct of an all appropriate inquiries investigation must qualify as an environmental professional, as defined in the final rule. Other individuals may contribute to the investigation as long as their activities are conducted under the supervision or responsible charge of the individual qualifying as an environmental professional.

Commenter Organization Name: NPCA

Comment Number: 0403

Excerpt Number: 13

Excerpt Text:

The Proposed Rule's definition of an "environmental professional" is overly stringent and arbitrary. The qualifications under the Proposed Rule for EPs will in some cases force potential owners to go through the expense of hiring or contracting with a Professional Engineer, or other "qualified" professional under the standard, to conduct AAIs, when current staff may be better qualified and equipped to do so. This will significantly increase the cost of conducting Phase I inquiries, without commensurate benefit.

Response:

Please also see response to comment number 0225, excerpt 3.

The definition of environmental professional in the final rule will allow for many practicing professionals to meet the definition or qualify as an environmental professional for the purpose of overseeing all appropriate inquiries investigation without incurring extensive costs or burdens.

We point out that only the individual overseeing the conduct of an all appropriate inquiries investigation must qualify as an environmental professional, as defined in the final rule. Other individuals may contribute to the investigation as long as their activities are conducted under the supervision or responsible charge of the individual qualifying as an environmental professional.

Commenter Organization Name: Dean, Frank

Comment Number: 0411

Excerpt Number: 3

Excerpt Text:

Due to the arbitrary nature of Section 312.10 and the potential for it to legislate me and many others out of this business, I will be contacting my Attorney to discuss the possibility of litigation if this part of the regulation goes into law as written. As there are approximately 2,000 members of the EAA, I am sure that there will be a number of us tax

paying small business owners who could have their businesses ruined by this arbitrary rule and would be interested in pursuing litigation and talking with our Congressmen.

Response:

Please also see response to comment number 0225, excerpt 3.

The definition of environmental professional in the final rule will allow for many practicing professionals to meet the definition or qualify as an environmental professional for the purpose of overseeing all appropriate inquiries investigation without incurring extensive costs or burdens.

We point out that only the individual overseeing the conduct of an all appropriate inquiries investigation must qualify as an environmental professional, as defined in the final rule. Other individuals may contribute to the investigation as long as their activities are conducted under the supervision or responsible charge of the individual qualifying as an environmental professional.

Commenter Organization Name: Young, Richard

Comment Number: PM-0207-0001

Excerpt Number: 4

Excerpt Text:

Today there are many small consulting firms whose business will be hurt by EPA's proposed rule because they cannot meet the proposed experience and education requirements. Such firms, these small little firms, are the backbone. They really are the backbone of today's business in conducting Phase I and Phase II work for residential and commercial property.

More consulting firms are destined to be hurt financially by the AAI rule. While EPA does not believe that the definition of environmental professional will go beyond the AAI rule, it is destined and, as so many times before, that it will and it will go and be accepted as a definition of an environmental professional in other laws.

As proposed, the AAI rule will drive up the market for consulting engineers and geologists. It will place them on a pedestal of being a specialist who can and will command higher pay for their work. From an economic standpoint it can be viewed as-- that it can be expected that all salaries on a brownfields project will also rise. The other trades will ask for more money and it will cost more to complete the work.

Very quickly and not boring you with all the details now because we will provide that in written testimony as I say, the total estimated number of environmental professionals nationwide without engineering degrees but practicing in the environmental field is 1,120,584. The total estimated Black professionals in the environmental field not being engineers is 100,853. We go on through also the Hispanic, the Asian, the female and the total minorities who are non-engineers practicing in the environmental field now today is 705,968. This will have an impact on them. A total impact on yearly wages which averaged on the way low side of being \$39,505,223,188.00.

By the way, these total environmental professionals, these non-engineers practicing in the environmental field, as a percentage of the nation's total employed, is 6.8 thousand. If we are to take and begin leaving them out and being recognized as equals in this field, this will have a dramatic effect on our nation's economy. These numbers, by the way, are not ones that I made up. They are there for you to see from the Bureau of Labor Statistics.

Response:

Please also see response to comment number 0225, excerpt 3.

The definition of environmental professional in the final rule will allow for many practicing professionals to meet the definition or qualify as an environmental professional for the purpose of overseeing all appropriate inquiries investigation without incurring extensive costs or burdens.

We point out that only the individual overseeing the conduct of an all appropriate inquiries investigation must qualify as an environmental professional, as defined in the final rule. Other individuals may contribute to the investigation as long as their activities are conducted under the supervision or responsible charge of the individual qualifying as an environmental professional.

2.1.8.4 Minimum Requirements for Personnel Working under the Supervision or Responsible Charge of an EP

Commenter Organization Name: Morris, Michael

Comment Number: 0114

Excerpt Number: 2

Excerpt Text:

As an advisor to our local community college that created an environmental engineering program, I am concerned that students who have earned an associate degree will no longer find employment doing site assessments. These students, who have had more formal training in conducting site assessments, will be competing with lower paid clerical level people who work for engineers or geologists that only sign off on the reports. There is no requirement or incentive to have all personnel working on these projects to have some training and experience in environmental assessments.

Response:

EPA disagrees with the commenter. The CERCLA statute provides significant incentives for conducting high quality all appropriate inquiries investigations. To maintain protection against CERCLA liability, property owners must comply with the continuing obligations established in CERCLA. These obligations include taking reasonable steps, stopping on-going releases, and not impeding the integrity of institutional controls. It is imperative that a high quality all appropriate inquiries investigation be conducted prior to acquiring a property so that the property owner has accurate information to comply with the required continuing obligations and maintain protection from liability. High caliber investigations will require highly qualified personnel.

In addition, in response to public comments, EPA has made several modifications to the definition of environmental professional in the final rule that will allow additional individuals to qualify as environmental professionals, including individuals without college degrees who have ten years of full time relevant experience. Please see the response to comment number 0225, excerpt 3.

Commenter Organization Name: Worlund, John

Comment Number: 0256

Excerpt Number: 2

Excerpt Text:

The proposed division of responsibilities for conducting all appropriate inquiry.

While the definition for Environmental Professional (EP) is arguably more restrictive than the current ASTM definition of an EP, the proposed rule requirement that the EP be in responsible charge is less restrictive than the current ASTM practice which requires the EP to conduct the site investigation and interviews. I am concerned that even with the strong recommendation in the preamble that the EP be involved, it is not required and therefore subject to abuse in the marketplace. From my experience as a practicing EP the

only two questions most prospective clients ask are: How soon can you do it? How much does it cost? This places market pressure on the EP to do them quickly and keep cost down. One obvious way of controlling cost is to use lower cost personnel who are typically less experienced than the EP. I would like to see some requirement for the person conducting the site visit to have a minimum level of experience and training even if it doesn't rise to the level of qualifying as an EP.

The provision for using non EP's to collect historic information and perform other routine duties as currently allowed in the ASTM practice is acceptable.

Response:

Please see response to comment number 0114, excerpt 2.

In today's final rule, the Agency is retaining the recommendation that an individual who qualifies as an environmental professional conduct, or closely oversee the conduct of, the required on-site visual inspection of the property. The Agency has concluded that it is would be too burdensome to require a person meeting the definition of an environmental professional to conduct the on-site site assessment in all cases.

Commenter Organization Name: Mille Lacs Ojibwe

Comment Number: 0330

Excerpt Number: 8

Excerpt Text:

The Band agrees with the proposed language in this section that allows a person who is not an Environmental Professional to assist in the conduct of all appropriate inquiries so long as the conduct is under the supervision of a qualified Environmental Professional.

Response:

EPA thanks the commenter for the stated support of the provision of the final rule.

Commenter Organization Name: FAA

Comment Number: 0334

Excerpt Number: 9

Excerpt Text:

5) FAA agrees that it is a good idea to allow people who do not meet the definition of an EP to assist with and take part in the conduct of AAI under the supervision of an EP.

Response:

EPA thanks the commenter for the stated support of the provision of the final rule.

Commenter Organization Name: Foth & Van Dyke

Comment Number: 0339

Excerpt Number: 2

Excerpt Text:

In addition we support the Proposal's acknowledgement that persons who-do not fall, within the definition of "Environmental Professional" can nonetheless assist in the conduct of the "all appropriate inquiries" if such person is under the supervision or responsible charge of a person meeting the definition. We also take this opportunity to endorse the comments submitted by the National Society of Professional Engineers.

Response:

EPA thanks the commenter for the stated support of the provision of the final rule.

Commenter Organization Name: CONNOR

Comment Number: 0398

Excerpt Number: 2

Excerpt Text:

--Environmental Professional (5) - please explicitly define "supervision and responsible charge".

Response:

Although the Agency is not formally defining the clause in the final rule, EPA offers that the meaning of "supervision or responsible charge" is that the environmental professional will generally be overseeing the performance of all appropriate inquiries activities conducted by all others who are contributing to the all appropriate inquiries investigation.

Commenter Organization Name: Froehlich, R A

Comment Number: 0438

Excerpt Number: 2

Excerpt Text:

Persons without the extensive environmental background required for recognition as an environmental professional should also be allowed to work on environmental site assessments, but should perform their work under the direction of an environmental professional. When sufficient experience has been achieved, they should be tested to ensure that they have the expertise to perform environmental site assessments under their own direction. Such testing should be required for all environmental professionals under the final regulation, but this level of testing is not included as a requirement in the proposed regulations. Testing is required under both the Asbestos and Lead Based Paint Model Accreditation Plans promulgated by EPA for both inspectors, supervisors and workers, and most would agree that the concerns associated with these narrow environmental issues is much less extensive than the concerns associated with environmental site assessments. Rather than promulgating yet another Model Accreditation Plan, however, I strongly recommend that testing for environmental professionals be performed through the existing ASTM E1929 98 compliant certification programs such as the QEP program. Mere years of experience and education alone are insufficient to demonstrate the needed expertise, and demonstrations of expertise can best be documented through an impartial examination by peers active in the field.

Response:

In the final rule, the qualifications for meeting the definition of an environmental professional are based upon educational and experience criteria. EPA believes that these minimum qualifications as well as the requirement that an environmental professional possess "sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases to the surface or subsurface of a property sufficient to meet the objectives and performance factors" of the rule (see 312.10) are sufficient qualifications for qualifying to oversee and conduct all appropriate inquiries investigations without an additional testing requirement.

2.1.8.5 The Proposed Rule Does Not Provide Information on the Requirements for Becoming Licensed or Certified by the Federal Government, a State, Tribe, or U.S. Territory to Perform Environmental Inquiries

Commenter Organization Name: Tucciarone, L W

Comment Number: 0079

Excerpt Number: 1

Excerpt Text:

There is no definition of how you become licensed or certified by the federal government, state, etc. to perform environmental inquiries.

Response:

The final rule provides that if a federal government department or agency develops a licensing or certification program, the rule will recognize it. Currently, the Bureau of Indian Affairs has a training and certification program for environmental professionals.

Because requirements of individual states and tribes differ, those requirements have not been detailed in this rule. To find out if and how these sovereigns certify environmental professionals you should contact the state or tribal officials directly.

Commenter Organization Name: City of Jacksonville, Florida

Comment Number: 0095

Excerpt Number: 3

Excerpt Text:

The definition of an environmental professional includes the usual and customary categories of professional engineers and geologists and adds a person "licensed...to perform environmental inquiries..." No such licensing program exists.

Response:

The federal government, a state, tribe, or U.S. territory have authority to certify individuals to perform environmental inquiries if they so choose. We are simply recognizing these sovereigns. The Bureau of Indian Affairs has a training and certification program for environmental professionals.

Commenter Organization Name: IPEP

Comment Number: 0266

Excerpt Number: 8

Excerpt Text:

Appendix C

Examples of State Programs with Designated Environmental Professional Credentialing Requirements

The following illustrative programs have been summarized based on information

obtained [and in many cases stated verbatim] from the state-specific websites for the designated programs.

DELAWARE

The Delaware Department of Natural Resources and Environmental Control (DNREC) is charged with identifying and remediating hazardous waste sites. To determine whether a firm is capable of performing the selected remedy on behalf of the potentially responsible party, minimum required qualifications have been established in the form of "Policy on Minimum Qualification Requirements for Consultants/Contractors Performing Work Under the Hazardous Substance Cleanup Act (Effective 6/17/94, Revised 12/5/01). The charge requires specific environmental investigation or remediation be executed by either the Department or, when PRPs are identified and willing, by private environmental consulting/contracting firms.

Before beginning work, a consultant/contractor must provide the names and qualifications of all geologist or engineers that will be performing work in each related service category (e.g., hydrogeological investigations, contaminant fate and transport). In addition to a series of other representations, the consultant/contractor must also provide information to substantiate that registered professionals will perform the work when and as required under 24 Del. C., Chapters 28 (for professional engineers) and 36 (for professional geologists).

However, submittals determined to be complete will undergo review by a team comprised of DNREC Cleanup Program managers and project officers, which either approves or disapproves the consultant/contractor. Thus, DNREC has established the procedure and criteria (not publicly available) for making determinations of acceptability under this program, in contrast to using a defined set of criteria established by independent peer review and available for public review, such as ASTM E1929-98.

MASSACHUSETTS

The Massachusetts Department of Environmental Protection has implemented the 21E program through a set of regulations known as the Massachusetts Contingency Plan or "MCP." The MCP lays out the state's rules for conducting cleanups of contaminated sites. The MCP requires people who are responsible for cleanups to hire a Licensed Site Professional to manage and/or oversee the required assessment and cleanup work. Licensed Site Professionals are often referred to as "LSPs." LSPs are scientists or engineers experienced in the assessment and cleanup of oil, gasoline, and hazardous material contamination. They are licensed by an independent state board to manage cleanups and provide formal, written opinions that cleanup work meets the requirements of the MCP.

An LSP is hired by a site owner or other potentially responsible party to oversee the assessment and cleanup activities required to address the contamination. The LSP collects data on conditions at the site, interprets this data, assesses the risks posed by the site to

health, safety, public welfare, and the environment, and recommends and oversees necessary cleanup activities. In providing these services, the LSP is responsible for making sure that the formal, written opinions that he or she provides about response actions at a disposal site, and the activities that lead up to these opinions, are consistent with the requirements of the MCP.

At key stages in the cleanup process, these formal, written opinions describing the work that has been completed must be sent to DEP. When a cleanup has been completed, the LSP provides a final opinion stating that the response actions have achieved an outcome that complies with the MCP and protects health, safety, public welfare, and the environment. Only an LSP can sign and stamp these formal opinions.

LSPs are licensed by the Board of Registration of Hazardous Waste Site Cleanup Professionals, common

Response:

EPA thanks the commenter for the provided information.

Commenter Organization Name: Mille Lacs Ojibwe

Comment Number: 0330

Excerpt Number: 7

Excerpt Text:

The Mille Lacs Band recommends that tribal licensing and registration requirements be incorporated into this section, including the applicability of tribal licensing regulations and laws before any activities are undertaken. An aspect of tribal licensing and registration would be the likely addition of a cultural component to the process. Through cultural training for the individual who is not familiar with a tribe, that individual would gain an awareness of tribal values (including practices and customs) that would make it easier to conduct environmental work within a tribal community. In this manner, environmental needs would be addressed and cultural issues would be respected in the tribal community.

Response:

The final rule allows for and recognizes tribal licensing and certification programs for environmental professionals. The final rule also recognizes the Bureau of Indian Affairs licensing and certification programs for environmental professionals.

Commenter Organization Name: Anonymous

Comment Number: 0371

Excerpt Number: 4

Excerpt Text:

The rule states in 312.10(b)(2)(I) that a person licensed by the federal government, state or tribal to perform environmental inquiries... The EPA should provide a list of acceptable federal, state or tribal licenses that meet this definition

Response:

EPA does not have a list of such programs and it would be difficult to maintain and update such a list for all states and the entire federal government. We simply note that we will honor individuals certified by the federal government, a state, tribe, or U.S. territory. Certifications must be for the purpose of designating individuals qualified to perform environmental inquiries as defined in §312.21.

