



EPA Approves ASTM's 2021 Update to Phase I Standard

Following an extended review process, the U.S. Environmental Protection Agency (EPA) on Thursday, December 15 approved the updated Phase I Standard issued by the ASTM work group in late 2021. This is an important development for property purchasers seeking to qualify for defenses to liability under federal and (some) state Superfund laws.

In a notice of Final Rule published December 15, 2022 (available [here](#)) the EPA amended its All Appropriate Inquiry (AAI) regulation (40 C.F.R. Part 312) to recognize the ASTM E-1527-21 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" as meeting the AAI Rule's requirements. The Final Rule becomes effective on February 13, 2023. The prior standard, ASTM E1527-13, will continue to be valid for one year following publication of the new rule (i.e., through mid-December 2023), allowing flexibility for environmental professionals and users of the reports.

The EPA had proposed use of an expedited approval process to implement the new standard back in March 2022 but withdrew its Direct Final Rule in May following negative comments. The EPA's final approval took those comments into account and adopted the main request. The EPA reversed its March 2022 proposal to allow continued use of the E1527-13 standard along with the -21 version. Under the Final Rule, only the -21 standard will be authorized for use (after a phase-in period). The EPA's Final Rule notice also observed that although some commenters had requested changes to the ASTM standard, the EPA could not do that because ASTM, not the EPA, issued the updated standard. The EPA noted, though, that the AAI Rule does not require anyone to use any version of an ASTM standard, and a prospective purchaser can conduct due diligence under the AAI Rule alone.

The new standard resulted from ASTM's customary process of reviewing E1527 at least every eight years. The update revises several key definitions, provides direction to environmental professionals about considering emerging contaminants, and clarifies that even if a Phase I report finds a need for additional investigation, that finding will not compel any specific course of action because such recommendations were and continue to be outside the scope of the Phase I process.

Early in 2022, the EPA produced its own comparison of the E1527-13 standard, the new -21 version, and the AAI Rule itself. The EPA's comparison and summary are available [here](#).

From February 13, 2023, until December 15, 2023, parties may use either the ASTM E1527-13 standard or ASTM E1527-21 to perform All Appropriate Inquiry. Beginning December 16, 2023, only the updated 2021 standard will have the EPA's approval as meeting the requirements of the AAI Rule.

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