

# **FINAL** ASTM **E1527-21 Update!**

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**Q & A Document** - January 5, 2023



ASTM INTERNATIONAL

## REC/HREC

**1. For the HREC definition, the change of the word “or” in the 1527-13 standard to “and” in the 1527-21 standard with respect to a portion of the definition “...and has been addressed to the satisfaction of the applicable regulatory authority or (now ‘and’ in the 21 standard) meeting unrestricted use criteria established by a regulatory authority...” was one of the bigger changes I noted. Based on this wording change, a site that is closed by the applicable regulatory agency with no restrictions, but did not achieve unrestricted use standards would no longer be an HREC, is that correct? In that case, does the closed site become a REC?**

That change was intentional. It was always intended to mean that you got regulatory closure to unrestricted use criteria through an agency, or you met unrestricted use criteria adopted by a regulatory authority. But the way it was previously worded apparently was not clear. The other thing we learned from some of the regulatory communities is that when we used "residential" criteria, that there actually could be a restricted residential use. So, we just had to take "residential" out.

**2. Is the dry-cleaner on adjoining property a REC? What is the critical distance?**

Things are not RECs. The likelihood of impact to your property, that is the REC. What are your migration pathways? What do your physical setting sources tell you? This is what you're doing as an EP. There is no plug-and-chug number that is going to answer that question.

**3. Can you please opine on whether or not a new UST is a REC?**

'Things' are not a REC. A UST is not a REC. A drum is not a REC. A dry cleaner is not a REC. Things are not RECs. Tie your opinion to the likelihood of releases. So the question you have to answer as an environmental professional is the likelihood of a release from a new underground storage tank and that's going to be your professional judgement.

**4. Can you expand on the HREC and whether an agency NFA is required for a condition to qualify as an HREC?**

The definition allows for self-directed actions, where allowed. There was a lot of discussion about that, and that's why the definition is worded the way it's worded.

**5. A UST that was removed and found to have not leaked (no detectable TPH, VOCs, etc) and then was issued a NFA letter by the agency, is this an HREC or just not an environmental concern?**

You have to have the REC first. "A previous release of hazardous substances or petroleum products affecting the subject property that has been addressed ..."

**6. I've already had an attorney argue with me regarding an adjoining dry cleaner without a subsurface investigation is a "significant data gap" and not a REC.**

I would disagree. We know from industry input that there is a roughly 90% likelihood there's been a release, so you have a likely release. What's the likelihood that release would affect your property? That's your REC.

**7. Does 'likely' mean a 50% or more chance? This is the test that the courts use on other opinions.**

We had a lot of that discussion, and we intentionally did not put a number on it.

**8. Is a significant data gap a REC?**

No. REC is the presence or likely presence of a release. The challenge with significant data gaps, is that we've had to make a judgement call (REC or no REC) about something we have zero information about. With the new change in 2021, I think how this is going to help us is that we can have our report say, we have no RECs, or we have RECs, or whatever conclusions we come to. But there's this significant data gap here that is affecting my ability to identify recognized environmental conditions. Now, that significant data gap must be stated in your conclusions, so that you can opine and conclude about what you know or what your lines of evidence are telling you. But that conclusion is conditional on this really big thing you don't know, because you couldn't get in the building, or or whatever the challenge was.

**9. CRECs and HRECs do not pertain to adjoining properties, correct?**

That depends on what you mean. RECs, CRECs, and HRECs are specific to impacts to your subject property. So if you've had an off-site release affect your property, there's your REC. If the impacts to your subject property from that off-site source have been addressed, that is your CREC or your HREC.

**10. Specific to dry cleaners, but are there any good indicators to determine if a historical cleaner seen on a past directory was a drop off only site or a solvent user? This would likely be considered a significant data gap in most cases, but just wanted your opinion.**

Based on the input we have received, no, there is not a reliable indicator. Just the opposite. We've had lots of "indicators" that it was drop off, or someone said no solvent use, and then very frequently that turns out to not be correct. And you can't really call out no info on past management practices as a significant data gap. Every report you do with historical uses would have a significant data gap. Is it really affecting your judgement when you know from what we have learned in industry?

**11. What about states that don't have an "unrestricted use standard"? (with respect to the HREC definition)**

Every place has unrestricted use standards. Some states defer to federal, but you'll always have standards.

