

Wisconsin DNR Issues & Trends Webinar

April 16, 2014

For audio, dial: 1-888-291-0312 / passcode: 5155 216#

REMEMBER

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PHASE I ENVIRONMENTAL ASSESSMENTS IN WISCONSIN



Michael Prager
Land Recycling Team Leader

AAI in Wisconsin

- DNR does not require you follow ASTM standard
- DNR recommends you use it
- If you are submitting Phase I and II to DNR, you must follow NR 712 regarding professional qualifications and signatures
- File review



If assessment is funded by EPA.....

ASTM standard must be followed:

- Wisconsin Assessment Monies (WAM)
- Local government using EPA Brownfields Grant



ASTM Standard Must be followed if owner is seeking EPA Brownfields Cleanup Funding:

- In order to qualify for EPA Cleanup funding, owner (local government or private party) must not be liable under CERCLA
- To claim bona fide prospective purchaser protection, one requirement is AAI
- Ready for Reuse
- EPA Brownfields Cleanup \$ (RLF or Cleanup grants)
- When in doubt, do AAI.....leave options open

Due Diligence, property transactions

- If Phase I or II identifies that a discharge of hazardous substance occurred on a property, the owner is required to notify the DNR immediately (NR 706)
- Phase I and II Reports may help DNR determine what actions are needed
- DNR may send RP letter, ask for more information or determine no action required

General Liability Clarification & Off-site Exemption Letters

- If only low level contamination is found, you can request DNR for No Action Required determination, letter under s. 716.05, Wis. Adm. Code
- Phase I and II usually can provide enough context and site history to support determination
- For other complicated sites, letter can help determine what additional work is needed
- If Off-site liability exemption letter is requested, Phase I can help demonstrate that there is not an on-site source

Voluntary Party Liability Exemption

- Phase I and Phase II are required
- To identify all areas of contamination on a Property
- More work than ASTM may be required
- If there is limited operational history/ gaps, more sample will be needed

Lender Exemption Assessment

- Requirements when lender forecloses on property in 292.21 are specific and different than AAI
- Could do AAI + meet 292.21



For more information

Additional Information

- Look on CLEAN:

<http://dnr.wi.gov/topic/Brownfields/clean.html>

- Contact regional Environmental Program Associate for file review:

<http://dnr.wi.gov/topic/Brownfields/Contact.html>

- WAM

<http://dnr.wi.gov/topic/Brownfields/wam.html>

- VPLE

<http://dnr.wi.gov/topic/Brownfields/vple.html>

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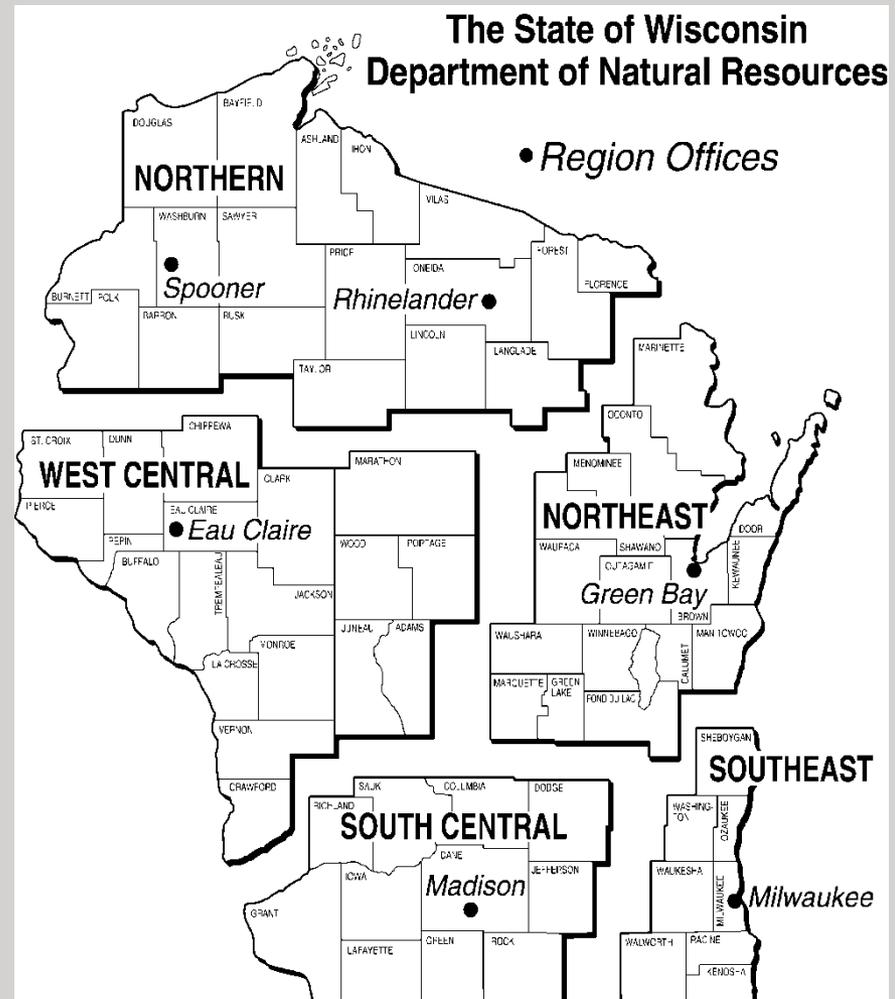
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ASTM E1527-13

