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**DEPARTMENTAL MANUAL**

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**TRANSMITTAL SHEET**

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PART 602 DM 2	SUBJECT PUBLIC LANDS Land Acquisition and Exchange Real Property Pre-Acquisition Assessments: Environmental Due Diligence	RELEASE NUMBER 4053
FOR FURTHER INFORMATION, CONTACT Office of Environmental Policy and Compliance		DATE Oct 12, 2016

**EXPLANATION OF MATERIAL TRANSMITTED:**

This Departmental Manual Release updates 602 DM 2, Real Property Pre-Acquisition Assessments: Environmental Due Diligence. The chapter is updated to reflect changes in applicable laws, regulations, and standards within the last 15 years with regard to pre-acquisition environmental site assessments. Revisions include:

-Updating and clarifying Departmental policy, responsibilities, and requirements to ensure that each bureau, prior to the acquisition of real property, determines the potential liabilities and remediation costs that could result from the presence, extent, and/or release of contaminants associated with the proposed acquisition.

-Adding a new section that describes two types of assessments that may be used to identify the presence or potential presence of contaminants:

(1) Pre-Acquisition Environmental Site Assessment (PA-ESA), which adheres to necessary standards to preserve certain defenses to liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the Oil Pollution Act of 1990 (OPA), and

(2) Limited Environmental Due Diligence: Transaction Screen Process, which may be used in certain limited circumstances, since it will not preserve certain defenses to liability under CERCLA or OPA.

Principal Deputy Assistant Secretary – Policy, Management and Budget

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**FILING INSTRUCTIONS:**

Remove:  
602 DM 2 (3 Sheets)

Insert:  
602 DM 2 (7 Sheets)

## Department of the Interior Departmental Manual

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**Effective Date:** 10/12/16

**Series:** Public Lands

**Part 602:** Land Acquisition, Exchange and Disposal

**Chapter 2:** Real Property Pre-Acquisition Environmental Site Assessments

**Originating Office:** Office of Environmental Policy and Compliance

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### 602 DM 2

2.1 **Purpose.** This chapter prescribes Departmental policy, responsibilities, and requirements regarding determinations of the potential to expose the Department of the Interior (Department) to liabilities and costs of remediation related to the release or threatened release of hazardous substances, oil, or petroleum products, defined in the Appendix to this chapter as “recognized environmental conditions.” In addition, this chapter:

A. Addresses the identification of environmental issues of concern, as defined in the Appendix to this chapter, associated with the acquisition of real property by the Department for the United States.

B. Describes steps to ensure informed decisionmaking and compliance with applicable laws, regulations, and standards for assessments prior to the acquisition of real property.

### 2.2 **Scope.**

A. The policy in this chapter applies to all proposed discretionary, mandatory, and/or legislative “real property acquisition” as defined in this chapter, except as specified in paragraph 2.2B below. This includes the following:

(1) Withdrawn public domain land being returned or reverted to the Department’s jurisdiction—the transaction needs to be treated as a land acquisition because the land might not be in the same condition as it was at the time of withdrawal.

(2) Land to be acquired through land exchanges, other acquisitions (e.g., Land and Water Conservation Fund), or other transfers from other government agencies (e.g., real property acquired from the General Services Administration (GSA), or Department of Defense/U.S. Army Corps of Engineers, including Base Realignment and Closure properties; National Guard; U.S. Coast Guard; Department of Energy; states; or private entities).

(3) Discretionary fee-to-trust acquisitions.

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B. The policy in this chapter does not apply to the following:

(1) Mandatory fee-to-trust acquisitions. The Secretary has the authority and duty to acquire land to be held in trust by the United States on behalf of an Indian tribe or individual Indian under various mandatory acquisition statutes, judicial decrees, and legislative transfers involving unique circumstances applicable to the acquisition of such real property. The procedures by which mandatory fee-to-trust acquisitions satisfy the intent and objectives of this chapter shall be defined by regulation, policies, and guidance adopted by the Bureau of Indian Affairs.

(2) Leases for commercial real estate, GSA Occupancy Agreements, and agreements entered into by the bureau/office with non-governmental entities for the use of buildings or structures. This exception does not apply to cases where the bureau/office has reason to believe a building or structure has been used to store or handle hazardous substances, oil, or petroleum products, nor to cases where there is visible evidence of environmental issues of concern.

