

**MINISTRY OF ENVIRONMENT AND ENERGY, DENMARK
DANISH ENVIRONMENTAL PROTECTION AGENCY**

Translation RL/LR
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CONTAMINATED SOIL ACT
Act no. 370 of 2 June 1999

PART I

Purpose and Scope

1.-(1) The purpose of this Act is to assist in the prevention, elimination, or reduction of soil contamination and the hindrance or prevention of the detrimental impact of soil contamination on groundwater, human health, and the environment.

(2) In particular, the objectives of this Act are to:

- 1) protect drinking water resources,
- 2) prevent health problems due to use of contaminated areas,
- 3) provide the basis for a co-ordinated and directed public effort to avoid detrimental effects from soil contamination,
- 4) prevent the further pollution of the environment through the use and disposal of soil, and
- 5) uphold the polluter as the primary party who shall take those measures that are required to combat the impact of soil contamination and restore the original state of the environment.

2.-(1) This Act shall apply to soil which due to human impact may detrimentally affect the groundwater, human health, and the environment.

(2) This Act shall not apply to soil affected by the spreading of sludges, fertiliser, and pesticides, etc. for agricultural purposes.

PART II

Listing and Permission to Change Land Use, etc.

3.-(1) In co-operation with the local council, the regional council shall carry out the listing of contaminated sites. Technical investigations may be used, cf. sections 4 and 5 below.

(2) In co-operation with the regional council, the Ministry of Defence shall, however, carry out the listing at knowledge level 1 of contaminated areas owned by the Ministry of Defence.

(3) Areas used for public roads shall not be listed at knowledge level 1.

4.-(1) An area shall be designated as listed at knowledge level 1 if actual knowledge of activities in the area or activities in other areas which may have been sources of soil contamination of the area has been obtained.

5.-(1) An area shall be designated as listed at knowledge level 2 if documentation has been obtained which renders it highly probable that the area contains soil contamination of a type and concentration that may have detrimental impact on human health and the environment.

6.-(1) In connection with the listing activities described under sections 4 and 5 above, the regional council shall identify special target areas with contamination or sources of contamination which are likely to:

- 1) have detrimental impact on the groundwater within an area with special drinking water interests,
- 2) have detrimental impact on the groundwater in the capture zone of a common water supply plant, or
- 3) have harmful impact on human health in areas with housing, children's institutions, or public playgrounds.

(2) The local council shall identify areas used for housing, children's institutions, or public playgrounds. This information shall be reported to the regional council for use in the regional council's identification of areas under subsection (1), no. 3 above. Furthermore, the local council shall identify areas used for recreation, public access, allotment gardens, weekend houses, or institutions. This information shall be reported to the regional council for use in the regional council's administration of the provisions in sections 8 and 9 below.

7.-(1) Within the areas identified under subsection 6(1) and designated as knowledge level 1, the regional council shall carry out the listing of areas at knowledge level 2 by means of technical investigations of the possible soil contamination through activities such as excavations, borings, or analyses.

(2) When listing areas at knowledge level 2, technical investigations may be omitted to the extent that other documentation provides a correspondingly solid basis for the listing of the area at knowledge level 2.

(3) If so requested by a homeowner, the listing of an area at knowledge level 2 under subsections (1) and (2) above shall be carried out within a period of two years. This shall not apply to sites with housing which are registered with the Danish Oil Industry's Environmental Clean-Up Association.

(4) Listing of an area at knowledge level 2 may be omitted where the assessment of the regional council maintains that the surfacing of the area prevents any current detrimental effects to the groundwater or human health.

8.-(1) An owner who has received notification on the listing of an area, cf. subsection 12(1), shall apply to the regional council for a license before said owner or user changes the land use of the listed area to one of the uses specified in subsection 6(2) above.

(2) If the listed area has been designated by the regional council as a target area requiring special effort, cf. subsection 6(1) above, or if the listed area is used for one of the purposes specified in subsection 6(2) above, the owner or user shall apply to the regional council for a license before commencing construction work at the site.

(3) For a decision under subsections (1) or (2) above, the regional council may require that the applicant shall at his own expense carry out the necessary investigation of the contamination or shall by other means provide documentation that the planned changes in land use or the planned construction works are sound in terms of human health and the environment.

(4) The regional council may stipulate the following terms for a license under subsections (1) or (2) above:

- 1) Where the application concerns one of the land uses specified in subsection 6(2) above, measures which are necessary in the interests of human health and the environment may be stipulated in regard to the land use.
- 2) Where the application concerns construction works on top of contamination which may pose a risk to the groundwater or at a site with significantly elevated concentrations of contaminants, such terms may be stipulated as required to prevent increased risk for the groundwater.
- 3) Terms stipulating that land use or work must be conducted in a prescribed manner to prevent subsequent public efforts from increasing significantly in cost or from being rendered impossible.
- 4) Terms stipulating that a report shall be prepared describing the change of land use or the work regarding documentation of the state of contamination after the change or work is complete.

(5) If contamination conditions other than those assumed to exist at the time the license was granted are discovered during the change of land use or construction, the regional council may change terms already stipulated or lay down new terms.

(6) A license granted under subsections (1) or (2) above shall be annulled if the activity for which a licence was granted is not commenced within 1 year after the licence date, unless otherwise decided by the regional council.

(7) The terms are binding for whosoever may be the current owner and user of the area. Long range terms may be entered into the land register.

(8) The regional council may formulate regulations on the requirements which must be fulfilled in order to obtain a licence, cf. subsections (1) and (2) above, pertaining to changes in land use and construction works at listed areas.

(9) The regional council may formulate regulations on which cases do not require a licence, cf. subsections (1) and (2) above and subsection 15(1), no. 2 below.

9.-(1) The regional council may prepare recommendations regarding the use of listed areas for the owners and users of these areas.

- (2) If the present land use in public access areas may pose a health risk, the regional council may issue enforcement notices to owners stipulating that said owners shall within a fixed period of time carry out or maintain specific low-cost measures, including fencing and flagstone paving.
- (3) For selected mapped areas, the regional council may formulate rules that the owners shall within a fixed period of time carry out or maintain measures in outdoor areas with public access as specified in subsection (2) above.
- (4) Enforcement notices and rules, cf. subsections (2) and (3) above, shall apply to whosoever is the current owner of the property and may be entered into the land register.
- (5) Owners shall notify tenants and lease-holders on recommendations, enforcement notices, or rules, cf. subsections (1-3) above.
- (6) Rules laid down under subsections 8(8), 8(9) and 9(3) above shall include provisions stipulating that the regional council may allow dispensation if the owner provides documentation that the measures ordered are unnecessary.
- 10.**-(1) Where an owner or user begins but does not complete a project which has received a license, cf. section 8 above, or begins but does not complete a remediation which is stipulated as a requirement for the license, the regional council may stipulate a deadline for the completion of the project or remediation. If this deadline is exceeded, the regional council may issue enforcement notices against the owner or user stipulating that the site shall be restored to an environmental state no worse than that preceding commencement of the project or remediation.
- 11.**-(1) After completion of a project or remediation, the regional council shall, at the request of an owner or user, cf. section 8 above, prepare a statement with a description of the completed project or remediation. The description shall include the listing status of the area and whether the regional council has overseen the project or remediation.
- 12.**-(1) The regional council shall give written notification of the final listing status of an area at knowledge level 1 or 2 to the owners of properties within the listed area and to the relevant local authority. Owners shall notify tenants and lease-holders of the regional council decision.
- (2) The regional council may decide that notification under subsection (1) above shall be carried out in a specified way.
- (3) Written notification to owners of properties which are used for permanent residence and which are listed at knowledge level 2 shall include information on the opportunities for remediation under Part IV of this Act.
- 13.**-(1) An area shall be deleted from the listing when the regional council is satisfied that there is no foundation pertaining to environmental or health concerns for maintaining the listing of the area in question.
- (2) The regional council shall give written notification hereof to the owners of properties that are no longer listed and to the relevant local authority.

14.-(1) The regional council shall ensure that information on listed areas is entered into the parcel register and that said register is kept up-to-date.