The New Phase I Environmental Site Assessment Standard

Paul Zovic, CHMM

Endpoint Solutions

Universal ASTM Requirements

- ▶ ASTM Standards have 8-Year shelf life
 - E1527 publications: 1993, 1994, 1997, 2000, 2005
- ▶ Action Options
 - No Action - standard sunsets upon expiration
 - Ballot to re-approve with no change
 - Reconvene Task Group, draft revised language, ballot revisions

E1527 Task Group

- ▶ Over 150 members convened in early 2010; with broad stakeholder representation:
 - SBA, HUD, F/F/F Utilities
 - Commercial Lenders Facility owners/operators
 - State/Local agencies Attorneys
 - Insurance Environmental professionals

- ▶ TG agreed on three primary objectives:
 - Clarify existing language
 - Strengthen the deliverable
 - Reflect good (current) commercial and customary practice

Focus Groups

- ▶ Task group identified about 16 “issues” and formed focus groups
- ▶ Not all work of focus groups resulted in proposed changes
- ▶ Not all proposed changes survived balloting

Simple Changes

- ▶ Added definitions for “release” and “environment,” that align with CERCLA definitions
- ▶ New definition for migrate/migration, to specifically include vapor migration
- ▶ Clarification that **recommendations are not required by the standard**

Key Change: Simplified REC Definition

- ▶ The identification of *Recognized Environmental Condition* remains as the goal of the practice
- ▶ Revised definition more closely aligned with the EPA's All Appropriate Inquiries (AAI) “objective”
- ▶ “*de minimis*” extracted as a stand-alone definition

Key Change: Simplified REC Definition

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*.
De minimis conditions are not recognized *environmental conditions*.

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Key Change: *De minimis*

- ▶ *Recognized Environmental Condition* includes the presence of a release
- ▶ “*de minimis*” originally added to allow the Environmental Professional to immediately dismiss a minor spill
- ▶ “*de minimis*” has been used by some to describe contamination left in place and accepted by an agency (RBCA)
- ▶ E1527 Task Group (and EPA) concluded that the same term should not be used to describe both situations



Key Change: Historical REC

- ▶ *Historical Recognized Environmental Condition* definition originally developed pre-2002
- ▶ Conditionally closed sites currently being handled in different ways
- ▶ Consistency needed



Key Change: HREC

- ▶ Redefined *Historical Recognized Environmental Condition*
 - Past releases that have been addressed to residential/unrestricted use (i.e. no AUL, no IC/EC)
 - Must consider current regulatory framework (rules change)
 - **HRECs are not RECs**

Key Change: CREC

- ▶ New term - ***Controlled Recognized Environmental Condition***
 - Past releases that have been addressed to non-residential standard, subject to some type of control
 - Clarification that “*de minimis condition*” is not to be used to describe CREC
 - CREC does not imply that the EP has evaluated or confirmed the adequacy, implementation, or continued effectiveness of the “control.”
 - CRECs **are** RECs and **must be included in the conclusions section of the report**

Key Change: Agency File/Records Reviews

- ▶ Some argued additional review already required under current standard; others, that additional records beyond a database report are not required under current standard
- ▶ Many users thought it was already being done; **consistency needed**
- ▶ New language:
 - Should be conducted for property and adjoining properties
 - Alternate sources ok
 - If not conducted, explain why

“User” Responsibilities

- ▶ The purpose of the “User Responsibilities” not previously explained
 - Grounded in “Factors the Courts will Consider” CERCLA amendments
 - 2002 CERCLA amendments reiterated and extended responsibilities to include BF grantees
- ▶ Loan officers/realtors/brokers/etc., not typically seeking CERCLA liability protections or brownfields grant - some EPs asking the wrong people to complete the “User” questionnaire
- ▶ Clarification needed

Vapor

- ▶ E1527 had been silent on vapor
- ▶ EPA recommended the task group not ignore the vapor pathway
- ▶ E1527-13 revision
 - Acknowledges the vapor pathway in “*migration*” definition
 - Acknowledges soil vapor in “*Activity and Use Limitations*” definition
 - Adds discussion in Legal Appendix regarding vapor intrusion
- ▶ Clarifies that E2600 vapor screening not mandatory

Non-Scope Considerations and Appendices

- ▶ Clarified “indoor air” exclusion
 - Added “unrelated to releases of hazardous substances or petroleum products into the environment”
- ▶ Revamped non-binding appendices
 - Revised Legal Appendix
 - Revised Report Table of Contents and Format
 - Developed a “Business Environmental Risk” Appendix to provide references and resource guidance

Recommendations

- ▶ Task group split about 50/50
- ▶ Ultimately agreed that:
 - Recommendations are not required by the standard.
 - User should consider whether recommendations are desired.
 - Recommendations are an additional service.

