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CMS Guide on Soil and Groundwater Contamination

April 2019

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Introduction

From the 1970s onwards, soil and groundwater contamination has become an increasingly important regulatory issue. However, there are still no uniform regulations. Numerous sets of rules have been developed which, among other things, aim to protect soil and groundwater and have led to standardisation throughout Europe and the world. These sets of rules include, for example, laws on the transport of dangerous goods, laws governing chemicals and laws relating to emission control. However, questions such as how to deal with contamination and who is responsible for its elimination can be answered only for the respective legal system. The member states of the European Union are no exception in this respect. Apart from the obligation for certain industrial plants to restore the initial state of the soil after operation has ceased that is set out in the European Directive 2010/75/EU on industrial emissions, and a minimum standard for the public law liability of certain plant operators provided for in the European Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage, there are also considerable differences here.

Merely the "polluter pays" principle is enshrined in all legal systems. The question of whether other persons are responsible in addition to the polluter and which of these persons are responsible is answered very differently by each of the various legal systems. A classification according to legal families is not possible either when answering these questions. While, for example, China, Bulgaria, Germany, Luxembourg and Colombia also provide for the liability of property owners and property users, and sometimes of former property owners, this is not possible at all or only under very strict conditions in other countries such as Chile, Hungary, Italy, Peru and Portugal. Accordingly, the answers to the question as to when the state has to bear the costs of eliminating existing contaminations are very different.

This diverse legislation poses a particular challenge for companies whose investments are associated with the acquisition or use of real property in various countries, be it directly or through the acquisition of a company in another country. The associated risks and necessary contractual arrangements cannot be properly assessed without sufficient understanding of the applicable laws.

The purpose of this guide is to assist with an initial risk assessment and to provide practical advice regarding the particularities of each of the 24 legal systems covered. However, owing to the large number of scenarios, this guide does not constitute legal advice. On the following pages, CMS environmental law experts present an overview by answering a set of eleven questions according to their respective jurisdiction, including Austria, Belgium, Bulgaria, Chile, China, Colombia, the Czech Republic, France, Germany, Hungary, Italy, Luxembourg, Monaco, the Netherlands, Peru, Poland, Portugal, Romania, Slovakia, Spain, Switzerland, Turkey, Ukraine and the United Kingdom.

Your CMS experts are happy to answer any further questions you may have.



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Austria
 By Robert Keisler and Marlene Wimmer-Nistelberger, CMS Austria

Question	Answer
Which laws are applicable for soil and groundwater contamination in Austria?	<p>The main regulations in Austria on soil and groundwater contamination are:</p> <ul style="list-style-type: none"> — Water Rights Act (WRG) — Waste Management Act (AWG) — Federal Environmental Liability Act (B-UHG) — Act on the Remediation of Contaminated Sites (AISAG) — Federal Constitutional Law on Sustainability, Animal Welfare, Comprehensive Environmental Protection, Ensuring Water and Food Supply and Research
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	<p>The WRG has been in force since 1959. The Federal Constitutional Law on Sustainability, Animal Welfare, Comprehensive Environmental Protection, Ensuring Water and Food Supply and Research has been in force since 2013. It replaced the Federal Constitutional Law of 1984 on comprehensive environmental protection, which had been in force since 1984. The AWG came into force in 2002, the B-UHG in 2009 and the AISAG in 1989.</p>
Who is responsible for soil and groundwater contamination?	<p>In Austria, there are a large number of specific provisions concerning regulations as to who is obliged to prevent or remediate any contaminations on a property, or to bear the costs, if contamination occurs. In general, the acts mentioned above provide the following hierarchy of a possible liability:</p> <ul style="list-style-type: none"> — The polluter ("polluter pays" principle) — The owner of the property at the time the contamination occurred — The legal successor of the property owner
Which measures may be required under public law in case of soil and groundwater contamination?	<p>Under the WRG as well as the AISAG, one can be required by the authority to take the necessary measures to remedy the unlawful situation, more specifically to reduce or eliminate the contamination. These obligations are applicable in addition to possible penalties and damages claims.</p> <p>In case of damages which arise within the scope of the B-UHG, the operator must, without delay, take all necessary measures to control, contain and eliminate the contamination in order to avoid adverse effects on human health and other damages to water and soil. Otherwise, the authority must impose the required measures on the obligated party or, in the event of danger, carry them out itself and in that case oblige the obligated party to reimburse the costs incurred.</p>
When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	<p>The term <i>contamination</i> is defined differently in various sources. One source defines it as follows: Contamination of soil means any alteration or deterioration of soil, which must result in a danger to or an impairment of human health, which is not merely insignificant. Furthermore, the occurrence of enormous danger can be defined, for example, as the infiltration of toxic substances into soil and groundwater, or the escape of gases from soil.</p> <p>The acts mentioned above do not generally provide thresholds as to when a contamination exists. However, the Austrian jurisdiction acknowledged the existence of thresholds, which were developed by experts.</p>

What are the regulatory instruments of the competent authorities and when may they be applied?	In general, the competent authority may issue orders to remove the contamination. If the responsible person does not comply with the order, the authority can carry out the measures itself and request reimbursement of costs. Moreover, depending on the act applicable, the authority may monitor the conditions, e.g. whether the (ground) water condition is in line with the WRG.
In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?	Applying civil law, the party that had to undertake measures might request compensation from the other parties that are responsible as well. The share of costs to be borne by each party depends on the extent to which each party has contributed to the contamination. Moreover, for breaches of the WRG specifically several polluters shall be jointly liable.
Which private law claims may be raised against the persons responsible for soil and groundwater contamination?	In the event of soil and groundwater contamination, the following private law claims might be raised neighbors: — Claims for omission of further contamination — Claims for removal of contamination from the property or if clean-up measures have been carried out, claims for reimbursement of costs (damages).
Are there any restrictions of the public law responsibility or the private law liability?	The liability based on public law is restricted in relation to the hierarchy of entities that can be held liable. According to case law, the subsidiary liability shall be applicable only in very few cases, i.e. a successor shall be liable where there is a risk of bypassing the liability. The private law liability depends on the contractual situation in most cases. Under certain circumstances warranty and damages claims can be excluded.
Is there a criminal liability for soil and groundwater contamination?	Soil contamination and water contamination can constitute criminal offences under the Austrian Criminal Code when committed intentionally or with negligence.
Are soil and groundwater contamination registered in Austria? If yes, please provide information on the register, the access to the register and the consequence of a registration.	Certain contaminations are registered. Austria implemented a register of contaminated sites and a register for suspected contaminated sites. The registration as a suspected contaminated site does not necessarily indicate that a significant risk results from the respective site. In order to clarify that issue, examinations must be carried out. Everyone can access these databases via: https://www.altlasten.gv.at/

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Belgium



Belgium By Ivan-Serge Brouhns and Gregory Verhelst, CMS Belgium

Question	Answer
Which laws are applicable for soil and groundwater contamination in Belgium?	<p>In Wallonia, the current main regulation on soil and groundwater contamination is the decree of 5 December 2008 on soil management. This decree has been replaced by the decree of 1 March 2018 on soil management and remediation as of 1 January 2019. The decree of 22 November 2007 modifying the Environmental Code was adopted to implement the European Directive 2004/35/EC on environmental liability.</p> <p>In Flanders, soil contamination and ground water contamination is regulated by the decree of 27 October 2006 on soil sanitation and protection. The Flemish Soil Decree was further implemented by an Order of the Flemish Government establishing the Flemish soil remediation and protection regulations in 2007.</p> <p>In Brussels, the main regulation on soil and groundwater contamination is the ordinance of 5 March 2009 on soil management and remediation. The Code of inspection, prevention, detection and punishment of environmental offences and environmental liability implements the European Directive 2004/35/EC on environmental liability.</p>
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	<p>In Wallonia, the decree of 5 December 2008 came into force in 2009 and the decree of 1 March 2018 entered into force in 2019. Before the entering into force of the decree of 5 December 2008, a decree of 1 April 2004 was adopted but has never entered into force.</p> <p>In Flanders, the current Flemish Soil Decree came into force in 2006. The first Soil Decree was adopted in 1995.</p> <p>In Brussels, the ordinance of 5 March 2009 came into force in 2010. Before the entering into force of this ordinance, the ordinance of 13 May 2004 on soil management was in force. Before the entering into force of the Code of inspection, prevention, detection and punishment of environmental offences and environmental liability in 2015, the ordinance of 13 November 2008 on environmental liability was adopted to implement the European Directive 2004/35/EC on environmental liability.</p> <p>Before the above-mentioned decrees entered into force, soil and groundwater contamination was treated sporadically applying waste legislation.</p>

<p>Who is responsible for soil and groundwater contamination?</p>	<p>In Wallonia, the following parties are responsible for soil and groundwater remediation:</p> <ul style="list-style-type: none"> — The polluter; — The presumed polluter; — The operator (if any); — The usufructuary, hereditary long term leaseholder, person holding the hereditary right of "superficie" or lessee; — The owner of the property. <p>By priority, the authority may demand the required measures by the polluter or presumed polluter. If the polluter or presumed polluter cannot be identified, the operator will be responsible for soil and groundwater remediation. If the operator is not solvent, the usufructuary, hereditary long term leaseholder, person holding the hereditary right of "superficie" or lessee will be responsible. When the right <i>in rem</i> on the parcel is not subdivided, the owner of the property will be responsible.</p> <p>In Flanders, a distinction has to be made between the administrative obligations caused by soil pollution and the liability arising from the soil pollution. The Flemish soil decree determines who is responsible for the examination and – if necessary – the decontamination of the land. The Soil Decree also entails regulation concerning the liability for the expenses of the examination and the decontamination of the soil.</p> <p>In the event the examination shows that the soil is polluted, the following persons will bear the responsibility to decontaminate the soil :</p> <ul style="list-style-type: none"> — The operator of an installation on the contaminated land for which an environmental permit is necessary; — The user of the contaminated land; — The owner of the contaminated land. <p>In Brussels, the polluter is responsible for soil and groundwater remediation. If there exist more than one polluter, they will be held jointly responsible for soil and groundwater remediation. If a polluter cannot be identified or has ceased to exist or if the pollution dates from before 20 January 2005, the owner of rights <i>in rem</i> will be responsible for soil and groundwater remediation.</p>
<p>Which measures may be required under public law in case of soil and groundwater contamination?</p>	<p>In Wallonia, the following measures can be required with regard to soil and groundwater contamination:</p> <ul style="list-style-type: none"> — Clean-up measures to eliminate or reduce the contamination; — Securing measures, such as restrictions of access and use, to control the effects of the contamination or prevent the contamination; — Follow-up measures to control the risks during the investigation measures; — Investigation measures to assess the extent of the contamination, the resulting risks and the necessary measures. <p>In Flanders, the following measures may be required with regard to soil and groundwater contamination;</p> <ul style="list-style-type: none"> — Soil studies to determine the gravity of the contamination; — Sanitation of the polluted ground, as well as the financing of the sanitation; — Preventive and protection measures if the contamination is an immediate threat to the environment; — Follow-up measures such as further monitoring of the contamination; — Restrictions regarding the use and the purpose of the land.. <p>In Brussels, the following measures can be required with regard to soil and groundwater contamination:</p> <ul style="list-style-type: none"> — Clean-up measures to eliminate or reduce the contamination; — Risk management measures to evaluate the risks for human health and the environment and maintain or make them acceptable; — Urgency measures to temporarily protect human health and the environmental awaiting the treatment of the contamination, such as restrictions of access and use; — Follow-up measures to control and to maintain the risks for human health and the environment acceptable; — Investigation measures to assess the extent of the contamination, the resulting risks and the necessary measures. <p>In Brussels and Wallonia, in the event of indications of or imminent or occurred soil or groundwater contamination, the responsible person is obliged to inform the competent authority.</p>
<p>When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?</p>	<p>In Wallonia, in the event of contamination dating from after 30 April 2007, clean-up measures are required if the threshold values are exceeded for at least one parameter. In the event of contamination dating from before 30 April 2007, clean-up measures are required if threshold values are exceeded for at least one parameter and if the contamination is a serious threat. The contamination is considered to be a serious threat when it is or is likely to constitute a source of pollutants that is transmissible to humans, animals and plants, certainly or probably prejudicial to the safety or health of humans or the quality of the environment.</p> <p>In Flanders, for 'new soil contamination' dating from after 29 October 1995, clean-up measures are required if the threshold values are exceeded for at least one parameter. In case of 'historic soil contamination' dating from before 29 October 1995 the obligation to sanitize the land will only arise if there are clear indications of 'severe soil pollution'. Whether the soil contamination will be considered as 'severe' depends on a case by case assessment. Different factors play a role in this assessment such as the characteristics, the function and the use of the land. Furthermore, it will be necessary to determine the sort and the concentration of the soil contamination. The characteristics of the soil will play an important role in this examination. The possibility or risk of further relocation of the pollution are additional elements in this assessment.</p> <p>In Brussels, in the event of a distinctly identifiable contamination generated by the current operator, by the person holding a right <i>in rem</i> on the site or, if the contamination dates from after 20 January 2005, by another identifiable person, clean-up measures are required if the intervention standards are exceeded. However, if it can be demonstrated that the contamination was principally generated before 1 January 1993, risk management measures instead of clean-up measures will be required.</p>
<p>What are the regulatory instruments of the competent authorities and when may they be applied?</p>	<p>In Wallonia, if the authority has serious indications that a contamination exceeds or risks to exceed the threshold values, the authority may request the responsible parties stated above to undertake investigation measures. Depending on the results of these investigation measures, the authority may order securing measures, follow-up measures and/or clean-up measures. If the order of the authority is not followed, the authority can either carry out the necessary measures itself and demand the costs from the responsible party or fine the latter until it follows the instruction.</p> <p>In Flanders, in case the operator, the user or the owner of a contaminated ground does not fulfil his obligations, the authority can conduct an <i>ex-officio</i> soil examination and – if necessary – soil sanitation. In such case, the costs will be recovered from the liable party.</p> <p>In Brussels, the authority can decide to register a site in category 0 in the register if a contamination is presumed. The registration of a site in category 0 triggers investigative measures in some circumstances (see question 11).</p>

<p>In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?</p>	<p>In Wallonia and in Brussels, when more than one party is responsible for contamination, the parties are held jointly responsible for the measures that must be carried out.</p> <p>In Flanders, if more than one party is responsible for the soil contamination, the parties will be jointly and severally responsible.</p> <p>In Brussels, it is clearly stated that the ordinance of 5 March 2009 does not affect the other rights exercised by the injured party or the person who incurred expenses against the responsible parties or other parties.</p>
<p>Which private law claims may be raised against the persons responsible for soil and groundwater contamination?</p>	<p>In the event of soil and groundwater contamination, the following private law claims might be raised by third parties, e.g. by neighbours:</p> <ul style="list-style-type: none"> — Claims for removal of contamination from their property or if clean-up measures have been carried out claims for reimbursement of costs; — Claims for damages in case of intended or negligent violation of life, body, health, property or other rights, as for example, a violation of the undertaking to carry out clean-up/remediation or securing measures; — Claims against operators of certain plants.
<p>Are there any restrictions of the public law responsibility or the private law liability?</p>	<p>In Wallonia, the obligation to carry out investigation measures is triggered in some situations such as the request of a building permit on a site that is polluted or presumed to be polluted. Following these investigation measures, the responsible person can be exempted of other obligations with regard to soil and groundwater contamination. For example, there exists an exemption if the person did not commit any fault or negligence and the contamination did not constitute a serious threat when it was generated. In such cases, the public law liability is therefore restricted.</p> <p>In the Flanders, in case of new soil contamination the user and the owner can be exempted from the administrative obligations regarding the examination and decontamination of the land. In order to be exempted, they have to prove that they did not cause the soil contamination and if the soil contamination occurred before they became owner/user of the land. The owner will also have to prove that he was not and should not have been aware of the soil contamination when obtaining the land. If the owner/user obtains such an exemption, his liability will in principle be limited to the costs required to prevent the soil contamination from spreading or to treat the contamination posing an immediate danger.</p> <p>In Brussels, such exemptions do not exist.</p> <p>The private law liability is not limited under Belgian law.</p>
<p>Is there a criminal liability for soil and groundwater contamination?</p>	<p>In Wallonia, soil and underground contamination can constitute criminal offences under the decree of 1 March 2018 and the Environmental Code when committed intentionally.</p> <p>In the Flanders, a person is likely to be prosecuted when he willingly neglects his obligation to take precautionary measures. Criminal liability will also arise when the person ignores multiple notices of the authority to examine or to decontaminate the land.</p> <p>In Brussels, in so far as soil contamination results from waste disposal, it can constitute a criminal offence under the ordinance of 14 June 2012 on waste and the Code of inspection, prevention, detection and punishment of environmental offences and environmental liability.</p>
<p>Are soil and groundwater contamination registered in Belgium? If yes, please provide information on the register, the access to the register and the consequence of a registration.</p>	<p>Yes, in Wallonia, Flanders and in Brussels, there are contaminated sites registers with information on contaminated sites and suspected contaminated sites. They are available online.</p> <p>In Wallonia, investigative measures must be carried out by the applicant of a building permit on a site that is registered as contaminated or as suspected of contamination in the register.</p> <p>In Brussels, the contaminated sites are classified in five categories:</p> <ul style="list-style-type: none"> — Category 0: contaminated sites or suspected contaminated sites; — Category 1: sites respecting the clean-up standards; — Category 2: sites respecting the intervention standards; — Category 3: sites not respecting the intervention standards but for which the risks have been made acceptable; — Category 4: sites that must be cleaned-up or that are being cleaned-up. <p>Investigative measures must be carried out before the transfer of a right in rem on a site classified in category 0 or a category combined with category 0. Investigation measures must also be carried out by the applicant of a building or environmental permit for works in contact with the soil on more than 20m² on a site classified in category 0 or a category combined with category 0.</p> <p>In Flanders, no direct consequences derive from the registration in the contaminated sites register.</p>

