HORIZONS

SCI Engineering, Inc. Volume 7, Issue 4 Fall, 2006

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EPA's "All Appropriate Inquiry" rule now in effect

What does it mean for real estate transactions?

By Jeff Langston, R.G.

The phrase "All Appropriate Inquiry" (AAI) refers to the requirements established by the U.S. Environmental Protection Agency (EPA) for evaluating a property's environmental condition before it is acquired. This is the key step required to provide protection from Superfund liability if an environmental impact is discovered at a later date. The EPA, directed by Congress, established standards and practices for conducting AAI last year, and the new regulations are effective as of November 1, 2006.

Many of you are aware that due diligence protection from Superfund liability has previously been accomplished by performing a Phase One Environmental Site Assessment (Phase One). Prior to this AAI rule, however, the EPA had never specifically defined what due diligence activities constituted all appropriate inquiry under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund). Since 1993, standard procedures for a Phase One have been those developed by the American Society for Testing and Materials (ASTM) – in particular Standard E1527. The AAI rule beefs up the requirements and standards.

According to the EPA's new rule, earlier versions of ASTM's standard do not meet the requirements of AAI. As part of the change, ASTM has developed a new standard (E1527-05), which is compliant with the AAI rule. Therefore, effective November 1, 2006, those seeking to perform all appropriate inquiry must use the EPA's AAI rule or ASTM 1527-05.

Why Conduct AAI?

- Under CERCLA (Superfund), you may be held liable for environmental clean-up on property that you currently own or have owned in the past.
- CERCLA provides three types of liability clean-up protections for landowners and prospective purchasers of real property.
- All three **REQUIRE** property owners to demonstrate that they conducted "all appropriate inquiries" prior to acquisition.

In brief, the new rule is more specific and places more responsibility on the consultant performing the Phase One. Key issues associated with the AAI rule include:

- **Definition of Environmental Professional (EP):** AAI must be performed or supervised by an EP who must meet the strict education or experience requirements in the rule.
- **User Responsibilities:** The prospective purchaser must be queried for specialized knowledge they may have about the property in question. For instance, a comparison of fair market value to purchase price must be considered.
- **Review of Activity and Use Limitations/Liens:** The EP must be provided the results of a search of any Activity and Use Limitations, such as deed restrictions and environmental liens. These searches are now to include federal, state, local, and tribal records.
- **Data Gaps:** Any gap in reviewable data must be identified and the EP must comment on the significance of such data gaps and the ability to identify environmental conditions.
- **Shelf Life:** An AAI-compliant report must be conducted and updated within one year of the date of the acquisition of the property. If an inquiry is conducted more than 180 days prior to the acquisition, certain aspects of the AAI must be updated.

The new rule contains additional changes regarding interview criteria, adjoining properties, assessments for controlled substances, and other topics.

For a list of FAQs on the topic, see page 2. For additional information about the AAI rule or the ASTM standard, contact Jeff Langston, R.G. at 636-757-1049.

- Geotechnical
- Construction
- Environmental
- Natural Resources
- Cultural Resources

Frequently-asked questions regarding AAI

Q: ***If I perform the Phase One ESA now, but don't close on my loan until next year, will I have to do a new one?***

A: The AAI requirements state that the AAI instrument is good for a period of one year. However, certain aspects of AAI will still need to be updated if the report is more than 180 days old. These include: ownership interviews; searches for cleanup liens; a review of federal, state, local, and tribal records; and a site reconnaissance.

Q: ***I typically have requested reliance letters in the past to satisfy any lender's needs. Will these still be useful?***

A: Reliance on a previous assessment will provide protection from Superfund liability only if the timing requirements are valid as stated in the answer to the previous question.

Q: ***I have an AAI-compliant Phase One ESA in hand that was prepared for another party, but now I am potentially acquiring the property. Can I still use that Phase One?***

A: Assuming that the timing constraints are followed as previously addressed, the Phase One can be used by another party, as long as two key issues are addressed. The new user must be queried regarding their specialized knowledge of the site, and any discrepancies between the purchase price and the fair market value must be re-considered.

Criteria established for Registered Brownfield Professional designation

The Institute of Brownfield Professionals (IBP) has established "initial criteria" for awarding its Registered Brownfield Professional (R.B.P.) designation to qualified environmental professionals.

According to the IBP, the criteria are "initial" because they apply only to engineers, geologists, or other environmental professionals licensed or certified by a government entity.

