



REMEDIATION SECTION

All Appropriate Inquiry Rule Becomes Effective November 1, 2006

BACKGROUND

The 2002 Brownfields Amendments to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) required that the United States Environmental Protection Agency (U.S. EPA) promulgate regulations establishing standards and practices for conducting “all appropriate inquiries” (AAI). These AAI requirements apply to anyone who may potentially claim protection from CERCLA liability as an innocent landowner under CERCLA §107(b)(3), a contiguous property owner under § 107(q), or a bona fide prospective purchaser under §107(r).

The final rule was published on November 1, 2005 at 70 FR 66070, *et seq.* and becomes effective on November 1, 2006.

INTERIM STANDARD

In the Brownfields Amendments, Congress established the then-current ASTM standard (ASTM E1527-00) as the interim AAI standard pending the effective date of U.S. EPA’s new regulation. In turn, U.S. EPA’s rulemaking recognizes the updated ASTM standard (ASTM E1527-05) as consistent with their AAI regulations and specifically allows the use of the new ASTM standard to comply with AAI requirements. U.S. EPA’s rule also allows the use of the proposed AAI standard (or ASTM E1527-05) prior to its effective date.

Thus, until November 1, potential purchasers may meet the AAI requirements by following either ASTM E1527-00 or E1527-05 or by following the final AAI rule. Beginning November 1, purchasers must follow either the final AAI rule or the comparable 2005 ASTM standard to qualify for protection under CERCLA.

NEW REQUIREMENTS

Although similar to past industry practices, the new standards do contain additional requirements regarding the level of inquiry and documentation performed during due diligence. A comparison of the AAI standard to the 2000 ASTM standard may be found on U.S. EPA’s website at www.epa.gov/brownfields/regneg.htm.

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