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Bulgaria
 By Kostadin Sirleshtov and Raya Maneva, CMS Bulgaria

Question	Answer
Which laws are applicable for soil and groundwater contamination in Bulgaria?	<p>The main pieces of legislation in Bulgaria on soil and groundwater contamination are the Bulgarian Soil Act (Soil Act), the Bulgarian Water Act (Water Act), the Bulgarian Environmental Protection Act (EPA) and with regard to liability the Liability for Prevention and Remedying of Environmental Damage Act (Environmental Damage Act).</p> <p>The secondary legislation adopted on the matter consists of Ordinance No. 1 dated 10 October 2007 on the investigation, use and protection of the groundwater (Groundwater Ordinance), Ordinance No. 1 dated 11 April 2011 on water monitoring (Water Monitoring Ordinance), Ordinance on the inventory and the investigations of areas with polluted soil, the needed recovery measures, as well as the maintenance of the realised recovery actions (Recovery Ordinance), Ordinance No. 4 dated 12 January 2009 for monitoring of the soil (Soil Monitoring Ordinance) and the Tariff on the taxes for water withdrawal, for use of water site and for contamination (Tariff).</p>
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	<p>The Soil Act came into force in 2007, abolishing the Protection of Soil Against Pollution Act, which was adopted in 1963. The Water Act came into force in 2000, abolishing the previous Water Act, which was in force since 1969. The EPA came into force in 2002, abolishing the previous Environmental Protection Act, which was in force since 1991. The Environmental Damage Act came into force in 2008 and was adopted to implement European Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage. There was no previous legislation on the matter.</p>
Who is responsible for soil and groundwater contamination?	<p>Under the applicable legislation, the following parties are responsible for soil and groundwater contamination:</p> <ul style="list-style-type: none"> — The polluter; — The general legal successor of the polluter; — The owner of the property; — The person in actual control over the property (e.g. tenants, permit holders). <p>The authority may demand the required measures from all of the above-mentioned parties irrespective of whether they have contributed to the contamination or not. The authority shall turn to the party that can most be expected to carry out the measures.</p>
Which measures may be required under public law in case of soil and groundwater contamination?	<p>Under the applicable legislation, the following measures can be required with regard to soil and groundwater contamination:</p> <ul style="list-style-type: none"> — Preventive measures, such as conduct of inspections, of documents and on-site inspections, observations and measurements, monitoring of the soils, taking samples, etc.; — Remedial actions, such as taking all practicable steps to control, contain, remove the contaminants and/or other environmental damage factors; developing and implementing projects for the restoration of areas with degraded soils, etc.; — The coercive administrative measures, such as suspension of the activity of the operators directly related to the occurrence of the environmental damage; denial of access to areas of owners and users; imposition of prohibitions or restrictions on water use. <p>The obligation to undertake preventive or remedial measures applies even without an administrative order.</p>

When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	Under the Soil Act, the degree of soil contamination is determined by means of standards for permissible content of harmful substances in soils. The standards for permissible content of harmful substances in soils are determined at three levels: (i) safe concentrations; (ii) maximum permissible concentrations; and (iii) intervention concentrations. Remediation is necessary if intervention concentrations are breached and in some other particular cases (e.g. landfill sites). There is no differentiation of intervention concentrations depending on the type of use of land.
What are the regulatory instruments of the competent authorities and when may they be applied?	The competent authorities may conduct on-site inspections and/or document examination, which cover: (i) the condition of the soils; (ii) activities which could degrade the soils; (iii) the implementation of: (a) plans and programmes for soil protection, sustainable use and restoration; (b) measures contained in the observations on environmental assessments in environmental impact assessment decisions and in permits issued in accordance with the EPA; (c) investment projects and development proposals. In case of detected violations, the competent authorities shall, where necessary, issue mandatory prescriptions on the basis of stating protocols drawn up on detected violations.
In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?	The party which had to undertake measures with respect to soil and groundwater contamination may request compensation from the other parties which are responsible under the applicable legislation. The share of costs to be borne by each party depends on the extent to which each party has contributed to the contamination.
Which private law claims may be raised against the persons responsible for soil and groundwater contamination?	In the event of soil and groundwater contamination, the following private law claims might be raised by third parties, e.g. by neighbours: — Claims for suspension and removal of contamination from their property or, if clean-up measures have been carried out, claims for reimbursement of costs. — Claims for damages in case of intended or negligent violation of life, body, health, property or other rights or of protective laws, as for example a violation of the undertaking to carry out clean-up/remediation or securing measures. — Claims against operators of certain plants under the EPA. Further obligations may apply under contractual relationship.
Are there any restrictions of the public law responsibility or the private law liability?	The public law liability under the EPA is limited to BGN 1m (approx. EUR 500,000). The liability under private law claims may be limited due to contributory negligence by the affected party.
Is there a criminal liability for soil and groundwater contamination?	Soil contamination and water contamination, which makes these soil or water hazardous to people or animals and plants, or makes them unfit for use for cultural and everyday use, health, agricultural, and other national-economy purposes constitute criminal offences under the Bulgarian Criminal Code when committed intentionally or with negligence.
Are soil and groundwater contamination registered in Bulgaria? If yes, please provide information on the register, the access to the register and the consequence of a registration.	The Environmental Agency keeps a public register with three main sections: (i) possible soil contamination; (ii) areas with proven contamination; and (iii) areas with unpolluted soil. The register contains information about the location, the source of degradation, the type and the area of degradation, a risk assessment and an estimate of the funds spent on the survey and restoration. The register can be accessed online at the website of the Environmental Agency.

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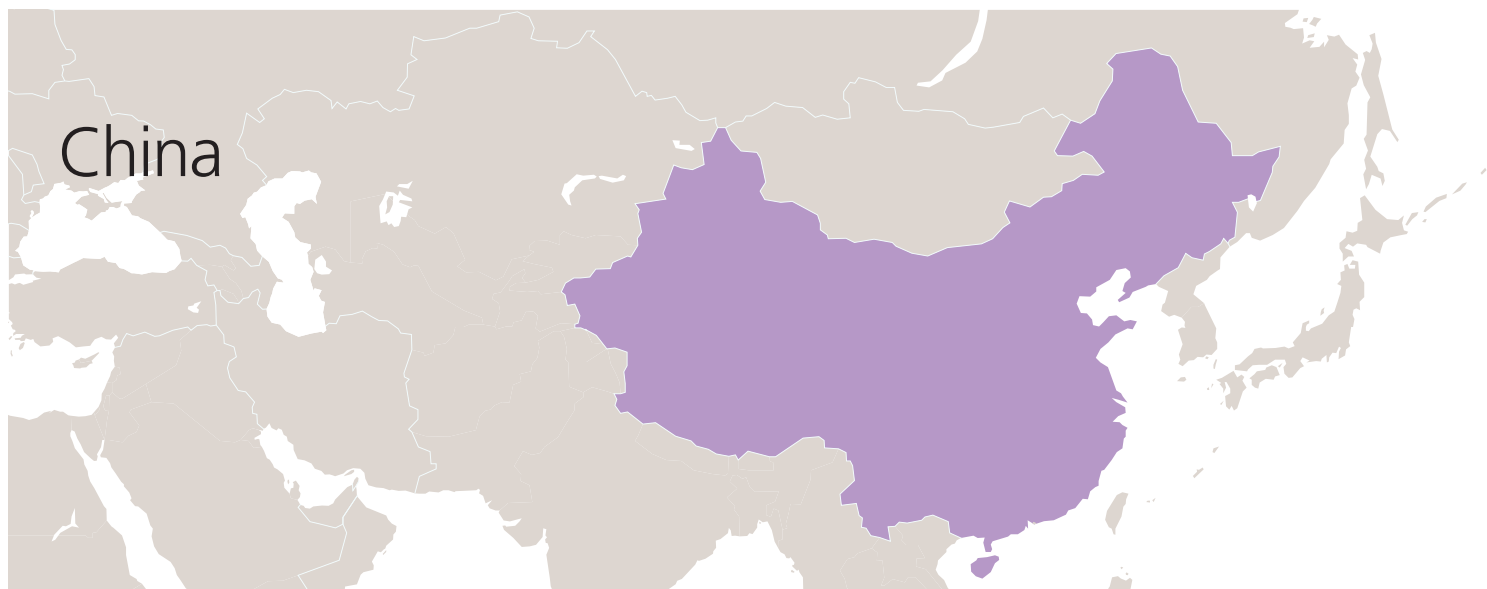
Question	Answer
Which laws are applicable for soil and groundwater contamination in Chile?	<p>The main regulations in Chile on soil and groundwater contamination are the Environmental Law (Law No. 19.300), the Water Code (Decree-law No. 1.122) and other supporting environmental statutes, such as the regulation on exploration and exploitation standards for groundwater.</p> <p>Additionally, the National Policy on the Management of Contaminated Sites (Resolution No. 5741/2009, National Environment Commission) serves to strengthen the management of contaminated sites in Chile by stipulating their identification, risk assessment, implementation and monitoring of measures to mitigate negative impacts. Guidance documents have been issued as well to support this policy. There are risk assessment/use of soil guidelines that are not legally binding.</p> <p>Specifically, in relation to mining (which represents approximately 8% of Chilean GDP and 40% of export value in 2016), the law that regulates the closure of mining operations and facilities (Law No. 20,551) aims to prevent the creation of abandoned mines in the future. However, it does not apply to previously abandoned mines.</p>
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	<p>The Environmental Law came into force in 1994. The Water Code came into force in 1981.</p> <p>Before the aforementioned laws came into force, soil and groundwater contamination was not regulated from an environmental point of view, and liability could only be prosecuted in civil or criminal courts. In fact, one of the main mechanisms used to prevent or avoid contamination occurrences was the remedy for the protection of constitutional rights.</p>
Who is liable for soil and groundwater contamination?	<p>Under the Environmental Law, any person who negligently or maliciously causes damage to the environment (such as pollution) must remedy it materially, at its own expense, if possible, and compensate for it in accordance with the law. In the same way, if the environmental damage causes civil damages, they must also be compensated by the person causing the damage.</p>

<p>Which measures may be required under public law in case of soil and groundwater contamination?</p>	<p>The measures that may be required will depend on whether the project or activity that caused the soil or groundwater contamination has been subjected to the Environmental Impact Assessment System (acronym in Spanish is SEIA, <i>Sistema de Evaluación de Impacto Ambiental</i>).</p> <p>If the project or activity was approved environmentally, the soil or groundwater contamination may imply a breach of the environmental permit (Environmental Qualification Resolution). In these cases, the Superintendence of the Environment can apply sanctions and, in addition, provide the measures it deems appropriate to stop and prevent contamination occurrences.</p> <p>It should be noted that when the punitive procedure has been initiated, the Superintendence of the Environment, to avoid imminent damage to the environment or to human health, may adopt one or more of the following provisional measures:</p> <ul style="list-style-type: none"> — Corrective, security or control measures that prevent the continuance of the risk or damage; — Sealing of devices or equipment; — Temporary, partial or total closure of the facilities; — Halting facility operations; — Temporary suspension of the Environmental Qualification Resolution; — Order specific monitoring and analysis programmes that will be charged to the offender. <p>Likewise, if the project is subjected to the Environmental Impact Assessment and the Superintendence of the Environment initiates a punitive procedure due to the existence of contamination episodes, the offender has the possibility of submitting a “Compliance Programme”, which, if approved by the authority and executed properly, would eliminate the application of possible sanctions. In the same way, the convicted person by the Superintendence of the Environment can present a “Remediation Plan”, which, if fulfilled, extinguishes the liability of the offender.</p> <p>On the contrary, if the project or activity was never approved by the environmental authority, the general liability regime applies. The remedy for the protection of constitutional rights could also possibly be enforced.</p>
<p>When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?</p>	<p>Clean-up measures are required if there is an administrative or judicial decision requesting it. The assessment of the authority is carried out on a case-by-case basis, taking into account, in particular, the extent of the contamination and the impact on the communities.</p> <p>In general, the need for clean-up measures is not subject to pre-established thresholds. However, it must be taken into account that the Environmental Law defines contamination based on exceeding the thresholds of a quality standard. In this way, there could be no contamination if the thresholds regulating contamination did not exist.</p>
<p>What are the regulatory instruments of the competent authorities and when may they be applied?</p>	<p>The authority may conduct its own investigations in the event that there is contamination or that it receives a complaint from a third party. If contamination is proven, the authority may conduct an administrative proceeding against the liable parties to carry out clean-up, protection, security or restrictive measures.</p> <p>Likewise, if a lawsuit for environmental damages is filed against the liable party, and the damages are granted, the environmental Court will order the polluter to repair the affected environment or, if this is not possible, it will, as a minimum, have to restore its basic properties.</p>
<p>In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?</p>	<p>The party which had to undertake measures may request compensation from the other liable parties. The part of costs borne by each party depends on the extent to which each party has contributed to the contamination. In this sense, there is precedent that supports the application of the rule of joint and several liability.</p>
<p>Which private law claims may be raised against the persons responsible for soil and groundwater contamination?</p>	<p>There are two options: First, a liability claim for environmental damage, which seeks the repair of the environment. Second, a claim for compensation for damages caused by environmental damage.</p>
<p>Are there any restrictions of the public law responsibility or the private law liability?</p>	<p>Except for time limits, there is no general limitation of the liability under public and private law.</p>
<p>Is there a criminal liability for soil and groundwater contamination?</p>	<p>Soil and groundwater contamination can constitute criminal offences under the Chilean Criminal Code when committed intentionally or with negligence.</p>
<p>Are soil and groundwater contamination registered in Chile? If yes, please provide information on the register, the access to the register and the consequence of a registration.</p>	<p>There is no contaminated sites register. However, if the project or activity that caused the soil or groundwater contamination was subjected to the Environmental Impact Assessment System, the Superintendence of the Environment must record the sanctions applied in a public register in which the names, surnames, company or business name of the natural person or legal entity liable and the nature of the infractions and sanctions must be indicated. This register must be available to any person who requires it, and must also be available electronically.</p> <p>In the same way, Law No. 20.551 (regulating the closure of mining operations and facilities) aims to prevent the creation of abandoned mines in the future, requiring all mines to request approval for their closure plans, and a catalogue of abandoned mines with information on tailings deposits available but needing to be updated.</p>

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China
By Ulrike Glueck and Sarah Wang, CMS China

Question	Answer
Which laws are applicable for soil and groundwater contamination in China?	The main law and regulations in China on soil are the Law on Soil Contamination Protection and Control (Soil Protection Law), the Administrative Measures for Soil Environment of Industrial and Mining Use Land, the Administrative Measures for Soil Environment of the Agricultural Land and the Administrative Measures for the Soil Environment of the Polluted Land (Measures on Polluted Land). The main regulation on groundwater contamination is the Law on the Prevention and Control of Water Pollution (Law on Water Pollution).
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	The Soil Protection Law came into force in 2019. The Law on Water Pollution came into force in 1984 and was revised in 2008 and 2017. Before the entering into force of the above-mentioned regulations, soil contamination was regulated under the umbrella of general regulations on environmental protection and prevention of pollution. Various laws and regulations were adopted to serve different ends, i.e., various measures adopted based on the different purpose of use of the land. Before the effectiveness of the Law on Water Pollution, groundwater contamination was mainly regulated for the safety of drinking water.
Who is responsible for soil and groundwater contamination?	Under the current laws and regulations, the following parties are responsible for soil and groundwater contamination: — The polluter; — The general legal successor of the polluter; — The owner of the property; — The person in actual control over the property (e.g. tenants); — The former owner of the property, if granted land use rights, have expired or terminated. Under the Soil Protection Law, the responsible party for soil contamination is primarily liable. Where it is impossible to identify the responsible party, the land use right holder shall be responsible.
Which measures may be required under public law in case of soil and groundwater contamination?	According to the current laws and regulations, the following measures can be required with regard to soil and groundwater contamination due to soil contamination: — Clean-up measures to eliminate or reduce the contamination; — Protection measures to prevent or minimise the spreading of contamination; — Securing or restrictive measures to avoid or minimise adverse effects of the contamination; — Investigative measures to assess the extent of the contamination, the resulting risks and the necessary measures; — Post-pollution measures to make a restoration plan for the contaminated soil and groundwater. The obligation to undertake clean-up, protection, and securing or restrictive measures applies even without an administrative order. In the event of indications of or imminent or occurred soil or groundwater contamination, the responsible person is obliged to inform the competent authority under the Measures on Polluted Land and the Law on Water Pollution.

