

What Due Diligence is Due??

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EPA answered the question in 2006 when it outlined [All Appropriate Inquiry \(AAI\)?? in response to ?CERCLA revisions](#) that made new defenses available to some categories of landowners. In its AAI Rule, ?EPA accepted ASTM Standard 1527-05 – “**Standard Practice for Environmental Site Assessments: Phase ?I Site Assessment Process**” – as the manner by which due diligence was to be done. Standard 1527 ?was updated in late 2013 and EPA sought to accept both the 2013 version and the previous 2005 ?version as acceptable practice for AAI. Stakeholders concerned by having competing practices ?interposed public comments stating that by so doing EPA was causing confusion in the ?marketplace. As a result, [EPA withdrew the proposed rule](#), leaving the 2006 AAI rule in effect. ?Prospective purchasers, lenders, investors and others perform Phase I Environmental Site ?Assessments for a variety of reasons, only one of which is to comply with the AAI rule. So what ?diligence is due today with both an EPA accepted standard and a more rigorous one available??

The [2013 ASTM standard](#) changes the previous standard in several ways including the following. First, the ?new standard updates the definitions of a recommended environmental condition (REC), an historic ?REC and a controlled REC. The new definitions allow the reviewer a more robust understanding of the ?conditions on the property which, under the previous standard, might not have qualified as RECs and ?therefore not called out to the reader for special consideration. Second, vapor is included in the ?definition for migrate and migration. Vapor migration and intrusion into buildings has become a more ?keenly watched issue for enforcement actions in some jurisdictions. Third, the definitions of “release” ?and “environment” are more aligned with those found in the statute. Fourth, the standard provides a ?method for obtaining historic information about a property’s environmental condition through agency ?databases.?

The new standard could be considered more robust and thus more useful to the user of the Phase I ?report. However, it does not explicitly satisfy AAI at this time. We likely will request our next Phase I ?be done to the new standard and ask our consulting team to confirm that by so doing it also conforms ?to the requirements of AAI.?

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