

4 July 2009

Steve Hartley
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RE: COMMENTS ON FINANCIAL ASSURANCE, ALTERNATIVES AND ENVIRONMENTAL INSURANCE

Dear Steve

Thank you and Julie Curry for meeting with Anthony Sanuders and myself on Thursday 4 June 2009 to discuss the use of financial assurances and environmental insurance.

Financial assurance has proved a useful tool for the Environment Protection Authority (EPA) in managing high risk activities. Waste Environment protection Licences have particular issues associated with the management of negatively valued products, e.g. wastes. It can be financially attractive, though not legally, to abandon wastes or be negligent in their storage and handling. In a nut shell if they disappear it is to the advantage to the owner or waste management company. Consequently, the government has powerful laws to correct this market failure and ensure that waste is managed correctly.

One means to prevent environmental harm from a waste licence holder is to require they hold a financial assurance which can be acted upon by the EPA to take action to prevent or minimise environmental harm. The scale of the financial assurance is determined by the scale and likelihood of environmental harm occurring. Use of the financial assurance to deal with environmental harm or its likely hood necessitates it being independent of the financial circumstances the waste licence holder is currently experiencing.

The main requirements of a financial assurance appears to include:

1. Immediate access to moneys by the EPA to take necessary actions to prevent and or minimise environmental harm from a licensee so covered
2. Ability to deal with insolvency issues where there is a need for immediate action
3. Ability for the EPA to commission contractors to deal with item 1
4. Must be provided by a recognised financial institution

During discussion there was agreement that environmental risks could be reasonably divided into:

- Immediate issues requiring immediate attention
- Clean up and management issues which can be managed over the longer term

It was also apparent that financial assurances are good at providing immediate access to funds are limited by:

- The size of the financial assurance estimated by EPA
- Cost of the financial assurance can be quite large for some licence holders especially those lacking capital

It was proposed that for some site a mix of a financial assurance and an environmental insurance policy may offer better coverage of the risks the EPA is attempting to cover with financial assurances alone.

For example a landfill will tend to have both a short or immediate risk as well as a long term risk, eg contamination of groundwater or becoming regulated land. In this instance a combination of a smaller financial assurance but also supported by environmental insurance may be a better model.

Environmental insurance has a number of advantages for the non-immediate risks including:

- Larger amount of coverage, e.g. \$10 million liabilities are common – leading to a potential lowering of orphan sites
- Insurance company can take an interest in the management of the site – report difficulties to EPA
- Can provide coverage of the initial financial assurance required
- Can be more cost effective for the licensee if a reduced financial assurance is needed
- Can be including into an Environment Protection Licence under s72 (see below)

72 Conditions for insurance cover


The conditions of a licence may require the holder of the licence to take out and maintain a policy of insurance for the payment of costs for clean-up action, and for claims for compensation or damages, resulting from pollution in connection with the activity or work authorised or controlled by the licence.

While the combination of both a financial assurance and environmental insurance will not fit all licensees requiring financial assurance it may suit quite a number.

Also discussed were the variations within insurance policies. Many insurance policies do not cover pollution issues or if they do there can be partial exclusions. Being shown Certificates of Currency is not enough due to the considerable variance in insurance policies. Ideally insurance policies should be audited for its coverage to ensure it is adequate to meet any licence requirements.

I also look forward to being involved with the development of the Financial Assurances policy document the DECC is preparing.

Yours sincerely



ANDREW DOIG
 Director
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