



*Buying, Selling, Redeveloping Commercial Real Estate –
How Environmental Insurance Can Help*



George Boire
Marsh Canada Limited

SMART Remediation
Ottawa, ON | February 6, 2020

SMART is
Powered by:



VERTEX
Environmental Inc.

www.vertexenvironmental.ca

Buying, Selling, Redeveloping Commercial Real Estate – How Environmental Insurance Can Help

SMART Remediation – Ottawa – Feb 6, 2020

0

Overview

- 1) What are the risks
- 2) What is Environmental Insurance
- 3) Environmental Insurance Claims
 - Types of claims
 - How Remediation Technology Can Help
- 4) Questions and Answers

1

Common Environmental Exposures and Losses

1st Party Cleanup

- Cost overruns for pre-existing conditions
- Discovery of unknown pre-existing conditions
- Re-opener of "closed" issues

Third Party

- Offsite cleanup
- Property Damage
 - Bodily Injury
 - Loss of value

Regulatory and Legal

- Natural Resource Damage
- Toxic Tort Claims
 - Legal Defense Costs *
- Off-site Disposal Legacy
- Fines and Penalties
- Governmental re-openers

Business Risks

- Business interruption
- Loss of Rents
- Increased development costs

MARSH

2

Triggering Events

- Transactional Acquisition or Sale (M&A) with legacy liabilities
- Simple Real Estate Purchase and Sale and Refinancing
- Leases...existing and exiting
- Bankruptcy Issues/Corporate Restructuring
- Plant Closings
- Redevelopment Projects
- Construction
- Third Party Contractor Operations
 - on site cause or exacerbate an environmental issue
 - result in a claim from adjacent properties or operations
- Transportation of chemicals and materials
- Evolving and New Legislation/Regulation (eg Excess Soil)

MARSH

3

Managing Environmental Risks

- “Prevent” - Develop Environmental Policies and Procedures – eg Environmental Management System
- “Avoid” - Perform Environmental Due Diligence
 - Eg Phase I and II ESAs
- “Transfer” Environmental Risk/Liabilities
 - Releases and Indemnities in Agreements
 - **Use Environmental Insurance**

Note: not generally for use in isolation or as a substitute for other risk management methods

MARSH

12 March 2020

4

4

Pollution Legal Liability

Overview

- Insures against risk of costs and liability associated with **Pollution Conditions**
- Know conditions typically excluded*
- Reduces financial uncertainty and impact from unforeseen events
- Common uses:
 - Real Estate Transactions incl. Financing
 - Brownfields Redevelopment
 - Portfolio management
 - M&A

Coverages

- **Clean-up Costs related to New Pollution Conditions**
- **Clean-up Costs related to unknown pre-existing conditions**
- Third party claims of Bodily Injury and/or Property damage
- Business Interruption costs
- Non Owned Disposal Sites liability
- Fines and Penalties (where allowable by law)
- Natural Resource Damages
- Transportation to/from Covered Locations
- Legal Defense of all of the above

MARSH

5

Trends in Environmental Insurance Claims

- Mostly first party discovery claims by Insured
- Redevelopment projects
 - Salt in soil/groundwater
 - Handling of contaminated and/or “impacted” excess soil/fill
- Indoor Air Quality (IAQ) for mould and vapour intrusion
- Emerging Contaminants (US experience):
 - PFAs (Per/Polyfluoroalkyl Substances)
 - 1,4 Dioxane
 - Pharmaceuticals/Personal Care Products
 - Coal Ash
- Regulators chasing any potentially responsible parties they can find
- Some third party claims – eg cleanup costs and/or diminution in value

MARSH

March 12, 2020

6

6

How Claims are made on Environmental Liability Insurance Policies

- Pollution Condition is a) discovered by Insured and/or b) is discovered by a neighbour(s) and/or a regulator and a claim is made against the Insured
- Claim details provided to Broker and Insurer
 - Emergency Response costs incurred – eg. in the event of a spill
 - Details (incl. costs) of any investigation/delineation of the impact related to a loss event
 - Remediation plan including a discussion of options, potential costs, and rationale for option chosen
 - Insurers typically want the opportunity to review and comment before agreeing to cover remediation/cleanup costs

Note: Pollution Legal Liability type policies are written on a “claims-made” basis meaning a claim must be made during the policy period or any extended reporting period

MARSH

March 12, 2020

7

7

Definition of Remediation Costs/Cleanup Costs

Example for Environmental Liability Insurance policy:

CLEANUP COSTS means the reasonable and necessary expenses incurred for the investigation, monitoring, testing, removal, disposal, neutralization, or treatment of a POLLUTION CONDITION to the extent required:

1. by any legislatively or administratively enacted law, rule, regulation or order applicable within the jurisdiction in which the COVERED LOCATION lies including any government action or demand pursuant thereto; or
2. to satisfy STANDARDS.

MARSH

March 12, 2020

8

8

Environmental Insurance Claims and Remediation Technology

- The insurance claim process involves a certain amount of “back and forth” between an Insured, and their advisors, and the Insurer and their advisors
- The site owner/Insured may have more than just regulatory considerations to deal with when it comes to deciding what remediation/cleanup approach to pursue (eg future tenants, lenders, development partners)
- Claims managers and adjustors at the Environmental Insurance companies have varying degrees of understanding and experience with remediation technologies
- Many look to outside consultants and contractors when it comes to the management and/or oversight of claims involving remediation

MARSH

March 12, 2020

9

9

Claims Example

- Petroleum Hydrocarbons found on/in groundwater at former retail fuel outlet on covered location
- Initial remedial efforts involved pump & treat. This was followed by groundwater “vaccuming” followed by in-site injections
- Risk Assessment was also performed to determine if Ok to leave remaining contamination in place
- Combination of air sparging and vapour extraction applied to further reduce contaminant levels
- Remedial efforts still underway after more than 10 years.....

MARSH

March 12, 2020

10

10

QUESTIONS AND ANSWERS

11



This document and any recommendations, analysis, or advice provided by Marsh (collectively, the "Marsh Analysis") are not intended to be taken as advice regarding any individual situation and should not be relied upon as such. This document contains proprietary, confidential information of Marsh and may not be shared with any third party, including other insurance producers, without Marsh's prior written consent. Any statements concerning actuarial, tax, accounting, or legal matters are based solely on our experience as insurance brokers and risk consultants and are not to be relied upon as actuarial, accounting, tax, or legal advice, for which you should consult your own professional advisors. Any modeling, analytics, or projections are subject to inherent uncertainty, and the Marsh Analysis could be materially affected if any underlying assumptions, conditions, information, or factors are inaccurate or incomplete or should change. The information contained herein is based on sources we believe reliable, but we make no representation or warranty as to its accuracy. Except as may be set forth in an agreement between you and Marsh, Marsh shall have no obligation to update the Marsh Analysis and shall have no liability to you or any other party with regard to the Marsh Analysis or to any services provided by a third party to you or Marsh. Marsh makes no representation or warranty concerning the application of policy wordings or the financial condition or solvency of insurers or reinsurers. Marsh makes no assurances regarding the availability, cost, or terms of insurance coverage.

Marsh is one of the Marsh & McLennan Companies, together with Guy Carpenter, Mercer, and Oliver Wyman.

Copyright 2018 Marsh LLC.
All rights reserved.