Designation: E2247 – 08

Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property[1]

This standard is issued under the fixed designation E2247; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A superscript epsilon (ε) indicates an editorial change since the last revision or reapproval.

1. Scope

1.1 *Purpose*—The purpose of this practice is to define good commercial and customary practice in the United States of America for conducting a *Phase I environmental site assessment*[2] of a *property* 120 acres or greater of *forestland* or *rural property* or with a developed use of only *managed forestland* and/or agriculture with respect to the range of contaminants within the scope of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and *petroleum products*. 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*. As such, this practice is intended to permit a *user* to satisfy one of the requirements to qualify for the *innocent landowner, contiguous property owner*, or *bona fide prospective purchaser* limitations on CERCLA liability (hereinafter, the " *landowner liability protections*," or "*LLPs*"): that is, the practice that constitutes "all appropriate inquiry into the previous ownership and uses of the *property* consistent with good commercial or customary practice" as defined at 42 U.S.C. §9601(35)(B). (See Appendix X1 for an outline of CERCLA's liability and defense provisions.) Controlled substances are not included within the scope of this standard. Persons conducting an environmental site assessment as part of an EPA Brownfields Assessment and Characterization Grant awarded under CERCLA 42 U.S.C. §9604(k)(2)(B) must include controlled substances as defined in the Controlled Substances Act (21 U.S.C. §802) within the scope of the assessment investigations to the extent directed in the terms and conditions of the specific grant or cooperative agreement.

1.1.1 *Recognized Environmental Conditions*—In defining a standard of good commercial and customary practice for conducting an *environmental site assessment* of a parcel of *property*, the goal of the processes established by this practice is to identify *recognized environmental conditions*. The term *recognized environmental conditions* means the presence or likely presence of any *hazardous substances* or *petroleum products* on a *property* under conditions that indicate an existing release, a past release, or a material threat of a release of any *hazardous substances* or *petroleum products* into *structures* on the *property* or into the ground, groundwater, or surface water of the *property*. The term includes *hazardous substances* or *petroleum products* even under conditions in compliance with laws. The term is not intended to include *de minimis* conditions that generally do not present a threat to human health or the environment or that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies. Conditions determined to be *de minimis* are not *recognized environmental conditions*.

1.1.2 *Two Related Practices*—This practice is closely related to Practice E1527. Practice E1527 is an *environmental site assessment* for *commercial real estate* (see 4.3).

1.1.3 *Petroleum Products—Petroleum products* are included within the scope of this practice because they are of concern with respect to many parcels of *forestland* or *rural property* and current custom and usage is to include an inquiry into the presence of *petroleum products* when doing an *environmental site assessment* of *forestland* or *rural property*. Inclusion of *petroleum products* within the scope of this practice is not based upon the applicability, if any, of CERCLA to *petroleum products*. (See Appendix X1 for discussion of *petroleum exclusion* to CERCLA liability.)

1.1.4 *CERCLA Requirements Other Than Appropriate Inquiry*—This practice does not address whether requirements in addition to *all appropriate inquiry* have been met in order to qualify for the *LLPs* (for example, the duties specified in 42 U.S.C. §9607(b)(3)(a) and (b) and cited in Appendix X1 including the continuing obligation not to impede the integrity and effectiveness of *activity and use limitations (AULs)*, or the

[1] This practice is under the jurisdiction of ASTM Committee E50 on Environmental Assessment, Risk Management and Corrective Action and is the direct responsibility of Subcommittee E50.02 on Real Estate Assessment and Management.

Current edition approved June 1, 2008. Published June 2008. Originally approved in 2002. Last previous edition approved in 2002 as E2247 – 02. DOI: 10.1520/E2247-08.

[2] All definitions, descriptions of terms, and acronyms are defined in Section 3. Whenever terms defined in 3.2 are used in this practice, they are in *italics*.

duty to take reasonable steps to prevent releases, or the duty to comply with legally required release reporting obligations).

1.1.5 *Other Federal, State, and Local Environmental Laws*—This practice does not address requirements of any state or local laws or of any federal laws other than the *all appropriate inquiry* provisions of the *LLPs*. *Users* are cautioned that federal, state, and local laws may impose environmental assessment obligations that are beyond the scope of this practice. *Users* should also be aware that there are likely to be other legal obligations with regard to *hazardous substances* or *petroleum products* discovered on a *property* that are not addressed in this practice and that may pose risks of civil and/or criminal sanctions for non-compliance.

1.1.6 *Documentation*—The scope of this practice includes research and reporting requirements that support the *user's* ability to qualify for the *LLPs*. As such, sufficient documentation of all sources, records, and resources utilized in conducting the inquiry required by this practice must be provided in the written report (refer to 8.1.8 and 12.2).

1.2 *Objectives—Objectives* guiding the development of this practice are (*1*) to synthesize and put in writing good commercial and customary practice for *environmental site assessments* for *forestland* or *rural property*, (*2*) to facilitate high quality, standardized *environmental site assessments*, (*3*) to ensure that the standard of *all appropriate inquiry* is practical and reasonable, and (*4*) to clarify an industry standard for *all appropriate inquiry* in an effort to guide legal interpretation of the *LLPs*.

1.3 *Considerations Beyond Scope*—The use of this practice is strictly limited to the scope set forth in this section. Section 13 of this practice identifies, for informational purposes, certain environmental conditions (for example, threatened and endangered species and non-point source considerations) that may exist on a *forestland* or *rural property* that are beyond the scope of this practice but may warrant discussion between the *environmental professional* and the *user* about a *forestland* or *rural property* transaction. The need to include an investigation of any such conditions in the *environmental professional's* scope of services should be evaluated based upon, among other factors, the nature of the *property* and the reasons for performing the assessment and should be agreed upon between the *user* and *environmental professional* as additional services beyond the scope of this practice prior to initiation of the *environmental site assessment* process.

1.4 *Organization of This Practice*—This practice has 13 Sections and 6 appendixes. Section 1 concerns the Scope. Section 2 relates to Referenced Documents. Section 3, Terminology, contains definitions of terms not unique to this practice, descriptions of terms unique to this practice, and acronyms. Section 4 describes the Significance and Use of this practice. Section 5 provides discussion regarding *activity* and *use limitations*. Section 6 describes the *User's* Responsibilities. Sections 7 – 12 are the main body of the *Phase I environmental site assessment*, including evaluation and report preparation. Section 13 provides additional information regarding non-scope considerations (see 1.3). The appendixes are included for information and are not part of the procedures prescribed in this practice. Appendix X1 explains the liability and defense provisions of CERCLA that will assist the *user* in understanding the *user's* responsibilities under CERCLA; it also contains other important information regarding CERCLA, the *Brownfields Amendments*, and this practice. Appendix X2 provides the definition of the *environmental professional* responsible for the *Phase I environmental site assessment*, as required in the "*All Appropriate Inquiry*" Final Rule (40 CFR Part 312). Appendix X3 provides an optional User Questionnaire to assist the *user* and the *environmental professional* in gathering information from the user that may be material to identifying *recognized environmental conditions*. Appendix X4 provides a recommended table of contents and report format for a *Phase I environmental site assessment*. Guidance Documents X5 and X6 provide guidance to address the evaluation of threatened and endangered species and Clean Water Act non-point source considerations, respectively.

