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E- NEWSLETTER

As of November 1, 2006, new changes have been made to the environmental site assessments, commonly known as PHASE I. The original E1527 standard has been revised to ASTM E1527-05. The revised standard is **focused on performance** rather than merely **checking items off** the list.

The changes are as follows:

- 1) The Environmental Professional or EP must meet specific educational, certification, licensing and relevant experience requirements.
- 2) The written Phase I report must include **two signed declarations** by the EP,
 - (a) that the EP meets the qualification requirements under the rule
 - (b) and that all appropriate inquiries were performed in accordance with the rule.

Purchasers who have relied on information in the previous PHASE I conducted for the property, may not be able to do it so confidently now. According to the rule, many parts of the previous Phase I, including the site inspection, must be updated **within 180 days** before acquiring the property.

The rule requires that if information from a previous PHASE I is used, the report must include a summary of any relevant changes to the conditions of the property since that time.

There is a greater stress on **documenting the sources of information** consulted by EP and **specifying any data gaps** remaining after the inquiry is complete.

The EP must comment in the written report on the significance of the data gaps in his or her ability to form an opinion on conditions at the site. The rule has enhanced requirements for review of historical records and interviews with neighbors and current as well as past owners, occupants, site managers or employees of the property.

The consultant must search federal, state, tribal and local records for

- (a) institutional or engineering controls at the property or any property within a ½ mile
- (b) cleanup liens filed or recorded against the property.

The EP must perform a visual onsite inspection of the property and any structures and improvements. Any failure to physically inspect the property will be subject to close scrutiny.

The rule now places greater responsibility on the purchaser to provide information and evaluate facts of the commercial transaction at issue. The purchaser is required to provide the EP with information concerning any specialized knowledge it may have about the property and must, compare the purchase price to the fair market value of the property if the property were not contaminated. If the proposed purchase price is less than the fair market value, then the purchaser must further consider whether the price reduction is due to the presence of hazardous substances.

Standard language in consultant bids that the assessment will be performed in substantial compliance is no longer acceptable. The user must be prepared to perform a **clean vs. dirty value comparison**, provide the consultant with relevant information it has concerning the property and ensure that a search of title and other records is performed for evidence of environmental liens, institutional records or engineering controls to which the property is subject. Users will also need to be aware that the cost of the phase I report and the time needed to complete it will likely increase.

If the purchaser does not comply with these requirements, he will be foreclosed from the opportunity of making CERCLA liability defenses, namely, that he is an innocent landowner, that this purchase was made in good faith and that the property was contaminated by the neighbor's property.

In Conclusion, I recommend that you choose wisely the company you allow to perform your Site Assessment. Be cognizant that they are aware of the new standards and that they are in compliance. Choosing wrong can be quite costly!