ENVIRONMENTAL INSURANCE FOR BROWNFIELD REDEVELOPMENT OPPORTUNITIES

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Agenda

• Introduction
• Types of Policies and Coverage
• Value of Environmental Insurance
• How Coverage May Be Applied
• Important Policy Terms and Conditions
• Marketplace Viewpoint
Introduction: The Evolution of Environmental Insurance

- Circa 1986, the birth of the absolute pollution exposure on the general liability policy created a need for an environmental insurance policy.
- The environmental insurance market gained traction in the mid 1990s.
- As the availability of Green spaces diminished, the redevelopment of contaminated properties created the need for a variety of new environmental insurance policies.
Environmental Policies and Their Coverage

- Pollution Legal Liability (PLL)
- Remediation Stop Loss or “Cost Cap”
  - Covers remediation cost overruns of known conditions
- Real Estate Lender Liability
  - Similar to PLL but its form of remediation expense coverage:
    - Includes a loan impairment trigger
    - Pays the lesser amount of either the loan balance or remediation expense
- Contractor’s Pollution Liability (CPL)
- Financial Assurance
Pollution Legal Liability Coverage

• Basics:
  • Third party bodily injury and property damage claims
  • On and off-site remediation expense for:
    • Pre-existing unknown conditions
    • New conditions
  • Legal expense
  • Coverage above includes:
    • Natural resource damage (NRD)
    • Changes in clean-up standards (reopener coverage)
Pollution Legal Liability Coverage

• Enhancements:
  • First and third-party transportation
  • 1st party business interruption
  • Non-owned disposal site (NODS)
  • Illicit abandonment
  • Disaster or crises management coverage
  • Limited coverage for known conditions
    • Use of indemnification trigger endorsement
Pollution Legal Liability Coverage

• Terms and Conditions:
  • Limits of Liability: $1,000,000 - $50,000,000
  • Retentions: $50,000 - +$500,000
  • Term:
    • Pre-Existing Conditions: Up to 10 years
    • New Conditions: 1yr, 3yrs, 5yrs or 10yrs depending on Risk.
Value of Insurance: Why buy it?

- Balance sheet protection
- Image / Brand protection
- Predictability for successful development
Value of Insurance: What Might Happen During Remediation?

• Unknown contamination discovered after project begins

• Improper remediation procedures lead to new, larger problems
  • Remediation plan not followed
  • Contamination is spread

• Change in regulatory requirements
Value of Insurance: What Are the Possible Post-Remediation Exposures?

• New contamination of neighboring area resulting from failure of remediation system to perform

• New or changing operations create additional contamination

• Fear that contamination still exists despite remediation -- environmental stigma
Value of Insurance: What Are The Issues For Funding Sources?

• Banks
  • Lack of resources/expertise to apply to Brownfield loans
  • Easier to make a “clean” loan

• Non-bank funding sources
  • Pension funds
  • Captive banks
  • Specialized lenders
  • Subject to same buying concerns as banks
  • Higher risk tolerance for contaminated property
How Coverage May be Applied

• A real estate development firm acquired “green” property to build a shopping mall

• The firm hired a consultant to conduct a Phase I Environmental Assessment

• The property was determined to be clean

• During excavation for the mall, 100 leaking drums of buried pesticides and herbicides were unearthed

• Damages including remediation and disposal costs exceeding $750,000
How Coverage May be Applied

- A solar energy client was interested in developing closed landfills with solar arrays
- The firm hired a consultant to conduct geotechnical studies of the landfill cap and slopes
- The client was concerned about the potential for pollution conditions during the construction and operation of the solar array
- An insurance policy was put in place with $10m in limits for a 3 year term naming the solar entity and the former landfill owner
Important Policy Terms and Conditions

• Disclosure of all known conditions (application and submitted materials)
• Review the policy exclusions
• Named Insureds
• Timely notice
• Payments require carrier consent (except for emergency costs)
• Policies are “Claims Made” and Reported
What impact have the new players had on the market place? (was about 10 between 4-10 years ago, now about 40)

- Mainstreaming of environmental coverages
- Pushing envelope on terms and conditions
- Rate erosion
- May delay hardening of pollution insurance market vs. other insurance coverage lines
- Premium spread over more carriers has decreased premium potential for all carriers (there has been little growth in the overall market due to the economy)
What insurance market changes do you expect over the next 1 to 3 years?

- Resurgence of M&A deals assuming the economy rebounds as anticipated
- Potential for reduction in competitors due to aggressive rate deterioration and loss picks moving to real loss ratio data
- Those with historic data can visibly see the potential impacts in profitability and sustainability of the line over the long term
Distinguishing carriers in the insurance market

• Significant/experienced UW, Risk Consulting, and Claim capabilities

• Service: issue policies promptly and provide other services not available in the broader market place

• Capacity: $50m in capacity and term lengths of 10 years

• Strong staff experience in transactions - prepared to manage the inflow of brownfield projects with the improving economy

• Strong partnerships with brownfield facilitators (developers/attorneys)
Selecting a Broker

- Selecting an experienced insurance broker is essential

- The right broker:
  - Has a strong understanding of the liabilities related to real estate transactions
  - Is familiar with the new environmental insurance products
  - Has existing relationships with multiple markets
  - Can help determine which insurance policy is best for the client’s needs
THANK YOU

Questions?

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