



**PDHonline Course G222 (3 PDH)**

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**EPA's All Appropriate Inquiries Rule –  
CERCLA Defense**

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# Comparison of the Final All Appropriate Inquiries Standard and the ASTM E1527-00 Environmental Site Assessment Standard

## INTRODUCTION

On January 11, 2002, President Bush signed into law the Small Business Liability Relief and Brownfields Revitalization Act (the Brownfields Amendments), which amended the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq. The Brownfields Amendments require the Environmental Protection Agency (EPA) to develop regulations establishing federal standards and practices for conducting all appropriate inquiries. Congress included in the Brownfields Amendments a list of criteria that the Agency must address in the regulations (section 101(35)(B)(iii) of CERCLA).

Subtitle B of Title II of the Brownfields Amendments revised the liability provisions of CERCLA Section 101(35) by clarifying the requirements necessary to establish the innocent landowner defense under CERCLA. In addition, the Brownfields Amendments amended CERCLA by providing additional liability protections for contiguous property owners and bona fide prospective purchasers. For the first time since the enactment of CERCLA in 1980, a person may purchase property with the knowledge that the property is contaminated without being held potentially liable for the cleanup of the contamination. To claim protection from liability, a prospective property owner must comply with the statutory requirements for obtaining the contiguous property owner or bona fide prospective purchaser liability defenses. Among these is the requirement to, prior to the date of acquisition of the property, undertake “all appropriate inquiries” into prior ownership and uses of a property.

The all appropriate inquiries requirements are applicable to any public or private party who may potentially claim protection from CERCLA liability as an innocent landowner, a bona fide prospective purchaser, or a contiguous property owner. In addition, parties receiving grants to conduct characterizations or assessments of brownfields properties under EPA’s Brownfields Grant program must conduct the property characterization and assessment in compliance with the all appropriate inquiries requirements.

The purpose of this document is to present a comparison of the all appropriate inquiries requirements included in the final federal regulations and the requirements of the interim standard, the ASTM E1527-00 standard for Phase I environmental site assessments. The ASTM E1527-00 standard is the most prevalent industry standard for conducting Phase I environmental site assessments. This document highlights the main differences between the requirements of the final regulation and the ASTM E1527-00 standard for Phase I environmental site assessments.

Please note that in conjunction with the development of EPA’s final rule setting federal standards for the conduct of all appropriate inquiries, ASTM International updated its E1527-00 standard. The new ASTM E1527-05 Phase I Environmental Site Assessment Standard is consistent and compliant with EPA’s final rule and may be used to comply with the provisions of the all appropriate inquiries final rule. The differences outlined below apply only to the ASTM E1527-00 standard and are provided to assist the regulatory community in understanding the incremental differences between the requirements of the final rule and the previous ASTM

E1527 standard, which was the interim standard designated by the Brownfields Law. The differences discussed below are not applicable to the newly revised ASTM E1527-05 standard.

## **CROSSWALK LINKING THE FINAL AAI STANDARD AND THE ASTM E1527-00**

To facilitate comparison between the two standards, Exhibit 1 presents a crosswalk linking the sections of all appropriate inquiries final rule with the relevant or corresponding sections of the ASTM E1527-00 standard, the interim standard that will remain in place until the effective date of the final rule. The first column in Exhibit 1 provides a list of the major activities required by the final rule. The second column in Exhibit 1 provides citations to the applicable sections of the regulation where the requirements are discussed. The third column in Exhibit 1 presents the corresponding sections of the ASTM E1527-00 standard. The fourth column in Exhibit 1 provides references to corresponding sections of the revised ASTM standard, ASTM E1527-05.

## **COMPARISON OF THE FINAL AAI STANDARD AND THE ASTM E1527-00 STANDARD**

The final rule setting federal standards for conducting all appropriate inquiries includes requirements that correspond to all the major activities that are currently performed as part of environmental due diligence under the ASTM E1527-00 standard, such as site reconnaissance, record review, interviews, and documentation of environmental conditions. The final rule, however, enhances the inquiries by extending the scope of some of the environmental due diligence activities. In addition, the final rule establishes a more stringent definition of an environmental professional than the ASTM E1527-00 standard. The key differences between the two standards are summarized in Exhibit 2.

