

THE GOVERNMENT**THE SOCIALIST REPUBLIC OF VIETNAM**
Independence - Freedom - Happiness**No. 03/2015/ND-CP***Hanoi, January 6, 2015***DECREE****Providing the assessment of environmental damage^(*)***Pursuant to the December 25, 2001 Law on Organization of the Government;**Pursuant to the June 14, 2005 Civil Code;**Pursuant to the June 23, 2014 Law on Environmental Protection;**At the proposal of the Minister of Natural Resources and Environment;**The Government promulgates the Decree providing the assessment of environmental damage.*

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation

1. This Decree provides the responsibility to assess, and claim compensation for, environmental damage, covering the collection of data and evidence for assessing 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 belonging or not belonging to nature reserves are degraded;

d/ Individuals of species prioritized for protection under law die or are 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/ Compliance with requests of competent state management agencies in *force majeure* or urgent circumstances;

c/ Other circumstances as prescribed by law.

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

Article 2. Subjects of application

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

^(*) *Công Báo Nos 161-162 (27/1/2015)*

Article 3. Responsibilities to claim compensation for and assess 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 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 collection and appraisal of data and evidence for assessing environmental damage caused by pollution or degradation;

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

c/ Provincial-level People's Committees shall claim compensation for environmental damage caused by 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 pollution or degradation in two or more provinces or centrally run cities.

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

a/ District-level People's Committees shall organize the collection and appraisal of data and evidence for assessing environmental damage caused by 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 evidence for assessing environmental damage caused by 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 assume the prime responsibility for, and coordinate with provincial-level People's Committees in, organizing the collection and appraisal of data and evidence for assessing environmental damage caused by pollution or degradation in two or more provinces or centrally run cities.

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

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

Chapter II

DATA AND EVIDENCE FOR ASSESSING ENVIRONMENTAL DAMAGE

Article 4. Data and evidence for assessing environmental damage

1. Data and evidence which need to be collected for identifying organizations and individuals that pollute or degrade the environment include:

a/ Sources of waste and activities that cause environmental incidents, directly harm the environment or are related to areas suffering environmental pollution or degradation;

b/ Basic information on organizations and individuals related to areas suffering environmental pollution or degradation, including type of operation; products, capacity and

input materials; production process; waste; points of waste discharge; waste treatment measures; and observation and analysis of environmental parameters;

c/ Other necessary data and evidence related to areas suffering environmental pollution or degradation.

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

a/ The area, volume or weight of polluted water or soil;

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

c/ Decisions, licenses or documents of competent state management agencies prescribing the use or approving master plans on the use of components of the water or soil environment in the polluted or degraded area.

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

a/ The area of the degraded natural ecosystem;

b/ The degradation degree of the ecosystem;

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

4. Data and evidence 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 die include:

a/ The species prioritized for protection of which individuals are injured or die;

b/ The number of injured or dead individuals of the species;

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

Article 5. Forms and time of collection of data and evidence for environmental damage assessment

1. Data and evidence for environmental damage assessment may be in the form of image, magnetic tape, data collected from observation, measurement, analysis, remote sensing, geographical information systems and other forms.

2. Data and evidence for computing environmental damage shall be collected or estimated at the time when the environmental pollution or degradation is at the highest level or is detected.

Article 6. Order and procedures for collection and appraisal of data and evidence for environmental damage assessment

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

a/ Identifying data and evidence necessary for environmental damage assessment and compensation claim;

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

c/ Forming a council to appraise collected data and evidence.

2. A council for appraisal of data and evidence for environmental damage assessment must have at least 30% of its members being environmental specialists; at least 30% of its members being managerial officers; representatives of administrations of the localities where data and evidence are collected; representatives of local communities and other stakeholders.

3. The Ministry of Natural Resources and Environment shall specify criteria for selection of providers of observation, assessment and measurement services for the collection of data and evidence and their responsibilities; and guide the formation and operation of data and evidence appraisal councils.

Article 7. Dossiers of claim for compensation for environmental damage

1. A dossier of claim for compensation for environmental damage must comprise:

a/ A compensation claim, made by a responsible agency specified in Clause 2, Article 3 of this Decree;

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

c/ Written conclusion made by the data and evidence appraisal council;

d/ Results of computation of environmental damage and conclusions on the compensation liability.

