



PDHonline Course G222 (3 PDH)

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

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All Appropriate Inquiries Rule: Reporting Requirements and Suggestions on Report Content

WHAT IS “ALL APPROPRIATE INQUIRIES”?

“All appropriate inquiries” is a process of evaluating a property’s environmental conditions and assessing potential liability for any contamination. All appropriate inquiries must be conducted to obtain certain protections from liability under the federal Superfund Law (CERCLA).

WHY DID EPA ESTABLISHING STANDARDS FOR CONDUCTING ALL APPROPRIATE INQUIRIES?

The 2002 Brownfields Amendments to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) require EPA to promulgate regulations establishing standards and practices for conducting all appropriate inquiries.

WHEN IS THE ALL APPROPRIATE INQUIRES RULE EFFECTIVE?

The final rule is effective on November 1, 2006, one year after its publication date in the Federal Register.

WHAT ARE THE DOCUMENTATION REQUIREMENTS FOR ALL APPROPRIATE INQUIRIES?

The final rule requires that the results of an all appropriate inquiries investigation be documented in a written report. The specific reporting requirements for all appropriate inquiries are provided in 40 CFR §312.21 (*Results of Inquiry by an Environmental Professional*) and §312.31 of the final rule and include:

- I. An *opinion* as to whether the inquiry has identified conditions indicative of releases or threatened releases of hazardous substances on, at, in, or to the subject property.
- II. An identification of *data gaps* (as defined in §312.10) in the information collected for the inquiry that affect the ability of the environmental professional to identify conditions indicative of releases or threatened releases of hazardous substances on, at, in, or to the subject property, as well as comments regarding the significance of these data gaps.
- III. *Qualifications* and *signature* of the environmental professional(s). The environmental professional must place the following statements in the document and sign the document:

“[I, We] declare that, to the best of [my, our] professional knowledge and belief, [I, we] meet the definition of Environmental Professional as defined in §312.10 of this part.”

“[I, We] have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. [I, We] have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.”

- IV. In compliance with §32.31(b), the environmental professional must include in the final report an *opinion regarding additional appropriate investigation*, if the environmental professional has such an opinion.

IS THERE A REQUIRED FORMAT FOR REPORTING RESULTS OF ALL APPROPRIATE INQUIRIES?

The final rule requires no specific format, length, or structure of the written report. However, EPA offers the following suggestions regarding the potential content of a written report. The following suggestions generally are consistent with recommendations published in ASTM E1527-05, *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process*. The ASTM E 1527-05 standard is consistent with the requirements of the final rule and may be used to comply with the provisions of the rule. The following are suggestions regarding format and content of an all appropriate inquiries written report. Please note that the suggestions below do not represent regulatory requirements. Prospective landowners and environmental professionals may design their own format for a written report, as long as the report contains the four documentation requirements listed above (and as noted below).

- **Introduction.** An introduction could include descriptions of: the purpose and objectives of the assessment; scope of services provided; methodology used to complete the inquiry; any significant assumptions made; limitations and exceptions; any modifications or deviations from the final rule requirements or from the ASTM E 1527-05 process; special terms and conditions; and information obtained from the landowner or user. The environmental professional and the person(s) who conducted the site reconnaissance and interviews may be identified.
- **Site Description.** This section may describe the property location; site and vicinity characteristics; structures, roads, site improvements, and utilities; current and historic use(s) of the property; site topography, geology, and surface/ground water resources; and current and historic use(s) of adjacent properties.
- **User-Provided Information.** The report may describe any information provided by the prospective landowner, or user, to the environmental professional. This information may include: title records; information of recorded environmental cleanup liens; recorded activity and use limitations (e.g., engineering controls, land use restrictions, institutional controls); specialized knowledge or experience held by the user related to the property or nearby properties; commonly known or reasonably ascertainable information; and relationship of the purchase price to the fair market value of the property, if it were not contaminated.
- **Records Review.** The written report may include a section that summarizes the information found during the records review. This section may describe records that were reviewed to complete the inquiry including: physical setting sources (e.g., topographic maps); historical use sources (e.g., aerial photographs, fire insurance maps, street directories, newspaper archives); federal, state, tribal, and local records or databases of government records; and other environmental record sources (e.g., prior investigation reports, tank/transformer inventories, spill records, permits, etc.).
- **Site Reconnaissance.** The written report may include a section dedicated to describing the methodology used to conduct the visual inspection of the subject and adjoining properties. The description may include: when and who performed the reconnaissance; physical imitations (e.g., snow-covered ground, limited access, safety concerns, etc.); general site setting; exterior observations; and interior observations. Additional information on evidence of staining, spills, odors, stressed vegetation, corrosion, pools of liquids, discolored water, ground surface alterations, and other conditions that might suggest a release or threatened release of hazardous substances also may be provided.
- **Interviews.** A summary of the interviews conducted could include a description of when and with whom the interviews were conducted (e.g., current property owner and occupants, site manager, attorneys, financial manager, local/state/federal government officials, past site owners and

