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Environmental Liability Act¹

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RT I 2007, 62, 396

Entry into force 16.12.2007, in part pursuant to § 46.

Amended by the following acts

Passed	Published	Entry into force
18.12.2008	RT I 2009, 3, 15	01.02.2009
30.09.2009	RT I 2009, 49, 331	01.01.2010
22.04.2010	RT I 2010, 22, 108	01.01.2011 will enter into force on the date specified in the decision of the Council of the European Union concerning abrogation of the derogation established with regard to the Republic of Estonia on the basis of Article 140(2) of the Treaty on the Functioning of the European Union, Decision No 2010/146/EU of the Council of the European Union of 13 July 2010 (OJ L 196, 28.07.2010, pp. 24-26).
06.12.2011	RT I, 21.12.2011, 1	31.12.2011
24.04.2013	RT I, 16.05.2013, 1	01.06.2013
19.02.2014	RT I, 13.03.2014, 4	01.07.2014
20.06.2014	RT I, 08.07.2014, 3	01.08.2014
19.06.2014	RT I, 29.06.2014, 109	01.07.2014, the ministers' official titles have been replaced on the basis of subsection 107 ³ (4) of the Government of the Republic Act.
19.02.2015	RT I, 17.03.2015, 1	01.07.2015
29.10.2015	RT I, 10.11.2015, 2	01.12.2015
15.06.2016	RT I, 05.07.2016, 1	01.01.2017
27.10.2016	RT I, 10.11.2016, 1	01.01.2017
30.01.2019	RT I, 22.02.2019, 1	01.10.2019
04.12.2019	RT I, 21.12.2019, 1	01.01.2020
15.10.2020	RT I, 30.10.2020, 1	31.10.2020

Chapter 1 GENERAL PROVISIONS

§ 1. Scope of application of Act

(1) This Act regulates the prevention and remedying of damage caused to the environment based on the polluter pays principle.

(2) This Act does not apply to environmental damage or threat of environmental damage caused by:

1) an armed conflict, hostilities, civil war or insurrection or an exceptional and inevitable natural phenomenon of force majeure;

2) an event or an activity in respect of which liability for environmental damage is regulated by the 1992 International Convention on Civil Liability for Oil Pollution Damage, the 1992 Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage or the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage and the 2003 Protocol to the 1992 Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage
[RT I, 08.07.2014, 3 – entry into force 01.08.2014]

3) an activity covered by the Treaty establishing the European Atomic Energy Community or an event or activity in respect of which liability is regulated by the Vienna Convention on Civil Liability for Nuclear Damage or the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention;
4) an activity the main purpose of which is to ensure international security or an activity the sole purpose of which is protection against natural disasters;
5) a national defence activity on the prescribed territory and to the prescribed extent.

(3) This Act applies to environmental damage or threat of environmental damage caused by non-point pollution if it is possible to determine a causal link between the environmental damage or a threat thereof and a person's or persons' act or omission.

(4) This Act applies to environmental damage or threat of environmental damage arising from an event, act or omission occurring after the entry into force of this Act if not more than 30 years have passed from the event, act or omission that caused it.

(5) This Act does not apply to environmental damage caused by an event, act or omission occurring after the entry into force of this Act if it is caused by an activity that occurred and ended before the entry into force of this Act.

(6) The provisions of the Administrative Procedure Act apply to the administrative proceedings specified in this Act, taking account of the specifications provided for in this Act.

§ 2. Environmental damage and threat of environmental damage

(1) For the purposes of this Act, 'environmental damage' means:

- 1) substantial adverse effects on reaching or maintaining a favourable conservation status of a habitat or species (hereinafter *damage caused to habitat or species*);
- 2) substantial adverse effects on a protected area, a special conservation area, a species protection site, an individual protected natural object (hereinafter *damage caused to protected area*);
- 3) substantial adverse impact on marine waters, surface water or groundwater (hereinafter *water damage*);
[RT I, 10.11.2015, 2 - entry into force 01.12.2015]
- 4) land damage caused by direct or indirect release of substances, preparations, organisms or micro-organisms into the environment, which results in a significant risk of human health being adversely affected (hereinafter *land damage*).

(2) 'Substantial adverse effects' means a measurable adverse change in the quality or quantity of a habitat, species, protected area, water or land (hereinafter *natural resource*) or measurable impairment of the quality or quantity of the functions performed by a natural resource for the benefit of another natural resource or the public (hereinafter *benefits*), which may occur directly or indirectly.

(3) Clauses 1) and 2) of subsection (1) of this section do not cover previously identified adverse effects which have been caused by an activity authorised by an administrative authority based on the results of an environmental impact assessment and § 29 of the Environmental Impact Assessment and Environmental Management System Act or which has been authorised by an administrative authority on the basis of law.

(4) For the purposes of clause 3) of subsection 1) of this section, substantial adverse effects means effects that impair:

- 1) the status of a surface water body in such a manner that the status class of the surface water body determined in accordance with the procedure established on the basis of subsection 2) of § 61 of the Water Act changes;
- 2) the status of a groundwater body in such a manner that the status class of the groundwater body determined in accordance with the procedure established on the basis of subsection 6) of § 66 of the Water Act changes to bad;
- 3) the qualities of surface water or groundwater not forming a part of a water body in such a manner that the water or the substratum or biota of the water body exceeds the quality limit value established on the basis of subsection 1) of § 76 or subsection 3) of § 79 of the Water Act is exceeded;
- 4) the status of the bathing water of a bathing site in such a manner that the bathing water is deemed as polluted in accordance with the regulation established on the basis of subsection 2) of § 91 of the Water Act;
- 5) the quality of the water body or aquifer used or planned for abstracting drinking water to a limit that results in a significant rise in the costs of treatment of the water into drinking water;
- 6) the status of water in an area designated for the protection of a habitat or species under the Nature Conservation Act or in an area designated for the protection of aquatic species of commercial importance under subsection 6) of § 36 of the Water Act changes to such an extent that it no longer meets the established quality requirements;
- 7) the status of the surface water and groundwater in such a manner that the attainment of the environmental objectives specified in a water management plan approved on the basis of the Water Act becomes impossible;

