Chapter

Denmark

Horten

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1 Environmental Policy and its Enforcement

1.1 What is the basis of environmental policy in Denmark and which agencies/bodies administer and enforce environmental law?

The basis of environmental policy in Denmark is to ensure that people, nature and the environmental interests of Denmark and other countries are protected against pollution, and that development is conducted on a sustainable basis.

The responsibility of enforcement and administration of environmental law lies with several authorities. The Danish Ministry of Environment is the superior authority administering environmental policy in Denmark and is responsible for the drafting of environmental law. The Danish Ministry of Environment has three agencies under its administration.

The Danish Environmental Protection Agency administers a large number of acts and regulations. The central act is the Environmental Protection Act, which lays down the fundamental objectives, the means with which to meet these objectives, and the administrative principles by which the Agency works. The Act is a framework Act and the framework of the Act is therefore to be supplemented with guidelines and regulations issued by the Ministry of Environment and the Danish Environmental Protection Agency under the authority of the Act. The Agency also administers Danish legislation on chemicals and legislation on waste and contaminated soil.

The Danish Nature Agency is the other important agency under the Danish Ministry of Environment, ensuring the protection of the Danish nature and the environment. The Nature Agency produces the government's policies concerning nature and environment. The Nature Agency aims to secure clean water, protecting and securing nature, planning for cities and landscape, outdoor activities and information to the public about nature, forestry and land management of the state forests, gaming and wildlife management. The agency administers the Nature Protection Act, the Planning Act and other legislations on environmental aspects.

Denmark also has a Ministry of Climate, Energy and Building. This Ministry is, among other things, responsible for national and international efforts to prevent climate change, primarily focusing on promoting and developing technologies for renewable energy.

The Danish Energy Agency is an agency under the Ministry of Climate and Energy and administers the responsibilities in relation to the production, supply, transport and consumption of energy, including energy efficiency and savings efforts, as well as domestic CO2 targets and efforts to reduce greenhouse gas emissions. The agency is also responsible for carrying out national climate adjustment strategies.

A number of institutions are affiliated with the Energy Agency, including the Danish Energy Savings Trust, the Energy Technology Development and Demonstration Programme (EUDP) and the Danish Portal for Adaptation to Climate Change. Members of the Energy Agency administration also sit on the secretariat of the Danish Commission on Climate Change Policy.

The Environmental Protection Act is based on a principle of decentralisation, so actions should be taken and problems be handled as close to the people as possible. For this reason, it is the municipalities that administer and enforce most of the legislation which is issued centrally.

The courts of Denmark are, to a certain degree, involved in enforcing environmental law – both in criminal and civil cases. A broad variety of non-governmental organisations (especially "green" organisations) have an important role to play in ensuring the protection of the environment.

1.2 What approach do such agencies/bodies take to the enforcement of environmental law?

Traditional instruments like rules, regulations and prohibitions represent the foundation of enforcement of environmental law in Denmark. However, the enforcement methods also represent an awareness that the success of environmental policy depends on broad participation at all levels, and among producers and consumers in all sectors of society. Like in most of Europe, the administration of environment is consensus-based.

Therefore, the legislation is to a large extent based on the responsibility of the operator itself to comply with applicable environmental regulation and for instance to apply for environmental permits if needed. If the operators fail to comply with the environmental regulation, including specific conditions in a permit, the supervisory authority has the power to enforce far-reaching measures to ensure future compliance with the environmental regulation. The local authorities are the supervisory authorities for approval and inspection tasks for a number of industries and companies with environmental challenges.

1.3 To what extent are public authorities required to provide environment-related information to interested persons (including members of the public)?

According to the Danish Act on public access to documents in public files ("the Public Administration Act"), there is general

access to official files from public authorities. The Act is applicable to all areas of public case administration etc. and is therefore not limited to the area of environmental legislation. The main rule of the Act is that all documents are available to the public.

The Act on access to Environmental Information extends the area of the general Act, so that it also involves access to environmental information from companies owned by public authorities if the activities of the company may have an impact on the environment.

