



*Redeveloping Land for
Sustainable Communities*

Site Assessment: The Phase I All Appropriate Inquiry (AAI)

Under current federal Superfund law and California statutes, current and past owners of contaminated properties are held jointly and strictly liable for the environmental cleanup of the property.

For a prospective purchaser of real property to qualify for federal liability protection they must conduct a Phase I Site Assessment (also referred to in law as an All Appropriate Inquiry (AAI)) prior to closing the purchase. AAI is also required by lenders and rating agencies by those seeking municipal bonds and loans. AAI is the term used in the Superfund Law to describe the process of evaluating a property for potential environmental contamination and assessing potential liability for any contamination at the property.

Completing an AAI Phase I Site Assessment is critical for municipalities and redevelopment agencies seeking to:

- comply with rating agency requirements for property securitizations
- comply with lending institution's due diligence for acquisition loans
- comply with federal and state brownfields grant requirements
- obtain Bona Fide Prospective Purchaser Liability Protection (pursuant to Superfund law and applied to property purchased after January 11, 2002, provides that someone can purchase property knowing of environmental contamination, and not be held liable)
- establish the Innocent Landowners Defense (applied to property purchased after 1986 and assumes that property owner "did not know and had no reason to know" of contamination at the time of purchase)
- obtain Contiguous Property Owner Liability Protection (applied to property purchased after 2002, provides that the owner of property adjacent to property with pollution is not liable provided they did not contribute to pollution and are not related to liable party)

In order to claim any of the above protections, an AAI-compliant Phase I Environmental Assessment must have been conducted before purchase has closed, and comply with any prior environmental based "continuing obligations" or other land use restrictions that may have been established. It also assumes that no disposal or waste management activities occurred on the property after purchase.

Under Superfund Law, without an AAI-compliant Phase I, liability for environmental cleanup is joint and several, meaning that businesses that had no part in creating the contamination may be liable for part or the entire cleanup cost. Additionally, to maintain protection, a purchaser must exercise appropriate care by taking responsible steps to stop continued releases, prevent any threatened future releases, prevent or limit human, environmental or

natural resource exposure to any previously released hazardous substances, comply with land use restrictions, and cooperate with people authorized to conduct response actions or natural resource restorations.

Prior to the 2002 Superfund amendments, any property owner could be held strictly, and jointly and severally, liable for any prior contamination of the property. In other words, prior to 2002, any owner within a property's chain of title could be held liable for contamination at a property, regardless of whether any particular owner caused the contamination.

A Phase I AAI-compliant Environmental Assessment should be reviewed for the following:

- Must be completed within one year prior to property purchase date.
- Certain aspects must be conducted or updated within 180 days prior to date of acquisition such as interviews with adjacent property owners, current and past tenants, previous property owners, records review, site inspection and lien search.
- Results of a Phase I assessment must be documented in a written report.
- Person who supervised or oversees the assessment must meet the definition of an Environmental Professional (EP), credentials must be part of the written report.
- Report must include an opinion as to whether the inquiry has identified conditions indicative of release or threatened release of hazardous substances.
- Report must be signed by the Environmental Professional.

For more information regarding an AAI Environmental Assessment, please call us at 415.398.1080.