

**Act serving to implement the Directive of the European Parliament and of the Council
on Environmental Liability with Regard to the Prevention and Remedying
of Environmental Damage¹.**

of 10 May 2007

The *Bundestag* has adopted the following Act:

**Article 1
Environmental Damage Prevention and Remediation Act.
(Environmental Damage Act - EDA [USchadG])**

**§ 1
Relationship with other laws and regulations**

This Act shall govern as far as laws and regulations at federal or state (*Länder*) level do not cover the prevention and remediation of environmental damage in specific detail or their provisions fall short of this Act. Laws and regulations that go beyond this Act shall remain unaffected.

**§ 2
Definitions**

For the purpose of this Act,

1. Environmental damage: means
 - a) damage to species and natural habitats as defined in § 21a of the Federal Nature Conservation Act,
 - b) water damage as defined in § 22a of the Federal Water Resources Act,
 - c) land damage by impacts on soil functions as defined in § 2 Sec. 2 of the Federal Soil Protection Act, as a result of the direct or indirect introduction of substances, preparations, organisms or micro-organisms on, in or under land, that creates a threat to human health;
2. Damage or detriment: means a measurable adverse change in a natural resource (species and natural habitats, water and soil) or measurable impairment of a natural resource service which may occur directly or indirectly;
3. Responsible party: means any natural or legal person who engages in or controls the occupational activity, including the holder of a permit or authorisation for such an activity or the person registering or notifying such an activity, thereby directly causing environmental damage or the immediate threat of such damage.

¹ This Act serves to implement Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (Official Journal of the European Union No L 143, p. 56).

4. Occupational activity: means any activity carried out in the course of an economic activity, a business or an undertaking, irrespectively of its private or public, profit or non-profit character;
5. Imminent threat of environmental damage: means a sufficient likelihood that environmental damage will occur in the near future;
6. Preventive measure: means any measure taken in the case of an imminent threat of environmental damage with a view to preventing or minimising that damage;
7. Damage control measure: means any measure taken to immediately control, contain, remove or otherwise manage the relevant contaminants and other damage factors concerned in order to limit or prevent further environmental damage and adverse effects on human health or any further impairment of natural resource services;
8. Remedial measure: means any measure serving to remedy environmental damage in accordance with the special regulations;
9. Costs: means the necessary costs incurred in the proper and effective implementation of this Act including the costs of assessing environmental damage or an imminent threat of such damage, alternatives for action as well as the administrative, legal, and enforcement costs, the costs of data collection and other general costs, monitoring and supervision costs;
10. Special regulations: means the Federal Nature Conservation Act, the Federal Water Resources Act and the Federal Soil Protection Act, including the ordinances issued for their implementation.

§ 3 Scope

(1) This Act applies to

1. environmental damage and the imminent threat of such damage caused by any occupational activity listed in Annex 1;
2. damage to species and natural habitats as defined in § 21a Sec. 2 and 3 of the Federal Nature Conservation Act and the imminent threat of such damage caused by occupational activities other than those listed in Annex 1, to the extent the operator has been at fault or negligent.

(2) This Act applies to damage to species and natural habitats and the imminent threat of such damage occurring within the Exclusive Economic Zone and the continental shelf, as defined within the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 (Federal Law Gazette 1994 II p. 1799).

(3) This Act does not apply to environmental damage or the imminent threat of such damage caused by:

1. armed conflicts, hostilities, civil war or insurrections,

2. an exceptional, inevitable and irresistible natural phenomenon,
3. an incident in which liability or compensation fall within the scope of any of the international conventions listed in Annex 2 in their respective versions applicable to Germany,
4. the exercise of activities covered by the Treaty establishing the European Atomic Energy Community, or
5. an incident or activity for which liability or compensation falls within the scope of any of the international instruments listed in Annex 3 in their respectively applicable versions.

