

Environmental damage

2015-04-23

The Act of 13 April 2007 on the prevention of environmental damage and its repair is in force since 30 April 2007. The Act sets out the principles of responsibility for the prevention of environmental damage and repairing damage to the environment. In accordance to the legal act cited above, damage to the environment is a negative, measurable change in state or function of natural elements, assessed in relation to the initial state, which was caused directly or indirectly by the activities of an entity using the environment.

In the event of an imminent threat of damage to the environment, there is an obligation to take immediate preventive measures, and in case of damage to the environment the user of the environment shall be obliged to take measures to limit the damage, prevent any further damage and effects detrimental to human health, including immediate control, cessation, removal, or reduction of pollution or other harmful factors, and to take corrective action.

The terms and conditions of corrective action shall be agreed upon with the environment protection authority. This arrangement includes:

- the state to which the environment is to be restored,
- scope and manner of implementing corrective actions,
- start and end dates of the above action.

Damage to the environment may affect the following components of the environment:

- the surface of the earth,
- waters,
- protected species or protected habitats.

In case of damage to the two first-mentioned components of the environment, the necessary conditions for the application of the law in question is the activity that creates the risk of the occurrence of damage to the environment, referred to in Art. 3 of the Act cited above. In other cases, the damage to the environment may occur as a result of other activities, however, in conjunction with the guilt of the user of the environment, who caused the damage.

Provisions of this Act shall not apply to, inter alia, an imminent threat or damage to the environment caused by natural disaster, armed conflict or an activity which main purpose is national defense, international security or the sole purpose of which is to protect against natural disaster.

If, despite all preventive measures, the threat have not been eliminated or the damage occurred, there is an obligation to report this fact to the Regional Director for Environmental Protection and the voivodship environmental protection inspector.

If the threat of injury or damage was caused by more than one user of the environment, the responsibility of these entities is joint and several. If they have been caused with the consent or knowledge of the land owner, he is obliged to take preventive and remedial action in solidarity with the entity benefiting from the environment. In the latter case, the decision concerning the obligation to carry out remedial or preventive action is also directed to the land owner.

If:

- the entity using the environment cannot be identified or enforcement proceedings against it cannot be initiated or execution proved ineffective;
- it is necessary to take immediate action, in view of the risks to human health or the possibility of irreversible damage to the environment.

environmental protection authority shall take preventive or remedial actions.

The costs of maintaining preventive or corrective actions is borne by the entity using the environment, unless he demonstrates that the risk of damage to the environment or environmental damage has been caused by:

- any other relevant party,
- formed as a result of subordination to the order issued by a public authority.

In such cases, the user of the environment, which has taken preventive or remedial actions can make a claim for reimbursement of costs for this purpose, respectively, from the offender or administrative authority. For such a claim, the provisions of the Civil Code apply.