

CLIENT ALERT

November 8, 2021

1

2021 REVISION OF THE ASTM PHASE I ENVIRONMENTAL SITE ASSESSMENT STANDARD APPROVED

by *Madeline P. Fleisher*

On November 1, 2021, the environmental committee of ASTM International approved revisions to the organization's E1527 standard practice for Phase I environmental site assessments.¹ The ASTM standard is widely used to satisfy the "All Appropriate Inquiries" (AAI) requirements under U.S. Environmental Protection Agency (U.S. EPA) rules² that allow parties of commercial property transactions to establish certain defenses to liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Many jurisdictions have also incorporated some or all of these requirements into defenses and exemptions relating to state liability for hazardous waste contamination.

The revised ASTM standard is not expected to be published until December 2021. U.S. EPA's rules currently refer to the 2013 version of the standard, E1527-13, and it is likely that the agency will allow for a transition period in substituting a requirement to utilize the 2021 version, as it has in the past.³ However, those engaging in real estate transactions should be aware that these changes are coming. The key revisions include:

- Clarification of the terms "Recognized Environmental Condition" (REC); "Controlled Recognized Environmental Condition" (CREC); and "Historical Recognized Environmental Condition (HREC) with an appendix providing guidance and examples of each category;
- Addition of more detailed site reconnaissance requirements;
- Provision of a formal definition of a "significant data gap" that might prevent identification of a REC; and
- Updated discussion of emerging contaminants such as per- and polyfluoroalkyl substances (PFAS) as a business environmental risk or non-scope consideration as part of a set of revised appendices.

This final item is particularly important since questions about the appropriate consideration of potential PFAS contamination have become an increasing concern in property transactions in recent years. Still, this is also an evolving area given that U.S. EPA's recently published "PFAS Strategic Roadmap" states that the agency intends to finalize a rule designating certain PFAS chemicals as hazardous substances under CERCLA by summer 2023, which would bring those chemicals within the scope of the ASTM standard.⁴

Stay tuned for further updates from our environmental team at Dickinson Wright.

¹<https://newsroom.astm.org/astm-international-revises-standard-practice-environmental-site-assessments>

² 40 CFR Part 312.

³ 79 Fed. Reg. 60087 (Oct. 6, 2014) (eliminating regulatory reference to use of ASTM E1527-05 to satisfy the All Appropriate Inquiries requirements effective October 6, 2015, in favor of ASTM E1527-13 which had been finalized in November 2013).

⁴ https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf.

FOR MORE INFORMATION:



Madeline P. Fleisher is Of Counsel in Dickinson Wright's Columbus office. She can be reached at 614.591.5474 or mfleisher@dickinsonwright.com.



Sharon Newlon is a Member in Dickinson Wright's Detroit office. She can be reached at 313.223.3674 or snewlon@dickinsonwright.com.



Kevin Desharnais is a Member in Dickinson Wright's Chicago office. He can be reached at 312.782.6660 or kdesharnais@dickinsonwright.com.



AnnMarie Sanford is a Member in Dickinson Wright's Troy office. She can be reached at 248.205.3246 or asanford@dickinsonwright.com.



Anna Maiuri is a Member in Dickinson Wright's Detroit office. She can be reached at 248.433.7558 or amaiuri@dickinsonwright.com.