



ENVIRONMENTAL
LIABILITY TRANSFER
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Liability Buyouts

An Update for M&A, Bankruptcy, and Corporate
Balance Sheets

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A business of Marsh McLennan

Today's presenters



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What is an environmental liability buyout?

- Liability assumption firm assumes the environmental liabilities of another company or group of companies or responsible parties
- Transferring entity is released or indemnified from all environmental cleanup responsibilities involving the affected property
 - known and unknown
 - above and below grade
 - onsite and offsite contaminants

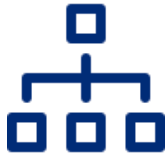


What liabilities and costs can be transferred?

More than just cleanup costs

- Remediation
- Decommissioning
- Demolition
- Asbestos and hazardous materials abatement
- Regulatory responsibilities (orders can be signed by liability assumption firm)
- Regulatory permits (NPDES, storm water, POTW permits, wetland permits, permits tied to property or remediation efforts)
- Insurance claims
- Shared services agreements
- Perhaps third-party bodily injury, third-party property damage, and natural resource damages

Structure and what can be included



Liability buyout structures

- Includes the real estate

OR

- Liability only (without real estate)
 - Formerly owned or operated (leased sites or already sold)
 - PRP consolidation and buyouts

PFAS / PFOS

Due to changing regulations and difficult to obtain cleanup standards, liability assumption firms are cautious on assuming liabilities associated with this category of emerging contaminants