Commenter Organization Name: McLeod, Jeff

Comment Number: 0444

Excerpt Number: 3

Excerpt Text:

The rule states in 312.10(b)(2)(I) that a person licensed by the federal government, state or tribal to perform environmental inquires... The EPA should provide a list of acceptable federal, state or tribal licenses that meet this definition.

Response:

EPA does not have a list of such programs and it would be difficult to maintain and update such a list for all states and the entire federal government. We simply note that we will honor individuals certified by the federal government, a state, tribe, or U.S. territory. Certifications must be for the purpose of designating individuals qualified to perform environmental inquiries as defined in §312.21.

2.2 An EP Should Remain Current in His/Her Field through Participation in Continuing Education or Other Relevant Activities

Commenter Organization Name: City of Jacksonville, Florida

Comment Number: 0095

Excerpt Number: 4

Excerpt Text:

Environmental professionals "should remain current in his or her field through participation in continuing education or other activities and should be able to demonstrate such efforts." What happens if the EP doesn't remain current or can't demonstrate such efforts? Are the reports he makes unreliable? Is this grounds to deny innocent landowner protection to the client who hired him.

Response:

The final rule retains the requirement that an environmental professional "should remain current in his or her field through participation in continuing education or other activities." However, the final rule does not retain the requirement that environmental professionals "should be able to demonstrate such efforts." The Agency has determined that the demonstration requirement is difficult to define and may place an undue burden on environmental professionals, particularly given that many training programs and conferences may not have an associated certificate or license. The marketplace and ultimately the courts can determine whether this criterion is sufficiently satisfied, should the credentials of an environmental professional be challenged or otherwise become an issue in regard to a property owner's CERCLA liability status. "Other activities" involves any activity that serves the purpose of keeping practitioners up to date on the latest developments and activities in the industry.

Commenter Organization Name: Diamond, Jason

Comment Number: 0251

Excerpt Number: 3

Excerpt Text:

I also support the AAI rule's requirements that the EP remain current in his field through continuing education or training, and be able to demonstrate such effort. Relying on professionals who have a high level of education, training, experience, and integrity is the most effective way to deal with the environmental risks that must be evaluated for commercial real estate transactions.

Response:

EPA thanks the commenter for the stated support of the provision.

Commenter Organization Name: Kentuckiana Chapter ACHMM

Comment Number: 0405

Excerpt Number: 4

Excerpt Text:

Moreover, because the proposed rule requires "all environmental professionals to remain current in the field of all appropriate inquiries, or environmental site assessments," 69 Fed. Reg. 52553, amending the proposed definition of "environmental professional" to include CHMMs will help EPA in meeting its commitment to high standards since CHMMs must earn Certification Maintenance Points ("CMPs") annually to maintain their certifications.

Response:

Please see responses to comment number 0173, excerpt 2.

2.2.1 The Agency Should Clarify What Type of Training or Continuing Education Would Satisfy This Requirement

Commenter Organization Name: Pike, Kenneth

Comment Number: 0117

Excerpt Number: 1

Excerpt Text:

--Comments: "Remaining current" could be interpreted as seeking continuing education or professional development courses in the field of AAI or only interpreted as continuing to work as an environmental professional. More than 20 states require that home inspectors be licensed to include specific training and passing a written test. Purchasers and lenders of commercial property have far greater financial exposure than residential purchasers yet no standardized training or licensure requirements exists relative to the performance of AAI/environmental site assessment by the Environmental Professional. Colleges and universities do not have environmental site assessment in their curricula, consequently the only training is on-the-job and that training is far from standardized.

--Recommendation: While accumulated work experience is valuable, "remaining current" should include continuing education or professional development courses specific to AAI/environmental site assessment. Such courses would create open dialogue, sharing of experiences and ideas and encourage a trend toward consistency in the industry. This industry has historically been inconsistent in all aspects of environmental site assessment (e.g., experience, professional judgement, QA/QC) and the proposed rule can solve these problems by defining "remaining current" in terms of continuing education or professional development coursework just as is required by many other professions.

Response:

Environmental professionals may "remain current" in their field of expertise by taking training and educational courses, attaining conferences and workshops or participating in any other activities that serve the purpose of keeping practitioners up to date on the latest developments and activities in the industry.

Commenter Organization Name: Leech Lake Ojibwe

Comment Number: 0125

Excerpt Number: 3

Excerpt Text:

Moreover, there is no mandate that an EP remain current in his or her field; rather, the rule imposes a much less rigorous standard by stating only that an EP "should" engage in such activities. To clarify this subsection, EPA should: (1) impose a limitation on the time period during which such experience must have been gained; and (2) mandate that EPs remain current in their field. These changes will ensure that EPs are competent, up-to-date in their education and training, and capable of effectively conducting AAIs.

Response:

The final rule retains the requirement that an environmental professional “should remain current in his or her field through participation in continuing education or other activities.” However, the final rule does not retain the requirement that environmental professionals “should be able to demonstrate such efforts.” The Agency has determined that the demonstration requirement is difficult to define and may place an undue burden on environmental professionals, particularly given that many training programs and conferences may not have an associated certificate or license. The marketplace and ultimately the courts can determine whether this criterion is sufficiently satisfied, should the credentials of an environmental professional be challenged or otherwise become an issue in regard to a property owner’s CERCLA liability status.

Commenter Organization Name: Myers, Steve

Comment Number: 0242

Excerpt Number: 3

Excerpt Text:

3 Steve Myers EP Definition 312.10(c)(3) What will count as continuing education or 'other activities'? How often or how many will be required? What type of documentation will be required to 'demonstrate such efforts'?

Response:

Please see response to comment number 0095, excerpt 4. The Agency expects practitioners to be abreast of the latest developments in the industry. To this end, practitioners should obtain continuing education. While the final rule does not set forth any specific hour requirements, individuals hiring firms or individuals to perform assessments may wish to inquire as to how the firm or individual is acquiring up to date knowledge about assessments. Further, in litigation, a court will ultimately decide if the environmental professional has fulfilled this requirement.

Commenter Organization Name: AIPG

Comment Number: 0253

Excerpt Number: 3

Excerpt Text:

AIPG also strongly recommends that an annual refresher course be required for the Environmental Professional. Other programs require annual refresher courses to remain current in their fields of practice such as the 8-hour OSHA classes and asbestos training. The proposed Rule only recommends continuing education and most state P.G. licenses don't require any. AIPG has instituted a program for continuing professional development for practitioners.

An annual refresher course would give other individuals who are grandfathered, but who are not CPGs or registered, an opportunity to learn some basic hydrogeology and geologic concepts to which they may not have been exposed previously.

Response:

Please see response to comment numbers 0095 (excerpt 4) and 0242 (excerpt 3).

Commenter Organization Name: Wallace, Ronald

Comment Number: 0254

Excerpt Number: 2

Excerpt Text:

I also strongly recommend that an annual refresher course be required for the Environmental Professional. Other programs require annual refresher courses to remain current in their fields of practice such as the 8-hour OSHA classes and asbestos training. The proposed Rule only suggests continuing education and most state P.G. licenses don't require any. AIPG is in the process of finalizing the requirement for continuing professional development hours for new CPGs and is in a position to help develop annual testing. The annual refresher course would also give those individuals who are "grandfathered" an opportunity to learn some basic hydrogeology and geologic concepts to which they may not have been exposed previously. This requirement will "raise the bar". Geologists who meet the CPG requirements will meet, and generally exceed, state P.G. requirements for education, experience, and continuing education.

Under these proposals the public will have a means to check on an individual to verify that they are a CPG and are current on educational requirements. Also included is a Code of Ethics which CPG's are required to adhere to as well as a procedure for filing complaints against CPG's. For non-CPG's who take the annual refresher course through AIPG, confirmation of their participation would also be available to the public.

Response:

Please see response to comment numbers 0095 (excerpt 4) and 0242 (excerpt 3).

Commenter Organization Name: Mille Lacs Ojibwe

Comment Number: 0330

Excerpt Number: 6

Excerpt Text:

The Band agrees with the proposed requirement that an Environmental Professional should remain current in his or her field through "continuing education or other activities." However, it is unclear what "other activities" refers to and what constitutes the ability to "demonstrate such efforts." Whether this means regularly updated certifications is unclear, but the Band supports an Environmental Professional staying current with the latest technologies, information, and practices in the field. In the situation where a tribe does license or certify an Environmental Professional, the Band recommends that the same and other similarly situated tribes be authorized to conduct continuing education seminars or classes that would "demonstrate such efforts."

Response:

Please see response to comment numbers 0095 (excerpt 4) and 0242 (excerpt 3).

Tribal continuing education seminars or classes would most likely satisfy the requirement.

Commenter Organization Name: FAA

Comment Number: 0334

Excerpt Number: 7

Excerpt Text:

3) What will count as continuing education or "other activities" as required by the third provision of the proposed EP definition? How often must an EP participate in this continuing education/other activities? What type(s) of documentation will EPA require to "demonstrate such efforts"?

Response:

Please see response to comment numbers 0095 (excerpt 4) and 0242 (excerpt 3).

Commenter Organization Name: Montana DEQ

Comment Number: 0335

Excerpt Number: 4

Excerpt Text:

Proposed Section 312.10(b)(3): Trainings and continuing education sessions are readily available for topics such as groundwater hydrology, environmental sampling, contaminant transport, and other related courses. However, there are not many trainings or continuing education sessions for environmental professionals to remain current in the field of AAI or environmental site assessments. Environmental professionals can stay current in their field but that may not mean they are specifically taking AAI or environmental site assessment courses. DEQ believes that EPA should clarify this section.

Response:

Please see response to comment numbers 0095 (excerpt 4) and 0242 (excerpt 3). The intent of the regulation is that environmental professionals remain current in the general field of environmental science, engineering and site assessments and not merely current on the specific all appropriate inquiries requirements.

Commenter Organization Name: Testa, Steve

Comment Number: PM-0359-0002

Excerpt Number: 2

Other Sections: MODIFIED - 2.1.8 - Comments on the proposed minimum requirements

Excerpt Text:

The second recommendation reflects on annual refresher courses or continuing education. AIPG also strongly recommends that an annual refresher course be required for the Environmental Professional. Other programs require annual refresher courses to remain

current in their fields of practice, such as the eight-hour OSHA classes and asbestos training. The proposed rule only recommends continuing education, and most state Professional Geologist licenses don't require any. AIPG has instituted a program for continuing professional development for practitioners.

Last, an annual refresher course would give other individuals who are grandfathered, but who are not CPGs or registered, an opportunity to learn more about basic hydrogeology and geologic concepts to which they may not have been exposed previously. Adding also to the importance of this issue is the proliferation of automated, Internet-based platforms for creating data summaries and maps of the subject area. These give the erroneous impression of thoroughness to the point of even showing groundwater flow direction and the relative elevation of surrounding sites that have the potential to impact the subject site. These presentations can be misleading and, if used by an unqualified Environmental Professional, may lead to serious oversights with significant consequences. The judgement of a qualified geologist, taking advantage of all available geologic and hydrogeologic information sources, is necessary for this purpose.

Response:

EPA thanks the commenter for the stated support of the provision. Please see response to comment numbers 0095 (excerpt 4) and 0242 (excerpt 3).

2.3 Suggestions for Additional Elements or Revisions of the Proposed Definition

Commenter Organization Name: Scalise, Frederick W, et al

Comment Number: 0105

Excerpt Number: 1

Excerpt Text:

We have reviewed the proposed "All Appropriate Inquiries" standards, and find no significant objections to them. All environmental assessments that we have completed in the past 12 years would generally meet or exceed the proposed specifications. We do offer the following comments and suggestions regarding some of the details of the proposed regulation.

Regarding:

§312.10 -

We believe the qualifications for an "Environmental Professional" should include:

(A) "Hold a current registration or certification accredited by the Council of Engineering and Scientific Specialty Boards that is recognized by a federal, state, tribal, or U.S. territory (or the Commonwealth of Puerto Rico) agency with jurisdiction over the location of the subject property in lieu of a license to conduct environmental inquiries as defined in §312.21, and have the equivalent of three (3) years of full-time relevant experience"

REASON: Many agencies have elected to recognize existing credentials rather than develop their own licensing programs.

(B) "Have an advanced (Masters or higher) degree from an accredited institution of higher education in a relevant discipline of engineering, environmental science, earth science, physical science, chemical science, or biological/health science and the equivalent of three (3) years of full-time relevant experience"

REASON: Environmental assessment and remediation has become an interdisciplinary endeavor, and persons with training in other sciences besides the engineering, earth, and environmental sciences are qualified to conduct environmental inquiries. Furthermore, a person with an advanced degree in a relevant science generally has as much training and overall qualification as a person holding a professional license or registration.

(C) "Have Baccalaureate degree from an accredited institution of higher education in a relevant discipline of engineering, environmental science, earth science, physical science, chemical science, or biological/health science and the equivalent of five (5) years of full-time relevant experience"

REASON: Environmental assessment and remediation has become an interdisciplinary

endeavor, and persons with training in other sciences besides the engineering, earth, and environmental sciences are qualified to conduct environmental inquiries.

Response:

EPA appreciates the commenter's suggestions. However, the commenter's suggested revisions to the definition of environmental professional are more stringent than the Agency has determined are necessary for the purposes of qualifying to oversee an all appropriate inquiries investigation. Particularly given that the scope of the all appropriate inquiries investigation is to investigate prior uses and ownerships of a property to determine the potential for environmental contamination. The final rule does not require sampling and analysis.

Please see also responses to comments 0072 (excerpt 2) and 0099 (excerpt 1).

Commenter Organization Name: SCBRG

Comment Number: 0321

Excerpt Number: 1

Excerpt Text:

The South Carolina Board of Registration for Geologists (SCBRG) wishes to comment on the above referenced proposed rule. Specifically, our comments concern the definition of environmental professional. In the proposed definition, the environmental professional is defined by a multi-tiered structure that first recognizes Professional Geologists (PG) and Professional Engineers (PE) and then proceeds downward to relevant experience and ends with a grandfather provision. The definition does have a disclaimer that states, "The definition of environmental professional provided above does not preempt state professional licensing or registration requirements such as those for a professional geologist, engineer, or site remediation professional". The SCBRG believes this definition is not definitive enough, provides opportunities for unqualified personnel to circumvent state laws, and could allow unqualified persons to conduct the practice of geology in South Carolina and possibly in other states that have professional registration requirements for geologists.

To strengthen the definition and to be protective of the health and safety of our citizens, SCBRG request that EPA redraft the definition for environmental professional to require such a person to be a registered professional in states that have professional registration laws. If the person will be conducting the practice of geology (which the completion of All Appropriate Inquiry for a Phase I ESA would require), then for states that require registration of geologists the environmental professional must be a registered professional geologist in that state. The same concept would apply for persons conducting engineering practices or other appropriate scientific investigations where licensing is appropriate. If the definition must have multiple tiers, then the first tier of the definition should require professional registration in states with state-regulated registration laws. The second tier would only apply for states without professional registration laws.

In the current proposed definition, EPA only acknowledges professional registration

without ensuring a person is truly qualified through professional registration. It places a burden on states with professional registration laws to seek out and take legal action against unqualified environmental professionals that are not registered professionals. However, with EPA's unequivocal recognition and requirement for professional registration in the states that have registration laws, the environmental professional could be considered qualified in his field. Professional registration's expressed purpose is to ensure a person is competent in his field through demonstrated academic achievements, relevant work experiences, and nationally based examination scores. Consequently, the most efficient method to ensure that environmental professionals are competent to complete the All Appropriate Inquiry process is through requiring professional registration in states with registration programs. This would prevent the creation of unnecessary loopholes for unqualified persons.

Response:

EPA disagrees with the commenter. The conduct of all appropriate inquiries may not necessarily require a person to practice geology. However, if a person should have to practice geology during the conduct of an all appropriate inquiries investigation, the final rule provides in § 312.10 (b)(4) the following provision: “The definition of environmental professional provided above does not preempt state professional licensing or registration requirements such as those for a professional geologist, engineer, or site remediation professional. Before commencing work, a person should determine the applicability of state professional licensing or registration laws to the activities to be undertaken as part of the inquiry identified in §312.21(b).” This portion of the final rule seems to adequately address your concern.

