

Could you fall foul of The Environmental Damage (Prevention and Remediation) Regulations 2009?

Regulations effective in England (March 2009) and Wales (May 2009) include new concepts to make businesses that cause environmental damage responsible for the full consequences

The regulations deal with serious environmental damage

- Damage to protected species and their habitats including sites of Special Scientific Interest
- Damage to water (streams, rivers, ponds, lakes as well as underground water sources or groundwater)
- Damage to land with significant risk for human health

The regulations introduce some new concepts including:

- **Primary remediation** Means repairing environmental damage and may include a wide range of techniques to remove contaminants, restock, replant, and manage the recovery of a damaged area
- **Complementary remediation** Sometimes a site may never recover and the business may need to provide equally beneficial improvements at the site or at another site to compensate for the fact that the primary remediation wasn't able to fully restore the natural resource or service within an acceptable timeframe
- **Compensatory remediation** It may take years for a damaged area to recover and the business may then have to provide compensation to the environment for interim losses from the date the damage occurred until primary remediation has achieved its full effect. This could result in the business having to make extra improvements to the site, or to another site altogether

Implications for businesses that cause such environmental damage

- **The "Polluter Pays Principle"** - Means that a business causing environmental damage will be financially liable. This goes beyond merely cleaning up the pollution and mean that businesses will be fully responsible for the environmental damage they cause
- **Act immediately** - As soon as businesses are aware of this kind of damage they must take all practicable steps to prevent further damage and inform the authorities
- **Work with the authorities** - Businesses should submit their remediation proposals to the authorities including complementary and compensatory remediation plan, before the authority issues a remediation notice
- **Emergency costs** - In an emergency situation the Authorities may take immediate action to prevent damage and recover these costs from the business responsible for causing the damage
- **Offences** - Failing to act immediately to prevent environmental damage is an offence according to the environmental damage regulations. Fines are unlimited and in extreme cases prison sentences may be imposed. Where companies have committed an offence, individuals who consented to them such as directors or managers may also be guilty.

If you need to know more about the new Regulations there is a quick guide and in depth guidance notes produced by the Department for Environment Food and Rural Affairs (DEFRA). These can be found by visiting: - <http://www.defra.gov.uk/environment/liability/index.htm>

Alternatively you can contact us at Square Mile Broking for further Risk Management advice, and help with arranging appropriate insurance cover.

For risk management advice including Health & Safety please contact one of our experts at Square Mile Broking on 0844 561 6075 or email us at info@squaremilebroking.com