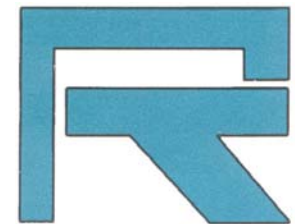


FINAL EPA  
*ALL APPROPRIATE INQUIRY*  
RULE

RT ENVIRONMENTAL  
SERVICES, INC.



# Agenda

- Rule Overview

*Gary R. Brown, PE, QEP*

- Integration with PA Act 2 Program

*Walter Hungarter*

- Integration with NJ VCP/ISRA Programs

*Justin Lauterbach*



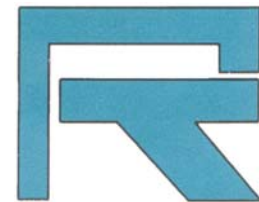
## *Rule Overview*

- Published in *Federal Register*- Nov. 1, 2005
- Title-***STANDARDS & PRACTICES FOR ALL APPROPRIATE INQUIRIES; FINAL RULE***
- An essential step in real property transactions...  
evaluating a property for potential environmental contamination & assessing potential liability for contamination present at the property.



## *Rule Overview(Cont'd.)*

- Environmental Due Diligence History
  - Fleet Factors Case/ Collateral Value-*NONE*
  - CERCLA-1986 Innocent Landowner Defense
- Use by “those persons or businesses purchasing...property used for commercial or public purposes who may ...seek to claim protection from CERCLA liability for releases or threatened releases of hazardous substances.”



## *Rule Overview(Cont'd.)*

- ASTM Phase 1 ESA-1993/1997/2000-Current Revision (2005)
- 2002 CERCLA Amendments- New “Contiguous Landowner” & “*Bona fide* Prospective Purchaser”...Amended “Innocent Landowner”
- Conduct Prior to or on Date Property Acquired
- Mandatory for Brownfields Site Assessment Grants



## ***Rule Overview(Cont'd.)***

- Innocent Purchaser***-at the time they acquired the property, they did not know & had no reason to know of releases or threatened releases to the property.

- Must demonstrate that that carried out ***all appropriate inquiries*** into the previous ownership & uses of the property in accordance with generally accepted good commercial & customary standards & practices.



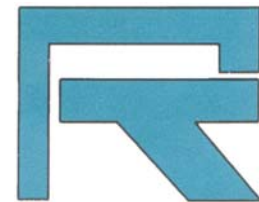
## *Rule Overview(Cont'd.)*

- Key Issue-Change *All Appropriate Inquiry*
- ID Releases/Threatened Releases, NOT RECs
- Identify Data Gaps
- Standardize Reliability & Shelf Life
- Intensify Historical Reviews/ Local Req'd.
- Require Owner to Share Information with  
Environmental Professional
- Require More Interviews, Where  
Needed



## *Rule Overview(Cont'd.)*

- Final Changes
  - Relaxed Education/Work Experience
  - ASTM E 1527-05
  - Purchase Price/ Value- Discretionary
  - AAI Mandatory w/in 1 Year of Acquisition;  
Must Update Prior Reports to AAI Stds.
  - Omits Offsite Inst./Engrg. Control Reviews
  - Effective Date- *Nov. 1, 2006*



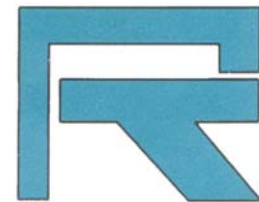
## *Rule Overview(Cont'd.)*

- Final Changes (Cont'd.)
  - Commonly known or reasonably ascertainable information
  - Degree of obviousness
  - Additional Inquiries/ Specialized Knowledge
  - Relationship of Purchase Price to Fair Market Value- No 'Windfall'
  - Confidentiality/ Data Gap(s)



## *Rule Impacts*

- Old ASTM Phase 1s Citing RECs-Need New Report
- Increase in Phase 1 Cost to About \$3,000
- Increase Time to About 3 Weeks
- Local Access Dependent
- Data Gap Considerations-Is it?/  
Isn't it?....Full Disclosure

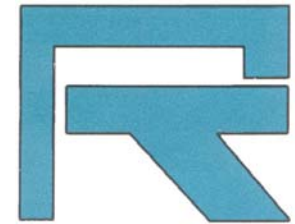


ASTM E1527-05 AND  
PRELIMINARY  
ASSESSMENTS (PA)  
NJAC 7:26E

Justin Lauterbach

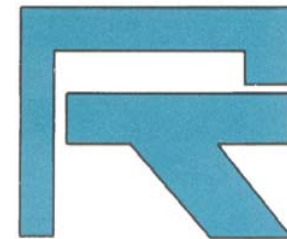
New Jersey General Manager

- **RT ENVIRONMENTAL  
SERVICES, INC.**

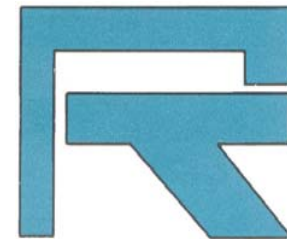


# What is a Preliminary Assessment?

- 7:26E – purpose is to identify the presence of any potentially contaminated areas of concern (AOCs) through diligent inquiry
- presents a history of ownership and use of a property from the time a site was naturally vegetated or utilized as farmland.

