

## EPA Proposes to Remove Reference To 2005 Standard for Site Assessments



### BNA Snapshot

EPA Proposed Rule on Standards for All Appropriate Inquiries

**Key Development:** The EPA proposes a rule to remove reference to a 2005 industry standard, ASTM E1527-05, from its appropriate inquiries rule.

**Potential Impact:** Removing reference to the 2005 standard may lead to stronger environmental assessments as parties will be more likely to use the approved 2013 version (ASTM E1527-13).

**What's Next:** Comments on the rule are due July 17.

The Environmental Protection Agency is proposing a rule to withdraw recognition of an outdated 2005 industry standard for assessing brownfields and other sites for potential environmental liability, according to a [notice](#) scheduled for publication June 17 in the Federal Register.

Under the proposed rule, which would amend the EPA's all appropriate inquiries (AAI) rule under the Comprehensive Environmental Response, Compensation and Liability Act, parties may now use the latest version of the voluntary standard—ASTM International's E1527-13—or follow the EPA rule to meet all appropriate inquiries.

Conducting AAI is one of the requirements for meeting liability defenses under CERCLA.

The EPA's recent rulemaking action makes it likely that more thorough environmental assessments will be conducted, according to some parties, because the 2013 updated standard is more stringent than the 2005 version.

Industries and organizations affected by the rule include real estate; insurance; banking and real estate credit; environmental consulting services; state, local and tribal governments and the federal government, according to the EPA.

In December 2013, the EPA published a final rule indicating that parties who purchase potentially contaminated properties may use the ASTM E1527-13 standard practice when conducting AAI pursuant to CERCLA. The rule, however, also allowed use of the older 2005 version ([23 EDDG 8, 1/16/14](#)).

Some parties expressed concerns with the final rule, saying environmental consultants would be more likely to use the less expensive and less thorough 2005 version, leading to weaker environmental assessments ([22 EDDG 78, 10/17/13](#)).

The EPA is downplaying the significance of removing the reference to the 2005 standard—in April an agency official told a conference it was a “housekeeping” issue and not an acknowledgement that the 2013 rule was “bad.”

### Proposed Rule Called Significant

However, a representative of a company specializing in environmental due diligence services for acquisitions and financing of commercial real estate told Bloomberg BNA June 16 he believes the proposed rule is significant.

Samuel Johnson, a principal with Targus Associates LLC, based in Dallas, said he thought the EPA's action was a "good move" given that the current rule endorses a standard that has been withdrawn by ASTM, therefore creating ambiguity. As it stands, parties would be allowed to assert they followed all appropriate inquiries while using a lesser standard, Johnson said.

"This is a much overdue action," Larry Schnapf, an environmental lawyer with Schnapf LLC, told Bloomberg BNA in a June 16 e-mail.

"It is possible some of those who objected to the recognition of E1527-13 on its merits may file negative comments," he said.

Some parties also may be concerned about what withdrawing reference to the 2005 standard from the regulatory language will mean for reports previously completed in accordance with 1527-05, he said.

"Presumably and hopefully, the preamble to the rule proposal will address this issue," Schnapf said.

Comments on the proposed rule are due July 17. Comments should be identified by Docket ID No. EPA-HQ-SFUND-2014-0474 and may be submitted to <http://www.regulations.gov>