

US EPA ARCHIVE DOCUMENT

# ***Environmental Insurance***

## ***A Tool for Successful Redevelopment***

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# *Contaminated Property Transactions*

*We've got issues!*

*Toxic Torts*

*Loan Defaults*

*Legacy Liabilities*

*Regulatory Re-Openers*

*Property Devaluation*

*Cleanup Cost Overruns*

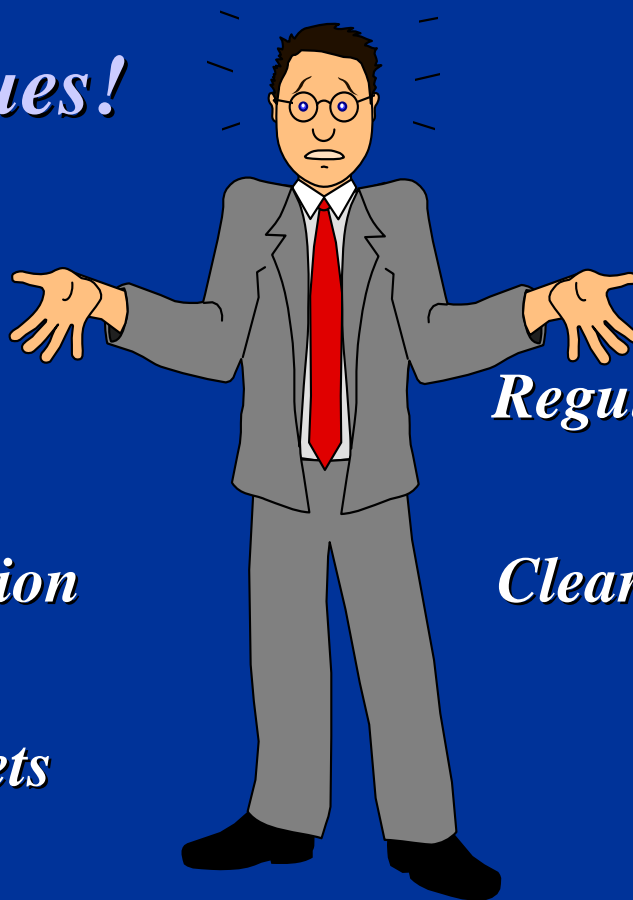
*Unproductive Assets*

*Disposal Site Risk*

*Downtime*

*Remedy Failure*

*Value Proposition*



# *Contaminated Property Transactions*

*The Good News...*

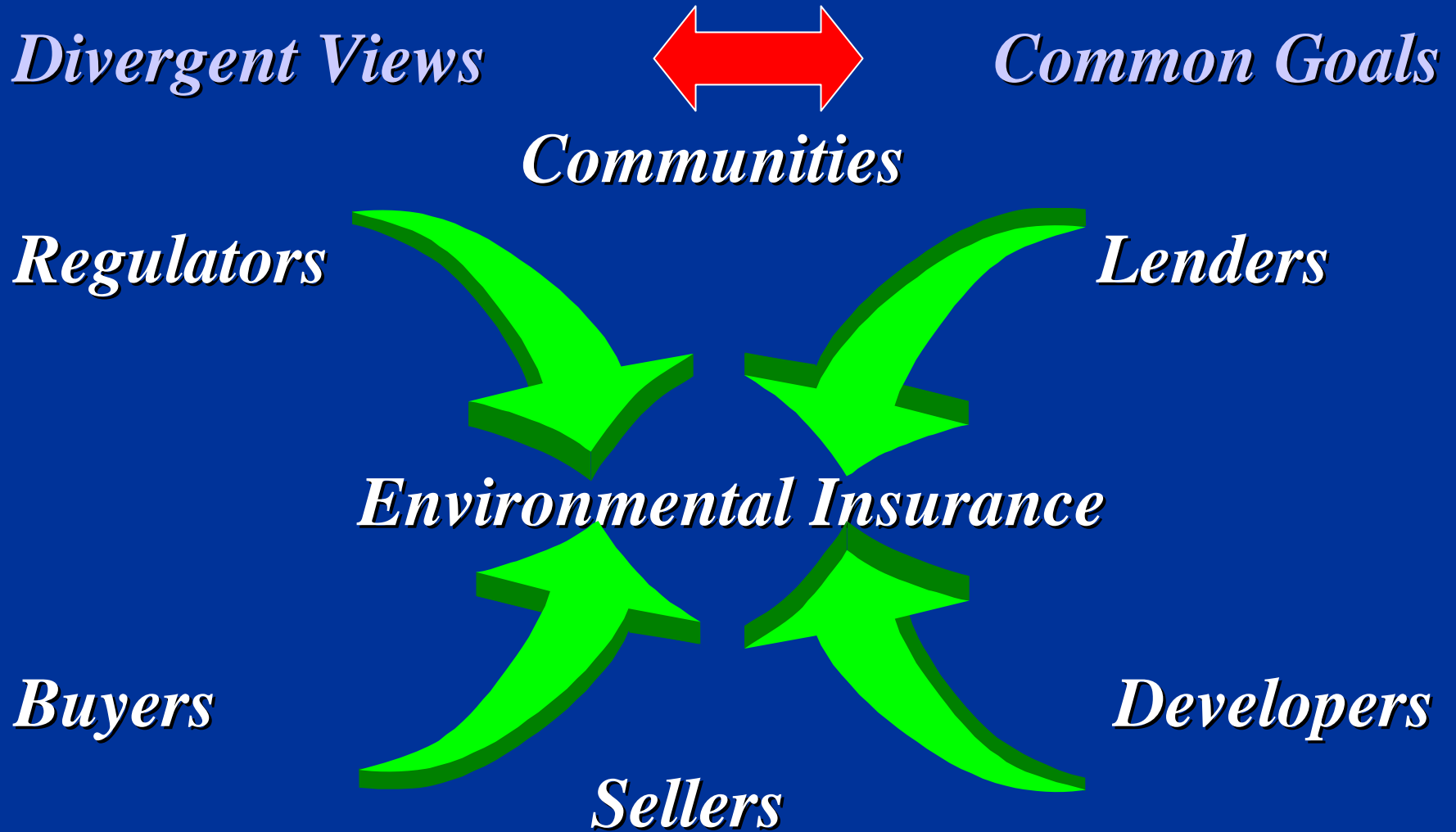
*Existing Infrastructure*

*Permitting/Zoning*

*Cost Advantages*

*“Location-Location-Location”*

# *Platform for Consensus*



# *Risk Mitigation Tools*

- *Contractual Tools*
  - *Reps. & Warranties*
  - *Indemnifications*
  - *Financial Guarantees*
  - *Liability “Buyouts”*
  - *Performance Guarantees*

# *More Risk Mitigation Tools*

- *Regulatory Tools*
  - *Comfort Letters*
  - *Prospective Purchaser Agmts.*
  - *Covenants*
  - *Regulatory Sign-offs (NFAs)*
  - *MOAs*
  - *Statutory Protections (AAI)*

# *Still More Tools...*

- *Financial Tools:*
  - *Escrow Arrangements*
  - *Holdbacks*
  - *L/Cs*
  - *Trust Funds*
  - *Fixed Price Contracts*
  - *Environmental Insurance*

# *Environmental Insurance*

*Working Definition:*

*A vehicle for transferring the financial responsibility for certain risks or costs that may be incurred as a result of environmental contamination.*

# *Environmental Insurance*

## *Brief History:*

- *Available for past 25 years*
- *Extensively used for the past 7 to 10 years*
- *Grew out of need caused by:*
  - *federal “Superfund” legislation and various state environmental statutes.*
  - *Exclusion of environmental risk from CGL & Title policies.*
  - *Increasing awareness of environmental impacts.*

# *Who are the Players?*

- *Have come and gone*
- *Five majors now provide 85%*
  - » *AIG*
  - » *Zurich*
