

## Environmental Risk – A Local Solution for a Local Problem

**Robert Willis, Executive Chairman of Willis & Company (Insurance Brokers) Limited addresses some key questions on Environmental Risk.**



There are few organisations with no 'operational' pollution risk. If you use or produce potentially contaminative materials or you create solid, liquid or gaseous waste – then you have a risk.

### What is the problem?

If your business causes unacceptable pollution of land, water or air it can result in:

- legal action by a third party alleging damage to their property, bodily injury or nuisance. This can lead to compensation payments and legal costs.
- involvement of a regulatory body, i.e. the DOE or local authorities. Regulators will exercise statutory powers, forcing the polluter to take action. This can create substantial clean up costs and associated expenses.

In addition to the direct financial costs, polluting companies must recognise the increasing reputational risk created by such incidents.

### Why now?

Directive 2004/35/EC, called the Environmental Liability Directive or ELD came into force on 30<sup>th</sup> April 2007. It has been transposed into national law across EU Member States and will have a significant impact in the UK from March 2009. It will be operational in Northern Ireland later this year through the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009.

### What are these regulations?

They represent new legislation focused on the prevention and remediation of environmental damage, reinforcing the principle that the polluter should pay for issues they create. They address future damage to land, water and particularly natural habitats and protected species – 'biodiversity.' There are a number of key implications:

- Strict Liability regime for 'regulated' industries
- Legal requirement to take preventative measure to avoid pollution incidents. It is an offence not to do so.
- Incidents must be reported to the authorities
- Regulators must investigate if wildlife or other 'interest' groups report legitimate cases of actual or imminent environmental damage

Operators face far higher clean-up costs through the introduction of Complementary & Compensatory Remediation concepts.

### Am I not already insured against these risks?

Pollution coverage in traditional insurance policies is far more limited than many appreciate. Liability policies offer no cover for gradual pollution or for pollution damage to own property. They are unlikely to provide cover for clean-up costs imposed by regulatory authorities or offer broad enough terms to respond to pollution claims arising from the new Environmental Liability regulations.

Property insurance fares little better. In most cases, land is not actually 'insured property' so any pollution damage to that land is excluded.

Most environmental issues are simply discovered on the company's property or surrounding land and water resources.

These significant gaps in coverage will only get wider as legislation and other drivers force companies to operate in an increasingly environmentally sound manner.

### What is the solution?

Specialist environmental insurance is available, which is specifically designed to fill gaps in traditional policies. Premises Pollution Liability (PPL) or Contractors Pollution Liability (CPL) programmes offer broad coverage for third-party liabilities, first-party clean-up costs imposed by the regulators, business interruption and legal expenses resulting from pollution incidents. These are expressly intended to respond to claims arising out of environment law, including the new Environmental Liability regulatory regime.

Companies should be aware of the current issues in environmental risk and the fact that unacceptable exposures can be transferred effectively and efficiently.

We at Willis & Company (Insurance Brokers) Limited have access to a number of specialist insurers including ACE who provide comprehensive environmental insurance.

Our experienced professional qualified staff are available to discuss these exposures with you.

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