

- ARCHIVE:** Archived. Refer to VA30006.11.001 for the updated document.
- TITLE:** Meeting VAP Phase I Requirements While Conducting All Appropriate Inquiry
- DATE EFFECTIVE:** February 2009
- HISTORY:** Update of VA30006.07.001 - Revision was necessary to reflect changes in the rule citations that became effective in March 2009.
- KEYWORDS:** All Appropriate Inquiry (AAI), Phase I, ASTM E1527-05, bona fide prospective purchaser, liability protection
- RULE/ AUTHORITY:** OAC 3745-300-06
- QUESTION:** I am conducting a site assessment that will meet the requirements of U.S. EPA's All Appropriate Inquiry Rule following 40CFR312 or ASTM E1527-05 to establish bona fide prospective purchaser, innocent landowner or contiguous property owner liability protection. What additional work must I do, if any, to also meet the requirements of the VAP Phase I rule (OAC 3745-300-06)?
- ANSWER:** Although U.S. EPA's All Appropriate Inquiry Rule 40CFR312 (AAI) and the ASTM E1527-05 are rather comprehensive initial environmental investigations (a.k.a., Phase I investigations), they do differ slightly from the VAP Phase I requirements contained in OAC 3745-300-06. Both investigations require, among other things, a review of historical sources, various government records and databases. Interviews with persons who resided at, were employed at, or who owned or operated the site are also required.
- What the AAI and the ASTM 1527-05 do not require that the VAP Phase I does require are the following:
- Site walkover. A site walkover or property inspection that is **conducted by a VAP Certified Professional (CP)**. Although both the AAI and the ASTM E1527-05 do require that a visual site inspection be conducted, an environmental professional or a person working under the supervision of an environmental professional are qualified to conduct the AAI/ASTM site inspection. ASTM and AAI both define the education and experience requirements needed to be considered an environmental professional. Although all current VAP CPs do meet the definition of environmental

professional under AAI and ASTM, not all environmental professionals meet the definition of a VAP CP.

- Map requirements. Although the AAI and ASTM E1527-05 require that certain items, at a minimum, be contained in the AAI report, there is no requirement for specific site maps. A VAP Phase I map requires that the following maps be contained in the VAP Phase I Property Assessment Report (see OAC 3745-300-06(H)(3)):
 - A property location map using the most currently available 7.5 minute USGS topographic map.
 - A property map which identifies significant structures and features including property boundary lines.
 - A map which identifies the location and type of identified areas on the property.
 - A map which identifies all properties within one half mile surrounding the subject property.
- Phase I report. In addition to the map requirements listed above, there are other minimum requirements for a VAP Phase I report. The volunteer or CP should familiarize themselves with the report requirements contained in OAC 3745-300-06(H). The AAI report is only required to contain an identification of data gaps, the environmental professional's opinion regarding the property condition and the qualifications and signature of the environmental professional.

A table is attached to this TGC which provides additional details of the various requirements of both the AAI/ASTM E1527-05 for further information.

BACKGROUND: **Differences**

It is important to understand that while both the AAI/ASTM and the VAP Phase I assessments were designed to be the initial environmental assessment for a property, the purpose of the VAP Phase I is different from that of the AAI/ASTM.

The VAP Phase I rule was developed to determine if releases of hazardous substances or petroleum have or may have occurred on the property. The Phase I is also designed to allow one to designate identified areas and determine the necessity for and scope of a VAP Phase II assessment.

The AAI or ASTM E1527-05 was developed to provide standards and practices for all appropriate inquiries at a property in order to establish the innocent landowner defense, the bona fide prospective purchaser liability protection or the contiguous property owner liability protection under CERCLA.

Therefore, it is not surprising that the assessments contain some different requirements. The VAP requires a more detailed and specific report and certain maps because these items allow both the CP and the VAP to determine the likelihood of hazardous substances or petroleum releases and the need for a VAP Phase II. On the other hand, the ASTM/AAI requires information the VAP Phase I does not such as the relation of the property's purchase price to the actual fair market value if the site was not contaminated and environmental cleanup lien search results because this information helps in determining innocent landowner or prospective purchaser status.