**12. Based on the dry-cleaner data provided, a dry-cleaner that operated for five years in the late 1960s/early 1970s in a multi-tenant commercial center should be considered a REC?**

Things are not RECs. Always tie your opinion to the likelihood of a release. Based on the industry data we have seen, the likelihood of a release that operated on your property in the late 60s/earlier 70s would be a REC.

**13. I've seen some Phase I reports that identify conditions on an adjacent property as "a REC to the site". Wouldn't this only be correct if there are data that indicate contamination likely migrated onto the subject site?**

Not necessarily data. Data would be the "presence" of impacts on your property. If there is no data because no one has ever looked, depending on the fact set, migration pathways, and physical setting information, there could be a "likely" presence of a "likely" release. Remember the new note that is now included in the definition of REC. Likely is that which is neither certain nor proved, but is expected or believed to be present based on your judgement.

**14. If there was a historical release onsite that was closed based on cleanup levels below standards at the time, what happens if we compare those older cleanup standards to present day more stringent standards and notice that it would be an exceedance? Would that become a REC then? HREC to REC?**

Look to the definitions. For example, 3.2.39.1, note 2. That requirement to compare to current regulatory criteria is not new.

**15. Is an adjacent drycleaner a REC if there is no use of groundwater?**

No use of groundwater is a factor to consider when you are evaluated exposure risk, but it has no bearing on the REC determination. The REC answers one question only - is the contamination there or likely there. How you manage it is another matter.

**16. What if the site was a part of a parent tract at one time and there was an identified environmental concern (i.e. a landfill)? If you find evidence of the landfill on our site that is not technically registered to your site but it was to the parent tract, how do you proceed?**

You must answer the question - is there likely to be a release affecting your site associated with that landfill. You've got to figure out where the landfill is and then determine if you think there is or is likely to be a impact to your subject property.

**17. The Subject Property was formerly part of a larger parcel that was subdivided into smaller parcels. The large parcel was issued a 'No Further Remediation' letter prior to being subdivided with engineering barrier controls. Currently, the Subject Property is in compliance with the engineering requirements, but an adjoining property is not. Is this considered a REC for the Subject Property due to the potential of the closure letter being voided?**

Oooh, interesting question. Could the CREC, the control, be voided because one of the parties has violated the conditions? I would defer to the regulators or the attorneys on this one.

**18. Can you briefly discuss how to handle potential HREC situations when the incident closed out in the 90's with outdated sampling or concentration requirements?**

Look to the definitions. For example, 3.2.39.1, note 2. If you think there is a likelihood that the release is present, that's a REC.

**19. One common point of confusion, HRECs are by definition not RECs currently, right? Because otherwise an HREC is just a REC. For example, a resolved UST release, that was resolved to standards that happen to remain current, is an HREC because it complies with current standards. Otherwise, if it does not comply with current standards, it's just a standard REC. Just wanted to confirm :) Thanks for your clarity!**

Correct, HRECs are not RECs because they no longer meet that "presence" or "likely presence" test of a REC.

## TIMING/VERSIONS

**20. Is EPA sunsetting its acceptance of the prior standard E1527-13 one year after the new standard's effective date (February 13, 2024) or one year after the publication date of the final rule (December 15, 2023)?**

That is outlined in the rule Section 312.11. References: (c) Until February 13, 2024, the procedures of ASTM International Standard E1527-13 entitled "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process."

**21. Can we reference this new ASTM E1527-21 on new phase I ESA?**

Yes, I've been encouraging people to do that even before this. But now that we have the official reference stated by EPA, you can choose to do a couple of things: if you want to wait until February 13th, you can still reference the prior 1527-13, but also just add a little note that says, this

assessment incorporates the updated procedures and definitions set forth in 1527-21. I've seen that to be very successful. I would encourage folks. Let's get rolling. Let's incorporate the new stuff.

**22. The EPA rule issued Dec 15, 2022 has conflicting information regarding time frames. Page 76579, column 1 says 1527-13 can be used for up to one year after the AAI rule becomes effective (Feb 23, 2023); Page 76580, columns 1 and 2 says one year from publication of the final rule (Dec 15, 2022). Any comments on this?**

Yes, I had the same confusion.

