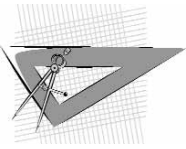


The Engineer's Angle

Cracking the Code—New AAI and ASTM Standards

Samuel J. Stevenson



Most real property transactions and refinances include an evaluation of the property for environmental contamination. This process usually starts with a Phase I Environmental Site Assessment (ESA), and may go on to include a Phase II ESA (typically, sampling and analysis of soil and/or groundwater) and possibly corrective action.

Since 1994, the ASTM Standard (E1527) has been the benchmark for performing ESAs. The most recent version of the ASTM Standard (E1527-00) was published in 2000. The U.S. Environmental Protection Agency (EPA) and ASTM have both contributed to changes in the ESA process, and prospective purchasers should be aware of these revisions.

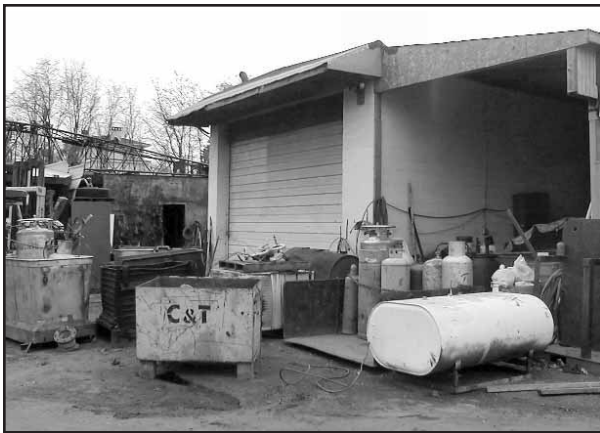


Photo courtesy of GTA.

Several environmental problems were identified during a Phase I ESA of this junkyard.

On November 1, 2005, the EPA established the federal standards and practices for conducting “all appropriate inquiries” (or AAI) as required by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Under CERCLA, a property owner may be strictly liable for contamination based solely on property ownership and without regard to fault. CERCLA does provide several landowner liability protections for persons who demonstrate, among other requirements, that they “did not know and had no reason to know” prior to purchasing a property that any hazardous substance was disposed of or released on a property. To demonstrate that they had “no reason to know,” a person must have performed “all appropriate inquiries” prior to acquisition of the site. This is now known as the “AAI Rule,” and it becomes effective November 1,

2006. In the interim, ASTM Standard E1527-00 may continue to be used to satisfy the statutory requirements of AAI.

Due in part to AAI, ASTM published a revised standard (E1527-05) on November 1, 2005, and it went into effect immediately. ASTM intended E1527-05 to satisfy AAI, and the EPA has recognized ASTM E1527-05 as consistent with the new AAI Rule. ASTM E1527-00 is now considered an interim standard and only remains in effect until November 1, 2006.

The AAI Rule and the ASTM E1527-05 standard include some significant changes, such as:

- “Environmental professionals” are now defined (those meeting specific education and experience requirements), and must perform certain ESA tasks. Previously, anyone could perform an ESA.
- The Environmental Professional must evaluate the significance of “data failures” and “data gaps” in the ESA.
- The “user” of the report (typically the Client) is expected to provide additional information, such as any awareness about the relationship of the purchase price of a property to its environmental condition.
- The ESA must include more in-depth research, including a review of local environmental records, a broader historical review, interviews with past property owners, and a review of several new regulatory databases.
- The ESA “shelf life” is one year (i.e., reports prepared more than one year ago must be updated in their entirety).

Until November 1, 2006, either E1527-00 or E1527-05 may be utilized. In determining which standard to select, clients should evaluate their goals, the desirability of CERCLA liability protection, the property settlement schedule, and corporate/lender requirements. Clients should seek advice from an experienced environmental consultant to assist in selecting an appropriate Phase I ESA standard.



Samuel J. Stevenson is an Associate with Geo-Technology Associates, Inc. (GTA) and has over 15 years of environmental consulting experience. He can be reached at [sstevenson@mragta.com](mailto:ssstevenson@mragta.com).

