

SCHEDULE 4

Regulation 15

Remediation

PART 1

Remediation of damage to natural resources other than land

Application of Part 1

1. This Part relates to remediation of damage to natural resources other than land.

Risk to human health

2. Remediation shall remove any significant risk to human health.

Objective

3. The objective of remediation is to achieve the same level of natural resource or services as would have existed if the damage had not occurred.

Primary and complementary remediation

- 4.—(1) The remediation shall consist of such primary remediation or complementary remediation or both as will achieve the objective.

(2) Primary remediation is any remedial measure which returns the damaged natural resources or impaired services to, or towards, the state that would have existed if the damage had not occurred (natural recovery is a permitted form of primary remediation in appropriate cases).

(3) Complementary remediation is any remedial measure taken in relation to natural resources or services to compensate for the fact that primary remediation does not result in fully restoring the damaged natural resources or impaired services to the state that would have existed if the damage had not occurred.

Compensatory remediation

- 5.—(1) In addition, compensatory remediation shall be provided to compensate for interim losses of natural resources or services that occur from the date of damage until remediation has achieved its objective; and in this paragraph “interim losses” means losses which result from the fact that the damaged natural resources or services are not able to perform their ecological functions or provide services to other natural resources or to the public until the primary or complementary measures have taken effect.

- (2) Compensatory remediation does not include financial compensation.

Choice of remediation

6. The remediation options shall be evaluated using best available methods, and based on—
 - (a) the effect of each option on public health and safety;
 - (b) the cost of implementing the option;
 - (c) the likelihood of success of each option;

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- (d) the extent to which each option will prevent future damage and avoid collateral damage as a result of implementing the option;
- (e) the extent to which each option benefits each component of the natural resource or service;
- (f) the extent to which each option takes account of relevant social, economic and cultural concerns and other relevant factors specific to the locality;
- (g) the length of time it will take for the restoration of the environmental damage to be effective;
- (h) the extent to which each option achieves the restoration of site of the environmental damage; and
- (j) the geographical linkage to the damaged site.

Identification of complementary and compensatory remediation

7.—(1) If possible, complementary and compensatory remedial measures shall provide natural resources or services of the same type, quality and quantity as those damaged.

(2) Where this is not possible, similar but different natural resources or services shall be provided (for example, by offsetting a reduction in the quality of natural resources or services by increasing their quantity).

(3) Where this is not possible, different natural resources or services may be provided, and the remedial measures shall have the same monetary valuation as the lost natural resources or services.

(4) If valuation of the lost natural resources or services is practicable, but valuation of the remedial measures cannot be made within a reasonable time or at a reasonable cost, then remedial measures may be provided whose cost (instead of monetary valuation) is equivalent to the value of the lost natural resources or services.

(5) In the case of complementary remediation at a new site, where possible and appropriate this site should be geographically linked to the damaged site.

Options

8.—(1) When evaluating the different identified remedial options, primary remedial measures that do not fully restore the damaged water or protected species or natural habitat to its condition at the time of the incident or that restore it more slowly may be chosen.

(2) This decision can be taken only if the natural resources or services foregone at the primary site as a result of the decision are compensated for by increasing complementary or compensatory actions to provide a similar level of natural resources or services.

(3) This will be the case, for example, when the equivalent natural resources or services could be provided elsewhere at a lower cost.

(4) The enforcing authority may at any time decide that no further remedial measures need be taken if—

- (a) the remedial measures already taken have removed any significant risk of adversely affecting human health, water or protected species and natural habitats; and
- (b) the cost of the remedial measures needed for restoration to its state before the incident would be disproportionate to the environmental benefits to be obtained.

PART 2

Remediation of damage to land

Remediation of damage to land

9.—(1) This Part applies in relation to damage to land.

(2) The remediation shall ensure, as a minimum, that the relevant contaminants are removed, controlled, contained or diminished so that the land, taking account of its lawful current use or any planning permission in existence at the time of the damage, no longer poses any significant risk to human health.

(3) The presence of such risks shall be assessed through risk-assessment procedures taking into account the characteristic and function of the soil, the type and concentration of the harmful substances, preparations, organisms or micro-organisms, their risk and the possibility of their dispersion.

(4) Natural recovery is a permitted form of remediation in appropriate cases.