(3) Federal lands transferred through the National Park Service's Federal Lands to Parks program.

(4) Easements that do not convey authority or rights to participate in the management of the property (e.g., conservation easements). For acquisition of other property interests that are less than fee title, such as water rights or mineral rights, the bureau must consult with the Solicitor's Office on a case-by-case basis to determine whether the acquisition could expose the bureau to associated liabilities or potential remediation costs that would trigger the requirements of this chapter.

### 2.3 Authorities.

A. Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. §§ 9601, et seq.

B. Oil Pollution Act (OPA), as amended, 33 U.S.C. §§ 2701, et seq.

C. Innocent Landowners, Standards for Conducting All Appropriate Inquiries (AAI), 40 CFR Part 312.

D. Oil Spill Liability: Standards for Conducting All Appropriate Inquiries Under the Innocent Landowner Defense, 33 CFR Part 137.

E. 40 CFR 312.11. The Environmental Protection Agency (EPA) has determined that American Society for Testing and Materials (ASTM) International standards E1527-13 and E2247-08 are consistent with its AAI regulations for 40 CFR 312.23-31. The EPA also still accepts ASTM standard E1527-05 as consistent with its AAI regulations. The ASTM standards E1527-13 and E1527-05 may be used for a Pre-Acquisition Environmental Site Assessment (PA-ESA), and ASTM standard E2247-08 may be used for a property of 120 acres or greater of

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forestland or rural property, or with a developed use of only managed forestland and/or agriculture. The ASTM standards E1527-13, E1527-05, and E2247-08 provide a path for landowner liability protections for land acquisition. Bureaus/offices should use the most current ASTM standards accepted by the EPA.

F. 33 CFR 137.20. The U.S. Coast Guard has determined that E1527-05 is consistent with its AAI regulations for 33 CFR 137.45-85. Bureaus/offices should use the most current ASTM standards accepted by the U.S. Coast Guard.

G. ASTM E1528-14 offers guidance accepted by the Department for conducting Limited Environmental Due Diligence: Transaction Screen Process (LEDD/TSP). However, ASTM E1528-14 does not provide a path for landowner liability protections for Federal land transactions. Bureaus/offices should use the most current version of ASTM E1528.

2.4 **Definitions.** Definitions for terms used in this chapter are provided in the Appendix.

2.5 **Policy.** It is Departmental policy to minimize the exposure of bureaus/offices to liabilities and potential remediation costs by avoiding the acquisition of real property that is contaminated, unless otherwise specifically directed by Congress, court mandate, or as determined by the Secretary or the Secretary's authorized representative as described in paragraph 2.14. When a bureau/office plans to acquire contaminated property, except under the conditions provided in paragraph 2.2B of this chapter, it is the Department's policy to preserve potential defenses to CERCLA and/or OPA liability when prudent and practicable by performing a PA-ESA, which is one step in the requirements for AAI (see the definition in the Appendix to this chapter).

A. Under limited circumstances, a bureau/office may determine, in consultation with the Office of the Solicitor (SOL), that preserving defenses to CERCLA and/or OPA liability, or developing the understanding of baseline environmental conditions that performing a PA-ESA would provide, is not relevant or useful with regard to the acquisition of a particular property. Under such limited circumstances, the bureau/office may perform a less stringent assessment process, described herein as LEDD/TSP (see the definition in the Appendix to this chapter), to determine whether there has been a release or threatened release of hazardous substances, oil, or petroleum products, or if there are other environmental issues of concern on or affecting the property. This LEDD/TSP process is described in detail in ASTM standard E1528-14. The LEDD/TSP should not be used when a bureau/office is seeking to preserve defenses to liability under CERCLA and/or OPA.

B. Bureaus/offices must consult with the SOL concerning the applicability of the policy and requirements in this chapter to site-specific locations and language in specific agreements (e.g., easements and other interests), as well as language of specific withdrawal agreements mentioned in paragraph 2.2A(1) in which liability could arise.

C. For intra-departmental transfers/land exchanges, the receiving bureau/office should consult with SOL on a case-by-case basis to determine whether the acquisition could

expose the bureau/office to associated liabilities or potential remediation costs. Although not required, the receiving bureau/office has the option to conduct either a PA-ESA or LEDD/TSP.

