**Land purchases, sales, leases, and easements**

1. Due diligence – Include a sufficient period for inspection of site records and completion of a Phase I environmental site assessment by a qualified consultant.

2. Environmental liability indemnity clause – Include a specific clause for environmental liability, not just a general indemnity clause or “as-is” provision.

3. Evaluate risk – If contamination is found on site or documents suggest it is likely, the purchaser does not have the “bonafide protected purchaser” defense under CERCLA .

4. Protect the local government – If leasing the land or providing a partial property interest, the local government retains liability as the land owner so the documents must be specific about the operations allowed, cleanup required, and liability allocation between the parties.

5. Wildlife Protection Statutes – CERCLA and TSWDA are not the only form of environmental statute that can impose liability.

**Contracts in general**

1. Insurance coverage – Hire consultants with adequate errors-and-omissions (E&O) insurance coverage in case the consultant fails to identify an environmental condition at the property.

2. Asbestos – Include the option for asbestos testing in buildings constructed in or before the 1970s when contracting for renovation or demolition work.

3.Environmental liability indemnity clause – include a specific clause for environmental liability, not just a general indemnity clause or “as-is” provision.

**Local government operations**

1. Know your waste – Identify operations that generate waste and evaluate these processes for potential risk.

2. Local governments as transporters – Where the local government acts as a transporter, e.g. cleaning out a blocked sewer line and removing restaurant grease, document the origin of the material and analyze before transporting; If possible, get documentation where the generator agrees to liability for the transport and the choice of disposal site.

3. Local governments as landowners – Environmental laws may impose liability on landowners even if they did not contribute to the contamination; Know your potential risks and consider these when planning ahead

**Environmental waste clean-up**

1. Environmental hazard mitigation contracts – When dealing with environmental response companies, require a full contract with clear indemnity provisions.

2. Analysis – Require thorough sampling of the waste prior to disposal and keep copies of the results in local government records.

3. Arranger liability – If possible, require the response company to be solely liable for transporting and arranging for disposal, including the choice of disposal site.

4. Generator liability – The local government retains liability as the generator of the waste in most cases, so analysis of the actual composition of the waste may be the only defense.

5. Qualifications – Verify you are hiring experienced clean-up companies, labs and disposal sites.