Comparison of ASTM and VAP Phase I Assessments
What is a Phase I Assessment?

- First step in the process of environmental due diligence
- Identifies potential or existing environmental liabilities
- Phase I report documents these liabilities and identifies areas that require further investigation (i.e. Phase II Assessment)
- Government regulations and industry standard practices dictate how a Phase I Assessment is conducted and then documented in a report
Standards and Regulations for Phase I Assessments

- ASTM E1527-05 – “Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process”

- All Appropriate Inquiry (AAI) – In 2002 Congress passed “Small Business Liability Relief and Brownfields Revitalization Act”
  - Provides legal liability protection under CERCLA (aka, Superfund)

- Voluntary Action Program (VAP) – “Rule 3745-300-06: Phase I Property Assessment”
ASTM and VAP Phase I
Some Similarities

- Historical environmental assessment
- Review of historical information and government databases/files
- Interview with persons familiar with operations on the property
- Site inspection/walk over
- Describe areas/issues of concern for hazardous substances or petroleum
- Phase I Assessment Report
ASTM and VAP Phase I Difference is in the Details

- Overall purpose of assessment
- Who conducts the assessment?
- General requirements
- Records review
- Interviews
- Site visit
- RECs vs IAs
- Report content
What is a Targeted Brownfield Assessment (TBA)?

- Assessment work provided at no cost to local governments
- Applicant must be a unit of local government
- Non-competitive
  - Projects funded as they come to Ohio EPA
  - Federal and State funding sources (renewed annually)
- TBA Phase I will be both ASTM E1527-05 (AAI) and VAP compliant
ASTM and VAP Phase I
Different Purposes

- The ASTM E1527-05 Phase I
  - Standard practice for U.S. EPA’s All Appropriate Inquiry (AAI) liability protection under CERCLA
  - Intended to facilitate commercial real estate transactions
  - Work product stands on its own

- The VAP Phase I
  - First step in a voluntary action
  - Identify areas that need further investigation for VAP Phase II and possible remediation
  - NFA letter will be issued at some point in future
ASTM and VAP Phase I
Requirements for Phase I Update

**ASTM E 1527-05**
- Valid for 1 year prior to acquisition of property
- Certain items must be conducted or updated within 180 days of property acquisition
  - Interviews
  - Environmental lien search
  - Records search
  - Site visit
  - Declarations by EP

**VAP Phase I**
- Conducted 180 days prior to issuance of NFA letter
- Never invalid but must be updated prior to issuance of NFA letter
- If older than 180 days, must demonstrate conditions have not changed
- VAP has a TGC document discussing this topic – see VA30007.09.007
ASTM and VAP Phase I
Who Conducts/Oversees Phase I

For ASTM, an Environmental Professional, as defined in the AAI rule and ASTM E1527-05

For the VAP Phase I

- Rule written as if Volunteer is responsible
- Certified Professional, as defined in VAP Rule OAC 3745-300-05, is only required to issue NFA letter
  - CP required to do certain activities
  - CP performance is monitored by Ohio EPA
  - CP Initial Training Course is required
ASTM Phase I
User Responsibilities

- Determine relationship of purchase price to property value
- Review records for environmental liens or activity and use limitations
- Provide specialized knowledge, experience, actual knowledge, or commonly known or reasonably ascertainable information
  - Includes relevant documents and proceedings involving property
- User and EP can modify scope of services conducted due to site-specific circumstances
ASTM and VAP Phase I  
*de minimis* Evaluation

**ASTM E 1527-05**
- Subjective professional opinion

  “Conditions that generally do 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 government agencies.”

