

A revised ASTM Standard

for Phase I ESAs is HERE

ERIS Webinars - Q & A - November 1, 2021

REC/HREC/CREC

1. HREC - what if the most recent data for an incident with a NFA is from the 90s and doesn't include what we currently test for or the concentrations have changed - would we consider it a REC?

Probably. Some would argue that if there was no benzene in a used oil excavation, there's probably no chlorinated solvents. But it's a risky guessing game without the data.

2. Please clarify that CREC needs to be implemented vs proposed.

Correct. It's not done until it gets across the finish line.

3. A HREC is not a REC? If you must consider current regulatory standards relative to a past REC which has been addressed to unrestricted reg standards (an HREC) why can't you say an HREC, is now a REC if the conditions do not pass current standards?

That's exactly what you say. If the standards changed and the old data does not meet current unrestricted use, that HREC is now a REC because you have the "presence" of something that exceeds unrestricted use criteria. Or perhaps, depending on your jurisdiction, it might be a "CREC" if it now meets a commercial standard and it's a commercial property.

4. Petroleum storage tanks can take years to get closure, what are you calling that? HREC CREC?

REC until it gets closure

5. Adjoining upgradient LUST - State agency issues NFA status for adjoining facility but we do not know GW plume concentrations on the subject property - is that HREC?

HREC only applies if your site was impacted by that release and now the impacts meet unrestricted use criteria. The contamination was previously there, and now it's not. So not an HREC. If you have an adjoining upgradient LUST site with an NFA, you have to ask yourself the likelihood that there is contamination on your site.

6. Do I conclude that release at a property cleaned up to a site specific standard would be considered a CREC?

Yes, that is the concept, and you need to relay to the client what the site-specific assumptions were based on. In other words, what is the "control" that is expected to ensure the contamination is properly managed in the future.

7. A REC is completely unaddressed while a CREC is addressed to some degree above unrestricted use?

No, a REC can be partially addressed, on it's way to being a CREC. Can't be a CREC until it's across the finish line.

8. In other words a CREC is a partially addressed REC?

No, not partially addressed. A CREC is a REC that has been addressed to the satisfaction of the overseeing regulatory agency. The risk-based remedy is done, the controls are in place.

9. Is there a contingency in the definition of CREC for de minimis conditions such as a small area of inaccessible soils that does not need to be managed by the buyer?

Ah, but they do need to be managed by the buyer. They need to leave it alone. If that building comes down, or the utilities need to be repaired, or whatever creates the lack of access at the time of remedy, that soil will have to be managed appropriately if/when anyone touches it. That's a CREC.

10. If there has been a release on a Site in the absence of any data except an unrestricted use NFA letter, is it professional judgment to call that release an HREC (based solely on the NFA) instead of a REC (assuming it isn't a CREC).

Maybe. But guessing is dangerous.

11. Under Risk-Based closure LPST sites can be granted closure, with contamination still in place. Since closure is unrestricted these sites would be HRECs. But...construction/excavation can bring up contamination. So...I would call this a REC. (Note: There is no AUL deed control etc.) What is "the answer"?

Not an HREC at all. That's a classic CREC, not an HREC.

12. Do HRECs RECs and CRECs only apply to subject properties or will it also apply to adjacent properties?

It only applies to contamination on your site. So if the adjoining release migrated to your property, then these terms apply.

13. If there is an offsite release that likely affects the subject property does that constitute a REC?

Yes

14. In some states residual contamination may meet risk based criteria for unrestricted residential uses and the Site may achieve formal regulatory closure. However there are post closure regulatory obligations to properly manage contamination during excavation relocating/transporting the contaminated media. Would post-closure regulatory obligations be considered a "control" for purposes of defining an issue as a CREC?

Yes

15. Would you classify the historical presence of a dry cleaner as a REC even if there is not evidence of a release?

The presence of a dry cleaner is not the REC. A REC is specific to the release or likely release to the environment affecting the subject property. Industry feedback that came to the task group from multiple regulatory, user, and EP groups were consistent. There is a very high likelihood of releases from dry cleaners. The likelihood of a release to the environment from a former dry cleaner - THAT is the REC.

16. Will the ASTM standard be stating explicitly that an unknown commercial building is a REC? Otherwise this creates a burden on the consultant when talking to clients.

No, the ASTM standard does not have an explicit statement.

17. Given your statement that 80%+ dry cleaners have releases would there ever be an "unlikely" presence of hazardous substances?

Industry feedback that came to the task group from multiple regulatory, user, and EP groups were consistent. There is a very high likelihood of releases from dry cleaners.

