



## **Purchasers of real property may see changes in environmental investigations**

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In 2005, the Environmental Protection Agency issued a rule that largely defines how purchasers of real property perform environmental investigations. The rule defined "all appropriate inquiry," the legal standard that must be met to qualify for the Superfund innocent purchaser defense. The statutory defense is available only to purchasers who were not aware of the contamination after performing "all appropriate inquiry." The rule stated that investigations performed in accordance with American Society for Testing and Materials (ASTM) standard E-1527-05 satisfy the all appropriate inquiry standard.

ASTM is revising or updating its standard to include some issues that were not regularly addressed in 2005, such as vapor intrusion. EPA has decided, in response, to issue a clarification of its rule, but not a revision. A change in the rule is probably not necessary because the statute indicates that what inquiry is appropriate will vary over time. The statute requires all appropriate inquiry "consistent with good commercial or customary practice," a standard that can vary over time.

As a practical matter, the change will not have a major impact on the way purchasers of real property act. They may pay a little more for the Phase I assessment, but the environmental consulting community had largely updated its practices to address issues that were of concern to regulators and therefore to purchasers, even if the issues were not yet of concern to ASTM and EPA. For additional environmental law updates please visit [forchellienvironmentallaw.com](http://forchellienvironmentallaw.com)

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