

**NICOLE BROWNFIELDS WORKING GROUP
 LIABILITY MANAGEMENT AND TRANSFER ROADMAP
 CHECKLIST 1: EXAMPLES OF CORPORATE AND SITE SPECIFIC OBJECTIVES**

Example Corporate Objectives
Transfer of all corporate environmental liability
Be indemnified by purchaser against any legal or regulatory action related to the environment
Ensure that purchaser is and remains of sufficient standing to assume environmental liabilities
Insure against future environmental claims, remediation cost overruns, etc
Ensure that future land use changes do not result in additional liabilities to vendor
Ensure that value realised from transfer is sufficient to cover residual environmental liabilities
Allow provisions in company accounts to be removed or reduced
Retain liabilities for defined period subject to a no-discovery/investigation requirement on purchaser
Maximise land sale receipts
Maximise land sale receipts and participate in development value "gain"
Ensure that transfer does not increase or reinforce negative public/stakeholder perceptions of the vendor
Meet corporate responsibility objectives to environment, community
Example Site Specific Objectives
Retain "legacy" operations; maintain wayleaves for access and/or retained services
Retain rights to complete remediation/monitored natural attenuation already underway
Surrender of environmental permits, licences, held by vendor
Clawback of proportion of development profit or unexpended remediation budget
Retain right to enter site to remediate particular chemical or pollutant linkage
Provide defined regeneration/environmental benefits to communities in vicinity of site
Allow continuing expenditure in security and site maintenance to be curtailed

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 CHECKLIST 2: EXAMPLES OF STAKEHOLDERS**

Public Sector/Regulatory
European/National Government
Regional/Local Government
Governmental Agency or Function: Economic Development/Regeneration, Spatial Planning, Public Health
Regulatory Agency or Function: Environmental, Health and Safety, Development Control, Financial, Trade
Legal: Police, Criminal Courts, Civil Courts, European Court of Justice
Private Sector
Financial Markets, Shareholders, Bondholders
Lenders, Insurers
Parent Company, Joint Venture Partners
Customers
Supply Chain
Site Neighbours (Businesses)
Community/Individuals/Interest Groups
Site neighbours (individuals); Other individuals potentially affected by operations
Local community; other communities potentially affected by operations
Non governmental organisations in community/environment
Social/environmental campaigning groups
Political organisations

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 CHECKLIST 3: SOURCES AND RELIABILITY OF EVIDENCE**

Source of Evidence	Reliability*
Desk based study using public record/environmental database information	Low: no direct evidence of pollutant linkages
Desk based study using internal company records of monitoring	Low to medium: depends on relevance of monitoring
Desk based study using internal company records of incidents etc	Medium: may contain direct evidence of linkages
Desk based study using internal company records of environmental site investigation	Medium: may contain direct evidence of linkages
Desk based study using internal company records of geotechnical site investigation	Low to medium: may provide contributory evidence of linkages
Desk based study using records made available to regulatory bodies, eg from monitoring/surrender of environmental permits	Medium: may contain direct evidence of linkages
Due Diligence audit reports	Low to Medium: depends on robustness of audit and quality of lines of evidence
Interviews with long serving employees	Low to medium: dependent on reliability of individual
Intrusive investigation of suspected linkages – limited scope	Medium to high: dependent on brief and scope
Intrusive investigation of suspected linkages – detailed scope	High: provided brief appropriate
Quantitative risk assessment based on data from detailed scope investigation	High to very high: provided methodology, brief, appropriate
Records of public health studies	Medium: dependent on rigour and relevance of study.
Records of regulatory and legal actions	Medium to high: dependent on relevance of case

***Specialist advice should be sought to test the reliability of particular sources of evidence. This ranking is given as a guide only.**

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CHECKLIST 4: LIST OF COUNTRY SPECIFIC INFORMATION SHEETS**

Country Specific Information Sheet	Version
1. Czech Republic	6 April 2009
2. Finland	28 April 2009
3. Flanders	09 April 2009
4. France	15 December 2009
5. Germany	27 April 2009
6. Hungary	30 April 2009
7. Ireland	30 April 2009
8. Italy	22 May 2009
9. Netherlands	9 April 2009
10. Portugal	30 April 2009
11. Romania	27 May 2009
12. Spain	8 April 2009
13. Sweden	25 April 2009
14. United Kingdom	5 May 2009
15. Wallonia	15 April 2009