occupants) and the method used to conduct the interviews (e.g., in person, written, telephone). If property is abandoned, this section may describe which neighboring property owners were interviewed and if applicable, which past owners and occupants were interviewed.

- **Findings.** A findings section could describe the results of the assessment including the identified known or suspected recognized environmental conditions, historical recognized environmental conditions, and de minimis conditions. This section also may include findings related to, but not limited to: current and historic site usage; adjoining and nearby properties; hazardous substances and petroleum products; non-hazardous, solid, and hazardous waste management; water pollution; pits, ponds, and lagoons; drains and sumps; waste water; wells; septic systems; spills or releases; air emissions; storage tanks and drums; soil and groundwater contamination, polychlorinated biphenyls (PCB) contaminants, or other contaminants.
- **Opinion of the Environmental Professional.** In compliance with the all appropriate inquiries final rule at §312.21(c)(1), the written report **must include** the environmental professional's opinion(s) as to whether the inquiry identified conditions indicative of releases or threatened releases of hazardous substances on, at, in, or to the subject property. The opinion likely will be based on conditions identified during the inquiries (and potentially noted in a findings section), and include a discussion of the logic, reasoning, and rationale used by the environmental professional in developing the opinion. The environmental professional also **must include in the final report an opinion regarding additional appropriate investigation to detect the presence of contamination at the property, if the environmental professional has such an opinion.**
- **Data Gaps.** As required in §312.21(c)(2) of the final rule, the report should document and discuss significant data gaps that affect the ability of the environmental professional to identify conditions indicative of releases or threatened releases.
- **Conclusions.** A conclusions section may be included that summarizes all identified conditions indicative of releases or threatened releases of hazardous substances (or recognized environmental conditions) connected with the property. The final rule does not require that any specific statements be made regarding these conditions, however, ASTM E 1527-05 requires that the report include one of the following written statements:
 - “We have performed a Phase I Environmental Site Assessment in conformance with the scope and limitations of ASTM Practice E 1527 of [insert address or legal description], the property. Any exceptions to, or deletions from, this practice are described in Section [] of this report. This assessment has revealed no evidence of recognized environmental conditions in connection with the property,” or
 - “We have performed a Phase I Environmental Site Assessment in conformance with the scope and limitations of ASTM Practice E 1527 of [insert address or legal description], the property. Any exceptions to, or deletions from, this practice are described in Section [] of this report. This assessment has revealed no evidence of recognized environmental conditions in connection with the property except for the following: (list).”
- **Additional Services.** If applicable, it may be useful to include a description of any additional services performed as part of the assessment that are beyond the scope of the final rule, and were contracted for between the user and the environmental professional. Additional services could include, but are not limited to: non-scope considerations (e.g., lead-based paint, mold, radon, asbestos, regulatory compliance assessment, indoor air quality, etc.); broader scope of assessment; liability or risk evaluations; Phase II sampling and analysis; health and safety; evaluation of remediation techniques; etc.
- **References.** A reference section may be included that lists the published sources relied upon to complete the assessment.

- **Signature(s) and Qualifications of the Environmental Professional(s).** Include the statements and environmental professional(s) signature required by §312.21(d), as discussed above in “*What are the Documentation Requirements for All Appropriate Inquiries?*”
- **Appendices.** Appendices could include: regulatory records documentation; environmental database report; site map/plan; vicinity maps; site photographs; historical source documentation (building department records, local street records, chain of title documents, property tax records, zoning/land use records, aerial photos, fire insurance maps, USGS topographical maps); interview documentation; and qualifications of the environmental professional(s).

CONTACT INFORMATION

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Also see U.S. EPA’s website at www.epa.gov/brownfields for additional information.

***Brownfields Fact Sheet
AAI: Reporting Requirements and
Suggestions on Report Content***

***Solid Waste
and Emergency
Response (5105)***

***EPA 560-F-06-244
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www.epa.gov/brownfields***