



Environmental Update #21

Published by the Hazardous Substance Research Centers/South & Southwest Outreach Program

December 2005

EPA Amends Rules for Investigating the Condition of Brownfield Properties

In January 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act. These amendments to the federal Superfund regulations established provisions to fund assessments and the cleanup of environmentally contaminated properties, also known as brownfields. The amendments also required the U.S. Environmental Protection Agency (EPA) to finalize regulations setting federal standards and practices for all appropriate inquiries (AAI) into the environmental condition of a property. While the funding mechanisms went into effect immediately, the EPA put out a draft AAI for public comment and released its final all appropriate inquiry rule on November 1, 2005, and the rule will go into effect November 1, 2006. Until the new rule goes into effect, purchasers have the option of using the new rule or the ASTM E 1527-00 standard.

The standards and practices set forth by EPA clarify the due diligence needed to limit liability for purchasers of contaminated commercial property or property that will be converted to commercial use. AAI must be conducted in order to qualify as one of the following:

- An innocent landowner under the Comprehensive Environmental Response Compensation and Liability Act (Superfund). An innocent landowner is a purchaser who did not know and had no reason to know, based on an environmental assessment, that the property purchased was contaminated.
- A bona fide prospective purchaser under the brownfield amendments. A bona fide prospective purchaser purchased contaminated property after January 11, 2002
- A contiguous property owner under the brownfield amendments. A contiguous property owner is a victim of pollution caused by a neighbor's actions.

In addition, recipients of EPA brownfields pilot grants, who conducted assessments as part of the grants, must conduct all appropriate inquiries to comply with the terms of the grant.

Among the standards of the new AAI rule, all inquiries must be conducted by an environmental professional defined as a person with a specific amount of experience, education and/or a license to conduct assessments. Persons not meeting the EPA's definition of an environmental professional may work on the inquiry, but a qualifying environmental professional must supervise their work and the final product.

To qualify for a limitation of liability, all appropriate inquiries must include:

- interviews with past and present property owners, property operators, and property occupants;
- reviews of historical sources of information such as aerial photographs, land use records, fire insurance maps, and chain of title documents;
- searches for recorded environmental cleanup liens recorded under federal, state, tribal or local law;

- reviews of federal, state, tribal, and local government records including public health records, registries or publicly available lists of engineering or institutional controls, the National Priorities List, lists of waste generators, lists of registered storage tanks, and records of permitted landfills;
- visual inspection of the property and adjoining properties;
- specialized knowledge or experience on the part of the purchaser regarding the likelihood that the property is contaminated;
- the relationship of the purchase price to the value of the property if uncontaminated;
- commonly known or reasonably ascertainable information about the property; and
- the degree of obviousness of the presence or likely presence of contamination.

If the inquiries show gaps in data that result in the failure to meet all of the criteria listed above, the environmental professional must indicate this in a written report that contains the findings of the inquiry and describe the steps taken to try to fill the gaps.

What does this mean to the purchaser of a brownfield property?

The new rule marks EPA's first effort to write a standardized protocol for conducting investigations of a property's environmental condition. It closely follows the American Society for Testing and Materials' (ASTM) guide for conducting Phase I environmental site assessments, but goes beyond the ASTM in several areas such as defining who can conduct inquiries and what must be included. Purchasers must follow the AAI protocol or risk facing liability for the cleanup of environmental contamination for which they are not responsible. Recipients of EPA brownfield pilot assessment grants must conduct AAI to qualify for and maintain EPA brownfield pilot grant funds. These new provisions may add to the cost of a project, but many firms have already implemented most of the AAI standards into their practices.

For more information contact the Technical Assistance to Brownfield Programs of the South & Southwest Hazardous Substance Research Center (888-683-5963 or <http://www.toscprogram.org/tab-overview.html>), your EPA Regional Office, or visit www.epa.gov.