2 Environmental Permits

2.1 When is an environmental permit required, and may environmental permits be transferred from one person to another?

Environmental permits are required for different types of environmental hazardous activities and activities that involve the use of natural resources. The types of activities that require a permit are listed as an annex to the Permit Order that is an Order issued pursuant to the Environmental Protection Act. The annex includes the majority of Danish industries, except those that are specifically and exhaustively regulated in other orders or subject to permit requirement in other regulations etc. The livestock industry is one such industry that is separately regulated in the Livestock Farming Act.

Environmental permits in Denmark contain e.g. descriptions of production processes, measures to limit contamination, and waste products and their disposal. A permit is required for commencement of the specific activity and also changes and expansions that involve increased contamination. When granted a permit, an operator is as a basic rule protected against intensified conditions for a period of time – if not otherwise specified in the permit, the period is eight years.

The environmental permit requirements are to varying extent based on EU legislation, which entails the permit requirements to periodically change due to e.g. new EU as well as national emission or technology standards.

Operations that do not require an environmental permit can be subject to orders by the environmental authorities to reduce pollution if they cause problems in the form of pollution of the air or soil, noise pollution or other problems for the environment or adjacent communities.

Beside a general environmental permit for the operation of the specific activities, the company must also apply for a permit to discharge waste.

Environmental permits are issued for a specific activity at a certain location and are not of a personal nature. This means that there are no restrictions on the transfer of environmental permits.

2.2 What rights are there to appeal against the decision of an environmental regulator not to grant an environmental permit or in respect of the conditions contained in an environmental permit?

A decision not to grant an environmental permit or specific conditions in such a permit can be appealed to the Nature and Environment Appeal Board, which is an independent appeal body. Also permits regarding discharge of wastewater can be appealed to the Nature and Environment Appeal Board. Furthermore, it is possible to initiate legal proceedings before the courts.

2.3 Is it necessary to conduct environmental audits or environmental impact assessments for particularly polluting industries or other installations/projects?

When applying for an environmental permit, an environmental impact assessment will often be required. The extent of such an assessment depends on what assumed impact the planned activity may have on the environment. If the planned activity is expected to have a large impact on the environment, an extensive assessment must be carried out.

Permits will often include conditions for the applicant to carry out or pay for environmental investigations or measures to limit the impact on the environment from the activities.

2.4 What enforcement powers do environmental regulators have in connection with the violation of permits?

Environmental authorities may issue orders and prohibitions that are necessary to ensure compliance with the conditions of a permit or environmental legislation in general. The authorities might also reconsider an issued environmental permit.

An operator not complying with the conditions laid down in a permit is in risk of being met with criminal charges.

3 Waste

3.1 How is waste defined and do certain categories of waste involve additional duties or controls?

The Danish legislation on waste is characterised by close interaction between EU regulations and national regulations. The EU regulations outline the overall framework and principles. The actual organisation and implementation of the EU Directives in national legislation are tasks for the Danish government. The Danish waste model works by a combination of traditional regulations (acts, orders and government circulars), a number of economic instruments such as charges, taxes and subsidies, as well as agreements. The framework Directives on waste has been implemented in Denmark in the Danish Environmental Protection Act and the Statutory Order on Waste.

In the Statutory Order of Waste, waste is – in accordance with EU legislation - defined as any substance or object belonging to a waste category, which the holder disposes of or intends or is required to dispose of. The Waste Order distinguishes between waste destined for disposal and waste destined for recovery. The different waste categories are specified in a comprehensive list in an annex to the order. Certain categories of waste such as hazardous waste, residual waste from power plants and residual waste from biological treatment are governed by certain regulations imposing additional obligations and controls – such as special regulations on transport, recycling and storing.

According to the Statutory Order on Waste, the municipalities are obliged to set up collection schemes for household waste, paper, cardboard, glass, recyclable metal and plastic and hazardous waste generated in industries and households. Most other types of waste the municipalities only have to assign to specific treatment facilities.

