

The Environmental Damage Regulations

The Environmental Damage Regulations implement the European Directive on Environmental Liability. They are based on the “polluter pays principal” and only apply to operators of economic activities and to damage after the Regulations come into force, on 1 March 2009. Existing legislation for environmental liability remains in place.

A business should identify any imminent threat or actual damage and take immediate action. Enforcing authorities must determine whether there is “environmental damage” and decide on the necessary remedial measures. The aim is to take action to avoid or minimise damage.

“Environmental damage” only refers to: Adverse effects on the integrity of a Site of Special Scientific Interest (SSSI) or on the conservation status of species and habitats protected by EU legislation outside SSSIs: Adverse effects on surface water or groundwater consistent with a deterioration in the water’s status (Water Framework Directive term): Contamination of land that results in a significant risk of adverse effects on human health.

There is liability with no need to show fault for some activities including: activities requiring Environmental Permits (EP); discharges to water & to groundwater; water abstraction or impoundment; using pesticides, biocides or dangerous substances; using & releasing Genetically Modified Organisms; transporting dangerous goods. There is also liability where there is intent to cause damage or negligence but only for damage to SSSIs or EU species or habitats. There are certain limited exemptions.

Operators must: - Take steps to prevent damage or further damage and notify the authority - Provide information and undertake preventive and remedial measures as required by the authority - Submit proposals for remediation.

Interested parties may: - Notify authorities of imminent threats or damage.

Authorities must: Establish if there is ‘environmental damage’; identify a responsible operator; serve a remediation notice. They may: Take steps to prevent or remedy damage; require information or action from operators.

For damage to SSSIs or EU species and habitats and damage to water, the following may be required; primary remediation to restore the damage itself; complementary remediation, including at alternative sites, to compensate for where primary remediation does not fully restore the damage; compensatory remediation to compensate for the losses of natural resources while the damage is restored. For damage to land, remediation must ensure there is no significant risk to human health.

The above are, of course, just “edited highlights”, designed solely to create awareness and are not for guidance. If you would like to discuss either the issues raised or a specific project please contact me, Peter George either on 077 6523 2995 or at pdg@gosolve.co.uk