

Incorporating Phase I Environmental Site Assessments into HUD Environmental Reviews

Questions and Answers from the Webinar

For specific situations, always defer to your HUD Regional/Field Environmental Officer.

The first question below was not answered clearly in the live webinar. Please defer to the answer provided below. The other questions are grouped by topic.

Question: If we have an option on a property that we're looking to acquire to develop a multi-family project, can we complete the HUD environmental assessment for that project before completing the Phase I and just list performing the Phase I as a mitigation condition so that we can acquire the site in a timely manner before the option agreement expires?

Answer: A Phase I ESA **cannot** be considered a potential mitigation measure for an environmental review. For example, if an option agreement is expiring and the grantee wants to acquire the property as soon as possible, they cannot complete the environmental review by conditioning it on the future completion of a Phase I. Although Phase I ESA is not a HUD requirement, except under the MAP guide and some other programs, it can be used to document compliance with HUD's contamination regulations at 24 CFR 58.5(i). Evidence of the presence or absence of hazardous materials or potential contamination is needed in order to complete the environmental review. Furthermore, opting to not complete the Phase I ESA before acquisition, if that will occur, means the buyer is taking on risk with regards to CERCLA liability. It may be possible, under certain circumstances, to condition the environmental review on the completion of a Phase II ESA, but the RE should discuss specific situations with their HUD environmental officers. When in doubt, please always reach out to your HUD Regional/Field Environmental Officer.

Terms

Q: What does acronym CERCLA stand for?

A: Comprehensive Emergency Response, Compensation, and Liability Act.

Q: Does FEMA define 'REC' as the ASTM E1527-21 does?

A: If you are referring to a FEMA's Record of Environmental Consideration (REC), it is not the same as a 'recognized environmental condition' as defined by ASTM E1527-21.

Q: The term 'area of concern' is not used in ASTM.

A: It is not in the ASTM standard. This is a term commonly used by state and federal agencies (such as the New Jersey Department of Environmental Protection, as seen in the case study) to refer to contaminated or potentially contaminated sites.

Q: How can we easily differentiate between a de minimis condition versus an actual REC, considering that a de minimis condition is not a REC.

A: The new ASTM E1527-21 standard defines a *de minimis* condition as "a condition related to a release that generally does not present a threat to human health or the environment and that

generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.” The condition must be “related to a release” for it to be a de minimis condition.

Q: Are the Phase I ESA and transaction screening comparable or equivalencies?

A: They are not comparable. The transaction screen is less comprehensive than a Phase I ESA, and it does not satisfy ‘all appropriate inquiries’ or protect against CERCLA liability.

Applicability of Phase I Environmental Site Assessments (ESAs)

Q: Is a Phase I ESA required for all EA-level projects?

A: HUD’s regulation at 58.5(i)(2)(ii) states, “The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any of the hazards listed in paragraph (i)(2)(i) of this section.” Furthermore, 58.5(i)(2)(iv) states, “The responsible entity shall use current techniques by qualified professionals to undertake investigations determined necessary.” Many, but not all, EAs are for multifamily housing and non-residential properties. The Phase I ESA qualifies as a current technique by a qualified professional, but there are other ways to satisfy this requirement (such as a knowledgeable staff member conducting a site visit, radius report/database search, interviews with current and past owners, and an investigation of past uses).

Q: Is the primary trigger for a Phase I ESA a change in use?

A: A change in land use is a trigger for a HUD environmental assessment. A trigger for a Phase I is satisfying AAI to protect against CERCLA liability in projects involving real property acquisition or HUD’s regulation at 58.5(i)(2)(ii), which states that environmental reviews for multifamily housing and nonresidential properties “must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by” hazardous materials, contamination, toxic chemicals and gases, and radioactive substances.

Q: For HUD CDBG projects, what triggers a Phase I? Obviously any new housing development—but what about funding for improvements to existing facilities such as senior centers? How is that handled?

