



CO-LOCATED AND MULTI-PARTY
INDUSTRIAL OPERATIONS AND
FACILITIES:

Environmental Complications Arising
from Modern Business Practices

Environmental Essentials for
In-House Counsel Webinar Series

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November 1, 2016

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OVERVIEW

- Framing Concept of Environmental Law – Owner and/or Operator Responsibility and Liability
- Modern Industrial Realities
- Modern Commercial Arrangements
- Key Complications Arising in these Scenarios
- Developing Solutions to these Complications

FRAMEWORK OF ENVIRONMENTAL LAW

- Regulatory scheme is media- or activity-specific:
 - Air, Water, Waste
 - Chemicals handling, Remediation, Response planning
- Multiple governing bodies and enforcement authorities:
 - Federal, State, and Local
 - Admin, Civil, and Criminal
- Responsibilities fall to the “**owner**” and/or the “**operator**” of the facility or activity
- Additional [squishier] concepts trigger liability: “arranger,” “generator,” and “any person that causes, suffers, allows, or permits”
- Multiple companies at a single site torques the framework

MODERN INDUSTRIAL REALITIES - SCENARIOS

- Multiple owners/operators inside a single fenceline
 - Cogeneration & steam supply
 - Chemical and industrial gas management and supply
 - Outsourced equipment and services – e.g., compression
 - Other contractors and vendors, contractor operators
 - Joint Venture ownership
- Thought experiments – one party's spill reaches another's outfall; air emissions fenceline modeling; vendor removes sludge from owner's process unit
 - Who controls the risk?
 - Who is regulated?

COMPLEX COMMERCIAL ARRANGEMENTS

- Modern transactional/contractual arrangements
 - MLP “dropdowns” at refineries
 - Splitting of integrated businesses with shared infrastructure and management systems
 - Splitting of real estate with active remediation
 - Sales of assets with AROS and other end-of-life obligations
- Thought Experiment: Can/should responsibilities be held by one party or bifurcated for: air permits; stormwater management; offsite waste disposal; fire suppression; emergency response?
 - Who controls the risk?
 - Who is regulated?

COMMON PROBLEM AREAS

- Managing wastes
- Chemicals/EPCRA
- Air emissions and events
- Wastewater/Stormwater
- Water supply
- Emergency and incident preparedness/response

KEY TOOLS FOR MANAGING THESE ISSUES

- Identifying business objectives that inform management strategy
- Scenario planning and testing
- Joint tabletop exercises and drills
- Careful contractual allocations of responsibility/liability including dispute resolution mechanisms, “act now/true up later” functions
- Policy/legal mechanisms – e.g., single property designation
- Pre-engagement with regulators and first responders
- Baseline environmental reports

KEY TOOLS FOR MANAGING THESE ISSUES

- There is no “one size fits all” mechanism that will fully prepare you for these many complex scenarios
- It’s certain that **not** planning / accounting for / proactively addressing these complications is a recipe for poor results
- Requires mutual understanding and careful coordination between line management (who understand the interactions and how things go wrong), business decision-makers and management, and qualified legal counsel experienced with papering these allocations

THANK YOU



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