DR. STRANGELOVE OR: HOW I LEARNED TO STOP WORRYING AND LOVE ENVIRONMENTAL LIABILITIES

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What questions should we ask to successfully manage environmental liabilities in a transaction?

- Who has the liabilities?
- What and whose activity created them?
- What form do they take?

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We know the forms environmental liabilities (and constraints) take (surprises are rare).

A POWERPOINT NO NO – THE LIST!

- Solid and Hazardous Waste
- USTs/ASTs
- Water: Groundwater, surface water and stormwater
- Air emissions: Air quality, deposition, worker and public exposure
- Neighbors: Superfund, nuisance/trespass
- Asbestos and other construction materials
- Employees: OSHA and right-to-know (hazard communication) laws
- TSCA compliance
- Global warming and sustainability
- Operations and history
- Land use requirements and limits

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Can the liabilities be quantified? Almost always

We know what it costs to dig something up, for example.

But, liabilities can be complex.

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Why do we need to “manage” those liabilities? It is not just transactions.

- Sale of a business, property
- Compliance, enforcement
- Citizen suit / other litigation
- Audit
- Criminal matter
- Securities disclosures

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Many potential “managers”

- Buyers and Sellers
- Developers
- Landlords, Tenants
- Neighbors
- Insurers
- Bankers
- Regulators

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Many Management Tools

- Transactional: Due diligence, PSAs & more
- Regulatory: PPAs, consent orders
- Commercial: Insurance, brownfields pros
- Management: e.g., Matidor, EMS

Most involve a SCOPE OF WORK

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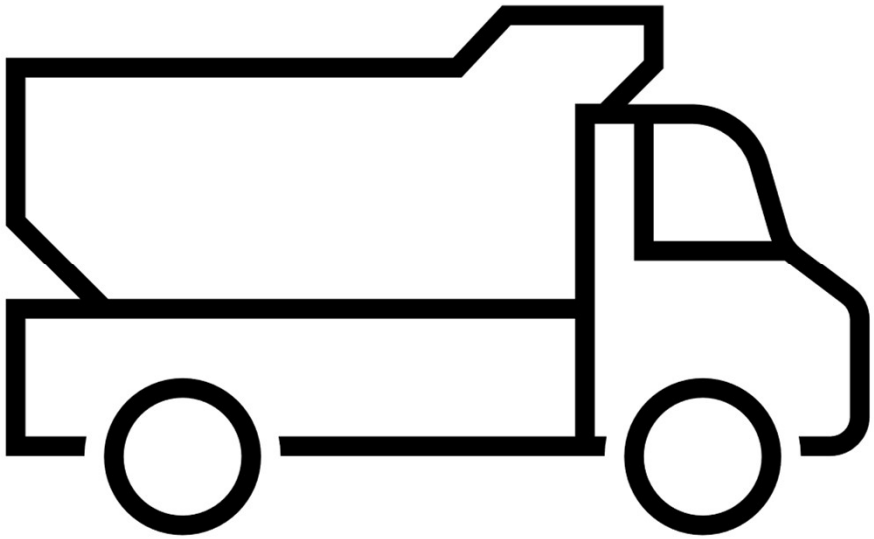
SCOPE OF WORK



