
WELSH STATUTORY INSTRUMENTS

2009 No. 995

**The Environmental Damage (Prevention
and Remediation) (Wales) Regulations 2009**

PART 3

Remediation

Assessment of damage

17. Where damage has been caused, and there are reasonable grounds for believing that it is, or may be, environmental damage, the enforcing authority must establish whether or not it is environmental damage.

Determining liability to remediate

18.—(1) If the enforcing authority decides that the damage is environmental damage it must notify the operator or operators of any activity or activities that caused the damage (referred to in these Regulations as “the responsible operator” (“*y gweithredwr cyfrifol*”)) that—

- (a) the damage is environmental damage;
- (b) the responsible operator’s activity was a cause of the environmental damage;
- (c) the responsible operator must submit proposals, within a time specified by the enforcing authority, for measures that will achieve the remediation of the environmental damage in accordance with Schedule 4; and
- (d) the responsible operator has a right to appeal.

(2) The enforcing authority may withdraw or vary the notification if it is satisfied that the notification should not have been served or that an appeal against the notification is likely to succeed.

Appeals against liability to remediate

19.—(1) A person served with notification under regulation 18 may notify the Welsh Ministers that that person intends to appeal against that notification.

(2) Notice of appeal must be served on the Welsh Ministers within 28 days of service of the notification under regulation 18 unless the time limit is extended by the Welsh Ministers.

(3) The grounds of appeal are—

- (a) the operator’s activity was not a cause of the environmental damage;
- (b) the enforcing authority has acted unreasonably in deciding that the damage is environmental damage;
- (c) the environmental damage resulted from compliance with an instruction from a public authority (except an instruction relating to an emission or incident caused by the operator’s own activities);

- (d) the responsible operator was not at fault or negligent and the environmental damage was caused by an emission or event expressly authorised by, and fully in accordance with the conditions of a permit listed in Schedule 3;
 - (e) the responsible operator was not at fault or negligent and the environmental damage was caused by an emission or activity or any manner of using a product in the course of an activity that the operator demonstrates was not considered likely to cause environmental damage according to the state of scientific and technical knowledge at the time when the emission was released or the activity took place;
 - (f) the environmental damage was the result of an act of a third party and occurred despite the fact that the responsible operator took all appropriate safety measures.
- (4) Paragraph 3(e) does not apply in relation to the deliberate release of genetically modified organisms.
- (5) Schedule 5 contains procedures for the appeal.
- (6) The person deciding the appeal may confirm or quash the notice.

Remediation notices

20.—(1) Once it receives the proposals from the responsible operator (or, if a proposal is not received within the specified time limit, at any time after the time limit has expired), the enforcing authority must, so far as is practicable, consult—

- (a) anyone who has notified an enforcing authority under regulation 29, and
- (b) any person on whose land the remedial measures will be carried out,

and may consult any other person appearing to be necessary.

(2) Following consultation the enforcing authority must serve a remediation notice on the responsible operator that specifies—

- (a) the damage;
- (b) the measures necessary for remediation of the damage, together with the reasons;
- (c) the period within which those measures must be taken;
- (d) any additional monitoring or investigative measures that the responsible operator must carry out during remediation; and
- (e) the right of appeal against the remediation notice.

(3) The enforcing authority may withdraw or vary the remediation notice if it is satisfied that the remediation notice should not have been served or that an appeal against the remediation notice is likely to succeed.

(4) Failure to comply with a remediation notice is an offence.

Appeal against the remediation notice

21.—(1) The responsible operator may notify the Welsh Ministers that that person intends to appeal against the remediation notice on the grounds that its contents are unreasonable.

(2) An appeal may only be brought against those parts of the remediation notice that are different from proposals made by the responsible operator.

(3) Notice of appeal must be served on the Welsh Ministers within 28 days of service of the remediation notice unless the time limit is extended by the Welsh Ministers.

(4) Schedule 5 contains procedures for the appeal.

(5) The Welsh Ministers or the appointed person may confirm, vary or quash the notice, and must give written notification of the final decision and the reasons for it, and may, if appropriate, add further compensatory remediation requirements necessitated by the lapse of time since the remediation notice was served.

(6) A remediation notice need not be complied with pending determination of an appeal unless the person hearing the appeal directs otherwise.

Further provisions on remediation notices

22. An enforcing authority may serve further remediation notices at any time while remediation is being carried out or, if remediation has not been achieved, at the end of the remediation period, requiring further or different remediation.

Action by the enforcing authority

23. Once it has established that in its opinion damage is environmental damage, the enforcing authority may carry out any reasonable works—

- (a) at any time if a responsible operator cannot be identified;
- (b) if a responsible operator fails to comply with a remediation notice, whether or not an appeal is pending; or
- (c) if the responsible operator is not required to remediate under these Regulations.