## 2.6 Responsibilities.

A. Office of the Solicitor. Provides legal review and guidance for proposed real property acquisition including, but not limited to, providing advice with respect to potential legal enforcement by third parties and evaluating whether the Department's defenses for liability under CERCLA or OPA should be or have been adequately preserved. Also, the SOL provides legal review and guidance to structure the instrument for land acquisition, whether it is a deed, statute, or interagency agreement, so as to minimize, whenever possible and appropriate, the Department's exposure to associated liabilities and potential costs of remediation.

B. Assistant Secretary – Policy, Management and Budget (AS-PMB). Provides policy oversight for acquisition of real property. Makes decisions on all recommendations to acquire real property which could result in bureaus/offices incurring associated liabilities or potential remediation costs exceeding \$500,000.

C. Program Assistant Secretaries. Oversee bureaus/offices under their jurisdiction to ensure compliance with this chapter. Under their respective jurisdictions, program Assistant Secretaries must concur with any recommendation to the AS-PMB for approval to acquire real property that could cause a bureau to incur associated liabilities or potential costs of remediation exceeding \$500,000.

D. Heads of Bureaus/Offices. Oversee bureau/office real property acquisition and development of bureau guidance and instructions to implement the policy requirements of this chapter. The heads of bureaus/offices must ensure that PA-ESA or LEDD/TSP is performed in accordance with the requirements of this chapter, and must exercise due diligence in limiting any associated liabilities and potential costs of remediation to the bureau/office. The heads of bureaus/offices are responsible for approval of remediation expenditures under their jurisdiction and, within their scope of authority, must ensure adequate program support (i.e., resources and budget) to fulfill the requirements of this chapter. If anticipated remediation expenditures total less than \$500,000, the head of the bureau/office is responsible for review and approval of expenditures for acquisition, and subsequent approval by the AS-PMB is not necessary. If anticipated remediation expenditures total less than \$250,000, the head of the bureau/office may delegate this approval authority in writing to a Regional or State Director.

E. Associate Director(s) for Bureau/Office Realty Program and Environmental and Disposal Liabilities Program. Receive(s) notification of decisions made by the Regional or State Director to not seek landowner liability protection. Provide(s) oversight on bureau/office land acquisitions.

F. Director, Office of Environmental Policy and Compliance (OEPC). Reviews all PA-ESA and LEDD/TSP reports and recommendations requiring approval by the AS-PMB. The OEPC may also assist bureaus/offices in interpreting and implementing the requirements of this chapter. In addition, OEPC may provide and revise additional guidance on land acquisition (e.g.,

environmental compliance memoranda). The OEPC is also responsible for informing bureaus/offices of updates to ASTM standards consistent with the EPA's and U.S. Coast Guard's AAI regulations.

G. Director, Office of Acquisition and Property Management (PAM). Reviews all PA-ESA and LEDD/TSP reports requiring approval by the AS-PMB. The PAM evaluates impacts and lifecycle costs associated with buildings and structures included in a proposed acquisition.

**2.7 General Requirements.** The responsibilities and functions prescribed in this chapter are intended to ensure that each bureau/office, prior to the acquisition of real property, determines the associated liabilities and potential remediation costs that could result from the presence, extent and/or release of hazardous substances, oil, petroleum products, or environmental issues of concern. Such determinations must be considered in any decision to acquire real property and must be taken into account when establishing the total cost of acquisition.

A. Assessments. The bureaus/offices must use one of two types of assessments to identify the presence or potential presence of recognized environmental conditions at a site, as well as the associated liabilities and potential costs to remedy contamination, thereby providing the bureau/office with valuable information for the calculation of the true costs of a proposed acquisition.

(1) The first type of assessment involves performing environmental due diligence with a PA-ESA in compliance with AAI standards. To preserve defenses to CERCLA and OPA liability at the time of acquisition, bureaus/offices must document compliance with the requirements of the applicable AAI regulations prior to the acquisition of real property. (See the Authorities section to find the list of standards that the EPA and U.S. Coast Guard have determined to be consistent with their AAI regulations at the time of publication of this chapter.) To acquire an understanding of baseline environmental conditions at the time of acquisition, including the liabilities and potential remediation costs associated with recognized environmental conditions, as well as an understanding of other environmental issues of concern, the bureau/office needs to complete a PA-ESA, except as otherwise specified in paragraph 2.2B or when performing an LEDD/TSP assessment as described below. A PA-ESA is one step in the AAI process and will provide the basis for informed decisionmaking regarding acquisition of the real property.

