

**Comparison of All Appropriate Inquiries Regulation
and
ASTM E2247-08 Phase I Environmental Site Assessment Process for Forestland or
Rural Property Standard**

INTRODUCTION

On November 1, 2005, EPA issued a Final Rule (40 CFR 312) establishing standards and practices for conducting all appropriate inquiries (AAI) as required under sections 101(35)(B)(ii) and (iii) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended. Section 312.11 of the Final Rule stated that ASTM International Standard E1527-05, “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” may be used to comply with the AAI requirements.

ASTM International recently revised a similar Phase I environmental assessment standard, specifically ASTM E2247-08, “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property.” The ASTM E2247-08 standard is similar to the ASTM E1527-05 standard in format, process, and areas of coverage. In fact, many of the sections in ASTM E2247-08 are taken verbatim from the ASTM E1527-05 text. The newly revised standard, although essentially congruent to the ASTM E1527-05 Phase I Environmental Assessment Standard, provides additional guidance for the assessment of large tracts of land that are undeveloped or used primarily for forest and agricultural purposes.

This document presents a comparison of the AAI regulatory requirements and the requirements of the ASTM E2247-08 standard. It also provides an opinion as to whether E2247-08 is compliant with the AAI regulation.

Exhibit 1 presents a summary of each of the major sections in the AAI regulation and the relevant or corresponding sections of the E2247-08 standard. The first column in Exhibit 1 provides a list of the major activities required by the AAI final rule. The second column provides citations to the applicable sections of the regulation where the requirements are discussed. The third column in Exhibit 1 presents the corresponding sections of the ASTM E2247-08 standard. The fourth column in Exhibit 1 provides a brief description of any differences between the two standards. As shown throughout the exhibit, the differences between the AAI regulatory requirements and the newly revised ASTM E2247-08 standard are minor in nature, and generally reflect the applicability of the ASTM standard to forestland and rural properties.

SUMMARY OF DIFFERENCES

ASTM E2247-08 is quite similar to ASTM E1527-05, and meets the requirements set forth in the AAI regulation. Although there are some minor differences between the AAI regulation and the ASTM standard, most are related to the scope and applicability of the ASTM E2247-08 standard. Exhibit 1 identifies these minor differences between the AAI

regulation and the ASTM E2247-08 standard. Some of the differences identified between the AAI regulation and the ASTM E2247-08 standard also exist between the AAI regulation and ASTM 1527-05 standard. The differences discussed below are specific to the ASTM E2247-08 standard. However, none of the differences between the ASTM E2247-08 standard and the all appropriate inquiries final rule are of a nature that cause the ASTM E2247-08 standard to be non-compliant with the AAI requirements.

The AAI regulation is applicable to all land use types. The ASTM E2247-08 standard, however, was specifically developed for use in conducting a Phase I environmental assessment on property 120 acres or greater of undeveloped rural and forestlands. The standard also may be used to assess properties 120 acres or greater with a developed use of managed forestland and/or agriculture. The standard allows that the property may contain isolated areas of other land uses. The standard states that the 120 acres do not need to be contiguous, although they should be part of the same commercial real estate transaction and have substantially the same land use. Although the specific land use focus of the ASTM E2247-08 standard reflects a narrower scope than the AAI regulation, it still meets the requirements of the AAI regulation.

Section 312.24 of the AAI regulation requires review of historical sources of information to cover a period of time from the present back until the time when the property first contained structures or was first used for “residential, agricultural, commercial, industrial or governmental purposes.” ASTM E2247-08 requires historical record review back to 1940 or the property’s first developed use, later defining developed use which includes “agricultural or forestry uses or placement of fill.” The recognition of forestry use as a “developed use” is consistent with the provisions and standards of AAI.

CONCLUSION

Based on the analysis provided above and Exhibit 1, ASTM E2247-08, “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property” is compliant with the AAI regulation.

