



Apex Environmental Consulting, LLC
W174 N8567 Schneider Drive • Menomonee Falls, WI 53051
Phone: (262) 364-7799 • Fax: (262) 251-7899
apex-enviro.com

PHASE Is AND THE NEW AAI RULE

What is AAI?

“All Appropriate Inquiry” (AAI) is the process of evaluating a property’s environmental conditions and assessing potential liability for contamination.

Why did the EPA establish standards for conducting all appropriate inquiries?

In January 2002, President Bush signed into law the Small Business Liability Relief and Brownfields Revitalization Act (commonly known as the “Brownfields Amendments”) which amended the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (commonly known as the “Superfund Law”). The Brownfields Amendments required the Environmental Protection Agency (EPA) to promulgate regulations establishing standards and practices for conducting AAI in relation to property transactions.

Who is affected?

AAI requirements are applicable to any party who may potentially claim protection from CERCLA liability as an innocent landowner, a bona fide prospective purchaser, or a contiguous property owner. Parties who receive grants under the EPA’s Brownfields Grant program to assess and characterize properties also must comply with the AAI standards.

When must all appropriate inquiries be conducted?

All appropriate inquiries must be conducted or updated within one year of the date of acquisition of a property. If all appropriate inquiries are conducted more than 180 days prior to the acquisition date, certain aspects of the inquiries must be updated.

When did the AAI rule become effective?

The AAI rule went into effect on November 1, 2006—one year after being published in the Federal Register.

Is there an updated ASTM Phase I site assessment standard?

Yes. The American Society for Testing and Materials (ASTM) updated its E1527-00 standard, “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.” The EPA has established that the revised ASTM E1527-05 standard is consistent and compliant with the AAI rule, and may be used to comply with the provisions of the AAI rule.

What specific activities does the AAI rule require?

Many of the inquiry’s activities must be conducted by, or under the supervision or responsible charge of, an individual who qualifies as an environmental professional as defined in the AAI rule. The inquiry of the environmental professional must include:

- interviews with past and present owners, operators, and occupants;
- reviews of historical sources of information;
- reviews of federal, state, tribal, and local government records;
- visual inspections of the facility and adjoining properties;
- commonly known or reasonably ascertainable information; and
- degree of obviousness of the presence or likely presence of contamination at the property and the ability to detect the contamination.

Additional inquiries that must be conducted by or for the prospective landowner or grantee include:

- searches for environmental cleanup liens;
- assessments of any specialized knowledge or experience of the prospective landowner or grantee;
- an assessment of the relationship of the purchase price to the fair market value of the property, if the property was not contaminated; and
- commonly known or reasonably ascertainable information.

Summary of Main Differences Between the New AAI Rule and the ASTM E1527-00 Standard

| | New ASTM 1527-05 AAI Standard | Old ASTM 1527-00 Standard |
|---|--|---|
| Definition of Environmental Professional | <ul style="list-style-type: none"> • Specific certification/license, education, and experience requirements. • Applies only to individuals supervising all appropriate inquiries. | <ul style="list-style-type: none"> • No specific certification, licensing, education, or experience requirements. • Applies to all individuals involved in conducting all appropriate inquiries. |
| Interview with Current Owner and Occupants of the Subject Property | <ul style="list-style-type: none"> • Mandatory. | <ul style="list-style-type: none"> • No specific certification, licensing, education, or experience requirements. • Applies to all individuals involved in conducting all appropriate inquiries. |
| Interview with Past Owner and Occupants | <ul style="list-style-type: none"> • Interviews with past owners and occupants must be conducted as necessary to achieve the objectives and performance factors in §§ 312.20(e)-(f). | <ul style="list-style-type: none"> • Not required, but must inquire about past uses of the subject property when interviewing current owner and occupants. |
| Interview with Neighboring or Nearby Property Owners or Occupants | <ul style="list-style-type: none"> • Mandatory at abandoned properties. | <ul style="list-style-type: none"> • Discretionary. |
| Review of Historical Sources: period to be covered | <ul style="list-style-type: none"> • From the present back to when the property first contained structures or was used for residential, agricultural, commercial, industrial or governmental purposes. | <ul style="list-style-type: none"> • All obvious uses from the present back to the property's first obvious developed use or 1940, whichever is earlier. |
| Records of Activity and Use Limitations (e.g., Engineering and Institutional Controls) and Environmental Cleanup Liens | <ul style="list-style-type: none"> • No requirement as to who is responsible for the search. • Scope of environmental cleanup lien search includes those liens filed or recorded under federal, state, tribal or local law. | <ul style="list-style-type: none"> • User's responsibility. • The search results must be reported to the environmental professional. • Scope of environmental cleanup lien search is limited to reasonably ascertainable land title records. |
| Government Records Review | <ul style="list-style-type: none"> • Federal, state, tribal, and local records. | <ul style="list-style-type: none"> • Federal and state records. • Local records/sources at the discretion of the environmental professional. |
| Site Inspection | <ul style="list-style-type: none"> • Visual inspection of subject property and adjoining properties required. • Limited exemption with specific requirements if the subject property cannot be visually inspected. | <ul style="list-style-type: none"> • Visual inspection of subject property required (no exemption). • No specific requirement to inspect adjoining properties; only to report anything actually observed. |
| Contaminants of Concern | <p>Parties seeking CERCLA defense:</p> <ul style="list-style-type: none"> • CERCLA hazardous substances. <p>EPA Brownfields Grant recipients:</p> <ul style="list-style-type: none"> • CERCLA hazardous substances, pollutants or contaminants, petroleum/petroleum products, controlled substances. | <ul style="list-style-type: none"> • CERCLA hazardous substances and petroleum products. |
| Data Gaps | <ul style="list-style-type: none"> • Requires identification of sources consulted to address data gaps and comments on significance of data gap with regard to the ability of the environmental professional to identify conditions indicative of releases and threatened releases. | <ul style="list-style-type: none"> • Generally discretionary; sources that revealed no findings must be documented. |
| Shelf Life of Written Report | <ul style="list-style-type: none"> • One year, with some updates required after 180 days. | <ul style="list-style-type: none"> • Updates of specific activities recommended after 180 days. |