1.5 The values stated in inch-pound units are to be regarded as standard. The values given in parentheses are mathematical conversions to SI units that are provided for information only and are not considered standard.

1.6 *This standard does not purport to address all of the safety concerns, if any, associated with its use. It is the responsibility of the user of this standard to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to use.*

1.7 *This practice offers a set of instructions for performing one or more specific operations and should be supplemented by education, experience, and professional judgment. Not all aspects of this practice may be applicable in all circumstances. This ASTM standard practice does not necessarily represent the standard of care by which the adequacy of a given professional service must be judged, nor should this document be applied without consideration of a project's unique aspects. The word "standard" in the title means only that the document has been approved through the ASTM consensus process.*

2. Referenced Documents

2.1 *ASTM Standards:*[3]

E1527 Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process

E1528 Practice for Limited Environmental Due Diligence: Transaction Screen Process

E2091 Guide for Use of Activity and Use Limitations, Including Institutional and Engineering Controls

2.2 *Federal Statutes:*

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "Superfund"), as amended by Superfund Amendments and Reauthorization Act of 1986 ("SARA") and Small Business Liability Relief and Brownfields Revitalization Act of 2002 ("*Brownfields Amendments*"), 42 U.S.C. §§9601 *et seq*.

[3] For referenced ASTM standards, visit the ASTM website, www.astm.org, or contact ASTM Customer Service at service@astm.org. For *Annual Book of ASTM Standards* volume information, refer to the standard's Document Summary page on the ASTM website.

Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA"), 42 U.S.C. §§11001 *et seq*.
Freedom of Information Act, 5 U.S.C. §552 as amended by Public Law No. 104-231, 110 Stat. 3048
Resource Conservation and Recovery Act (sometimes also referred to as the Solid Waste Disposal Act), as amended ("RCRA"), 42 U.S.C §6901 *et seq*.

2.3 *USEPA Documents:*
"All Appropriate Inquiry" Final Rule (40 CFR Part 312)
Chapter 1 EPA, Subchapter J–Superfund, Emergency Planning, and Community Right-To-Know Programs, 40 CFR Parts 300-399
National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300

2.4 *Other Federal Agency Documents:*
OSHA Hazard Communication Regulation, 29 CFR §1910.1200

3. Terminology

3.1 This section provides definitions, descriptions of terms, and a list of acronyms for many of the words used in this practice. The terms are an integral part of this practice and are critical to an understanding of the practice and its use.

3.2 *Definitions:*

3.2.1 *abandoned property*—property that can be presumed to be deserted, or an intent to relinquish possession or control can be inferred from the general disrepair or lack of activity thereon such that a reasonable person could believe that there was an intent on the part of the current *owner* to surrender rights to the property.

3.2.2 *activity and use limitations (AULs)*—legal or physical restrictions or limitations on the use of, or access to, a site or facility: *(1)* to reduce or eliminate potential exposure to *hazardous substances* or petroleum products in the soil or ground water on the *property*, or *(2)* to prevent activities that could interfere with the effectiveness of a response action, in order to ensure maintenance of a condition of no significant risk to public health or the environment. These legal or physical restrictions, which may include *institutional* and/or *engineering controls*, are intended to prevent adverse impacts to individuals or populations that may be exposed to *hazardous substances* and petroleum products in the soil or ground water on the *property*.[4]

3.2.3 *actual knowledge*—the knowledge actually possessed by an individual who is a real person, rather than an entity. Actual knowledge is to be distinguished from constructive knowledge; that is, knowledge imputed to an individual or entity.

3.2.4 *adjoining properties*—any real *property* or properties the border of which is contiguous or partially contiguous with that of the *property*, or that would be contiguous or partially contiguous with that of the *property* but for a street, road, or other thoroughfare separating them.

3.2.5 *aerial photographs*—photographs taken from an airplane or helicopter (from a low enough altitude to allow identification of development and activities) of areas encompassing the *property*. *Aerial photographs* are often available from government agencies or private collections unique to a local area. See 8.3.4.1 of this practice.

3.2.6 *all appropriate inquiry*—that inquiry constituting "*all appropriate inquiry* into the previous ownership and uses of the *property* consistent with good commercial or customary practice" as defined in CERCLA, 42 U.S.C. §9601(35)(B), that will qualify a party to a *forestland* or *rural property* transaction for one of the threshold criteria for satisfying the *LLPs* to CERCLA liability (42 U.S.C. §9601(A) and (B) and §9607(b)(3), §9607(q); and §9607(r)), assuming compliance with other elements of the defense. See Appendix X1.

3.2.7 *apiary*—a place where bees are kept; a collection of hives or colony of bees.

3.2.8 *approximate minimum search distance*—the area for which records must be obtained and reviewed pursuant to Section 8 subject to the limitations provided in that section. This may include areas outside the *property* and shall be measured from the nearest *property* boundary. This term is used in lieu of radius to include irregularly shaped properties.

3.2.9 *Best Management Practices (BMPs)*—minimum standards necessary for protecting and maintaining a particular State's water quality, as well as certain wildlife habitat values, during forestry activities. (See Section 13, non-scope considerations.)

3.2.10 *bona fide prospective purchaser liability protection*—(42 U.S.C. §9607(r)). A person may qualify as a bona fide prospective purchaser if, among other requirements, such person made "all appropriate inquiries into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices." Knowledge of contamination resulting from *all appropriate inquiry* would not generally preclude this liability protection. A person must make *all appropriate inquiry* on or before the date of purchase. The facility must have been purchased after January 11, 2002. See Appendix X1 for the other necessary requirements that are beyond the scope of this Practice.

3.2.11 *Brownfields Amendments*—amendments to CERCLA pursuant to the Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118 (2002), 42 U.S.C. §§9601 *et seq*.

3.2.12 *building department records*—those records of the local government in which the *property* is located indicating permission of the local government to construct, alter, or demolish improvements on the *property*. Often *building department records* are located in the building department of a municipality or county. See 8.3.4.3*(5)*.

3.2.13 *commercial real estate*—any real *property* except a dwelling or *property* with no more than four dwelling units

[4] The term *AUL* is taken from Guide E2091 to include both legal (that is, institutional) and physical (that is, engineering) controls within its scope. Other agencies, organizations, and jurisdictions may de fine or utilize these terms differently (for example, EPA and California do not include physical controls within their definitions of *"institutional controls."* Department of Defense and International County/City Management Association use "Land Use Controls." The term "land use restrictions" is used but not defined in the Brownfields Amendments).

exclusively for residential use (except that a dwelling or *property* with no more than four dwelling units exclusively for residential use is included in this term when it has a commercial function, as in the building of such dwellings for profit). This term includes, but is not limited to, undeveloped real *property* and real *property* used for industrial, retail, office, agricultural, forestry, other commercial, medical, or educational purposes; *property* used for residential purposes that has more than four residential dwelling units; and *property* with no more than four dwelling units for residential use when it has a commercial function, as in the building of such dwellings for profit.

3.2.14 *commercial real estate transaction*—a transfer of title to or possession of real *property* or receipt of a security interest in real *property*, except that it does not include transfer of title to or possession of real *property* or the receipt of a security interest in real *property* with respect to an individual dwelling or building containing fewer than five dwelling units, nor does it include the purchase of a lot or lots to construct a dwelling for occupancy by a purchaser, but a commercial real estate transaction does include real *property* purchased or leased by persons or entities in the business of building or developing dwelling units.