(2) The Ministry of Defence shall enter the areas listed by the Ministry of Defence at knowledge level 1 in a register under the Ministry of Defence which corresponds to that specified in subsection (1) above. The Ministry of Defence shall ensure that said register is kept up-to-date.

(3) A listed area shall be deleted from the parcel register when the regional council is satisfied that there is no foundation pertaining to environmental or health concerns for maintaining the listing of the area in question.

(4) After negotiations with the parcel register authorities, the Minister for Environment and Energy may formulate rules on the registration of the listing of areas, including setting up and operation of the parcel register, use of cadastral maps, and issuance of and payment for information from the parcel register.

15.-(1) The Minister for Environment and Energy may stipulate

- 1) the form and content of applications under subsection 8(1) and (2) above, and that applications shall be submitted to the local authorities,
- 2) cases where a license under subsection 8(1) and (2) above is not required, such as smaller construction works,
- 3) the contents of local rules under subsections 8(8) and 9(3) above, and announcement hereof,
- 4) deadlines and procedures for contamination mapping and the obligation of the regional councils to notify other authorities,
- 5) the content of and criteria for the listing of contaminated areas and that specified conditions shall form the basis for the listing.

16.-(1) Decisions made by the regional council under the provisions of this Part II of this Act cannot be appealed to other administrative authorities.

(2) Decisions made by the local council on identification of areas, cf. subsection 6(2) cannot be appealed to other administrative authorities.

PART III

Public Investigation and Remediation Efforts

17.-(1) The regional council shall carry out investigation projects pertaining to soil contamination of listed areas. The regional council shall also prepare project suggestions for remedial action, including clean-up, and carry out said projects.

(2) The regional council shall compile information on the implementation of remedial actions, including clean-up of soil and groundwater contamination.

(3) The Minister for Environment and Energy shall be responsible for the development and testing of new technology within the field of soil contamination.

(4) In connection with the task specified in subsection (3) above, the Minister may formulate rules on administration, defray expenses, and subsidise remediation projects, including projects carried out by the regional council, cf. subsection (1) above. The Minister may defray expenses, i.a. subsidise development projects, the establishment of criteria, risk assessments, the collection of information, and the summarising of experience. The Minister may also defray expenses, i.a. subsidise tenders for projects, administration, audits, evaluations, and insurance pertaining to any liability for damages in connection with the execution of the task.

(5) Expenses incurred while carrying out the task of advancing the technological development specified in subsection (3) above shall be held within the limits of the annual budget. Preconfirmation of payment may extend into the coming fiscal year.

18.-(1) The regional council shall prepare an overview of public efforts and revise this overview annually.

(2) This overview shall not entail any rights or obligations for owners.

19.-(1) The overview shall include a specification of the areas where investigations or remedial action, including clean-up, shall be carried out. The overview shall specify efforts in order of priority and shall contain a financial outline.

20.-(1) Where deemed necessary, deviations from the order of priority may be made and projects not included in the overview may be carried out.

21.-(1) The regional council shall notify the owner and any party to whom enforcement notices may be issued, cf. Part V of this Act, before carrying out investigations or commencing remedial action.

(2) The regional council shall notify the assessment authorities of clean-up or remedial action carried out by the regional council on properties.

(3) Upon completion of public efforts which are carried out due to land use interests on residential property which remains listed, the regional council shall prepare a statement to the effect that the contamination is of no significance for the actual use of the property, see however subsection 9(1) and (2) above. This information shall be entered into the parcel register, cf. section 14 above.

22.-(1) In order to implement projects in the overview, cf. section 18 above, or projects which are deemed necessary, cf. section 20 above, the regional council may under special circumstances make agreements for taking over property concerned by the project.

(2) In order to implement projects specified in the overview, the regional council may expropriate rights over real property for the purpose of obtaining ownership or temporary use.

(3) The regional council may transfer property which the regional council has taken over, or acquired by means of expropriation, free of charge, to the local council.

(4) The regional council may expropriate rights over real property for the purpose of ownership or temporary use if this is deemed an advantage for a water supply plant wishing to carry out projects concerning protection of present or future water abstraction. This shall apply irrespective of whether the areas in question are included in the overview, cf. section 18 above.

(5) , Sections 45 and 47-49 of the Public Roads Act shall apply similarly to expropriations under subsections (2) or (4) above. The regional council, however, shall carry out the functions assigned to the road council under the Public Roads Act.

23.-(1) The Minister for Environment and Energy may formulate rules on the regional council's preparation of the overview under section 18 above, i.a. on the criteria and conditions the regional council shall use as basis for prioritising and implementing public efforts.

24.-(1) The Minister for Environment and Energy shall appoint a council, the Contaminated Sites Council, to observe administration of this Act by the environmental authorities.

(2) The regional council shall prepare an annual report for the council appointed under subsection (1) above. The report shall include implemented activities and planned efforts, budgets, etc., for the coming year.

(3) The Council shall prepare an annual report to the Minister on the basis of regional council reports under subsection (2) above. The Council shall advise the Minister on general issues of technology development and on preparation of rules under this Act.

(4) The Minister for Environment and Energy may formulate specific regulations on the make-up of the Council and its activities as well as on regional council reports under subsection (2) above.

25.-(1) With the exception of decisions on expropriation under section 22(2) and (4) above, decisions made by the regional council under the provisions of this Part III of this Act cannot be appealed to other administrative authorities.

PART IV

Land Depreciation Programme for Home Owners, etc.

26.-(1) The Land Depreciation Programme shall apply to property which was used as a main residence on 18 November 1992 and which was contaminated before 1 September 1993, but see subsection (3) hereof. The Land Depreciation Programme shall also apply to property used as a main residence on 18 November 1992 if contamination is caused by an oil tank under the provision specified in section 48(3), first clause, and if contamination was discovered before the date fixed by the Minister for Environment and Energy under section 48(1) below, but see subsection (3) hereof.

(2) For the purposes of this Part IV of this Act, "contaminated property" shall mean property listed at knowledge level 2, cf. section 5 above, or which fulfills the criteria hereof.

(3) Notwithstanding the provisions in subsection (1) above, the Land Depreciation Programme shall not apply to the following properties:

- 1) Industrial properties, properties entered as agricultural properties under the Agricultural Property Act, and properties containing woods or forest reserves protected under the Forestry Act.
- 2) Properties with multi-storied buildings used for both residence and business where more than 50 % of the floor space is used for business. Loft areas, basement areas, and garages not suitable for residence or business shall not be included in floor space calculations.
- 3) Properties in areas zoned for summer cottages or allotment gardens, unless the property is used as a main residence and the legality hereof does not rest on provisions in sections 40(2) and 41 of the Spatial Planning Act, cf. Consolidation Act no. 563 of 30 June 1997 with later amendments.
- 4) Publicly owned properties.

27.-(1) The Land Depreciation Programme shall apply to owners who

- 1) have acquired contaminated property, cf. section 26 above, and
- 2) at the time of acquisition neither knew nor should have known that the property was contaminated.

(2) If the previous owner fulfilled the provisions specified in subsection (1) above, the Land Depreciation Programme shall apply to the following persons:

- 1) Owners who acquired the property through inheritance, by retaining undivided possession of the property, or by being holder of an unsatisfied mortgage in connection with a forced sale.
- 2) Owners who took over the property as a result of divorce or separation, or after at least two years of cohabitation with the previous owner.
- 3) Owners who acquired the property through a voluntary contract with a mortgagee or through mortgagee intervention as part of mortgagee efforts to mitigate damages.

(3) The Land Depreciation Programme shall apply to owners of properties which have been parcelled out as resident-owned flats regardless of the provisions under subsection (1) above as long as the conditions specified under subsection (1) above were fulfilled at the time of parcelling out.

28.-(1) At the request of the owner, the regional council shall carry out clean-up of properties covered by the Land Depreciation Programme, but see section 34 below. It is a requirement that the property shall still be used as a main residence at the time of the owner's request for clean-up, and that the contamination has detrimental effects on human health or the environment or involves a risk hereof in relation to the actual use of the property as a residence.

(2) Measures which the regional council may stipulate an enforcement notice under section 9(2) above, shall not be covered by the Land Depreciation Programme.

(3) Clean-up shall be implemented insofar as funds are allocated for this purpose in the annual budget.