When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	Various clean-up measures are required in the event of harmful soil changes and according to the planning use of the land, and groundwater contamination and also according to whether it is drinkable water or not. Generally, the measures are tailored on a case-by-case basis. Also, such measures shall comply with other relevant regulations, e.g., the Emergency Response Law of PRC.
What are the regulatory instruments of the competent authorities and when may they be applied?	<p>The competent authority at state or provincial level shall formulate standards for the management and control of soil pollution. Such standards are compulsory. The local authority shall make a list of entities which shall be under major supervision in regard to soil pollution within the local administrative region.</p> <p>The responsible party shall conduct its own investigations and report the result if indications of harmful soil changes are shown within six months after the receipt of the notice from the competent authority.</p> <p>If harmful soil changes are shown to exist, the authority may issue an administrative order against one of the responsible parties stated above to undertake clean-up, protection, securing or restrictive measures. The responsible party should retain a professional entity having the requested permits and licences to implement the clean-up. The required licences, permits approvals for engaging in such clean-up are subject to the approval of the competent authorities.</p> <p>If the order is not followed, the authority can either carry out the necessary measures itself and demand the costs from the responsible party or fine the latter until it follows the order.</p>
In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?	There are no explicit provisions giving rise to compensation claims allocation under the soil and groundwater contamination related laws and regulations. The party which had to undertake measures may request compensation from the other parties which are responsible under either contractual agreements or under tort law. The share of costs to be borne by each party depends on the extent to which each party has contributed to the contamination and how the contracts, if any, allocate risks.
Which private law claims may be raised against the persons responsible for soil and groundwater contamination?	<p>Soil and groundwater contamination related laws and regulations do not include specific regulations as to what claims may be raised. In the event of soil and groundwater contamination, the following private law claims might be raised by third parties under the contractual agreements and tort law:</p> <ul style="list-style-type: none"> — Claims for removal of contamination from their property or if clean-up measures have been carried out claims for reimbursement of costs. — Claims for damages in case of intended or negligent violation of life, body, health, property or other rights or of protective laws. — Claims against the tortfeasors according to Article 4 of the Judicial Interpretation of the People's Supreme Court on PRC Evidence of Civil Procedure, contain a liability independent of fault, i.e. strict liability.
Are there any restrictions of the public law responsibility or the private law liability?	<p>According to the Soil Protection Law, depending on seriousness of the violation, the public law liability on the property owner can be an order of closing business or criminal liability on a natural person. The liability under the Soil Protection Law is limited to RMB 2m with regard to an administrative fine. There are no explicit restrictions on the private law liability.</p> <p>The liability under the Law on Water Pollution is limited to RMB 1m with regard to violation of the law. The liability under private law claims based on contracts can be limited within the restrictions imposed by the PRC Contract Law. Liability for personal injuries and for property damages caused by gross negligence or intention cannot be restricted. Liability under tort law cannot be limited through contractual agreements.</p>
Is there a criminal liability for soil and groundwater contamination?	Soil contamination and water contamination can constitute criminal offences under the PRC Criminal Law when contamination is committed and leads to serious outcomes.
Are soil and groundwater contamination registered in China? If yes, please provide information on the register, the access to the register and the consequence of a registration.	According to the Soil Protection Law and the Measures on the Polluted Land, state and municipal contamination registration systems shall be established. However, they are not in existence yet.

Key contacts

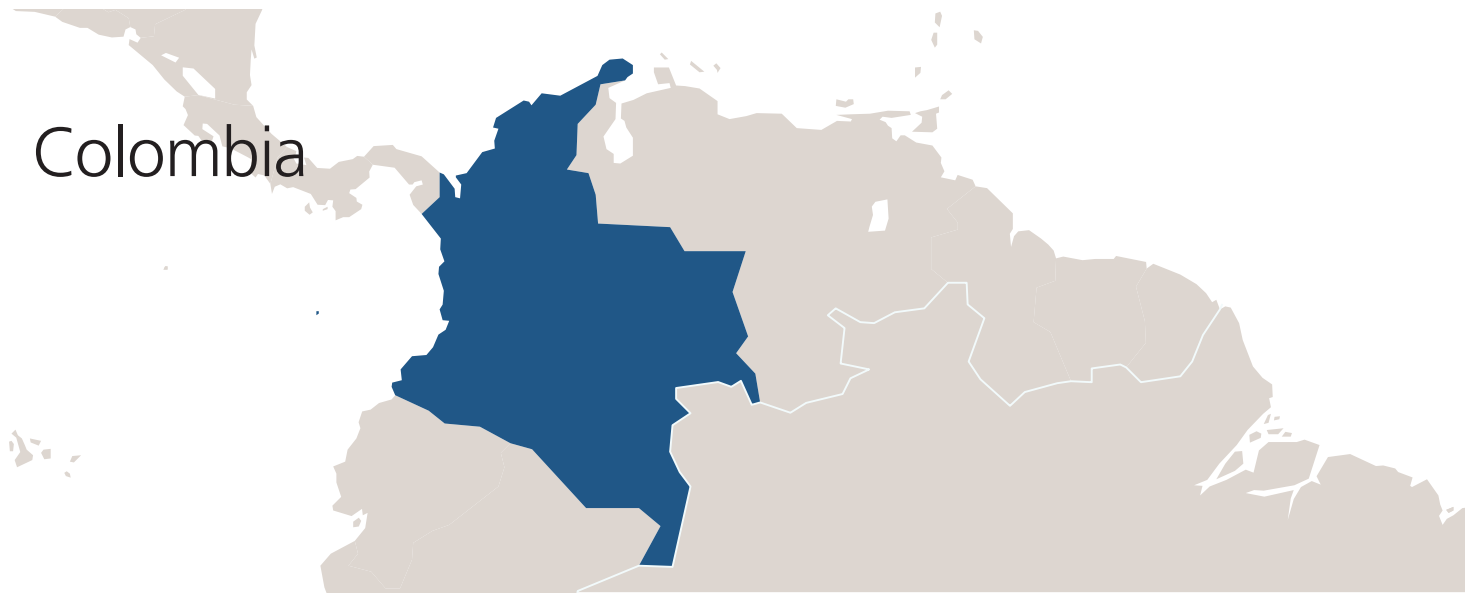


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Colombia



Colombia By Daniel Rodríguez, CMS Colombia

Question	Answer
Which laws are applicable for soil and groundwater contamination in Colombia?	The main laws are Law 23 of 1973, Decree 2811 of 1974 (Natural Resources Code), Law 99 of 1993, Decree 321 of 1999 (National Contingency Plan for spills caused by hydrocarbons and its derivatives and harmful substances), Law 1333 of 2009, and Decree 1076 of 2015 (Unique Regulatory Decree for the Environment and Sustainable Development Sector, which compiled all environmental decrees into one).
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	The laws came into force in 1973, 1974, 1993, 1999, 2009, and 2015 respectively. Before the entry into force of the above-mentioned laws, there were no specific laws in Colombia regarding contamination. In 2015, Decree 1076 compiled all environmental decrees (such as Decree 1541 of 1978, Decree 3930 of 2010, and Decree 1640 of 2012 which included regulation of water resources into a single regulatory body). These laws are the main legal environmental framework in Colombia.
Who is responsible for soil and groundwater contamination?	Applicable Colombian law establishes that the polluter is responsible for soil and groundwater contamination. Also, according to Colombian general civil liability law, the following parties are responsible for soil and groundwater contamination: <ul style="list-style-type: none"> — The general legal successor of the polluter; — The owner of the property; — The person in actual control over the property (e.g. tenants); — The person who, under Colombian company or trade law, acts as guarantor for a legal person which is the owner of contaminated land; — The former owner of the property if it was abandoned.
Which measures may be required under public law in case of soil and groundwater contamination?	The measures that can be required due to soil and groundwater contamination are executing the contingency plan in order to control, remove or handle the pollutant factors, mitigate the impacts, cleaning-up and proposing the corrective and restrictive measures. Furthermore, the following measures may be also required: <ul style="list-style-type: none"> — According to Law 99 of 1993 “compensatory rates” are monetary measures imposed for the harmful consequences of the use of the atmosphere, water and ground. — According to Law 1333 of 2009 sanctions may be imposed for environmental breaches. The sanctions may include environmental restoration measures. — Furthermore, Law 23 of 1973 establishes civil liability for individuals that harm or misuse natural resources (State property). — Lastly, the Colombian Civil Code establishes civil liability in general terms, which is applicable to soil and groundwater contamination.
When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	Clean-up measures may be required by administrative or judicial authorities in any case of environmental emergencies. There is no specific legal threshold for clean-up measures.

What are the regulatory instruments of the competent authorities and when may they be applied?	<p>According to Law 1333 of 2009, the environmental sanctions regime is aimed at penalising environmental regulation breaches and environmental contamination. This law establishes that any violation of a law regarding the protection of the environment empowers the environmental authorities to impose sanctions. These types of sanctions may include economic penalties and preventive measures, among others.</p> <p>Environmental authorities are entitled to impose any of the following sanctions as a result of the procedure established under Law 1333 of 2009.</p> <ul style="list-style-type: none"> — Daily fines up to 5,000 minimum monthly wages (COP\$ 3,906,210,000 approx. EUR 1,080,997); — Temporary or permanent closure of the facilities; — Revocation or expiration of the environmental licence, authorisation, concession, permit or registration; — Demolition of buildings; — Permanent seizure of specimens, wild exotic species, products and sub-products, elements or articles used to commit the infraction; — Restitution of fauna and flora specimens; — Community service.
In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?	In case of more than one party being responsible for soil and groundwater contamination, according to civil liability principles, each of them will be severally liable.
Which private law claims may be raised against the persons responsible for soil and groundwater contamination?	According to Law 23 of 1973, civil liability applies to individuals that harm or misuse natural resources (States property). Article 16 of said law establishes that the State will be liable for harm caused to individuals or to natural resources. It also establishes that individuals will be responsible for the same reasons (harmful use or misuse of the natural resources).
Are there any restrictions of the public law responsibility or the private law liability?	None.
Is there a criminal liability for soil and groundwater contamination?	Soil contamination and water contamination can constitute criminal offences under the Colombian Criminal Code. There are criminal offences directly linked to the subject (Environmental Contamination, Environmental Contamination due to Solid Hazardous Waste, and Imprudent Environmental Contamination due to Exploitation of a Mining or Hydrocarbon Deposit offence respectively), while other felonies might also be related.
Are soil and groundwater contamination registered in Colombia? If yes, please provide information on the register, the access to the register and the consequence of a registration.	There is no register.

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Czech Republic

Czech Republic By Lukáš Janíček and Markéta Škvorová, CMS Czech Republic	
Question	Answer
Which laws are applicable for soil and groundwater contamination in the Czech Republic?	The main regulations in the Czech Republic on soil and groundwater contamination are the Act on Protection of Agricultural Land Fund, Decrees on Particularities of the Protection of the Agricultural Land (Decrees), the Water Act, the Act on Integrated Prevention (IPPC Act) and, with regard to responsibility, the Environment Act and the Act on Environmental Damage and its Remedy (Environmental Damage Act).
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	<p>The Act on Protection of Agricultural Land Fund and the Decrees came into force in 1992, 1994 and 2016 respectively. The Water Act and IPPC Act were entered into force in 2002, the Environment Act in 1992 and the Environmental Damage Act in 2008.</p> <p>Before the entry into force of the above-mentioned laws, only particular aspects of soil and groundwater contamination were regulated by several laws. There was no similar legal regulation in the field of responsibility that is now governed by the Environment Act and Environmental Damage Act before their entry into force.</p>
Who is responsible for soil and groundwater contamination?	<p>In general, primary legal responsibility follows the “polluter pays” principle; therefore the person who causes the contamination is responsible for it – the responsibility is joint and several where there are several polluters for soil and groundwater contamination.</p> <p>Notwithstanding the above, under particular conditions, environmental laws may impose responsibility on owners and occupiers for contamination which was present prior to the acquisition of the real estate (so called old ecological loadings) or on the legal successor.</p> <p>Under the Environmental Act, any person, both natural and/or legal, can be responsible for causing soil and groundwater contamination (in practice, this act is not used). However, under the Environmental Damage Act (<i>lex specialis</i> to the Environment Act), operators operating particular activities listed in the Annex can be responsible for causing soil and groundwater contamination; such as operators handling hazardous chemicals.</p> <p>If there is serious threat of groundwater contamination and no administrative order may be imposed on the polluter or the property owner, then the corrective measures should be taken by the competent state authority; for which there is a special fund of CZK 10m (approx. EUR 388,425).</p> <p>If the polluter (especially operators listed in the Environmental Damage Act) ceases to exist without any legal successor, the state shall bear the costs of remedying the contamination under certain conditions.</p>
Which measures may be required under public law in case of soil and groundwater contamination?	<p>Under the Czech regulation the following measures, among others, may be required with regard to soil and groundwater contamination:</p> <ul style="list-style-type: none"> — Notification of the competent authority; — Protection measures to prevent or minimise the spreading of contamination; — Corrective measures to restore natural functions of damaged ecosystems or parts of the ecosystem to its original condition; — Substitute performance of the environmental damage in the case that the restoration is not possible or ineffective for serious reasons; — Financial reimbursement of the environmental damage; and — Various investigative measures to assess the contamination.

When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	<p>In general, preventive or restorative clean-up measures are required immediately from the polluter to control, limit or remove the contamination. The competent authority may then decide on imposing the obligation of clean-up measures.</p> <p>The Act on Protection of Agricultural Land Fund and Decrees establish the limits of hazardous substances for the declaration of contaminated agriculture soil. If such limits are exceeded, the polluter will be obliged to remedy the damage, for example, by soil agro-technical and melioration measures.</p>
What are the regulatory instruments of the competent authorities and when may they be applied?	<p>The competent authorities will be competent to adopt preventive, control and inspection measures under Czech environmental law.</p> <p>Further, the competent authorities may issue an administrative order imposing upon the polluter obligations to, among others, undertake corrective (restoration) measures, protection measures, substitute performance of the environmental damage or to provide financial reimbursement or under certain conditions to restrict or stop the operation. If the order is not followed, the authority can carry out the necessary measures itself and demand the costs from the responsible party.</p> <p>Lastly, the competent authority may, in particular, impose a penalty in certain situations, predetermined by law (up to CZK 10m; approx. EUR 388,425).</p>
In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?	The Environmental Damage Act provides that responsibility is joint and several where there are several polluters for soil and groundwater contamination. In such a case, the party which had to undertake measures may request compensation on a separate civil proceeding from the other parties (polluters) which are responsible.
Which private law claims may be raised against the persons responsible for soil and groundwater contamination?	<p>In the event of soil and groundwater contamination, the following private law claims might be raised by third parties (whose property was contaminated / or otherwise affected by the contamination) under certain conditions: claim for restoration to its original condition and claim for financial compensation.</p> <p>Despite the public law regulation, the party making the claim may choose which claim to make and method of compensation it prefers.</p> <p>Further obligations may apply under contracts.</p>
Are there any restrictions of the public law responsibility or the private law liability?	In general, environmental responsibility is not restricted, with the exception of liberation reasons, such as when environmental damage is caused as a result of the fulfilment of the administrative decision.
Is there a criminal liability for soil and groundwater contamination?	Soil contamination and water contamination can constitute criminal offences under the Czech Criminal Code when committed intentionally or with negligence.
Are soil and groundwater contamination registered in the Czech Republic? If yes, please provide information on the register, the access to the register and the consequence of a registration.	<p>There is no comprehensive register of contamination in the Czech Republic. However, soil and groundwater contamination are monitored in the Czech Republic. A map (updated in 2010) displaying soil contamination sites is available online as well as maps and databases showing to which extent various chemical substances are represented in the soil. With respect to groundwater, the only available maps and databases reflect the presence of chemical substances.</p> <p>To obtain detailed information, an application to the Ministry of environment / Ministry of agriculture can be submitted.</p>

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France



France By Céline Cloché-Dubois and Anne Plisson, CMS France	
Question	Answer
Which laws are applicable to for soil and groundwater contamination in France?	The main French regulations on soil and groundwater contamination are Act No. 76-663 dated 19 July 1976 (codified in the French Environmental Code by Ordinance No. 2000-914 dated 18 September 2000), Act No. 2014-366 dated 24 March 2014 on access to housing and renovated urban planning (ALUR Act), Act No. 2003-699 dated 30 July 2003 on the prevention of technological and natural risks and the repair of damage, the Instruction dated 26 May 2011 on the cessation of activity of a classified facility for the protection of the environment ICPE (Instruction).
When did the laws come into force? Have there been other regulations been applicable before the entering into force of the current laws?	Act. No. 76-663 and Act No. 2003-699 came into force in 1976 and 2003, respectively, the Instruction in 2011 and ALUR Act in 2014. Before the entering into force of the above-mentioned legislation, the soil and groundwater contamination was regulated by the Act of 19 December 1917 on dangerous, unhealthy or inconvenient facilities.
Who is responsible for soil and groundwater contamination?	For ICPE activities the following parties are in the stated order responsible for soil and groundwater contamination under the French Environmental Code and case law: <ul style="list-style-type: none"> — The operator (or its legal successor) or, if the ICPE site is closed, the last operator or the future operator which voluntarily replaces the last operator ("<i>tiers demandeur</i>"); — The owner of the property if the deed of acquisition of the property so provided; — The entity which plans to modify the use of a former ICPE site and wants to adapt the condition of the land to the future use of the site; — In the absence of the above persons and conditions, the owner of the property, if it is evidenced that it was negligent or was not unrelated to the pollution. For non-ICPE activities, the following parties are responsible for soil and groundwater contamination: <ul style="list-style-type: none"> — The waste producer that contributed to the soil pollution; or — The waste holder whose fault contributed to soil pollution.
Which measures may be required under public law in case of soil and groundwater contamination?	During the operation of an ICPE site the Prefect may impose additional requirements, such as the completion of studies, provisional curative measures (e.g. clean-up measures), protection measures and safety measures. After the end of the operation of an ICPE site the operator of the site must inform the Prefect of the closure of the site. As a result, the operator must provide a remediation action report detailing the different environmental measures taken to clean up the site. The Prefect may also require the following actions: environmental or health surveys, soil, subsoil and groundwater rehabilitation works (clean-up measures), or monitoring of the site. In these two cases, after the Prefect has sent a formal notice to the responsible person, he may ask a third party to perform the works at the expense of the person which is responsible or he may require such person to deposit in escrow with a public accountant a sum of money corresponding to the amount of the work.

