

Factors influencing the environmental insurance market place

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Facts and figures

- Environmental Insurance Premium Income in the U.K. (2004) - £60 million
- Environmental Insurance Premium Income in the U.S. (2004) - £1 billion
- General Liability Insurance Premium Income in the U.K. (2004) - £5.7 billion

Facts and figures (cont.d)

- Small but well established market
 - Principal players AIG, XL, Chubb, Ace
 - Around 10 dedicated underwriters
 - Long established and substantial US market
 - Inadequacy of existing insurances:
 - Historic contamination exclusions
 - No cover for clean-up of own land or preventative works
 - Criminal penalties may not be covered
 - Land probably not be covered under a buildings policy

The Part IIA regime

- Part IIA Environmental Protection Act 1990, inserted by the Environment Act 1995
 - Introduced 1 April 2000 in England
 - Local Authorities/ Environment Agency must:
 - Publish inspection strategy
 - Establish contaminated land registers
 - Inspect areas to identify contaminated land
 - Ensure remediation of contaminated land
 - 78 sites identified by September 2004, up from 33 in 2002
 - 4 remediation notices served
 - Lack of resources

The Part IIA regime (cont.d)

- Part IIA Environmental Protection Act 1990, inserted by the Environment Act 1995 (cont.d)
 - S.78A -regime for identification and remediation of land where contamination poses an unacceptable risk to human health or the environment
 - Land is contaminated if it is in such a condition ... that significant harm is being caused or there is a significant possibility of such harm being caused, or pollution of controlled waters is or is likely to be caused
 - Significant Pollutant Linkage: Contaminant – Pathway - Receptor
 - S.78F – “appropriate person” – Class A or B

The Directive

- Environmental Liability Directive
 - Due to be introduced on 13 April 2007
 - Preventing and/or remedying environmental damage to habitats and species protected by EU law, as well as damage to water resources and land contamination which presents a threat to human health
 - Polluter pays
 - Strict liability where polluter carries out “hazardous” activities
 - Does not cover damage to third party property or personal injury

The Directive (cont.d)

- Compulsory environmental insurance
 - Original intention to require compulsory environmental insurance for businesses as part of the directive
 - Implementation postponed indefinitely, but ...
 - With proposal for implementation 6 years after the directive comes into force (therefore April 2013)

Circular Facilities (London) Limited v Sevenoaks District Council (2005)

- Notice to remediate contaminated land served on property developer owner
- “Caused or knowingly permitted” the presence of organic material to remain on site, by which the land became contaminated (class A person)
- Whether the company had the relevant knowledge
- Case remitted for retrial and subsequently settled
- New assertiveness by enforcing authorities?

R (on the application of National Grid Gas plc (formerly Transco plc) v Environment Agency (2006)

- Redevelopment of gas works
- Site sold in 1965 and redeveloped for residential housing
- Gas industry privatised in 1986 and “property, rights and liabilities” transferred to British Gas Plc (now Transco)
- Land identified as contaminated under Part IIA in 2003
- “intention of Parliament ... that a transferee company ... should step into the shoes of the transferor, not only in terms of current actual liabilities, but also in respect of liabilities that would come into being in the future in respect of the past activities of the transferor.”
- Leave to apply direct to House of Lords

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