

Technical Brief for Environmental Professionals:

ASTM E 1527-13 Monthly Series - What is a CREC and How is it Determined?

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In a recent brief, [2013 -A Year of Education: Are You Ready for ASTM E 1527-13?](#), EDR Insight highlighted a variety of educational content dedicated to helping stakeholders prepare for the upcoming release of the new version of E. 1527. To continue these efforts, this technical brief addresses one particular area of revision in E 1527-13: definitions of RECs, HRECs and CRECs. In the revised standard, environmental professionals and end users will find:

- A streamlined REC definition
- A revised, clarified HREC definition
- A definition for a new term, “Controlled” REC (CREC)

All of the above defined terms are related to each other and must be understood by environmental professionals to make proper REC determinations when conducting an environmental site assessment.

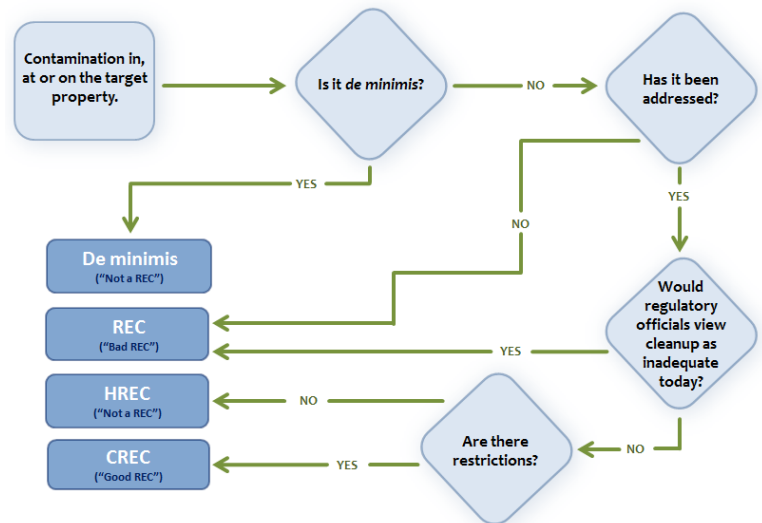
How and why has the REC definition been modified?

Since the identification of recognized environmental conditions (RECs) is at the crux of the Phase I Environmental Site Assessment process under ASTM E 1527, the new streamlined definition of a REC is an important one for EPs to understand. This new definition is designed to more closely align with CERCLA’s text and EPA’s “all appropriate inquiries” (AAI) rule, while still maintaining the instructive language from the current definition. “A lot of verbiage existed in the old REC definition, so streamlining the new language was the goal, not to make a substantive change,” says Attorney and Task Group member William Weissman.

With the language unchanged since 1993, some Task Group members felt that the old definition needed to be modified to address current industry practice. According to Anthony Buonicore, Principal of The Buonicore Group, “[The E 1527-05 definition of a REC] was extremely loose and left a lot of questions for environmental professionals, so modifying it to try to help them deal with issues they face in today’s Phase I ESA market made a lot of sense.”

The process of modifying the REC definition was primarily driven by the attorneys in the Task Group and was brought about by industry concerns, such as complaints of variability in the interpretation of the language amongst industry environmental professionals and inconsistencies with the language in CERCLA (i.e. “in, on or at...”). “I believe the new version of the REC definition is a major improvement over the definition in E1527-05,” says Weissman. Finally, REC determinations should be included in both the findings and conclusions sections of the Phase I ESA report under E 1527-13.

REC-HREC-CREC Relationship



E 1527-05 REC Definition

“the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property, or into the ground, ground water, or surface water of the property.”

New REC Definition:

“the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: (1) due to any release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment.”

