

ALERTS

Environmental Law Alert - New ASTM Phase 1 Environmental Site Assessment Standards Endorsed By EPA As Constituting “All Appropriate Inquiries” Under CERCLA

August 15, 2013 | [Atlanta](#) | [Chicago](#) | [Columbus](#) | [Delaware](#) | [Elkhart](#) | [Fort Wayne](#) | [Grand Rapids](#) | [Indianapolis](#) | [Los Angeles](#) | [Minneapolis](#) | [South Bend](#)

On Aug. 15, U.S. Environmental Protection Agency (EPA) issued notice in the *Federal Register* that it intends to endorse the updated “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,” issued by ASTM International, through a Final Rule amending 40 C.F.R. Part 312. See Environmental Protection Agency, Amendment to Standards and Practices for All Appropriate Inquiries, 78 FR 49714 (Aug. 15, 2013) (link to proposed rule is [here](#)). If there are no adverse comments to this direct Final Rule the rule will go into effect in 90 days, on Nov. 13, 2013. The comment period for this Rule closes on Sept. 16, 2013.

This Final Rule will establish that EPA has determined that compliance with the ASTM standard constitutes “All Appropriate Inquiries” (AAI) for purposes of applying various provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), such as innocent landowner and bona fide prospective purchaser liability protections. However, EPA will continue to consider adherence to the previous ASTM standards as acceptable in evaluating claims for application of innocent landowner defenses under CERCLA for transactions pre-dating this new standard adoption. This continuing applicability of the older environmental diligence standard may nevertheless be a source of potential confusion for current landowners, potential purchasers, environmental consultants, and attorneys.

While the framework for environmental diligence laid out in the current ASTM standard, E1527-05, will largely remain in place, as discussed in [a previous Barnes & Thornburg Client Alert](#), there are several key changes in E1527-13. First, the new standard will clarify the definition of “Recognized Environmental Conditions” (“REC”), particularly the definition of “Historical REC.” Relatedly, E1257-13 will add a new term, “Controlled Recognized Environmental Condition,” which will refer to contamination that has been remediated, but still may be the basis for ongoing or future land use or exposure control obligations. Additionally, E1257-13 adds significant discussion regarding the assessment of vapor intrusion and vapor mitigation risks. Finally, the amended standard also places greater emphasis on conducting regulatory file reviews, particularly of adjacent properties.

For more information, contact the Barnes & Thornburg attorney with whom you work, or one of the following attorney’s in the firm’s Brownfields & Environmental Transactional Diligence group: David R. Gillay, Chair, at david.gillay@btlaw.com, 317-231-7474; Charles Denton at

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