

WHITE PAPER

Qualify for the Innocent Landowner Defense: Complying with the All Appropriate Inquiry (AAI)

Complying with the AAI Standard is now the only way to ensure that you will qualify for the Innocent Landowner Defense.

Environmental due diligence is an essential part of any property transaction. Over time, property owners have come to see the American Society of Testing and Materials (ASTM) E1527 for Phase I Environmental Site Assessments as the accepted and appropriate standard for pre-purchase inquiry. However, in November of 2006, the U.S. Environmental Protection Agency (EPA) released a new, tougher standard for environmental due diligence, the All Appropriate Inquiry (AAI) Standard. Complying with the AAI Standard is now the only way to ensure that you will qualify for the Innocent Landowner Defense. This paper's objective is to guide you in adhering to the AAI Standard to ensure you qualify for the Innocent Landowner Defense.

THE IMPORTANCE OF ENVIRONMENTAL DUE DILIGENCE

Environmental due diligence can reveal possible hazards on a property and is typically done during a sales transaction. This due diligence can exempt you from cleanup liability for environmental contamination present on the property. In fact, most property owners strive to qualify for the Innocent Landowner Defense. The Innocent Landowner Defense is a legal defense that can be asserted to restrict a property owner's liability for cleaning up contamination and is intended to protect those who own property after an impact has occurred.

In order to achieve the status of an "innocent landowner", the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) defined in 1986 that a party must conduct an All Appropriate Inquiry (AAI). Unfortunately, the statute never defined the criteria for conducting an AAI, so the ASTM was considered a temporary definition of the AAI requirements. Many property owners still believe the ASTM E1527 for Phase I Environmental Site Assessments is the correct standard for pre-purchase inquiry. However, complying with the first Standard, the ASTM E1527, will no longer qualify you for the Innocent Landowner Defense.

HOW THE NEW ALL APPROPRIATE INQUIRY STANDARD AFFECTS YOU

In late 2005, the EPA published a standard setting federal requirements for the conduct of All Appropriate Inquiry. The new AAI Standard, which became effective in November 2006, applies to any property owner claiming protection from liability as an innocent landowner, as a bona fide prospective purchaser or as a contiguous property owner. Since November 2006, parties must comply with the requirements of the AAI Standard to be exempt from property cleanup liability.

Through the AAI, the regulated community now has specific criteria to meet the requirements of due diligence before purchase. Although the requirements of the

AAI Standard are not severe, property owners should be aware that the Innocent Landowner Defense is now more difficult and expensive to establish. The All Appropriate Inquiry Standard enhances the provisions by extending the scope of some of the environmental due diligence activities. Also, the AAI Standard includes specific requirements for enhanced experience and educational background for an environmental professional.

ABIDING BY THE ASTM E1527-05

In agreement with the development of the EPA's AAI Standard, the ASTM E1527 was amended to be consistent and compliant with the final rule. The new ASTM E1527-05 can be used to abide by the provisions of the AAI approved Standard. Following these requirements is the only way a purchaser can ensure that they will qualify for the EPA's Innocent Landowner Defense, restricting their liability for cleaning up contamination.

Please contact us at 800-805-6002, and a Sierra Piedmont team member will be happy to assist you with your specific project.