(4) Regional council expenses pursuant to the provisions in this Part IV of this Act shall be held within the limits of the annual budget. Preconfirmation of payment may extend into the following fiscal year.

(5) Material which is acquired as an essential part of clean-up shall after use pass free of charge to the regional council for further use, sale, or disposal. Expenses or income incidental hereto shall fall to the regional council.

(6) The regional council may defray expenses for insurance pertaining to any liability for damages in connection with clean-up.

29.-(1) Requests for clean-up under the Land Depreciation Programme shall be submitted to the regional council.

(2) The right to clean-up under the Land Depreciation Programme may be transferred to persons subsequently acquiring the property provided the request for clean-up has been submitted before the sale.

(3) The owner shall at his own expense produce evidence that a property which has not been listed at knowledge level 2 is contaminated to a corresponding extent. The regional council may specify requirements for the documentation corresponding to the requirements for the listing of areas at knowledge level 2, cf. section 5 above.

(4) The regional council shall make decisions on whether the Land Depreciation Programme shall apply to the property. The regional council shall inform the local council of the decision.

30.-(1) The regional council shall make decisions on the extent of clean-up under the Land Depreciation Programme. The clean-up shall correspond to clean-up under Part III of this Act. Where a publicly funded clean-up under the Land Depreciation Programme may be carried out, the regional council shall notify the owner of this decision and include a time schedule for when clean-up may be expected to commence.

(2) When notification of clean-up has been given under subsection (1) above, the regional council is subrogated to the owner's rights against the polluter or previous owners with respect to the contamination to the extent that the owner's claim against the polluter or previous owners is reduced as a consequence of clean-up.

(3) No earlier than nine months before clean-up commences, the regional council shall send the owner a request for partial payment, cf. sections 31 and 32 hereof. The regional council may require that the owner's payment be paid from an account with a financial institution. The time limit for payment shall be set at no less than three months. Where the owner fails to pay within the time limit, the owner's right to clean-up under the Land Depreciation Programme will lapse. Under special circumstances, the regional council may disregard minor transgressions of this time limit.

(4) If clean-up under the Land Depreciation Programme fails to commence at the stated time, interest on the owner's payment corresponding to the official bank rate of the national bank on 1 January of the year in which the owner's payment was made plus 5% shall be accrued. The accrued interest shall be paid upon commencement of the clean-up or if the owner withdraws his application for clean-up. Where the application is withdrawn because clean-up failed to commence at the time stated, the owner's payment shall be returned, and the owner cannot reapply for clean-up of the area unless the regional council under special circumstances decides otherwise.

(5) If the owner, for reasons other than those specified in subsection (4) above, withdraws his application after payment, the regional council shall decide whether clean-up shall be carried out regardless. Where the regional council decides that clean-up shall not be carried out, the owner's payment shall be returned. However, where the regional council has defrayed expenses, the regional council may decide against full repayment of the owner's payment. Where repayment is made, interest shall not be paid.

(6) Where clean-up under the Land Depreciation Programme is deemed unnecessary, or where property remains contaminated after clean-up under the Land Depreciation Programme, the regional council shall issue a statement to the effect that the contamination is insignificant with respect to actual land use for main residence, but see section 9(1) and (2) above. Notification hereof shall be entered in the parcel register, cf. section 14 above.

(7) Where clean-up under the Land Depreciation Programme, cf. subsection (6) above fails to remove all contamination beneath existing buildings used as main residences or beneath water, sewer, electrical and other lines pertaining to said buildings, the regional council shall decide whether the pledge of clean-up of the property under the Land Depreciation Programme shall continue to be in effect.

(8) The regional council shall provide information to the owner about the clean-up which has been carried out.

31.-(1) The basic owner's payment shall amount to DKK 40,000, though with a minimum amount of DKK 7,000 per flat.

(2) The owner's payment shall be reduced for each entire year which passes from the time where a contamination has been listed at knowledge level 2, or where the owner provides evidence, cf. section 29(3) above, that the property is contaminated to a corresponding degree, to the time of the owner's payment. However, where property was ascertained to be contaminated before 1 September 1993, reductions shall be calculated against this date.

(3) The basic annual reduction, cf. subsection (2) above, shall amount to DKK 2,500, though DKK 5,000 for properties with 12 or more flats. The owner's payment shall not be less than DKK 15,000 or 30,000, respectively.

32.-(1) Where the owner has defrayed expenses for necessary investigation, cf. section 29 (3) above, the owner's payment shall be reduced correspondingly. Where the expenses paid for investigations exceed the owner's payment, the excess amount shall not be reimbursed.

33.-(1) The regional council shall upon request grant loans for the owner's payment to owners who at the time of submission of request for clean-up under the Land Depreciation Programme:

- 1) have attained the age of 65,
- 2) receive pension under the Social Pensions Act or the Partial Social Pension, or
- 3) receive early retirement pension.

(2) The loan request shall be submitted to the regional council along with the request for clean-up. The regional council shall pledge to grant the loan at the same time as pledging to carry out clean-up, if applicable.

(3) The loans shall be used directly for the owner's payment and shall be administered by the Financial Administration Agency. In all other respects, the conditions set out in Loan for Payment of Property Taxes Act, with the necessary amendments, shall apply to the loans. However, the size of the loan does not necessarily have to fall within the assessment value of the property as determined prior to clean-up.

(4) Under special circumstances, the regional council may upon request provide a guarantee for the owner's loan granted by usual mortgage providers.

(5) The request for a guarantee shall be submitted to the regional council with the request for clean-up. The regional council shall pledge to grant the guarantee at the same time as pledging to carry out clean-up, if applicable.

34.-(1) Under special circumstances, the regional council may make an offer for the acquisition of property, cf. section 75 hereof. The provisions on the owner's payment in sections 31 and 32 above shall apply correspondingly.

(2) The rights of property owners under the Land Depreciation Programme shall lapse where the owner does not within a specified time limit of no less than 3 months accept that the property is acquired under subsection (1) above, or does not within a specified time limit of no less than 3 months settle the owner's payment,

(3) The regional council shall hold ownership of property which has been acquired. The regional council may transfer property which it has acquired to the local council without charge.

35.-(1) Where the owner's payment exceeds the total cost of investigation and clean-up under the Land Depreciation Programme, the remaining amount shall be reimbursed upon completion of clean-up.

(2) If a property which is already listed at knowledge level 2 and entered in the register, cf. section 14 above, remains contaminated upon completion of clean-up, cf. section 28 above, to an extent precluding the property from being deleted from the register, the owner's payment shall be reimbursed. The owner's payment shall likewise be reimbursed if the property remains contaminated upon completion of clean-up to the extent that it becomes listed at knowledge level 2 and entered in the register as such. During a prolonged clean-up project, the regional council may, under special circumstances, decide that the owner's payment shall be reimbursed before the project is completed in the event that the property is expected to remain contaminated after completion of the project to an extent precluding it from being deleted from the register, or causing it to be entered in the register at knowledge level 2.

(3) Reimbursement shall be made to whosoever is the present owner of the property in question. Reimbursement may be transferred to a bank account. In the event of reimbursement, annual interest

corresponding to the official bank rate of the national bank plus 5 % shall be added to the owner's payment for the period from the owner's payment to reimbursement thereof.

(4) For owners who have been granted loans, or for whom guarantees have been provided under section 33 above, the reimbursement shall be used directly to redeem the loan granted or the loan for which guarantee was provided. Interest corresponding to the interest accrued on the loan shall be added to the amount.

36.-(1) The Minister for Environment and Energy may under the Land Depreciation Programme defray expenses, i.a. grant support for information, administration, amendment, evaluation, and communication of results, etc.

37.-(1) The Minister for Environment and Energy may formulate specific regulations on administration of cases under the Land Depreciation Programme carried out by The Danish Environmental Agency, the regional councils, the Copenhagen and Frederiksberg municipalities, and the Financial Administration Agency, including

- 1) the pledging of loans or guarantees for loans,
- 2) the evidence which the owner must submit with his request and the formalities of the request,
- 3) the investigation, clean-up, and case assessment,
- 4) the regional council's notification of the Minister for Environment and Energy of cases pursuant to the Land Depreciation Programme, and
- 5) the acquisition and sale of equipment and real property under the Land Depreciation Programme.

