

# Due Diligence Update - EPA's AAI and ASTM's Phase I Standard

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# Introduction

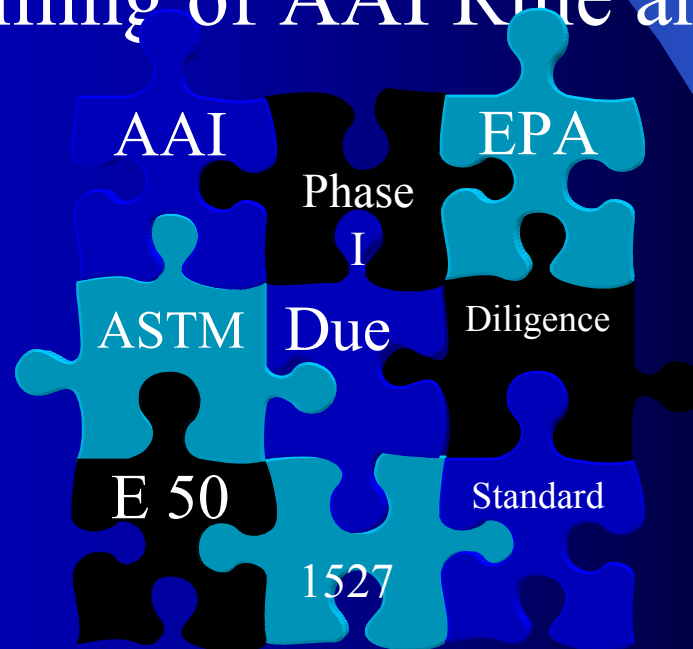
- American Geosciences, Inc. – Full service environmental, health & safety consulting firm in Murrysville, PA
- Corporate experience performing wide array of due diligence for over 15 years
- Presenters:
  - David Perry – Chairs WPaBF, NBA Member
  - David Parsonage – ASTM E 50 Committee, E 1527 Task Group Member

# Agenda

- What we will cover today:
  - Background information
  - Why the new rule and standard are important
  - Summary of main points of final AAI Rule
  - Differences between the final AAI Rule and interim ASTM Standard
  - Continuing obligations
  - A look at the new ASTM Phase I Standard
  - Bottom line implications

# Overview

- AAI Rule almost 4 years from law to reg.
- Expands CERCLA liability protections
- Sets federal standards and practices
- EPA and ASTM worked closely to ensure acceptability and timing of AAI Rule and Phase I Standard



# Background

- History of the Phase I Standard
- Brownfields Amendments to CERCLA
  - January 2002 Small Business Liability Relief and Brownfields Revitalization Act
  - Funding to assess and cleanup brownfields
  - Clarified and added liability provisions
- Reg-Neg Process (April – Dec 2003)
- All Appropriate Inquiries (AAI) Rule
  - Proposed Rule in August 2004
  - Sets federal standards and practices for conducting AAI
- ASTM E 1527-97/00 Interim Standard

# Why Should You Care About the Final AAI Rule?

- CERCLA Safe Harbors – Landowner Liability Protections (LLPs)
- Federal grant recipients
- Forces behind the lending market – Private and Government
  - Wall Street
  - HUD
- Considering the future
  - Protecting your investment/future divestment

# EPA's Final AAI Rule

- Published November 1, 2005
- Effective November 1, 2006
- Codifies federal environmental due diligence standards and practices for AAI
- Must be followed by persons seeking CERCLA LLPs and those receiving federal brownfields grants

# EPA's Final AAI Rule (cont.)

- LLPs
  - Bona Fide Prospective Purchaser – may purchase property with knowledge of contamination
  - Contiguous Property Owner – must have no knowledge or reason to know of contamination
  - Innocent Landowner – must have no knowledge or reason to know of contamination
- Over 400 comments – such as:
  - Definition of Environmental Professional (EP)
  - Performance-Based vs. Prescriptive Approach
  - Data Gaps
  - Purchase Price vs. Fair Market Value

# Changes Between Final AAI Rule and Interim Phase I Standard (E 1527-00)

- Definition of Environmental Professional
- Interviews – Current Owners/Occupants, Past Owner/Occupants, Neighboring Owners/Occupants
- Historical Review Sources – Time Period
- Activity and Use Limitations (AULs), Cleanup Liens
- Government Record Search
- Site Inspection
- Constituents of Concern
- Data Gaps
- Shelf Life

# Continuing Obligations

- CERCLA LLPs require that continuing obligations are met by property owner:
  - Not cause/contribute to contamination (or for BPP acquire after all disposal)
  - Provide required notices
  - Take appropriate care/reasonable steps re: releases/exposures
  - Provide full access, cooperation
  - Comply with land use restrictions
  - Not impede effectiveness/integrity of institutional controls
- Incentive to perform thorough Phase I so continuing obligations are clear

# ASTM's New E 1527-05

- ASTM worked closely with EPA to ensure acceptability and “time” the publication
- Due November 10 or 11, 2005
- Cited in Final AAI Rule – Meets AAI requirements
- Good commercial and customary practice - facilitates high-quality, standardized ESAs, ensures the standard of AAI is practical and reasonable, clarifies an industry standard for AAI

# What it Doesn't Cover

- AAI and ASTM's Phase I Standard do not address "business risk" issues outside of hazardous substance and petroleum releases such as:
  - Asbestos
  - Lead-based Paint
  - Radon
  - Wetlands
- ASTM's Transaction Screen Process

# Bottom Line

- Qualified environmental firms that have been doing due diligence right all along will be able to readily respond for their clients
- The market will sift out the firms that are unqualified and unprepared
- Overall, the street price of a Phase I will go up a few hundred dollars due to the increased level of effort required to comply with the new standard
- Quality and reliability of due diligence should increase with performance-based standard