

**U.S. Environmental Protection Agency
All Appropriate Inquiry Negotiated Rulemaking Committee**

**Meeting Summary – November 12-14, 2003
Final Committee Meeting**

FINAL CONSENSUS

Final consensus was reached at 12:08 p.m. EST on November 14, 2003, on all issues of the proposed all appropriate inquiry regulation.

Given that the Committee reached a final consensus on all issues, the Agency shall use this consensus-based language in its proposed regulations, and Committee members will refrain from commenting negatively on the consensus-based regulatory language. If the Agency alters the consensus-based language of its proposed regulation, it will reopen the negotiated rulemaking process or provide a written explanation to Committee members, including a detailed statement of the reasons for altering the consensus-based language. If the Agency alters consensus-based language, it will identify such changes in the preamble to the proposed regulations, and Committee members may comment positively or negatively on those changes and on all other parts of the proposed regulations. In addition, EPA will provide a draft preamble to the Committee for comment. (Per the ground rules of the All Appropriate Inquiry Negotiated Rulemaking Committee, Section IV: Agreement)

Agenda Review

The Committee reviewed and accepted the meeting agenda.

Review and Approve October 14-16 Meeting Summary

The Committee reviewed and approved the October 14-16, 2003 draft meeting summary and made no changes to it. It was approved as final and will be posted on the EPA website.

EPA Comments

Barry Breen, Assistant Administrator, acknowledged the hard work of the AAI Reg Neg Committee and thanked the Committee members for their significant commitment, efforts, and contributions to the development of the AAI standards. He stated that EPA will promulgate a better AAI standard for having used a negotiated rulemaking process for its development.

Review draft regulatory language with special attention to outstanding issues

The Committee reviewed the draft regulatory language in its entirety with special attention to the remaining outstanding issues. All outstanding issues were resolved, some tentative agreements were revised, and most tentative agreements were sustained with no changes.

The key outstanding issues discussed included: §312.20 All Appropriate Inquiries; §312.21 Results of an inquiry by an environmental professional; §312.26 Reviews of Federal, Tribal, State, and Local Government Records; and §312.10 Definitions.

§312.20 All Appropriate Inquiries

The key remaining issues included shelf life of reports; transferability of reports; treatment of data gaps; and de minimis conditions.

Report shelf life: The Committee agreed that reports prepared as part of all appropriate inquiries may be used for up to one year prior to purchase of the subject property, provided that the report is updated to include relevant changes to the conditions of the property, and that the report is updated with regard to interviews, visual inspections, environmental cleanup liens, government records, and declaration by the environmental professional within 180 days of and prior to purchase of the subject property.

Report transferability: The Committee agreed that reports prepared for a party, as part of an all appropriate inquiry, could be used by another party, if the report meets the purposes and objectives of the regulations (per §312.20(d)); and the new party reviews the previously collected information and conducts the additional inquiries that are the responsibility of the party, who may assert the liability defense.

Data gaps: The Committee agreed that when data gaps prevent an environmental professional from providing an opinion regarding conditions indicative of releases or threatened releases, the environmental professional and/or the user will be required to document the significance of such data gaps in the report.

The Committee also agreed to a definition of data gaps such that an environmental professional and/or the user must make a “good faith” effort to gather the information required by the all appropriate inquiry standard.

In addition, EPA agreed to summarize the “reasonable steps” and “appropriate care” provisions of the statute, which are required to sustain the liability defense after purchase of a property, in the preamble.

De minimis conditions: The Committee agreed that the conditions indicative of a release or a threatened release identified as part of an all appropriate inquiry should be identified in the report of the environmental professional, but that reports are not required to identify very small amounts of hazardous substances, which individually or in aggregate, would not pose a threat to human health or the environment.

§312.21 (d) Results of an inquiry by an environmental professional (statement by the environmental professional)

The Committee agreed to require, as part of the report, a declarative statement by the environmental professional that he or she meets the requirements of the definition of environmental professional, has the qualifications necessary to assess the subject property, and has developed and performed the all appropriate inquiries in conformance with the requirements of the all appropriate inquiry regulation.

