

# NEW EPA REGULATIONS FOR PHASE I ESA EFFECTIVE NOVEMBER 1, 2006



## ENVIRONMENTAL LIABILITY PROTECTION

Companies purchasing and leasing commercial real estate commonly retain an environmental consultant to provide a Phase I Environmental Site Assessment as part of their due diligence process. The Phase I Environmental Site Assessment process is designed to allow the user to qualify for certain landowner liability protections (LLPs) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). In addition to protection against environmental liability, the commercial real estate industry uses the Phase I Assessment process to assess any contamination issues that may impact lending requirements, facility construction or the intended use of a property.

## NEW EPA REGULATIONS

On November 1, 2006, new Environmental Protection Agency (EPA) Regulations contained in Title 40 CFR Part 312 became effective. The regulations, Standards and Practices for All Appropriate Inquiries, codify all appropriate inquiries (AAI) as required under CERCLA. The regulations specify tasks required to determine the previous ownership and uses of a property for the purposes of meeting the requirements necessary to qualify for certain LLPs under CERCLA. The new regulations specify that ASTM Standard E1527-05 may be used to comply with the new provisions after November 1, 2006. Therefore, in November 2006, ASTM E1527-05 became the customary Phase I Standard within the United States and replaced the E1527-00 standard that was in use since 2000.

## NEW QUALIFICATION REQUIREMENTS FOR CONSULTANTS

The AAI rule and the ASTM E1527-05 standard includes the definition of individuals who are qualified (environmental professional, or EP) to perform Phase I Assessments. In general, an EP must have a PE or PG registration or certification to perform assessments and 3 years property assessment experience; a science or engineering degree and 5 years experience; or 10 years experience.

## USER RESPONSIBILITIES

The User has responsibilities under the EPA AAI rule and must provide available information to the Environmental Professional. Such information includes documentation pertaining to 1) environmental cleanup liens, 2) activity and land use limitations, 3) specialized knowledge or experience or commonly known information about the property, and 4) relationship of the purchase price to the fair market value of the property. Failure to provide this information could result in a determination that "all appropriate inquiry" was

not completed, if a suit were to be brought regarding the property and whether the purchaser was diligent in the conduct of all appropriate inquiry.

## USE OF PRIOR ASSESSMENTS

Information in prior Phase I assessments that are between six months and one year old may be usable within limitations. Specifically, according to the EPA Regulations, interviews, database searches, site reconnaissance, and the EP declarations must be updated.

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On November 1, 2006, ASTM E1527-05 replaced the E1527-00 Standard that was in use since 2000.

According to AAI and ASTM E1527-05, information in prior Phase I ESAs that are older than 6 months may be used, but the Phase I ESA must be updated by the EP.

*ECA is uniquely qualified to meet the AAI and ASTM requirements and has extensive experience providing Phase I Environmental Site Assessments. ECA has completed thousands of Phase I Assessments under the EPA AAI and ATM Standards.*

ENVIRONMENTAL CORPORATION OF AMERICA

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