

ENVIR BRIEFS

Issue Date: September 2006

New Changes to USEPA's All Appropriate Inquiry (AAI) Rule and ASTM's New Phase I Site Assessment Rules

American Society for Testing Materials has updated its standard for Phase I environmental site assessments

The USEPA final rule for conducting all appropriate inquiries into previous ownership, uses, and environmental conditions of a property will be effective on **November 1, 2006**.

In conjunction with USEPA's final rule, the American

Society for Testing Materials has updated its standard for Phase I environmental site assessments with ASTM E 1527-05 as well as ASTM E 1528-06 Standard Practice for Limited Environmental Due Diligence: Transaction Screen Process.

BIG CHANGES INCLUDE:

• Who?

Changes have been made as to the definition of environmental professional and who should be doing a Phase I review. For example, "the environmental professional should hold a current Professional Engineer or Geologist license and have three years full-time experience."

Who should be interviewed? The current owner and/or lessee should be interviewed or at least one nearby property owner (in the case of an abandoned property).

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New Changes to New York State's Asbestos Code Rule 56

As of **September 5, 2006** the new New York State Department of Labor (DOL) Regulations take effect.

This may be a surprise to some building owners because the new rule places responsibility on the building owner to make sure asbestos work is done properly. Although the regulation has been in effect since January 2005, the use of only the new regulations begins September 5, 2006.

The new rules require that building owners contracting asbestos abatement obtain air monitoring services independent of the abatement contractor and the air monitoring technician remain on site for the duration of the daily monitoring. A project monitor, also hired by the owner, must conduct a post-abatement work site inspection.

Building Owners may be surprised by the new asbestos requirements

Proposed Changes - Discharge Regulations for Farms

The USEPA is proposing to revise the National Pollutant Discharge Elimination System (NPDES) permitting requirements and Effluent Limitations Guidelines and Standards (ELGs) for concentrated

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New Changes to USEPA's...

• **What?**

What should be reviewed?

Historical Sources, Recorded Environmental Cleanups, Government Records, Commonly Known or Reasonably Ascertainable Information, Environmental Liens Filed Against the Property.

The AAI Rule requires that historical data be reviewed as far back in time as the property contained structures or was used for agricultural, residential, commercial, industrial, or government purposes.

• **Where?**

Where data gaps exist there should be more extensive documentation.

Identify Data Gaps; Identify Sources of Information, Comment on the Significance of the Data Gap

Where petroleum is concerned the AAI Rule does not require consideration of releases or threatened releases of petroleum. The CERCLA term "hazardous substance" has been defined as excluding petroleum, including any crude oil. Nevertheless, petroleum products are still included in the ASTM standard because of concern to many commercial real estate transactions.

• **When?**

When does a Phase I ESA report have to be updated?

If it was prepared more than 180 days prior to the date of acquisition; or it was prepared as part of a previous AAI more than 180 days prior to acquisition.

• **Price to Value**

The AAI rule requires consideration of the fair market price and the difference, if any, in the purchase price due to releases or threatened releases.

Proposed Changes...

animal feeding operations (CAFOs) in response to the order issued by the Second Circuit Court of Appeals in *Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486 (2nd Cir. 2005).

The proposed plan changes several aspects of USEPA's current requirements:

First, EPA proposes to require only the owners and operators of those CAFOs that discharge or propose to discharge to seek coverage under a permit. Second, EPA proposes to require CAFOs seeking coverage under a permit to submit their nutrient management plan (NMP) with their application for an individual permit or notice of intent to be authorized under a general permit. Permitting authorities would be required to review the plan and provide the public with an opportunity for meaningful public review and comment. Permitting authorities would also be required to incorporate terms of the NMP as NPDES permit conditions. Third, this action proposes to authorize permit writers, upon request by a CAFO, to establish best management, zero discharge effluent limitations when the facility demonstrates that it has designed an open containment system that will comply with the no discharge requirements.

The rule will affect farms where large numbers of animals are confined. This includes farms with over 200 dairy cattle, 300 slaughter or feeder cattle, 150 horses, and others. (See *Appendix B to 40 CFR 122 for details*)

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