



Environmental Update

November 2021

ASTM Issues New Phase I Environmental Standard

Following a thorough evaluation process, ASTM International's Environmental Assessment, Risk Management and Corrective Action Committee has [revised its standard practice for Phase I environmental site assessments](#) (ESAs) (otherwise known as ASTM E1527) for the first time since 2013. ASTM E1527-21 is now the standard for performing Phase I ESAs, which are crucial to many property transactions, as they facilitate the applicability of U.S. EPA's all appropriate inquiries (AAI) rule, which, when followed, provides certain innocent purchaser or lessee protections from CERCLA liability. Following ASTM's Phase I ESA standard is also typical in most commercial transactions or brownfield redevelopment projects.

With the publication of ASTM E1527-21, it is expected that U.S. EPA will promulgate a new and/or updated AAI rule that will incorporate the revised ASTM standard. U.S. EPA's current rules apply the 2013 version of the standard, E1527-13. Typically, the agency will allow for a transition period prior to formally adopting the new ASTM E1527-21 version. Those watching this space, however, should now begin to incorporate these new requirements into their Phase I reviews and become familiar with the new standard. Parties should continue to ask their consultants to certify compliance with ASTM-13 in Phase I ESA reports until EPA adopts the ASTM-21 standard and the AAI rule is amended, though a best practice would be to ask that consultants also address the ASTM-21 standard in the report.

Below are some highlights of the important changes set forth in ASTM E1527-21, including its treatment of emerging contaminants, including per- and polyfluoroalkyl substances (PFAS), and some background on the way these changes may shape future Phase I ESAs and the AAI process.

Important Changes to the Standard

With the adoption of the revised standard, ASTM has made several changes to the standard practice for Phase I environmental site assessments, including:

- **Terminology.** The terms "Recognized Environmental Condition" (REC), "Controlled Recognized Environmental Condition" (CREC) and "Historical Recognized Environmental Condition" (HREC) are critical in the evaluation performed in nearly every Phase I ESA. Previously, these terms were subject to varying interpretations by environmental professionals. In the latest version of the ASTM standard, these definitions have been clarified in an attempt to reduce misclassification. The revisions are further supported by a new appendix that provides guidance on the REC/HREC/CREC decision process, a flow chart and representative examples of each type of condition.
- **Appendix updates.** New appendices were added, including a revised legal appendix, new REC/HREC/CREC guidance, revised report outline and updated discussion of business environmental risks, including emerging contaminants.
- **Historical records.** The historical records review section has been updated to reflect best practices. The revisions clarify subject and adjoining property identification, use and research objectives (i.e., the depth of inquiry required for both the subject and adjoining properties), and new parameters have been established for the use of standard historical sources.
- **Reconnaissance.** Detailed site reconnaissance requirements have been added to reinforce existing best practices and better reflect the typical way reconnaissance is performed.

- **New definitions.** The terms “Property Use Limitation” and “Significant Data Gap” were previously undefined by ASTM but used frequently in the Phase I ESA process. In the latest version, those have been formally defined to clarify their meaning and streamline their use.
- **Report requirements.** Revised report requirements have been added to strengthen the final product, including consistent use of the term “subject property”; identification of RECs, CRECs and significant data gaps in the conclusion section; photos of site reconnaissance items; and a site map.

Treatment of PFAS Under the New Standard

PFAS are addressed for the first time in the ASTM E1527-21 standard, though not fully incorporated into the scope of a Phase I ESA. The new ASTM standard states that PFAS diligence will be considered a “non-scope consideration” for the time being (i.e., addressing PFAS within a Phase I ESA is not required to meet the AAI standard). However, recent legislative/regulatory trends at the state and federal levels suggest that PFAS may be included within CERCLA’s definition of a “hazardous substance” in the not-too-distant future. (See, e.g., [PFAS Action Act of 2021](#), currently working its way through Congress.) Additionally, this new approach to PFAS in the ASTM standard will likely aid in compliance with state PFAS programs, which appear to be another continuing regulatory trend that is moving quickly across the country. While the likely presence of PFAS at a property is not currently considered a REC, its addition as a non-scope consideration signals a major expansion in cleanup liability when/if PFAS are added to U.S. EPA’s list of hazardous substances. This would follow the trend of other non-scope considerations, like the review of asbestos-containing materials, which has become standard practice over the last decade.

Given the increasing regulatory emphasis on PFAS, purchasers and lessees clearly face a liability risk associated with acquiring or leasing property with PFAS contamination. Those who want to understand the liability risk associated with purchasing or leasing a particular property should consider evaluating whether PFAS contamination may be present on a subject property, regardless of how the revised ASTM Phase I standard addresses PFAS.

Potential Impact of the New Standard

The changes to the ASTM standard add additional rigor and formality to the process of generating a Phase I report, likely resulting in a longer timeline to complete due diligence and prepare a Phase I report as environmental professionals get up to speed and implement the revised standard. Parties should allow for additional time in the process to account for these changes and be on the lookout for formal U.S. EPA adoption of ASTM E1527-21 into the AAI rule in the coming months. The risks associated with PFAS contamination, while not formalized as part of the AAI process in the new ASTM standard, should be considered and could likely lead to additional recommendations for Phase II sampling or additional investigation.

The ASTM website offers [additional details about the new standard](#), including information about training programs.

We will continue to watch developments related to new ASTM standards and provide updates on U.S. EPA’s adoption of this latest standard.

FOR MORE INFORMATION

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