

Session 607

Environmental Issues in M&A Transactions

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Note: The requirements of the items on this checklist should be updated to reflect current laws and regulations at the time of your transactions.

1.0 PURPOSE/SCOPE

1.1 Purpose

The purpose of due diligence is to discover and assess potential liabilities / risks associated with the property.

1.2 Scope

The HS&E due diligence provides management with an assessment of health, safety and environmental practices and conditions associated with all property transfers.

2.0 REFERENCES

2.1 Standards

2.1.1 ASTM E 1527-94 Standard Practice for Environmental Site Assessments: Phase 1 Environmental Site Assessment Process

2.1.2 ASTM E 1528-93 Standard Practice for Environmental Site Assessments: Transaction Screen Process

2.2 Practices

2.2.1 Bureau of National Affairs Environmental Due Diligence Guide

2.2.2 Government Institutes, Inc. Environmental Audits 6th Edition

2.2.3 Oklahoma State University Environmental Considerations in Real Estate Transactions

3.0 DEFINITIONS

3.1 **PROPERTY** - Land and associated structures.

3.2 **LIABILITIES** - Any economic, public relation, health, safety, or environmental condition or event which can ultimately affect CITGO financially.

4.0 PROGRAM REQUIREMENTS

4.1 Notifications

The Health Safety and Environmental (HS&E) Department is informed of potential property transfers through several sources. Notification can occur from, but not necessarily limited to, the Legal Department, Planning and Economics/Business Development, Business Unit, Project Leader or Planning Task Force. It is the responsibility of these groups or any other group involved in a property transfer to notify the HS&E Department.

4.2 Responsibilities

When a due diligence is requested an HS&E due diligence team will be assembled consisting of individuals from each HS&E group as appropriate. The Reviews and Assessments group will assume responsibility for the coordination of the HS&E due diligence process and activities. This includes scheduling and arranging for the review of documents and on-site visits during the discovery process. As a minimum the Reviews & Assessments representative will attend the CITGO coordination meetings to remain current on the status of the property transfer process. Additionally, representatives from the HS&E due diligence team will attend CITGO coordination meetings to discuss critical items identified during the discovery process that could impact the decision making process. A written HS&E report will be assembled when the level of inquiry is of appropriate magnitude and CITGO's objective and purpose requires documentation.

Each HS&E group shall identify individuals from their area to participate in the due diligence process as necessary. The due diligence team should consist of individuals with expertise in specific areas which are to be addressed during the due diligence. (Team composition may vary depending on the complexity of the facility.) These individuals are subject matter experts and will be responsible for conducting the due diligence for the area assigned.

Each team member shall prepare a written report for the area assigned, forwarding it to the Reviews and Assessments HS&E due diligence coordinator assigned to the project.

The Reviews and Assessments coordinator is responsible for obtaining, assembling and distributing the HS&E report documenting the status of each area reviewed.

4.3 Process

The HS&E due diligence is an evaluation of health, safety and environmental activities associated with the property involved in the transfer. The evaluation

consists of reviewing documents, investigation of compliance status, discussions with personnel, on-site observation, and possibly a phase II environmental assessment. The degree of due diligence depends on the company's objective and purpose concerning a property transfer, which then determines the level of inquiry. The level of inquiry ranges from a general screening (e.g., limited document review) to intrusive (e.g., obtaining samples). Sampling and testing may be performed, as necessary, on soil, water, groundwater, air, materials, equipment, and structures. This may include integrity testing and performance testing. Information concerning Government agency compliance status of properties will be obtained through the Freedom of Information Act.

HS&E due diligence worksheets have been developed identifying specific areas to be reviewed as part of the due diligence. These worksheets are used as a guidance document to assist team members in completing the due diligence and provide consistency. The level of review for each item within the worksheets may vary depending on the size, complexity, and/or condition of the property.

5.0 REPORTS

Upon completion of the discovery process a written HS&E report will be developed when the level of inquiry is of appropriate magnitude and CITGO's objective and purpose requires documentation. The format and type of information provided in a report will vary in detail and only reflect the level of inquiry conducted. However, information in the report should include, as applicable for the level of inquiry an: executive summary; facility description; assessment of HS&E practices and conditions concerning: 1) air, 2) water, 3) waste, 4) surface & subsurface contamination, 5) safety, 6) fire protection, 7) industrial hygiene, 8) health; and an expenditure impact matrix and appendix.

The appendix should include a local map showing the location of the property and surrounding area, facility plot plan, and photographs of specific items/conditions which are documented in the report.

The expenditure impact matrix should reflect an order of magnitude for HS&E items that economically affect the investment. These items should identify current and future expenditures (+/- 25%) which may be required. These expenditures may be necessary per CITGO standards and/or government regulations.

The final HS&E due diligence report will be issued to the Legal Department representative and Business Unit representative with the overall responsibility for the property transaction.

6.0 FORMS

6.1 Due Diligence Worksheets

Worksheets have been developed to assist personnel in conducting the due diligence. The worksheets are intended to provide consistency and be utilized as a guide. The areas identified in the worksheets are not considered required. The demographics/operation of the actual property will determine the specific areas required to be assessed during the due diligence process.

6.2 Report Outline

A generic outline of the areas identified in the worksheets has been developed to provide consistency for assembling the due diligence report. The report will only contain those areas which are applicable.

HS&E DUE DILIGENCE WORKSHEETS

A. Environmental Due Diligence

1. Site History

- a. History of site, including all prior owners and operators site usage, boundary changes, bordering facilities, and

land usage.

- b. Aerial maps and photographs.
- c. All Regulatory citations, warning letters, notices of violation, compliance orders, consent orders.
- d. Copies of all correspondence to and from Local, State, and Federal regulators for past five (5) years.
- e. History of dredging operation, permits, and correspondence, including incidence reports of vessel grounding.

2. Air

- a. Copy of Air Permits, including rates, capacity, and design basis for permits. Include information on "grandfathered" units and documentation on Standard Exemptions from permitting.
- b. Copy of all monitoring reports, air exceedences, performance evaluations on air emissions control devices, routine operating reports on all permitted sources and stacks, and maintenance records on air emissions control devices for past five years.
- c. Copy of most recent emissions inventory.
- d. Copy of all NESHAPS reports to the state.
- e. Description of fugitive monitoring program and summary of last three (3) years' results.
- f. Notices of Violations (NOV's) for past five (5) years.
- g. All reports to regulatory agencies/correspondence from regulatory agencies for past five (5) years.