3.2.15 *Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS)*—the list of sites compiled by the United States Environmental Protection Agency (EPA) that EPA has investigated or is currently investigating for potential hazardous substance contamination for possible inclusion on the National Priorities List.

3.2.16 *construction debris*—concrete, brick, asphalt, and other such building materials discarded in the construction of a building or other improvement to property.

3.2.17 *contaminated public wells*—public wells used for drinking water that have been designated by a government entity as contaminated by hazardous substances (for example, chlorinated solvents), or as having water unsafe to drink without treatment.

3.2.18 *contiguous property owner liability protection*—(42 U.S.C. §9607(q)). A person may qualify for the *contiguous property owner liability protection* if, among other requirements, such person owns real property that is contiguous to, and that is or may be contaminated by *hazardous substances* from other real property that is not owned by that person. Furthermore, such person conducted *all appropriate inquiry* at the time of acquisition of the property and did not know or have reason to know that the property was or could be contaminated by a release or threatened release from the contiguous property. The *all appropriate inquiry* must not result in knowledge of contamination. If it does, then such person did "know" or "had reason to know" of contamination and would not be eligible for the *contiguous property owner liability protection*. See Appendix X1 for the other necessary requirements that are beyond the scope of this Practice.

3.2.19 *CORRACTS list*—list maintained by EPA of hazardous waste treatment, storage, or disposal facilities and other RCRA-regulated facilities (due to past interim status or storage of hazardous waste beyond 90 days) who have been notified by the EPA to undertake corrective action under the Resource Conservation and Recovery Act (RCRA).

3.2.20 *data failure*—a failure to achieve the historical research objectives in 8.3.1 through 8.3.2.2 even after reviewing the *standard historical sources* in 8.3.4 that are *reasonably ascertainable* and likely to be useful. *Data failure* is one type of *data gap*. See 8.3.2.3.

3.2.21 *data gap*—a lack of or inability to obtain information required by this practice despite good faith efforts by the *environmental professional* to gather such information. *Data gaps* may result from incompleteness in any of the activities required by this practice, including, but not limited to *site reconnaissance* (for example, an inability to conduct the *site visit*), and *interviews* (for example, an inability to interview the *key site manager*, regulatory officials, and so forth). See 12.7.

3.2.22 *demolition debris*—concrete, brick, asphalt, and other such building materials discarded in the demolition of a building or other improvement to *property*.

3.2.23 *drum*—a container (typically, but not necessarily, holding 55 gal [208 L] of liquid) that may be used to store *hazardous substances* or *petroleum products*.

3.2.24 *dry wells*—underground areas where soil has been removed and typically replaced with pea gravel, coarse sand, or large rocks. Dry wells are used for drainage, to control storm runoff, for the collection of spilled liquids (intentional and non-intentional), and wastewater disposal (often illegal).

3.2.25 *due diligence*—the process of inquiring into the environmental characteristics of a parcel of *forestland* or *rural property* or other conditions, usually in connection with a *real estate* transaction. The degree and kind of *due diligence* vary for different properties and differing purposes. See Appendix X1.

3.2.26 *dwelling*—structure or portion thereof used for residential habitation.

3.2.27 *Emergency Response Notification System (ERNS) list*—EPA's list of reported CERCLA hazardous substance releases or spills in quantities greater than the reportable quantity, as maintained at the National Response Center. Notification requirements for such releases or spills are codified in 40 CFR Parts 302 and 355.

3.2.28 *endangered species*—any species as defined in the Federal Endangered Species Act..."which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insect as determined by the Secretary to constitute a pest whose protection under the provisions of this Act (Endangered Species Act) would present an overwhelming and overriding risk to man." (See non-scope considerations.)

3.2.29 *Endangered Species Act*—7 U.S.C. 136; 16 U.S.C. 1531 *et seq*. (1973)

3.2.30 *environmental lien*—a charge, security, or encumbrance upon title to a *property* to secure the payment of a cost, damage, debt, obligation, or duty arising out of response actions, cleanup, or other remediation of *hazardous substances*

or *petroleum products* upon a *property*, including, but not limited to, liens imposed pursuant to CERCLA 42 U.S.C. §§9607(1) and 9607(r) and similar state or local laws.

3.2.31 *environmental compliance audit*—the investigative process to determine if the operations of an existing facility are in compliance with applicable environmental laws and regulations. This term should not be used to describe this practice, although an environmental compliance audit may include an *environmental site assessment* or, if prior audits are available, may be part of an *environmental site assessment*. See Appendix X1.

3.2.32 *environmental professional*—a person meeting the education, training, and experience requirements as set forth in 40 CFR §312.10(b). See Appendix X2. The person may be an independent contractor or an employee of the *user*.

3.2.33 *environmental site assessment (ESA)*—the process by which a person or entity seeks to determine if a particular parcel of real *property* (including improvements) is subject to *recognized environmental conditions*. At the option of the *user*, an *environmental site assessment* may include more inquiry than that constituting *all appropriate inquiry* or, if the *user* is not concerned about qualifying for the *LLPs*, less inquiry than that constituting *all appropriate inquiry* (see Appendix X1). An *environmental site assessment* is both different from and less rigorous than an *environmental compliance audit*.

3.2.34 *Federal Register (FR)*—publication of the United States government published daily (except for federal holidays and weekends) containing all proposed and final regulations and some other activities of the federal government. When regulations become final, they are included in the CFR, as well as published in the *Federal Register*.

3.2.35 *fill dirt*—dirt, soil, sand, or other earth, that is obtained offsite, that is used to fill holes or depressions, create mounds, or otherwise artificially change the grade or elevation of real *property*. It does not include material that is used in limited quantities for normal landscaping activities.

3.2.36 *fire insurance maps*—maps produced for private fire insurance companies that indicate uses of properties at specified dates and that encompass the property. These maps are often available at local libraries, historical societies, private resellers, or from the map companies who produced them.

3.2.37 *forestland-property*—that is either *historically undeveloped* (see 3.2.43) or *managed forestland* (see 3.2.55).

3.2.38 *good faith*—the absence of any intention to seek an unfair advantage or to defraud another party; an honest and sincere intention to fulfill one's obligations in the conduct or transaction concerned.

3.2.39 *hazardous substance*—a substance defined as a *hazardous substance* pursuant to CERCLA 42 U.S.C. §9601(14), as interpreted by EPA regulations and the courts: "(A) any substance designated pursuant to section 1321(b)(2)(A) of Title 33, (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, (42 U.S.C. §6921) (but not including any waste the regulation of which under RCRA (42 U.S.C. §6901 *et seq*.) has been suspended by Act of Congress), (D) any toxic pollutant listed under section 1317(a) of Title 33, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act (42 U.S.C. §7412), and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator (of EPA) has taken action pursuant to section 2606 of Title 15. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a *hazardous substance* under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas)" See Appendix X1.

