

Environmental Lending and Foreclosure Risks in 2020



Mark McPherson
McPherson Law Firm
Serving All of Texas from Dallas



1

1

Environmental Lending and Foreclosure Risks

- Today's COVID-19 Setting

The Home Office Comes With an Automatic Doorbell....



2

2

Environmental Lending and Foreclosure Risks

- Scope of this Presentation
 - Environmental Issues from the Lender Perspective
 - Federal and State Law
 - Enforcement Process
 - What Happens in Bankruptcy
 - Strategies



3

3

Environmental Lending and Foreclosure Risks

- CERCLA
 - Owner or Operator
 - AAI
 - Lender
 - Not a Participant in Management (relationship to the collateral)
 - Bona Fide Extension of Credit (relationship to action)
 - To a Non-Affiliated Person (relationship to borrower)



4

4

Environmental Lending and Foreclosure Risks

- Texas Solid Waste Disposal Act (SWDA)
 - Adds Unique Safe Harbor to the Exclusion of Lenders Not Participants in Management
 - Divest the property at the earliest practicable, commercially reasonable time, if, within 12 months after foreclosure...



5

5

Environmental Lending and Foreclosure Risks

- Enforcement Process
 - Enforcement Order
 - Technical/Ordering Provisions
 - Monetary Penalty
 - Unpaid Penalty Accrues Interest
 - Expenditure of Govt Funds to Remediate
 - CERCLA Lien/Judgment Lien



6

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Environmental Lending and Foreclosure Risks in 2020

Also available as part of the eCourse

[2020 William W. Gibson, Jr. Mortgage Lending and Servicing eConference](#)

First appeared as part of the conference materials for the
54th Annual William W. Gibson, Jr. Mortgage Lending and Servicing Institute session
"Environmental Lending and Foreclosure Risks in 2020"