



*Environmental Consulting & Remediation Services*

## Phase I ESA: What's new in 1527-21

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# Discussion Points



- Why have a Phase I ESA?
- What is a Phase I ESA?
- What's new in ASTM 1527-21?
- How to interpret a report.
- Are Non-scope Considerations needed?

# Phase I Environmental Site Assessment Background

- Comprehensive Environmental Response Compensation & Liability Act (42 U.S.C. 9601 et seq (1980)
  - Superfund Act
  - Federal platform to clean up hazardous waste sites (uncontrolled or abandoned)
  - Gave EPA authority to seek out “responsible party”
- Brownfield Reauthorization Act of 2002
  - “All Appropriate Inquiry”
  - ASTM E 1527
  - Contiguous Property Owner Defense
  - Bona fide prospective purchaser Defense



# Importance of Non-Responsible Party



- **Brownfields Funding Eligibility (AKA FREE MONEY)**
- **LDEQ Actions**
- **Continuing Obligations after Purchase**

# What is a Phase I Environmental Site Assessment?



- ASTM E1527 – Standard for Phase I ESAs
- Satisfies environmental due diligence including All Appropriate Inquiry (AAI)\*\*;
- Satisfies one of the requirements of the *User/purchaser* for **Innocent Landowner, Contiguous Property Owner, or Bonafide Prospective Purchaser Defense** and limitations on CERCLA liability.



Designation: E1527 – 21

Standard Practice for  
Environmental Site Assessments: Phase I Environmental  
Site Assessment Process<sup>1</sup>



# What a Phase I ESA is not

A Phase I ESA is not a full review of your business risks associated with potential environmental concerns. It does not include:



- Asbestos, Lead, Mold, or Radon Inspections
- Confirmation of Regulatory Compliance
- Review of Federal State and Local Compliance Obligations
- Waste Characterization/ Disposal
- Permitting
- Sampling
- Wetlands Determination

# EA vs. ESA

## ▶ Environmental Assessment (NEPA)

- ❖ National Environmental Policy Act
- ❖ Each Federal Agency has own set of standards
- ❖ Looks at property and action
- ❖ Shelf Life 3-5 years
- ❖ Timeframe to complete: min 60 days
- ❖ Coordination with other agencies required

## ▶ Phase I Environmental Site Assessment

- ❖ CERCLA & Brownfield Acts
- ❖ ASTM 1527 & All Appropriate Inquiry
- ❖ Looks at specific property
- ❖ Shelf Life 6 months
- ❖ Timeframe to complete: 3-6 weeks
- ❖ No regulatory approvals/correspondences

# When do I need a Phase I?

- Commercial Purchases
- Site Redevelopment Planning
- Lender Requirement
- Commercial and Industrial Leases
- Federal Funding Requirement





# Phase I Key Components

**Purpose: Identification  
of RECs**

**User Knowledge**

Prospective Purchaser

**Physical Setting**

**Government Records**

**Historical Record  
Review**

Use back to 1940, or first  
development

**Site Reconnaissance**

**Interviews**

Owner, Tenant, Adjoining, Government

**Environmental Professional Opinion**

3 , 5, or 10 years of experience based on education level as defined in the  
standard

# Recognized Environmental Condition

ASTM E1527 – “The term recognized environmental conditions means

**(1) the presence of any hazardous substances or petroleum products in, on, or at the subject property due to a release to the environment;**

**(2) The likely presence of any hazardous substances or petroleum products in, on, or at the subject property due to a release or likely release...;**

**(3) The presence of hazard substances or petroleum products in, on or at the subject property under conditions that pose a material threat to a future release to the environment.**

*De minimis conditions* are not recognized environmental conditions.”

