Utilizing Environmental Insurance for Brownfield Redevelopment

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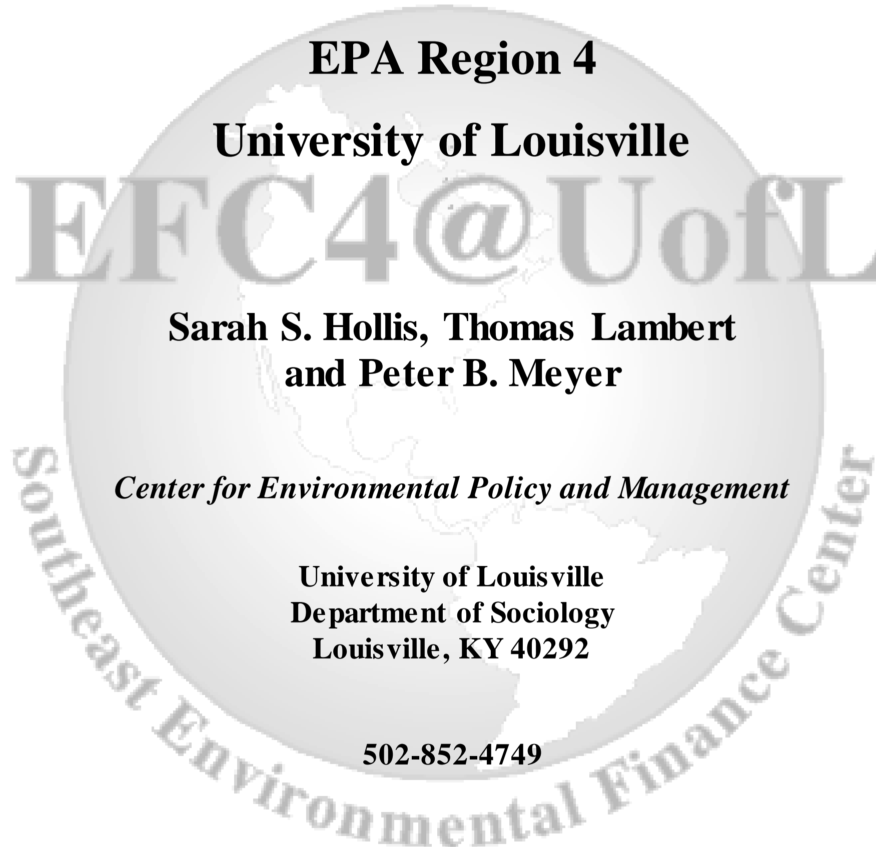

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Introduction

Brownfield redevelopment has long had a reputation as burdened by extreme uncertainty and high risks of liability losses. As a result, risk management – and, more specifically – risk transfers to others – has always been a concern for brownfield redevelopers. Environmental insurance is a means by which some firms accept the risk burdens from others in return for a fee. This manual is intended to provide an overview of the types of environmental insurance relevant to brownfield redevelopment

Both developers and state/local organizations attempting to promote the remediation and reuse of brownfields need a greater understanding of the insurance tools available to them than many of them now exhibit. Though there are various types of insurance coverage available, many redevelopers choose not to use insurance despite substantial risks and potentially low-cost coverage. Public sector agencies in many states have tried and failed to develop brownfield insurance programs. For these and other readers who may need to know more about insurance and brownfields, we offer this Practice Guide about the types of coverage and how they may be used.

The Guide begins with a brief primer on the types of environmental insurance (EI) policies available and follows with a general commentary on how these risk transfer tools can ease the workings of local real estate markets for previously used sites. Next, the Guide provides a table linking the risks that arise at different major stages of the brownfield redevelopment process to the types of insurance coverage that might be useful, and a modified description from a senior EI broker of the factors affecting insurance costs and coverage available. We then address recent trends in brownfield insurance availability and cost. We close the Guide with "how to" advice for public agencies on the pitfalls in issuing RFPs or RFQs for needed environmental insurance services. Other informational resources, a glossary, and a brief set of references–many accessible on the web–are provided at the end.

We end this introduction with a cautionary note: whatever the coverages available, the utility or value to users of different policies–and the costs of coverages–are a function of aspects of the brownfield project itself and the context in which it is undertaken. Even when a developer or development agent is well-versed in what different coverages can contribute to the economic worth of a brownfield project, the insurance decision is not straight-forward. EI may be too expensive for a given project to be useful. This problem can arise in many different ways:

1) The coverages may only be available for very high claim limits and the project only needs low limits;
2) The information demands made by the insurer for underwriting the policy may be so great that they add excessive costs to the project, possibly even exceeding premiums;
3) The time and effort required to negotiate the manuscripted coverages can cause delays on the project that may cost more than the insurance is worth to the developer.