Commenter Organization Name: Jermakian, David

Comment Number: 0328

Excerpt Number: 1

Excerpt Text:

I suggest the following changes to the definition of Environmental Professional. Changes are underlined

-Environmental Professional means:

(a) a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases (per §312.1(c)) to the surface or subsurface of a property, sufficient to meet the objectives and performance factors in §§312.20(d) and (e).

(b) Such a person must:

(1) hold a current Professional Engineer's or Professional Geologist's license or registration from a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) or be individuals that are certified by a professional organization that is third party

accredited and have the equivalent of five (5) years of full-time relevant experience; or

(2) be licensed or certified by the federal government, a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) to perform environmental inquiries as defined in §312.21 and have the equivalent of five (5) years of full-time relevant experience; or

(3) have a Baccalaureate or higher degree from an accredited institution of higher education in a relevant discipline of engineering, environmental science, or earth science and the equivalent of ten (10) years of full-time relevant experience; or

(4) as of the date of the promulgation of this rule, have a the equivalent of fifteen (15) years of fulltime relevant experience.

(c) An environmental professional should remain current in his or her field through participation in continuing education or other activities and should be able to demonstrate such efforts.

(d) The definition of environmental professional provided above does not preempt state professional licensing or registration requirements such as those for a professional geologist, engineer, or site remediation professional. Before commencing work, a person should determine the applicability of state professional licensing or registration laws to the activities to be undertaken as part of the inquiry identified in §312.21(b).

(e) A person who does not qualify as an environmental professional under the foregoing definition may assist in the conduct of all appropriate inquiries in accordance with this part if such person is under the supervision or responsible charge of a person meeting the definition of an environmental professional provided above.

Response:

Please see responses to comment numbers 0072 (excerpt 2) and 0142 (excerpt 1).

Commenter Organization Name: ID Board of Reg. for Prof. Geologists

Comment Number: 0421

Excerpt Number: 1

Excerpt Text:

The Board strongly concurs in Section 312.10(b)(4) of the proposed rule, which states:

"The definition of environmental professional provided above does not preempt state professional licensing or regulation requirements such as those for a professional geologists, engineer, or site remediation professional. Before commencing work (emphasis added), a person should determine the applicability of state professional licensing or registration laws to the activities to be undertaken as part of the inquiry identified in Section 312.21(b)."

The State of Idaho requires licensure for the professional practice of geology. It is

inappropriate, and possibly illegal, for the proposed "environmental professionals" to engage in the practice of geology in the environmental characterization and remediation of Brownfields sites.

Any and all proposed "grandfathering" clauses as stated in the proposed rulemaking change should be removed. Any references to unlicensed individuals being qualified by the federal Government to perform this type of work should also be stricken. Professional licensure is the only mechanism allowed by law in Idaho for this type of activity.

Response:

Please see responses to comment numbers 0321 (excerpt 1), 0072 (excerpt 2) and 0142 (excerpt 1).

Commenter Organization Name: Vanderweide, Joe

Comment Number: 0455

Excerpt Number: 1

Excerpt Text:

The Kansas Board strongly concurs in Section 312.10(b)(4) of the proposed rule which states:

"The definition of environmental professional provided above does not preempt state professional licensing or registration requirements such as those for a professional geologist, engineer, or site remediation professional. Before commencing work (emphasis added), a person should determine the applicability of state professional licensing or registration laws to the activities to be undertaken as part of the inquiry identified in Section 3 12.21(b)."

The State of Kansas requires licensure for the professional practice of engineering and geology. It is inappropriate, and possibly illegal for the proposed "environmental professionals" to engage in the practice of engineering or geology in the environmental characterization and remediation of Brownfields sites, as well as any other investigations, studies and/or reports that require these professional activities.

Any and all proposed "grandfathering" clauses that allow conducting engineering or geologic activities within the State of Kansas, without a Kansas State License, as stated in the proposed rulemaking change should be removed. Any references to unlicensed individuals being qualified by the federal Government to perform this type of work should also be stricken. Professional licensure is the only mechanism allowed by law in Kansas for these professional activities.

Response:

Please see responses to comment numbers 0072 (excerpt 2) and 0142 (excerpt 1).

2.3.1 Professional Engineer Certification and Professional Geologist Certification Do Not Ensure High Level of Professional Ability

Commenter Organization Name: None

Comment Number: 0040

Excerpt Number: 1

Excerpt Text:

There are thousands of qualified environmental professionals who do not carry the P.E. or P.G. designation. Conversely the majority of P.E.s and P.G.s are not qualified and experienced to perform environmental assessments. This distinction should be analyzed and reevaluated to include the largest sector of real environmental professionals.

Response:

Please see response to comment number 0336, excerpt 1.

Note that experience requirements accompany each of the qualification paths within the definition of environmental professional. The Agency agrees that simply being educated in a certain field is not adequate and that there must be “full-time” and “relevant” work experience in any circumstance to ensure that an individual qualifies as an environmental professional.

Commenter Organization Name: Hodgson, R S

Comment Number: 0075

Excerpt Number: 1

Excerpt Text:

it needs to be emphasized that the Registered Professional Engineer and/or Registered Professional Geologist must have both training and experience to make the required judgments or they would be practicing outside their area of expertise. To assure this, a peer review should be included in the process. The process should also encourage any questions over training and experience to be brought before the appropriate state registration board.

Response:

The definition of environmental professional in the final rule requires that individuals who are licensed Professional Engineers or Professional Geologists must also have three years of full-time relevant experience. State licensing and registration boards may always be consulted regarding the qualifications of individuals licensed or registered by the state. There is no reason to include such a requirement in the final rule. The final rule requires that the written report of findings be signed by an individual who meets the definition of environmental professional and that the signature block include a statement indicating that the person signing the report meets the qualifications within the definition of environmental professional. EPA has determined that there is no need for a individual’s qualifications to be peer reviewed.

Please also see response to comment number 0336, excerpt 1.

Commenter Organization Name: Martinez, Hugo

Comment Number: 0077

Excerpt Number: 1

Excerpt Text:

In your section entitled : "2. What Are the Minimum Qualifications for Meeting the Definition of an Environmental Professional?" you mention Professional Engineers. Professional Engineers are licensed for specific practice areas. One area is Environmental Engineering. Without specifying which area of expertise is considered pertinent by EPA, it is unclear whether engineers from other areas of expertise qualify as "meeting the definition of an environmental professional". I submit that Licensed Environmental Professional Engineers are qualified Environmental Professionals. The Licensing Boards typically disallows the exercise of engineering responsibilities outside the licensed area, as defined at the time of taking the licensing exam.

Response:

Although the final rule recognizes tribal and state-licensed P.E. and P.G.s and other such government licensed environmental professionals with three years of full-time relevant experience to be environmental professionals, the rule does not restrict the definition of an environmental professional to these licensed individuals. The definition of an environmental professional also includes individuals who hold a Baccalaureate or higher degree from an accredited institution of higher education in engineering or science and have the equivalent of five (5) years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries. In addition, individuals with ten years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries qualify as environmental professionals for the purpose of conducting all appropriate inquiries. Individuals with these qualifications most likely will possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases to the surface or subsurface of a property, sufficient to meet the objectives and performance factors included in §312.20(e) and (f).

In addition to the qualifications for environmental professionals mentioned above, EPA is retaining the proposed provision to include within the definition of an environmental professional individuals who are licensed to perform environmental site assessments or all appropriate inquiries by the Federal government (*e.g.*, the Bureau of Indian Affairs) or under a state or tribal certification program (*e.g.*, a state Licensed Site Professional program), provided that these individuals also have three years of full-time relevant experience. We contend that individuals licensed by state and tribal governments, or by any department or agency within the federal government, to perform all appropriate inquiries or environmental site assessments, should be allowed to qualify as an environmental professional under today's regulation. State and tribal agencies may best determine the qualifications defining individuals who "possess sufficient specific education, training, and experience necessary to exercise professional judgment to

develop opinions and conclusions regarding the presence of releases or threatened releases...to the surface or subsurface of a property, sufficient to meet the rule's objectives and performance factors" within any particular state or tribal jurisdiction.

Based upon the input received from the public commenters, EPA determined that the definition of environmental professional included in today's final rule establishes a balance between the merits of setting a high standard of excellence for the conduct of all appropriate inquiries through the establishment of stringent qualifications for environmental professionals and the need to ensure that experienced and highly competent individuals currently conducting all appropriate inquiries are not displaced.

Commenter Organization Name: Lind, Peter

Comment Number: 0107

Excerpt Number: 1

Other Sections: NEW - 2.1.2 - Revise the license requirement to include licensed or certified professionals other than professional engineers and professional geologists

Excerpt Text:

The present definition for "environmental professional" in the PROPOSED REGULATION is too restrictive by omitting the words, "licensed architects" and "architectural accredited institutions". Similar to licensed engineers and licensed geologists, licensed architects are design professionals.

To simply allow the grandfathering of, for example; a licensed "electrical engineer" to conduct surface and subsurface investigations because the "engineer" is licensed and has had three years of AAI relevant experience is NOT fair to a licensed architect having similar AAI relevant environmental experience. Nor is it appropriate for the client and general public to feel safe that a licensed geologist is absolutely qualified to sign-off on an environmental site assessment of a "facility" or "building structure" on the subject site. Think about it, a licensed architect having specialized environmental training may be better qualified in ESA matters concerning facility, function and their processes that may, or may not, have contaminated site surface or subsurface, yet is not expressly "qualified" under any of the four proposed qualifications by the exclusion of these terms, including the grandfather provisions.

Response:

Please see responses to comments 0072 (excerpt 2) and 0099 (excerpt 1).

Note that architects can become environmental professionals as defined in this rule either by possessing a Baccalaureate or higher degree from an accredited institution of higher education in a discipline of engineering or science and the equivalent of five (5) years of full-time relevant experience; or have the equivalent of ten (10) years of full-time relevant experience.

Commenter Organization Name: Froehlich, R.A.

Comment Number: 0119

Excerpt Number: 1

Other Sections: NEW - 2.3.3 - Adopt the definition of EP as specified in the ASTM standard

Excerpt Text:

If the objective of this change in rules is to ensure that all appropriate inquiry is performed by a qualified environmental professional, the qualifications should mirror the qualifications of environmental professionals as included in the current ASTM Standard on credentials for environmental professionals. Merely licensing as a P. E. or P. G. does not ensure the highest levels of professionalism in environmental professionals. Independent credentialing by an organization that meets the requirements of the ASTM standard which is supported by the environmental professional associations is the best way to ensure that all appropriate inquiry is made by well-qualified environmental professionals. I strongly recommend that environmental professionals should be certified as a Qualified Environmental Professional by the Institute for Professional Environmental Practice. The IPEP certification program, one of the ASTM compliant certification programs, since it is supported by the Air & Waste Management Association, the Water Environment Federation, the National Association of Environmental Managers, the American Industrial Hygiene Association, the Solid Waste Association of North America, the American Association of Environmental Engineers, and several other environmental professional organizations. All of these professional organizations existed well before the certification issues arose, and each of the sponsoring organizations supports the QEP certification as the only environmental professional certification.

Response:

EPA is not recognizing in the regulatory language of the final rule private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards.

Given the performance-based qualifications provided in the final definition for an environmental professional, such an approach is not necessary. Therefore, there is no need to reference or depend upon an independent standard such as the ASTM E1929 standard that assesses professional certification standards. The final rule does not recognize, or reference, any private organization's certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in today's final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Commenter Organization Name: Schafer, Marc

Comment Number: 0188

Excerpt Number: 1

Other Sections: NEW - 2.1.3 - Revise the rule to exclude the license requirement from the definition of the EP

Excerpt Text:

The Minimum Qualifications for those conducting the All Appropriate Inquiry work which specifically states that a Professional Geologist of a Professional Engineer is acceptable is objectionable for the following reasons: 1.) A Professional Engineer (PE) and Professional Geologist (PG) receive no additional experience as compared to an engineer with a Baccalaureate degree over a three year period when both groups work in environmental investigations. Those successfully receiving PE or PG status will not have garnished additional experience in their studies relative to environmental releases or the causes of such releases by virtue of studying for the PE and PG exams. The additional requirement of two years to be placed on the Baccalaureate is therefore arbitrary. 2.) By specifically labeling that a Professional Engineer (PE) and Professional Geologist (PG) may conduct the All Appropriate Inquiry work, it appears that these titles are a preferred class and therefore more desirable. This causes confusion with the user where they must compare various categories. It would be easier for the user to eliminate the PE and PG titles and use only the experience and educational qualifications.

Response:

EPA is retaining the proposed provision to include within the definition of an environmental professional individuals who are licensed to perform environmental site assessments or all appropriate inquiries by the Federal government (*e.g.*, the Bureau of Indian Affairs) or under a state or tribal certification program, provided that these individuals also have three years of full-time relevant experience. We contend that individuals licensed by state and tribal governments, or by any department or agency within the federal government, to perform all appropriate inquiries or environmental site assessments, should be allowed to qualify as an environmental professional under today's regulation. State and tribal agencies may best determine the qualifications defining individuals who "possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases...to the surface or subsurface of a property, sufficient to meet the rule's objectives and performance factors" within any particular state or tribal jurisdiction.

The Agency believes that being a licensed professional engineer or a licensed professional geologist is beneficial in carrying out site assessments. However, this licensing alone is not adequate. This rule also requires three years of experience for such individuals. In some instances, state requirements for obtaining a P.E. or P.G. license, which often include that an individual have a certain number of years experience after obtaining a college degree, may create a situation where individuals applying for such licenses must have more years of relevant experience to become an environmental professional than an individual who has an engineering or geology degree and is required by the final rule to have five years of full time relevant experience to qualify as an environmental professional. Regardless, both sets of individuals may qualify as environmental professionals.

Commenter Organization Name: Outsource Environmental Company

Comment Number: 0211

Excerpt Number: 2

Excerpt Text:

In our experience, many P.E.'s and P.G.'s, for example, may have 5 years generally related experience, but do not possess much (or any) of these specific relevant experiences in their backgrounds.

Response:

Please see responses to comment numbers 0040 (excerpt 1) and 0336 (excerpt 1).

Commenter Organization Name: Appraisal Institute

Comment Number: 0212

Excerpt Number: 5

Excerpt Text:

The EPA has proposed that a "certified engineer" be placed above all other professional qualifications in the signing off on All Appropriate Inquiry investigations. While current regulations state what one must do to conduct such an inquiry, the proposed rule would change this to state who that person should be.

We do not believe engineers should be given special status in the environmental assessment industry as that designation does necessarily bring with it the needed skill set to protect the public health.

Response:

Please see responses to comment numbers 0040 (excerpt 1) and 0336 (excerpt 1).

Commenter Organization Name: Gray, Cynthia

Comment Number: 0215

Excerpt Number: 1

Excerpt Text:

I think it is appropriate to require some level of competency and qualifications for environmental professionals conducting environmental site assessments, and managing Brownfields and similar EPA or other State regulated projects. The historic lack of certification/qualification has led to occasional substandard work in the area of environmental compliance and remediation.

However, it appears the main rationale behind limiting the registration/qualification to Registered Professional Engineers and Registered Professional Geologists is to ensure ethical behavior in addition to competency. If ethical concerns are the main reason EPA has accepted the American Society of Civil Engineers' arguments in favor of this limitation, I would challenge the assertion that P.E.s and P.G.s are more ethical than

others professionals with credentials that demonstrate competency. The Institute of Hazardous Materials Management and the Academy of Certified Hazardous Materials Managers insist upon the adherence to equally stringent ethical standards by their diplomates and membership.

Response:

Please see responses to comment numbers 0040 (excerpt 1) and 0336 (excerpt 1).

