

Strategic Brief for Environmental Professionals

The ASTM E 1527 Standard: Update on New Revisions

Remember when the U.S. Environmental Protection Agency's All Appropriate Inquiries rule took effect back in 2005? For the first time since then, there is now a revised version of ASTM E 1527, published on November 6, 2013—and the time to transition over to the new protocol and educate your clients is now.

EDR Insight recently polled environmental professionals to gauge how closely the industry has been tracking the Task Group's efforts, with the following results:

- “Like a hawk. I never miss a call/meeting.” (6%)
- “Moderately closely. I can name key areas of change.” (64%)
- “Not at all. I'm not familiar with what's being revised.” (30%)

If you are in the last category, or even the second, this Technical Brief is for you. This brief contains EDR Insight's summary of the key changes in E 1527-13 that can impact the way you do business. U.S. EPA published a proposed rule in August 2013 recognizing E 1527-13 as sufficiently stringent for satisfying All Appropriate Inquiries for the purposes of CERCLA liability protection. A final rule from EPA amending the federal AAI rule to reference the new standard is expected by year-end or early 2014.

The ASTM Process

The latest version of E 1527 is the result of numerous debates conducted over the past three years at Task Group meetings across the country and dozens of conference calls attended by environmental professionals and end users, all dedicated to having a voice in how the new standard took shape. Representatives from the U.S. EPA were also active in the ASTM revision process to ensure that the standard maintains its role as a protocol for satisfying the requirements of AAI, which are necessary for CERCLA liability protection. EDR Insight has had firsthand involvement in the process, most recently at the Task Group meeting in Florida in October 2013—and has been closely following the process leading up to the standard's publication last week.

Key Areas of Clarification

Below is a brief overview of three key areas of change and the potential implications for both the environmental professionals using the ASTM E 1527 scope of work, and for lenders and other end-users with environmental policies that reference E 1527.

1. Clarifications to Recognized Environmental Condition (REC) and Historical REC (HREC) Terms and Addition of a New Term: Controlled REC (CREC)

At the core of the Phase I ESA process under E 1527 is the identification of RECs. The new standard includes a simplified definition of a REC, expanded clarification of an HREC and the introduction of a new term, the CREC. The revised REC definition is designed to make it more closely resemble CERCLA's text, while still maintaining the instructive language from the current definition.

The revisions to the HREC definition go hand in hand with the introduction of the new CREC term, or “controlled” REC. The revised definition for HRECs applies to RECs that meet unrestricted land use criteria after remediation/risk-based cleanup. In contrast to HRECs, the new CREC language applies to past releases that were addressed, yet have contamination remaining subject to the implementation of required activity and use limitations (AULs) (e.g., institutional controls or engineering controls). The CREC is designed to provide environmental professionals with a new term to better address situations where there are land use restrictions associated with the cleanup. The revised standard also specifies that CRECs are to be considered RECs.

Implications of the New CREC, HREC and REC Language

The addition of the new CREC term provides an opportunity for environmental professionals to help lenders and other clients get comfortable with the new/revised terminology and assist them in differentiating between HRECs and CRECs.

ASTM E 1527-13 – Key Areas of Proposed Changes



2. Addition of Vapor Migration

The Task Group also added another definition to the standard: “migrate/migration,” which includes both contaminated groundwater and vapor migration. This new language clarifies that vapor migration should be considered no differently than contaminated groundwater migration in Phase I investigations. The change also establishes a standardized definition consistent with the existing CERCLA and AAI definitions of a release (e.g., solid, liquid and vapor) to the environment. The revised standard also specifically references the ASTM E 2600-10 Vapor Encroachment Standard Guide as a consensus-based methodology for assessing vapor migration in Phase I ESAs.

