Mitigating Environmental Risks And Liabilities For Consultants And Contractors

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Common Blunders

1. Misunderstands and Miscommunicates Scope of Retainer
2. Gives an Opinion Outside of Area of Expertise
3. Shares Findings with Regulators
4. Performs Below the Standard of Care
5. Misses Deadlines
6. Underestimates Time and Resources Needed
7. Extends Reliance
8. Negotiates Unreasonable Liability Limits
Blunder: Misunderstands and Miscommunicates Scope of Retainer

- Seek, understand, clarify and document client’s objectives and instructions
- Also, document non-instructions
- Onus is on consultant (not client) to communicate and document key communications

Blunder: Gives an Opinion Outside of Area of Expertise

- Consultants and contractors are not qualified to give legal advice
- Going beyond your expertise puts your client, reputation and insurance policy at risk
- Team of experts (including environmental lawyer) sets client up for success
Blunder: Shares Findings with Regulators

- Obligations are to their clients, not the regulator
- Consultants and contractors must
  - maintain confidentiality
  - keep client apprised of any obligation to report or disclose findings (may well need legal input)
- Disclosure can be prejudicial to the client
- Disclosure may be protected in law (EPA, CEPA, FOI) if specified

Blunder: Performs Below the Standard of Care

- Consultants and contractors sometimes do not
  - review all applicable and available records
  - test for all applicable parameters
  - correctly interpret data
  - advise clients about limitations of sampling and data analysis
  - identify all APECs and COCs
  - clearly convey to clients the implications of APECs and COCs on the clients’ objectives
Blunder: Misses Deadlines

- Missing deadlines can drive up costs and lead to losses for the client
- Underestimating time is never a good strategy for winning the work

Blunder: Underestimates Time and Resources Needed

- Remediation and/or risk assessment can take considerable time
- Time to satisfy regulatory requirements is variable, and often out of consultant’s, contractor’s and client’s control
- Client must understand realistic timing and risks associated with recommended remedial approach
Blunder: Extends Reliance

- Consultant and contractor must understand
  - purpose for extending reliance
  - to whom reliance extends
  - scope of reliance
- Ensure reports are based on recent and valid data before extending reliance

Blunder: Negotiates Unreasonable Liability Limits

- Client makes substantial investments on the strength of consultant’s and contractor’s work
- Client should be entitled to rely and have assurance should the work fall below the standard of care
- Doing excellent work is consultant’s and contractor’s best defence
- Maintaining applicable insurance (including high enough limits) is not optional for consultants and contractors
Contact Information

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