3.2.40 *hazardous waste*—any *hazardous waste* having the characteristics identified under or listed pursuant to section 3001 of the RCRA, as amended, (42 U.S.C. §6921) (but not including any waste the regulation of which under RCRA (42 U.S.C. §6901 *et seq*.) has been suspended by Act of Congress). RCRA is sometimes also identified as the Solid Waste Disposal Act. RCRA defines a *hazardous waste*, at 42 U.S.C. §6903, as: "A solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may (A) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed."

3.2.41 *hazardous waste/contaminated sites*—sites on which a release has occurred, or is suspected to have occurred, of any *hazardous substance*, *hazardous waste*, *or petroleum products*, and that release or suspected release has been reported to a government entity.

3.2.42 *historical recognized environmental condition*—an environmental condition which in the past would have been considered a *recognized environmental condition*, but which may or may not be considered a *recognized environmental condition* currently. The final decision rests with the *environmental professional* and will be influenced by the current impact of the *historical recognized environmental condition* on the *property*. If a past release of any *hazardous substances* or petroleum products has occurred in connection with the *property* and has been remediated, with such remediation accepted by the responsible regulatory agency (for example, as evidenced by the issuance of a no further action letter or equivalent), this condition shall be considered an *historical recognized environmental condition* and included in the findings section of the *Phase I environmental site assessment* report. The *environmental professional* shall provide an opinion of the current impact on the *property* of this *historical recognized environmental condition* in the opinion section of the report. If this *historical recognized environmental condition* is determined to be a *recognized environmental condition* at the time the *Phase I environmental site assessment* is conducted, the condition shall be identified as such and listed in the conclusions section of the report.

3.2.43 *historically undeveloped forestland*—a *property* is historically undeveloped or unmanaged forestland if it contains no *relevant man-made changes* and is of such size or of such a nature that *visible* and *physical* observance of the *property* as contemplated in Section 9 of this practice is not capable of being accomplished within reasonable time and cost constraints, will yield little information relevant to the *property*, or will generate extraordinary amounts of irrelevant information. Large tracts of *historically undeveloped forestland* may contain isolated areas of *commercial real estate* which are not relevant to the *historically undeveloped forestland*. See 4.5.3 regarding appropriate assessment of *commercial real estate* that may be involved in the transaction.

3.2.44 *IC/EC registries*—databases of *institutional controls* or *engineering controls* that may be maintained by a federal, state or local environmental agency for purposes of tracking sites that may contain residual contamination and *AULs*. The names for these may vary from program to program and state to state, and include terms such as Declaration of Environmental Use Restriction database (Arizona), list of "deed restrictions" (California), environmental real covenants list (Colorado), and brownfields site list (Indiana, Missouri, Pennsylvania).

3.2.45 *innocent landowner defense*—(42 U.S.C. §§9601(35) & 9607(b)(3)). A person may qualify as one of three types of innocent landowners: (i) a person who "did not know and had no reason to know" that contamination existed on the *property* at the time the purchaser acquired the property; (ii) a government entity which acquired the property by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation; and (iii) a person who "acquired the facility by inheritance or bequest." To qualify for the first type of innocent landowner *LLP*, such person must have made *all appropriate inquiry* on or before the date of purchase. Furthermore, the *all appropriate inquiry* must not have resulted in knowledge of the contamination. If it does, then such person did "know" or "had reason to know" of contamination and would not be eligible for the *innocent landowner defense*. See Appendix X1 for the other necessary requirements that are beyond the scope of this practice.

3.2.46 *institutional controls (IC)*—a legal or administrative restriction (for example, "deed restrictions," restrictive covenants, easements, or zoning) on the use of, or access to, a site or facility to *(1)* reduce or eliminate potential exposure to *hazardous substances* or petroleum products in the soil or ground water on the *property*, or *(2)* to prevent activities that could interfere with the effectiveness of a response action, in order to ensure maintenance of a condition of no significant risk to public health or the environment. An *institutional control* is a type of *Activity and Use Limitation (AUL)*.

3.2.47 *interviews*—those portions of this practice that are contained in Sections 10 and 11 thereof and address questions to be asked of past and present *owners*, *operators*, and *occupants* of the *property* and questions to be asked of local government officials.

3.2.48 *key site manager*—the person identified by the *owner* of a *property* as having good knowledge of the uses and physical characteristics of the *property*. See 10.5.1.

3.2.49 *landfill*—a place, location, tract of land, area, or premises used for the disposal of solid wastes as defined by state solid waste regulations. The term is synonymous with the term *solid waste disposal site* and is also known as a garbage dump, trash dump, or similar term.

3.2.50 *Landowner Liability Protections (LLPs)—landowner liability protections* under CERCLA ; these protections include the *bona fide prospective purchaser liability protection*, *contiguous property owner liability protection*, and *innocent landowner defense* from CERCLA liability. See 42 U.S.C. §9601(35)(A), 9601(40), 9607(b), 9607(q), 9607(r).

3.2.51 *leaking underground storage tank (LUST) sites list*—state lists of leaking underground storage tank sites. Section 9003 (h) of Subtitle I of RCRA gives EPA and states, under cooperative agreements with EPA, authority to clean up releases from UST systems or require owners and operators to do so (42 U.S.C. §6991b).

3.2.52 *lessee*—individual or entity which does not own the *property* but has a written lease or other agreement to use the *property*.

3.2.53 *local government agencies*—those agencies of municipal or county government having jurisdiction over the *property*. Municipal and county government agencies include, but are not limited to, cities, parishes, townships, and similar entities.

3.2.54 *major occupants*—those occupants, suboccupants, or other persons or entities each of which uses at least 40 % of the leasable area of the *property* or any anchor occupant when the *property* is a shopping center.

3.2.55 *managed forestland*—a *property* is *managed forestland* if it has received the practical application of biological, physical, quantitative, managerial, economic, social, and policy principles to the regeneration, management, utilization, and conservation of forests to meet specific goals and objectives while maintaining the productivity of the forest. The management of *forestland* may include the management for aesthetics, fish, recreation, urban values, water, wilderness, wildlife, wood products, and/or other forest resource values, goals, or objectives.

3.2.56 *material safety data sheet (MSDS)*—written or printed material concerning a *hazardous substance* which is prepared by chemical manufacturers, importers, and employers for hazardous chemicals pursuant to OSHA's Hazard Communication Standard, 29 CFR 1910.1200.

3.2.57 *material threat*—a physically observable or *obvious* threat which is reasonably likely to lead to a release that, in the opinion of the *environmental professional*, is threatening and might result in impact to public health or the environment. An example might include an aboveground storage tank system that contains a *hazardous substance* and which shows evidence of damage. The damage would represent a *material threat* if it is deemed serious enough that it may cause or contribute to tank integrity failure with a release of contents to the environment.

3.2.58 *National Contingency Plan (NCP)*—the National Oil and Hazardous Substances Pollution Contingency Plan, found at 40 CFR Part 300; that is, the EPA's blueprint on how hazardous substances are to be cleaned up pursuant to CERCLA.

3.2.59 *National Priorities List (NPL)*——list compiled by EPA pursuant to CERCLA 42 U.S.C. §9605(a)(8)(B) of properties with the highest priority for cleanup pursuant to EPA's Hazard Ranking System. See 40 CFR Part 300.

3.2.60 *Natural Areas Inventory (NAI)*—list compiled by various state agencies that shows records of reported observations of threatened and endangered species.