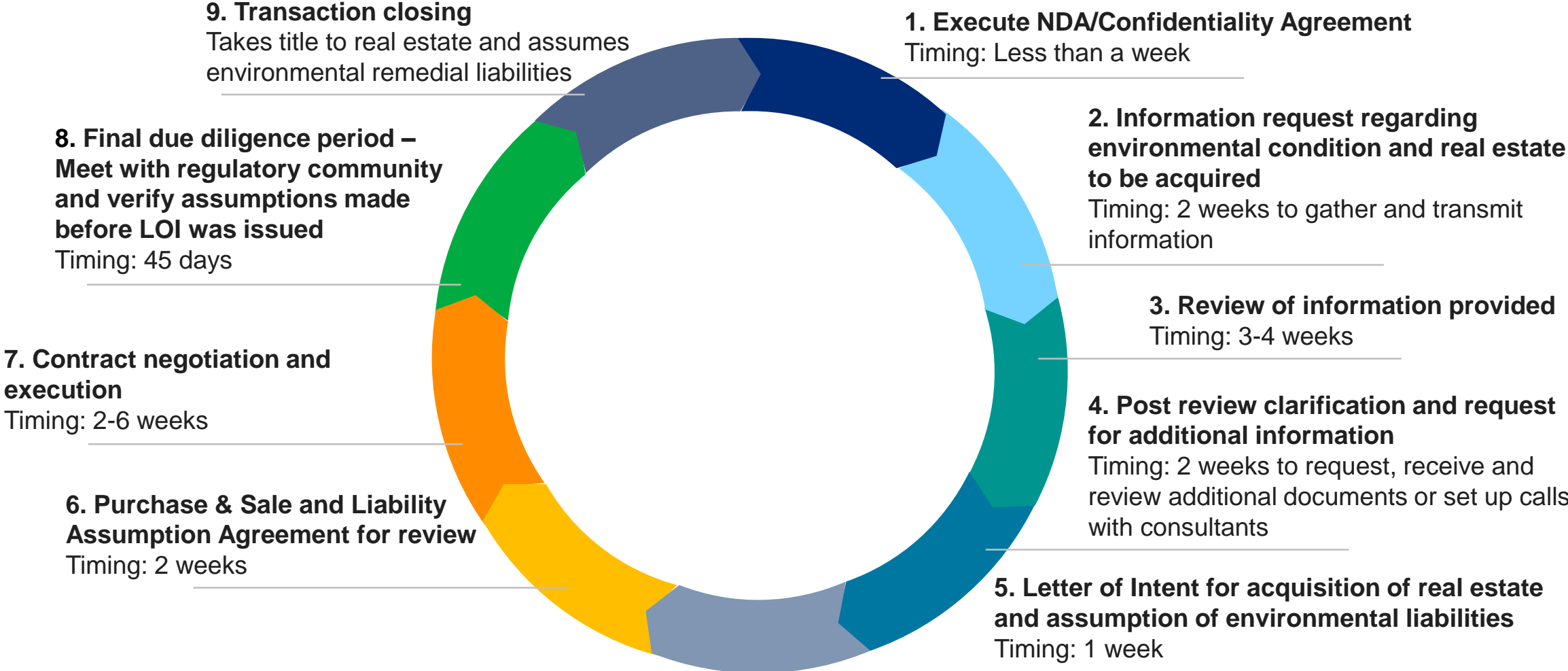


Typical costs

- Costs for the life cycle of the remediation project
- Management costs
- Legal costs
- Risk premiums
- Environmental insurance
- Holding costs for the real estate if included
- Abatement if needed
- Demolition if needed

Mechanics of an environmental liability buyout

Process, timing, contracts



Applications



Corporate divestitures

Surplus or operational sites



Mergers & acquisitions

Remove environmental hurdles to M&A transactions



Bankruptcies

Remove legacy environmental liabilities and sell surplus real estate prior to emerging from bankruptcy



Company wind-downs & dissolutions

Divest of environmental liabilities and real estate assets so companies can dissolve



PRP disputes

Allows PRPs to transfer environmental liabilities and responsibilities to a liability assumption firm



Sale/leasebacks

Corporations sell real estate and leaseback the facilities while transferring legacy liabilities



Corporate balance sheet cleanse

Remove environmental liabilities from balance sheets



Remediation fatigue

Walk away from long-term environmental liability battles

Environmental insurance

- Enables the transaction and post-transaction risks
- Manages environmental risk for all parties: buyer, seller, lenders
- Follows the retained, assumed, indemnified, environmental liabilities

Insurance risk management options

- PLL (unknown pre-existing conditions)
 - Cleanup (on and off site)
 - Third-party bodily injury
 - Third-party property damage
 - Legal defense
- Non-owned disposal sites
- Divested properties
- Excess of indemnity
- Cost cap
- Multiple policies depending on liability apportionment
- Legacy versus new conditions

Buyout of a chemical company property

Case study



600 acre chemical plant in Georgia



Owner sought to liquidate the property, assets, and environmental cleanup liabilities as part of a corporate restructuring



Challenge was a solution that included environmental liabilities

Marsh and ELT were engaged to facilitate an integrated buyout-insurance solution

- ELT completed due diligence that included:
 - Real estate end use and valuation
 - Scrap value from equipment
 - Costs associated with environmental cleanup
 - Property carrying costs
 - Management and legal costs
- Buyout offer included:
 - Assumption of cleanup liability in perpetuity
 - Indemnities to the seller
 - Seller retains third-party bodily injury and third-party property damage
- Marsh engaged insurers to address liabilities:
 - PLL for ELT: covers cleanup for unknown pre-existing conditions; narrowly excludes known conditions
 - PLL #1 for seller: Covers retained third-party bodily injury and third-party property damage (including NRD)
 - PLL #2 for seller: Covers environmental cleanup indemnity in the event there is a “failure to perform”

Buyout of a chemical company property

Case study

Outcome

- Transaction was successfully completed
 - Environmental Liability Buyout
 - Three insurance policies
- Regulators approved

- **PLL for ELT:
unknown
pre-existing
conditions**
- **PLL for Seller:
3rd-party BI & PD**
- **PLL for Seller:
indemnity if
failure to perform**

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Marsh is one of the Marsh & McLennan Companies, together with Guy Carpenter, Mercer, and Oliver Wyman.

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