

ADDRESSING THE RISK:

MAKING ENVIRONMENTAL INSURANCE
AVAILABLE FOR BROWNFIELD SITES IN NEW YORK CITY



NPCR
NEW PARTNERS FOR
COMMUNITY
REVITALIZATION, INC.

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Laura Truettner, NPCR's Deputy Director, Technical Services was the primary author of this report.

While this report was informed by NPCR's interviews of representatives from the insurance industry, the findings and recommendations contained herein are solely NPCR's.

**NOVEMBER 2009 UPDATE TO:
ADDRESSING THE RISK: MAKING ENVIRONMENTAL INSURANCE
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INTRODUCTION

New Partners for Community Revitalization, Inc. (NPCR) is a 501(c)(3) not-for-profit organization whose mission is to advance the renewal of New York's low- and moderate-income neighborhoods and communities of color through the redevelopment of brownfield sites. In collaboration with community, commercial, government and nonprofit partners, NPCR develops policies, programs and projects aimed at achieving the remediation and sustainable reuse of brownfield sites in New York. Our integrated approach has been refined through on-the-ground work with environmental justice organizations, community based groups, nonprofit and for profit developers, community lenders, and nationwide research on innovative brownfield programs. Building on its work in 2008, NPCR has continued to track opportunities for and obstacles to obtaining environmental insurance to control risks that arise on brownfields sites being redeveloped for community- supported, profit-capped end uses.

In November 2008, NPCR released: "*Addressing The Risk: Making Environmental Insurance Available For Brownfield Sites In NYC.*" Years of work in the brownfield arena as well as an understanding of the risks and uncertainties associated with redeveloping contaminated sites for community-supported end uses and the perceived potential value that environmental insurance could play to advance transactions motivated NPCR to undertake the original report. NPCR embarked on the effort with Howard Tollin, a well-regarded environmental insurance broker with the firm AON. NPCR focused particularly on cleanup cost cap (CCC) and pollution liability (PL) policies and between December 2007 and May 2008, interviewed a broad range of stakeholders, including environmental insurance carriers and brokers, lenders, developers and consultants and reviewed a number of reports about the environmental insurance industry. Information was collected on current practices and uses of insurance as well as ideas for how to most effectively use public subsidies to increase the availability of coverage for brownfield sites in New York City.

NPCR found that while CCC, which is coverage for remediation cost overruns and PL, which is coverage for unknown conditions and third party liability claims could be particularly valuable, their costs were often prohibitive, which created a gap in the insurance market for narrow-profit-margin projects. In the 2008 report, NPCR issued a series of recommendations aimed at increasing the availability, accessibility and usability of environmental insurance to advance brownfields redevelopment projects in NYC:

- Provide subsidies for CCC policies- specifically subsidies for: (i) a buffer above the Self-Insured Retention, (ii) the CCC policy premium, and (iii) for policy underwriting costs. NPCR also proposed that the buffer dollars be allowed to revolve which would maximize government funds. While the buffer set-aside dollars would need to be committed upfront to specific projects, they would not necessarily be spent. Once the policy period was over, the money would be available to advance other projects.

- Provide subsidies for PL policies- specifically subsidies for (i) PL policy premiums and (ii) deductibles on short-term PL policies;
- Evaluate subsidies for specialized insurance products designed for cleanups under \$3 MM;
- Provide funds for supplemental targeted site investigations;
- Develop an information dissemination and training program for stakeholders;
- Provide technical assistance to Community Development Corporations and Community Development Financial Institutions to address capacity issues;
- Provide third party environmental screening to facilitate the carrier's underwriting; and
- Explore the feasibility and value of developing specialized products for gas stations and dry cleaners in NYC.