38.-(1) Decisions made by the regional council under the provisions of this Part IV of this Act cannot be appealed to other administrative authorities.

PART V

Enforcement Notices to Polluters, etc.

39.-(1) The local council shall hand down decisions on enforcement notices under this Part V of this Act pertaining to contamination which stems from properties or plants within the municipality, irrespective of whether the party against whom the enforcement notice is issued resides in or holds rights over properties or plants within the municipality, but see subsections (2) and (3) hereof.

(2) The regional council shall hand down decisions on enforcement notices pertaining to contamination which stems from enterprises which are under county supervision pursuant to the Environmental Protection Act or which were under such supervision at the time of termination of enterprise activities, irrespective of whether the party against whom the enforcement notice is issued resides in or holds rights over properties or plants within the county. The regional council shall also hand down decisions pertaining to contamination at raw material excavations and abandoned raw material excavations.

(3) The regional council shall hand down decisions pertaining to soil contamination at enterprises operated by the local council. The local council shall hand down decisions pertaining to soil contamination at enterprises operated by the regional council.

Information, Carrying Out Investigations, etc.

40.-(1) The environmental authority, cf. section 39 above, may issue enforcement notices requiring the polluter, cf. subsection 41(3), no. 1, first clause, and no. 2 hereof, to submit information which is significant to the assessment of remedial or preventive action pertaining to any contamination.

Enforcement notices may be issued to the polluter requiring the polluter to

- 1) carry out sampling, analyses, and measurements of substances, etc., for the purpose of determining the causes or effects of contamination and determining the type and extent of contamination, and
- 2) determine how the consequences of contamination can be remediated or prevented.

(2) Enforcement notices under subsection (1) above may be issued irrespective of when contamination occurred. Enforcement notices under subsection (1) above may also be issued irrespective of how a possible contamination occurred, but see section 41(3), no. 2 below.

Clean-up or other Remedial Action

Contamination occurring 1 January 2001 or thereafter

41.-(1) For contamination occurring 1 January 2001 or thereafter, the environmental authority, cf. section 39 above, may issue enforcement notices stipulating that the polluter shall eliminate contamination and restore the original state of the environment or carry out corresponding remedial action.

(2) Enforcement notices may be issued irrespective of how contamination has occurred, but see subsection (3), no. 2 hereof. Enforcement notices cannot be issued where contamination has occurred due to war, civil unrest, nuclear damage, or natural disaster. Nor may enforcement notices be issued where contamination has occurred due to fire or criminal damage which were not caused by reckless conduct on the part of the polluter or by conduct on the part of the polluter which falls within stricter liability rules under other legislation.

(3) "Polluter" shall mean:

- 1) Any party who for commercial or public purposes operates or operated the enterprise or uses or used the plant from which the contamination originated. The contamination shall have been released in its entirety or in part during the operation period in question.
- 2) Any other party who has caused contamination to occur through reckless conduct or by conduct which falls within stricter liability rules under other legislation.

(4) Enforcement notices cannot be issued where a period of 30 years or more has elapsed from the termination of the production method or use of the plant which caused or could cause the contamination.

42.-(1) Where a contamination which occurred before 1 January 2001 continues after this date, the provisions under sections 41 and 43 shall only apply if the environmental authority is able to show that the most significant part of the contamination occurred after 1 January 2001.

Common Provisions

43.-(1) Where a contamination can be attributed to more than one polluter, enforcement notices as specified in sections 40 and 41 above may be issued to all of them. The enforcement notice issued to each polluter shall be stipulated in view of the proportion of the contamination which the environmental authorities assess to have originated from said polluter. Where it is not possible to assess the respective contamination proportions originating from more than one polluter, the environmental authorities shall in the enforcement notices attribute equal shares of the contamination, including the contamination which cannot with certainty be attributed to one or more polluters, to said polluters.

(2) Enforcement notices cannot be issued against a polluter to whom only an insignificant proportion of the contamination can be attributed.

(3) Where polluters to whom enforcement notices have been issued under subsection (1) above cannot agree to jointly comply with the enforcement notices, a new enforcement notice may be issued stipulating that the polluter who is deemed to have contributed the greater part of the contamination shall carry out investigation or clean-up of the total contamination. Where the environmental authorities have under subsection (1) above attributed equal shares of the contamination to the polluters, enforcement notices may be issued against the polluter who has the current use of the property. Where none of the polluters have current use of the property, enforcement notices may be issued to the most recent polluter to have use of the property.

(4) Any person required to comply with enforcement notices issued under subsection (3) above may demand that his expenses be covered by the other polluters insofar as the expenses for compliance with the enforcement notice can be attributed to their shares of the contamination and an enforcement notice has or could have been issued against the other polluters.

44.-(1) Enforcement notices under sections 40 and 41 may be issued irrespective of whether the polluter has current use of the contaminated property. Where contamination occurred before 1 January 2000, enforcement notices under section 40 may only be issued where the polluter had use of the contaminated property on 10 February 1999 or later. The enforcement notice shall stipulate that restoration of the contaminated property shall be carried out.

(2) Where the polluter does not have current use of the contaminated property, the environmental authority may issue an enforcement notice against any party with use of the property stipulating that said party shall suffer investigation, clean-up, or other action to be carried out at the order of the polluter.

(3) Enforcement notices issued under subsection (2) above shall be binding for whosoever has current use of the contaminated property.

45.-(1) Enforcement notices under sections 40 and 41 above pertaining to an enterprise in operation shall be binding on subsequent operators where said subsequent operators at the time of acquisition knew or should have known that an enforcement notice had been issued. This shall also apply where prior notice of an enforcement notice has been given.

(2) Where at the time of acquisition of the enterprise an enforcement notice on investigations, etc., under section 40 has been issued against or prior notice of such an enforcement issue has been given to an enterprise in operation, enforcement notices on further action pertaining to the same contamination may be issued against a subsequent operator where at the time of acquisition said subsequent operator knew or should have known that an enforcement notice had been issued or that prior notice of such an enforcement notice had been given.

(3) Enforcement notices issued under sections 40 and 41 to an enterprise in operation shall be binding on subsequent acquirers of the contaminated property, where

- 1) the enforcement notice was issued or prior notice of said enforcement notice was given before the acquisition, but not complied with, irrespective of the fact that injunction of compliance has been given and the matter has been reported to the police.
- 2) at the time of acquisition the acquirer knew or should have known that an enforcement notice had been issued or that prior notice of such an enforcement notice had been given, and
- 3) the purchase is made from a person who was himself or could himself be bound to comply with the enforcement notice.

46.-(1) Where enforcement notices are issued or prior notice hereof is given under this Part V of this Act, the environmental authorities shall at the expense of the offending party let such enforcement notices be entered into the land registry, but see subsection (2) hereof. However, information on enforcement notices issued under section 44(2) above and prior notice hereof shall not be entered into the land registry.

(2) Where an enforcement notice is not issued even though prior notice has been given, the environmental authorities shall reimburse registration expenses defrayed by the party to whom said enforcement notice was directed.

(3) When the enforcement notice has been complied with, the environmental authorities shall cancel the registration of the enforcement notice.

47.-(1) Enforcement notices under this Part V of this Act cannot be issued to publicly operated landfills, etc., where operation began before 1 October 1974 and ceased before 1 September 1990.

Owners of Oil Tanks for Domestic Heating with a Capacity of less than 6,000 l and Obligations to take out Insurance

48.-(1) For oil contamination which is discovered after a date specified by the Minister for Environment and Energy, cf. section 39 above, the environmental authorities may, irrespective of how contamination occurred, issue enforcement notices to owners of oil tanks, cf. subsection (3) hereof, stipulating that said owner shall submit information and carry out investigations as specified in section 40(1) above, and that the owner shall eliminate the contamination and restore the original state of the environment or carry out corresponding action.

(2) Enforcement notices under subsection (1) above cannot be issued where contamination occurred due to war, civil unrest, nuclear damage, or natural disasters. Where the conditions for issuing enforcement notices under subsection (1) above are met, but section 49(2) below applies,

enforcement notices may only be issued under subsection (1) above if contamination occurred after this Act entered into force.

