



November 30, 2004

Sent via E-mail

OSWER Docket
Environmental Protection Agency
Mailcode: 5305T
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

RE: Docket ID No. SFUND-2004-0001
Standards and Practices for All Appropriate Inquiries
Sampling

Dear Sir or Madam:

The Mortgage Bankers Association ("MBA") has reviewed the proposed Standards and Practices for All Appropriate Inquiries ("AAI") and wishes to provide comment.

The MBA is the national association representing the real estate finance industry, an industry that employs more than 400,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets. MBA promotes fair and ethical lending practices and fosters excellence and technical know-how among real estate finance professionals through a wide range of educational programs and technical publications. Its membership of over 2,900 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, life insurance companies, Wall Street conduits, and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

The MBA expresses our full support and endorsement of the Environmental Protection Agency's ("EPA") decision to utilize the negotiated rulemaking process to develop AAI. MBA would also like to congratulate the entire advisory committee for reaching a unanimous, consensus-based draft regulation.

MBA and its members support EPA's proposed regulation, which establishes that AAI is met through the performance of an ASTM Phase I environmental site assessment. MBA supports the concept of allowing the environmental professional, exercising his or

her judgment, to advise the user when the circumstances may be appropriate for limited sampling, if at all, as part of the overall due diligence process.

As a participant on the advisory committee, MBA recognizes the thoughtful and important discussions that occurred during the drafting process, surrounding the use of sampling. In the discussion on how data gaps may be addressed when conducting AAI, it was acknowledged that, despite good faith efforts by the environmental professional and the prospective purchaser to gather information, data gaps may still exist. EPA, and the advisory committee, considered sampling as an option used at the discretion of the environmental professional and user, based on the totality of circumstances, information already gathered, and a review of any data gaps. Sampling is simply one tool that may help the environmental professional convey a fuller picture of the conditions on the property.¹

As EPA stated clearly in numerous sections of the preamble, *sampling is not required* while conducting AAI.² The proposed regulation also addresses the role of sampling during the discussion of data gaps, in Section C – Standards and Practices, stating that sampling “*may be conducted to develop information to address data gaps.*”³ At no other point in AAI is sampling mentioned and there is no language requiring an environmental professional to conduct sampling. EPA is not requiring sampling to successfully complete AAI and MBA agrees with this position.

MBA thanks the EPA for choosing them to participate in the negotiated rulemaking process and encourages EPA to utilize this effective practice in the future, where appropriate.

Thank you for your time and consideration.

Most sincerely,



Jonathan L. Kempner
President and Chief Executive Officer

¹ Please note, EPA explicitly states “Proposed §312.20(f) points out that one way to address data gaps may be to conduct sampling and analysis.” Preamble to proposed rule section II.F.7, *Federal Registrar*, 40 CFR Part 312, August 26, 2004.

² See preamble to proposed rule sections II.F.7, III.O, and IV, *Id.*

³ See §312.20(f), emphasis added.