



# A world of difference

A changing global environmental agenda is raising the issue of risk management up the agenda. **Nick Bennison** investigates the potential pitfalls

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. For good reason, this has firmly put all things environmental on the boardroom agenda.

There is clear evidence that environmental and wider social considerations directly influence the buying decisions of customers and investors. Forward-thinking companies are now taking a strategic approach to managing these issues. The activities of companies which own and/or occupy property used for retail, office and non-hazardous goods distribution purposes, for example, would appear, from an environmental risk perspective, to be relatively

company could face liability simply by virtue of their ownership or tenancy of a site. Furthermore, landlords may seek to contractually pass contamination liabilities, arising from previous site uses, to the company 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 in the UK 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 while 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

risk property portfolios which include sites with a former industrial usage, such as sites on typical "out of town" retail/business park developments. In view of the history associated with such sites, and the common feature of there being a paucity of (if any) information associated with any contamination clean-up which might have been undertaken prior to development, it is not unrealistic to suggest that many unwitting owners and occupiers will soon have to respond to regulator interest.

Companies 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 property portfolio placements. Policies can be written for periods of up to ten years at competitive premium levels, but perhaps more crucially, insurers are now realistic with underwriting information requirements.

Many companies with property portfolios 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.

**Nick Bennison works for Willis' Environmental Practice**



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benign. However, the potential for liabilities associated with pre-existing contamination across such property portfolios, regardless of whether sites are freehold or leasehold, can be significant.

The historic contamination risk for such low operational risk property portfolios is most likely to arise from previous industrial site uses prior to the current occupation. The prevailing legal regime is such that a

contaminated land legislation. Indeed, within the last year, the UK has seen the first prosecution by a regulatory authority under the regime. 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.

The issue of contaminated land liabilities has been brought into particular focus for low operational