

ENVIRONMENTAL INSURANCE AND BRAC EXPOSURES

Military base closures and realignments present a unique range of redevelopment opportunities for Local Reuse Authorities (LRAs), communities, military installations and developers. Stakeholders must navigate a series of financial challenges and potential liabilities during the transfer and management of the property to ensure a successful project, and some of the more complex issues involve environmental risks, including:

- Unknown contamination found during redevelopment of a “clean” parcel
- Exposure from munitions and unexploded ordnance
- Remediation delays and unexpected costs
- Stakeholder protection from third-party toxic tort lawsuits
- Payment of legal fees associated with defense against toxic tort suits, etc.
- Payment of cost overruns for assumed known cleanup responsibilities

The allocation of environmental liabilities and management of their associated uncertainties can be addressed with contractual indemnifications that may be augmented by customized environmental insurance. Such programs are specifically designed to address these exposures, to wrap around or replace government

indemnifications, and thereby facilitate BRAC (Base Realignment and Closure) projects.

THE WILLIS ADVANTAGE

Willis Environmental recognizes that each BRAC project is unique. Our first step is to clearly understand the transfer timeline, the perspective of each stakeholder and the liabilities they are asked to assume. We also consider the economic and political forces that shape the project requirements, the type of transfer (FOST, FOSET, FOSE, LIFOC, etc.) and conveyance mechanism (auction, EDC, PBC, etc.) that will be employed.

Our BRAC specialists identify the environmental liabilities, develop risk management options to address them and then implement a tailored insurance solution that allows the stakeholders to achieve their goals.

KEY BRAC EXPOSURES

Military facilities can present unique problems for potential insurers. Challenges can include the unavailability of detailed site characterization data, the presence of unusual contaminants (e.g., radioisotopes, perchlorate) or munitions and ordnance (MEC/UXO).

HTRW

Hazardous, toxic, radiologic and other waste materials may be encountered in any property transaction. However, in a BRAC transfer scenario, liability for these materials nearly always transfers to the LRA or developer of the facility, and the discovery of unknown materials of this kind usually creates the need for an unplanned remediation project.

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MEC/UXO/CWA

Munitions, unexploded ordnance and chemical weapons are exposures more unique to a BRAC transfer. Discovery of these materials in areas that are transferred as “clean” property under a FOST, as well as cost overruns beyond the negotiated amounts for FOSET properties could be outside a government indemnification.

FUNDING AND TIMING

In the current economic environment, the ability of an LRA to procure additional funds to address cost overruns associated with a planned remediation project may be difficult to predict. Similarly, the discovery of new contaminants requiring remediation may create a need for additional funding not originally anticipated – giving rise to a timing issue that could force the LRA to fund the cleanup and seek reimbursement from the government on its own.

INSURANCE SOLUTIONS

When designing a BRAC insurance program, we match the insurance coverage to the unique risk factors and the flow of environmental liability. The following insurance products are among those likely to come under consideration:

POLLUTION LEGAL LIABILITY (PLL)

PLL coverage is normally associated with a FOST property and provides protection against the cost and timing risk of remediating unknown contamination (HTRW and MEC) and third-party tort claims, but it can also be designed for a FOSET property to address third-party tort claims and regulatory “re-openers” for successfully remediated contaminants.

REMEDATION COST OVERRUN INSURANCE

This type of coverage provides funds to address unanticipated cost overruns associated with the planned cleanup of HTRW or MEC. In some instances, cost overrun coverage may also be designed as a “blended” insurance program, which includes a pre-funding element for planned cleanup expenses as an alternative to a self-insured retention, although the market for this product is limited and dynamic.

LIABILITY TRANSFER

To encourage beneficial reuse of closing military facilities, Willis has pioneered the development of innovative liability transfer solutions to expedite and better integrate the cleanup and redevelopment process. The most significant of these is the use of early transfer authority to privatize the cleanup process, using performance-based contracting approaches, such as guaranteed fixed-price remediation contracts. This allows LRAs and developers to secure BRAC properties before cleanup has been completed while avoiding any open-ended environmental risks.

CONTACTS

Willis Environmental Practice members have broad experience in the design and placement of cutting-edge insurance programs for BRAC transfers and other military base cleanup projects. For additional information, contact your local Willis Environmental Practice professional, visit our **website** or contact:

Rich Sheldon

Willis Environmental Practice Leader
610 254 5625
richard.sheldon@willis.com