EXHIBIT 1

Definitions and Requirements	Final AAI Regulation	ASTM E2247-08	Description of Differences
Section 312.1 Purpose, applicability, scope and disclosure obligations.			
Purpose	312.1(a)	1.1, 7.1	The AAI regulation provides a standard specifically related to the requirements of CERCLA §§ 101(35)(B)(i)(I) and 101(35)(B)(ii) and (iii). ASTM E2247-08 provides a standard for conducting a <i>Phase I environmental site assessment</i> of a <i>property</i> 120 acres or greater of forestland or rural property or with a developed use of only managed forestland and/or agriculture. The property need not be contiguous; however, the non-contiguous areas should have substantially the same general land use and be part of the same transaction. The property may contain isolated areas of non-forestland and non-rural property. In addition, the ASTM standard states that the practice has utility for a wide range of uses outside of potential CERCLA liability.
Applicability	312.1(b)	1.1, 4.1, 4.2	The AAI regulation applies to all properties if the owner wants to qualify for CERCLA liability protections or those conducting site characterization and assessments with the use of a grant awarded under CERCLA § 104(k)(2)(B), without limit to a particular land use. Although its use is not limited to CERCLA purposes only, ASTM E2247-08 applies specifically to identifying environmental conditions on forestland, agricultural, and rural properties of at least 120 acres. The 120 acres do not have to be contiguous, and can have isolated areas of non-rural/forested land.
Scope	312.1(c)	1.1, 1.1.2, 1.3, 4.1, 4.2.1, 4.2.2	AAI includes Petroleum Products and Controlled Substances within its scope for persons conducting AAI with grants awarded under the authorities of CERCLA 104 (k) (2) (B). ASTM E2247-08 includes petroleum products in its scope because they may be of concern on parcels of forestland or rural property, not because they are applicable to the CERCLA landowner liability protections. Controlled substances are specifically defined as "not within the scope of" ASTM E2247-08, but ASTM E2247-08 notes that controlled substances must be included if the assessment is conducted under an EPA Brownfields Assessment and Characterization Grant where the grantee requests that controlled substances be included within the scope of the investigations. ASTM E2247-08 also discusses two environmental considerations outside its scope and not addressed in the AAI regulation. These considerations may be applicable to the condition of the property under certain circumstances: <ol style="list-style-type: none"> 1. Threatened and Endangered Species 2. Non-point source pollution The inclusion of these considerations in the ASTM E2247-08 standard does not affect compliance with the AAI regulatory requirements.
Disclosure Obligations	312.1(d)	Not Specified	ASTM E2247-08 does not address disclosure obligations for either the user or environmental professional. This lack of disclosure obligations is not significant because the AAI regulation does not include any disclosure requirements, but merely notes that it does not limit or expand any disclosure requirements otherwise required under CERCLA.

Definitions and Requirements	Final AAI Regulation	ASTM E2247-08	Description of Differences
Section 312.10 Definitions			
Definition of Abandoned Property	312.10(b)	3.2.1	None
Definition of Adjoining Properties	312.10(b)	3.2.4	None
Definition of Data Gap	312.10(b)	3.2.21	The AAI regulation indicates that the data gap applies to efforts by the environmental professional and to the efforts of any person listed in 312.1(b) to gather the specific information required by §§ 312.20(e)(1) and (e)(2). The E2247-08 standard indicates that a data gap includes any missing information that “affects the ability of the environmental professional to identify recognized environmental conditions,” including missing information resulting from the inability of the user (prospective property owner) to provide information to the environmental professional.
Definition of Environmental Professional	312.10(b)	3.2.32, X2.1	None. ASTM E2247-08 specifically refers to the definition provided in the AAI regulation.
Definition of Relevant Experience	312.10(b)	X2.2	None
Definition of Good Faith	312.10(b)	3.2.38	None
Definition of Institutional Controls	312.10(b)	3.2.46	None
Section 312.11 References			
References	312.11	2	Similar and essentially the same. The AAI reference section lists compliant standards. The E2247-08 standard lists other standards and practices that may be of use or of interest to persons using the E2247-08 standard.
Section 312.20 All appropriate inquiries			
List of Components in All Appropriate Inquiries	312.20(a)	6, 7	None
Shelf Life of the Written Report	312.20(b)-(c)	4.6	None

