

# Technical Bulletin

## A New Standard Practice for Phase I Environmental Site Assessments (ESAs)

On November 6, 2013, ASTM International published an updated standard for evaluating environmental conditions at properties involved in commercial real estate transactions. The revised standard E1527-13, *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process*, is the result of several years of drafting and negotiating among various stakeholders.

The revised standard is the first revision since 2005, when the U.S. Environmental Protection Agency (EPA) finalized its All Appropriate Inquiries (AAI) rule published at 40 CFR Part 312. The AAI rule describes one of the steps necessary for certain landowners to obtain liability protections under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Producers and users of Phase I ESA reports need to understand and properly employ the revised standard.

### Key Changes

The new Phase I ASTM standard makes several key changes. Among the changes are revised definitions of what constitutes a “recognized environmental condition” (REC) and a “historical REC” (HREC). In addition, the new standard introduces a new term referred to as a “controlled REC” (CREC). The new terminology provides clarification and greater flexibility for environmental professionals in framing known or suspected environmental contamination on a property, and takes into consideration risk-based cleanup standards to help communicate environmental risks.

For example, a petroleum release from an underground storage tank at a commercial site

some 20 years ago that received a No Further Action letter from the regulatory authority upon cleanup used to be considered a HREC under E1527-05. Today, under E1527-13, the same situation may be classified as a CREC, if residual contamination was left in place and concentrations are above the current cleanup criteria for unrestricted (residential) land use. This has positive implications for users and producers of Phase I reports, as it can better explain what continuing obligations the landowner might have for this known release.

The new standard explicitly requires environmental professionals to consider the vapor pathway in evaluating evidence of environmental contamination on or to a property. Furthermore, the methodology for such an evaluation must be defined (e.g., the ASTM E2600-10 standard guidance). In the past, some environmental professionals excluded migration of hazardous substances or petroleum constituents in the context of vapor intrusion, as it was construed an indoor air quality issue (and thus beyond the scope of the ASTM Phase I standard).

The revised standard clarifies that a “release” and “migration” of regulated contaminants under CERCLA and AAI does not (and was never meant to) exclude such chemical contaminants in the vapor form.

Another major revision pertains to the process of reviewing regulatory agency files when evaluating the potential for RECs. The new standard requires the environmental professional to evaluate and demonstrate whether agency files are reasonably ascertainable and whether such records will provide meaningful information to evaluate whether the property

under review has been affected by a release to the environment.

The decision to “go the extra step” to review agency files will depend on the nature of the site in question, data and project needs, and time and cost constraints. In practice, many environmental professionals (including those at SCS) regularly perform this step. And, in some cases, the records are available online or within SCS’s existing repository of information and past work.

### Compliance with AAI

One of the issues that has emerged since the draft standard was published has been whether EPA will recognize the revised standard as compliant with AAI, and what will then be the status of the E1527-05 standard that EPA has already found to be compliant with AAI.

In essence, EPA has found the E1527-13 standard to be compliant with AAI, and will be proceeding with formal rulemaking in the coming weeks or months—sometime early in 2014—to confirm this on the record.

With regard to the E1527-05 standard, it has now been superseded by E1527-13 and we expect industry (consultants and users) to quickly migrate to this new standard of care. Some may argue that E1527-05 technically still will be considered by EPA to be compliant with AAI, and thus that producers and users are free to follow that historical standard if they want. Indeed, there is nothing in the AAI rule that requires compliance with any particular ASTM standard, and EPA has said there are ways other than following an ASTM standard practice to demonstrate AAI.

That said, we believe that ASTM E1527-13 will quickly become the standard of “good commercial and customary practice” in the industry.

### Continuing Obligations

As noted earlier, compliance with AAI is only one of several obligations that an otherwise-qualified landowner must meet to assert CERCLA’s landowner liability protections. In addition to performing AAI, the landowner must comply with land use restrictions and institutional controls, take reasonable steps to protect human health and the environment with respect to known releases, comply with government information requests, and provide legally-required notices.

### How SCS Can Help

SCS has been conducting environmental assessments of real property since the 1980s. We have actively participated in the ASTM E1527 updates over the years, including E1527-13. Our environmental due diligence experts in some 60 offices across the country help clients navigate Phase I ESA requirements and the nuances of AAI as appropriate for their situation. We would be pleased to put this experience to work for you.

### Resources

- i) [ASTM E1527-13, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process](#)
- ii) [EPA All Appropriate Inquiries Website](#)
- iii) [SCS Engineers Home Page](#)

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[SCS Office Locations](#)