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ASTM INTERNATIONAL

E1527-21 is IN... E1527-13 is OUT!

What Environmental Professionals Need to Know

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What EPs Need to Know

Wednesday, January 10, 2024



Presenter



Julie Kilgore, Chair, ASTM E-1527 TASKFORCE

- President of Wasatch Environmental based out of Salt Lake City
- 25 years of experience in environmental assessment, investigation, remediation, and regulatory agency coordination
- Chairs the task group responsible for revising the E1527 Standard Practice for ESAs: Phase I ESA Process
- Served on the ASTM International Board of Directors
- Appointed by the EPA as an environmental professional representative on the regulatory negotiation Federal Advisory Committee to assist in developing the federal All Appropriate Inquiry regulation that ultimately adopted by reference the ASTM E1527-05 standard practice
- An incredibly bright and accomplished individual, a great friend of ERIS, and the entire environmental assessment and remediation industry!




Moderator



Scott Davis, SVP, Industry Engagement, ERIS

The Time Has Come

- ▶ E1527-21 Published November 2021
 - ▶ Available through astm.org (redline also available)
 - ▶ E1527-13 now a “historical standard”
 - ▶ EPA has issued a final rule in November 2022 referencing the E1527-21 standard, effective 2/13/2023
 - ▶ EPA is removing reference to E1527-13 after one year to “provide parties with an adequate opportunity to complete AAI investigations that may be on-going and to allow all parties sufficient notice to become familiar with the updated industry standard”
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Making the Switch

- ▶ Industry feedback indicates that most consultants have already transitioned to 1527-21
- ▶ Some sources have suggested that 20%+ consultants have not transitioned to 1527-21

E1527 Revision Drivers

- ▶ CERCLA and the All Appropriate Inquiries rule require that assessments be conducted “**consistent with good commercial and customary practice**”
- ▶ ASTM uses a consensus-based method among Users and Producers to develop a **consistent** process that is expected to result in a **consistent** deliverable.
- ▶ Inconsistencies in process and quality signaled the areas where the standard could be improved.
- ▶ Review of recent litigation and claims also provided insight for areas where the standard could be improved.

REC vs HREC vs CREC

- ▶ **Recognized Environmental Conditions:**
 - Presence or likely presence of a release . . . to the environment
- ▶ **Historical Recognized Environmental Condition (revised in 2013)**
 - Past releases affecting the subject property, addressed to unrestricted use
 - Must consider current regulatory framework (rules change)
 - HRECs are not RECs
- ▶ **Controlled Recognized Environmental Condition (introduced in 2013)**
 - Past releases affecting the subject property, addressed to anything above unrestricted use
 - CRECs are a subset of RECs (meets the “presence” test) and must be included in the conclusions section of the report

REC vs HREC vs CREC

- ▶ If there is residual contamination **present** at concentrations above unrestricted use criteria, that condition, by definition, will be either a REC (not yet fully addressed) or a CREC (fully addressed and controls understood).
- ▶ If there is residual contamination **present** at concentrations above unrestricted use criteria, that condition cannot by definition, be an HREC.

New Definition: Property Use Limitation

- ▶ Not a new concept. E1527-13 states
“... controls (for example, property use restrictions, activity and use limitations, institutional controls, or engineering controls)”
- ▶ Task Group replaced “property use restrictions” (not previously defined) with “property use limitations” (now defined)”
- ▶ E1527-21: PUL defined broadly to capture a wide variety of risk-based mitigation end points:
“limitation or restriction on current or future use of a *property* in connection with a response to a *release*, in accordance with the applicable regulatory authority or authorities that allows *hazardous substances* or *petroleum products* to remain in place at concentrations exceeding unrestricted use criteria.”


Historical Research

- ▶ Objective is to identify uses back to 1940 or first developed use (unchanged)
- ▶ Intervals (unchanged):
- ▶ Standard Historical Sources (unchanged)
 - Aerial photos, fire insurance maps, street directories, topographic maps, building department records, interviews, property tax files, zoning/land use records

Historical Research

- ▶ Users and producers agreed that additional, consistent rigor needed
- ▶ Clearer emphasis on property identification:
 - The subject property is defined by its current boundaries
 - Properties may be different in use, size, configuration, or address than in the past
 - Research of additional addresses may provide further information to meet the objective
- ▶ Clarified Type of Use:
 - Specific information about uses is more helpful than general information
 - If the general type of use is retail, industrial, or manufacturing, then additional *standard resources* shall be reviewed if they are likely to identify a more specific use and are *reasonably ascertainable*
 - **Note:** Merely identifying that a building is present may not satisfy the historical research objective. For example, tenant operations in a retail building may have included past dry cleaning or other activities of concern.

