RECOGNIZING ENVIRONMENTAL RISKS IN OIL AND GAS PROPERTY ACQUISITIONS

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ABSTRACT

Within the last 20 years, our society has become increasingly sensitive to environmental concerns. These concerns have been recognized by Congress through the passage of federal laws which address numerous environmental issues. With the passage of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in 1980, the business community was suddenly thrust into a new arena of environmental due diligence driven by the principle that environmental cleanup costs can become the responsibility of the unfortunate party who has possession of the property when the contamination is discovered, regardless of who caused the environmental damage.

The financial and industrial community recognizes these concerns as civil liability risks. Sophisticated financial institutions and industrial firms have required environmental due diligence assessments on major financial transactions involving real estate for several years. The oil and gas industry is not immune from the environmental and financial risks associated with acquisitions of potentially contaminated properties.

The Resource Conservation and Recovery Act (RCRA) currently exempts drilling fluids, produced waters and associated wastes from hazardous waste regulation. However, there are several products used at exploration and production facilities which are not exempt wastes when disposed and are, therefore, subject to RCRA regulations. Cleanup of RCRA hazardous wastes are subject to provisions of CERCLA. Furthermore, state agencies have authority to require cleanup of RCRA exempt wastes (e.g. crude oil spills) which have contaminated soil or groundwater. The risk associated with acquiring cleanup (and financial) responsibility at contaminated producing facilities or other acquisitions can be reduced through the environmental assessment process.