

ENVIRONMENTAL INSURANCE

IMAGE: © Kirsty Pargeter

Environmental Insurance for 2007 – Predictions for the future

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In a recent meeting with a significant property funder – attended by their legal and technical advisors – I witnessed the client pale significantly and nearly fall into a coma within ten minutes. *And that was before I had spoken!*

There really should be a Government quango that monitors and controls the number of acronyms used in any industry. The brownfield industry is full of acronyms that, in our defense, is a reflection of the complex technical and legal issues involved. Environmental insurance brings a whole new raft of acronyms and definitions to the growing list.

So it was no surprise that, after ten minutes, the client began to look uncertain as the risks were described to him. The first point discussed at the meeting was the consultant's report and risk-assessment findings. A lengthy description on Soil Guideline Values (SGVs) and their meanings followed. The ultimate conclusion for the SGVs was that their meaning was very limited and their scientific reliability questionable. The attention moved on to the number and location of exploratory boreholes and the accuracy of 'a few two-inch holes' in the ground proving a robust characterisation of the site. This was mulled over. To be fair to the consultant, the scope and budget on the original investigation was tight.

Next, the client moved to the lawyer. The lawyer reported that UK caselaw was limited and that future EU Directives were multiple, vague in implementation, contracts complex and that current UK law was completely 'un-joined-up thinking' in terms of legislation, thereby adding to the quagmire. The idea that the enforcement of legislation such as Part IIA in the UK was relatively lacklustre seemed to offer little comfort to the funder.

When the conversation moved to the removal of the contamination, definition of waste and need or otherwise for any remediation licenses

you could see progress slowing to the pace of a snail wading through treacle. It is at this point that I would like to say environmental insurance came to the rescue. However, that is not quite the case. Environmental insurance does have limitations and cannot fully remove the client's risk. However, after gaining a second wind, the lawyer, consultant and insurance broker working in tandem managed to put a case together that was significantly clear to persuade the investor to put substantial backing into a project, which perhaps otherwise may not have proceeded. The funder felt that sufficient due diligence had been completed and that his risks were suitably covered.

As sites become more complex in both technical and legal aspects, the need for expert specialist advisors with real practical experience with development of challenging sites will come to the fore. Increasingly, we are finding that large-scale regeneration redevelopment projects have environmental insurance as part of the process. A few years ago this was not the case. Environmental insurance was mostly bought when all else had failed.

The drivers for the increase in the environmental insurance market are the usual factors. Increase in legislation, public awareness, corporate policy, professional understanding of its availability amongst lawyers and consultants, continuing uncertainty on scientific and legal liability and perhaps, claims? Yes, claims!

The industry is now starting to see environmental claims both for insured and non-insured sites. Whether it is on the consultant's professional indemnity (PI) insurance, remediation contractors, indemnities in sale and purchase contracts, right across to the general public taking action – claims are occurring. It remains to be seen how directives, such as the Environmental Liability Directives will further enhance the activities of the public and NGOs. Never before

in the UK has the word environment been so much at the forefront of the media.

My predictions for 2007 and beyond for environmental insurance in the UK and Europe is for an increasing growth in the market. Apart from the drivers mentioned above I believe clients, especially funders, are saying that further security is required. The old methods of chasing the consultants and contractors PI and warranties are primarily based on fault and negligence. These are difficult at times and costly to prove. Insurance policies are based on financial loss occurring and streamline the process should a claim occur instead of chasing multiple parties, there is only one party involved. Importantly, insurance companies are designed to take risks, monitored for credit rating and are regulated by the government in terms of solvency.

Tysers is the leading independent UK broker advising on environmental risk and, as a testament to this expertise, we have been involved in many recent activities and initiatives in the environmental sector.

Tysers is an active member of the Environmental Industries Commission with representation on the Contaminated Land and Integrated Waste Management working groups.

As a testament to this expertise, Tysers was the sole representative of the insurance industry on the land condition working group set up to deliver the recommendations of the Urban Task Force chaired by Lord Richard Rogers. For close to a decade, Tysers has worked on numerous large-scale regeneration projects across the UK. Working with multidisciplinary teams, Tysers has placed environmental insurance on some of England's and Scotland's largest regeneration sites, with a range of clients from National Housebuilders, Commercial developers and funding institutions. The sites have been developed for industrial, commercial and mixed residential use.