Each of the activities presented in Exhibit 2 is addressed in more depth in the sections following Exhibit 2.

**Exhibit 1: Crosswalk between the All Appropriate Inquiries Rule and the ASTM E1527-00 Standard**

Definitions and Requirements	Final AAI Standard <sup>1</sup>	ASTM E1527-00	ASTM E1527-05
Purpose	312.1(a)	1.1	1.1, 6.7
Applicability	312.1(b)	4.1, 4.2	4.1, 4.2, 4.5.3
Scope	312.1(c)	1	1
Disclosure Obligations	312.1(d)	Not specified	Not specified
Definition of Abandoned Property	312.10	Not defined	3.2.1
Definition of Adjoining Properties	312.10	3.3.2	3.2.4
Definition of Data Gap	312.10	Not defined	3.2.20
Definition of Environmental Professional	312.10	3.3.12	3.2.29; Appendix X2
Definition of Relevant Experience	312.10	Not defined	Appendix X2
Definition of Good Faith	312.10	Not defined	3.2.35
Definition of Institutional Controls	312.10	3.2.17	3.2.42
References	312.11	2	2
List of Components in All Appropriate Inquiries	312.20(a)	6	6, 7
Shelf Life of the Written Report	312.20(a)-(b)	4.6, 4.7	4.6, 4.7
Reports Prepared for Third Parties	312.20(c)-(d)	4.7	4.7
Objectives	312.20(e)	6.1	7.1
Contaminants of Concern	312.20(e)	1.1	1.1
Performance Factors	312.20(f)	7.1	8.1
Data Gaps	312.20(g)	7.3.2	12.7
Interview with Current and Past Owners and Occupants of the Subject Property	312.23(b), 312.23(c)	9	10
Interview with Neighboring or Nearby Property Owners or Occupants in the Case of Inquiries Conducted at Abandoned Properties	312.23(d)	Not specified	10.5.5
Review of Historical Sources: Suggested Sources	312.24(a)	7.3.4	8.3.4
Review of Historical Sources: Period to Be Covered	312.24(b)	7.3.2	8.3.2
Searches for Recorded Cleanup Liens	312.25	5.2, 7.3.4.4	6.2, 6.4, 8.3.4.4, 10.8.1.10
Records of Activity and Use Limitations (e.g., Engineering and Institutional Controls)	312.26	5.2	8.3.4.4
Government Records Review: List of Records	312.26(a), 312.26(b)	7.2	8.2
Government Records Review: Search Distance	312.26(c), 312.26(d)	7.1.2, 7.2	8.1.2
Site Visit: Requirements	312.27(a), 312.27(b)	8	9
Site Visit: Limitations	312.27(c)	8.2.4	9.2.4, 9.4
Specialized Knowledge or Experience	312.28	5.3	6.3, 12.3
The Relationship of the Purchase Price to the Value of the Property	312.29	5.4	6.5
Commonly Known or Reasonably Ascertainable Information about the Property	312.30	7.1.4	4.1, 6.6,
The Degree of Obviousness of the Presence or Likely Presence of Contamination	312.31	11.6, 11.7	12.6, 12.8, X.3
Signed Declarations to Be Included in the Written Report	312.21(d)	11.7, 11.11	12.12, 12.13

<sup>1</sup> Citations in column 2 are to Title 40 of the Code of Federal Regulations (e.g. 40 C.F.R. § 312.20).

