

Double Due Diligence: Incorporating Strategic Environmental Management in Environmental Assessments for Industrial Mergers and Acquisitions

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Environmental due diligence for industrial mergers and acquisitions has traditionally been viewed as ensuring that environmental liabilities associated with on-site contamination and regulatory compliance issues are fully accounted for in the transaction. However, this focus fails to obtain information on a number of potential strategic risk issues, nor does it provide for the type of proactive business planning that can add tremendous value to the overall due diligence process for industrial mergers and acquisitions. To eliminate these critical shortcomings, strategic environmental management (SEM) concepts need to be incorporated into the environmental due diligence process. This paper provides guidance on the incorporation and implementation of SEM reviews in these types of projects. This guidance includes examples of the types of objectives that SEM reviews can encompass to better ensure the integration of environmental issues with overall business planning efforts conducted during the due diligence process, in order to obtain a competitive advantage.

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You can never plan the future by the past.

Edmund Burke

Mergers and acquisitions continue to drive business activities in an increasing number of commercial and industrial sectors. In 2000, the United States posted another record number of transactions worth an estimated \$1.74 trillion.¹ The torrid pace of activity has continued despite the fact that studies on post-merger and acquisition perfor-

mance indicate that almost half of these transactions will have a negative effect on long-term company performance and shareholder value.² This lackluster post-performance is attributed to a number of reasons, including paying too much for a target company, lack of clear strategic business plans, poor knowledge of the competition, and simply bad due diligence.³

Due diligence for environmental issues has traditionally been viewed as ensuring that environmental liabilities associated with on-site contamination issues are fully accounted for in a transaction. This is especially true for industrial facilities with a long history of operations involving the use and handling of hazardous substances.

The standard approach to environmental due diligence is the performance of a Phase I environmental site assessment (Phase I ESA) or similar study to identify recognized environmental conditions associated with potential releases of hazardous substances (i.e., contamination) at a site. Recognized environmental conditions are defined as the "presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or into the ground, groundwater, or surface water at a property."⁴

Increasing awareness of the potential adverse impact of environmental contamination liabilities has increased the number of Phase I ESAs conducted in the United States more than ten-fold during the past decade. Unfortunately, this tremendous growth has not resulted in a material expansion in the scope or objectives of the Phase I ESA process.⁵

In recognition of these limitations, environmental due diligence for industrial mergers and acquisitions has increas-

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