3.2 To what extent is a producer of waste allowed to store and/or dispose of it on the site where it was produced?

Storage of waste originating from an operator's production and

stored or disposed of within the operating site will often be subject to conditions in an environmental permit. If a permit for storage is not obtained, the producer of the waste must dispose of the waste in accordance with the requirements for handling of the specific waste fraction and use the collection services of the municipality.

Often an environmental permit will include specific conditions on handling and storage of hazardous waste on industrial sites.

3.3 Do producers of waste retain any residual liability in respect of the waste where they have transferred it to another person for disposal/treatment off-site (e.g. if the transferee/ultimate disposer goes bankrupt/disappears)?

If a waste producer has delivered waste in accordance with the system for collection of waste – which means either to an approved waste disposer or a transport operator approved by the environmental authorities – the waste producer will not have any residual liability regarding the waste. If the waste is not handed over in accordance with these rules, the waste producer will retain full liability until the waste is handed over to an approved waste disposer or transport operator.

3.4 To what extent do waste producers have obligations regarding the take-back and recovery of their waste?

Most parts of the Danish rules on obligations of waste producers are based on EU regulation. The rules make sure that the waste will be reused, recovered or recycled.

In Denmark, beer and soft drinks and certain other beverages may only be marketed in containers that can be either refilled or recycled. Beverage containers produced in Denmark must be refillable, part of a deposit-and-return system and approved by DEPA. The purpose of these mandatory systems is to limit waste from packaging by encouraging the reuse of beverage containers.

A consumer must be able to return the bottles at the same place as they are bought.

Companies that produce, import or sell specific product categories such as tyres, refrigeration equipment and electrical and electronic goods are obliged to secure that such products, when disposed as waste, are collected, recycled, reused or disposed in an environmentally acceptable manner.

4 Liabilities

4.1 What types of liabilities can arise where there is a breach of environmental laws and/or permits, and what defences are typically available?

Breach of environmental law can give rise to both criminal and civil liabilities.

Traditional Danish liability law resembles that found in other European countries. The fundamental condition that must be met before liability to pay damages applies is that the person causing the damage has acted negligently. This has not presented much of a hindrance to compensation in environmental cases, however. In a number of criminal cases, Danish courts have set a rather low threshold for negligence in environmental cases and in Danish law one can conclude that if negligence is found in a criminal case, it will also be found in a civil case. In simple terms, one can say that an enterprise that emits considerably more pollution than it has been given permission to will normally be convicted on the grounds of negligence, irrespective of whether the case is criminal or civil. In spring 1994, the Danish Parliament passed a special Liability for Environmental Damages Act. The Act introduces strict liability for contaminations caused by operations performing activities governed by the law, most of them similar to the activities requiring permission. Liability is therefore not dependent on proof of negligence.

Another condition that needs to be fulfilled before one becomes liable to pay compensation is that there is an individual injured party. In cases of soil pollution that are initially cleaned up by the State or a municipality, the State or municipality is considered to be the injured party and can therefore submit a claim for compensation.

Violations of environmental laws are in most cases subject to a fine. In most criminal cases, the issues of negligence, proof and limitation are issues for a defence.

4.2 Can an operator be liable for environmental damage notwithstanding that the polluting activity is operated within permit limits?

The Danish implementation of the Environmental Liability Directive holds a possibility for liability for environmental damage despite operating within permit limits.

The Danish Environmental Damage Act provides an option for stating a liability even though the environmental damages are caused by activities operated within permit limits if the evaluation of the environmental damage changes over time.

This, for instance, means that a landowner that has obtained a permit for disposing building materials on his property is in risk of being subject to an environmental damage liability if this disposal is considered an environmental damage years from now. The statute of limitations for environmental damages is 30 years.

4.3 Can directors and officers of corporations attract personal liabilities for environmental wrongdoing, and to what extent may they get insurance or rely on other indemnity protection in respect of such liabilities?

Besides cases where the directors or officers have directly caused the pollution, Danish civil case law only includes one case where a director and owner of a company has been held liable for environmental wrongdoings performed by the company. Directors may be punished when they have actively caused an illegal act. This cannot be insured.

4.4 What are the different implications from an environmental liability perspective of a share sale on the one hand and an asset purchase on the other?

