

## U.S. EPA PROPOSES NEW DUE DILIGENCE RULES

On August 26, 2004, the U.S. EPA published proposed administrative rules that detail the “all appropriate inquiries” requirements for acquisition of commercial property. (69 Fed. Reg. 52,542). The proposed rules follow the 2002 Small Business Liability Relief and Brownsfield Revitalization Act’s clarification of the *innocent land owner* defense and creation of new liability protections for a *bona fide purchaser* and a *contiguous property owner*. An *innocent land owner*, a *bona fide purchaser* and a *contiguous property owner* must satisfy the Act’s “all appropriate inquiries” requirements to obtain liability protections. The proposed rules explain and define the scope and content of the “all appropriate inquiries” requirement.

The “all appropriate inquiries” investigation into the property must be completed *within one year prior to receiving title to the property* and must include: (1) a detailed inquiry by an “environmental professional;” (2) the examination of various specific types of additional information; and (3) determination of whether there is a recorded environmental cleanup lien on the property. The qualified “environmental professional’s” inquiry must culminate in a certified and signed written report. The information does not have to be reported or provided to the U.S. EPA or any other government agency.

The types of information that must be collected and analyzed as part of the “all appropriate inquiries” include: the relationship between the property’s market value and purchase price; property use and occupancy history; waste management and disposal activities; engineering controls; institutional controls (e.g. deed restrictions); past or current corrective actions; identification of data gaps; any environmental conditions at neighboring properties; interviews with past and present owners; reviews of government records; and visual inspections. Any special knowledge or experience of the landowner or other person conducting any of the “all appropriate inquiries” *will be* taken into account by U.S. EPA in considering whether conditions indicating releases of hazardous substances were properly identified.

*Comments on the proposed rules must be submitted to the U.S. EPA on or before October 25, 2004.*

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