

THE SOIL AND GROUNDWATER TECHNOLOGY ASSOCIATION

SAGTA REPORT 25 – MANAGING FINANCIAL RISKS

Introduction

SAGTA's Workshop in September 2004, held at AWE, Aldermaston, addressed the topic of applying management of financial risks to landholdings that are contaminated. Significant studies in recent years have sought to unlock the issues and the mechanisms that are available to the landholder and the development community to manage the risks (technical, legal and financial). The workshop aimed to offer a forum for exchanging perspectives on land management strategies to manage such risks, and sought to identify the key drivers from the perspectives of the vendor, the purchaser, and the landholder.

Review and gap analysis

The perspectives of workshop attendees on uncertainties surrounding the management of financial risk are summarised below:

- Selling with knowledge
 - is it a benefit, or does one become liable?
 - preparation of environmental reports - internal resource or commission external consultants?
 - choose consultants carefully
 - what is considered "enough" information?
 - age / relevance of information to current transaction
- Who gets value from the purchase information?
- Can risk be transferred effectively?
 - clean break – transfer liability for clean up
 - are limitations of transfer mechanisms understood?
 - what constitutes an appropriate discount?
 - liability for future remediation in context of level of discounted price
- Insurance
 - what is enough information for insurers?
 - correlation between quality of site investigation and premiums offered

SAGTA Members' perspectives

- Uncertainty remains on transfer of liabilities
 - role and relative effectiveness of collateral warranties and insurance
 - is there a case for joint review?
- Potential future policy and legislative impacts
- Industry should take responsibility for clean up – not transfer.

Topics of Workshop Presentations

Why is financial risk management important?

Financial provisions. Whilst the actual cost to business is not clear, sizeable provisions have been disclosed in the statements of several publicly quoted corporations recognising contamination as a major issue. For example:

British Gas	£342m	Projected costs of statutory decontamination
Royal Dutch Shell	£412m	Environmental clean up liabilities

Business risk. Increasing focus on contamination has come about as a result of:

- Financial Reporting Standard 12 (FRS12) requires companies to recognise certain liabilities for remediating contaminated land in their financial statements;
- Restrictions of pollution cover on virtually all public liability and some other insurance policies written after 1990 in UK;
- Introduction of strict and retroactive liability for remediating contaminated land – Part IIA of EPA 1990.

What are sources of financial risk?

- Inability or perceived inability to forecast the impact of contamination
- Namely the harm contamination causes or is perceived to cause on business costs, income flow and asset value
- Combination of technical, scientific, financial and regulatory uncertainties
- Likelihood that contamination will result in financial impact depends upon:
 - nature and extent of harm;
 - stakeholders perceptions of risk.

Members Experiences

Members' experiences covered mechanisms for managing and transferring liability and utilised case studies. Many sources of liability exist in transactions including emissions, waste management, occupational health fire protection, product stewardship, transport facilities e.g. pipelines.

Due diligence should be considered a process rather than a single event and the key is to commence the process early. Key components are setting objectives and strategies collating data and asking key questions to elicit answers, contractual issues management and post-closing management. Structuring the deal will cover a balance between liability retention and transfer.

Management of blight was considered with experiences in dealing with the implications. A key component was the engagement with stakeholders as an early stage with effective communication. Key Issues

Legal issues

Legal perspectives covered recent UK and European regulatory activity and case law together with the impacts of the European Liability Directive.

Insurance

Insurance as a potential solution in a changing business environment covered the drivers which may identify insurance as assistance to making deals happen. The need to understand the role of PI and the need to take into account new perspectives outside traditional construction approaches were also debated.

Examples of the range of products and players in the market were highlighted as were perspectives on new developments that may in turn create new products in the insurance sector.