In sum, insurance is by no means a panacea: it may help your brownfields program, but it does not substitute for state or local policies and practices to promote the reuse of previously developed sites.

Types of Insurance Coverage Available for Brownfields

There are four major classes of Environmental Insurance (EI) that apply directly to the problems of risk management and reducing uncertainty of investments involving contaminated sites. Other environmental insurance products, available to consultants, engineers, and contractors, also can play a role in brownfield redevelopment. The four major types of coverage available for brownfield projects and addressed in some detail here, are:

- Pollution Liability Policies
- Cost Cap Policies
- Secured Lender Policies
- Finite Risk Coverage

The first three are generic labels, and the underwriters may have different names for the insurance programs they operate. The fourth is an insurance program method that is becoming increasingly popular for coverages of environmental risks. All these coverages are "manuscripted,"–meaning that they are written for a specific project or mix of projects–and can be modified in far more ways than the buyer of more traditional "off-the-shelf" insurance products can imagine. Since environmental insurance policies must suit the specific needs of individual projects, developers must carefully determine the coverages they need and negotiate with the underwriters for each project.

Pollution Liability Policies

These policies are usually acquired for an extended period of time and require the developer to choose the appropriate mix of coverages from 28 or more potential coverage clauses. Policies can be written so that successive owners inherit the protection, and can cover both regulatory agency and "third party" claims (those from people suing the insured). This extended protection helps to maintain the value of the property in as it passes to different owners, despite its possible history of past contamination. The policies provide coverage for three general types of risks, described below:

- Third party bodily injury and property damage tort liability claims, which may arise even after completion and state approval of a reclamation plan for cleanup or containment of contamination.
- Costs of any remediation and other related expenses, due to a *reopener* order–a regulator's finding (due to new evidence) that an initial approved response was inadequate and that further cleanup is needed. Reopener clauses are built into virtually all regulatory approval programs, with the triggers and possible causes varying across state 'voluntary cleanup' or brownfield programs.
- Legal defense costs associated with the first two risks.

The following coverage *may* be provided, depending on the carrier and specific project:

1. Protection against **third party claims** which include:
    a. Tort liability claims for bodily injury, property damage, property value diminution, and business interruption caused by pollution emanating from the insured's property (the claims under tort liability charge the developer or cleanup

firm with having caused damage by its action or inaction).

b. Onsite bodily injury and property damage caused by pollution.
c. Claims due to pollution at or emanating from any sites at which materials from the redeveloped property were disposed.
d. Release of contamination during transportation.
e. Contractual liability due to purchase of a polluted site, whether or not the purchaser knew of the on-site contamination issues.
f. Natural resource damage caused by pollution.

2. Coverage for **first party onsite cleanup costs and related expenses**
   a. Remediation of pollution ordered by a regulator after a cleanup.
   b. Remediation of known pollution originally thought not to require remediation.
   c. Remediation of previously unknown, pre-existing pollution.
   d. Remediation of current pollution from ongoing operations.
   e. Property value diminution, business interruption, and delayed construction costs caused by a covered pollution condition.
   f. Remediation of pollution emanating from adjacent properties.
   g. Property damage, property value diminution, and delayed construction due to pollution emanating from adjacent properties.

Cost Cap Policies

These types of policies are also called Cost Overrun or Remediation Stop Loss insurance policies: they protect against cost overruns that can arise during clean up or containment of a pollution condition. These are usually short-term insurance policies, since they are intended for use only throughout the period of remediation response. Some cleanups, such as those that rely on phytoremediation (using plants to gradually neutralize toxics in the soil) or those that involve extended pump and filtering operations (for contaminated groundwater), may require longer-term policies.

The premium–what the potential insured pays–is typically quoted as a percentage of the estimated cleanup cost. The insurer would then pay the excess costs beyond the deductible that is also usually a percentage of the estimated cleanup cost. This kind of coverage is generally very expensive and historically has tended not to be cost-effective for single sites with cleanup costs of less than $1 million. Recent trends suggest that some forms of "portfolio coverage" for groups of small sites and projects with low cost cleanups may become available, or may be provided through the actions of local public or non-profit redevelopment organizations.

A policy may include a co-insurance provision under which claims that exceed the deductible are shared by the insurer and the insured. The policies do not insure the use of a contractor or other consultants for assessment or remediation activities.

The coverage that *may* be provided, depending on the carrier and specific project, includes:

1. Costs due to discovery of a greater volume or higher concentrations of contaminants than were noted in the remediation plan.
2. Costs due to discovery of contaminants that were not noted in the plan.
3. Costs due to regulatory requirement changes during the performance of the remediation

plan.