18. Here in Florida there are thousands of golf courses. And thousands of consultants each of whom have their own opinion as to golf courses. Are they RECs or not? The State regulates and permits the use of various fertilizers and chemicals and pesticides on golf courses. When a golf course closes and the new buyer wants to build homes there can be a big tussle as to the cleanup if needed. Any thoughts?

This is a classic example that we use in the Phase I classes, and there is some discussion on this topic in the 1527 legal appendix. "Application" is not a "release". Now, when it's not going to be a golf course anymore, that's different.

19. How would you classify the following circumstance - a past on-site spill is closed by the regulatory agency but residual contamination remains. The spill was closed without any restrictions by the agency.

If the data meets unrestricted use criteria, then it's an HREC. If the spill is closed meeting a risk-based standard, then there is a restriction or limitation, even if that restriction or limitation is not specifically stated. The risk-based standards are based on something that limits access to the contamination.

20. Would you call an historical industrial property identified offsite but with no known reported release a REC?

The definition of REC is specific to the presence or likely presence of a release or likely release affecting your property. How you evaluate that offsite industry property depends on your judgement about whether 1) there was a likely release from that offsite source and 2) if there were a likely release, would that likely release have likely reached your property?

21. If an unknown commercial building is identified - shown on the aerials but none of the other 7 sources show its use and the property is not on regulatory databases - would you identify this past use as a REC and recommend subsurface?

The "use" is not a REC. The "building" is not a REC. The REC is specific to a release or likely release to the environment affecting the subject property. If you have absolutely no information about the historical "use" of that property, check out the new definition for significant data gap.

22. Please share whether an offsite release is a REC

The offsite release is not a REC. It's a finding. Now, what is the likelihood that the offsite release has affected the subject property? THAT is the REC.

23. Do you consider an undocumented soil pile with no staining or odors a REC or significant data gap?

I consider it a "finding." Evaluate what you know, what you see, what you smell, and make a professional judgment call.

24. If the responsible party has been established on the adjacent property is this a REC for the subject property?

Responsible party is not part of the REC definition. The REC definition is specific to a release or likely release affecting the subject property.

25. Would the presence of railroad tracks on the subject property be considered a REC?

The presence of a "thing" is not a REC. The REC definition is specific to a release or likely release affecting the subject property.

26. Would the historic former use of the subject property for growing crops be a REC if it can't be determined if pesticides or herbicides were used?

The REC definition is specific to the presence or likely presence of a release to the environment affecting your property. So you'll have to use judgement and experience in this scenario.

27. Was there discussion about how to address RECs on properties that have been divided into commercial condominiums? For example if there is a REC on a larger parcel but the parcel has been divided into condominiums how should these issues be addressed?

No, this was not specifically discussed. What WAS discussed is being very clear on what is the subject property. So if you have a condo that is the subject property, the REC question is whether there is a release or likely release to the environment that has or is likely to have affected the subject property.

28. Do HRECs RECs and CRECs only apply to subject properties or will it also apply to adjacent properties?

The REC is specific to releases or likely releases to the environment affecting the subject property. Releases on adjoining properties are "findings." Now you have to evaluate if there have been impacts to the subject property. The REC is specific to releases affecting the subject property.

29. For properties nearby but not necessarily defined as "adjoining" such as separated by a street or within <1/8 of a mile etc if deemed could these properties be identified as a REC HREC or CREC or does this only apply to subject property and adjoining properties?

You could have a release a mile away. If that release has affected the subject property, you have a REC (BTW, review the definition of "adjoining". It includes property across the street).

30. If a site gets a closure letter for 'no further action is required' after a UST removal and there are no land use restrictions or deed restrictions, but the LPST closure is risk-based, and if any future development involves excavation of contaminated soils (they should be disposed of at a landfill). Is this a HREC or CREC?

CREC. Check out the new definition for property use limitation.

31. There is a lot of grey area surrounding body shops and auto repair shops. It would be helpful to know how often soil and groundwater contamination is found at these sites depending on the years of use? Are you aware of any large look at these types of properties?

No. Only my experience. Highly likely.

32. In many states risk assessments are conducted to close LUST sites by regulatory agencies. In the past these may qualify as an HREC. However it appears that this would now be a CREC under the new standard. Is this generally correct?

Those have not qualified as an HREC since 2013.