# Other Key Terms

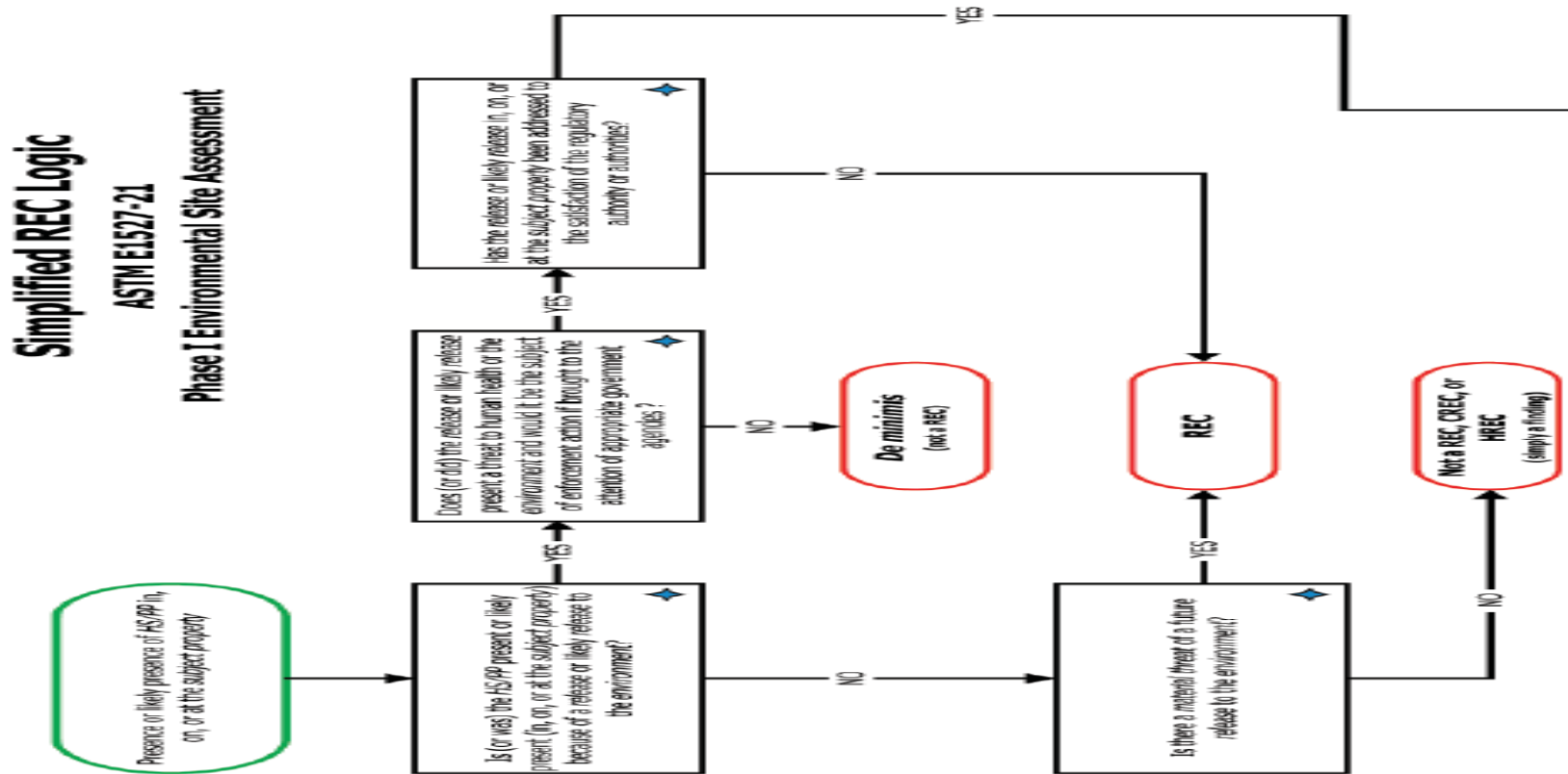
Controlled Recognized Environmental Condition (CREC) – a REC at the Subject Property that has been addressed by regulatory agency with contamination remaining with controls in place (restricted use, other control)

Historical Recognized Environmental Condition (HREC) – past release at the Subject Property that has been satisfactorily addressed by regulatory agency with unrestricted use

Vapor Encroachment Condition (VEC) – included in context of whether it is a REC or not

# What's New with ASTM 1527-21

Updated/clarified definitions: REC, CREC, HREC, VEC  
- Appendix X4 Logic Chart



# What's New with ASTM 1527-21

Use of “Subject Property”

Physical Setting Resources – required current USGS map review; as well as other reasonable credible (and ascertainable), e.g. groundwater, geology, soil maps, etc.