4. 'Soft' costs due to a project delay caused by unexpected contamination, such as income loss and/or loan interest incurred by the insured as a result of the delay.

Secured Lender Policies

Finding financial backing for development projects on potentially contaminated sites is often problematic. Secured Creditor policies are specifically designed to benefit the financiers behind the brownfields redevelopers. They can have a positive impact on brownfield projects through their effects in easing developer access to debt capital. The policies are designed to limit lenders' risks and thus make them more willing to lend, and sometimes to offer better terms. They provide reimbursement to a lender for the lesser of the principal loan balance or the cleanup costs (or, in some policies, for the loan balance only) in the event that a borrower defaults and the default is accompanied by a pollution condition. Third party tort liability coverage is also offered. The policy term or length purchased is generally the term of the loan. Banks and other lenders can buy policies themselves, passing the cost on to borrowers, or may demand that borrowers obtain coverage as a condition for lending.

Developers should recognize, however, that these policies do not protect them or new owners to whom they may sell the properties from any contamination risks. Therefore, Secured Lender coverage is commonly combined with other forms of coverage to protect those undertaking redevelopment with respect to their own liabilities.

The coverage that *may* be provided, depending on the carrier and specific project:

1. Reimbursement for loss of the principal loan balance due to borrower's default.
2. Remediation costs.
3. Cost of third party tort liability claims for bodily injury, property damage, diminution of property value and/or business interruption resulting from contamination.
4. Legal defense costs to defend against third party claims.

Finite Risk Programs

Finite risk programs are similar to Cost Cap policies in that they cap the cost of mitigation. However, they apply to anticipated future cleanup costs, not to an immediate response action (the programs are very evident in financial planning for future closings of landfills that require capping and sealing from the elements). The insurer assumes the risk that remediation costs will be higher than anticipated in return for a premium payment and the up-front deposit of all the funds needed to cover the cost of the expected remedial response. Determining the deposit, as well as the premium, involves such issues as expected investment returns on the deposited funds, the time elapsing until the cleanup needs to be done, and other risk factors that have little to do with the contamination itself.

While a powerful and potentially useful risk transfer tool, finite risk programs are appropriate for brownfields only when the following conditions exist:

a. cleanup costs are expected to be high;
b. remediation is expected to take at least five years;
c. extensive site assessments have been conducted; and
d. the insured party has the financial capacity to pay the expected cleanup costs or a

substantial portion of them up front.

Like pollution liability and cost cap policies, each finite risk program is tailored to meet the needs of the project and involves complex options. The unique feature of finite risk programs is a profit-sharing arrangement between the insurer and the insured. A comparison of the flow of funds illustrates the basic differences between the two approaches:

- ***Cost cap*** coverage involves the insured paying an insurance premium to an insurer in return for coverage of environmental response costs above some specified maximum level, and then proceeding with the cleanup with his/her own funds. There is typically a buffer in some amount between the expected cleanup cost and the total expenses at which the insurance begins to cover costs (or in the insurance jargon, "attaches"). Often the insured must pay 10 percent above expected costs before the insurer begins to pay. In the absence of cost overruns, all payments made to the insurer are lost to the insured.
- ***Finite risk program*** structures have the insured paying the full net present value of the expected remediation cost, plus some additional amounts, into an account with the insurer. Installments might be arranged, but the cost of cleanup is paid to the insurer, not held by the insured. The insurer uses most of the funds in the so-called *commutation account* to pay the insured's cleanup costs and retains the rest to cover program operating costs and the assumption of risks. If there is a balance remaining in the account at the end of the policy term, the insured and insurer divide the excess (whether due to costs being less than expected or the proceeds from investment exceeding expectations) according to a formula that is negotiated as part of underwriting. Under many programs, on the fifth year of a policy and each year after, the insured in a finite risk program may chose to 'commute' or terminate the contract. In this case, the insurer returns to the insured 100 percent of the account balance at that time in return for a complete release of all liability for any future cleanup costs.

The risk transfers differ between cleanup cost cap and finite risk coverage, which is why the latter are useful for cleanups extending over time. Under both policies, if the cleanup costs are higher than expected, the insurer pays the excess costs, up to the limit of the policy. This is the 'underwriting risk' associated with the program. However, under finite coverage, the insurer is also assuming the 'timing risk' and the 'investment risk' associated with the cleanup. The timing risk is the risk that the actual costs will be paid out faster than estimated. If this happens, the insurer will have less time to earn investment income on funds that the firm is holding. The investment risk is the risk that the insurer will be unable to realize on the investment return anticipated when the contract was negotiated. Both of these risks are otherwise experienced by the redeveloper mitigating the brownfield.

