



Minnesota CLE June Webcast Extravaganza Environmental Law Basics for the Business and Real Estate Practitioner

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Environmental Law Basics for the Business and Real Estate Practitioner

- I. Sources of Environmental Law**
- II. Environmental Law Requirements That Apply To Business Operations**
- III. Environmental Law Issues Arising In Business and Real Estate Transactions**

I. Sources of Environmental Law

A. Federal Statutes and Regulations

- 1. CERCLA, Clean Air Act, Clean Water Act, RCRA, EPCRA, TSCA, FIFRA**

B. State Statutes and Regulations

- 1. MERLA, Minnesota Environmental Statutes Chs. 115 and 116, Air, Water, Solid and Hazardous Wastes, Tanks**

C. Local Ordinances

- 1. Hazardous Wastes (Seven County Metro), MCES Industrial Wastewater, Conditional Use Permits**

II. Environmental Law Requirements That Apply To Business Operations

A. Permits

B. Regulatory Compliance Requirements

C. Inspections

D. Agency Enforcement Processes

E. Environmental Audits

II. Environmental Law Requirements That Apply To Business Operations

A. Permits

1. Air Emissions

- a. Federal**
- b. State**

2. Discharges to Waters

- a. NPDES**
- b. Wastewater Discharges to POTW**
 - i. Regional**
 - ii. Municipal**

II. Environmental Law Requirements That Apply To Business Operations

A. Permits (cont.)

3. Stormwater

a. Industrial

b. Construction

4. Hazardous Waste Generator Licenses

II. Environmental Law Requirements That Apply To Business Operations

B. Regulatory Compliance Requirements

- 1. Need for Permits**
- 2. Compliance with Permit Conditions and Regulations**
- 3. Response to Inspections and Findings of Noncompliance**

II. Environmental Law Requirements That Apply To Business Operations

C. Inspections

- 1. Sources of Agency Authority to Enter Property**
- 2. Purpose**
- 3. Documentation**
- 4. What happens if access is denied?**

II. Environmental Law Requirements That Apply To Business Operations

D. Agency Enforcement Processes

1. EPA –

- a. Civil Penalties**
- b. Administrative Orders**
- c. Referral to DOJ**
- d. Criminal Investigation**
- e. Prosecution**

II. Environmental Law Requirements That Apply To Business Operations

D. Agency Enforcement Processes (cont.)

2. MPCA –

- a. Administrative Penalty Orders**
- b. Notice of Violation**
- c. Stipulation Agreement**
- d. Schedule of Compliance**
- e. Litigation Referral**
- f. Criminal Prosecution**

II. Environmental Law Requirements That Apply To Business Operations

D. Agency Enforcement Processes (cont.)

3. President Trump's Changes to Policies

a. State Enforcement

b. Citizen Suits

II. Environmental Law Requirements That Apply To Business Operations

E. Environmental Audits

- 1. Determine Compliance Status**
- 2. Compare Environmental Compliance Audit to Health and Safety Audit**
- 3. Conduct Under Attorney Client Privilege**

II. Environmental Law Requirements That Apply To Business Operations

E. Environmental Audits (cont.)

- 4. May Trigger Reporting Requirements**
- 5. May Require Remedies for Noncompliance Issues.**
- 6. Applicability of Federal And State Audit Protections – Penalty Avoidance Possible**

II. Environmental Law Requirements That Apply To Business Operations

Hiring an Environmental Consultant.

- 1. Experience and Background.**
- 2. Contract, Scope of Work and Terms and Conditions Considerations.**
- 3. Geographic Reach.**

III. Environmental Law Issues Arising In Business and Real Estate Transactions

- A. Purchase or Sale of a Business Requires Environmental Due Diligence**
- B. Warranties and Representations**
- C. Indemnification**
- D. Lender Involvement**

III. Environmental Law Issues Arising In Business and Real Estate Transactions (cont.)

E. Insurance

F. Purchase of Real Estate Considerations

G. Are Reporting Requirements Triggered?

H. Role of Minnesota Voluntary Programs

I. Handling Environmental Concerns That Arise During Diligence.

III. Environmental Law Issues Arising In Business and Real Estate Transactions

A. Purchase or Sale of a Business Requires Environmental Due Diligence

- 1. Stock or Asset Purchase**
- 2. Assess Issues With Real Property From Historic And Current Use Perspective**
- 3. Determine Whether Business Has All Required Permits**