**VAP Phase I**
- Very prescriptive requirements
  - Only applies to surficial soil (9ft² and 1ft depth)
  - Might need samples to show residential standards are met
  - Affidavit from Volunteer may be used in lieu of sampling
  - Limit of 3 *de minimis* areas per property
Records Review

Historical Use of Property

**ASTM E 1527-05**
- Determine history to the first developed use or 1940, whichever is earlier
  - Review interval of less than 5 years is not required
  - Optional chain of title investigation
    - One of several standard historical sources that could be used

**VAP Phase I**
- Determine a continuous history of use back to the first commercial or industrial use
  - May need to consider interval less than 5 years to establish a continuous history
  - Requires chain of title investigation to establish historical use
Records Review
Document Review and Retrieval

ASTM E 1527-05
- Reasonably ascertainable
  - Provided within 20 calendar days
  - Provided at nominal cost
  - Must yield information without the need for extraordinary analysis of irrelevant data

VAP Phase I
- Reasonably available
  - Provided within 90 calendar days
  - No limits on the cost of retrieval or the amount of time or effort needed to analyze information
Many similarities/overlap in the type of records included in search; however...

- VAP requires review of state and local records/files
- These records are optional under ASTM

Search distances vary for some sources

- ASTM – 1.0 miles, 0.5 miles, property and adjoining property, or property only
- VAP – 0.5 miles or property only
Interviews
Who Should Be Interviewed?

ASTM E 1527-05
- Tends to be a bit more specific about who to interview and when
  - Key site manager
  - Occupants
  - Past interviewees
  - Past owners, operators or occupants
  - State and local government officials
  - Owners or occupants of adjacent properties for abandoned sites

VAP Phase I
- Requirements are more general, but reasonable attempts to locate and conduct interviews are required for all persons
  - Key property personnel
  - Persons who reside or have resided on or within areas surrounding the property
  - Persons who are or where employed at or within areas surrounding the property
Interviews
Who Should Conduct Interview?

**ASTM E 1527-05**
- EP, unless a person with sufficient training and experience does and is supervised by EP
- EP must, at a minimum, help plan interviews

**VAP Phase I**
- CP, unless a sufficient number and quality of interviews conducted by others are adequately documented
- If others conduct interview, CP must demonstrate information from interview is reliable and complete
Site Visit
Who Should Conduct Site Visit?

**ASTM E 1527-05**
- EP, unless a person with sufficient training and experience does and is supervised by EP
- EP must, at a minimum, help plan site visit

**VAP Phase I**
- VAP rules are silent on this
- CP must conduct site walk-over prior to issuing NFA letter
### Site Visit
#### Requirements Prior to Site Visit

<table>
<thead>
<tr>
<th>ASTM E 1527-05</th>
<th>VAP Phase I</th>
</tr>
</thead>
<tbody>
<tr>
<td>EP requests User identify Key Site Manager</td>
<td>Volunteer is responsible for Phase I, so similar requirements are moot</td>
</tr>
<tr>
<td>Request that Key Site Manager, Property Owner, and User provide relevant documents and any proceedings relevant to property</td>
<td>VAP rules are silent on when Volunteer must provide information to CP for NFA letter</td>
</tr>
<tr>
<td>EP must review information prior to or at the beginning of the site visit</td>
<td>Requirement for VAP eligibility determination is similar to disclosure about proceedings relevant to property</td>
</tr>
</tbody>
</table>
Site Visit
Property and Building Inspection

**ASTM E 1527-05**
- Inspect all exterior areas of the property, including all buildings and structures
- Inspect all interior accessible common areas used by public and occupants, maintenance and repair areas, and representative sample of occupant spaces

**VAP Phase I**
- Physical inspection of all areas of the property, including interior and exterior of all buildings and structures
# RECs vs IAs

## Some Differences

<table>
<thead>
<tr>
<th>ASTM E 1527-05</th>
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<tbody>
<tr>
<td>Releases to structures are included in definition of REC</td>
<td>Releases to structures are not included in definition of IA</td>
</tr>
<tr>
<td>Historical REC – Condition that would have been a REC historically but is not a REC today</td>
<td>Must demonstrate release to environment, which means soil, water, etc.</td>
</tr>
<tr>
<td>Material Threat of a Release</td>
<td>Concept of historical IA not in VAP – All past and present IAs are IAs</td>
</tr>
<tr>
<td>- Observable threat likely to lead to release that might result in impact to public health or environment</td>
<td>- Threatening conditions are not considered VAP IAs unless an actual release is suspected</td>
</tr>
<tr>
<td>- Based on opinion of EP</td>
<td>- Definition of release does include abandoned drums, containers, etc.</td>
</tr>
</tbody>
</table>
When is a Release Not a Release?