Other Policies

There are other types of policies available for brownfield project contractors and service providers:

- Contractors Pollution Liability policies insure general contractors and others who handle remediation, transportation of hazardous materials, etc. The products protect against third party property damage, bodily injury, and environmental cleanup claims that may arise from performance of work associated with a brownfield site.
- Errors and Omissions, also known as Professional Liability coverage, provide protection

against claims for mistakes and negligent acts for engineers, lawyers, consultants, laboratories and other professionals providing services and advice on reuse projects.

- Owner-Controlled policies, which cover all parties involved with a brownfield project, and protect a redeveloper in the event that insurance purchased by contractors and service providers excludes needed coverages and/or does not have sufficient limits.

Insurance Availability and Land Redevelopment Markets

When insurance is 'available'–meaning that it is accessible at affordable prices and provides coverages parties believe they need–this capacity of risk transfer can improve local markets for previously used properties. By reducing uncertainty on the land demand and land supply sides of the market, insurance may be able to facilitate brownfield redevelopment.

On the **land demand** side, anything that may help to reduce uncertainty, determine costs or enable developers simply to calculate risk may promote the redevelopment of sites that are currently overlooked. *Cost Cap* provides a way to quantify risks and manage the uncertainties associated with cleanup or redevelopment, such as previously undiscovered contamination. *Secured Lender* coverage acts as the equivalent of a loan guarantee and insulates a lender from any losses that might arise from a borrower's involvement with an environmental cleanup. Finally, *Pollution Liability* coverage can eliminate the uncertain costs of stigma effects, stabilize appraisal valuations and increase community acceptance of risk-based corrective actions by assuring that funds are available to complete additional mitigations and compensate for any harm done.

On the **land supply** side, the different coverages may help to bring idle and underutilized lands to market, providing the potential for new private returns to landowners, and public benefits from the reuse of the sites. *Cost Cap* handles costs beyond what a developer anticipates. This coverage might encourage owners to remediate sites for sale, and could also make public acquisition of abandoned sites easier–easing the process in both cases by providing a well-defined maximum environmental response cost figure. *Pollution Liability* coverage, especially a policy with a long time horizon, may address the concerns of some sellers about becoming liable for claims at some distant future date, thus inducing them to bring their properties to market at reasonable prices and to reduce owner-defined constraints on possible land reuses.

Major Brownfield Project Stages and the Risks Involved

This table presents an abbreviated profile of the major stages of a brownfield project from the perspective of a potential developer, rather than an owner or operator. The table serves only to illustrate how risks and possible insurance needs change over the development of a project.

Table 1: Stages of Brownfield Redevelopment

The Stage	Key Activities and Elements	Risk and Insurance Issues
1. Initiation	"Due diligence" searches, accumulation of background data, project design, and financial feasibility analysis	Contractors' errors and omissions policies protect them–and investors
2. Environmental Assessment	ASTM(*) Phase I (and Phase II, if needed) field Site Assessments, negotiations with current owners & other Potentially Responsible Parties	Same coverage needed; investors may engage in insurance archeology to identify other funding
3. Purchase Negotiations	Determination of property sale price and negotiation over responsibility for paying for required site mitigations; reiteration of Phase 2 assessments	Cost cap, pollution liability lower uncertainties; insurance augments other indemnifications
4. Pursuit of Funding	Negotiation and deal-making to arrive at a financing package, given a sale price and intended use	Secured lender coverage may help with access to capital and loan terms
5. Pursuit of Regulatory Relief and/or Financing	Negotiations with economic development agencies for subsidies, with regulators for lower cleanup or performance standards	Bonding, prospective liability coverage, other risk transfers help demonstrate long term financial capacity
6. Remediation Planning and Implementation	Conducting site-specific hazards mitigation and remediation, possibly including parcel assembly and land clearance in addition; risk of discovery of unanticipated pollution problems	Cleanup cost-cap and pollution liability coverage permit developers and financiers to quantify fixed maximum costs
7. Site Redevelopment and Reuse	Execution of the redevelopment plan, initiation of the intended new site use, lease or sale to the new user(s)	Pollution liability policies raise value by protecting new owners or occupants

* ASTM International develops standards for testing and materials; the ASTM standards for site assessment and mitigation planning are accepted in US Federal brownfields law as guidelines for the approaches to be undertaken in redevelopment projects. Online at: <http://www.astm.org/>

Project Characteristics that Affect Risks, Coverage Needs, and Costs

This list, originally developed by Alan Bressler of Marsh Environmental, a major national EI brokerage, for the EPA workshop ***Brownfields2001***, provides a framework for understanding some of the many factors that can both affect developers' needs for and interest in risk transfers – and the costs and availability of coverage for different projects at different stages of their development.