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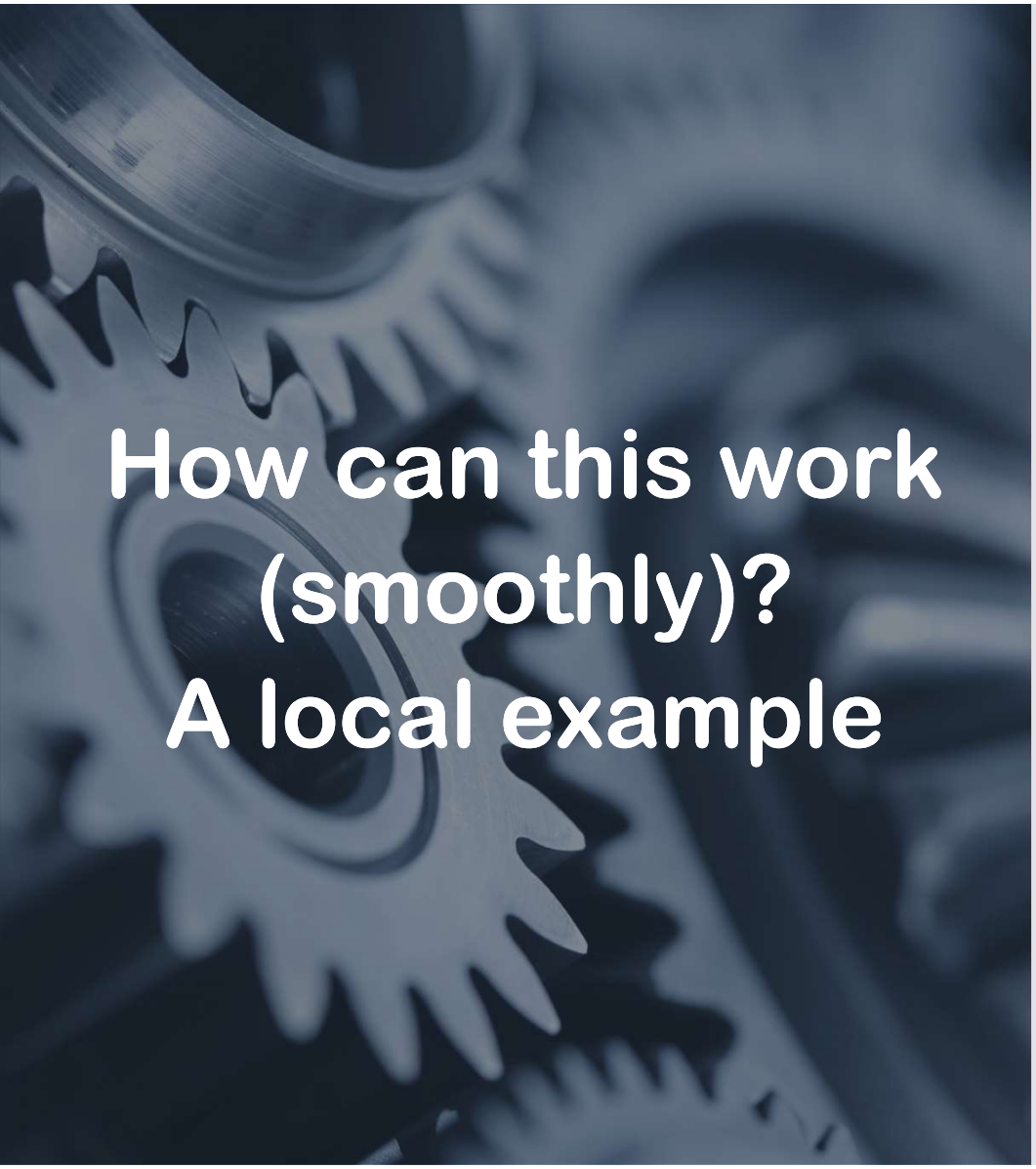
What should managers worry about?

