

THE SOIL AND GROUNDWATER TECHNOLOGY ASSOCIATION

SAGTA REPORT 9 - MANAGEMENT OF LIABILITIES

Introduction

The aims of SAGTA's workshop on Management of Liabilities held on 24 June 1999 were:

- to share and discuss experiences in the management of land which through its past or current use carries a real or potential environmental liability;
- to learn about current and new initiatives to regenerate brownfield sites and manage derelict land;
- to discuss legal aspects of environmental liability and its effect on the sale and transfer of land;
- to learn of new initiatives in environmental insurance;
- to assess opportunities for SAGTA to work with other interested organisations.

Summary of the Workshop

Presentations were made on:

- the management of land portfolios by English Partnerships;
- a UK Trust for the management derelict land problems;
- environmental due diligence matters in the sale and purchase of sites;
- legal viewpoints on environmental liability;
- Joint Pollution Working Group guidelines on the underwriting of pollution risks.

The Challenge

The need to manage environmental liabilities can be divided into a number of categories:

1. Ongoing industrial operations – There are requirements to ensure that impact from ongoing operations are minimised and that any historical contamination problems are understood and safely managed. Planned legislation such as IPPC and Statutory Guidance on Contaminated Land is intended to clarify the legislative framework, however employment of EMS including ISO 14001 can have a useful proactive effect.
2. Properties for sale retaining their existing use – The sale and purchase of ongoing industrial operations presents various problems, such as how much environmental information should be provided by the seller, and what indemnities and warranties should be agreed in the sale. Sellers should be aware of any major liability issues prior to the sale process and manage these through negotiation. The transfer of environmental liabilities can be reflected in the sale price if sold with full disclosure. This may not fully protect the seller from any liability in the future, since it is dependent upon the purchaser's continued solvency. Here there may be a role for insurance
3. Redevelopment of sites – This is a major opportunity to minimise or remove environmental liabilities in addition to revitalising a local economy. The planning process is used to manage environmental issues. The efficiency of this process and its ability to embrace best environmental practice, encourage innovation whilst providing confidence to the property marketplace are critical success factors. Additionally the role of environmental insurance and the tax and planning policy (e.g. landfill tax exemption and encouragement of brownfield development) can be facilitators.

Key Issues

Key issue and initiatives highlighted in the workshop were:

1. English Partnerships has provided a major vehicle to facilitate the regeneration of sites with environmental legacies. The formation of the RDAs will provide an increased regional focus for site regeneration. However the problem of 'orphan' sites where the burden of environmental damage is so great as to limit its beneficial future use remains. The case for a new UK trust for derelict land has been advanced by research conducted by Groundwork, ABROS, Golder Associates and the Dept. of Planning & Landscape at the University of Manchester. Although such a trust could selectively replace local authority responsibilities for such sites, further research is being conducted to provide ways by which a trust's long term environmental liabilities could be managed.

Areas of SAGTA Contribution

- **SAGTA members were interested in this new initiative, and consideration is being given to SAGTA providing advisory assistance to the project.**
2. The due diligence process is key to managing environmental liabilities during sale and purchase of sites. Lessons learned include:
 - start the due diligence work at conception of the sale or purchase (treat it as a process not an event);
 - environmental due diligence is an integral part of the sale or purchase. It needs a broad team approach;
 - align health, safety and environmental objectives with the business objectives-have a strategy for dealing with uncertainty.
 3. Choice of appropriate legal options in managing environmental liabilities during transfer of ownership should be based on the outcome from a risk management assessment on the site in question. Options include:
 - a buyer's indemnity where it is the intention to transfer liability for existing contamination;
 - environmental insurance, bond or bank guarantee or property charge can be used to provide sufficient security behind an indemnity;
 - agreed remedial works to be paid for or managed by the seller – these works may be part of a redevelopment planning consent.
 4. Joint Pollution Working Group (JPWG) – This new initiative from the insurance industry for provision of a sudden and accidental pollution insurance is based on assessment of site risk.

Area of SAGTA Contribution

- SAGTA wishes to keep in contact with the JPWG via ABI and the Risk Prevention Council on this initiative and is considering supporting a training workshop to be held in October 1999.

For further information on SAGTA please contact the Secretary of the Association Doug Laidler at douglas.laidler@atkinglobal.com or Tel +44 01372 726140