Clarification of the HREC definition

The clarification to the HREC definition in E 1527-13 is applicable to properties that meet unrestricted land use requirements after some sort of remediation or risk-based cleanup occurs. If the release occurred in the past and it has been addressed and there are no property use limitations,

Properties that have undergone remediation of a past release:

The revised definition of HREC and the new definition of CREC are intended to clarify the EP's analysis of whether a past release is a current REC at the time of the environmental site assessment. This is historic information of importance to both buyers and sellers of a property and alerts the purchaser of the property of possible future obligations that arise out of the remediation. Because the current status of the property will turn on the factual circumstances surrounding the remediation as well as subsequent changes affecting the property, the E1527-05 standard left EPs without clear guidance on how to determine whether these remediated properties continue to be RECs.

then the environmental professional would make an HREC determination. However, before making that determination, the EP has to consider if anything might have changed in the timeframe between when cleanup occurred and today that could cause a regulatory agency to revisit the site remediation. If there have been no changes, then the HREC determination stands. If changes have occurred, such as a change in cleanup standards, the EP would have to evaluate whether the past release might be a REC today. As an example, a vapor pathway that was not considered in the past could be considered a REC today because of current regulatory policy to revisit sites with potential vapor intrusion impacts. If the EP determines that the conditions at the property satisfy the definition of HREC, that determination must be included in the findings section of the Phase I ESA report. On the other hand, if the EP determines that the conditions constitute a REC, this determination, like all findings of a REC, shall be included in both the findings and the conclusions section.

According to Weissman, *"For the user community, whether on the buyer or seller side of a transaction, they need to know whether remedial activities at the property result in a changed status at the time of the Phase I assessment. Thus, defining an HREC requires a two-step analysis:*

- (1) Did the remediation result in a condition that meets unrestricted residential use? and*
- (2) Has there been a change in regulatory policy so that at the time of the Phase I assessment the site would no longer meet unrestricted residential use?"*

He added: *"If the EP concludes that a REC exists despite the past remediation, then no HREC exists."*

E 1527-05 Definition: HREC

"an environmental condition which in the past would have been considered a REC, but which may or may not be considered a REC currently."

New HREC Definition:

"a past release of any hazardous substances or petroleum products that has occurred in connection with the property and has been addressed to the satisfaction of the applicable regulatory authority or meeting unrestricted use criteria established by a regulatory authority, without subjecting the property to any required controls (e.g., property use restrictions, AULs, institutional controls, or engineering controls). Before calling the past release an HREC, the EP must determine whether the past release is a REC at the time the Phase I ESA is conducted (e.g., if there has been a change in the regulatory criteria)."

Another key change: "de minimis"

In ASTM E 1527-13, the definition of "de minimis" conditions (those that generally do not present a threat to human health or the environment) was removed from the REC definition and assigned its own separate section (3.2.22).

The revised standard clarifies that the term de minimis conditions does not apply to RECs or CRECs.

The addition of CREC term

The new term "Controlled" REC or CREC, introduced in E 1527-13, is closely related to the revision of the HREC definition, as both terms refer to past releases that have been addressed. Unlike HRECs, however, the new CREC definition applies to past releases that have been addressed, but where contamination still remains and is subject to the implementation of required activity use limitations (AULs) such as institutional or engineering controls. CREC determinations are RECs and must be listed as RECs in both the findings and conclusions sections of the Phase I ESA report.

The inclusion of the new CREC language is intended to provide environmental professionals with a term that more effectively addresses situations in which land use restrictions or other controls are associated with the cleanup or mitigation of a site. Attorneys in the Task Group were concerned that the existing HREC definition provided insufficient guidance to the EP on the status of a remediated property when there were AULs or other controls on a site, even though the property had been cleaned up to the satisfaction of the regulatory agency overseeing it. They recommended separate terms to identify properties subject to controls (CREC) and those with unrestricted land use determinations (HREC).

According to Buonicore, there are "good RECs" and "bad RECs". To date, RECs that have been deemed "bad" (i.e., when there is known or suspect contamination on site) have caused issues such as not getting loan approval or requiring Phase II ESAs. Though CRECs will be listed in the Phase I ESA report as RECs, CRECs can be "good". An example of a "good REC" under the revised standard would be a REC that has been mitigated through risk-based corrective action, with the state regulatory agency issuing a No Further Action (NFA) letter as long as the site remains for commercial and industrial use. The CREC, in this situation, would be listed in the report as a REC because it meets the "presence" test, but is not necessarily "bad".

