**The Story:Company Tri-States Pipeline Company**

**Risk Management Consultant Dan Buster**

**Environmental Manager Jeff Target**

**Environmental Attorney Craig Turnipseed**

*Dan Buster is a risk management consultant retained by the Tri-States Pipeline Company to assist it with its risk management programs. Shortly after he was retained, the Tri-States environmental manager Jeff Target calls him about a problem.*

*It seems that about five years ago, the company bought a property on the outskirts of a small rural community to build a new plant that will process natural gas coming to the site from a set of pipelines coming from each of the three states in which the company does business. Construction has just begun after a long planning process. This is now a time-critical project, with huge investments having been made in pipeline land acquisition and construction, gas supply contracts are in place with mandatory take requirements, and the company’s present and future is heavily dependent on cash flow being realized quickly from the pipelines and the plant.*

*The environmental manager explains:*

*“I got hired at the company a month ago, and I’m still getting my arms around how things are handled at this place. The project manager at the gas plant construction site just called me to say they were digging a hole for a foundation column and once they dug down about nine feet, they hit this very disturbing odor and the soil changed color...whatever is here…there’s a lot of it…and it is very wet…”*

* + *Subsequent tests show significant subsurface soil and groundwater contamination at the site for a common but toxic compound often used in solvents for parts cleaning.*
  + *The state is notified and further testing of groundwater down gradient from the site reveals that a plume of groundwater contamination about half a mile wide and two miles long starting on the plant property has impacted nearby drinking water wells of about 20 residences.*
  + *The state declares it a high priority site and it may become a National Priority Site for Superfund. It looks like its going to be necessary to do a good amount of additional sampling and on-site remediation on the site before any further construction can take place. It ends up that there are some groundwater seeps on and off the company property that are effecting springs where endangered species live. Moreover, an ancient Native American burial site is discovered in the course of the on-site sampling activities. The media is hovering, environmental groups are putting out press releases, Native American representatives are in an uproar, and a bunch of plaintiffs’ lawyers have started becoming regular visitors at the local churches. Even without the lawyers there, the people in the community are generally worried about what the effect of drinking contaminated water may be.*
  + *The cost of land was a “steal” at $1MM, but environmental investigation and remediation costs alone appear to be headed north of $50MM, and there are no obvious historical potentially responsible parties (PRPs) still around to send the bill to. And then there’s the cost of defending and settling the likely lawsuits. And the lost revenues and profits from the delayed construction are huge.*
  + *The company was smart enough to already have a pollution liability policy that applied to its pre-existing operations, but no one had added the gas plant site to the policy yet, because they didn’t figure there would be pollution exposure until it got up and running.*
  + *Before buying the property, the company had an environmental consultant do a Phase I investigation, but he didn’t find any government records of any prior environmental problems at the site, and the Phase I investigation by its very nature didn’t include a review for endangered species or archaeological concerns. Since the property had just been used for a ranching operation, the consultant didn’t deem the historical use to be high risk for environmental contamination other than the occasional cow patty. He tried to interview the owner, but he had a bad cold at the time. He concluded in the Phase I report that there were no recognized environmental conditions, so he did not recommend a Phase II investigation to take environmental samples before the property was purchased. (The boilerplate terms and conditions on the contract with the environmental consultant included a provision limiting the consultant’s liability to the amount of fees he charged, in this case $5,000.)*
  + *The environmental manager has now interviewed some old ranch hands and learned that the ranch did its own maintenance of ranching equipment years ago, and since they didn’t know any better back then, they just poured the used solvent from parts cleaning outside on anthills and scorpion nests and down rattlesnake holes to try to kill the boogers.*
  + *The longtime owner of the ranch died a couple of years ago (his bad cold turned into bronchitis and then pneumonia) and all his assets, including the sales proceeds from the land sale, have been distributed out to his heirs and the estate is closed.*

*The environmental manager explains that the company’s CEO, CFO, and COO are all tied up in knots. Believe it or not, they didn’t really have a contingency plan in place for this type of thing.*

***What kind of advice does the outside risk manager have about what to do now that we’re in this pickle?***

***And if the company can survive this mess, what should it do to avoid something similar happening in the future?***

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**YES NO CHECKLIST OF ENVIRONMENTAL CONSIDERATIONS FOR RISK MANAGERS**

1. Does the company have an experienced in-house environmental manager?

a. Does that manager have direct access to the right people within the company?

b. If no in-house environmental manager, does it have a go-to outside environmental consultant with good credentials who is used appropriately?

1. Does the company have good environmental counsel, in-house or outside, who is consulted appropriately?
2. Has the company arranged for a broad environmental audit of its facilities and operations?
   1. If not, it should do so, and environmental counsel should be involved upfront to render the audit privileged to the maximum degree possible.
3. Does the company have environmental insurance coverage?
   1. If so, are the type of coverage and the limits and deductibles and duration of that coverage adequate?
   2. Does it include coverage for potential fines, punitive damages, and attorneys fees awards?
   3. Does it include business interruption coverage?
4. Prior to any acquisitions of new properties or facilities, has a thorough environmental review been conducted, including but not limited to evaluation of existing and prospective environmental permitting compliance considerations, waste management, recycling, and disposal considerations, storm water management considerations, surficial and subsurface contamination both on and off the subject property, protected species, wetlands, stream protection, and cultural assets protection.
5. Has legal and insurance review been conducted of any third party environmental consultant’s or contractor’s terms and conditions of engagement and insurance coverage prior to engagement?
6. Have the results of any environmental assessment or audit been subject to legal review?
7. Have state and federal legal protections for prospective purchasers of property been considered?
8. Have common law liability exposures been considered?
9. Has the company obtained an appropriate and viable purchase price discount, indemnity, escrow, bond, and/or insurance policy to protect against potential pre-existing environmental concerns?
   1. Does any policy include coverage for potential claims from off-site waste disposal?
10. Has the subject property been added to the scope of any pre-existing policy, with a review of policy limits to assure reasonable coverage in light of the acquisition?
11. Does the company have a crisis management team and contingency plan in place? If so, who are the members of that team and are they adequate? Has a dry run of a crisis management drill been undertaken? Is there a list of emergency/ environmental response notification requirements and contacts in place?
12. Does the company do business in an industry in which green/sustainability standards are an important factor due to vendor requirements or otherwise?
    1. If so, has business planning taken that into appropriate consideration?
13. Is the company in an industry that is particularly subject to cutting edge environmental risk, such as climate change regulation and litigation?
    1. If so, what risk management tools have been applied to evaluate such risk?
14. Does the company include and evaluate environmental risks appropriately in its internal and external financial reports?