3. Water

- a. Copy of SPCC Plan.
- b. Copy of all permits, including NPDES, stormwater and/or POTW discharge permits, including DMR's for past five (5) years.
- c. Copy of any stormwater analysis for new outfalls under new

- stormwater NPDES regulations.
 - d. Copy of Oil Spill Contingency Plan.
 - e. Description of onsite and offsite water disposal activities.
 - f. Description of wastewater treatment system, including all waste streams treated by the system.
 - g. Wastewater treatment system schematic.
 - h. All reports to regulatory agencies/correspondence from regulatory agencies for past five (5) years.
 - i. Water discharge flow charts.
4. Solid Waste
- a. Description of waste streams, on-site disposal practices, amounts, dates, final disposition of disposal sites, closure activities.
 - b. Copy of Waste Handling Procedures.
 - c. Copy of Hazardous Waste Manifests for past three (3) years.
 - d. List of all offsite disposal facilities used in past 15 years.
 - e. Copy of CERCLA release reports.
 - f. Reports of all offsite contamination.
 - g. EPA I.D. Number(s).
 - h. Superfund Site Affiliation.
 - i. State waste registration.
 - j. All reports to regulatory agencies/correspondence from regulatory agencies for past five (5) years.
5. Storage
- a. Tank and equipment listing, including construction detail and maintenance records re: Tank & Pipe Wall Thickness,

- Testing, Bottoms cleaning, Sludge disposal.
 - b. Copy of UST listing and registration, including information on all UST closures, abandonments, and out of service UST's.
 - c. Copy of tank and equipment inspection and maintenance program.
 - d. Schematics/Records of Cathodic protection system, including dock.
 - e. Results of line and tank tightness testing, remediation and repair programs or efforts on all leaks from site equipment.
6. Site Assessment
- a. Copies of all consulting reports of site evaluation, assessment, investigations on and below surface, including proposed RFI.
 - b. Complete spill history, including all reports, internal and external.
 - c. Copy of all soil analysis, groundwater analysis, well placements, boring logs, consulting reports, and site assessment reports produced internally or externally.
 - d. All environmental inspection/audit reports, internal and external.
 - e. Description of location including map, drilling logs, pump tests, monitoring records, etc. of all groundwater monitoring wells.
 - f. Description and operations of all groundwater recovery systems.
 - g. Environmental policies and procedures.
 - h. Copies of all emissions survey/inventories for the site.
 - i. Reports on dike capacity, condition, permeability.
 - j. Regulatory Compliance Files
 - k. Past or current Consent Order or other statutory cleanup orders.

- l. Site Assessments
- m. Local complaints (onsite/offsite) not acted upon by regulatory or governmental agencies.
- n. Spill equipment
- o. Offsite contamination
- p. Containment areas
 - 1) Empty barrels
 - 2) Stained soil, concrete, etc.
 - 3) Standing product
- q. General housekeeping
- r. Interview
 - 1) Current operating or supervisory personnel
 - 2) Retired operating or supervisory personnel.
- s. Wetlands
- t. FAA - Height limitation on expansion.
- u. Summary of regulatory variances "grandfathered" or otherwise under which the business is now operating.
- v. Proximity and type of neighbors
 - 1) Distance to residential
 - 2) Distance to schools
 - 3) Distance to hospitals
 - 4) Distance to nursing homes
- 7. Other
 - a. Listing of PCB equipment and annual reports, including

inspection and testing records of all electrical equipment for last three years.

- b. Asbestos Abatement Plan (if applicable).
- c. Copy of facility permits re: Fire Department, Certificate of Occupancy, Boiler Use Certificate.
- d. Marine Operations Manual, including Letter of Intent, Letter of Adequacy, Letter of Intent to meet Marpol Annex V.

B. Risk Management Due Diligence

- 1. Copies of insurance policies.
- 2. List all liability, property, casualty, marine, workers' compensation, environmental responsibility or other insurance policies held, including limits of coverage, policy dates, premiums, and insurance brokers.
- 3. Loss history for claims exceeding \$25,000 for pollution, marine, general and auto liability, property, and workers' compensation.
- 4. Property values including actual cash value and replacement cost
- 5. Payroll by workers' compensation code for most recent 12 months.
- 6. Fleet listing and radius of operation.
- 7. Whether trucking operations are a common carrier or a private fleet and the products carried.
- 8. Shipping and receiving schedule for rail cars, including products handled.
- 9. State the existence of any sidetracks and/or workers subject to the Federal Employees Compensation Act.
- 10. Listing of any tankage with capacities and products stored.

C. Safety & Industrial Hygiene Due Diligence

- 1. Copies of any internal or external safety and health inspections/audits.
- 2. SARA Compliance

- a. MSDS's for manufactured/intermediate streams and supplied products.
 - b. MSDS distribution records for past five (5) years. (Part 372).
 - c. SARA 313 Form R's for past five (5) years.
 - d. SARA 302 Notification of Storage of Extremely Hazardous Substances (EHS's).
 - e. Reports of EHS's and CERCLA Substance releases reportable under SARA 304.
 - f. SARA 311 Reports (MSDS's or listing of chemicals) for.
 - g. SARA 312 Reports (Tier I and Tier II) for past five (5) years.
3. OSHA Compliance - Recent Regulations
- a. Written Emergency Response Plans and Procedures for compliance with HAZWOPER (RCRA status?) and HAZWOPER responders training certification.
 - b. Benzene Monitoring Records
 - c. Any results of atmospheric monitoring results obtained from Asbestos Abatement activities.
 - d. Written Lockout/Tagout Procedures/Confined Space Entry Procedures.
 - e. Asbestos Identification Records
 - f. OSHA 1910.119 Compliance Status/Activity Report/ Estimated Cost to achieve compliance.
 - g. Records of Fire Brigade training and physical exams (if applicable).
 - h. Written Standard Operating Procedures for selection and use of respiratory protection required by 29 C.F.R. 1910.134.
 - i. Noise Survey Results

