

ENVIR BRIEFS

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Daubert Redux?

New standard being developed by ASTM provides guidance for selecting experts in the field of environmental forensics

In *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), the Supreme Court ordered federal trial judges to become the “gatekeepers” of scientific evidence.

Now a guide is being developed to assist the

federal courts and other judicial and administrative decision making bodies for assessing the qualification of environmental forensic experts. The guidance currently under consideration by ASTM’s subcommittee E50 on Environmental Assessment is intended to provide a consensus-developed and peer-reviewed standard for the general practice of Environmental Forensics.

The guidance provides the legal background; qualification of experts in the field of environmental forensics; terminology defined in the guide; and covers the reliability of forensic scientific evidence.

Several revisions have been made since 2006 and although there is some controversy over the need for such a guide, a majority of ASTM members have voted to continue to move it through the review and approval process. The next review will be at the ASTM E50 subcommittee meeting in October 2007.

For further information, contact us or ASTM at www.ASTM.org.

Report the Threat or Pay Up

According to the New York State Attorney General’s office, HSBC Bank USA, N.A., will pay \$850,000 in civil penalties and reimburse the State for approximately \$68,000 in costs incurred as a result of the abandonment of hundreds of drums, tanks and containers at

Westwood Chemical Company on Tower Drive in the Orange County town of Wallkill. The settlement is reported to include an additional \$48,000 for enforcement costs.

The Attorney General’s office reported that HSBC seized Westwood’s operating funds in 2004, which forced Westwood to close their doors, leaving behind hundreds of containers of abandoned chemicals and products within and outside the company’s buildings. The Attorney General’s suit alleged that HSBC knew of the abandoned chemicals, frozen pipes and the lack of a fire suppression system but did not contact the DEC or any state or local emergency responder to report the threat, as required by New York law.

Attorney General Andrew Cuomo said “This settlement is groundbreaking in that it sends a strong message that lenders cannot ignore toxic cleanup laws by simply seizing a company’s operating funds and leaving it without the financial ability to be in compliance with environmental laws and ensure public safety.”

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Brownfields Tax Incentives

The clock is ticking on the use of Brownfields Tax Incentives, which are due to expire December 31, 2007. Originally signed into law as part of the Tax Relief Act of August 1997, the incentives were extended in December 2006 to December 31, 2007. Amendments in 2006 also expanded the law’s scope to allow the deduction of expenses for the cleanup of petroleum products (e.g., crude oil, condensates, and natural gasoline) that were previously ineligible. Amended tax returns may be filed to deduct expenditures from prior tax years.

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To prevent similar environmental hazards from occurring, HSBC has agreed to implement a new internal environmental training program to educate its employees on environmental compliance obligations of companies facing financial difficulty and of the lenders' responsibilities.

The case is State of New York v. HSBC Bank USA, Civil Action No. 07-CV-3160, U.S. District Court, Southern District of New York.

See www.oag.state.ny.us.

Going Green

Climate change worries coupled with high oil prices and increasing government support are fueling investment in the renewable energy and energy efficiency industries, according to a report from the United Nations Environment Program.

Experts predict the investment in green technology will continue this year with new investments of \$85 billion. The UNEP Executive Director Achim Steiner says "One of the new and fundamental messages of this report is that renewable energies are no longer subject to the vagaries of rising and falling oil prices - they are becoming generating systems of choice...irrespective of the costs of fossil fuels"

Large companies like GE and Wal-Mart are transforming the real estate industry by embracing sustainable business practices and green technologies

The practical application of going green was seen at the International Council of Shopping Centers (ICSC) convention in Las Vegas earlier this year. For the first time ever, the ICSC was promoting a new platform of energy efficiency, sustainable products, and green building practices, culminating in a Green Zone and Green Pavilion.

An analysis of the real estate industry by Progressive Investor reports that approximately 41% of 300 U.S. real estate investment trusts (REITs) are pursuing energy efficiency and green building upgrades and another 27% of the companies plan to do so.

Progressive real estate firms are focused on urban rehab buildings and Brownfields rather than suburban greenfields, incorporating advanced energy efficiency measures, gray water systems, and recycled building materials.

The tipping point may now have been reached as leading developers, retailers, lenders, and product and service providers place high-level emphasis on sustainability and green building practices.

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Taxpayers must obtain a statement from a designated state agency verifying a property's eligibility for the tax incentive. Sources at USEPA say it is uncertain as to whether the incentives will be extended again.

However, in each of its budget proposals since 2003, the administration has suggested that Congress make the tax incentive permanent. If the tax incentives are extended, they will likely be retroactive as they were in 2006.

According to a recent New York State press release, a bill sponsored by Assembly member Thomas DiNapoli, Chair of the Assembly Committee on Environmental Conservation, is designed to refinance the state Superfund program and establish a Brownfields program in a way that protects public health, cleans up groundwater and maintains the existing law's "polluter pays" principle. Governor Spitzer was recently quoted as saying "Adoption of the DiNapoli bill would give New York the best Brownfields program in the nation."

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