

THE GOVERNMENT

**Decree No. 113/2010/ND-CP of
December 3, 2010, providing for the
determination of environmental damage**

THE GOVERNMENT

*Pursuant to the December 25, 2001 Law on
Organization of the Government;*

Pursuant to the June 14, 2005 Civil Code;

*Pursuant to the November 29, 2005 Law on
Environmental Protection;*

*At the proposal of the Minister of Natural
Resources and Environment,*

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation

1. This Decree provides for the determination of environmental damage, covering the collection of data and proof for determining environmental damage, computation of environmental damage, and identification of the liability to compensate for environmental damage caused by pollution or degradation in the following cases:

a/ Water environment for conservation, daily life, entertainment, production and other purposes is polluted, severely polluted or exceptionally severely polluted;

b/ Soil environment for conservation, production and other purposes is polluted,

severely polluted or exceptionally severely polluted;

c/ Natural ecosystems within or without nature reserves are degraded;

d/ Species prioritized for protection under law are dead or injured.

2. This Decree does not apply to cases in which environmental damage is caused by any of the following circumstances:

a/ Natural disasters;

b/ *Force majeure* or emergency circumstances in which requests of competent state management agencies must be complied with;

c/ Other circumstances as specified by law.

3. The determination of damage and compensation for damage caused to human health and life, assets and lawful interests of organizations and individuals by environmental pollution or degradation complies with the civil law.

Article 2. Subjects of application

This Decree applies to organizations and individuals that commit acts causing environmental pollution or degradation in the territory of the Socialist Republic of Vietnam; and other related organizations and individuals.

Article 3. Responsibilities to claim compensation for damage and determine environmental damage

1. People's Committees at all levels, organizations and individuals that detect signs of environmental pollution or degradation shall notify such to agencies responsible for claiming compensation for environmental damage

specified in Clause 2 of this Article.

2. Responsibility to claim compensation for damage is specified as follows:

a/ Commune-level People's Committees shall claim compensation for environmental damage caused by environmental pollution or degradation in localities under their management. In this case, commune-level People's Committees shall request district-level People's Committees to organize the collection and appraisal of data and proof for determining environmental damage caused by environmental pollution or degradation;

b/ District-level People's Committees shall claim compensation for environmental damage caused by environmental pollution or degradation in two or more communes, townships or commune centers;

c/ Provincial-level People's Committees shall claim compensation for environmental damage caused by environmental pollution or degradation in two or more districts, towns or provincial cities;

d/ The Ministry of Natural Resources and Environment shall claim compensation for environmental damage caused by environmental pollution or degradation in two or more provinces or centrally run cities.

3. Responsibility to collect and appraise data and proof for determining environmental damage is specified as follows:

a/ District-level People's Committees shall organize the collection and appraisal of data and proof for determining environmental damage caused by environmental pollution or degradation in their localities, except the cases specified at

Points b and c of this Clause;

b/ Provincial-level People's Committees shall organize the collection and appraisal of data and proof for determining environmental damage caused by environmental pollution or degradation in two or more districts, towns or provincial cities under their management, except the case specified at Point c of this Clause;

c/ The Ministry of Natural Resources and Environment shall organize the collection and appraisal of data and proof for determining environmental damage caused by environmental pollution or degradation in two or more provinces or centrally run cities.

4. Agencies collecting and appraising data and proof for determining environmental damage specified in Clause 3 of this Article shall compute the damage, identify the compensation liability and provide results to agencies specified in Clause 2 of this Article for claiming compensation.

5. The Ministry of Natural Resources and Environment shall guide procedures for settling claims for compensation for environmental damage specified in Clauses 2, 3 and 4 of this Article.

Chapter II

DATA AND PROOF FOR DETERMINING ENVIRONMENTAL DAMAGE

Article 4. Data and proof for determining environmental damage

1. Data and proof which need to be collected for identifying organizations and individuals causing environmental pollution or degradation

include:

a/ Waste sources or activities causing environmental incidents or directly harming the environment or related to areas of environment pollution or degradation;

b/ Basic information on organizations and individuals related to areas of environment pollution or degradation, including type of operation; products, capacity and input materials; production process; waste; waste discharge places; waste disposal measures; observation and analysis of environmental parameters;

c/ Other necessary data and proof related to areas of environment pollution or degradation.

