

Issued in Helsinki on 29 May, 2009

## **Act**

### **on the Remediation of Certain Environmental Damages**

In accordance with the decision of Parliament the following is enacted:

#### **Chapter 1**

##### **General provisions**

###### **1 §**

###### **Section 1, Scope of application**

This act shall apply to remediation of the following damages caused to the environment:

- 1) damage to the environment referred to in section 5 a of the Nature Conservation Act (1096/1996);
- 2) considerable pollution of the water system referred to in section 84 a of the Environmental Protection Act (86/2000); and
- 3) a substantially harmful change in the water bodies or groundwater referred to in Chapter 21, section 3 c of the Water Act (264/1961).

This act shall not apply in cases where the damage has been caused by:

- 1) an exceptional natural phenomenon;
- 2) a measure whose sole purpose is to protect against natural disasters;
- 3) a measure whose primary purpose is national defence or international security;
- 4) an occurrence to which Chapters 10 and 10 a of the Maritime Act (674/1994) apply;
- 5) an activity regulated under the Nuclear Liability Act (484/1972).

###### **2 §**

###### **Section 2, Reference to other legislation**

Remediation is regulated under the Nature Conservation Act, Environmental Protection Act, Water Act and Gene Technology Act (377/1995).

The obligation to prevent the causation of damage referred to in section 1, subsection 1 and the obligation to limit damage incurred are regulated under the Acts mentioned in subsection 1 and in the Act on the Transport of Dangerous Goods (719/1994).

###### **3 §**

###### **Section 3, Decision-making authority on remedial measures**

The decision-making authority on the remedial measures referred to in this Act, hereafter *authority*, is regulated under the Acts mentioned in section 2, subsection 1.

#### **Chapter 2**

## **Remediation of damage**

### **4 §**

#### **Section 4, Definitions**

In this chapter the term

1) *natural resource*

means: a) the natural habitats and living environments of the species referred to in the Nature Conservation Act, section 5 a, subsection 1, as well as the species and their localities and the places where they reproduce and rest;

b) the water area referred to in the Water Act, Chapter 1, section 1, subsection 2, and ground water referred to in section 4.

c) the territorial waters referred to in the Act on the Delimitation of the Territorial Waters of Finland (463/1956);

d) the economic zone referred to in the Finnish Act on the Exclusive Economic Zone (1058/2004);

2) *natural resource service* means the useful effect of a natural resource on another natural resource or on humans;

3) *baseline condition* means the status prior to damage to natural resources and natural resource services.

### **5 §**

#### **Section 5, Remedial measures**

Natural resources and natural resource services must be restored to baseline condition by eliminating the harmful change caused by the damage (*primary remediation*).

If the baseline condition cannot be fully restored, the impairment the damage has caused to the natural resource and natural resource service should be replaced by measures undertaken in the damaged area or elsewhere (*complementary remediation*).

The temporary losses caused to a natural resource or natural resource service shall be replaced by taking measures in the damaged area or elsewhere until primary and complementary remediation have exerted their full effect (*compensatory remediation*).

### **6 §**

#### **Section 6, Selection of remedial measures**

The authority shall take the following into consideration when considering the measures to be undertaken:

1) the nature, scope and severity of the damage;

2) the possibility for natural restoration;

3) risks posed to human health;

4) expenses incurred in remedying the damage;

5) other damages that may have occurred in the area.

In selecting the measures to be undertaken, the proposal of the operator who caused the damage and the comments of the parties entitled to institute proceedings under the Acts mentioned in section 2, subsection 1 shall be taken into consideration.

7 §

#### **Section 7, Remedial measures outside the damaged area**

The authority may grant the operator who caused the damage the right to perform the measures referred to in section 5, subsections 2 and 3, outside the damaged area. Remedial measures must not cause any inconvenience that could be avoided. The authority shall, before the measures are decided upon, afford the owner of the real estate or a special right holder the right to be heard.

If carrying out the remedial measures causes considerable inconvenience to the owner of the real estate or the special right holder, he/she has the right to receive full compensation for any damage. When granting the right referred to in subsection 1, the authority shall, at the same time, ordain compensation to be paid for the inconveniences incurred in undertaking the measures. If an agreement on compensation cannot be reached, the provisions of the Act on the Redemption of Immoveable Property and Special Rights (603/1977) shall apply, as appropriate, in determining the amount of compensation.

If the party entitled to receive compensation is unable to collect compensation from the operator who caused the damage, the government shall pay damages.

