

EFFECTIVELY MANAGING RISK

Introduction

Key Perspectives

Legal Mechanisms

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Panel Introduction

- Act 2 allows cost effective cleanups to standards above residential levels
- Cleanups may rely on:
 - Engineering controls (caps, slurry walls)
 - Institutional controls (land and GW use restrictions)
- Act 2's flexibility however requires additional measures to assure long-term risk management

Panel Introduction

- Managing risks at brownfields sites requires a holistic approach
 - Legal
 - Technical
 - Insurance
 - Long term stewardship
 - Environmental covenants

Panel Introduction

- Panel Members:
 - Gary Brown – President, RT Environmental Services
 - Deborah Sewell – Director, Frank Crystal & Company
 - Troy Conrad – Director, Land Recycling Program
DEP
 - Steve Miano – Shareholder, Hangley Aronchick
Segal & Pudlin

Key Perspectives

- Risks are in the eye of the beholder
 - Risk tolerances differ
 - Roles in a deal differ
 - Goals in a deal differ
- Risk Management requires:
 - Identification of risks
 - Determination of goals/tolerance
 - Identification of risk management options
 - Accepting appropriate level of risk
 - Proper documentation

Key Perspectives

- Roles and goals
 - Developer
 - Property owner
 - Property seller
 - Property user (tenant/subsequent buyer)
 - Lender
 - Financial partners
 - Government (municipality/RDA/regulatory agency)
 - Community

Key Perspectives

- Risk Management axioms:
 - “No such thing as a free lunch”
 - “You get what you pay for”
 - “No pain, no gain”
 - “No guts, no glory”

Legal Mechanisms To Manage Risk

- Legal mechanisms are key ways to manage risk
 - Identification of relevant laws
 - Participation in legal/technical due diligence
 - Drafting and documenting protections
 - Identification of reporting obligations
 - Ensuring compliance
 - Enforcing rights under contracts
 - Enforcing restrictions on future land use

Legal Mechanisms To Manage Risk

- Key Legal Documents
 - Purchase & sale agreements
 - Buyer/seller or AOCs with agencies
 - Contracts with consultants (due diligence/cleanup)
 - Insurance contracts
 - Lending/financing/partnership contracts
 - Leases
 - Covenants

Legal Mechanisms To Manage Risk

- Don't forget community outreach
- Not a legal issue per se but...
- Community opposition stops projects
 - Politics/appeals/direct law suits
- Community involvement/buy-in is critical
- Involve community early on

Legal Mechanisms To Manage Risk

- Key concepts
 - Cookie cutter approaches don't work
 - Each deal and each document is different
 - Pay attention to wording details/drafting
 - Recognize limitations:
 - Insurance – dates/terms of coverage
 - Indemnifications – party/resources/timing
 - Timing/coordination of components is key

Conclusions

- Anticipate the issues in your transaction
- Identify risks/goals/tolerance
- Maintain an open dialogue with all stakeholders
- Work with consultant on key technical issues
- Seek out insurance options
- Seek competent legal assistance

Questions??

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