



All Appropriate Inquiry

WHAT IS “ALL APPROPRIATE INQUIRY”?

All appropriate inquiry refers to the requirements for assessing the environmental conditions of a property prior to its acquisition.

WHY IS EPA ESTABLISHING STANDARDS FOR CONDUCTING “ALL APPROPRIATE INQUIRY”?

On January 11, 2002, President Bush signed the Small Business Liability Relief and Revitalization Act (“the Brownfields Law”). In general, the Brownfields Law amends CERCLA and provides funds to assess and clean up brownfields sites, clarifies CERCLA liability provisions for certain landowners, and provides funding to enhance State and Tribal cleanup programs. The Brownfields Law requires EPA to develop regulations establishing standards and practices for how to conduct all appropriate inquiry by January 2004.

WHO CONDUCTS “ALL APPROPRIATE INQUIRY” UNDER THE NEW BROWNFIELDS LAW?

Subtitle B of Title II of the Brownfields Law revises some of the provisions of CERCLA Section 101(35) clarifying the requirements necessary to establish the innocent landowner defense under CERCLA in addition to providing Superfund liability limitations for bona fide prospective purchasers and contiguous property owners. Among the requirements added to CERCLA is the requirement that such parties undertake “all appropriate inquiry” into prior ownership and use of a property at the time at which a party acquires the property.

- **Bona fide prospective purchasers** who buy property after January 11, 2002 must perform all appropriate inquiry prior to purchase and may buy knowing, or having reason to know, of contamination on the property while still enjoying the limitation on liability provided by the new definition.
- **Contiguous property owners** whose property is not the source of the contamination, but is “contiguous” to a facility that is the source of contamination found on their property must perform all appropriate inquiry prior to

purchase and buy not knowing, or having reason to know, of contamination on the property.

- **Innocent purchasers/landowners** must perform all appropriate inquiry prior to purchase of a property and must buy without knowing, or having reason to know, of contamination on the property.

The Brownfields Law also establishes that site characterizations or assessments conducted by entities with the use of brownfields grants awarded under CERCLA Section 104(k)(2)(B)(ii) must be conducted in accordance with the “all appropriate inquiry” standards established under the law.

WHAT ARE THE STATUTORY CRITERIA FOR CONDUCTING “ALL APPROPRIATE INQUIRY”?

Congress directed EPA to establish, by regulation, standards and practices for conducting all appropriate inquiry. This will be accomplished through the process of regulatory negotiation. In the Brownfields Law, Congress directed EPA to include, within the standards for all appropriate inquiry, the ten criteria shown below:

- The results of an inquiry by an environmental professional;
- Interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility;
- Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land-use records, to determine previous uses and occupancies of the real property since the property was first developed;
- Searches for recorded environmental clean-up liens against the facility that are filed under federal, state, or local law;
- Reviews of federal, state, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records concerning contamination at or near the facility;

- Visual inspections of the facility and adjoining properties;
- Specialized knowledge or experience on the part of the defendant;
- The relationship of the purchase price to the value of the property if the property was not contaminated;
- Commonly known or reasonably ascertainable information about the property; and
- The degree of obviousness of the presence or likely presence of contamination at the property and the ability to detect the contamination by appropriate investigation.

CONTACT INFORMATION

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WHAT ARE THE INTERIM STANDARDS FOR CONDUCTING “ALL APPROPRIATE INQUIRY”?

The law set two different interim standards for conducting “all appropriate inquiry” that apply depending on the date the property was purchased. These standards will remain in effect until EPA promulgates final federal standards.

1. **Properties purchased prior to May 31, 1997**, the law provides that a court shall consider the following when making a determination with respect to a defendant: specialized knowledge or experience of the defendant, relationship of the purchase price to the value of uncontaminated property, commonly known information about the property, obviousness of contamination, and the ability of the defendant to detect contamination by appropriate detection.
2. **Properties purchased after May 31, 1997**, the law requires the use of procedures developed by the American Society for Testing Materials (ASTM), in particular ASTM’s standard E1527-97, or “Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process.” In the final rule “Clarification to Interim Standards and Practices for All Appropriate Inquiry Under CERCLA and Notice of Future Rulemaking Action,” EPA establishes that the current ASTM standard, E1527-00, will also meet the “all appropriate inquiry” requirement for site characterizations and assessments.