- ASTM – Includes all releases even those in compliance with law
- VAP – Excludes some releases from the definition of a VAP release
  - Regulated by OSHA
  - Originates from engine exhaust
  - Nuclear material regulated under the Atomic Energy Act, as long as it is not mixed with hazardous substances or petroleum
  - Federally permitted release
  - Normal application of fertilizer
## Contaminants of Concern

<table>
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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Hazardous substances</td>
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</tr>
<tr>
<td>- CERCLA 42 USC 9601 (14)</td>
<td>- Listed in 40 CFR 302.4</td>
</tr>
<tr>
<td>- Larger universe than VAP</td>
<td>- VAP has a narrower universe than CERCLA</td>
</tr>
<tr>
<td>Petroleum products</td>
<td>Petroleum</td>
</tr>
<tr>
<td>- Contaminants included within the petroleum exclusion of CERCLA</td>
<td>- Oil or petroleum of any kind or in any form</td>
</tr>
<tr>
<td>Controlled substances</td>
<td>- VAP definition includes some examples</td>
</tr>
<tr>
<td>- Applies only for U.S. EPA Brownfield Grants</td>
<td></td>
</tr>
<tr>
<td>- Federal Controlled Substances Act</td>
<td></td>
</tr>
</tbody>
</table>
ASTM and VAP Phase I Report Differences

- Map requirements
- Identification of deviations and limitations
- Findings and Opinions
- RECs vs IAs (previously discussed)
- Written statements and signatures
- Miscellaneous
ASTM and VAP Phase I Report
Map Requirements

- ASTM has no specific map requirements
  - Suggested table of contents includes a site location map and a site plan

- VAP has prescriptive map requirements
  - Property location map (7.5 min USGS topo)
  - Property map with boundary determined by professional surveyor
  - Identified area map
  - Map showing off-property sites that may be impacting property
ASTM and VAP Phase I Report

Deviations and Limitations

- The ASTM allows for additions, deletions, or deviations from standard practice, as long as it is documented in report.

- VAP does not allow for deviations from rule requirements.
  - Cannot exclude information due to confidentiality agreements.
  - Identification of limitations is required.
### ASTM E 1527-05
- Identify known or suspected RECs, historical RECs, and *de minimus* conditions
- List RECs in conclusions section of report

### VAP Phase I
- Identify known or suspected IAs and *de minimus* areas
- If IAs are present, must identify the hazardous substance or petroleum that must be assessed during Phase II
ASTM E 1527-05
- Required concluding statements
  - See 12.8.1 or 12.8.2 of ASTM standard
- Required professional statements
  - See 12.13.1 and 12.13.2 of ASTM standard
- Signature of EPs

VAP Phase I
- Required statement recommending either:
  - A NFA letter can be issued, or
  - A Phase II is required to obtain a NFA letter.
- CP does not sign Phase I report but will sign affidavit when issuing NFA letter.
ASTM and VAP Phase I Report
Other Miscellaneous Requirements

**ASTM E 1527-05**
- List qualifications of EP and other personnel conducting site interviews and visit
- Identify current and past uses of property
- Legal description of property is **optional**
- Photographs are often included as part of documentation in report but are not required

**VAP Phase I**
- Identify name and job title of each person conducting investigation
- Identify past, current, and **intended use** of property
- Legal description of property is **required**
- Color photos of property with date are **required**
Information Resources

U.S. EPA’s All Appropriate Inquiry Rule, Fact Sheet and other pertinent information concerning the AAI Rule

http://www.epa.gov/brownfields/aai

VAP Web Page (contains Phase I rule language along with other information for performing a voluntary cleanup under the VAP)

http://www.epa.state.oh.us/derr/volunt/volunt.aspx

ASTM E 1527-05 (Copyrighted material available for purchase from ASTM)

http://www.astm.org/Standards/E1527.htm
Questions?

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