(2) The second type of assessment, the LEDD/TSP, which may be used in certain limited circumstances, will not preserve certain defenses to liability under CERCLA or OPA. The LEDD/TSP is explained in detail in ASTM standard E1528-14.

B. Deciding on an Assessment.

(1) Before acquiring real property, including acquisitions described in paragraph 2.2A, the acquiring bureau/office must complete an assessment (i.e., PA-ESA or LEDD/TSP) of the property in accordance with applicable regulations and guidance, except as specified in paragraph 2.2B. Early in the process, if the bureau/office is considering not

completing a PA-ESA, the Regional or State Director must consult with SOL and determine whether to preserve certain defenses to CERCLA and/or OPA liability and establish a comprehensive assessment of the property's baseline environmental conditions, or to proceed with LEDD/TSP and not seek to preserve these defenses. This decision may not be delegated below this level. The Associate Director(s) or person(s) in equivalent position(s) over the bureau's realty program and environmental and disposal liabilities (EDL) program must be notified when a decision is made not to seek landowner liability protection.

(2) Bureaus/offices may establish additional pre-acquisition assessment procedures to meet their individual needs, including criteria for when to seek landowner liability protection from CERCLA and/or OPA. Ideally, in addition to doing a PA-ESA, these procedures could assist in defining the objectives of the assessment (e.g., evaluate total cost of acquisition inclusive of potential costs of remediation, determine associated liabilities, identify recognized environmental conditions, and ascertain potential responsible parties).

(3) Before taking title to real property, except as specified in paragraph 2.2B, and in accordance with applicable regulations and/or guidance, the bureau/office must either:

(a) Complete a PA-ESA in compliance with applicable AAI standards to preserve certain defenses to CERCLA and/or OPA, as well as to understand baseline environmental conditions that a PA-ESA would identify; or

(b) Complete an LEDD/TSP in accordance with ASTM standard E1528-14, if the Regional or State Director, pursuant to paragraph 2.7B(1), decides not to pursue landowner liability protection and understanding of additional baseline environmental conditions.

(4) Bureaus/offices are responsible for ensuring that the PA-ESA or LEDD/TSP is complete in terms of technical accuracy and comprehensiveness, whether it is performed by a bureau/office employee or by a contractor, in order to ascertain whether recognized environmental conditions exist that might expose the Department to associated liabilities or potential costs of remediation. The assessment could also be used to achieve any objectives identified in paragraph 2.7B(2).

## 2.8 PA-ESA Requirements.

A. If defenses to CERCLA and/or OPA liability are to be preserved or there are other reasons to develop an understanding of baseline environmental conditions that performing PA-ESA would identify, the bureau/office shall complete a PA-ESA in compliance with the applicable requirements of CERCLA, OPA, AAI regulations (40 CFR 312 or 33 CFR 137), and this chapter. The ASTM standards specified in paragraph 2.3 may be used to satisfy the AAI requirements. See definitions of PA-ESA and AAI in the Appendix.

B. Review of Contractor Work Product. The bureau/office must review any PA-ESA completed by a contractor on behalf of the bureau/office. The bureau/office may approve the PA-ESA only after a qualified individual, as designated by the bureau/office,

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determines that it complies with applicable statutory and regulatory standards and that all data gaps have been addressed. Note that the PA-ESA itself must be conducted by an environmental professional as specified in paragraph 2.8F below.

C. Time Requirements. A PA-ESA must be completed prior to taking title of the subject property. In addition, as required by the AAI regulations (40 CFR 312.20 and 33 CFR 137.33), a PA-ESA must be completed within one year prior to the date of acquisition. For more details on timing requirements, see 40 CFR 312.20 and 33 CFR 137.33. The following specific components of the PA-ESA must be completed or updated within 180 days of acquisition:

- (1) Interviews with owners, operators, and occupants.
- (2) Searches for recorded environmental cleanup liens.
- (3) Records reviews.
- (4) Visual site inspections.
- (5) The declaration by an environmental professional that all appropriate inquiries into the previous ownership and uses of the property have been conducted.

