

NJ Preliminary Assessment vs. ASTM E1527 Phase I

| Preliminary Assessment | Phase I Environmental Site Assessment |
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| PA is first phase of process set forth in Technical Regulations for Site Remediation to identify areas of concern and determine if contaminants are or were present at a site or have migrated or are migrating from a site. | Not part of remedial process. Purpose to define good commercial and customary practice for commercial property to enable party to satisfy one of the CERCLA landowner liability protections |
| PA includes the initial search for and evaluation of existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or latent discharge of any contaminant is required | Performance-based evaluation of the ten criteria set forth These criteria are set forth in CERCLA section 101(35)(B)(iii) |
| PA applies to all sites (commercial as well as residential) with discharges | AAI applies to commercial and government entities purchasing property, individuals purchasing property for non-residential use and brownfield grantees. Does not include property purchased by a non-governmental entity or non-commercial entity for “residential use” or other similar uses. |
| PA applies to discharged hazardous substances per NJDEP list (N.J.A.C. 7:1E App A). Investigator also required to review all raw materials, finished products, formulations and hazardous substances, hazardous wastes, hazardous constituents and pollutants, including intermediates and by-products that are present or were historically present on the site. Also pesticides on the list of hazardous materials and substances if it appears that mixing areas were located on the target site. Also conduct a diligent inquiry into all current and historical wastewater discharges of sanitary and industrial waste along with sanitary and industrial sludge. Also evaluate present and past production processes, including potential for radioactive materials or waste used or generated in the manufacturing process. | AAI refers to hazardous substances which has certain exemptions (including petroleum). However, phase 1 for brownfield grantees may also have to investigate releases of petroleum products, controlled substances, and pollutants and contaminants. ASTM includes petroleum products. |
| Spill Act “Discharge” narrower than CERCLA “Release” | Exclusions to CERCLA “Release” definition. |
| PA must identify Areas of Concern (AOCs) which are broader than RECs (“... existing or | AAI goal is to identify Releases and threatened Releases of Hazardous Substances |

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| <p>former distinct location or environmental medium where any hazardous substance, hazardous waste, or pollutant is known or suspected to have been discharged, generated, manufactured, refined, transported, stored, handled, treated, or disposed, or where any hazardous substance, hazardous waste, or pollutant has or may have migrated ...") PA requires evaluation of specific AOCs such as transformers, compressor vent discharges, Non-contact cooling water discharges, Areas which receive flood or storm water from potentially contaminated areas, active or Inactive production wells, rail lines, spurs or sidings, and other general process and production areas that use hazardous materials</p> | <p>that would be the subject of a response action to enable party to qualify for liability protection. ASTM goal to identify RECs ("the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: (1) due to any release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment").</p> <p>Specific observations should include drains, drums, heating and cooling systems, lagoons, odors, pools of liquid, pits, ponds, sewage disposal and septic systems, staining, stressed vegetation, sumps.</p> |
| <p>Any UST containing hazardous substance is AOC requiring investigation regardless of size or if it is subject to regulation.</p> <p>If a current transformer does not contain oil, the investigator should determine if oil-containing transformers were ever present at the site regardless of utility ownership or responsibility.</p> | <p>Electrical or hydraulic equipment known to contain PCBs or likely to contain PCBs shall be described in the report to the extent visually and/or physically observed or identified from the interviews or records review.</p> <p>Identify ASTs or USTs, vent pipes, fill pipes or access ways (content, capacity, and age) to the extent <i>visually and/or physically observed</i> during the site visit or identified from interviews or records review</p> |
| <p>PA does not recognize "data gaps" or data failure".</p> | <p>ASTM provides for "Data gaps" and "data failure"</p> |
| <p>PA does not have concept of de minimis AOC.</p> | <p>AAI does not require discussion of "extremely small quantities or amounts of contaminants, so long as the contaminants generally would not pose a threat to human health or the environment". ASTM excludes "de minimis" conditions from REC definition</p> |
| <p>PA should discuss remediation activities that have been conducted at the site and of any known changes in site conditions and any new information developed since completion of previous sampling or remediation. PA</p> | <p>CREC does not require verification of remedy protectiveness</p> |