3.2.61 *obvious*—that which is plain or evident; a condition or fact that could not be ignored or overlooked by a reasonable observer while visually or physically observing the *property*.

3.2.62 *occupant*—a person or entity who is using the *property* or a portion of the *property* and includes, but is not limited to, scattered residential tenancies, agricultural and silvicultural tenancies, small-scale commercial/industrial tenancies, and recreational tenancies such as hunting clubs.

3.2.63 *operator*—the person responsible for the overall operation of a facility.

3.2.64 *other historical sources*—any source or sources other than those designated in 8.3.4.1 and 8.3.4.2 that are credible to a reasonable person and that identify past uses of the *property*. The term includes, but is not limited to: miscellaneous maps, newspaper archives, internet sites, community organizations, local libraries, historical societies, current *owners* or *occupants* of neighboring properties, and records in the files and/or personal knowledge of the *property owner* and/or *occupants*. See 8.3.4.3.

3.2.65 *owner*—generally the fee owner of record of the *property*.

3.2.66 *petroleum exclusion*—the exclusion from CERCLA liability provided in 42 U.S.C. §9601(14), as interpreted by the courts and EPA: "The term (*hazardous substance*) does not include petroleum, including crude oil or any fraction thereof, which is not otherwise specifically lis ted or designated as a *hazardous substance* under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas)."

3.2.67 *petroleum products*—those substances included within the meaning of the *petroleum exclusion* to CERCLA, 42 U.S.C. §9601(14), as interpreted by the courts and EPA, that is: petroleum, including crude oil or any fraction thereof, which is not otherwise specifically listed or designated as a *hazardous substance* under Subparagraphs (A) through (F) of 42 U.S.C. §9601(14), natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). The word fraction refers to certain distillates of crude oil, including gasoline, kerosene, diesel oil, jet fuels, and fuel oil, pursuant to *Standard Definitions of Petroleum Statistics*.[5]

3.2.68 *Phase I Environmental Site Assessment*—the process described in this practice.

3.2.69 *physical setting sources*—sources that provide information about the geologic, hydrogeologic, hydrologic, or topographic characteristics of a property. See 8.2.3.

3.2.70 *practically reviewable*—information that is *practically reviewable* means that the information is provided by the source in a manner and in a form that, upon examination, yields information relevant to the *property* without the need for extraordinary analysis of irrelevant data. The form of the information shall be such that the *user* can review the records for a limited geographic area. Records that cannot be feasibly retrieved by reference to the location of the *property* or a geographic area in which the *property* is located are not generally *practically reviewable*. Most databases of public records are *practically reviewable* if they can be obtained from the source agency by the county, city, zip code, or other geographic area of the facilities listed in the record system. Records that are sorted, filed, organized, or maintained by the source agency only chronologically are not generally *practically reviewable*. Listings in publicly available records, which do not have adequate address information to be located geographically, are not generally considered *practically reviewable*. For large databases with numerous records (such as RCRA hazardous waste generators and registered underground storage tanks), the records are not *practically reviewable* unless they can be obtained from the source agency in the smaller geographic area of zip codes. Even when information is provided by zip code for some large databases, it is common for an unmanageable number of sites to be identified within a given zip code. In these cases, it is not necessary to review the impact of all of the sites that are likely to be listed in any given zip code because that information would not be *practically reviewable*. In other words, when so much data is generated that it cannot be feasibly reviewed for its impact on the property, it is not *practically reviewable*.

3.2.71 *pits, ponds, or lagoons*—man-made or natural depressions in a ground surface that are likely to hold liquids or sludge containing *hazardous substances* or *petroleum products*. The likelihood of such liquids or sludge being present is determined by evidence of factors associated with the pit, pond, or lagoon, including, but not limited to, discolored water, distressed vegetation, or the presence of an obvious wastewater discharge.

3.2.72 *property*—the real *property* that is the subject of the *environmental site assessment* described in this practice. Real

[5] *Standard Definitions of Petroleum Statistics*, American Petroleum Institute, Fourth Edition, 1988.

property includes, but is not limited to, buildings and other fixtures, and improvements located on the *property* and affixed to the land.

3.2.73 *property tax files*—the files kept for *property* tax purposes by the local jurisdiction where the *property* is located and includes records of past ownership, appraisals, maps, sketches, photos, or other information that is *reasonably ascertainable* and pertaining to the *property*. See 8.3.4.3.

3.2.74 *publicly available*—information that is *publicly available* means that the source of the information allows access to the information by anyone upon request.

3.2.75 *RCRA generators*—those persons or entities that generate hazardous wastes, as defined and regulated by RCRA.

3.2.76 *RCRA generators list*—list kept by EPA of those persons or entities that generate hazardous wastes as defined and regulated by RCRA.

3.2.77 *RCRA TSD facilities*—those facilities on which treatment, storage, and/or disposal of hazardous wastes takes place, as defined and regulated by RCRA.

3.2.78 *RCRA TSD facilities list*—list kept by EPA of those facilities on which treatment, storage, and/or disposal of hazardous wastes takes place, as defined and regulated by RCRA.

3.2.79 *reasonably ascertainable—for purposes of this practice*, information that is *(1) publicly available*, *(2)* obtainable from its source within reasonable time and cost constraints, and (3) *practically reviewable*.

3.2.80 *recognized environmental conditions*—the presence or likely presence of any *hazardous substances* or *petroleum products* on a *property* under conditions that indicate an existing release, a past release, or a material threat of a release of any *hazardous substances* or *petroleum products* into *structures* on the *property* or into the ground, groundwater, or surface water of the property. The term includes *hazardous substances* or *petroleum products* even under conditions in compliance with laws. The term is not intended to include *de minimis* conditions that generally do not present a threat to human health or the environment or that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies. Conditions determined to be *de minimis* are not *recognized environmental conditions*.

3.2.81 *recorded land title records*—records of historical fee ownership, leases, land contracts, *AULs*, easements, liens, and other encumbrances on or of the *property* recorded in the place where land title records are, by law or custom, recorded for the local jurisdiction in which the *property* is located. (Often such records are kept by a municipal or county recorder or clerk.) Such records may be obtained from title companies or directly from the local government agency. Information about the title to the *property* that is recorded in a U.S. district court or any place other than where land title records are, by law or custom, recorded for the local jurisdiction in which the *property* is located, are not considered part of *recorded land title records*.

3.2.82 *records of emergency release notifications*—EPCRA, (42 U.S.C. §11004) requires operators of facilities to notify their local emergency planning committee (as defined in EPCRA) and state emergency response commission (as defined in EPCRA) of any release beyond the facility's boundary of any reportable quantity of any extremely *hazardous substance*. Often the local fire department is the local emergency planning committee. Records of such notifications are "Records of Emergency Release Notifications" (42 U.S.C. 11004).

3.2.83 *records review*—that part that is contained in Section 8 of this practice that addresses which records shall or may be reviewed.

3.2.84 *relevant man-made changes*—generally include commercial or industrial buildings intended to enhance a *property's* value or adapt it for new or further purposes such that said changes render the *property commercial real estate*.

3.2.85 *report*—the written record prepared by the *environmental professional* and constituting part of a "*Phase I environmental site assessment*," as required by this practice.

