HOW TOMORROW MOVES

DETERMINATION OF ENVIRONMENTAL LIABILITY COSTS DURING RAILWAY DIVESTITURES IN CANADA

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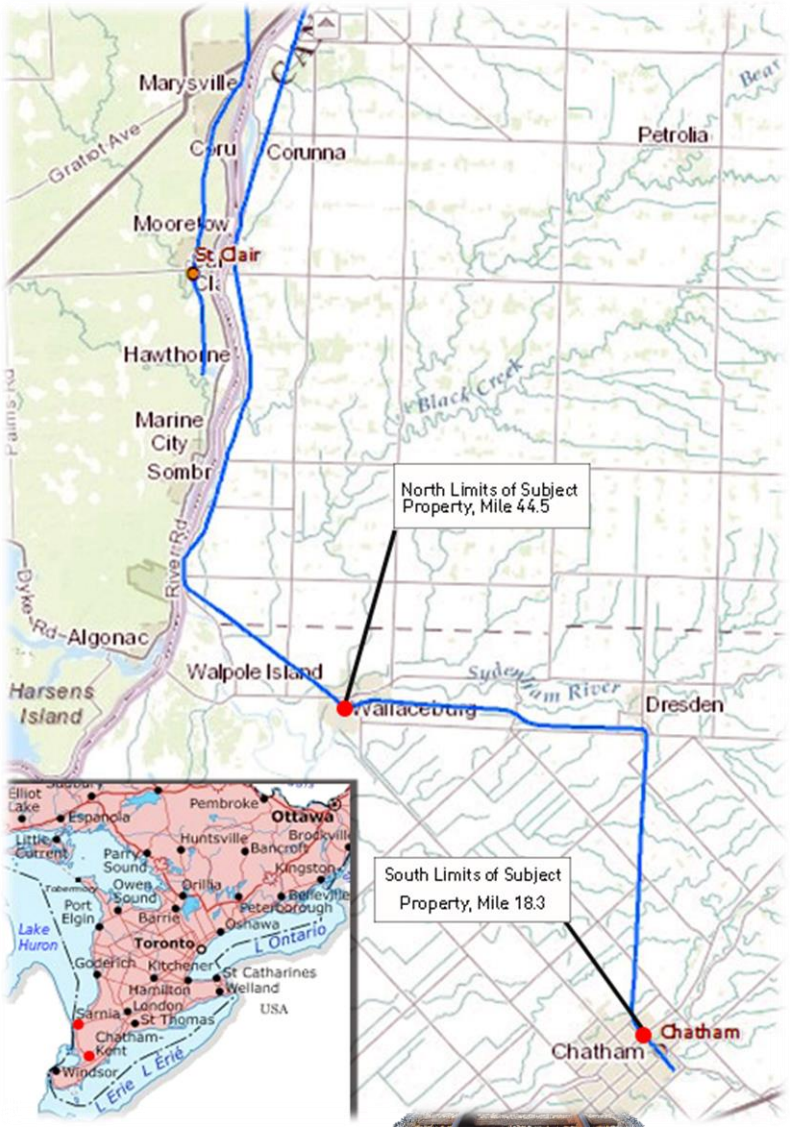
SUMMARY

- Overview of the Sarnia Subdivision Divestiture
- Canada Transportation Act
- Net Salvage Value
- Key Variables Impacting the Determination of Environmental Liability Estimates
- Summary of Key Lessons Learned

OVERVIEW OF THE SARNIA SUBDIVISION DIVESTITURE

- March 2006 CSX filed application with the Canadian Transportation Agency (the Agency) to divest a 42 kilometre (26 mile) railway line in southwestern Ontario
- The local municipality accepted an offer to purchase in December 2006
- Environmental liability cost a key negotiation issue
- Transaction finalized in 2013
- Negotiated ~ $10 million in savings to CSX



CANADA TRANSPORTATION ACT (CTA) - PROCESS FOR DIVESTITURE OR DISCONTINUANCE OF RAILWAY LINES

OVERSIGHT BY CANADIAN TRANSPORTATION AGENCY

Publish "Notice of Discontinuance of Railway Line"

Per requirements of CTA Part III Division V

Offer to Other Rail Operators

Railway line offered to parties with interest in continuing the operation (e.g., other railway operators)

No offers ?

Proceed with Sale

Offer to Government Agencies

The line is offered to provincial or municipal governments at net salvage value (NSV)

No acceptable NSV ?

No offers ?