Commenter Organization Name: Stevens, Scott

Comment Number: 0225

Excerpt Number: 2

Other Sections: NEW - 2.1.8.3 - The proposed minimum requirements will have a negative impact on the ESA industry, small businesses, and the real estate market

Excerpt Text:

First, under the proposed rule, an engineer with no environmental training at all can be made responsible for assessing land with significant environmental contamination. "All appropriate inquiries" require data collection and visual inspection. Such duties do not translate into the professional certification of "engineer." Placing someone in charge of evaluating environmental liabilities with no formal environmental training is a risk to the public health.

Response:

Please see responses to comment numbers 0040 (excerpt 1) and 0336 (excerpt 1).

Commenter Organization Name: Stevens, Scott

Comment Number: 0225

Excerpt Number: 4

Other Sections: NEW - 2.1.2 - Revise the license requirement to include licensed or certified professionals other than professional engineers and professional geologists

Excerpt Text:

It is important that professional designations for conducting inquiries be placed on the same level. Engineers should not be given special status in this industry as that designation does automatically bring with it the needed skill set to protect the public health. Instead, place all professional designations on the same level and make level of experience the deciding factor.

Response:

Please see responses to comment numbers 0040 (excerpt 1) and 0336 (excerpt 1).

Commenter Organization Name: Young, Richard

Comment Number: 0243

Excerpt Number: 1

Excerpt Text:

-Preferential Recognition. The proposed definition of an Environmental Professional includes individuals who possess the following combinations of education and experience:

As of the date of promulgation of the final rule, a person with a Baccalaureate or higher degree in Environmental Science or Earth Science from an accredited institution of higher education is required to have more full-time relevant work experience than a person with a Professional Engineers license or a Professional Geologist license with no prior environmental experience, thus granting preferential recognition over those with environmental education and experience.

Response:

Please see response to comment number 0336, excerpt 1. Individuals licensed as P.E.s or P.G.s are restricted to practicing only in their field of expertise. To obtain such a license, most states require that individuals have accumulated three or more years of experience in their field. Therefore, the Agency has determined that P.E.s and P.G.s with three years of full-time relevant experience (as defined in the final rule) are sufficiently qualified to oversee the conduct of all appropriate inquiries investigations.

Commenter Organization Name: Young, Richard

Comment Number: 0243

Excerpt Number: 4 and 6

Excerpt Text:

The EPA has proposed that a professional engineer be placed above all environmental and other professional qualifications in the signing-off on all appropriate inquiry investigations. Other instances of this profession acceptance proposal have been found in other laws. Current Federal regulations only state what one must do to conduct such an inquiry. Such an unwarranted elevation of professional roles by one government agency endangers the public well-being, hurts small businesses created around current environmental regulations, and could slow down home building - one of the primary engines of our economy.

First, under the proposed rule, an engineer with no environmental training at all can be made responsible for assessing land with significant environmental contamination. Prior to acceptance of one profession as an environmental standard, EPA should define the criteria of what an environmental professional is include specific educational requirements and skill sets. "All appropriate inquiries" require data collection and visual inspection. Such duties do not translate into the professional certification of "engineer." Placing someone in charge of evaluating environmental liabilities with no formal environmental training is a risk to the public health.

Fifthly, it is important to note that EPA's charter is to protect the environment and not endorse any one profession. Prior to enacting any environmental regulation with specific language about any profession, EPA needs to validate that they are empowered/chartered

with such a task. It is important that all environmental professional designations for conducting inquiries be placed on the same level. Engineers should not be given special status in this industry as that designation does automatically bring with it the needed skill set to protect the public health. Instead, place all professional designations on the same level and make level of experience the deciding factor.

Response:

Please see response to comment numbers 0040 (excerpt 1) and 0336 (excerpt 1). Further, note that the final rule states, “*Environmental Professional* means: (1) a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases (per §312.1(c)) to the surface or subsurface of a property, sufficient to meet the objectives and performance factors in §312.20(e) and (f).” This definition requires that any individual conducting an all appropriate inquiry assessment must meet these minimum requirements as well as meet the education and experience requirements. No class of individuals receives special treatment in this regard.

Commenter Organization Name: IPEP

Comment Number: 0266

Excerpt Number: 4

Excerpt Text:

Thus, merely having a state or territorial license to practice a profession, such as engineering or geology, does not necessarily denote that an individual has the requisite qualifications and experience to conduct, coordinate, and oversee the gathering and evaluation of information required to fulfill the AAI requirements. Environmental Professionals engaged in AAI must be able to address the wide range of issues and property conditions that may be encountered at such sites, especially those that have been filled with anthropogenic materials and/or have been used for extended periods and multiple industrial purposes that may have involved the use, storage, manufacture, and/or disposal of hazardous substances (as defined under CERCLA and the Toxic Substances Control Act [TSCA]) or hazardous waste (as defined under RCRA).

Of particular concern are properties where underground structures (e.g., utilities, storage tanks, process vessels, conveyance systems, surface impoundments, drying beds, lagoons, French drains, cesspools, burn pits, landfills) may have existed and been used for the storage, conveyance, processing, and/or disposition and management of hazardous materials or hazardous wastes, including fire response training, dewatering of process residuals, or other past practices that could have released hazardous constituents into the environment intentionally or unintentionally or in an uncontrolled manner.

In the case of abandoned or razed sites, where records are limited or non-existent, it is particularly important for the Environmental Professional to be knowledgeable and highly competent regarding a broad spectrum of industrial activities and the typical hazardous materials used in such activities over the relevant operational life of such a facility, many of which date to the early 20th century before the modern era of

environmental management which began in the late 1960s and 1970s. To conduct AAI, the Environmental Professional should not only be proficient and have a working knowledge of hazardous substances under CERCLA and TSCA, and hazardous wastes under RCRA, but also have a working knowledge of analytical chemistry sufficient to identify and characterize such substances in the various media of concern that may be encountered at a facility, including soils, surface water, ground water, indoor air, and the ambient atmosphere.

In this regard, only a limited number of the approximately 18 professional engineering examination disciplines deal with the subjects essential to performing environmental site assessments or conducting All Appropriate Inquiries. As examples, agricultural, civil, environmental, and chemical engineering examinations address various aspects of environmental management, whereas electrical and computer engineering, metallurgical engineering, and structural engineering professionals likely do not have adequate training and experience to address environmental matters related to the use and management of hazardous substances and hazardous wastes in commerce or industry. Furthermore, only a small percentage of the licensed professional engineers in the U.S. practice in the field of environmental engineering.

Similarly, registered professional geologists are required only to meet the minimum acceptable criteria to become licensed, and only a small percentage of those who achieve licensure practice or become familiar with the subjects and issues of importance in which a highly competent or expert environmental professional needs to be proficient in order to perform AAI activities. For example, geologists who practice remedial investigation and remediation are likely to have substantial knowledge and expertise in the use and possible release of hazardous substances and/or hazardous wastes into the subterranean environment on properties used for commercial or industrial purposes, whereas a geologist who is engaged in mining exploration or water supplies development is not likely to have such expertise.

Additionally, because the legal definition of "engineering" varies from one state/jurisdiction to another, and because some states have or are creating other professional licensing or registration requirements for other disciplines (including geologists), IPEP believes that the above suggested insert is the best way to address the concern for relevant experience and a high degree of competency. As errors of omissions in the performance of environmental site assessments or All Appropriate Inquiries can result in serious adverse consequences to public health or the environment, it is essential that such activities be performed not just by junior level professionals meeting the minimum criteria for licensure or certification, but under the direction of an experienced environmental professional of demonstrated competence.

Likewise, the conduct of All Appropriate Inquiries, should be performed under the direction of and be reviewed and certified by those with qualifications and experience in multimedia environmental management. A major distinction of the QEP credential from all other environmental professional credentials is the requirement that QEPs exhibit comprehension and technical capability to assess multi-media environmental impacts in

their professional practice, and they are specifically subjected to examination on this concept.

There is a further concern regarding the designation of professional geologists to perform AAIs. For most real property AAIs the quality of underlying ground water is an item of concern. For some properties this portion of the AAI is so important, it should be performed under the direction of a licensed/registered or certified professional with qualifications and experience in hydrogeology, hydrology, and environmental chemistry. This is an area of paramount importance to not only owners/operators or prospective owners of the real property of interest, but also adjacent property owners, nearby water supply owners/operators, and the local or state health authorities responsible for drinking water quality in the nearby community. Thus, it is important that one of the persons on a team responsible for performing AAI on a property where groundwater quality is suspect, or vital to the transaction, have a working knowledge of hydrogeology, hydrology, and environmental chemistry, or engage the services of an individual who is qualified and experienced, and licensed and/or certified in these practice areas.

It should be noted that few, if any, registered professional engineers have demonstrated proficiency in these areas unless they have extensive experience in AAIs, ESAs, or site remedial investigation and remedial action implementation. In contrast, only a small percentage of professional geologists have expertise in current and past practices involving the use and/or disposition of hazardous substances and/or hazardous wastes. This again illustrates the need to fit the licensure or certification criteria to the qualifications and experience of the individual and not the name of the license/registration or certification specialty. It is also noteworthy that approximately 31 states have established a form of Registration/Certification Boards for Geologists (see Appendix B).

Accordingly, IPEP recommends that ASTM 1929-98 be identified in the final rule as the appropriate standard to use for designation of an Environmental Professional.

Response:

EPA is retaining the proposed provision to include within the definition of an environmental professional individuals who are licensed to perform environmental site assessments or all appropriate inquiries by the Federal government (*e.g.*, the Bureau of Indian Affairs) or under a state or tribal certification program, provided that these individuals also have three years of full-time relevant experience. We contend that individuals licensed by state and tribal governments, or by any department or agency within the federal government, to perform all appropriate inquiries or environmental site assessments, should be allowed to qualify as an environmental professional under today's regulation. State and tribal agencies may best determine the qualifications defining individuals who "possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases...to the surface or subsurface of a property, sufficient to meet the rule's objectives and performance factors" within any particular state or tribal jurisdiction.

The Agency believes that being a licensed professional engineer or a licensed professional geologist is beneficial in carrying out site assessments. However, this licensing alone is not adequate. This rule also requires three years of experience for such individuals. In some instances, state requirements for obtaining a P.E. or P.G. license, which often include that an individual have a certain number of years experience after obtaining a college degree, may create a situation where individuals applying for such licenses must have more years of relevant experience to become an environmental professional than an individual who has an engineering or geology degree and is required by the final rule to have five years of full time relevant experience to qualify as an environmental professional. Regardless, both sets of individuals may qualify as environmental professionals.

Individuals licensed as P.E.s or P.G.s are restricted to practicing only in their field of expertise. To obtain such a license, most states require that individuals have accumulated three or more years of experience in their field. Therefore, the Agency has determined that P.E.s and P.G.s with three years of full-time relevant experience (as defined in the final rule) are sufficiently qualified to oversee the conduct of all appropriate inquiry investigations.

Further, note that the final rule states, “*Environmental Professional* means: (1) a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases (per §312.1(c)) to the surface or subsurface of a property, sufficient to meet the objectives and performance factors in §312.20(e) and (f).” This definition requires that any individual conducting an all appropriate inquiry assessment must meet these minimum requirements as well as meet the education and experience requirements. No class of individuals receives special treatment in this regard.

EPA is not recognizing in the regulatory language of the final rule private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards.

Given the performance-based qualifications provided in the final definition for an environmental professional, such an approach is not necessary. Therefore, there is no need to reference or depend upon an independent standard such as the ASTM E1929 standard that assesses professional certification standards. The final rule does not recognize, or reference, any private organization’s certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization’s certification qualifications include the same or more stringent education and experience requirements as those included in today’s final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Commenter Organization Name: IPEP

Comment Number: 0266

Excerpt Number: 5

Excerpt Text:

Conducting and Overseeing an AAI Is Not An "Engineering" Task

The conduct of an AAI is not in and of itself an engineering task or require engineering expertise, and should not be the exclusive purview of registered professional engineers, even if such authority were to be limited to those professional engineers who have qualifications and experience and have demonstrated competence in performing such activities. If the findings of an AAI indicate that additional investigation and/or remediation is likely to be needed on the property of interest or adjacent properties, the evaluation of appropriate investigative efforts and costs may require the expertise of an appropriately qualified and experienced licensed engineer at some point in the subsequent efforts that follow issuance of an AAI or ESA report to the authorizing party. However, such follow-up efforts are beyond the scope of the proposed regulation.

Response:

Please see responses to comment numbers 0040 (excerpt 1) and 0336 (excerpt 1).

Commenter Organization Name: ABCEP

Comment Number: 0271

Excerpt Number: 1

Excerpt Text:

Our Comments on the Environmental. Professional (EP) definition ^pertain to recognizing and including persons of the*appropriate and relevant backgrounds to conduct the relevant environmental inquiries. While the "Environmental Professional" definition intends to insure that persons responsible for determining past and present conditions affecting human health and the environment need an appropriate level of background and experience, the proposed regulation misses this goal by recognizing professional licenses that may or may not certify that the person has the skills necessary to access the complex variables needed for the investigation of a site in question. For example, a Professional Engineer (PE) could have all of his professional and educational background in electrical, structural, or systems engineering, and realistically lack the background to recognize biological effects. Recognizing that someone has a PE or Professional Geologist license does not ensure that they have an adequate environmental background. The same can be said for state environmental licenses. For both environmental and engineering licenses, each state has their own exams and their own standards. Some states require that skills and educations be kept current, and many do not. Under your EP definition, a PE with a background in electrical engineering who received his license 30 years ago, and may have worked in his field for 3 years, at the beginning of his career, would be qualified to conduct inquires under CERCLA. Realistically, this may meet the letter of the law, but is unrealistic in what the Agency is trying to achieve.

Response:

Although the final rule recognizes tribal and state-licensed P.E. and P.G.s and other such government licensed environmental professionals with three years of experience to be environmental professionals, the rule does not restrict the definition of an environmental professional to these licensed individuals. The definition of an environmental professional also includes individuals who hold a Baccalaureate or higher degree from an accredited institution of higher education in engineering or science and have the equivalent of five (5) years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries. In addition, individuals with ten years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries qualify as environmental professionals for the purpose of conducting all appropriate inquiries. Individuals with these qualifications most likely will possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases to the surface or subsurface of a property, sufficient to meet the objectives and performance factors included in §312.20(e) and (f).

Individuals licensed as P.E.s or P.G.s are restricted to practicing only in their field of expertise. To obtain such a license, most states require that individuals have accumulated three or more years of experience in their field. Therefore, the Agency has determined that P.E.s and P.G.s with three years of full-time relevant experience (as defined in the final rule) are sufficiently qualified to oversee the conduct of all appropriate inquiries investigations.

Further, note that the final rule states, “*Environmental Professional* means: (1) a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases (per §312.1(c)) to the surface or subsurface of a property, sufficient to meet the objectives and performance factors in §312.20(e) and (f).” This definition requires that any individual conducting an all appropriate inquiry assessment must meet these minimum requirements as well as meet the education and experience requirements. No class of individuals receives special treatment in this regard. The final rule also requires that all environmental professionals remain current in their field.

Commenter Organization Name: ENSR International

Comment Number: 0314

Excerpt Number: 6

Other Sections: NEW - 2.1.4 - Revise educational requirements to allow individuals with Baccalaureate or higher degrees in areas other than engineering, environmental science, and earth science and five or more years of relevant experience to qualify as EPs

Excerpt Text:

The EP is defined in § 312.10 (b)(1) and (2). Essentially, the qualifications involve either

holding a PE or PG certification and three years of full time relevant experience; or holding a Baccalaureate or higher degree in the relevant disciplines of engineering, environmental science, or earth science plus five years of full time relevant experience.

