



All Appropriate Inquiries Final Rule

WHAT IS “ALL APPROPRIATE INQUIRIES”?

“All appropriate inquiries” is the process of evaluating a property’s environmental conditions and assessing potential liability for any contamination.

WHY IS EPA ESTABLISHING STANDARDS FOR CONDUCTING ALL APPROPRIATE INQUIRIES?

The 2002 Brownfields Amendments to CERCLA require EPA to promulgate regulations establishing standards and practices for conducting all appropriate inquiries.

STAKEHOLDER COLLABORATION

A Negotiated Rulemaking Committee consisting of 25 diverse stakeholders developed the proposed rule. Following publication of the proposed rule, EPA provided for a three month public comment period. EPA received over 400 comments from interested parties. Based upon a review and analysis of issues raised by commenters, EPA developed the final rule.

WHEN IS THE RULE EFFECTIVE?

The final rule is effective on November 1, 2006—one year after being published in the Federal Register. Until November 1, 2006, both the standards and practices included in the final regulation and the current interim standards established by Congress for all appropriate inquiries (ASTM E1527-00) will satisfy the statutory requirements for the conduct of all appropriate inquiries.

WHO IS AFFECTED?

The final All Appropriate Inquiries requirements are applicable to any party who may potentially claim protection from CERCLA liability as an innocent landowner, a bona fide prospective purchaser, or a contiguous property owner. Parties who receive grants under the EPA’s Brownfields Grant program to assess and characterize properties must comply with the All Appropriate Inquiries standards.

WHEN MUST ALL APPROPRIATE INQUIRIES BE CONDUCTED?

All appropriate inquiries must be conducted or updated within one year prior to the date of acquisition of a property. If all appropriate inquiries are conducted more than 180 days prior to the acquisition date, certain aspects of the inquiries must be updated.

WHAT SPECIFIC ACTIVITIES DOES THE RULE REQUIRE?

Many of the inquiry’s activities must be conducted by, or under the supervision or responsible charge of, an individual who qualifies as an environmental professional as defined in the final rule.

The inquiry of the environmental professional must include:

- interviews with past and present owners, operators and occupants;
- reviews of historical sources of information;
- reviews of federal, state, tribal and local government records;
- visual inspections of the facility and adjoining properties;
- commonly known or reasonably ascertainable information; and
- degree of obviousness of the presence or likely presence of contamination at the property and the ability to detect the contamination.

Additional inquiries that must be conducted by or for the prospective landowner or grantee include:

- searches for environmental cleanup liens;
- assessments of any specialized knowledge or experience of the prospective landowner (or grantee);
- an assessment of the relationship of the purchase price to the fair market value of the property, if the property was not contaminated; and
- commonly known or reasonably ascertainable information.

HOW DOES THE FINAL AAI RULE DIFFER FROM THE INTERIM STANDARD?

The final All Appropriate Inquiries rule does not differ significantly from the ASTM E1527-00 standard. The rule includes all the main activities that previously were performed as part of environmental due diligence such as site reconnaissance, records review, interviews, and documentation of recognized environmental conditions. The final rule, however, enhances the inquiries by extending the scope of a few of the environmental due diligence activities. In addition, the final rule requires that significant data gaps or uncertainties be documented.

Under the final All Appropriate Inquiries rule, interviewing the subject property's current owner or occupants is mandatory. The ASTM E1527-00 standard only required that the environmental professional make a reasonable attempt to conduct such interviews. In addition, the final rule includes provisions for interviewing past owners and occupants of the subject property, if necessary to meet the objectives and performance factors. Under the ASTM E1527-00 standard, the environmental professional had to inquire about past uses of the subject property when interviewing the current property owner.

The final rule also requires an interview with an owner of a neighboring property if the subject property is abandoned. The ASTM E1527-00 standard included such interviews at the environmental professional's discretion.

The final rule does not specify who is responsible for performing record searches, including searches for use limitations and environmental cleanup liens. The ASTM E1527-00 standard specified that these record searches are the responsibility of the user and required that the results be reported to the environmental professional.

Unlike the ASTM E1527-00 standard, the final rule requires the examination of tribal and local government records and more extensive documentation of data gaps.

The final rule includes specific documentation requirements if the subject property cannot be visually inspected. The ASTM E1527-00 standard did not include such requirements.

WHO QUALIFIES AS AN ENVIRONMENTAL PROFESSIONAL?

To ensure the quality of all appropriate inquiries, the final rule includes specific educational and experience requirements for an environmental professional.

The final rule defines an environmental professional as someone 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 of the rule, and has: (1) a state or tribal issued certification or license and three years of relevant full-time work experience; **or** (2) a Baccalaureate degree or higher in science or engineering and five years of relevant full-time work experience; **or** (3) ten years of relevant full-time work experience.

For more information on the environmental professional definition, please see EPA's Fact Sheet on the Definition of an Environmental Professional.

WILL THERE BE AN UPDATED ASTM PHASE I SITE ASSESSMENT STANDARD?

Yes. ASTM International updated its E1527-00 standard, "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process." EPA establishes that the revised ASTM E1527-05 standard is consistent with the requirements of the final rule for all appropriate inquiries and may be used to comply with the provisions of the rule.

CONTACT INFORMATION

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Also, please see the U.S. EPA's web site at www.epa.gov/brownfields for additional information.