



# **Soil Pollution and Environmental Risk Assessment**

## **Legislation, Risks for Lenders & Management of Risk**

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## Soil Pollution and Environmental Risk Assessment

### The Legislation

- **Environmental Protection Act 1990;Part IIA**
  - **Statutory Guidance Notes, implemented April 2000**
- **Defines contaminated land**
- **Determines how it should be identified**
- **Prescribes steps to be taken to secure remediation**
- **Stipulates the basis on which liability for remediation costs should be apportioned**

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### Contaminated land

- **Source - Pathway - Target**
- **Target may be**
  - **Human beings**
  - **Eco-systems**
  - **Property in the form of crops or livestock**
  - **Property in the form of buildings**
  - **Controlled waters (territorial and coastal waters, inland fresh waters and groundwaters)**

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### Apportioning Liability

- A 'Class A' person is 'any person,...who caused or knowingly permitted the substances...to be in, on or under that land...' In other words, the polluter pays.
- But, a 'Class B' person is also defined because 'If no person has, after reasonable inquiry, been found...to bear responsibility for the...remediation, the owner or occupier for the time being of the land in question is an appropriate person.'

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### Direct risk

- **A lender is unlikely to be identified as a Class A person, solely by virtue of lending**
- **But, there is potential for a lender to become legally responsible to pay for the clean-up of land or water which has been contaminated or polluted by a customer. Typically, this may arise if enforcing rights as a mortgagee, i.e. assuming ownership - Class B**
- **Bad debt**
- **Devalued or worthless security**

**Potential costs of remediation**

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### Direct Risk - an example

- **Electro-plating company failed**
- **Possession order, unenforced**
- **Secure the premises**
- **Cyanide and acids**
- **Specialist contractors**

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### Direct Risk - an example

- **Surgical instruments company**
- **LTV of 66% against factory premises**
- **Radioactive contamination**
- **Significant decontamination costs**
- **Revised valuation, less than 50% of assumed value**
- **Many months to sell**

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### Indirect risk - credit risk

**Environmental costs and liabilities weaken a borrower's ability to honour their financial liabilities to the bank, such as**

- **Compliance with emerging environmental regulations, or fines for non-compliance**
- **Cleaning up a contaminated site, and/or blight**
- **Warranties/indemnities given on sale or purchase of land or a business**
- **Cash flow, management time, asset value and balance sheet strength could all be affected**

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### Indirect risk - an example

- **Former chemicals works remediated as condition of planning for residential development**
- **12 years later, changes in water regulations lead to designation as 'Special Site' under Part IIA**
- **Source of groundwater contamination**
- **'In Situ' clean-up means cost will be significant, and third party claims, particularly from the water company have yet to be quantified**

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### Managing the risk

- **Commercial land offered as collateral is screened at the time of valuation, using a Land Use Questionnaire**
- **‘Symptoms’ of contamination will lead to further enquiry including commissioning specialist reports**
- **‘Preferred’ environmental consultants provide risk-based assessments**
- **‘Stepped’ approach, so no unnecessary costs or delays are incurred**