8) the properties of the water of a marine area in such a manner that the groundwater quality limit values established on the basis of subsection 1 of § 76 of the Water Act are exceeded.
[RT I, 22.02.2019, 1 – entry into force 01.10.2019]

(5) Effects arising from the conditions specified in subsection 1 of § 42 of the Water Act are not considered substantial adverse effects for the purposes of clause 1 of subsection of this section.
[RT I, 22.02.2019, 1 – entry into force 01.10.2019]

(6) Upon assessment of a risk for the purposes of clause 4) of subsection (1) of this section, the purpose of the use of the area where land damage has occurred must be taken into account. A risk must be assessed through risk assessment procedures taking into account the characteristics and functions of the soil, the type and concentration of the harmful substances, preparations, organisms or micro-organisms, their risk and the possibility of their dispersion.

(7) ‘Threat of environmental damage’ (hereinafter *threat of damage*) means a sufficient likelihood that environmental damage will occur in the near future.

§ 3. Identification of environmental damage and threat of damage and baseline condition

(1) The baseline condition and the provisions of § 2 of this Act and subsections (3) and (4) of this section are taken into account upon identifying environmental damage.

(2) The baseline condition means the status of natural resources and the benefits thereof, which would exist if no environmental damage had been caused.

(3) The environmental damage specified in clauses 2 (1) 1) and 2) of this Act is identified on the basis of the following: the number of specimen; the size of the population and the range of its habitat; the importance of the specimen or damaged area to the population, species, habitat or protected area; threats to the species or habitat at the local, national or European Union level; the reproductiveness and viability of the species; natural self-regeneration of the habitat, species and the protected area; the protection objective, the protection regime or the protection category of the habitat, species and protected area; and the benefits of the habitat, species or protected area. Damage that has adverse effects on human health is deemed to be environmental damage.

(4) Adverse effects that are smaller than a natural change that is considered normal in the case of the given habitat, species or protected area and that has occurred due to natural factors or in the course of ordinary management, or if the habitat, species or protected area reaches the baseline condition or equivalent or better condition as compared to the baseline condition within a short period of time and without intervention, may not necessarily be deemed environmental damage within the meaning of clauses 2 (1) 1) and 2) of this Act.

(5) Environmental damage and a threat of damage is identified by the Environmental Board (hereinafter *Board*).
[RT I 2009, 3, 15 – entry into force 01.02.2009]

§ 4. Habitat and species

(1) For the purposes of this Act, ‘habitat’ means:

- 1) the habitat of a species specified in subsection (2) of this section;
- 2) a habitat type specified in the regulation established on the basis of subsection (3) of this section.

(2) For the purposes of this Act, ‘species’ means:

- 1) a species belonging to the protected category I, II or III under the Nature Conservation Act;
- 2) a species specified in the regulation established on the basis of subsection (3) of this section.

(3) A complementary list of habitats and species deemed to be habitats and species for the purposes of this Act will be established by a regulation of the minister responsible for the field on the basis of Articles 2(3)(a) and (b) of the Directive 2004/35/CE of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.04.2004, pp. 56–75).

§ 5. Favourable conservation status of habitat and species

(1) The term ‘favourable conservation status of habitat’ is used within the meaning of subsection 3 (1) of the Nature Conservation Act.

(2) The term ‘favourable conservation status of species’ is used within the meaning of subsection 3 (2) of the Nature Conservation Act.

§ 6. Person who caused environmental damage and identification of person who caused environmental damage

(1) A person who caused environmental damage (hereinafter *person who caused damage*) is a person whose act or omission caused environmental damage or a threat of damage.

(2) A causal link between an act or omission and the environmental damage caused will be presumed if it is likely that the damage or a threat of damage is caused by an activity specified in subsection 8 (2) of this Act and the operator engaged in the activity is deemed to be the person who caused damage. Upon assessment of the likelihood of a causal link, the following must be taken into account: the course of the activity; the premises used; the buildings and equipment; the nature and concentration of the substances and organisms related to the damage; the weather conditions; the time, place and circumstances of the occurrence of the damage; and the general characteristics of the damage.

[RT I, 08.07.2014, 3 – entry into force 01.08.2014]

(3) The causal link between the damage and an act or omission not specified in subsection 8 (2) of this Act must be proven by the Board based on the criteria provided for in subsection (2) of this section.

[RT I 2009, 3, 15 – entry into force 01.02.2009]

(4) The person who caused damage is identified by the Board.

[RT I 2009, 3, 15 – entry into force 01.02.2009]

Chapter 2 PREVENTION AND REMEDYING OF ENVIRONMENTAL DAMAGE

Division 1 General Provisions

§ 7. Definition of prevention and remedying of environmental damage

(1) ‘Prevention of environmental damage’ means the taking of measures to eliminate a threat of damage caused by an event, act or omission or to reduce the extent of possible environmental damage or to control, prevent the spread of, eliminate or otherwise influence the contaminants or other harmful factors in order to limit or to prevent further environmental damage as well as damage to human health or further impairment of the quality of the benefits of the habitat, species, protected area or water (hereinafter *preventive measures*).