D. Visual Inspections. In accordance with ASTM E2247-08, provided that other requirements in 40 CFR 312.27 and 33 CFR 137.65 are met, an exception to on-site visual inspection of a property may be granted in unusual circumstances where an on-site visual inspection of the property cannot be performed because of physical limitations, remote and inaccessible location, or other inability to obtain access to the property after good faith efforts. It should be noted that in 40 CFR 312.27(c) and 33 CFR 137.65(c), the EPA and U.S. Coast Guard state that “the mere refusal of a voluntary seller to provide access to the subject property does not constitute an unusual circumstance.” If an on-site visual inspection cannot be conducted, other options include aerial photography, aerial imagery, and/or aerial flyover, as outlined in ASTM standard E2247-08.

E. Prior Assessments. A prior ESA may be used if (a) it is reviewed and found to be in compliance with the AAI regulations (40 CFR 312 and 33 CFR 137), (b) the information in the assessment meets the timing requirements enumerated in paragraph 2.8C, and (c) the information accurately reflects the current conditions of the property. The components of the assessment enumerated in paragraph 2.8C must be completed or updated within 180 days prior to acquisition. If all of the PA-ESA requirements are not met by the prior ESA, whether it was conducted by the bureau/office, an outside party, or a party contracted by the bureau/office, the bureau/office must complete a PA-ESA addressing any missing information or data gaps and ensure that all PA-ESA requirements are met prior to the acquisition. Any assessment conducted by outside parties should be considered as a part of the “User Provided Information” and “Records Review” section of the final PA-ESA report.

F. Environmental Professional. The AAI regulations (40 CFR 312 and 33 CFR 137) require that AAI investigations, of which PA-ESA is a critical component, must be conducted or supervised by an environmental professional that meets specific requirements. See the definition of “environmental professional” in the Appendix to this chapter. Pursuant to 40 CFR 312.10(b)(5) and 33 CFR 137.25(a)(4), a person who does not qualify as an environmental professional may assist in conducting a PA-ESA if such person is under the supervision or responsible charge of an environmental professional when conducting such activities.

G. Certification program. Bureaus/offices may develop their own certification program for environmental professionals as defined in the Appendix to this chapter. At a minimum, bureaus/offices must determine what constitutes “relevant experience” in accordance with 40 CFR 312.10(b) and 33 CFR 137.25, and determine whether their personnel are environmental professionals. This may include using a bureau/office training program to facilitate meeting these requirements or relevant courses provided by other agencies or bureaus/offices.

## 2.9 **LEDD/TSP Requirements.**

A. Bureaus/offices, upon making the decision as prescribed in paragraph 2.7B(1), may proceed with an LEDD/TSP in accordance with ASTM standard E1528-14. Whether the LEDD/TSP is performed by a bureau/office employee or by a contractor, bureaus/offices are responsible for ensuring that the LEDD/TSP is complete in terms of technical accuracy and comprehensiveness in order to ascertain whether recognized environmental conditions exist that could expose the Department to associated liabilities or potential costs of remediation.

B. The LEDD/TSP must be conducted or supervised by a qualified individual, as determined by the bureau. This person does not need to be classified as an environmental professional, as that term is defined in the AAI regulations and the definition in the Appendix to this chapter.

C. Time requirements. Prior to taking title of the subject property, the LEDD/TSP must be completed and approval given in accordance with paragraphs 2.10 and 2.14.

D. Prior assessments may be used if the prior assessment is reviewed and found to be in compliance with this policy. If all of the requirements of ASTM standards in E1528-14 are not met, the bureau should complete any missing information or data gaps in order to provide for an informed decision under paragraphs 2.10 and 2.14.

## 2.10 **Finalizing a PA-ESA or LEDD/TSP.**

A. The bureau/office must incorporate the PA-ESA or LEDD/TSP results, including associated liabilities and potential costs of remediation, in its evaluation of the estimated total cost of the acquisition. This information must be provided as part of the Acquisition Approval process addressed in paragraph 2.14 below.

B. Prior to acquisition, bureaus/offices are also encouraged to evaluate environmental issues of concern, as defined in the Appendix to this chapter and including non-scope issues as identified in ASTM standards E1527-05 and E1527-13, that could expose the Department to associated liabilities and potential costs of remediation.