(3) Enforcement notices under subsection (1) above may be issued to owners of oil tanks with a capacity of less than 6,000 l where 50 % or more of the area heated by oil from the oil tank in question is used for residence if the heating system has been used after the date specified by the Minister for Environment and Energy, cf. subsection (1) above, and has been or could have been used directly prior to the discovery of contamination. Where contamination is discovered within a period of 12 months after the date specified by the Minister for Environment and Energy, cf. subsection (1) above, enforcement notices under subsection (1) above may also be issued if the heating system has been operated within a period of 12 months prior to the discovery of contamination.

(4) Enforcement notices may be issued irrespective of whether the owner of the oil tank has current use of the contaminated property. The enforcement notice shall stipulate that restoration of the contaminated property shall be carried out.

(5) Where the owner of the oil tank does not have current use of the contaminated property, the environmental authorities may issue enforcement notices to any party with use of the property to suffer investigations, clean-up, or other measures to be carried out. This enforcement notice shall be binding on whosoever has current use of the contaminated property.

(6) Where oil contamination is not covered in subsection (1), cf. subsection (2), above, the other provisions in the legislation on contaminated soil shall apply.

(7) The Minister for Environment and Energy may formulate specific regulations on which enforcement notices may be entered into the land register.

49.-(1) Owners of oil tanks to whom enforcement notices may be issued under subsection 48 (1), cf. subsection 48 (3), above are required to take out insurance which will cover the expenses of investigation and clean-up demanded by the environmental authorities under the provisions under section 48, but see subsection (2) hereof.

(2) The obligation to take out insurance shall not apply to cases where contamination:

- 1) is caused deliberately by the owner of the tank,
- 2) originates from installations which the owner of the tank knew or should have known fail to comply with public rules and regulations hereof specified in the Statutory Order on Oil Tanks,
or
- 3) is caused by the fact that oil deliveries carried out during the period of the tank owner's ownership did not comply with public rules and regulations hereof, specified in the Statutory Order on Road Transport of Dangerous Goods.

(3) The obligation to be covered by an insurance shall expire 6 months after operation of the tank has ceased and the tank has been discontinued in compliance with rules and regulations.

(4) The insurance shall commence no later than the date specified by the Minister for Environment and Energy, cf. subsection 48(1).

- (5) The insurance shall cover expenses as specified under subsection (1) above. Where it becomes apparent that the cost of compliance with an enforcement notice, cf. section 48(1) above, will exceed DKK 2 million, the insurance company shall contact the environmental authority for approval of the part of the project which exceeds DKK 2 million. Expenses exceeding DKK 2 million shall be defrayed by the environmental authority. The environmental authority shall upon request provide guarantee hereof in advance.
- (6) The obligation to take out insurance shall not apply to the State, counties, and municipalities.
- (7) The insurance company cannot terminate the insurance due to failure to pay insurance premiums without documentation that other insurance has been taken out.
- (8) The insurance company shall have the right of statutory debt collection for insurance premiums with accrued interest and other expenses. The insurer shall also have a mortgage on benefits in the insured property after state and municipal real estate taxes for a period of 1 year after the due date for payment.
- (9) The Minister for Environment and Energy may formulate specific regulations on the contents of insurance after negotiations with providers of oil tank insurance.

PART VI

Soil Disposal and Use

- 50.**-(1) Any party transporting soil from the property where it was excavated and any party using such soil shall ensure that the soil does not cause detrimental effects on groundwater, human health, and the general environment.
- (2) Any party carrying out excavation and transport of contaminated soil and soil from a listed property, a listed part of a property, or an area used for public roads shall notify the local council hereof. Notice of soil use shall also be given to the regional and local councils relevant to the site where use of the soil is requested. Under special circumstances, the Minister for Environment and Energy may formulate rules stipulating that notification may be carried out after soil extraction and transport, and stipulating the provisions hereof.
- (3) The Minister for Environment and Energy may formulate rules on the notification scheme under subsection (2) above, including rules on the distribution of duties among the authorities and rules stipulating that the notifier shall instigate soil analyses. The Minister may also formulate rules on a covering-note scheme and on evidence for management of the soil, including evidence that the soil re-use has been carried out under rules and regulations currently in force.
- (4) Excavation and management of soil carried out in compliance with rules under subsection (3) above and section 51 below may commence after a period of 4 weeks after notification, but see subsections (5) and (6) hereof.

(5) Where excavation and management cannot be carried out in accordance with rules specified under subsection (4) above, or where the regional council wishes to oppose re-use of the soil or to stipulate terms for said re-use, cf. section 51 below, the local council and the regional council shall, respectively, inform the notifier hereof within a period of 4 weeks after notification. In such cases the notifier may not commence soil excavation and management.

(6) Decisions made by the local council under subsection (5) above and decisions made under the provisions pursuant to subsection (3) above may not be appealed to other administrative authorities.

51.-(1) The Minister for Environment and Energy may formulate rules on re-use of soil for specific purposes, including rules on criteria and limit values, on notification, and under special circumstances where the regional council may oppose re-use or stipulate terms for such re-use.

52.-(1) Disposal of contaminated as well as uncontaminated soil to raw material excavations and abandoned raw material excavations is prohibited.

(2) The regional council may allow dispensation from this prohibition where:

- 1) the developer or owner provides evidence that binding agreements were made before 19 December 1996 for the supply of soil to the property,
- 2) the developer or owner suffers a significant financial loss as a result of being debarred from exploitation of the property which he had special reason to anticipate under rules previously in force, or
- 3) there is no risk of pollution of water abstraction plants or of groundwater which is expected to be part of the future drinking water supply, and other environmental considerations do not go against such activities.

(3) In dispensations under subsection (2) above regarding the prohibition of disposal of uncontaminated soil, terms may be stipulated, including terms regarding the handling of soil and the provision of documentation that the soil is uncontaminated.

(4) In dispensations under subsection (2) above regarding the prohibition against disposal of contaminated soil, terms may be stipulated, including terms regarding the handling of soil or compliance with any documentation requirements. As a further prerequisite for dispensation, the regional council shall under sections 19 or 33 of the Environmental Protection Act stipulate terms for soil disposal. If the regional council has issued a license for soil disposal in raw material excavations under sections 19 or 33 of the Environmental Protection Act at the time of entry into force of this Act, this license shall still apply.

53.-(1) The Minister for Environment and Energy may formulate specific regulations on control of disposal of soil at raw material excavations and abandoned raw material excavations, including rules that the party receiving the soil shall at his own expense carry out sampling, analyses, and measurements of the soil.

PART VII

Administrative Provisions

Decisions

54.-(1) Decisions that are handed down under this Act shall be communicated in writing to the party concerned. Decisions against which complaints may be presented, shall also be communicated to persons and authorities entitled to present complaints, cf. section 82 below, and to the authorities having otherwise been involved in the review of the case.

(2) Notification of the persons specified in no. 2 of subsection 82(1) below may take place by public announcement.

(3) Enforcement notices may be issued orally in case of danger to health or where immediate intervention is required to prevent significant environmental damage. Oral decisions shall be confirmed in written form as soon as possible.

55.-(1) Enforcement notices shall stipulate a time limit for compliance with the decision. Under special circumstances, it may be decided that the enforcement notice shall be complied with immediately.

56.-(1) Under special circumstances, the environmental authority may decide that complaints against enforcement notices shall not result in postponement.

Access to Property

57.-(1) The environmental authorities shall, where deemed necessary, at any time and against proper proof of identity without a court order, but see subsection (2) below, have access to public and private properties, localities, and means of transport for the purpose of carrying out supervision under sections 65 and 66 and under corresponding rules issued under this Act and to carry out measures under Parts II-IV under this Act and subsection 68(1,2, and 4) below. This shall also apply to persons empowered to carry out such activities by said authorities, the Medical Officer of Health concerned, and persons with access granted under section 58(1) below.

(2) Access under subsection (1) above requires a court order where the purpose of access is to carry out measures stipulated in an enforcement notice, cf. section 68(1) below. A court order is not required where:

- 1) the situation is as specified under subsection 68(2), or
- 2) access to carry out investigation or clean-up stipulated in an enforcement notice is required to prevent the situation specified under section 68(2) from arising.