(2) ‘Remedying of environmental damage’ means the taking of measures to restore, replace or compensate for natural resources or the benefits thereof and to eliminate significant risks threatening human health (hereinafter *remedial measures*).

(3) ‘Recovery’ means achieving the baseline condition of a damaged habitat, species, protected area or water and their benefits in the event of the environmental damage specified in clauses 2 (1) 1)–3) of this Act. Recovery also includes natural recovery.

(4) In the event of land damage ‘recovery’ means the elimination of a potential risk to human health.

§ 8. Obligation of person who caused damage to prevent and remedy damage

(1) The person who caused damage must take appropriate preventive and remedial measures if the person is liable for causing the environmental damage or the threat of damage. The person who caused damage is liable for causing the environmental damage or the threat of damage if the person is at fault in causing the environmental damage or the threat of damage.

(2) The person who caused damage is liable regardless of whether the person is at fault or not if the environmental damage or the threat of damage has been caused by the following activities:

1) operation of installations for which an integrated environmental permit is required under the Industrial Emissions Act;

[RT I, 16.05.2013, 1 – entry into force 01.06.2013]

2) [Repealed – RT I, 21.12.2019, 1 – entry into force 01.01.2020]

2¹) activities specified in clauses 1 and 3 of subsection 1 of § 41 of the General Part of the Environmental Code Act, which required an environmental permit;

[RT I, 21.12.2019, 1 – entry into force 01.01.2020]

2²) registered activities involving a risk to the aquatic environment, which are specified in subsection 2 of § 195 of the Water Act;

[RT I, 21.12.2019, 1 – entry into force 01.01.2020]

2³) activities of a registered waste handler specified in subsection 2 of § 98 of the Waste Act;

[RT I, 21.12.2019, 1 – entry into force 01.01.2020]

3) [Repealed – RT I, 21.12.2019, 1 – entry into force 01.01.2020]

4) manufacture, use, storage, processing, release into the environment and on-site transport of dangerous chemicals provided for in the Chemicals Act, plant protection products provided for in the Plant Protection Act and biocides provided for in the Biocides Act;

5) transport of dangerous goods by road, rail, inland waterways, sea or air in the manner prescribed by the Agreement Concerning the International Carriage of Dangerous Goods by Road, the requirements provided for in subsection 111 (2) of the Railways Act, subsection 42 (1) of the Maritime Safety Act or § 54 of the Aviation Act;

[RT I, 30.10.2020, 1 – entry into force 31.10.2020]

6) contained use of genetically modified micro-organisms within the meaning of the Contained Use of Genetically Modified Micro-organisms Act;

7) deliberate release of genetically modified organisms into the environment and the placing of genetically modified organisms and products on the market within the meaning of the Release into Environment of Genetically Modified Organisms Act;

8) transboundary movement of waste transported to or from the European Union for which a permit is required or which is prohibited under Regulation (EC) No1013/2006 of the European Parliament and of the Council on shipments of waste (OJ L 190, 12.07.2006, pp. 1-98);

9) activities relating to the geological storage of carbon dioxide in accordance with the Atmospheric Air Protection Act.

[RT I, 05.07.2016, 1 - entry into force 01.01.2017]

(3) Sections 140 and 141 the General Part of the Civil Code Act and §§ 104, 137, 138 and 1052-1053 of the Law of Obligations Act apply to the prevention of environmental damage and a threat of damage and to the remedying of environmental damage, taking account of the specifications provided for in this Act.

(3¹) Sections 140 and 141 the General Part of the Civil Code Act specified in subsection (3) of this section do not apply if the environmental damage or the threat of damage is caused by the activities specified in subsection 8 (2) of this Act.

[RT I, 08.07.2014, 3 – entry into force 01.08.2014]

(4) The liability of the person who caused damage relating to maritime claims is limited by the standards applicable to maritime claims under the 1976 Convention on Limitation of Liability for Maritime Claims.

§ 9. Notification obligation

(1) If environmental damage or a threat of damage emerges or a threat of damage remains regardless of preventive measures taken, the person who caused the damage must immediately notify the Board or the Environmental Inspectorate of all the circumstances relating to the environmental damage or the threat of damage and submit the information specified in the regulation established on the basis of subsection (2) of this section. If the environmental damage or the threat of damage may affect human health, the Board will also notify the Health Board.

[RT I, 08.07.2014, 3 – entry into force 01.08.2014]

(2) The list of data concerning environmental damage and threats of damage will be established by a regulation of the minister responsible for the field.

(3) The Board and the Health Board have the right to demand that the person who caused damage submit other relevant information, which has not been specified in the regulation established on the basis of subsection (2) of this section. The Board and the Health Board also have the right to demand the person who caused damage submit information in the event of suspicion of a threat of damage.

[RT I 2009, 49, 331 – entry into force 01.01.2010]

(4) The owner of an immovable must inform the Board or the Environmental Inspectorate of the occurrence of environmental damage or a threat of damage at their immovable if the occurrence thereof is obvious. If the environmental damage or the threat of damage may affect human health, the Board will also notify the Health Board thereof.

[RT I, 08.07.2014, 3 – entry into force 01.08.2014]

§ 10. Involvement of expert

[Repealed – RT I, 08.07.2014, 3 – entry into force 01.08.2014]

§ 11. Selection of expert upon occurrence of environmental damage or threat of damage that may affect human health

[Repealed – RT I, 08.07.2014, 3 – entry into force 01.08.2014]

Division 2

Prevention of Environmental Damage

§ 12. Obligation to take preventive measures

(1) The person who caused damage must immediately take preventive measures if environmental damage or a threat of damage occurs, and notify the Board thereof.

