

Environmental Insurance Solutions

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Objectives and Agenda

- ⌘ Environmental background
 - ⌘ Legal Environment
 - ⌘ Testing the Law – Bawtry / Sevenoaks
 - ⌘ Tools for dealing with this liability – Indemnities / Balance Sheet / Insurance
- ⌘ Insurance cover under Liability policies
- ⌘ Environmental Impairment Liability (EIL) market
- ⌘ An EIL Insurers Perspective
- ⌘ Discussion

Environmental Background

- 60% of buildings on “brownfield sites”
- Environmental Protection Act 1990 Part IIa – as implemented by Contaminated Land Regulations 2000
- Role of Local Authorities – Contaminated Land Strategy
- Based around the “polluter pays” principal

Environmental Background

Recent Cases

- Bawtry
- Sevenoaks

Apparent themes

- Hardship clause limits liability of homeowners
- Deepest pockets theory doesn't always work
- Developers have been focal points of attention in both cases due to the introduction of a receptor

Environmental Background

In practice....

- Sites being transferred with knowledge
- Development of Environmental Warranties
- Residual & inherited liability – affect on balance sheet
- Greater pool of experience in dealing with contaminated land
- Development of a market for bespoke environmental insurance products

Liability Insurance Cover

- Third Party Liability policies
 - Legal defence costs & compensation for death, injury or damage
- Environmental impairment – sudden & unforeseen only
- Exclusion of “gradual pollution”
- Bartoline decision

Environmental Insurance Market

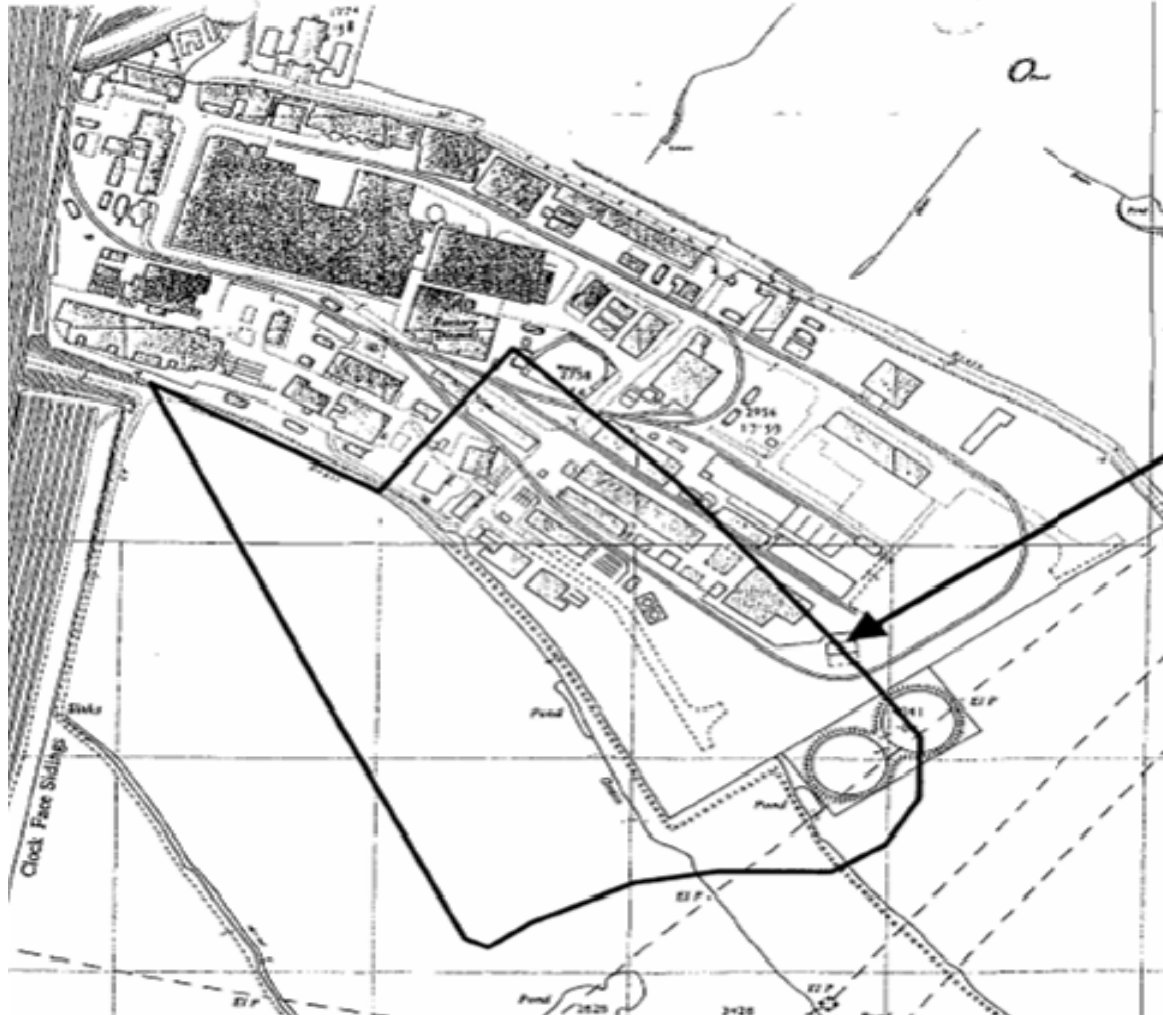
- 4 specialist insurers
 - ACE, AIG, Chubb and XL
 - Those we have lost - Quanta (UK) & CERTA
- What can they do
 - S&A + Gradual Pollution conditions
 - Historic and Operational Risk
 - Basic coverage – Clean-up costs, 3rd party Bodily injury & Property Damage
- Becoming more recognised and increased marketing

An EIL Insurers Perspective

Three main applications (in this context)

- Owned / Occupied site(s)
- Transfer of Site(s)
- Redevelopment

An EIL Insurers Perspective



An EIL Insurers Perspective

Owned / Occupied site(s)

- Portfolios of Light Industrial Sites
- Institutional Investors
- Annual policy
- Key benefits;
 - 1st party business interruption cover – protecting rental income
 - Operational & Historical Cover
 - On & Off Site Clean-up Costs – “Bartoline”

An EIL Insurers Perspective

Transfer of Site(s)

- Industrial Sites – being sold for continued use
- Indemnity in respect of historical conditions requested by purchaser
- EIL policy for up to 10 years covering Pre-existing conditions
- Key Benefits;
 - Both Parties Insured
 - Assignable policy
 - Facilitates exit strategy

An EIL Insurers Perspective

Redevelopment

- Clean-up is the Developers risk
- Over-spend on clean-up – Fixed Price Remediation increasingly used

Insurance – what can it do?

- Off-site cover during development covering 3rd party risk
- On-site cover post-remediation covering residual risk
- Key Benefits;
 - Change in Legislation covered
 - Protects Developer

Summary

Legislation has not developed as planned
Liability focus on site owners and developers

EIL Insurance viable method of transferring environmental risks

- Well established, albeit niche market
- Flexibility to address a range of scenarios and Insureds

Conclusion & Debate

Thank you for listening

Any questions ?