

Laying down the law



The safe way to depart

Ross Fairley considers what companies need to do to correctly decommission or close a permitted site



Despite the economic upturn, there continues to be a steady stream of manufacturing plant rationalisations and closures in the UK. Closing a site with an environmental permit is not as easy as is often envisaged, however. Whether it is a chemicals plant, a large power station or a relatively small manufacturing facility there are many issues that ought to be considered by operators as well as the environment and project managers tasked with decommissioning the site.

Closing and decommissioning an environmentally permitted site – rather than selling it – is likely to necessitate demolition and possible remediation works. The drivers for these operations will depend on a variety of things, but will include the requirements of the landlord, the local authority and the regulator to which the permit must be surrendered.

In confidence

Confidentiality is the first thing to consider, including the preservation of documents and surveys assessing the state of the site. It is likely that management will not want these documents disclosed to the public or to the regulators that will decide on the clean-up operation, until they are ready and have been evaluated internally. It is essential to obtain legal advice at the outset on protecting the disclosure of such information.

Surveys to assess the site will form the basis for designing the remediation strategy that will be used by contractors. Those reports will also be disclosed to regulators. The terms and conditions for the appointment of the experts carrying out these surveys and studies need to be robust and considered in the overall

strategy for demolition and remediation. It is amazing how often wholly inadequate standard terms and conditions are agreed in the rush to hasten the process.

Higher standards

Having a permitted site tends to focus people's minds on the surrender of the environmental permit. The trap that many fall into is to assume that only contamination that took place during the period covered by the permit must be cleaned up. This is not, however, what the legislation says and regulators often insist on higher standards.

Even if the Environment Agency, for example, does not demand a higher standard of remediation, local authorities and landlords (if the site has been leased) will have their own views as to what must be done to clean up a site before a company can walk away.

Thought also needs to be given to the company's strategy for mitigating future liabilities. It may be that only minimal remediation is required to surrender the environmental permit, but where does that leave the site? The company needs to ask what liability for contamination may come back to haunt it in the future. Remediation under a permit does not necessarily solve future potential contaminated land or water liability for the business and it may make economic sense to aim for a higher standard of clean-up than is required to mitigate future risks.

Time and again people underestimate the process by which the landlord can influence, negotiate and cause delay to a decommissioning project. Many leases do not allow the tenant to simply surrender it and walk away, so the closure becomes a matter of negotiation. Marrying this negotiation with what needs to be done to surrender the environmental permit to achieve a quick exit from the site is often very difficult. Many landlords will consent to such action only where they can be certain that the clean-up absolves them from liability in future.

Getting work going

Another potential pitfall is overlooking some of the permits that are required to implement a remediation and demolition scheme. Planning permission may well be required for such activities and this should be factored into timescales. Companies may have to apply for new permits, or variations of permits, to implement an ongoing remediation scheme. Proceeding without these permits could expose the firm to liabilities and could cause serious damage to its relationship with stakeholders.

Some of the machinery left at the site may be valuable. Often value can be derived from selling plant as scrap or to others who are prepared to remove and reuse it. Such action can, however, pose difficulties for the environment manager onsite who is looking to minimise liability and close the site appropriately. Practitioners in this situation may have to sacrifice a measured approach to the environment; perhaps by fast tracking permits and studies to ensure the business benefits from the quick removal of machinery. A well-drafted contract with those proposing to remove the kit is essential to avoid potential pollution from removal activities and to prevent them dismantling half the plant and leaving.

Experience counts

There is always a risk that environment practitioners will forget that environmental issues are just one of the elements that effect site closures. It is crucial that everyone involved recognises this and that they work together to fit the environment strategy and advice into the overall decommissioning plan.

Finally, it is worth highlighting that whatever the size of the permitted site, clean-up liabilities will apply. Putting together an experienced management team and appointing good external advisers is crucial. There is no substitute for experience. Managers, generally, will not have to deal with too many of these scenarios during their career, so be prepared to appoint people with knowhow to guide you through the process.

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