(3) The police shall assist the authorities and persons empowered by said authorities in their discharge of functions under subsections (1) and (2) hereof. After negotiations with the Minister of Justice, the Minister for Environment and Energy may formulate specific regulations on such activities.

58.-(1) The regional council may decide that investigation or clean-up may be carried out at specific properties by a party other than the authorities under this Act. The regional council shall place the obligation to restore the contaminated property on said party. The regional council may issue an

enforcement notice against the person having current use of the property to suffer such work to be carried out.

(2) Enforcement notices issued under subsection (1) above shall be binding on whosoever is the current owner or user.

(3) Where enforcement notices are issued under subsection (1) above or prior notice hereof is given, the regional council shall enter such enforcement notices into the land register. The regional council shall cancel such registrations when the measures to be carried out on the property are completed. The expenses for registration and cancellation shall be defrayed by the party who under a decision made pursuant to subsection (1) above shall carry out investigation or clean-up on the property.

Authority, etc.

59.-(1) The Minister for Environment and Energy may authorise an agency under the Ministry or a similar institution to discharge the powers conferred upon the Minister under this Act.

(2) The Minister for Environment and Energy may formulate rules on the right to present complaints against decisions handed down via this authorisation, cf. subsection (1) above, and include rules to the effect that decisions may not be brought before the Minister.

60.-(1) The local council may authorise a public environmental centre to discharge the powers conferred upon the local council under this Act.

61.-(1) The Minister for Environment and Energy may order the regional councils or the local councils to take up matters which pertain to soil contamination for consideration and decision. These matters may include specific cases.

(2) The Minister for Environment and Energy may order regional councils and local councils to collect information within that particular regional or local area that is required for the assessment of matters regulated under this Act. The Minister may require that such information shall be submitted in a specified form.

(3) The Minister for Environment and Energy may formulate specific regulations that the regional councils and the local councils shall submit reports on their listing and supervision activities, i.a. on the results of measuring and investigation. The Minister may also require that such reports shall be submitted in a specified form.

62.-(1) The local council shall upon request submit to the regional council all information within the local area that is required to assess matters regulated under this Act.

63.-(1) Approval, license, planning, and dispensation under the Spatial Planning Act, the Protection of Nature Act, the Raw Materials Act, the Environmental Protection Act, the Water Supply Act, the Act on Watercourses, and the Forestry Act are not required for carrying out investigation and remedial action under Parts III and IV of this Act. This shall not apply where the Acts concerned or provisions hereof implement or are a part of implementation in this country of the directives or

regulations of the European Community. However, the provisions of the Environmental Protection Act shall apply to soil management notwithstanding.

(2) Plans for projects involving remedial action with discharge of contaminated groundwater into watercourses, lakes, or the sea, shall be made public by the regional council in order to allow the public a 4 week period in which to dispute the plan.

(3) Final decisions made by the regional council, cf. subsection (2) above, cannot be appealed to other administrative authorities.

64.-(1) In the Copenhagen and Frederiksberg municipalities, the local council shall discharge the functions conferred to the regional council under this Act or under rules pursuant to this Act.

PART VII

Supervision and Enforcement

65.-(1) The local council shall supervise compliance with

- 1) the Act and rules stipulated under the Act,
- 2) enforcement notices issued by the local council, and
- 3) enforcement notices issued by the regional council under subsection 9(2) above.

(2) The local council shall convey cases to the regional council if the case regards failure to comply with enforcement notices issued by the regional council.

(3) The local council shall notify the local branch of the National Working Environment Authority if the local council ascertains that there are indoor air problems at a business property and that said problems are caused by soil contamination.

66.-(1) The regional council shall supervise and monitor developments in the state of soil contamination.

(2) If contamination of groundwater is discovered, the regional council shall search out the sources of contamination in co-operation with the local council.

(3) The regional council shall supervise compliance with

- 1) terms stipulated by the regional council for licenses and dispensation, including terms stipulated under general rules, and
- 2) enforcement notices issued by the regional council, but see subsection 65(1), no. 3 above.

(4) The regional council shall notify the local building authority if the regional council discovers that there are indoor air problems at a residence and said problems are caused by soil contamination.

(5) The regional council shall notify the local branch of the National Working Environment Authority if the regional council discovers that there are indoor air problems at a business property and said problems are deemed to be caused by soil contamination.

(6) If contamination is discovered, the regional council shall immediately notify the relevant water suppliers.

67.-(1) The supervision authority, cf. sections 65 and 66 above, shall see to it that illegal situations are corrected, unless the matter has only minor significance.

(2) The supervision authority may omit treatment of matters deemed to be of minor significance to the protection of the environment.

(3) Decisions made by the supervision authority under subsections (1) and (2) hereof cannot be appealed to other administrative authority.

68.-(1) If the stipulated time limit is exceeded, the supervision authority, cf. sections 65 and 66 above, may carry out measures at the expense of the party against whom an enforcement notice is issued.

(2) In cases where there is imminent serious danger to health and in cases where immediate action is required to avoid considerable pollution or spreading of pollution, the supervision authority shall take necessary measures without handing down a decision.

(3) Decisions made by the supervision authority under subsections (1) and (2) hereof cannot be appealed to other administrative authority.

(4) In cases where an area has been listed, the local council may carry out investigations and remedial action.

69.-(1) The Minister for Environment and Energy may formulate specific regulations on how the supervision authorities shall discharge their supervision functions which pertain to contaminated soil.

(2) The Minister may formulate specific regulations on searching out sources of contamination in situations where the origin of contamination is not sufficiently clear.

(3) For a specified period of time, the Minister may fix the scope of the supervision functions of a local council or a regional council.

(4) Under special circumstances, the Minister may formulate rules stipulating that supervision shall be carried out by other authorities or with other distribution than stipulated under sections 65 and 66 above.

PART IX

Various Provisions

Notification of Contamination, etc.

70.-(1) If the local council is notified of soil contamination, the local council shall notify the regional council hereof.

(2) The local council shall notify the local branch of the National Working Environment Authority if soil contamination is discovered during construction or soil excavation work, cf. section 71(1) below.

71.-(1) If contamination is ascertained during construction or soil excavation work at an unlisted site, work shall be suspended. This shall also apply to listed sites where the discovered contamination is not specified in the listing. This obligation rests with the landowner and the party carrying out such work or having such work carried out.

(2) Work may be resumed after a period of 4 weeks or when the regional council has decided whether terms shall be stipulated for such resumption of work. The regional council shall notify the local branch of the National Working Environment Authority of its decision.

72.-(1) Upon the request of the local council or the regional council, any owner or user of a property shall submit all information that is necessary for the authorities to carry out functions under this Act or under rules stipulated under the authority of this Act.

(2) The obligation to submit information shall include all information that is necessary for the assessment of the contamination and for any remedial or preventive measures.

Claims for Cover of Expenses, Compensation, etc.

73.-(1) The regional council or the local council may present claims that expenses defrayed under this Act for investigation, clean-up, other remedial action, acquisition, or compensation for expropriation pertaining to a property shall be covered by any party against whom an enforcement notice pertaining to said property has been or could be issued.

(2) Decisions made by the regional council or the local council under subsection (1) hereof to present claims to have expenses covered cannot be appealed to other administrative authority. However, the decisions made by the regional council or the local council on the party against whom claims may be made may be appealed where no prior enforcement notice has been issued.

(3) Upon completion of clean-up where expenses have been defrayed by the public under this Act, the environmental authorities are subrogated to any claims for damages the owner has against the polluter or previous owners due to the contamination if the owner's claim against the polluter or previous owners has been reduced due to the clean-up.

74.-(1) This Act shall not reduce the environmental authorities' title to compensation under general rules on contractual or non-contractual compensation or under rules stipulated under other legislation.

(2) Repayment of sums paid under the Land Depreciation Programme, cf. Part IV of this Act, may be required if such said payment was too large due to errors or submission of false information, etc.

75.-(1) When fixing compensation for expropriation, cf. section 22 above, or drafting an agreement on acquisition, cf. sections 22 and 34 above, the party against whom expropriation is directed may require that the value of the property shall be calculated without consideration of the depreciation caused by danger of contamination from the contaminated property where said party acquired the property in good faith. However, where an enforcement notice under Part V of this Act is or could be issued against the owner, the property value shall be calculated with consideration of the contamination.

