



NEWSLETTER



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Five Things Developers Need to Know About ASTM's New Phase I Environmental Site Assessment Standard Practice

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The proposed new ASTM Standard E1527-21 for conducting Phase I Environmental Site Assessments (ESAs) went public in late 2021 and is positioned mostly as “clarifications.” But there are several changes that could have a significant impact on real estate development projects.

Here are the top 5 changes GCI sees that clients should pay attention to:

1. Clean up action levels may have changed.

In Ohio, the residual contamination levels allowed by state law for the closure of leaking underground storage tank (UST) removal were first established in the 1980s and subsequently updated, with the current state of Ohio action levels effective as of 2015.

When conducting a Phase I ESA, the environmental professional is now expected to obtain and review state agency file records of old lab data for any UST closure site that received No Further Action (NFA) status, and determine if the lab data met the unrestricted use criteria at the time of the closure.





And, if the remaining residual contamination exceeds one or more of the current state action levels, what may not have been a recognized environmental condition (REC) before is now a REC that could require additional mitigation.

2. Environmental lien searches must now go back to 1980.

This clarification, which is essentially acting as a change in the Standard, requires that title search information reports shall review land title records for documents recorded between 1980 and the present.

The previous ASTM Standard indicated an environmental lien search must be performed, but no date was specified as to how far back to research.

The 1980 date represents the year when the federal Comprehensive Environmental Response, Compensation & Liability Act (CERCLA, commonly known as the federal Superfund law) was enacted and environmental liens first came into being.



Because not all counties provide online access to land title records going back to 1980, a local title researcher may need to be hired to visit the county recorder's office to copy deeds going back to that date. Fees to complete searches have doubled in some cases and lead times may increase.

3. Phase I ESA must soon be compliant with the new standards.

The ASTM standard language allows for a period when both the new and old standards are acceptable. Although the new standard must be fully implemented before the end of 2022, the ending date for use of the old standard is ambiguous.

Not complying with the new standard is an unnecessary risk. GCI is already performing all Phase I ESAs in compliance with the new standards.



The purpose of the ASTM Standard E1527 is to define good commercial and customary practice in the United States of America for conducting an environmental site assessment of a parcel of commercial real estate with respect to the range of contaminants within the scope of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. 9601) and petroleum products. The Standard defines what is required to obtain protection from liability under CERCLA.

ASTM International (formerly the American Society for Testing Materials) is the forum where industry and government stakeholders come together to develop consensus and create standards used around the world to improve product quality and enhance health and safety.



4. Certain Phase I ESA elements must be completed within 180 days prior to closing.

This item is not a change to the standard, but it's so important it's worth revisiting.

To qualify for the “innocent landowner defense,” certain elements must be performed within 180 days prior to closing on a property or there is no chance of attaining those defenses. [Note: the “innocent landowner defense” means you will not be held liable if due diligence was performed according to the All Appropriate Inquiry (AAI) standards.]

These elements include:

- a. Interview of owners, operators, and/or occupants
- b. Environmental lien search
- c. Governmental database review
- d. Site visit
- e. Declaration of the environmental professional

Note that the date on the report and the date of the signed agreement have nothing to do with the 180-day window—the completion date of each element is what matters. It's the earliest completion date that matters now, not the date on the cover of the report.

5. Pay extra attention to report conclusions.

The revised ASTM Standard requires the environmental professional to highlight in the report conclusions whether Recognized Environmental



Conditions (RECs) or Significant Data Gaps were encountered, or not encountered, during the performance of the Phase I ESA.



This significant change is necessary because Controlled Recognized Environmental Conditions (CRECs) are RECs that the user should be aware of, and Significant Data Gaps may indicate increased risk because important information to evaluate the property may not have been available.

Note that Historical RECs (HRECs) are not required to be mentioned in the conclusions. HRECs can be important for the user to be aware of when evaluating a property, but since HRECs are similar to de minimis conditions, they aren't as significant as the RECs, CRECs, and Significant Data Gaps.



As you can see, complying with the new ASTM Standard for Phase I ESAs can be complicated. GCI provides a full range of environmental assessment, inspection and remediation services to assist clients throughout environmental due diligence, design, clean-up and construction.

For more information about environmental services, call 614.895.1400 or contact:

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