A: A Phase I ESA can be used to demonstrate compliance with HUD’s regulations at 58.5(i)(2), especially 58.5(i)(2)(ii), which applies to multifamily housing and nonresidential projects. Please defer to your HUD Regional/Field Environmental Officer on what would be appropriate for rehab of an existing site.

Q: Is a Phase I appropriate/recommended for HUD-funded rehab projects? (Example: rehab of commercial/retail sites)? Or primarily just for projects that include acquisition?

A: For projects that do not involve acquisition, a Phase I ESA can be used to demonstrate compliance with HUD’s regulations at 58.5(i)(2), especially 58.5(i)(2)(ii), which applies to

multifamily housing and nonresidential projects. Please defer to your HUD Regional/Field Environmental Officer on what would be appropriate for rehab of an existing site.

Q: To clarify, for any and all acquisitions by a RE, a Phase I must be completed before the acquisition is completed, correct?

A: For acquisition of commercial/nonresidential property or multifamily housing, a Phase I should be completed to protect against CERCLA liability. Additionally, 24 CFR part 58(i)(2)(ii) lays out requirements for multifamily housing with five or more dwelling units (including leasing) and non-residential property.

Q: Would a Phase I ESA be required if the property has already been acquired?

A: A Phase I ESA is used to investigate the past uses of the property and absence/presence of contamination for multifamily housing and nonresidential properties per 58.5(i)(2)(ii). Similar techniques undertaken by qualified professionals could also be used when a Phase I ESA is not required. Check your HUD program guidance for whether a Phase I ESA is required because some HUD programs do require Phase I ESAs.

Q: If a Phase I was completed within 6 months of a property purchase and then that same owner decides to build on that property years later, is a new Phase I required?

A: If HUD funding is used for the new construction, then compliance with 58.5(i)(2) and 58.5(i)(2)(ii) should be demonstrated (through a new Phase I or by supplementing the old Phase I with updated information, such as a new site visit and new database search). Please defer to your HUD Regional/Field Environmental Officer on what would be appropriate for specific situations.

Q: For multi-family residential rehab that does not involve acquisition and is not substantial rehab, is a Phase I ESA required? If a Phase I ESA is not required, then what information and documentation is required?

A: An investigation into past uses and the likely presence or absence of contamination is required by HUD regulations at 58.5(i)(2)(ii) for multifamily residential properties. This investigation must be performed “using current techniques by qualified professionals”. If you do not use a Phase I, you would still want to carry out something comparable, such as site reconnaissance, interviews with current and past owners, records/database search, testing (e.g., lead-based paint, asbestos, radon, and/or methamphetamine, as appropriate) and an investigation into past uses.

Q: When completing the ERR five-year update for a public housing authority for existing MF PHA sites when no new construction or acquisition is planned, are Phase I ESAs required for each site to satisfy the contamination factor?

A: Please contact your HUD Regional/Field Environmental Officer on what documentation would be appropriate for existing MF PHA sites.

Q: We are a housing authority, and we completed a Phase I and II for a SAC demolition/disposition application. Do we need to complete the ESAs again?

A: Please contact your HUD Regional/Field Environmental Officer with the details of your situation.

Q: What is the requirement or recommendation for Phase I ESA for non-construction or acquisition programs, such as 5-year capital fund, Section 18, or Section 8 HAP renewal?

A: An investigation into past uses and the likely presence or absence of contamination is required by HUD regulations at 58.5(i)(2)(ii) for multifamily residential properties and nonresidential properties. This investigation must be performed “using current techniques by qualified professionals”. If you do not use a Phase I, you would still want to carry out something comparable, such as site reconnaissance, interviews with current and past owners, records/database search, and an investigation into past uses. Some HUD programs specifically require a Phase I ESA, so please check the program guidance as well.

Q: What if you are acquiring a private building and remodeling for housing?

A: Please contact your HUD Regional/Field Environmental Officer. Without knowing more details about what you are talking about, a specific answer cannot be given. But in general, a Phase I ESA is recommended to protect against CERCLA liability when you are acquiring real property.

Q: Does the installation of playground equipment, picnic shelter, or an outdoor exercise area in an existing city park (non-residential use) require a Phase I ESA?

