

FEATURE ARTICLE

**SELECTING AND MANAGING ENVIRONMENTAL CONSULTANTS;
IMPORTANT BUSINESS DECISIONS FOR TODAY AND THE FUTURE**

By Cameron "Scott" Kirk

Environmental related problems can be intimidating. The frequently evolving law pertaining to such matters, combined with the scientific and technical nature of both problem and solution can be much more than just confusing and complicated. Accordingly, the ability to select and retain able and reliable environmental consultants is today a very important business decision.

This is particularly true as environmental law becomes less adversarial and litigious, and more conscious of business economics and practicalities. As both property owners and regulators now view environmental issues in more practical and business oriented terms than they did 10 years ago, the emphasis is placed on business consultants to approach environmental issues from practical and cost efficient perspectives.

This article discusses briefly the changing perspectives in the field of environmental law which emphasize negotiation and consultation skills in place of litigation or trial experience. Consideration will then be given to specific, practical steps which will facilitate the identification and retention of business oriented environmental consultants who will prove to be assets to your company, not expensive liabilities. Further discussion will also identify practical considerations regarding interacting with your environmental consultants to obtain the most effective and efficient results for your business.

Changing Perspectives

When the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the various pollution control laws were first enacted, Congress was attempting to address for the first time national issues regarding modern society's waste. Prior to this legislation, the handling of waste was largely unregulated, and as the U.S. Environmental Protection Agency (EPA) was commissioned to oversee industries' waste practices, it received little or no support from business. Instead, the basic premises upon which environmental laws were enacted became the subject of massive litigation efforts. Environmental laws and agencies were subject to adversary proceedings and lawsuits across the country challenging the application of the laws and the authority of the agencies. Similarly, potentially responsible parties and their insurers commenced mammoth litigation to determine responsibility, fault, and legal liability as between each other.

Presently, after years of extraordinary expense, and some reflection, the accumulated benefits and practical results of these efforts is being examined with significant consternation. Business principles are beginning to control the processes of both business and regulators. That is, all sides to the controversies are beginning to recognize the value, in terms of costs and results, of cooperative and/or coordinated efforts.

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Just as important, all sides are recognizing the inherent value obtained by business, the government, and the economy in general as a result of sound environmental policies. Accordingly, the emphasis now appears to be less on the fight and more on the cost effective resolutions to environmental problems.

This changes the role for professionals serving as environmental consultants. Business people now seek more practical oriented advice on how to avoid environmental problems in the normal course of day-to-day management and ongoing business practices. Prudent business owners recognize the need to incorporate environmental policies and practices into their normal production processes. Therefore, environmental consultants—and environmental lawyers as well—must be prepared and qualified to address environmental issues within the context of their clients business.

As wise business people view their environmental consultants as resources to help better effect cost efficient production while minimizing governmental intrusion, the expectations for such consultants has changed. The process by which the consultant is retained, therefore, becomes more critical. The skills necessary to work within a business context, as both a scientist and practical consultant, become more crucial for the consultant. Similarly, the manner in which a consultant may work on coordinated projects with the business owner or staff also requires new emphases on practical and fiscally sound strategies.

The foregoing concerns must be addressed throughout the process of identifying and retaining the proper consultant for business concerns. The first step in this process involves the initial meeting with a potential consultant. This meeting should indicate not only how qualified the consultant may be, but also his or her business acumen and ability to adapt the science of environmental issues to a particular business.

Working with Consultants

Initial Meeting

There are many environmental consultants advertising today in nearly all media. Finding several should not be difficult. Finding the right one is the challenge, and the first face-to-face meeting is a very important first step in this pursuit.

Any consultant should be willing to meet with you without charge to become acquainted with your situation or problem. This initial meeting should accomplish three primary purposes: 1) the consultant's credentials and references should be discussed; 2) the technical aspects of a business' particular environmental issues, and 3) the consultant's experience with cost effective solutions. Assuming, however, that most consultants will be suitably educated and properly experienced, it is most important that you discuss the particular facts relating to your business, and how the consultant would approach your situation.

A complicated situation may warrant considerable discussion regarding even the most basic facts. It is important, however, to spend the time necessary to gain a mutual understanding between client and consultant regarding the essence of the problem. It is likely the consultant will perceive the facts differently than you. If so, you should be certain to gain an understanding of how and why the consultant's view may be different from yours. If the consultant is unable to explain the different perspective, you should be concerned about how well you will be able to understand and work with the consultant on an ongoing basis.

A consultant should also be willing to discuss in some detail how he would address your problem. This can be done with some specificity, and with a good deal of organizational thought. While the technical aspects of environmental work may be somewhat esoteric, the basic procedures intended to manage or remediate hazardous materials are not necessarily so. For example, the science of managing hazardous waste flows through a production process may be complicated technically and scientifically, but the particular facts related to the waste stream itself are likely no secret.