**Exhibit 2: Summary of Main Differences between the Final All Appropriate Inquiries Regulation and the ASTM E1527-00 Standard**

Main Differences	Final AAI Standard	ASTM E1527-00
Definition of Environmental Professional	<ul style="list-style-type: none"> <li>• Specific certification/license, education, and experience requirements</li> <li>• Applies only to individuals supervising all appropriate inquiries</li> </ul>	<ul style="list-style-type: none"> <li>• No specific certification, licensing, education, or experience requirements</li> <li>• Applies to all individuals involved in conducting all appropriate inquiries</li> </ul>
Interview with Current Owner and Occupants of the Subject Property	Mandatory	A reasonable attempt must be made to interview key site manager and reasonable number of occupants
Interview with Past Owner and Occupants	Interviews with past owners and occupants must be conducted as necessary to achieve the objectives and performance factors in §§ 312.20(e)-(f)	Not required, but must inquire about past uses of the subject property when interviewing current owner and occupants
Interview with Neighboring or Nearby Property Owners or Occupants	Mandatory at abandoned properties	Discretionary
Review of Historical Sources: period to be covered	From the present back to when the property first contained structures or was used for residential, agricultural, commercial, industrial or governmental purposes	All obvious uses from the present back to the property's first obvious developed use or 1940, whichever is earlier
Records of Activity and Use Limitations (e.g., Engineering and Institutional Controls) and Environmental Cleanup Liens	<ul style="list-style-type: none"> <li>• No requirement as to who is responsible for the search</li> <li>• Scope of environmental cleanup lien search includes those liens filed or recorded under federal, state, tribal or local law</li> </ul>	<ul style="list-style-type: none"> <li>• User's responsibility</li> <li>• The search results must be reported to the environmental professional</li> <li>• Scope of environmental cleanup lien search is limited to reasonably ascertainable land title records</li> </ul>
Government Records Review	<ul style="list-style-type: none"> <li>• Federal, state, tribal, and local</li> <li>• Records</li> </ul>	<ul style="list-style-type: none"> <li>• Federal and state records</li> <li>• Local records/sources at the discretion of the environmental professional</li> </ul>
Site Inspection	<ul style="list-style-type: none"> <li>• Visual inspection of subject property and adjoining properties required</li> <li>• Limited exemption with specific requirements if the subject</li> <li>• property cannot be visually inspected</li> </ul>	<ul style="list-style-type: none"> <li>• Visual inspection of subject property required. No exemption.</li> <li>• No specific requirement to inspect adjoining properties; only to report anything actually observed</li> </ul>
Contaminants of Concern	<u>Parties seeking CERCLA defense:</u> <ul style="list-style-type: none"> <li>• CERCLA hazardous substances</li> </ul> <u>EPA Brownfields Grant recipients:</u> <ul style="list-style-type: none"> <li>• CERCLA hazardous substances, pollutants or contaminants</li> <li>• petroleum/petroleum products</li> <li>• controlled substances</li> </ul>	CERCLA hazardous substances and petroleum products
Data Gaps	<ul style="list-style-type: none"> <li>• Requires identification of sources consulted to address data gaps and comments on significance of data gap with regard to the ability of the environmental professional to identify conditions indicative of releases and threatened releases</li> </ul>	<ul style="list-style-type: none"> <li>• Generally discretionary;</li> <li>• Sources that revealed no findings must be documented.</li> </ul>
Shelf Life of the Written Report	<ul style="list-style-type: none"> <li>• One year, with some updates required after 180 days</li> </ul>	<ul style="list-style-type: none"> <li>• Updates of specific activities recommended after 180 days</li> </ul>

## **RESULTS OF INQUIRIES BY AN ENVIRONMENTAL PROFESSIONAL (§ 312.21)**

### **Definition of Environmental Professional**

To ensure the quality of all appropriate inquiries investigations, the final rule defines specific qualifications for environmental professionals. The rule requires that the person who supervises or oversees the conduct of the all appropriate inquiries, or the Phase I environmental site assessment, meet the final rule's qualifications for an environmental professional. The rule does not require that all individuals involved in conducting the all appropriate inquiries investigations qualify as an environmental professional

The definition of an environmental professional provided in the final rule differs from the qualifications included in the ASTM E1527-00 standard. Unlike the ASTM E1527-00 standard, the final rule on all appropriate inquiries imposes specific educational, certification or licensing, and relevant experience requirements for the environmental professional tasked with overseeing the assessment. The final rule requires that the environmental professional qualifications be met by the person supervising the conduct of all appropriate inquiries investigation. The environmental professional qualifications under the two standards are summarized in Exhibit 3.

