

## Environmental Remediation In a Fish Bowl: Conducting a Remediation in the Midst of a Complex Transaction

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CSX operates in Northern New Jersey in close proximity to some of the largest Superfund sediment sites in the U.S. A number of years ago, the State of New Jersey decided to build a new bridge over a large urban waterway utilizing funds from, among other sources, the Port Authority of New York and New Jersey. The use of Port Authority funds by the State for this and a related project has itself become a topic of numerous federal, state and SEC investigations. The State of New Jersey determined that it needed a portion of a CSX facility for the new bridge and threatened condemnation. Instead, the State and CSX negotiated a property swap in which the State would provide CSX with a new property that the State would condemn from a local trucking company in exchange for the portion of the CSX property needed by the State. For operational reasons, CSX was eager to begin the redevelopment of the new parcel even before taking title to the new property. However, the new parcel was contaminated, the prior site closure by the trucking company was flawed, the State and CSX were still negotiating the terms of the transaction agreement, and the environmental remediation would need to be largely completed before site development could begin. Working closely with counsel, the consultant began the investigation and remediation of the site under severe time constraints and in a context where every activity needed to be approved by both CSX and the State and all budgets needed to be approved by both CSX and the State. Some of the funds to pay for the environmental remediation also required court approval so that the consultant's invoices could be paid from funds held in escrow by the court after the State condemned the compensatory property from the local trucking company. As of today, the remediation, which included the excavation of PCBs at depth from beneath a building, the removal of previously unidentified tanks, and excavation and in-situ remediation of petroleum contaminated soil and groundwater, has been largely completed except for post-remediation monitoring. The remediation costs have been reimbursed by the State and funds placed in escrow with CSX for anticipated future work. The redevelopment work has largely been completed. This all occurred before the properties have even been exchanged. This program will discuss the remedial challenges faced by the consultants and the challenges of working closely with both parties to the property swap, and counsel, to ensure a smooth process and full funding of the project by the State. This environmental project will ultimately exceed \$2 million.

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