C. If evidence is found during the initial PA-ESA or LEDD/TSP that indicates environmental contamination could be present on the land, the bureau would likely need to perform additional analysis to determine the potential cost of remediation (e.g., ASTM standard E1903 for Environmental Site Assessments: Phase II). Additional analysis should more fully ascertain the nature and extent of the contamination and help estimate the cleanup cost identified in the PA-ESA and LEDD/TSP.

D. Any information on known potentially responsible parties should be helpful in the analysis of potential cost liability documentation.

2.11 **Mandatory Acquisitions.** Heads of bureaus/offices shall, to the maximum extent practicable, ensure that reports to Congress, comments on proposed legislation, Congressional testimony, and responses pertaining to acquisition of real property contain pre-acquisition environmental site assessment information from a PA-ESA or LEDD/TSP and estimates of remediation costs in order to inform total costs for any congressionally-mandated acquisition of contaminated property. These requirements would not apply to the policy exceptions described in paragraph 2.2B of this chapter.

2.12 **Funding.** Bureaus/offices proposing to acquire property shall ensure the availability of adequate funds to conduct PA-ESA or LEDD/TSP, as well as complete any further investigation of contaminated real property proposed to be acquired, including the identification and evaluation of cleanup alternatives. Bureaus may not obtain funding for PA-ESA or LEDD/TSP from the Department's Central Hazardous Materials Fund (CHF). The CHF also will not be used to fund remediation work associated with property acquired after September 30, 1995, where the environmental contamination was, or reasonably could have been, identified prior to acquisition. The acquiring bureau/office, in accordance with the Anti-Deficiency Act, needs to plan how adequate funds would be available for completion of cleanup or remediation of contamination for real property to be acquired.

2.13 **Acquisition.** Following the preparation of the PA-ESA or LEDD/TSP written report, including the determination of any associated liabilities and potential costs of remediation, the Department or bureau may acquire the real property, provided one of the following conditions exists:

A. There is no evidence of releases or threatened releases of hazardous substances, oil, or petroleum products, nor is there evidence of environmental issues of concern.

B. The acquisition will not result in significant associated liabilities or potential costs of remediation to the United States beyond the purchase price of the property.

C. The pre-acquisition proposal, which would include the findings of a PA-ESA and any calculated liabilities and potential costs of remediation associated with the acquisition, is approved in accordance with paragraph 2.14 below.

D. The acquisition is mandated by Act of Congress, judicial decision, or the Secretary.

**2.14 Acquisition Approvals.** Approval as described in this paragraph is required for all real property acquisitions that could require oil, hazardous substance, or other environmental cleanup, or could otherwise result in associated liabilities or potential costs of remediation to the Department. Where applicable, a formal estimate of the costs of remediation alternatives, taking into consideration reasonable future-use assumptions, should be included as part of the request for approval.

A. The bureau/office may acquire real property upon receipt of the following levels of approval:

(1) If there is evidence of a release or threatened release of hazardous substances, oil, or petroleum products, or any identified environmental issues of concern, and associated liabilities and potential costs of remediation are estimated to be less than \$500,000, the head of the bureau/office may approve the acquisition after consulting with the SOL. The head of the bureau/office may delegate this approval authority in writing to the Regional or State Director level for acquisitions for which associated liabilities and potential costs of remediation total less than \$250,000. The Regional or State Director must also consult with the SOL prior to approving the acquisition and may not re-delegate this authority.

(2) If there is evidence of a release or threatened release of hazardous substances, oil, or petroleum products, or any identified environmental issues of concern, and associated liabilities and potential costs of remediation are estimated to exceed \$500,000, then the acquisition must be approved by the AS-PMB. The bureau/office shall, after consulting with the SOL, forward the PA-ESA written report, as well as other information relevant to the proposed acquisition, through the applicable program Assistant Secretary to the AS-PMB for approval or disapproval.

B. Requests for approval sent to the AS-PMB must provide detailed information on the benefits of the acquisition relative to the total cost, including the fair market value of the property; the estimated costs of acquisition, including associated liabilities and potential costs of remediation to address hazardous substances, oil, petroleum products, or environmental issues of concern; and any other known or reasonably estimated monetary costs or damages that are expected to be associated with the acquisition.