Implications of Vapor-Related Revisions

There is a great deal of inconsistency in how vapor is treated in today's Phase I ESAs. Some environmental consultants automatically include consideration of vapor migration, while others do so only at a client's request. Likewise, some financial institutions require vapor screens on all Phase I ESAs, while others do so only on a case-by-case basis. This revision to ASTM E1527 is one in a series of recent developments that are bringing vapor risk front and center. Notably, the U.S. EPA is about to release a final guidance document more than a decade in the making that presents the federal position on vapor-related risk and mitigation. It is critical that environmental professionals and property risk managers understand what these documents mean in terms of the industry standard of care and how it might affect their own practices. For EPs, the addition of vapor-related language to E 1527 will likely necessitate changes to the internal Phase I ESA process. Clients will need a deeper understanding about the risk that vapor migration presents to make educated decisions about how and whether to revise their environmental due diligence policies accordingly.

3. Regulatory Agency File Reviews

An agency file review is a common industry term used to describe the search for, and review of, files maintained by local, state, or federal authorities whereby an environmental professional physically travels to the file location. The Task Group added a new section that indicates the EP should do an agency file review if a subject property or adjoining property is identified in any of the standard environmental records sources. If the EP decides not to undertake such a file review, the justification must be included in the Phase I ESA report (e.g., the files are not reasonably ascertainable).

Implications of Agency File Reviews:

The majority of EPs routinely include agency file reviews in their Phase I ESA when applicable. Others do not. The level of effort behind conducting file reviews ranges from easy to onerous, depending on distance, the level of sophistication at the agency office, data availability and other factors (including the availability of adequate documentation online or on site). The impact the revisions have on any individual firm will be a function of what they are currently doing. At a minimum, environmental professionals should review their contracts and report templates and contemplate any necessary revisions to reflect the new language. Firms should also think about the types of records that might trigger the need for a file review (e.g., a large quantity RCRA generator next door vs. on-site LUST), which offices they need to contact, and what information to look for in file reviews. Building relationships with state and local offices may help EPs streamline the file review process up front by allowing them to find out if and when information will be available before they need it. For national firms that do Phase I work in different states, EPs need to examine how this new ASTM language will drive their decisions about when they may need to travel to offices in Tallahassee, Sacramento, Hartford, Austin, and other state capitals, or alternatively, tap into the alternative sources listed in the revisions to E 1527. In addition, determining the level and thoroughness of information that each agency maintains early on can also help EPs in determining whether a file review is necessary, and reaching internal consensus on what types of reliable alternative sources should be considered, in the event a file review is not reasonably ascertainable.

Status of Revisions

ASTM provided the revisions to E 1527 to the U.S. EPA in early 2013 to allow the agency to review the standard and determine its applicability for the purposes of AAI compliance under CERCLA. In August 2013, the U.S. EPA published a proposed rule recognizing E 1527-13 as an acceptable protocol for meeting AAI. ASTM published the new E 1527-13 standard on November 6, 2013. At that time, E 1527-05 was moved to listing as a “historical standard” along with the -00 version and all other prior versions of E 1527. EPA's representative on ASTM Task Group calls indicated that the agency's final rule recognizing E 1527-13 will likely be published by year-end 2013.

What EPs should be doing to transition to E 1527-13

When the AAI rule was promulgated and when the EPA-recognized ASTM E 1527-05 standard was published, it was an important time for education and awareness on property environmental risk, policies and decision-making. Today is no different. Release of a new version of the ASTM standard sheds light on the need for attention to the process, the need for necessary improvements and valuable reminders of several areas of environmental due diligence, such as user responsibilities, that risk managers may not have given much thought to in the past eight years—or even longer. Here are some things that environmental professionals can do during this transition period:

- Educate clients about revisions to E 1527-05 via client meetings, local industry workshops and client alerts
- Work with clients to make any necessary updates to their environmental due diligence policies to recognize the new version of the standard

- Ensure that internal staff are aware of the key areas of change, particularly CREC determinations, vapor migration and agency file reviews
- Plan for any necessary changes to the internal Phase I ESA process, scope of work and report format
- Attend events dedicated to the E 1527 revisions

What EDR Insight is doing to help you

All of our content related to the new revisions is posted in our new [ASTM E 1527-13 toolkit](#) with links to recent technical webinars, client alerts, links to the standard and more. Check back often as new content is frequently being added to the toolkit

EDR Insight is committed to helping you prepare for the clarifications to the E 1527 standard. Stay tuned for the latest and greatest developments as ASTM E 1527 moves closer to its next iteration.

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Questions or comments?

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