



Taking the HELM

Proactive Environmental Liability
Assessment and Management as a
Corporate Best Practice

“What gets measured
gets improved”

- Peter Drucker



Corporate Social Responsibility (CSR)

- CSR is a corporation's initiatives to assess and take responsibility for its effects on environmental and social well-being. The term generally applies to efforts that go beyond what may be required.
- Most environmental CSR initiatives focus on sustainability.
- However, there are other ways a corporation's activities can negatively impact the environment and our social well-being.



Negative Environmental Events

- 2014 Elk River chemical spill
- 2008 Imperial Sugar factory explosion
- Insolvent companies unable to satisfy their environmental liabilities



A New Environmental CSR Initiative?

- The same people who care about environmental sustainability also care about environmental stewardship.
- Is there a way to signal to the public that a company is assessing and addressing the full spectrum of its environmental risks and liabilities?
- First step: Do your due diligence




What is environmental due diligence?

- Most think of Phase I environmental site assessments.
- Phase I ESAs are conducted by environmental consultants.
- Phase I ESAs involve site visits, interviews with site representatives, and database searches, all looking for evidence of known or potential contamination at the subject property.



What do Phase I ESAs not cover?

- Environmental violations
- Off-site waste disposal liabilities
- Toxic torts
- Legacy environmental liabilities



Are companies required to conduct environmental due diligence?

- When buying property, a Phase I ESA is required to qualify for certain Federal environmental liability protections
- Under Regulation S-K, public companies must disclose any environmental matter that might have a material effect on its business, liquidity, or financial condition.
- Regulation S-K does not specify a minimum standard of environmental diligence a public company must conduct before making any such disclosures.

"As we know, there are known knowns. We also know there are known unknowns. But there are also unknown unknowns."

- Donald Rumsfeld



Unknown unknowns

- How can a company go public when it already has enough environmental liabilities to bankrupt the company? When it doesn't realize that's the case.
- You can't disclose what you don't know.
- If you haven't looked, you probably don't know.
- But if you know you don't know, it behooves you to look.



A new measuring stick

- When do you often see the most comprehensive reviews of a company's environmental risk profile?
- In the context of a transaction, i.e., when someone is buying the company.
- Wouldn't that same level of environmental review make sense when a company is asking the public to buy into its reputation as a responsible steward of its environmental liabilities and obligations?



Why is this not already the standard?

- Conservative findings and recommendations?
- No business risk analysis or context?
- Cost?
- Identifying potential issues that must then be addressed?
- Any other barriers?




Using insurance to manage environmental risk

- Solutions for unknowns (PLL)
- Solutions for knowns (Cost Cap and Buyouts)
- Post-Transactional Issues
- Rep and Warranty without reps and warranties?



CSR and Branding

- If CSR can enhance a company's brand, can a brand enhance a CSR initiative?
- Taking the HELM
- HELM = Holistic Environmental Liability Management
- Taking the HELM means conducting a customized environmental assessment to facilitate environmental risk management, but the phrase reinforces the concept by evoking imagery of an enterprise taking charge, taking stock, and charting a path to avoid risks and hazards.



Q&A