- j. Hearing Conservation Program
 - k. OSHA Log and Summary of Occupational Injuries and Illnesses for past five (5) years.
 - l. Access to Medical and Monitoring Records - identity of custodian.
 - m. Loss Control Inspection Results (Insurance inspections, etc.).
 - n. Description of Fire Protection Systems and Test Records (Including fixed fire protection and portable fire extinguisher inspection records).
 - o. Written Hazard Communication Program, Hazardous Chemicals List.
 - p. Summary of Training Records for Regulatory Requirements.
 - q. Last 24 months of Injury Reports at all owned and leased facilities.
4. General Safety and Health Issues
- a. Metals Inspection Programs
 - b. Safety Manual/Employee Emergency Action Plans (Building Evacuation) Fire Prevention Plans (1910.38).
 - c. Operating and Maintenance Procedures.
 - d. All hygiene exposure information/monitoring information.
5. TSCA Issues
- a. 1985 Production and Volume Report 8(a).
 - b. Records of Allegations of substantial risk to health and environment 8(c).
6. Personnel to be Interviewed
- a. Medical Director or, in absence of medical director, the

plant industrial hygienist or custodian of medical and monitoring records.

- b. Environmental Manager responsible for SARA and Right-to-Know compliance programs.
- c. Safety Director
- d. Manager of inspection department or, in the absence of this position, the manager of engineering.

D. Health Services Due Diligence

- 1. Written Corporate Policies and Procedures relating to:
 - a. Post-offer physical examinations
 - b. Medical surveillance programs
 - c. Other physical examinations (i.e., voluntary, executive, etc.)
 - d. Management of occupational illness and/or injury (including reporting/decision-making responsibilities)
 - e. Management of personal illness and/or injury
 - f. Management of cumulative trauma, ergonomic process, etc.
 - g. Infectious diseases/bloodborne pathogens
 - h. Drug & alcohol testing
- 2. Facility Program specifies (who, what, where, when, why) relating to:
 - a. Post-offer physical examinations
 - b. Medical surveillance programs
 - c. Other physical examinations (i.e., voluntary, executive, etc.)
 - d. Management of occupational illness and/or injury (including reporting/decision-making responsibilities)
 - e. Management of personal illness and/or injury

- f. Management of cumulative trauma, ergonomic process, etc.
 - g. Infectious diseases/bloodborne pathogens
 - h. Drug & alcohol testing
 - i. Health promotions/screenings/wellness programs
 - j. On-site first aid, emergency response (including protocols and equipment)
 - k. Existence of OTC medications, band-aids, etc.
3. Requirements for transfer of medical records

HEALTH, SAFETY & ENVIRONMENTAL DUE DILIGENCE REPORT OUTLINE

- 1.0 Introduction
 - Scope
 - Facility Description
 - Site History
 - Prior land use
 - Sensitive Receptors

- 2.0 Remediation
 - Surface and Subsurface Conditions
 - Soils
 - Geology
 - Groundwater
 - Contamination
 - Leaks / Spills (Past & Present)
 - Waste Disposal Practices (Past & Present)
 - Site Assessments/Investigations
 - Monitoring
 - Recovery
 - Status of Remediation Activities
 - Applicable Regulations
 - Federal
 - State
 - Recommendations/Cost Impact

- 3.0 Air
 - Air Emission Sources
 - Control Devices
 - Applicable Regulations
 - Federal
 - State
 - Compliance Status
 - Recommendations/Cost Impact

- 4.0 Water
 - Wastewater Sources
 - Wastewater Treatment System
 - Applicable Regulations
 - Federal
 - State
 - Compliance Status
 - Recommendations/Cost Impact

- 5.0 Solid Waste
 - Waste Handling Procedures
 - SARA
 - CERCLA
 - TSD
 - Superfund Affiliation
 - Recordkeeping
 - PCB's
 - Identification
 - Sampling
 - Labeling
 - Storage
 - Disposal
 - Recordkeeping
 - Asbestos Abatement
 - Identification
 - Sampling
 - Labeling
 - Storage
 - Disposal
 - Recordkeeping
 - Underground Storage Tank(s)
 - Certification
 - Removal
 - Recommendations/Cost Impact
- 6.0 Spill Plans
 - SPCC
 - Facility Drainage
 - Operations
 - Facility Transfer Operations
 - Loading/Unloading Facilities
 - Tanks
 - Containment
 - Cathodic Protection
 - Inspections/Records
 - Security
 - OPA90
 - Recommendations/Cost Impact
- 7.0 Safety
 - Personal Protective Equipment
 - Process Safety
 - Electrical

- Housekeeping
 - Material Handling
 - Walking & Working Surfaces
 - Emergency Preparedness
 - Training
 - Recordkeeping
 - Color Coding
 - Recommendations/Cost Impact
- 8.0 Fire Protection/Loss Control
- Fire Water Supply/Distribution
 - Fixed Systems
 - Mobile Apparatus
 - Emergency Response
 - In-Plant
 - Mutual Aid
 - Training
 - Fireproofing
 - Recommendations/Cost Impact
- 9.0 Industrial Hygiene
- Hazard Communication Std
 - Exposure Monitoring
 - Radiation
 - TSCA
 - Recommendations/Cost Impact
- 10.0 Medical
- 11.0 Risk Management
- 12.0 Appendix
- Plot Plan
 - Maps
 - Photographs
 - Expenditure Matrix

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Note: The requirements of the items on this checklist should be updated to reflect current laws and regulations at the time of your transactions.

ENVIRONMENTAL CHECKLIST

I. Facility Overview

1. For each and every owned or leased facility, the operating name and address.
2. Name and job title the person primarily responsible for day to day environmental compliance at each facility
3. Brief description of current operations conducted at each facility.
4. Brief description of past operations at each facility if they differ from present operations.
5. The names of previous owners or operators of the facility and any known prior uses.

II. Available Environmental Information

1. Copies of any safety and health or environmental audits, studies or reports prepared for each facility.
2. A list of all environmental permits, authorizations, licenses, identification numbers and/or authorizations currently held by each facility, and their relevant expiration date.
- 7.a. Please identify major waste streams and by-products generated at the facility (except general plant rubbish and wastewater discharges) and provide the requested information. Include any instances of storage of waste or raw materials outside, such as waste piles.

