

# PMK Group Environmental

## New Environmental Due Diligence Standard

**O**n November 1, 2005, the Environmental Protection Agency (EPA) announced that the “all appropriate inquiries” regulations regarding environmental due diligence would go into effect November 1, 2006.

This rule which was mandated by the Small Business Liability Relief and Brownfields Revitalization Act of 2002, will effectively replace the American Society for Testing and Materials (ASTM) Phase I Standard.

The Phase I Standard has become universally accepted and is required by banks and other lenders prior to providing financing for property acquisition. The ASTM standard was developed to assist purchasers of property to qualify for the innocent purchaser defense under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Persons who do not conduct all appropriate inquiries prior to obtaining ownership of the property may lose their ability to claim protection from CERCLA liability as an innocent landowner, bona fide prospective purchaser, or contiguous property owner. This new due

diligence standard (All Appropriate Inquiries (AAI)) sets forth specific regulatory requirements for conducting all inquiries into the previous ownership, uses, and environmental conditions of a property for the purposes of qualifying for certain landowner liability protections under CERCLA.

The concepts of the AAI are almost identical to the ASTM Phase I; however, certain aspects of AAI provide more detail or emphasize different aspects as part of the site assessment process. One of the differences between the two Standards is the need to establish minimum qualifications for Environmental

Professionals (EP) responsible for environmental due diligence. A sliding scale of training and experience has been proposed that runs from three years for professional engineers and geologists to five years for an individual with a Bachelor's Degree in a relevant discipline, up to ten years for an individual that has relevant experience performing due diligence assessments. In addition, in the final rule, the EPA included those individuals licensed by federal, state, tribe or US territory agencies to perform environmental assessments along with 3 years relevant experience. While an individual that does not meet the qualifications may participate in

the acquisition of information and the preparation of the report, AAI requires that this be done under the supervision of the EP. Additionally, the EP would be required to sign the report and indicate that they satisfy the definition of an EPI.

As set forth in the final rule, AAI must consist (at a minimum) of the following:

1. Interviews with owners, operators and occupants (past and present).
2. Searches for deed notices, environmental liens and other related documents.
3. Review of governmental records
4. Visual observations of the property and adjacent properties.
5. Review of reasonable ascertainable information.
6. An evaluation of the relationship between the sale price of the property and the fair market value.

Environmental Consulting firms and EP's practicing in New Jersey should be advised that AAI does not supersede the need to perform a Preliminary Assessment in accordance with N.J.A.C.7:26E in order for the purchaser to obtain the innocent purchaser protection from the NJDEP. Ideally, an environmental due diligence

inspection should be crafted to satisfy both standards.

If you have any questions concerning this new standard, please feel free to contact Lisa Sauer at 800-879-6681 or [lsauer@pmkgroup.com](mailto:lsauer@pmkgroup.com).

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