New Jersey Institute of Technology (NJIT) Technical Assistance to Brownfield Communities (TAB)

ASTM Phase I Changes and AAI Webinar

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March 13, 2014

973-642-4165 (Hotline)



Webinar Overview

- Logistics
- NJIT TAB Overview
- ASTM Phase I Changes
- USEPA and the New ASTM Phase I Standard
- REC and CREC (w/examples)
- Q&A Break
- Definitions and Clarifications
- Q&A Discussion / Wrap-Up



Logistics

- We have put all participants on mute
- Please submit questions using the chat window
- Webinar is scheduled for 1 hour
 - Web room will remain open at the end of the hour to answer questions
- The webinar will be <u>recorded</u> and will be posted on our website <u>www.njit.edu/tab</u>
- Technical Difficulties use chat function or call 973-642-4165

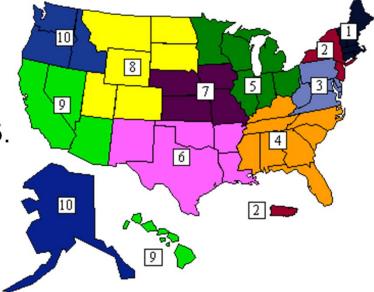


What is TAB?

TAB is a technical assistance program, funded by the USEPA, which is intended to serve as an independent resource to communities and nonprofits attempting to cleanup and reclaim brownfields.

NJIT's TAB program covers communities in EPA Regions 1 and 3.

Refer to EPA's website for other regions: http://epa.gov/brownfields/grant_info/tab.htm Kansas State and CCLR





Who Can Receive NJIT TAB Assistance?

 Communities, regional entities and nonprofits interested in brownfields





What are NJIT TAB Services?

NJIT TAB can provide <u>free</u> assistance throughout the brownfield process, from getting started to staying on track to getting the job done.

All services must be <u>aimed at achieving Brownfields clean up and</u> <u>development</u> and be consistent with Region 1 and 3 programs.



Technical Assistance for Brownfields TAB@NJIT.EDU

Examples of NJIT TAB Services

- One-on-One Technical Assistance
- Review , Analysis, and Interpretation of Technical Reports
- Assistance with Procuring Consultants
 - Examples of RFPs
 - Consultant Selection Process
- Brownfields Workshops
- Webinars



NJIT TAB CONTACT INFORMATION

NJIT TAB Hotline 973-642-4165 tab@njit.edu

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Meet the Presenter

Bob Blauvelt, NJIT TAB (GEI Consultants)

Geologist with more than 25 years

- Environmental licenses in
 - New Jersey
 - Connecticut
 - Massachusetts
- ASTM 1527 Committee Member



All Appropriate Inquiry (AAI)

AAI Final Rule (40 CFR Part 312)

Innocent landowner liability defenses

 EPA defines 10 AAI criteria which ASTM 1527 satisfy





All Appropriate Inquiry (AAI)



- EPA Office of Inspector General (February 14, 2011) evaluation of 35 Phase I Reports
- All reports were non-compliant with AAI requirements
- Is human health and environment threatened at redeveloped Brownfield sites?
- Landowner or purchaser at risk of incurring CERCLA liability



1527-13 and All Appropriate Inquiry

- Eligible (Brownfield) Grantees must demonstrate they are not CERCLA liable
- December 30, 2013 EPA Final Rule
 - 1527-13 satisfies AAI requirements
 - http://www.epa.gov/brownfields/aai/ <u>AAI-Reporting-fact-sheet-and-</u> <u>checklist-062111-Final.pdf</u>
- 1527-13 provides new focus on
 - Definitions and clarifications
 - Prior contamination
 - Potential obligations or restrictions on future use





1527-13 and All Appropriate Inquiry



Revision Process

- Eight year sunset provision on all ASTM standards
- Broad spectrum of users, environmental professionals, etc.
- 05 standard divided into sections assigned to subcommittee
- Proposed revisions compiled, discussed, with changes voted on according to ASTM by-laws



Recognized Environmental Conditions (05)

"The presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property, or into the ground, ground water, or surface water of the property. The term includes hazardous substances or petroleum products even under conditions in compliance with laws."

Recognized Environmental Conditions (13)

"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."



