



[INSIDE INDUSTRY]

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Industrial, commercial and agricultural AAI property transactions — buyer be aware!

The EPA "All Appropriate Inquiries" (AAI) environmental site assessments (ESA) rule has been in effect for a few months now. Under this rule, both the environmental professional and the "user" have obligations to fulfill before an environmental investigation can be considered complete and valid. The transition to the new AAI requirements — which require additional research and interviews — has gone fairly smoothly for most environmental professionals. The new user requirements, however, may take a little getting used to.

The "user" of the AAI rule is defined as "the party seeking to use Practice E 1527* to complete an environmental site assessment of the property. A user may include, without limitation, a potential tenant of property, an owner of property, a lender or a property manager." In simpler terms, the "user" is the person or organization that will use the AAI report.

The AAI rule provides that the user, not the environmental professional, must provide the following information and conduct investigations necessary to provide this information.

Environmental cleanup liens

Have you (the user) checked for these environmental cleanup liens? Are you aware of any

such liens against the subject property?

> Some environmental professionals can conduct an environmental lien search, if so requested by the user.

Activity and use limitations (AULs)

Are you aware of any possible AULs involving the subject property?

> AULs are engineering controls (e.g., slurry walls, caps) and land use restrictions or institutional controls (e.g., deed restrictions, covenants) that may be in place at the site or filed under federal, tribal, state or local law.

Specialized knowledge

Do you have personal knowledge or experience about the subject property or nearby properties?

> For example, do you know or have reason to believe chemicals, oil, degreasers, gasoline or other hazardous substances may have been stored or used on the property?

Fair market value (FMV)

Is the purchase price significantly below fair market value?

> A purchase price significantly below FMV may indicate an environmental problem.

Obvious indicators

Do you know of any obvious indicators of possible contamination on or near the site (past or present spills, stains, releases, cleanups, etc., on or near the site)?

Common knowledge

Do you have any common knowledge about the property (past uses, use of chemicals, possible contamination, etc.)?

The AAI rule does not require a user to disclose his findings to the environmental professional, particularly if the findings involve confidential information. The user must be aware, however, that if the user questionnaire is not completed and/or the findings of the user investigations are not disclosed to the environmental professional, the environmental professional may consider this lack of disclosure a "data gap." Such a data gap could invalidate the overall conclusions in the ESA report.

In summary, the user of an AAI report has obligations under the new AAI rule that were not required before. The new AAI rule, therefore, not only requires research and documentation by the environmental professional, but also the user. Gaps in this research or documentation could potentially invalidate the find-

✓	AAI User Checklist
??	Environmental Cleanup Liens
??	AULs
✓	Specialized Knowledge
✓	FMV
??	Obvious Indicators
✓	Common Knowledge

ings of the AAI ESA.

SSCI is a woman-owned environmental engineering, consulting and remediation firm with offices in Houma, La., Houston, Dallas, and Austin, Texas. 2006 marked its 20th year in business.

For more information on ESAs or AAI requirements, contact Lora Lewis or David Klebieko at (800) 324-7724 or visit www.sscienvironmental.com. □

*AAI requirements are described in EPA regulations 40 Code of Federal Regulations (CFR) Part 312 and American Society for Testing and Materials (ASTM) Standard Practice for Site Assessments: Phase I Environmental Site Assessment Process (E 1527-05).