NPCR's 2009 EFFORTS

In the context of implementing the recommendations made in the November 2008 report, NPCR worked on incorporating funds for insurance into the Proposed Clean Water, Clean Air and Green Jobs Bond Act of 2009 (the Bond Act). As a result of these efforts, the proposed Bond Act included \$100 million for a Smart Growth Brownfields Environmental Insurance Pool that would allow the private environmental insurance market to function in many low- and moderate-income communities. Funds in the pool would be set-aside on a site-specific basis to fund two types of subsidies: 1) for a buffer layer that would be accessed before the insurance policy (inducing carriers to make a policy available where there is currently little or no appetite to do so, which might also result in a reduction in the premium) and 2) for policy premiums. Unfortunately, while the Bond Act made it from the Assembly's Environmental Conservation Committee to Assembly Ways and Means, it made it no further in 2009.

Also in 2009, NPCR, in concert with Howard Tollin of AON set out to determine whether the market for environmental insurance had changed as a result of the housing market collapse and its impact on the insurance industry as well as the credit markets. NPCR was also interested in whether the conclusions reached in the 2008 report remained valid. In October 2009, a number of environmental insurance providers were interviewed about their policies and underwriting procedures, the state of the industry and the availability of coverage for redeveloping NYC brownfield sites with community-supported end uses. A brief summary of the current terms for CCC and PL policies is provided in Appendix A.

MAJOR FINDINGS FROM 2009 INTERVIEWS

1. The number of CCC policies that are bound (negotiated and executed by a carrier and a property owner/developer) continues to decline. One carrier has stopped providing traditional CCC insurance altogether and the two carriers that continue to provide CCC for cleanups under \$10 million have only written a few policies. A new entrant to the environmental insurance market has indicated that his company will not provide CCC.

2. The availability of specialized CCC policies for small, profit-capped projects has also declined. In 2008, NPCR reported that there were three such products and now there are only two.
3. CCC policy coverage and costs have not changed substantially in the last year. Underwriting of the policies continues to be stringent with carriers emphasizing that company policy requires they do their own internal underwriting in accordance with specific company guidelines.
4. New carriers have entered the PL market and there are more carriers now than in 2008 providing PL policies for owners/developers and contractors.
5. PL policies continue to require careful manuscripting to ensure that the developer/owner gets the most inclusive/protective policy possible.
6. PL policy coverage costs and terms have not changed significantly but there is a wider range in the premium costs because some carriers have not changed their rates while others have reduced them somewhat in response to increased competition.
7. The importance of adequate site characterization continues to be a recurring theme among the carriers and several noted that the better the site characterization, the better the policy and the lower the cost.

REVIEW OF NPCR'S 2008 RECOMMENDATIONS

In light of the information collected during the October 2009 interviews, NPCR reviewed the conclusions in the 2008 Report and concluded the following:

1. Providing subsidies to offset the costs of policy premiums for either CCC or PL remains a viable tool for increasing the availability of insurance policies for profit-capped projects.
2. Because of the change in the market, CCC providers seem less willing than one year ago to explore programmatic approaches to increasing the availability of CCC. Part of the reluctance is what carriers view as the highly site specific nature of risk.
3. Carriers remain interested in discussing and writing policies for specific sites. So, while carriers may not be enthusiastic about programmatic approaches to providing insurance, there remains an opportunity to cooperatively evaluate the value of subsidies on specific sites.
4. Adequate site investigation remains a critical part of securing protective CCC and PL policies.
5. Obtaining policies still requires a significant level of effort for which profit-capped developers may need additional technical assistance.

WHERE DO WE GO FROM HERE?

NPCR is continuing to pursue legislative and site-specific approaches to increasing the availability of insurance for profit-capped projects.

As noted above, the bill to put a proposed Clean Water, Clean Air and Green Jobs Bond Act of 2009 on the November ballot passed the Assembly Environmental Conservation Committee, and was referred to Assembly Ways and Means but did not advance beyond that. It is difficult to anticipate how the Bond Act discussion will unfold in 2010. It is an election year, and some elected officials oppose initiatives that increase state debt, others see bond act type investments as a way to stimulate the state's economy and provide a source of funds for important revitalization and public health investments in a time of limited resources. NPCR will continue to track efforts to develop a new Bond Act and to ensure that it includes funds for an environmental insurance buffer and premium subsidies.

