

Corporate Restructuring - Optimizing Financial Outcomes for Operations with Environmental Issues

The current economic climate is forcing companies to increasingly focus on efficiency measures to optimize financial performance, and both conserve and raise cash. Frequently these measures involve restructuring, which includes appropriate analysis, followed by operations realignment, plant closings, mothballing, or divestiture of assets and business units.

Restructuring of plant operations creates new and evolving issues for companies to address beyond normal management of plant operations. Sub-optimal planning and execution can burn through time and cash, expose the company to increased risk and result in assets that continue to drag on cash flow and be a balance sheet liability. Although plant closing rationalization presents such challenges, it also presents opportunities, particularly with environmental issues. Optimizing the decision making process can result in significant asset enhancement, budget optimization and cash generation. Addressing these issues successfully is critical in maximizing resultant value, reducing costs and delivering on planned restructuring goals.

The Challenges

Common challenges-opportunities in this context include:

Property Disposition

A critical decision is whether to sell or hold a closed facility. Each option presents a range of considerations and goals. Property divestiture raises questions such as:

- What is the highest and best use analysis for an individual to maximize income from the property?
- Have all possible alternatives been considered that may be available, especially if the property has residual environmental issues?
- If closing a number of plants, is there efficiency in prioritizing and sequencing property sales to maximize return and minimize risk?
- Can maximum price be yielded with speed through traditional real estate channels, or are there alternative, specialized channels and buyers who should be considered?
- What are the advantages of using a competitive bidding process to move the property- maximize income-cash, decrease sales cycle-time, and reduce frictional costs?
- If a facility is being held, what can be done with environmental liabilities and infrastructure to minimize carrying costs?

Environmental Liability

The closing of a plant results in having to inventory and address environmental issues. In some instances, issues that were being husbanded may require more aggressive action to close out. In other instances, new issues may arise that require being dealt with as part of a divestiture or close-and-hold strategy. Questions arise such as:

- Is there any active remediation at the facility that may need to be accelerated due to potential agency and public scrutiny?
- What are the impacts to environmental permits and exposures to new regulations or regulatory focus?
- Have all environmental risks from operations been inventoried, and what is the most cost effective way to address them and prepare the property for closure?
- Does environmental decommissioning need to be completed and in what sequence?
- Have costs been projected for full life-cycle purposes in the event of a divestiture or negotiation?
- What is the probability of unknown, pre-existing conditions being discovered or raised by potential purchasers and having that uncertainty erode asset value of the property?

- Should environmental liabilities be managed through more standard purchase and sale agreement provisions (e.g. indemnity, purchase price adjustment or escrow), or could both parties benefit from having the environmental liability taken out of the transaction through an environmental liability buy-out?

The Solutions

Marsh and its' partners have experience working with clients early in the process to provide advice and alternatives so that management can choose the most appropriate pathway for both real estate and environmental liability disposition. Early engagement in the process is critical to taking advantage of strategic alternatives that are often not considered under more standard processes and can yield enhanced outcomes around restructuring goals.

Real Estate Optimization with SBS Discovery

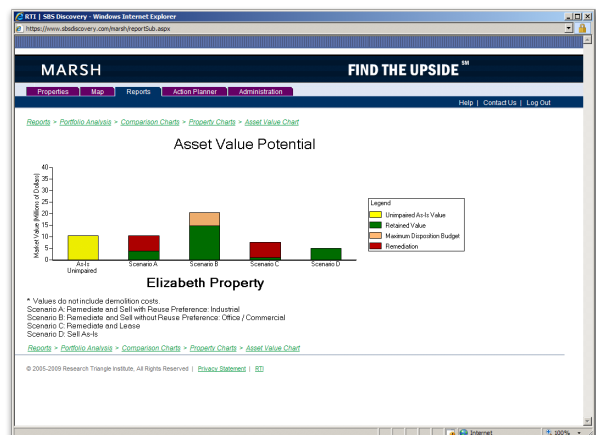
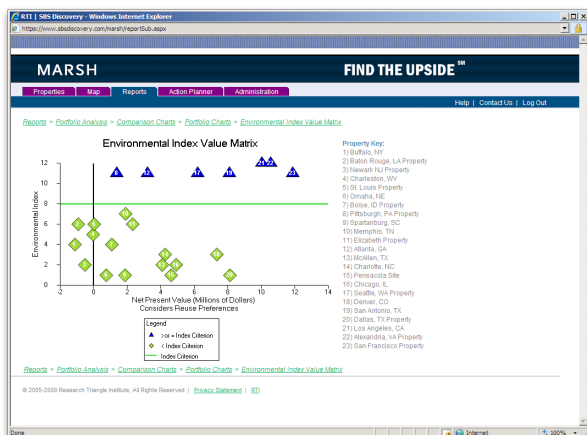
Marsh environmental professionals can help clients understand the risks versus rewards for various optimization,

disposition and acquisition scenarios and provide strategies for making informed decisions that will yield the best results. This has application with distressed pre-bankruptcy workouts, and also with bankruptcy, particularly 363 asset sales and Environmental Trusts.

