



THE CUBICAL

Year-End Edition 2022

The Year in Review - 2022

Chemical Screening – Design & Implementation

Designing & Implementing a
Chemical Screening Program Within
a Risk Management Framework

Thursday, April 28, 2022



Since distributing the Inaugural Edition of The Cubical in February 2021, I have strived with each edition to deliver information and content that lawyers, environmental professionals, and other business leaders, managers, and professionals may find to be of interest. As I close out 2022 with the Year-End Edition, I can certainly say that the process of

researching, drafting, and publishing this content has been quite a learning process for me personally. Hopefully, you all have found at least some of this content to be of use or interest.

In 2022, I was also fortunate to have the opportunity to speak on a number of topics of interest to several dynamic groups in the commercial real estate, quality management, and legal fields. This has been quite an educational process for me as well, so I thought that I would hit some of the highlights from these presentations, as well as some of the other 2022 editions of The Cubical, to wrap up the year.

***January 20, 2022 - Phase Is, All Appropriate Inquiries & ASTM E1527-21:
Environmental Due Diligence in Commercial Real Estate Transactions -
presentation to Association of Georgia Real Estate Exchangers***

The year started off with a presentation on environmental due diligence in

commercial real estate transactions to the Association of Georgia Real Estate Exchangers (AGREE) at their regularly scheduled monthly meeting. This presentation took place in the wake of ASTM's new standard for the conduct of Phase I Environmental Site Assessments - E1527-21 which had just been finalized the previous month. We had a good discussion on some of the fundamental concepts in performing Phase Is such as what constitutes a "recognized environmental condition." We then spent some time talking about the features and particular points of emphasis of the new standard. We finally wrapped up with a quick summary of some of the tools available for addressing contaminated property in Georgia.

A full copy of the presentation can be accessed by clicking [here](#). My thanks to AGREE President, Scott Morchower and the AGREE membership for graciously allowing me to present to their group.

April 28, 2022 - Chemical Screening - Design & Implementation/Risk Assessment Tools for a Regulatory Environment - presentation by Daniel J. Brown & Stephen B. Ellingson, Ph.D. to the American Society of Quality - Greater Atlanta Section

I, along with Steve Ellingson, Ph.D. (a senior associate with Shannon & Wilson and a consultant who is well-known among the Atlanta environmental community), led an interesting discussion with the American Society of Quality - Greater Atlanta Section (ASQ-Atlanta) on the benefit of designing and implementing chemical screening programs, and how certain risk assessment tools can be used to enhance such programs. I drew from my previous experience as an environmental engineer in the refining industry to describe the regulatory drivers for such programs, and how operations can use such programs to ensure compliance with programs such as Toxic Release Inventory (TRI) or Spill Planning, Control & Countermeasure (SPCC) reporting. I also briefly touched upon how such programs can be used to ensure that a company complies with its ESG commitments.

Steve led an interesting discussion on how a chemical screening program can be enhanced through the implementation of a 7-Element Risk Management System. Steve also led the group through a discussion of how this System can be effectively utilized in other areas of environmental compliance.

Finally, the program benefitted from some very useful insights and feedback that we received from members of the group when leading them through several workshop problems relating to chemical screening and the implementation of risk management systems.

A full copy of the presentation can be accessed by clicking [here](#). My thanks to Doug Waterman, Ruffin Booth, Jerome Lofton, Judi Kern, and members of ASQ-Atlanta and other ASQ sections for graciously allowing us to present to at their meeting. And of course, thanks to my presentation partner, Steve Ellingson, for the keen insights he provided in a fun program!

October 5, 2022 - Attorney as Client: The In-house Perspective on Outside Counsel - presentation by Daniel J. Brown & Chris Sperry to the Atlanta Attorney Affinity Group of ProVisors - a national organization of trusted

I, along with Chris Sperry of the Sperry Law Firm, were participants on a panel discussion entitled *Attorney as Client: the In-house Perspective on Outside Counsel*. The panel discussion took place during the monthly meeting of the Atlanta Attorney Affinity Group for ProVisors, a national organization of trusted advisors to which Chris and I belong. Chris and I drew from our previous experience managing and working with outside counsel while serving in in-house legal and other business roles in the corporate world. Chris and I both stressed the importance of setting expectations early in an engagement with outside counsel, as well as gaining an understanding of outside counsel's view of the general road map to the solution of the legal matter in question. We also pointed out that all organizations have budgets, and that it is critical for outside and in-house counsel to have a common understanding of the estimated legal budget for a particular matter. Once the budget estimate is established, it is imperative for outside counsel to conduct their activities within the framework of the budget estimate, and to inform in-house counsel as soon as possible if there are developments that may impact the ability of outside counsel to meet the established budget estimates.

My thanks to my panel partner, Chris Sperry, Group Leader for the Pro Visors Atlanta Attorneys Affinity Group, Carter Stout, the rest of the Executive Committee for the Atlanta Attorneys Affinity Group, and the meeting attendees for a lively panel discussion.

Highlights from the 2022 editions of *The Cubical*

Continuing Some of the Key Themes from 2021

In 2022, we continued some of the themes from 2021. In the June 2022 edition, we discussed how DOJ adopted one of the key pillars of EPA's environmental justice (EJ) enforcement strategy: *seeking interim or preliminary relief prior to a meaningful opportunity for administrative or judicial review*. Whereas the April 2021 edition focused on EPA's general stormwater permit for industrial activities, the July 2022 edition turned its attention towards the states, focusing on Georgia EPD's general stormwater permit for industrial activities. The October 2022 edition continued the August 2021 edition's process safety theme, this time focusing on several features of EPA's proposed amendments to its Risk Management Plan (RMP) Rule. Other continuing themes included ESG and mass and energy balances; and utilizing EPA's audit policy to address toxic release inventory (TRI) violations.

For a complete archive of past editions of *The Cubical*, visit the Articles webpage of the website for Daniel J. Brown, L.L.C. - [Blogs/Articles – Daniel J. Brown, L.L.C. \(djbrownlaw.com\)](https://www.djbrownlaw.com/Blogs/Articles)

Due Diligence Focus

With the issuance of ASTM's updated standard for the conduct of Phase I assessments, *The Cubical* focused on some of the features of the new standard in the January 2022 edition, including its focus on contamination associated with dry cleaners. The August 2022 edition of *The Cubical* included an update on EPA's regulatory activity in the wake of ASTM's issuance of its new Phase I ESA standard, discussing the ramifications of EPA's decision to withdraw its direct final rule to incorporate the new standard into its regulations.

Happy Holidays!!

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