Definitions and Requirements	Final AAI Regulation	ASTM E2247-08	Description of Differences
Use of Previous Reports Prepared by Others	312.20 (c)-(d)	4.7	<p>Similar and essentially the same. The AAI regulation and the ASTM E2247-08 standard both recognize that environmental site assessments include information that is relevant to subsequent users and should be considered to avoid duplicating efforts in the future. The ASTM E2247-08 also addresses the contractual and legal obligations to subsequent users of the site assessments, only in stating that they are beyond the scope of the practice.</p> <p>The AAI regulation states that AAI may include the results and information contained in a previous inquiry so long as the prior AAI was done in compliance with the requirements of CERCLA §§ 101(35)(B), 101(40)(B) and 107(q)(A)(viii); the information was collected or update within one year prior to the date of acquisition of the subject property; previously collected information is updated to include relevant changes in the conditions of the property and specialized knowledge; and the following were conducted within 180 days prior to that acquisition:</p> <ul style="list-style-type: none"> (i) Interviews with past and present owners, operators, and occupants (ii) Searches for recorded environmental cleanup liens (iii) Reviews of federal, tribal, state, and local government records (iv) Visual inspections of the facility and of adjoining properties (v) The declaration by the environmental professional; <p>ASTM E2247-08 states that prior environmental site assessments may be used so long as the information was generated as a result of procedures that meet or exceed the requirements of ASTM E2247-08 and there is a current investigation of conditions likely to affect recognized environmental conditions in connection with the property. This standard also states generally that additional tasks may be necessary to document conditions that may have changed materially since the prior assessment was done.</p>
Objectives	312.20(e)	1.2, 7.1	<p>Similar and essentially the same. The objectives of the AAI regulation are to set forth the standards and practices that are intended to result in the identification of conditions indicative of releases and threatened releases of hazardous substances on, at, in, or to the subject property in order to satisfy CERCLA liability protection or Brownfield Assessment grants. The objectives of ASTM E2247-08 are to set a standard practice for environmental site assessments for forestland or rural property to identify recognized environmental conditions for commercial property transactions.</p>
Contaminants of Concern	312.20(e)(2)	1.1	<p>The AAI regulation applies to hazardous substances (and if conducted under 312.1(b)(2) adds pollutants, contaminants, petroleum and petroleum products, and controlled substances). The ASTM E2247-08 applies to the broad range of contaminants within the scope of CERCLA and petroleum products. As noted above, the scope for ASTM E2247-08 generally does not include Controlled Substances, but recognizes their applicability under EPA Brownfields Assessment and Characterization Grants.</p>

Definitions and Requirements	Final AAI Regulation	ASTM E2247-08	Description of Differences
Performance Factors	312.20(f)	8.1.3, 8.1.4, 7.3.1	None
Data Gaps	312.20(g)	8.2.3, 12.7	None. The ASTM E2247-08 standard states that a data gap itself is not inherently significant. It is only significant if other information and/or professional experience raises reasonable concerns involving the data gap. This same concept with regard to data gaps is addressed in the AAI rule.
<i>Section 312.21 Results of inquiry by an environmental professional</i>			
Requirements for Inquiries of the Environmental Professional	312.21(b)	7.2, 6	<p>The ASTM E2247-08 standard fully addresses the provisions required in the AAI regulation. Both the AAI rule and the ASTM E2247-08 standard require that the investigation include a review of records, interviews, and a site visit.</p> <p>The AAI regulation requires that prospective property owners and the environmental professional conduct interviews with past and present owners and visual inspections; review government records, historical sources, commonly known or reasonably ascertainable information, and the degree of obviousness of the presence and the ability to detect the contamination and take into account commonly known or reasonably ascertainable information, the degree of obviousness and ability to detect contamination.</p> <p>The ASTM E2247-08 standard requires the environmental site assessment to include: records review; site reconnaissance; interviews with present and past owners, operators, and occupants of the property and local government officials; and an evaluation and report. In addition, the user must review title and judicial records for environmental liens and activity and use limitations, report specialized or actual knowledge or experience of the user, purchase price, any commonly known or reasonably ascertainable information, and maps of the property.</p> <p>Both the AAI regulation and the ASTM E2247-08 standard require that the final report include an opinion regarding additional appropriate investigation, if the environmental professional holds such an opinion.</p>

Definitions and Requirements	Final AAI Regulation	ASTM E2247-08	Description of Differences
Report Requirements	312.21(c)	12.6, 12.7, 12.13.2	Both require the report to contain opinions as to whether there are conditions indicative of release and identification of data gaps. Both the AAI regulation and the ASTM E2247-08 standard require that the final report include a statement that the person signing the report meets the definition of an environmental professional provided in section 312.10 of the AAI regulation.
Signed Declarations to Be Included in the Written Report	312.21(d)	12.12, 12.13	The declaration required of the environmental professional is more specific in ASTM E2247-08 than in the AAI regulation. Both require a declaration that the environmental professional meets the definition defined in §312.10 and that the AAI investigation was performed in conformance with 40 CFR Part 312. ASTM E2247-08 requires an additional statement that the Phase I assessment was performed in conformance with ASTM E2247-08.
Section 312.22 Additional inquiries			
Additional Inquiries	312.22(a)	6.2, 6.3, 6.5, 6.6	The AAI regulation assigns the task of developing information on environmental cleanup liens, specialized knowledge, relationship of purchase price to fair market value, and commonly known information to the person seeking liability protection or conducting assessments with Brownfields grants. The AAI regulation states that this data may be provided to the environmental professional. The ASTM E2247-08 standard goes further and states that it is the user's responsibility to collect the information and the user <i>shall</i> report environmental cleanup liens information to the environmental professional.
Section 312.23 Interviews with past and present owners, operators, and occupants			
Interview with the Subject Property Current and Past Owners and Occupants	312.23(b), 312.23(c)	10	The AAI regulation states that the current owner and occupant must be interviewed. Additionally, at least one of the following groups must be interviewed, to the extent necessary to achieve the objectives and performance factors: current or past facility managers; past owners or occupants; or employees of current or past occupants. ASTM E2247-08 states that the key site manager or someone with knowledge of the property should be interviewed. Additionally, a reasonable attempt to interview current occupants must be made. If such attempts fail and subsequently results in a lack of information that results in the environmental professional's inability to render an opinion regarding the environmental conditions at the property, then the environmental professional would, under the ASTM E2247-08 standard, have to document the lack of information as a data gap. This is similar to the AAI regulation.

