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### **Brownfields**

## **ASTM Standard Offers Reasonable Approach For Evaluating Properties, Risk Manager Says**



A limited ASTM International due diligence standard (E1528) offers a reasonable and inexpensive approach for assessing some properties for potential contamination, an environmental risk manager told Bloomberg BNA April 2.

"It's an acknowledgement that doing less than what is required in a stricter standard (E1527) is acceptable to lenders," Derek Ezovski, president of ORMS in Hartford, Conn., said. ORMS outsources environmental risk management services to smaller community and regional banks.

The voluntary standard, which Ezovski called "more of a guidance document than a practice," is less expensive than E1527 because it doesn't require parties to hire an environmental professional to conduct a strict evaluation.

E1528 is a transaction screen for parties who aren't seeking liability protection under the Comprehensive Environmental Response, Compensation, and Liability Act, Bill Weissman, co-chair of the E1528 Transaction Screen Group, told Bloomberg BNA.

In comparison, ASTM E1527 requires more due diligence, including a requirement to conduct a Phase I environmental site assessment of property, which is more expensive than the transaction screen.

In December, the EPA published its final "all appropriate inquiries" (AAI) rule, which references ASTM's updated Phase I standard, E1527-13 .

### **Banks Don't Follow ASTM**

Ezovski said, however, that "in my experience, a lot of banks we work with don't follow the ASTM standards very closely."

Typically, most smaller community and regional banks do more than required under E1528 but less than a Phase I assessment under E1527, he said. "What ends up happening a lot of times is that the transaction screen standard ends up being 'Phase I-like' but it doesn't need any protections from AAI or any of the third-party protections that 1527 affords," he said.

Larger buyers who are working with a sophisticated bank and high-value loan typically conduct Phase I assessments, Ezovski said.

Weissman said E1528 is meant for parties dealing with property who start with a high level of confidence that there aren't going to be any environmental issues.

"If there are, this is not the standard to use," Weissman said. If parties suspect contamination at a site, they should use the Phase I standard under E1527, he said.

Weissman's comments represent his own views and not those of ASTM, an ASTM staff member told Bloomberg BNA.

Electric utilities, for example, have used E1528 when buying property that hasn't had a long history of industrial activity, Weissman said. "They felt this standard was a tool for doing an inexpensive spot-check," he said.

### **Standard Called Checklist**

"It's really a checklist of things to look at," Weissman said.

The transaction screen outlined in E1528 may be used by buyers, environmental consultants, lenders, brokers, appraisers, corporations, lawyers, government agencies or any other party that wants to screen for environmental risk.

The transaction screen allows parties to question property owners, allows non-environmental

professionals to observe site conditions and allows parties to conduct research from government records and historical sources, Ezovski said.

Often "desk-top reviews," which consist of pulling information from different sources without making a site visit, can comprise the transaction screen process, he said.

E1528-14, published January 2014, revises the 2006 version of the standard.

One change states the transaction screen is a floor, and parties can do more than it calls for, Weissman said. For example, lenders, who often are willing to hire an environmental professional, may do so without conducting a full-scale Phase I assessment, he said.

### **Other Changes Made**

Another change removes language linking potential contamination to a property bought far below the market value, he said. Many parties who sought the revision said reliable information couldn't be obtained from an E1528 transaction screen, he said.

The revised standard also clarifies that users aren't going to get protection under CERCLA, Weissman said. "We had already said they weren't, but people don't read, so we took out all CERCLA-like phrases," he said.

Finally, the 2014 version of the standard clarifies that the tools parties are using in a transaction screen can't determine whether the property has a "recognized environmental condition," as E1527 does, Weissman said. This holds true for E1528 even if an environmental professional is hired, he said.

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