AAI and ASTM E1527-00 and ASTM E1527-05

When the Small Business Liability Relief and Brownfields Revitalization Act (a.k.a., the Brownfields Bill) was passed in January 2002, it contained the requirement that the U.S. EPA develop an All Appropriate Inquiry regulation. While the regulation was being developed and finalized, the ASTM E1527-00 was the interim standard to be used for the innocent landowner defense under CERCLA.

Until 2005, the ASTM E1527-00 was the most prevalent and accepted industry standard for conducting Phase I environmental site assessments. Once the AAI rule was finalized in November 2005, the ASTM E1527-05 was developed. The ASTM E1527-05 is consistent and compliant with U.S. EPA's final AAI rule and may be used to comply with the provisions of the AAI rule.

When AAI is Required

An environmental site assessment that complies with the final AAI rule is required whenever the innocent landowner defense, the bona fide prospective purchaser liability protection or the contiguous property owner liability protection under CERCLA is sought. In addition, persons who receive grants under U.S. EPA's Brownfields grant program to assess and characterize properties must conduct AAI complaint assessments.

SUMMARY:

When conducting a site assessment that will meet the requirements of U.S. EPA's All Appropriate Inquiry Rule following 40CFR312 or ASTM E1527-05, the additional work a volunteer or CP must do to

also meet the requirements of the VAP Phase I rule (OAC 3745-300-06) includes:

- A site walkover or property inspection that is conducted by a VAP Certified Professional.
- Specific maps of the site which are detailed in OAC 3745-300-06 (H)(3).
- Specific Phase I report requirements which are detailed in OAC 3745-300-06(H).

OHIO EPA
CONTACT:

For any questions concerning this issue, please contact the VAP central office at (614) 644-2924.

VAP Phase I/AAI Comparison Chart

Criteria	All Appropriate Inquiry	VAP Phase I
What is the purpose of the assessment?	To provide standards and practices for “all appropriate inquiries” for the purposes of CERCLA. Applicable to: persons seeking to establish innocent landowner defense or bona fide prospective purchaser liability protection or contiguous property owner liability protection, pursuant to CERCLA. Also applicable to: persons conducting site characterizations and assessments under CERCLA Brownfields program. Rule reference:§ 312.1	To determine if releases of hazardous substances or petroleum have occurred or may have occurred; to designate identified areas where releases of hazardous substances have or may have occurred; to determine the necessity for and scope of a Phase II Property Assessment. A required component of the NFA letter submitted in order to receive a CNS. Rule references: 3745-300-06(A); 3745-300-06(E); 3745-300-13(E)(3)
Under what program this should be used?	Under the CERCLA enforcement program, to be able to establish innocent landowner defense. Targeted brownfield assessment.	Voluntary Action Program
When must investigation take place?	“All appropriate inquiries” must be conducted within one year prior to the acquisition of the subject property. Rule reference: § 312.20 (a)	No specified requirements.
How often must the assessment be updated?	If > 180 days old by the date of acquisition, the following must be updated: interviews, record reviews, property inspection, lien search, declaration by environmental professional. Rule reference:§ 312.20(a)(3)(b)	Must be performed within 180 days of the date of issuance of NFA or subsequent investigation conducted per 3745-300-06 (C) must be performed to ensure conditions have not changed since the activities in 3745-300-06 (C) and (F) were performed. Rule reference: 3745-300-06(I)(3)
What is the area to be Investigated?	Intended result is identification of conditions indicative of releases of Impact of releases on property itself. Rule reference:§ 312.20	Impact of releases on property and adjacent properties and receptors. Rule reference: 3745-300-06(A) and (B)
What is the legal basis of the assessment?	CERCLA §101(35)(B), as amended; 40 CFR Part 312.	Rule (OAC 3745-300-06).
Who can conduct the assessment?	Specific requirements for Environmental Professional (can be a VAP CP); does not have to be licensed or certified by federal government, state, tribe or U.S. territory. Additional inquiries per § 312.22 may be made by party seeking liability protection, and then information given to environmental professional. Rule reference:§ § 312.10(b) and 312.21	No specific requirements, but site walk-over must be performed by and assessment must be certified by a Certified Professional. Rule reference: 3745-300-06(J); 3745-300-13(D)

