

New Phase I Environmental Site Assessment (ESA) Rules Provide Additional Environmental Liability Protections

On 11/1/05, U.S. EPA promulgated new Standards and Practices for All Appropriate Inquiry (AAI). This rule defines the AAI requirements that a purchaser of a property must complete in order to qualify for:

- 1) Innocent Landowner defense
- 2) Bona Fide Prospective Purchaser defense
- 3) Contiguous Property Owner defense

These defenses are beneficial in that they provide property buyers with certain protection from environmental liabilities.

The new law becomes effective on 11/1/06. After that date, Phase I Environmental Site Assessments (ESAs) completed following the current ASTM E 1527-00 guidelines will no longer qualify a purchaser for AAI liability protections. Therefore, ASTM published new a Standard Practice (E 1527-05) for Phase I ESAs that meets the new AAI requirements.

Through 11/1/06, Phase I ESAs following any of the ASTM standards (97, 00, or 05) will meet the AAI requirements. After 11/1/06, the new ASTM E 1527-05 standard practice must be followed to obtain the liability protections offered by the AAI obligations.

The impacts of the new AAI rule and Phase I ESAs that property purchasers will most notice are:

- Additional protection from environmental liabilities.
- Additional time necessary to meet the obligations required for conducting the research of federal, state, tribal, and local records.
- Increased Phase I ESA cost to meet the additional research requirements (i.e., interviews, site inspections, government record reviews, historical records review, and report preparation).

Contact us if you would like to better understand these changes in the requirements for completing Phase I ESAs and their potential impact on your business.

Environmental Update



Watterson's professionals are experienced in all phases of real estate transfer environmental due diligence.

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