

Environmentally Challenged PROPERTIES

Taking an Acquisition and Redevelopment Approach

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In the song “My Hometown,” Bruce Springsteen sings poignantly of the deleterious impact on the residents of his town who were losing their industrial jobs when the town’s textile mill closed (“... foreman says these jobs are going boys and they ain’t coming back...”). What the song does not express, however, is perhaps even more pernicious — the old textile mill probably has had a host of environmental contamination issues causing it to remain empty, fenced in and nonfunctional. In turn, the local economy has likely deteriorated over the years together with the long defunct textile mill and surrounding property.

Indeed, the legacy of our country’s past industrial success — visually represented by the now moribund industrial property sites blighting the urban landscape — is a myriad of stark realities and problems associated with “Brownfield property.” Brownfield property refers to environmentally challenged properties found within some of the most industrialized port cities and urban communities throughout the United States. These properties are often left unutilized upon the cessation of its former industrial operations because of economic considerations associated with remediating and/or investing in such property. While it is obviously in society’s clear interest to see unused, contaminated industrial properties cleaned up and returned to positive use, that goal has been

severely hampered by economic forces fueled by market realities and perceptions. Environmental insurance programs continue to serve as the way out of this morass.

Prior to the implementation of various environmental insurance programs, corporate owners of Brownfield properties have actually been incentivized to act in opposition to societal goals. Owners have elected to fence in their properties rather than perform the requisite regulatory closure activities, which can be an expensive draw on resources. Fencing in contaminated properties has also allowed corporate owners to avoid the negative impact of quantifying potential exposures related to the properties in meeting financial reporting obligations.

Potential investors have likewise approached Brownfield properties with great reluctance. The perception in the investment community has been that the risks that inhere in environmentally challenged properties outweigh the potential rewards of investment. Without a reliable mechanism to minimize perceived risks and thereby assuage both current corporate ownership and potential investors, there would have been little incentive to effectuate positive and meaningful change leading to the remediation of and investment in Brownfield properties.

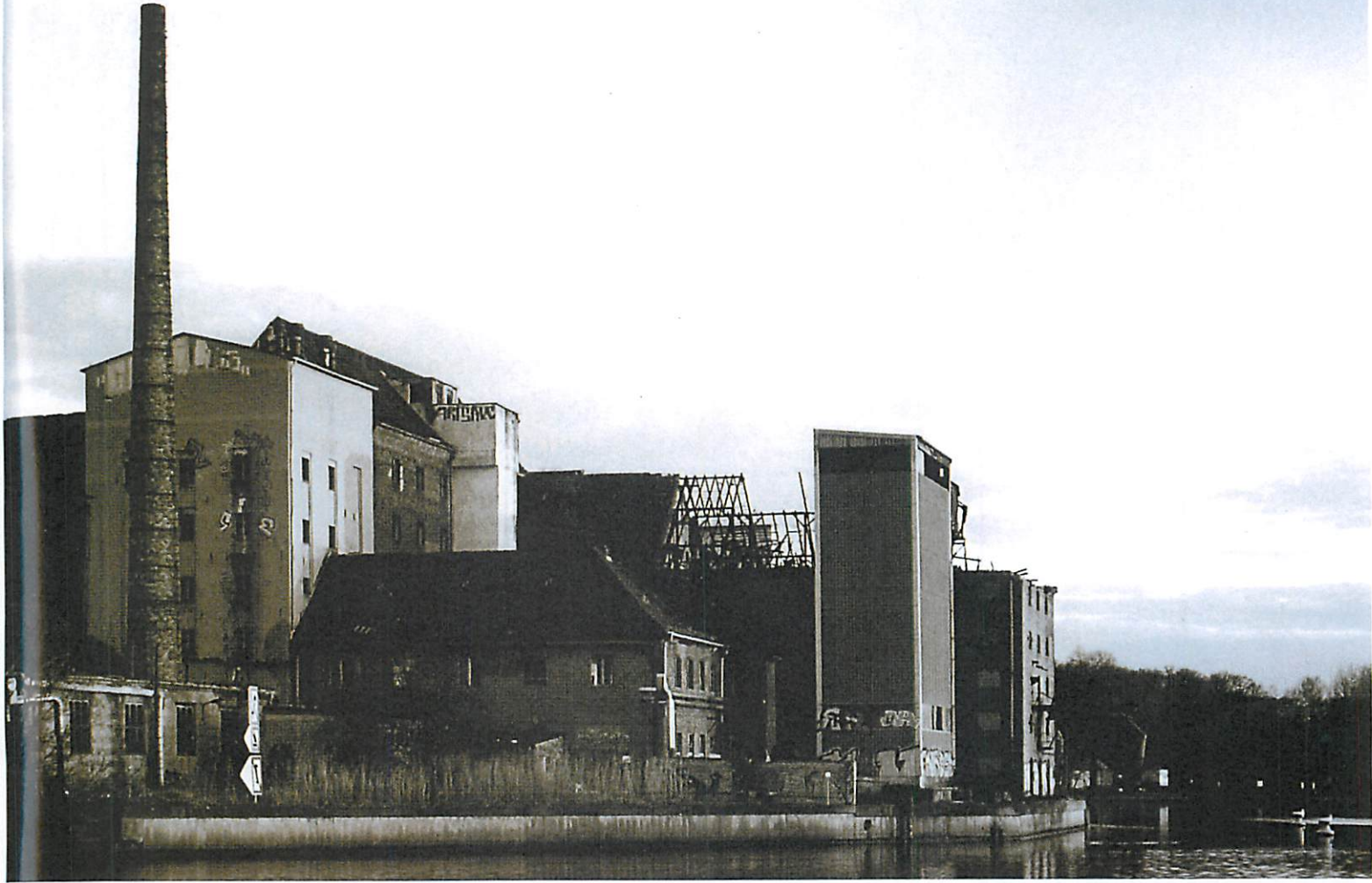
The unique indemnification strategies offered by various environmental insurance