A: For a CEST environmental review or environmental assessment on an existing park, other sources of documentation of the past uses and presence/absence of contamination could suffice in lieu of a Phase I ESA. For any park, the important thing to determine is whether the park is safe for children to play in.

Q: Regarding playgrounds, would there be a distinction between existing playground rehab and new playgrounds?

A: For existing playgrounds, other sources of documentation of the past uses and presence/absence of contamination could suffice in lieu of a Phase I ESA. For any playground, the important thing to determine is whether the park is safe for children to play in. Please defer to your HUD Regional/Field Environmental Officer on what would be appropriate for specific situations.

Q: Can you clarify if a Phase I ESA is required for a disaster recovery acquisition buy-out program where the flooded property will be acquired and demo/cleared and deed restricted to prevent any future development to avoid future disaster risk?

A: If a deed restriction will be applied, then a Phase I ESA would not be necessary for HUD’s environmental review. In that case you would only do a Phase I if you wanted to protect against CERCLA liability.

Q: Is the Phase I required for an undeveloped site that will be acquired and kept as it is for green space and flood control purposes? Or from a site that will be converted into a green space not involving housing?

A: A Phase I is highly recommended for the acquisition to protect the buyer from CERCLA liability. For HUD’s environmental review purposes, the Phase I is optional. You could use other means to determine whether any contaminants could conflict with the end use of the property or threaten the health and safety of occupants.

Q: Should Responsible Entities hire someone to do a Phase I if the grantee hasn't done so? For example: small nonprofits with small CDBG physical improvement grants.

A: As the RE will sign off on the environmental review, the RE should be comfortable with its contents. If the RE does not want to sign off on a project without a Phase I ESA but the grantee doesn't have the capacity to order one, then the RE could consider ordering the Phase I itself. Costs for a Phase I ESA are allowable program delivery costs.

Single-family projects

Q: If an environmental review is completed for new construction of 1-4 single family housing units for which the property will be acquired, would a Phase I be required?

A: A Phase I ESA would not be necessary if you were purchasing a residential lot to build a house with 1-4 units. A database search, site visit, and testing (such as for lead-based paint, asbestos, and radon) could be used to demonstrate compliance with 58.5(i). If you were purchasing a large parcel to develop a subdivision for housing, then a Phase I ESA would be prudent to satisfy 58.5(i)(2), 58.5(i)(2)(ii) and (iv), and All Appropriate Inquiries.

Q: Please discuss how and when a Phase I would be needed for a rehab of an existing housing unit. If the number of units or the capacity is not increased, what conditions would suggest a Phase I is needed.

A: Phase I ESAs are not typically performed for single-family housing, especially not for rehab; however, one could be done if desired. You must still ensure compliance with HUD's contamination regulations at 24 CFR 58.5(i).

Q: Are Phase I ESAs required for a project that is going from an undeveloped section of land to a single-family residential home?

A: If you are only constructing one to four units on undeveloped land, 58.5(i)(2)(ii) would not apply, so you wouldn't need a Phase I ESA. You would still want to determine whether there are any hazardous substances, chemicals, toxic materials, or radioactive materials on or near the property that could harm the health and safety of the occupants per 58.5(i)(2).

Infrastructure projects

Q: If HUD funds were being used only for water or sewer improvements but that water/sewer was to serve a proposed new residential structure, would a Phase I be required?

A: Even though the HUD funds are only going toward water/sewer improvements, you would aggregate the activities into one project description for the HUD environmental review. Thus, your project is infrastructure + housing. You'd need to investigate past uses of the property in accordance with 58.5(i)(2)(ii) and (iv).

Q: Should a Phase I ESA be required for projects like sewer and water lines through previously undeveloped lands with no previous evidence of contamination?

A: Most infrastructure projects would not qualify as multifamily housing or nonresidential property where an investigation of past uses is required by HUD's regulations at 58.5(i). But if you are moving or disposing of soil, you would want to determine whether the soil was contaminated so that you dispose of the soil properly.