When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	During the operation of an ICPE site, clean-up measures are required in case of accident/incident when the pollution threatens the interests mentioned in Article L. 511-1 of the French Environmental Code, e.g. health, safety, public health, environmental protection. After the end of operation of an ICPE site, the existence and the type of clean-up measures depend on the future use of the site (sensitive, non-sensitive).
What are the regulatory instruments of the competent authorities and when may they be applied?	The Classified Facilities Inspectorate may carry out scheduled or unannounced inspections, examining studies and assessments, proposing measures to lift reservations concerning non-conformance of the facilities and proposing administrative sanctions to the Prefect and criminal prosecution actions to the public prosecutor in the event of violation.
In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?	If several persons are liable, the party which had to take measures may request compensation through civil proceedings from the other liable parties.
Which private law claims may be raised against the persons responsible for soil and groundwater contamination?	In France, there is no special private claim for soil and groundwater contamination. The general rules of private litigation apply. The following private law claims may be raised: — Fault liability action when the operator has committed a fault causing a damage to a third party — Strict liability which may have the two following grounds: (i) abnormal neighbourhood disorders if the operator's activity causes a nuisance to a neighbour even though the operator complies with the legislation and the operating permit, or (ii) liability linked to the action of a thing if the installation itself causes damage to a third.
Are there any restrictions of the public law responsibility or the private law liability?	There is no restriction. Environmental liability is unlimited.
Is there a criminal liability for soil and groundwater contamination?	Soil contamination and water contamination can constitute criminal offences under the French Environmental Code.
Are soil and groundwater contamination registered in France? If yes, please provide information on the register, the access to the register and the consequence of registration.	There are three main contaminated site registers: — The BASIAS database registers former industrial sites, and is predominantly aimed at the general public, lawyers and developers to ascertain the relative risks associated with a piece of land in light of the type of activity that has taken place there. — The BASOL database is a list of contaminated sites calling for action by the authorities. — The SIS is a register of pieces of land where the state is aware of soil pollution that requires, in particular in the event of a change of use, the carrying out of soil surveys and the implementation of pollution management measures to preserve health and the environment. These registers are available on the Internet. The registration provides only an indication of soil or groundwater contamination.

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Germany



Germany By Christian Scherer-Leydecker and Anne Rausch, CMS Germany

Question	Answer
Which laws are applicable for soil and groundwater contamination in Germany?	The main regulations in Germany on soil and groundwater contamination are the German Federal Soil Protection Act (BBodSchG) and the German Federal Soil Protection Ordinance (BBodSchV), the German Federal Water Resources Act (WHG) and, with regard to liability, the German Federal Environmental Liability Act (UmweltHG). The German Federal Environmental Damage Act, which was adopted to implement the European Environmental Liability Directive, is subsidiary with regard to soil and groundwater contamination and will mainly be left out of consideration.
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	<p>The BBodSchG and the BBodSchV came into force in 1998 and 1999, respectively, the UmweltHG in 1997 and the WHG in 2010.</p> <p>Before the entering into force of the above-mentioned laws, soil and groundwater contamination was regulated on the level of the federal states. Few of the federal states had soil protection acts; other federal states regulated the treatment of underground pollution under the respective water laws, waste laws or laws to prevent risk to public law and order. The threshold levels above which clean-up measures were necessary varied significantly from one federal state to another.</p>
Who is responsible for soil and groundwater contamination?	<p>Under the BBodSchG, the following parties are responsible for soil and groundwater contamination due to soil contamination:</p> <ul style="list-style-type: none"> — The polluter; — The general legal successor of the polluter; — The owner of the property; — The person in actual control over the property (e.g. tenants); — The person who, under German company or trade law, acts as guarantor for a legal person which is the owner of contaminated land; — The former owner of the property if it was abandoned; — And – under certain conditions – the former owner of the property if it was sold after 1 March 1999. <p>The authority may demand the required measures from all of the above-mentioned parties irrespective of whether they have contributed to the contamination or not. The authority shall turn to the party that can most be expected to carry out the measures.</p> <p>Under the WHG, persons that caused water contamination while acting in their professional activities are responsible. In general, this is the operator of a plant.</p>

<p>Which measures may be required under public law in case of soil and groundwater contamination?</p>	<p>Under the BBodSchG, the following measures can be required with regard to soil and groundwater contamination due to soil contamination:</p> <ul style="list-style-type: none"> — Clean-up measures to eliminate or reduce the contamination, as, for example, dredging of soil or skimming of contaminant plumes; — Protection measures to prevent or minimise the spreading of contamination, as, for example, sealing of surfaces or placement of sheet piles; — Securing or restrictive measures to avoid or minimise adverse effects of the contamination, as, for example, setting of barriers or restrictions of use to avoid that persons get into contact with the contamination; — Investigative measures to assess the extent of the contamination, the resulting risks and the necessary measures. <p>The obligation to undertake clean-up, protection and securing or restrictive measures applies even without an administrative order.</p> <p>Under WHG in conjunction with USchadG, the authority may request the person responsible for a damage to the waterbody to carry out the required remediation measures.</p> <p>In the event of indications of or imminent or occurred soil or groundwater contamination, the responsible person might be obliged to inform the competent authority under the Soil Protection Acts of the federal states or the USchadG.</p>
<p>When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?</p>	<p>Clean-up measures are required in the event of harmful soil changes. Such harmful soil changes are assumed to exist if the soil contamination leads to a risk of significant disadvantages or significant nuisances for individuals or the general public. The assessment has to be made on a case-by-case basis while taking into account – in particular – the extent of the contamination and the permissible use of the affected real properties. For example, in the event of a residential use of the property, clean-up measures might be required rather than in the event of a commercial or even industrial use of the property.</p> <p>The BBodSchV contains threshold values regarding concentration for several substances. The regulation distinguishes between “test values” that, if exceeded, will trigger further examination of the extent of the underground pollution, and “action values” that, if exceeded, will trigger clean-up action.</p>
<p>What are the regulatory instruments of the competent authorities and when may they be applied?</p>	<p>The authority may conduct its own investigations in the event indications of harmful soil changes are shown to exist. In the event of sufficient indications of harmful soil changes, the authority may request one of the responsible parties stated above by way of an administrative order to undertake investigative measures.</p> <p>If harmful soil changes are shown to exist, the authority may issue an administrative order against one of the responsible parties to undertake clean-up, protection, securing or restrictive measures or may undertake the required measures itself. In the latter case, the authority may request compensation for the increased property value from the property owner.</p> <p>If the order is not followed, the authority can either carry out the necessary measures itself and demand the costs from the responsible party or fine the latter until it follows the instruction.</p> <p>Instead of an order, the obligations may be determined in a public law contract. In the event of complex and particularly dangerous contamination, special remediation instruments are applicable which include a remediation plan and control mechanisms.</p>
<p>In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?</p>	<p>The party which had to undertake measures under the BBodSchG may request compensation from the other parties which are responsible under the BBodSchG. The share of costs to be borne by each party depends on the extent to which each party has contributed to the contamination.</p>
<p>Which private law claims may be raised against the persons responsible for soil and groundwater contamination?</p>	<p>In the event of soil and groundwater contamination, the following private law claims might be raised by third parties, e.g. by neighbours:</p> <ul style="list-style-type: none"> — Claims for removal of contamination from their property or, if clean-up measures have been carried out, claims for reimbursement of costs. — Claims for damages in case of intended or negligent violation of life, body, health, property or other rights or of protective laws, as, for example, a violation of the undertaking to carry out clean-up/remediation or securing measures. — Claims against operators of certain plants under WHG or UmweltHG (strict liability). <p>Further obligations may apply under contractual regulations.</p>
<p>Are there any restrictions of the public law responsibility or the private law liability?</p>	<p>On grounds of reasonability, the public law liability of the (former) property owner and the person in actual control over the property can be restricted to the market value of the real estate.</p> <p>The liability under the UmweltHG is limited to EUR 85m with regard to life/health damage as well as with regard to property damage. In addition, the liability under private law claims may be restricted due to contributory negligence by the affected party.</p>
<p>Is there a criminal liability for soil and groundwater contamination?</p>	<p>Soil contamination and water contamination can constitute criminal offences under the German Criminal Code when committed intentionally or with negligence.</p>
<p>Are soil and groundwater contamination registered in Germany? If yes, please provide information on the register, the access to the register and the consequence of a registration.</p>	<p>Yes, there are contaminated site registers of the federal states with information on contaminated sites and suspected contaminated sites. Suspected contaminated sites are – in particular – former production sites where environmentally hazardous substances were handled and former landfills or waste treatment plants.</p> <p>For access to the register, an application to the competent local authority is required. The registration provides only an indication of soil or groundwater contamination.</p>

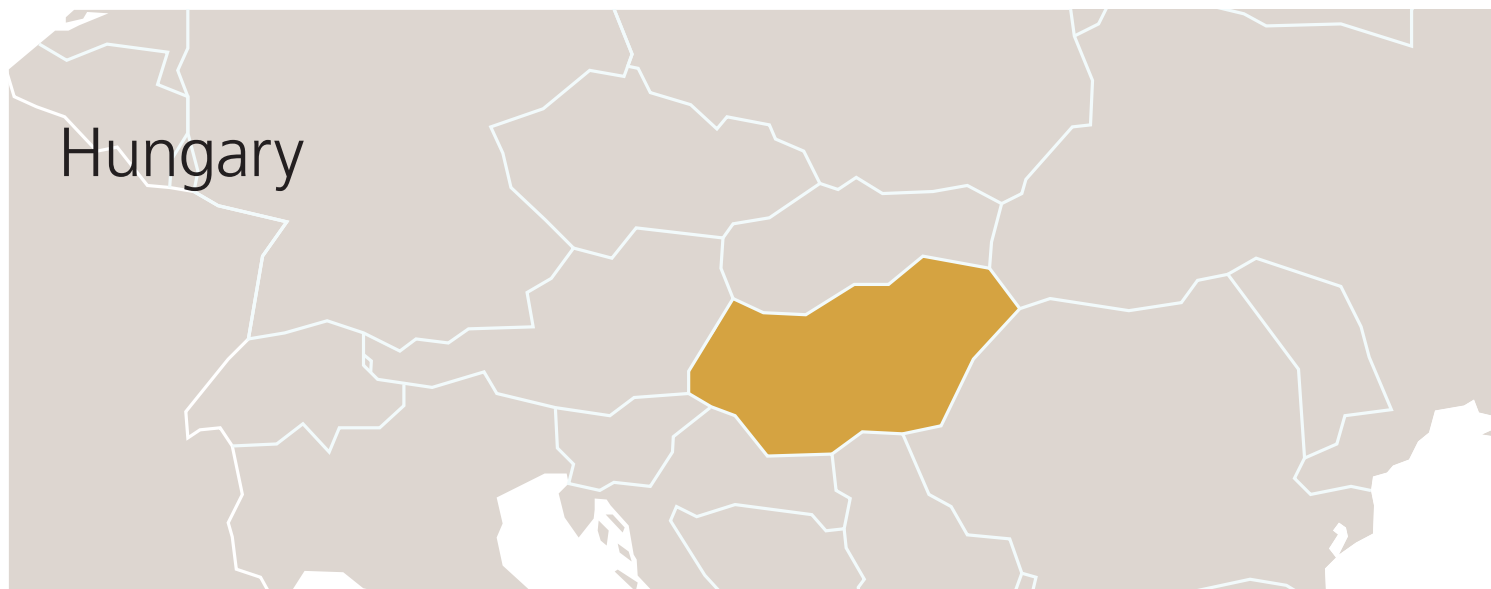
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Hungary
 By Gábor Czike and Péter Simon, CMS Hungary

Question	Answer
Which laws are applicable for soil and groundwater contamination in Hungary?	<p>The main regulations in Hungary on soil and groundwater contamination are the Act LIII of 1995 on the General Rules of Environmental Protection (Environmental Protection Act), Act LVII of 1995 on Water Management (Water Management Act), Governmental Decree No. 219/2004. (VII. 21) on the Protection of the Groundwater (Governmental Decree) and KvVM-EÜM-FVM Ministerial Decree No. 6/2009. (IV.14.) on the Thresholds Necessary for the Protection of Groundwater and Measurement of Contamination (Ministerial Decree).</p> <p>There are several additional ministerial decree level legal regulations applicable in respect of soil and groundwater contamination, which regulate the technical aspect of delineation, measurement and remediation of the contamination.</p>
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	<p>The Environmental Protection Act came into force in 1995, the Water Management Act in 1996, the Government Decree in 2004 and the Ministerial Decree in 2009.</p> <p>No unified, comprehensive legislation for environment protection had existed in Hungary prior to the adoption of Act II of 1976 on the Protection of the Human Environment. Prior to 1976 provisions regulating (also) environmental protection were set out in various types and levels of legislative measures that only covered fragmented issues on an occasional basis, without having any general legal concept or guiding principles. Act II of 1976 on the Protection of the Human Environment set out detailed rules regarding liability for the violation of provisions concerning environment protection. In 1995, the Environment Protection Act replaced the previous legislation and entered into force on 19 December 1995.</p>
Who is responsible for soil and groundwater contamination?	<p>Environment Protection Act provides for a presumption of the owner's liability and on the other hand a joint and several liability of the owners and users. The owner may be released from the presumed liability if it can evidence without doubt that it has not caused the environmental pollution and names the actual user of the property. On the basis of the published court decisions it is clear that the owner may name not only a current user as the person causing the damage, but also the occupant who used the polluted property in the past prior to the acquisition by the current owner.</p>
Which measures may be required under public law in case of soil and groundwater contamination?	<p>Under the applicable laws certain measures can be required with regard to soil and groundwater contamination due to soil contamination, including (i) measures to restrict or terminate the contamination and to establish proper measures of intervention, or to prevent or minimise the spreading of contamination, (ii) investigative measures to assess the extent of the contamination, the resulting risks and the necessary measures to be taken and (iii) monitoring measures to assess whether there is a need for modifying the previously applied approaches.</p>
When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	<p>The Ministerial Decree, among other legal regulations, sets forth certain threshold values for concentration levels of contaminating substances, on the basis of which it can be determined whether soil or groundwater may be deemed contaminated (the "B Threshold").</p> <p>The environmental authority determines – in its resolution on closing the fact-finding investigation phase – the target contamination threshold (the "D Threshold") to be achieved as a result of the remediation in order to prevent any damage to health, ecosystem and the environmental elements. The D Threshold is to be determined on the basis of several factors, including the B Threshold applicable for the contaminating substances, the natural level of concentration of the substances in the area prior to the contamination in question, the best available remediation method, etc.</p>