(4) This Act shall only apply to cases in which the environmental damage or the imminent threat of such damage is caused by pollution of a diffuse character, where a causal link between the damage and the activities of individual responsible parties can be established.

(5) This Act does not apply to activities whose main purpose is to serve defence or international security nor to activities whose sole purpose is to protect from natural disasters.

§ 4 Information obligation

In the event of an imminent threat of an environmental damage, or when an environmental damage has occurred, the responsible party must promptly inform the competent authority of all relevant aspects of the situation.

§ 5 Threat prevention obligation

In the event of an imminent threat of an environmental damage, the responsible party must promptly take the necessary preventive measures.

§ 6 Remedial obligation

Where an environmental damage has occurred, the responsible party must

1. take the necessary damage control measures,
2. take the necessary remedial measures according to § 8.

§ 7 General obligations and powers of the competent authority

(1) The competent authority shall monitor the responsible party to ensure that the necessary preventive, damage control and remedial measures are taken.

(2) With regard to the obligations under §§ 4 to 6, the competent authority may require the responsible party to

1. provide all necessary information and data on an imminent threat of environmental damage, on a suspected imminent threat or on a damage that has occurred, along with the responsible party's own assessment,
2. take the necessary preventive measures,
3. take the necessary damage control and remedial measures.

§ 8

Determination of remedial measures

(1) The responsible party shall be obligated to identify, in accordance with the special regulations, the necessary remedial measures and to submit them to the competent authority for approval, unless the competent authority has taken the necessary remedial measures.

(2) The competent authority shall decide, in accordance with the special regulations, on the nature and extent of the remedial measures to be taken.

(3) If several instances of environmental damage do not allow for remedial measures taken at the same time, the competent authority can prioritise the remedial measures in due consideration of the nature, extent and gravity of the various instances of environmental damage, of the possibility of a natural recovery and of the risks to human health.

(4) The competent authority informs those affected and the appropriate associations entitled to an application per § 10 about the planned remedial measures, giving them an opportunity to submit their observations; such information may be in the form of a public announcement. Timely responses will be taken into account in the decision process.

§ 9

Costs of preventive and remedial measures

(1) Subject to any claims against public authorities or third parties the responsible party shall bear the costs of the preventive, damage control and remedial measures. For the enforcement of this Act by the *Länder* authorities the *Länder* shall issue provisions, necessary for implementing Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ EC No L 143, p. 56), on cost allocations, cost exemptions and cost reimbursements including payment deadlines; in particular, the *Länder* may decide that, subject to the provisions of Article 8 Sec. 4 of Directive 2004/35/EC, the responsible party may not have to bear the costs of the remedial measures taken. In doing so the *Länder* will take into account the particular situation in the agricultural sector with regard to the use of pesticides.

(2) Multiple responsible parties, regardless of the manner in which they were obligated, shall have the right to compensatory claims among themselves. Unless stipulated otherwise, the obligation to provide such compensation and the extent of the compensation to be provided

shall depend on the degree to which the damage or threat was caused primarily by one party or the other; § 426 Sec. 1 s. 2 of the Civil Code is applicable accordingly. The statute of limitations for any compensatory claim will be three years; §§ 438, 548 and 606 of the Civil Code will not be applicable. The statute of limitations begins following collection of costs, when the competent authority carries out measures itself, otherwise it begins following completion of the measures by the responsible party and at the time at which the responsible party becomes aware of the identity of the person obligated to provide compensation. Regardless of such knowledge, the statute of limitation for such compensatory claim is 30 years following the completion of the measure. For legal actions, recourse to the ordinary courts shall be available.

(3) This Act does not influence the right of the responsible party to limit its liability in accordance with § 486 Sec. 1, 4 and 5, § 487 to 487e of the Commercial Code or § 4 to 5m of the Inland Waterways Act.

§ 10 Request for action

The competent authority will take action towards the enforcement of the remedial obligation under this Act ex officio or when an affected party or an association, entitled to appeal under § 11 Sec. 2, submits a corresponding application and when the facts on which that application is based plausibly suggest the occurrence of an environmental damage.