In the discussions regarding the consultant's anticipated work, it is important to remember that promises of early and inexpensive resolutions must be viewed carefully. The solutions to environmental problems most often involve long term planning and testing. Many of the practical and scientific principles regarding hazardous waste management, as well as hazardous waste remediation, are not precisely defined. Room remains for significant innovation in this field, and ready resolutions are unusual. In combination with the scientific and technical work,

resolving matters through governmental agencies is often complicated and time consuming. Particularly as the law of environmental remediation continues to evolve, the ability to act quickly through the governmental process is often thwarted. Most often cost efficient solutions are neither easy or quick. Patience in dealing with governmental authorities on environmental issues is nearly a prerequisite.

In addition to a discussion regarding the technical aspects of a business' particular environmental issues, the consultant's experience with cost effective solutions should also be explored. It is important that the consultant has maintained a cost sensitive approach toward past environmental concerns. The more business oriented the consultant may be, the better able he is to resolve environmental issues on practice and efficient bases.

After a frank discussion of the facts and the consultants opinions regarding the same, the basis for a good relationship may be established. If you have a good and comfortable understanding of how the consultant views your situation, and how he intends to deal with it, the next step should be to agree specifically on what the consultant will do, and how much he will charge for it. These discussions cannot be too specific. Agree on the terms and the charges in as much detail as possible.

Written Retainer Agreement

Though the retention agreement may be informal and oral, it is best to enter into a written agreement that delineates at least the initial steps to be taken by the consultant, as well as the itemized fees for such services. The agreement may also state more generally that additional acts or projects may be undertaken by the consultant, but only with client approval after the completion of the initial project(s). This combination of specific task definition with the expectation of continuing work supported by client approval protects both you and the consultant from misunderstandings which may exist regarding his role or your expectations. It also establishes a framework for ongoing work which should be handled cooperatively between you and the consultant.

Cooperative Effort

Despite the scientific and technological complications of environmental issues, business interests will

be served most effectively and efficiently by working as closely as possible with the consultant. Rather than turning over all environmental matters to the consultant for independent handling, environmental management should be a cooperative effort. At least two purposes are served through this joint approach. Obviously, the more informed a business owner or manager becomes about particular environmental issues, the better he or she will be able to effectively manage those concerns. Moreover, a cooperative approach toward environmental consulting will place controls on the consultant which will enable the business person to adequately control and anticipate consultant costs.

Task Oriented Consultation

Environmental projects are readily defined. Even very large remediation projects may be divided into clearly discernible tasks. For example, in circumstances involving the potential for groundwater, the number of monitoring wells should be specified, and the need for each well should be well supported. Similarly, in situations regarding excavations, the size of any excavation should be estimated as precisely as possible, with the understanding, of course, that unexpected circumstances may warrant significant changes in plan. The most important aspect of the task oriented relationship is that it forces communication and cooperation between the client and consultant.

Furthermore, the easiest way to begin working with a consultant is on a task-by-task basis. This approach not only keeps the property or business owner involved in the process, but also fairly acts to manage the consultant. If the consultant is addressing the client's particular needs, and the business owner is becoming more informed regarding the environmental issues pertinent to his or her business or property, the coordination between business interests and the environmental consultant will become better defined. This promotes further the most effective and efficient management of environmental issues.

Stay Involved

The advantages of retaining an environmental consultant you can rely upon are numerous. As a relationship is built between the business person and the consultant, the management or remediation of

hazardous waste or other environmental concerns becomes less of a huge liability risk and more of an ongoing business endeavor. More and more frequently wise business people are demonstrating that proper management of environmental matters is far more effective and cost efficient than dealing with the consequences of poor management practices.

Conclusion

As environmental legal issues evolve, the proper environmental consultant may prove at least as valuable as the proper environmental attorney. Both professionals need to share in their clients' business interests which demand cost effective and efficient solutions to environmental problems. Detailed discussions with the consultant which examine the consultant's views on many fronts will best enable a

business person to identify and retain the best consultant for the particular business.

Continuing involvement of the business person in environmental matters, as well as a cooperative effort between consultant and client will best protect the client. It will also serve to develop the most cost effective environmental management efforts. Task-oriented delineation of consultant tasks will serve to establish proper environmental management efforts and efficient environmental projects on an ongoing basis.

These practical steps should enable a business person to retain an environmental consultant who can work effectively within the business environs, who shares a sense of business, and who can address the business' needs practically and realistically. Such a consultant will prove to be a valuable asset through coming years.

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