Comment: We disagree with the minimum qualifications for an EP. The current language is far too restrictive. Having the specified professional certifications or degrees has no relevance, in our professional opinion. In our more than 20 years of experience in performing Phase I investigations, we have seen no correlation between certifications or degree fields and the competent undertaking of a site investigation. There is an important thought process that is necessary in order to complete a quality Phase I investigation. In part, it requires knowledge about commercial and industrial processes and activities, including by-products. But it also requires an ability to comb through municipal records, historical sources, and other reference material in an effort to put together an historical use puzzle. PE certifications or degrees in engineering or specific sciences have little bearing on the ability of the professional to appropriately conduct such research. We strongly recommend broadening the criteria to a single one (beyond the grandfathering threshold) involving a Baccalaureate or higher degree from an accredited institution and three years of relevant full-time experience.

Response:

Please see response to comment number 0072, excerpt 2.

Individuals licensed as P.E.s or P.G.s are restricted to practicing only in their field of expertise. To obtain such a license, most states require that individuals have accumulated three or more years of experience in their field. Therefore, the Agency has determined that P.E.s and P.G.s with three years of full-time relevant experience (as defined in the final rule) are sufficiently qualified to oversee the conduct of all appropriate inquiries investigations.

Further, note that the final rule states, “*Environmental Professional* means: (1) a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases (per §312.1(c)) to the surface or subsurface of a property, sufficient to meet the objectives and performance factors in §312.20(e) and (f).” This definition requires that any individual conducting an all appropriate inquiry assessment must meet these minimum requirements as well as meet the education and experience requirements. No class of individuals receives special treatment in this regard. The final rule also requires that all environmental professionals remain current in their field.

Commenter Organization Name: Anonymous

Comment Number: 0326

Excerpt Number: 2

Excerpt Text:

The EPA/NRMC must reconsider this definition. The definition should only include two

criteria: Relevant experience and Applicable Certification. Experience, regardless of secondary education, must be the primary criteria. The years required may be adjusted based on "applicable" education or licence but experience must be the focus. Applicable Certification should not, and does not, necessarily mean a PE or PG. In fact, neither a PE or PG examination (in almost all cases) includes significant testing on applicable AAI areas. In the area of AAI the Certified Hazardous Materials Manager, beyond doubt, provides for a much more complete examination and proof of experience than either a PE or PG. It is agreed that no licence/certification encompasses all the experience needed for AAI work, and hence they must be tied to experience but to give weight to a PE and PG and not to a CHMM and/or other certifications, is entirely inappropriate.

Response:

Please see responses to comment numbers 0072 (excerpt 2) and 0336 (excerpt 1).

Individuals licensed as P.E.s or P.G.s are restricted to practicing only in their field of expertise. To obtain such a license, most states require that individuals have accumulated three or more years of experience in their field. Therefore, the Agency has determined that P.E.s and P.G.s with three years of full-time relevant experience (as defined in the final rule) are sufficiently qualified to oversee the conduct of all appropriate inquiries investigations.

Further, note that the final rule states, "*Environmental Professional* means: (1) a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases (per §312.1(c)) to the surface or subsurface of a property, sufficient to meet the objectives and performance factors in §312.20(e) and (f)." This definition requires that any individual conducting an all appropriate inquiry assessment must meet these minimum requirements as well as meet the education and experience requirements. No class of individuals receives special treatment in this regard. The final rule also requires that all environmental professionals remain current in their field.

Commenter Organization Name: FAA

Comment Number: 0334

Excerpt Number: 6

Other Sections: NEW - 2.1.4 - Revise educational requirements to allow individuals with Baccalaureate or higher degrees in areas other than engineering, environmental science, and earth science and five or more years of relevant experience to qualify as EPs

Excerpt Text:

2) FAA believes that the qualifications for an EP should also include those with a Bachelor's (BA or BS) in chemistry, physics, and/or the life sciences plus years of relevant experience. Limiting the title to just engineers, geologists, and people with earth and environmental science degrees arbitrarily punishes those who entered the business prior to most schools establishing environmental science programs but who do not yet

have the requisite 10 years of experience before the publication of the final rule. Also, there is no reason to assume that someone with a professional engineer's (PE) or professional geologist's (PG) certification will better understand and judge a property's likelihood of contamination after three years of relevant experience than someone with a BS in a relevant degree and five years of experience. Therefore, FAA believes that it is arbitrary and capricious to require those with a BS to have two extra years of relevant experience than a PE or PG must have in order to qualify as an EP.

Response:

Please see response to comment number 0099, excerpt 1.

Individuals licensed as P.E.s or P.G.s are restricted to practicing only in their field of expertise. To obtain such a license, most states require that individuals have accumulated three or more years of experience in their field. Therefore, the Agency has determined that P.E.s and P.G.s with three years of full-time relevant experience (as defined in the final rule) are sufficiently qualified to oversee the conduct of all appropriate inquiries investigations.

Further, note that the final rule states, “*Environmental Professional* means: (1) a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases (per §312.1(c)) to the surface or subsurface of a property, sufficient to meet the objectives and performance factors in §312.20(e) and (f).” This definition requires that any individual conducting an all appropriate inquiry assessment must meet these minimum requirements as well as meet the education and experience requirements. No class of individuals receives special treatment in this regard. The final rule also requires that all environmental professionals remain current in their field.

Commenter Organization Name: McKerr, Thomas

Comment Number: 0347

Excerpt Number: 3

Excerpt Text:

Section III, D Qualifications. I recognize the contentiousness of this section but it does not appear that the regulatory development process recognized that AAI can include multi-levels of investigations, e.g., Phase I, II, Expanded Phase II. A Phase I is largely an historical document, not engineering or geological study. In addition to performing Phase Is for close to 20 years I have and continue to review other third party Phase I documents. No question that there are many reports that are total frauds, but of the four absolutely worst reports I have ever reviewed, two were by PEs and one was by a PG (the fourth was by a person that clearly had a conflict of interest). My point is that very little in the training of a PE or PG better qualifies that category to be better Phase I producers. A critical aspect of Phase Is is how they express their findings. Neither of these skills is commonly emphasized in the education of PEs or PGs.

Response:

Please see responses to comment numbers 0072 (excerpt 2) and 0336 (excerpt 1).

Individuals licensed as P.E.s or P.G.s are restricted to practicing only in their field of expertise. To obtain such a license, most states require that individuals have accumulated three or more years of experience in their field. Therefore, the Agency has determined that P.E.s and P.G.s with three years of full-time relevant experience (as defined in the final rule) are sufficiently qualified to oversee the conduct of all appropriate inquiries investigations.

Further, note that the final rule states, “*Environmental Professional* means: (1) a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases (per §312.1(c)) to the surface or subsurface of a property, sufficient to meet the objectives and performance factors in §312.20(e) and (f).” This definition requires that any individual conducting an all appropriate inquiry assessment must meet these minimum requirements as well as meet the education and experience requirements. No class of individuals receives special treatment in this regard. The final rule also requires that all environmental professionals remain current in their field.

Commenter Organization Name: Anonymous

Comment Number: 0371

Excerpt Number: 2

Excerpt Text:

I find it interesting that two specific licenses are listed (e.g. PE and CPG) that qualify as environmental professionals (EP). While both PE and CPG are issued by states, they do not meet all the requirements listed for an environmental professional in the proposed rule. Specifically, CPG's at least in the state of Ohio, are not required to pass an examination to show competence in their field. There is no requirement for continuing education to maintain either the CPG or PE.

Response:

Please see responses to comment numbers 0072 (excerpt 2) and 0336 (excerpt 1).

Individuals licensed as P.E.s or P.G.s are restricted to practicing only in their field of expertise. To obtain such a license, most states require that individuals have accumulated three or more years of experience in their field. Therefore, the Agency has determined that P.E.s and P.G.s with three years of full-time relevant experience (as defined in the final rule) are sufficiently qualified to oversee the conduct of all appropriate inquiries investigations.

Further, note that the final rule states, “*Environmental Professional* means: (1) a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the

presence of releases or threatened releases (per §312.1(c)) to the surface or subsurface of a property, sufficient to meet the objectives and performance factors in §312.20(e) and (f).” This definition requires that any individual conducting an all appropriate inquiry assessment must meet these minimum requirements as well as meet the education and experience requirements. No class of individuals receives special treatment in this regard. The final rule also requires that all environmental professionals remain current in their field.

Commenter Organization Name: Cohen, Irving

Comment Number: 0391

Excerpt Number: 1

Other Sections: NEW - 2.1.2 - Revise the license requirement to include licensed or certified professionals other than professional engineers and professional geologists

Excerpt Text:

However, I feel that the definition is excluding an important sector of the environmental practice community and places heavy reliance on recognition on professional licensure that may not actually be relevant to environmental disciplines.

The mere fact that a person is a licensed professional engineer does not necessarily indicate professional competence in the field of environmental practice; your proposed certification does not preclude that potential. I do not question the ethics of a PE in not attempting to accept any responsibility that he is not professionally competent to undertake, however your definition allows a de facto acceptance of a PE as an "environmental professional". I wish to point out to you that there are certifications, such as the ABCEP certification of "Certified Environmental Professional (CEP) that clearly addresses the knowledge base requirement of such an individual. Moreover, our certification program is accredited by the same accreditation body for a variety of PE subspecialties, the Council of Engineering & Scientific Specialty Boards (CESB).

I therefore request that you consider my comments as well as my support of the comments of the National Association of Environmental Professionals (NAEP) as well as my colleagues in ABCEP requesting the word changes to include "Certified Environmental Professionals (CEP)" to your definition of an "Environmental Professional".

Response:

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. EPA agreed with commenters who pointed out that the requirement that environmental professionals hold specific types of science or engineering degrees was too limiting. In the final rule, persons with any science or engineering degree (regardless of specific discipline in science or engineering) can qualify as an environmental professional, if they also have five (5) years of full-time relevant experience.

In addition, many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

EPA is not recognizing in the regulatory language of the final rule private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Given the performance-based qualifications provided in the final definition of an environmental professional, such an approach is not necessary. Therefore, there is no need to reference or depend upon an independent standard that assesses professional certification standards. The final rule does not recognize, or reference, any private organization's certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in today's final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Commenter Organization Name: McLeod, Jeff

Comment Number: 0444

Excerpt Number: 2

Excerpt Text:

I find it interesting that two specific licenses are listed (e.g. PE and CPG) that qualify as environmental professionals (EP). While both PE and CPG are issued by states, they do not meet all the requirements listed for an environmental professional in the proposed

rule. Specifically, CPG's at least in the state of Ohio, are not required to pass an examination to show competence in their field. There is no requirement for continuing education to maintain either the CPG or PE.

While there are a number of certifications available for environmental professionals to obtain, the Certified Hazardous Materials Manager (CHMM) is the most established and recognized in the field. In order to obtain the CHMM credential, one must meet most of the requirements already listed in the proposed rule for education and experience and unlike the CPG, an examination must be passed to evaluate competence in the field. CHMMs are also required to remain current in their field through continuing education or they lose the credential, unlike both the CPG and PE.

The EPA should take note of the fact that individuals seeking to demonstrate competency in their field take the time and effort to obtain valid certifications and maintain these certifications. As there is not state or national certification body for environmental professionals, private organizations have had to step in. I think the EPA should reevaluate their position of not relying on private organizations or they should seek to develop such certification at the national level. The Occupational Safety and Health Administration has referenced certifications from private organizations in their regulations, specifically the CIH in asbestos regulations. Therefore, if one governmental agency can recognize a private organization's certification, it would seem logical that another could as well.

Response:

Please see responses to comment numbers 0371 (excerpt 2) and 391 (excerpt 1).

Commenter Organization Name: Greenwood, Harriet

Comment Number: PM-0127-0008

Excerpt Number: 1

Excerpt Text:

The strong emphasis on professional engineering or a professional geologist license is not borne out, in my experience, of reviewing hundreds of Phase I reports and remediation studies.

The education of PEs and PGs tends to focus on quantitative analysis. Phase I work, on the other hand, is mainly a qualitative analysis. It's based more on interviews, site inspections, historical source review. It involves review of the reliability and thoroughness of the information collected. When data is available, it is frequently limited and quantity is often related to nearby sites or very limited in scope.

Response:

Please see responses to comment numbers 0072 (excerpt 2) and 0336 (excerpt 1).

Individuals licensed as P.E.s or P.G.s are restricted to practicing only in their field of expertise. To obtain such a license, most states require that individuals have accumulated three or more years of experience in their field. Therefore, the Agency has determined

that P.E.s and P.G.s with three years of full-time relevant experience (as defined in the final rule) are sufficiently qualified to oversee the conduct of all appropriate inquiries investigations.

Further, note that the final rule states, “*Environmental Professional* means: (1) a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases (per §312.1(c)) to the surface or subsurface of a property, sufficient to meet the objectives and performance factors in §312.20(e) and (f).” This definition requires that any individual conducting an all appropriate inquiry assessment must meet these minimum requirements as well as meet the education and experience requirements. No class of individuals receives special treatment in this regard. The final rule also requires that all environmental professionals remain current in their field.

Commenter Organization Name: Greenwood, Harriet

Comment Number: PM-0127-0008

Excerpt Number: 4

Excerpt Text:

Some AA inquiries will focus on agricultural land, timberland, rangeland, or impacts to rivers or fisheries. PEs and PGs lack specific academic training on some of these issues. Many of these professionals do learn about these fields of life science on the job and are well qualified to perform adequate AAI investigations in areas where they lack academic background.

Likewise, professionals with life science academic backgrounds can learn on the job the necessary areas of other technical fields, such as engineering, environmental chemistry or geology, where they may have academic weaknesses. A good BA or a BS degree is a sound basis for an environmental professional.

In my experience of reviewing Phase I's both as a senior environmental consultant and as an environment banker, some of the best Phase I's are written by liberal arts majors, and oddly, history majors.

Response:

Please see responses to comment numbers 0072 (excerpt 2) and 0336 (excerpt 1).

Individuals licensed as P.E.s or P.G.s are restricted to practicing only in their field of expertise. To obtain such a license, most states require that individuals have accumulated three or more years of experience in their field. Therefore, the Agency has determined that P.E.s and P.G.s with three years of full-time relevant experience (as defined in the final rule) are sufficiently qualified to oversee the conduct of all appropriate inquiries investigations.

Further, note that the final rule states, “*Environmental Professional* means: (1) a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases (per §312.1(c)) to the surface or subsurface of a property, sufficient to meet the objectives and performance factors in §312.20(e) and (f).” This definition requires that any individual conducting an all appropriate inquiry assessment must meet these minimum requirements as well as meet the education and experience requirements. No class of individuals receives special treatment in this regard. The final rule also requires that all environmental professionals remain current in their field.

Commenter Organization Name: Young, Richard

Comment Number: PM-0207-0001

Excerpt Number: 2

Excerpt Text:

A state licensed engineer or geologist cannot be considered as being equivalent to a bachelor, master or doctorate degree in environmental education unless they've received comparable training in environmental science. It's a false conclusion that all professional engineers and geologists are knowledgeable about environmental matters.

It would be fair to state that engineers and geologists with three years of verified work experience would be comparable to somebody with an environmental science degree who also had three years of practical work experience and the same thing could be true, also, of five years work experience if EPA so decided to view it in that manner.

Response:

EPA understands that not all engineers are knowledgeable in site assessment processes and techniques. For that reason, the definition of environmental professional provided in the final rule includes both experience and educational qualifications.

EPA notes that individuals licensed as P.E.s or P.G.s are restricted to practicing only in their field of expertise. To obtain such a license, most states require that individuals have accumulated three or more years of experience in their field. Therefore, the Agency has determined that P.E.s and P.G.s with three years of full-time relevant experience (as defined in the final rule) are sufficiently qualified to oversee the conduct of all appropriate inquiries investigations.

Further, note that the final rule states, “*Environmental Professional* means: (1) a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases (per §312.1(c)) to the surface or subsurface of a property, sufficient to meet the objectives and performance factors in §312.20(e) and (f).” This definition requires that any individual conducting an all appropriate inquiry assessment must meet these minimum requirements as well as meet the education and experience requirements. No class of individuals receives special treatment in this

regard. The final rule also requires that all environmental professionals remain current in their field.

See also the response to comment number 0072 (excerpt 2).

