

Minnesota Brightfields: Solar Opportunities on Closed Landfills Legal Considerations

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SOLAR ON BROWNFIELDS

- Some Degree of Existing Soil and/or Groundwater Contamination of Regulatory Concern
- Sites To Be Investigated/Remediated
- Sites That Have Been Investigated and Remediated
- Landfills
 - Operating, But Project is in Buffer Area or on Closed Cell
 - Closed
 - MPCA Closed Landfill Program

KEY PARTIES

- Project Developer/Owner
- Land Owner
- Contractor/Builder
- Raw Material Suppliers
- Off-Take Contractors/Utilities

KEY PARTIES (CONTINUED)

- Bank or Other Financing Entities
- Local, Regional, State and Federal Governments:
 - City
 - County
 - Metropolitan Council
 - MPCA
 - DEED
 - EPA

KEY PROJECT ELEMENTS

- Site Control
 - Own
 - Lease
- Financing and Tax Equity Structure and Agreements
- Supply and Off-Take Agreements
- Permitting, Regulatory and Transmission Matters
- Design and Construction Agreements
- Liability Mitigation

FEDERAL SOURCES OF LIABILITY

- Comprehensive Environmental Response Cleanup Liability Act (CERCLA)
 - Potentially Responsible Parties:
 - Current Owners/Operators
 - Past Owners/Operators
 - Arrangers
 - Transporters
 - Defenses/Assurances
 - Innocent Landowner
 - All Appropriate Inquiry Before Purchasing; No Knowledge Or Constructive Knowledge
 - Bona Fide Prospective Purchaser
 - Secured Creditor Exemption

FEDERAL SOURCES OF LIABILITY (CONTINUED)

- Resource Conservation and Recovery Act (RCRA)
 - Corrective Action
 - Defenses/Assurances
 - Comfort/Status Letters
 - Administrative Agreements

STATE SOURCES OF LIABILITY

- Minnesota Environmental Response and Liability Act (MERLA)
 - Responsible Parties-
 - Ownership Does Not Equal Liability
 - Only Those Who Were Directly Involved Or Engaged in Conduct Associating Them With Contamination
- Petroleum Tank Release Cleanup Act
 - Responsible Parties-
 - Owners of Tanks or Land, Except Those Who Did Not Know of or Significantly Contribute to Release
- MPCA Hazardous and Solid Waste Regulations

LIABILITY MITIGATION

- Separate Project Entity Structure
- MPCA Brownfields Programs:
 - Voluntary Investigation and Cleanup (VIC)
 - Petroleum Brownfields
- No Association Determination
- No Further Action Letter
- Certificate of Completion
- Lender Letter

LIABILITY MITIGATION (CONTINUED)

- Other Potential Liability Mitigation Assurance Letters
- Environmental Impairment Insurance

KEY PROJECT ELEMENTS

- Depends on Status of Landfill; but Focus Will Be Protection of Cap and RCRA Permit Compliance
- Agreements Between Landfill Owner and Project Developer; and Project Developer and Project Construction Contractor
- Indemnities, Responsibilities and Remedies if Release Occurs
- Interactions Among the Parties and Local Government and MPCA Regarding Permitting
- Insurance

KEY PROJECT ELEMENTS

- Phase I and II Environmental Site Assessments
- MPCA VIC Program Entrance
- Seek No Association, If Possible
- Pursue Potential Brownfields Grant/Loan Funds (Usually With Local Government Sponsor) for Investigation/Remediation
- Job Creation is Important Factor
- Further Site Investigation, If Necessary

CONCLUSION

- Minnesota Has a Very Successful Approach to Brownfields Redevelopment
- Solar Energy Projects Can Benefit
- Liability Mitigation is Extremely Important

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