

## Allocation and Agreement

- Divisibility vs. Shares
- Consequences of Failure to Agree
- Benefits of Agreement
- Tactics for Differentiation


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## Apportionment Issues

- Physical Separation
- Time Separation
- Process Differences
- Containers
- Material / Cleanup differences
- Very Difficult in practice


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## Failure to Agree

- Internal Costs
- External Obvious Costs
- External Less Obvious Costs
- Social Costs

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## Internal Costs

- Management time – Depositions, research, Litigation holds, Financial statement notes and provisions for claims
- Site management – engineering
- Litigation management

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## Experts

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- Engineering
  - site, water, air, process etc.
- Accounting & Financial Reporting
- Data management
- Allocation

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## Litigator Costs

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- Depositions & Witnesses
- Expert preparation
- Mediation prep and execution
- Trial preparation
- Trial
- Decommissioning & Appeals


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## Enforcement Issues

- UAO (s)
- Targeted cleanup carve outs
- Litany of enforcement tools
- Recalcitrant Status – this site
- @ other sites

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## Litigation

- 1% of all cases go to Trial
- Judicial dislike of Complex Env Cases
  - Long exhaustive contests of experts
  - Detailed findings
  - Appeals
  - Court congestion
- Eventual Settlement


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## Social / Reputation

- Agency Recalcitrant
- Pilloried by the press
- Environmental Group Backlash
- Neighborhood issues
- Better Toxic Tort Target


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## Agreement Benefits

- Consistent Structure
  - Engineering, Admin, Legal
  - Agency relationship
  - Long Term process
- Reputation issues
  - Press / Agency / Other parties


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## Agreement Benefits 2

- People Matter
  - Engineering and testing credibility
  - Admin and Management
  - Internal PRP structure
- Financial Structure
  - Trust Funds & Forecasting
  - Financial Statement notes

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## Going Forward

- Long Term Group
  - Buyouts
    - w/ and w/o re-openers
  - Structure(s)
    - Financial – Trusts
    - Engineering / admin – LLC
- Continuing Agency Engagement


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## Agreement Risks

- Uncertain Relationship
  - Parties w/o business history
    - Would you willingly do business with ...?
  - Parties with risk of default
    - Standby Trusts and other devices
- Management Time Investment


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## Additions?

- Costs not yet mentioned?
- Benefits ?
- Audience – Please use the chat box to send them in.


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## Allocation w/ Differentiation

- Differences beyond volume
- Transaction assessment
- Site Model
- Evidence Review
- Allocation Model

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## Physical Issues

- Physical location
  - Burlington
  - No dozer operator holiday
  - Separate and Separable cleanups
  - Agency agreement on Operable Units
- Time / Containers / Contaminants

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## Transactions – Waste-In -1

- Shipping Documents
  - Manifests
  - Bill of Lading
  - Tickets – all types
- Internal Tracking
  - Logs
  - Accounting


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## Transactions – Waste-In -2

- Statements
- Depositions
- Agency files - multiple
  - Violation Notices
  - Hearings
  - Permits


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## Transactions – Waste-In -3

- City Council meetings
- Newspapers
- Neighbor statements
- ETC.


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## Site Model – KISS or Complex

- Engineering
  - RI is Cleanup related
  - One OU or many
  - Multiple cleanup technologies in FS
  - Differential costing


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## Site Model – 2

- Business Model
  - Waste / material through the Gate
  - Revenue / customer driven
  - Process(es)
  - Customer Classes


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## PRP Evidence Review

- PRP agreement
  - Mutual assurances of complete search
  - Collaborative process
  - Confidential
- Agency participation
  - PRP collection @ 10% the cost
  - Agency reviewer on panel w/ vote


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## Weighting as differentiation

- Waste Type
  - Generalize from DOT labels
  - Specific treatments from tickets / logs
  - Hazard perceptions
- Containers
- Tanks


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## Weighting - 2

- Component cost as a basis
  - Marginal cost to cleanup
- But for ... analysis
  - Cleanup w/o component
  - Listing Criteria


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## PRP Model / Data Review

- Material Characterization
- Container identification
- Non Quantitative weights
  - Deps and statements and citations
- Group appeals process

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## Group Management

- Common Counsel
- Mediator / Facilitator roles
  - Internal Mediation
  - External Mediation
- Specialized committees
  - Finance, Engineering, Admin ++

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## Negotiation and Mediation

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- Sub groups with common interests
- Community relations
- Cost to drop out and litigate
- Nobody's happy, nobody's angry
- **SUCCESS**

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