

New Phase I Environmental Site Assessment Standard And U. S. EPA Rule

On November 1, 2005, the U. S. Environmental Protection Agency (EPA) promulgated the first ever “environmental due diligence” federal regulation. In *40 CFR Part 312 - Standards and Practices for All Appropriate Inquiries*, this rule established specific regulatory requirements for conducting an inquiry into the previous ownership, uses, and environmental conditions of a property. It became effective on November 1, 2006.

ASTM produced an updated Phase I ESA “standard practice” document in accordance with this EPA rule (the two parties in fact worked together on the rule). The ASTM standard E1527-05 incorporates “**All Appropriate Inquiry**” (AAI) language complying with EPA rule requirements.

Once effective, the rule's provisions must be met by any purchasers seeking to qualify for CERCLA (“Superfund” law) liability protection as an innocent landowner, *bona fide* prospective purchaser, or contiguous property owner. It must also be used by any party receiving a Brownfields grant awarded under CERCLA Section 104(k)(2)(B) to conduct site assessment activities.

AAI must be performed or supervised by a qualified environmental scientist who meets strict educational or experience requirements set forth in the rule. Generally, the rule calls for more experienced, better educated people to do the field work and reporting. More interviews (and more comprehensive interviews) must be conducted with past and present owners, operators and occupants of property, including all major occupants or ones likely to handle hazardous substances, for the purpose of gathering information regarding the potential for contamination at the facility.

As required before, historical sources such as chain of title documents, aerial photographs and building department and land use records must be reviewed to determine previous uses and occupancies since the property was first developed. Prior ASTM Standards only required the historical search to go back to 1940, but the new rule requires historical research to go back to the property's first developed use.

The professional must review recorded searches for federal, state, tribal or local government environmental cleanup liens against the property, and searches of the same types of records related to waste disposal records, underground storage tank records and hazardous waste handling, generation, treatment, disposal and spill records concerning contamination at or near the facility.

In addition, the assessment must include evaluation of the relationship of the purchase price to the fair market value of an impaired property if it was not contaminated. This is a difficult set of comparisons to make, even with an experienced person reporting.

Any data gaps identified in the various inquiries must be identified. The professional must comment on the significance of such data gaps, and whether they affect identification of conditions that indicate hazardous substance releases.

Contact Chapman Engineering at 800-375-7747 to discuss further.