



Financial Tools for Brownfields/Voluntary Cleanup Sites

The Missouri Department of Natural Resources' Brownfields/Voluntary Cleanup Program provides state oversight for the voluntary cleanup of hazardous substance releases by property owners and other parties. Sites are often enrolled into the program as part of a brownfield development, a real estate transaction, merger or acquisition.

The department has been monitoring the emergence of environmental insurance and other products and assessing the ability of these tools to attract sites into the program by serving as a mechanism to deal with post-remediation financial risk. The emergence of these tools is a response to the acceptance of risk-based remedies by the U.S. Environmental Protection Agency, or EPA, and most state authorities. Risk-based decision making sometimes concludes that part or all of the contamination at a site can be safely contained on-site by an engineered cap or other barrier, or be subject to a longer term remedy, such as monitored natural attenuation. These remedies require future management that carry some level of financial risk. Environmental insurance and related tools can transfer the risk posed by residual contamination to a financially secure entity, thus providing assurances for the parties to a transaction who need closure before remedies are complete.

Some of the financial tools now available are:

- Cost cap insurance.
- Pollution legal liability insurance.
- Insurance for institutional controls.
- Post-remediation care and private and non-profit institutional care funds.

Cost Cap Insurance

This product caps the remediation expense at a negotiated sum with an insurance layer over the negotiated cap. Cost cap insurance may be used to reduce uncertainty at the beginning of a project, thereby enticing a party to initiate a transaction and a remediation. Its success relies upon a thorough site investigation and the establishment of cleanup levels, which allow total cost to be predicted. Cost cap insurance can keep a project from faltering in the event of cost overruns or unforeseen conditions.

Pollution Legal Liability Insurance

Offered by several insurance companies, pollution legal liability insurance addresses the third party risk posed by contamination, both pre- and post-remediation, among other things. An example of this contingent risk includes possible claims by neighboring landowners and lessees. For example, a groundwater plume undergoing monitored natural attenuation may be predicted to degrade before reaching a neighboring property. Should those predictions fail and the neighbor's groundwater become contaminated, legal liability insurance would protect the property owner from third party damages.

Institutional Control Insurance

A recurring issue at brownfield sites is the responsibility of the participants in maintaining land use restrictions and performing long-term operation and maintenance that may be part of an approved remedial action. Unknown conditions or new and unanticipated regulatory requirements could require the reopening of the remedial action at some point in the future. Concern over these contingent risks and responsibilities could deter a party otherwise willing to proceed with a brownfield development. Products in this category cover a party's liability for unpredicted future costs.

Private and Non-Profit Funds for Institutional Control and Contingent Risk

Although the program cannot at this time sponsor or recommend any particular initiative, the program is monitoring efforts around the country to create trust funds where the risk and obligations for institutional controls for a long-term remedy can be transferred to a single solvent entity whose main purpose is stewardship of institutional controls at remediated sites.

Applying Insurance Tools At Missouri Sites

The program can be a resource for its participants in applying these tools to a specific site. These insurance tools do not replace any of the requirements of the program in approving sites for inclusion in the program, the investigation of sites, remedy selection, or remedial action. At the same time, the program's decision making does not address all the possible financial risks perceived by the marketplace, both pre- and post-remediation. The program welcomes the use of insurance tools that can work in concert with voluntary cleanup to promote more cleanup and reuse of contaminated sites in Missouri.

For more information

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