**23. Will the date of the report need to reflect when the report was completed OR when the research was started?**

When it's completed. But the date of each of the components that are required to be conducted or updated within 180 days must be identified in the report.

**24. After how long a Phase I ESA should be repeated?**

Section 4 discusses the various components that must be conducted or updated within 180 days.

**25. I know it was mentioned earlier, but is there a transition period for switching from the 2013 to 2021 standard? What is it?**

EPA is giving a year, but I would not recommend waiting that long. Remember, the -21 reflects current "good commercial and customary practice".

**26. Due to reporting the shelf life of an ESA, there has been an exponential increase in ESA Update requests (an ESA over 180 days but less than 1 year old). The standard says to update environmental records, liens, site recon, and interview. In terms of reporting, what is the industry expectation for the ESA Update Process? An addendum to the original ESA, a revised ESA that has a new date, etc?**

AAI and E1527 do not specify the format. That is up to the EP and the User.

**27. If a prior report was done in 1527-13, are there any barriers or complications to doing an update of that report in 1527-21? What pitfalls should we watch out for if doing this? (Within the relevant time frames, of course.)**

There shouldn't be pitfalls using -21. Just make sure that the update complies with the current version that you cite.

## DATA GAPS

**28. Is a non-response from a Regulatory Agency considered a significant data gap?**

It could be. Or maybe not. Are there other sources? Did you get adequate information from someone else? What is the question you're needing to answer from the agency? You have to evaluate what it is you can't get from the agency and you have to opine on whether, considering the totality of the information, not hearing back from that agency is affecting your ability to identify RECs.

**29. What is the consequence of a "significant data gap"?**

Unfortunately you probably won't know for a very long time.

## HISTORICAL RESEARCH

**30. I thought that there was a minor tweak to standard historical resources? Wasn't interviews added as one? Or am I remembering incorrectly**

Yes, see 8.3.4. Interviews was added as a standard historical source and chain of title was moved to Others in 8.3.4.9.

**31. If the User doesn't provide the lien and title information and don't authorize it in a scope of work, does this mean they aren't covered under CERCLA?**

Well, that's a legal question. What you as the environmental professional is responsible for, is asking the question. Did they have a title report, and did they review it for AULs and environmental liens? You as the environmental professional ask the question. If the user does not answer the question, you treat that as a data gap. And then you must opine on whether that is a significant data gap. If you've never had EPA on your site, if you've never had any release, if there's never been any investigation or remedial action, maybe it wouldn't be a significant data gap. But you're going to have to judge that one.

**32. Can you please explain changes to title search requirements (now required for 1980 to present?)**

So again, title reports that are issued by a title company for the purposes of a property transaction that everybody gets, and every buyer is going to get one of those. Nothing changes there. Those are acceptable. Those have always been acceptable, and that's always been a user responsibility. The changes are in these third-party vendor providers that are selling you, these environmental lien and AUL searches, and some have interpreted the language in the standard to only look at current owner information. And the reason that disconnect was happening is because what we had said in the standard was to review for environmental liens and activity and use limitations currently affecting the property, because what we didn't want is for buyers to have to go chasing down environmental liens and things that have been satisfied or removed. Well, it was brought to the task group's attention that the way some of these vendors were interpreting this was a requirement to review current owner information only. And that's not what we meant. So, for those vendors who are selling you something outside of what a buyer is already getting for their title reports, if you choose to do that, or you're contracted to do that which is not required of you by the standard, you must make sure that vendor is doing it appropriately and going back far enough that they would pick up those environmental covenants. But again, title reports that the title companies are giving to buyers are fine. Nothing changes there. Let the buyers do what the standard has always expected the buyer is doing.

**33. Can you go into more detail regarding historical research when property boundaries change through time, and how you address that when there aren't FIMs or a similar historical resources that identify address/property boundary changes? Do you have examples of sources that would show when a parcel or property boundary changes? It isn't always obvious when looking at property records, plat maps, aerial photographs, etc.**

Yeah, it happens all the time on most of our properties. You must be clear on your current subject property boundaries. That's defined by your user as your subject property, then as you're evaluating your historical resources and regulatory research, you must figure out if those things that you are identifying were on your subject property or not on your subject property, and that can be tough to figure out, sometimes takes a bit of work.

