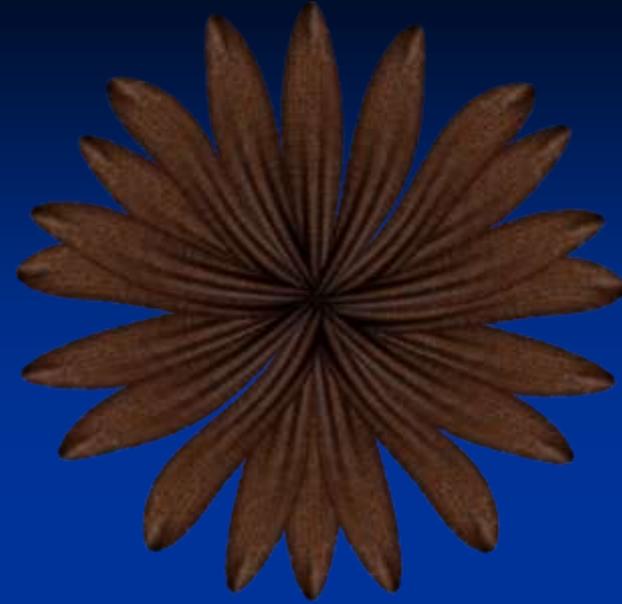


BROWNFIELDS
Connecticut
All Grantee Meeting
July 11 2012



**Getting the most out of
All Appropriate Inquiries
(AAI)**



AAI in Perspective

- All Appropriate Inquiries often is a critical step in a continuum of property investigations.
 - AAI / Phase I
 - Phase II Sampling and Analysis
 - Additional Site Characterization
 - Cleanup and reuse planning
- Investigating potential environmental conditions or problems at a property so that contamination can be properly addressed to protect public health and the environment.





AAI – the "Other" Perspective

- 2002 Brownfields Amendments to CERCLA
 - Amended CERCLA and provided liability protections for certain property owners
 - Clarified Innocent Landowner Defense
 - Added Contiguous Property Owner
 - Added Bona Fide Prospective Purchaser
 - Required EPA to develop regulations establishing standards and practices for conducting AAI
 - Established EPA's Brownfields Grant Program



But there is more...

AAI = BFPP + Continuing Obligations

Bona Fide Prospective Purchaser

- AAI prior to purchase
 - 1-Year w/ 6-mo. Update
 - ASTM E1527-05
- Acquire after disposal of hazardous substances occurred
- Not potentially liable or affiliated with liable party

Continuing Obligations

- Comply with land use restrictions
- Do not impede institutional controls
- Take reasonable steps to stop and prevent releases
- Provide legal notices on discovery
- Provide access and information upon request

Stepping up to Continuing Obligations (to maintain liability protections)



- Activity and Use Limitations (AULs)
 - Broad term encompassing institutional and engineering controls
 - Stay with the property – FOREVER
 - Noncompliance can jeopardize liability protections
 - Work with the state to change or eliminate
 - Create a monitoring plan to document long term compliance

Caution on Search for Environmental Liens and Activity and Use Limitations



- Environmental Liens and AULs may be recorded on chain of title documents or some other format by federal, state or local governments
 - Be prepared to pay for a title search
- **ASTM** considers this a “**User**” responsibility (i.e., performed by prospective landowner or grantee) that can be delegated to Environmental Professional
- **AAI** separates the lien search as a User responsibility, and the AUL search as part of EP responsibilities under records review.

Stepping up to Continuing Obligations (to maintain liability protections)



- Seek closure to recognized environmental conditions identified in the AAI/Phase I report
- Address identified releases to limit human and environmental exposure to contamination
- Prevent any future releases (by owner or operators)
- Notify the State on new and /or previously unidentified releases to the environment
- If disaster strikes, call in the state and/or EPA for assistance



Reminder on AAI for local governments

- Involuntary taking of property, through tax foreclosure or eminent domain, provides inherent liability protections
 - Remember – Continuing Obligations apply
- Taking a property through donation or any dollar amount requires AAI to establish BFPP status (and all that goes with it)



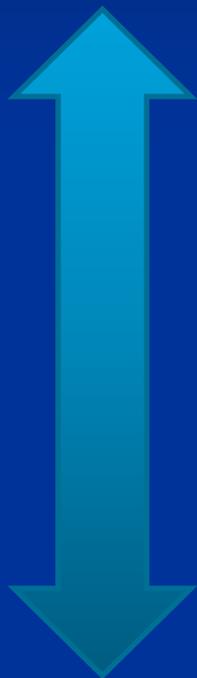
How Else Does AAI Affect You?