Q: Would a Phase I be required for an CEST- or EA-level street reconstruction project not involving acquisition?

A: Infrastructure projects would not qualify as multifamily housing or nonresidential property where an investigation of past uses is required by HUD's regulations at 58.5(i). But if you are moving or disposing of soil, you would want to determine whether the soil was contaminated so that you dispose of the soil properly.

Timing of Phase I ESAs

Q: Can you clarify how long a Phase I ESA is valid?

A: A Phase I ESA is valid for 6 months (up to a year with updates) for the purposes of AAI and protecting against CERCLA liability for projects involving acquisition.

Q: When does the clock start?

A: According to the new ASTM E1527-21 standard, the clock starts whenever the first component of the Phase I has been completed.

Q: When does 1 year versus 180 days apply?

A: 180 days (after the first component of the Phase I has been completed) is how long the Phase I ESA is valid. If certain sections of the report are updated, then its validity can be extended up to 1 year.

Q: What sections need to be updated to extend the validity up to 1 year?

A: Interviews with past and present owners, operators, and occupants; searches for recorded environmental cleanup liens; reviews of federal, tribal, state, and local government records; visual inspections of the facility and adjoining properties; and the declaration by the EP.

Q: How long is a Phase I valid for environmental review purposes?

A: If the project does not involve property acquisition, then 5 years along with the rest of the environmental review unless a known release occurs in the meantime, in which case reevaluation would be necessary. Note that some HUD programs, such as some Office of Housing programs, have more specific requirements regarding Phase I ESAs. Please defer to your HUD Regional/Field Environmental Officer for specific situations.

Q: If a HUD environmental assessment was completed and received its authority to use grant funds from HUD but the purchase of the land did not occur for another year after receiving this, does the Phase I need to be updated?

A: To satisfy AAI and protect against CERCLA liability, the Phase I needs to be current at the time of purchase/closing.

Q: What happens when a site is cleared environmentally, but construction doesn't start until a few years later? Would an updated Phase I be required?

A: This depends on when construction starts. If the project does not involve acquisition (or acquisition occurs within 180 days of the Phase I) and if the construction is within five years, then the original Phase I ESA along with the rest of the environmental review could be acceptable. If the project scope or environmental conditions change (such as a known release of

hazardous substances nearby), then reevaluation of the environmental review would be necessary, and documentation on the presence/absence of onsite/offsite contamination should be updated.

Q: I have a Phase I ESA that was followed by a Phase II ESA. Do I need to update the ESA within 6 months of the Phase I ESA's earliest component or the Phase II completion date?

A: If you are acquiring property and using the Phase I ESA to satisfy AAI and protect against CERCLA liability, then the date of the Phase I ESA's earliest component is what you would use to calculate the 180 days before updating according to the new ASTM E1527-21 standard.

Q: If we owned property for more than 5 years, do I need another ER and Phase 1 ESA?

A: You would most likely need a new environmental review after 5 years if more HUD assistance is going into the property. Whether a new Phase I should be done depends on the risk of onsite or offsite contamination having occurred in the last five years. Please contact your HUD Regional/Field Environmental Officer with the project details to get a more specific answer.

Components of a Phase I

Q: Are the new ASTM standards available?

A: The ASTM standards are available directly from ASTM for a fee. Please see to the following link to order the complete E1527-21 standard: https://www.astm.org/e1527-21.html?gclid=CjwKCAiAu5agBhBzEiwAdiR5tKh_Zumk1c5rH8AVajBx_c575dtrCSc4wQeBsZoEyjh88bBS1YJ1QxoCBkoQAvD_BwE

Q: What are major changes between the E1527-13 and the E1527-21 standards?

A: A summary of some of the changes can be found at <https://downloads.regulations.gov/EPA-HQ-OLEM-2021-0946-0002/content.pdf>

Q: Are aboveground storage tanks typically listed in an AAI? The last AAI had said they weren't included. Do you know the technical standard?

