

Environmental Due Diligence Auditing

Environmental due diligence is the exercise conducted by Abricon for a purchaser, seller, underwriter or lender (for simplicity only “purchaser” is referred to in the rest of this piece) in a wide range of commercial transactions, including a public offering of shares, re-financing, asset purchase, share purchase, divestment or merger. The objective is firstly, to ascertain what environmental liabilities and risks these parties might be transferring in the transaction and, secondly, to quantify any liabilities. In essence it is an external examination by Abricon of the environmental operations of a company; The emergence of environmental due diligence in business transactions has resulted from two factors, namely the increased risk of inheriting environmental liability, and the limited comfort offered by warranties and indemnities which seek to safeguard against that risk.

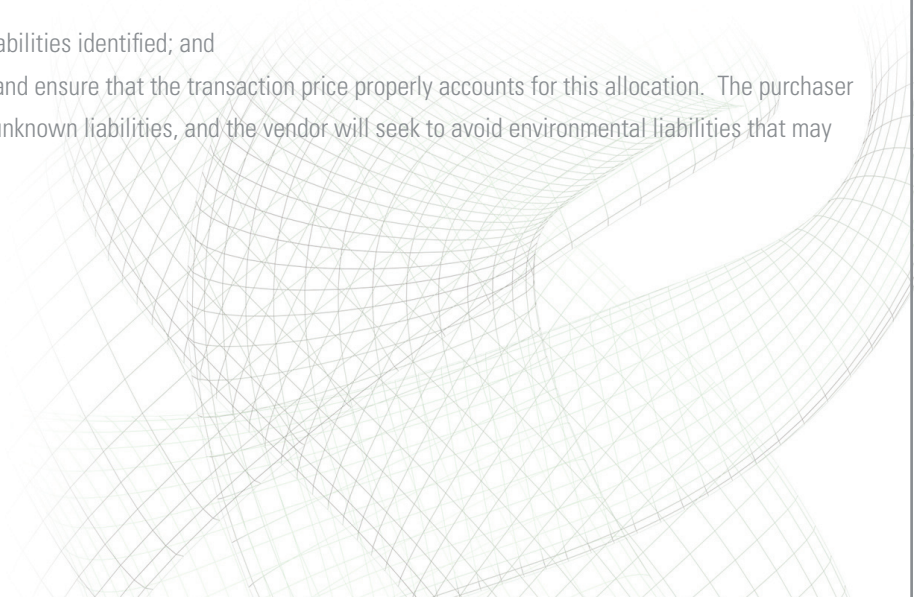
Most frequently, in our experience, environmental due diligence is part of the range of surveys and investigations which an intending purchaser will generally need to undertake before committing itself to a purchase. It is applicable both to pure property purchases and also to corporate acquisitions, since the latter almost invariably involve a property element. A purchaser must, as a minimum, inform itself as fully as is reasonably practicable of the proper market value of the asset it is considering acquiring, so that it can relate this to the price being asked and what it is prepared to pay. In assessing the value it will need to establish all liabilities that may be associated with the asset. If the deal is to make business sense, the purchaser must then ensure that the purchase contract terms adequately protect it from such liabilities.

Four main categories of potential risk of most concern to Abricon are:

- Contaminated land with its potential clean up liabilities and costs;
- Latent damage (in the UK a large proportion of new development is carried out on brownfield land, much of which is contaminated to a smaller or greater extent); and
- Regulatory non-compliance with the potential for fines and the capital costs of technological upgrading of pollution abatement equipment or more substantial process modification to achieve compliance.
- Third party liability for off-site environmental damage caused by contamination leaving the site.

For each of the above areas of risk there are three strands to the work we carry out:

- To identify the actual and potential risks and liabilities arising from past, current and proposed future activities on the site being acquired and neighbouring sites;
- To attempt to quantify any risks and liabilities identified; and
- To allocate risks between the parties and ensure that the transaction price properly accounts for this allocation. The purchaser will normally seek to avoid acquiring unknown liabilities, and the vendor will seek to avoid environmental liabilities that may not be attributable to it.



Environmental Due Diligence Auditing cont.

From many years experience, we at Abricon appreciate that an environmental due diligence exercise must be flexible and will need to be adapted to the circumstances. However, generally what is required is an understanding of the site; its layout; environmental setting; physical features; and details of past and current processes and working practices. In general terms, there are three phases as follows:

Phase	Purpose	Form
I Site Evaluation	Information Gathering	Documentary Desk-based Study and Visual Evaluation
II Intrusive Studies	Intrusive Scientific Testing	Chemical and Geotechnical Sampling & Analysis
III Remedial Action	Problem Solving – Remediation	Physical and Contractual

In summary, a purchaser must be prepared to have Abricon conduct a thorough environmental due diligence investigation by establishing a detailed and systematic review of the vendor's business so as to define all applicable environmental liabilities and thereafter to establish a policy as regards the acceptance, avoidance or reduction of the risks implicit in those liabilities. Thus Abricon, on behalf of a purchaser, will seek:

- To identify problems arising from past practice;
- To identify actual and potential future liability flowing from that past practice;
- To identify current problems, such as non-compliance and required future process upgrades; and
- To allocate risk according to the above.

Due Diligence Audit; Phase 1 Methodology

To gather the information required we would typically follow a stepwise approach:

1. Issue a Pre-Audit Questionnaire to the management of the subject business, to gather information on the site, its setting, processes and impacts.
2. Supplement the information gathered by a search of commercially available environmental databases and in-house information.
3. If allowed by the project circumstances, investigate any files held by local and national regulators on the subject business.
4. Visit the site to examine all environmental documentation held there, walk over the site, and interview management and staff involved in the management of the company's environmental "footprint".
5. Carry out a gap analysis to define the extent of any missing information, and close any gaps by further investigation.
6. Produce a report identifying all environmental liabilities and regulatory non-compliances, and estimating the costs of addressing the liability and compliance issues.

Due Diligence auditing is a dynamic area of the Abricon business, needing seasoned consultants who understand a wide range of both business and environmental issues. We typically complete assignments in a matter of days, and report in real time on any deal breakers or significant findings.

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Phase 2 Methodology

The pace of transactions in today's world frequently ordains that Phase 1 investigations are the limit achievable within the timescale of the transactional framework. However, in cases where there are significant contaminated land or groundwater issues, and time permits, further intrusive investigations may be carried out. These may include geophysical investigations of sub-surface regions of the site and, most frequently, installation of boreholes and trial pits so that samples of soil and groundwater can be removed for chemical analysis. A fuller picture is thus built up of risks and liabilities posed by the subject business by virtue of its land and groundwater. The investigation is scoped by the results of the Phase 1 and aims both to delineate liabilities and inform any subsequent remedial work ("Phase 3") required.

To perform the audit, Abricon would typically follow a stepwise approach:

1. Issue a Pre-Audit Questionnaire to the management of the subject business, to gather information on the site, its setting, processes and impacts.
2. Supplement the information gathered by a search of commercially available environmental databases and in-house information.
3. Investigate any files held by local and national regulators on the subject business.
4. Visit the site to examine all environmental documentation held there, walk over the site, and interview management and staff involved in the management of the company's environmental "footprint".
5. Carry out a gap analysis to define the extent of any missing information, and close any gaps by further investigation.
6. Produce a report identifying all environmental performance issues and regulatory non-compliances, and estimating the costs of addressing them.

