



Brownfields and Site Assessments

U.S. Environmental
Protection Agency
Office of Brownfields
Cleanup and Redevelopment

1

Brownfields and Site Assessment

- Overview
- All Appropriate Inquiries
- State Voluntary Cleanup Program – Illinois
- Comparing AAI and Superfund Preliminary Assessment

2

Site Assessments at Brownfields

- Grant Eligibility
- Grant Recipients
- State Program Grants (Section 128 Funding)
- Targeted Brownfields Assessments
- State VCP Programs

3

Brownfields Grant Eligibility

- Site-specific assessment grants and all cleanup and RLF grants
 - Prohibition on use of grant monies to address releases for which applicant is responsible party
 - Applicant must be Bona Fide Prospective Purchaser; or
 - Otherwise protected from CERCLA liability (involuntary acquisition)

4

Brownfields Grantees

- Applicants receiving Federal Brownfields grants for site assessment and characterization
 - Must conduct assessment in compliance with All Appropriate Inquiries standards
 - Grant monies can be used for further assessment (Phase II and beyond)

5

State Program (Sec. 128) Grants

- States can use a portion of their Sec. 128 grant funding to conduct targeted BF assessments
- Not restricted to AAI
- However, suggest doing AAI to ensure eligibility for future BF cleanup or RLF grant

6

Targeted Brownfields Assessments

- AAI not required
- Should do AAI if site may be the subject of future Federal Brownfields grant application

7

State VCP Programs

- State-specific program requirements
- Conduct assessment in compliance with state program provisions
- AAI not applicable if site is involved or state is overseeing assessment and cleanup

8

All Appropriate Inquiries

“All Appropriate Inquiries,” or due diligence, is the process of evaluating a property for potential environmental contamination and assessing potential liability for any contamination present at the property.

9

Small Business Liability Relief and Brownfields Revitalization Act

- Congress mandated that EPA promulgate regulations establishing federal standards for all appropriate inquiries
- Statute lists ten criteria EPA must include in regulations
- Statute establishes interim standard

10

Applicability

- The All Appropriate Inquiries standards will apply to:
 - Property owners asserting CERCLA liability protections
 - Persons receiving brownfields grants for site characterization and assessment under CERCLA 104(k)(2)(B)

11

CERCLA Liability

- The Brownfields Amendments provide liability protections for landowners who qualify as:
 - contiguous property owners,
 - bona fide prospective purchasers, or
 - innocent landowners.

12

CERCLA Liability (cont.)

- To qualify for the liability protections, landowners must:
 - Meet certain threshold criteria
 - Satisfy certain continuing obligations.

13

Threshold Criteria

- No affiliation with liable party
- Conduct all appropriate inquiries prior to date property is acquired

14

Continuing Obligations

- Comply with land use restrictions
- Do not impede effectiveness or integrity of institutional controls
- Take “reasonable steps”
- Provide cooperation, assistance and access
- Comply with CERCLA information requests and subpoenas

15

Innocent Landowner

- Did not know and “had no reason to know” of contamination prior to purchase
- Must acquire property after all disposal of hazardous substances at the property

16

Contiguous Property Owner

- Did not cause, contribute, or consent to any release or threatened release of hazardous substances
- No reason to know of contamination prior to acquiring property
- Contamination from real property that is not owned by same person

17

Bona fide Prospective Purchaser

- Can purchase property with knowledge of contamination
- Must have bought property after January 11, 2002
- All disposal of hazardous substances must occur prior to acquisition of the property

18

Property Owners Must Comply with ALL Criteria

- Must comply with all Statutory Criteria to obtain liability protection
- Failure to identify a release or threatened release during conduct of AAI does not relieve property owner from compliance with continuing obligations

19

Interim Standard for AAI

- Congress established an interim standard that is in effect until EPA issues a final rule.
- Interim standard was clarified in final rule published May 9, 2003 (68 FR 24888).
- Interim standard is ASTM E1527-00 (or E1527-97) for properties purchased after May 31, 1997.

20

Negotiated Rulemaking

- EPA developed proposed AAI regulatory language using a Negotiated Rulemaking process
- Negotiated Rulemaking Committee
 - Composed of 25 stakeholders
 - Decisions made by consensus

21

Benefits of Negotiated Rulemaking

- Solicit direct input from informed, interested, and affected parties prior to publishing proposed rule
- Make good use of outside expertise
- Reduce number of significant public comments
- Increases ease of implementation

22

Schedule

- Proposed Rule currently at OMB
- 60-day public comment period following publication of proposed rule in Federal Register
- Final rule will be developed by EPA after considering and responding to all public comments

23

Highlights of Consensus-based Language

- Structured around 10 statutory criteria
- Objectives and performance standards
- Report of findings
- Shelf Life
- Definition of E.P.