Definitions and Requirements	Final AAI Regulation	ASTM E2247-08	Description of Differences
Interviews Conducted at Abandoned Properties	312.23(d)	10.5.5	None.
Section 312.24 <i>Reviews of historical sources of information</i>			
Review of Historical Sources: Suggested Sources	312.24(a)	8.3	The ASTM E2247-08 standard provides a more detailed list of documents to be used in historical review including activities likely to be found on large tracts of rural or forested land (oil/mineral development, livestock dipping vat records).
Review of Historical Sources: Period to Be Covered	312.24(b)	8.3.2	The AAI regulation requires that the historical record review must cover a period of time as far back in the history of the subject property as it can be shown that the property contained structures or from the time the property was first used for residential, agricultural, commercial, industrial or governmental purposes. ASTM E2247-08 indicates that all records back to 1940, or back to the property's first developed use, whichever is earlier, should be used. "Developed use" specifically includes forestry use. The ASTM E2247-08 standard is more stringent than the AAI final regulation.
Section 312.25 <i>Searches for recorded environmental cleanup liens</i>			
Searches for Recorded Environmental Cleanup Liens	312.25	6.2, 6.4, 10.9.1.10	Both the regulation and the standard require a search for liens, however, AAI allows the user to retain the information or share it with the environmental professional, whereas ASTM E2247-08 states that the information <i>shall</i> be provided to the environmental professional.
Section 312.26 <i>Reviews of Federal, State, Tribal, and local government records</i>			
Government Records Review: List of Records	312.26(a), 312.26(b)	6.2, 8.2.1.1, 8.2.2, 8.3.4	The ASTM E2247-08 standard provides a more expansive list of secondary environmental records sources than the AAI regulation (8.2.2). These secondary sources include records for the optional scope areas including inventories of threatened and endangered species and best management practice violations for water quality protection. Additional record sources specifically reference Department of Natural Resources and Division of Forestry.
Government Records Review: Search Distance	312.26(c), 312.26(d)	8.1.2, 8.2.1.1	None

Definitions and Requirements	Final AAI Regulation	ASTM E2247-08	Description of Differences
<i>Section 312.27 Visual inspections of the facility and of adjoining properties</i>			
Site Visit: Requirements	312.27(a), 312.27(b)	9	The AAI regulation requires that visual inspections of the facility be conducted or updated within 180 days of and prior to the date of acquisition. ASTM E2247-08 standard states that a prior environmental site assessment may be used for the purposes of guidance (without time limitation), but shall not be relied upon without new site reconnaissance. This is similar to the AAI regulation.
Site Visit: Limitations	312.27(c)	9.2.4	None
<i>Section 312.28 Specialized knowledge or experience on the part of the defendant</i>			
Specialized Knowledge or Experience	312.28	6.3	The AAI regulation requires the user to take into account any specialized knowledge of the area around the property and the conditions of adjoining properties. ASTM E2247-08 does not explicitly require the user to provide the environmental professional with specialized knowledge about adjacent properties. However, both the AAI regulation and the ASTM E2247-08 standard state that the goal is to use specialized knowledge that is relevant to property conditions in order to identify conditions indicative of releases or to identify RECs. Therefore, if there is relevant specialized knowledge, the user (or prospective property owner) is required to take the information into account.
<i>Section 312.29 The relationship of the purchase price to the value of the property, if the property was not contaminated</i>			
The Relationship of the Purchase Price to the Value of the Property	312.29	6.5	None
<i>Section 312.30 Commonly known or reasonably ascertainable information about the property</i>			
Commonly Known or Reasonably Ascertainable Information about the Property	312.30	4.1, 6.6	Similar requirements, but the ASTM E2247-08 standard adds that the user should notify the environmental professional of this knowledge prior to site reconnaissance.

Section 312.31 The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation

<p>The Degree of Obviousness of the Presence or Likely Presence of Contamination</p>	<p>312.31</p>	<p>12.6, 12.8, X.3</p>	<p>Similar requirements, but the ASTM E2247-08 standard is more specific with the items to be addressed, such as "items initially suspected to be a recognized environmental condition and subsequently determined, upon further evaluation, to not be considered a recognized environmental condition."</p>
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