(2) Where agreement cannot be reached, compensation and property values in expropriation cases, cf. section 22 above, and acquisition cases, cf. section 22 and 34, shall be fixed by the appraisal authorities appointed under the Public Roads Act. The provisions under section 51(1) and (3-7), sections 52-56 and 59-67 of the Public Roads Act shall apply. However, the regional council shall discharge the functions conferred on the road council under the Public Roads Act.

76.-(1) Where a party other than the environmental authorities has caused damage to the property of another while carrying out measures under this Act, the owner or user of said property may claim compensation against the environmental authorities if agreement cannot be reached on the fixing of compensation, or when the party that caused damage cannot meet the claim.

(2) Where the environmental authority has met a claim under subsection (1) above, the authority is subrogated to the claimant's rights against the person causing the loss.

(3) Where agreement cannot be reached, compensations under subsections (1) and (2) and compensations pertaining to damage due to measures carried out by the environmental authorities under this Act shall be fixed by the appraisal authorities appointed under the Public Roads Act. The provisions under sections 51-56 and 59-67 of the Public Roads Act shall apply. However, the regional council shall discharge the functions conferred on the road council under the Public Roads Act.

(4) Where it appears from an ordered investigation, cf. section 40 above, that no contamination has been ascertained at the site in question or that the contamination cannot be fully or partially ascribed to the party against whom the enforcement notice was issued, the expenses defrayed by the party against whom the enforcement notice was issued for complying with the order shall be covered by the environmental authority who ordered the investigation.

PART X

Complaint and Legal Proceedings

Complaint

77.-(1) Unless otherwise provided for in this Act, complaints against the decisions of the local council and regional council under this Act may be made to the Minister for Environment and Energy.

78.-(1) The Minister for Environment and Energy may formulate rules stipulating that decisions which are of minor importance shall not be appealed to other administrative authorities.

79.-(1) A complaint has suspensive effect upon an enforcement notice unless the appeal authority decides otherwise.

(2) If it is decided under section 56 above that enforcement notices shall be complied with immediately, a complaint shall not have suspensive effect unless the appeal authority decides otherwise.

(3) A complaint against decisions on dispensations under section 52 above shall not have suspensive effect unless the appeal authority decides otherwise.

(4) The provision of subsection (3) hereof does not restrict the power of the appeal authority to change or revoke an appealed dispensation.

80.-(1) Complaints against decisions regarding expropriation of property have suspensive effect unless the appeal authority decides otherwise.

81.-(1) The time limit for lodging a complaint is four weeks from the day the decision is notified. If notification is made by public announcement the time limit shall be calculated from the day the decision is announced.

(2) Where the time limit expires on a weekend or public holiday, the time limit shall expire on the following work day.

(3) Complaints shall be lodged in writing to the authority making the decision. Immediately after the expiration of the time limit for complaint, the authority shall submit the complaint, the authority's decision, and the materials on which review of the case was based to the Minister.

82.-(1) Complaints against the decisions of the local council and the regional council may be lodged by:

- 1) the party against whom the decision was made,
- 2) any party having an individual and significant interest in the outcome of the case, and
- 3) the Department of Medical Officers of Health.

(2) Complaints against the decisions of the regional council may be made by the local council, and complaints against the decisions of the local council may be made by the regional council.

(3) The Minister for Environment and Energy may formulate rules stating that complaints against decisions under this Act may be lodged by specific authorities in other countries.

Environmental Appeal Board

83.-(1) The Environmental Appeal Board is the authority of appeal for decisions made by the Minister for Environment and Energy or by empowered Agencies in matters of major or principle importance under Part V of this Act and subsection 73(2) above.

(2) The Environmental Appeal Board shall make decisions in matters pertaining to the Board's own competence.

(3) The make-up and field of work of the Environmental Appeal Board are determined by provisions under the Environmental Protection Act.

84.-(1) Complaints shall be submitted to the Environmental Appeal Board.

(2) Complaints may be brought before the Environmental Appeal Board by parties entitled to complain under the rules of section 82 above and by the authority making the decision in the first instance.

85.-(1) The rules of subsections 81(1) and (2) above shall apply to complaints brought before the Environmental Appeal Board.

(2) A complaint against an enforcement notice has suspensive effect unless the Board decides otherwise, but see 56(2) above.

86.-(1) The Environmental Appeal Board may procure information and carry out inspections under the provisions of sections 40, 48, and 57 above.

Legal Proceedings

87.-(1) Legal proceedings to re-examine decisions under this Act or rules laid down under this Act shall be instituted within six months from the day the decision was notified. If the decision was notified by public announcement, the time limit for instituting legal proceedings shall be calculated from the day the decision was announced.

(2) Issues which may be brought before the appraisal authorities cannot be taken to court before the decision of the appellate appraisal commission is available.

(3) Legal proceedings concerning expropriation under this Act shall be instituted before the High Court under whose jurisdiction the property is situated.

PART XI

Penalty

88.-(1) Unless heavier penalty is due under other legislation, offenders may be fined for the following offences:

- 1) failure to comply with enforcement notices under this Act,
- 2) failure to submit an application under subsection 8(1) above,
- 3) commencement of excavation, transport, and re-use without notification under subsection 50(2) above,
- 4) changing of land-use or commencement of work contrary to subsections 8(1) and 50(4) above where a licence has been applied for or notification has been given,

- 5) excavation or management of soil without a licence contrary to the notification given by the local council or the regional council under subsection 50(5) above,
- 6) disregard of terms of a permit or a dispensation issued under this Act,
- 7) violation of section 9(2), 12, 49, 50(1), or 52 above.
- 8) submission of false or misleading information or failure to submit information pertaining to a request under sections 29 and 33 or notification under subsection 50(2),
- 9) failure to suspend work as specified in section 71 above upon discovery of contamination,
- 10) submission of false or misleading information or failure to submit information as specified in section 72 above,
- 11) preventing access to a property in violation of section 57 above, or,
- 12) deliberate removal, garbling, or damaging of markers set up in connection with activities and investigations under this Act.

(2) The penalty may be detention or imprisonment for a maximum term of two years where the offender acted deliberately or by gross negligence and where the infringement resulted in damage to the environment or risk of damage, or the infringement achieved or intended to achieve economic advantages, including savings, for the offender or for others.

(3) Rules and regulations issued under this Act may specify the use of fines as a penalty. The penalty may be increased to detention or imprisonment for a maximum term of two years under the same conditions as those specified in subsection (2) above.

(4) Enterprises etc. (legal persons) may incur criminal liability under the rules of Part V of the Penal Code.

(5) If violations give rise to profits, these profits shall be confiscated in accordance with Part IX of the Penal Code, even if the violation did not result in damage to the environment or risk of damage. If profits cannot be confiscated, the setting a fines or inclusion of additional fines shall take this into consideration.

(6) Criminal liability is limited to five years for violations etc. specified in no. 1 of subsection (1) above, with the exception of failure to comply with orders to investigate under sections 40 and 48, and nos. 2-7 and 9 of subsection (1) above.

89.-(1) If provisions of this Act are violated, premises may be searched in accordance with the rules of the Administration of Justice Act where these rules relate to searches in connection with cases for which a prison sentence may be incurred under the law.

PART XII

Amendments to the Environmental Protection Act, the Tax Assessment Act, the Profits from Sale of Property Taxation Act, the Stamp Duty Act, and the Raw Materials Act

90.-(1) The Environmental Protection Act, cf. Consolidation Act no. 698 of 22 September 1998, as last amended by Act no. 908 of 16 December 1998 shall be amended as follows:

1) Sections 20a and 20b shall be repealed.

2) The following shall be inserted after section 21:

“21a. The current owner of a property shall ensure that tanks used for storage of petroleum products which fall into disuse are discontinued in accordance with rules and regulations. Tanks which are discontinued in accordance with rules and regulations cannot subsequently be required to be removed or re-discontinued.”

3) The following subsection shall be inserted in section 24:

“(3) Enforcement notices regarding measures for contaminated soil cf. section 83c cannot be issued under subsections (1) or (2) hereof.”