3.2.86 *rural property—property* that includes non-*commercial real estate*, undeveloped real *property*, real *property* used for agricultural purposes, or *commercial real estate* used only for the transportation of people or products (including, but not limited to, natural resource development, for example, mining, oil and gas, and so forth).

3.2.87 *silvicultural*—following generally accepted forest management principles for tending, harvesting, and reproducing forests and crops.

3.2.88 *site reconnaissance*—that part that is contained in Section 9 of this practice and addresses what should be done in connection with the *site visit*. The *site reconnaissance* includes, but is not limited to, the *site visit* done in connection with such a *Phase I environmental site assessment*.

3.2.89 *site visit*—the visit to the *property* during which observations are made constituting the *site reconnaissance* section of this practice. The *site visit* may include several visits to the site to ensure the *methodology* of the *site visit* is met (for example, large parcels of land).

3.2.90 *solid waste disposal site*—a place, location, tract of land, area, or premises used for the disposal of solid wastes as defined by state solid waste regulations. The term is synonymous with the term *landfill* and is also known as a garbage dump, trash dump, or similar term.

3.2.91 *solvent*—a chemical compound that is capable of dissolving another substance and may itself be a *hazardous substance*, used in a number of manufacturing/industrial processes including, but not limited to, the manufacture of paints and coatings for industrial and household purposes, equipment clean-up, and surface degreasing in metal fabricating industries.

3.2.92 *standard environmental record sources*—those records specified in 8.2.1.1.

3.2.93 *standard historical sources*—those sources of information about the history of uses of *property* specified in 8.3.4.

3.2.94 *standard physical setting source*—a current USGS 7.5 minute topographic map (if any) showing the area on which the *property* is located. See 8.2.3.

3.2.95 *standard practice(s)*—the activities set forth in this practice.

3.2.96 *standard sources*—sources of environmental, physical setting, or historical records specified in Section 8 of this practice.

3.2.97 *state registered USTs list*—state lists of underground storage tanks required to be registered under Subtitle I, Section 9002 of RCRA.

3.2.98 *Streamside Management Zone (SMZ)*—an area of varying width adjacent to a watercourse in which special management precautions are necessary to protect natural resources.

3.2.99 *sump*—a pit, cistern, cesspool, or similar receptacle where liquids drain, collect, or are stored.

3.2.100 *"taking"*—the process defined in the Endangered Species Act, that is: the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect a plant or animal listed as threatened or endangered, or to attempt to engage in any such conduct.

3.2.101 *threatened species*—the term means, as defined in the Federal Endangered Species Act, any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

3.2.102 *TSD facility*—treatment, storage, or disposal facility (see *RCRA TSD facilities*).

3.2.103 *underground injection*—the emplacement or discharge of fluids into the subsurface by means of a well, improved sinkhole, sewage drain hole, subsurface fluid distribution system or other system, or groundwater point source.

3.2.104 *underground storage tank (UST)*—any tank, including underground piping connected to the tank, that is or has been used to contain *hazardous substances* or *petroleum products* and the volume of which is 10 % or more beneath the surface of the ground.

3.2.105 *user*—the party seeking to use this practice to complete an *environmental site assessment* of the *property*. A *user* may include, without limitation, a purchaser of *property*, a potential *occupant* of *property*, an *owner* of *property*, a lender, or a *property* manager. The user has specific obligations for completing a successful application of this practice as outlined in Section 6.

3.2.106 *USGS 7.5 Minute Topographic Map*—the map (if any) available from or produced by the United States Geological Survey, entitled "USGS 7.5 Minute Topographic Map," and showing the *property*. See 8.3.4.2.

3.2.107 *visually and/or physically observed*—during a *site visit* pursuant to this practice, this term means observations made by vision while walking through a *property* and the structures located on it and observations made by the sense of smell, particularly observations of noxious or foul odors. Due to the remoteness and size of large acreage forestland and rural properties covered by this practice, the term *visually and/or physically observed* also includes *aerial photography*, aerial imagery, and/or aerial flyovers that may be used in conjunction with walking through areas identified as suspect (such as clearings/disturbed soil, mounds, trenches, structures, and so forth) to "ground-truth" the observations. The term "walking through" is not meant to imply that disabled persons who cannot physically walk may not conduct a *site visit*; they may do so by the means at their disposal for moving through the *property* and the structures located on it.

3.2.108 *wastewater*—water that *(1)* is or has been used in an industrial or manufacturing process, *(2)* conveys or has conveyed sewage, or *(3)* is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. Wastewater does not include water originating on or passing through or adjacent to a site, such as storm water flows, that has not been used in industrial or manufacturing processes, has not been combined with sewage, or is not directly related to manufacturing, processing, or raw materials storage areas at an industrial plant.

3.2.109 *zoning/land use records*—those records of the local government in which the *property* is located indicating the uses permitted by the local government in particular zones within its jurisdiction. The records may consist of maps and/or written records. They are often located in the planning department of a municipality or county. See 8.3.4.3*(6)*.

3.3 *Acronyms:*

3.3.1 *AULs*—Activity and Use Limitations.

3.3.2 *BMPs*—Best Management Practices.

3.3.3 *CERCLA*—Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as amended, 42 U.S.C. §9601 *et seq.*).

3.3.4 *CERCLIS*—Comprehensive Environmental Response, Compensation, and Liability Information System (maintained by EPA).

3.3.5 *CFR*—Code of Federal Regulations.

3.3.6 *CORRACTS*—facilities subject to Corrective Action under RCRA.

3.3.7 *CWA*—Clean Water Act; see Appendix X1.

3.3.8 *EPA*—United States Environmental Protection Agency.

3.3.9 *EPCRA*—Emergency Planning and Community Right to Know Act ((also known as SARA Title III), 42 U.S.C. §11001 *et seq.*).

3.3.10 *ERNS*—Emergency Response Notification System.

3.3.11 *ESA*—Environmental Site Assessment (different than an *environmental audit*; see 3.2.33).

3.3.12 *FIFRA*—Federal Insecticide, Fungicide, and Rodenticide Act.

3.3.13 *FOIA*—U.S. Freedom of Information Act (5 U.S.C. 552 as amended by Public Law No. 104-231, 110 Stat.).

3.3.14 *FR*—Federal Register.

3.3.15 *ICs*—Institutional Controls.

3.3.16 *LLP*—Landowner Liability Protections under the *Brownfields Amendments*.

3.3.17 *LUST*—Leaking Underground Storage Tank.

3.3.18 *MSDS*—Material Safety Data Sheet.

3.3.19 *NCP*—National Contingency Plan.

3.3.20 *NFRAP*—Archived CERCLIS sites where no further remedial action is planned under CERCLA.

3.3.21 *NPDES*—National Pollutant Discharge Elimination System.

3.3.22 *NPL*—National Priorities List.

3.3.23 *PCBs*—polychlorinated biphenyls.

3.3.24 *PRP*—Potentially Responsible Party (pursuant to CERCLA 42 U.S.C. §9607(a)).

3.3.25 *RCRA*—Resource Conservation and Recovery Act (as amended, 42 U.S.C. §6901 *et seq*.).

3.3.26 *SARA*—Superfund Amendments and Reauthorization Act of 1986 (amendment to CERCLA).

3.3.27 *SMZ*—Streamside Management Zone.

