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Environmental Practice in 2020 – Part 2 Balancing on a Tight Rope

Presented by:

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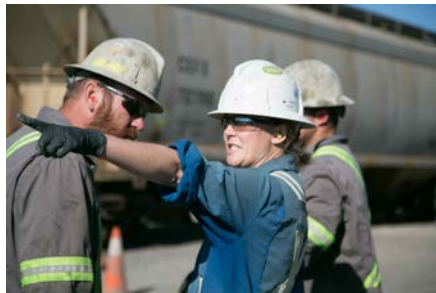
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This presentation provides general information and is not intended to provide technical or legal advice. Audience members should seek technical and legal advice for specific situations.

Presentation Overview

- In 2020, environmental professionals continue to walk a ‘tight rope’ to balance meeting client, regulator and stakeholder expectations, and operating in a professionally prudent manner.
- Case study to discuss some common foot slips that may be encountered related to:
 - Notification and provision of data to landowners and neighbours
 - Off-site plume migration
- How clean is “clean”?
- Digital signatures and stamps

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Case Study

- Well spud in 1959 and a gas plant constructed between 1960 and 1962
- Multiple infrastructure and licensee changes throughout the years
- Currently an active compressor station on Site that overlaps the former gas plant lease
- The fenced site is under a surface lease agreement with the private landowner (farmer)



Case Study – Cont'd

- Compressor station has a sublease with the former gas plant operator
- Recent assessment identified several areas of soil and groundwater impacts including a former burn pit in the SE site corner, likely not related to current sublease
- Suspected off-site migration in soil and groundwater with potential for impact to domestic use aquifer



Questions?

- Should the landowner be informed of suspected contamination when requesting work space?
 - It depends!
 - Review the surface lease/lease for obligations re liability, reporting, remediation, reclamation and abandonment
 - Review regulatory requirements
 - Consider providing general scope of work necessary to obtain permission, including: number of wells and location, and what condition land will be returned to



Questions?

- When should affected landowners be notified of potential contamination and what information should be provided?
 - It depends!
 - Review lease and regulatory requirements
 - Understand the impacts/source at the property or off-site
 - Consider reporting obligations, but first report to client
 - Landowner – provide data and workplan to address contamination
 - Neighbour – consider who should notify, timing of notification and what information to provide, suggest hiring consultant to assess, maybe provide workplan to address contamination, if that is the intent
 - Consider strategy and limitation periods around timing of notification

Questions?

- If a current leaseholder can prove source of contamination is related to prior land user, is there legal action to take against responsible party?
 - It depends!
 - Review lease and regulatory requirements
 - Review technical information/baseline report to confirm impacts tie to prior land user
 - Send demand letter to prior land user
 - Consider civil lawsuit against prior land user
 - Note: landowner may be in better position to bring civil claim given available causes of action, but may be restricted by terms of the lease with the prior land user

Questions?

- How clean is “clean”, and who is responsible to clean up?
 - Where leases are unclear or silent, courts broadly interpret and/or imply clean up obligations
 - *1200144 Alberta Ltd v Land's Happy Mart Ltd*, 2020 ABQB
 - *GRJ Holdings Ltd v GBM Trailer Service Ltd*, 2017 ABQB
 - *Tompkins Mews Inc. v 1332334 Ontario Inc.*, 2006 ONSC
 - *Westfair Foods Ltd v Domo Gasoline Corp*, 1999 MBCA
 - *Darmac Credit Corp. v Great Western Container Inc.*, 1994 ABQB
 - “Clean and neat”, “meets appropriate and reasonable standards”
 - Generally, tenants required to clean up to original property condition (what is that?) or regulatory standards (but not necessarily pristine), or in accordance with lease

Questions?

- What legal concerns exist with e-signatures or electronic applications of a professionals stamp?
 - Requirements for signing off on a work product/report – either prepared by the professional or another person supervised by the professional, who will assume technical responsibility for the work
 - Requirements for authentication – physical/digital, stamp/seal/registration, date, signature – what constitutes acceptable electronic/digital credentials?
 - Professional body may not allow administrative staff to apply digital stamp/signature – requirement to safeguard/secure electronic credentials
 - For guidance, look to own professional body, and others, in particular, APEGA Authentication Practice Standard

Questions? We're here to help.



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