

ENVIR BRIEFS

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Draft ASTM Standard Being Developed for Real Estate Transactions

Draft vapor intrusion standard to define a "standard of good commercial and customary practice for conducting an environmental site assessment"

The organization that developed industry standards for environmental assessments, the American Society for Testing Materials (ASTM), is working on a new standard for conducting a vapor intrusion assessment on property involved in a real estate transaction. The draft standard being developed is intended to supplement a Phase I environmental assessment.

Since the USEPA issued draft guidance on soil-vapor intrusion in 2002, a number of states have issued their own vapor intrusion guidelines. Massachusetts was one of the first to issue guidance in the early 1990's and set regulatory requirements to investigate potential pathways and notify the State if the pathway was likely or confirmed. Other states that have issued guidelines include: Alaska, California, Colorado, Connecticut, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin. Indiana initiated a draft vapor intrusion pilot program in 2006.

The draft ASTM standard is being designed to define a "standard of good commercial and customary practice for conducting an environmental site assessment" for a property and determining whether or not a vapor intrusion condition exists or is likely to exist on the property. A vapor intrusion condition means the presence or likely presence of any volatile chemicals.

Not All Environmental Assessments Are Equal

Caution is advised when ordering environmental assessments as there are several types. Consider the user's primary concern and make sure the scope of the assessment meets the need. For example, a "Basic" Phase I ESA may be used to identify environmental risk under the old ASTM E 1527-00 standard and yet it may not meet CERCLA liability protection. The new All Appropriate Inquiry (AAI) practices and standards and ASTM E 1527-05 Phase I ESAs are designed to meet CERCLA Liability Protection requirements or "current industry practice."

Other types of assessments include:

- **Business Risk Phase I ESA** - The scope is defined by the user or environmental professional and may be focused on specific business risks such as asbestos, wetlands, mold, or compliance issues.

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Costs Going Up for Phase I ESAs?

It's not surprising that Phase I ESA costs are slowly creeping up as new guidelines and regulations call for expanded services. This trend is likely to accelerate.

According to the latest Environmental Data Resources "ESA Report" an estimated 68,000 Phase I ESAs were performed in the fourth quarter of 2006 and the national average Phase I ESA price was a little more than \$2,200. The average maximum price is reported to be just over \$3,000.

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The draft standard appears headed toward a four-tiered process with the first two tiers being screening steps that will assess the potential for soil vapor intrusion. Tier 1 is the initial screening step that will be similar to data collection for a Phase I, but could also stand on its own. Tier 2 actually relies on soil or groundwater samples or soil vapor samples (either existing or new). Analytical data is compared to federal or state risk-based criteria.

The draft standard introduces a new term - vapor intrusion condition or "VIC" and potential VIC "pVIC." If a Tier 1 or Tier 2 assessment determines that it's reasonable and probable that there is a pVIC, and then the user can go directly to Tier 3 or Tier 4. Tier 3 is essentially further assessment that may include groundwater or vapor sampling, site-specific modeling, and/or indoor air testing. Tier 3 relies on the environmental professional's judgment and experience and the appropriate state or federal vapor intrusion guidance. Tier 4 identifies mitigation alternatives whether out of necessity (e.g., a VIC is found to exist by Tier 3) or as a voluntary and precautionary measure (e.g., a pre-emptive mitigation for a pVIC identified in Tier 1 or Tier 2).

The ASTM Vapor Intrusion Task Group includes 230 ASTM members and representatives from major professional and trade organizations, such as the Mortgage Bankers Association and Environmental Bankers Association among others. Several meetings throughout 2006 will be used to further refine the draft. The standard could be published by ASTM by the end of the year. The Palmerton Group is a member of ASTM and will be following this development closely.

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- **Phase I ESA Update** - Updates a prior Phase I which may or may not meet CERCLA or "current industry practice" standards. However, an update can be designed to meet these standards.
- **Transaction Screen** - Follows ASTM E 1528-06 standard and has a limited scope. The environmental professional may not visit the site. This will not meet CERCLA or "current industry practice" standards.
- **Desktop Environmental Review** - This is generally a records review only and the environmental professional does not visit the site. This will not meet CERCLA or "current industry practice" standards.

We are seeing an evolution toward a wider range of environmental due diligence being conducted on commercial properties. User's need to recognize this change and ensure that the environmental professional is providing an assessment that meets the user's primary concern. Longer due diligence periods and substantially more cooperation is required for CERCLA compliant assessments.

Costs Going Up continued from page 1

The new All Appropriate Inquiry (AAI) practices and standards that took effect November 2006 requires a greater degree of investigation and reporting in order to qualify for certain landowner liability protection under CERCLA. Some of the changes that immediately impact costs include requirements for interviewing past and present owners, operators, and occupants; searching for recorded environmental cleanup liens; and addressing data gaps. New guidelines for vapor intrusion are likely to further add to the reporting effort and hence the bottom line.

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