A: They are typically not listed in Phase I ESAs. EPA's 2005 All Appropriate Inquiries rule includes a records search of registered storage tanks on the subject property and adjoining properties. Leaking underground storage tanks within ½ mile must be included, but not aboveground storage tanks beyond any registered to the subject property or adjoining properties. However, some Phase I ESAs do include a listing of aboveground storage tanks, if found during the records review or noted during site inspections.

Q: Should something like the topographical map be standard in any report?

A: Historic topographic maps, fire insurance (Sanborn) maps, aerial photographs, and city directories for the subject property and adjoining properties are now a required (rather than recommended) part of the historical records review in the E1527-21 standard. If such maps are unavailable for the subject property's location, then an explanation should be provided, and this would be noted as a data gap.

Q: What is required by HUD in the ESA certification?

A: A Phase I ESA completed for a HUD project should follow ASTM E1527-21 (E1527-13 is acceptable until February 2024).

Q: If the user does not provide lien information, can it just be noted as such in the PI ESA? Or would the EP need to obtain the lien information, if not provided by the user?

A: If the user does not provide lien information, the EP would still need to do a search through government records for liens. If records are not available, this would be noted as a data gap in the Phase I ESA report.

Q: Does HUD require compliance with Additional Inquiries/User Responsibilities?

A: If a Phase I ESA is ordered for a HUD-assisted project, it should follow ASTM E1527-21 standards (or E1527-13 until February 2024). HUD's environmental review regulations at 58.5(i)(2)(ii) require an investigation of past uses and evidence of the presence/absence of contamination by a qualified professional using current techniques.

Q: Does HUD require a Tier 1 Vapor Encroachment Screen as part of the EA or Phase I ESA

A: Vapor intrusion is defined as a recognized environmental condition under the ASTM E1527-13 and E1527-21 standards. A Phase I ESA performed following ASTM E1527-21 standards will include the same information as a Tier 1 Vapor Encroachment Screen. The MAP Guide outlines the requirements for HUD-FHA-insured loans for multifamily housing, and it requires a vapor encroachment screen:

https://www.hud.gov/program_offices/administration/hudclips/guidebooks/hsg-GB4430

For other HUD programs, please consult your HUD point of contact for more information.

Q: Will an EDR report suffice for historical information, rather than having to do FOIA requests?

A: The new ASTM E1527-21 standard requires a review of historical aerial photographs, local street/city directories, fire insurance maps and historical topographic maps for the subject property and adjoining properties as part of the Historical Research section. If the EDR report contains all four sources, then it could suffice. If you are referring to using an EDR report rather than a Phase I to demonstrate past uses of the property, that is fine if you are able to determine the past uses and the absence/presence of contamination.

Non-scope considerations

Q: Is there HUD guidance with respect to evaluating mold in a Phase I ESA?

A: If mold (or any other substance) could pose a threat to the health and safety of the occupants or conflict with the intended use of the property, it should be considered in the HUD environmental review. Whether this should be done in the Phase I ESA or separately (such as by a housing inspector) is not specified in HUD guidance.

Q: Can you define 'other testing'?

A: Other testing could mean testing for non-scope items, such as lead-based paint, radon, or asbestos.

Q: If the Phase I ESA includes lead-based paint (LBP) as a non-scope item, would HUD's LBP requirements under 24 CFR 35 be satisfied?

A: A Phase I LBP testing addition usually does NOT comply with the Lead Safe Housing Rule when the requirement is an LBP risk assessment and/or LBP inspection. The Phase I EP generally screens for LBP and that is all.

Q: Wetlands are a non-scope item for a Phase I ESA, so a reviewer wouldn't necessarily see a wetland map or identify an issue.

A: Correct. Wetlands are a non-scope item. EPs are not experts in wetland delineation. HUD recommends that wetlands not be included in the Phase I ESA or at least that you do not rely on the Phase I ESA to determine the presence or absence of wetlands.

Q: Where do I find the draft radon policy that was mentioned?

A: <https://www.hud.gov/sites/dfiles/CPD/documents/23-02cpdn.pdf>

Q: Is radon a non-scope consideration or a required component?