2. Data and proof which need to be collected or estimated for computing environmental damage in case water or soil is polluted include:

a/ Area, volume or weight of polluted water or soil;

b/ Pollutant(s) and its/their contents in water or soil;

c/ Decisions, licenses, permits or documents of competent state management agencies permitting the use or approving plans on use of elements of the water or soil environment in places in which pollution or degradation occurs.

3. Data and proof which need to be collected or estimated for computing environmental damage in case a natural ecosystem is degraded include:

a/ Area of the degraded natural ecosystem;

b/ Degree of ecosystem degradation;

c/ Decision or document of a competent state management agency prescribing the level of conservation of the natural ecosystem.

4. Data and proof which need to be collected or estimated for computing environmental damage in case individuals of a species prioritized for protection under law are injured or dead include:

a/ Individuals of the species prioritized for protection are injured or dead;

b/ Number of injured or dead individuals of the species prioritized for protection;

c/ Decision or document of a competent state management agency prescribing the protection priority of the species.

Article 5. Forms and time of collection of data and proof for determining environmental damage

1. Data and proof for determining environmental damage may take the form of images, magnetic tapes or data collected from observation, measurement, analysts, remote sensing, geographical information system and other forms.

2. Data and proof for computing environmental damage must be collected or estimated at the time when the environmental pollution or degradation reaches its peak or is detected.

Article 6. Order and procedures for collection and appraisal of data and proof for determining environmental damage

1. The collection and appraisal of data and proof for determining environmental damage shall be organized according to the following order and procedures:

a/ Identifying data and proof necessary for determining environmental damage and claiming

compensation;

b/ Selecting providers of observation, assessment and measurement services for the collection of data and proof;

c/ Setting up a council for appraisal of collected data and proof.

2. The Ministry of Natural Resources and Environment shall specify criteria for selection and responsibility of providers of observation, assessment and measurement services for the collection of data and proof; and guide the setting up and operation of councils for data and proof appraisal

Article 7. Dossiers of claim for compensation for environmental damage

1. A dossier of claim for compensation for environmental damage comprises:

a/ A document of a responsible agency defined in Clause 2, Article 3 of this Decree claiming compensation for environmental damage;

b/ Data and proof which have been collected and appraised under Clause 3, Article 3 and Clause 1, Article 6 of this Decree;

c/ Written conclusions of the council for data and proof appraisal;

d/ Results of computation of the environmental damage and conclusion on the compensation liability;

e/ Other documents as specified by law.

2. The Ministry of Natural Resources and Environment shall guide the form of dossier of claim for compensation for environmental damage.

Article 8. Responsibility to provide data and proof for determining environmental damage

Organizations and individuals related to and People's Committees at all levels in areas of environmental pollution or degradation shall coordinate with, and provide sufficient, accurate and timely data and proof to, agencies collecting and appraising data and proof defined in Clause 3, Article 3 of this Decree, at the latter's request.

Article 9. Expenses for determining environmental damage and carrying out procedures for claiming compensation for environmental damage

1. Expenses for determining environmental damage and carrying out procedures for claiming compensation for environmental damage are actual and reasonable expenses for activities already conducted by competent agencies to collect and appraise data and proof for determining environmental damage and to carry out procedures for claiming compensation for environmental damage.

2. Agencies collecting and appraising data and proof specified in Clause 3, Article 3 of this Decree shall pay in advance expenses for determining damage and carrying out procedures for claiming compensation for damage, and sum up these expenses for use as a basis for requesting damage-causing organizations and individuals to compensate for damage in the course of settlement of compensation under Clause 1, Article 14 of this Decree.

3. The Ministry of Natural Resources and Environment shall assume the prime responsibility for, and coordinate with the

Ministry of Finance in, specifying expenses for determining damage and carrying out procedures for claiming compensation for damage.