1. Contamination Type

Toxic chemicals
Petroleum products
Lead
Heavy metals other than lead
Petroleum products
Asbestos

2. Contamination Location

In soil
In water (ground or surface)
In soil and water
On site only
Migration off site likely
Migration to site likely

3. Prior Use/Future Use

Residential
Commercial (e.g., office, retail, warehousing)
Light industry (e.g., food processing, textiles, lumber)
Heavy industry (e.g., metallurgical, pulp and paper, chemical)
Recreational (e.g., a sports arena)
Park

4. Remediation/Redevelopment Stage

Phase I/Phase II completed
Remediation plan approved by state agency
Remediation begun
Remediation completed
Assurance issued by state agency
Ongoing monitoring begun
Purchaser identified

5. The Private Indemnification Available from Known "Potentially Responsible Parties"

For known/unknown contamination
For tort liability
Financial strength of indemnitor

Recent Trends in Coverages

After expanding rapidly through 1999, with lower premiums and extended terms for liability policies (at times reaching 20 years with additional guaranteed extensions), the market contracted substantially thereafter. Insurance premium levels and coverage availability are always very dependent upon the investment returns that insurers can earn on the premiums they collect. The collapse of the stock market and historic lows in interest rates has combined to create a very "tight" market for insurance as of late 2003. The four major shifts that have emerged since a comprehensive review of environmental insurance products for brownfields was completed in 1999 are:

1. A tighter market, with generally shorter pollution liability terms.
2. Some churning in the industry, with some new firms underwriting EI and others leaving the "specialty" insurance markets entirely, whether or not they were making profits.
3. Greater reliance on finite insurance, using up-front payments for expected costs to finance possible losses as well, and which is more readily available for "legacy" sites, with known past pollution.
4. New efforts to promote finite risk coverages and to develop information systems to monitor and reduce liability risk exposures for sites that are remediated without removal of 100 percent of their original contamination.

In general, the availability of this form of risk transfer has contracted at the same time as both need and potential demand have expanded.

Generalizing about the coverages available and the cost-effectiveness of different types of policies for projects of varying dollar scales–and land area–is dangerous. Some noteworthy trends are emerging. While they are difficult to specify in the absence of any sort of industry-wide database, changes in the recent years in pollution liability policies noted by major carriers and brokers suggest that policies offered now provide lower maximum dollar limits to liability, shorter policy periods, higher deductibles, and higher premium costs. There appears to be a "hardening" or contraction of coverage available. Industry insiders suggest that the issue is not merely tightening, but attribute this to the offering of coverage too readily and at inadequate premiums in the past, and to an effort to gain market share in new product lines. Current limits on available coverages generally appear to include:

- ✓ Cost Cap coverage only for cleanups of over $1 million (or insurance paying only after the total cost rises above that level).
- ✓ Expectations of higher quality assessments and mitigation plans before cost cap underwriting is even considered.
- ✓ Pollution Liability coverage rarely available for more than 10 years.
- ✓ The smaller the Pollution Liability risk covered (and thus the associated premium), the shorter the time frame may be.

By and large, as of 2003, individual environmental insurance coverage is inaccessible for small or less heavily contaminated brownfield sites. As a result, the use of portfolio coverage–a policy covering a group (or 'portfolio') of sites–has expanded, with the risk spread across different sites and lower overall premiums for developers. Some communities and insurance brokers now seek to arrange such portfolios, sometimes including large redevelopment sites alone with small ones, as a means of making this risk transfer tool available to the most common types of brownfields–the small scattered sites.

Whether this effort to provide an insurance mechanism for risk is a worthwhile effort for a public agency attempting to promote brownfield redevelopment is not yet clear. A 2001 survey of brownfield redevelopers showed unexpectedly low utilization rates of the types of environmental insurance that developers in principle would be expected to use most: pollution liability and cost cap coverage. Only a minority of the developers surveyed purchased coverage, while many indicated that they had checked out coverage yet still would not purchase it, and the majority said they had not investigated and did not expect to ever purchase coverage.

Table 2: Developers' Utilization of Environmental Insurance

	Type of Coverage	
Environmental Insurance Action Taken and Planned	**Pollution Liability**	**Cost Cap**
Coverage Purchased	22%	11%
Investigated and will purchase in future	4%	7%
Investigated and will not purchase in future	22%	16%
Did not investigate and will not purchase	51%	67%
$N = 45$		

Most respondents were not aware of insurance availability. Half of the respondents who said they never checked out coverage admitted they did not know about insurance availability, and the other half claimed their liability exposure was so low as to not warrant coverage. Both these types of responses reflect poor advice on risks and liability in the brownfields context and of the means of controlling them, whether the advice was obtained from environmental or legal consultants or from insurance professionals.