	Estimated	Is it a	Is it recycled
Waste or	Yearly	hazardous	or disposed
<u>By-Product</u>	<u>Volume?</u>	<u>waste?</u>	<u>of on-site?</u>

7.b. Please list all current and past waste transporters and treatment, recycle or disposal facilities utilized since the facility began operation. Please note any years or time periods for which such information is not known.

8. Have any spills of chemicals or hazardous substances resulted in contamination of soils, surface or groundwater at the facility? If so, please describe remedial efforts and provide copies of any documents evidencing remedial action.

9. Please provide the following information about any substances emitted or processes that emit regulated substances at the facility.

Substance or process	Is there an emission control device for the substances?	Is a permit or similar approval necessary for the emission?	Has it been obtained?
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10. Please provide the following information about any wastewater generated at the facility. Also indicate whether that facility has any direct discharges not regulated by a permit.

Description	Method of Disposal (e.g., local sewer authority, direct discharge)	Is a permit or similar approval necessary?	Has it been obtained?
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- 11.a. Please provide the following information about any storage tanks (whether previously removed or currently present) at the facility on a tank-by-tank basis.

Underground
or above? Size Age Substance stored? Any known leaks?

- 11.b. Does the site have a fuel distribution system? If so, have any spills or fuel resulted in contamination of soils, surface or groundwater at the facility? If so, please describe.
12. Does the facility have any spill prevention plans or are such required under applicable regulations?
13. Does the facility currently have, or has there been removed from the facility, any PCB-containing equipment?
14. Is any asbestos containing material currently located at or within the facility? If so, please identify the types of material (e.g., pipe insulation) and estimate generally the amount.
15. Please list all physical hazards, health hazards, or chemicals listed on the facility's Tier One or Tier Two Emergency and Hazardous Chemical Inventory required by Title III of the Superfund Amendments and Reauthorization Act of 1986, Section 312 or any foreign equivalent.

16. Please list all substances listed on the facility's Form R Toxic Chemical Release Inventory Reporting Form required by Title III of the Superfund Amendments and Reauthorization Act of 1986, Section 313 or any foreign equivalent.
17. Has the facility conducted any on-site remediation or received any notification or request for information concerning off-site contamination from any federal or state government or any private entity suggesting liability for cleanup costs, damages or injuries resulting from the alleged release of hazardous substances or pollutants into the environment? If so, please provide details, technical reports and costs related to on-site remediation and list any off-site locations for which you have received such notifications or requests.
18. Has the facility received any notices of violation, or orders, legal complaints or similar governmental notices alleging violation of any environmental or occupational safety and health statute or regulation? If so, please summarize the allegations (e.g., guards missing, improper storage, excess emission) and their status (e.g., paid \$200 fine, pending, dismissed).
- 19.a. Does the facility require any permits not mentioned in response to the foregoing questions?

<u>Brief Description</u>	<u>Expiration Date of Currently Held Permits</u>
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- 19.b. Will renewal of any of the aforementioned permits require any material capital expenditures or specific consents by governmental authorities?
- 19.c. Do you anticipate needing new permits, making major alterations or installing new control technology as a result of new production activities or new or anticipated regulations? If so, please provide details concerning expected capital expenditures.
20. Are you aware of any other environmental matter or concern affecting the property or facility? If so, please describe.

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HS&E Due Diligence Worksheets

A. Environmental Due Diligence

1. Site History

- a. History of site, including all prior owners and operators site usage, boundary changes, bordering facilities, and land usage.
- b. Aerial maps and photographs.
- c. All Regulatory citations, warning letters, notices of violation, compliance orders, consent orders.
- d. Copies of all correspondence to and from Local, State, and Federal regulators since 1989.
- e. History of dredging operation, permits, and correspondence, including incidence reports of vessel groundings.

2. Air

- a. Copy of Air Permits, including rates, capacity, and design basis for permits. Include information on grandfathered" units and documentation on Standard Exemptions from permitting.
- b. Copy of all monitoring reports, air exceedences, performance evaluations on air emissions control devices (stack testing), routine operating reports on all permitted sources and stacks, and maintenance records on air emissions control devices since 1989.
- c. Copy of most recent emissions inventory.
- d. NESHAPS applicability and copy of all NESHAPS reports.

- e. Description of fugitive monitoring program and summary of results since 1989.
 - f. Notices of Violations (NOV's) 10/89 - present.
 - g. All reports to regulatory agencies/correspondence from regulatory agencies 10/89 - present.
 - h. Description of operating unit revisions, expansions, improvements, or changes in thru put since 1989. Include PSD determination calculations.
3. Water
- a. Copy of SPCC Plan.
 - b. Copy of all permits, including NPDES, stormwater and/or POTW discharge permits, including DMR's since 1989.
 - c. Copy of any stormwater analysis for new outfalls under new stormwater NPDES regulations.
 - d. Copy of Oil Spill Contingency Plan.
 - e. Description of onsite and offsite water disposal activities.
 - f. Description of wastewater treatment system, including all waste streams treated by the system.
 - g. Wastewater treatment system schematic.
 - h. All reports to regulatory agencies/correspondence from regulatory agencies since 1989.
 - i. Wastewater treatment system design information and drawings or schematic.

4. Solid Waste

- a. Description of waste streams, on-site disposal practices, amounts, dates, final disposition of disposal sites, closure activities.
- b. Copy of Waste Handling Procedures.
- c. Copy of Hazardous Waste Manifests for past three (3) years.
- d. List of all offsite disposal facilities used in past 15 years.
- e. Copy of CERCLA release reports.
- f. Reports of all offsite contamination.
- g. EPA I.D. Number(s).
- h. Superfund Site Affiliation.
- i. State waste registration.
- j. All reports to regulatory agencies/correspondence from regulatory agencies 10/89 - present.
- k. Copy of all permits, draft permits, and registrations for solid and hazardous waste storage, handling, transportation and disposal.

5. Storage

- a. Tank and equipment listing, including construction detail and maintenance records re: Tank & Pipe Wall Thickness, Testing, Bottoms cleaning, Sludge disposal.
- b. Copy of UST listing and registration, including information on all UST closures, abandonments, and out of service UST's.

