



Fall 2005

## *EPA's All Appropriate Inquiry (AAI)* *Coming late 2005/early 2006*

The Environmental Protection Agency's (EPA) AAI will soon become the new standard for meeting landowner liability. Here are a few things you should know.

1) **What is AAI?**

- On August 26, 2004, EPA published the proposed AAI which will establish for the first time that environmental due diligence is codified in a Federal Regulation and will establish specific regulatory requirements for performing AAI for the purpose of qualifying for certain landowner liability protections under the Comprehensive Environmental Response, Compensation and Liability Act (also known as "CERCLA", "Superfund", and/or "the Brownfields Law").

2) **What are the anticipated economic impacts of AAI?**

- **Increased Costs:**  
A member of the Environmental Bankers Association stated in an article published in March of 2004 by the Bureau of National Affairs, Inc. that the economic impact of the new AAI could possibly increase the cost of a Phase I Environmental Site Assessment Report by as much as \$500 - \$1,500.
- **Increased Turnaround Times:**  
The new AAI Rule outlines requirements for conducting more comprehensive research, which in turn is one of the reasons for the anticipated increase in costs as well as the increase in the amount of time it takes to perform an AAI. With the implementation of AAI, the completion time could increase significantly to 20 to 30 days.  
Source: Environmental Data Resources and the Environmental Bankers Association

3) **Impact of AAI on Commercial Real Estate Investors and Developers?**

- **Q:** I'm an investor and developer that frequently buys, sells, and develops commercial real estate properties. Based on the new EPA AAI rule, will I be required by law to perform an AAI?
- **A:** No, not necessarily. You only have to perform an AAI if you want qualify for certain landowner liability protections under CERCLA. Additionally, if you are financing your project through a financial institution you should check with them to find out what their requirements are for performing environmental due diligence.

4) **Impact of AAI on Lenders?**

- **Q:** I'm a loan officer for a financial institution that finances commercial real estate transactions. Based on the new EPA AAI rule, will we be required by law to perform an AAI?
- **A:** No, not necessarily. Lenders have the Secured Creditor Exemption and liability protection from CERCLA. CERCLA provides a secured creditor exemption from liability for banks and lenders that do not participate in the management of the property. Further, lenders don't have to perform AAI to get the Secured Creditor protection. Therefore, lenders are free to require whatever due diligence procedures and practices they think are appropriate for their own business risk.

For more information on All Appropriate Inquiry (AAI) please visit us at [www.pinsci.com](http://www.pinsci.com)

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