8 §

#### **Section 8, Ending remediation**

The authority can decide, by means of the procedure concerning the determination of remedial measures as prescribed in the Act mentioned in section 2, subsection 1, to end remediation, if:

- 1) the remedial measures implemented guarantee that the risk to human health and natural resources has been eliminated; and
- 2) the costs of continuing remediation would be disproportionate compared to the environmental benefits gained.

9 §

#### **Section 9, The authority's right to undertake measures**

The Centre for Economic Development, Transport and the Environment can, at the government's expense, perform the necessary measures relating to the prevention or limitation of damage, or perform remedial measures in the damaged area, or have someone else perform these measures, provided that:

- 1) the matter is urgent and the procedure prescribed in the Act referred to in section 2, subsection 1, cannot be delayed without substantially exacerbating the damage; or
- 2) the operator who caused the damage cannot be determined without difficulty.

The Centre for Economic Development, Transport and the Environment shall, following the procedure referred to in subsection 1 or after the operator referred to in subsection 1, point 2 has

been established, institute, without delay, proceedings for the determination of remedial measures as prescribed in the Act referred to in section 2, subsection 1.

### **Chapter 3**

#### **Liability**

##### **10 §**

###### **Section 10, Liability**

The operator who caused the damage shall be liable for any costs:

- 1) arising from the remedial measures referred to in section 5; and
- 2) that the authority incurs in assessing the damage and the immediate threat posed by it, and in deciding upon remedial measures and supervising them.

If the damage was caused by more than one activity, the responsibility for the costs referred to in subsection 1 shall be allocated among the operators according to their share of the total damage. If this share cannot be assessed, the responsibility shall be divided per capita.

##### **11 §**

###### **Section 11, Limitation of liability**

The operator is not liable for the costs referred to in section 10 if he/she can prove that the damage:

- 1) was caused by a third party and incurred despite appropriate safety measures taken by the operator;
- 2) was caused as a result of complying with a requirement or instruction issued by the authority, unless the requirement or instruction was issued on account of an emission or other occurrence resulting from the operator's own activity.

##### **12 §**

###### **Section 12, Making costs equitable**

An operator who proves that he/she has acted carefully, shall not be responsible for the full amount of the costs referred to in section 10.

The prerequisite for making the costs equitable is that:

- 1) the damage is due to an emission or an occurrence that complies with the conditions of the permit granted for the operation or other decision of the authority; or
- 2) the obligations prescribed in the legislation concerning the operation were complied with in carrying out the operation.

##### **13 §**

###### **Section 13, Deciding upon liability**

Matters concerning the allocation and limitation of liability and making the costs equitable shall be decided upon by means of a procedure regulated under the Act mentioned in section 2, subsection 1 concerning the requirement to undertake remedial measures.

## **14 §**

### **Section 14, Claim for recovery of costs incurred by the Government**

Compensation paid by the Government on the basis of section 7, subsection 3 shall be collected from the operator in the order prescribed in the Act on the Implementation of Taxes and Levies (706/2007).

The costs incurred by the government in performing the measures referred to in section 9 shall be collected from the operator who caused the damage within five years from the conclusion of said measures, or within five years from the date of determination of the identity of the operator who caused the damage. If the expenses of the claim for recovery are greater than the amount to be recovered, the costs may be left uncollected. The decision concerning the claim for recovery must not be implemented until it has become legally binding.

## **15 §**

### **Section 15, The Government's participation in remedial measures**

If the operator is not responsible for the costs for a reason pursuant to section 11, or the liability of the operator who caused the damage has been made more equitable on the basis of section 12, the Centre for Economic Development, Transport and the Environment may perform the remedial measures, or have them performed, as work benefitting the environment.

## **Chapter 4**

### **Various provisions**

## **16 §**

### **Section 16, More specific provisions**

More specific provisions can be issued by means of a government decree, concerning:

- 1) the remedial measures referred to in section 5;
- 2) matters to be considered in selecting the remedial measures referred to in section 6;
- 3) matters to be considered in determining the costs incurred by the authority referred to in section 10, subsection 1, point 2.

## **17 §**

### **Section 17, Appeal**

Appeals against the authority's decision concerning imposing remedial measures is prescribed in the Acts mentioned in section 2, subsection 1.

## **18 §**

### **Section 18, Entry into force and transitional provisions**

This act shall take effect on 1 July, 2009.

This act shall not apply to remedying damage caused by activities that concluded before this Act became effective, even though the damage may have become apparent only after the Act took effect.

Before the Act takes effect, measures required for its implementation may be taken.

[Government proposal 228/2008](#)

Environment Committee Other matter 3/2009

Parliamentary reply 48/2009

Directive of the European Parliament and of the Council of Europe [35/2004/EC](#) (32004L0035);

Official Journal of the European Communities No. L143, 30 April, 2004, p. 56

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