Chapter III

COMPUTATION OF ENVIRONMENTAL DAMAGE

Article 10. Principles for computing environmental damage

1. The computation of environmental damage shall be based on expenses for remedying environmental pollution or degradation and rehabilitating the environment in areas of environmental pollution or degradation to conform to environment-related technical regulations on the quality of water and soil environments; expenses for restoring ecosystems and species prioritized for protection to their original state.

2. The computation of environmental damage shall be based on data and proof collected, estimated and appraised under this Decree.

3. Environmental damage in a geographical area is the total of damage to all environmental elements in such area.

Article 11. Computation of environmental damage

1. Total damage caused by pollution or degradation to the environment in a geographical area shall be computed according to the following formula:

$$T = T^N + T^D + T^{HST} + T^{LBV}, \text{ in which:}$$

T means damage caused by pollution or degradation to the environment in a geographical

area;

T^N means damage caused by pollution or degradation to the water environment;

T^D means damage caused by pollution or degradation to the soil environment;

T^{HST} means damage caused by pollution or degradation to the ecosystem;

T^{LBV} means damage caused by pollution or degradation or infringement to a species prioritized for protection.

2. Damage caused by pollution or degradation to the water environment is specified as follows:

a/ In case the water environment is permitted for use for a sole purpose and polluted at a certain level, damage caused by the pollution or degradation shall be computed according to the following formula:

$$T_{ij}^N = C_i^N \cdot W_{ij}^N \cdot H_j^N, \text{ in which:}$$

i means the use purpose of the water environment based on a competent state management agency's decision, permit or document permitting the use or approving a plan on use of the water environment in an area in which pollution or degradation occurs, which has a value from 1 to 7 as specified in Appendix I to this Decree;

j means the pollution level of the water environment based on data and proof already collected, estimated and appraised under this Decree, which has a value from 1 to 3 corresponding to different levels of pollution, severe pollution and exceptionally severe pollution;

T_{ij}^N means damage caused to the water environment with use purpose (i) and polluted

at level (j);

C_i^N means a coefficient for adjusting damage according to the use purpose of the water environment as specified in Appendix I to this Decree;

W_{ij}^N means total volume of water used for the purpose (i) and polluted at level (j), which is determined, estimated and appraised under this Decree;

H_j^N means the limit expense for treating a unit of area, volume or weight of water polluted at the level (j) up to the environment-related technical regulation on quality of the water environment.

b/ In case the water environment is permitted for use for a sole purpose and polluted at different levels in different water areas, damage caused by pollution or degradation to the water environment is total of damage caused to all those water areas polluted at different levels and shall be computed according to the following formula:

$$T_i^N = \sum_{j=1}^3 T_{ij}^N, \text{ in which:}$$

T_i^N means damage to the water environment permitted for purpose (i).

c/ In case the water environment is permitted for use for different purposes at a time, the coefficient of the largest value for adjusting damage according to use purpose shall be applied to compute damage according to the formulas provided at Points a and b of this Clause;

d/ In case the water environment is divided into many areas for use for different purposes, damage caused by pollution or degradation to the water environment equals the total of damage caused by pollution or degradation to all those

areas of the water environment.

Damage caused by pollution or degradation to each area of the water environment shall be computed according to the formulas provided at Points a, b and c of this Clause and based on data and proof collected, estimated and appraised under this Decree.

