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BLOG

# EPA Proposes Removal of 2005 ASTM Reference Standard from AAI Rule

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On June 17, 2014, EPA proposed to amend the All Appropriate Inquiry ("AAI") Rule in 40 CFR Part 312, Subpart C to remove the reference to the ASTM International's E1527-05 standard for conducting a Phase I Environmental Site Assessment ("ESA") as sufficient to satisfy the AAI requirements for establishing a defense to CERCLA liability. If finalized, the rule would reference only the more stringent ASTM E1527-13 standard, which was released on November 6, 2013, as sufficient to satisfy AAI. EPA proposed this change "because the Agency wants to reduce any confusion associated with the regulatory reference to a historical standard that is no longer recognized by its own promulgating organization as meeting its standards for good customary business practice." Although EPA previously concluded last August that "there are no legally significant differences between the regulatory requirements and the two ASTM E1527 standards," EPA now seeks to "promote the use of the [ASTM E1527-13] standard." EPA had previously announced its intention to remove the reference to the ASTM E1527-05 standard from the AAI rule last December when it added a reference to the ASTM E1527-13 standard to the AAI rule. As a practical matter, most Phase I ESAs being conducted since the first of the year have used the new standard.

EPA is proposing that, for properties acquired between November 1, 2005 and the date EPA finalizes the proposed rule, Phase Is conducted in accordance with the ASTM E1527-05 standard will be deemed to have satisfied the AAI Rule "as it was in effect at the time the property was acquired." EPA is also proposing to address the transitional period after EPA removes the reference to the ASTM E1527-05 standard by delaying the effective date of the final rule by one year "to provide parties with an adequate opportunity to complete AAI investigations that may be ongoing and to become familiar with the" ASTM E1527–13 standard. EPA will be taking public comment on its proposal through July 17, 2014.

1 Min Read

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