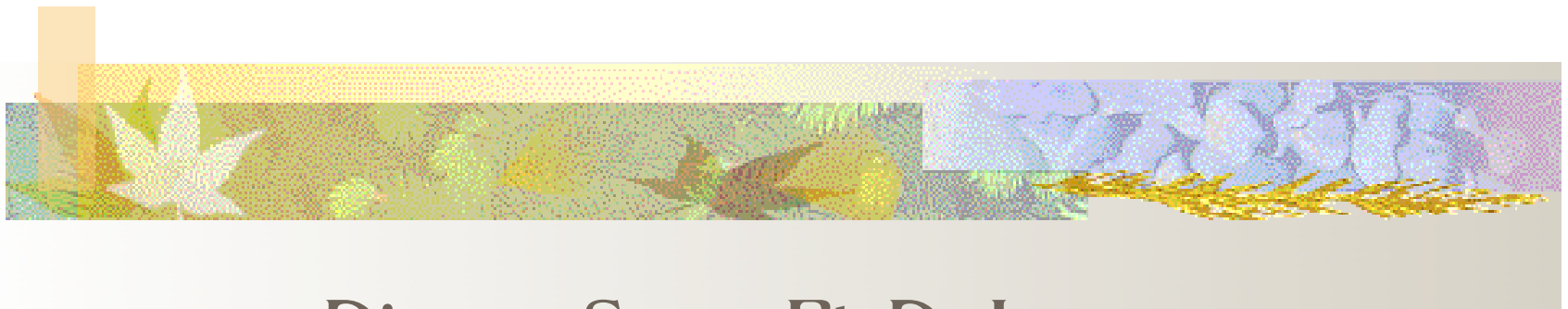


SUCCESSFUL PIECRUSTS



Dianne Saxe, Ph.D. Law
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April 4, 2007

OVERVIEW

- **What is a Piecrust?**
- Abuse and Response
- Case Studies
 - Condo
 - Seniors' Residence
 - Industrial Lease
 - Park

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What is a Piecrust?

- Legal severance
- Horizontally
- Like a layer cake
- One or more
- Any depth/ height
- aka “bluefield”

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Why a Piecrust?

- No ownership, possession, charge, management, control of the contaminated layer
- No risk of civil suits
- No MOE reopeners
- The only clean tool

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How do a Piecrust?

- Legal severance
 - s. 50 Planning Act
 - Municipal consent
- Multiple condos
- Lease <21 years

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Abuse and Response

- Abuse:
 - Create piecrust
 - Don't investigate/ clean
 - Transfer contaminated layer to shell co.
 - Build on top without cleanup
 - Shell co. goes bust, escheat assets to Crown
 - Environmental risks: who knows?

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MOE Response?

- Essential to block abuses
- Options being considered
- January 07 Proposal:
 - Prevent piecrusts using s. 50 *Planning Act*
- Administrative block:
 - Can RSC be registered if layer beneath not assessed?
 - “in, on or under”



Preventing Abuse

- Essential to allow control of legal risk through piecrusts, without permitting risks to health and environment
- OBA: Limited responsibility of upper owner to ensure that RSC issued for lower property?



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Condo, Toronto

- The Site
- The Risk Assessment
- The Piecrust

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The Site

- Gas stations 1930s to 1986, then vacant
- Major road, sewer, water, subway
- Steep slope on fill, creek, park
- Fierce neighbourhood opposition
- Offsite plume

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The Site, 2

- Inaccurate delineation
- Unlucky timing
- Failed *in situ* remediation
- OMB fight
- Multiple lawsuits
- Political perfect storm



Risk Assessment/ Management

- Old plume: No real problem
- Thick foundation
- Imported topsoil
- Construction worker time limits
- Minimal impact on creek
- Soil vapours low
- But: *what if?*

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The Piecrust

- Two separate condo corps:
- Residential condo:
 - Owns slab and above
- Commercial condo
 - Owns soil and groundwater
 - Keeps records
 - Assumed pump & treat system, monitoring





Case Study 2, Seniors Home

- The Site
- The Risk Assessment
- The Piecrust

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The Site

- Railyard / waterfront, then vacant
- Fill, chlorinated solvents, metals and TPH
- Offsite plume
- Key to revitalizing waterfront
- Strong local support (Community Waterfront Friends, City Council)

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Risk Assessment/ Management

- Hot spot /free product removal
- Soil vapours low
- No basement
- Imported topsoil
- Minimal impact on Bay
- Seniors' Residence

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CPU

- Passive vapour barrier
- Contingency: vapour extraction
- 5 years' monitoring
- Foundation drainage to sewage treatment
- Offsite disposal of disturbed >Table 3 soil

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The Piecrust

- Developer buys from groundwater up:
 - Owns slab and above
- Municipality
 - Obtained RSC
 - Retains soil and groundwater
 - Keeps records
 - Responsible for monitoring, offsite
 - Permits foundation



Today

- Construction underway
- Excitement building about the waterfront

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Case Study 3: Industrial Lease

- Long-term owner/ occupier created contamination
- P&T system in place
- Potential tenant can't risk exposure to liability for historic contamination
- Proposed 20 year lease



The Solution

- Tenant rents upper layer only
- Described by strata plan
- 20 year lease, no municipal consent required
- Landlord maintains right of access to monitor, run P&T system





Case Study #4: Evergreen at the Brickworks

- The Site
- The Risk Assessment
- The Piecrust

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The Site

- 550 Bayview
- Quarry and heavy industry for a century, then vacant
- Major floodplain, ravine, river
- Geologic treasure
- Historic buildings
- Owned by TRCA, managed by City

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The Site, 2

- Contaminants: Metals, TPH, VOCs, PAHs, and whatever comes when it floods
- Buildings deteriorating
- Costly to maintain
- Uses limited by expropriation, zoning and flooding



The Vision

- Evergreen at the Brickworks
- Centre for nature in the city
- Gateway to the ravines
- P2 partnership: government and charities
- Inspire, empower, celebrate - nature, culture, community

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Risk Assessment/ Management

- Still underway
- Likely elements:
 - Containment:
 - Thick slab
 - Imported topsoil
 - Limited Uses
 - No residential
 - Flood-sensitive uses upstairs
 - Hot Spot removal?

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The Piecrust

- Evergreen leases from ground surface up:
 - Owns slab and above
- Municipality / TRCA
 - Seek RSC
 - Retain soil and groundwater
 - Keeps records
 - Responsible for risk management plan
 - Permits foundation



Risk Allocation

- What if new problems are found later?
- If $< \$500K$, and must be cleaned for continued use: City will pay
- If $> \$500K$, City can delete affected area from the Lease, unless Evergreen decides to pay for the cleanup



Today

- Lease approved
- RA underway
- Construction to start 2007/8



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Piecrust Summary

- **Format:** Flexible
- **Landuses:** Flexible
- **Contaminants:** Flexible
- **RSC needed?** Maybe
- **Indispensable:**
 - Surface is safe enough for use
 - Different owner keeps contaminated layer
 - Municipality / MOE allows severance



Questions?

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