33. So a future impact must be imminent to be called a REC for the subject site if there is an offsite use that is suspect? Like an offsite dry cleaners that there is an 80% likelihood had a release but the release has gone unreported or undiscovered

I think you're referring to the "material threat" definition. That definition was intended to capture something that you observed and the release to the environment hasn't happened yet, or perhaps it's de minimis right now but could get worse if appropriate management isn't implemented, then you have a material threat of a future release and someone has a chance to do something to minimize the likelihood that it will happen. If you have an offsite dry cleaner and in your opinion there is a high likelihood of a release (which would be true) and if there were a release, and physical setting source information indicates that there is a likelihood your site could be impacted, that's a REC.

34. Is the threat of migration from an adjacent property (i.e. from a adjacent property with known groundwater impacts) a REC if no samples have been collected from the Subject property (yet)?

If the downgradient extent has not yet been defined, you have to make your judgment on that likelihood.

35. Isn't there a material threat to release with USTs because of human error - filling over-filling lack of attention to monitoring systems lack of maintenance and testing etc. Doesn't experience teach us that these are 'material'? Can we not have a REC without any specific remedial action recommended?

You have three questions here. 1) Yes, there is always the chance of a release from human error. That doesn't make it a REC. 2) Your argument in the second statement would mean that anytime there is the mere presence of any haz substance or petro product then there would always be material threat of a release caused by human error and therefore every site with haz substances or petro products would be a REC. You can certainly make that judgment call, but that would be inconsistent with the intent of the standard. 3) You should never have recommendations in your report unless the client specifically asks for them. This is discussed in Section 12 of the standard.

36. USTs are not RECs?

USTs are not RECs. Drums are not RECs. Sacks of chemicals are not RECs. These are all findings. The REC definition is specific to the release or likely release to the environment.

37. If a historical REC existing on your subject property is identified and closed by a regulatory agency, can soil and water sampling be included in the phase 1?

Client and EP can expand the scope of the Phase I in any way they contractually agree to.

EMERGING CONTAMINANTS

38. So if your state has standards for PFAS (NJ ex.) would that substance then be considered scope?

Live answered. See Section 1.1.4 of E1527-13 and E1527-21.

39. If an emerging contaminant (such as PFAS) is regulated in a specific state would that place it as a Scope Consideration?

Live answered. See Section 1.1.4 of E1527-13 and E1527-21.

40. Once PFAS are haz substances knowing that PFAS can be transported by air for miles how far should one check from a likely discharger?

Not discussed by the task group.

41. Can you discuss the conflict between State regulations vs. Federal regulations e.g. with emerging contaminants or conflicts between State or Federal screening levels? (take California for example).

Live answered. See Section 1.1.4 of E1527-13 and E1527-21

42. When preparing a Phase I ESA report where will I find information regarding PFAS/PFOS in connection to a subject property? What agency would have this information?

Not discussed by the task group.

43. Some states have already established risk-based remediation criteria for PFAS and PFOS. Wouldn't this obligate the professional to review and assess (in those states) even if EPA has not defined them as CERCLA hazardous substances?

Live answered. See Section 1.1.4 of E1527-13 and E1527-21.

VAPOR

44. What about vapor intrusion?

Vapor intrusion is not part of a Phase I.

45. Any updates to vapor intrusion potential?

No.

46. At least a few states now consider any discussion of subsurface migration of contaminants as the practice of geology requiring review by a licensed geologist. Was this considered?

State specific requirements are not part of the E1527.

47. Any update status on vapor migration assessment (E2600-10)?

No

48. In Michigan property owners/operators have ongoing due care obligations even if they are not liable for contamination. The due care obligations pertain to vapor intrusion (VI). So how does VI fit into the ASTM 1527 discussion?

Due care, continuing obligations, and VI are all outside the scope of a Phase I. For the purposes of a Phase I, these would factor into your evaluation of CRECs.

THE NEW STANDARD

49. How can I obtain the latest redlined copy of the standard?

Available now on the ASTM website.

50. What is the transition/period and how does it apply to upcoming Phase 1s?

No specific transition period.

51. When will the new standard go into effect?

The new standard is now the "active" standard as of the date of publication. There is no specific timing for implementation.

52. Is there any CONFLICT between 1527-13 and 1527-21? Meaning if I am meeting 1527-21 is there anything that would take away from 1527-13?

No conflict, and nothing in -21 takes anything away from -13.

HISTORICAL PRODUCTS

53. No Chain of title search

Chain of title is now listed as an "other" historical resource.

54. Is the use of oblique aerial photographs as a standard historical source addressed?

Not beyond what is already in -13.

55. I consider topos to be insufficient for historical research... supplemental maybe but never as a stand alone source

Under 1527-21, none of the historical sources should be stand alone. Must check aerial, topos, city directories, and fire insurance maps, or say why you didn't.