If the company is acquired by a sale of shares, the corporate entity is the same and the historical liability is therefore purchased together with the company.

If a business operation is acquired through an asset purchase, the acquiring entity will not inherit historical liability that can be attributed to the purchased assets.

If an enforcement order is issued by the time of sale, the new owner will, however, be obliged to comply with this order if continuing the specific activities.

4.5 To what extent may lenders be liable for environmental wrongdoing and/or remediation costs?

In connection with the adoption of the Liability for Environmental

Damages Act, the question of lender liability was discussed. On this question, the Ministry of Justice stated that a lender as a main rule is not liable for environmental damage, but if a lender has played an active role in connection with the more detailed planning of the enterprise's production, including relative to questions on measures concerning environmental matters, and if the lender has thereby had a direct or indirect influence on the subsequent environmental damage, then the lender could be held liable to pay compensation. There is no example in case law of a lender being held responsible.

5 Contaminated Land

5.1 What is the approach to liability for contamination (including historic contamination) of soil or groundwater?

Danish environmental legislation is based on the polluter pays principle. However, during the 1990s several lawsuits revealed that strict liability for contaminated sites could not be applied within Danish civil law. The Supreme Court ruled against the Ministry of Environment in a number of cases where it could not be proved that the polluter was acting in bad faith at the time the pollution occurred. As a consequence, the Soil Contamination Act provides for a number of significantly strengthened enforcement powers, primarily to be applied in relation to pollution occurring after 1 January 2001.

The Soil Contamination Act introduces strict liability for operations causing soil contamination. Regarding the power of the authorities to order investigation and notices of enforcement to this effect, strict liability can be applied for pollution occurring after 1991. Regarding orders to carry out remediation, strict liability can only be applied for contamination occurring after 1 January 2001.

If no contamination is found or if the investigation shows that the party to whom the notice was addressed caused no part of the pollution, the expenses are paid by the authorities.

A special rule has been introduced regarding owners of oil tanks with a capacity below 6,000 litres, used for domestic heating. Strict liability in these cases only applies if contamination occurs after 1 March 2000. These more strict rules on the responsibility of owners of private oil tanks are combined with a compulsory insurance programme. All the oil companies supplying heating oil have established a joint insurance scheme. All owners of oil tanks used for domestic heating with a capacity below 6,000 litres are automatically covered by the insurance scheme.

If soil contamination is not governed by the Soil Contamination Act, the Danish Environmental Protection Act applies. Intent or negligence has to be proven to demonstrate liability according to this Act.

Liability for contamination of groundwater is also governed by the Danish Environmental Protection Act, which means that intent or negligence has to be proved to assign liability due to such contamination.

5.2 How is liability allocated where more than one person is responsible for the contamination?

Under the Soil Contamination Act, notice of enforcement may, where several polluters are involved, be served to all the parties, based on estimates of their contribution to the pollution. Notices may also be served, no matter whether the polluter still has the right to dispose of the property, provided he had the right to dispose of the property at the time the Act was presented to the Parliament (10 February 1999) or later. Owners/users must accept investigations, clean-up actions etc. on their site.

5.3 If a programme of environmental remediation is 'agreed' with an environmental regulator can the regulator come back and require additional works or can a third party challenge the agreement?

The legal effect of an agreement with the authorities will depend on the form and wording of the agreement. The authorities tend to phrase their approvals in a way that will not prevent the authority from requiring additional works in case new circumstances should appear. But this will depend on an interpretation of the agreement or decision issued by the authority.

If a third party is affected by a decision made by a public authority, the third party will be able to challenge the decision by appeal. Under special circumstances – or if specifically regulated – non-governmental organisations have the same possibility of challenging such decisions.

5.4 Does a person have a private right of action to seek contribution from a previous owner or occupier of contaminated land when that owner caused, in whole or in part, contamination; and to what extent is it possible for a polluter to transfer the risk of contaminated land liability to a purchaser?

A buyer of contaminated land has two possibilities of seeking compensation from the seller. It can either be as a claim for reduction of the purchase price (since the contamination constitutes a defect of the property) or as a claim for damages.

