

The German regulatory context of contaminated site remediation with regard to European regulations

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Legal framework

Federal Soil Protection Act (FSPA 1998)

- Definitions, obligations, provisions for contaminated sites

Federal Soil Protection and Contaminated Sites Ordinance (FSPO 1999)

- Investigation, evaluation, remediation measures, remediation plan, values

Promulgation of methods and standards for the derivation of trigger and action values (Federal Gazette 1999)

FSPA - Definitions

- **Suspected (contaminated) sites**

are real estates where a suspicion for harmful soil changes exists (former waste disposal sites and former industrial sites)

- **Contaminated sites**

are closed-down waste management installations and other real estates in/on which waste has been treated, stored or landfilled (former waste disposal sites) and real estates that include closed-down installations and other real estates, on which environmentally harmful substances have been handled (former industrial sites)

FSPA – Definitions (cont 'd)

Remediation

1. measures to eliminate or reduce pollutants (decontamination measures)
2. measures that prevent or reduce spreading of pollutants in a lasting way, without eliminating the pollutants (containment measures)
3. measures that eliminate or reduce harmful changes in the soil 's physical, chemical or biological characteristics

Restriction measures

are other measures that prevent or reduce hazards, especially using restrictions

Actual statistic 2005/2006

Suspected contaminated sites: **273.677**

abandoned waste disposal sites: 86.268

(31,5 %)

abandoned industrial sites: 187.409

(68,5 %)

Contaminated sites: **47.756**

Remediated sites: **13.622**

remediation ongoing: 18.533

monitoring ongoing: 4.564

Towards European regulations

- **1972** European Soil Charter (revised 2002)
- **1986** Berlin Symposium „Scientific basis for soil protection in the EU“
- **1998** Bonn Workshop „Soil protection policies within the EU“ (1. European Soil Forum – ESF)
- **2001** Naples, 3. ESF: Draft-Communication „Towards a Soil Thematic Strategy“
- **2002** Official Communication of the Commission
- **2006** Thematic Strategy for Soil Protection
Proposal for a „Soil Framework Directive“ (SFD)

German regulatory – proposed EU-regulatory

- Definition of contaminated sites
- Inventory of contaminated sites
- Identification procedure
- Soil status report
- Duty for remediation
- Remediation Fund
- National remediation strategy

Definition of contaminated sites

Article 10,1. SFD

Article 2 (4, 5) FSPA

- Based on the significant risk of dangerous substances to human health or the environment
- That risk shall be evaluated taking into account current and approved future use of the land

The term „site“ seems more vague compared to the German term „real estate“

Inventory of contaminated sites

Article 10, 2./11, 1 SFD

M.S. shall establish a national inventory of contaminated sites.

Each M.S. shall designate a competent authority...

Article 11 FSPA

The Länder may issue provisions regarding of contaminated sites and of sites suspected of being contaminated

There is no obligation for a national inventory due to the FSPA. In practice all Federal States (Länder) are keeping such inventories. The designation of a competent authority is not reflecting the structures in Germany.

Identification procedure

Article 11, 2. SFD

Identification of the location of at least the sites where the potentially soil polluting activities referred to in Annex II are taking place or have taken place in the past

Article 9 FSPA; 3 FSPO

If the competent authority has a clue about the presence of a contaminated site, it should take appropriate measures to determine the facts of the relevant matter

The Federal States in Germany use branch and waste catalogues, which contain branches to suspected contaminated sites. Sites listed in Annex II are not established on concrete suspicion.

Identification procedure (cont 'd)

Article 11, 3. SFD

The authorities shall measure the concentration levels of dangerous substances in the sites identified in accordance with para. 2, and where the levels are such that there may be sufficient reasons to believe that they pose a significant risk... an on-site risk assessment shall be carried out

Article 9 FSPO

The authorities should take appropriate measures to determine the facts of relevant matter if there are essential points for the existence of contaminated sites. If the trigger values are exceeded, the authority should take measures necessary to determine whether a contaminated site exists

Both procedures are similar although the SFD does not set forth concentration levels for single case assessment

Soil status report

Article 12, 1.-4. SFD

Where a site is to be sold on which a potentially polluting activity listed in Annex II is taking place, or for which the official records, such as national registers, show that it has taken place, M.S. shall ensure that the owner of that site or the prospective buyer makes a soil status report available to the competent authority referred in Article 11 and to the other party in transition

This request does not exist in German regulations although similar weaker instruments are developed more and more under private law when buying and selling real estates

Duty for remediation

Article 13, 1. SFD

M.S. shall ensure that the contaminated sites listed in their inventories are remediated

Article 4 FSPA

The party who caused a contaminated site, and his universal successor, as well as the relevant property owner and the occupant of the relevant real property, shall be obligated to remediate the contaminated site

These duties are similar. The „polluter pays principle“ is essential in both regulations.

Remediation

Article 13, 2. SFD

Remediation shall consist of actions on the soil aimed at the removal, control, containment or reduction of contaminants so that the contaminated site, taking account of its current use and approved future use, no longer poses any significant risk to human health or the environment

Article 2 FSPA

Remediation within the meaning of this Act refers to measures: to eliminate or reduce pollutants (decontamination measures), that prevent or reduce spreading of pollutants in a lasting way, without eliminating the pollutants themselves (securing containment measures)

Both definitions for remediation measures correspond to each other

Article 13, 3. SFD

M.S. shall set up appropriate mechanism to fund the remediation of contaminated sites for which, subject to the polluter pays principle, the person responsible for the pollution cannot be identified or cannot be held liable under Community or national legislation or may not bear the costs of remediation

German legislation has no funding mechanisms for remediation of orphan sites. In general the Federal States cover the cost of remediation for such contaminated sites

National remediation strategy

Article 14 SFD

M.S. shall, on the basis of the inventory...draw up a National Remediation Strategy, including at least remediation targets, a prioritisation, starting with those sites which pose a significant risk to human health, a timetable for implementation, and the funds allocated by authorities responsible for budgetary decisions in the M.S. in accordance with their national procedures. Where containment or natural recovery are applied, the evolution of the risk to human health or the environment shall be monitored.

The request for a National Remediation Strategy is not known to the German Law. Although components can be derived from the FSPA.

Amendment of the FSPO 2006/2008

Relevant topics for contaminated sites

- 11 thematic expert groups
- No derivation of additional action values for the pathway soil-human being (direct contact)
- Addition of trigger values for explosives and complementary trigger values for selected substances
- Addition of trigger and action values for the pathway soil-plant
- Taking over of the new non use-related thresholds which were derived by the Land-Working-Group Water (LAWA) for the pathway soil-groundwater as trigger values

Conclusions

- German rules and regulations concerning contaminated sites remediation are adequate to solve the problem – experience gained so far could be used when drafting corresponding European regulations
- Many regulations of the proposed Soil Framework Directive (SFD) correspond largely with German regulations of the FSPA and the FSPO.
- With more than 7 years of experience the Federal Soil Protection and Contaminated Sites Ordinance (FSPO) will be amended in 2006/2008
- The majority of the German Länder so far reject the SFD as suggested mainly for reasons of additional buerocratic burdens and administrative costs

Dissemination tool (e.g.)



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Thank You for Your Attention

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