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 evidence for environmental damage assessment

Organizations and individuals related to, and People's Committees at all levels in areas suffering environmental pollution or degradation shall coordinate with, and sufficiently, accurately and timely provide data and evidence to, the agencies in charge of organizing the collection and appraisal of data and evidence specified in Clause 3, Article 3 of this Decree as requested.

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

1. Expenses for assessing, and carrying out procedures for claiming compensation for, environmental damage must be actual and reasonable expenses for activities already carried out by competent agencies to collect and appraise data and evidence for environmental damage assessment and to carry out procedures for claiming compensation for environmental damage.

2. Agencies in charge of organizing the collection and appraisal of data and evidence specified in Clause 3, Article 3 of this Decree shall pay in advance expenses for assessing, and carrying out procedures for claiming compensation for, environmental damage, and sum up these expenses for use as a basis for requesting damage-causing organizations and individuals to refund 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 assessing, and carrying out procedures for claiming compensation for, environmental damage.

Chapter III

COMPUTATION OF ENVIRONMENTAL DAMAGE

Article 10. Principles of 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 polluted or degraded areas up to technical regulations on water or soil environment quality; expenses for restoring ecosystems and species prioritized for protection to a state equal or equivalent to their original state.

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

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

Article 11. Computation of environmental damage

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

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

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

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

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

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

T^{LBV} means the damage caused by environmental pollution or degradation or infringement to the 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, its damage caused by pollution or degradation shall be computed according to the following formula:

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

i means the use purpose of the water environment stated in a competent state management agency's decision, permit or document permitting the use, or approving the master plan on use of the water environment in the polluted or degraded area, 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 assessed based on the data and evidence collected, estimated and appraised under this Decree, which has a value from 1 to 3 corresponding to the level of pollution, severe pollution or exceptionally severe pollution;

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

C_i^N means a damage coefficient based on the use purpose of the water environment, which is specified in Appendix I to this Decree;

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

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

b/ In case the water environment is permitted for use for a sole purpose but it covers different water areas polluted at different levels, its damage caused by pollution or degradation is the total of damage caused to all those water areas, 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 the damage to the water environment permitted for use for the purpose (i);

c/ In case the water environment is permitted for use for different purposes at a time, the highest of the damage coefficients for these use purposes shall be applied to compute the 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 with different use purposes, its damage caused by pollution or degradation must be 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 the data and evidence 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, its damage caused by pollution or degradation shall be computed according to the following formula:

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

i means the use purpose of the soil environment stated in a competent state management agency's decision, permit or document permitting the use or approving the master plan on use of the soil environment in the polluted or degraded area, 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 assessed based on the data and evidence collected, estimated and appraised under this Decree, which has a value from 1 to 3 corresponding to the levels of pollution, severe pollution and exceptionally severe pollution;

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

C_i^D means a damage coefficient based on the use purpose of the soil environment, which is specified in Appendix II to this Decree;

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

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

b/ In case the soil environment is permitted for use for the sole purpose (i) but it covers many land areas polluted at different levels, the damage caused by pollution or degradation to the soil environment must be the total of damage caused to all those land areas, 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 the damage to the soil environment permitted for the purpose (i).

c/ In case the soil environment is permitted for use for different purposes at a time, the highest of the damage coefficients for these use purposes shall be applied to compute the 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 with different use purposes, its damage caused by pollution or degradation must be 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 the data and evidence collected, estimated and appraised under this Decree.

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

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

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

i means the conservation level of the ecosystem stated in 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 assessed based on the data and evidence collected, estimated and appraised under this Decree and according to regulations on ecosystem degradation assessment;

C_i^{HST} means a damage coefficient based on the ecosystem conservation level specified in Appendix III to this Decree;

D_j^{HST} means a damage coefficient based on the ecosystem degradation level as specified by law;

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

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

b/ In case an ecosystem is placed under conservation at a certain level but it covers different areas degraded at different levels, its damage caused by pollution or degradation must be the total of damage caused to all those areas, 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 the damage to the ecosystem placed under conservation at the level (i);

n means the total of degradation levels under regulations on ecosystem degradation assessment.

c/ In case an ecosystem is divided into many areas placed under conservation at different levels, its damage caused by pollution or degradation must be 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 the data and evidence collected, estimated and appraised under this Decree.