- Threshold Criteria for Brownfields Grant Applicants
 - To apply for **Cleanup grant or Site-Specific Assessment grants** an eligible entity must demonstrate protection from CERCLA liability
- Recipients of Brownfields Assessment Grants
 - Must conduct Phase I assessments in compliance with AAI
- Help others understand and manage AAI
 - Parties seeking protection from CERCLA liability **must conduct AAI prior to purchasing property**



Buyer's Perspective to AAI

Higher



Risk

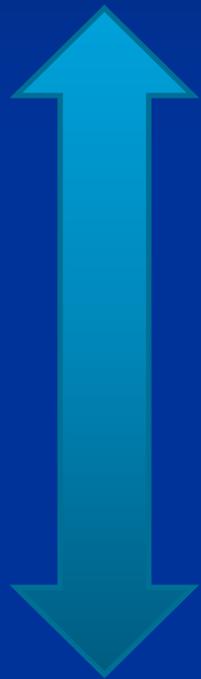
Lower

- **No AAI**
 - Buyer becomes PRP and assumes all risk
- **AAI Only**
 - Qualifies as BFPP, but assumes all continuing obligations and potential risk due to uncertainty
- **AAI + Phase II**
 - Reduces risk with greater understanding of continuing obligations
- **AAI + Phase II + Cleanup Planning**
 - Minimizes risk and begins to approach cost certainty



Seller Perspective to AAI

Higher



Risk

Lower

- **No AAI**
 - Desirable to sell at market rate, but unknown risk for potential liability from 3rd party lawsuit
- **AAI Only**
 - Helps establish baseline risk for marketing property, and lowers potential risk from 3rd party lawsuit
- **AAI + Phase II**
 - Further reduces risk to seller and buyer, but may result in reportable concentrations which may require further seller responsibilities
- **AAI + Phase II + Cleanup Planning**
 - Minimizes risk, property value understood, improves decision making and bargaining position

Getting Invested in Your Phase I Investigation Report





Phase I Report – Checklist

- Required To-Do for Grant Project Managers

Require Review of:

- EP Opinion of environmental conditions
 - Identify data gaps
 - Qualifications and signature of EP
 - EP Opinion regarding additional investigation
- Available on EPA AAI website and from your grants project officer

Required Checklist for All Phase I Site Assessments Conducted using EPA Brownfields Assessment Grant Funds

Grantee Name: _____

Grant Number: _____

Program Manager Name: _____
(Point of Contact)

Contact Phone Number: _____

Name / Address of Property Assessed: _____

Please indicate that each of the following All Appropriate Inquiries documentation requirements were met for the Phase I assessment conducted at the above listed property:

- An *opinion* as to whether the inquiry has identified conditions indicative of releases or threatened releases of hazardous substances on, at, in, or to the subject property.
- An identification of *data gaps* (as defined in §312.10) in the information collected for the inquiry that affect the ability of the environmental professional to identify conditions indicative of releases or threatened releases of hazardous substances on, at, in, or to the subject property, as well as comments regarding the significance of these data gaps.
- Qualifications and signature** of the environmental professional(s). The environmental professional must place the following statements in the document and sign the document:
 - “[I/ We] declare that, to the best of [my, our] professional knowledge and belief, [I/ we] meet the definition of Environmental Professional as defined in §312.10 of this part.”
 - “[I/ We] have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. [I/ We] have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.”
- In compliance with §32.31(b), the environmental professional must include in the final report an *opinion regarding additional appropriate investigation*, if the environmental professional has such an opinion.

Signature of Grantee Program Manager

Date

Submission of this checklist to EPA does not constitute a determination of CERCLA liability by EPA and does not confer protection from CERCLA liability.



Phase I Reports – Review Process

- Consultant submits draft Phase I report electronically to project team
 - Commercial data report can be left out to reduce file size
- Grantee reviews report for compliance with checklist
 - Work with consultant on questions and comments
 - Grantee must be able to check all boxes
 - Grantee emails EPA PO completed checklist (not in report)
- EPA and/or state may review and provide comments on report, as appropriate
 - EPA/state role is review only (not approval)
- Consultant finalizes report and submits to project team in requested format (CD copy for EPA)

EPA Region I Recommends ASTM 1527-05 Report Format



- Summary
- Introduction
- Site Description
- User Provided Information
- Records Review
- Site Reconnaissance
- Interviews
- Findings
 - Known & suspect RECs
 - Historic RECs
 - De minimis conditions
- Opinion
 - RECs (yes or no)
 - Significant data gaps
 - Additional appropriate investigations
- Conclusions
 - RECs & ASTM declarations
- Deviations
- Additional Services
- References
- Signature of EP
- Qualifications of EP
- Appendices

Opinion of the Environmental Professional (EP)



- The report must provide an opinion as to whether the inquiry has identified conditions indicative of a release or threatened release
- Good reports provide the rationale for concluding that a condition “is or is not” a REC (i.e., based on...)
- “To be of real value, a Phase I report should contain a narrative that links the information obtained with an analysis as to whether or not the subject property contains a REC or area of concern.”