**31. So are the 3rd party vendors going back to the 1980's for AULs?**

I was really hoping when this standard came out that that's what was going to happen, but I have been hearing that's not what is happening. Apparently they are offering consultants both, then you get to choose if you want one that meets AAI and 1527 or the cheaper option that doesn't. But here's my question, why buy something that doesn't satisfy the standard or the regulation. Reviewing title reports for AULs has always been acceptable and has always been a User responsibility. So, I don't understand how we wound up with this problem to begin with.

**35. Just to be clear, the User only has to look at current data in a title insurance report, but the Consultant obtaining a lien search has to research records back to 1980? Is that right? Which is required by the AAI regulation?**

No, that is not correct. Review Section 6.2.1. "The user may rely on title insurance documentation, commonly fashioned as preliminary title reports or title commitments, which are prepared in the course of offering title insurance for the subject property transaction to identify environmental liens or AULs filed or recorded against the subject property. Title insurance documentation involves a reliable review of land title records or judicial records." Title companies represented to the task group that traditional title work will pick up AULs. Nothing changes there. But review 6.2.2 and 6.2.2.1. There are these other deliverables that have evolved that are outside the traditional title process. Those deliverables have a variety of names and (we found out) often are limited in scope. It's those types of deliverables that consultants and maybe some users have been ordering outside of the traditional title process that were missing AULs because they were only looking at current owner information.

**36. If the title search is done by the User and not the EP, is it necessary for them to be provided to the EP to include in the ESA?**

No. Review Section 6.2.3. The standard is, and has been, very clear on this.

**37. So does this mean that the EP does not have to order the AUL/Title Reports and have it in the report? This is still on the user/owner? I do not add this into my report unless an AUL has been told to me by the user from the questionnaire (or I find it in the database search).**

This has always be a User Responsibility. No, the EP does not have to order an AUL/Title report and does not have to have an AUL/Title Report in their reports. Review Section 6.2.

**38. Must there now be a section for historical adjoining properties a separate one for historical surrounding properties? And if so, is there a radius limit for surrounding?**

The E1527 does not specify how reports are organized or sectioned. That being said, it would generally make sense to have a section for historical research of adjoining properties. There is no specific radius for "surrounding," nor has there been one in past versions of the standard.

**39. How do you add photos and maps to reports that are copywrited material? For example, city directories reviewed at libraries can not be copied for inclusion in reports. In these cases, how do you recommend dealing with this in the reports?**

There is nothing in the standard that requires either violation of copyright or inclusion of printed material like city directories so perhaps one can simply describe what you see, or an abstract of specific listings. The EP is taking photographs, or purchasing aerials, or obtaining from public sources.



**40. Does 40cfr 312.22 require the consultant to pull a lien search?**

No, this is a user responsibility. Review Section 6, and specifically Section 6.2.3.

**41. Based on my experience, the title work problem is due to timing. The title work is often not produced until after the Phase I is complete and closer to closing.**

Agree.

**42. How should it be handled when the user does not have the title opinion when the Phase I is ordered and/or completed.**

Address it as a data gap, and opine about whether it represents a significant data gap.

## TRAINING

**43. What is that best source (powerpoint or other presentations) for internal training of new employees?**

Take an ASTM training provided by ASTM approved instructors.

**44. What training would you recommend for users/property owners (i.e., corporate EHS managers) to become familiar with the new standard at a high level?**

There are several one-hour webinars, like the one you attended. Send me an email and we can set one up.

**45. Julie do you know of an ASTM Phase I training session (offered through ASTM.org) that YOU will be instructing?**

Yes, ASTM has me scheduled for a few of them this year. Send me an email and I'll let you know the dates I am doing.

## MISCELLANEOUS

**46. Can you further explain what is meant by including physical setting source information obtained from agency file reviews?**

Describe depth to ground water and the groundwater flow direction that you found in those groundwater monitoring reports. Soil types can be helpful. The normal stuff the EP is considering when evaluating migration.

**47. Most of our Phase Is are rural so we do use E2247-XX most of the time. Would the revisions for E-1527 be considered for E2247-XX as well?**

Yes, that is in the works right now.

