

Environmental Update: The New ASTM E1527-21 Standard Practice for Phase I Environmental Site Assessments by David P. Ruetz

In November 2021, the American Society for Testing and Materials (ASTM) approved a new standard practice (E1527-21) for conducting Phase I Environmental Site Assessments (ESAs), which modifies the previous ASTM Standard (E1527-13) used by environmental consultants in performing Phase I's of real property. The goal of an E1527 Phase I is to identify the documented or potential presence of hazardous substances regulated under CERCLA and/or petroleum products, known as a "Recognized Environmental Condition" (REC).

The most significant modifications include:

1. REC Definition – To assist environmental consultants, E1527-21 contains a revised definition of REC, and an Appendix with examples of what constitutes a REC.
2. Standard Historical Sources – E1527-21 requires four "Standard Historical Sources," at a minimum, be reviewed for the subject and adjoining properties. They include:
 - Historical Aerial Photographs,
 - Historical City Directories,
 - Historical Topographic Maps, and
 - Historical Fire Insurance Maps.
3. Emerging Contaminants – new contaminants (e.g., PFAS) have recently been reviewed for possible regulation by EPA and states as hazardous substances. E1527-21 provides that until a contaminant is regulated by CERCLA, such substances are not required to be included in an E1527-21 Phase I. However, E1527-21 provides that inclusion of such substances can be added to Phase I's as a "Non-Scope Consideration."
10. Significant Data Gap – E1527-21 includes a definition of "significant data gap," which is an information gap that affects the ability of the environmental consultant to identify RECs, and also requires discussion of how significant data gaps affected the ability to make conclusions regarding RECs.

While use of the prior E1527-13 will still satisfy the EPA's All Appropriate Inquiry (AAI) regulations until EPA adopts E1527-21 into its rules (estimated one-year), as a best practice, it is highly recommended that parties commissioning Phase I's request that the E1527-21 requirements be included now in Phase I ESAs.

The Author:

David Ruetz is an attorney with von Briesen & Roper, s.c. in Milwaukee, Wisconsin. He has over 30 years of experience in the environmental field. In addition to his work as an environmental attorney, Mr. Ruetz has worked as the President of an environmental consulting-engineering firm, as an Administrative Director of a Governor-Appointed environmental Advisory Council, an environmental scientist and as an aquatic biologist.

If you have questions surrounding this Legal Update, Mr. Ruetz can be contacted at: druetz@vonbriesen.com or 414-287-1517.