

EPA Proposes Change to Environmental Due Diligence Rule For Property Transactions

June 18, 2014

For the second time in a year, the U.S. Environmental Protection Agency (EPA) proposed to amend the “all appropriate inquiry” rule under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Under the current rule finalized in December 2013, a property purchaser seeking to establish protection from liability for historical contamination may choose to conduct environmental due diligence under industry standards established in 2005 or 2013. The amended rule would require that purchasers that choose to follow an industry standard use only ASTM E1527-13, the standard adopted in 2013.

ASTM’s 2013 standard for all appropriate inquiries incorporated eight years of industry experience with environmental due diligence to refine the concept of recognized environmental conditions, providing definitions for historical and controlled recognized conditions. The 2013 standard also includes an enhanced focus vapor intrusion, which is not required under the 2005 standard. By removing the reference to the 2005 standard, the EPA is acknowledging ASTM’s designation that it is “historical” and not a current industry standard.

If adopted, the rule amendment would not require property buyers to follow the ASTM standard in lieu of other business practices that comply with the all appropriate inquiry rule. Nor would the proposed rule alter the substantive requirements of the 2013 ASTM standard. Rather, it would give property buyers that choose to follow the industry standard one year from publication of the final rule amendment to begin using ASTM E1527-13 and to stop using ASTM E1527-05.

The 2005 ASTM standard remains valid until the rule is formally amended. However, parties involved in complex property acquisitions, transactions with a long timeframe, or projects with CERCLA brownfield grant money should plan their environmental due diligence to adapt to the change in standards. Options for moving to the 2013 standard exist even for projects that have already started under the 2005 ASTM standard.

Click [here](#) to read USEPA’s statement on the proposed rule amendment or to find information on providing comments to the agency by July 17, 2014: <https://federalregister.gov/a/2014-14032>