

April 13, 2022

The Honorable Carlton Waterhouse
Deputy Assistant Administrator
Office of Land and Emergency Management
Environmental Protection Agency
Washington, DC 20460

Re: EPA-HQ-OLEM-2021-0946, FRL-9334-01-OLEM

Dear Deputy Assistant Administrator Waterhouse:

Thank you for the opportunity to provide comments on the Environmental Protection Agency's (EPA) proposed direct final rule to "amend the All Appropriate Inquiries Rule to reference ASTM International's E1527-21 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" and allow for its use to satisfy the requirements for conducting all appropriate inquiries under the Comprehensive Environmental Response, Compensation, and Liability Act."

The U.S. Chamber of Commerce represents all the relevant sectors named and additional areas of the value chain across the broad economy impacted by the proposal. We are encouraged that the updated standard will offer clear and consistent guidelines for property ownership and development. Ensuring that CERCLA liability does not apply is critical for businesses across the United States. The notion of brownfields to greenfields is an important step in ensuring that communities can optimize the economic vitality and quality of life as property moves back into productive use, especially for innocent landowners and prospective purchasers.

We are, however, sharing the following concerns with EPA's proposal:

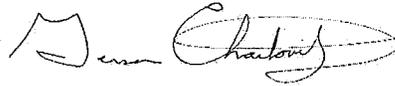
- **Continued use of 2013 standard.** Our members urge EPA to make the transition to the new 2021 standard and eliminate the flexibility to apply either 2013, 2021, or other standards. The new ASTM standard requires agreed on methods and records to justify the property determination.
- **Inclusion of PFAS as a non-scope contaminant.** Until EPA finalizes the rule designating PFOS and PFOA as hazardous substances under CERCLA, inclusion as part of the ASTM standard, even as a non-scope issue, may lead to additional potential CERCLA liability prematurely for landowners and potential buyers.

The business community supports accelerating cleanups to address PFAS risks to our employees, customers, and communities where we operate. We urge EPA to engage with

stakeholders and provide a formal notice and comment period for the proposed ASTM standard as called for under the Administrative Procedures Act and the Congressional Review Act with a robust process that supports this effort.

Please feel free to contact us with any questions or if you wish to discuss.

Sincerely,

A handwritten signature in black ink, appearing to read "Chuck Chaitovitz". The signature is fluid and cursive, with a large initial "C" and a long, sweeping underline.

Chuck Chaitovitz
Vice President
Environmental Affairs and Sustainability
U.S. Chamber of Commerce



Environmental Bankers Association (EBA) | 2900 Delk Road, Suite 700, PMB 321, Marietta, GA 30067 | envirobank.org

April 5, 2022
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington DC 20460

cc: Patricia Overmeyer, Office of Brownfields and Land Revitalization (5105T)
Overmeyer.patricia@epa.gov

Re: Comments to EPA's proposed rule and amendment to 40 CFR Section 312.11

To Whom It May Concern:

The Environmental Bankers Association (EBA) is submitting this comment to EPA's proposed rule (87 FR 14224-14227, March 14, 2022) and direct final rule amending 40 CFR Section 312.11 (87 FR 14174-14177, March 14, 2022) proposing to and amending its All Appropriate Inquiries Rule (AAI) to reference the ASTM E1527-21 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" (E1527-21) and allowing it use to satisfy the requirements of AAI.

About the EBA: The EBA is a non-profit trade association representing the financial services industry. Established in 1994, EBA's members include lending institutions, property & casualty and life insurers, attorneys, and the environmental consulting and appraisal communities. EBA's membership is organizational based, and we currently have 123 organizational members, of which, 74 are affiliate organizations and 49 are banking firms. Of the 123 organizational members, we have 992 individual members collectively from these organizations. In response to heightened sensitivity to environmental risk issues, the need for environmental risk management, sustainable development, due diligence policies and procedures in financial institutions, the EBA engages with its members to invest in their success.

The Environmental Bankers Association strongly supports EPA recognizing the updated ASTM E1527-21 as the ASTM Standard to satisfy and demonstrate conformance with the EPA's All Appropriate Inquiries (AAI) rule. The revisions in ASTM E1527-21 are appropriate and were necessary to align the standard practice with assessments already being conducted by reputable Environmental Professionals. Adherence to the new standard will improve the quality of Phase I assessments, providing benefit to EPA for brownfield site development and to commercial property owners, investors, and lenders. ASTM E1527-21 includes important updates that will reduce the risk of Users failing to identify conditions indicative of hazardous substance releases, potentially jeopardizing landowner liability protections to

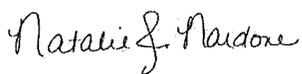
CERCLA. Adherence to the new standard should reduce the risk that property buyers will complete due diligence which fails to satisfy AAI.

We do not support EPA continuing to recognize the ASTM E1527-13 standard as a means to satisfy AAI going forward. In November 2021 ASTM International published E1527-21 as the sole current standard and designated E1527-13 a historical standard. We recommend that the reference to 1527-13 be removed from the rule.

The goal of ASTM E1527-21 was to reflect current good commercial and customary practice based on professional experience and insight, improve quality and consistency, and to correct challenges noted during implementation of previous versions of the standard. An important revision was made to the definition of Recognized Environmental Condition which helps clarify the intent of the term. Other definitions were also added, including subject property and adjoining property, significant data gap, and property use limitation. Importantly, significant revisions were made to the historical research section which had not been substantively changed since 1994; however, research methods and resources have evolved and the revisions to that section reflect those changes. Other areas clarified in E1527-21 include dates for tasks used to establish report viability relative to AAI, deletion of obsolete database names which EPA has renamed or discontinued, requirements to include photographs of a property and a site map in a report, a requirement to discuss significant data gaps in the report conclusions, and an acknowledgment of emerging contaminants. New Appendices were also added providing examples of recognized environmental conditions and a flow chart that provides guidance and logic for evaluating findings (Fig X4.1 Simplified REC Logic).

Recognition of two standards is likely to cause significant controversy and confusion in the industry since ASTM Committee E-50 has determined that the 2013 standard no longer meets good commercial and customary practice and ASTM now considers E1527-13 a historical standard. Further, having two standards recognized as meeting AAI will create a two-tier system; one for lower-cost, less thorough assessments prepared under E1527-13, and another for higher-quality assessments with consistency in application of key terminology, records reviews, and evaluation of findings. As environmental risk managers at major lending institutions we are on the front lines of review of Phase I ESAs. For us, time is of the essence, and the cost and time to redo due diligence is not welcome and often not possible. We strongly believe that the requirements of E1527-21 will raise the bar on the final quality of Phase I ESAs produced by Environmental Professionals (EPs) across the industry and urge the EPA to no longer recognize E1527-13 as a means to satisfy AAI.

Environmental Bankers Association



Natalie Nardone
Managing Director