

EPA Publishes Final Rule on Conducting Phase I Environmental Site Assessments

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What You Need to Know

- CERCLA requires prospective purchasers to conduct an “all appropriate inquiry” into the environmental conditions of a property to qualify for potential defenses to CERCLA liability. Typically, an environmental consultant documents this evaluation by preparing a Phase I Environmental Site Assessment Report.
- The EPA has published a Final Rule amending the standards by which the Phase 1 assessment is conducted, effective February 13, 2023.
- Purchasers, developers, lenders, and others involved in commercial and industrial real estate should confirm that Phase I Environmental Site Assessment Reports being prepared on their behalf comply with EPA’s approved standards in order to qualify for environmental liability protections under CERCLA.

On December 15, 2022, the U.S. Environmental Protection Agency (EPA) published a Final Rule for conducting Phase I Environmental Site Assessments. The Final Rule amends the All Appropriate Inquiries (AAI) Rule to reference ASTM International’s E1527-21 standard (Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process) as satisfying the requirements for conducting AAI under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

The EPA’s Final Rule is effective on February 13, 2023 and contains a one year phase-out period of the prior ASTM International E1521-13 standard (the 2013 standard) as satisfying the AAI Rule. Purchasers, developers, lenders, and other parties involved in commercial and industrial real estate should confirm that Phase I Environmental Site Assessment

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Reports being prepared on their behalf comply with EPA approved standards for AAI in order to qualify for environmental liability protections under CERCLA.

By way of background, CERCLA requires prospective purchasers of properties to conduct AAI into the prior ownership and use of a property to qualify for one of CERCLA's landowner liability protections (i.e. bona fide prospective purchasers, contiguous property owners, and innocent landowners). Parties conducting pre-acquisition due diligence normally retain a qualified environmental consultant to prepare a Phase I Environmental Site Assessment Report to evaluate the environmental condition of a property as well as to qualify for potential CERCLA liability protections. EPA's Final Rule means that starting on February 13, 2023, parties having Phase I Environmental Site Assessment Reports prepared may either have the report prepared in accordance with ASTM International's Standard E1521-21 or the 2013 standard. After February 13, 2024, the 2013 standard will no longer be recognized as compliant with the AAI Rule and ASTM International's Standard E1521-21 should be used.

Please contact the author of this Alert with questions related to the EPA's Final Rule or to discuss impacts to your specific real estate transactions in greater detail.

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