ARTICLES

Turning Brownfields Green, without Going in the Red

By Joe Quarantello, Risk Strategies Environmental Practice Leader

Jan 4, 2018

Before the post-World War II suburban exodus, cities were where people lived and worked. Today, an explosion of interest in urban centers is reversing the trend.

Downtown mill buildings from the 19th and early 20th centuries are being transformed into high-end apartments and condos. Old-line retail haunts are becoming trendy restaurants and office space. But as the best urban locations get snapped-up and redeveloped, other city sites – burdened by environmental concerns from their industrial past – are passed over.

Why have many investors and contractors tried and failed in redeveloping these riskier sites, while others have prevailed?

Some projects fail because there is no coordination between the development plan and the remediation plan. Consider a large project with three parking options – a traditional parking lot, slab-on-grade parking under the building or an underground parking garage. The underground option would significantly increase project costs if the soil being removed had to be treated as a hazardous material.

Project funding can also pose a significant challenge. Lenders have become more sensitive to site environmental issues. If the developer or investor goes into default, the lender does not want to foreclose on a polluted property for fear of assuming remediation responsibility through strict joint and several liability provisions. It's a key obstacle preventing brownfield developers from obtaining appropriate project funding.

These major hurdles prevent the development of sites lacking the right political or business interest support. High profile projects are generally assured of success because they can align political and business motivations. Case in point: The planned Wynn casino currently under construction in Everett, Mass. on an old Monsanto chemical manufacturing site.

But, how do you level the playing field for sites that fall outside that criterion?

For sites not blessed with a straightforward, easily managed environmental challenge or the favorable political backing to deal with a more complex hurdle, environmental insurance is emerging as one effective way of dealing with legacy risks associated with old industrial sites.

Environmental insurance comes in many forms, but provides reliable protection against environmental liabilities and puts “fences” around legacy and operational risks; addressing everything from remediation, bodily injury, and property damage, to legal defense, non-owed disposal sites and transportation.

In the early- to mid-1990s, a number of environmental insurance carriers offered coverages addressing the cost-overrun risk associated with remediation projects that exceeded the budgeted cost allocated to bring the site into regulatory compliance. By the early 2000s, however, most carriers eliminated these programs because of incomplete environmental data, lack of remedial action plan acceptance from regulators and, in some cases, flawed underwriting decisions leading to high loss ratios. This brought an end to the cost-cap insurance market and, along with it, many development projects.

Over the past few years, a handful of insurance carriers have re-entered the market offering cost overrun insurance. They came, however, understanding they must offer competitive products and pricing yet also protect themselves from making the mistakes of their predecessors. As a result, these carriers are offering protection against project budget overruns from newly discovered contaminants or unexpected, increased volumes of contaminated materials.

Another, innovative, approach to environmental liability and regulatory compliance is the use of environmental liability transfer companies. These specialized companies take on legal responsibility for a project’s environmental remediation. This type of transfer is accepted by regulators, and the transaction is backed by environmental insurance programs as an added layer of protection for both the developer and the liability transfer company.

The transfer of liability transforms the remediation problem from an open-ended, time-and-material project to a guaranteed, fixed-price job handled by a specialist with a clear, regulation-compliant, exit strategy; eliminating a key financial drag and possible negative effects for the developer.

Nicely aligned political and business interests are a significant advantage for any development. Project sites with environmental challenges are typically far from that perfect world, though understanding the landscape of remediation risk control options can help ensure the success of a project regardless of affiliated political motivations and business interests.

TAGS:
Environmental