NPCR's follow-up interviews with carriers revealed that the insurance market has changed in response to the economy: fewer carriers are providing CCC policies while more are providing PL policies. Nevertheless, the recommendations from NPCR's 2008 report remain relevant: both subsidies for a buffer layer above the self-insured retention for a clean-up cost cap policy as well as subsidies for environmental insurance policy premiums will increase the availability of insurance. That being said, carriers are much more interested in testing these subsidies on a site-by-site basis rather than programmatically because of the site-specific nature of risk. Carriers also continue to emphasize the importance of adequate site investigation in obtaining cost effective and comprehensive policies. In 2010, NPCR will continue to track environmental insurance and identify ways to increase its availability because as the economy recovers, there will be more opportunities to obtain and use such policies.

APPENDIX A
SUMMARY OF CHARACTERISTICS OF CCC AND PL POLICIES

	CLEANUP COST CAP	POLLUTION LIABILITY
Required site information (Database search, Phase I, Phase II, RAWP, regulatory sign-off)	Carriers want as much information as possible about historical operations and environmental conditions; they need a Phase I and Phase II, a Remedial Plan, costs and schedule and preferably a regulatory sign-off on the remedy.	Carriers want as much information as possible about historical operations, environmental conditions and past claims. They typically request a Phase I and a Phase II and the better the information, the better and more cost-effective the insurance policy. However, depending on site conditions, some policies may be issued without a Phase I or II report.
Minimum policy limits	Policy limits ranged from \$1 MM to \$3MM	\$10 MM to \$15 MM for a "typical" NYC brownfield site.
Policy Term	2 to 3 years	5 to 10 years
Average premium for minimum policy	13 to 21% rate on line with minimum premiums ranging from \$200K to \$350K depending on policy.	A \$10 to 15MM policy for 5 to 10 years ranges from \$50K to 200K depending on the carrier.
Co-payment provision	Co-payment required by all carriers; percentage can vary from 10 to 30%. Higher co-payments can be used to reduce the premium.	Not applicable
Underwriting Process	Carrier's internal team of engineers will perform a detailed evaluation of the remedy and the remedial cost estimate; evaluation often leads to increasing the original cost estimate by 10 to 30%.	Each carrier conducts it's own internal underwriting and starts with a standard form that is then carefully modified to reflect site-specific conditions. Since policies cover unknowns, carriers carefully list some or all known conditions as exclusions based on the results of their underwriting.
Use of pre-approved consulting firms	No pre-approved firms but carriers will look at consulting firm's track records on other clean-ups.	Not applicable
Interest in policies for Guaranteed Fixed Price Remediation (GFPR) contracts	Some preference for writing GFPR policies (which are essentially CCC policies for a consultant) but will write CCC policies for both consultants and owners/developers.	Not applicable
Preference for particular remedies (excavation versus in-situ technologies)	No preference for particular remedies- key is that site data (e.g., types of contaminants) and end use are consistent with selected remedy.	Not applicable
Number of policies provided/declined on annual basis	50 to 90% declination rate related to a number of factors such as long lead-time on projects, mid-deal collapses, and insufficient site data.	This was a more difficult question for the PL carriers to answer, some said some kind of policy could almost always be developed, several said they were writing fewer policies than last year and one carrier said they were writing more policies than last year.
Interest in relying on third party underwriting	Carriers had very little interest in third party underwriting although they thought that a third party could provide some assistance by packaging applications, which could increase the efficiency of their underwriting process.	Carriers had very little interest- company guidelines require internal evaluations.
Interest in use of public subsidies	Some interest in use of subsidies, but carriers unwilling to accept less than \$200K in premiums, which could limit the effectiveness of the subsidy.	Some interest- but subsidizing PL policy premiums or deductibles does not affect carriers.