§ 11 Legal protection

(1) An administrative act taken pursuant to this law shall state the reasons and must be provided with an instruction about legal remedies available.

(2) For associations recognised or considered to have been recognised pursuant to § 3 Sec. 1 of the Environmental Appeals Act (of 7 December 2007, Federal Law Gazette I p. 2816), legal remedy against a decision or the omission of a decision by the competent authority according to this present Act is available through § 2 of the Environmental Appeals Act.

§ 12 Cooperation with the Member States of the European Union

(1) Where environmental damage affects or is likely to affect one or several Member States of the European Union, the competent authority shall cooperate with the corresponding authorities of the other Member States, exchanging to a reasonable extent the information needed to ensure the necessary preventive, damage control and remedial measures to be taken.

(2) In the event an environmental damage has been caused within the scope of validity of this Act, with a potential effect on the territory of another Member State of the European Union, the competent authority shall be required to provide adequate information to the potentially affected Member States.

(3) Where a competent authority identifies an environmental damage that was caused not

within the scope of validity of this Act but within the territory of another Member State of the European Union, it may make recommendations for the implementation of preventive, damage control and remedial measures, and it may seek to recover the costs it has incurred in relation to the adoption of such measures.

§ 13 **Time-limited applicability**

(1) This Act does not apply to damage caused by emissions, events or incidents that took place prior to 30 April 2007 or derive from specific activities that finished prior to that date.

(2) This Act does not apply to damage caused more than 30 years ago, if during that period no authority took action against the responsible party.

ANNEX 1 (to § 3 Sec. 1) Occupational activities

1. The operation of installations subject to permit in pursuance of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control. That means all activities listed in Annex I of Directive 96/61/EC with the exception of installations or parts of installations used for research, development and testing of new products and processes.
2. Waste management operations (the collection, transport, recovery and disposal of waste and hazardous waste, including the supervision of such activities and after-care of disposal sites), subject to a permit, an announcement or a plan approval pursuant to regulations implementing Council Directive 75/442/EEC of 15 July 1975 on waste and Council Directive 91/689/EEC of 12 December 1991 on hazardous waste.
These operations include, inter alia, the operation of landfill sites requiring a plan approval or planning permission according to § 31 Sec. 2 and 3 of the Closed Substance Cycle and Waste Management Act (KrW-/AbfG), as well as the operation of incineration plants requiring a permit in accordance with § 4 of the Federal Immission Control Act (BImSchG) in conjunction with the Annex to the Fourth Ordinance for the Implementation of the Federal Immission Control Act (4. BImSchV).
3. The introduction, discharge or other input of pollutants into surface waters pursuant to § 3 Sec. 1 No 4 and 4a as well as Sec. 2 No 2 of the Federal Water Resources Act (WHG) requiring a permit in accordance with § 2 Sec. 1 WHG.
4. The introduction, discharge or other input of pollutants into the groundwater pursuant to § 3 Sec. 1 No 5 as well as Sec. 2 No 2 WHG requiring a permit in accordance with § 2 Sec. 1 WHG.
5. The abstraction of water from bodies of water pursuant to § 3 Sec. 1 No 1 and 6 WHG requiring a permit or a licence in accordance with § 2 Sec. 1 WHG.
6. The impoundment of surface waters pursuant to § 3 Sec. 1 No 2 WHG requiring a permit or a licence in accordance with § 2 Sec. 1 WHG or a plan approval or a planning permission in accordance with § 31 Sec. 2 or 3 WHG.
7. The manufacture, use, storage, processing, filling, release into the environment and on-site transport of
 - a) dangerous substances as defined in § 3a Sec. 1 of the Chemicals Act (ChemG);