3. Damage caused by pollution or degradation to the soil environment is specified as follows:

a/ In case the soil environment is permitted for use for a sole purpose and polluted at a certain level, damage caused by pollution or degradation to the soil environment shall computed according to the following formula:

$$T_{ij}^D = C_i^D \cdot W_{ij}^D \cdot H_j^D, \text{ in which:}$$

i means the use purpose of the soil environment based on a competent state management agency's decision, permit or document permitting the use or approving a plan on use of the soil environment in an area in which pollution or degradation occurs, which has a value from 1 to 5 as specified in Appendix II to this Decree;

j means the pollution level of the soil environment based on data and proof collected, estimated and appraised under this Decree, which has a value from 1 to 3 corresponding to different levels of pollution, severe pollution and exceptionally severe pollution;

T_{ij}^D means damage caused to the soil environment used for purpose (i) and polluted at level (j);

C_i^D means a coefficient for adjusting damage according to the use purpose of the soil environment as specified in Appendix II to this Decree;

W_{ij}^D means total volume of soil used for purpose (i) and polluted at level (j), which is determined, estimated and appraised under this Decree;

H_j^D means the limit expense for treating a unit of area, volume or weight of soil polluted at level (j) up to the environment-related technical regulation on quality of the soil environment.

b/ In case the soil environment is permitted for use for sole purpose (i) and polluted at different levels in different soil areas, damage caused by pollution or degradation to the soil environment equals the total of damage caused to all those soil areas polluted at different levels and shall be computed according to the following formula:

$$T_i^D = \sum_{j=1}^3 T_{ij}^D, \text{ in which:}$$

T_i^D means damage to the soil environment permitted for purpose (i).

c/ In case the soil environment is permitted for use for different purposes at a time, the coefficient of the largest value for adjusting damage according to use purpose shall be applied to compute damage according to the formulas provided at Points a and b of this Clause;

d/ In case the soil environment is divided into many areas for use for different purposes, damage caused by pollution or degradation to the soil environment equals the total of damage caused by pollution or degradation to all those areas of the soil environment.

Damage caused by pollution or degradation to each area of the soil environment shall be computed according to the formulas provided at Points a, b and c of this Clause and based on

data and proof collected, estimated and appraised under this Decree.

4. Damage caused by pollution or degradation to an ecosystem is specified as follows:

a/ In case an ecosystem is placed under conservation at a certain level and degraded at a certain level, damage caused by pollution or degradation to the ecosystem shall be computed according to the following formula:

$$T_{ij}^{HST} = C_i^{HST} \cdot D_j^{HST} \cdot W_{ij}^{HST} \cdot H_i^{HST}, \text{ in which:}$$

i means the conservation level of the ecosystem under a competent state management agency's decision or document, which has a value from 1 to 4 as specified in Appendix III to this Decree;

j means the degradation level of the ecosystem based on data and proof collected, estimated and appraised under this Decree and under regulations on determination of ecosystem degradation levels:

C_i^{HST} means a coefficient for adjusting damage according to the conservation level of the ecosystem as specified in Appendix III to this Decree;

D_j^{HST} means a coefficient for adjusting damage according to the conservation level of the ecosystem as specified by law;

W_{ij}^{HST} means total area of ecosystem placed under conservation at level (i) and degraded at level (j), which is determined, estimated and appraised under this Decree;

H_j^{HST} means the limit expense for restoring a unit of degraded area of the ecosystem placed under conservation at level (i).

b/ In case an ecosystem is placed under

conservation at a certain level and degraded at different levels in different areas, damage caused by pollution or degradation to the ecosystem equals the total of damage caused to all those areas degraded at different levels and shall be computed according to the following formula:

$$T_i^{HST} = \sum_{j=1}^n T_{ij}^{HST}, \text{ in which:}$$

T_i^{HST} means damage to the ecosystem placed under conservation at level (i);

n means total level of degradation under regulations on determination of ecosystem degradation levels.

c/ In case an ecosystem is divided into many areas placed under conservation at different levels, damage caused by pollution or degradation to the ecosystem equals the total of damage caused by pollution or degradation to all those areas.

Damage caused by pollution or degradation to each area of the ecosystem shall be computed according to the formulas provided at Points a and b of this Clause and based on data and proof collected, estimated and appraised under this Decree.