The all appropriate inquiries final rule does not preclude a person lacking the proper certification or license or sufficient education and relevant experience from participating in the conduct of all appropriate inquiries investigations. A person who does not qualify as an environmental professional under the regulatory definition may assist in the conduct of all appropriate inquiries if he or she is under the supervision or responsible charge of a person who meets the qualifications of an environmental professional. For example, a person lacking the required certification or license or education and relevant experience may perform the individual activities required by the final rule, provided that a qualified environmental professional oversees his or her work.

### Exhibit 3: Required Qualifications for an Environmental Professional

	All APPROPRIATE INQUIRIES FINAL RULE	ASTM E1527-00
Definition	A person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases (per Section 312.1(c)) on, at, in or to a property, sufficient to meet the objectives and performance factors in Section 312.20(e) and (f) (Section 3.10).	A person possessing sufficient training and experience necessary to conduct a site reconnaissance, interviews, and other activities in accordance with [the ASTM standard], and from the information generated by such activities, having the ability to develop opinions and conclusions regarding recognized environmental conditions in connection with the property in question. An individual's status as an environmental professional may be limited to the type of assessment to be performed or to specific segments of the assessment for which the professional is responsible. (Section 3.3.12).
Certification/License, Education and Relevant Experience Requirements	<p>Hold a current Professional Engineer's or Professional Geologist's license and have the equivalent of <i>three</i> years of full-time relevant experience</p> <p style="text-align: center;"><i>OR</i></p> <p>Hold a current registration from a state, tribe, U.S. territory, or the Commonwealth of Puerto Rico and have the equivalent of <i>three</i> years of full-time relevant experience</p> <p style="text-align: center;"><i>OR</i></p> <p>Be licensed or certified by the federal government, a state, tribe, U.S. territory, or the Commonwealth of Puerto Rico to perform environmental inquiries as defined by the AAI rule (Section 312.21) and have the equivalent of <i>three</i> years of full-time relevant experience</p> <hr/> <p><i>A person who does not hold a relevant license or certificate may still qualify as an environmental professional if he/she</i></p> <p>Have a Baccalaureate or higher degree from an accredited institution of higher education in a discipline of engineering or science and have the equivalent of <i>five</i> years of full-time relevant experience</p> <hr/> <p><i>A person who does not have a relevant license or certificate and does not hold a university degree in a discipline of engineering or science can qualify as an environmental professional if he/she</i></p> <p>Has the equivalent of <i>ten</i> years of full-time relevant experience</p>	No requirements
Additional Requirements	Remain current in his/her field through participation in continuing education or other relevant activities	None

## **Documentation of the Results of the All Appropriate Inquiries**

Under both the all appropriate inquiries final rule and the ASTM E1527-00 standard, the results of the Phase I investigation must be documented in a written report. Like the ASTM E1527-00, the all appropriate inquiries final rule does not specify the structure, format, or length of the final report documenting the results of the inquiries. The ASTM E1527-00 standard provides a recommended report format; the all appropriate inquiries final rule does not include any requirements for the report format.

The all appropriate inquiries rule requires that the written report include two signed declarations by the environmental professional. One declaration must state that the environmental professional meets the qualifications for environmental professionals included in the final rule (see 40 CFR 312.10). The environmental professional is not required to include in the written report any documentation corroborating the qualifications statement (*e.g.*, a copy of a current Professional Geologist's license). The second declaration required to be included in the final report must state that the all appropriate inquiries were carried out in accordance with the requirements of the final rule.

