

## §311.2

State and local government employees engaged in *hazardous waste operations*, as defined in 29 CFR 1910.120(a), in States that do not have a State plan approved under section 18 of the Occupational Safety and Health Act of 1970.

### §311.2 Definition of employee.

*Employee* in §311.1 is defined as a compensated or non-compensated worker who is controlled directly by a State or local government, as contrasted to an independent contractor.

## PART 312—INNOCENT LAND-OWNERS, STANDARDS FOR CONDUCTING ALL APPROPRIATE INQUIRIES

### Subpart A—Introduction

Sec.

312.1 Purpose, applicability, scope, and disclosure obligations.

### Subpart B—Definitions and References

312.10 Definitions.

312.11 References.

### Subpart C—Standards and Practices

312.20 All appropriate inquiries.

312.21 Results of inquiry by an environmental professional.

312.22 Additional inquiries.

312.23 Interviews with past and present owners, operators, and occupants.

312.24 Reviews of historical sources of information.

312.25 Searches for recorded environmental cleanup liens.

312.26 Reviews of federal, state, tribal and local government records.

312.27 Visual inspections of the facility and of adjoining properties.

312.28 Specialized knowledge or experience on the part of the defendant.

312.29 The relationship of the purchase price to the value of the property, if the property was not contaminated.

312.30 Commonly known or reasonably ascertainable information about the property.

312.31 The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation.

AUTHORITY: Section 101(35)(B) of CERCLA, as amended, 42 U.S.C. 9601(35)(B).

SOURCE: 70 FR 66107, Nov. 1, 2005, unless otherwise noted.

## 40 CFR Ch. I (7–1–07 Edition)

### Subpart A—Introduction

#### §312.1 Purpose, applicability, scope and disclosure obligations.

(a) *Purpose.* The purpose of this section is to provide standards and practices for “all appropriate inquiries” for the purposes of CERCLA sections 101(35)(B)(i)(I) and 101(35)(B)(ii) and (iii).

(b) *Applicability.* The requirements of this part are applicable to:

(1) Persons seeking to establish:

(i) The innocent landowner defense pursuant to CERCLA sections 101(35) and 107(b)(3);

(ii) The bona fide prospective purchaser liability protection pursuant to CERCLA sections 101(40) and 107(r);

(iii) The contiguous property owner liability protection pursuant to CERCLA section 107(q); and

(2) persons conducting site characterization and assessments with the use of a grant awarded under CERCLA section 104(k)(2)(B).

(c) *Scope.* (1) Persons seeking to establish one of the liability protections under paragraph (b)(1) of this section must conduct investigations as required in this part, including an inquiry by an environmental professional, as required under §312.21, and the additional inquiries defined in §312.22, to identify conditions indicative of releases or threatened releases, as defined in CERCLA section 101(22), of hazardous substances, as defined in CERCLA section 101(14).

(2) Persons identified in paragraph (b)(2) of this section must conduct investigations required in this part, including an inquiry by an environmental professional, as required under §312.21, and the additional inquiries defined in §312.22, to identify conditions indicative of releases and threatened releases of hazardous substances, as defined in CERCLA section 101(22), and as applicable per the terms and conditions of the grant or cooperative agreement, releases and threatened releases of:

(i) Pollutants and contaminants, as defined in CERCLA section 101(33);

(ii) Petroleum or petroleum products excluded from the definition of “hazardous substance” as defined in CERCLA section 101(14); and

## Environmental Protection Agency

## § 312.10

(iii) Controlled substances, as defined in 21 U.S.C. 802.

(d) *Disclosure obligations.* None of the requirements of this part limits or expands disclosure obligations under any federal, state, tribal, or local law, including the requirements under CERCLA sections 101(40)(c) and 107(q)(1)(A)(vii) requiring persons, including environmental professionals, to provide all legally required notices with respect to the discovery of releases of hazardous substances. It is the obligation of each person, including environmental professionals, conducting the inquiry to determine his or her respective disclosure obligations under federal, state, tribal, and local law and to comply with such disclosure requirements.

### Subpart B—Definitions and References

#### § 312.10 Definitions.

(a) Terms used in this part and not defined below, but defined in either CERCLA or 40 CFR part 300 (the National Oil and Hazardous Substances Pollution Contingency Plan) shall have the definitions provided in CERCLA or 40 CFR part 300.

(b) When used in this part, the following terms have the meanings provided as follows:

*Abandoned property* means: property that can be presumed to be deserted, or an intent to relinquish possession or control can be inferred from the general disrepair or lack of activity thereon such that a reasonable person could believe that there was an intent on the part of the current owner to surrender rights to the property.

*Adjoining properties* means: any real property or properties the border of which is (are) shared in part or in whole with that of the subject property, or that would be shared in part or in whole with that of the subject property but for a street, road, or other public thoroughfare separating the properties.

*Data gap* means: a lack of or inability to obtain information required by the standards and practices listed in subpart C of this part despite good faith efforts by the environmental professional or persons identified under

§ 312.1(b), as appropriate, to gather such information pursuant to §§ 312.20(e)(1) and 312.20(e)(2).

*Date of acquisition or purchase date* means: the date on which a person acquires title to the property.

*Environmental Professional means:*

(1) a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases (see § 312.1(c)) on, at, in, or to a property, sufficient to meet the objectives and performance factors in § 312.20(e) and (f).

(2) Such a person must:

(i) Hold a current Professional Engineer's or Professional Geologist's license or registration from a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) and have the equivalent of three (3) years of full-time relevant experience; or

(ii) Be licensed or certified by the federal government, a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) to perform environmental inquiries as defined in § 312.21 and have the equivalent of three (3) years of full-time relevant experience; or

(iii) Have a Baccalaureate or higher degree from an accredited institution of higher education in a discipline of engineering or science and the equivalent of five (5) years of full-time relevant experience; or

(iv) Have the equivalent of ten (10) years of full-time relevant experience.

(3) An environmental professional should remain current in his or her field through participation in continuing education or other activities.

(4) The definition of environmental professional provided above does not preempt state professional licensing or registration requirements such as those for a professional geologist, engineer, or site remediation professional. Before commencing work, a person should determine the applicability of state professional licensing or registration laws to the activities to be undertaken as part of the inquiry identified in § 312.21(b).

(5) A person who does not qualify as an environmental professional under