

Chapter 8

Indemnity for Environmental Damage: Methods for Structuring an Enforceable Indemnification Agreement for Environmental Claims and Liabilities

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§ 8.01. Introduction.

Ownership and participation in the development of oil and gas, as well as other mineral interests, presents both environmental related risks and potential liability due to the nature of exploration and development operations. As risks associated with environmental liability have become more prevalent from increasing regulatory oversight and the availability of private rights of action for land and water damages, many companies engaged in mineral exploration and development have incorporated an indemnification requirement for environmental claims and liabilities into their contractual arrangements. The scope of indemnity provided under such an agreement will, however, be limited in many cases by the applicable environmental statute and state contract law.

This chapter examines the type of environmental liabilities companies intend to provide indemnification for, reviews the types of environmental indemnification agreements available, and analyzes the limitations of these indemnification agreements under certain federal and state laws. The chapter concludes by discussing practical ways companies can ensure the enforceability of a contractual agreement intending to provide indemnification for current and future environmental claims and liabilities.

§ 8.02. The Basics of Indemnification.

Indemnification, or indemnity, is essentially a form of risk-shifting or cost allocation that occurs through one party’s compensation of another