



ENVIRONMENTAL STRATEGIES

# Environmental Insurance Forum

A Case Study:

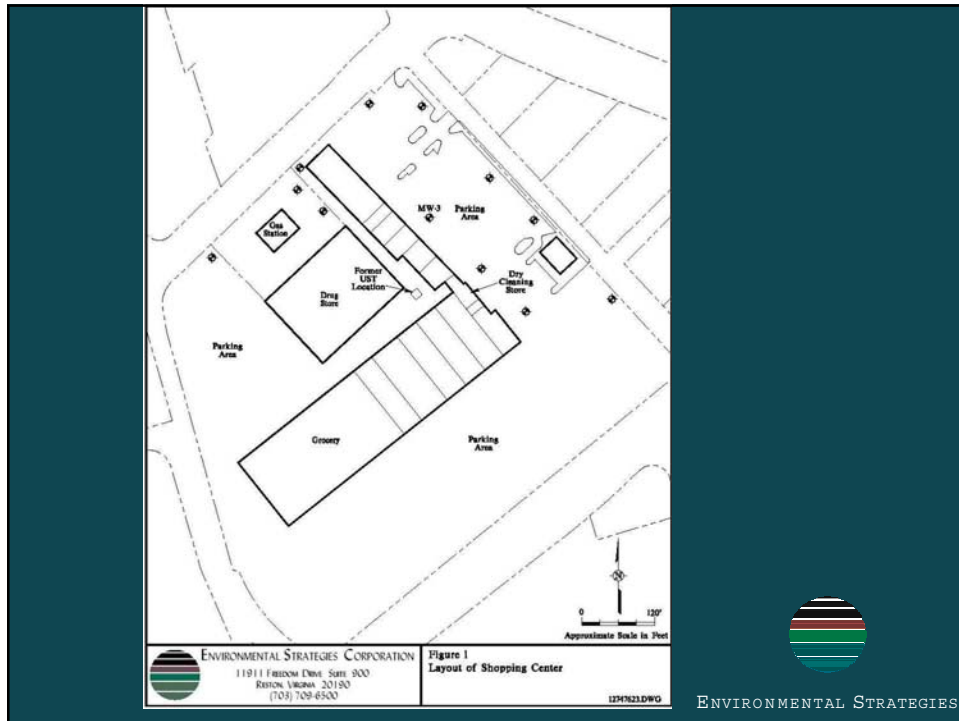
Applying Environmental Risk Management Program  
for Georgia Real Estate Company

## Shopping Center Property

- Property is 15.4 acres
- Shopping Center and improvements constructed in 1958
- L-shaped building, 90,000 square feet
- Two separate buildings; 40,000 square feet and 3,000 square feet
- Nineteen tenants - fully leased
- Tenant space on NE portion site renovated in 1999



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## Shopping Center Property

- Seller:
  - Regional Grocery Chain
  - Raise cash for debt reduction
  - Remodel store
- Buyer:
  - Real estate investment company
  - Strong long-term investment opportunity
  - Future redevelopment opportunity for mixed residential (condo) & commercial



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## Shopping Center Property Environmental Issues

- Phase I Environmental Assessment conducted by Seller identified former dry cleaner, gas station, and former UST as recognized environmental condition.
- Phase II Environmental Investigation conducted by Seller revealed gasoline impacts in groundwater downgradient of gas station and perchloroethylene (PCE) in soil below the dry cleaner and in groundwater. No impacts found at former UST location.



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## Shopping Center Property Environmental Issues

- Expanded Phase II performed by Buyer showed gasoline and PCE impacts extended beyond downgradient property line. Groundwater occurred at 15 feet below ground surface and extended to 65 feet below ground surface at property line.
- Cleanup will involve two state regulatory programs (underground storage tank program and hazardous site remediation group.)



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## Shopping Center Property Environmental Issues

- Buyer's consultant estimated the onsite environmental liability to be \$1,600,000.
- Seller's estimate of total environmental liability \$1,000,000; acknowledge need for offsite wells with limited sampling.



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## Shopping Center Property

### Objectives of Seller

- Limit impact on price and key terms of transaction related to environmental issues
- Limit indemnity that needs to be offered
- Eliminate any potential for future liabilities
- No escrow, corporate guarantee, or letter of credit.
- Have Buyer assume full responsibility for cleanup and fix cost of cleanup.



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## Shopping Center Property

### Objectives of Buyer

- Obtain broad indemnity covering known and unknown environmental liabilities arising prior to closing (10 years) to onsite and offsite conditions.
- Set up funding mechanism in amount of \$1,900,000 to pay for site cleanup.
- Eliminate CERCLA liability for environmental conditions as owners of property.
- Control the cleanup so as to minimize impacts to tenants and visitors and to ensure the cleanup achieves state standards.



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## Shopping Center Property

### Other Issues of Seller

- How to ensure Buyer performs cost-effective cleanup (risk-based) and pursues cleanup sufficient to meet commercial standards and not residential standards.
- How to limit risk of offsite third-party claims.
- Drafting of indemnity.



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# Shopping Center Property

## Other Issues of Buyer

- Ability of Seller to back indemnity.
- Financial health of Seller (B+ bond rating)
- Shareholder perception of owning contaminated property.
- Distraction to business of owning contaminated property.
- Lender's willingness to provide loan on contaminated property.
- Drafting of indemnity.



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# Shopping Center Property

## Buyer's/Lender's Concern

- Limitation of any indemnity
  - Financial health of Seller
  - Legal questions regarding clarity and choice of law
  - Enforcement



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## Shopping Center Property

### Risk Issues In Transaction

- Cleanup costs for known and unknown
- Third-party bodily injury and property damage (diminution in property value)
- Legal defense
- Business interruption
- First party diminution of property value for owners (collateral value for lenders)



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## Shopping Center Property Structuring the Transaction

### Traditional approach using indemnification

- Allocates environmental liabilities between Seller & Buyer (Perspective)

### Alternative approach using risk management methods

- Environmental insurance to support indemnity Seller & Buyer (Perspective)



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# Shopping Center Property

## Insurance Risk Management Options & Process

- Cost Cap
- Pollution Legal Liability (PLL)
- Finite Risk Policy



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# Shopping Center Property

## Risk Management Process

- Buyer (Risk Transfer)
- Seller (Risk Transfer)
- Broker (Placement)
- Insurer (Underwriting)
- Lender (Environmental Concerns)



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