Liability Concerns are Being Addressed

There are a number of criticisms being voiced stating that the U.S. legal system has failed to deliver economic solutions to the equitable resolution of environmental disputes. In response, a number of shifts are occurring that are of relevance to this study.

- First, the federal government has begun to introduce liability limitations into new legislation.
- Second, disputing parties are increasingly turning to the more timely and economical option of mediation as a method of resolving disputes.
- Third, pressure is increasingly being applied to rectify situations such as the Superfund where excessively high legal costs and paper shuffling has greatly reduced its effectiveness and timeliness. For example, insurance firms are suggesting that Superfund be supported through a surtax on commercial and industrial insurance premiums and that liability be repealed for "old" sites.
- Fourth, an emphasis upon negotiation, mediation, and pre-court settlements means that less than 10 percent of liability disputes are settled by court award (according to the American Consulting Engineers Council's annual liability survey).

One Canadian firm described the liability question as "maybe not as risky as we perceive", stating that new insurance programs have been introduced during the past 1-2 years offering environmental insurance for professionals at reasonable prices. A state government official also suggested that "she knows the liability issue scares many companies but personally, she has not seen a reduction in bidders due to this uncertainty". Another official in the hazardous waste department of a municipality expressed the view that "the courts have shown that environmental consultants are pretty well protected so long as there is no negligence".

As well, the number of insurance claims has decreased dramatically in the past year because of the reasons stated above.

A specific example of this was discussed in the July 23rd, 1992 issue of *Environmental Week.* The Empire Fire and Marine Insurance Company has recently unveiled a comprehensive, cost-effective environmental lender liability insurance policy for small banks. The policy is aimed at a banking industry that had been becoming increasingly concerned with potential liabilities for cleaning up hazardous waste at Superfund or other polluted sites acquired through loan defaults. One motivation for the new policy is the fact that new American Society for Testing and Materials screening analysis requirements will be much cheaper, will not require an engineer on site, and will substantially reduce the lender assessment and application fees.