The IBP Web site at www.brownfieldpros.org offers a search function to "Find a Brownfield Professional" by state. SCI is one of only a few in the St. Louis metro area that are listed as Registered Brownfield Professionals.

Start the new year right with a presentation in January

Join us at our place for lunch. . . And learn.

As most friends of SCI know by now, the company's "Lunch & Learns" are presentations we make to architectural and engineering firms, private companies, and public sector agencies. SCI has offered these for years and the response has been enthusiastic. Now, to broaden the appeal even further, we're inviting you to our place.

We're planning to offer a series of presentations in our two main offices in St. Charles and O'Fallon, Illinois. So start the new year right by joining us January 16 and/or January 17.

FREE "Lunch & Learns"
Noon - 1:00 pm
Tues. Jan. 16.....O'Fallon, IL
Wed. Jan. 17.....St. Charles

The Lunch & Learn on Tuesday, January 16 will be in O'Fallon, Illinois. The topic will be Cultural Resource Services – what they are, why they're needed, and how they can impact your project.

On Wednesday, January 17, the presentation will be in St. Charles and will cover the due diligence process involved in new construction. We'll discuss the environmental and geotechnical concerns on a new development project and provide guidance on how to make a challenging site (shallow bedrock, groundwater impact, etc.) developable. Presenters will be from multiple service groups.

What's in it for you? How about an educational hour spent with subject matter experts, a PDH credit for the new year, and lunch on us.

Seating is limited, so please call Craig Palmer at 636-757-1087 to make a reservation.

Sinkhole collapse appears to be anomaly

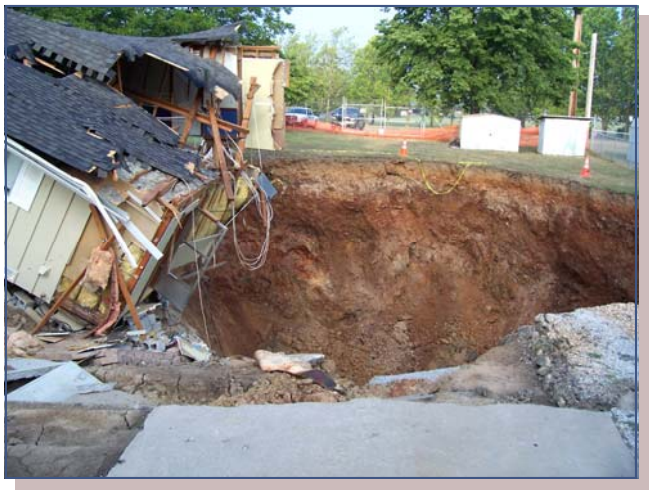
In the southwest Missouri town of Nixa, the sudden collapse of a sinkhole attracted national media attention, mainly because it swallowed a garage and part of a house overnight in a residential neighborhood. The subsequent geophysical investigation by SCI after the August collapse should make neighbors in the community rest a little easier. SCI's Regional Manager in Springfield, Jonathan L. Robison, P.E., managed the project. "We're working closely with Dr. Neil Anderson, Professor of Geophysics at the University of Missouri-Rolla," Robison said. "They used two geophysical tools and we incorporated their test data into our final geotechnical report."

SCI drilled four bore holes that found bedrock at 37 to 51 feet below the surface. The geophysical tests used included electrical resistivity and MASW (Multi-Channel Analysis of Shear Waves) surveys.

The initial sinkhole opening was approximately 50 feet in diameter and 75 feet deep. The electrical resistivity survey indicated that two prominent geologic features appeared to intersect near the location of the collapse. "At the intersection of the two joints, there were varying degrees of leaching, infill with clay and other fine-grained sediment, and subsidence of the bedrock," Robison said.

The geology of the Ozarks area of Missouri – along with regions of Florida, Texas, Alabama, Kentucky, and Tennessee – is characterized by significant amounts of limestone and carbonate rock. This type of rock can be dissolved by groundwater circulating through it. The result is a karst topography underground, which looks similar to Swiss cheese and helps to explain the number of caves in Missouri. As the rock continues to dissolve, spaces and caverns develop underground.

That appears to be the cause of the Nixa sinkhole collapse, or specifically the collapse of an erosion dome. Over time, groundwater causes soil material to erode out from beneath the ground surface and into joints and cracks in the underlying bedrock. An underground void or dome is created that grows and eventually collapses once it erodes close enough to the surface.



The view from the owner's driveway – September, 2006.