5. Damage caused by pollution or degradation to species prioritized for protection is specified as follows:

a/ In case individuals of a species prioritized for protection under law are dead or injured due to pollution or degradation, damage caused by pollution or degradation to such species shall be computed according to the following formula:

$$T_k^{LBV} = C_k^{LBV} \cdot W_k^{LBVc} \cdot H_k^{LBVc} + C_k^{LBV} \cdot W_k^{LBVi} \cdot H_k^{LBVi},$$

in which:

k means the species prioritized for protection with its individuals being dead or injured due to environmental pollution or degradation or infringement;

C_k^{LBV} means a coefficient for adjusting damage according to the level of protection priority of species (k) as specified in Appendix IV to this Decree;

W_k^{LBVc} means the number of individuals of species prioritized for protection (k) that are dead as determined, estimated and appraised under this Decree;

H_k^{LBVc} means the limit expenses for rehabilitating or replacing a dead individual of species prioritized for protection (k);

W_k^{LBVi} means the number of individuals of species prioritized for protection (k) that are injured as determined, estimated and appraised under this Decree;

H_k^{LBVi} means the limit expenses for salvage and care for health recovery of an injured individual of species prioritized for protection (k).

b/ In case individuals of many species prioritized for protection under law are dead or injured, damage caused by pollution or degradation to such species equals the total of damage caused by pollution, degradation or acts of infringement to all those species.

Damage caused by pollution or degradation to each species prioritized for protection shall be computed according to the formula specified at Point a, Clause 5 of this Article.

Article 12. Levels of ecosystem degradation and limit expenses for pollution remedy and environmental rehabilitation

1. The Ministry of Natural Resources and Environment shall guide the determination of levels of ecosystem degradation for computing environmental damage.

2. The Ministry of Natural Resources and Environment shall assume the prime responsibility for, and coordinate with the Ministry of Finance in, prescribing the limit expense for treating a unit of area, volume or weight of polluted water or soil up to environment-related technical regulations on quality of water and soil environments mentioned at Point a, Clause 2, and Point a, Clause 3, Article 11 of this Decree; the limit expense for rehabilitating an area unit of a degraded ecosystem as mentioned at Point a, Clause 4, Article 11 of this Decree; the limit expense for rehabilitating or replacing a dead individual of a species prioritized for protection and the limit expense for salvage and care for health recovery of an injured individual of the species prioritized for protection mentioned at Point a, Clause 5, Article 11 of this Decree, for use as a basis for computing environmental damage.

Chapter IV

IDENTIFICATION OF THE LIABILITY TO COMPENSATE FOR ENVIRONMENTAL DAMAGE

Article 13. Principles for identifying the liability to compensate for environmental

damage

1. Organizations or individuals causing environmental pollution or degradation shall be identified on the following main principles:

a/ Whether or not environmental pollution or degradation in a geographical area is caused by waste discharge sources or acts of infringement in such area or outside such area but with an adverse impact on such area;

b/ There is a scientific ground evidencing the existence of a relationship between pollutants possibly generated from discharge sources or acts of infringement and the state of deficiency of environmental functions and utilities;

c/ Organizations or individuals causing environmental pollution or degradation shall be identified in a timely and fair manner.

2. Organizations or individuals, causing environmental pollution or degradation shall compensate for the whole environmental damage caused by such pollution or degradation and pay all expenses for determining such damage and carrying out procedures for claiming compensation for damage to the agency that has paid in advance these expenses under Clause 2, Article 9 of this Decree.

3. In case two or more organizations or individuals cause environmental pollution or degradation, the liability of each organization or individual to compensate for environmental damage and expenses for determining damage and carrying out procedures for claiming compensation shall be determined in proportion to the percentage of the damage it/he/she has caused to the total environmental damage.

4. Organizations and individuals that fully observe regulations on environmental protection, have waste treatment systems up to requirements and can prove that they do not cause environmental pollution or degradation are not obliged to compensate for environmental damage and to bear expenses for determining the damage and carrying out procedures for claiming compensation for damage.

5. The Ministry of Natural Resources and Environment shall guide the order and procedures for proving that organizations and individuals do not cause environmental pollution under Clause 4 of this Article.

