2016 AASHTO Right of Way, Utilities, Outdoor Advertising Control & National Alliance of Highway Beautification Agencies Conference

Sunday, May 1–Thursday, May 5
Rosen Centre Hotel
Orlando, Florida
Dare You to Buy

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Minnesota Department of Transportation

2016 AASHTO ROWUOAC & NAHBA Conference
NOTES

• Why the worry?
• Environmental law 101
• What your organization can do
How Much Cleaning Up Brownfields Is Really Worth

A new study shows the enormous effect that the EPA's brownfield remediation program has on real estate values in cities.

KRYSTON CAPPES | @kristoncapps | Jul 29, 2014 | 6 Comments
• Removal/remediation
• Natural resource damages
• Economic loss
• Personal injury
• Delays/claims
• Legal fees

70%
What makes you liable?

- Owner
- Operator
- Transporter
- Generator
What is the difference?
What could possibly go wrong?
Institutional Controls

• Due diligence
• Real estate contracts
• Construction contracts
Due Diligence

**Phase I ESA**
- Interviews
- Records search
- Site visit
- Historical research
- ASTM standards

**Phase II ESA**
- Soil sampling
- Groundwater samples
- Sediment
- Surface water samples
No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or threat of release under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under [CERCLA].
Real Estate Contract Terms

- Representations
- Warranties
- Negotiate cleanup costs
- Indemnification
## I DARE YOU TO BUY...

<table>
<thead>
<tr>
<th>Level of Contamination</th>
<th>Conveyance Factors</th>
<th>Contract Language</th>
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| • Clean site           | • High level of interest  
                        | • Multiple buyers  
                        | • Intended to be industrial site |
|                        |                    | • General real estate terms |
I DARE YOU TO BUY...

- **Level of Contamination**
  - DROs in soil

- **Conveyance Factors**
  - Small acreage
  - Low appraisal value

- **Contract Language**
  - “As Is” Contract Language

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I DOUBLE DARE YOU TO BUY...

Level of Contamination
• Lead in water

Conveyance Factors
• Large acreage
• Few buyers
• Stigma
• Intended use: Public park & soccer fields

Contract Language
• “Dare you to buy” Contract Language
Grantee, in full acknowledgement and aware of such risks shall defend indemnify, hold harmless and hereby waives, releases and discharges forever the State from any and all future claims, cross claims, counterclaims, demands and causes of action and any and all damages, losses, injury, liability, claims or costs, including fines, penalties and judgments, and attorneys’ fees and court costs whether known or unknown, arising from or in any way related to the condition of the property, any patent or latent defects or alleged or actual presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the property. Grantee’s release and indemnity to the State includes any and all such Claims and Damages whether based in contract, tort, or strict liability, including the cost of any investigation, removal, remedial or other response that is required by any Environmental Law, judicial order or order of any governmental authority, losses for injury or death of any person, losses arising under any Environmental Law enacted in the future, and losses for property damage including diminution in value thereof. This indemnity specifically includes the obligation of Grantee to remove, close, remediate, reimburse or take other actions requested or required by any governmental agency concerning any Hazardous Substances on the property.

If Grantee causes or allows the property to become contaminated in any manner by a Hazardous Substance or a pollutant or contaminant, Grantee will defend (with counsel acceptable to the State, consistent with Minn. Stat. § 8.06 (2014)), indemnify and hold harmless the State.
Thank you!

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