3.3.28 *TSCA*—Toxic Substances Control Act.

3.3.29 *TSDF—hazardous waste* treatment, storage or disposal facility.

3.3.30 *USC*—United States Code.

3.3.31 *USDA* —Unites States Department of Agriculture.

3.3.32 *USGS*—United States Geological Survey.

3.3.33 *UST*—Underground Storage Tank.

4. Significance and Use

4.1 *Uses*—This practice is intended for use on a voluntary basis by parties who wish to assess the environmental condition of *forestland* or *rural property* of 120 acres or greater taking into account commonly known and reasonably ascertainable information. While use of this practice is intended to constitute *all appropriate inquiry* for purposes of the *LLPs*, it is not intended that its use be limited to that purpose. This practice is intended primarily as an approach to conducting an inquiry designed to identify *recognized environmental conditions* in connection with a *property*. No implication is intended that a person must use this practice in order to be deemed to have conducted inquiry in a commercially prudent or reasonable manner in any particular transaction. Nevertheless, this practice is intended to reflect a commercially prudent and reasonable inquiry. (See section 1.7.)

4.2 *Clarifications on Use:*

4.2.1 *Use Not Limited to CERCLA*—This practice is designed to assist the *user* in developing information about the environmental condition of a *property* and as such, has utility for a wide range of persons, including those who may have no actual or potential CERCLA liability and/or may not be seeking the *LLPs*.

4.2.2 *Residential Occupants/Lessees/Purchasers and Others*—No implication is intended that it is currently customary practice for residential occupants/lessees of multifamily residential buildings, occupants/lessees of single-family homes or other residential real estate, or purchasers of dwellings for one's own residential use, to conduct an *environmental site assessment* in connection with these transactions. Thus, these transactions are not included in the term *forestland* or *rural property* transactions, and it is not intended to imply that such persons are obligated to conduct an *environmental site assessment* in connection with these transactions for purposes of *all appropriate inquiry* or for any other purpose. In addition, no implication is intended that it is currently customary practice for *environmental site assessments* to be conducted in other unenumerated instances (including, but not limited to, many forestland and rural acreage leasing transactions, many acquisitions of easements, and many loan transactions in which the lender has multiple remedies). However, forestland and rural acreage transactions may include improvements (including, but not limited to, residential dwellings, barns, sheds, garages, and greenhouses). Areas with such improvements shall be examined during the *site reconnaissance* as described in Section 9. Inspection of such improvements will normally focus on the exterior of the *structures*. The *environmental professional* shall determine, in his/her professional judgment, whether the interior inspections of such improvements are warranted. Factors influencing this determination can include whether: (*1*) there is specific knowledge of a potential environmental concern, (*2*) the improvement is accessible, and (*3*) the inspection is coordinated by the *key site manager*.

4.2.3 *Site-specific*—This practice is site-specific in that it relates to assessment of environmental conditions on a specific parcel of *forestland* or *rural property*. Consequently, this practice does not address many additional issues raised in transactions such as purchases of business entities or interests therein, or of their assets, that may well involve environmental liabilities pertaining to properties previously owned or operated or other offsite environmental liabilities.

4.3 *Two Related Practices*—This practice sets forth one procedure for an *environmental site assessment* known as a "Phase I environmental site assessment for Forestland or Rural *Property*," "Phase I environmental site assessment," a "Phase I ESA," or simply a "Phase I." This practice is separate from Practice E1527. These practices are each intended to meet the standard of *all appropriate inquiry* necessary to qualify for the *LLPs*. It is essential to consider that these practices, taken together, provide for two alternative practices of *all appropriate inquiry* for *forestland* or *rural property*.

4.3.1 *Election to Commence with This Practice*—The *user* may commence inquiry to identify *recognized environmental conditions* in connection with a *property* by performing this practice when conditions identified in 1.1 are met.

4.3.2 *Who May Conduct*—Whenever a *Phase I environmental site assessment* is conducted, it must be performed by an *environmental professional*, as defined in Appendix X2 (and 40 CFR 312.10(b)), to the extent specified in 7.5.1. Further, at the *Phase I environmental site assessment* level, no practical standard can be designed to eliminate the role of judgment and the value and need for experience in the party performing the inquiry. The professional judgment of an *environmental professional* is, consequently, vital to the performance of *all appropriate inquiry* at the *Phase I environmental site assessment* level.

4.4 *Additional Services*—As set forth in 12.9, additional services may be contracted for between the *user* and the *environmental professional*.

4.5 *Principles*—The following principles are an integral part of this practice and are intended to be referred to in resolving any ambiguity or exercising such discretion as is accorded the *user* or *environmental professional* in performing an *environmental site assessment* or in judging whether a *user* or *environmental professional* has conducted *all appropriate inquiry* or has otherwise conducted an adequate *environmental site assessment*.

4.5.1 *Uncertainty Not Eliminated*—No *environmental site assessment* can wholly eliminate uncertainty regarding the potential for *recognized environmental conditions* in connection with a *property*. Performance of this practice is intended to reduce, but not eliminate, uncertainty regarding the potential for *recognized environmental conditions* in connection with a *property*, and this practice recognizes reasonable limits of time and cost.

4.5.2 *Not Exhaustive—All appropriate inquiry* does not mean an exhaustive assessment of a clean *property*. There is a point at which the cost of information obtained or the time required to gather it outweighs the usefulness of the information and, in fact, may be a material detriment to the orderly completion of transactions. One of the purposes of this practice is to identify a balance between the competing goals of limiting the costs and time demands inherent in performing an *environmental site assessment* and the reduction of uncertainty about unknown conditions resulting from additional information.

4.5.3 *Level of Inquiry Is Variable*—Not every *property* will warrant the same level of assessment. Consistent with good commercial or customary practice, the appropriate level of *environmental site assessment* will be guided by the type of *property* subject to assessment, the expertise and risk tolerance of the *user*, and the information developed in the course of the inquiry. For purposes of this practice, the level of *all appropriate inquiry* of isolated areas of *commercial real estate* contained within *forestland* or *rural property* shall meet the requirements of Practice E1527. This practice is no less stringent than Practice E1527; however, the means by which this practice intends to satisfy that level of *all appropriate inquiry* within reasonable time and cost constraints are different than under Practice E1527.

4.5.4 *Comparison With Subsequent Inquiry*—It should not be concluded or assumed that an inquiry was not *all appropriate inquiry* merely because the inquiry did not identify *recognized environmental conditions* in connection with a *property*. *Environmental site assessments* must be evaluated based on the reasonableness of judgments made at the time and under the circumstances in which they were made. Subsequent *environmental site assessments* should not be considered valid standards to judge the appropriateness of any prior assessment based on hindsight, new information, use of developing technology or analytical techniques, or other factors.

4.6 *Continued Viability of Environmental Site Assessment*—Subject to section 4.8, an *environmental site assessment* meeting or exceeding this practice and completed less than 180 days prior to the date of acquisition[6] of the *property* or (for transactions not involving an acquisition) the date of the intended transaction is presumed to be valid[7]. If within this period the assessment will be used by a different user than the user for whom the assessment was originally prepared, the subsequent user must also satisfy the User's Responsibilities in Section 6. Subject to section 4.8 and the User's Responsibilities set forth in Section 6, an *environmental site assessment* meeting or exceeding this practice and for which the information was collected or updated within one year prior to the date of acquisition of the *property* or (for transactions not involving an acquisition) the date of the intended transaction may be used provided that the following components of the inquiries were conducted or updated within 180 days of the date of purchase or the date of the intended transaction: (i) *interviews* with *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 property and of *adjoining properties*; and (v) the declaration by the *environmental professional* responsible for the assessment or update.