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| requires the assessment of previous investigations and/or remediation for Order of Magnitude rule and verification that remedy remains protective. Cannot simply rely on an old NFA or RAO | |
| Only an LSRP can submit a PA to NJDEP. | Inquiries must be performed by or under direction of "Environmental Professional" but some criterion are responsibility of person seeking to qualify for defense (i.e., specialized knowledge, liens, relationship of purchase price) |
| Property Owner must perform PA | AAI may be conducted by or for one party and used by another party provided the report complies with AAI. |
| Records to be searched include tax records, deeds, historical chain of title. | AAI does not require review of chain of title |
| PA requires a diligent search from 1932 or before the site was developed and naturally vegetated to the present, including investigation of all documents that are reasonably likely to contain information related to the site. Additionally, the review is to include only those documents that are in the person's possession, custody or control, or in the possession, custody or control of any other person from whom the person conducting the search has a legal right to obtain such documents. Review should include scaled site plans detailing lot and block numbers, property and leasehold boundaries, current and historic structures, areas where fill has been brought on site, paved and unpaved areas, vegetated and unvegetated areas, all areas of concern and active and inactive wells. PA should document specific features identified in aerials that might be of importance to the PA. | AAI requires search of historical records back to when property first contained structures or was first used for residential, agricultural, commercial, industrial or governmental purposes but does not require specific type of historic information be collected. ASTM provides list of databases that may be searched. |
| PA mandates specific sources to be searched including, historical Sanborn Maps, historical aerial photographs and business directories (such as McRae's Industrial Directory, New Jersey Industrial Directory, etc). PA must identify and evaluate ALL resources available for a given site to form any decision to further | AAI requires reviewing at least one of the six government records or data bases of government records for the property and adjoining or nearby properties in compliance with the objectives and performance standards. |

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| investigate a site or AOC or to conclude no further investigation is necessary. No reference to non-government databases. | |
| PA requires diligent inquiry into current and past permits applied for or obtained for all previous and current owners or operators. Also diligent inquiry into historical and current enforcement actions at the subject site, including NOVs, court orders, and directives. | Environmental compliance such as permits and duty to comply with legally required release reporting obligation is beyond scope of AAI/ASTM (BER under ASTM E1527). Enforcement actions could be implied through requirement to review agency records but EP can avoid file review if it determines unnecessary for identifying presence of RECs. |
| PA does not require interviews of neighboring property owners or occupants | For adjacent abandoned neighboring or nearby properties where no current owner is available, interview one owner or occupant of a neighboring property to obtain information regarding past owners or uses of the property. |
| Interviews of current and former employees and agents whose duties include or included any responsibility for hazardous substances, hazardous wastes, or pollutants, and any other current and former employees or agents who may have knowledge or documents relevant to the inquiry. | Interviews with past and present owners, operators, and occupants including current and past facility managers with relevant knowledge of the property, past owners, occupants or operators of the subject property, interviews of major occupants and those occupants that are using, storing, treating, handling or disposing (or are likely to have used, stored, treated, handled or disposed) of hazardous substances (or pollutants, contaminants, petroleum and petroleum products, and controlled substances for brownfield grantees), as necessary to meet the rule's objectives and in accordance with the performance factors. |
| PA requires evaluation of compliance with controls (e.g., did the remedy address all of the residual soil contamination, is it properly maintained? Is the remedy working as designed? Have required biennial certifications been submitted?) | identification of institutional controls placed on the subject property but review of integrity and effectiveness of controls beyond scope of AAI/ASTM. |
| PA does not specifically require search for liens | AAI requires searches for recorded environmental cleanup liens against the facility filed under federal, state, or local law. |
| Definition of AOC does not specifically refer to obviousness but refers to "...known or suspected to have been discharged, generated, | AAI criterion includes degree of obviousness of the presence or likely presence of contamination at the property, and the ability |

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| manufactured, refined, transported, stored, handled, treated, or disposed, or where any hazardous substance, hazardous waste, or pollutant has or may have migrated. | to detect the contamination by appropriate investigation. ASTM requires identifying past uses of the property are <i>visually and/or physically observed</i> on the site visit, or are identified in the interviews or records review. |
| PA does not specifically require consideration of specialized knowledge of purchaser | Specialized knowledge or experience on the part of the defendant |
| PA not complete until all parties contacted for information have responded to information request and the information obtained has been reviewed. Statements such as "Unknown" or "We are only a tenant on the site and have no knowledge of prior site history" do not satisfy diligent inquiry requirement. | AAI provides for commonly known or reasonably ascertainable information about the property. ASTM provides exit ramp for "practically reviewable" or "reasonably ascertainable." |
| PA site inspection to verify observable and current site condition | Visual inspections of the facility and of adjoining properties |
| PA does not have specified search radius, it is only concerned with the site; | AAI has minimum search distances and ASTM has specific search radii |
| PA does not specifically require evaluation of relationship of property value to contamination; | Evaluate relationship of the purchase price to the value of the property, if the property was not contaminated |
| PA has no shelf life | Six Month Shelf Life with update for months 7-12. |
| PA requires evaluating certain building interior issues when contaminants have potential to migrate into or from the structure. | ASTM requires identifying current uses of building that use, treat, store, dispose of, or generate hazardous substances and petroleum products, identify releases or material threat of future releases of hazardous substances or petroleum products to the environment. Releases solely within buildings, LBP and ACM are ASTM non-scope items and not part of AAI when fall within "Release" definition exclusions. |
| PA requires recommendations. If sampling not proposed for AOC, must explain why AOC is not a potential source of soil, ground water, surface water or sediments exceeding remediation standards. | AAI/ASTM requires opinion of releases/RECs. AAI/ASTM do not require recommendations. |
| Person seeking defense MUST proceed to SI if contamination found | Under AAI/ASTM, user finished upon identifying releases/RECs. Sampling outside scope of AAI/ASTM. |