- b) dangerous preparations as defined in § 3a Sec. 1 ChemG;
 - c) plant protection products as defined in § 2 No 9 of the Plant Protection Act (PflSchG);
 - d) biocidal products as defined in § 3b Sec. 1 No 1 a) ChemG.
8. Transport by road, rail, inland waterways, sea or air of dangerous goods or polluting goods as defined in § 2 No 9 of the Regulation on Carriage of Dangerous Goods by Road and Rail or as defined in No 1.3 and 1.4 of the Annex to § 1 Sec. 1 of the Internal Waters Entering Requirements Ordinance.
 9. The operation of installations subject to authorisation in pursuance of Council Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants in relation to the release into air of any of the polluting substances covered by the aforementioned Directive.
 10. Genetic engineering activities as defined in § 3 No 2 of the Genetic Engineering Act (GenTG) involving micro-organisms in genetic engineering systems as defined in § 3 No 4 GenTG, as well as the extramural transport of genetically modified micro-organisms.
 11. Any deliberate release of genetically modified organisms into the environment as defined in § 3 No 5 first clause GenTG, as well as the transport and the placing on the market of such organisms as defined in § 3 No 6 GenTG.
 12. Transboundary shipment of waste within, into or out of the European Union, requiring an authorisation or prohibited in the meaning of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community.

ANNEX 2 (to § 3 Sec. 3 No 3)

International Conventions

- a) International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage (1992 Liability Convention, Federal Law Gazette 1996 II p. 670);
- b) International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1992 Fund Convention, Federal Law Gazette 1996 II p. 685);
- c) International Convention of 23 March 2001 on Civil Liability for Bunker Oil Pollution Damage;
- d) International Convention of 3 May 1996 on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea;
- e) Convention of 10 October 1989 on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels.

ANNEX 3 (to § 3 Sec. 3 No 5)

International Instruments

- a) Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy and the Brussels Supplementary Convention of 31 January 1963 (Federal Law Gazette 1975 II p. 957);
- b) Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage (Federal Law Gazette 2001 II p. 202);
- c) Convention of 12 September 1997 on Supplementary Compensation for Nuclear Damage;
- d) Joint Protocol of 21 September 1988 relating to the Application of the Vienna Convention and the Paris Convention (Federal Law Gazette 2001 II p. 202);
- e) Brussels Convention of 17 December 1971 relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material (Federal Law Gazette 1975 II p. 957).

Article 2 Amendment of the Federal Water Resources Act

The Federal Water Resources Act as promulgated in the Federal Law Gazette of 19 August 2002 (Federal Law Gazette I p. 3245), as amended last by Article 2 of the Law of 25 June 2005 (Federal Law Gazette I p. 1746), is amended as follows:

1. In § 1 Sec. 2, 2nd sentence, the statement “§ 22” is replaced by the statement “§§ 22 and 22a”.

2. After § 22 the following § 22a is inserted:

§ 22a Water Damage

(1) Water damage according to the Environmental Damage Act means any damage that significantly adversely affects:

- 1. the ecological or chemical status of surface waters or of coastal waters,
- 2. the ecological potential or the chemical status of artificial or heavily modified surface waters or coastal waters, or
- 3. the chemical or quantitative status of the groundwater,

excluding those adverse effects governed by § 25d Sec. 3, § 32c in conjunction with § 25d Sec. 3 and § 33a Sec. 4, 2nd sentence.

(2) In the event a responsible party according to the Environmental Damage Act has caused water damage, it will take the necessary remedial measures according to Annex II No 1 of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ EC No L 143, p. 56).

(3) Any additional regulations regarding damage to or other impairments of waters and appropriate remediation shall remain unaffected.

Article 3

Amendment of the Federal Nature Conservation Act

The Federal Nature Conservation Act of 25 March 2002 (Federal Law Gazette I p. 1193), as amended last by Article 8 of the Law of 9 December 2006 (Federal Law Gazette I p. 2833), is amended as follows:

1. In the Table of Contents, after the text for § 21, the following wording is inserted: "§ 21a Damage to certain species and natural habitats".

