

Technical Brief for Environmental Professionals

5,000 EPs: Top Five Issues with E 1527-13

Author: Dianne P. Crocker, Principal Analyst, EDR Insight (dcrocker@edrnnet.com)

To date, I have moderated five webinars focused on the 2013 revisions to the ASTM E 1527 Phase I ESA standard—most recently, yesterday. On top of that, I spoke on market trends at eight fall/winter Due Diligence at Dawn workshops, which also included a track given by Anthony Buonicore on the E 1527-13 revisions, as well as a class for new EPs that I taught at Rutgers University in February. All told, that adds up to over 5,000 environmental professionals coming up the learning curve about what the revised standard will mean to their Phase I ESA practice. At each of these events, either by raising a hand at DDD or typing and clicking a mouse during a live webinar, EPs aired their concerns and questions about how to apply the standard in practice. The majority of these questions or concerns fall into a few key areas. Here's my list of the top five issues EPs have with the revisions to the Phase I ESA protocol:

1. Making accurate REC-HREC-CREC determinations

Hands down, this was the most common area of questions on the definitions in E 1527-13. At our March and April webinars alone, more than 100 questions fell into this category. Under the revised/new definitions in the REC family, EPs came forward to ask whether situations like these (and many others) would be a REC, an HREC or a CREC:

- ...an abutting upgradient site with a significant spill?*
- ...hazardous waste drums stored on the target property?*
- ...an on-going remediation or investigation?*
- ...a property remediated to the level of industrial/commercial standards but zoned as residential?*
- ...a property granted NFA status with petroleum constituents in groundwater above background and above the state's own most restrictive clean-up goals, but with no AUL/EC/IC?*
- ...contaminated groundwater that migrates onto a property from a nearby property?*
- ...an EC/IC at an adjoining property?*

2. Conducting agency file reviews (and getting paid for them)

Past surveys conducted with environmental professionals in the field confirm that the majority of environmental professionals regularly review agency file records regarding on-site releases provided these records are deemed to be reasonably ascertainable. For the rest, the clarifying language in E 1527-13 regarding agency file reviews may raise the bar of what is typically conducted during a Phase I ESA. The revisions also spurred questions about the differences from state to state in terms of availability of files, travel time required, responsiveness of agencies, and inconsistent/incomplete data. The potential added time that might be required to review agency files also concerns some EPs about how best to prepare clients for longer turnaround times and how to go about getting adequately compensated for the work involved. We heard questions like:

- What's the typical turnaround time on a Phase I ESA with a file search?*
- How am I supposed to handle the cost? Is it built in upfront, done via a change order or does the consultant eat the cost?*
- What are your business suggestions for how my firm can adequately account for the effort/cost of visiting regulatory agency offices to review files of adjoining properties in my Phase I price? I have no idea at the proposal stage whether or not there are any problem properties adjoining my target property or how extensive any files are that may be available!*
- You discussed file review for suspect RECs and HRECs of the project site and ADJACENT properties. What about nearby but NON-ADJACENT properties within the ASTM search radius with RECs, HRECs, or CRECs? Is there a need to review files beyond immediately adjacent properties?*

3. Handling vapor-related risk (not too much, not too little)

In response to the standard's new definitions of "migrate/migration," which includes both contaminated groundwater and vapor migration, EPs have questions about what exactly needs to be done as part of the Phase I ESA to assess vapor-related risk vs. what would be considered part of a Phase II. Questions EPs asked included:

- Does the new definition 'back door' the necessity of conducting a vapor encroachment screening?*
- Where does vapor intrusion/encroachment stand as far as being within the E 1527 standard?*
- When do I have to start including vapor migration screening in my Phase Is? Is there a problem with waiting until the revised E1527-13 standard is published later this year which addresses it?*
- Can you explain what you mean when you said vapor migration should be treated no differently than contaminated groundwater migration in the Phase I?*
- How would you know if vapor migration exists without sampling and testing....which takes it out of scope of a Phase I, Yes/No?*
- Does vapor consideration for a REC only address soil vapor, meaning are ambient air conditions a consideration for declaring a REC?*

4. Timing the move over to E 1527-13 (and making sure clients are ready)

And, understandably, many questions were raised by attendees on when ASTM will publish the new standard:

When will a draft of the new standard be available to the general public?

