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Important Changes to EPA Rule Will Affect Buyers & Sellers of Real Property

Thinking of buying commercial or industrial property? Environmental laws contain very broad liability provisions, making new owners responsible for past environmental practices. Phase I studies are conducted to establish certain defenses to that liability.

Beginning November 1, 2006, a new U.S. EPA rule, (known as the “All Appropriate Inquiries Rule” or “AAI Rule”) applies to pre-purchase Phase I environmental site assessments. The AAI Rule changes the requirements for these studies.

Phase I studies have been conducted since the 1980’s to evaluate past and current use, handling, treatment and disposal of chemicals. Phase I studies are also conducted to determine whether environmental conditions will interfere with the intended use of the property. The AAI Rule adds new requirements to Phase I studies that may increase both the time frame needed to conduct the assessment and its cost. Some of the more significant changes include:

1. The AAI Rule requires that the environmental professionals conducting the Phase I assessment have specified college degrees as well as extensive training and experience.
2. The AAI Rule broadens the number and type of interviews that environmental professionals conduct to identify past and current environmental practices at the site.
3. The AAI Rule broadens the visual inspections that environmental professionals conduct to include both the site being acquired and adjacent sites.
4. “Post-purchase” activities have been added by the AAI Rule that require new owners to prevent or minimize environmental contamination being released at or from the site.
5. The AAI Rule requires the environmental professionals to include an evaluation of “data-gaps” that impact their assessment, and they must “certify” their findings.
6. The AAI Rule limits the “shelf life” of Phase I reports to 180 days.

This advisory was written by Charlotte A. Biblow, Esq., partner to the firm and leader of its environmental law practice group. If you have questions regarding the new U.S. EPA rule and how to integrate it into your transaction, or about environmental law in general, please contact Ms. Biblow at 516.227.0686 or cbiblow@farrellfritz.com.