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ASTM Standard Practice for Environmental Site Assessments/Phase I Environmental Site Assessment Process for Forestland or Rural Property: U.S. Environmental Protection Agency Proposed Rule

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The United States Environmental Protection Agency ("EPA") published in the March 12th Federal Register a proposal to amend the Standards and Practices for All Appropriate Inquiries ("All Appropriate Inquiries") Rule to reference a standard practice. See 89 Fed. Reg. 17804.

EPA is proposing to amend the All Appropriate Inquiries Rule to reference:

ASTM International E2247-23 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property" ("E2247-23")

The Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") provides that a person (broadly defined) may be held strictly liable for cleaning up hazardous substances at a property they either currently own or operate, or owned or operated in the past. In other words, CERCLA strict liability means that liability for environmental contamination can be imposed based solely on property ownership.

CERCLA was amended in 2002 to provide liability protections for certain landowners and potential property owners who did not cause or contribute to contamination at the property and can demonstrate compliance with specific provisions outlined in the statute. These amendments directed EPA to establish due diligence standards for the purposes of qualifying for the defenses. The due diligence was denominated All Appropriate Inquires ("AAI"). A final rule was published in 2005 setting the standards for conducting AAI. See 70 Fed. Reg. 66070.

The objective of AAI is to conduct inquiries into past uses and ownership of a property. This includes visually inspecting it to identify conditions indicative of releases and threatened releases of hazardous substances on, at, in, or to the subject property.

The additional importance of AAI is that the standard is referenced in circumstances such as:

- Threshold criteria for brownfield grant applicants
- Recipients of brownfield assessment grants

- Target brownfield assessments

The AAI rule has allowed the use of standards that the American Society for Testing and Materials (“ASTM”) developed for conducting Phase I Environmental Site Assessments.

EPA is proposing to amend the AAI Rule to allow the use of the ASTM E2247-23 standard to conduct AAI as required under CERCLA for establishing the following protections:

- Bona fide prospective purchaser
- Contiguous property owner
- Innocent landowner liability

The EPA states it is determined that E2247-23 is compliant with the AAI Rule:

... based upon the Agency’s finding, after reviewing the elements of the ASTM standard practice and comparing them to the requirements set forth in the All Appropriate Inquiries Rule.

An additional part of the proposed action which is stated to be undertaken to avoid confusion associated with its recognition of a historical standard no longer recognized by ASTM International as current or no longer reflecting its current consensus-based or customary business standard is the proposal to:

... remove its current reference to the ASTM E2247-16 “Standard practice for Environmental Site Assessments for Forestland or Rural Property” . . .

However, a sunset period is provided for parties to complete any ongoing investigations using ASTM E2247-16 at the time EPA publishes the final rulemaking which will consist of one year from the date on which EPA publishes a final rule recognizing the updated standard.

EPA also announces the usual reminder that the use of the ASTM E2247-23 standard is not required. The federal agency notes:

Any party conducting all appropriate inquiries to comply with CERCLA’s bona fide prospective purchaser, contiguous property owner, and innocent landowner liability protections may continue to follow the provisions of the All Appropriate Inquiries Rule at 40 CFR part 312, or continue to use the ASTM E1527–21 Phase I Environmental Site Assessment Standard.

A copy of the Federal Register Notice can be downloaded [here](#).