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EPA Amending Standards for Phase 1 Environmental Site Assessments

The United States Environmental Protection Agency (USEPA) is set to amend the All Appropriate Inquiries Rule (AAI Rule), the standard for evaluating a property's environmental conditions prior to purchase, which may impact a purchaser's potential liability under the [Comprehensive Environmental Response, Compensation, and Liability Act \(CERCLA\)](#) for any contamination discovered at the property. Those affected by this amendment include both public and private parties who are purchasing potentially contaminated properties and wish to establish a limitation on CERCLA liability as bona fide prospective purchasers, contiguous property owners, or innocent landowners. In addition, any entity conducting a site characterization or assessment on a property with funding from a brownfields grant awarded under CERCLA Section 104(k)(2)(B)(ii) may be affected by this action.

The AAI Rule first went into effect in 2006 and has been subject to amendments since that time. The current [amendments](#) will become effective on February 13, 2023, and will reference a new standard – "[ASTM E1527-21](#)" – that may be used to satisfy the requirements for conducting all appropriate inquiries under CERCLA.

Significant changes within the new standard include, but are not limited to:

- Revised and new definitions to make requirements clearer than the prior 2013 standard
- Requirements for more specific information related to the subject property's use, as well as historical research related to the property and surrounding area
- Requirements that purchasers review aerials, topographical maps, fire insurance maps, and city directories, if reasonably available
- The addition of "Emerging Contaminants" to the list of considerations. This would include per- and polyfluoroalkyl substances (PFAS), which have garnered much attention in

recent years, particularly as USEPA added two such substances (perfluorooctanoic acid and perfluorooctanesulfonic acid) to the hazardous substances list in 2022.

It is important to note that, for a period of one year after this amendment becomes effective, parties employing the former “[ASTM E1527-13](#)” standard will still be recognized as being in compliance with the AAI Rule. However, after that time, USEPA will no longer recognize the prior standard as compliant with the AAI Rule. A detailed comparison of the two standards can be found [here](#). Prospective purchasers and their consultants should review the amended standards carefully to ensure compliance.

As always, the attorneys at Gibbons P.C. are here to assist with the evaluation and implementation of these new standards.

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