- c. Copy of tank and equipment inspection and maintenance program.
 - d. Schematics/Records of Cathodic protection system, including dock.
 - e. Results of line and tank tightness testing, remediation and repair programs or efforts on all leaks from site equipment.
6. Site Assessment
- a. Copies of all consulting reports of site evaluation, assessment, investigations on and below surface, including proposed RFI and list of identified SWMU's.
 - b. Complete spill history, including all reports, internal and external.
 - c. Copy of all soil analysis, groundwater analysis, well placements, boring logs, consulting reports, and site assessment reports produced internally or externally.
 - d. All environmental inspection/audit reports, internal and external.
 - e. Description of location including map, drilling logs, pump tests, monitoring records, etc. of all groundwater monitoring wells.
 - f. Description and operations of all groundwater recovery systems.
 - g. Environmental policies and procedures.
 - h. Copies of all emissions survey/inventories for the site.
 - i. Reports on dike capacity, condition, permeability.

- j. Regulatory Compliance Files
- k. Past or current Consent Order or other statutory cleanup orders.
- l. Local complaints (onsite/offsite) not acted upon by regulatory or governmental agencies.
- m. Spill containment/cleanup equipment
- n. Offsite contamination
- o. Containment areas
 - 1) Empty barrels
 - 2) Stained soil, concrete, etc.
 - 3) Standing product
- p. General housekeeping
- q. Interview
 - 1) Current operating or supervisory personnel.
 - 2) Retired operating or supervisory personnel.
- r. Wetlands
- s. FAA - Height limitation on expansion.
- t. Summary of all regulatory variances "grandfathered" or otherwise under which the business is now operating.
- u. Proximity and type of neighbors
 - 1) Distance to residential

- 2) Distance to schools
 - 3) Distance to hospitals
 - 4) Distance to nursing homes
7. Other
- a. Listing of PCB equipment and annual reports, including inspection and testing records of all electrical equipment since 1989.
 - b. Asbestos Inventory and Asbestos Abatement Plan (if applicable).
 - c. Copy of facility permits re: Fire Department, Certificate of Occupancy, Boiler Use Certificate.
 - d. Marine Operations Manual, including Letter of Intent, Letter of Adequacy, Letter of Intent to meet Marpol Annex V.
- B. Risk Management Due Diligence
1. Copies of insurance policies.
 2. List all liability, property, casualty, marine, workers' compensation, environmental responsibility or other insurance policies held, including limits of coverage, policy dates, premiums, and insurance brokers.
 3. Loss history for claims exceeding \$25,000 for pollution, marine, general and auto liability, property, and workers' compensation.
 4. Property values including actual cash value and replacement cost
 5. Payroll by workers' compensation code for most recent 12 months.

6. Fleet listing and radius of operation.
 7. Whether trucking operations are a common carrier or a private fleet and the products carried.
 8. Shipping and receiving schedule for rail cars, including products handled.
 9. State the existence of any sidetracks and/or workers subject to the Federal Employees Compensation Act.
 10. Listing of any tankage with capacities and products stored.
- C. Safety & Industrial Hygiene Due Diligence
1. Copies of any internal or external safety and health inspections/audits.
 2. SARA Compliance
 - a. MSDS's for manufactured/intermediate streams and supplied products.
 - b. MSDS distribution records since 1989.. (Part 372).
 - c. SARA 313 Form R's since 1989.
 - d. SARA 302 Notification of Storage of Extremely Hazardous Substances (EHS's).
 - e. Reports of EHS's and CERCLA Substance releases reportable under SARA 304.
 - f. SARA 311 Reports (MSDS's or listing of chemicals) since 1989.
 - g. SARA 312 Reports (Tier I and Tier II) since 1989.
 3. OSHA Compliance - Recent Regulations

- a. Written Emergency Response Plans and Procedures for compliance with HAZWOPER (RCRA status?) and HAZWOPER responders training certification.
- b. Benzene Monitoring Records
- c. Any results of atmospheric monitoring results obtained from Asbestos Abatement activities.
- d. Written Lockout/Tagout Procedures/Confined Space Entry Procedures.
- e. Asbestos Identification Records
- f. OSHA 1910.119 Compliance Status,PHA Unit Prioritization List & Status. PHA Recommendation Status, Activity Report, Estimated Cost to achieve compliance.
- g. Records of Fire Brigade training and physical exams (if applicable).
- h. Written Standard Operating Procedures for selection and use of respiratory protection required by 29 C.F.R. 1910.134.
- i. Noise Survey Results
- j. Hearing Conservation Program
- k. OSHA Log and Summary of Occupational Injuries and Illnesses for past five (5) years.
- l. Access to Medical and Monitoring Records - identity of custodian.

- m. Loss Control Inspection Results (Insurance inspections, etc.).
 - n. Description of Fire Protection Systems and Test Records (Including fixed fire protection and portable fire extinguisher inspection records).
 - o. Written Hazard Communication Program, Hazardous Chemicals List.
 - p. Summary of Training Records for Regulatory Requirements.
 - q. Last 24 months of Injury Reports at all owned and leased facilities.
4. General Safety and Health Issues.
- a. Metals Inspection Programs.
 - b. Safety Manual/Employee Emergency Action Plans (Building Evacuation) Fire Prevention Plans (1910.38).
 - c. Operating and Maintenance Procedures.
 - d. All hygiene exposure information/monitoring information.
 - e. Status of API 752 Facility Siting implementation & study.
5. TSCA Issues
- a. 1985 Production and Volume Report 8(a).
 - b. Records of Allegations of substantial risk to health and environment 8(c).

6. Personnel to be Interviewed

- a. Medical Director or, in absence of medical director, the plant industrial hygienist or custodian of medical and monitoring records.
- b. Manager responsible for SARA and Right-to-Know compliance programs.
- c. Safety Director
- d. Manager of inspection department or, in the absence of this position, the manager of engineering.

D. Health Services Due Diligence

1. Written Corporate Policies and Procedures relating to:
 - a. Post-offer physical examinations
 - b. Medical surveillance programs
 - c. Other physical examinations (i.e., voluntary, executive, etc.)
 - d. Management of occupational illness and/or injury (including reporting/decision-making responsibilities)
 - e. Management of personal illness and/or injury
 - f. Management of cumulative trauma, ergonomic process, etc.
 - g. Infectious diseases/bloodborne pathogens
 - h. Drug & alcohol testing

2. Facility Program specifies (who, what, where, when, why) relating to:
 - a. Post-offer physical examinations
 - b. Medical surveillance programs
 - c. Other physical examinations (i.e., voluntary, executive, etc.)
 - d. Management of occupational illness and/or injury (including reporting/decision-making responsibilities)
 - e. Management of personal illness and/or injury
 - f. Management of cumulative trauma, ergonomic process, etc.
 - g. Infectious diseases/bloodborne pathogens
 - h. Drug & alcohol testing
 - i. Health promotions/screenings/wellness programs
 - j. On-site first aid, emergency response (including protocols and equipment)
 - k. Existence of OTC medications, band-aids, etc.
3. Requirements for transfer of medical records

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Note: The requirements of the items on this checklist should be updated to reflect current laws and regulations at the time of your transactions.