<p>What are the regulatory instruments of the competent authorities and when may they be applied?</p>	<p>The competent environmental authority may conduct its own investigations in relation to endangerment, pollution or damage of the soil and groundwater, which also includes the right to undertake itself the preventive or remedial measures in connection with the contamination at the cost of the responsible party. The authority may also order the responsible party to prepare a remediation intervention plan, which is to be reviewed and approved by the environmental authority. In such case the remediation shall be carried out on the basis of the approved remediation plan by the liable person.</p>
<p>In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?</p>	<p>In case of a claim for damages by a third party against the parties responsible for soil and groundwater contamination, the liability of the responsible parties are joint and several against the third party who incurred damages. In this case, the parties responsible for the contamination may have a compensation claim against the other responsible parties and liability for damages between the responsible parties in such an event shall be determined on the basis of their respective culpability, or – if this cannot be determined – in proportion to their respective involvement. If the degree of their respective involvement cannot be determined either, the responsible parties shall be liable for damages in equal proportions and any compensation claims for damages between such responsible parties shall be determined on that basis.</p> <p>On the other hand, in case there is more than one party being responsible for the contamination, but only one party is ordered by the competent authority to carry out the necessary remediation procedures, then this party may claim damages from the other responsible parties, however the other responsible parties shall not reimburse the damages of the party who is ordered to carry out the remediation procedures to the extent that the damage incurred by the party who is ordered to carry out the remediation procedures is attributable to such party.</p>
<p>Which private law claims may be raised against the persons responsible for soil and groundwater contamination?</p>	<p>In the event of soil and groundwater contamination, the following private law claims might be raised by third parties:</p> <ul style="list-style-type: none"> — In the event of the presence of imminent danger, the endangered person may request the court to (i) prohibit such person from continuing such conduct, (ii) order the person imposing such danger to take sufficient preventive measures, and (iii) order the person imposing such danger to provide sufficient guarantee; — Claims for damages in case the soil and groundwater contamination caused damages (strict liability); — Claims for protection of possession against the party responsible for contamination; — Claims for damages also in case the conduct of the polluter acts in conformity with the applicable environmental regulations, but damage is nevertheless incurred (e.g. due to the loss of value of a neighbour's real property). <p>Further obligations may apply under contractual regulations.</p>
<p>Are there any restrictions of the public law responsibility or the private law liability?</p>	<p>There are no restrictions of the public law responsibility. Under the Civil Code, in cases of exceptional circumstances, the court may award damages in an amount lower than the amount of the total loss.</p>
<p>Is there a criminal liability for soil and groundwater contamination?</p>	<p>The Hungarian Criminal Code regulates the act of '<i>Environment Offense</i>' as a criminal act, which may be committed by any person responsible for the pollution by any means of the earth, the air, the water, the flora and fauna and their constituents, resulting (i) in their endangerment, or (ii) damage (sanctions differentiate on the basis of the extent of the damage). Pollution shall mean the introduction of contaminants into the earth, the air, the water, the flora and fauna and their constituents exceeding the emission limits laid down by law or by decree of the competent authority. The crime may be committed intentionally or with negligence.</p>
<p>Are soil and groundwater contamination registered in Hungary? If yes, please provide information on the register, the access to the register and the consequence of a registration.</p>	<p>There is no special soil and groundwater contamination public register in Hungary. However, the information about any long-term environmental damage identified over real properties is entered into the land register.</p>

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Italy



Italy By Serena Carroli and Pietro Cavasola CMS Italy

Question	Answer
Which laws are applicable for soil and groundwater contamination in Italy?	The main provisions in Italy on soil and groundwater contamination are set forth in Part IV of Legislative Decree no. 152 of 3 April 2006, i.e. the Italian Consolidated Environmental Act, as amended. This Act has implemented the European Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage. In addition to state legislation, additional environmental regional legislation applies.
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	Part IV of the Italian Consolidated Environmental Act came into force on 29 April 2006. The entering into force put an end to the regulatory fragmentation resulting also from the variety of provisions at regional level. The different regions regulated the treatment of underground pollution under the respective water laws, waste laws or laws to prevent risk to public law and order. The two main state regulations were (i) Legislative Decree no. 152 of 11 May 1999 concerning the protection of waters against pollution, urban waste water treatment and on the protection of waters against pollution caused by nitrates from agricultural sources and (ii) Ministerial Decree no. 471 of 25 October 1999 on procedures and methods for the safety, remediation and environmental restoration of polluted sites.
Who is responsible for soil and groundwater contamination?	The general rule is the "polluter pays" principle, which means that anyone who exceeds, even accidentally, the thresholds established by law must provide for the remediation of the contaminated area. In cases where it is not possible to identify the person/entity responsible for the pollution, the Consolidated Environmental Act provides that it is the region or the municipality territorially concerned responsible for the intervention which may include emergency safety securing, permanent safety securing, remediation and environmental restoration.
Which measures may be required under public law in case of soil and groundwater contamination?	Under the Consolidated Environmental Act, the following measures can be required with regard to soil and groundwater contamination due to soil contamination: <ul style="list-style-type: none"> — Precautionary measures: initiatives to counter an event, act or omission that has created an imminent threat to health or the environment, to be seen as a sufficiently likely risk to health or a risk of environmental damage occurring in the near future, in order to prevent or minimise such a threat; — Restorative measures: mitigating or interim measures to repair, rehabilitate or replace damaged natural resources and/or services, or to provide an equivalent alternative to such resources or services; — Emergency securing: immediate or short-term actions to be taken under emergency conditions in the event of abrupt contamination events to contain the spread of the primary sources of contamination, to prevent their contact with other matrices on the site and to remove them, pending any further reclamation or operational or permanent securing; — Operational safety securing: interventions carried out at a site with activities in operation that guarantee an adequate level of safety for people and the environment, pending further interventions of permanent safety to be carried out at the end of the activity. They also include measures to contain the contamination to be implemented on a temporary basis until the execution of the remediation or of permanent safety securing, in order to avoid the spread of contamination; — Permanent safety securing: set of measures designed to permanently isolate polluting sources from the surrounding environmental matrices and to ensure a high and definitive level of safety for people and the environment. In such cases, monitoring and control plans and restrictions on use in relation to the provisions of urban planning instruments must be provided for; — Remediation: set of measures designed to eliminate sources of pollution and pollutants or to reduce their concentrations in soil, subsoil and groundwater to a level equal to or less than the values of the risk threshold concentrations; — Environmental restoration: environmental and landscape requalification interventions, also as a complement to remediation or permanent safety interventions, which allow the recovery of the site to the actual and definitive usability for the intended use in accordance with urban planning tools.

<p>When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?</p>	<p>In accordance with the Consolidated Environmental Act, an area where concentrations of surface soil, subsoil or groundwater samples is found to be higher than the maximum concentrations admitted by legislation (Contamination Threshold Concentrations) is defined as a <i>potentially contaminated</i> site. When, following specific investigations, the presence of a risk to human health deriving from pollution has been detected, the area in question is defined as a <i>contaminated site</i>.</p> <p>If the Contamination Threshold Concentrations are exceeded, a specific technical administrative procedure – the costs of which will be borne by the person responsible for the pollution – will be initiated, which in brief entails the following steps:</p> <ul style="list-style-type: none"> — Geognostic investigations aimed at defining the extent of the contamination in the subsoil, proposed in a special document called <i>characterization plan</i>; — Verification, with a special decision-making tool (Environmental Health Risk Analysis), of the actual existence of a health risk according to various site-specific factors (actual use, geology and hydrogeology); — Where there is a risk, the polluter must clean up to the contamination threshold concentrations. — If there is no risk, the process can be concluded; environmental monitoring of the site is generally maintained.
<p>What are the regulatory instruments of the competent authorities and when may they be applied?</p>	<p>The competent authorities (provinces) may issue orders requiring the person responsible for the potential contamination to take action. The owner of the site shall in any case also be notified of the order. If the person responsible is not identifiable or does not act and the site owner or other interested party do not act either, any action required shall be taken by the competent authorities. Costs are to be borne by the polluter identified or, if this cannot be identified, by the public administration.</p>
<p>In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?</p>	<p>The party which had to undertake measures under the Consolidated Environmental Act may request compensation from the other parties which are responsible under the same Act. The share of costs to be borne by each party depends on the extent to which each party has contributed to the contamination.</p>
<p>Which private law claims may be raised against the persons responsible for soil and groundwater contamination?</p>	<p>In the event of soil and groundwater contamination, the following private law claims might be raised by third parties, e.g. by neighbours:</p> <ul style="list-style-type: none"> — Claims for removal of contamination from their property or, if clean-up measures have been carried out, claims for reimbursement of costs. — Claims for damages in case of intended or negligent violation of life, body, health, property or other rights or of protective laws, including for the violation of the obligation to carry out clean-up/remediation or securing measures.
<p>Are there any restrictions of the public law responsibility or the private law liability?</p>	<p>The benefit of conditional discharge as well as industrious repentance with reduction of penalties may be subject to the implementation of emergency measures, remediation and environmental restoration.</p> <p>Compliance with the projects approved to carry out restorative, safety securing or remediation measures constitutes a condition for not being punished by the environmental fines provided for by other laws for the same event and for the same pollution conduct.</p>
<p>Is there a criminal liability for soil and groundwater contamination?</p>	<p>Unless the conduct constitutes a more serious offence, anyone who causes pollution of the soil, subsoil, surface water or groundwater by exceeding the risk threshold concentrations is criminally liable as well as who fails to carry out the remediation in accordance with the project approved by the competent authority. The Consolidated Environmental Act, provides for criminal liability also in case of failure to provide the required information to the competent authorities. Relevant penalties are higher if the pollution is caused by dangerous substances.</p> <p>In addition, for certain environmental crimes (including environmental pollution to water, soil and underground) committed by directors/top managers or employees of a company, the company itself can be held “criminally” liable with very severe penalties such as, inter alia, the disqualification, suspension or interruption of the activity. Such additional liability can be avoided only if the company has adopted an organisation and management model pursuant to Legislative Decree No. 231/2001, and the same is found adequate to the concrete risks of the company and correctly applied.</p>
<p>Are soil and groundwater contamination registered in Italy? If yes, please provide information on the register, the access to the register and the consequence of a registration.</p>	<p>A register of contaminated sites is prepared by the Regions and Autonomous Provinces. It lists the sites subject to remediation and environmental restoration as well as the interventions carried out in the sites themselves; the identification of the persons responsible for remediation; the public bodies that the region intends to avail itself of, in the event of non-compliance of obliged parties, for the purpose of <i>ex officio</i> performance.</p> <p>For access to the register, an application to the competent local authority is required.</p>

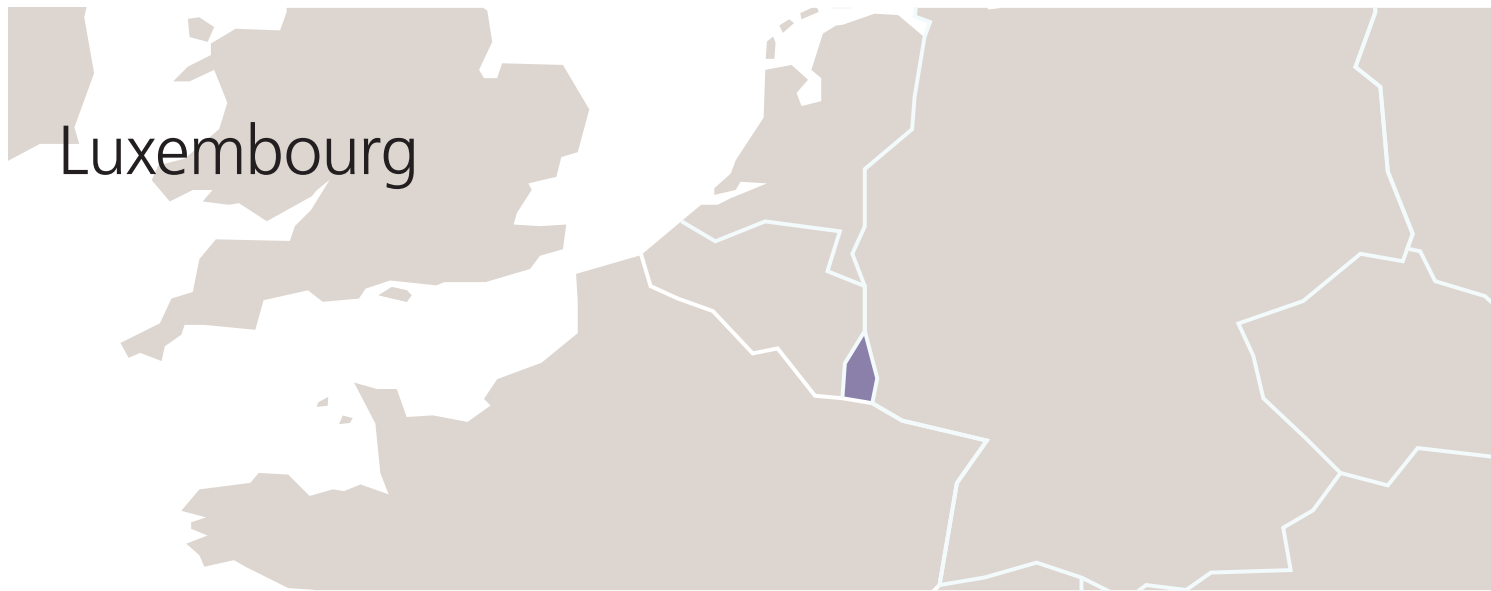
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Luxembourg
By Jerome Guillot, CMS Luxembourg

Question	Answer
Which laws are applicable for soil and groundwater contamination in Luxembourg?	The main regulations in Luxembourg on soil and groundwater contamination are the amended Law of 19 December 2008 on Water Protection, the amended Law of 21 March 2012 on Waste Control, the Ordinance of 7 October 2002 on Water Quality for Human Consumption and the Ordinance of 12 December 2016 on Groundwater protection. The amended Law of 20 April 2009 under the Environmental Damage Act, which was adopted to implement the European Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage, is also to be considered with regard to soil and groundwater contamination.
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	The amended Law on Water Protection came into force on 1 January 2009, the Ordinance on Groundwater protection came into force on 19 December 2016 and the Ordinance on Water Quality for Human Consumption came into force on 15 October 2002. Before the entering into force of the above-mentioned regulations, soil and groundwater contamination was regulated by the Law of 29 July 1993.
Who is responsible for soil and groundwater contamination?	Under the amended Law of 21 March 2012 on Waste Control, the following parties are responsible for soil and groundwater contamination due to soil contamination: <ul style="list-style-type: none"> — The polluter, mainly the operator of a plant; — The owner of the property; — The person in actual control over the property (e.g. tenants); — The former owner of the property if it was abandoned. <p>The authority may demand the required measures from all of the above-mentioned parties irrespective of whether they have contributed to the contamination or not. The authority shall turn to the party that can most be expected to carry out the measures.</p>
Which measures may be required under public law in case of soil and groundwater contamination?	Under the amended Law of 21 March 2012 on Waste Control, the following measures can be required with regard to soil and groundwater contamination due to soil contamination: <ul style="list-style-type: none"> — Clean-up measures to eliminate or reduce the contamination, as for example dredging of soil or skimming of contaminant plumes; — Protection measures to prevent or minimise the spreading of contamination, as for example sealing of surfaces or placement of sheet piles; — Securing or restrictive measures to avoid or minimise adverse effects of the contamination, as for example setting of barriers or restrictions of use to avoid people coming into contact with the contamination. — Investigative measures to assess the extent of the contamination, the resulting risks and the necessary measures. <p>The obligation to undertake clean-up, protection and securing or restrictive measures applies upon the issue of an administrative order.</p> <p>In the event of indications of or imminent or occurred soil or groundwater contamination, the responsible person might be obliged to inform the competent authority, i.e. the Environment Administration.</p>