Data Gaps

- Data gaps that impact the ability of the EP to identify a REC must be reported as a significant data gap in the opinion section of the report
- Limiting factors identified during the investigation should always be discussed in the findings and can be considered data gaps
- If the EP has not identified any significant data gaps, a statement indicating this in the opinion section will assist the grantee in completing the checklist

EP Qualifications, Declarations and Signature



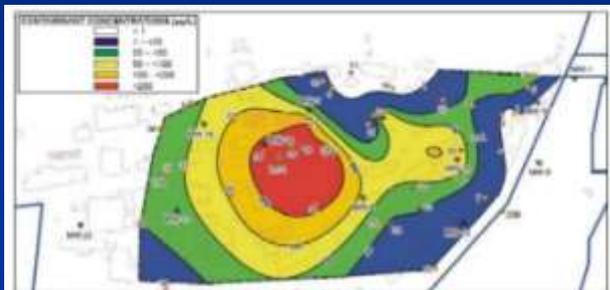
- Qualifications of the EP must be documented in the report in some manner
 - Resume
 - Other documentation showing the EP meets the qualifications described in the definition
 - **ASTM** requires qualifications of personnel conducting site inspection and interviews if not performed by EP
- Declarations must be verbatim (in “general” conformance won’t cut it)
- Signature is the EP supervising and overseeing the inquiry

Degree of obviousness and ability to detect by additional investigation

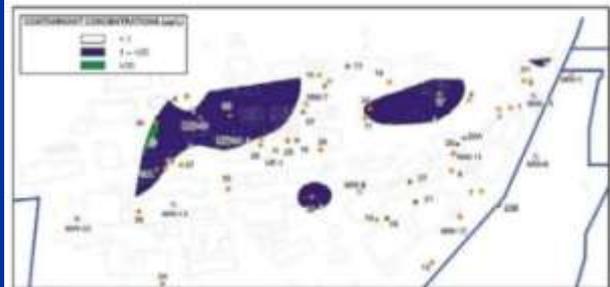


- The EP must include in the final report an opinion regarding additional appropriate investigation, if the EP has such an opinion
 - Opinions are required when greater certainty is needed to identify an REC (i.e., potential presence)
 - Does not imply an opinion on specific recommendations (but they are encouraged, as appropriate, to continue progress)
 - Identified RECs (i.e., real or likely presence) must be addressed as part of continuing obligations, and are not the intent of this inquiry
 - Degree of obviousness becomes most important if “no” RECs are identified (innocent landowner defense)
- If the EP does not have such an opinion, a relevant statement in the Opinion section of the report will help the grantee in completing the checklist

AAI Basics



CCl₄ - Prior to SVE



CCl₄ July 2001



Figure 7-1
Sampling Locations, Building 14 and
Former Building 13 Site Investigation



Objectives of AAI

- Seek to identify conditions indicative of releases and threatened releases (Recognized Environmental Conditions (RECs))
 - Identify current and past uses and occupancies
 - Identify current and past uses of hazardous substances and petroleum
 - Identify waste management and disposal activities
 - Identify current and past corrective actions
 - Identify engineering and institutional controls, and
 - Identify RECs at nearby and adjoining properties that may impact subject property



Performance Factors

- Gather required information that is publicly available, obtained within reasonable time and cost, and which can practicably be reviewed
- Review and evaluate the thoroughness and reliability of the information gathered
- Don't let quality suffer at the expense of cost savings



Managing AAI shelf life post 2006

- Must be conducted within **1-year** prior to the acquisition date, with certain components requiring updating within **180-days** of acquisition
 - Date of acquisition or purchase date = date landowner obtains title to the property
- With property transactions shelf life is pass/fail
- Strategize AAI completion with each individual project
 - Status of environmental investigation
 - Buyer/owner/grantee goals and timing

Environmental Professional's Responsibilities



- Reviews of historical sources of information
- Reviews of federal, state, tribal, and local government records (180-day)
- Interviews with past and present owners, operators, and occupants (180-day)
- Visual inspection of the subject property, facilities and improvements, and visual observation of adjoining properties (180-day)

Prospective Landowner and Grantee (Report Users) , and EP's Responsibilities



- Reviews of environmental liens and activity and use limitations (180-day) (user & EP responsibility)
- Relationship between purchase price vs. value of property, if not contaminated (user responsibility)
- Specialized knowledge (user responsibility)
- Commonly known and reasonably ascertainable information (user & EP responsibility)
- Degree of obviousness of contamination and ability to detect by additional appropriate investigation (user & EP responsibility)



Records Review

- Searching for and reviewing State records on releases and investigation reports is a must
 - Subject Property
 - Nearby or adjoining properties of high interest
 - Caution: site defined boundaries can overlap multiple properties
- Identification of institutional and engineering controls will become more common over time and more important for continuing obligations



Interviews

- Lack of required interviews is a data gap and must be addressed some manner
 - Efforts made and limitations to inquiry
 - In terms of performance factors
 - Significant data gap
- For abandoned properties, interviews with neighboring properties may not be desirable from the buyer's perspective, and will result in a data gap to be addressed if voluntarily left out



Visual Inspection

- Experience can play an important role in the quality of the site inspection, and the Environmental Professional is encouraged to take part in the site inspection
- The devil is in the details for a thorough inspection
 - Data gaps or limitations found in the inspection need to be discussed
- Inability to get on the property is a significant data gap

Questions?



AAI Contact Information

- Alan Peterson
- 617-918-1022
- Peterson.Alan@epa.gov
- Dorrie Paar
- 617-918-1432
- Paar.Dorrie@epa.gov