III. Environmental Law Issues Arising In Business and Real Estate Transactions

B. Warranties and Representations

- 1. Establishes Baseline Of Knowledge To Compare Against Future Findings**
- 2. Exceptions**

III. Environmental Law Issues Arising In Business and Real Estate Transactions

C. Indemnification

- 1. Triggers**
- 2. Sunset**

III. Environmental Law Issues Arising In Business and Real Estate Transactions

D. Lender Involvement

- 1. Underwriting Checklist**
- 2. Standard Loan Agreement- REC**

III. Environmental Law Issues Arising In Business and Real Estate Transactions

E. Insurance

- 1. Representation and Warranty**
- 2. Pollution Liability**
- 3. Provide Due Diligence For Review**

III. Environmental Law Issues Arising In Business and Real Estate Transactions

F. Purchase of Real Estate Considerations

- 1. Part of Acquisition**
- 2. Stand Alone Transaction**

III. Environmental Law Issues Arising In Business and Real Estate Transactions

F. Purchase of Real Estate Considerations

1. Due Diligence

a. Phase I ESA

- i. Conducted As Part of Due Diligence**
- ii. Must Comply With Current ASTM Standard Practice**
- iii. Purpose to Identify Recognized Environmental Conditions**
- iv. Recommendations- Situational**

III. Environmental Law Issues Arising In Business and Real Estate Transactions

F. Purchase of Real Estate Considerations

1. Due Diligence (cont.)

b. Phase I Components

- i. Regulatory Review**
- ii. Interviews**
- iii. Current and Past Property Use**
- iv. Site Visit: Looking at Subject Property and Neighboring Properties.**
- v. Examples of issues that may be identified as RECs or BERs. HRECs or CRECs.**

III. Environmental Law Issues Arising In Business and Real Estate Transactions

F. Purchase of Real Estate Considerations

1. Due Diligence (cont.)

c. Phase II may be Required.

i. Scope of Work

ii. Media Sampled

iii. Analytes

III. Environmental Law Issues Arising In Business and Real Estate Transactions

F. Purchase of Real Estate Considerations

1. Due Diligence (cont.)

d. Phase II Findings.

I. Soil, Groundwater and/or Soil Vapor Impacts.

a) On-site Releases

b) Groundwater Impacts That May Flow Off-site

c) Soil Vapor Impacts That Many Also Affect Neighboring Properties.

d) Liability Considerations Especially To Third Parties.

III. Environmental Law Issues Arising In Business and Real Estate Transactions

G. Are Reporting Requirements Triggered?

- 1. Requires Technical and Legal Analysis.**
- 2. Minn. Stat. 115.061**
- 3. UST Reporting**
- 4. CERCLA Reportable Quantity- National Contingency Plan**

III. Environmental Law Issues Arising In Business and Real Estate Transactions

H. Role of Minnesota Voluntary Programs

1. Availability of liability assurances

a. Non-petroleum- addresses MERLA liability considerations.

i. No Association Determination

ii. No Further Action Letter

iii. Certificate of Completion

iv. Off-site Source Determination

III. Environmental Law Issues Arising In Business and Real Estate Transactions

H. Role of Minnesota Voluntary Programs

- 1. Availability Of Liability Assurances (cont.)**
 - a. Petroleum**
 - i. Tank and Non-Tank Closure**
 - ii. General Liability Letter**
 - iii. Tank Removal Verification**

III. Environmental Law Issues Arising In Business and Real Estate Transactions

H. Role of Minnesota Voluntary Programs

1. Availability of Liability Assurances

a. Should You Seek Assurances or Not?

III. Environmental Law Issues Arising In Business and Real Estate Transactions

I. Handling Environmental Concerns That Arise During Diligence

1. Post Closing Obligations

A. Buy-sell Agreement

B. Lender Undertaking

2. Escrow Funds To Address Ongoing Issues

3. Indemnification Trigger

Questions?

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