(2) In order to perform the obligation provided for in subsection (1) of this section, the person who caused damage has the right to address the Board for the assessment of the suitability of the preventive measures to be taken.

(3) The Board has the right, by its precept, to demand that the person who caused damage take preventive measures and to give mandatory instructions for taking the measures.
[RT I 2009, 3, 15 – entry into force 01.02.2009]

§ 13. Taking of preventive measures by Board

(1) If the person who caused damage fails to perform the obligations arising from § 12 of this Act, the person who caused damage has not been identified or is not required to bear the costs relating to preventive measures in accordance with subsection 26 (4) of this Act, preventive measures may be taken by the Board. In the event of environmental damage or a threat of damage, the Board has the right to take preventive measures regardless of the person who caused the damage also in events not specified above, unless another state authority or local authority has the duty to act under the law.

(2) The taking of preventive measures by the Board does not release the person who caused damage from liability.

(3) The Board will take preventive measures in accordance with the Substitutive Enforcement and Penalty Payment Act, taking account of the specifications provided for in this Act.
[RT I 2009, 3, 15 – entry into force 01.02.2009]

Division 3

Remedying of Environmental Damage

§ 14. Obligation to take remedial measures

(1) The person who caused damage must take remedial measures in accordance with the remedial action plan and at their own expense, except in the events provided for in subsections 26 (4), and (5) of this Act.

(2) Before the completion of the remedial action plan the person who caused damage must take remedial measures with the approval of the Board.
[RT I 2009, 3, 15 – entry into force 01.02.2009]

(3) The Board has the right, by its precept, to demand that the person who caused damage take remedial measures and to give mandatory instructions for taking the measures.
[RT I 2009, 3, 15 – entry into force 01.02.2009]

§ 15. Taking of remedial measures by Board

(1) If the person who caused damage fails to perform the obligations arising from § 14 of this Act, the person who caused damage is not known or is not required to bear the costs relating to remedial measures in accordance with subsection 26 (4) or (5) of this Act, remedial measures may be taken by the Board. The Board has the right to take remedial measures regardless of the person who caused damage also in events not specified above.

(2) The taking of remedial measures by the Board does not release the person who caused damage from liability.

(3) The Board will take remedial measures in accordance with to the Substitutive Enforcement and Penalty Payment Act, taking account of the specifications provided for in this Act.
[RT I 2009, 3, 15 – entry into force 01.02.2009]

§ 16. Measures remedying damage caused to habitat, species, protected area and water

(1) If it is not possible to achieve the baseline condition of a habitat, species, protected area or water or their benefits by taking restorative remedial measures, substitutive remedial measures will taken. In addition, compensatory remedial measures will be taken for remedying interim damage.

(2) 'Restorative remedial measures' means measures by which the baseline condition of a damaged habitat, species, protected area or water or the benefits thereof is achieved or by which its status is changed towards the baseline condition.

(3) 'Substitutive remedial measures' means measures taken when it is not possible to restore the baseline condition of a habitat, species, protected area or water or the benefits thereof. The purpose of taking substitutive remedial measures is to achieve a level of the benefits of a habitat, species, protected area or water, which is analogous to the one which would have existed if the baseline condition of the benefits of the habitat, species, protected area or water had been restored in the place of occurrence of the environmental damage or, if this is not possible, to replace it with equivalent condition. If it is possible and practical, substitutive remedial measures are taken in a place that is geographically linked to the place where the environmental damage occurred.

(4) 'Compensatory remedial measures' means measures taken for the compensation of the interim damage of a habitat, species, protected area or water or the benefits thereof, which has accompanied the environmental damage from its occurrence until the restorative or substitutive measures attain their full effect. This includes measures for the improvement of the status of a habitat, species, protected area or water in the place of occurrence of environmental damage or in an alternative area. The measures do not include financial compensation to the public.

§ 17. Interim damage

'Interim damage' means environmental damage arising from the fact that a natural resource or its benefit cannot perform its ecological function or provide public benefits or does not support the natural functioning of other natural resources until the restorative or substitutive remedial measures have taken effect.

§ 18. Preparation of remedial action plan

(1) The Board will grant a reasonable time limit for the preparation of a remedial action plan.

(2) A remedial action plan will be prepared by the person who caused damage and the person will submit it to the Board for approval in the digitally signed electronic form or on paper immediately after its completion, but not later than by the date set by the Board.

(3) The person who caused damage and the Board must cooperate in preparing the remedial action plan already before it is submitted to the Board for approval.

(4) If remedial measures are taken by the Board in accordance with § 15 of this Act, the remedial action plan will be prepared by the Board.

(5) [Repealed – RT I, 08.07.2014, 3 – entry into force 01.08.2014]

§ 19. Selection of measures for remedying damage caused to habitat, species, protected area and water

(1) Upon remedying damage caused to a habitat, species, protected area or water, the Board and the person who caused the damage select remedial measures on the basis of the following circumstances:

- 1) the effects of the measures on human health and safety;
- 2) the geographical links to the area where the environmental damage has been caused;
- 3) the likelihood of the success of the measures;
- 4) the extent to which the taking of remedial measures will allow for preventing future damage or collateral damage;
- 5) the extent to which the remedial measure contributes to the recovery of the natural resource and its benefit;
- 6) the effects of the measures on social, economic, cultural and other significant factors;
- 7) the length of time it takes to eliminate the environmental damage;
- 8) the extent to which it is possible to restore the area that has suffered the environmental damage;
- 9) the amount of costs related to the measures.