Marsh has partnered with Research Triangle Institute (RTI) International. With their award winning expertise in property evaluation modeling and software - and our expertise in environmental risk and liability - we can develop a framework that will address environmental liability costs associated with transactions which are structured along specific goals, such as reducing reserve obligations, maximizing property reuse value or increasing the return on assets. The proprietary models, called SBS Discovery, have been developed to integrate market, financial, environmental and community data to create an analysis of a portfolio of plants or selected sites - helping management understand risk-reward trade-offs, evaluate different divestiture and optimization scenarios, and target properties for action.

SBS Discovery Features	User Benefits
Comprehensive and multi-dimensional assessment of property location, features, and local demographics delivers enhanced marketability analysis	<ul style="list-style-type: none"> Higher potential sales price for divested property Broader options for future use of property Improved basis for setting site restoration or improvement budgets
Web-based software delivers easily accessible and permanent platform for enterprise-wide property information storage, retrieval and analysis	<ul style="list-style-type: none"> Lessens time wasted assembling and formatting data and information Preserves knowledge and information assembled over time from multiple sources Encourages internal collaboration and consensus building
Structured review of property conditions delivers quantitative index of environmental uncertainties and risks	<ul style="list-style-type: none"> Reduces amount of "risk premium" subtracted from selling price Lowers insurance premiums Helps prioritize future site investigations and characterizations
Financial algorithms deliver streamlined approach for determining fair value of assets and liabilities in accordance with new accounting standards.	<ul style="list-style-type: none"> Heightened balance sheet transparency and investment ratings Reduced risk of non-compliance with SEC reporting requirements Improved consistency of reporting information
Embedded goal-driven work processes deliver greater confidence in outcomes	<ul style="list-style-type: none"> Accelerates decision making Improves community relations

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Best Practices for Environmental Liability Risks

Marsh is expert at helping clients manage financial risks for known and unknown environmental liabilities around distressed assets. The risks associated with known and unknown liabilities have the potential to erode asset value or create legacy details that can impede future performance.

The following risk management tools are available to control the financial uncertainties discussed above:

Pollution Legal Liability (PLL). This insurance policy can be designed to provide coverage for unknown environmental risks that may emerge. It can include legacy risks or operational risks. The core coverages typically include: cleanup, third-party bodily injury and property damage, legal defense and business interruption. These policies can be manuscripted and coverages enhanced to meet client and situation-specific needs. PLL is the policy most frequently used to control risk and there are a wide range of carriers who can provide this coverage. This insurance product can be used to backstop or as a substitute for environmental indemnities and escrows, i.e. using a highly rated financial institution (the insurance carrier) to backstop the transaction.

Remediation Cost Cap. This insurance policy is used to cover cost over-runs around known environmental risks. Cost Cap requires

that there is sufficient information known about pollution condition(s) so that remediation plans, schedules and costs can be forecasted. Insurance carriers underwrite the risks and agree upon an “attachment point” for the remediation cost above which it will play claims should the attachment point be exceeded or overrun.

Environmental Liability Buyouts. An imbedded assumption in many asset sales or restructuring is that an existing party must retain liability or that the liability is apportioned between buyer and seller. An alternative exists using an environmental liability buyout. A number of consulting and brownfields companies have evolved that conduct remediation activities and can contractually assume liabilities. These companies will assess and value the liability(s) and contractually assume remediation and regulatory obligations in exchange for being paid to take on the forecasted liability(s). Environmental insurance is typically used to wrap around the contractual obligation(s) using a combination of PLL and/or Cost Cap.

Whether moving a closed property faster and for more cash, containing a liability or facilitating an environmental liability buyout, Marsh has a track record of success we would like to share with you. For more information, please contact Chris Smy, Managing Director, Marsh Global Environmental Practice Leader, (404) 995-2748 or your local Marsh Environmental representative.

Contact Us

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