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Revisions to ASTM E1527 and proposed revisions to the AAI Rule

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This year, ASTM International, a widely recognized standards development organization, released a new standard, ASTM E1527-13 "Environmental Site Assessments: Phase I Environmental Site Assessment Process." As discussed below, ASTM E1527-13 makes several revisions to the predecessor standard, ASTM E1527-05, without drastically departing from its original framework. In response to the publication of ASTM E1527-13, the EPA proposed to amend the standards and practices for conducting all appropriate inquiries (AAI) under sections 101(35)(B)(ii) and (iii) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended. Under CERCLA, certain parties may be protected from landowner liability if they comply with AAI standards in conjunction with a property purchase. The EPA's proposed revision, filed in the Federal Register on August 15, would add a new subsection to 40 CFR 312.11 that would include a reference to ASTM E1527-13 as a standard that may be used to comply with the AAI requirements. The revision would not require the application of ASTM E1527-13. Indeed, the revised regulation would continue to reference ASTM E1527-05. The EPA has yet to take final action on the proposed rule, but does not plan to institute a second comment period.

In addition to the proposed revision, the EPA has posted a summary of the changes to the ASTM E1527 standard. Briefly, some notable changes include:

Recognized Environmental Condition (REC): ASTM E1527-13 revises the REC definition to be more closely aligned with the language of the AAI rule. It also adds a new definition for "Controlled Recognized Environmental Condition" (CREC), to describe a release addressed with a risk-based clean-up where some contaminants remain in place under certain restrictions or conditions. The Historical Recognized Environmental Condition (HREC) term is also clarified to include only past releases that have been addressed to allow unrestricted residential use.

Migrations: The "migrate/migration" term is revised to specifically include vapor migration.

Consistency: ASTM E1527-13 is drafted to more closely mirror CERCLA and the AAI rule. Terms such as "release," "environment," and "User Responsibilities" are revised for such consistency.

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