

Commercial real estate industry adjusting to new ASTM phase one environmental standards - by Chuck Merritt



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As I presented earlier this year, the ASTM E-1527-21 standard for Environmental Site Assessments (ESAs) or more commonly known as a “phase one” was approved in February of 2023. However, the Environmental Protection Agency (EPA) will allow the prior ASTM E-1527-13 standard to survive as meeting the All-Appropriate Inquiry (AAI) Rule through February of 2024. Many consultants have begun the migration over to the new standard as it offers the latest standard of care for their clients. Now six months in, with six months left to the official sun-setting of the ASTM-13 standard, implementing some of the “new” sections of the standard has proved challenging.

A more comprehensive look at adjacent/adjoining properties is the change getting the most attention in the new standard. The current/historical usage of the nearby sites where a dry cleaners or gasoline station may be or may have operated in the past are the biggest concerns. Consultants are now required to point out the potential

for these properties to have caused an impact to the soil/groundwater or air quality to the property being inspected. When this occurs, the recommendation is to further evaluate the Area of Concern (AOC) of which the formal name in the report is Recognized Environmental Condition (REC). This has traditionally been done by collecting soil/groundwater samples which in many cases requires hiring a drill rig for the day. Over the past several years, sampling for vapors under a building has gained momentum as a baseline study to determine if any hazardous chemicals from adjacent/adjoining properties have migrated onto the target property.

Vapor sampling can be an effective way to uncover a plume of contamination that may be present under a site. As contaminants break down, they start to volatilize into a gas. The gas can move in different ways through the soil and accumulate in buildings, impacting the air quality. So, a building does not need to be in the direct path of groundwater flow (typically down-gradient) to be impacted by vapors. Vapor sampling alone is less expensive and less invasive to the operations of property than obtaining samples with the assistance of a drill rig.

Following the new standard is not so difficult. It is communicating the changes to clients that can be. It is important to remember that the standard is designed

for purchasers of commercial real estate to protect their interest and achieve certain legal protections as part of the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA) laws which only a fully compliant ASTM-ESA report can provide. Although it will cost more money and take more time, purchasers do realize the importance of the additional investigation prior to finalizing their acquisition.

However, the buyer is not always the one ordering the report as the lending community is a large driver of the ESA whether the loan is a refinance or a purchase. Many times, purchasers are not aware that they would be better served by hiring a reputable company (maintaining proper insurance limits) to represent them with their environmental due diligence deferring to their lending institution to request such a report. In that scenario, the lender becomes the client and not the purchaser. So, the consultant will be the advocate for the lender and their risk threshold and not necessarily what is best for the buyer. This can have good and bad outcomes depending on the quality of the report.

As many loans mature in five to seven year intervals, lenders may now be receiving a report pointing out a concern that was not presented the last time a loan request was initiated. This can occur when a new lender is entertaining the loan

application or the same institution that made the loan in the past. Different lenders have different requirements as well. While some may only require a Transaction Screen Assessments (TSA), which is a lesser product to the ASTM full phase one, others require the more comprehensive report.

One can only imagine the lack of excitement from a borrower refinancing an existing mortgage and being told the current phase one ordered from a bank approved vendor recommends a phase two investigation. It is difficult when working in densely populated cities to not have these properties of concern on busy streets that primarily house commercial businesses. Therefore, more and more phase one reports are recommending additional testing either in the form of sampling for vapors or the more traditional route of bringing in a drill rig to obtain samples.

As with the introduction of anything new, there is a period of adjustment. The ASTM E-1527-21 standard is no exception. Whether consultants are introducing the new standard to their clients now or waiting until the February of 2024 deadline, it won't be long before the industry complies with the changes of the ASTM standard when an AAI compliant report is required.

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