

## **Environmental regulations and risks in the mining industry**

Willie van Graan, Business Unit Head – Mining and George Davis, Senior Account Executive – Mining from Aon South Africa provide comment on the impact of environmental regulations and environmental risk factors on the mining sector.

### **Regulations force mid-tier sector to get creative**

Regulatory focus in the mining industry is forcing the mid-tier mining sector to find innovative ways to economise and deal with operational constraints and project delays, believes Van Graan. The regulatory focus centers on health, safety and environmental issues, particularly the remediation of environmental damage.

South African law requires mines to make financial provision for ongoing environmental rehabilitation and the environmental costs associated with mine closure, are creating one of the biggest challenges facing mining companies today. The Mineral and Petroleum Resources Development Act (MPRDA) stipulates the requirements for making financial provision for the remediation of environmental damage. Closure costs for mine rehabilitation are based on the Department of Minerals and Energy's (DME) prescribed master rates with the application of CPIX. "This method of calculation can bring about shortcomings in the provision which will be for the account of the mining company even though the prescribed guarantee amount was provided," says Van Graan.

He believes the use of an insurance-based costing provision and annual policy review can ensure more accurate calculations that can reduce the risk of funding shortfalls.

Provision for closure cost can be made using four different methods as specified by the MPRDA:

- Cash deposit into an account specified by the Director General.
- An approved contribution to a trust fund as required in terms of the income Tax Act.
- A financial guarantee from a bank approved by the Director General.
- Any other method as determined by the Director General.

"The methods most favoured by mid-tier mining companies are guarantees issued by either banks or insurance companies. Bank guarantees may tie up mining companies' facilities," says Van Graan.

During the first quarter of 2009, the DME suspended the practice in which mining companies obtained environmental rehabilitation guarantees from insurance companies. The reason for this is that insurance products expose the DME to guarantees not honored by mining companies who do not comply with policy conditions. "This currently only leaves the first three

options open to mining companies, with the further exposure of inaccurate calculation of closure cost a reality," concludes Van Graan.

### **Specific environmental insurance a must for mining industry**

Environmental issues have attracted a lot of attention since the effects of global warming were realised. Innovative new products are continuously being created that are manufactured using greener processes or using bio-degradable products. Households are recycling waste where possible and disposing of hazardous materials such as batteries and used oils in a responsible manner.

The Insurance industry has not lagged behind, in fact Environmental Insurance developed in the United States around 30 years ago in response to the US Superfund initiative and perhaps more importantly, key pollution exclusions from general liability programs which left companies and operators effectively uninsured for environmental risks. These exclusions were mirrored in the South African insurance industry and Europe. "Generally the only cover obtainable has been for sudden and accidental pollution arising from an indemnifiable event. Competent financial officers and risk managers would have provided for unforeseen events which fell outside of the available cover in the insurance market, but even so, providing adequately for an unquantifiable risk is a challenge," says Davis.

Mining concessions were only granted, previously, to mining companies who provided Environmental Guarantees for restoration plan, abandonment and mine closure. This is now proving to be a challenge, however, due to the Regulator's objections, as discussed above. The recent regulatory activity in South Africa has increased exposure and strengthened implementation of actions that can be taken by the authorities. Davis believes these international and South African trends have led to today's active and growing environmental insurance market bringing relief for financial officers and risk managers. "Environmental Insurance policies contain limitations on the maximum amount of a judgment payable under the insurance contract. Further, the cost of defense, supplementary payments, and punitive damages are covered," he says. According to Davis, environmental insurance programs provide the following main heads of cover and in all cases include gradual pollution:

- Third party property damage including claims for any consequential loss of value and business interruption;
- Third party bodily injury;
- Action by the authorities against the insured, including any clean up where required or directed;
- Cover in relation to insured loss and damage for directors, officers and employees.

Environmental Guarantees for the restoration plan, abandonment and mine closure are based on expected cleanup costs to restore the environment following mining activities. “Unfortunately cost overruns are very possible by, for example, ever-changing environmental laws that place further responsibilities on the mining industry. The environmental insurance can be extended to cover remediation cost cap programmes which are attached above the expected cleanup costs,” he adds.

The mining industry is more susceptible to certain incidents’ which could pollute or impair, such as:-

- spills of gasoline, diesel, oil, lubricants, curing compounds and the like during mining operations and over time causing on and off-site soil and possible groundwater contamination;
- dust and air emissions gradually causing harm to human health or damage to the environment;
- allegations of contamination of the water supplies from operations and associated legal defence costs;
- off-site disposal of wastes and debris including tailings;
- discovery of unknown soil and/or ground water contamination.

“Worldwide, companies with similar operations are increasingly taking up the option to purchase a specific environmental program, supplementing and complementing their general liability insurance program. For the mining industry in my opinion, this insurance is a must,” concludes Davis.

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