



# U.S. EPA Updates “All Appropriate Inquiries” Rule Effective February 13, 2023

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On December 15, 2022, the United States Environmental Protection Agency (EPA) published an amendment to the All Appropriate Inquiries Rule (AAI Rule), 40 C.F.R. part 312. The AAI Rule establishes standards and practices for conducting all appropriate inquiries into the previous ownership and uses of real property “in accordance with good commercial and customary standards and practices.” Typically this inquiry is done by way of a Phase I Environmental Site Assessment (ESA) and is a key element of several defenses to liability under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), namely, the bona fide prospective purchaser defense, innocent landowner defense and contiguous property owner defense. Many state-law analogues to CERCLA also include these defenses, and require all appropriate inquiries to qualify for them.

The amended AAI Rule goes into effect on February 13, 2023, and allows the use of ASTM International’s E1527-21 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” to satisfy the requirement to conduct all appropriate inquiries. ASTM updates the E1527 standard practice every eight years, and this amendment updates the rule to reflect ASTM’s 2021 update of its E1527 standard practice. EPA’s AAI Rule previously referenced an earlier version of the ASTM E1527 standard practice for conducting a Phase I ESA, ASTM E1527-13.

The AAI Rule does not require the use of the ASTM E1527-21 standard practice; parties may also complete the tasks listed in the AAI Rule itself, or if purchasing potentially contaminated forestland or rural property, they may use the existing ASTM E2247-16 standard practice entitled “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property.”

The amendment will phase out use of ASTM’s E1527-13 standard practice, which is no longer considered current. To reduce the impact on regulated parties and the confusion that might occur from having two acceptable standards, EPA is providing a sunset period that will allow parties to continue using the E1527-13

standard practice for one year after the effective date of the rule, until February 13, 2024. (Under 40 CFR 312.20(a), all appropriate inquiries must be conducted within one year prior to the date of acquisition of the property; a one-year sunset period allows parties to complete transactions where a Phase I ESA is already in process.)

Parties seeking to obtain CERCLA liability protection based on all appropriate inquiries during the sunset period should consult with counsel to ensure that their actions are consistent with the AAI Rule.