

## Environmental Insurance

By: Michael Lang

The insurance industry is beginning to provide environmental insurance that offers financial protection against the risks associated with ongoing operations, site remediation, and property transfers. The major insurance companies in the environmental field include AIG, Zurich, ECS (Reliance), Kemper and United Capitol. Because each case may be unique, it is recommended to seek the assistance of experienced professionals.

In general, Environmental Insurance may cover one of the following three areas: 1) environmental risks associated with on-going operations; 2) environmental risks associated with site remediation; or 3) environmental risks associated with property transfers.

### 1) Environmental Risks Associated with On-going Operations

Insurance for basic business operations. Policy provides coverage for general risks of the business place (e.g., workman's compensation in the event of an on-the-job accident).

Insurance for catastrophic accidents. Insurance covers a firm in the event of a significant accident (e.g., fire, major spill).

Insurance for non-catastrophic environmental impairment. Policy covers property damage claims that result from environmental impairment at a covered location. This policy may be appropriate for helping businesses insure their property and thereby improve their access to capital. Environmental impairment insurance was very expensive in the past, but prices have come down significantly recently.

Hazardous releases from disposal sites used by the insured. Policy protects firms against litigation associated with contamination at disposal sites.

### 2) Environmental Risks Associated with Site Remediation

Errors and omissions policies for remediation contractors. Also known as professional liability policy or an "E&O", this policy is specifically directed at environmental consultants, engineers and laboratories. Policies cover a wide range of risks associated with mistakes made during remediation activities.

Stop loss policies for cleanup costs. Stop Loss Insurance protects an insured against a cleanup project that runs substantially over budget. These policies insure the purchaser against cost-overruns on the remediation of a site. By allowing prospective purchasers and lenders to bound the cost of remediation, these policies make contaminated properties much easier to transfer and to finance. These policies maybe referred to as Cleanup Cost Cap or Finite Risk policy.

### 3) Environmental Risks Associated with Property Transfers

Insurance for site transfer. Policy provides coverage for risks from contamination that is discovered subsequent to the transfer of the property. Such coverage commonly lasts for up to five years, although a few policies have been written for up to ten years.

Insurance to protect lenders from environmental risks. If a borrower defaults on a loan, the lender runs the risk of foreclosing on a property with undiscovered contamination. This policy protects the lender from a decrease in the value of property it has taken as collateral on a loan. The insurer is responsible for assessing a property (to be taken as collateral) for existing contamination and environmental risks. Lenders can make a claim on the policy if both of the following conditions apply: 1) the loan is in default (e.g., 90 days past due); and 2) undiscovered contamination is found on the site.

Property Transfer Insurance. This policy protects an insured against on-site cleanup costs of unknown, pre-existing or new conditions, and against third-party claims for off-site cleanup costs that result from on-site pollution. These policies may be referred to as a site-specific pollution liability policy, the “pollution legal liability policy” (“PLL”) or the “environmental impairment liability policy” (“EIL”).

Site-Specific Insurance. Policies designed specifically for the real estate transaction. These products can include a combination of the above policies and/or include a single insured party or insure all parties involved. These policies are becoming more popular because they can be part of the real estate transaction and limit the liability for all parties.