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STATE ENVIRONMENTAL LAWS AFFECTING PROPERTY TRANSFERS

Since the advent of the federal Superfund law in 1980, many states have passed certain environmental laws and regulations that become important in the context of business and real property transactions. Of particular concern to lenders have been the environmental lien laws, which provide for a lien, in some cases a super-priority lien, on property that is the subject of an environmental cleanup. Of more recent vintage, but equally important to lenders, are the lender liability exemptions under state environmental remedial laws. Finally, many states have now adopted laws that potentially require the disclosure of environmental conditions as part of a property transfer. The following summary chart ("Chart") identifies such laws of potential interest to buyers, sellers and lenders.¹

STATE	LIEN ¹	PROPERTY TRANSFER/ DISCLOSURE	LENDER LIABILITY
ALABAMA	NO	NO	YES
ALASKA	YES	NO	YES
ARIZONA	YES	NO	YES
ARKANSAS	YES	NO	YES
CALIFORNIA	YES	IRPTA, RIRPTA & DEED	YES
COLORADO	NO	DEED	YES
CONNECTICUT	YES SUPER	ECRA	NO
DELAWARE	NO	DEED	YES
DISTRICT OF COLUMBIA	YES-UST	NO	NO
FLORIDA	NO	NO	YES
GEORGIA	YES	DEED	YES
HAWAII	NO	RIRPTA	YES

** The Chart is being provided for informational purposes only and it is not intended as specific legal advice or to be all-inclusive or to substitute for an independent review of relevant state laws by the reader.*

STATE	LIEN ¹	PROPERTY TRANSFER/ DISCLOSURE	LENDER LIABILITY
IDAHO	NO	RIRPTA	NO
ILLINOIS	YES	IRPTA & RIRPTA	YES
INDIANA	YES	IRPTA	YES
IOWA	YES	IRPTA & DEED	YES
KANSAS	NO	DEED	NO
KENTUCKY	YES	DEED	YES
LOUISIANA	YES SUPER	NO	YES
MAINE	YES SUPER	IRPTA	YES
MARYLAND	YES	DEED & RIRPTA	YES
MASSACHUSETTS	YES SUPER	DEED	YES
MICHIGAN	YES	IRPTA & DEED	NO
MINNESOTA	YES	DEED	YES
MISSISSIPPI	NO	RIRPTA	NO
MISSOURI	NO	DEED	YES
MONTANA	YES	NO	YES
NEBRASKA	NO	DEED	YES
NEVADA	NO	NO	NO
NEW HAMPSHIRE	YES SUPER	DEED	YES
NEW JERSEY	YES SUPER	ECRA & DEED	YES
NEW MEXICO	NO	NO	NO
NEW YORK	YES	DEED	NO
NORTH CAROLINA	YES SUPER	DEED & IRPTA	NO

STATE	LIEN ¹	PROPERTY TRANSFER/ DISCLOSURE	LENDER LIABILITY
NORTH DAKOTA	NO	DEED	YES
OHIO	YES	RIRPTA	NO
OKLAHOMA	NO	RIRPTA	NO
OREGON	YES	DEED	YES
PENNSYLVANIA	YES	DEED	YES
RHODE ISLAND	YES	DEED & RIRPTA	YES
SOUTH CAROLINA	YES	DEED	NO
SOUTH DAKOTA	YES	RIRPTA	YES
TENNESSEE	YES	DEED	NO
TEXAS	YES	DEED, RIRPTA & IRPTA	YES
UTAH	NO	NO	YES
VERMONT	NO	DEED	YES
VIRGINIA	NO	RIRPTA	NO
WASHINGTON	NO	DEED	YES
WEST VIRGINIA	NO	DEED	NO
WISCONSIN	YES SUPER	RIRPTA	NO
WYOMING	NO	NO	NO

1. *State environmental lien laws vary in terms of when a governmental body may impose a lien, the priority that will apply, and the types of property (real, and sometimes personal) that may be the subject of the lien. As such, it is important to individually review any applicable state lien law in the context of a specific transaction to understand its potential impact.*

2. States have taken a variety of approaches in ensuring that future and potential owners of property are aware of any actual or potential contamination of such property. This chart loosely divides those approaches into four categories. Statutes which require affirmative investigation,

cleanup and state approval as a condition of transfer are identified in this column as "**CLEANUP**" statutes. Requirements which focus on disclosure of actual or potential contamination in connection with a proposed transfer of property are identified as "**IRPTA**" provisions, after the Illinois Responsible Property Transfer Act, one of the earliest of this type of requirement. For purposes of this chart, the IRPTA category encompasses both transfer laws that require some affirmative filing with a government agency and those that simply mandate disclosure by the seller to the buyer (and lender). IRPTA-type requirements which apply only to transactions involving residential property (containing one to four dwellings) are identified as "**RIRPTA**" provisions. Finally, provisions which require either the state or the owner to record notice of contamination or restrictions upon future uses of contaminated property on the deed to affected property, often in the context of a state Resource Conservation and Recovery Act ("**RCRA**") program, are designated "**DEED**" provisions in this column. (State approval before transfer of property containing a RCRA-permitted facility may also be required.) Note that within each of these categories, the laws and regulations vary significantly in terms of what triggers applicability of the requirements and how compliance is effected.

3. The scope of lender liability provisions varies significantly from state to state. The provisions referenced in this column may be found in the state Superfund statute, the state Underground Storage Tank Program, or other program under which the state chooses to create an exception for lender liability.

4. While Alaska does not have in place a property transfer/disclosure statute or regulation of the type described above in Note 2, the Alaska Administrative Code requires that a person developing a subdivision obtain approval of its plans for the subdivision's wastewater disposal system from the Alaska Department of Environmental Conservation as a prerequisite to the recording of the plat or the sale or lease of any lots in the subdivision. The state Supreme Court, in Alaska v. Anderson, 749 P.2d 1342 (Alaska 1988), upheld the DEC's right to require this approval.

