

An Update on Pending Revisions to the Phase I Environmental Site Assessment Standard

David C. Scott and Chemmie Sokolic

Greenbaum, Rowe, Smith & Davis LLP and FalconRE Group Client Alert

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ASTM International is required to review and either update or renew the existing version of its ASTM E1527 Phase I Environmental Site Assessment standard (Phase I ESA standard) every eight years. Since the current version was last updated in 2013, it is now time for a reassessment.

This Client Alert is the first in a series of advisories regarding potential upcoming revisions to the Phase I ESA standard.

Background

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) requires prospective purchasers of commercial and industrial properties to conduct appropriate environmental due diligence to qualify for certain environmental legal protections. Since 1993, the Phase I ESA standard has come to be recognized as the defining standard of what comprises “good commercial and customary standards and practices” for conducting environmental due diligence. The goal of the Phase I process, as established by the Phase I ESA standard, is to identify recognized environmental conditions (RECs). Over the last few years, the ASTM E50.02 subcommittee has been hard at work examining numerous sections of the Phase I ESA standard to bring it up to date with what constitutes good commercial and customary practice in 2021. These revisions may impact prospective purchasers as they navigate their commercial and industrial real estate transactions as well as their ability to receive financing on real estate transactions.

Proposed Changes

Attorneys

David C. Scott

Some of the proposed changes to the Phase I ESA standard include the following:

- **Change No. 1: Definition** – the definition of REC is being revised to more clearly convey that RECs include not only *confirmed* releases of hazardous substances or petroleum products in, on, or at the subject property, but *likely* releases as well. This is true whether a release of hazardous substances or petroleum products occurred at the subject property *itself*, but also if it occurred, or even *likely* occurred, at *nearby* properties as well.
- **Change No. 2: Flow Chart** – A flow chart is being added in an appendix to the Phase I ESA standard that will assist practitioners in determining if a particular condition identified at a property constitutes either a REC, a “historic REC,” a “controlled REC,” a “de minimis condition,” or a “finding.”
- **Change No. 3: Examples** – Several examples of Phase I ESA findings are being provided in an appendix for illustrative purposes, and as an accompaniment to the flow chart discussed above in Change No. 2.

What's Next

It should be noted that although the revised Phase I ESA standard is currently undergoing its third internal ASTM ballot review – and is due to be out of ballot by April 2, 2021 – it is not yet finalized, and the potential updates discussed in this Alert are subject to change. We will continue to keep you advised as the Phase I ESA standard makes its way through the ASTM balloting and the U.S. Environmental Protection Agency's review process.

It is expected that the new Phase I ESA standard will be finalized and promulgated later in 2021. Please contact the authors of this Alert with questions related to proposed revisions to the Phase I ESA standard or to discuss impacts to your specific real estate transactions in greater detail.

David C. Scott is an attorney in the Environmental Department at Greenbaum, Rowe, Smith & Davis LLP. He advises clients on environmental risks associated with real estate transactions, methods for mitigating those risks, and strategies for addressing environmental issues when they do arise, including the presence of hazardous substances in soil and groundwater, discharges from underground storage tanks, and the cleanup and remediation of contaminated sites. He is a member of the ASTM E50.02 subcommittee.
dscott@greenbaumlaw.com | 732.476.2626

Chemmie Sokolic is Principal at the FalconRE Group. He is a due diligence leader with over 20 years' experience, specializing in environmental, building, and property land use evaluations. He has conducted or managed over 1,000 due diligence assessments at a wide variety of sites, and supports environmental, engineering, and related real estate service firms to help them realize premium due diligence opportunities, increased revenue, and reduced costs and liability. He is a member of the ASTM E50.02 subcommittee.
csokolic@TheFalconREGroup.com | 973.363.9500