From these survey results, it appears that most developers do not have access to or know how to locate qualified environmental insurance brokers. The appropriate public sector role in addressing risk transfer tools to promote brownfield reuse thus may more logically be the provision of useful information about risks and means of managing them, rather than the development of coverage pools for developers who do not even know the risks they face–or who do not know of the availability of insurance.

Finding a Broker or Insurance Advisor

As the description of the types of coverages we have presented above should make clear, the purchase of appropriate insurance coverage for a redevelopment project with environmental concerns is not a simple matter. Different coverages are needed as a project progresses over time, and the specific clauses needed in each general coverage policy depend on an array of project characteristics. Price and budget constraints can, of course, add to the problem, since tradeoffs between desired coverages might need to be considered. The decisions to be made generally will require the help of a specialist.

However, a major problem facing those who want to pursue environmental insurance coverage for projects is finding competent brokers and advisors. The field is sufficiently new that the number of experienced parties is really quite small. One experienced environmental insurance specialist claims there may be fewer than 200 highly qualified brokers negotiating coverages for clients. Given the manuscripting of all policies, and the secrecy that innovative underwriters and brokers want to maintain in order to hold a competitive edge, merely getting interested parties to offer their services can be exceptionally difficult for those organizations that are accustomed (or legally required) to post Requests for Qualifications (RFQ) from suppliers.

The difficulty lies in a simple fact: insurance companies do not sell coverages. Brokers do–and brokers are paid commissions on policies sold. This means that, if a developer or development organization simply posts a RFQ for insurance coverage or even a Request for Proposals (RFP) for commission-based insurance services, and states broadly that environmental insurance experience is required, local branches of major national brokerage firms that have environmental records will apply and win the contract. The local brokers then would have no legal obligation to bring in the headquarters or regional personnel who have the needed brownfields and environmental insurance expertise–and an economic incentive not to call on them, since they would then have to share their commissions.

Any formal request for environmental insurance services thus has to be extremely specific and state that it requires the services of personnel who have previously negotiated and implemented a designated number of policies, including some or all of the types of coverages in which the requester has an interest. Possible elements to include in the RFP or RFQ posting include:

- Requests for the qualifications of key named individuals, not just of the offering firm or its branch office, including requests for documentation of their experience writing policies that were actually placed (to assure that the people available fully fit the developer's needs).
- Indication that a heavy value in ranking proposals will be given to the specific environmental insurance experience in years and number of policies written of the named individuals offered in the response (to make sure that a developer can demand access to specialists).
- Specification of the types of policies that will count in demonstration of experience, including factors such as size and number of policies implemented, number of sites in a single policy, types of contaminants covered, and types of coverages provided (so a developer can emphasize experience with the specific issues of concern).

- A clear statement that national, not just local, experience is expected from the named individuals and the firm (to make sure that advisors have the broad perspective needed to identify available creative, possibly more cost-effective or less expensive, solutions).
- Some specification on the timeliness of service expected (since, otherwise, a broker would be free to stall while devoting time to a larger prospective sale offering a bigger commission).
- Other preferences: the expertise wanted, services desired and remuneration offered. Among the questions to ask in identifying those specific preferences should take the form of:
  - Do we want lawyers providing contract and legal advice on insurance issues with a primary concern for our future rights as a claimant, or do we want brokerage experience more attuned to negotiating the right coverage so we have protection paid for by, say, the parties from whom we are acquiring sites?
  - Do we simply want advice on options available and their costs and feasibility, or do we actually want someone who can sell us a policy? Remember, the broker is a salesman, and thus wants to sell, while the advisor may be more objective and disinterested in whether or not insurance is purchased.
  - Are we willing to pay a fee, whether or not we buy any insurance, or are we only advertising the opportunity for someone to earn a commission? A fee must be paid for a pure advisor, but this will get someone who is less interested than a broker in consummating a sale. It may be worth paying by the hour for unbiased education about insurance options.

There is a need for care, however, to avoid raising the bar too high in these specifications: demands for 20 years experience negotiating environmental insurance policies, or even 20 or more policies written, may generate no qualified responders to an RFQ.

The larger the possible insurance coverage purchase, or the more extensive the advice and guidance sought, the more it may make sense to post the request nationally, not just locally. In many instances, in fact–basically outside the largest metropolitan areas–even the local office of a national brokerage firm with environmental specialists will be unlikely to have the capacity to serve your needs. It is important to plan how to distribute RFPs or RFQs to attract the attention of the specialists working in the national insurance market. The standard vendor lists many organizations maintain (or local economic development organizations might have available for redevelopers) will not be sufficient. Notice of issuance of RFPs and RFQs thus should be disseminated to, among others known to the issuer:

1. Local commercial insurance brokers, even if they have not advertised environmental coverage as a specialty (since they can team with specialists and might help identify non-local firms that way).
2. Any local, regional or state services broadcasting RFQs and RFPs from public agencies and nonprofits (where such systems exist, they can be quite useful, since they are scanned by many possible providers).
3. Environmental law firms in the area or the environmental specialists in local or regional corporate law firms (since they are as likely as any others to have worked with environmental insurance specialists).
4. Firms identified from worldwide web searches on more than one "yellow pages" or

directory site (since no one web site is likely to have links to all potential providers).