[RT I 2009, 3, 15 – entry into force 01.02.2009]

(2) Upon preparation of a remedial action plan, the person preparing the plan must, when selecting remedial measures, consider the taking of such measures with the help of which the baseline condition of the natural resource and the benefits thereof are achieved directly and in an accelerated timeframe or by way of natural recovery.

(3) Upon planning of substitutive and compensatory remedial measures, the remedial action plan must first consider the substitution of the damaged natural resource or the benefits thereof with an equivalent natural resource or the benefits thereof. First, it must be considered whether it is possible to take measures that ensure the existence of a natural resource of the same type, quality and quantity as the damaged natural resource and the benefits thereof. If substitution with an equivalent natural resource or the benefits thereof is not possible, the

natural resource or the benefits thereof may be substituted with an alternative natural resource or there benefits thereof.

(4) If it is not possible to substitute a damaged natural resource or the benefits thereof with an equivalent one, remedial measures must be found using the method prescribed by the Board.
[RT I 2009, 3, 15 – entry into force 01.02.2009]

(5) If the person who caused damage has caused several environmental damage events and the Board finds that it is not possible to ensure the simultaneous taking of the required remedial measures, the Board may determine in respect of which event the remedial measures must be taken first. Thereby the Board takes into account the nature and the extent of the environmental damage, the possibilities of natural recovery of the environment and the risk that the environmental damage may affect human health.
[RT I 2009, 3, 15 – entry into force 01.02.2009]

§ 20. Selection of remedial measures upon remedying of land damage

The measures selected for remedying land damage must allow for the removal, isolation, restriction of the spread or minimising of the effects of the pollutants so that the polluted land does not pose a threat to human health.

§ 21. Approval of remedial action plan

(1) The Board will, by a precept, approve a remedial action plan for remedying the damage caused to a habitat, species, protected area or water or the benefits thereof if the taking of the measures planned therein allows for remedying the environmental damage and the remedial measures are selected and justified in accordance with § 19 of this Act.
[RT I 2009, 3, 15 – entry into force 01.02.2009]

(2) The Board will, by a precept, approve a remedial action plan for remedying land damage if it sets out suitable and sufficient measures for the removal, isolation, restriction of the spread or minimising of the effects of the pollutants so that the polluted land does not pose a threat to human health.
[RT I 2009, 3, 15 – entry into force 01.02.2009]

(3) Before approving a remedial action plan, the Board will hear the person concerned specified in subsection 23 (1) of this Act and the person whose property the taking of the remedial measures affects.

(4) If the remedial action plan does not comply with the criteria provided for in subsection (1) or (2) of this section, the Board may refuse to approve it and grant the person who caused the damage a time limit for the submission of a modified remedial action plan.

(5) The Board has the right to make amendments to the remedial action plan before approval thereof, taking account of the provisions of §§ 19 and 20 of this Act.
[RT I 2009, 3, 15 – entry into force 01.02.2009]

(6) The Board may, on the basis of subsection 19 (3) of this Act, approve restorative remedial measures by which the baseline condition of a habitat, species, protected area, water or the benefits thereof is not achieved fully if the full remedy of the damage caused to the habitat, species, protected area, water or their benefits is guaranteed by substitutive or compensatory measures.
[RT I 2009, 3, 15 – entry into force 01.02.2009]

§ 22. Implementation of remedial action plan

(1) Remedial measures must be implemented in accordance with the remedial action plan approved in accordance with § 21 of this Act.

(2) If upon taking remedial measures it becomes evident that the extent of environmental damage exceeds the damage identified earlier or that the circumstances specified in §§ 19 or 20 of this Act on the basis of which the remedial measures were selected have been assessed incorrectly upon selection of the measures prescribed in the remedial action plan or these circumstances have changed, the Board will have the right to make amendments to the remedial action plan on a proposal of the person who caused the damage or on its own initiative, taking account of the provisions of §§ 19 and 20 of this Act.
[RT I 2009, 3, 15 – entry into force 01.02.2009]

(3) When the measures specified in the remedial action plan have been taken and the damaged natural resource or the damaged benefit thereof has been restored, substituted or compensated for and the threats to human health have been eliminated, the Board will, by its administrative decision, declare the remedial action plan as implemented and the environmental damage as remedied.
[RT I 2009, 3, 15 – entry into force 01.02.2009]

(4) The Board may decide that the taking of further remedial measures is not necessary if the remedial measures taken guarantee that there is no significant risk to human health and no substantial adverse effects on a habitat, species, protected area or water or the costs of the remedial measures to be taken for achieving the baseline

condition or equivalent condition would be disproportionate in comparison with the achieved improvement of the state of the environment.

[RT I 2009, 3, 15 – entry into force 01.02.2009]

Division 4

Rights and Duties of Persons upon Prevention and Remedying Environmental Damage

[RT I, 08.07.2014, 3 - entry into force 01.08.2014]

§ 23. Rights of person concerned

(1) A person who is affected or may be affected by environmental damage or who has a justified interest in environmental damage proceedings or whose rights are violated by the environmental damage or a threat of damage (hereinafter *person concerned*) as well as a non-governmental environmental organisation specified in § 31 of the General Part of the Environmental Code Act whose environmental protection goal or environmental protection activities are affected by the environmental damage or the threat of damage, has the right to request that the Board take preventive or remedial measures or obligate the person who caused the damage to take preventive or remedial measures. To that end, information about the environmental damage or the threat thereof must be submitted to the Board.

