

MEMORANDUM TO CLIENTS AND FRIENDS

November 1, 2006

Final Rule for “All Appropriate Inquiry”

The final rule promulgated by the United States Environmental Protection Agency (“EPA”) to define the standards and procedures for conducting “All Appropriate Inquiry” (“AAI”) for Phase I Environmental Site Assessments pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) became effective today.

In general, this rule establishes regulatory requirements geared towards the in-depth investigation of the previous ownership and uses of the subject property, requiring any real property owner, prospective purchaser, and developer of commercial property to undertake specific investigations into the current and past uses of property, past waste management and disposal activities and others, in connection with the evaluation of potential environmental contamination and assessment of potential liability from contamination present at the property.

Specifically, the AAI rule applies to any public or private entity purchasing commercial property and any property that will be used for commercial purposes that seek protection from liability for releases or threatened releases of hazardous substances under CERCLA’s innocent landowner, bona fide prospective purchaser and contiguous property owner defenses.

The American Society of Testing Materials (“ASTM”) has established a new standard consistent with the statutory provisions and final criteria of the AAI rule, which has already been approved by the EPA, namely Standard E1527-05, entitled Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessments Process.

The following are highlights of changes effected by the final rule:

- Environmental Professionals, which must meet educational and experience requirements set forth in the final rule, are the only professional that may certify AAI Reports.
- Interviews with current owners and occupants are now mandatory.
- Review of Historical Sources must go back to the time when the property first contained structures or was used for residential, agricultural, commercial, industrial or governmental purposes.
- Search for recorded environmental cleanup liens.
- Data gaps must be identified by the Environmental Professionals.
- Local government records (municipal) must be reviewed, along with central government records.



- Visual inspections of the property, as well as of adjoining properties, must be conducted, from the property line, public rights of way or other vantage points.
- Specialized knowledge or experience on the part of the prospective owner must be documented and if not provided must be accounted for as a gap on information and commented by the Environmental Professional.
- Relationship of the purchase price to the value of the property if the property were not contaminated must be considered to ascertain whether the price difference is due to the presence of releases or threatened releases.
- The degree of obviousness of the presence of contamination at the property, and the ability to detect the contamination by appropriate investigation must be considered and commented by the Environmental Professional.
- Shelf-life of the written report is one year prior to the date of acquisition if the interviews, on site investigation, historical record review, etc, were conducted not more than one hundred and eighty days prior to the date of acquisition.

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If you have any questions regarding the scope, effect or application of the All Appropriate Inquiry Rule, please contact any of the following attorney's from our Environmental and Land Use Practice Group:

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