In 1988, the New Jersey Supreme Court decided *Inmar Associates, Inc. v. Borough of Carlstadt; GAF Corporation v. Borough of South Bound Brook* (112 N.J. 593; 549 A.2d 38 1988 N.J. Lexis 102). The case was considered a landmark in the valuation and property taxation industries because the court recognized that it was not proper appraisal procedure to deduct cleanup costs in recognizing any impairment due to environmental contamination. Additionally, this court determined that the effect of contamination on value is best measured by an appraiser.

Many hailed this decision as a commonsense approach in the matter of the valuation of contaminated properties. In fact, *Inmar* has been cited in nearly 50 subsequent cases. In New Jersey alone, where it would be considered Primary Authority, it has been cited 25 times. The decision has been cited in three federal court decisions and by a number of other state supreme courts.

This article will examine how *Inmar* played a role in certain decisions over the years. Additionally, there is a discussion of how it has influenced a school of thought in the appraisal industry. Six cases in particular stand out as good examples.

First, briefly, the salient points of *Inmar*:

**Inmar revisited**

The opinion handed down on Oct. 13, 1988 was introduced as the proper method to determine “the assessed value of real property subject to governmentally imposed requirements for environmental cleanup.” It was clear the court had this perspective throughout its discussion and decision.

The taxpayer’s main argument was articulated as “the property was unmarketable and therefore should be regarded as having no value or, in the alternative, that Inmar’s cleanup costs … should therefore ‘be deducted dollar for dollar from the value of the property to reach a correct assessment.’”

The court did not agree. It noted that the methodology “is not simply to deduct the cost of the cleanup from a putative value of the property. That would reflect only the cost accounting practices of the current owners.” It went on to state, “Simply because cleanup costs will affect the owner’s profits does not, however, automatically require a reduction in the tax assessment; an owner’s expenditures of cost are never conclusive on the question of value for tax purposes.”

**Subsequent cases**

Several subsequent cases addressed similar issues; some courts agreed with the *Inmar* ruling, others did not. A sampling follows:

*Dana Corporation v. Department of Local Government Finance* (Cause No. 49T10-9906-TA-133 Indiana Tax Court 2003; Ind.Tax Lexis 70). Dana Corporation owned land in Wayne County, Ind. that was environmentally contaminated and as a result, believed that a reduction in assessed value should be forthcoming. The Indiana Tax Court said a reduction in assessed value would be forthcoming only if “Dana … show[ed] … the causal link between (1) the contamination and (2) a reduction in property value … Its evidence does not do so.” Further, the court cites *Inmar*, recognizing that a reduction in assessed value is not “simply deducting the cost of the cleanup from the putative value of the property.”
Simply stated, Dana considered the contamination as evidence of the need for a reduction in assessed value. They did not come to court with any evidence that quantified the contamination’s effect on value. Inmar said it best: “never conclusive on the question of value for tax purposes.”

Lake County Assessor, Calumet Township Assessor and Lake County Property Tax Assessment Board of Appeals v. United States Steel Corporation (Cause No. 49T10-0703-TA-19 Indiana Tax Court 901 N.E.2d 85; 2009 Ind. Tax Lexis 7). Ruling similarly to the judge in Dana, Judge Fisher denied the taxpayer relief. The denial was based on the methodology that US Steel used, which deducted remediation costs from the current assessed value to account for the environmental contamination. Fisher cited Inmar exactly as the court did in Dana. The issue, however, that distinguishes US Steel from Dana is that the court negated the cursory contamination reduction made by the Indiana Board in saying that it was US Steel’s opinion that the money spent on remediation was tantamount to a reduction in value. Instead, the court decided “… this is nothing more than a mere opinion or conclusion, and ‘a mere opinion or conclusion does not constitute probative evidence.’”

In short, Judge Fisher set the bar for the evidence needed for the court to even consider a potential reduction due to environmental contamination. This case has a number of other interesting points outside of the scope of this article. The reader is encouraged to review it.