Commenter Organization Name: Young, Richard

Comment Number: PM-0207-0001

Excerpt Number: 5

Excerpt Text:

The law is too stringent. It forces everybody, in effect, to become a professional engineer or a geologist when they are not--professional geologist, pardon me--when it's not--when it's an established standard for all other EPA. Providing or establishing professional engineers and geologists as a standard for brownfields is not appropriate at this venue. A better venue for this issue is outside the brownfields law and in front of a U.S. EPA administrative law judge when the case arises.

Response:

Although the final rule recognizes tribal and state-licensed P.E. and P.G.s and other such government licensed environmental professionals with three years of experience to be environmental professionals, the rule does not restrict the definition of an environmental professional to these licensed individuals. The definition of an environmental professional also includes individuals who hold a Baccalaureate or higher degree from an accredited institution of higher education in engineering or science and have the equivalent of five (5) years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries. In addition, individuals with ten years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries qualify as environmental professionals for the purpose of conducting all appropriate inquiries. Individuals with these qualifications most likely will possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases to the surface or subsurface of a property, sufficient to meet the objectives and performance factors included in §312.20(e) and (f).

2.3.2 Revise the Proposed Rule to Include a Provision Relieving the EP of a Liability for Contaminant Exposure of Persons Working under His/Her Supervision or Responsible Charge

Commenter Organization Name: Hodgson, R S

Comment Number: 0075

Excerpt Number: 2

Excerpt Text:

My second concern is over the possible contaminant exposure of those working under the responsible charge of the Registered Professional Engineer and/or Registered Professional Geologist. If the EPA requires that these people be included in the process then provisions should be included for the additional liability that their presence brings to the process. This liability should not fall upon the Registered Professional Engineer and/or Registered Professional Geologist if in their opinion the inclusion of these additional people in the process is unnecessary.

Response:

Other than the requirement that an all appropriate inquiries investigation be managed by, or conducted under the supervision or responsible charge of, a person meeting the definition of environmental professional, specific staffing issues related to the conduct of individual site assessment investigations is beyond the scope of the rule. The final rule allows for individuals who do not meet the definition of environmental professional to contribute to the all appropriate inquiries investigation as long as their activities are conducted under the supervision or responsible charge of an environmental professional. The final rule includes no other restrictions or requirements with regard to how the investigations are staffed. The Agency has no position on the staffing and liability issues raised by the commenter.

2.3.3 Adopt the Definition of EP as Specified in the ASTM Standard

Commenter Organization Name: Froehlich, R.A.

Comment Number: 0119

Excerpt Number: 1

Other Sections: NEW - 2.3.1 - Professional engineer certification and professional geologist certification do not ensure high level of professional ability

Excerpt Text:

If the objective of this change in rules is to ensure that all appropriate inquiry is performed by a qualified environmental professional, the qualifications should mirror the qualifications of environmental professionals as included in the current ASTM Standard on credentials for environmental professionals. Merely licensing as a P. E. or P. G. does not ensure the highest levels of professionalism in environmental professionals. Independent credentialing by an organization that meets the requirements of the ASTM standard which is supported by the environmental professional associations is the best way to ensure that all appropriate inquiry is made by well-qualified environmental professionals. I strongly recommend that environmental professionals should be certified as a Qualified Environmental Professional by the Institute for Professional Environmental Practice. The IPEP certification program, one of the ASTM compliant certification programs, since it is supported by the Air & Waste Management Association, the Water Environment Federation, the National Association of Environmental Managers, the American Industrial Hygiene Association, the Solid Waste Association of North America, the American Association of Environmental Engineers, and several other environmental professional organizations. All of these professional organizations existed well before the certification issues arose, and each of the sponsoring organizations supports the QEP certification as the only environmental professional certification.

Response:

EPA is not recognizing in the regulatory language of the final rule private, non-governmental organizations whose certification requirements meet the environmental professional qualifications included in the final rule. The final rule does not reference any private party professional certification standards. Given the performance-based qualifications provided in the final definition of an environmental professional, such an approach is not necessary. Therefore, there is no need to reference or depend upon an independent standard that assesses professional certification standards. The final rule does not recognize, or reference, any private organization's certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in today's final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Commenter Organization Name: Peyton, J.

Comment Number: 0216

Excerpt Number: 4

Excerpt Text:

Or better yet, simply follow what ASTM has done since 1993 and let the free market determine who can and cant provide AAI services.

Response:

EPA determined through the discussions of the negotiated rulemaking committee during the development of the proposed rule and through an analysis of public comments received in response to the proposed rule that the final rule should include a definition of environmental professional. The statute requires that all appropriate inquiries include an inquiry conducted by an environmental professional. EPA determined that to effectively implement the statute and define the intent of the law it is essential to define who should oversee the conduct of the inquiry.

See also the response to comment number 0353, excerpt 4.

2.3.4 Persons Who Do Not Qualify as EPs Should Not Be Allowed to Assist in the Conduct of All Appropriate Inquiries

Commenter Organization Name: Academy of Certified Hazardous Materials Managers

Comment Number: 0140

Excerpt Number: 3

Excerpt Text:

In reference to the posed question concerning whether or not persons not meeting the definition of an EP can contribute to the Conduct of All Appropriate Inquiries, we recommend that only EPs be able to perform those duties as prescribed by the proposed rule. It is not logical to have undergone all of the discussions as to whom is a qualified EP, as proposed, and then to negate that definition by allowing lesser-qualified individuals to perform the activities. By allowing non-EPs to perform the duties EPA is suggesting that an EP is only fulfilling a managerial or oversight function and if so; why is the proposed EP definition so specifically limiting?

Response:

The final rule retains the allowance for individuals not meeting the definition of an environmental professional to contribute to and participate in the all appropriate inquiries on the condition that such individuals are conducting inquiries activities under the supervision or responsible charge of an individual that meets the regulatory definition of an environmental professional. EPA determined that some activities required by the final rule may be conducted effectively and efficiently by individuals who may not necessarily meet the definition of environmental professional. For example, research regarding past owners of a property may best be performed by a title search expert or an attorney. Data base searches to determine past uses of a property may be conducted by a research assistant or a librarian.

This provision of the final rule allows for a team of individuals working for the same firm or organization (*e.g.*, individuals working for the same government agency) to share the workload for conducting all appropriate inquiries for a single property, provided that one member of the team meets the definition of an environmental professional and reviews the results and conclusions of the inquiries and signs the final report. All activities conducted during the course of the inquiries must be conducted under the supervision of responsible charge of an environmental professional. The final rule requires that the final review of the all appropriate inquiries and the conclusions that follow from the inquiries rest with an individual who qualifies as an environmental professional, as defined in §312.10.

Commenter Organization Name: Diamond, Jason

Comment Number: 0251

Excerpt Number: 4

Excerpt Text:

However, I would like to express my concern that the AAI rule allows for individuals who do not qualify as an EP to conduct an environmental assessment "under the supervision or responsible charge of" an EP. The AAI rule places an enormous importance on professional judgment and experience; however, the rule permits individuals who are not qualified EPs to conduct site visits, interviews, or visual inspections. This compromises the high standards for EPs ultimately responsible for the quality and results of the work. Allowing personnel who do not meet the qualifications of an EP to conduct most of the work required for an AAI under the supervision of a qualified EP dilutes the quality of the assessment. Halff Associates, Inc. will only allow individuals who meet the requisite education, training, and experience to practice as environmental professionals. I believe that the proposed rule should include minimum education, licensure, and/or certification requirements even for those who are performing work under the supervision of an EP.

Response:

Please see response to comment number 0140, excerpt 3.

Commenter Organization Name: PIRG

Comment Number: 0258

Excerpt Number: 5

Excerpt Text:

1. Environmental Inquiries by Unqualified Personnel

Section 223 of the Brownfields Law provides that certain specific criteria must be included in the AAI regulations. Among other requirements, the law states that the Administrator shall require in the AAI rules:

(I) The results of an inquiry by an environmental professional

This criterion is also specifically addressed in the 97 ASTM standard. The definition contained in the 97 ASTM standard requires that an environmental professional possess sufficient training and experience necessary to conduct site reconnaissance and interviews and must have the ability to develop opinions and draw conclusions about the condition of the property at issue. The 97 ASTM Standard also requires that site reconnaissance, interviews, as well as the review and interpretation of the information upon which the report is based must be performed by the environmental professional. Other, more limited activities, such as records review, may be performed under the supervision of an environmental professional.

Unfortunately, under Section 312.21 of the draft proposed AAI rules, "Results of an Inquiry by an Environmental Professional" there is no requirement that an environmental professional perform any of these duties, in fact non-professionals can conduct the entire inquiry, including site inspections and interviews if they are simply under the charge or supervision of an environmental professional. Allowing personnel who are not qualified as environmental professionals to perform these critical duties is inconsistent with the 97

ASTM standard and is not supported by the Brownfields law.

The dilution in the draft proposed AAI rules of the central role played by the qualified Environmental Professional on key matters undermines the reliability of the AAI standard, greatly increasing the likelihood that serious environmental problems will be missed. This defeats a central the purpose of the AAI standard-to assess the condition of a site prior to sale or transfer and to ensure that the condition is taken into account in the transaction and in the purchaser's future activities at the site.

Response:

The final rule assures that a highly-qualified environmental professional manages the conduct of all of the required all appropriate inquiries activities by:

1. Establishing a definition of environmental professional that sets stringent qualifications for the individual responsible for all activities conducted during the all appropriate inquiries investigation (see §312.10). These qualifications are significantly more stringent than the requirements of the ASTM E1527-97 standard and will serve to raise the standard of quality of environmental site assessments.
2. Requiring that the environmental professional, after reviewing the results of all inquiries and data searches required by the regulation, provide a written report of findings that includes an opinion of the environmental conditions of the property and documents all conditions indicative of releases and threatened releases of hazardous substances on, at, in or to the property (see §312.21(c)).
3. Requiring that the environmental professional sign the written report that documents all results of the all appropriate inquiries investigation. When signing the report, the environmental professional must include two statements with the signature block. One must state that the person signing the report meets the required qualifications of an environmental professional and the other must state that the all appropriate inquiries investigation was completed in compliance with the final regulations (see §312.21(d)).

The final rule retains the allowance for individuals not meeting the definition of an environmental professional to contribute to and participate in the all appropriate inquiries on the condition that such individuals are conducting inquiries activities under the supervision or responsible charge of an individual that meets the regulatory definition of an environmental professional. EPA determined that some activities required by the final rule may be conducted effectively and efficiently by individuals who may not necessarily meet the definition of environmental professional. For example, research regarding past owners of a property may best be performed by a title search expert or an attorney. Data base searches to determine past uses of a property may be conducted by a research assistant or a librarian.

This provision of the final rule allows for a team of individuals working for the same firm or organization (*e.g.*, individuals working for the same government agency) to share the workload for conducting all appropriate inquiries for a single property, provided that one member of the team meets the definition of an environmental professional and reviews the results and conclusions of the inquiries and signs the final report. All activities

conducted during the course of the inquiries must be conducted under the supervision or responsible charge of an environmental professional. The final rule requires that the final review of the all appropriate inquiries and the conclusions that follow from the inquiries rest with an individual who qualifies as an environmental professional, as defined in §312.10.

In addition to establishing who must oversee the conduct of the all appropriate inquiries activities and prescribing the types of activities that must be conducted to address each of the statutory criteria, the final rule establishes clear objectives for the inquiries and a set of performance factors that must be met in carrying out the requirements of each criteria. The objectives clearly establish the types of information that must be collected during the conduct of the inquiries (see §312.20(d)). The performance factors establish quality parameters that must be met when collecting the information and undertaking the activities required by the statutory criteria (see §312.20(e)). The objectives and performance factors must be followed when conducting the activities required to meet each criteria. They serve to guide the conduct of all activities required by the statutory criteria and ensure that all activities are conducted with clear objectives and to a standard of high quality.

Commenter Organization Name: Belaire, Kent

Comment Number: 0267

Excerpt Number: 2

Excerpt Text:

The AAI rule allows for an environmental assessment to be conducted "under the supervision or responsible charge of, an EP." The AAI rule places an enormous importance on professional judgment and experience, however, the rule permits individuals who are not qualified EPs to conduct site visits, interviews, or visual inspections. This compromises the high standards for EPs ultimately responsible for the quality and results of the work. Allowing personnel who do not meet the qualifications of an EP to conduct most of the work required for Phase I under the supervision of a qualified EP dilutes the quality of the assessment. Halff Associates only allows individuals who meet the education, training, and experience requirements to practice as environmental professionals. The rule should include minimum education requirements consistent with the requirements for an EP, for those who perform AAI studies under the supervision of an EP.

Response:

Please see response to comment number 0140, excerpt 3.

Commenter Organization Name: Congressmen Dingell, Boxer, et al

Comment Number: 0332

Excerpt Number: 4

Excerpt Text:

Section 101(35)(B) of the Comprehensive Environmental Response, Compensation, and

Liability Act (CERCLA) as amended by section 223 of the Brownfields law requires that the standards and practices established in the AAI rule shall include the results of an inquiry by an environmental professional. The law clearly requires that the inquiry be conducted by an environmental professional in accordance with generally accepted good commercial and customary standards and practices. Even under the interim standard established in the Brownfields law, the American Society for Testing and Materials Standard E-1527-97, the key elements of an inquiry, including the site inspections and critical interviews, must be conducted by an environmental professional.

Under Section 312.21 of the proposed AAI rule, an environmental professional is not required to conduct the inquiry. In fact, none of the detailed qualifications for an environmental professional established in the proposed rule are necessary for the person actually conducting the inquiry. This includes site inspections and interviews with hazardous materials experts associated with the site. An environmental professional need not participate directly in the inquiry at all, but need only supervise or have the person conducting the inquiry under his or her charge. This is inconsistent with the intent of the Brownfields law and with the generally accepted good commercial and customary standards and practices codified in the interim requirements.

The probability of missing an environmental problem becomes unacceptably high when the person conducting the inquiry on the ground does not have the experience or judgment of an environmental professional. The consequences are serious.

It is worth noting that EPA itself recognizes the importance of having an environmental professional actually conduct critical elements of the inquiry in the preamble to the proposed AAI rule. "EPA believes that the professional judgment of an individual meeting the proposed definition of environmental professional is vital to ensuring that all circumstances at the property indicative of environmental conditions and potential releases or threatened releases are properly identified and analyzed" (67 Federal Register 52565). EPA recognizes and recommends that an environmental professional conduct this portion of the inquiry, but does not require it. EPA must require it as provided in the Brownfields law.

Response:

The final rule assures that a highly-qualified environmental professional manages the conduct of all of the required all appropriate inquiries activities by:

1. Establishing a definition of environmental professional that sets stringent qualifications for the individual responsible for all activities conducted during the all appropriate inquiries investigation (see §312.10). These qualifications are significantly more stringent than the requirements of the ASTM E1527-97 standard and will serve to raise the standard of quality of environmental site assessments.
2. Requiring that the environmental professional, after reviewing the results of all inquiries and data searches required by the regulation, provide a written report of findings that includes an opinion of the environmental conditions of the property and documents

all conditions indicative of releases and threatened releases of hazardous substances on, at, in or to the property (see §312.21(c)).

3. Requiring that the environmental professional sign the written report that documents all results of the all appropriate inquiries investigation. When signing the report, the environmental professional must include two statements with the signature block. One must state that the person signing the report meets the required qualifications of an environmental professional and the other must state that the all appropriate inquiries investigation was completed in compliance with the final regulations (see §312.21(d)).

The final rule retains the allowance for individuals not meeting the definition of an environmental professional to contribute to and participate in the all appropriate inquiries on the condition that such individuals are conducting inquiries activities under the supervision or responsible charge of an individual that meets the regulatory definition of an environmental professional. EPA determined that some activities required by the final rule may be conducted effectively and efficiently by individuals who may not necessarily meet the definition of environmental professional. For example, research regarding past owners of a property may best be performed by a title search expert or an attorney. Data base searches to determine past uses of a property may be conducted by a research assistant or a librarian.