E1527 Task Group and Industry Input Regarding Dry Cleaners

- ▶ EPA: Dry cleaners are currently the primary source of new superfund sites
 - ▶ Illinois Drycleaner Fund: As of 2016, 88% of dry cleaner investigations for active dry cleaners exceeded action levels
 - ▶ Consultant input: for older dry cleaners, that percentage is higher
 - ▶ Small Business Administration: If a dry cleaner has ever been present, multi-media investigation is required
 - ▶ North Carolina DEQ Dry Cleaning Solvent Cleanup Act Program: PCE continues to be the most prominent cleaning agent used at dry cleaners
 - ▶ Many dry cleaner operators have not upgraded to newer machines
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Revised Historical Research – Subject Property

- ▶ The following standard resources shall be reviewed if reasonably ascertainable, likely to be useful, and applicable to the subject property
 - * Aerials
 - * Fire Insurance Maps
 - * Topos
 - * City Directories
- ▶ If not reviewed, state why
- ▶ Additional standard resources **shall** be reviewed, as needed, to satisfy **the objective**
- ▶ Can continue to use “other historical resources”

New Section: Historical Research - Adjoining Property

- ▶ During research of the subject property, past uses of the adjoining properties that are obvious shall be identified to evaluate if those uses may have led to RECs
- ▶ If researched for the subject property, if they provide coverage the adjoining properties, and if they are likely to be useful in satisfying the objective, review the following:

Aerials

Fire Insurance Maps

Topos

City Directories

If reviewed for the subject property and not the adjoining property, say why

- ▶ Additional standard historical resources **should** be reviewed if warranted to satisfy the objective.
- ▶ Can continue to use “other historical resources.”

City Directories

- ▶ EPs were interpreting **E1527-13** differently:
“Uses in the area surrounding the *property* shall be identified in the *report*, but this task is required only to the extent that this information is revealed in the course of researching the *property* itself”
- ▶ **E1527-13** says factors to consider include:
“. . . the time and cost involved in reviewing surrounding uses (for example . . . reviewing *local street directories* **for more than the few streets** that surround the site is typically too time-consuming)



AUL Search in Land Title Records

The User may rely on title insurance documentation (i.e. preliminary title reports or title commitments) typically prepared for title insurance.

The user must inform the EP if the title report identified environmental liens/AULs

Unless expressly added by a change in the Phase I scope of work, the EP is not responsible for reviewing land title records for environmental liens or AULs

Third-party vendors offer this service, as long as the title search information report reviews land title records back to 1980


Section 6.2 of the Standard

Strengthen the Deliverable

- ▶ Consistent use of “Subject Property”
- ▶ More robust discussion about how significant data gaps affect the EP’s opinion.
- ▶ Conclusions must include RECs, CRECs, and Significant Data Gaps
- ▶ Include Photos and Site Map



Final Thoughts on Changes to E1527

- ▶ Latest revisions reflect input from across the country from users and producers representing current good commercial and customary
 - ▶ Many of the changes were requested by User groups seeking better consistency in the Phase I process and deliverables
 - ▶ EPs producing quality deliverables have seen little substantive change in their process
 - ▶ Read the Standard
 - ▶ Take an ASTM Phase I class offered by ASTM
- 

Final Finals Thoughts

The most common mi\$\$e\$ resulting in big-dollar losses and lawsuits

Inadequate historical research

Lack of agency file reviews

Cursory site visits

Contact Information



- Julie Kilgore
- President, Wasatch Environmental, Inc.
- Chair of the ASTM E1527 Task Group
- Member of the EPA Federal Advisory Committee established to develop the proposed “All Appropriate Inquiry” (AAI) regulation

Salt Lake City, Utah

801-972-8400

jk@wasatch-environmental.com



Environmental Science and Engineering

QUESTIONS?



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