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CHECKLIST 5: LIABILITY MANAGEMENT AND STRATEGY OPTIONS**

Liability Management and Strategy Options
Contract (e.g. warranties and indemnities)
Detailed Assessment of Site Purchaser
Remediation to higher standards than those set by the regulator
Monitoring of greater frequency and duration than required by the regulator
Legal restrictions on future land uses
Environmental insurance
Other Financial mechanisms (Bonds, Escrow accounts etc)
Corporate Restructuring
Transfer to a specialist liability management organisation
Combinations of the above

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 CHECKLIST 6: SALE CONTRACT OPTIONS**

Sale Contract Options (after Johnson and Shaw, 2007)
As below but with parent company guarantee, or other secure credit backed mechanism, unlimited in amount and/or duration
As below but with parent company guarantee, or other secure credit backed mechanism, limited in amount and/or duration
Sold with information provided by the Seller to knowledgeable Buyer who has conducted his own investigations, site discounted to reflect environmental impairment, indemnity provided by the Buyer, indemnity backed by insurance policy which includes the Seller (insurance will be limited in amount and duration)
Sold with information provided by the Seller to knowledgeable Buyer who has conducted his own investigations, site discounted to reflect environmental impairment, indemnity provided by the Buyer
Sold with information provided by the Seller to knowledgeable Buyer who has conducted his own investigations, site discounted to reflect environmental impairment, no indemnity provided
Sold with information but with no (apparent) discount to unimpaired value – no information provided by the Seller, limited access to the Buyer to get own information
Sold as seen, no information, no discount – <i>caveat emptor</i>

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CHECKLIST 7: RECORDS FOR RETENTION**

Record Category	Examples of Records to be Retained
Corporate	Corporate policies; records of negotiations (including completed "tools" forms); records of decisions; basis for calculations of provisions (eg as required by Sarbanes-Oxley/FRS12) in accounts (including reduction of provisions on disposal).
Legal Agreements	Sale and Purchase Agreements; Environmental indemnities and warranties;
Risk Management	Insurance policies; risk assessments; environmental audit/due diligence reports
Contracts	Contracts with consultants and contractors; works specifications; remedial design documentation; contracts with specialist liability transfer organisations
Regulatory	Copies of licenses/environmental permits and associated correspondence; legal notices or regulatory orders; confirmation of regulatory actions/decisions; prosecutions or civil sanctions; regulatory approvals.
Technical	In-house historical records including plans, documents, incident records; desk studies; site investigations; risk assessments; remediation strategies/method statements; remediation designs; as constructed drawings and records; verification reports; monitoring reports;.
Development control/zoning	Development consents; zoning decisions; institutional controls.

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 TOOL 1: CORPORATE AND PROJECT SPECIFIC OBJECTIVES**

Site Name:	
Corporate Objectives	Source/Reference, Authority, Date
Project Specific Objective	Authority, Date, Date Amended
Record of Formulation and Amendment of Project Specific Objectives: (include cross reference to files/documents)	
Record of Decisions Consequent on Formulation and Amendment of Project Specific Objective: (include cross reference to files/documents)	

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 TOOL 2: RECORD OF HIGH LEVEL REVIEW**

Site Name:	National Jurisdiction:
Schedule of Data Reviewed (Pollutant Linkage, Liability, Cost)	Key Conclusions, Relevance, Gaps
High Level Appraisal of Legal and Stakeholder Context: (Include Cross Reference of Documents)	
High Level Liability and Order of Cost Appraisal: (Include Cross Reference of Documents)	
Record of High Level Review Outputs eg Preliminary Conceptual Site/Liability Models: (Include Cross Reference of Documents)	

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 TOOL 6: STRUCTURED REVIEW RECORD SHEET**

Site Name:	Country/Legal Jurisdiction:
Liability Transfer Options	Liability Transfer Constraints
Record of Legal Advice Received: (include details of advisors, cross reference to files/documents)	
Record of Commercial Advice Received: (include details of advisors, cross reference to files/documents)	
Record of Technical Advice Received: (include details of advisors, cross reference to files/documents)	

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 TOOL 10: RECORD OF REVIEW OF CORPORATE LIABILITY PROVISIONS**

Site Name:		
Basis of Previous Corporate Liability Provision		Data
Financial Reporting Standard and Corporate Policy		
Date of Liability Assessment		
Documents containing details of Corporate Liability Provision		
Details of Corporate Liability Provision Specific to Site		
Previous Corporate Liability Provision Element	Deleted Provision (Liability transferred)	Retained Provision
Record of Decision/Justification to Delete Provision: (include cross reference to files/documents)		
Record of Assessment of Retained Provision: (include cross reference to files/documents)		
Record of Decision of Post Liability Transfer Corporate Liability Provision : (include cross reference to files/documents)		