When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	Clean-up measures are required in the event of harmful soil changes. Such harmful soil changes are assumed to exist if the soil contamination leads to a risk of significant disadvantage or significant nuisance to individuals or the general public. The assessment has to be made on a case-by-case basis while taking into account – in particular – the extent of the contamination and the permissible use of the affected properties.
What are the regulatory instruments of the competent authorities and when may they be applied?	<p>The authority may conduct its own investigations in the event indications of harmful soil changes are shown to exist. In the event of sufficient evidence for harmful soil changes, the authority may request one of the responsible parties stated above by way of an administrative order to undertake investigative measures.</p> <p>If harmful soil changes are shown to exist, the authority may issue an administrative order against one of the responsible parties to undertake clean-up, protection, securing or restrictive measures or may undertake the required measures itself. In the latter case, the authority may request compensation for the increased property value from the property owner.</p> <p>If the order is not followed, the authority can either carry out the necessary measures itself and demand the costs from the responsible party or fine the latter until it follows the instruction.</p>
In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?	The party which had to undertake measures under the amended Law of 21 March 2012 on Waste Control may request compensation from the other parties which are responsible under the general stipulations of the Luxembourg Civil Code. The share of costs to be borne by each party depends on the extent to which each party has contributed to the contamination.
Which private law claims may be raised against the persons responsible for soil and groundwater contamination?	<p>In the event of soil and groundwater contamination, the following private law claims might be raised by third parties, e.g. by neighbours:</p> <ul style="list-style-type: none"> — Claims for removal of contamination from their property or if clean-up measures have been carried out claims for reimbursement of costs. — Claims for damages in case of intended or negligent violation of life, body, health, property or other rights or of protective laws, as for example a violation of the undertaking to carry out clean-up/remediation or securing measures. — Claims against plant operators (strict liability). <p>Further obligations may apply under contractual regulations.</p>
Are there any restrictions of the public law responsibility or the private law liability?	Liability under private law claims may be restricted due to contributory negligence by the affected party.
Is there a criminal liability for soil and groundwater contamination?	Soil contamination and water contamination can constitute criminal offences under the Luxembourg Criminal Code when committed intentionally or with negligence.
Are soil and groundwater contamination registered in Luxembourg? If yes, please provide information on the register, the access to the register and the consequence of a registration.	<p>No, there is no contaminated sites register yet.</p> <p>Such a register will be created upon the basis of the Bill of Law No. 7237 which was filed by the Luxembourg Government in the Luxembourg Parliament on the 26 January 2018.</p>

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Monaco



Monaco By Sophie Marquet and Sarah Rolland, CMS Monaco

Question	Answer
Which laws are applicable for soil and groundwater contamination in Monaco?	In Monaco, measures to combat soil and groundwater contamination are governed by the Environmental Code.
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	<p>The Environmental Code came into force at the end of 2017.</p> <p>Prior to this, it was Act No. 954, dated 17 April 1974, which defined and regulated – to some extent – the effects of soil and groundwater contamination. It should be noted, however, that the implementing legislation for the Environmental Code has not yet been passed. Consequently, the provisions of the sovereign ordinances and ministerial decrees adopted pursuant to Act No. 954 will continue to apply until the relevant implementing legislation is promulgated – on condition that they do not conflict with the new legislative requirements.</p>
Who is responsible for soil and groundwater contamination?	<p>The Environmental Code identifies the party responsible as the originator of the pollution (whether this is an individual or legal entity) or the polluter (sometimes even more vaguely as “the party involved”). It provides for the application of strict liability against the following parties, in the event of damage resulting directly or indirectly from their activities, except where this arises due to an external cause or <i>force majeure</i>:</p> <ul style="list-style-type: none"> — Any party transporting or using hydrocarbons, or materials or substances, — Any operator of a facility subject to special monitoring, — Any party which produces or stores hazardous waste.
Which measures may be required under public law in case of soil and groundwater contamination?	<p>The Environmental Code provides for the following measures in the event of an incident of soil or groundwater contamination:</p> <ul style="list-style-type: none"> — Measures to investigate or establish proof of the pollution (samples, seizure of documents or products, observations, etc.). — Measures intended to rehabilitate the site, which are likely to restore it to its original state or permit future use that will not pose any risk to the environment or health. — Measures to reduce pollution, including temporary closure of the company or establishment, stoppage or suspension of production operations or the handling or transport of materials, products, substances or waste, or the seizure, storage, neutralisation, immobilisation or destruction thereof. — Measures aimed at minimising the population’s contact with the pollution source (e.g. access restrictions).
When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	<p>The Environmental Code stipulates that any damage caused to the environment must, as a priority, result in measures to repair the damage. Primary remediation, which must be the guiding principle, comprises all remedial measures to restore the contaminated soil and groundwater to, or close to, their original state.</p> <p>Only where rehabilitation is impossible may other measures be considered (financial compensation, for example).</p> <p>Primary remediation measures apply as soon as environmental damage is noted. No threshold has been set by the Environmental Code, which nonetheless defines the concept of environmental damage. Environmental damages are “measurable negative changes significantly affecting the condition of the soil due to contamination, the condition of the air, the ecological, chemical or quantitative status or the ecological potential of water, the conservation or restoration of a state favourable to the long-term maintenance of plant and animal species and their habitats”.</p>

<p>What are the regulatory instruments of the competent authorities and when may they be applied?</p>	<p>The authority has investigatory powers and may, in the event of confirmed contamination, issue an order to eliminate any risk of significant adverse impacts on human health.</p> <p>If this is not possible, the following measures may be requested:</p> <ul style="list-style-type: none"> — Remediation measures required to restore the damaged soil, air, water, species and natural habitats or impaired services to, or close to, their original state, or — Complementary remediation measures either on the site or at a different site, where it is impossible to restore the damaged site, or — Compensatory remediation measures to compensate for interim losses that make the provision of ecosystem services impossible. These measures can be undertaken either at the damaged site, or at another site, or — As a last resort, if these measures prove impossible, the polluter will be obliged to pay financial compensation for the damage to the environment. <p>Remediation measures can be implemented by the state in the event of a failure to do so on the part of the polluter, at the expense of the latter.</p>
<p>In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?</p>	<p>The Environmental Code does not make any specific provision for cases where liability is shared.</p>
<p>Which private law claims may be raised against the persons responsible for soil and groundwater contamination?</p>	<p>The polluter may be exposed to the following civil actions:</p> <ul style="list-style-type: none"> — Tort claims: any polluter whose activities cause damage to a third party is liable to face claims for compensation or a demand for rehabilitation. Actions arising from abnormal neighbourhood disturbances are also possible. — Contractual claims: contamination may contravene contractual obligations, e.g. the obligations of a lessee to its landlord.
<p>Are there any restrictions of the public law responsibility or the private law liability?</p>	<p>In the absence of implementing legislation on this issue at this time, there is currently no limitation on liability, except for where the damage arises due to an external cause or <i>force majeure</i>.</p>
<p>Is there a criminal liability for soil and groundwater contamination?</p>	<p>Soil or groundwater contamination may constitute an offence punishable under the Monegasque Criminal Code if committed intentionally or as a result of gross negligence.</p>
<p>Are soil and groundwater contamination registered in Monaco? If yes, please provide information on the register, the access to the register and the consequence of a registration.</p>	<p>There is no register of contaminated sites in Monaco. However, the Environmental Code has enshrined a principle according to which the Government publishes relevant information which is useful to the public on the state of and changes to the environment.</p>

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The Netherlands



The Netherlands By Luurt Wildeboer, Elvira Baars and Heidi Dekker, CMS Netherlands

Question	Answer
Which laws are applicable for soil and groundwater contamination in the Netherlands?	<p>The main regulations in The Netherlands on soil and groundwater contamination are the Soil Protection Act (Wbb), the Soil Quality Decree (Bbk), the Soil Quality Regulation (Rbk) and the Water Act (Ww).</p> <p>The Soil Remediation Circular 2013 serves as a supplement to the Wbb. It contains guidelines for the use of remediation criteria and the determination of remediation goals in the case of soil pollution.</p> <p>In addition to the obligations under the Wbb, the overarching environmental legislation is provided in the Environmental Management Act (Wm). The Activities Decree also contains obligations in relation to soil pollution.</p> <p>The National Soil Protection Guidelines for Business Activities (NRB) serves as a harmonised toolkit for assessing the necessity and reasonableness of soil protection measures and facilities. Despite lacking a legal status, the guidelines do have a powerful steering function, having been confirmed at the highest administrative level.</p>
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	<p>The Wbb came into force in 1987. The Bbk came into force in 2008. The Rbk is based on the Bbk and came into force in 2008. The Wm and the Ww came into force in 1993 and 2009. The Activities Decree dates from 2008. The NRB was published in 2012 and the Soil Remediation Circular in 2013.</p> <p>From the 1970s the Dutch government started to regulate soil and groundwater contamination. With the discovery of the first major polluted sites in the late 1970s, the Dutch government realised that it was time to develop a soil contamination policy. Considering the urgency of dealing with serious soil pollution, such as directly under domestic housing, the first Interim Soil Remediation Act passed in 1983.</p>
Who is responsible for soil and groundwater contamination?	<p>In general, the following parties can be held responsible for soil and groundwater contamination:</p> <ul style="list-style-type: none"> — The polluter: the "polluter pays" principle has already been embedded in Dutch soil legislation since 1987 when liability became the key term in recovering the cost of soil remediation; — The owner of the property: however, no decontamination works can be demanded from owners of land who demonstrate that they did not cause the soil pollution and could not have been aware of its existence at the time they acquired title to the contaminated land; — The previous owner: owners and lessees of commercial and industrial zones can be required to perform soil investigations and decontamination works after they have sold the relevant site. The responsibility for the performance of these measures is therefore shared between the original land owner and the subsequent buyer of the land, until the new owner of the land provides adequate financial guarantees for the performance of the decontamination works. — The person in actual control over the property.
Which measures may be required under public law in case of soil and groundwater contamination?	<p>The Dutch regulators have relatively large discretionary powers to demand decontamination or the adoption of protective measures through the use of administrative enforcement mechanisms. Under the Wbb, the following measures can be required with regard to soil and groundwater contamination due to soil contamination:</p> <ul style="list-style-type: none"> — Cleaning and recovery measures to eliminate or reduce the contamination; — Protection measures to prevent or minimise the spreading of contamination; — Securing and restrictive measures to avoid or minimise adverse effects of the contamination. <p>In the event of detecting a soil or groundwater contamination or impairment at the site, the responsible person is obliged to notify the competent authority under the Wbb. A notification is also required when conducting activities that may contaminate or impair the soil, or instructing others to perform such activities.</p>

<p>When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?</p>	<p>For historic contaminations, the Dutch competent authorities can demand the decontamination of pollutions only if they are severe and in case decontamination is urgent. Decontamination of severe soil pollution is only urgent (i) in case the current use of the contaminated soil poses a direct threat to humans, plants or animals and (ii) in case of a risk of spreading of the contamination.</p> <p>Cases of severe soil contamination on commercial/business and industrial sites are subject to additional soil protection regulations. The owners and ground lease holders of these sites are responsible for performing soil investigations and decontamination works if the competent authorities decide that urgent remediation is required.</p>
<p>What are the regulatory instruments of the competent authorities and when may they be applied?</p>	<p>The regulatory instruments of the competent authorities can be:</p> <ul style="list-style-type: none"> — A so-called ‘further investigation’ order or an order to take temporary security measures pending the investigation results; — If it is not clear which measures are fitting, the competent authority can give an order to perform remedial investigation; — A clean-up order; — Security measures and/or restrictions on use of the land; — An order to cease activities which have caused soil contamination. <p>As of 1 July 2012, the Wbb contains a new instrument for the overall decontamination of pollutions that are spread over several locations. Under the new arrangements, regulators can assume full responsibility for the adoption of measures to protect or decontaminate large-scale pollutions that do not originate from one single source. Individual owners of contaminated land can decide to pay a financial contribution to the regulators, upon which the private entity can no longer be subjected to any administrative measures that would require it to decontaminate the land.</p>
<p>In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?</p>	<p>The Dutch legislation can direct the responsibility for soil and groundwater contamination to one party (often, the polluter). However, the party which had to undertake measures to remediate the contamination, may request compensation from the other parties in separate civil proceedings. The share of costs to be borne by each party depends on the extent to which each party has contributed to the contamination.</p>
<p>Which private law claims may be raised against the persons responsible for soil and groundwater contamination?</p>	<p>The owner of the land, polluter or tenant may on the basis of general tort law be liable regarding the owners of neighbouring land for any damages caused by the spread of soil contaminations.</p>
<p>Are there any restrictions of the public law responsibility or the private law liability?</p>	<p>No. However, in order to stimulate the remediation of industrial sites and to make sure that all sites with serious risks are controlled prior to 2030, there are four different financial regulations under the Financial Provisions Soil Remediation Decree. Apart from stimulating the actual remediation, these also aim to prevent bankruptcy of otherwise financially sound companies due to the costs of soil remediation. Furthermore, it is possible to agree on environmental warranties and indemnities.</p>
<p>Is there a criminal liability for soil and groundwater contamination?</p>	<p>Serious violations of soil protection regulations are subject to punitive sanctions. The Economic Offences Act provides that certain violations of soil protection regulations are criminal offences.</p>
<p>Are soil and groundwater contamination registered in the Netherlands? If yes, please provide information on the register, the access to the register and the consequence of a registration.</p>	<p>Yes, the Dutch Land Registry contains information on any limitations on the use of land. The information contained in the land registry relates, for example, to any known soil contamination. To access this information, you will have to request an extract from the land register through the webshop or an online form (https://www.kadaster.com/).</p> <p>Also, a digital map is available online which shows the soil quality in The Netherlands (free of charge). The map is available via the following link: http://www.bodemloket.nl/kaart#144738,469769,145263,470231</p>

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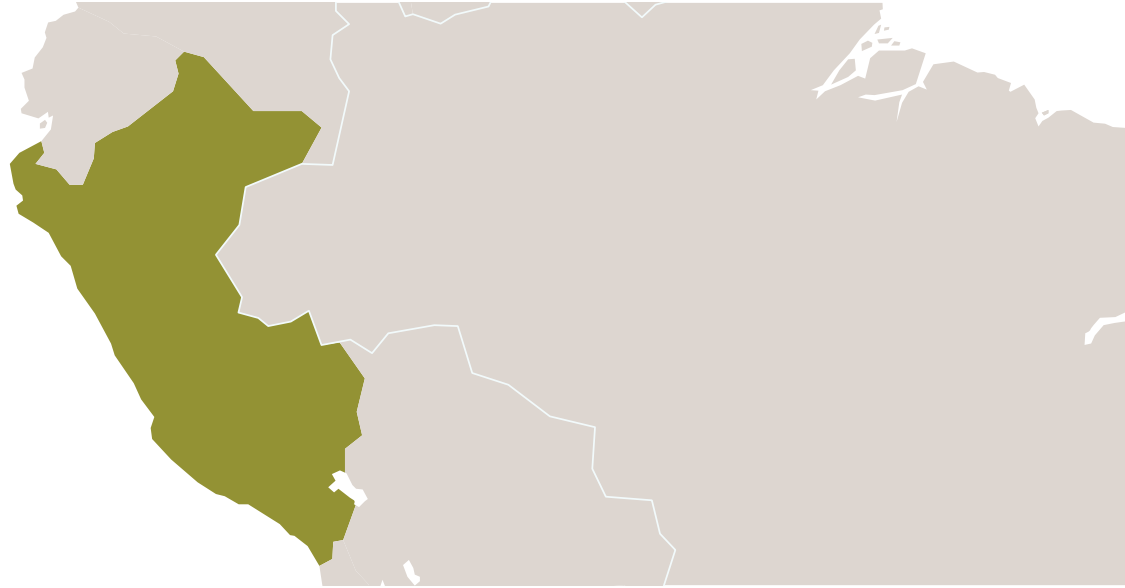


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Peru



Peru By Vito Verna, Paola Carbajal and Victor La Madrid, CMS Peru

Question	Answer
Which laws are applicable for soil and groundwater contamination in Perú?	<p>The main regulations on soil and groundwater contamination are:</p> <ul style="list-style-type: none"> — The Environment Quality Standards for Soil, approved by Supreme Decree N° 011-2017-MINAM. — The criteria for management of contaminated sites, approved by Supreme Decree N° 012-2017-MINAM. — Guide for Soil Sampling and Guide for the Plan Aimed at Remediation, approved by Ministerial Resolution N° 085-2014-MINAM. — Guide for Preparation of Health and Environmental Risk Assessments, approved by Ministerial Resolution N° 034-2015-MINAM. — The Water Resources Law, approved by Law N° 29338. — Regulations of the Water Resources Law, approved by Supreme Decree N° 001-2010-AG. <p>In addition, there are the following laws relevant for the hydrocarbon sector:</p> <ul style="list-style-type: none"> — Law that creates The Contingency Fund to Environmental Remediation, approved by Law N° 30321 — Regulation of Law N° 30321, that creates The Contingency Fund to Environmental Remediation, approved by Supreme Decree N° 039-2016-EM
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	<p>The Supreme Decree N° 011-2017-MINAM and the Supreme Decree N° 012-2017-MINAM come into force in December 2017.</p> <p>Before the entering into force of the above-mentioned laws, soil and groundwater contamination was regulated in 2013 and 2014 by the Environment Quality Standards for Soil, approved by Supreme Decree N° 002-2013-MINAM and the Complementary Provisions for the Application of the Environmental Quality Standards (EQS) for soil approved by Supreme Decree N° 002-2014-MINAM, but did not have the expected success.</p> <p>The Water Resources Law and the Regulation of the Water Resources Law came into force in 2009 and 2010, respectively.</p>
Who is responsible for soil and groundwater contamination?	Under Peruvian regulation, the polluter is the only party responsible for soil and groundwater contamination due to soil contamination.
Which measures may be required under public law in case of soil and groundwater contamination?	<p>The following measures can be required due to soil and groundwater contamination:</p> <ul style="list-style-type: none"> — Preparation of a plan aimed at remediation. — Clean-up, protection and securing or restrictive measures.
When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	Clean-up measures are required in case of any environmental emergencies that affect the soil and thus may lead to a public health incident.