5. The insurers and underwriters identified in the "Other Resources" below (since the underwriters can forward the announcement of an RFP or RFQ to brokers with whom thy work).

The point is that dissemination of a summary of the RFP or RFQ and instructions of where the full documents are available or to whom requests for copies can be directed is relatively inexpensive–especially if dissemination is by e-mail or faxed one-page announcement. With a small universe of specialist firms out there, you have to get the word out, and you could easily miss excellent providers.

Finally, it is important to take the time needed to do the job correctly. With an ever-changing mix of underwriters, brokers and advisors, locating specialists who can serve specific local needs–and making all of them aware of an RFP or RFQ–can take time. Moreover, it may be necessary to provide more time to the responders to enable them to gather the information they need to respond appropriately and in a manner that addresses specific local environmental insurance needs.

Glossary of Selected Insurance Terms (*)

Certain terms used in insurance discussion may need explanation. Some have not acquired an agreed upon meaning and thus may be confusing to a buyer. While the definitions provided below may help the uninitiated to understand the basic elements of a policy and the discussion in negotiations over terms and coverages, the specific definitions present in particular insurance policies are legally binding and may vary, even between different policies issued by the same insurer. These broad definitions are included here since virtually all environmental insurance policies are manuscripted. Since these forms of coverage have not yet become standardized (and may never reach that status), the issues addressed by the terms below are likely to become key dimensions of any coverage negotiations.

Adverse Selection: A tendency for parties who perceive a high probability of loss for themselves to seek insurance and high limits while those who perceive a low probability of loss do not. This may be an exceptionally serious problem for portfolio coverages with voluntary enrollments, since the low risk projects may opt out of the coverage program while those with serious problems do enroll.

Claims-Made Policy: A type of policy, including pollution liability coverages, in which a claim must be made against (or by) the insured and reported to the insurer during the policy period for coverage to apply. Most policies like this offer a specified extended reporting period after policy expiration, to allow time for some discovery of a problem and the time needed to file a claim.

Insurance Archeology: The term used to describe efforts to identify old Commercial and General Liability insurance policies held by companies before the exclusion of environmental risks from such coverage. Since the old policies were generally written on an "occurrence" basis, claims can be made against them for pollution that occurred when they were in force, even if the claim is filed decades later and the covered company has ceased to exist. These policies therefore can generate funds for the successor owners of an insured site, such as redevelopers. The difficulties in collecting on such policies involve first finding them, then demonstrating the legal right to claim against them, and finally, proving that the pollution occurred during the time period the policy was in force. There are legal firms that specialize in such work, often pursuing possible funds on a pure contingent fee basis, sharing in any recoveries.

Law of Large Numbers: A statistical principle on which insurance is based. Essentially, it means that when insurers have a large enough number of 'exposure units'–such as contaminated properties–they are able to accurately predict losses and determine appropriate premiums. With brownfields, the mix of contaminants, geology and other factors on individual sites may be so diverse that, even as the number of brownfields covered expands, the capacity to predict losses may not. The 'law' presumes comparability of the exposure units as a basis for statistical risk determination, so if the pool of sites insured remains very diverse, the law may not come into play and the costs of coverage may remain exceptionally high, despite large numbers of policies in place. The 'law,' therefore, may bring down the costs of liability coverages as the number of policies in place grows, but it is less likely to affect cost cap

coverages, given the uniqueness of cleanup and site conditions that can affect the likelihood of claims.

Moral Hazard: A term referring to the risk that insurers fear in negotiating coverages, that some insureds may, as a result of having acquired insurance, fail to take action to avoid having to make claims, or even systematically take actions that save them money and enable them to file claims. Moral hazard has been identified by some in the industry as an exceptionally serious problem in the case of brownfield reclamation efforts, resulting in carrier monitoring of mitigation efforts and/or inclusion of exceptional reporting requirements to insurance underwriters' engineering staffs on the conduct and progress of reclamation efforts.

***Named Insureds Versus Additional Insureds*:** When there is more than one party insured under a policy, different types of covered parties may be designated and given distinct responsibilities and rights, i.e., the 'first named insured,' 'additional named insureds,' and 'additional insureds.' The first named insured (also called the 'primary' or 'lead' insured) is listed first on the declarations page of the policy and is the contact for the insurer. This party is responsible for submitting payments for premiums and deductibles (even if other insureds contribute to these expenses), filing claims, accepting claims payments, negotiating changes in the policy, and acting on behalf of the other insureds.