Criteria	All Appropriate Inquiry	VAP Phase I
Are interviews required?	Yes. Interviews with owners, operators, and occupants are required, including the current owner/occupant. Rule reference:§ 312.23	Reasonable attempts must be made to conduct interviews with persons who reside or have resided, or who are employed or were employed at or within the areas surrounding or adjoining the property. Rule reference: 3745-300-06(C)(1)(c)
Are reviews of historical sources required?	Yes. Documents and records covering period of time as far back as it can be shown that subject property contained structures or since property used for residential, agricultural, commercial, industrial or governmental purposes. Documents/records may include: aerial photos, fire insurance maps, building dept. records, chain of title documents, and land use records. Rule reference:§ 312.24	Yes. A diligent inquiry of reasonably available historical sources to establish a continuous history of the use of property and a review of the chain of title for the property to evaluate current and previous ownership and identifiable uses. Documents may include: deed, mortgages, easements of record, and similar documents. Rule reference: 3745-300-06(C)(1)
Are searches for environmental cleanup liens required?	Yes, a search is required for all cleanup liens filed under federal, tribal, state or local law. Rule reference:§§ 312.22 and 312.25	Not required, but could be included in chain of title documents.
Are reviews of government records required?	Yes, a review of federal, tribal, state and local government records or data bases is required for the subject property and adjoining or nearby properties. These records include: records of reported releases, CERCLIS records, public health records, and registries of engineering controls and institutional controls. Rule reference:§ 312.26	Yes, to the extent that documents are reasonably available, any previous environmental assessments or studies, property assessments or geologic studies of the property must be reviewed. A review of reasonably available documents from U.S. EPA, Ohio EPA, ODNR and BUSTR is also required. Also local fire department and local health department records. Rule reference: 3745-300-06(C)(2)
Are visual inspections of the property required?	Yes, a visual on-site inspection of the subject property by the environmental professional is required, and a visual inspection of adjoining property from property line or public right of way by environmental professional is required. Rule reference:§ 312.27	Yes, a property inspection of all areas of the property, including all buildings, is required. In addition, a walkover of the property by the Certified Professional is required. Rule reference: 3745-300-06(C)(5); 3745-300-06(J)
Is obtaining any specialized knowledge of the owner required?	Yes, the owner/defendant must take into account their specialized knowledge of the subject property, the area surrounding the subject property, the conditions of adjoining property, and another other experience relevant to the inquiry. Rule reference:§ 312.28	Useful, but not required.

Criteria	All Appropriate Inquiry	VAP Phase I
Is relation of the purchase price to value required?	Yes, requirement applies to persons seeking liability protection and those seeking Brownfields grants. Consideration must be given to whether purchase price reasonably reflects the fair market value of property, if the property were not contaminated, and if does not reasonably reflect fair market value must consider whether this is due to releases of hazardous substances, etc. Rule reference:§ 312.29	Not required.
Is a review of commonly known information required?	Yes, commonly known or reasonably ascertainable information within the local community must be taken into account. This could include: owners/occupants of adjoining property, government officials, and local organizations, such as historical society. Rule reference:§ 312.30	Yes, a review of “reasonably available” information is required. Rule reference: 3745-300-06(C)
Is sampling conducted?	Identify data gaps, identify the sources of information consulted to address such data gaps, and comment on the significance of data gaps. Sampling NOT required. Rule reference:§ 312.20 (g)	Done during Phase II. Determine identified areas. Sampling during Phase I may be conducted for de minimus areas. Rule reference: 3745-300-06(F)
What is the end product of the assessment?	Report compiling all information related to the identification of conditions indicative of releases of hazardous substances on, at, in, or to the subject property and identification of data gaps. Rule reference:§§ 312.20 and 312.21	Report concluding whether there is reason to believe releases of hazardous substances have or may have occurred and identifying areas where hazardous substances or petroleum are known or suspected to be present. Rule reference: 3745-300-06(H)
Who is the intended audience of the report?	Property owner or lender.	Property owner/Volunteer, State government, property owner’s prospective purchasers, lenders.
Are pathways considered?	Considers only potentially contaminated media (any). Rule reference:§ 312.20(e)	Considers only potentially contaminated media (soil, ground water, surface water, sediments, air). (Targets/completeness of pathways addressed in Phase II.) Rule reference: 3745-300-06(A) and (B)
What maps are required to show the site location?	None are specified.	USGS 7.5-minute topo map showing property boundary. Property map identifying structures, features and property line. Map of identified areas. Map showing all sites of possible releases on adjoining property within ½-mile radius of the property. Rule reference: 3745-300-06(H)(3)