5. This state has incorporated lender liability provisions in its underground storage tank program.

6. Louisiana's superlien provisions is still in effect. However, Louisiana announced that it has temporarily suspended enforcement of this provision pending revision of the superlien statute to address due process concerns raised, in a similar context, in Reardon v. United States, 947 F.2d 1509 (1st Cir. 1991).

7. *Maine requires disclosure of the presence of underground tanks.*

8. Michigan's lien has the potential to become a superlien in that the Attorney General can petition the court to increase the priority of the lien.

9. Minnesota's lien may become a priority lien if the state intervenes to perform a cleanup at an old municipal landfill and may apply to certain property adjacent to the landfill. A conventional lien attaches for the cleanup of property in Minnesota other than a municipal landfill; however, this lien may attach to any property in the state that is owned by the same person who owns the property on which the cleanup is performed.

10. New York's lien applies to costs and damages associated with cleanup and removal of petroleum discharges.

Note: Purchasers of property owned by federal government departments, agencies or instrumentalities must be notified if: (i) the property has been used to store hazardous substances for one year or more where such hazardous substances exceed the greater of 1,000 kilograms or the substance's Superfund reportable quantity or (ii) there is a known release of a hazardous substance in quantities greater than the Superfund reportable quantity for that substance. The specific requirements of the notice and its applicability are set forth at 40 C.F.R. Part 373.

11. *A deed restriction provision was proposed in 1994. We do not believe final action has been taken.*

REFERENCE MATERIALS

■ *U.S. DOJ-*

(July 1, 1991)

www.usdoj.gov

■ *EPA 1986 Environmental Auditing Policy Statement (July 9, 1986)*

51 Fed. Reg. 25004

- ***EPA Self-Disclosure Interim Policy Statement (April 3, 1995)***
60 Fed. Reg. 16875

- ***EPA Final Self-Policing/Disclosure Policy (December 22, 1995)***
60 Fed. Reg. 66705

- ***EPA Audit Policy Interpretive Guidance (January 15, 1997)***
www.epa.gov/oeca/apolguid.html

- ***EPA Proposed Revisions to Incentives for Self-Policing (May 17, 1999)***
60 Fed. Reg. 26745
- ***NEIC Process-Based Investigation Guide***
<http://es.epa.gov/oeca/oceft/neic/pubstxt.html>
- ***NEIC Compliance-Focused Environmental Management System-Enforcement Agreement Guidance (August 1997)***
<http://es.epa.gov/oeca/oceft/neic/pubstxt.html>

■ ***Earl Devaney, Director; Memo re:***

(October 1, 1997)

<http://es.epa.gov/oeca/oceft/audpol2.html>

■ ***Policy on Compliance Incentives for Small Businesses (June 10, 1996)***

<http://es.epa.gov/oeca/smbusi.html>

- ***U.S. Sentencing Commission Guidelines Manual (eff. November 1, 1991); Chapter 8 - www.ussc.gov/index.html***

Sample EH&S Acquisition Integration Checklist

*ACCA Annual Meeting
November 5, 1999
David C. Cannon Jr.
Vice President, Environment,
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PPG Industries, Inc.*

EHS Acquisition Integration Checklist **For ABC Company**

Attached is an acquisition integration program for ABC Company (ABC) operations. The program is designed to identify the Environment, Health & Safety (EHS) activities that should be addressed by an EHS integration team during the initial phases of integrating an acquisition into ABC.

The guide documents activities and/or concerns that should be considered during the early stages of the integration process. Several of the issues may have been addressed or identified as part of the pre-acquisition due diligence effort. Accordingly, the EHS integration team should obtain any relevant reports/information and hold discussions with the acquisition due diligence team to identify these specific issues. In general, the following basic steps should be completed:

- Review the “Proven Principles – Integration” guidance in the ABC Mergers & Acquisitions Manual for a list of integration Best Practices.
- Form an integration team involving EHS and business personnel from ABC and the acquired company.
- Obtain an understanding of the business to identify potential concerns.
- Determine status of acquired company’s EHS management system and determine process to integrate into ABC’s EHS management system.
- Reconfirm current compliance status and determine if any critical issues need immediate attention.
- Determine whether the EHS accounting policies followed by the acquired company are reasonable, the reserves adequate (if relevant), and if there are any significant weaknesses in the internal EHS management controls.
- Review the acquired company’s current EHS long-range plan and key assumptions.
- Provide ABC and Business Unit EHS policy and guidance documents and contacts.

General

Responsibility for Contract Administration:

- Determine who on the business integration team has responsibility for contract compliance/administration and establish direct communication with that individual.
- Identify and contact lead negotiator from corporate development.
- Obtain a complete copy of the contract and gain an understanding of the transaction.
- Determine all of the EHS-related response dates/action dates and take steps to assure required action will be taken.
- Ensure that all EHS commitments within the contract are understood and appropriately communicated.
- Assess whether operations have been recently run in the ordinary course of business. Evaluate impact on acquisition in cases where unique transactions have occurred.

Disciplines

1. General EHS Requirements

- Notify EHS government agencies of ownership change
- Assess the adequacy of EHS organization
- Review EHS training records, compare to ABC requirements
- Provide Business Unit EHS review process and checklists for authorization for capital transaction
- Establish Management of Change (MOC) procedures
- Review ABC crisis response procedures – provide manual
- Review ABC Emergency Response procedures – provide guidance
- Provide copies of ABC EHS policy and guide
- Review ABC Responsible Care® process
- Review records retention policy
- Establish plant EHS steering committee, provide support for committee
- Review current customer assistance procedures
- Provide list of ABC EHS acronyms
- Review current internal audit records and procedures, update as needed
- Develop schedule for EHS reviews and audits
- Identify documents requiring translation
- Review plans for EHS new capital requirements
- Provide organization charts, telephone, voicemail, fax and email addresses for key EHS personnel
- Establish a short- and long-term EHS integration timeline and secure Business Unit management approval