In order to claim a reduction of the purchase price, the contamination of the property must be of some significance compared to the purchase price. As a rule-of-thumb, the decrease of value of the property due to the contamination must be at least 10% of the total purchase prise of the property at the time of purchase.

The buyer does not have to prove negligence on the part of the seller. The only limitation is the normal period of limitation of 20 years for claims regarding contaminated land.

If the claim is raised as a claim for damages, the buyer will have to prove negligence on the part of the seller regarding the contamination. This might be the case if the seller is responsible for the operations that caused the contamination or if the seller at the time of purchase had knowledge of the contamination without sharing this knowledge with buyer.

If the purchase agreement contains a specific exclusion of liability clause regarding soil contamination, the buyer will, depending on the extent of the clause, be prevented from asserting claims due to the contamination.

Such an agreement does not prevent public authorities from making claims against the seller.

5.5 Does the government have authority to obtain from a polluter, monetary damages for aesthetic harms to public assets, e.g., rivers?

The current Danish regulation does not give the government authority to obtain damages for aesthetic harms to public assets.

6 Powers of Regulators

6.1 What powers do environmental regulators have to require production of documents, take samples, conduct site inspections, interview employees, etc?

The environmental regulators have many possibilities of obtaining information about operations.

According to the Environmental Protection Act, the environmental authorities may require any information from an operator, who can be a possible polluter. The information is not only descriptions about the production, including what materials the firm uses for a product; the required information may also be, for example, financial statements and other financial conditions. If the operator does not have the information that the environmental authorities demand, the authorities can order the operator to take samples and make analyses of the products, the materials and waste from the production. It is the operator who pays for the preparation of such information. If the operator denies surrendering the required documents or samples to the environmental authorities, the authorities can make the necessary examinations on the operator's account. The authorities can – if necessary – make inspections to control any possible location.

A similar possibility of information is found in the Contaminated Soil Act. Under this Act, the authorities may require information, when it is necessary for repairing or taking preventive measures concerning possible soil pollution.

This access to require information from a company is, due to the principle of self-incrimination, not possible if the authorities suspect the company of an environmental crime. In this case, the environmental authorities must obtain the required information by making their own examinations.

7 Reporting / Disclosure Obligations

7.1 If pollution is found on a site, or discovered to be migrating off-site, must it be disclosed to an environmental regulator or potentially affected third parties?

The owner or user of a property has a general obligation to inform and involve the local environmental authority (the municipality) if contamination is discovered on the property. If contamination is discovered during building or construction work, the work must be stopped immediately.

7.2 When and under what circumstances does a person have an affirmative obligation to investigate land for contamination?

An owner does not have a general obligation to investigate land for contamination. It is only when the environmental authorities require examinations that an owner has an obligation to perform such investigations.

7.3 To what extent is it necessary to disclose environmental problems, e.g. by a seller to a prospective purchaser in the context of merger and/or takeover transactions?

There is no general legal obligation in Denmark to disclose environmental problems to a prospective purchaser in the context of merger and takeover transactions. The basic principle in these cases is that of caveat emptor or "let the buyer beware".

However, the seller of real estate has an obligation to inform the purchaser about circumstances which can be of decisive importance. And this obligation includes disclosing environmental problems. If a seller fails to give such information, the purchaser is entitled to recover damages or if the environmental problems are extensive, the purchaser can terminate the transaction.

8 General

8.1 Is it possible to use an environmental indemnity to limit exposure for actual or potential environment-related liabilities, and does making a payment to another person under an indemnity in respect of a matter (e.g. remediation) discharge the indemnifier's potential liability for that matter?

An environmental indemnity can be agreed upon. However, such an agreement is only applicable between the parties to the agreement and will therefore not be binding upon the authorities. See also question 5.4 above.

8.2 Is it possible to shelter environmental liabilities off balance sheet, and can a company be dissolved in order to escape environmental liabilities?

It is not possible to shelter environmental liabilities from the rest of an operation just as it is not possible to dissolve a company in order to escape environmental liabilities. The environmental authorities or an offended third party will have a claim against the insolvent estate corresponding to the environmental liability of the company. Dissolving the company cannot prevent this.