What are the regulatory instruments of the competent authorities and when may they be applied?	In the case of an emergency, the environmental authority may request a company to evaluate the contaminated site and, if applicable, require the preparation of a plan aimed at remediation. Furthermore, if during the inspection the environmental authority finds sufficient indications of harmful soil changes, the authority may request the company by way of an administrative order to undertake investigative measures, and, if applicable, to prepare a plan aimed at remediation.
In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?	The party which had to undertake measures may request compensation from the other parties under civil law. The share of costs to be borne by each party depends on the extent to which each party has contributed to the contamination.
Which private law claims may be raised against the persons responsible for soil and groundwater contamination?	In case of contamination of soil and groundwater, third parties may claim damages suffered through extra contractual civil liability.
Are there any restrictions of the public law responsibility or the private law liability?	There is only a restriction for fines. The fines imposed by the environmental authority may not exceed ten percent of the gross annual income earned by the offender the year before the date on which he committed the infraction.
Is there a criminal liability for soil and groundwater contamination?	Soil contamination and water contamination can constitute criminal offences under the Peruvian Criminal Code when committed intentionally or with negligence.
Are soil and groundwater contamination registered in Peru? If yes, please provide information on the register, the access to the register and the consequence of a registration.	There is no register on contaminated sites. But, it is established by Supreme Decree N° 039-2016-EM that the Pastaza River Basin, the Tigre River Basin, the Corrientes River Basin and the Marañon River Basin are areas contaminated by hydrocarbon activity and must be remediated.

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Poland
 By Agnieszka Skorupińska and Karol Jaworecki, CMS Poland

Question	Answer
Which laws are applicable for soil and groundwater contamination in Poland?	The main regulations in Poland on soil and groundwater contamination are the Environmental Protection Law (EPL), the Act on environmental damage prevention and remediation (EDA), the Regulation on the manner of conducting the soil surface contamination assessment (Soil Surface Assessment Regulation), and the Regulation on the criteria and manner of assessment of the condition of the unified groundwater bodies (Groundwater Standards Regulation).
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	The EPL came into force in 2001, whereas the EDA came into force in 2007. However, the current contamination liability scheme was shaped anew in 2014 and subsequently new soil quality standards and new sampling requirements were added to the scheme in 2016.
Who is responsible for soil and groundwater contamination?	<p>The entity liable for the contamination depends on whether the contamination is of historic nature or whether it is a new contamination, i.e. environmental damage.</p> <p>Under the EPL, soil surface (including soil and groundwater) contamination that occurred before 30 April 2007 or results from activity which was terminated before this date is referred to as "historic soil surface contamination". Liability for historic soil surface contamination is, as a rule, based on the "holder of land liability" principle. This means that if there is any historic contamination, the "holder of land" – i.e. the owner of the land or another entity disclosed in the land and buildings register as the holder of land – is responsible for it. Thus, any new entity which becomes the holder of land and has its name entered into the relevant land and buildings register becomes liable to take care of the historic contamination regardless of who in fact caused the historic contamination.</p> <p>Soil surface contamination caused on or after 30 April 2007 is referred to as "new environmental damage" under the EDA and is based, as a rule, on the "polluter pays" principle. This means that the entity using the environment who caused the new environmental damage is liable for the remediation.</p>
Which measures may be required under public law in case of soil and groundwater contamination?	<p>Under the EPL, it is necessary to remediate historic soil surface contamination (including groundwater). However, as of 2014 Polish law also provides for other possibilities of dealing with contamination on the basis of risk assessment such as: (i) limited remediation (including self-attenuation), (ii) release from remediation obligation and (iii) postponing the remediation until the closure of the site.</p> <p>Under the EDA, the polluter is obliged to take preventive measures in case of anticipated environmental damage and clean-up measures once the new environmental damage occurs. As in the case of historic soil surface contamination, with respect to new environmental damage it is also possible to apply other solutions on the basis of risk assessment such as: (i) limited remediation (including self-attenuation), and (ii) release from remediation obligation and (iii) postponing the remediation until the closure of the site. Additionally, under the EDA it is possible to forego further remediation actions with respect to water where the performed measures turn out to be sufficient or the costs of further clean-up measures are disproportionate to the environmental benefits.</p>

When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	<p>Clean-up measures are required when the maximum allowable substances concentration in soil is breached. The currently binding soil quality standards (the thresholds) are set forth in the Soil Surface Assessment Regulation. The soil standards differ depending on the type of use of the property based on the local zoning plan or – in absence thereof – land register. The list of contaminants contained in the said regulation is not exhaustive. Thus, if a contaminant is not mentioned in the regulation but occurs in the soil, a special risk assessment must be performed.</p> <p>There are no legally binding quality standards as far as groundwater contamination is concerned. In practice, the substances present in groundwater are often compared with the standards set forth in the Groundwater Standards Regulation.</p>
What are the regulatory instruments of the competent authorities and when may they be applied?	<p>The authority may require the occupier to test a property which was used in the past for activity that may have resulted in historic soil surface contamination or a property where a direct threat of environmental damage or actual environmental damage is identified. Such an area may also be tested by the authority itself.</p> <p>When need for remediation is confirmed but due to various reasons it cannot be performed by the responsible person, remediation will be performed by the authority, while in some cases the costs of remediation will be claimed back from the responsible person.</p>
In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?	Polish contamination law does not provide for special compensation claims that may be raised by a responsible person who performed remediation against another party under the public law. However, the contamination law provides for joint responsibility of the holder of the land and other party that caused historic soil surface contamination. Additionally, the parties involved in the contamination case may raise compensation claims under the general rules of civil law.
Which private law claims may be raised against the persons responsible for soil and groundwater contamination?	<p>In the event of soil and groundwater contamination, the following private law claims might be raised by third parties, e.g. by neighbours:</p> <ul style="list-style-type: none"> — Tort-based claims for damages against operators of industrial plant set into motion by “powers of nature”. — Tort-based claims for restitution of condition of environment or ceasing operation in case of unlawful influence over natural environment. <p>Further obligations may apply under contractual regulations.</p>
Are there any restrictions of the public law responsibility or the private law liability?	There are no restrictions of the public law responsibility. Neither there are any specific restrictions of the private law liability. Only general restrictions such as prescription period apply.
Is there a criminal liability for soil and groundwater contamination?	Soil contamination and water contamination can constitute criminal offences under the Polish Criminal Code. The penalty depends on whether the act was committed intentionally or not.
Are soil and groundwater contamination registered in Poland? If yes, please provide information on the register, the access to the register and the consequence of a registration.	<p>Yes, currently there are two central contaminated sites registers: (i) historical contamination register and (ii) direct threat of environmental damage and environmental damage register. Both contain information on the properties where contamination has been discovered.</p> <p>For access to the register, an application to the competent local authority is required.</p>

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Portugal



Portugal By Mónica Carneiro Pacheco and Bernardo Cunha Ferreira, CMS Portugal

Question	Answer
Which laws are applicable for soil and groundwater contamination in Portugal?	<p>There is no specific law concerning soil and groundwater contamination in Portugal, although over the last few years, several political parties and entities have advocated its approval.</p> <p>The main regulation in Portugal on soil and groundwater contamination is Law no. 19/2014 of 14 April, as amended, which foresees the general framework for environmental policy and Decree-Law no. 147/2008, of 29 July, as amended, which foresees the environmental liability regime. Also Law no. 58/2005, of 29 December, as amended, which establishes the water law, and the Decree-Law no. 226-A/2007, of 31 May, as amended, which sets out the regime of use of water resources, are also relevant.</p>
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	<p>Law no. 19/2014 of 14 April came into force in 2014 and Decree-Law no. 147/2008 of 29 July in 2008. Concerning water regulations, Law no. 58/2005 of 29 December came into force in 2005 and Decree-Law no. 226-A/2007 of 31 May in 2007.</p> <p>Before such provisions were approved, the environmental regime was regulated by Law no. 11/87, of 7 April which established the Portuguese environmental legal framework.</p>
Who is responsible for soil and groundwater contamination?	<p>Under Decree-Law no. 147/2008, of 29 July, as amended, the operator of an economic activity which caused a soil and groundwater contamination is responsible for such contamination. If the operator is a company, such liability remains jointly and severally on its directors and managers.</p> <p>It is debatable under Portuguese environmental doctrine, if, as per the extent of the definition of responsibility set for in Decree-Law no. 147/2008, leisure or welfare activities which cause environmental damages may be covered by this legal framework.</p>
Which measures may be required under public law in case of soil and groundwater contamination?	<p>Under the Decree-Law no. 147/2008, of 29 July, as amended, the following measures can be required by the competent authorities to the operator with regard to soil and groundwater contamination:</p> <ul style="list-style-type: none"> — Prevention measures to avoid an imminent threat of environmental damage or further damage; — Remedial measures to eliminate or reduce the contamination, in order to limit or prevent further environmental damage, adverse effects on human health or new damages to services; — Investigation measures to assess the extent of the contamination, the resulting risks and the necessary measures. <p>The costs associated with the execution of the above measures shall be borne by the operator which is liable for the respective contamination.</p>
When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	<p>Clean-up/remedial measures might be executed in the case of environmental damage. Such clean-up measures might be executed by the operator without a prior notification (if duly urgent) or after a prior opinion/approval from the authorities. In case of groundwater contamination, the standards/thresholds foreseen within Decree-Law no. 208/2008 of 28 October shall be considered.</p>
What are the regulatory instruments of the competent authorities and when may they be applied?	<p>In case of imminent environmental damage or effective damage, the authorities may request the operator to provide information and to undertake preventive measures. Further, the authorities may undertake their own inspections/inquires and execute any required measures at the expense of the operator.</p>

In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?	All liable parties are jointly and severally responsible for the damage, regardless of the existence of fault and they may raise a compensation claim between them. If it is not possible to determine the extent/contribution of participation of each person responsible for the environmental damage, the liability shall be presumed as equal.
Which private law claims may be raised against the persons responsible for soil and groundwater contamination?	Affected persons may raise claims for the reparation of damages caused by the operator under the "polluter pays" principle. The compensation can be duly reduced or excluded in accordance with specific circumstances and provided the affected person or persons has contributed to the production or occurrence of such environmental damage.
Are there any restrictions of the public law responsibility or the private law liability?	The responsibility may be restricted contractually and with effects between the parties. Liable parties cannot restrict or limit their responsibility which results from public law. Under Decree-Law no. 147/2008, the limitation period for environmental damage or event is 30 years.
Is there a criminal liability for soil and groundwater contamination?	The Portuguese Criminal Code defines several acts which configure a crime related to environment, which criminalize damage to environment, pollution and the development of activities which prejudices the environment.
Are soil and groundwater contamination registered in Portugal? If yes, please provide information on the register, the access to the register and the consequence of a registration.	The Portuguese Environmental Agency (APA) provides general information available to the public about soil and groundwater contamination within the Portuguese territory.

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Romania
 By Varinia Radu, Ramona Dulamea, Daniela Popescu, CMS Romania

Question	Answer
Which laws are applicable for soil and groundwater contamination in Romania?	<p>The main regulation on soil and groundwater contamination is the Government Emergency Ordinance no. 195/2005 on the environment protection, as approved through Law no. 265/2006 (GEO).</p> <p>The environmental legislation also contains separate sectorial regulations, as follows:</p> <ul style="list-style-type: none"> — Government Decision no. 1408/2007 on the methods of investigation and evaluation of the soil and subsoil pollution — Government Decision no. 1403/2007 regarding the rehabilitation of the areas where the soil, subsoil and terrestrial ecosystems have been affected — Ministerial Order no. 756/1997 for the approval of the Regulation on Environmental Pollution Assessment. — The Water Law no.107/1996 (Water Law)
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	<p>The GEO and the Water Law are effective since 2005 and 1996 respectively. Previously, soil and groundwater contamination was regulated through laws on environmental protection (the first law on environmental protection was enacted in 1973 and repelled in 1995, whilst the first water law was enacted in 1974).</p>
Who is responsible for soil and groundwater contamination?	<p>Under Romanian law, the polluter is responsible for contamination. The polluter means any operator which is understood as a natural or legal person governed by public or private law, exercising or having control of a professional activity or, where provided by law, which has been invested with control over the technical functioning of such an activity, including the holder of a regulatory act for such an activity or the person who registers or notifies such an activity.</p> <p>This being said, the responsibility may be attributable to: (i) the actual polluter, whilst in case of multiple polluters, the liability is joint and several; (ii) the parent company or the consortium leader, should the polluter be part of a group of companies; (iii) the owner of the property; (iv) the person performing an economic activity on the property, or (v) be predetermined under privatisation contracts as regards historical contamination .</p> <p>As regarding known historical contaminated sites, remediation measures are undertaken either by the Government or/ and the private entities currently controlling such sites (e.g as provided under various privatisation contracts whereby the investor has undertaken various remediation measures against future reimbursement from the Government).</p>
Which measures may be required under public law in case of soil and groundwater contamination?	<p>Whether in the case of imminent or currently occurring environmental damage, within 2 hours of occurrence, the operator shall inform the competent environmental authority and shall immediately control, isolate, eliminate or otherwise manage the contaminating factors, in order to limit or prevent the spread of environmental damage and any adverse effects on human health.</p> <p>If the primary remedies do not lead to the restoration of the environment to its original state, additional complementary or compensatory remediation measures shall be pursued.</p>
When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	<p>Whenever the concentrations of one or more soil pollutants exceed the prescribed legal limits, clean-up measures are required.</p> <p>The secondary legislation contains threshold values regarding allowed concentration levels for several substances. The regulation distinguishes between <i>alert threshold</i>, which if exceeded, triggers in-depth examination of underground pollution, and <i>intervention threshold</i> which, if exceeded, triggers clean-up measures.</p>

<p>What are the regulatory instruments of the competent authorities and when may they be applied?</p>	<p>In the event that contamination of the soil or groundwater occurs, the competent environmental authority may:</p> <ul style="list-style-type: none"> — Require the operator to provide additional clarifications/ information about any damage occurred and the pursued remediation measures; — Require the operator to act, control, isolate, eliminate or to otherwise manage the pollutants and/or any other contaminating factors, in order to limit or prevent the spread of environmental damage and any adverse effects on human health. If the operator does not comply with the instructions issued by the authority, the authority can either carry out the necessary measures itself and demand the costs from the responsible party or sanction the latter (contravention fine); — Require the operator to take the necessary remedial measures, — Perform the necessary remedial measures, in case the operator: (i) cannot be identified or (ii) according to the applicable legislation, the operator is not liable for such measures.
<p>In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?</p>	<p>Based on the "polluter pays" principle, the GEO stipulates that any operator committing a pollution act, bears the damages and the correlative costs of remediation measures. However, in accordance with the GEO no. 68/2007, in case several operators have caused the environmental damage, such parties are jointly and severally liable for the costs of reparatory measures. Should, for any reason, only one operator exclusively pursue remediation measures, such operator shall be entitled to proportionally request reimbursement from the other joint and several liable operators.</p> <p>Regarding known historical contaminated sites, remediation measures are undertaken either by the government or/ and the private entities currently controlling such sites (e.g as provided under various privatisation contracts whereby the investor has undertaken various remediation measures against future reimbursement from the Government).</p>
<p>Which private law claims may be raised against the persons responsible for soil and groundwater contamination?</p>	<p>In the event of soil and groundwater contamination, the following private law claims might be raised by affected third parties, e.g. by neighbours:</p> <ul style="list-style-type: none"> — Claims for removal of contamination from their property or, if clean-up measures have been carried out on the polluter's behalf, claims for reimbursement of costs (according to the Civil Code); — Claims for damages in case of failure to comply with the legal obligations to prevent or combat pollution (according to GEO 68/2007), as for example a violation of the undertaking to carry out clean-up/remediation or controlling contingent measures; — Further obligations may apply under contractual regulations.
<p>Are there any restrictions of the public law responsibility or the private law liability?</p>	<p>The operator shall not be obliged to bear the cost of the reparatory measures, whenever the environmental damage:</p> <ul style="list-style-type: none"> — Is attributable to a third party, if the appropriate safety measures were already taken by the operator which may be entitled to compensations from the respective third party, or — Has occurred as a result of compliance with a mandatory provision or instruction issued by a public authority, other than those issued by the authority due to a pollution attributable to the respective operator. <p>There is no regulatory threshold of public law liability. The liability under private law claims may be restricted due to contributory negligence by the affected party or may be limited under various contractual provisions.</p>
<p>Is there a criminal liability for soil and groundwater contamination?</p>	<p>Soil contamination and water contamination may constitute criminal offences and hence may trigger criminal liability for individuals or entities. Criminal offences, whether committed intentionally or with negligence, are not only prescribed in the GEO, but also provided for in other special sectorial laws (e.g. the Water Law, the Criminal, etc.).</p>
<p>Are soil and groundwater contamination registered in Romania? If yes, please provide information on the register, the access to the register and the consequence of a registration.</p>	<p>The list of sites with potentially contaminated soil is published by the National Agency for Environmental Protection, however the list was last updated back in 2014. Under a new bill (undergoing the last stages of the legislative process) regulating the management of potentially contaminated and contaminated sites, the National Inventory of potentially contaminated sites list will be updated and published on the website of the National Agency for Environmental Protection.</p>