4.7 *Prior Assessment Usage*—This practice recognizes that *environmental site assessments* performed in accordance with this practice will include information that subsequent *users* may want to use to avoid undertaking duplicative assessment procedures. Therefore, this practice describes procedures to be followed to assist *users* in determining the appropriateness of using information in *environmental site assessments* performed previously. The system of prior assessment usage is based on the following principles that should be adhered to in addition to the specific procedures set forth elsewhere in this practice:

4.7.1 *Use of Prior Information*—Subject to the requirements set forth in section 4.6, *users* and *environmental professionals* may use information in prior *environmental site assessments* provided such information was generated as a result of procedures that meet or exceed the requirements of this practice. However, such information shall not be used without current investigation of conditions likely to affect *recognized environmental conditions* in connection with the *property*. Additional tasks may be necessary to document conditions that may have changed materially since the prior *environmental site assessment* was conducted.

4.7.2 *Contractual Issues Regarding Prior Assessment Usage*—The contractual and legal obligations between prior and subsequent *users* of *environmental site assessments* or between *environmental professionals* who conducted prior *environmental site assessments* and those who would like to use such prior *environmental site assessments* are beyond the scope of this practice.

4.8 *Actual Knowledge Exception*—If the *user* or *environmental professional(s)* conducting an *environmental site assessment* has *actual knowledge* that the information being used from a prior *environmental site assessment* is not accurate or if

[6] Under "All Appropriate Inquiry" 40 CFR Part 312, EPA defines date of acquisition as the date on which a person acquires title to the property.

[7] Subject to meeting the other requirements set forth in this section, for purpose of the LLPs, information collected in an assessment conducted prior to the effective date of the federal regulations for All Appropriate Inquiry or this practice can be used if the information was generated as a result of procedures that meet or exceed the requirements of the E1527-97 or -00 standards.

it is *obvious*, based on other information obtained by means of the *environmental site assessment* or known to the person conducting the *environmental site assessment*, that the information being used is not accurate, such information from a prior *environmental site assessment* may not be used.

4.9 *Rules of Engagement*—The contractual and legal obligations between an *environmental professional* and a *user* (and other parties, if any) are outside the scope of this practice. No specific legal relationship between the *environmental professional* and the *user* is necessary for the *user* to meet the requirements of this practice.

5. Significance of Activity and Use Limitations

5.1 *Activity and Use Limitations (AULs)*—AULs are one indication of a past or present release of a *hazardous substance* or petroleum products. AULs are an explicit recognition by a federal, tribal, state, or local regulatory agency that residual levels of hazardous substances or petroleum products may be present on a *property*, and that unrestricted use of the *property* may not be acceptable. AULs are important to both the user and the *environmental professional*. Specifically, the *environmental professional* can review agency records and IC/EC registries for the presence of AULs on the *property* to determine if a recognized environmental condition is present on the subject *property* (see sections 8.2.1, 8.2.2, and 11.5.1.4). The User must comply with AULs to maintain the LLP (see Appendix X1).

5.2 *Different Terms for AULs*—The term *AUL* is taken from Guide E2091 to include both legal (that is, institutional) and physical (that is, engineering) controls within its scope. Agencies, organizations, and jurisdictions may define or utilize these terms differently (for example, Department of Defense and International City/County Management Association use "Land Use Controls" and the term "land use restrictions" is used but not defined in the *Brownfields Amendments*).

5.3 *Information Provided by the AUL*—The AUL should provide information on the chemical(s) of concern, the potential exposure pathway(s) that the AUL is intended to control, the environmental medium that is being controlled, and the expected performance objective(s) of the AUL. AULs may be used to provide access to monitoring wells, sampling locations, or remediation equipment.

5.4 *Where AULs Can Be Found*—AULs are often recorded in land title records. AUL information is contained in the restrictions of record on the title, rather than a typical chain of title. Chain of title will not provide information regarding restrictions on title such as restrictive covenants, easements, or other types of AULs. Some AULs are maintained on a state *IC or EC Registry* and may not be recorded in land title records. While some states maintain readily accessible IC/EC Registries, other states do not. The *environmental professional* is cautioned to determine whether AULs are considered readily available records in the state in which the *property* is located. Some AULs may only exist in project documentation, which may not be readily available to the *environmental professional*. This may be the case in states where project files are archived after a period of years and access to the archives is restricted. AULs imposed upon some properties by local agencies with limited environmental oversight may not be recorded in the land title records, particularly where a local agency has been delegated regulatory authority over environmental programs.

6. User's Responsibilities

6.1 *Scope*—The purpose of this section is to describe tasks to be performed by the *user* that will help identify the possibility of *recognized environmental conditions* in connection with the *property*. These tasks do not require the technical expertise of an *environmental professional* and are generally not performed by *environmental professionals* performing a *Phase I environmental site assessment*. They may be performed by the *user*. Appendix X3 provides an optional User Questionnaire to assist the *user* and the *environmental professional* in gathering information from the *user* that may be material to identifying *recognized environmental conditions*.

6.2 *Review Title and Judicial Records for Environmental Liens and Activity and Use Limitations (AULs)—Reasonably ascertainable recorded land title records* and lien records that are filed under federal, tribal, state, or local law should be reviewed to identify *environmental liens* and activity and use limitations, if any, that are currently recorded against the *property*. *Environmental liens* and *activity and use limitations* that are imposed by judicial authorities may be recorded or filed in judicial records, and, where applicable, such records should be reviewed. Any *environmental liens* or activity and use limitations so identified shall be reported to the *environmental professional* conducting a *Phase I environmental site assessment*. Unless added by a change in the scope of work to be performed by the *environmental professional*, this practice does not impose on the *environmental professional* the responsibility to undertake a review of land title records and judicial records for *environmental liens* or activity and use limitations.. The *user* should either *(1)* engage a title company or title professional to undertake a review of *reasonably ascertainable recorded land title records* and lien records for *environmental liens* or activity and use limitations currently recorded against or relating to the property, or *(2)* negotiate such an engagement of a title company or title professional as an addition to the scope of work to be performed by the *environmental professional*.

6.2.1 *Reasonably Ascertainable*—Except to the extent that applicable federal, state, local, or tribal statutes, or regulations specify any place other than *recorded land title* records for recording or filing *environmental liens* or *activity and use limitations* or specify records to be reviewed to identify the existence of such *environmental liens* or *activity and use limitations*, environmental liens or *activity and use limitations* that are recorded or filed any place other than *recorded land title records* are not considered to be *reasonably ascertainable*.

6.2.2 *Recorded Land Title Records*—The term *recorded land title records* means records of historical fee ownership, which may include leases, land contracts, and AULs on or of the property recorded in the place where land title records are, by law or custom, recorded for the local jurisdiction in which the *property* is located. (Often such records are kept by a municipal or county recorder or clerk.) The *user* should