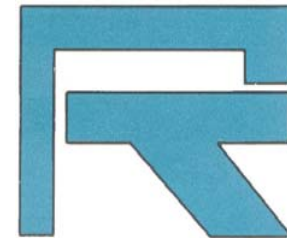


Diligent Inquiry – diligent search of all documents which are reasonably likely to contain information related to the object of inquiry.



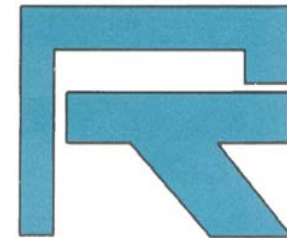
# ASTM E1527-05 vs. Preliminary Assessments

- ASTM – files are “practically reviewable, publically available within reasonable time and cost”
- PA’s – reasonable inquiries of all information related to current and former uses and processes



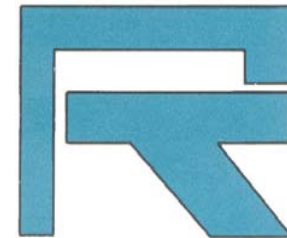
# Time Periods for Research

- ASTM – first developed use or 1940, whichever comes first
- PA's – from a time a site was naturally vegetated or first utilized as farmland - must have history until at least 1932



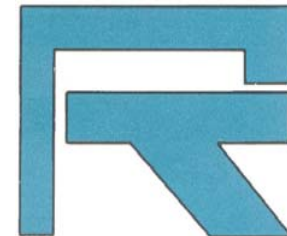
## Areas of Concern (AOCs) vs. Recognized Environmental Conditions (RECs)

- AOCs – must provide a narrative for each AOC which details type, age, dimensions, content, volume, construction methods, location, integrity, records, etc.
- Each AOC must be referenced to a keyed and scaled site map
- *deminimis* and professional judgement



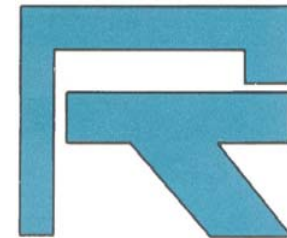
## Historical Sources for PAs:

- Sanborn Fire Insurance Maps
- McRae's Industrial Directories
- Title and Deed
- Site Plans, as-built drawings
- Federal, State, County, and Local Files
- Interviews
- Site Inspection
- Aerial Photos (sites > 2 acres)
- NJDEP GIS
- Environmental Permits



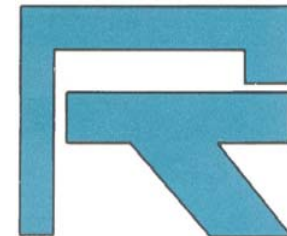
# Additional Requirements of PAs:

- Hazardous substances and waste inventory (past and present)
- All production processes (past and present)
- Current and historic wastewater discharges of sanitary and/or industrial waste



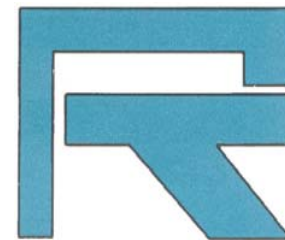
# When is a PA required?

- Multiple triggers for a site with an NAICS code subject to ISRA (Industrial Site Recovery Act):
  - Sale of property
  - When operations cease
  - Execution of a lease
  - Corporate dissolution
  - Change from non-applicable NAICS code
  - Merger or Consolidation
  - Many More – See 7:26B



# Reasons to do PAs as part of your Due Diligence

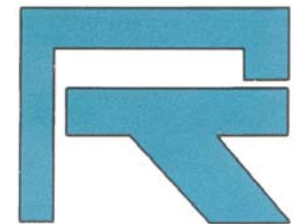
- In order to receive NFA status for entire site
- NJ Brownfields Law – qualifies a site owner for reimbursement for remediation of undisclosed AOCs under the NJ Spill Act
- Recommend a combined PA/Phase I for sites in New Jersey in order to qualify under the Spill Act and qualify for “landowner liability protections”



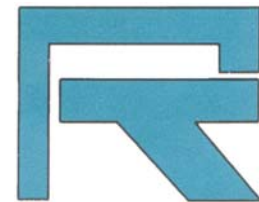
# Integration with PA Act 2 Program

*Walter Hungarter*

**RT ENVIRONMENTAL  
SERVICES, INC.**



- Act 2 Technical Guidance Manual  
Says Follow ASTM Ph. 1 Protocol
- Liability Releases Limited To What  
Releases are Found/Standard Attained
- Updates/ New AOC Searches Probably  
Not An Issue at Most Sites



- One Cleanup Program Implications
- RCRA Corrective Action- Likely More Research/SWMUs
- ASTM 05 Used This Year For Act 2 Program Training



- New AOCs Become Reopeners
- DEP Will Be Flexible
- Deed Notices Subject Not Always Placed
- New-Uniform Covenants Act



- Use L&I Philadelphia File Reviews
- Small Towns/ No Responses
- Intentional Access Delays Leading to Data Gaps
- After the Fact AOCs/ Renotice  
NIR

