



BUYER BEWARE

New All Appropriate Inquiry Rule

Do you have due diligence? If you are contemplating acquiring new property or securing funding for an existing project you need to know about the new All Appropriate Inquiry (AAI) rule.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) provides protection for prospective purchasers and investors involved in real estate transactions. The new All Appropriate Inquiry Rule is the first step in taking advantage of that protection.

What's Changed in the New AAI?

- Standards for the Environmental Professionals conducting Phase 1 EAs have been tightened.
- Interviews with one or more current property owners and owners or occupants of adjoining properties are required.
- Review of environmental records has been expanded to include local governments.
- Required review of historical sources has been broadened.
- Physical inspection of the property and adjoining properties is required.

The Environmental Protection Agency (EPA) has implemented some important changes for conducting "All Appropriate Inquiry" for Phase I Environmental Assessments (EAs). This new AAI rule, which went into effect on November 1st of this year, requires a Phase I EA to satisfy the AAI standards in order to qualify the user of the Phase I EA for certain defenses and protections available under the federal Superfund law.

Does your property contain a time-bomb of liability? Did the previous owner allow toxic wastes to enter the soil, where they remain hidden and invisible, but still dangerous? No matter when the toxins entered the soil, the current owner is responsible for bringing the site up to Federal and state standards of safety. The costs for remediating toxic waste can be much higher than the value of the property.

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- Any gaps in required data must be identified in the EA report.
- Properties with identified contamination may be subject to Activity and Use Limitations (AULs) that restrict the use of the site in perpetuity.
- The EA must be completed no more than one year before the transfer of the property, and many of the critical components of the EA must have been completed no more than 180 days before transfer.



Questions / Contact Us

To learn more about liability protection under CERCLA, the AAI, Environmental Assessments, and other environmental issues contact Dr. Bill Kirby or Amanda Thompson at 703-934-0900.

The completion of a Phase 1 Environmental Assessment is only the first component of comprehensive liability protection under the CERCLA. The ability to qualify for liability protection must be maintained perpetually. The new AAI clarifies and formalizes a number of issues, and places increased responsibility on the owner or user of a property as well as on the Environmental Professional who prepares the Phase 1 EA.

All Appropriate Inquiry Rule

Changes to the All Appropriate Inquiry Rule went into effect on November 1, 2006. Are you prepared?

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PSA *for you*