## **INTERVIEWS WITH PAST AND PRESENT OWNERS, OPERATORS, AND OCCUPANTS (§ 312.23)**

The final rule includes requirements to conduct interviews with the current owner(s) and occupant(s) of the subject property, as necessary to meet the objectives and performance factors of the rule, to collect information on past uses and ownerships of the property, and to identify potential conditions that may indicate the presence of releases or threatened releases of hazardous substances<sup>2</sup> at the subject property. The ASTM E1527-00 standard does not require that interviews be conducted with past owners or occupants of a property; the standard only suggests that current owners be questioned about past uses and ownership.

The all appropriate inquiries final rule requires that additional interviews be conducted with parties such as current and past facility managers, past owners, operators or occupants of the property, and employees of past and current occupants of the subject property, as necessary to meet the objectives and performance factors of the final rule (*see* 40 CFR 312.20(e) - (f)). The final rule allows the environmental professional to use his or her discretion to determine whether such interviews are necessary. Under the ASTM E1527-00 standard, the environmental professional must inquire about the past uses of the subject property when interviewing the current property owner and key site manager.

The all appropriate inquiries final rule goes beyond the ASTM E1527-00 by requiring interviews with owners and occupants of neighboring and nearby properties in cases where the subject property is abandoned and there is evidence of potential unauthorized uses or uncontrolled access. Such interviews could help gather information that may not be available from any other source, given that no owner or occupant of the subject property can be identified to provide information on the uses and ownerships of the property.

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<sup>2</sup> Individuals conducting all appropriate inquiries as part of an EPA Brownfields Assessment grant must also include pollutants, contaminants, petroleum and petroleum products, and controlled substances in the scope of the inquiry as required by their cooperative agreement with EPA.



## REVIEWS OF HISTORICAL SOURCES OF INFORMATION (§ 312.24)

### Historical Sources

The all appropriate inquiries final rule requires that environmental site assessments include reviews of historical sources of information about the property. The purpose is to ensure that a continuous record of land uses is assembled to create a comprehensive review of the potential for releases of hazardous substances at the property. The all appropriate inquiries rule, as well as ASTM E1527-00 standard, does not require that any specific historic document be reviewed nor does it specify the minimum number of records to be reviewed. The records that may be reviewed include, but are not limited to, aerial photographs, fire insurance maps, building department records, chain of title documents, and land use records. Historical sources of information should be reviewed as necessary to meet the objectives and performance factors of the final rule.

### Research Timeframe

The all appropriate inquiries rule requires that historical documents be reviewed as far back in time as the property contained structures or the property was used for agricultural, residential, commercial, industrial, or governmental purposes. The final rule allows for the environmental professional to apply professional judgment to determining how far back in time it is necessary to review historical records, subject to the objectives and performance factors of the rule. In comparison, ASTM E1527-00 requires that all obvious uses of the property be identified from the present back to the property's obvious first developed use, or back to 1940, whichever is earlier. For example, if a property was first used in 1960, under the ASTM E1527-00 standard, the environmental professional must review historical sources of information going back to 1940. Under the all appropriate inquiries final rule, historical sources of information must be reviewed only as far back as 1960.

### Research Interval

Under the ASTM E1527-00 standard, the research interval is specified as a function of the property use. Intervals of less than five years or more than five years are not required if the property use remains unchanged. For example, if historical records show the same property use in 1940 and 1960, it is not necessary to obtain and review additional historical records to ascertain the property use in the interim period. The all appropriate inquiries rule does not specify or give guidance on the research interval for reviewing historical records. Accordingly, the environmental professional must exercise professional judgment to determine the most appropriate research interval.

## **Review of Historical Information Pertinent to Surrounding Area**

The ASTM E1527-00 standard requires that the uses of properties surrounding the subject property should be identified in the report if the information is revealed in the course of researching the subject property (e.g., if the aerial photographs show the area beyond the subject property boundaries). Although the all appropriate inquiries rule does not contain the same requirement, the objectives and performance factors of the rule do include within the scope of the types of information that should be collected the environmental conditions of adjoining or nearby properties.