**48. For comparison, what is the rate of exceedances for gas stations?**

Oh, I don't know the answer to that question. I personally do not have that data, and we know it's high, just from our experience, especially old gas stations. And don't forget the service. I see that happen a lot when I review reports. Everybody is focused on the great big bugaboo of underground storage tanks, but they forget the service. So, just as an industry, I think we see that the risk from those gas stations, the old gas stations especially, are high.

**49. Can the history for the site, the adjoining and surrounding area, all be discussed together? Or do you recommend separate sections?**

1527 doesn't say how reports are organized/sectioned. Depending on how complicated it is, I think generally it would make sense to separate the discussion. Now this is just the opinion, according to Julie, you've got the boundaries of your subject property, and you need to be specific about what's going on within your boundaries, unless it's all just an agricultural field or all the same thing which happens sometimes. But it makes sense that they should be broken out.

**50. Is a Vapor Intrusion review required?**

No.

**51. What is an acceptable site map? Is an aerial or topo good enough or does it have to be a CAD-type drawing with labels?**

The standard does not specify.

**52. Do you anticipate price increases with database packages or Phase I ESAs with the new standard?**

Not for the vast majority of consultants who are already doing what is outlined in the new standard. Remember, the changes reflect "good commercial and customary practice", which means this is what most professionals are already doing.

**53. Did users indicate they are willing to pay more for stronger deliverables?**

We are not permitted to discuss pricing in an ASTM task group. There is a very strong anti-trust requirement.

**54. Why not just name it 1527-23?**

The standard must reflect the year in which it successfully completed balloting.

**55. If the User does not provide title information and does not change the scope to have the EP order the title information - should we consider this a "significant data gap"?**

No, it would be a data gap, then the EP opines about whether it represents a significant data gap, which is defined now as a data gap that affects the EP's ability to identify RECs.

**56. Were there any changes to the 21 standard when it was first released, to when the EPA finally gave it approval?**

No.

**57. How would you identify a site that was closed a long time ago with contamination that would currently be closed with restriction, but that were closed in early days without restriction?**

The data has to be evaluated by current standards.

**58. What is 'findings di minimis'? The word 'findings' is not defined. It is also used in conjunction with 'opinions'. What does 'findings' mean?**

Review Section 12.5. ". . . those features, activities, uses, and conditions that, in the judgment of the environmental professional, may indicate the presence or likely presence of hazardous substances or petroleum products at the subject property."

**59. Should the property be referred to by the full "subject property" term every time we reference the property throughout a report? It starts to feel very clunky after the first few times in a section**

Yes.

**60. Is "physical setting source" defined in the standard?**

Yes. Review Section 3.2.63.

**61. Interviewing a local regulatory person in a large city is very difficult, any suggestions?**

Make and document the attempts. If no response, treat as a data gap, document what was done to address the data gap, and opine about whether the lack of response is a significant data gap.

**62. Is a mapped tank on a fire insurance map or confirmed tank (by GPR) in the sidewalk outside the SP boundary on-site or adjoining?**

Maybe. Does your subject property boundaries include the sidewalk? If not, the tank itself would be adjoining.

**63. What if we have a linear project where the subject property is contained within roadway medians, how do we reasonably look at all hundreds of "adjoining properties"? Thinking about city public works type projects here.**

Yep, I just finished one of those. It's challenging and it's complicated. There are strategies. We broke this last one into 5 logical sections. We did one that covered several blocks of a city, and we broke that one into 21 areas. One linear corridor project we did covered the entire length of a major road through the city. The city did TSQs on every parcel, with a specific set of research rules that would bump a particular parcel up to a Phase I. Lots of strategy options to discuss with a client.

**64. If an adjoining property is a large road such as an interstate or other major highway, can you treat that road and the historical uses of that area as the adjoining property or do you also have to include the current adjoining property across said roadway?**

Both. Currently, the adjoining property is across the highway. Historically, that may be different. There is some language added to the -21 standard that reminds consultants to be aware of this.

**65. I purchased the E1527-21 standard last year when it came out. ASTM won't refund my purchase price since it was greater than 60 days when EPA withdrew their approval. Will I be required to buy this new update, again?**

EPA did not withdraw their approval. EPA withdrew the direct final rule and continued with their traditional rulemaking process so they could address the comments that were submitted. There is no new ASTM 1527 update. The E1527-21 standard did not change. What you purchased is what EPA approved.



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