

Environmental

Willis

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Retailers – Environmental risk

The global environmental agenda is developing at a rapid pace. New liabilities are continually being created as legislative frameworks evolve in response to changing national and international environmental demands.

There is clear evidence that environmental and wider social considerations directly influence the buying decisions of customers and investors. Forward thinking retailers are now taking a strategic approach to managing these issues.

The activities of a retailer, from an environmental risk perspective, would appear to be relatively benign. However, the potential for liabilities associated with pre-existing contamination across a retailer's property portfolio, whether sites are freehold or leasehold, can be highly significant.

The historic contamination risk for a retailer is most likely to arise from previous industrial site uses prior to their occupation. The prevailing legal regime is such that the retailer could face liability simply by virtue of their ownership or tenancy of the site. Furthermore, landlords may seek to contractually pass contamination liabilities arising from previous site uses to the retailer through the terms of lease agreements (through, in some cases, clauses that may not obviously apply to environmental issues).

The principal piece of legislation relating to historic contamination is Part IIA of the Environmental Protection Act 1990 (the Contaminated Land Regulations) which came into effect during April 2000.

There has been a time lag in the effective implementation of the Regulations whilst the local authorities and Environment Agency have prepared their enforcement strategies. It is only now that written strategies are being finalised and actual inspections are being made.

It is clear that the Environment Agency and local authorities are now under considerable pressure to increase enforcement and demonstrate high visibility implementation of contaminated land legislation. With the pace of inspections and the identification of contaminated sites expected to increase, the

Regulations are expected to really bite over the next few years.

In view of the typical size and nature of retail portfolios, it is not unrealistic to suggest that many retailers may soon have to respond to regulator interest in some of their sites.

The rapid development and increase in profile of environmental legislation has firmly put all things environmental on the boardroom agenda. The issue of contaminated land liabilities has been brought into particular focus for retailers which occupy sites with a former industrial usage (e.g. sites on typical "out of town" retail parks / developments).

Retailers will usually find that coverage for "sudden and accidental" pollution incidents under a general liability policy provides very little, if any, worthwhile cover for land contamination liabilities. Property policies will almost certainly exclude pollution and contamination clean-up losses. The net result is insurance cover that is wholly inadequate in respect of environmental risks and liabilities.

The environmental insurance market has evolved and is now playing an increasingly prominent role in the management of environmental risk. The market can now offer significant capacity and flexibility for retail site portfolio placements. Policies can be written for periods of up to 10 years at competitive premium levels, but perhaps more crucially, insurers are now realistic with underwriting information requirements.

Many retail businesses are now looking to obtain environmental insurance coverage sooner rather than later in order to lock into competitive terms before the claims record begins to impact the premiums and breadth of coverage on offer.

The Willis Environmental Practice is a market leader in the design and placement of specialist environmental insurance programmes.

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Case Study

Example of a recent insurance solution delivered by Willis is summarised below. For further details of this and other case studies, please contact us or visit our website www.willis.com/services/environmental.

Case Study

Willis recently placed an environmental solution for a major UK based retailer with a mixed property portfolio comprising over 2000 individual freehold and leasehold sites (including warehouse and distribution facilities). The placement addressed the following key objectives: -

- Protection from environmental liabilities which could attach to any of their sites and properties (i.e. statutory on-site and off-site remediation costs, claims for third party property damage and bodily injury, and associated legal defence costs) arising from historical and new pollution conditions (regardless of whether sudden & accidental or gradual in nature).
- Protection from environmental liabilities arising from historical contamination that landlords may seek to contractually pass to the retailer through the terms of lease agreements.
- Protection from environmental liabilities arising from a change of law (or a more onerous interpretation of existing law) during the policy period.
- Protection against any residual environmental liabilities that could arise from being former leaseholders / owners of disposed sites.
- A cost-effective and flexible solution that supports the overall management of environmental issues and risks across the European portfolio with minimal administration requirements.

Willis was able to arrange environmental insurance to cover the entire portfolio on the basis of a 3-year renewable policy, with automatic cover for mid-term acquisitions subject to a simple annual self-declaration. The cover was successfully placed without the need for a burdensome data collection exercise.



Nathan Sewell
International Practice Leader for the Mergers and Acquisition Practice at Willis. Nathan leads the Environmental Team, bringing substantial experience gained within the financial products insurance sector.



Nick Bennison
Nick combines his vast experience of the insurance industry with his sound environmental science knowledge. This gives Nick an excellent platform to advise clients on a wide range of risk transfer options.



David Barr
David has extensive experience of environmental risk assessment, remediation planning and financial modelling. This provides an invaluable technical resource enabling the design of innovative insurance solutions.



Fiona Gray
With a background in the construction industry and environmental consultancy, Fiona has extensive experience of providing risk management advice at both a strategic and local level to clients across a range of industry sectors.

Willis' Environmental Team combines insurance, commercial and scientific specialists dedicated to the provision of independent advice, design and placement of environmental risk transfer programmes.

Profiles of the key team members are outlined opposite.



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