## **SEARCHES FOR RECORDED ENVIRONMENTAL CLEANUP LIENS (§ 312.25)**

The all appropriate inquiries rule requires that environmental site assessments include searches for environmental cleanup liens against the subject property that are filed or recorded under federal, state, tribal, or local laws. The objective of this requirement is to identify liens placed upon the property that indicate that environmental response actions were taken to address past releases at, on, or to the subject property. The ASTM E1527-00 standard also requires a search for environmental cleanup liens, although the scope of the search is limited to reasonably ascertainable recorded land title records.

The all appropriate inquiries rule differs from the ASTM E1527-00 standard with respect to the party responsible for conducting the search for environmental cleanup liens. Under the ASTM E1527-00 standard, the user, or prospective property owner, is responsible for the environmental cleanup lien search and is required to provide the results of the search to the environmental professional. The all appropriate inquiries rule allows that either the prospective property owner or the environmental professional may conduct the search. If the search is performed by the prospective property owner and the property owner does not provide the search results to the environmental professional, the environmental professional should treat the lack of information as a data gap and should comment on the significance of the data gap on his or her ability to identify conditions indicative of releases or threatened releases.

## **REVIEWS OF FEDERAL, STATE, TRIBAL AND LOCAL GOVERNMENT RECORDS (§ 312.26)**

The all appropriate inquiries final rule requires that environmental site assessments include a review of federal, state, tribal, and local government records and specifies the minimum search distance for each record. The type of records and the minimum search distances do not differ significantly from the requirements included in the ASTM E1527-00 standard, in the case of federal and state government records. Both the ASTM E1527-00 standard and the all appropriate inquiries final rule allow the environmental professional to exercise discretion to modify the minimum search distance for a particular record type, based upon enumerated factors. The ASTM E1527-00 standard does not allow for the reduction of search distance for the federal NPL site list and the federal RCRA TSD list. In the case of both standards, the reason(s) for any such modification must be documented in the written report.

The all appropriate inquiries final rule goes beyond the requirements of the ASTM E1527-00 standard by requiring that records maintained by tribal and local governmental agencies be

reviewed. The ASTM E1527-00 standard lists local governmental records as supplemental sources to be consulted at the discretion of the environmental professional.

The all appropriate inquiries regulation also places more emphasis on institutional and engineering controls than the ASTM E1527-00 standard. Under the ASTM E1527-00 standard, the user is responsible for identifying institutional and engineering controls found in reasonably ascertainable recorded land title records and is required to provide the results of such searches to the environmental professional. The ASTM E1527-00 standard does not explicitly require that the search results be documented in the written report. The all appropriate inquiries regulation allows for the search for institutional and engineering controls to be performed by either the prospective property owner or the environmental professional. If the search is performed by the prospective property owner and the results of the search are not provided to the environmental professional, the environmental professional should treat the lack of information as a data gap and should comment on the significance of the data gap on his or her ability to identify conditions indicative of releases or threatened releases.

## **VISUAL INSPECTIONS OF THE FACILITY AND OF ADJOINING PROPERTIES (§312.27)**

The all appropriate inquiries final rule requires that environmental site assessments include an on-site visual inspection of the subject property and facilities and improvements on the subject property. The all appropriate inquiries rule does not extend the scope of the subject property visual inspection beyond the current ASTM E1527-00 requirements.

With respect to adjoining properties, the requirements of the ASTM E1527-00 standard and the all appropriate inquiries rule differ. The all appropriate inquiries rule requires that the environmental professional perform a visual inspection of such properties from the subject property line, public rights-of-way, or another vantage point. The ASTM E1527-00 standard does not explicitly require a visual inspection of adjoining properties. However, the ASTM E1527-00 standard states that current and past uses of adjoining properties should be identified in the Phase I ESA report if such uses are visually or physically observed during the subject property visit, or are identified in the interviews or record reviews, if they are likely to indicate recognized environmental conditions.