This provision of the final rule allows for a team of individuals working for the same firm or organization (*e.g.*, individuals working for the same government agency) to share the workload for conducting all appropriate inquiries for a single property, provided that one member of the team meets the definition of an environmental professional and reviews the results and conclusions of the inquiries and signs the final report. All activities conducted during the course of the inquiries must be conducted under the supervision or responsible charge of an environmental professional. The final rule requires that the final review of the all appropriate inquiries and the conclusions that follow from the inquiries rest with an individual who qualifies as an environmental professional, as defined in §312.10.

In addition to establishing who must oversee the conduct of the all appropriate inquiries activities and prescribing the types of activities that must be conducted to address each of the statutory criteria, the final rule establishes clear objectives for the inquiries and a set of performance factors that must be met in carrying out the requirements of each criteria. The objectives clearly establish the types of information that must be collected during the conduct of the inquiries (see §312.20(d)). The performance factors establish quality parameters that must be met when collecting the information and undertaking the activities required by the statutory criteria (see §312.20(e)). The objectives and performance factors must be followed when conducting the activities required to meet each criterion. They serve to guide the conduct of all activities required by the statutory criteria and ensure that all activities are conducted with clear objectives and to a standard of high quality.

Commenter Organization Name: SCANA

Comment Number: 0373

Excerpt Number: 3

Excerpt Text:

We understand that professionals who do not meet the proposed definition can still perform AAIs under the supervision of those who do meet the definition; however, we contend that we will derive neither benefit nor improvement in thoroughness and accuracy to the AAI process. Additionally, organizations will incur additional costs due to the need to review an individual's work and AAIs often have short deadlines that could easily be impacted due to the unavailability of a "qualified" reviewer.

Response:

Please see response to comment number 0140, excerpt 3.

Commenter Organization Name: Rybak, John Thomas

Comment Number: 0412

Excerpt Number: 15

Excerpt Text:

Non - EP Supervised Work under EP

a) Page # 52555

b) View: The Goal of AAI is to increase quality of the Phase I, not to shortcut the process. All non-clerical portions of the Phase I should be conducted by the EP.

c) Assumptions: The EP is narrowly defined within this proposal to qualify individuals to conduct Phase I reports. If the purchaser needs to rely on the Phase I to prove in court they conducted AAI, the report and non-clerical sections should be performed by an EP. Anything less will not assure the EP has complete knowledge and involvement in the process, and would negate the relevance of their signature.

d) Burden: Having EP's conduct the non-clerical aspects of the Phase I will increase quality and cost.

Response:

Please see response to comment number 0140, excerpt 3.

Commenter Organization Name: Rybak, John Thomas

Comment Number: 0412

Excerpt Number: 17

Excerpt Text:

All Non-clerical tasks to be done by EP.

a) Page # 52571

b) View: The Goal of AAI is to increase quality of the Phase I, not to shortcut the process. All non-clerical portions of the Phase I should be conducted by the EP.

c) Assumptions: The EP is narrowly defined within this proposal to qualify individuals to conduct Phase I reports. If the purchaser needs to rely on the Phase I to prove in court they conducted AAI, the report and non-clerical sections should be performed by an EP. Anything less will not assure the EP has complete knowledge and involvement in the process, and would negate the relevance of their signature.

d) Burden: Having EP's conduct the non-clerical aspects of the Phase I will increase quality and cost.

Response:

Please see response to comment number 0140, excerpt 3.

Commenter Organization Name: Sierra Club & NET

Comment Number: 0419

Excerpt Number: 2

Excerpt Text:

--The Proposed AAI Rule Allows Unqualified Personnel To Conduct Key Elements Of The Environmental Inquiry

Under Section 312.21 of the proposed AAI rules, non-professionals can conduct the environmental inquiry at a site, including site inspections and interviews, as long as they are under the charge or supervision of an environmental professional. Section 223 of the Brownfields Law expressly requires that an Environmental Professional conduct the inquiry, and the interim 97 ASTM Standard makes clear there are many instances where there is no substitute for an environmental professional's experience and judgment and it expressly requires the environmental professional to conduct the site inspection and the interviews.

Mere oversight of unqualified personnel provides very little protection when only a trained eye is likely to find environmental problems during a visual inspection. Interviews are also of limited value when the person conducting the interview does not have the experience to know what follow-up questions to ask. When key portions of the inquiry are not conducted by qualified personnel, the likelihood of missing serious environmental threats rises dramatically. The proposed AAI rule allows this result.

Response:

Please see response to comment number 0332, excerpt 4.

Commenter Organization Name: Sierra Club & NET

Comment Number: 0419

Excerpt Number: 4

Excerpt Text:

--The Proposed AAI Rule Allows Unqualified Personnel To Conduct Interviews And Eliminates Specific Requirements in the Interim 97 ASTM Standard That Ensure A Consistent Standard Is Maintained For Conducting And Documenting Interviews

Sections 312.21 (results of an inquiry by an environmental professional) and 312.23 (interviews) of the proposed AAI rule allow unqualified personnel to conduct interviews. As discussed above, inexperienced interviewers are far less likely to ask the appropriate follow-up questions and identify environmental conditions of concern. Given the dynamic nature of an interview and the technical expertise required in this area, "supervision" does not mean a great deal if the supervisor is not present for and does not participate in the interviews.

Response:

The final rule assures that a highly-qualified environmental professional manages the conduct of all of the required all appropriate inquiries activities by:

1. Establishing a definition of environmental professional that sets stringent qualifications for the individual responsible for all activities conducted during the all appropriate inquiries investigation (see §312.10). These qualifications are significantly more stringent than the requirements of the ASTM E1527-97 standard and will serve to raise the standard of quality of environmental site assessments.
2. Requiring that the environmental professional, after reviewing the results of all inquiries and data searches required by the regulation, provide a written report of findings that includes an opinion of the environmental conditions of the property and documents all conditions indicative of releases and threatened releases of hazardous substances on, at, in or to the property (see §312.21(c)).
3. Requiring that the environmental professional sign the written report that documents all results of the all appropriate inquiries investigation. When signing the report, the environmental professional must include two statements with the signature block. One must state that the person signing the report meets the required qualifications of an environmental professional and the other must state that the all appropriate inquiries investigation was completed in compliance with the final regulations (see §312.21(d)).

The final rule retains the allowance for individuals not meeting the definition of an environmental professional to contribute to and participate in the all appropriate inquiries on the condition that such individuals are conducting inquiries activities under the supervision or responsible charge of an individual that meets the regulatory definition of an environmental professional. Interviews are conducted for the purpose of attaining information on present and past uses and ownerships of the property. Many types of individuals may be skilled interviewers and may be able to obtain this type of information from property owners. EPA maintains that it is important that a person meeting the qualifications of an environmental professional review the results of all activities

conducted during the all appropriate inquiries investigation and render an opinion with regard to the potential environmental conditions of a property based upon all results. However, EPA maintains that it is not essential that the environmental professional conduct every activity. In fact, some activities may best be performed by persons with specific skills not held by the environmental professional.

2.3.5 The Rule Should Provide Examples of Relevant Experience

Commenter Organization Name: Leech Lake Ojibwe

Comment Number: 0125

Excerpt Number: 2

Excerpt Text:

Comment #2: The Time Period during Which "Relevant Experience" Must Have Been Obtained is Unclear and Should Be Clarified.

The definition of an EP under the proposed rule includes a reference to "relevant experience." While EPA defines this term in § 312.10(b), it leaves unclear the time period during which relevant experience must have been accumulated. For example, must an individual have acquired the relevant experience - whether for three, five or ten years - in the years immediately before the promulgation of the final rule? If not, is there a maximum period during which such experience must have been obtained?

By way of example, if a person has an undergraduate degree in geology and five full-time years of relevant experience, but acquired that experience 15 years earlier without having performed any subsequent work in the field, would that person still qualify as an EP? The Band is concerned that while an individual might qualify as an EP under the letter of the rule in this scenario, he or she may lack an understanding of recent developments in the field or of the latest technological advancements during the intervening time period. Such a deficiency has the potential of putting Tribes, including the Band, and other parties at risk.

Response:

To qualify as an environmental professional for the purpose of the final rule on all appropriate inquiries, individuals must simply meet the qualifications of the definition of an environmental professional. The final rule does not include restrictions on when a person accumulates the required years of full-time relevant experience. However, the final rule does require that environmental professionals remain current in their field of expertise. Also, the final rule requires that environmental professionals "possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases (per §312.1(c)) to the surface or subsurface of a property, sufficient to meet the objectives and performance factors in §312.20(e) and (f)."

2.3.6 Revise the Proposed Rule to Allow Individuals to Accumulate the Required Ten Years of Experience after the Promulgation of the Rule

Commenter Organization Name: Montana DEQ

Comment Number: 0335

Excerpt Number: 2

Excerpt Text:

Also, DEQ appreciates EPA's willingness to "grandfather" in as environmental professionals people without a science degree and a number of years of experience as of the date the rule is promulgated. However, DEQ believes this option should also be considered for people that acquire a number of years of experience past the promulgation date. If a person has attended environmental trainings and educational courses and has enough experience to successfully conduct AAI investigations, it should not be important what their degree is in. In addition, a person may work under an environmental professional as a team member being trained and educated about AAI's for several years but may never be considered an "Environmental Professional" because he or she does not have the appropriate degree. Having a degree in something other than a science field may be beneficial to conducting AAI investigations because AAI investigations are primarily research based. During an AAI investigation, design work and sampling are typically not involved. DEQ believes that a bachelor's degree with five years of relevant full time experience is more appropriate as part of the definition of an "Environmental Professional" for a person to be "grandfathered." Also, the person should not need to have the five years of experience as of the date of the rule. The proposed AAI rule excludes from future consideration people who have the knowledge and experience to conduct AAI investigations but do not have a degree in the sciences. We ask EPA to reconsider the number of years of experience required to perform AAI without a science degree and to allow people who meet the requirements after rule promulgation to be considered environmental professionals.

Response:

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out all appropriate inquiries.

Commenter Organization Name: Greenwood, Harriet

Comment Number: PM-0127-0008

Excerpt Number: 5

Excerpt Text:

The best existing training for environmental professionals is relevant on-the-job experience, building on a solid academic background. 312.10 (B)(2)(IV) would be strengthened by removing the phrase, as of the date of the promulgation of this rule, and simply read, have a bachelor or higher degree from an accredited institution of higher education and the equivalent of ten years with a full-time relevant experience.

The value of a degree in any field, plus a significant amount of on-the-job experience will not expire as of the date of this rule. A potential environmental professional with nine years of experience, as of that date, should have the chance to gain the status when the ten years have been achieved.

Response:

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high

standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out all appropriate inquiries.

2.3.7 Ramifications/Penalties for an Unqualified Non-EP Signing an AAI Statement

Commenter Organization Name: Myers, Steve

Comment Number: 0242

Excerpt Number: 8

Excerpt Text:

8 Steve Myers EP Penalties if Wrong/

Unqualified 312.21(d), 312.24(b), 312.26(d), and 52561-62 What is the penalty for an environmental professional for signing such a statement if they are not qualified and who will determine if the environmental professional's judgment was appropriate? If, in the end, the qualification standards of an environmental professional and an owner's ability to claim an 'Innocent Landowner' defense will be ruled on by the courts, why set narrow arbitrary standards for who may be an environmental professional in the first place?

Response:

EPA determined, through the discussions of the negotiated rulemaking committee during the development of the proposed rule and through an analysis of public comments received in response to the proposed rule, that the final rule should include a definition of environmental professional. The statute requires that all appropriate inquiries include an inquiry conducted by an environmental professional. EPA determined that to effectively implement the statute and define the intent of the law it is essential to define who should oversee the conduct of the inquiry.

The marketplace and ultimately the courts will determine whether this criterion is sufficiently satisfied, should the credentials of an environmental professional be challenged or otherwise become an issue in regard to a property owner's CERCLA liability status. Ultimately, the penalty for undertaking an all appropriate inquiries investigation that is not overseen or managed by an individual who qualifies as an environmental professional is disqualifying the owner or grantee from receiving liability protection under the law. This is the ultimate incentive for property owners to be active participants in the process and to seek out the best, most qualified individuals to conduct all appropriate inquiries assessments.

See also the response to comment number 0353, excerpt 4.

Commenter Organization Name: IPEP

Comment Number: 0266

Excerpt Number: 6

Excerpt Text:

Personal Liability of Environmental Professionals

Another issue of concern expressed in EPA's October 2003 NODA, which is not addressed in the subject proposed CERCLA regulation, is the personal liability of those

who would be allowed to perform AAIs for real property. Although state (and territorial) licensing boards have the authority to investigate complaints of negligence or incompetence, and may impose fines or take other disciplinary actions against those determined to have improperly practiced as a professional engineer or professional geologist, such disciplinary action is rarely demanded or taken against licensed professional engineers, professional geologists, etc. This is because it is difficult to prove that an individual is negligent or incompetent to practice in the field of his/her licensure. It is much more frequent that other remedies are embraced to address alleged negligence or incompetence. Both individuals and organizations that perceive they have been so compromised typically enforce contractual terms and conditions first, where financial penalties carry enormous weight with licensed individuals. If these measures fail, relief and damages may be sought through arbitration, a practice that is being used ever more frequently. If such matters still cannot be resolved, civil or criminal legal action can be taken against an individual practitioner and/or the organization that employs him/her. And such claims typically seek to recover damages available from insurance carriers who provide professional liability insurance for licensed practitioners and their employers.

However, it is not the threat of action by a state licensing board or potential civil or criminal legal actions that empowers the professional licensure system to function effectively across the country. Professional engineers, professional geologists, licensed surveyors, licensed medical practitioners, etc. are all required to abide by a code of ethical behavior that places public safety, health, and welfare above their individual or employers' interests, and the vast majority of licensed professionals recognize the seriousness of maintaining their personal credibility and integrity in the marketplace of their profession. They understand that any action they take that may cast doubt on their professional competence or integrity threatens their professional reputation and financial security or ability to practice their chosen profession.

Similarly, those individuals who have earned credentials from certification programs that are compliant with ASTM E1929-98 for environmental professionals are required to abide by code of ethics that are essentially equivalent to those established by state licensing boards. Furthermore, ASTM E1929-98 mandates that for a certification program to maintain its accreditation, it must include a recertification component. This component must require that for certificants to maintain their credential, they must engage in continuing professional development activities suitable to their profession. Such a mandate has been in place for only a limited number of state licensure programs in the past for professional engineers, but most states are expected to have incorporated this requirement for professional license renewal by the end of this decade. Thus, the perception that threat of state licensure board actions has significant impact as a policing mechanism to discourage negligence or incompetence is a less than compelling basis for limiting the definition of Environmental Professional to the definition in §312.10(b)(1) of the proposed rule.

Response:

The marketplace and ultimately the courts will determine whether this criterion is sufficiently satisfied, should the credentials of an environmental professional be

challenged or otherwise become an issue in regard to a property owner's CERCLA liability status. Ultimately, the penalty for undertaking an all appropriate inquiries investigation that is not overseen or managed by an individual who qualifies as an environmental professional is disqualifying the owner or grantee from receiving liability protection under the law. This is the ultimate incentive for property owners to be active participants in the process and to seek out the best, most qualified individuals to conduct all appropriate inquiries assessments.

The final rule does not recognize or reference any private party professional certification standards. Such an approach would require that EPA review the certification requirements of individual organizations to determine whether or not each organization's certification requirements meet or exceed the regulatory qualifications for an environmental professional. Given that there may be many such organizations and given that each organization may review and change its certification qualifications on a frequent or periodic basis, we conclude that such an undertaking is not practicable. EPA does not have the necessary resources to review the procedures of each private certification organization and review and approve each organization's certification qualifications. Therefore, the final rule includes within the regulatory definition of an environmental professional, general performance-based standards or qualifications for determining who may meet the definition of an environmental professional for the purposes of conducting all appropriate inquiries. These standards include particular education and experience qualifications. The final rule does not recognize, or reference, any private organization's certification program within the context of the regulatory language. However, the Agency notes that any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in today's final regulation will meet the definition of an environmental professional for the purposes of this regulation.

