



## ASTM E 1527-00: Updated and Improved Phase I Standard

### In the next Carlson Report:

*Wetlands Mitigation  
Banking*

It's official! As of June 2000, the American Society for Testing and Materials (ASTM) has approved and published changes to the Phase I Environmental Site Assessment, now called the ASTM E 1527-00.

While many of the 74 revisions are technical in nature, the biggest change is the introduction of "business environmental risk" as a reason for the investigation. This comes in addition to the original purpose of identifying potential releases of hazardous substances.

"Buyers of commercial real estate today are concerned about all environmental issues that can materially impact the property, not just the environmental issues which can result in the property becoming a Superfund site," explained Anthony Buonicore, task group chair for the Phase I revisions.

### Site Investigations and Superfund

The ASTM Phase I standard was initially designed as a response to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund). Congress enacted the Superfund law in 1980 to address the problem of abandoned hazardous waste sites. The law's reliance on strict, joint and several liability opened up a Pandora's Box of risk for property owners and facility operators at sites where environmental spills or releases had occurred.

Liability for environmental damage came without regard to fault. Thus, owners and operators associated with the site could be held liable for environmental problems

<sup>1</sup> The ASTM develops standard test methods, practices, and terminology in 130 areas covering subjects such as metals, paints, plastics, textiles, petroleum, construction, energy, the environment, and more. Founded in 1898, the ASTM has 32,000 members from 100 countries.

regardless of when the contamination occurred. The courts also included banks as liable partners, making them potential targets for lawsuits.

### Innocent Purchaser Defense

Superfund legislation includes a provision known as the "innocent purchaser defense." This provision states that if a party conducts "all appropriate inquiry" prior to purchase, this investigation can act as a defense against Superfund liability if past contamination is discovered at a future date. However, the law did not address what exactly constituted "all appropriate inquiry."

In order to establish a standard of common practice, an ASTM committee of real estate developers, bankers, lawyers, and consultants approved a uniform Phase I Environmental Site Assessment in 1993, called the ASTM E 1527-93.

This standard was designed to identify Recognized Environmental Conditions (REC) described by ASTM as a "past or present site condition that may have resulted in the release of chemicals or hazardous substances into the structures, soil, or ground water on the property, or that represents the material threat of a release."

*A standard ASTM Phase I includes:*

- Site visit
- Review of government databases
- Review of historical records
- Interviews with owners and occupants
- Info from local government officials
- Written report of findings

### Business Environmental Risk

While the ASTM E 1527-00 standard is still a CERCLA "innocent landowner defense," the new standard introduces the concept of "business environmental risk." Business environmental risk includes any environmental conditions that can materially impact the

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property, not just those conditions categorized as Recognized Environmental Conditions.

The earlier standard's primary emphasis on chemical releases could potentially overlook other troublesome site conditions. Chief among these are wetlands and the presence of asbestos, which often must be removed prior to redevelopment. Both of these issues can increase the cost of development or reduce property values.

"The new standard reflects what is already happening in the marketplace," said Elizabeth Seltzer, who heads Carlson Environmental's Phase I program. "I think many consulting firms already go beyond the basic requirements to consider other business risk issues like wetlands or asbestos. Our Phase I assessments have always addressed other conditions that could affect development."

## New Technical Terms

Other improvements with the ASTM E 1527-00 include an expanded definition of Recognized Environmental Conditions and the addition of new terminology known as Historically Recognized Environmental Conditions (HREC).

The definition of a Recognized Environmental Condition in the earlier ASTM standard included the words "past release." This language created confusion when it was used to describe a site condition that had already been cleaned up.

Environmental professionals writing the reports had a concern that not using the designation of REC could expose them to a greater liability risk. On the other hand, owners of remediated sites preferred that their sites not be identified as having RECs, principally because this could impact lender financing and property value.

To clarify matters, a new designation, Historical Recognized Environmental Condition, was introduced to describe site conditions that have been cleaned up and pose no risk.

## Better Report Format

The new Phase I report has a revised format that offers users a more uniform and concise report that can be readily customized to meet user needs. The ASTM E 1527-00 includes:

1. A separate findings section, where any environmental condition identified in a site investigation will be summarized.

2. A separate opinion section where the environmental professional will provide an opinion on how each environmental condition impacts the property (if at all) and the basis for this opinion.

3. A separate conclusions section where only RECs will be listed. Remember that the designation of an REC is a matter of professional judgment and can vary according to whom conducts the investigation.

## More User-Consultant Discussion

With its emphasis on "business environmental risk" the new ASTM E 1527-00 standard requires that a discussion about the scope of services take place prior to the investigation. The scope of services may vary depending on a number of factors:

- *Whether the client is a buyer, the buyer's lender, or the seller*
- *The type of transaction, e.g. sale, lease*
- *The property type, e.g., existing, to be developed, commercial, residential, etc.*
- *The risk tolerance of the user*
- *The availability of prior environmental reports on the property*

If the user does not discuss the scope of services, then according to the new standard, the consultant must note in the final report that the reason for the investigation is solely to qualify the user for the "innocent landowner defense" under Superfund liability.

## A Final Note

Ultimately, the Phase I remains a screening tool designed to identify existing and potential site conditions. Depending on what is discovered, further investigation may be necessary. This can involve anything from additional research to a full-scale site investigation with soil borings and ground water sampling. All said, the new ASTM standard is a much-improved document that reflects the priorities of today's businesses.

To learn about Carlson Environmental Inc.'s Phase I program, contact Elizabeth Seltzer at 312-346-2140 or [eseltzer@carlsonenv.com](mailto:eseltzer@carlsonenv.com). For technical information about the ASTM E 1527-00 standard, visit [www.astm.org](http://www.astm.org).

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