In the cases where on-site access to the subject property cannot be obtained to conduct the visual inspection of the subject property, the ASTM E1527-00 standard does not provide for an alternative course of action. The failure to conduct the on-site visual inspection must be documented in the Phase I report as a limitation. In contrast, the all appropriate inquiries rule provides for a limited exemption to the on-site visual inspection requirement and imposes specific documentation and inspection requirements in that situation. The all appropriate inquiries regulation requires that the environmental professional do the following:

- Visually inspect the subject property via another method (*e.g.*, aerial imagery) or from an alternate vantage point (*e.g.*, walk the property line);
- Document efforts taken to gain access to the subject property;

- Document the use of other sources of information to determine the existence of potential environmental contamination; and
- Express an opinion about the significance of the failure to conduct an on-site visual inspection on the ability of the environmental professional to identify conditions indicative of releases or threatened releases.

### **SPECIALIZED KNOWLEDGE OR EXPERIENCE ON THE PART OF THE DEFENDANT (§ 312.28)**

Under the ASTM E1527-00 standard, the user, or prospective property owner, is required to disclose to the environmental professional any specialized knowledge of the subject property and surrounding areas that is material to recognized environmental conditions in connection with the subject property. The all appropriate inquiries final rule requires that any specialized knowledge held by the prospective property owner be documented or taken into account during the inquiries. However, the prospective property owner is not required to provide this information to the environmental professional. If the information is not provided to the environmental professional, the environmental professional should treat the lack of information as a data gap and should comment on the significance of the data gap on his or her ability to identify conditions indicative of releases or threatened releases.

### **THE RELATIONSHIP OF THE PURCHASE PRICE TO THE VALUE OF THE PROPERTY, IF THE PROPERTY WERE NOT CONTAMINATED (§ 312.29)**

Both the all appropriate inquiries final rule and the ASTM E1527-00 standard require that the user, or prospective property owner, consider the relationship of the purchase price and the fair market value of the property, if the property were not contaminated. The ASTM E1527-00 standard, however, only requires this comparison if the user has actual knowledge that the purchase price is significantly less than that of comparable properties. In cases where the purchase price paid for the subject property does not reflect the fair market value of the subject property if it were not contaminated, the ASTM E1527-00 standard and the all appropriate inquiries final rule impose slightly different requirements. The ASTM E1527-00 standard requires that the user identify an explanation for the difference between price and value and make a written record of such explanation. The all appropriate inquiries final rule requires that the prospective property owner consider whether or not the difference in purchase price and fair market value is due to the presence of releases or threatened releases of hazardous substances. Neither standard explicitly states that documentation of a discrepancy or difference between the price and value of the property must be included in the final report. Under the all appropriate inquiries final rule, if the prospective property owner does not provide information regarding the relationship of the purchase price of the subject property to its fair market value to the environmental professional, the environmental professional should treat the lack of such information as a data gap and should comment on the significance that the data gap may have on his or her ability to identify conditions indicative of releases or threatened releases.

## **COMMONLY KNOWN OR REASONABLY ASCERTAINABLE INFORMATION ABOUT THE PROPERTY (§ 312.30)**

Under the all appropriate inquiries final rule, the prospective property owner and environmental professional are required to take into account, during the conduct of all the required inquiries or activities, commonly known or reasonably ascertainable information about the subject property. In addition to the information sources consulted during the conduct of the historical records searches, the review of government records, and the required interviews, such information may be obtained from a variety of sources, including newspapers, local government officials, community organizations, and websites, among others. Commonly known and reasonably ascertainable information must be pursued to the extent necessary to achieve the objectives and performance factors of the final rule. Although the ASTM E1527-00 standard does not explicitly include such a requirement, it is up to the environmental professional to determine if any source, other than those identified as “standard sources” should be reviewed to obtain necessary information about the environmental conditions of the subject property.

