

### § 312.27

### 40 CFR Ch. I (7-1-08 Edition)

from the subject property for which such information should be searched include the following:

(i) Records of NPL sites or tribal- and state-equivalent sites (one mile);

(ii) RCRA facilities subject to corrective action (one mile);

(iii) Records of federally-registered, or state-permitted or registered, hazardous waste sites identified for investigation or remediation, such as sites enrolled in state and tribal voluntary cleanup programs and tribal- and state-listed brownfields sites (one-half mile);

(iv) Records of leaking underground storage tanks (one-half mile); and

(2) Properties that previously were identified or regulated by a government entity due to environmental concerns at the property. Such records or databases containing such records and the associated distances from the subject property for which such information should be searched include the following:

(i) Records of delisted NPL sites (one-half mile);

(ii) Registries or publicly available lists of engineering controls (one-half mile); and

(iii) Records of former CERCLIS sites with no further remedial action notices (one-half mile).

(3) Properties for which there are records of federally-permitted, tribal-permitted or registered, or state-permitted or registered waste management activities. Such records or databases that may contain such records include the following:

(i) Records of RCRA small quantity and large quantity generators (adjoining properties);

(ii) Records of federally-permitted, tribal-permitted, or state-permitted (or registered) landfills and solid waste management facilities (one-half mile); and

(iii) Records of registered storage tanks (adjoining property).

(4) A review of additional government records with regard to sites identified under paragraphs (c)(1) through (c)(3) of this section may be necessary in the judgment of the environmental professional for the purpose of achieving the objectives and performance factors of § 312.20(e) and (f).

(d) The search distance from the subject property boundary for reviewing government records or databases of government records listed in paragraph (c) of this section may be modified based upon the professional judgment of the environmental professional. The rationale for such modifications must be documented by the environmental professional. The environmental professional may consider one or more of the following factors in determining an alternate appropriate search distance:

(1) The nature and extent of a release;

(2) Geologic, hydrogeologic, or topographic conditions of the subject property and surrounding environment;

(3) Land use or development densities;

(4) The property type;

(5) Existing or past uses of surrounding properties;

(6) Potential migration pathways (e.g., groundwater flow direction, prevalent wind direction); or

(7) Other relevant factors.

### § 312.27 Visual inspections of the facility and of adjoining properties.

(a) For the purpose of achieving the objectives and performance factors of § 312.20(e) and (f), the inquiry of the environmental professional must include:

(1) A visual on-site inspection of the subject property and facilities and improvements on the subject property, including a visual inspection of the areas where hazardous substances may be or may have been used, stored, treated, handled, or disposed. Physical limitations to the visual inspection must be noted.

(2) A visual inspection of adjoining properties, from the subject property line, public rights-of-way, or other vantage point (e.g., aerial photography), including a visual inspection of areas where hazardous substances may be or may have been stored, treated, handled or disposed. Physical limitations to the inspection of adjacent properties must be noted.

(b) Persons conducting site characterization and assessments using a grant awarded under CERCLA section

## Environmental Protection Agency

## § 312.29

104(k)(2)(B) must include in the inquiries referenced in § 312.27(a) visual inspections of areas where hazardous substances, and may include, as applicable per the terms and conditions of the grant or cooperative agreement, pollutants and contaminants, petroleum and petroleum products, and controlled substances as defined in 21 U.S.C. 802 may be or may have been used, stored, treated, handled or disposed at the subject property and adjoining properties.

(c) Except as noted in this subsection, a visual on-site inspection of the subject property must be conducted. In the unusual circumstance where an on-site visual inspection of the subject property cannot be performed because of physical limitations, remote and inaccessible location, or other inability to obtain access to the property, provided good faith (as defined in § 312.10) efforts have been taken to obtain such access, an on-site inspection will not be required. The mere refusal of a voluntary seller to provide access to the subject property does not constitute an unusual circumstance. In such unusual circumstances, the inquiry of the environmental professional must include:

(1) Visually inspecting the subject property via another method (such as aerial imagery for large properties), or visually inspecting the subject property from the nearest accessible vantage point (such as the property line or public road for small properties);

(2) Documentation of efforts undertaken to obtain access and an explanation of why such efforts were unsuccessful; and

(3) Documentation of other sources of information regarding releases or threatened releases at the subject property that were consulted in accordance with § 312.20(e). Such documentation should include comments by the environmental professional on the significance of the failure to conduct a visual on-site inspection of the subject property with regard to the ability to identify conditions indicative of releases or threatened releases on, at, in, or to the subject property, if any.

### **§ 312.28 Specialized knowledge or experience on the part of the defendant.**

(a) Persons to whom this part is applicable per § 312.1(b) must take into account, their specialized knowledge of the subject property, the area surrounding the subject property, the conditions of adjoining properties, and any other experience relevant to the inquiry, for the purpose of identifying conditions indicative of releases or threatened releases at the subject property, as defined in § 312.1(c).

(b) All appropriate inquiries, as outlined in § 312.20, are not complete unless the results of the inquiries take into account the relevant and applicable specialized knowledge and experience of the persons responsible for undertaking the inquiry (as described in § 312.1(b)).

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

(a) Persons to whom this part is applicable per § 312.1(b) must consider whether the purchase price of the subject property reasonably reflects the fair market value of the property, if the property were not contaminated.

(b) Persons who conclude that the purchase price of the subject property does not reasonably reflect the fair market value of that property, if the property were not contaminated, must consider whether or not the differential in purchase price and fair market value is due to the presence of releases or threatened releases of hazardous substances.

(c) Persons conducting site characterization and assessments with the use of a grant awarded under CERCLA section 104(k)(2)(B) and who know that the purchase price of the subject property does not reasonably reflect the fair market value of that property, if the property were not contaminated, must consider whether or not the differential in purchase price and fair market value is due to the presence of releases or threatened releases of hazardous substances, pollutants, contaminants, petroleum and petroleum products, or controlled substances as defined in 21 U.S.C. 802.