The City of Nixa is moving ahead with remediation of the sinkhole by filling it with rock and soil. The good news for the neighborhood is that the situation appears to be very unusual, partly because the depth to bedrock at the site of the collapse was 75 feet, whereas the borings found bedrock on the order of 40 to 50 feet. In addition, the geophysical surveys did not find any large voids that may become problems in the future.

See www.sciengineering.com for more information and links to other related articles.

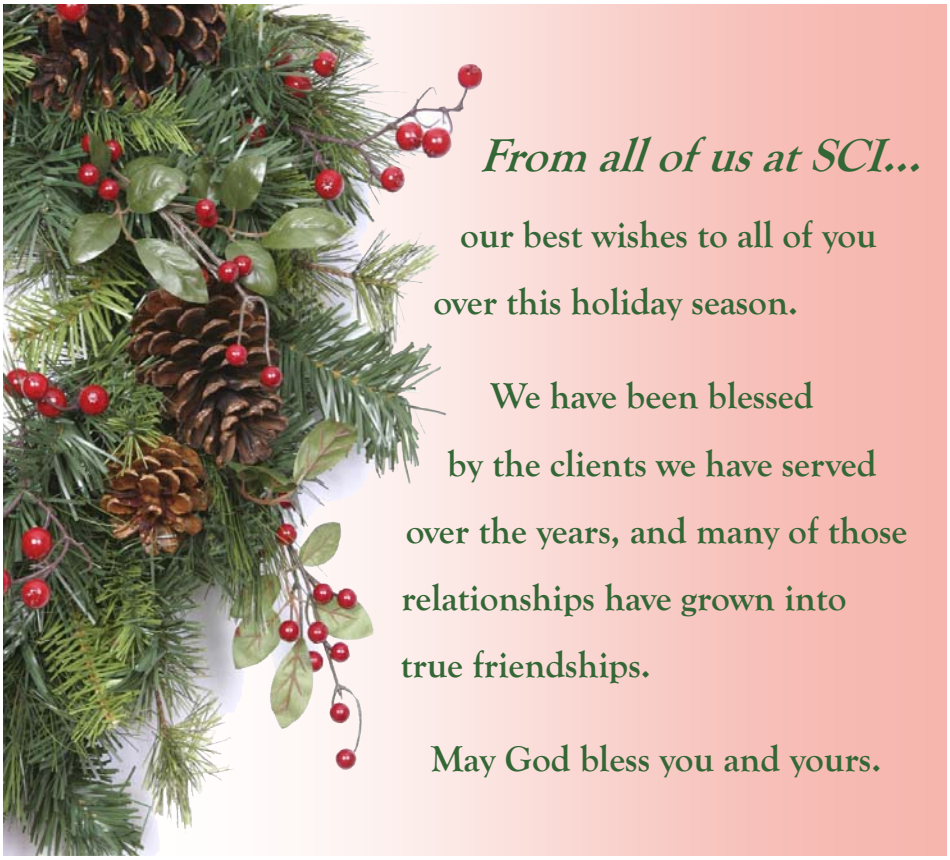
- **Bill Guerdan, P.E.,** Senior Vice President, was elected into the Concrete Council Hall of Fame, recognizing his 18 years of involvement with the Council.
- **Chris Wiggins** has been promoted to Construction Services Field Manager for projects in Rolla and Fort Leonard Wood.
- **David Nolan, P.E.** has been elected Treasurer of the American Concrete Institute.
- **Keith Slagle** has been promoted to Construction Services Field Manager.
- **Don Booth and Steve Dasovich, Ph.D.,** presented "The Poag Road Site" at the Midwest Archaeological Conference 2006 in Urbana, Illinois in October.
- **Michelle Eaton** has been promoted to Project Manager in the Environmental Services Group
- **Scott Harding, CPSS/SC,** presented "The Value of Wetlands" at the *Natural Resources, Economics, and Your Community* program in Collinsville, Illinois.
- **SCI's** entry in the *ACEC/MO Engineering Excellence Award Competition* for the Gaslight Square project won a Grand Award in the Environmental Category.
- **SCI** was chosen by *St. Louis Commerce* magazine as a *TOP 50 Company* in the metro region for 2007.

TRIVIA QUESTION

From our last issue:
What two historic towns in Missouri and Illinois were the sites of SCI archaeological digs this past summer?

The first 5 people to e-mail cpalmer@sciengineering.com with the correct answer win $10 gift cards for St. Louis Bread Company.

Our Turn .....



HORIZONS

is published quarterly by
SCI Engineering, Inc.

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