A: The ASTM standard considers some contaminants or considerations beyond the standard scope of practice and are therefore not required to protect against CERCLA liability. Radon is one of these 'non-scope' considerations. However, radon must be considered for multifamily projects, as specified in the [Multifamily Accelerated Processing \(MAP\) Guide](#).

Q: Where would I find out more about the radon testing?

A: EPA provides recommendations for radon testing: <https://www.epa.gov/radon/find-radon-test-kit-or-measurement-and-mitigation-professional>. You may also contact your state's radon program. Contact information for each state can be found here: <https://sosradon.org/state%20program%20contacts>.

Q: Since radon can be managed on the property, does the EA need to identify the project mitigation if the levels are too high?

A: Yes, if the radon levels are high, you would need to identify mitigation measures to make the property safe for occupants or cancel the project at that location. Please refer to the MAP Guide for specific radon mitigation requirements for all Multifamily Housing projects.

Outcome of the Phase I ESA

Q: If a Phase I ESA identifies no RECs, would HUD still require that a Phase II Work Plan/HASP be produced and reviewed?

A: HUD could ask for further investigation if the concerns were identified by the Phase I that could harm the health and safety of the occupants or conflict with the end use of the property. As discussed in the webinar, sometimes EPs miss RECs in their investigation, and things that are not RECs could still pose a business environmental risk. If you are asking about a specific scenario, please contact your HUD Regional/Field Environmental Officer with the details.

Q: Do all RECs require Phase II reviews?

A: Not all RECs would require a Phase II review. It depends on the REC identified and the intended use of the property. For instance, some RECs can be managed through the establishment of a soil management plan that would be implemented during the construction phase. Even if there is no REC identified, HUD's MAP Guide for processing of Multifamily projects states: "Note that even if the Environmental Professional preparing the Phase I ESA determines that a Finding does not rise to the level of a REC, HUD may determine that the finding warrants Phase II investigation based on HUD's toxics policy at 50.3(i)." This is for a Part 50 review and for Multifamily, but an RE can similarly require testing or further inquiry for business risk reasons.

Q: If a Phase I determined the prior building had a heating oil container that might be leaking was not removed upon demo of the prior building, a Phase II would be needed, right?

A: A Phase II ESA would be appropriate for this case.

Q: Are petroleum releases handled separately from CERCLA, and, if so, should no further action (NFA) letters from state authorities regarding petroleum releases (typically a UST cleanup program) be investigated further for contaminants not covered under these requirements?

A: Yes, CERCLA's definition of a "hazardous substance" excludes petroleum (<https://www.epa.gov/epcra/cercla-petroleum-exclusion>). If the State has issued an NFA letter regarding a petroleum release, it should be referenced and included in the Phase I ESA and ERR. Oftentimes, no further investigation is necessary. However, the environmental professional and the team conducting the Phase I ESA should conduct due diligence to ensure all potential contaminants have been investigated.

Q: If lead is naturally occurring in soils, and tests are not exceeding accepted levels, why would we retest?

A: If the lead is not safe for a specific land use, then mitigation and retesting may be necessary. For example, if the naturally occurring lead is higher than state, federal, or tribal standards for residential use, then you would consider mitigation if you were planning on developing housing.

Q: If a Phase III is recommended, how does the project proceed without violation of 58.22?

A: As part of the Phase III, you'd develop a remedial action plan (RAP) to address the contamination. As long as you have the plan developed, you can proceed with completing the environmental review and receiving clearance for the project. The plan must be approved by the state oversight agency. The environmental review would be 'conditioned' on the mitigation outlined in the RAP. As you're moving forward with your project, you would need to keep documentation of implementation of the RAP and any other mitigation and update the ERR.

Q: If the report indicates that there is an on-going water well monitoring on the adjacent site (not on project site), which is uphill from the project site, is this a concern and should water well testing be requested?

A: This could be a concern depending on what contaminant within the water is being monitored, the frequency of testing, and the historic and current use of the adjacent site (among other factors). If there is concern that the health and safety of the occupants of the project site or the end use of the project site will be harmed, then water well testing should be requested, if not required.

