

DAAlert...to Local and State Governments



A Publication of **Draper Aden Associates**

October 2006

Brownfields' Ownership Affected

EPA's New 'All Appropriate Inquiry Rule'

The U.S. Environmental Protection Agency's (EPA) All Appropriate Inquiry Rule (AAI) for Phase I Environmental Site Assessments (ESAs) **becomes effective on November 1, 2006**. Purchasers of real property seeking to establish innocent purchaser, bona fide prospective purchaser or contiguous property owner defenses with respect to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund"), must comply with the AAI Rule at that time.

If ASTM E 1527-05 is not followed after this date the buyer will lose important liability defenses. ASTM updated its Phase I ESA Standard in 2005 (ASTM E 1527-05) to include the AAI requirements. However the ASTM E 1527-97 or 1527-00 Standard can still be used if "closings" are completed prior to November 1, 2006.

Under the AAI Rule, the prospective purchaser's due diligence must include:

- o Review of historical sources of information;
- o Review of government records for both the subject property and nearby or adjoining properties;
- o Visual inspections of subject property and adjoining properties;
- o Additional reviews or research to gather commonly known or reasonably ascertainable information about the property to the extent necessary to identify conditions indicative of releases or threatened releases of hazardous substances at the property;
- o Consideration of the degree of obvious or likely presence of contamination at the property; and the ability to detect the contamination by appropriate investigation; and
- o A written report documenting the results of the environmental inquiry. The AAI Rule dictates that an environmental professional will also:
 - Conduct interviews with a wider range of individuals with knowledge of the subject property;
 - Undertake a more thorough visual inspection of properties adjoining the subject property;
 - Review a broader array of governmental records;
 - Make a statement regarding the relationship of the purchase price to the fair market price of the property, assuming that it is not contaminated;
 - Identify whether there are environmental liens on the property; and
 - Include in the written report acknowledgement of areas of uncertainty that might effect the environmental professional's conclusions.

For more information about the new ASTM Standard, AAI Rule and Phase I Environmental Site Assessments call Steve Werner (swerner@daa.com) at (804) 264-2228 or Janet Frazier (jfrazier@daa.com) at (540) 552-0444. You can also access more about the AAI Rule at www.epa.gov/brownfields/.

If you would like to have your name removed from our fax list, please send your request to chanks@daa.com.



Draper Aden Associates

Engineering ♦ Surveying ♦ Environmental Services

Corporate Offices: 2206 South Main Street Blacksburg, VA (540) 552-0444
Blacksburg, VA 24060 Charlottesville, VA (434) 295-0700
(540) 552-0444 Hampton Roads, VA (757) 599-9800
Fax: (540) 552-0291 Richmond, VA (804) 264-2228
www.daa.com daa@daa.com