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### *An Insider's Perspective*

## **ASTM Phase II Framework Evolves from Standard Guide to Standard Practice**

**T**he revised version of ASTM International's standard governing Phase II environmental site assessments not only sets forth a "methodologically sound" process for conducting property assessments, but also lays the foundation for essential communication to ensure the resulting investigation and report meet the expectations of all involved, the chair of the task group that revised the standard told BNA Dec. 8.

The standard, E1903 *Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process*, was approved and published by ASTM in July.

Christopher McCormack, an attorney with Pullman & Comley LLC, said the revision process already was underway by ASTM's E50 Committee on Environmental Assessment, Risk Management, and Corrective Action when he became task group chair. By that time, he explained, the task group had been at work for several years and had rewritten the standard extensively.

### **A Changing Framework**

Prior to the interview with BNA, McCormack had discussed the Phase II standard during a BNA webinar Oct. 20, where he provided a detailed look at its development to provide context for the most recent version.

As originally issued in 1997, ASTM's E1903 *Standard Guide for Environmental Site Assessments: Phase II Environmental Site Assessment Process* was intended to define "good commercial and custom-

ary practices" for assessing the potential presence of contaminants following a Phase I assessment in accordance with ASTM's E1527 Phase I environmental site assessment standard. At that time, McCormack explained, both Phase I and Phase II assessments were viewed as steps in satisfying the "all appropriate inquiry" criterion of the innocent purchaser defense under the federal superfund law. The standard was reviewed and reissued without change in 2002.

However, that same year, significant amendments to the Comprehensive Environmental Response, Compensation, and Liability Act altered the innocent purchaser defense, McCormack explained, and redefined AAI. In 2005, the Environmental Protection Agency published its rule setting forth detailed new AAI criteria. In parallel, ASTM updated the E1527 Phase I standard to provide an alternative approach that EPA approved as sufficient to satisfy AAI requirements.

These changes meant the Phase II standard no longer could be viewed as an element of AAI, McCormack explained. This "decoupling" of the Phase II process from Phase I and AAI led the E1903 task group to "rethink the standard." In doing so, it agreed to change the Phase II standard guide to a practice.

### **Changes Are Evolutionary**

McCormack describes the transformation of the E1903 standard from a guide to a practice as "evolutionary."

In the ASTM framework, a standard guide provides an organized collection of information or series of options that does not recommend a specific course of action, whereas a standard practice defines a sequence of operations that must be followed. The change from a guide

to a practice, therefore, is not insignificant.

One of the major changes in the new Phase II standard practice is that the user of the standard and the Phase II assessor must consult to define the scope and objectives of the Phase II. This step is critical, McCormack explained, to ensure assessment activities meet the needs of the user who commissions the assessment or others to whom the user intends to provide the results, such as lenders or insurance underwriters.

"The greatest potential upside of the new standard is to get participants on the same page about these investigations. There was widespread frustration with existing assessment practice because of mismatched expectations from both the people getting the reports and the people doing the work," McCormack told BNA Dec. 8.

The new standard "requires people to start off by agreeing on what it is they're doing, why they're doing it, and what they need."

On the technical side, the standard now specifies procedures that must be followed based on the "scientific method" to characterize property conditions, with the goal of being objective, representative, reproducible, and defensible.

### **Incremental Changes**

McCormack views these changes as incremental. "The idea that the investigation proceeds according to the scientific method was made more robust," he explained. "It was already there, but it was not in as much detail and not stated quite as firmly" in the previous version.

In reaction to the new standard, McCormack said some people seem to be daunted by the level of detail. However, he said, if you view it as a systematic way of approaching the process, "it is not as threatening."

“Notwithstanding the length of the document, the process itself is really a way of thinking about the investigation, and the actual assessment doesn’t need to be more complex than it has to be to meet the agreed objectives,” McCormack explained.

“But if you have a complex situation and you want to investigate exhaustively, it may be that you have to be more systematic and go into more detail.”

The standard is “a tool that can help you navigate the most difficult

issues if you need it and make sure that all the circles are closed. When you are done, you should have something that is intellectually defensible and accomplishes the goals you define at the outset.”

BY MARY ANN GRENA MANLEY