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

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

$$T_k^{LBV} = C_k^{LBV} \times W_k^{LBVc} \times H_k^{LBVc} + C_k^{LBV} \times W_k^{LBVt} \times H_k^{LBVt}, \text{ in which:}$$

k means the species prioritized for protection of which individuals die or are injured due to environmental pollution or degradation or due to harm;

C_k^{LBV} means a damage coefficient based on the protection priority level of the species (k), which is specified in Appendix IV to this Decree;

W_k^{LBVc} means the number of dead individuals of the species (k), which is assessed, estimated and appraised under this Decree;

H_k^{LBVc} means the expense limit for replacing a dead individual of the species (k);

W_k^{LBVi} means the number of injured individuals of the species (k), which is assessed, estimated and appraised under this Decree;

H_k^{LBVi} , means the limit expense for the salvage of and health care for an injured individual of the species (k).

b/ In case individuals of many species prioritized for protection under law die or are injured, their damage caused by pollution or degradation must be the total of damage caused by pollution, degradation or harm 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. Degradation levels of ecosystems and expense limits for pollution remediation and environmental rehabilitation

1. The Ministry of Natural Resources and Environment shall guide the degradation assessment of ecosystems 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 expense limits for treating a unit of area, volume or weight of polluted water and soil up to technical regulations on water and soil environment quality specified at Point a, Clause 2, and at Point a, Clause 3, Article 11 of this Decree; the expense limit for rehabilitating an area unit of a degraded ecosystem specified at Point a, Clause 4, Article 11 of this Decree; the expense limit for replacing a dead individual of a species prioritized for protection and the expense limit for the salvage of and health care for an injured individual of a species prioritized for protection specified 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 of identifying the liability to compensate for environmental damage

1. Organizations or individuals that pollute or degrade the environment shall be identified on the following main principles:

a/ Environmental pollution or degradation in a natural geographical area is caused by sources of waste or acts of infringement inside such area or outside such area which, however, have adverse impacts on such area;

b/ There is a scientific ground evidencing the existence of the relationship between pollutants possibly stemming from sources of waste or acts of infringement and the decline of environmental functions or utilities;

c/ Organizations or individuals that pollute or degrade the environment shall be identified in a timely and fair manner.

2. Organizations or individuals that pollute or degrade the environment shall compensate for the environmental damage caused by such pollution or degradation and pay all expenses for assessing the damage and carrying out procedures for claiming compensation to the agencies that have paid these expenses in advance under Clause 2, Article 9 of this Decree.

3. In case two or more organizations or individuals have polluted or degraded the environment, the liability of each organization or individual to compensate for environmental damage and pay expenses for assessing damage and carrying out procedures for claiming

compensation shall be divided in proportion to the percentage of the damage it/he/she has caused.

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

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

Article 14. Settlement of compensation for environmental damage

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

- a/ Reaching agreement on compensation with those that cause damage;
- b/ Requesting an arbitration to settle the case;
- c/ Filing a lawsuit at court.

2. After subtracting expenses for assessing damage and carrying out procedures for claiming compensation, the agencies specified in Clause 2, Article 3 of this Decree may use the compensation for remedying pollution or degradation and improving the environment in the polluted or degraded areas.

3. In case two or more provinces or centrally run cities are polluted or degraded, the compensation for the damage, after subtracting expenses for assessing damage and carrying out procedures for claiming compensation, shall be remitted into the Vietnam Environmental Protection Fund for remedying pollution or degradation and improving the environment in the polluted or degraded areas.

Chapter V

IMPLEMENTATION PROVISIONS

Article 15. Effect

1. This Decree takes effect on March 1, 2015, and replaces the Government's Decree No. 113/2010/ND-CP of December 3, 2010, providing the assessment of environmental damage.

2. For environment-polluting or -degrading acts which cause environmental damage occurring before the effective date of the 2014 Law on Environmental Protection for which no compensation has been paid, the damage assessment and the liability to pay compensation must comply with 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 related organizations and individuals shall implement this Decree.-

On behalf of the Government
Prime Minister
NGUYEN TAN DUNG

** All appendices to this Decree are not translated.*