

Environmental insurance: a vital tool for property transactions

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THE TRUE VALUE OF INSURANCE

is — in most cases — only realized following a loss. With any business involved in the redevelopment or transfer of property, however, the importance of insurance, especially environmental insurance, is recognized before any loss is suffered or any financial pay-out is made. For businesses and lending institutions involved in property ownership or management, the role of insurance is to transfer some of the environmental risk associated with properties.

IN THE BEGINNING

The perception and uses of environmental insurance have substantially changed over the years. The environmental insurance market grew out of the need for businesses to meet regulatory requirements, but today the majority of the environmental insurance market's growth is driven by its recognition as an important business tool for covering operational risks or

managing potential environmental liabilities of a transaction, such as the closure of a facility or property sale.

As anyone in redevelopment knows, a property buyer should seek assurances about a property's condition. But even though strict due diligence is undertaken, there is always the possibility that an environmental condition could be discovered later. This could leave a redevelopment project at a standstill or stall a property transfer for an extended period of time while remediation takes place.

Often an environmental insurance policy provides for the possibility of unforeseen cleanup expenses associated with the redevelopment or transfer of property. Lending institutions are increasingly using insurance to cover possible remediation expense and pollution legal liability on properties they may own, operate or hold in trust.



Environmental insurance, continued

THE ROLE OF ENVIRONMENTAL INSURANCE

The annual premium for environmental insurance is certainly more attractive than a seven-figure cleanup expense. Environmental coverages are now available to insure the various parties and aspects of property transfers, sales transactions and real estate redevelopment projects, including contractors, developers, subcontractors, financial institutions, and future buyers. Coverages are also available to protect the owner from changes in government regulations that could require additional unexpected cleanup costs after the development is completed and the site is occupied by tenants. Without some kind of protection, these groups were often understandably hesitant to undertake a project or transaction that involved known environmental contamination and, more importantly, the risk of unknown pollutants. Common environmental insurance programs used in these situations include:

- **Pollution and Remediation Legal Liability (PARLL)** policy provides coverage for on-site and off-site sudden and gradual pollution conditions at or from covered locations that result in third party property damage and bodily injury, remediation expense, and legal defense expense under one policy.
- **Real Estate Lenders Policy (RELP)** provides coverage for the interest of a secured creditor in a real estate loan such as a bank, insurance company or other financial institution holding commercial

IT IS IMPORTANT TO UNDERSTAND THAT ENVIRONMENTAL INSURANCE IS AN ENGINEERED PRODUCT — A SUBSTANTIAL AMOUNT OF UPFRONT, HANDS-ON WORK AND EVALUATION GO INTO ASSESSING A POTENTIAL BUYER'S ENVIRONMENTAL EXPOSURE BEFORE A POLICY IS ACTUALLY UNDERWRITTEN

real estate collateral. Coverage includes pollution legal liability and the lesser of remediation expense or outstanding loan balance.

- **Remediation Stop Loss (RSL)** programs provide protection against cost overruns resulting from scheduled remedial activities.

Environmental insurance providers are recognized for their flexibility in writing coverages. Pollution insurance policies are underwritten specifically to accommodate the environmental concerns of the individual transaction. Enhancements or endorsements can be attached to the standard PARLL policy to address specific issues such as indoor air quality or underground storage tanks, among others.

LOOK FOR STRENGTH AND EXPERTISE

It is important to understand that environmental insurance is an engineered product. In other words, a substantial amount of upfront, hands-on work and evaluation go into assessing a potential buyer's environmental exposure

before a policy is actually underwritten. Fortunately, there are a handful of financially strong insurance companies that have remained long-time participants in the environmental insurance market. Predetermining a provider's level of expertise in underwriting environmental risk, providing loss control services and managing claims should be a guiding principle when deciding upon the right provider and appropriate coverages.

Since the majority of environmental liability policies for property transactions are written for a period of several years, it is important to place insurance with a carrier that has demonstrated its long-term commitment to the environmental insurance marketplace and has the financial strength to back it up. With underwriters who are technical specialists with a background in environmental sciences and engineering, you can be assured you will receive intelligent solutions from someone who can structure a program that suits your unique needs and be there throughout the life of the policy to assist with necessary changes.

INSURANCE IN ACTION

What is happening today on former military bases nationwide is clearly showing how environmental insurance can keep big redevelopment dreams alive, with minimal delays and doubt, and help return these closed military sites to productive community use. (See the following article, “*A risky, but worthwhile, mission*”.)

A VALUABLE TOOL FOR TAKING CARE OF BUSINESS

Traditionally, pollution liability caused disputes and stood in the way of real estate transactions and other property issues. Today, there are specialty coverages available to address this unique liability and protect the many parties involved in redeveloping, transferring and financing property. Environmental insurance is proving to be a valuable business tool for making the most of lucrative property deals that would have been passed up in the past. **XL**

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