8.3 Can a person who holds shares in a company be held liable for breaches of environmental law and/or pollution caused by the company, and can a parent company be sued in its national court for pollution caused by a foreign subsidiary/affiliate?

A person who holds shares in a limited liability company cannot be held responsible for breaches of environmental law caused by the company merely due to the fact that the person holds shares in the company.

Only in exceptional circumstances where the conditions for lifting the corporate veil are present, a shareholder can be held responsible for environmental violations caused by the company. To lift the corporate veil, it will most likely be a condition that the shareholder personally has gained some kind of financial advantage due to the violations of environmental law.

There are no specific rules in Danish law regarding liability for pollution by affiliates. If the affiliate is a Danish limited liability company, the parent company will not be held liable for liabilities of the affiliate. It cannot be ruled out though that a parent company under very exceptional circumstances can be held responsible for liability of the affiliate.

8.4 Are there any laws to protect "whistle-blowers" who report environmental violations/matters?

Under Danish Law there is no specific protection of "whistle-blowers" in environmental matters. However, Denmark has incorporated the European Convention on Human Rights, including

Article 10 on the Freedom of Speech. If an obligation of secrecy is broken, a balance must be found between this obligation and the general interest of the revealed information.

8.5 Are group or "class" actions available for pursuing environmental claims, and are penal or exemplary damages available?

Danish legislation holds a general possibility of class actions and therefore also regarding environmental matters.

The Danish legal system does not acknowledge penal or exemplary damages.

9 Emissions Trading and Climate Change

9.1 What emissions trading schemes are in operation in Denmark and how is the emis sion trading market developing there?

The Danish government has ratified the Kyoto Protocol. The European Union must reduce emissions of greenhouse gasses by 8 %. However, the members of the European Union have made a political agreement - the Burden Sharing Agreement - under which Denmark must reduce the emission by an average 21% in the period 2008-2012, compared to the 1990 emission level.

The use of CO2 emission permits has been introduced to reach the goal of 21 % reduction. The system of permits operates under the common EU trading scheme European Union Greenhouse Gas Emission Trading Scheme (EU ETS).

Companies in the energy production industries, in certain raw material refinery and production industries, and, as of 2012, also in the aviation operation industry must obtain a CO2 emission permit and CO2 quota units corresponding to the company's discharge of CO2.

Companies within the above-mentioned industries are allocated a certain amount of CO2 quota units free of charge every year and have the possibility to trade these quota units on a European emission trading market. The companies must once a year report their CO2 emission. If a company has discharged more CO2 than permitted, the company must pay a penalty of EUR 100 per tonnes extra CO2 and obtain the lacking quota units on the market.

The Danish Emission Trading Registry registers the trade in quota units, but the Registry does not arrange contact between buyers and sellers.

Danish companies in the energy industry have been very active in buying quotas in the European market as they have generally been allocated a very low amount of quota units under the Danish system.

9.2 What is the overall policy approach to climate change regulation in Denmark?

The Danish government stated in its government platform from November 2011 that Denmark should move towards an energy and transport system based on 100% sustainable energy by 2050.

The Danish Ministry of Climate, Energy and Building has a declared goal of working towards the realisation of a stable and secure energy supply and promoting the reduction of greenhouse gas emissions. The main challenge for the ministry is to address global warming and at the same time maintain energy security. The declared policy approach of the government and the Ministry is to change the way the energy is produced and consumed and adapt society to climate change.

The government's long-term vision for Denmark is to be 100% independent of reliance on fossil fuels. An independent climate commission is investigating how this vision can be achieved.

In order to achieve the objective of 100% sustainable energy by 2050, a series of interim targets have been set within Danish energy policy: by 2020 half of Denmark's traditional electricity consumption must be covered by energy harvested by wind, and greenhouse gas emissions must be reduced by 40% compared to the 1990 emission level; and by 2035, half of all electricity and heat consumption must be covered by sustainable energy sources.

