

AAI Property Transfer
Environmental Assessments
Do It Right or Pay the Price!

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A Presentation for the Oklahoma
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Overview



- CERCLA Liability Protections
- Congressional Directive
- Environmental Site Assessment Regulations
- Investigation Requirements
- Investigator Requirements
- Reporting Requirements
- Cost Considerations

History of ESA



- CERCLA Adopted December 11, 1980
- Innocent Landowner Provisions -107(b)(3)
- Appropriate Inquiry/Due Care
- Rebut the Liability Presumption
- Due Care Guidance at August 18, 1989, Federal Register (54 FR 34235)

History of ESA



- No Standard Study/Reporting Procedures
- ASTM Procedures Adopted in 1993
- Revised in 1997 and 2000
- 2002 Brownfields Amendments to CERCLA
- EPA to Develop “All Appropriate Inquiry” Rules Within 2 Years

History of ESA



- AAI Rule Adopted November 1, 2005
- Final Rule in 40 CFR Part 312
- Effective on November 1, 2006
- ASTM E1527-05 Adopted-Same Date
- EPA Determined that E1527-05 is Fully Compliant with the Final Rule
- EPA also Determined that ASTM E2247-08 (Rural & Forestlands) is Fully Compliant

All Appropriate Inquiry



- CERCLA Liability Protection Options
 - Innocent Landowner - Same protections as before AAI
 - Bona Fide Prospective Purchaser - Intended to Drive Brownfields Redevelopment
 - Contiguous Property Owner - Protect landowners from contaminant migration issues

All Appropriate Inquiry



- Investigation Requirements
 - Required Interviews
 - Current & Past Owners & Operators
 - Neighboring Owners & Operators
 - Required Historical Period
 - From the Present Back to First Development or Use
 - Required Records Review
 - Federal, State, Tribal, Local
 - Use Limitations, Corrective Actions

AAI Required Records Review

- NPL - 1 Mile
- RCRA Corr. Action - 1 Mile
- Haz Waste Sites - ½ Mile
- Leaking UST - ½ Mile
- Archived NPL - ½ Mile
- Engineering Controls - ½ Mile
- NFRAO CERCLIS - ½ Mile
- RCRA Generators - Adjoining
- Solid Waste Mgmt. - ½ Mile
- Registered Tanks - Adjoining



All Appropriate Inquiry

- Phase I Investigation Requirements
 - Visual Inspections Required
 - Subject Property
 - Adjoining Properties
 - Contaminants of Concern
 - For CERCLA Defense
 - CERCLA Hazardous Substances
 - For EPA Brownfields Grant Recipients
 - Controlled Substances
 - CERCLA Pollutants or Contaminants
 - Petroleum/Petroleum Products



All Appropriate Inquiry



- Phase I Investigation Requirements
 - Conducted By An Environmental Professional
 - Identify Commonly Known or Reasonably Ascertainable Information
 - Evaluate Degree of Obviousness or Likely Presence of Contamination on Property
 - Relationship of the Purchase Price to Fair Market Value of the Property

All Appropriate Inquiry



- Environmental Professional Requirements
 - Certification or License
 - Current Professional Engineer (w/3 Years Exp.)
 - Current Professional Geologist (w/3 Years Exp.)
 - Current License or Certification to Perform ESA's or AAI as Defined in EPA Rule (w/3 Years Exp.)

All Appropriate Inquiry



- Environmental Professional Requirements
 - Education
 - B.S. or Higher Degree in Engineering or Science
 - Accredited Institution of Higher Learning
 - Plus 5 Years of Relevant Experience
 - Experience
 - 10 Years of Relevant Experience
 - Continuing Education to Remain Current in Field

All Appropriate Inquiry



- Environmental Professional Requirements
 - Individuals not Meeting Environmental Professional Requirements May Participate in the Environmental Assessment if they Work under the Responsible Charge of a Qualified Environmental Professional.

All Appropriate Inquiry



- Phase I Report Requirements Include
 - Statements
 - Environmental Professionals Qualifications
 - Prepared in Accordance with Federal Regulation
 - Opinion of Releases or Threatened Releases
 - Identification of Data Gaps Preventing Full Evaluation
 - Must be Conducted Within 1 Year
 - of Purchase Date (6 Month Update)

Vapor Intrusion



- Not Addressed in E1527-05/40CFR Part 312
- Growing Liability Concerns Regarding Indoor Air Quality
- ASTM Adopted E2600-10 to Guide Property Transfer Investigations
- Vapor Migration Similar to Groundwater Migration – Similar Liabilities
- EPA Currently Considering the Need to Address