Challenges for EPs

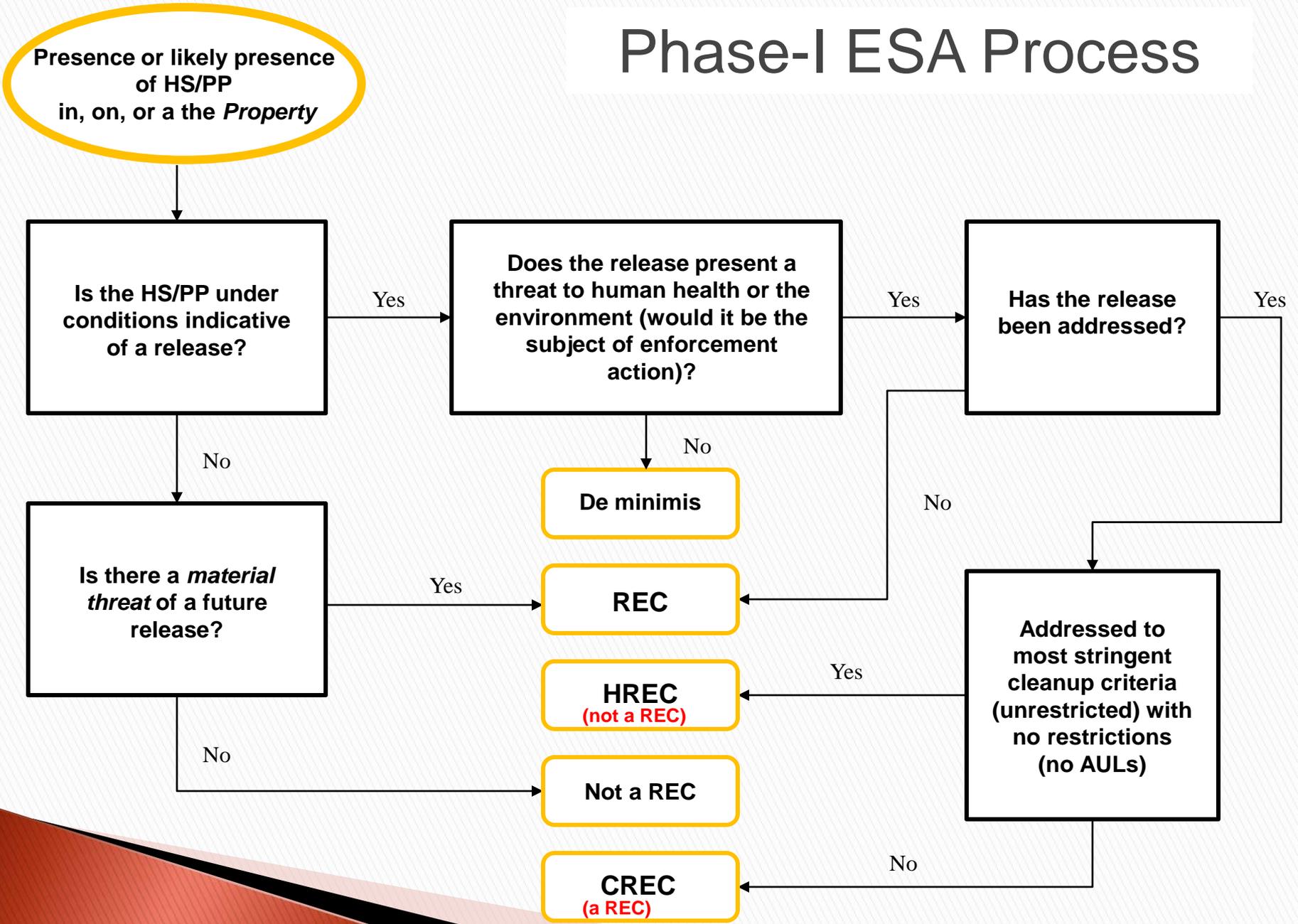
- ▶ Clarification of REC, HREC, CREC

- ▶ File Reviews
 - Management
 - Justification
 - Communication

- ▶ EPA/AAI

- ▶ Educating staff and clients

Phase-I ESA Process



Comments or Questions

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