C. The AS-PMB or the SOL may impose additional limitations on or requirements for acquisitions which are necessary to protect the interests of the Department.

D. If the SOL determines it is appropriate, the existence of any recognized environmental conditions or environmental issues of concern found prior to the transfer, as well

as the associated liabilities and potential costs of remediation identified in the PA-ESA or LEDD/TSP report, should be documented during the transfer of property. This documentation should identify whether the party transferring the property, or some other potentially responsible party, will be responsible for addressing the associated liabilities and potential costs of remediation, in whole or in part.

**2.15 Records Retention.** Each bureau/office that acquires real property must maintain documentation of the process and the findings of the PA-ESA or LEDD/TSP. Bureaus/offices must retain these records as part of the acquisition case file and real property record as long as the Department manages and retains ownership of the real property. After the Department no longer manages or retains the real property, the bureau/office must submit the records to the National Archives and Records Administration for appropriate retention, in compliance with 384 DM 4, Records Disposition.

**2.16 Reprogramming.** Any reprogramming proposal should be submitted according to established Departmental reprogramming procedures.

**2.17 Additional Guidance and History.**

A. See Environmental Compliance Memorandum (ECM) titled “Pre-acquisition Environmental Assessment Guidance for Federal Land Transactions.”

B. Congress enacted amendments to CERCLA in 2001 which clarified and expanded liability protection for certain prospective purchasers of property who comply with specific provisions outlined in the statute. Among those provisions were requirements necessary to satisfy AAI standards, which included additional requirements that went beyond those more limited ESAs that were provided in LEDD/TSP in ASTM standard E1528-00.

C. The EPA published regulations (40 CFR 312) in 2005 that clarified the actions necessary to perform AAI in order to preserve certain defenses to CERCLA liability, and the U.S. Coast Guard issued regulations (33 CFR 137) in 2008 consistent with the EPA regulations with respect to performing AAI to preserve certain defenses to OPA liability. In addition, the ASTM published standards for conducting AAI. The EPA and Coast Guard have confirmed that certain ASTM standards are consistent with AAI regulations. See the Authorities section to find the list of standards that the EPA and U.S. Coast Guard have determined to be consistent with their AAI regulations at the time of publication of this chapter.

Appendix  
Definitions and Acronyms

1. **All Appropriate Inquiry (AAI).** The pre-acquisition evaluation process defined in CERCLA 101(35)(B)(i), 40 CFR 312.20, and 33 CFR 137 that is used when seeking landowner liability protections pursuant to CERCLA and/or OPA.
2. **American Society for Testing and Materials (ASTM) International Standards.**
3. **Bona Fide Prospective Purchaser.** A person (or tenant of a person) who acquires ownership of a facility after January 11, 2002, and establishes by a preponderance of the evidence each of the requirements set forth in CERCLA 101(40) and applicable regulations. All bona fide prospective purchasers must conduct AAI into previous ownerships and uses of the facility.
4. **The Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC 9601, et seq. (CERCLA)**
5. **Environmental Issues of Concern.** The broad array of environmental issues, outside of the scope of releases of hazardous substances, oil, or petroleum products, presented by conditions on a property. These could include, but are not limited to:
  - A. Asbestos-containing building materials, radon, nuclear/radiological source materials, lead-based paint, lead in drinking water, unexploded ordnance, regulatory compliance, industrial hygiene, health and safety, indoor air quality, biological agents, high voltage power lines, and mold and other Non-Scope Considerations discussed in ASTM standards E1527-05 and E1527-13.
  - B. Environmental liabilities – these are subject to the Federal Accounting Standards Advisory Board's Statement of Federal Financial Accounting Standard (SFFAS) Number 5, Accounting for Liabilities of the Federal Government.
  - C. Bureau-specific concerns, such as invasive species, radioactive substances, unexploded ordnance, landfills, abandoned vehicles, abandoned subsurface utilities, hazards on abandoned mine sites, debris, underground storage tanks, and storm water collection points that might be Class V injection wells.
  - D. The presence of wetlands, infrastructure, cultural resources including historic properties, ecological resources, endangered species, or other conditions that could affect management costs and considerations.
6. **Environmental Professional.** A person with specific education, training, and experience as set forth in 40 CFR 312.10(b) and 33 CFR 137.25.
7. **Hazardous Substance.** A substance as defined in CERCLA 101(14).

