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# Environmental insurance a key component of total coverage

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Perhaps one of the most ominous tasks for local officials is trying to spark interest in the redevelopment of sites that could involve environmental remediation.

The potential liability associated with unforeseen environmental issues can sour many investors, developers and bankers before a project even gets off the ground.

But local officials are hoping the emergence of affordable and flexible environmental insurance policies will help spur more interest in redeveloping brownfields. In a region that, according to Chad Helmer, director of the Lehigh Valley Land Recycling Initiative (LVLRI), is home to at least 1,700 acres of brownfields, redevelopment is an important economic hurdle to clear.

A project of the Lehigh Valley Economic Development Corp. (LVEDC), LVLRI held a seminar recently to elucidate some of the details of environmental insurance to local bankers, investors, municipalities, real estate representatives and brownfield owners.

"It needs to be understood that environmental insurance is available as another tool to help with the redevelopment of these types of sites," Helmer says. "We also want to let people know we are an information resource to help you get in touch with the people you need to work with in regards to redevelopment."

Environmental insurance is relatively new to the insurance world, according to Eugene J. Nosovitch Jr., president of West Park Insurance in Allentown.

But he says that the industry is creating more appealing environmental insurance policies today than in the past and that the market is getting more competitive as more providers enter it.

"Environmental insurance is not brand-new," he says. "It has been around for about seven or eight years, perhaps a bit more, but from an insurer's point of view that is not very long. . . . There was not a history of claims, and originally the product was priced in such a way that it was cost prohibitive. A policy seven or eight years ago cost considerably more than one costs today. But now we have a bit of a history and a few more carriers writing for environmental insurance, so the price has come down. It has become a more competitive product."

But Nosovitch says the market has nowhere near as many carriers yet as, say, the car insurance market. ECS and AIG account for more than half of the market share, while others like Kemper, Royal and Chubb also write environmental insurance policies, he says.

"What the product is really set up to do is remove the buyer, the seller and the financial institution from environmental liability associated with a property transfer," Nosovitch says. "The policy will provide insurance above the actual cleanup."

Cost-cap policies limit the amount of money an owner spends on cleanup by placing a ceiling on how much the process should cost by all reasonable estimates. If the cleanup becomes more complex because of unforeseen issues, the policy covers any additional cleanup.

Environmental insurance policies can protect owners and investors from any litigation stemming from environmental conditions on- or off-site after the cleanup is complete as well. Unlike other homeowner or other common policies, such insurance typically is bought for a one-time fee that covers a site for five, 10, 15 or more years.

"The way to look at environmental insurance is that everything is negotiable," Nosovitch says. "It depends on what you want the product to do. Each deal is different, what you want to carve out as far as exposures are concerned, etc., so there is a tremendous amount of flexibility in coverage."

William K. Ahlert is manager of Mid-Atlantic Services for Lawlor Matusky & Skelly Engineers LLP, an environmental science and engineering consulting firm in Allentown. A participant in the LVLRI seminar, he explains that environmental insurance helps to eliminate typical blockages to brownfield redevelopment.

"Historically, developers shy away from sites that involve remediation because of the questions of what it will cost to address any environmental issues. It might not cost a dollar because once they have done normal due diligence, they find there are no environmental conditions on the site," Ahlert says. "On the other hand, you might not see the existing issues. . . . and developers are really concerned about going into a deal without having these issues addressed. If you are going to put up a building, the last thing you want to have is a big question mark when it comes to how much it will

cost for environmental work."

"What many don't understand is that you can buy policies that cover all the parties involved," Ahlert says. "You can basically name them as additional insureds, so if I am buying a piece of property, I can cover the developer, the bank and anyone else involved in the project."

Environmental insurance can help streamline the development process as well, Ahlert says, enabling professionals to concentrate on their unique roles in a project.

"It allows people such as bankers, developers and economic development professionals to focus on their jobs because historically those have been the people who have had to deal with the environmental issues," he says.

"They hire a consultant and they hire an attorney, and they have to be the ones who take in that information, assess what it means and make an overall decision about what it means for the project. As a consultant, many of my clients are always having to take the information I provide them and regurgitate it, and an insurance policy takes that all out of the equation."

Ahlert says the issues preventing the redevelopment of environmentally sensitive sites are starting to be addressed on a national level.

In 1995, Pennsylvania put into effect the so-called Act 2 program, a voluntary program that releases property owners from liability under state law once they have completed statutes set for remediation.

But this measure has met with limited success due to the fear of federal retribution. "There has been a concern as to whether or not the EPA would reopen a case because it does not believe that what had been agreed upon and released by the state is safe for human health and the environment," Ahlert says.

"EPA and DEP have been negotiating a memorandum of understanding for about three or four years now. . . . and there is hope that with the new administration that will be concluded. There is a lot of emphasis in Congress right now to try to enact brownfield legislation that basically deals with the issue of innocent land purchaser, innocent landowner," Ahlert says.

In light of such regulatory concerns, environmental insurance becomes an important asset.

"It's a comfort that needs to be put

there so that when all the parties involved in a project come to a room to talk about it, the players involved understand that the environmental issue can be taken off the table," Ahlert says. "They can focus on the development."

Environmental insurance policies respond to changes in government regulation, Nosovitch says.

Megan Distler, director of marketing for LVEDC, says environmental insurance can go a long way to stimulating local development.

"It's an important tool that not only makes the site owner and developer comfortable, but also facilitates the whole deal by making the banks comfortable with financing the project. Having an environmental policy in place can make a deal happen," Distler says.

## Shopping around for environmental insurance

Ahlert, Helmer and Nosovitch make the following suggestions to those shopping for environmental insurance:

- Go in early and ask lots of questions. You might not need environmental insurance, but make sure you are approaching it from an educated standpoint, Ahlert says. "You may find yourself dealing with a \$10 million problem in 10 years that could have been covered by an insurance policy, and that's the worst time to be discovering what you should have done."
- Assemble your own Dream Team. Bring the right group of professionals to the table, Nosovitch says, one that has the credentials and experience to help you address the real or perceived environmental issues at the site in question.
- Know your insurance brokers. Nosovitch says premiums will be best with the brokers who have the best track records. Also, make sure the company you go with has the management, technical know-how and claims office necessary to do the job. Nosovitch says you should buy insurance as if you had to settle a claim.
- Cheaper is not better. Be careful to review any policy you are considering to be sure that it covers all unforeseen environmental issues. Peace of mind down the road is worth a few extra dollars today.