If the new ASTM method is published, when will it be effective? If one starts an ESA on August 15th and the new method is published September 1st, which method will be acceptable? Will I need to start over?

If ASTM E1527-13 is published, let's say on September 1, could an updated Phase I ESA (that that now exceeds its 180-day Continued Viability) be conducted as an update using E1527-13, or would a completely new Phase I ESA be required in accordance with the new ASTM standard?

Can I begin using the CREC determination now?

5. E 1527-13 in the context of AAI and CERCLA

The last bucket of questions relates to how the E 1527 standard dovetails with requirements for CERCLA liability protection and the AAI rule:

Is there even a moderate risk that these 1527-13 revisions could motivate the U.S. EPA to reopen the AAI rule for subsequent revisions?

Given the continuing obligations' influence on a user's ability to keep a grip on its access to the CERCLA liability protections and how easy it can be to run afoul of those obligations, isn't applying ASTM E 1527 to gain the protections really an illusion?

Will E 1527-13 be deemed adequate for property purchasers to follow to gain CERCLA protection?

Will EPA open a public comment period on the changes? If so, what happens if there are negative comments?

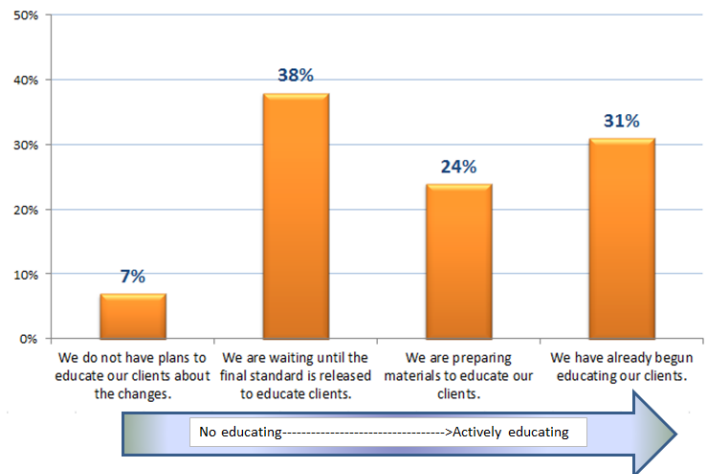
What does the EPA view as the role of the environmental professional re: the user's responsibility to search for AULs/liens?

Is there any chance that EPA's review would necessitate changes to E 1527-13 beyond the current version?

In addition to these five, I'm hearing general questions about AAI requirements (e.g., user responsibilities, shelf life and data gaps) that I have not heard in eight years. As I have said in my introductory comments to these webinars, the release of a new ASTM standard is always an exciting time for the industry. For young and older professionals alike, it is a time to hit the refresh button, and remind yourself and your clients of what should be happening under the EPA/ASTM language. It opens the door of opportunity for consultants to reach out with their technical expertise and educate clients about what they can expect to see in their future reports, to explain the implications for risk management decisions and to assure them that your firm and staff is on top of it and ready to hit the ground running as soon as the new standard takes effect.

Many of you are already doing this according to EDR Insight's latest poll of environmental professionals, which closed just this past Friday. The results show that the majority (or 55%) of EPs have already started this process of preparing materials to educate staff and clients, revising their templates and actively reaching out to end users about the revisions.

The best guess is that the release of the standard will happen sometime around Labor Day so that gives the market approximately four more months to collectively ready itself for the change-over. The concerns and questions raised at our events are important discussions for the industry as a whole to have now to raise awareness, ensure that EPs in the field understand the rationale behind the changes and work toward consistent application of the E 1527 standard practice.



NOTE TO READERS: EDR Insight wishes to sincerely thank all of our Due Diligence at Dawn attendees, and those who attend our webinars and are not afraid to speak up to ask a question or air a concern. We look forward to having you at future events.

Questions or comments?

Dianne P. Crocker | Principal Analyst

Email: dcrocker@edrnnet.com

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