

ASTM E1527-21/All Appropriate Inquiries: Selected Comments Filed Addressing U.S. Environmental Protection Agency Proposed/Direct Final Rules



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The U.S. Environmental Protection Agency (“EPA”) has received to date 14 comments addressing both a proposed rule and direct final rule amending 40 CFR Section 312.11 which would amend the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) All Appropriate Inquiries (“AAI”) rule. See 87 Fed. Reg. 14224, March 14, 2022, and 87 Fed. Reg. 14174-14177, March 14, 2022, respectively.

The purpose of both the proposed and direct final rule is to amend the AAI to reference ASTM E1527-21 which is titled:

Standard Practice for Environmental Site Assessments: Phase 1 Environmental Assessment Site Assessment Process (“E1527-21”)

The importance of this reference is the confirmation that it could be used to satisfy the requirements of AAI. A detailed overview and discussion of the updated ASTM E1527-21 standard and its relevance to AAI can be found in a [prior blog post](#) which provides both a discussion and slides from a webinar undertaken by Mitchell Williams Law firm.

The importance of AAI is that the standard must be met in certain circumstances such as:

- Threshold criteria for brownfield grant applicants
- Recipients of brownfield assessment grants
- CERCLA liability determinations (i.e., parties seeking protection from CERCLA liability as bona fide perspective purchasers, contiguous property owners, or innocent landowners who must conduct AAI prior to purchasing property)
- Target brownfield assessments

ASTM’s publication of E1527-21 meant that its prior ASTM E1527-13 standard became “historical.” However, EPA is also apparently proposing to retain ASTM E1527-13 as an alternative to comply with AAI.

The comments submitted to date have been generally supportive of EPA’s adoption of ASTM E1527-21. However, a number of comments have criticized the retention of ASTM E1527-13.

For example, the United States Chamber of Commerce in an April 13th comment states in regards to the EPA proposed rule:

- Continued use of 2013 standard. Our members urge EPA to make the transition to the new 2021 standard and eliminate the flexibility to apply either 2013, 2021, or other standards. The new ASTM standard requires agreed on methods and records to justify the property determination.

The Environmental Bankers Association also requests that ASTM E1527-21 be deemed the sole current standard for meeting AAI and cites as the rationale:

Recognition of two standards is likely to cause significant controversy and confusion in the industry since ASTM Committee E-50 has determined that the 2013 standard no longer meets good commercial and customary practice and ASTM now considers E1527-13 a historical standard. Further, having two standards recognized as meeting AAI will create a two-tier system; one for lower-cost, less thorough assessments prepared under E1527-13, and another for higher-quality assessments with consistency in application of key terminology, records reviews, and evaluation of findings.

EPA typically promulgates a direct final rule premised upon the assumption that it is noncontroversial and that the accompanying proposed rule is unlikely to receive significant objections. Because the previously cited commentors and others have raised potentially significant objections it is possible that EPA may withdraw the direct final rule and repromulgate with ASTM E1527-21 as the sole standard.

A copy of the two cited comments can be downloaded [here](#).