[RT I, 08.07.2014, 3 – entry into force 01.08.2014]

(2) The Board will decide on the need to take preventive or remedial measures within 30 days after the receipt of the request specified in subsection (1) of this section. The Board will immediately inform the person who submitted the request of its reasoned decision by submitting a copy of the decision the person who submitted the request.

(3) If it is not possible to submit the information specified in subsection (2) of this section to the person who submitted the request on the grounds that it is not possible to formulate an opinion in respect to the request before the formulation of an expert opinion or for any other similar reason, the Board will notify the person who submitted the request about the fact which steps have been taken in the course of the proceedings of the request and when it is possible to forward the decision specified in subsection (2) of this section.

[RT I 2009, 3, 15 – entry into force 01.02.2009]

§ 23¹. Obligation to tolerate preventive and remedial measures

(1) The owner of an immovable is required to tolerate steps relating to identifying environmental damage or a threat of damage or the taking of preventive or remedial measures at the immovable if it is done on the basis of an administrative decision.

(2) Upon making an administrative decision specified in subsection (1) of this section, the Board must taken into account the justified interests of the owner of the immovable and identify the opinion of the owner of the immovable.

(3) If damage is caused to the owner of the immovable as a result of the measures of prevention or remedying of environmental damage, the person who caused the damage must eliminate the consequences of the damage or compensate the owner of the immovable for the damage in accordance with the provisions of the Law of Obligations Act, which regulate the compensation of damage.

[RT I, 08.07.2014, 3 – entry into force 01.08.2014]

§ 24. Non-governmental environmental protection organisation

[Repealed – RT I, 08.07.2014, 3 – entry into force 01.08.2014]

Division 5

Costs of Prevention and Remedying of Environmental Damage

§ 25. Costs relating to preventing and remedying environmental damage

The costs related to the prevention or remedying of environmental damage (hereinafter *costs*) are the costs of identifying, preventing and remedying environmental damage and a threat of damage, including the costs of taking preventive and remedial measures, involving experts, assessing alternative measures, collecting information, monitoring and supervision as well as organisational, legal assistance and other justified costs of the administrative authority relating to the implementation of this Act.

§ 26. Person required to bear costs

(1) The costs will be borne by the person who caused damage if the person is liable for causing the environmental damage or the threat of damage.

(2) The costs will be borne by the Board if:

- 1) the person who caused the damage fails to perform the obligation provided for in subsection (1) of this section;
- 2) the person who caused the damage is released from the obligation to bear the costs in accordance with subsections (4) and (5) of this section;
- 3) it is unknown who caused the damage.

(3) If the person who caused the damage has been identified, the Board will recover the costs incurred on the basis of subsection (2) of this section from the person, unless the person who caused the damage is released from the obligation to bear the costs in accordance with subsections (4) and (5) of this section.

(4) The Board will release the person who caused the damage from the obligation to bear the costs of taking preventive and remedial measures if the person proves that:

- 1) the environmental damage or the threat of damage was caused by a third party and regardless of the fact that appropriate safety measures were taken;
- 2) the environmental damage or a threat of damage was caused by following an order or instruction given by a public authority, except in the event where the order or instruction was given due to a prior illegal act or omission of the person who caused the damage.

(5) The Board will release the person who caused the damage from the obligation to bear the costs of taking remedial measures if the environmental damage has been caused by:

- 1) emission or an event that meets the criteria established in the permit if the permit was issued for an activity specified in subsection 8 (2) of this Act and the person who caused the damage complied with the obligations imposed on it by and on the basis of law;
- 2) emission or an activity or a manner of use of a product with regard to which the person who caused the damage proves that at the time of occurrence of the emission or performance of the activity there was no reason, based on the state of scientific and technical knowledge, to consider the causing of environmental damage likely and that the person took all measures to ascertain the potential effects of the activity.

(6) Subsection (5) of this section does not apply to the costs of taking measures to prevent environmental damage caused by deliberate release of genetically modified organisms into the environment or by placing a genetically modified organism or product on the market.

(7) The person who caused the damage has the right to request that the Board release the person from the obligation to bear the costs specified in subsections (4) and (5) of this section until a remedial action plan has been approved.

[RT I, 08.07.2014, 3 – entry into force 01.08.2014]

§ 27. Payment notice for reimbursement of costs

(1) In the event specified in subsection 26 (3) of this Act, the Board will submit a calculation of costs and issue a payment notice to the person who caused damage. 'Payment notice' means is an administrative decision aimed at the performance of a public financial obligation within the meaning of clause 2 (1) 21) of the Code of Enforcement Procedure.

[RT I 2009, 3, 15 – entry into force 01.02.2009]

(2) The amount of the costs which must be reimbursed and the work, service or thing in connection with the buying or manufacturing of which the costs were incurred and, if the costs were incurred on the basis of a remedial action plan, a reference to the provision of the remedial action plan that provided for the procurement of the relevant work, service or thing will be set out in the calculation of costs.

(3) The person who caused damage must pay the costs in the amount and by the due date indicated in the payment notice. The term for the payment of the costs must not be shorter than 30 calendar days.

(4) In the event of failure to reimburse the costs by the due date, the person who caused damage must pay late interest at the rate of 0.06 per cent of the overdue sum per day.

[RT I, 08.07.2014, 3 – entry into force 01.08.2014]

(5) The Board has the right to submit a calculation of costs and a payment notice to the person who caused damage within five years from the date of termination of the taking of the preventive or remedial measures or from the date when the person who caused damage was identified, whichever took place later.