Q: What happens if a Phase I uncovers a burial ground on site property or nearby? What is protocol or is this on a state-by-state (or case-by-case) basis?

A: If the Phase I uncovers a burial ground, you must contact the state historic preservation officer/archaeologist, local tribes, and your HUD environmental officer contact. If a dead body is discovered during a site visit, first immediately contact law enforcement. This would become a historic preservation concern rather than a contamination concern.

Q: Do you have to follow Phase I recommendations for a Phase II or limited subsurface investigation if there is doubt that it would affect the project? E.g., groundwater contamination will not have an impact on a sidewalk project that only has an excavation of 12 inches or fewer.

A: Regarding HUD environmental reviews, you could make the case that a Phase II is not needed if you can demonstrate that the contamination would not conflict with the end use of the property or affect the health and safety of occupants/users.

Q: At what distance should potential RECs be considered a problem when considering site contamination?

A: The ASTM standard defines search radius distances for different types of facilities (ranging from a quarter mile to one mile). Whether a potential REC could be a problem could also depend on factors such as whether the subject is downgradient from the source of contamination.

Procurement

Q: Shouldn't hiring be held to lowest most responsible bidder status as this is HUD-related?

A: If HUD funds are paying for the Phase I ESA, then bidding/procurement should follow government regulations at 2 CFR 200.

Q: Can we procure directly without going through an RFP and still meet 2 CFR 200?

A: See 2 CFR 200.320 "Methods of procurement to be followed" for different options on procurement.

Miscellaneous

Q: Is a site visit required as part of the HUD Part 58 Environmental Review, or is relying on the Phase I ESA acceptable?

A: A site visit done for a Phase 1 ESA may not sufficient for the purposes of a part 58 environmental review. There are multiple topics required within a HUD environmental review, such as neighbors, noise sources, and EA factors, that are not evaluated during a Phase 1 ESA. Additionally, part 50 environmental reviews may require a site visit by HUD staff. However, a site visit for a Phase 1 ESA may be combined with a site visit conducted for a HUD Part 58 environmental review.

Q: With regard to farming, if a site lays fallow for 7 years, organic farming can typically be started; does this hold any weight when assessing for pesticides?

A: Some pesticides could still be around after 7 years. Factors to consider would include the half-lives of the specific chemicals and the soil type/drainage of the land.

Q: For the case study in the webinar, can't the argument be made that the Phase I is not valid since it was completed following ASTM E1527-13 rather than the most current ASTM standard (E1527-21)?

A: The most recent EPA amendment to the All Appropriate Inquiries rule did not take effect until February 13, 2023. It recognizes the ASTM E1527-21 standard, and the ASTM E1527-13 standard is still valid until February 13, 2024.

Q: I have utilized my local EPA brownfields program or my regional EPA's Targeted Brownfields Assessment Program to complete Phase I and II ESAs. Is there any reason why this is not appropriate to meet HUD's ER requirements?

A: Such Phase I and II ESAs should meet HUD's requirements under 58.5(i)(2) regarding the likelihood of site contamination or the presence/absence of substances that could threaten the health and safety of the occupants or conflict with the end use of the property *unless* they were not performed under the current applicable ASTM standards. When in doubt, please contact your HUD environmental officer for further guidance.

Q: Sometimes A Phase I can be hundreds (if not 1,000s) of pages long when all the appendices are included. Does the full Phase I ESA need to be uploaded HEROS? Could the primary assessment be uploaded with figures and the full assessment (with appendices) simply be retained onsite by the RE?

A: If you were to upload only the main report into HEROS, you could make a note that the full report with appendices is available for public viewing onsite by request.

Q: If you have more than one property within the same vicinity, (street or within a few streets nearby) can you add them into one ESA? Or do they have to be separate for each address/project?

A: One Phase I ESA could be conducted for adjacent properties. However, if the properties are not adjacent, separate Phase I ESAs for each property is recommended.