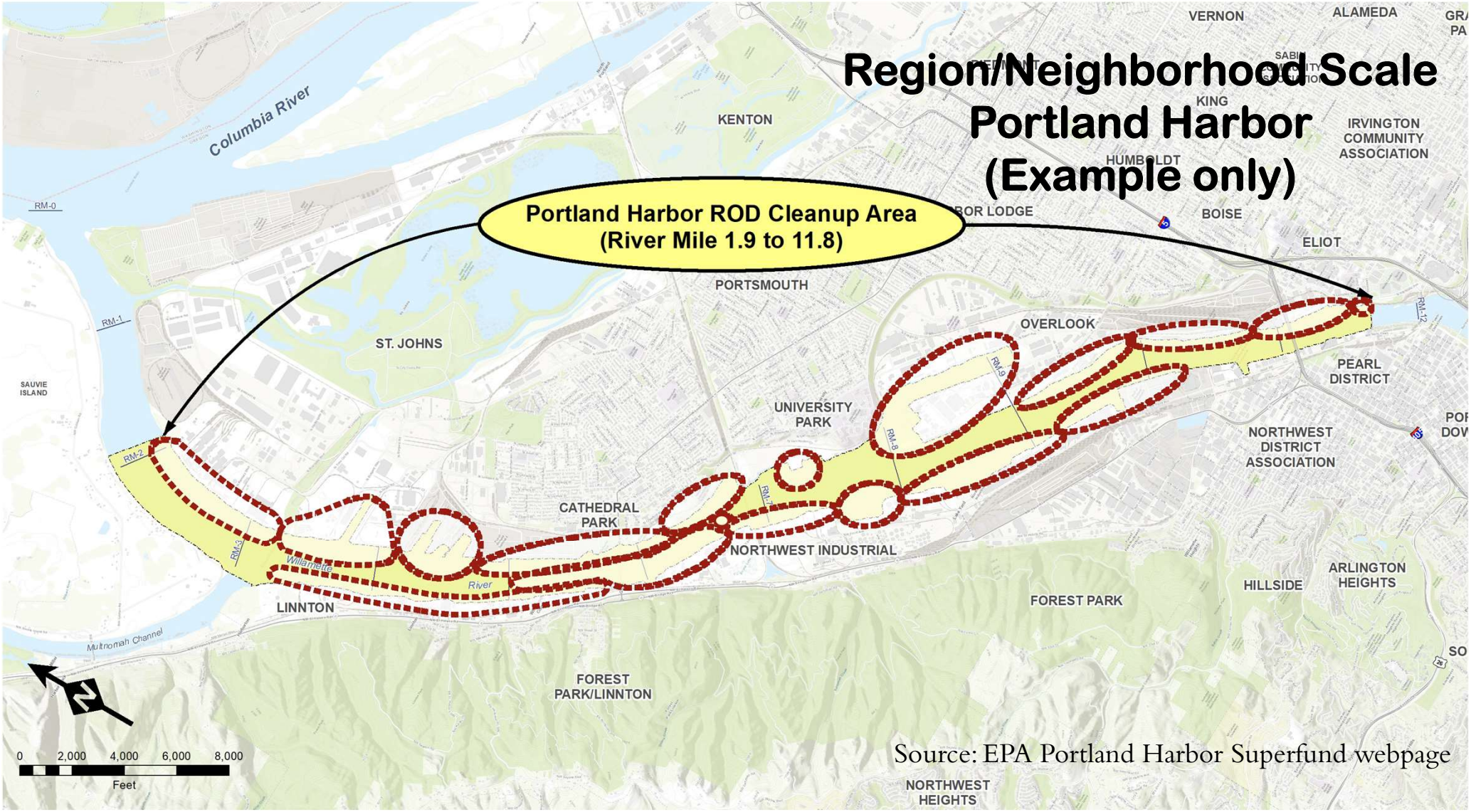
- $$$ Costs – DUH!
- Relationships: neighbors, lenders, insurers, regulators, municipalities, NGOs, other stakeholders
- Environmental justice
- Sustainability



How can this work (smoothly)? A local example

Let's buy a commercial property in the Portland Harbor Superfund Site:

- Large property with history dating back to 100+ years
- Multiple and varied historic operations, including docks, warehouses, manufacturing, redevelopment, truck, rail, ship traffic
- In-water contamination that is part of Superfund remedy
- Contaminated upland that may require remediation
- Neighbors with contamination
- Redevelopment for future commercial uses
- A multi-party, multi-part transaction – different parcels to different buyers for different uses



Source: EPA Portland Harbor Superfund webpage

Property-scale (example only)