24

Objectives of AAI

- Identify conditions indicative of releases or threatened releases
- Identify particular information:
 - Uses and occupancies of property
 - Uses of hazardous substances
 - Waste management activities
 - Corrective actions and response activities
 - Institutional and engineering controls
 - Nearby and adjoining properties with environmental conditions

25

Performance Factors

- Gather information that is:
 - Publicly available
 - Obtainable from its source within reasonable timeframe and cost constraints
 - Can be practicably reviewed
- Review and evaluate thoroughness and reliability
- Identify data gaps and their significance

26

AAI Report of Findings

- Results of AAI must be documented in report that is signed by EP
- Report must include:
 - Opinion regarding conditions
 - Identification of releases or threatened releases
 - Data gaps and their significance
 - Signature of EP
 - Declaration of EP qualifications

27

Shelf Life and Third Parties

- AAI must be conducted within one year prior to acquiring property (title transfer) – some aspects updated after 180 days
- May use information contained in previous inquiries (must be collected in compliance with regulations)
- AAI may be conducted by third party
 - Person acquiring property responsible for specialized knowledge and purchase price requirements

28

Definition of Environmental Professional

- Recognizes P.E., P.G. and other state-certified or licensed environmental professionals with 3 years experience as environmental professional
- Education and experience qualifications for others
 - Degree in relevant discipline of science or engineering, plus
 - Five years of relevant full time experience
- Persons with 10 years experience grandfathered

29

Additional Provisions of Proposed Rule

- Interviews
- On-site Visual Inspections
- Comparison of Purchase Price and Market Value of Property
- Commonly Known or Reasonably Ascertainable Information

30

Interviews

- Must interview current and past owners and occupants
- Must interview owners or occupants of neighboring properties, if purchasing an abandoned property

31

On-site Visual Inspection

- Must conduct on-site visual inspection
- Limited exemption from "on-site" inspection, if good faith efforts result in no access to property
 - Must document efforts taken
 - Must conduct inspection from nearest vantage point
 - Must document impacts of limited access

32

Purchase Price versus Value of Property

- Persons must consider whether the purchase price reflects the fair market value of the property, if not contaminated
- If price does not reflect value, persons should consider whether differential is due to presence of contamination

33

Commonly Known or Reasonably Ascertainable Information

- Must consider information that is commonly known and reasonably ascertainable information within the local community
- Information may be obtained from:
 - Current owners or occupants
 - Local and state government officials
 - Other sources (e.g., newspapers, local libraries, historical societies)

34

Sampling and Analysis

- No requirements to conduct sampling and analysis
- AAI must include documentation of data gaps
- Sampling and analysis may be used to address data gaps – not required

35

Additional Information

- Information on Negotiated Rulemaking, including consensus-based language can be found on our website:
www.epa.gov/brownfields/regneg.htm
- For additional information, contact Patricia Overmeyer at overmeyer.patricia@epa.gov
- Brownfields 2004 – September 20 -22 St. Louis www.brownfields2004.org

36

Comparison of Preliminary Assessment and AAI

Criteria	Preliminary Assessment	All Appropriate Inquiries
Purpose	Determine if score > 28.5.	CERCLA Liability Protection.
Area of concern	Impact of site on targets.	Impact of releases on property itself.
Basis	NCP regulation; guidance.	Statute.

37

Comparison of Preliminary Assessment and AAI (cont)

Criteria	Preliminary Assessment	All Appropriate Inquiries
Definition of Environmental Professional	Comparable, more flexible.	Specific requirements for EP.
Interviews	Usually required.	Required.
Reviews of historical sources	Required.	Required.

38

Comparison of Preliminary Assessment and AAI (cont)

Criteria	Preliminary Assessment	All Appropriate Inquiries
Searches for Environ. Cleanup Liens	Useful; not required.	Required.
Reviews of government Records	Required.	Required.
Visual Inspections of Property	Preferred.	Required.

39

Comparison of Preliminary Assessment and AAI (cont)

Criteria	Preliminary Assessment	All Appropriate Inquiries
Specialized Knowledge of Owner	Useful; not required.	Required.
Relation of purchase price to value	Not done.	Required.
Commonly Known Information	Usually done; not required.	Required.

40

Comparison of Preliminary Assessment and AAI (cont)

Criteria	Preliminary Assessment	All Appropriate Inquiries
Ability to Detect Contamination by further investigation	During SI, not usually part of PA Identify gaps.	Identify data gaps. Sampling NOT required.
Draft HRS Score	PA score required.	Not applicable.
Product	PA report and score.	Report addressing likelihood of contamination and identifying data gaps.
Audience	State or Federal Gov't.	Property owner or lender. 41

Comparison of Preliminary Assessment and AAI (cont)

Criteria	Preliminary Assessment	All Appropriate Inquiries
Number of Assessments per year	300+ (50 combined)	240,000
Cost per Assessment	\$8 – 10 million	\$1,900 – \$2,300

42