Jeff and Victoria Schmidt v. Utah State Tax Commission, County Board of Equalization of Salt Lake County, State of Utah (1999 UT 48; 980 P.2d 690; Utah Adv. Rep. 34; 1999 Utah Lexis 88). The Schmidts purchased a home near the site of a former smelter operation. They argued the value of the property should be zero because the property was contaminated with high levels of lead and arsenic. In support of their contention, while the original assessed value was approximately $800,000, they had an estimate for the environmental cleanup of almost $1,050,000. The Utah Supreme Court stated “This court has never established a proper method for fixing the value of contaminated property.”

It said, however, that other jurisdictions had a better idea of how to start and cited Inmar in saying that perhaps there should be some consideration to the value-in-use to the owner. Later the decision alludes to Inmar in pointing out “no agency had required any cleanup” of the Schmidts’ land, thereby calling into question the validity of the remediation costs.

Garvey Elevators, Inc. v. Adams County Board of Equalization (No. S-00-226) (261 Neb.130;621 N.W.2d 518; 2001 Neb.Lexis 18). Garvey protested the 1998 assessment valuation of two parcels owned in Adams County, Neb. The parcels contained grain storage and a merchandising business. Garvey, at one time, owned approximately 30 grain elevators in the area. In the early 1990s AGP Grain Cooperative offered to purchase all 30 contingent upon a satisfactory environmental site assessment. AGP acquired 27 of these elevators from Garvey but did not purchase the other three based on the results of the environmental site assessments, including the subject properties.

Garvey submitted a summary appraisal that concluded a fair market value of the property on the date of the assessment was zero. The methodology used by the appraiser consisted of a dollar for dollar reduction in the value by the amount of the costs to remediate. The Equalization and Review Commission concluded, for a number of reasons, Garvey was incorrect in its methodology. The court agreed and in their opinion cited Inmar, where “The Court stated that such methodology would reflect only the cost accounting practices of the current owners.”
The opinion of the court in *Garvey* is similar to those in the cases discussed above: Remediation costs deducted from the unimpaired value would overstate the value lost.

*E.I. DuPont De Nemours & Company, and Colorado State Board of Assessment Appeals v. Douglas County Board of Equalization* (75 P.3d 1129; 2003 Colo. App. Lexis 3). The DuPont property at issue consists of almost 850 acres adjacent to the town of Louviers, Colo. It was used by DuPont to manufacture explosives such as detraprime, dynamite, nitroglycerine and emulsion-type blasting agents from 1908 to 1989. The process contaminated portions of the property and resulted in the entry of a “Compliance Order on Consent” by Colorado. This order required DuPont to clean and remediate the property. DuPont appealed its 2001 property tax assessment on the grounds that the assessor did not properly consider the effect on the value of the subject property from the contamination.

The Colorado Board of Assessment Appeals (BAA) agreed with DuPont and lowered the assessment to reflect the loss in value from the contamination. The Colorado Court of Appeals agreed with this approach as well.

“In affirming the BAA’s order, we conclude that the deduction of costs to cure required by governmental remediation order represents the better approach to determine the actual value of a parcel when it is clear that, even by conservative estimates, the cost of remediation is greater than the value of the property if it were in clean condition.”

Further, “… the governmental remediation order imposes an irrevocable obligation on DuPont to complete the remediation. Accordingly, we agree … the DuPont property is valueless.”

This isn’t the only case that went against the standard set in *Inmar*. Interestingly, *Inmar* was cited but its point ignored in the ultimate decision.

*Mola Development Corporation v. Orange County Assessment Appeals Board No. 2* (80 Cal. App. 4th 309; 95 Cal. Rptr. 2d 546; 2000 Cal. App.). This is another decision that did not follow *Inmar*. In this case, the court agreed that the County Board of Assessment Appeals erred only when it deducted the costs to remediate from the unpolluted value but then added back contributions to the cleanup from former owners.

In fact, not only is the *Inmar* decision criticized, but so is the entire New Jersey body of law including the courts: “First, New Jersey property assessments are tied to something called ‘true value,’ not necessarily open market value…the New Jersey Court [in *Inmar*] took seriously the idea that property might have ‘value to the owner even if there is no market.’” [Emphasis added by the court.]

