



ANADARKO PETROLEUM CORPORATION

# IN-HOUSE EHS COUNSEL

April 10, 2104

*"The meek shall inherit the Earth, but not its mineral rights"* J.P. Getty, Founder of Getty Oil Co. (1892-1976)



# Role of In-house HSE Counsel

## ■ Support & Advise:

- Compliance & regulatory counseling
- Legacy Liability
- Due Diligence
  - *Mergers, Acquisitions, Divestitures*
- Contracts
  - *MSCs, contractor work orders, insurance limits, indemnity provisions*
- Litigation support
  - *Landowner, royalty owners, government (state, federal local), partners or co-ventures, shareholders*
- SEC filings
- Emergency Response
- Endangered Species
- Corporate Audits
- OSHA
- API and other Industry group
- CSR, Biodiversity, Human Rights
- International - *Everything we do domestically, but in other countries applying different laws, values and standards*

# Key Function:

*Create an “environment of candor”*



# Environment of Candor

## ■ Attorney/Client Communications

- The most sacred of all the privileges
- Creates certain *potential* conflicts of interest for in-house counsel

## ■ Attorney Work Product

- Prepared in Anticipation of Litigation

## ■ Settlement Discussions

- In-house are usually the first to be involved in an emerging dispute
- Most disputes are settled, rather than litigated – *not* the **core** business

# Acquisitions/Divestitures



# Key Issues

- **Conflicts of Interest**
- **Asset A/D or Company A/D?**
- **Reps & Warranties or “as is, where is”**
- **Definitions and Schedules – foundations of the transaction**
- **Risk Based Due Diligence**

# Conflicts of Interest

# Asset or Company ?

# Definitions and Schedules

- **Foundations of the transaction**
- **Often glossed-over and not read by the Parties until years later**

# Reps & Warranties or “as is, where is”

- **Limitation on R&Ws to “knowledge-based” vs. absolute**
  - *Compliance with the laws*
  - *Environmental conditions*
  - *Past activities*
  
- **Limitations on R&Ws to**
  - *Certain persons*
  - *Certain assets*
  - *Certain timeframe*
  - *Certain activities*
  
- **Post Closing Due diligence period**
  - Grace period to find issues –
    - *Often establish an amount that can be used to address post closing issues for a limited time*
    - *Set an aggregate amount that is deemed “material”*
  - Tiered approach

# Risk Based – value vs. cost

- Phase I – paper review only
- Phase I + Field/site visit
- Phase I + Field/site visit + Phase II

# Emerging Due Diligence Issues

- **Endangered Species**
- **Surface Water and Groundwater Rights and Title**
- **Review of the 10K and 10Q's**



# Tronox

- **In exchange for a complete release of all claims asserted against Kerr-McGee, Anadarko to pay \$5.15 billion**
  - \$3.98 billion and 6-percent interest from May 2009.
- **The Company estimates it will record a gross tax benefit of approximately \$1.65 billion associated with the settlement, offset by approximately \$1.10 billion in uncertain tax positions, currently resulting in a net tax benefit of approximately \$550 million.**

# International EHS

- In 2006 Anadarko divested itself of most of its international holdings (except for Algeria) to focus on domestic and GoM assets
- Since 2009, Anadarko is currently 15 countries:
  - Africa:
    - *Morocco,*
    - *Algeria,*
    - *Tunisia,*
    - *Kenya,*
    - *Mozambique,*
    - *South Africa,*
    - *Sierra Leone, Cote d'Ivoire, Liberia,*
    - *Ghana*
  - South America:
    - *Brazil,*
    - *Columbia,*
    - *Guyana*
  - China
  - New Zealand
  - Canada



























# Project: Estimate CWA penalty

- **Using the EPA's CWA penalty guidance document and factors**
  - Penalty Factors
  - <http://www2.epa.gov/enforcement/framework-statute-specific-approaches-penalty-assessments-implementing-epas-policy-civil>
- **Eastern District of Louisiana**
  - <http://www2.epa.gov/enforcement/deepwater-horizon-bp-gulf-mexico-oil-spill>
- **What should the total CWA civil penalty be for the DWH spill (and why)?**
- **What should be Anadarko's share (and why)?**