2. Safety

- Review capabilities of current safety organization
- Review current recordkeeping process, modify as needed
- Review Workers Compensation program
- Establish safety goals and monthly safety reporting procedures
- Assess fire protection system, schedule IRI plant visit
- Review/Develop safety procedures including:
 - Electrical systems
 - Confined space
 - Personal protective equipment
 - Bonding and grounding
 - Hot work permits
 - Lock Out/Tag Out
 - Fork trucks (including seat belt policy)
 - Accident (incident) tracking and investigation
 - Contractor safety
 - Non-routine situations/operations
 - Ladder safety
- Establish ergonomic process
- Establish process safety management process
- Establish and training Emergency Response Team
- Assess HAZWOPER requirements
- Implement Responsible Care® Process Safety Code
- Implement Responsible Care® Employee Health & Safety Code
- Assess readiness for Behavior Based Safety process
- Review safety training records, upgrade training plan
- Provide copy of manual of safety and loss prevention policies and implementation guidelines
- Provide copy of safety and health risk reduction process
- Provide SBU-specific guidance documents

3. Occupational Health/Industrial Hygiene

- Review capabilities of current health organization
- Implement IH monitoring program
- Assess facility ventilation system capability
- Develop noise map
- Verify onsite hazards – asbestos, crystalline silica
- Assess Hazards Communication system
- Implement Responsible Care® Employee Health & Safety Code
- Review health training records, upgrade training plan
- Provide copy of ABC global requirements for occupational health
- Provide copy of safety & health risk reduction process
- Provide Business Unit-specific guidance documents

4. Medical

- Review current medical staffing
- Nurses, EMTs
- Company and contract physicians
- Evaluate local medical facility relationships and contracts, if applicable
- Assess current wellness, health promotion practices
- Develop medical procedures:
 - Blood-borne pathogens
 - Confidentiality of records
- Install medical management software
- Assess emergency medical response personnel capabilities and upgrade training as needed
- Provide copy of ABC medical manual

5. Security

- Assess capability of current security staff
- Assess plant security systems
- Fencing
- Alarms
- Surveillance
- Review ongoing investigations, if applicable
- Implement incident investigation process, if needed
- Develop relationship with local law enforcement organizations
- Assess training needs of security staff and upgrade as needed

6. Product Safety

- Assess capability of current product safety staff
- Review procedures for:
 - Assessing material hazards
 - Completing toxicology testing
 - Preparing MSDS
 - Supplying MSDS to customers
 - Sample shipments
 - Chemical Weapons Inventory
 - Drug trafficking regulations
- Review product registration procedures, U.S. and international
 - e.g. TSCA, FDA, FIFRA and their international equivalents
- Review TSCA, FDA, FIFRA compliance issues
- Implement Responsible Care® Product Stewardship Code
- Assess training needs for sales, marketing, research and manufacturing personnel
- Identify major customers and short- and long-term product commitments
- Determine whether there are current tolling and consignment agreements

7. Environmental

- Assess the adequacy of the current environmental organization
- Review representation letters and implications
- Review overall compliance record and any outstanding enforcement actions
- Determine whether there are any Superfund sites and, if there are, whether reserves have been established in purchase accounting
- Determine whether there have been any government studies conducted and results published
- Review all air permits, determine renewal schedules
- Review TRI and other Air Toxics reports
- Assess fugitive emissions
- Review process and sanitary discharge permits
 - To surface waters and public treatment plants
- Review stormwater management practices, asses needs
- Assess offsite impact evaluation requirements
 - RMP (US), SEVESO Directive (Europe), etc.
- Review waste management practices and permits
 - Hazardous and non-hazardous wastes
- Review all waste contractor agreements and inspection reports
- Implement waste minimization/pollution prevention program
- Review equipment cleaning procedures and associated waste management
 - Include offsite cleaning facilities
- Develop spill plans to meet regulatory and policy requirements

- SPCC plans, contingency plans
- Assess spill containment systems
 - Loading and unloading areas, storage tanks, drum pads, warehouses
- Review PCB inventory
- Review Underground Storage Tank (UST) inventory
- Conduct site assessment, if warranted
- Provide environmental practices manual
- Provide waste minimization technology transfer handbook
- Review environmental training records, upgrade training plan

8. Distribution & Transportation

- Assess the adequacy of the current D&T organization
- Determine what distribution or agency agreements exist
- Determine whether the location utilizes export agents or other arrangements
- Establish procedures to ensure that proper control exists over all distribution/agency agreement
- Provide transportation of hazardous materials (or goods) policy guide document
- Provide focus assessment on process for air shipment of hazardous materials
- Review offsite equipment cleaning contracts and inspection records
- Provide organization charts; telephone, voicemail, fax numbers, and email addresses for key D&T department contacts

9. IT/Communications

- Assess the adequacy of the IT resources (human, systems, quality, etc.)
- Determine the status of the current PC inventory and whether upgrades will be required to be compatible with ABC standards for EHS data management
- Determine who is responsible for establishing LAN/WAN connections; determine:
 - When they will be implemented and available and will email capabilities exist
- Determine whether the ABC Office Suite will be installed and whether appropriate training will be available
- With appropriate IT contact, assess the inventory of current systems; determine issues that may require immediate attending, including:
 - Hardware/Software (including identification of in-house developed software and support)
 - Software licenses
 - Integrated systems

- Year 2000
- Applications access controls and data owners
- Determine availability/compatibility of key EHS programming:
 - System for MSDS and label management and hazcom compliance
 - IH/medical management
 - Labeling
 - Environmental (waste, TRI)
 - Transportation of dangerous goods database
- Provide organization charts; telephone, voicemail, fax numbers and email addresses for key law department contacts

10. Purchasing

- Identify the principal EHS vendors
- Establish approval authorities consistent with ABC requirements
- Determine what purchase contracts exist
- Evaluate the terms/commitments of each
- Determine the rights that exist within the contracts
- Provide ABC EHS purchasing guidance documents
- Provide organization charts; telephone, voicemail, fax numbers and email addresses for key purchasing department contacts

11. Legal Issues/Pending Litigation

- Gain awareness of pending or potential litigation issues
- Determine if any government investigations are ongoing or pending
- Determine the circumstances and magnitude of any identified issues
- Establish process for notifying law department of new, pending or threatened legal action
 - Must be recorded on law department enforcement log
- Provide organization charts; telephone, voicemail, fax numbers and email addresses for key law department contacts