

# CLIENT ALERTS

## ASTM 1527-21 Approved by EPA For CERCLA All Appropriate Inquiry

### Client Alert

12.14.2022

The Environmental Protection Agency's (EPA) long awaited approval of the use of the ASTM 1527-21 standard to satisfy the CERCLA All Appropriate Inquiry Rule has finally arrived. The final rule is to be published tomorrow, December 15, 2022. EPA received negative comments regarding the original proposal to allow the continued use of the 1527-13 standard as well as the new 1527-21 standard. In response, EPA has instead sunsetted the 1527-13 standard, which will no longer be a recognized method for complying with the All Appropriate Inquiry Rule as of December 15, 2023 (One year from the date of publication of the final rule in the Federal Register).

Performance of an EPA All Appropriate Inquiry compliant Phase I Environmental Site Assessment is necessary to qualify for (i) protections afforded under CERCLA as an Innocent Purchaser, Bonafide Prospective Purchaser or Contiguous Landowner; (ii) as part of a Baseline Environmental Assessment to obtain liability protection as an owner or operator of a facility pursuant to Michigan's NREPA Part 201; and (iii) to obtain federal Brownfields Assessment Grant funds or other federal funding.

The ASTM 1527-21 provides significant definitional and practice updates and clarifications from the 2013 standard for conducting Phase I Environmental Site Assessments including:

1. New definitions of Recognized Environmental Condition (REC), Historical Recognized Environmental Condition (HREC) and Controlled Recognized Environmental Condition (CREC);
2. Clarifies that the 180-day or one-year shelf-life of the Phase I is based on completion of key components, clarifying that the applicable time period commences on the date when the first of these components were completed and requires that the completion dates be identified in the Phase I report;

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3. Requires the use of specified historical sources;
4. Defines and requires discussion of “significant data gaps” in the Phase I report;
5. Requires the inclusion of maps and photographs in the Phase I report.

Butzel's Energy & Sustainability Practice team can help clients navigate the legal complexities and issues associated with preparing or relying on a Phase I Environmental Site Assessment. If you have any questions about this client alert or would like additional information on the ASTM 1527-21 standard for Phase I Environmental Site Assessments, please contact the authors or your Butzel Attorney for further assistance.

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