Proper reference or inclusion in appendices for historical sources and other required components

Site Reconnaissance – Visually or physically observed. Photographs must be included

Site Map showing key features and boundaries



# Site Reconnaissance and Interview





# Site Reconnaissance and Interview



# What's New with ASTM 1527-21

Significant Data Gaps – must be identified in Findings Section

Additional Investigation – EP should\* provide an opinion regarding additional investigation. \*not a requirement

Updated/clarified User Responsibility:

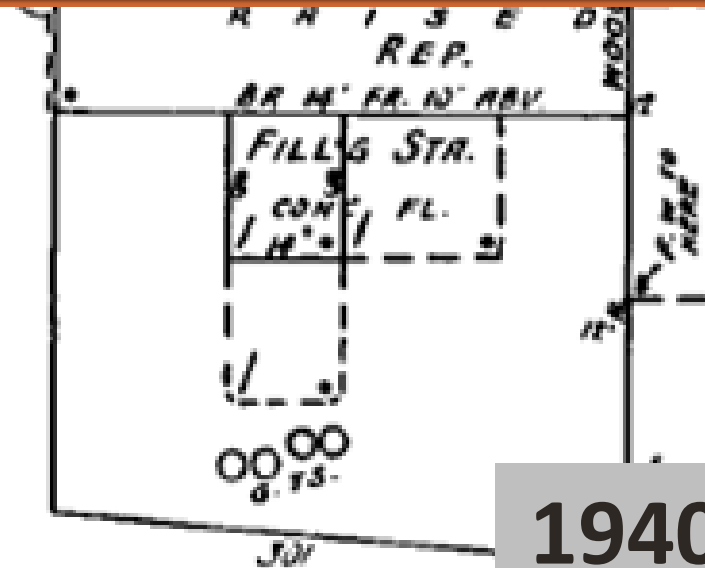
- Presumed viability of 180 Days
- Components to be updated between 180 and 365 Days
- Date of components, not report date

Specified ways to review Land Title and Judicial records for Environmental liens and AUL records

- Transaction Title Insurance Documentation
- Title Search Information Reports

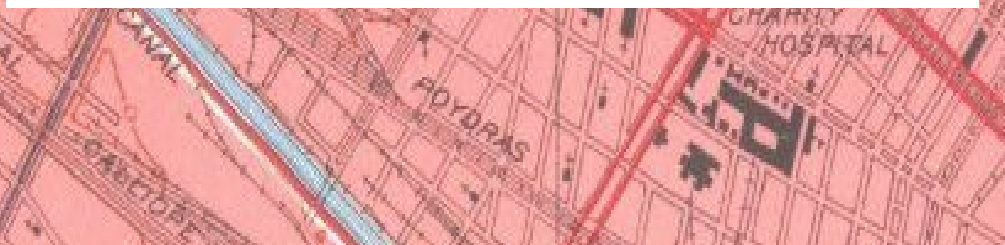


# Review Of Historical Records



- Topographic Maps,
- Fire Insurance Maps (Sanborns),
- Aerial Photos,
- Directories,
- Environmental Lien and AULs (Title Records)
- Other Historical Sources

**1940, or earlier  
first use**



1961	Broad Ada Esso Service Center	R. L. Polk & Co.
	sta AWH	R. L. Polk & Co.
1955	Soabs Esso Serv Sta	R.L. Polk & Co Publishers

# Putting it Together



**Environmental Professional makes the call**

- Put the data together
- Review Data Gaps
- Findings and Opinions
- Are there RECs? CRECs? HRECs?





# Recommendations

Discuss conclusions with your Consultant.

Evaluate Recognized Environmental Conditions (RECs) and your risks

Determine if additional investigation or research is required to evaluate RECs

**NOT** required in the ESA report

We're here to help!



# Non-Scope Considerations/ BERs

- Asbestos, Lead, Mold
  - Is there a release?
- Floodplain
- Cultural and Historical Resources
- Ecological Resources:  
Wetlands/WOUS; Threatened and Endangered Species
- Naturally occurring Radon
- Non-hazardous substances (emerging contaminants)
  - Unless substance is classified by CERCLA or regulated by State





**THANK YOU**

Please do not hesitate to reach out with any questions or comments!

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