56. If you live somewhere where Sanborns are relatively uncommon (ie Phoenix) can you put "it is of XX Firm's professional opinion that these are unnecessary?" Or something along those lines?

Better to say it is XX Firm's experience that they are not available for this area, if in fact that is the case. But Phoenix has fire insurance maps, so you would want to make sure you're right about that.

57. How can assessor records and building department records not be required as historical sources?

They are listed as standard historical sources.

58. Is there a clarification in the new standard indicating that the lien/AUL search must go back to 1980 and not simply look at the most recent deed transfer?

For third-party provided lien/aul searches being conducted outside the normal process of obtaining title insurance, yes.

59. Please review the discussion about interviews relating to historical sources.

"Interviews" is now listed as one of the 8 standard historical resources.

60. If the subject property is retail for example will the historical for the adjoining properties also require looking into the 8 standard sources? Or will the big 4 suffice?

The big 4 first, then research more if needed to achieve the objective.

61. Do we look for the aerals and fire insurance maps of the adjoining properties from now onwards?

Task Group research indicates that most consultants already do that and most data providers already provide that. It would be an unusual circumstance to review aerial photographs and not see the adjoining properties. Fire insurance maps can be more challenging, but EPs and data providers have consistently said that they do.

ADJACENT/ADJOINING PROPERTIES OR PARCELS

62. What if you are doing a Phase I for a small piece of land on a larger parcel that will be leased? Is the subject property the entire parent parcel or only the proposed lease area within the parent parcel?

The new -21 standard states that the subject property is specific to what the client defines.

63. Can you please clarify the difference/distance between an adjoining property and an adjacent property?

"Adjoining property" is the defined term used in E1527, and that is the term EPs should use. If the EP uses the term "adjacent property", you leave it up to someone else to figure out what you mean.

64. In large cities such as New York City there can be dozens of street addresses for adjoining properties. Each address order can cost up to \$45. Won't the cost of the order be prohibitively high in such a setting?

That was discussed at length within the task group, and that is in part why some of the research exit ramps are included in the -21 standard. The short answer is, it depends. What is the risk of releases from these adjoining properties affecting your subject property. That's going to be an EP judgment call. I will say that EPA and other regulators have been very clear. Just because it's hard is not a valid reason to do inadequate research.

65. Can you clarify adjoining vs. adjacent? Would a property across a two or four lane highway still be considered adjoining and therefore need to be researched?

"Adjoining property" is the defined term used in E1527, and that is the term EPs should use. If the EP uses the term "adjacent property", you leave it up to someone else to figure out what you mean.

66. Is there any ambiguity on what is considered "adjoining?" Some consultants argue about "across the street" or only shares a property corner. What about diagonally across an intersection?

The definition of "adjoining" in E1527 is clear. Yes, across the street is "adjoining."

67. Often our Subject Property is an urban street that is being torn up and replaced or where utilities are being replaced by city public works. The City wants an ESA-I each time. How do you perform that using the standard when the city is concerned with adjoining properties and there can be hundreds of adjoining properties or the road can be miles long? What about telephone directories? We are getting thousands of pages.

Professional judgment. What do you do now? I've done these. If historical uses have been residential (based on aerials, fire insurance maps, and other info), then the standard allows for you to not do it, just explain why. If commercial, retail, industrial, manufacturing? Yeah, those are the risks the city would be concerned about.

COST CONCERNS

68. Did the task force discuss what is a reasonable average cost to conduct an evaluation to meet the standard?

It is against federal law for the task group to specifically discuss cost.

69. When you approached the Users did you ask them how much they were paying for their ESAs? Was there any correlation to lower cost and higher number of complaints/issues with the work product?

To your first question, It is against federal law for the task group to specifically discuss cost. To your second question, absolutely.

70. Did the committee touch on any link between report quality and cost of the Phase I?

Generally, yes.

71. In densely developed urban centers a good phase 1 costs at least \$10k. Clients want to pay \$2.5k. How has the committee tried to reconcile this ?

It is against federal law for the task group to specifically discuss cost.

72. How will photos be handled when photos are not allowed by a site? (For confidentiality or similar)

The EP explains that in the report.

DATA GAPS

73. Can you give examples of significant data gaps?

A significant data gap might be aerial photographs depicting an industrial building on the subject property and the EP has no information at all what "uses" were associated with that building.

74. Some facilities do not allow photos. Is that condition a data gap under the new standard?

The EP explains that in the report. It's not a data gap, because the EP saw what the EP needed to see.

75. Can you summarize your opinion on snow cover as a significant data gap?

Depends. Is it a hay field or a manufacturing plant with evidence of spills? Definitely a "limitation", then based on the totality of other information gathered, is it a significant data gap?

