

HOW TOMORROW MOVES



2014 RailTEC Conference

Managing Environmental Risk When Third-Parties Seek Access to Your Site

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There Are Many Third-Party Projects That Share Space With Railroads

- Pipelines
- Wires
- Transmission Towers
- Roads
- Bridges
- Others



There Are Many Third-Party Projects That Share Space with Railroads (con't.)

- Do These Third-Party Projects Systematically Receive an Environmental Risk Assessment Before the Project Plans Are Finalized and Begin?
- Should They?
- Is a Cost-Benefit Analysis Done that Includes Environmental Risks?
- Should There Be?



What Should You Consider In Evaluating the Environmental Risk Associated with a Third-Party Project?

- The Type of Project
- The Location of the Project



The Type of Third-Party Project

- Geotechnical Investigation, Environmental Assessment and Test Trenching in Advance of a Third-Party Project
- New Foundations for Transmission Towers or Bridges
- Open Trench Excavation
- Jack & Bore Under Tracks
- Horizontal Directional Drilling
- Entry and Exit Pits for Horizontal Directional Drilling
- Surcharge
- Pipeline Anomaly Investigations
- Replacing Existing Pipelines (Petroleum v. Natural Gas v. Sewer v. Something Else)



The Location of the Third-Party Project

- ROW Crossing
- ROW Longitudinal Occupancy
- Through a Yard
- Within Groundwater
- Deep Below Surface
- Known Environmental Conditions On-Site
- Known Environmental Conditions Off-Site



The Tools for Managing Environmental Risk

- Excavated Material and Groundwater Management Plan (EMGMP)
 - Screening and classification of material
 - Waste handling procedures and responsibilities
 - Dewatering procedures
 - Site restoration
 - Backfill and clean fill requirements
 - Disposal



The Tools for Managing Environmental Risk (con't.)

- Right-of-Entry Agreement for Construction
 - Oversight by railroad environmental consultant (paid for by third-party)
 - Approval process in field (who's in charge)
 - Insurance requirements
 - Indemnity provisions covering construction, including environmental issues
 - Requires compliance with EMGMP
 - Survival provisions



The Tools for Managing Environmental Risk (con't.)

- License or Easement for the Occupation
 - Decommissioning of third-party facilities
 - Broad indemnities including environmental liabilities
 - Increased remediation costs due to presence of third-party facilities
 - Emergencies (access and self-help)
 - Require ROE and EMGMP for future work (attach models)
 - Relocation provisions
 - Damage to third-party facilities
 - Damage to railroad by third-party facilities



Factors Affecting Railroad's Ability to Negotiate with Third-Party

- Existing Easement or License Provisions
- Condemnation
- Public or Private Third-Party
- Financial Issues
- Relationship with the Third-Party



Questions?

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