"I think [the new language] reduces risks because it gives EPs guidance on what they have to look at to determine whether a site where contamination was present in the past is a REC today. The CREC definition helps EPs recognize that though the site may have been cleaned-up to the satisfaction of regulators, subject to controls, it remains a REC with user restrictions,"

A good example of the CREC vs HREC distinction:

"Consider a warehouse building located in a heavily industrialized area historically used for manufacturing purposes. Past operations resulted in an on-site release of solvents to soil and groundwater. Under the direction of a regulatory agency, remediation was conducted and the case was granted closure. Elevated levels of contaminants (above unrestricted residential levels) were allowed to be left in place with a land use restriction. Under ASTM E1527-05, this release might have been considered an HREC based on the fact that regulatory agencies had granted the property closure. Under the proposed ASTM 1527-13, this case would fall under the umbrella of the Controlled Recognized Environmental Condition, owing to the presence of residual contamination and an associated land-use restriction."

~ Kathryn Peacock,
Regional Manager with
Partner Engineering and
Science, Inc.

says Weissman. It also alerts the buyer of the property that he will have continuing obligations once the acquisition has occurred to ensure that the controls are properly implemented and maintained.

New CREC Definition:

"a REC resulting from a past release of hazardous substances or petroleum products that has been addressed to the satisfaction of the applicable regulatory authority (e.g., as evidenced by the issuance of a NFA letter or equivalent, or meeting risk-based criteria established by regulatory authority), with hazardous substances or petroleum products allowed to remain in place subject to the implementation of required controls (e.g., property use restrictions, AULs, institutional controls, or engineering controls)... a CREC shall be listed in the Findings Section of the Phase I ESA report, and as a REC in the Conclusions Section of the...report."

Implications of the new REC, HREC and CREC language

The addition of the new CREC term provides a great opportunity for environmental professionals to educate lenders and other end users about not only the key areas of change to the standard but also situations in which CREC determinations would be made. It will be vital for EPs to reach out to their clients, explain the new language and assist them in differentiating between HRECs and CRECs, particularly as CRECs will be considered RECs in the conclusion section of the report.

"Education will be required for lenders and prospective purchasers who have been trained over the years to think that RECs are bad. The opportunity for environmental professionals to educate clients truly exists with the way that the new definitions have materialized in the revision process," says Buonicore.

In order to prepare for the new revisions to E 1527-13, Peacock's firm is "revising the definition of the REC and the HREC in our reports according to the new standard and incorporating this language into our standard templates that are used company wide. Additionally, we will be adding the definition of the CREC to our templates. As we learned from EDR Insight [at the Environmental Bankers Association (EBA) Meeting] in New Orleans, a large percentage of end users are not up to speed on the upcoming changes. Therefore, client outreach and education have been a large part of our preparations. As well, we have implemented internal education programs that will prepare our organization for the new standard."

Weissman believes that EPs should also make sure that, in a situation in which an EP makes a CREC determination, they are reminding property buyers that they will have continuing obligations and should ensure that, if there is a control at the site, the buyers know to make sure it's in place." This conversation does not have to take a lot of time, as there is another standard for continuing obligations that applies once the property has been acquired, but it is something EPs should mention when educating purchasers of properties on which CREC determinations have been made.

NOTE TO READERS: EDR Insight wishes to thank Kathryn Peacock of Partner Engineering and Science, Attorney William Weissman and Anthony J. Buonicore of The Buonicore Group for contributing to this brief.

Additional information on the ASTM E 1527-13 revision is [available here](#).

Upcoming Webinar: April 23, 2013 - [Upcoming Revisions to ASTM E 1527: Are You Prepared for E 1527-13?](#)

Questions or comments?

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