Although there are variations among individual policies, in most cases, *named* insureds (including the first named insured) differ from *additional* insureds in that additional insureds are protected only when a claim filed against them also is filed against one of the named insureds. Coverage for the additional insureds applies only to liability flowing through the named insureds.

Pool: This term can be confusing as it is variously used to denote (a) a group of organizations that join together to provide insurance for themselves such as a public-entity self-insurance pool or (b) a risk purchasing group that joins together to buy a policy covering multiple properties under which they share a single aggregate dollar limit. As a verb, the term may denote combining *risks*, so that a portfolio policy may be referred to as a case of 'pooling.'

Portfolio Policy: A 'portfolio' policy, sometimes called a 'master' or 'blanket' policy, is a policy that covers two or more distinct properties. In many cases, the policy will have an 'aggregate' limit (the most a policy will pay for *all* losses) and different 'sub-limits' such as a per-occurrence limit for each event resulting in a claim at a site and/or a limit for coverage at any one site.

A single organization may purchase a portfolio policy to protect various properties it owns. In addition, a group of entities may join together to purchase a single policy to cover properties owned by the members. In conversation, the term 'pool' is used to refer both to the group of purchasers who buy a portfolio policy and the properties covered by the policy. Unfortunately, this term can be confusing because, as its definition above shows, a pool has different, more formal, meanings in insurance parlance.

Reinsurer: An insurance firm that, in return for a paid premium, will indemnify another underwriter for part or all of the liability it has assumed under a policy it has issued. The reinsured company may be referred to in policy documents as the 'original' or 'primary' insurer, or the 'ceding company.'

Stigma: Reduced property value or revenues from use of a site resulting from negative perceptions about its condition. Stigma is generally attributable to a site's prior status as a brownfield or the publicity about its contamination and reclamation. The stigma associated with labeling a site as contaminated and/or in need of remedial action can affect the value of both the site itself and surrounding properties, an issue that can become very significant in claims for 'diminution of value' from third parties holding nearby properties. The significance of this issue is evident in some municipalities' fear of inventorying or assessing brownfields due to nearby property owners' threats to sue for 'taking' of their properties' value resulting from public disclosure of the contamination condition of a nearby site.

Surplus Lines Coverage: Insurance coverage capacity that is not reported to state insurance departments as a condition of being able to offer coverage, since it augments the capacity of underwriters who have registered in the state in which coverage is offered. Surplus lines insurance markets generally exist for risks with adverse loss experience, unusual risks, and those for which there is a shortage of capacity within the standard market.

Trigger: The event(s) that must occur or conditions that must exist before a policy responds to a loss. Otherwise similar insurance policies can differ drastically in their cost, and their value to the insured, based on the triggers incorporated. Multiple triggers that have to occur simultaneously may reduce the likelihood that claims will be honored, while alternative individual triggers may make it easier to file.

** Many of these definitions are derived or adapted with permission from International Risk Management Institute, Inc. (IRMI) 1999. Glossary of Insurance and Risk Management Terms. Dallas, TX: Author*

Other Resources

While there is massive information available on-line and in print on the insurance industry, the volume of objective material on environmental insurance in general and on the use of the products and services in addressing brownfields in particular -- is extremely limited. One useful place to start is EPA's brownfields website, since it has a special page on environmental insurance at: <http://www.epa.gov/swerosps/bf/insurebf.htm>.

Environmental insurance underwriters all offer information on their web pages. While the firms currently offering coverage changes frequently, in recent years, all of the following have offered insurance to brownfield redevelopers and their financiers:

- Ace Environmental Risk
- AIG Environmental
- American Safety Risk Retention Group
- Chubb & Son, (a division of Federal Insurance Company)
- ECS, Inc (an XL Capital Company; the web listing may be XL)
- Gulf Insurance Group
- Kemper Environmental
- Liberty Mutual Insurance Company
- Seneca Environmental Management
- Zurich US - Environmental

The three biggest players to date have been AIG, ECS and Zurich

Firms with specialized environmental insurance units and specialist environmental brokerages also offer web data. Among them, useful information is available from:

- Environmental Insurance Agency, Inc.
- Environmental Strategies Corporation
- IMA Environmental Insurance
- Marsh USA, Inc.
- Miller & Associates Environmental Brokers
- Wachovia Insurance Services
- Willis Environmental Practice

Once you turn to the web for information on environmental insurance, you will also find the home pages of a variety of other brokers and advisors seeing to offer you their services. Those pages, too, especially those from locally-based firms, may provide useful advice, some of which may be more specific to particular conditions in your locality or state, if the firm is has a presence in your area.

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