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Insurance for Redevelopers of Polluted Sites

It's extra protection against cost overruns and unexpected suits.

By RACHELLE GARBARINE

Last year the state enacted the Brownfields and Contaminated Site Remediation Act, providing developers reimbursement of up to 75 percent of the cost of the completed cleanup if, among other things, the redevelopment project would generate new tax revenue exceeding the cleanup cost.

The measure also provides purchasers protection from private lawsuits related to past contamination problems and carries an assurance that the state will not sue once the site is cleaned according to the state's now more flexible standards.

One answer to both of these problems, say brokers and developers, is the use of private environmental insurance. The developers of two projects, one in Linden, the other in Edison, have taken out environmental insurance policies as they prepare to transform contaminated sites into mixed-use centers.

"The insurance allows all parties to distill what is a large unknown to a fixed cost and eliminate the potential of a huge loss due to liability," said Richard S. Greenberg. He is the president of Environmental Waste Management Associates, an environmental cleanup firm in Parsippany, who is involved in the cleanups of the Linden and Edison sites.

Insurance covering unexpected costs is based on an initial estimate of what it will cost to remediate known contaminants on the site. Any costs incurred over that estimate, less a deductible of 10 to 20 percent, depending on the insurer, are covered by the policy, which runs for the length of the cleanup. The policy can be tailored to protect buyers and sellers as well as lenders and tenants.

The policy can also be extended, or a separate policy can be written, to cover third-party liability issues, including property damage and the discovery of unknown pollutants. This coverage usually runs from one to five years, but can be extended to up to 10 or 15 years and can be put in place before during or after the cleanup.

Most insurers will issue policies only after the state approves a cleanup plan. But some will do so even without state approval if the consultant who did the estimate has a proven track record and will do the cleanup in accordance with state standards.

While insurers began offering such policies three years ago, they only started to be actively used in the last 18 months. Among the reasons, analysts say, is the scarcity of developable land. The state's efforts to return contaminated sites to productive use has increased developers' interest in such sites.

Moreover, they say, technological advances in assessing the cost of cleanups have made insurance companies more willing to underwrite such policies. As more policies are written, increasing competition among insurers has resulted in lower prices.

Major insurers offering the coverage include American International Group, or AIG, of Manhattan, Kemper Environmental of Princeton, a division of the Kemper Insurance Companies, and the Reliance National Insurance Company of Exton, Pa.

Environmental insurance is not inexpensive. Premiums for policies covering cost overruns generally range from 4 to 10 percent of the estimated cost of the cleanup, said Robin G. Kelliher, a vice president at the Morris Plains office of Willis Corroon Corporation, an international insurance brokerage.

Among the factors influencing the premium amount are the amount of contamination and whether there is off-site migration of the contaminants through soil or groundwater. The

minimum premium is \$15,000, Ms. Kelliher said.

What buyers are paying for, said Joseph L. Boren, president of AIG Environmental, an affiliate of the giant insurer, is that the insurance "can help control the cleanup cost" and enable them to decide whether moving forward makes economic sense. Otherwise, he added, "if something is missed they could be left with tapoca."

No one sees insurance as a panacea and even supporters say policies must be carefully ready by buyers to make sure they are getting the coverage they need. Insurance also cannot be obtained for every deal, nor is it always necessary, Ms. Kelliher said, adding that for small cleanups of \$25,000 or less insurance doesn't make sense.

State environmental officials consider the use of insurance complementary to their efforts to facilitate the reuse of the 10,000 contaminated sites in the state, down from about 20,000 in 1985. Of the remaining sites, 1,130 are brownfields, which the state defines as tainted, underutilized industrial or commercial sites.

"All of a sudden there's a ton of insurance products to deal with cost overruns," said Richard J. Gimello, assistant commissioner at the Site Remediation Program, part of the state's Department of Environmental Protection. "For projects with \$1 million cleanups it sounds like a good idea because it gives developers a level of comfort that there is finality to their costs."

Such insurance played a role in the purchase earlier this month by Starwood Ceruzzi L.L.C. of 62 acres of the 188-acre city-owned Linden Airport along Route 1-9 in Linden. Part of the airport is used for small cargo and private planes.

Starwood Ceruzzi — a joint venture of Ceruzzi Holdings of Fairfield, Conn. And Starwood Opportunity Fund V, an affiliate of Starwood

Capital Group of Greenwich, Conn. – intends to turn the 62 acres into a 650,000-square foot mixed-use center, comprising a hotel, movie theater and retail shops. Financing for the \$60-million project, the latest in a three decade effort to redevelop the airport, is coming from banks and investors.

Starwood Ceruzzi had 60 days to decide to redevelop the site and take on the cleanup associated with it. Dr. Greenberg of Environmental Waste Management Associates estimated the cost of cleaning the contaminants on the site and in the groundwater, which included chlorinated solvents left behind from the airport operation, at \$1.2 million. To meet the partners' time frame the cleanup plan was designed without state approval, which saved time and will allow them to "hit the ground running," Dr. Greenberg said.

Louis Ceruzzi, president of Starwood Ceruzzi, added: "Whenever there is a significant cleanup we wring the risk out of it and protect our investors by buying insurance."

The partners paid a \$100,000 premium for an insurance policy from Reliance that covers \$1 million in unex-

pected costs. "The price of the policy was worthwhile when weighed against our ability to move ahead today with a \$60 million project," Mr. Ceruzzi said. And since Dr. Greenberg told the developers that the cleanup would meet state standards, he said, "we will be able to avail ourselves of the state's reimbursement program and its assurance not to sue, once the cleanup is complete.

The cleanup will be tied to the construction of the project, which is to start in 30 days. Completion is expected in 18 months, said Mr. Ceruzzi.

In Edison, Starwood Heller L.L.C. purchased environmental insurance to redevelop a 63-acre former Revlon complex, including the cosmetic giant's worldwide research and development center, near the intersection of Route 27 and Interstate 287.

Plans call for demolishing most of the vacant 750,000-square foot former manufacturing plant and replacing it with 390,000 square feet of new and renovated industrial space, as well as building 150,000 square feet of retail space on 18 undeveloped acres.

Starwood Heller – a joint venture between G. Heller Enterprises of Edgewater and the Starwood Capital Group – also agreed to lease back to Revlon the 100,000-square foot research component, as well as 75,000 square feet in an existing 250,000-square foot office building. That four-story building will be renovated.

But for the \$49 million purchase and redevelopment plan to proceed Revlon wanted to limit its exposure to cost overruns and legal liability involved in the \$1 million cleanup of the site, said Scott D. Heller, executive vice president at G. Heller Enterprises. So, he said, the partners agreed to pay a premium of \$100,000 to \$200,000 to buy an \$8 million insurance policy from AIG. The cleanup involves treating contaminants in the groundwater, including a variety of chemical solvents, Mr. Heller said.

"The insurance made cautious people more comfortable," Mr. Heller said, noting that without the policy Revlon would not have sold the property.