8. **Landowner Liability Protections.** Protections from CERCLA and/or OPA liability is available for the landowner who qualifies for and meets certain statutory criteria to preserve defenses under CERCLA for “bona fide prospective purchaser” liability protection, contiguous property owner liability protection, or innocent landowner defense (AAI). For OPA, the liability protection pertain to the operator of a facility who qualifies for and meets certain statutory criteria to preserve defenses for innocent landowner defense to liability under 33 U.S.C. 2703 (d)(4) of OPA.

9. **Limited Environmental Due Diligence: Transaction Screen Process (LEDD/TSP).** An evaluation conducted prior to land acquisition, to identify “potential environmental concerns.” Such analysis determines the potential of, and extent of liability for oil and hazardous substances or other environmental remediation. This includes, but is not limited to, a determination of the absence or presence of oil and hazardous substances or conditions that indicate an existing or past release, or a material threat of a release on the real property, into the air, soil, sediment, groundwater, surface water or any structures located on the real property. The standards can be found in ASTM standard E1528; however, completion of this evaluation will not meet the standards for a PA-ESA for landowner liability protection from CERCLA or OPA. (Note that as of the date of the publication of this chapter, the ASTM standard is E1528-14.)

10. **Mandatory Acquisition.** An acquisition that occurs as pursuant to a Presidential Proclamation or an Executive, Congressional, or Judicial order directing the Secretary to take title to real property.

11. **Occupancy Agreement (OA).** The formal written agreement between GSA and the bureau/office defining the financial terms and conditions for the occupancy of GSA-provided space.

12. **Oil.** As defined in 33 U.S.C. 2701 (23) of OPA, oil means oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredge spoil, but does not include any substance which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of CERCLA and which is subject to the provisions of that Act.

13. **The Oil Pollution Act of 1990, 33 U.S.C. section 2701, et seq. (OPA)**

14. **Petroleum products.** As defined in section 3.2.65 of ASTM standard E1527-13: 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 sub paragraphs (A) through (F) of 42 U.S.C., Sect 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.)

15. **Potential environmental concerns.** As defined in section 3.2.35 of ASTM standard E1528-14 (LEDD/TSP): The possible presence of any hazardous substances or petroleum products on a property under conditions that indicate the possibility of an existing release, a past release, or a threat of a future release of any hazardous substances or petroleum products into structures on the property or into the ground, ground water, or surface water of the property. The term includes hazardous substances or petroleum products even under conditions in compliance with laws. (Note that “threat of release” is generally understood to be present when hazardous substances or petroleum products are poorly managed (for example in corroded tanks or damaged containers) but the release of the contaminants has not yet occurred, and there is an opportunity to take response action to prevent a release of the contaminants.)

16. **Pre-Acquisition Environmental Site Assessment (PA-ESA).** A pre-acquisition evaluation of real property that identifies recognized environmental conditions and other environmental issues of concern; identifies and evaluates associated liabilities; evaluates potential costs of remediation; and evaluates the total cost of acquisition inclusive of environmental issues of concern, associated liabilities, and potential costs of remediation. When CERCLA and/or OPA liability protections are sought, the PA-ESA must comply with all AAI requirements set forth in 40 CFR 312 and 33 CFR 137.

17. **Real Property.** Land or interests in land, including easements, and any improvements thereon (e.g., roads, buildings, and other structures, including installed permanent features).

18. **Real Property Acquisition.** For the purposes of this chapter, real property acquired by bureaus/offices through acts or operation of law, by condemnation, donation, escheat, right-of-entry, escrow, exchange, lapses, reversions, purchase, return of previously withdrawn lands, or transfer and that will be under the jurisdiction or control of the United States for any period of time, except for public benefit transfer programs and other exceptions specified in paragraph 2.2B. This term does not include real property that may be leased by a bureau from another party.

19. **Recognized Environmental Conditions.** Conditions resulting from or related to the release or threatened release of hazardous substances, oil, or petroleum products.

20. **Release.** As defined in CERCLA 101(22): <http://www.epw.senate.gov/cercla.pdf>. Any discharge of oil or a hazardous substance into the environment.