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ASTM Standard Practice for Environmental Site Assessments/Phase I Environmental Site Assessment for Forest Land or Rural Property: U.S. Environmental Protection Agency Issues Final Rule

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The United States Environmental Protection Agency (“EPA”) published in the June 24th Federal Register a final rule amending the Standards and Practices for All Appropriate Inquiries (“All Appropriate Inquiries”) Rule to reference a standard practice. See 89 Fed. Reg. 52386.

The EPA final rule amends 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 and 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 purpose of qualifying for the defense. The due diligence was denominated All Appropriate Inquiries (“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
- Contiguous property owner

- Innocent landowner liability

EPA has determined that E2247-23 is compliant with the AAI Rule. The agency made this determination after reviewing elements of the ASTM Standard Practice and comparing them to the requirements set forth in the AAI Rule.

E2247-23 is sometimes utilized when some of the methodologies outlined in the other ASTM standard are impractical due to the size or nature of the property. It will presumably be utilized for rural or expansive settings involving solar and/or wind facilities. An additional example might be corridors for transmission lines or pipelines.

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