2. In § 11 1st sentence after the statement "§§ 21 and" the wording "'21a, in §" is inserted.

3. After § 21 Sec. 3 the following section 4 is added:

"(4) If in decisions on projects per § 34 of the Federal Building Code, consultation under section 3 is denied because there are indications to the effect that the project could cause damage as defined in § 21a Sec. 1, 1st sentence, the developer shall be so informed. At the request of the developer, the authority competent for the permit decision shall, in consultation with the authority responsible for nature conservation and landscape management, take decisions in accordance with § 19 or corresponding *Länder* law, as far as they serve the prevention, mitigation or compensation of damage according to § 21a Sec. 1, 1st sentence; in those cases § 21a Sec. 1, 2nd sentence will apply. Other than that, section 2, 1st sentence remains unaffected."

4. After § 21 the following § 21a is added:

"§21a

Damage to certain species and natural habitats

(1) Damage to species and natural habitats according to the Environmental Damage Act includes any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species. In contrast to the 1st sentence, damage does not include previously identified adverse effects which result from an activity of a responsible party which the competent authority approved under the provisions of §§ 34, 34a, 35 or corresponding *Länder* law, of § 43 Sec. 8 or § 62 Sec. 1 or, if such an assessment is not required, in accordance with

1. § 19 or corresponding *Länder* law or
2. on the basis of the preparation of a land-use plan according to §§ 30 and 33 of the Federal Building Code

or which are allowed.

(2) Species according to Sec. 1 are those listed in

1. Article 4 Sec. 2 or Annex I of Directive 79/409/EEC or
2. the Annexes II and IV of Directive 92/43/EEC.

(3) Natural habitats according to Sec. 1 are

1. habitats of species listed in Article 4 Sec. 2 or Annex I of Directive 79/409/EEC or in Annex II of Directive 92/43/EEC,
2. natural habitats listed in Annex I of Directive 92/43/EEC, as well as
3. the breeding sites or resting places of the species listed in Annex IV of Directive 92/43/EEC.

(4) In the event a responsible party according to the Environmental Damage Act has caused damage to protected species or natural habitats, it will take the necessary remedial measures according to Annex II, No 1 of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ EC No L 143, p. 56).

(5) The significance of effects according to Sec. 1 shall be determined with reference to the baseline condition in due consideration of the criteria set forth in Annex I of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ EC No L 143, p. 56) whereas a significant damage normally is not on hand in the following cases:

- negative variations that are smaller than natural fluctuations regarded as normal for the species or habitat in question,
- negative variations due to natural causes or resulting from intervention relating to the normal management of sites, as defined in habitat records or target documents or as carried on previously by owners or operators,
- damage to species or habitats for which it is established that they will recover, within a short time and without intervention, either to the baseline condition or to a condition which leads, solely by virtue of the dynamics of the species or habitat, to a condition deemed equivalent or superior to the baseline condition.

(6) Sec. 1 to 5 also apply to the Exclusive Economic Zone and the continental shelf within the legal framework of the United Nations Convention on the Law of the Sea of 10 December 1982 (Federal Law Gazette 1994 II p. 1799). For that area the competent authority under the Environmental Damage Act is the Federal Agency for Nature Conservation."

Article 4
Entry into force; suspension

This Act shall enter into force as of the day in the sixth month following the month of its promulgation that matches the number of the day of the promulgation or, if there is no such calendar date, as of the first day of the following calendar month. Annex I No 9 of the Environmental Damage Act shall be suspended as of 30 October 2007.

The constitutional rights of the *Bundesrat* are safeguarded.

The foregoing law is hereby drawn up. It shall be published in the Federal Law Gazette.

Berlin, 10 May 2007.

The Federal President
The Federal Chancellor
The Federal Minister for the Environment,
Nature Conservation and Nuclear Safety