Article 14. Settlement of compensation for environmental damage

1. Based on data, proof and results of damage computation, agencies specified in Clause 2, Article 3 of this Decree shall decide to settle compensation for damage by the following modes:

a/ Reaching an agreement on compensation with the damage-causing party;

b/ Requesting an arbitration to handle the case;

c/ Instituting a lawsuit at court.

2. Agencies specified in Clause 2, Article 3 of this Decree may use compensation after subtracting expenses for determining damage and carrying out procedures for claiming compensations for remedying pollution or degradation and improving the environment in areas of pollution or degradation.

3. For pollution or degradation occurring in

two or more provinces or centrally run cities, the compensation for damage, after subtracting expenses for determining damage and carrying out procedures for claiming compensation, shall be remitted into the Vietnam Environmental Protection Fund for investment in remedying pollution or degradation and improving the environment in areas of pollution or degradation.

Chapter V

IMPLEMENTATION PROVISIONS

Article 15. Effect

1. This Decree takes effect on January 18, 2011.

2. For acts causing environmental pollution or degradation and leading to environmental damage committed after the effective date of the 2005 Law on Environmental Protection, for which compensation for damage has not yet been paid, the environmental damage and the liability to compensate for damage shall be determined under this Decree.

3. The Ministry of Natural Resources and Environment shall guide the implementation of this Decree.

4. Ministers, heads of ministerial-level agencies, heads of government-attached agencies, chairpersons of provincial-level People's Committees and concerned organizations and individuals shall implement this Decree.

On behalf of the Government

Prime Minister

NGUYEN TAN DUNG

Appendix I

COEFFICIENTS FOR ADJUSTING DAMAGE ACCORDING TO USE PURPOSES OF
WATER ENVIRONMENT (C_i^N)

(To the Government's Decree No. 113/2010/ND-CP of December 3, 2010)

Use purpose of water environment (i)	Adjusting coefficient (C_i^N)
In sub-zones under strict protection of a nature reserve (i = 1)	5
In other sub-zones of a nature reserve (i = 2)	3
In buffer zone of a nature reserve (i = 3)	2
For daily life (i = 4)	2
For industrial production, agricultural production or aquaculture (i = 5)	1.5
For entertainment and recreation (i = 6)	1.5
For other purposes or remaining unplanned (i = 7)	1

Appendix II

COEFFICIENTS FOR ADJUSTING DAMAGE ACCORDING TO USE PURPOSES OF
SOIL ENVIRONMENT (C_i^D)

(To the Government's Decree No. 113/2010/ND-CP of December 3, 2010)

Use purpose of soil environment (i)	Adjusting coefficient (C_i^D)
In sub-zones under strict protection of a nature reserve (i = 1)	5
In other sub-zones of a nature reserve (i = 2)	3
In buffer zone of a nature reserve (i = 3)	2
For agricultural production, forestry or aquaculture (i = 4)	1.5
For other purposes or remaining unplanned (i = 5)	1

Appendix III

COEFFICIENTS FOR ADJUSTING DAMAGE ACCORDING TO CONSERVATION
LEVEL OF ECOSYSTEMS (C_i^{HST})*(To the Government's Decree No. 113/2010/ND-CP of December 3, 2010)*

Conservation level of ecosystem (i)	Adjusting coefficient (C_i^{HST})
1. Nature reserves	
a/ For sub-zones under strict conservation (i = 1)	5
b/ For other sub-zones (i = 2)	3
c/ For buffer zones (i = 3)	2
2. Other natural ecosystems not in nature reserves (i = 4)	1

Appendix IV

COEFFICIENTS FOR ADJUSTING DAMAGE ACCORDING TO PROTECTION
LEVEL OF SPECIES (C_K^{LBV})*(To the Government's Decree No. 113/2010/ND-CP of December 3, 2010)*

Protection level (i)	Adjusting coefficient (C_K^{LBV})
Species on the list of endangered, precious and rare species prioritized for protection	10
Species on the list of wild species banned from exploitation in nature	8
Species on the list of wild species permitted for conditional exploitation in nature	6
Other species prioritized for protection under law	4