[RT I 2009, 3, 15 – entry into force 01.02.2009]

§ 28. Staggering of payment of costs

(1) The Board has the right, at the request of the person who caused damage, to stagger the payment of costs over a term of up to ten years. To stagger costs that significantly affect the state budget revenue, the Board will

coordinate the staggering with the Ministry of Finance beforehand. The staggering of the payment of the costs does not release the person who caused damage from the obligation to pay current or future costs.
[RT I 2009, 3, 15 – entry into force 01.02.2009]

(2) Upon staggering the payment of the costs, interest will be calculated at the rate of 0.03 per cent per each calendar day. The calculation of interest is suspended upon declaration of the bankruptcy of the person who caused damage.

[RT I, 08.07.2014, 3 – entry into force 01.08.2014]

(3) The person who caused damage will submit to the Board a reasoned application for the staggering of payment of costs and a schedule of payment of the costs.

[RT I 2009, 3, 15 – entry into force 01.02.2009]

(4) Upon deciding whether to approve the application, the Board will take into account the financial situation and economic indicators of the person who caused damage, its prior performance of the obligations to pay costs and environmental charges, the practicality of the staggering of the payment of the costs and, if a security is required, the security provided. The Board has the right to request that documents required for identifying these circumstances be submitted. The Board will make a decision on whether to grant or refuse to grant the application within 10 working days as of the submission of the application or, if additional documents were requested, as of the submission of the documents.

[RT I 2009, 3, 15 – entry into force 01.02.2009]

(5) The Board has the right to refuse to grant an application for the staggering of the payment of costs if:

- 1) the application is not sufficiently reasoned;
- 2) the person who caused damage fails to provide the required security or the Board does not consider the security provided to be sufficient, trustworthy or easily marketable, or if the formalisation of the security will result in excessive administrative costs;
- 3) upon consideration of a compromise proposal made by a debtor in bankruptcy proceedings, the Board finds that the financial situation of the debtor does not allow for the performance of the obligations assumed under the compromise either;
- 4) other circumstances or grounds exist, which cause the Board not to consider the staggering of the payment of the costs to be justified.

[RT I 2009, 3, 15 – entry into force 01.02.2009]

(6) If the person who caused damage does not abide by the schedule of payment of the costs or does not perform the obligation provided for in the Law of Property Act to keep the thing provided as the security encumbered with a pledge or, in the event of a decrease in the value or reliability of security, does not provide a proper additional security or a replacement security by the due date set by the Board, the Board will the right to revoke the decision on the staggered payment of the costs.

[RT I 2009, 3, 15 – entry into force 01.02.2009]

§ 29. Security upon staggered payment of costs

(1) The Board has the right to request a security upon staggering the payment of costs. Security will not be requested from a person who is bankrupt and whose debt is staggered for the purpose of making a compromise in bankruptcy proceedings.

[RT I, 08.07.2014, 3 – entry into force 01.08.2014]

(1¹) The following may be used as a security securing the staggering of the payment of costs:

- 1) a pledge, whereby preference is given to a mortgage of the first ranking or a registered security over movables;
- 2) the guarantee of a credit or financial institution or insurer;
- 3) a security deposit;
- 4) a notarial deposit.

[RT I, 08.07.2014, 3 – entry into force 01.08.2014]

(2) Upon establishment of a mortgage, the owner of the immovable agrees to subject to immediate compulsory enforcement for the settlement of the claim secured by the mortgage. Such agreement is an enforcement title within the meaning of clause 2 (1) 19) of the Code of Enforcement Procedure.

(3) The value of the security must, at the time the security is provided, amount to at least 115 per cent of the amount of the costs to be staggered. If the Board identifies that the security is no longer sufficient or does not reliably ensure the payment of the costs, the Board will have the right to demand that the security be increased or that the initial security be replaced with a new security.

[RT I 2009, 3, 15 – entry into force 01.02.2009]

(4) The procedure for the provision, use, increase, replacement and release of securities will be established by a regulation of the minister responsible for the field.

§ 30. Order of payment of costs

Upon payment of costs, firstly late interest, secondly interest in the order of emergence starting from the earliest and, finally, the costs will be deemed to be paid.

Division 6 Cooperation with Member States

§ 31. Cooperation with Member States

If environmental damage or a threat of damage concerns another Member State of the European Union, the Ministry of the Environment will inform the relevant Member State of the event of environmental damage or threat of damage and organise the taking of cross-border preventive and remedial measures in cooperation with the Member State, the Board and the person who caused the damage.

[RT I 2009, 3, 15 – entry into force 01.02.2009]

Division 7 Communication of Information and Resolution of Disputes

§ 32. Communication of information and giving explanations

(1) The Board informs the Ministry of the Environment about events of environmental damage and threats of damage and about the preventive and remedial measures taken. Information on environmental damage and a threat of damage is published on the websites of the Ministry of the Environment and the Board.

[RT I 2009, 3, 15 – entry into force 01.02.2009]

(2) The Ministry of the Environment has the right to give explanations for assessment of interim damage and for drawing up and implementing a remedial action plan.

(3) The minister responsible for the field may establish the procedure for informing the public about environmental damage events, threats of damage, and about preventive and remedial measures taken.

§ 33. Settlement of disputes

(1) Disputes arising from the prevention of environmental damage or a threat of damage or from remedying of environmental damage are resolved by the Ministry of the Environment.

(2) Before filing of an appeal with an administrative court in the event of a dispute arising from the implementation of this Act, intra-authority appeal proceedings must be undergone on the conditions and in accordance with the procedure for in the Administrative Procedure Act.

(3) The Ministry of the Environment will resolve an intra-authority appeal within 30 working days as of the filing of the appeal.

