



## Zurich Environmental

A Developers Perspective of Risk, Legal Issues and Insurance

The Insurer's side...

Christopher Robertson  
Manager – Environmental  
[Christopher.robertson@zurich.com](mailto:Christopher.robertson@zurich.com)

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# Agenda

- Barriers to development of a contaminated site
- Risks and challenges associated with a brownfield redevelopment
- Insurance as a risk management tool to facilitate a redevelopment project
  - Site Specific Coverage
  - Fixed Price Remediation Coverage
  - Coverage for Environmental Service Providers
- The flexibility of coverage available

# Barriers to Brownfields Redevelopment

- Risk Tolerance of Developer
- Risk Tolerance of Financier
- Time Constraints For Cleanup or Risk Assessment Process
- Buy-in from stakeholders
- Working through environmental regulations and with regulators
- Buyer / seller disagreements
- Availability of clean sites
- Location or demographic considerations
- Actual Cleanup costs
- Uncertainty of past or future environmental liability

# Risks of Brownfield Redevelopment

Whether you are an owner/developer, a purchaser, a financier or a contractor/consultant, there is risk associated with developing brownfields.

## Owner/Developer

- Regulatory reopeners (ie. Change in government regulations)
- Liability for known or unknown pre-existing contamination during or after cleanup
- Failure of remediation technology
- Cleanup cost overruns

## Contractors/Consultant

- Failure to adequately characterize a site
- Failure of remediation technology
- Exacerbation of existing conditions
- Defence against claims

## Purchaser

- Real estate market conditions
- Civil liability for bodily injury, property damage or cleanup costs
- Decreased marketability of property due to actual/perceived risks
- Indemnity agreements only as good as financial stability of indemnitor and clarity of language.

## Financier

- Under default or foreclosure circumstances, financier may be unable to recuperate loan value on impaired property.

# Insurance Policies

## Site-Specific Insurance Policies

- Third party liability coverage for on-site or off-site bodily injury, property damage and/or cleanup costs resulting from new or pre-existing unknown pollution events.
- First party discovery and cleanup coverage for new and pre-existing unknown pollution events.
- Third party liability coverage for **known** pre-existing pollution events depending on available technical reports (Phase I/II ESA, Risk Assessments, Closure reports)
- Caused by a pollution event on, at, under or coming from an insured's scheduled covered location.

# Flexibility of Environmental Insurance

Broad terms and conditions to address potential impacts such as:

- Multi-year policies terms – up to 10 years available.
- Policies can be assigned if ownership of the site is transferred.
- Purchasers, vendors and lenders can be added as additional insured depending on the circumstances.
- High limits of liability are available within the insurance market.

Standard coverage enhancements can include:

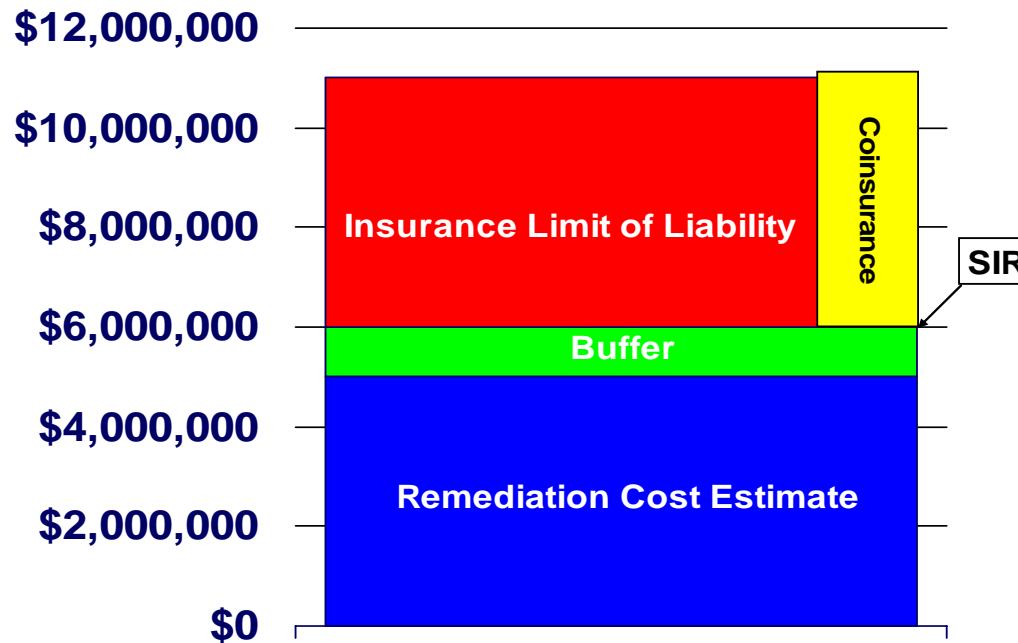
- Transportation of materials by insured or carrier.
- Non-owned disposal sites coverage.
- Suspension of operations, suspension of tenant occupancy
- Delayed completion costs

# Insurance Policies -

## Fixed Price Remediation Insurance

- Protects against remediation costs overruns on a covered project resulting from:
  - greater than anticipated contamination
  - regulatory reopeners/changes
  - cost escalation
  - remedy failure.
- Policy terms and conditions customized to match the insureds planned scope of work and the requirements of the project.
- Primary insurance wording.
- Can purchase with a site-specific pollution insurance policy to cover new or pre-existing unknown pollution events that were not discovered during the site characterization.
- Risk sharing through coinsurance and SIRs.

# Fixed Price Remediation Insurance



# Insurance Policies

## Environmental Services Providers

### Contractors Pollution Liability –

- Covers the contractor's liability for third-party claims caused by pollution events arising out of covered operations or completed operations performed by or on behalf of the insured at project sites.
- Available on a claims-made or occurrence basis.

### Professional Liability –

- Covers professionals for liability arising out of acts, errors or omissions during the rendering of professional services by the insured.
- Coverage for strict liability imposed by law.

# Before the Environmental Protection Act



# Benefits of Environmental Insurance





The description of policy provisions provides a broad overview of coverages only. All coverages are subject to conditions, coverage limits, limits of liability, limitations and exclusions as contained in the policy.

See the policy itself for an exact description of the coverage provided.