76. When one finds something such as evidence of a septic system at a subject property that utilized hazardous materials but no evidence of release or illegal disposal to the system, is this best defined as a significant data gap?

That's not a data gap. That's going to be a judgment call whether the EP believes there has been a likely release to the environment.

77. A historic auto service station is located adjacent to the owner's residential home. The site uses a septic system and a well for drinking water. The owner is careful with chemicals/practices because he/she knows that contamination introduced to the land would/could impact their family. When do you lean into the potential that something/someone could have caused a release? Would you leave it as a significant data gap?

I don't see a connection to a significant data gap. It will be a professional judgment call whether the EP believes there has been a likely release to the environment.

MISCELLANEOUS

78. R/E Appraisers have professional associations and certifications. What do we think about similar certification and/or licensing programs for EPs?

Many believe that would be helpful.

79. When I see an EP identify a Closed LUST there is typically not a file review done and no discussion on changes to regulatory framework since closure. Does this mean the Phase I ESA is not done up to Standard?

Correct, the Phase I has not been done up to standard.

80. Are there any changes to what has to be included as an opinion?

No.

81. Please cite the EPA website describing 80% of dry cleaner sites have had releases.

It wasn't EPA. It was one of the new state programs in the midwest, and that was information provided by someone within that agency.

82. Why did ASTM issue a Phase I ESA practice in consecutive years 1993 and 1994?

There were some typographical corrections that needed to be made.

83. It sounds like "likely" presence is an estimated greater than 50% probability?

No number was applied to "likely".

84. Is there an email list we can join to receive notification when the new standard is published and available?

The 1527-21 standard has been published and is available on the [astm.org](https://www.astm.org) website.

85. Instead of expecting voluntary compliance with the standards why doesn't the EPA and ASTM come out with a standard template that will bring uniformity to the process?

The E1527 has had a recommended or suggested table of contents, but its use is voluntary.

86. We still see current reports that are no more than 10 pages, lack photos, lack site location, maps, etc. Will ASTM ever pursue certification of EPs to raise the bar? By your admission it sounds like it is well known that 20% of firms produce sub-par non-compliant reports.

ASTM is a voluntary consensus standards development organization. They provide a framework for any industry professionals who want to use their process to develop standards. They are not a certifying body. Regarding the sub-par non-compliant reports, it's not my "admission" as much as it is the industry feedback that was brought to this particular task group.

87. With respect to a later user wanting to use a Phase I less than a year old, is there a change to that process AND how to handle the user requirements? Any change to the staleness of the old Phase I? The reliance letter process is applied differently across consultants.

No changes. Some clarification, but no changes. Reliance letters are a contractual matter that is not addressed by the E1527.

88. The de minimis condition definition could also use some clarification; will this occur with the new standard?

It was clarified that a de minimis condition is specific to a "release".

89. For Phase I ESA Updates (post 6 months to a year), one of the items to update include environmental lien/AUL searches. If no environmental lien search was conducted by the EP for the original Phase I ESA (with language in there stating it is the User responsibility), does the EP need to still order the lien search to satisfy the update requirements? Or can the language stating that it is the User responsibility (unless otherwise instructed) still apply?

This remains a User responsibility, unless the User specifically contracts with the EP to obtain.

90. Can you clarify the difference between the Additional Investigations section that should be included in the Phase I reports per the ASTM versus a Recommendations section? We understand no recommendations (such as Phase IIs) are required within the reports, but what is typically placed in the required Additional Investigations section if not recommendations on further testing, services, etc.? Another way to put it - if a REC (such as a nearby historical gas station) is identified for the property, is there any requirement to say additional investigations or testing are needed in the actual report?

Something along the lines of "It is our opinion that additional investigation would be appropriate to evaluate the identified recognized environmental condition(s)."

91. I'm wondering if, under the standard, the Phase I can include multiple properties? I have a potential client who is purchasing one commercial property and a cousin is purchasing the adjoining property. We have not previously done our Phase Is to include more than one property and would like some advice or clarification as to the Standard. I read it as Subject Property, singular.

The Phase I can include whatever the client defines as the "subject property." So yes, it could include multiple properties.

92. ASTM states a reference section shall be included in the report; however, when I pointed that out to a consultant I use, I was told that "The standard says a few times that items must be adequately referenced OR appended to the report. We typically append all documents." So, is a separate References section required (as I understand it) or can the items/documents simply be included in the appendices?

Yes, Section 12.12 in E1527-21 (previously 12.11 on E1527-13) says that "The report shall include a references section . . ."



erisinfo.com