programs have been serving precisely this function and acting as a catalyst to positive impacts on Brownfield properties. Indeed, the insurance marketplace offers strategies to transfer/limit the environmental exposures related to a project and unlock the way to redeveloping and revitalizing not only particular properties, but also local economies. The available insurance products include mechanisms to:

- ◆ Cap the cost of remediation work
- ◆ Insure the on-site activities of all contractors/subcontractors
- ◆ Insure the transportation of off-site waste and material
- ◆ Insure the disposal and/or destruction of the waste

The exact components of an environmental insurance program can vary greatly from site to site. The specifics of the environmental insurance program to be implemented can and should be precisely tailored to address those needs. Most programs blend a variety of environmental coverages.



These insurance programs are an essential part of the industry's trend and focus on "going green." While at the onset of this movement the majority of capital markets had been slow to recognize the investment potential of working on environmentally challenged projects, that pattern has been changing. As these initiatives continue to evolve, the number of parties participating in these transactions has increased and their interests have diversified. This growth trend has continued in conjunction with increasing market awareness of the availability of access to greater financial incentives and assurances, including more and better solutions to address common environmental contamination issues. Typically, the groups involved include local municipalities, remediation contractors, environmental insurance providers, redevelopers, public and private sector partnerships and joint ventures, as well as institutional investors.

The financial benefits and protections now available for companies associated with Brownfield projects take many forms. They include the division of clean-up costs and

liability among interested parties through executed consent agreements, environmental services cooperation agreements, environmental insurance, covenants not to sue, risk-based corrective action alternatives, and federal or state issued "comfort" or no further action letters for the site. Additionally, as a result of "smart growth" initiatives and other programs designed to minimize "Greenfield" development and promote land re-use, there are greater financial benefits associated with redevelopment of contaminated sites for community use, residential housing, commercial and industrial development, conservation purposes, and historical preservation.

Such redevelopment requires the cooperation of the remediation contractor selected to perform the clean-up activities at the site, along with the developer, institutional/business investor, local governments and regulatory authorities. This redevelopment is often the first step to re-infusing economic value in a community, and is an opportunity to create tax revenue and jobs.

In these ways, the implementation of

environmental insurance programs is enabling the various segments of society, from governmental agencies to the private marketplace, to effectuate remediation and investment in Brownfield property. In doing so, these programs have been instrumental in ameliorating the deleterious effects of a former industrial age while promoting a newly reinvigorated spirit of industry, capitalism, and civic/environmental responsibility.

While it may be true, as depicted in the Boss's song, that many industrial jobs never came back, thanks in part to environmental insurance programs, those sites can be cleaned up, developed and returned to productive functionality, which, in turn, advances important societal goals. As this continues to occur, urban areas all across the nation can be hopeful and proud once more of their hometowns. [LM](#)

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