#### DUE DILIGENCE PERSPECTIVES

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## What's On Tap

- \* Phase I Overview and Update
- \* Vapor Intrusion Considerations
- \* Agency Record Reviews
- \* Perspectives On Reports
- \* Hits and Misses



#### Phase I Overview

- \* Why perform a Phase I?
  - \* Secure liability protections
  - \* Satisfy lenders
  - \* Inform / aid negotiations







## All Appropriate Inquiry

- \* CERCLA "innocent purchaser" defense if purchaser had undertaken "all appropriate inquiries into the previous ownership and uses of the property ..."
- \* All appropriate inquiry not defined
- \* ASTM E 1527-93 fills the gap
- \* 2002 Brownfields Act made "all appropriate inquiry" a pre-requisite for contiguous property owner and bona fide prospective purchaser defenses

# All Appropriate Inquiry Rule

- \* Brownfields Act required EPA to develop an all appropriate inquiry rule.
- \* ASTM E1527-97 / E1527-00 deemed AAI.
- \* Final AAI Rule effective Nov. 1, 2006.
- \* AAI Rule included all main ASTM 1527-00 activities, enhanced some inquiries / extended scope, defined role of EP.
- \* Satisfy AAI by the AAI Rule or ASTM E1527-05.

## ASTM E1527-13 Highlights

- \* November 2013: ASTM E1527-13.
  - \* Simplified the definition of REC
  - \* Vapor intrusion considerations
  - \* Amended definition of Historical REC
  - \* Added Controlled RECs
  - \* File review considerations
- \* EPA response ASTM E1527-13 met AAI.
- \* After October 2015 ASTM E1527-05 not AAI



# Vapor Intrusion Considerations



# Agency Record Reviews



## Report Considerations

- \* Attorney-client privilege
- \* Recommendations
- \* Writing style
- \* Trust EDR?
- \* Quality of aerials/Sanborns





#### Phase I Hits and Misses





#### Non-ASTM Considerations

- Cost of Asbestos and Other Hazardous Building Materials
- 2. Stormwater/Operating Permits
- 3. Mold
- 4. Lead Based Paint
- 5. Water Supply
- 6. Radon

#### What is a REC?

- \* What is important the facts or the label?
- \* Subjective or professional judgment?
- \* Variability across consultants
- \* Confusion about offsite sources
- \* Everything is a REC?



#### Cannot See the Forest for the Trees

\* Phase I reports that dutifully provide individual historical source information (e.g., Sanborn maps) but fail to provide any narrative describing the overall history of the site



#### Check the Box Reports

- Reports that are merely check the box without understanding the site
- \* All ASTM elements present, but little thought given to explaining the property







# Did Not Bother To Read Their Own Attachments

- Reports that contain important information in attachments that were missed or ignored
  - \* Example the case of the moving street

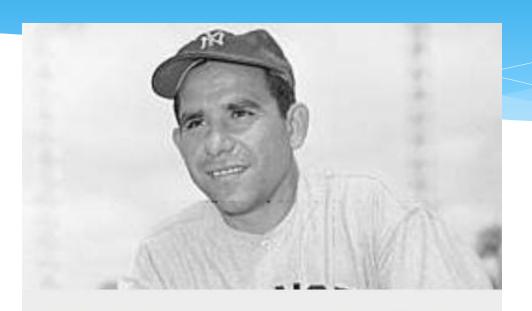


# Case of the Moving Street





## QUESTIONS?



"If you ask me anything I don't know, I'm not going to answer."

Yogi Berra