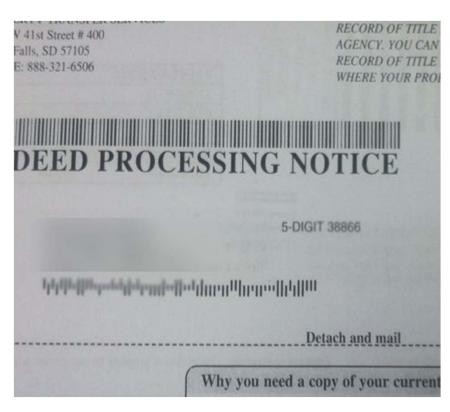
Historic Recognized Environmental Conditions (HREC)

- <u>05 definition</u>: "an environmental condition which in the past would have been considered a REC, but which may or may not be considered a REC currently."
- <u>13 definition</u>: "a past release of any hazardous substances or petroleum products that has occurred in connection with the property and has been addressed to the satisfaction of the applicable regulatory authority or meeting unrestricted...use criteria...without subjecting the property to any required controls...Before calling the past release an HREC, the EP must determine whether [it] is a REC at the time the Phase I ESA is conducted...If the EP considers [it] to be a REC...the condition shall be included in the conclusions section of the report as a REC."



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Controlled Recognized Environmental Conditions

"A REC resulting from a past release of hazardous substances or petroleum products that (1) has been addressed to the satisfaction of the applicable regulatory authority, with (2) hazardous substances or petroleum products allowed to remain in place subject to the implementation of required controls.

A condition considered by the EP to be a REC shall be listed in the findings section of the Phase I ESA report and as a REC in the conclusions section of the Phase I ESA report."



de minimis Condition

"A condition 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.

Conditions determined to be de minimis conditions are neither RECs nor CRECs







"Thanks to yoga, I now gently stretch to conclusions instead of jumping to them" Report Findings

 Identifies known or suspect RECs, CRECs, HRECs, and *de minimis* conditions.

Report Conclusions

- Summarizes all RECs including CRECs connected with the property.
- Recommendations not required by 1527-13



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Identifying and Managing CRECs

Example No. 1

Industrial facility where past operations resulted in a release of petroleum hydrocarbons to soil.

Remediation completed to non-residential standards and case closed with an institutional control

<u>05 Standard</u>: HREC – However.... what about notification obligation under the IC?

<u>13 Standard</u>: CREC - Residual contamination present with a land use restriction



Identifying and Managing CRECs

Example No. 2

Dry cleaner released chlorinated solvents to ground water in 2001.

Unrestricted use NFA issued by regulatory agency in 2005, but water quality standards changed in 2012 and last sampling round in 2004 indicates site is no longer compliant.

05 Standard: REC? HREC?

<u>13 Standard</u>: REC? CREC?



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Q&A Break





Vapor Migration Risk

- Clarifies the definition of a release and migration to include contamination in the vapor phase
- Encourages EP's to address VI more explicitly in the Phase I.
- ASTM 2600 not a requirement and not usually necessary



Regulatory File Reviews

"If the property or any of the adjoining properties is identified on one or more of the standard environment record sources...pertinent regulatory files and/or records associated with the listing should be reviewed...If...such a review is not warranted, the EP must explain the justification for not conducting the regulatory file review"

- More full disclosure/analysis of records
- Timing and cost likely to become an issue







Reasonably Ascertainable Data

- Publically available access by anyone upon request
- Obtainable within reasonable time and cost constraints – site, client, and/or project specific
- Practically reviewable: information relevant to the property without the need for extraordinary analysis



User Responsibility

- User party seeking to complete an ESA (owner, purchaser, tenant, lender, etc.)
- EP must request, but user is not required to provide, the following:
 - Environmental liens
 - Activity and use limitations
 - Specialized knowledge about site operations
 - Relationship of purchase price to the fair market value
 - Commonly know or reasonable ascertainable information about the property
 - Obvious indications that point to the presence of a release







Report Format

- 05 Standard
 - 16 major sections with 41 subsections
 - Repetitive and highly proscriptive
- 13 Standard
 - Nine major sections with no specified subsections
 - More performance or outcome based



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Final Wrap Up Q&A/Discussion



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