(4) The Ministry of the Environment and the appellant have the right to involve experts in resolving an intra-authority appeal.

(5) The costs of involving the expert are borne by the appellant, unless the appeal is granted.

Chapter 3 STATE SUPERVISION

[RT I, 13.03.2014, 4 - entry into force 01.07.2014]

§ 33¹. State supervision

State supervision over the adherence to this Act and fulfilment of the requirements of the legislation established on the basis thereof is exercised by the Environmental Board.

[RT I, 13.03.2014, 4 – entry into force 01.07.2014]

§ 33². Special measures of state supervision

The Environmental Board may, for the purpose of exercising the state supervision provided for in this Act, take special measures of state supervision provided for in §§ 30, 31, 32, 49, 50 and 51 of the Law Enforcement Act on the grounds and in accordance with the procedure provided for in the Law Enforcement Act.

[RT I, 13.03.2014, 4 – entry into force 01.07.2014]

§ 33³. Rate of penalty payment

In the event of failure to comply with a precept the maximum penalty payment imposed in accordance with the procedure provided for in the Substitutive Enforcement and Penalty Payment Act will be 32 000 euros.
[RT I, 13.03.2014, 4 – entry into force 01.07.2014]

§ 34. Precept and application of coercive measure

[Repealed – RT I, 13.03.2014, 4 – entry into force 01.07.2014]

§ 35. Access right

[Repealed – RT I, 13.03.2014, 4 – entry into force 01.07.2014]

Chapter 4 LIABILITY FOR VIOLATION OF THIS ACT

§ 36. Failure to take mandatory remedial measures, failure to submit proper remedial action plan and disregarding of obligations established in remedial action plan before approval of remedial action plan

(1) The penalty for failure to take mandatory remedial measures, failure to submit a proper remedial action plan or the disregarding of the obligations established in the remedial action plan before the approval of the remedial action plan is a fine of up to 300 fine units.

(2) The penalty for the same act committed by a legal person is a fine of up to 32 000 euros.
[RT I 2010, 22, 108 – entry into force 01.01.2011]

§ 37. Violation of notification obligation

(1) The penalty for failure to notify the Board of environmental damage or a threat of damage or refusal to submit the required information is a fine of up to 200 fine units.
[RT I 2009, 3, 15 – entry into force 01.02.2009]

(2) The penalty for the same act committed by a legal person is a fine of up to 20 000 euros.
[RT I 2010, 22, 108 – entry into force 01.01.2011]

§ 38. Failure to take preventive measures

(1) The penalty for failure to take preventive measures is a fine of up to 300 fine units.

(2) The penalty for the same act committed by a legal person is a fine of up to 32,000 euros.
[RT I 2010, 22, 108 – entry into force 01.01.2011]

§ 39. Proceedings

(1) [Repealed – RT I, 22.02.2019, 1 – entry into force 01.10.2019]

(2) The extrajudicial proceedings of the misdemeanours provided for in §§ 36–38 of this Act are conducted by the Environmental Inspectorate.

Chapter 5 IMPLEMENTING PROVISIONS

§ 40. Monetary compensation for environmental damage

(1) If environmental damage is remedied on the basis of this Act, the person who caused the damage will not pay monetary compensation for:

1) causing damage to a habitat or a species on the basis of § 67 of the Forest Act, § 73 of the Fishing Act, § 77 of the Nature Conservation Act or § 48 of the Hunting Act;

[RT I, 17.03.2015, 1 – entry into force 01.07.2015]

2) causing damage to surface water or groundwater in accordance with Chapter 4 of the Environmental Charges Act;

[RT I, 22.02.2019, 1 – entry into force 01.10.2019]

3) discharging pollutants into soil on the basis of § 112 of the Earth's Crust Act or in accordance with Chapter 4 of the Environmental Charges Act.

[RT I, 10.11.2016, 1 - entry into force 01.01.2017]

(2) If a person has, in addition to the remedying of environmental damage in accordance with this Act, also paid the monetary compensation specified in subsection (1) of this section, the Board will deduct the monetary compensation from the costs related to the prevention and remedying of the environmental damage, which must be borne by the person who caused damage, or will compensate to the person who caused damage if the person who caused damage bears all the costs of the prevention and remedying of the environmental damage.

[RT I 2009, 3, 15 – entry into force 01.02.2009]

(3) If the person who caused damage eliminates the damage specified in clause 3) of subsection (1) of this section in accordance with § 128 of the Waste Act, the person will not pay environmental charge at a higher rate for the release of pollutants into soil in accordance with the Environmental Charges Act.

§ 41. Assessment of damage caused to water if status class of water body has not been assessed beforehand

If the status class of a water body has not been determined beforehand, the damage caused to water will be assessed on the basis of an expert opinion, taking into account the status of a reference water body which is type-specific to the relevant surface water body, the existence of stress factors and their likely effects, the overall impression of the surface water body and the general description of the ecological status.

§ 41¹. Assessment of water damage if no environmental quality limit values of substances have been established

If no prior environmental quality limit values of substances have been established, damage caused to water is assessed based on §§ 144–146 of the Water Act.

[RT I, 22.02.2019, 1 – entry into force 01.10.2019]

§ 42.–§ 45.[Omitted from this text.]

§ 46. Entry into force of Act

The part of the clause 1 (2) 2) of this Act, which contains a reference to the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage, will enter into force on the date of entry into force of the international convention.

¹Directive 2000/35/EC of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.04.2004, pp. 56–75); Directive 2009/31/EC on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 (OJ L 140, 05.06.2009, pp. 114–135). [RT I, 21.12.2011, 1 - entry into force 31.12.2011]