The Danish Ministry of Climate, Energy and Building is aiming at achieving these goals through e.g. the Danish strategy for adapting to climate change in Denmark and by implementing energy agreements.

The Danish Ministry of Climate, Energy and Building is also working to reduce greenhouse gas emissions worldwide, including within the EU framework and through climate negotiations, e.g. in the UN climate conference that was held in Copenhagen in December 2009.

However, in the Danish as in the International systems, the climate change regulation is mainly expressed in general non-binding declarations. In Denmark, as well as in other countries, economic interests have a powerful impact on the political system (http://www.kemin.dk/en-US/Climate_and_energy_policy/Denmark/Sider/Forside.aspx).

10 Asbestos

10.1 Is Denmark likely to follow the experience of the US in terms of asbestos litigation?

No, this is not likely. The liability of an employer regarding asbestos diseases is mainly regulated by mandatory health insurance.

10.2 What are the duties of owners/occupiers of premises in relation to asbestos on site?

Use of asbestos is prohibited in Denmark. Handling of existing asbestos-containing materials in buildings etc. is subject to extensive regulation under Danish law. This includes specific rules on removal and repairing of asbestos-containing material, such as special education of the workers involved. Waste containing asbestos is considered hazardous waste and is thus subject to strict provisions regarding handling and transportation.

11 Environmental Insurance Liabilities

11.1 What types of environmental insurance are available in the market, and how big a role does environmental risks insurance play in Denmark?

Environmental risk insurance plays a very limited – almost non-existing – role in Denmark. In connection with the adoption of the Liability for Environmental Damage Act, a special insurance scheme was offered for operations that were governed by the strict liability in the Act. Only a very limited number of operations have taken out a policy on such insurance.

As a very specific exception from the above, most industrial

farmers are insured against liability from pollution caused by use of livestock manure.

General professional indemnity insurance might, depending on the scope of the specific policy, also cover environmental damages.

11.2 What is the environmental insurance claims experience in Denmark?

Apart from insurance claims under the special compulsory insurance programme for contaminations from oil tanks with a capacity below 6,000 litres, there is no significant insurance claims experience in Denmark.

12 Updates

12.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Environment Law in Denmark.

As a result of the weather becoming more extreme the recent years, focus has increased on measures to prevent flooding. Among other things, the construction and improvement of basins to withhold water during heavy rainfalls and many other technical measures are currently being discussed and implemented throughout the country.

However, the implementation of such measures often clashes with the regulation relating to nature conservation.

The Danish nature conservation regulation is based on the basic principle that various natural area types and habitats must be protected as is and wherever they may be at any given time. This also applies to natural areas that have grown from a technical installation that was originally planned and intended strictly for a technical purpose – e.g. a water basin that later "grows into" a lake.

The clash between nature conservation and construction and maintenance of necessary technical installations has become more outspoken and has led to many cases in the past few years.

It is proving increasingly necessary to plan for replacement biotopes or other remedial measures, when planning for large construction projects as a result of the described development.

Another trend in Danish national environmental law that is worth noting, though on a somewhat different scale, is the development towards digitalisation of all procedures relating to industrial companies' environmental issues and how to ease the administrative burdens relating to environmental procedures. The political discussions on this topic are nearing a close and draft legislation regarding digitalisation is expected to be put forward in the near future.

Digitalisation will have great influence on how companies handle environmental issues and will also provide new legal challenges as to compliance procedures with environmental requirements.

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Henriette Soja has for years ranked among the absolute leading practitioners of environmental law in Denmark. Henriette has long and extensive experience in conducting environmental due diligence on major transactions, compliance programmes and risk management in private enterprises.
Henriette Soja has advised and carried out legal investigations in many leading cases within the areas of environmental, planning and construction law and has conducted negotiations and a large number of cases of general public importance within all the areas traditionally handled by the municipal technical administration and the municipal supply sector.
She has represented municipalities and private enterprises in some of the largest environmental cases in recent years.
Henriette Soja is chairman of the Danish Society of Environmental law. She is admitted to the Supreme Court and member of the Danish Bar and Law Society. Henriette has extensive teaching experience and has published several articles on environmental law issues.

HORTEN

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