

Contractual Allocation of Environmental Risks

In today's business and regulatory landscape, environmental risks can significantly impact transactions, business operations and viability, and operational and transactional liabilities, leading to substantial financial burdens and legal disputes. Greenbaum's environmental team proactively seeks to assist clients in managing and mitigating these exposures through strategic contractual allocation of environmental risks in a wide array of business scenarios. We understand that environmental liabilities can be complex and long-lasting, often surviving changes in ownership of properties and businesses or corporate mergers. Our approach focuses on incorporating robust and enforceable contractual provisions that clearly define responsibilities, indemnities, and risk-sharing mechanisms among parties.

In concert with the drafting of transactional documents and development plans, we work collaboratively with clients and other professionals to conduct thorough environmental due diligence to identify existing or potential environmental conditions, assess regulatory compliance status, and quantify potential cleanup costs or penalties. This crucial information forms the basis for effective risk allocation. We have deep expertise in incorporating sophisticated contractual protection techniques into the drafting and negotiation of environmental clauses in a broad range of agreements, including those related to purchase and sale transactions, leases, mergers & acquisitions, settlements, loan documents, service and consulting agreements, institutional controls such as deed notices and use restrictions, and insurance policies. We structure indemnification agreements that protect our clients from environmental claims, carefully defining the scope of indemnified losses, triggering events, and procedures for seeking indemnification. We also draft and negotiate environmental release agreements to formally discharge parties from specific environmental liabilities. For properties undergoing remediation, we advise on the use of environmental covenants and institutional controls, and how these regulatory tools intersect with contractual obligations to manage long-term environmental risk and land use restrictions.

Our attorneys stay abreast of the latest case law interpreting environmental clauses in agreements and other transactional documents, making practical use of this knowledge to develop targeted transactional solutions to manage environmental liability under the federal Superfund law (CERCLA), New Jersey's Spill Compensation and Control Act (Spill Act), Industrial Site Recovery Act (ISRA), and other transaction-triggered laws, and other laws and regulations. We also assist in preparing environmental disclosures to governmental entities.

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