§312.26 Reviews of Federal, State, and Local Government Records

With regard to nearby and adjacent properties, the Committee identified the government records and the associated search distances from the subject property for which such information should be searched. In addition, the Committee agreed to provide for the use of the environmental professional's judgment to adjust those search distances and to determine search distances for new types of records that may become available in the future.

§312.10 Definitions: environmental professional

Committee members agreed to require the equivalent of: three years of full-time relevant experience for individuals with a professional engineer or geologist license; three years of full-time relevant experience for an individual licensed or certified to perform environmental site assessments by the federal government or a state, tribe, or U.S. territory; and five years of full time relevant experience for individuals with a baccalaureate or higher degree in a relevant discipline of engineering, environmental science, or earth science. Individuals who do not have any of the above licenses, certifications, or degrees, will be required to have a baccalaureate degree and the equivalent of ten years of full-time relevant experience prior to the date of promulgation of the all appropriate inquiry regulation.

In addition, environmental professionals conducting all appropriate inquiries are expected to determine the applicability of any relevant state professional licensing requirements. Environmental professional are also expected to remain current in their fields through participation in continuing education or other activities, and they should be able to demonstrate such efforts.

Public Comment (November 12-14)

Steven Merrill Smith of Computer Systems Corporation discussed the construction of an internet navigation tool that focused on integrating institutional controls through a web link.

Next Steps

Documents: Facilitators will distribute the draft meeting summary. Committee members will be asked to provide comments and approvals by email. If necessary, a revised version will be sent to Committee members for review and approval.

Regulatory Language: EPA will distribute the draft final regulatory language.

Preamble: EPA will distribute a draft preamble to Committee members for comment.

**U.S. Environmental Protection Agency
All Appropriate Inquiry Negotiated Rulemaking Committee
November 12-14, 2003
Attendance**

Committee Members:

Kathy Blaha, Trust for Public Land
Eric Block, National Groundwater Association
Clifford Case, International Municipal Lawyers Association
Abbi Cohen, Mortgage Bankers Association of America
Tom Crause, Illinois Environmental Protection Agency (ASTSWMO)
Andy Darrell, Environmental Defense
Deeohn Ferris, Partnership for Sustainable Brownfields Redevelopment
Jim Johnson (alternate), American Society of Civil Engineers
Karl Kalbacher, Maryland Department of the Environment (ASTSWMO)
Julie Kilgore, Wasatch Environmental, Inc.
David Lourie, ASFE
Stephen Luftig, U.S. Environmental Protection Agency
Vernice Miller-Travis, West Harlem Environmental Action
Martin Mitchell, National Association of Home Builders
Suzan Morang, Cherokee Nation/ITEC
Kelly Novak, National Association of Development Organizations
Roger Platt, Real Estate Roundtable
Lenny Siegel, Center for Public Environmental Oversight
Julie Sheehan, The US Conference of Mayors
Jeff Telego, Environmental Bankers Association
Barry Trilling, National Association of Industrial and Office Properties
Matt Ward, National Association of Local Government environmental professionals
John Watson (alternate), National Brownfield Association
Julie Wolk, U.S. Public Interest Research Group
David Luick, International Council of Shopping Centers

Patricia Overmeyer, US EPA, Designated Federal Official
Sven Erik Kaiser, US EPA, Office of Brownfields Cleanup and Redevelopment
Deborah Dalton, US EPA, Conflict Prevention and Resolution Center
Susan Podziba, Susan Podziba & Associates, Facilitator
Alexis Gensberg, Susan Podziba & Associates, Facilitator

Resource Participants:

Sara Beth Watson, American Bar Association, Section of Environment

Pam Barker (alternate), ABA Section of Environment

Dan Smith, ASTM

U. S. Environmental Protection Agency

Helen Keplinger, EPA / Office of Site Remediation Enforcement

Bob Myers, EPA / Office of Site Remediation and Technology Innovation

Public