## **THE DEGREE OF OBVIOUSNESS OF THE PRESENCE OR LIKELY PRESENCE OF CONTAMINATION AT THE PROPERTY, AND THE ABILITY TO DETECT THE CONTAMINATION BY APPROPRIATE INVESTIGATION (§ 312.31)**

The all appropriate inquiries regulation requires that the prospective property owner and environmental professional take into account information collected during the inquiries in considering the degree of obviousness of the presence or likely presence of hazardous substances on, at, in, or to the subject property. They should also take into account the information collected during the inquiries in considering the ability to detect contamination by appropriate investigation. These requirements are consistent with the ASTM E1527-00 requirements. The all appropriate inquiries rule, however, requires that the environmental professional also provide in the written report an opinion regarding additional appropriate investigation that may be necessary, if any. The opinion could include activities or considerations outside the scope of the all appropriate inquiries investigation that might help the prospective property owner to more fully characterize environmental conditions on the property. The ASTM E1527-00 standard does not explicitly require that such an opinion be included in the final report.

## **ADDITIONAL REQUIREMENTS (§ 312.20)**

### **Recognized Environmental Conditions – Inclusion of Petroleum Releases**

Unlike the ASTM E1527-00 standard, the all appropriate inquiries final rule does not require that the environmental professional consider releases and threatened releases of petroleum and petroleum products in the scope of all environmental site assessments.

Under the all appropriate inquiries final rule, if the environmental site assessments are being conducted for the purpose of qualifying for one of the three CERCLA liability protections, the environmental professional must seek to identify conditions indicative of releases and threatened releases of hazardous substances, if any. The scope of the investigation may include the identification of potential petroleum releases that do not include hazardous substances at the discretion of the prospective property owner and environmental professional.

In cases where the all appropriate inquiries investigation is being funded by a federal brownfields assessment grant, where the scope of the grant or cooperative agreement includes the assessment of releases or threatened releases of petroleum and petroleum products, the environmental professional must include petroleum and petroleum products within the scope of the all appropriate inquiries investigation. Certain federal brownfields grants may also include requirements to assess a property for the presence or potential presence of controlled substances.

### **Data Gaps**

The all appropriate inquiries rule requires a more extensive documentation of data gaps than was required under the ASTM E1527-00 standard. The all appropriate inquiries rule requires that the environmental professional: (1) identify data gaps that remain after the conduct of all required activities; (2) identify the sources of information consulted to address such data gaps; and (3) comment upon the significance of such data gaps with regard to his or her ability to identify conditions indicative of releases or threatened releases of hazardous substances on, at, in, or to the property. The ASTM E1527-00 standard requires that the environmental professional document sources that revealed no findings. Additional data gaps or limitations were not required to be identified and documented.

### **Shelf Life**

Under the all appropriate inquiries final rule, a prospective property owner may use a Phase I ESA report without having to update any information collected as part of the inquiry:

- If the all appropriate inquiries investigation was completed less than 180 days prior to the date of acquisition of the property; or
- If the Phase I ESA report was prepared as part of a previous all appropriate inquiries investigation and was completed less than 180 days prior to the date of acquisition of the property.

This provision is consistent with the ASTM E1527-00 standard.

Under the all appropriate inquiries final rule, a prospective property owner may use a previously conducted Phase I ESA report:

- If the Phase I ESA report was prepared as part of a previous all appropriate inquiries investigation for the same property; and
- If the information was collected or updated within one year prior to the date of acquisition of the property; and
- Certain aspects of the previously conducted report are conducted or updated within 180 days prior to the date of acquisition of the property. These aspects include the interviews, on-site visual inspection, the historical records review, and the search for environmental liens.

Under the all appropriate inquiries final rule, information collected from previously completed all appropriate inquiries investigations of the subject property can be used as sources of

information even when they are more than a year old as long as all information is reviewed for accuracy and is updated to reflect current conditions and current property-specific information.

In all cases, the analysis of the relationship of the purchase price of the subject property to the fair market value of the property, if it were not contaminated, must reflect the current property transaction. In addition, the assessment of specialized knowledge must be reflective of the prospective property owner seeking the liability protection or the brownfields grantee.