Commenter Organization Name: OSBGE

Comment Number: 0291

Excerpt Number: 3

Excerpt Text:

EPA's proposed definition of an "environmental professional" is very broad and may result in sending confusing messages to unregistered "environmental professionals" and to the public in general, who may unknowingly hire unregistered "environmental professionals" to in fact conduct geologic work. As such, the public may not be properly protected from the consequences of geologic work performed by non-qualified, unregistered "environmental professionals". EPA needs to clearly articulate that "environmental professionals" must comply with State laws before seeking to conduct work under the CERCLA provisions.

Response:

The commenter's concern is addressed in the final rule. The final rule states, "The definition of environmental professional provided above does not preempt state

professional licensing or registration requirements such as those for a professional geologist, engineer, or site remediation professional. Before commencing work, a person should determine the applicability of state professional licensing or registration laws to the activities to be undertaken as part of the inquiry identified in §312.21(b).”

Commenter Organization Name: FAA

Comment Number: 0334

Excerpt Number: 10

Excerpt Text:

1) What will the penalty be for someone who signs an AAI report if he or she does not meet the definition of an environmental professional (EP)? Who will determine whether the EP's judgment was appropriate? Will EPs be liable for any errors or omissions in information from third party AAI reports if that information meets the proposed requirements for using previous information?

Response:

The marketplace and ultimately the courts will determine whether this criterion is sufficiently satisfied, should the credentials of an environmental professional be challenged or otherwise become an issue in regard to a property owner's CERCLA liability status. Ultimately, the penalty for undertaking an all appropriate inquiries investigation that is not overseen or managed by an individual who qualifies as an environmental professional is disqualifying the owner or grantee from receiving liability protection under the law. This is the ultimate incentive for property owners to be active participants in the process and to seek out the best, most qualified individuals to conduct all appropriate inquiries assessments.

The Agency does not want to speculate on liability based upon contractual obligations between parties. The parties are free to negotiate these issues as they deem appropriate.

Commenter Organization Name: McKerr, Thomas

Comment Number: 0347

Excerpt Number: 18

Excerpt Text:

-Environmental Professional: delete all after paragraph (1). It would be nice if there was a real penalty for violators.

Response:

Please see response to comment number 0336 (excerpt 1) and comment number 0334 (excerpt 10).

2.3.8 To Ensure that EPs are Qualified, a National Test and/or Training Should Be Established

Commenter Organization Name: Gaugler, Earl

Comment Number: 0327

Excerpt Number: 3

Excerpt Text:

I propose that the best way to resolve the issue of qualification is to identify the specific skills and knowledge areas required of an assessor, and to develop an appropriate verification (registration) system that is fair to all current and future environmental assessors / inspectors. There are many professionals, with diverse backgrounds and varied employment histories, who truly qualify for this type of work. A formal qualification, if eventually mandated, should be rated like a job application, e.g. provision for an appropriate evaluation, in lieu of an academic degree and/or license, which demonstrates the required background necessary for the position.

Response:

EPA agrees with the commenter's statement that many professionals with diverse backgrounds and varied employment histories may qualify as environmental professionals for the purposes of overseeing all appropriate inquiries investigations. Given the potential diversity in qualifications, EPA is finalizing general education and experience qualifications for environmental professionals, rather than specifying specific skills. The final rule does not include a registration or verification process.

The final rule requires that an environmental professional sign the written report that documents all results of the all appropriate inquiries investigation. When signing the report, the environmental professional must include two statements with the signature block. One must state that the person signing the report meets the required qualifications of an environmental professional and the other must state that the all appropriate inquiries investigation was completed in compliance with the final regulations (see §312.21(d)).

The marketplace and ultimately the courts will determine whether this criterion is sufficiently satisfied, should the credentials of an environmental professional be challenged or otherwise become an issue in regard to a property owner's CERCLA liability status. Ultimately, the penalty for undertaking an all appropriate inquiries investigation that is not overseen or managed by an individual who qualifies as an environmental professional is disqualifying the owner or grantee from receiving liability protection under the law. This is the ultimate incentive for property owners to be active participants in the process and to seek out the best, most qualified individuals to conduct all appropriate inquiries assessments.

Commenter Organization Name: DWR Consultants

Comment Number: 0349

Excerpt Number: 1

Other Sections: NEW - 2.1.1 - Support of the proposed minimum requirements

Excerpt Text:

I fully support the enhancement for qualifications of Environmental Professionals. However, I think some sort of national test should be integrated into the process to ensure the "professionals" are qualified.

Response:

The final rule requires that an environmental professional sign the written report that documents all results of the all appropriate inquiries investigation. When signing the report, the environmental professional must include two statements with the signature block. One must state that the person signing the report meets the required qualifications of an environmental professional and the other must state that the all appropriate inquiries investigation was completed in compliance with the final regulations (see §312.21(d)).

The marketplace and ultimately the courts will determine whether this criterion is sufficiently satisfied, should the credentials of an environmental professional be challenged or otherwise become an issue in regard to a property owner's CERCLA liability status. Ultimately, the penalty for undertaking an all appropriate inquiries investigation that is not overseen or managed by an individual who qualifies as an environmental professional is disqualifying the owner or grantee from receiving liability protection under the law. This is the ultimate incentive for property owners to be active participants in the process and to seek out the best, most qualified individuals to conduct all appropriate inquiries assessments.

Commenter Organization Name: EAA

Comment Number: 0366

Excerpt Number: 2

Excerpt Text:

The EAA objects to the minimum requirements set forth herein as they apply to the environmental professional. While we feel a science degree and professional license as a geologist or engineer are valuable, they may or may not always fit the skill set needed to properly complete a Phase I ESA. Experience and skill are gained through proper specialized training time spent actually completing the projects. As most EAA members are from "one-man shops", we are confident that these individuals have, many times, been through the entire process of the project in a "hands on" capacity. This would include all the marketing, project development, technical aspects of the project, report writing, and liability issues, to name a few.

To offer a proposed solution to this objection, it is the opinion of the EAA membership that, in lieu of requirements based strictly on education and background in non-specific science, that training designed to directly address the regulation and requirements be conducted by EPA-approved providers. This could be accomplished in much the same way as currently implemented in the EPA asbestos program. The goal of this direct, intense, and well-designed training would simply be the allowance of experienced qualified individuals who have been providing this service for years to be able to continue their enterprise without being unfairly and instantly banned from their vocation.

Response:

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Given the variety of property types and uses that an environmental professional may encounter when conducting all appropriate inquiries investigations, EPA has determined that a minimum of three years of relevant full-time experience is essential to ensuring a high level of expertise on the part of environmental professionals.

At this time, EPA does not have the resources to establish a national training and certification program for environmental professionals. Training on the essential elements of conducting environmental site assessments may best be achieved by meeting the educational and experience qualifications including in the definition of environmental professional in the final rule. Other training opportunities may be available from private organizations.

Commenter Organization Name: Dean, Frank

Comment Number: 0411

Excerpt Number: 2

Excerpt Text:

Second, in Section 312.10 the requirement that the Environmental Professional must have a degree in geology, engineering or hard science will put a number of current providers out of business, as many of us do not have these science related degrees. If one looks at

the skill sets needed to do a Phase I Environmental Audit, you will find that "hard science" is not needed at this level, but is most certainly required in many of the Phase II testing protocols. As a business owner, I can hire these specialists if and when needed to handle the projects requiring these skill-sets.

I would much prefer to see a well designed training program developed to mirror the actual requirements of the Phase I, rather than a non-related science or engineering degree as the qualifying criterion for this work. This training program can be modeled after the current EPA asbestos program with accredited course providers delivering the approved training. This way, those with the proper knowledge of the regulations and procedures can do the work and one is not limited by arbitrary education requirements that could deprive one of his lively hood. And, you as a regulator would have more confidence that the people in the field actually know what they are supposed to be doing. I am always a promoter of demonstrated competence over arbitrary requirements.

Response:

Based upon public comments received in response to the proposed rule on the issue of qualifications for the environmental professional, the Agency made a few modifications to the proposed definition of environmental professional. Many commenters pointed out that the proposed definition placed too much emphasis on educational requirements and did not allow persons with a significant number of years of experience in performing environmental assessments to qualify as environmental professionals, for the purposes of the all appropriate inquiries rule, if they do not have a college degree in science or engineering. In response to the concerns raised by commenters, the final rule provides that individuals that do not meet the required educational requirement (i.e., do not have a Baccalaureate or higher degree in a field of engineering or science from an accredited institution of higher education) will qualify as an environmental professional if they have ten (10) years of relevant full-time experience in the conduct of all appropriate inquiries investigations, or Phase I environmental site assessments. In addition, today's final rule does not include the proposed "grandfather clause."

The Agency has made every effort to take public comment into consideration while promulgating the final all appropriate inquiries rule. To this end the above mentioned changes have been made to the standards set out for environmental professionals. It is the opinion of the Agency that the modified standards will establish sufficiently high standards for environmental professionals, ensuring environmental responsibility and health protection. Additionally, we believe that the modified standards are also superior in that they are more fair than the proposed standards. We hope the balance struck on this issue will result in both environmental protection and a fair gauge of an environmental professional's ability to carry out an all appropriate inquiries.

Given the variety of property types and uses that an environmental professional may encounter when conducting all appropriate inquiries investigations, EPA has determined that a minimum of three years of relevant full-time experience is essential to ensuring a high level of expertise on the part of environmental professionals.

At this time, EPA does not have the resources to establish a national training and

certification program for environmental professionals. Training on the essential elements of conducting environmental site assessments may best be achieved by meeting the educational and experience qualifications including in the definition of environmental professional in the final rule. Other training opportunities may be available from private organizations.

2.3.9 The Rule Should Specifically Address Subsurface Investigations as a Separate Component of AAI

Commenter Organization Name: Ferguson, Jim

Comment Number: 0203

Excerpt Number: 2

Excerpt Text:

However, the proposed definitions should be revised by adding "geologist" in addition to that of "Environmental Professional" (EP) and defining a procedure for that specific component of AAI dealing with impact from adjoining properties whereby that component is done only by a "geologist".

EPA's rationale for its broad definition of EP, while an improvement, appears to be based on the recommendations of a Negotiated Rulemaking Committee (NRC) composed of individuals from a variety of backgrounds but lacking members of the geology profession such as The American Institute of Professional Geologists (AIPG). EPA claims to have taken a "middle-of-the-road" approach in which the technical quality for Phase I's is ensured while at the same time "grandparenting" those individuals with the required years of experience in the practice. This approach contains a contradiction. Phase I's have not been technically rigorous by tradition. Many have been done only as a formality with very little concern over technical substance by either the buyer or the seller. Thus, a scientist with any common sense has been able to walk the site, access the ASTM-required databases, conduct interviews and draw conclusions. In fact, those individuals and firms who have not properly addressed the issue of adjoining properties have been retained solely on the basis of price by buyers and sellers ignorant of the importance of adjoining properties. In many instances, serious oversights have occurred based on improper or no consideration of the impact of contamination migrating from adjacent sites to the subject site. This decision requires specialized knowledge and appropriate interpretation of the subsurface conditions and hydrogeologic properties of the area. These hidden properties control the rate and direction of groundwater flow, contaminant attenuation, groundwater vulnerability and the radius of concern. Man-made impacts from such as underground utilities and pumping wells must also be properly considered. EPA included recognition of this specialized discipline when it defined "qualified groundwater scientist" and specified his/her roles in the Subtitle D Municipal Solid Waste Landfill Regulations. AAI is no different.

Many (~28) States have boards of registration for geologists with the responsibility to restrict the making of these decisions to qualified, duly registered professional geologists. This is but one component of the many issues in AAI, but it is a very important one and it requires specific knowledge. It appears that EPA considered a rigorous definition of EP but opted not to follow through. It should. This concept, dealing with the interpretation of subsurface conditions, was apparently not discussed in detail by the NRC or in the rationale in the proposed rule. It takes on a greater importance also in that the proposed rule allows more judgment by the EP and is not as prescriptive as ASTM 1527.

Adding also to the importance of this issue is the proliferation of automated, Internet-based platforms for creating data summaries and maps of the subject area. These give the erroneous impression of thoroughness to the point of even showing groundwater flow direction and the relative elevation of surrounding sites that have the potential to impact the subject site. These presentations can be very misleading and, if used by an unqualified EP, may lead to serious oversights with significant consequences. The judgment of a qualified "geologist", taking advantage of all available geologic and hydrogeologic information sources, is necessary for this purpose. The AAI process, therefore, should specifically define a separate component in and of itself dealing with interpretations of the subsurface and of determining which, if any, adjoining properties may have contaminated or might contaminate the subject property. The rule should specifically require that individuals licensed as professional geologists or individuals meeting equivalent qualifications such as the Certified Professional Geologist in AIPG make these decisions in a specifically defined component of AAI.

Response:

EPA appreciates the commenter's concerns. However, EPA has determined, after reviewing and considering all public comments received in response to the proposed rule, that the activities required to complete a rigorous all appropriate inquiries investigation do not necessarily always require the skills of a professional geologist. In the final rule, EPA adopted a definition of environmental professional that describes the qualifications that EPA determined are necessary for an individual who oversees or manages all appropriate inquiries investigations. Should the assessment of a particular property require the skills of a professional geologist, the environmental professional overseeing the conduct of the site investigation will most likely identify this need and consult with a professional geologist prior to rendering an opinion regarding the environmental conditions of a property.

2.3.10 The Agency Should Define the Term "Full-Time"

Commenter Organization Name: Lind, Peter

Comment Number: 0107

Excerpt Number: 2

Excerpt Text:

Which brings me to the definition for "relevant experience". The proposed regulations consistently state the equivalent of "full-time" relevant experience. What is meant by "full-time". As a licensed architect, or engineer, or geologist, or any other professional the term full-time must be defined.

In Illinois, I currently hold ten professional licenses. Seven of the Illinois professional licenses are in the environmental field: asbestos, lead, air monitoring, project management, design professional, etc. Illinois does not currently license individuals as an "Environmental Professional", nor firms as "Environmental Consultants". For the most part, I have held current and continuously all seven licenses since 1988... or a total of 16 years.

My design firm also serves public and institutional clients offering licensed architectural and engineering for facility needs. If my design firm spends 50% of the time on architecture and 50% on AAI related projects, then my total relevant experience may be viewed by the opposing lawyer as only 8 years (16 years times 50% relevant experience), even though I held, maintained, and offered the AAI service to clients and holding all relevant state environmental licenses for the entire duration. In Illinois, each environmental license requires relevant EPA refresher training to maintain the annual license.

Response:

The use of the phrase "full-time" within the definition of environmental professional and the definition of relevant experience is meant to require that an individual has accumulated the equivalent of 3, 5, or 10 years of experience. An individual may accumulate such experience over a longer length of time than the 3, 5, or 10 years, as long as the total time of accumulated experience would be the equivalent of 3, 5, or 10 years of full-time experience. Even after an individual accumulates the required number of years of full-time experience, that individual does not have to conduct environmental site assessments, or all appropriate inquiries investigations, on a full-time basis to qualify as an environmental professional.

Commenter Organization Name: Lind, Peter

Comment Number: 0107

Excerpt Number: 4

Excerpt Text:

3. Define the term "full-time" as an individual holding current an annual state license in an equivalent environmental consultant role.

Response:

The use of the phrase “full-time” within the definition of environmental professional and the definition of relevant experience is meant to require that an individual has accumulated the equivalent of 3, 5, or 10 years of experience. An individual may accumulate such experience over a longer length of time than the 3, 5, or 10 years, as long as the total time of accumulated experience would be the equivalent of 3, 5, or 10 years of full-time experience. Even after an individual accumulates the required number of years of full-time experience, that individual does not have to conduct environmental site assessments, or all appropriate inquiries investigations, on a full-time basis to qualify as an environmental professional.