4) The following shall be inserted after section 64a:

“64b.-(1) Where a party other than the environmental authorities has caused damage to the property of another while carrying out measures under subsection 83c(1) below, the owner or user of said property may claim compensation against the environmental authorities when agreement cannot be reached on the fixing of compensation, or when the party which caused damage cannot meet the claim.

(2) Where the environmental authority has met a claim under subsection (1) above, the authority is subrogated to the claimant’s rights against the person causing the loss.”

5) The following shall be inserted as a second clause in subsection 70(3):

“However, statutory debt collection cannot be carried out for expenses pertaining to investigation and clean-up of contaminated soil, cf. section 83c.”

6) The following shall be inserted after section 83:

“83a.-(1) The provisions of this Act, i.a. on carrying out measures under section 69 above pertaining to contaminated soil, cf. section 83c, shall allow for the issuance of enforcement notices against the polluter of a property, irrespective of whether said polluter has current use of the contaminated property, as long as the polluter had use of the contaminated property on 10 February 1999 or later. The enforcement notice shall stipulate that restoration of the contaminated property shall be carried out.

(2) If the polluter does not have the use of the contaminated property, the authority may issue an enforcement notice against any party which has the use of the property, stipulating that said party shall suffer investigation, clean-up, or other remedial measures to be carried out by the party against whom an enforcement notice under the provisions of this Act was issued.

(3) Enforcement notices issued under subsection (2) above shall be binding on any person who has current use of the contaminated property.

(4) Enforcement notices under this Act, i.a. on carrying out measures under section 69 above, which are issued against enterprises in operation and which concerns investigation, clean-up, or other remedial measures pertaining to contaminated soil, cf. section 83c below, shall be binding on subsequent operators where said subsequent operator acquired the enterprise after 1 January 2000 and at the time of acquisition knew or should have known that an enforcement notice had been issued. This shall also apply where prior notice of an enforcement notice has been given.

(5) If at the time of acquisition of the enterprise, an enforcement notice on investigations, etc., of contaminated soil, cf. section 83c below, has been issued under this Act or the Contaminated Soil Act or prior notice of such an enforcement notice has been given to an enterprise in operation, enforcement notices on *further* action, i.a. under section 69 above, pertaining to the same contamination may be issued under this Act against a subsequent operator where the subsequent operator acquired the enterprise after 1 January 2000 and at the time of acquisition knew or should have known that an enforcement notice had been issued or that prior notice had been given of such an enforcement notice.

(6) Enforcement notices issued under this Act, including orders to an enterprise in operation regarding measures under section 69 and concerning clean-up, or other remedial measures pertaining to contaminated soil, cf. section 83c below, shall be binding on subsequent acquirers of the contaminated property, where

- 1) the enforcement notice was issued or prior notice of said enforcement notice was given before the acquisition, but had not been complied with, irrespective of the fact that injunction of compliance had been given and the matter had been reported to the police,
- 2) at the time of acquisition, the acquirer knew or should have known that an enforcement notice had been issued or that prior notice of such an enforcement notice had been given,
- 3) the acquisition was made from a person who was himself or could himself be bound to comply with the enforcement notice, and
- 4) the property was acquired after 1 January 2000.

(7) Enforcement notices under subsections (1) – (6) hereof cannot be issued to publicly run landfills, etc., where operation began before 1 October 1974 and ceased before 1 September 1990.

83b.-(1) If enforcement notices are issued or prior notice hereof is given under this Act, including orders on carrying out measures under section 69 concerning investigation, clean-up, or other remedial measures pertaining to contaminated soil, cf. section 83c below, the environmental authorities shall enter such enforcement notices into the land registry at the expense of the party against whom such enforcement notices are directed. However, information on enforcement notices issued under subsection 83a (2) above and prior notice hereof shall not be entered into the land registry.

(2) If prior notice of an enforcement notice has been given and said enforcement notice is not issued, the environmental authorities shall reimburse expenses for registration paid by the party against whom said enforcement notice was directed.

(3) Where the enforcement notice is complied with, the environmental authorities shall cancel the registration of the enforcement notice.

83c-(1) “Contaminated soil” shall mean soil which due to human influence may cause detrimental effects to groundwater, human health, or the general environment. “Contaminated soil” shall not mean soil affected by agricultural spreading of sludges, fertiliser, and pesticides, etc.”

7) Section 84a shall be repealed.

8) The following new subsection shall be inserted in section 87, after subsection (1):

“(2) Access under subsection (1) hereof requires a court order if the purpose of access is to carry out measures stipulated in an enforcement notice issued under section 69 above concerning investigation and clean-up of contaminated soil, cf. section 83c above. A court order is not required if:

- 1) the situation is as specified under section 70(1), or
- 2) investigation or clean-up stipulated in an enforcement notice is required to prevent the situation specified under section 70(1) from arising.”

Subsections (2) and (3) shall thus become subsections (3) and (4).

9) In no. 1 of subsection 110(1), the following shall be deleted: “Section 20 a (1),”.

10) The following new number shall be inserted in section 110(1), after no. 4):

“ 5) failure to remove or discontinue a tank used for storage of petroleum products in accordance with rules and regulations, cf. section 21 a,”.

Nos. 5) – 12) shall thus be nos. 6) – 13).

11) In subsection 110(3), the following shall be deleted: “subsection 20b(2),”.

12) In subsection 110(7), “and 5” shall be amended to “, 5, and 6”.

91.-(1) In the Tax Assessment Act, cf. Consolidation Act no. 819 of 3 November 1999, as last amended by section 10 of Act no. 288 of 12 May 1999, the drafting of the second clause of section 17a(2) shall be:

“This shall also apply to interest on loans granted under section 33 of the Contaminated Soil Act.”

92.-(1) In the Profits from Sale of Property Taxation Act, cf. Consolidation Act no. 631 of 17 August 1998, as amended by section 5 of Act no. 166 of 24 March 1999, the drafting of the third clause of section 11 shall be:

“Profits gained from sale under section 34 of the Contaminated Soil Act shall not be considered in the calculation.”

93.-(1) In the Raw Materials Act, cf. Consolidation Act no. 569 of 30 June 1997, the drafting of the second clause of subsection 10(5) shall be:

“Any revised terms which are the result of the prohibitions under section 52 of the Contaminated Soil Act shall be registered at the regional council’s expense.”

PART XIII

Entry into force and Transitory Provisions

94.-(1) This Act enters into force on 1 January 2000, but see subsection (2) hereof.

(2) The Minister for Environment and Energy shall lay down the date for entry into force of section 14.

(3) At the date of entry into force of this Act, the following provisions are repealed:

- 1) Act on Waste Deposits (no. 420 of 13 June 1990), cf. Consolidation Act no. 939 of 27 October 1996, and
- 2) Act on Depreciation Scheme for Property Owners, etc. (no. 214 of 28 April 1993).

(4) An enforcement notice shall only be binding on a mortgagee under section 45 of this Act or under the Environmental Protection Act, subsection 83a(4-6) as drafted under no. 6 of section 90 of this Act where the mortgage was created after 1 January 2000.

95.-(1) Decisions and amicable settlements made under the Acts specified in section 94(3) above or under provisions made under said Acts shall remain valid until other decisions are made pursuant to this Act or to rules laid down under this Act. Violations of such decisions are punishable under current rules.

(2) Decisions under the Environmental Protection Act or under rules pursuant to the Environmental Protection Act, which regard enforcement notices and terms for licenses, dispensations, or approvals concerning contaminated soil and which were made prior to entry into force of this Act, shall remain in force.

(3) Decisions on the return of the owner’s payment under the Act on Depreciation Scheme for Property Owners, etc., shall be made pursuant to the prevailing rules at time of submission of the claim for clean-up. However, the regional council may hand down a decision on return of the owner’s payment under subsection 35(2), third clause.

(4) Entries in the land registry regarding contaminated sites under the Act on Waste Deposits shall remain in force until the contaminated sites have been entered in the various registers specified in section 14 above.

(5) The members of the Contaminated Sites Council appointed by the Minister for Environment and Energy shall continue their term under the hitherto prevailing rules.

96.-(1) This Act shall not apply to the Faroe Islands and Greenland. This Act may upon Royal decree enter into force for the Faroe Islands and Greenland with the deviations required by special local conditions.