The California Appeals Court went on to ridicule New Jersey’s opinion that said “dollar-for-dollar reduction does not ‘realistically’ reflect that an investment in cure might prudently be spread out by ‘competent management’ over a number of years…the *Inmar* court’s introduction of the idea of time, however, does not refute the idea that cure costs should be deducted.”

Later in its opinion, the California Court cites another case (*University Plaza v. Hackensack* (1993) 264 N. J. Super. 353) and how the New Jersey court distinguished its support for *Inmar* by saying the University Plaza remediation was not mandated by the government. “Of course, if we may be forgiven for kibitzing in New Jersey common law, the *University Plaza* court’s reliance on the difference between voluntary and mandatory cleanups is hardly a persuasive way of distinguishing *Inmar*. If anything, a mandatory cleanup leaves even less room for anything but a cost-of-cure deduction approach. The point is, when an unworkable doctrine is announced (in *Inmar*, a rejection of deduction of costs-to-cure), lower courts sometimes twist like Houdini to get around it. Well, at least in New Jersey.”

**Appraisal literature**

All of the foregoing cases have one point in common: the idea that effect on value as a result of environmental contamination is difficult to quantify. The appraisal literature agrees, but sets out to provide some practical solutions for appraisers.

Mundy, MAI, PhD, says “The impact a contaminating material has on the value of a property can be traced on a time continuum. Initially, a clean property has a value equal to full market value. When the market perceives a property is a problem, value will be significantly affected in several ways ... when the problem is understood uncertainty is lessened and the value of a property should then increase to a point at which the difference between its contaminated value and its market value is the sum of the cost to control the problem plus any residual stigma.”

Stigma is the difference in the understandings of the scientific community and the general public.

Other authors agree with Mundy and there has been a similar school of thought within that context. (See articles by Patchin and Chalmers published in the *Appraisal Journal*.) Additionally, there is a great deal of validity to those concepts. Practicality, however, begs another answer to the question of contamination’s effect on value.

In the October 1998 edition of the *Appraisal Journal*, Randall Bell discusses a practical model. First, Bell introduces his 10 categories of Detrimental Conditions (DCs). Each category, he explains, has “unique patterns and attributes that can be illustrated on a graph.” The 10 categories, as presented on a Bell Chart, include “Environmental Conditions.” Bell outlines this category as “Soil Contamination, Building Contamination, Hydrocarbons/Metals/Solvents, Asbestos/Radioactive, etc.”

Then Bell describes the analysis using the three approaches to value. Lastly, he shows, on a time continuum, the various stages and the characteristics of those stages. He adds that one must consider certain costs related to each stage and specific characteristic. His commonsense conclusion advocates what the appraiser must consider before contamination, during the contamination and post contamination.

**Conclusion**

*Inmar* was most certainly a landmark decision and it has become a catalyst for discussions in many subsequent cases. In addition, Inmar challenged appraisers when it said “We leave to the competence of the appraisal community the sound measure of that adjustment.”

Appraisers have, indeed, stepped up to that challenge in the form of thought leadership from people like Randall Bell. He and others like him have provided a great deal of thought and logic in completing appraisal assignments that have the environmental contamination issue present at the time of the valuation. Perhaps, over time, these methods will become the standards by which courts evaluate property tax assessment complaints that include the issue of environmental contamination.

It is clear that New Jersey has taken a position in using the *Inmar* decision as its standard with regard to methods that should not be used. Most of the states that have cited *Inmar* agree with New Jersey’s approach. The jurisdictions that have not agreed have used the method of removing remediation costs from the unimpaired value. It appears that their underlying sentiment is that, without that approach, there is no credible or reliable methodology available to them. It may not necessarily be a matter of it being the right approach but that it is the approach right now.

The best approach is one that takes into account common sense. All of the referenced articles in the *Appraisal Journal* underscore that philosophy. Practicality must prevail and those methods that consider all of the facts within the context of all of the phases of environmental contamination, and cleanup, are in the best position to do just that.

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