  - » *XL*
  - » *Quanta*
  - » *Chubb*
- *All over \$30 Billion in Assets*
- *All rated “A” or better*

# *Environmental Insurance*

## *Benefits of Environmental Insurance:*

- *Financial Certainty*
- *Broad Range of Protections*
- *Eliminates “Guesswork”*
- *Predictable Cost*
- *Can Protect Multiple Parties*
- *Extensive Capacity to Cover Risk*
- *No Cost Environmental Peer Review*
- *Flexibility (Customized to meet needs)*

# *Environmental Insurance*

*A few Disadvantages:*

- *Doesn't transfer ultimate responsibility*
- *Can be a challenge to obtain*
- *“The Big One...”*

# *Environmental Insurance*

*Disadvantages of Environmental Insurance:*

**\$\$\$ COST \$\$\$**

*Negotiation - Deductible - Retentions  
Premium*

# *Environmental Insurance*

- *What Impacts the Price?*
  - *Limits Purchased*
  - *Cost of Underwriting*
  - *Varied Remedies/Science*
  - *Quality of Site Characterization*
  - *Level of Regulatory Oversight*
  - *Past & Future Use*
  - *Financial Strength of Insured*
  - *Special Coverages*

# *What's Out There?*

- *About 20 Separate Insurance Products*
  - *Pollution Liability/Real Estate Liability*
  - *Contractor Liability*
  - *UST*
  - *Cost Cap/Stop Loss*
  - *Blended Finite Risk*
  - *Remediation Warranty/Remedy Assurance*
  - *Secured Creditor Insurance*
  - *Transportation*
  - *Spill/Release policies*

# *The “Big Ones”*

- *Pollution Legal Liability*
- *Cleanup Cost Cap/Blended Finite Risk*

*Applicable to 90% of  
Contaminated Property Transactions*

# *Primary Coverage's*

- *Pollution Legal Liability*
  - *Third Party Claims for Bodily Injury, Prop. Damage, Cleanup, both On-Site & Off-Site*
  - *Natural Resource Damages*
  - *Diminution of Value*
  - *Business Interruption/Loss of Use or Income*
  - *Regulatory Re-Openers*
  - *Transportation*
  - *Non-Owned Disposal Sites*
  - *Legal Defense/Expense*
  - *New Conditions/Releases*
  - *Deductible and/or Self-Insured Retention Apply*

