

SCS TECHNICAL BULLETIN

A NEW STANDARD PRACTICE FOR PHASE I ENVIRONMENTAL SITE ASSESSMENTS (ESAs)

January 17, 2022

On November 1, 2021, ASTM International published an updated consensus guidance document for evaluating environmental conditions at properties involved in commercial real estate transactions. The revised E1527-21, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, results from several years of drafting and negotiating among more than 150 industry professionals representing various stakeholders.

The update addresses improved definitions and terminology used, clarifies industry practice for historical records review of the subject and adjoining properties, and provides for updates and additions to appendices, report outlines, and other collateral (i.e., flow chart for decision making) to make the document more clear, consistent, and usable. It also may increase the level-of-effort required for some assessments

The U.S. Environmental Protection Agency (EPA) finalized its All Appropriate Inquiries (AAI) rule (40 CFR Part 312) in 2006; it describes one of the steps necessary for certain landowners to obtain liability protections under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The AAI Rule currently says that the prior version of ASTM E1527 may be followed to comply with AAI.

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

Key Changes

Definitions for "recognized environmental condition" (REC), "controlled REC" (CREC), and "historical REC" (HREC) have all been clarified. Each definition now has a discussion section following it which helps guide the decisions of the Environmental Professional and should improve consistent identification of RECs among practitioners.

In addition, an appendix has been added, including a Flow Chart (Figure X4.1) to guide REC Logic. Twelve examples are included to illustrate the Flow Chart REC Logic.

Definitions have also been added to the revised document for "property use limitations" and "significant data gap." These added definitions should help guide more consistent identification of RECs and better guide how to address data gaps that affect the Environmental Professional's ability to identify a REC.

In addition to updated definitions and terminology, the revised document has significantly expanded the procedures for researching historical uses of the subject property and adjoining properties. While SCS has historically reviewed the four main historical sources (aerial photographs, topographic maps, fire insurance maps, and city directories), the revised practice now

requires that these sources be reviewed for both the subject property and the adjoining properties, if "reasonably ascertainable." A definitive statement must be included in the report why such review was not conducted if not reviewed.

For retail, industrial, or manufacturing properties, the expanded procedures may require the Environmental Professional to review building department records, conduct interviews, review property tax files, and review zoning/land use records. Depending on the ability to identify the historical use of adjoining properties, additional historical sources may also need to be reviewed for adjoining properties. For dense, urban areas, this will likely create additional effort on the part of the consultant.

Another key change in the revised guidance is mandatory information in the Phase I ESA Report. For example, the Environmental Professional must include a discussion and rationale in their Findings and Opinions section of the report as to why they identified a particular item as a CREC or HREC. For an HREC, a definitive statement must be included in the Findings and Opinions section that the condition still qualifies as an HREC.

Reports must also include a Site Plan with key features and conditions identified, and the report must include photographs of conditions indicative of RECs and de minimis conditions.

The new guidance requires that the dates that certain components of the Phase I ESA Report were completed (i.e., interviews, review of government records, visual inspections, declaration of the Environmental Professional) be included in the report. Each of these must be completed within 180 days of the transaction date (not the report date). Report users are also obligated to search for environmental liens at least back to 1980.

Finally, the revised guidance speaks to the business risk associated with emerging contaminants, such as Per- and polyfluoroalkyl substances (PFAS). It provides guidance and clarification on handling emerging contaminants that are not yet designated by EPA as hazardous substances under CERCLA

but may otherwise be regulated at a state or local level. SCS is well-positioned to address emerging contaminant concerns and can efficiently help identify and address these business risk concerns if requested by the user.

Compliance with AAI

As it did following the last revision to the ASTM practice in 2013, we expect that EPA will move forward rulemaking to state that the revised guidance complies with AAI formally. That said, formal rulemaking could take months to complete. In the interim, we believe that ASTM E1527-21 guidance will quickly be adopted as "good commercial and customary practice" in the industry. We believe the 2021 revision is useful immediately as it exceeds the requirements set forth in the ASTM E1527-13 version.

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 E1527-21. Our environmental due diligence specialists in some 70 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 E1527-21, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process](#)
- ii) [EPA All Appropriate Inquiries Website](#)

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