

Contek Solutions LLC

ENGINEERING • ENVIRONMENT • SAFETY • MANAGEMENT SYSTEMS

Due Diligence in M&A's: Have you covered all bases?

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Even with certain existing protections provided by state and federal regulations, purchasers of properties, industrial operations or even services must still make sure they are not acquiring liabilities that will come to haunt them in the future. The old adage “buyer beware” always rings true.

Almost all property transfers nowadays go through some sort of a due diligence process, be it strictly financial, or including a regulatory compliance audit, or adding a more comprehensive approach that will include environmental, safety and even security assessment of the property, operations or services being purchased.

The purpose of the pre-M&A environmental, safety and security assessment is to document for the purchaser any current and/or long-term risks and liabilities associated with the site, its activities and related operations.

The challenge involved in covering all bases is to ensure that the comprehensive due diligence approach is systematic and carried out by competent assessors. A *systematic due diligence assessment* involves the following steps:

1. Confidentiality: This work is highly confidential and assessors have to follow a strict and formal communication process, as determined by the purchaser.
2. Establish the scope and the terms of reference: Will the assessment be environmental only, or will health, safety and security practices and potential liabilities also be examined? The environmental assessment should follow the ASTM standard for Phase I site assessment. Other useful terms of reference include EPA's risk management program and OSHA's process safety management standard as well as all other applicable EPA and OSHA regulations. Will the assessment include historical background research of the facility, a review of neighboring operations, and of public records; a visual, on-site inspection, and interviews with key personnel? Will there be a need for a cost of compliance analysis? And finally the purchaser should needs to specify the deliverables expected which in turn will guide the format of the final report for the due diligence assessment.
3. Site visit: Plan the site visit to ensure it runs smoothly, making the most effective use of the time while making sure no stone is left unturned.
4. Ranking the facility against the risk factors to determine its relative risk: Based on specific environmental, health and safety, and security risks identified, rank each risk based on for example, a “best case – worst case” scenario.
→ Note: We find that a “template/database” approach, works very well, and proves to be relatively quick while being very consistent and reliable.
5. Final report: The final report includes the results of the due diligence assessment in detail as well as an executive summary. It should also include risk ranking tables, pictures and any other relevant data and documentation supporting the findings.

6. Purchaser addresses the risks identified: This might include for instance a decision to mitigate the risks identified prior to the acquisition, or to include special terms and conditions in the M&A agreement based on the risks identified.

Contek staff members, many with over 20 years of industrial experience, have expertise in compliance auditing, liability assessment and operations. Our specific capabilities include worker health and safety, process safety, security and radiological safety liabilities in a due diligence context, environmental liability and operations review.

Contek has performed numerous environmental due diligence assessments including Phase I environmental reviews, of both undeveloped and developed properties. A great many of the assessments have included long term oil producing operating properties, production facilities and properties. Our Phase I reviews have been done for clients involved in mergers, acquisitions and divestitures. Our reviews are based on ASME Standard, and supervised by a Professional Engineer.

Because of its operations management experience, Contek has been asked, on several occasions, to evaluate oil & gas production facilities, operating practices and compliance efforts in different States particularly to assist in acquisitions. The goal was to determine operating status.

Our assessments have all been performed to identify and help develop management options for potential non-compliance conditions or other liabilities. Our team used existing protocols, reviewed relevant documentation, visited selected on-shore and off-shore facilities, reviewed records held by regulators, and provided a concise report identifying issues to be addressed along with recommended management options and estimated costs.

Ask about how Contek can help you minimize risks and protect yourself from liability in business transactions with our experienced and professional service that will put you on a secure legal footing.

Contek is a consulting firm that has been in operation since May 2003. Our professional services focus on engineering, environmental, safety and related management systems and regulatory compliance. We offer our clients cost-effective solutions through a uniquely high level of expertise, an innovative technical approach and disciplined project management. Contek delivers customized, rapid and cost-effective solutions to its clients. Our approach is not generic, but is adapted specifically to our client's needs and situation.

Call us at 469-467-8296 for a free project proposal and cost estimate.

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