# *Pollution Legal Liability*

- *Benefits*
  - *Flexibility (Highly “Manuscripted”)*
  - *Transfers Financial Risk to “Third Party Insurer”*
  - *Backstops Other Tools*
  - *Facilitates Loan and Investment Capital*
  - *Assured Financial Performance*

# *Primary Coverage's*

- *Cleanup Cost Cap (Stop Loss)*
  - *Cost overruns on planned cleanup*
  - *Additional cleanup due to change in regulations*
  - *Discovery of new contaminants or more contamination, within a RAP area*
  - *Transport & Non-owned Disposal Sites*
  - *SIR applies (usually a function of cleanup estimate)*
  - *Co-Insurance may be required*
  - *Generally for minimum cleanups of \$1MM or more.*

# *Cleanup Cost Cap*

- *Benefits*
  - *Adds Certainty/Finality to Cost*
  - *Deals with Unexpected Related Issues*
  - *Facilitates Loan & Investment Capital*
  - *Offsets Faulty Engineering*

# *What Environmental Insurance Can't Do...*

- *Transfer Risk in Absence of Data*
- *Cover Risk in Perpetuity*
- *Directly Eliminate Balance Sheet Liabilities*
- *Pay claims related due to Known Conditions  
("burning building")*
- *Change Real Estate Market Realities*
- *Pay Costs Resulting from Voluntary Change  
in Use*

# *What Environmental Insurance Can Do...*

- *Transfer Financial Risk of Liability*
- *Respond to Regulatory Changes*
- *Provide Financial Assurance*
- *Provide Broad Range of Protections*
- *Provide Extensive Levels of Protection*
- *Protect Multiple Parties to a Transaction*
- *Provide a No Cost “Second Look” at Environmental Issues*

# *Placing an Environmental Policy*

- *A Few Tips for Users*
  - *Allow sufficient time*
  - *Assemble competent “team” (Broker, Counsel, LSP)*
  - *Identify & quantify issues/risks*
  - *Practice full disclosure*
  - *Elaborate on the “Deal”*
  - *Keep copies of everything*

# *Some Points to Remember*

- *Aggregate Limits/Multiple Insureds*
- *Single Limit/Self-Depleting Policies*
- *“Claims Made & Reported” Policies*
- *Choice of Law*

# *What if I Have a Claim?*

- *React Quickly (claims made/reported policies)*
- *Mobilize your “Team”*
- *Work cooperatively with the ins. company*
- *Practice full disclosure*
- *Don’t pay anything yourself*
- *Use the insurance company’s experience*

*Industry Wide*

*Over 95% of claims are paid without Litigation*

*Commonwealth of  
Massachusetts  
Brownfields Redevelopment  
Access to Capital Program  
(Mass. BRAC)*

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# *Mass. BRAC Program*

## *Program Purpose...*

*to mitigate or eliminate environmental risks and unexpected costs associated with the cleanup and/or development of Brownfield sites in Massachusetts, in order to facilitate the access to private sources of loan and investment capital to fund such projects.*

# *Accomplishing the Objective*

*Make pre-negotiated,  
low cost,  
state- subsidized*

*environmental insurance available to:*

- Parties who undertake Brownfield cleanup redevelopment projects, and to*
- Lenders who finance any aspect of such projects.*

# *Program Benefits*

- *Pre Negotiated Policies*      *Reduces/eliminates legal fees/negotiation time*
- *Low Cost*      *BRAC Premiums are 10% to 30% below non-program premiums for similar conventional policies.*
- *Subsidized*      *50% of standard premium reimbursed by BRAC*

# *Is my Site Eligible?*

*What Qualifies?:*

*“Brownfields Sites”*

*Real properties where the history, presence or perception of environmental contamination and/or liability can complicate development.*

# *Program Policies*

## *Developer Coverage*

- *Pollution Legal Liability/Cleanup*
- *Cleanup Cost Cap (Stop Loss)*
- *Business Interruption*

# *Program Policies*

- *Protection for Lenders*
- *Mortgage/Insured Assignment  
Endorsement (No Cost)*

*Transfers policy and all rights to the name of the lender in event of foreclosure.*

# *Mass. BRAC*

## *Program Results* (*Inception through 6/30/05*)

<i>Total Projects</i>	<i>257</i>
<i>Total Insurance Provided</i>	<i>\$937 million</i>
<i>Total Premiums</i>	<i>\$11.8 million</i>
<i>Subsidies Paid</i>	<i>\$4.8 million</i>
<hr/>	
<i>Environmental Cleanups</i>	<i>\$145 million</i>
<i>Development Expenditures</i>	<i>\$2.0 billion</i>
<i>Permanent Jobs Created</i>	<i>18,558</i>
<i>Permanent Jobs Retained</i>	<i>7,365</i>