

U.S. EPA Publishes Final Rule Updating the Phase I Environmental Site Assessment Standard Under CERCLA

Hinshaw Alert | 1 min read

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On December 15, 2022, the United States Environmental Protection Agency (EPA) published the Final Rule, entitled “Standards and Practices for All Appropriate Inquiries,” updating the Phase I Environmental Site Assessment standard required to meet the “all appropriate inquiries” (AAI) requirement of the Comprehensive Environmental Response, Compensation and Recovery Act, 42 U.S.C. § 9601 et seq (CERCLA). AAI compliance informs parties to a site investigation or transaction and avails a purchaser’s use of CERCLA’s innocent landowner, contiguous property owner, and/or bona fide prospective purchaser defenses, which limit a purchaser’s liability for contamination that predates its ownership.

The Final Rule took effect on February 13, 2023, and requires purchasers of a commercial property to conduct a Phase I Environmental Site Assessment (ESA) consistent with the updated 2021 ASTM International standard, ASTM E1527-21, rather than the former American Society for Testing and Materials’ 2013 standard, ASTM E1527-13. Under the Final Rule, a Phase I completed pursuant to ASTM E1527-13 prior to December 15, 2023 will be accepted as AAI compliant.

Key differences between the ASTM E1527-21 standard and the ASTM E1527-13 standard are highlighted below:

- Revised definitions and direction for key terms such as “review of land title records,” “property use limitations,” “significant data gaps,” “presumed liability,” and “level of inquiry” related to the future intended use(s) of the subject property.
- The Phase I ESA must describe specific future activities, uses, and conditions that both were and were not present at the subject property.
- Prior environmental site assessments may be used as guidance but shall not be relied upon to accurately represent current features, activities, uses, or conditions.
- PFAs and other emerging contaminants may be considered for inclusion as non-scope items. However, once specific PFAs are defined as a hazardous substance under CERCLA, such substances must be evaluated within the scope of E1527-21 standard.

- An opinion should be given as to whether additional investigations may be appropriate; however, recommending a specific course of additional action is not required and falls outside of the scope of the 2021 standard.

Notice of the Final Rule can be found [here](#).

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