

New ASTM phase one standards approved, but not yet ready for prime time - by Chuck Merritt



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The recently adopted ASTM E-1527-21 Environmental Site Assessment (ESA) or more commonly known as a “phase one” standard was submitted to the federal Environmental Protection Agency (EPA) earlier this year since the standard needs congressional approval every five years. On March 14, 2022, the EPA approved the new standard. However, the EPA also allowed the prior E-1527-13 to survive as meeting the All-Appropriate Inquiry (AAI) Rule as well. This also happened when the E-1527-13 standard attempted to sunset the prior E-1527-05 standard it was designed to replace. So, it was a bit surprising to the industry that we ended up in a similar place. That prompted a slew of negative comments nationwide and led to the EPA withdrawing its direct final rule to adopt the new standard in May. What is expected next is that the EPA will finalize the adoption

of the new standard later this year and in a separate ruling rescind the older standard and eventually recognize the new standard as the only one meeting the AAI rule.

With every set of revisions that accompany the new standard, the hope is that things will be better and consultants that prepare phase one ESA’s will compete on a level playing field by all using the same standard. There are several sections of the new standard that were overhauled to provide better information within the ESA work product. It is important to remember that it is the purchaser of the property who has the most to gain (or lose) by having the correct report to protect their interest and achieve certain legal protections as part of the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA)

Some of the notable changes include a more comprehensive look at adjacent/adjoining properties in addition to the property being purchased (or financed by a lender). Since there is a potential that these properties may have caused an impact to the soil/groundwater or air quality (based on current or historical usage), consultants are required to properly vet these sites.

Emerging contaminants which are not currently required as part of the standard since these type of forever chemicals have not yet been classified as hazardous was

discussed for several months within the ASTM committee. Although not yet considered hazardous by the federal government, many states are adopting their own standards for these chemicals. It is when these forever chemicals end up in the drinking water supply where the danger lies. Ingesting forever chemicals and the long-term effects have been studied and continue to be studied for their contribution to many types of cancers. This has prompted public water municipalities to file lawsuits against the large chemical manufacturers responsible for developing and patenting products that contain the chemicals. The allowable amount of these chemicals is measured in parts per trillion.

The suite of different chemicals found within the emerging contaminants class and include a group known as perfluorooctanoic acid or perfluorooctanoate sulfonate substances (PFAS and PFOS) are found in hundreds of household chemicals along with some more industrial uses in which greater amounts of the chemicals are used. Even though not currently included, there is a reference within the standard, that consultants be aware and present the information to their clients. Which begs the question “Who is the client?” When working for a lending institution in a refinance, this topic can complicate the loan approval process. Once it ap-

pears in the phase one report, lenders tend to require their borrowers to rectify the situation or develop a cost to cure before the closing. To further complicate things, there currently is no easy way to remediate the chemicals once they are present in the groundwater. Public water suppliers have implemented very expensive ultra-violet technologies to remove these chemicals at the point of distribution to their customers. A cost they are hoping to be reimbursed for by the companies that manufactured those products.

When a buyer is the client and conducting their due diligence, they need to understand the ramifications of purchasing a site that may have a PFAS/PFOS chemicals in the groundwater as it may impact the value of the property if there is a real or perceived stigma to the property

So, as we wait for the EPA to repeat the process from the last approval of the standard, consultants have begun to amend their reports, advise clients of the pending changes and take stock of how to implement best practices.

The industry is hopeful that we will have the standard adopted by the EPA this fall which will sunset the preceding E-1527-13 standard for the new E-1527-21 version.

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