Discontinue operations

Application to Determine Net Salvage Value

Upon application the Transportation Agency will Determine the net salvage value on behalf of the parties

NET SALVAGE VALUE (NSV)

Value of Track Assets

Salvage value of *rails, tie plates, joint bars, spikes, bolts, anchors, switches, & ties**

*Includes disposal cost for ties that are not suitable for re-use

+

Value of Land

Appraised Land value

Value of leases and Agreements

Liabilities associated with environmental remediation costs, where required

=

Net Salvage Value

"the realizable value of the assets - the track, land and other structures - less the costs associated with their disposal, to be used for any purpose"

KEY VARIABLES IMPACTING DETERMINATION OF ENVIRONMENTAL LIABILITY COSTS

- Is environmental remediation *required* ?
- What Land-Use Standards Apply ?
- What remediation / risk-based approaches are viable ?
- What lands are included ?
- How are costs associated with remediation of contamination from off-site sources addressed?

AMEC'S ROLE IN THE PROCESS

- Expert opinion in relation to environmental aspects of the project
- Oversight of third party consultant during completion of the Phase II Environmental Site Assessment (ESA) on the railway line
- Critical reviews of Phase I and II ESA and Remedial Options Review
- Preparation of independent estimate of environmental liability costs

IS ENVIRONMENTAL REMEDIATION REQUIRED ?

- Environmental remediation typically completed to satisfy regulatory obligations or manage potential liabilities which could negatively impact property value
- NSV only includes costs for environmental remediation *where required*
- AMEC's assessment of the data supported the conclusion that there was no regulatory obligation to remediate the majority of the impacted soil and ground water identified
- In the absence of any clear regulatory impetus or other driver, Agency capped costs associated with environmental remediation at land value

WHAT LAND USE STANDARDS ARE APPLICABLE ?

- Section 145. (1) of the CTA states:

  "The railway company shall offer to transfer all of its interest in the railway line…for not more than its net salvage value *to be used for any purpose*"

- CTA language can be interpreted as requiring the most sensitive standards to facilitate *any* future use
- Purchaser argued that costs associated with remediation to facilitate most sensitive future use were appropriate
- AMEC and CSX argued that industrial standard applied
- Agency reviewed submissions from both parties and determined that industrial land use Standards applied

WHAT REMEDIATION / RISK-BASED APPROACHES ARE VIABLE ?

- Varied approaches to address environmental impacts with highly divergent costs
  - Environmental liability estimate to remediate via “dig and dump” approach used by the purchaser = ~ $15M liability vs. risk-based approach recommended by AMEC = ~ $100K liability
- Purchaser argued that risk-based approach was not appropriate and higher remediation estimate should apply
- AMEC provided expert evidence indicating that risk-based approaches have been successfully utilized at other railway lines
- Agency reviewed submissions by both parties, and ruled that costs associated with risk-based approaches were applicable for determining the NSV

WHAT LANDS ARE INCLUDED ?

- CTA definition of “railway line” *excludes* yard tracks, sidings, spurs or other auxiliary tracks
- “Non-railway properties” initially included in the sale represented:
  - Disproportionately high environmental liability due to historical storage of hazardous commodities; and,
  - Indeterminate *potential* liabilities due to undefined off-site impacts
- AMEC recommended removal of non-railway properties, which significantly lowered environmental liability and provided greater certainty with respect to future liabilities
- Agency concurred with exclusion of “non-railway” properties from the divestiture process

HOW ARE COSTS ASSOCIATED WITH REMEDIATION OF CONTAMINATION FROM OFF-SITE SOURCES ADDRESSED?

- Numerous potential sources of environmental impacts on adjacent properties
- Potentially significant costs associated with remediation of impacts resulting from off-site sources
- AMEC argued that such liabilities should reside with the party responsible for the source of the contamination
- Agency ultimately ruled that the costs to remediate or manage contamination from off-site sources will not be considered in NSV

SUMMARY OF KEY LESSONS LEARNED

- Environmental liability costs a key factor in determining NSV - Environmental expertise required to assist with negotiations
- Agency confirmed that industrial land-use standards apply to the Site for purposes of assessing environmental liabilities
- Risk-based approaches are viable alternative to more cost-intensive remediation methods
- CTA only applies to the divestiture of the “railway line” – “non-railway” lands can be excluded

SUMMARY OF KEY LESSONS LEARNED (CONT'D)

- Environmental liabilities determined to be related to off-site sources were not included in NSV
- In the absence of any clear regulatory impetus to remediate impacts, the Agency capped costs associated with environmental remediation at appraised land value component
- The final NSV determined by the Agency was approximately $10 million higher than the value that would have been calculated if the purchasers conservative assumptions had not been challenged

THANK YOU !

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