

INSIGHTS

EPA adopts new standard for conducting All Appropriate Inquiries

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In a rule published on December 30, 2013 and effective immediately upon publication, EPA formally adopts a new standard for conducting All Appropriate Inquiries (AAI) at potentially contaminated sites. 78 Fed. Reg. 79319. The AAI rule outlines steps for potential property purchasers to take to claim a limitation on CERCLA liability connected to purchased property. 40 CFR Part 312. EPA allows purchasers to use the applicable ASTM standard for Phase I Environmental Site Assessments to satisfy their obligations under the AAI rule. In this rule, EPA incorporates new ASTM International Standard ASTM E1527-13 into the AAI rule. This standard updates several procedures associated with conducting environmental site assessments (ESAs). For example, ASTM revised the definition of migrate/migration to "specifically include vapor migrations." 78 Fed. Reg. 79321. ASTM also updated the definitions of Recognized Environmental Condition (REC) and Historical Recognized Environmental Condition (HREC). The definition of HREC "clarifies that the scope and application of a HREC is limited to only past releases that have been addressed to a degree allowing for unrestricted use of the property." 78 Fed. Reg. 79322. Finally, ASTM added the term Controlled Recognized Environmental Condition (CREC), which is defined as "past releases that have been addressed but allow contamination to remain in place subject to the implementation of required controls." *Id.* EPA rejected comments requesting changes to the definition of environmental professional in the AAI rule because EPA "did not propose any changes to the requirements of 40 CFR Part 312" and thus the comments were "outside the scope of [the] rulemaking." 78 Fed. Reg. 79321. However, EPA plans to later propose a rule to remove references to the 2005 ASTM standard from the AAI rule.