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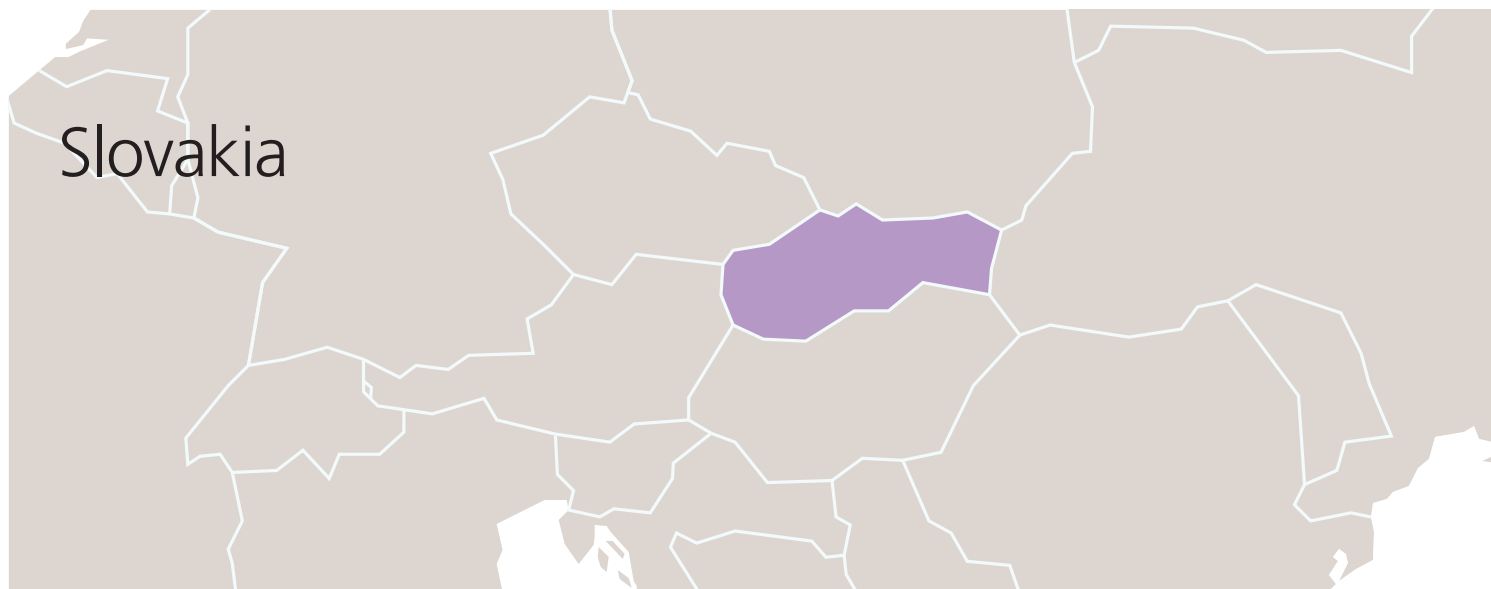


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Slovakia

Slovakia By Michal Huťan, CMS Slovakia	
Question	Answer
Which laws are applicable for soil and groundwater contamination in Slovakia?	The main regulation in Slovakia on soil and groundwater contamination is contained in the Act on the Prevention and Recovery of Environmental Damage (the “ Environmental Damage Act ”); Slovak Water Act (the “ Water Act ”); Act on Protection and Use of the Agricultural Land (the “ Agricultural Land Act ”); Act on Integrated Prevention and Control of the Environmental Pollution (the “ IPPC Act ”); and Slovak Geological Act.
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	<p>The abovementioned laws came into force on the following dates:</p> <ul style="list-style-type: none"> — Agricultural Land Act in 2004; — Water Act in 2004; — Environmental Damage Act in 2007; — Slovak Geological Act in 2008; and — IPPC Act in 2013. <p>All these acts with the exception of the Environmental Damage Act replaced the previous acts.</p>
Who is responsible for soil and groundwater contamination?	<p>Pursuant to the Environmental Damage Act the operator of the facility is responsible for environmental damage (the responsibility will be transferred to its legal successor).</p> <p>Pursuant to the Water Act the following parties are responsible for groundwater contamination:</p> <ul style="list-style-type: none"> — The polluter; — The acquirer of the property (existence or use of which has caused the damage/contamination); — In the case of extraordinary deterioration, the polluter is considered to be the person who operated the facility at the time when the extraordinary deterioration occurred. <p>Under the Agricultural Land Act anyone who damages agricultural land by his activities with hazardous substances is obliged to immediately take measures to eliminate the damage.</p> <p>Pursuant to the IPPC Act the following parties are responsible for soil and groundwater contamination connected with IPPC plant activity:</p> <ul style="list-style-type: none"> — The operator of the stationary technical unit in which one or more industrial activities are carried out as well as all other directly related activities (“unit”); — The legal successor of the operator of the unit or incineration plant, waste incineration plant or co-incineration plant; and — The owner of the unit.

<p>Which measures may be required under public law in case of soil and groundwater contamination?</p>	<p>Pursuant to the Environmental Damage Act the following measures are required with regard to environmental damage:</p> <ul style="list-style-type: none"> — Taking all practicable steps to immediately control, prevent the spreading of, remove or otherwise handle the relevant pollutants or other deleterious factors; — Immediately proposing corrective measures (restoration, compensation etc.). <p>Pursuant to the Water Act the following measures can be required with regard to groundwater contamination:</p> <ul style="list-style-type: none"> — Corrective measures or coverage of associated costs; — Immediate measures – urgent reporting to the relevant authorities, removing the causes, immediate implementation of measures to prevent further spread of pollution; — Measures to eliminate the detrimental consequences of extreme deterioration of water- e.g. restoration of the affected area, etc. <p>Pursuant to the Agricultural Land Act the following measures can be required with regard to contamination of agricultural land:</p> <ul style="list-style-type: none"> — Measures to eliminate the damage; — Penalty of up to EUR 995; however in the case of a polluter who is a legal person or natural person-entrepreneur, a penalty of between EUR 1,660 and EUR 166,000 per hectare of the agricultural land. <p>Pursuant to the IPPC Act the following measures can be required with regard to soil and groundwater contamination:</p> <ul style="list-style-type: none"> — Necessary measures to remove the pollution and return the site to its original state; — Measures to eliminate, control, isolate or reduce the amount of hazardous substances.
<p>When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?</p>	<p>In general, preventive or restorative clean up measures are required immediately from the polluter to control, limit or remove the contamination. The competent authority may then decide on imposing the obligations and clean-up measures.</p> <p>There are no general thresholds to determine the need for clean-up measures. However, the Agricultural Land Act provides a reference to the Decree of Ministry of Agriculture on the limit value of the hazardous substances for the declaration of contaminated agriculture soil.</p>
<p>What are the regulatory instruments of the competent authorities and when may they be applied?</p>	<p>The competent authorities are competent to adopt preventative, control and inspection measures under Slovak environmental law.</p> <p>Further, the competent authorities may issue an administrative order imposing on the polluter the obligation to, amongst others, undertake remedial (restoration) measures, protection measures, substitute performance of the environmental damage or to provide financial reimbursement. If the order is not followed, the authority can carry out the necessary measures itself and demand the costs from the responsible party.</p> <p>Lastly, the competent authority may impose a penalty in certain situations, predetermined by law.</p>
<p>In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?</p>	<p>According to the Environmental Damage Act if more than one polluter caused the environmental damage, they are responsible for such damage to the extent of their involvement. In the event that division of responsibility is not clear, the competent authority shall decide. Where the extent of their liability cannot be determined, unambiguously or without undue cost, the polluters shall be jointly and severally liable. There is no regulation concerning compensation claims which can be raised between the responsible parties under the public law, but liability may be sought under civil law.</p>
<p>Which private law claims may be raised against the persons responsible for soil and groundwater contamination?</p>	<p>In the event of soil and groundwater contamination, the following private law claims might be raised by third parties (whose property was contaminated/ or who were otherwise affected by the contamination): claim for restoration to its original condition and claim for financial compensation (e.g. damages, economic losses, etc.).</p> <p>More detailed obligations may apply under contractual regulations.</p>
<p>Are there any restrictions of the public law responsibility or the private law liability?</p>	<p>In general, under public law, environmental responsibility is not limited, with the exception of liberation reasons such as where environmental damage is caused as a result of the fulfilment of an administrative decision.</p> <p>Liability under private law claims may be restricted by contributory negligence by the affected party.</p>
<p>Is there a criminal liability for soil and groundwater contamination?</p>	<p>Soil contamination and water contamination can constitute criminal offences under the Slovak Criminal Code.</p>
<p>Are soil and groundwater contamination registered in Slovakia? If yes, please provide information on the register, the access to the register and the consequence of a registration.</p>	<p>The Ministry of Environment holds an information system on environmental damage and imminent threats which provides information on the type of damage, polluter, implemented correction measures and costs incurred for the prevention/correction.</p> <p>In addition, there is a register of environmental burden administered by the Ministry of Environment via the Slovak Environment Agency, where most of the information is also accessible by third parties. This register collects information on environmental burdens (originated in the past, e.g. communist era) that pose a serious risk to human health or groundwater and soil.</p>

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Spain



Spain By Javier Torre de Silva, CMS Spain	
Question	Answer
Which laws are applicable for soil and groundwater contamination in Spain?	<p>The main regulations in Spain on soil and groundwater contamination are the Act 22/2011, of 28 July, on Waste and Contaminated Soils (Act 22/2011), the Royal Decree 9/2005, of 14 January, establishing the list of potentially polluting activities for soil and the criteria and standards for the declaration of contaminated soils (RD 9/2005), the Royal Legislative Decree 1/2001, of 20 July, approving the consolidated text of the Water Act (RD 1/2001), the Act 26/2007, of 23 October, on Environmental Responsibility (Act 26/2007), which was adopted to implement the European Environmental Liability Directive, and the Royal Legislative Decree 1/2016, of 6 December, approving the consolidated text of Integrated Prevention and Control of Pollution (RD 1/2016).</p> <p>The Spanish Autonomous Communities have implemented legal provisions, regulations and instructions applicable at autonomous community level.</p>
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	<p>The Act 22/2011 and the RD 9/2005 came into force in 2011 and 2005, respectively, the Act 26/2007 in 2007, and the RD 1/2016 in 2017.</p> <p>Before the entering into force of the abovementioned laws, soil and groundwater contamination was regulated by several laws, some of which have been consolidated into a single act.</p>
Who is responsible for soil and groundwater contamination?	<p>Firstly, the perpetrator of the damage is responsible. In the event of several perpetrators the responsibility is solidary. Subsequently, this obligation will fall, in this order, to the owner and to the holder.</p>
Which measures may be required under public law in case of soil and groundwater contamination?	<p>The measures that can be required with regard to soil and groundwater contamination are clean-up and recovery measures to eliminate or reduce contamination, protection measures to prevent or minimise the spreading of contamination, and securing and restrictive measures to avoid or minimise any adverse effects of contamination.</p>
When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	<p>The Act 22/2011 entrusts Autonomous Communities with discretion in determining the appropriate clean-up measures. The RD 9/2005 establishes criteria and standards for the declaration of contaminated soils but it does not set forth thresholds to determine the need for clean-up measures.</p>
What are the regulatory instruments of the competent authorities and when may they be applied?	<p>Autonomous Communities will be competent to adopt precautionary, control and inspection measures under RD 1/2016.</p> <p>During a sanctions procedure, the competent authorities may agree to impose, among others, some or all of the following provisional measures:</p> <ul style="list-style-type: none"> — Correction, security or control measures that prevent the continued propagation of risk or damage. — Sealing of devices or equipment. — Temporary closure, partial or total, of the facilities. — Closure of the facilities. — Temporary suspension of authorisation for the exercise of the activity.

In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?	Spanish legislation provides that responsibility is solidary when there are several perpetrators of soil and groundwater contamination. However, the party which had to undertake measures may request compensation under a separate civil proceeding from the other parties responsible, in proportion to which each party has contributed to the contamination.
Which private law claims may be raised against the persons responsible for soil and groundwater contamination?	In the event of soil and groundwater contamination, the following private law claims might be raised by third parties: injury to people, damage to private property, and economic losses or any other patrimonial damage that is not environmental damage but is a consequence of the same events that give rise to environmental responsibility.
Are there any restrictions of the public law responsibility or the private law liability?	Environmental responsibility is an unlimited liability. The obligation of repair and prevention assumed by the responsible operator consists in returning the damaged natural resources to their original condition, paying the total of the costs of such preventive or reparatory actions.
Is there a criminal liability for soil and groundwater contamination?	Soil contamination and water contamination can constitute criminal offences under the Spanish Criminal Code when committed directly or indirectly.
Are soil and groundwater contamination registered in Spain? If yes, please provide information on the register, the access to the register and the consequence of a registration.	<p>Yes, according to Act 22/2011, Autonomous Communities are bound to create an inventory of the existing contaminated soils in their territory. Based on this information, the Minister of Agriculture, Food and Environment, will create the State Inventory of contaminated soils. Currently this Inventory is pending, as only some Autonomous Communities have created their own inventory.</p> <p>Besides that, the declaration of soil as contaminated will be subject to marginal registration in the Property Registry on the initiative of the respective Autonomous Community. This marginal note will be cancelled when the Autonomous Community declares that the land has ceased to be contaminated.</p>

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Switzerland

Switzerland By Sibylle Schnyder, CMS Switzerland	
Question	Answer
Which laws are applicable for soil and groundwater contamination in Switzerland?	<p>Legal fragmentation is a characteristic of the Swiss regulations on environmental protection. The main regulations in Switzerland on soil and groundwater contamination are:</p> <ul style="list-style-type: none"> — Federal Act on the Protection of the Environment (USG) — Ordinance on the Remediation of Polluted Sites (AltIV) — Ordinance on the Pollution of Soil (VBBo) — Federal Act on the Protection of Waters (GSchG) — Ordinance on the Protection of Waters (GSchV) — Ordinance on the Register relating to Pollutant Release and the Transfer of Waste and of Pollutants in Waste Water (PRTR-V)
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	<p>In 1888, the Federal Act on Fishery was the first legal basis against water pollution in Switzerland according to which the introduction of factory waste or other harmful substances were banned in so far as they damaged fish and crayfish stocks. In 1953, a water protection article was incorporated in the Swiss Federal Constitution, whereupon four years later the first – for the time being ineffective – GSchG was adopted. In 1971 the Swiss population approved a new article in the Swiss Federal Constitution which obliged the Federation to take measures against harmful effects or nuisances and legislate in areas concerning environmental issues.</p> <p>The USG entered into force in 1983, the VBBo and the AltIV in 1998. The new version of the GSchG became effective in 1991 and the GSchV in 1998.</p>
Who is responsible for soil and groundwater contamination?	<p>One of the principles governing Swiss environmental law is the "polluter pays" principle. With respect to the remediation of a polluted site, one has to distinguish between the obligation to effect remediation measures and the allocation of costs.</p> <p>The duty to effect remediation measures is incumbent on the respective owner of the site. The costs are, however, allocated to the various polluters, whereby the definition of polluter includes the persons whose conduct caused the pollution and the persons owning or possessing the property. The latter includes also for example tenants. As a basic principle, the persons whose conduct caused the pollution has to bear a bigger cost share (in practice 60-90%) than the persons who are merely owner or possessors (in practice 10-30%). If one of the polluters is no longer existing or bankrupt, its share of costs will be borne by the community. Please note that the above only applies to contaminations which lead to harmful effects or nuisances and therefore have to be remedied irrespective of a change of use of the property. The elimination of other contaminations (e.g. contaminated excavation material in connection with a construction project) is – from a public law perspective – at the cost and responsibility of the respective land owner.</p>
Which measures may be required under public law in case of soil and groundwater contamination?	<p>The primary goal of remediation is to stop the contaminant source; however this does not mean that the contaminations must be completely eliminated because it is not the contamination of the soil that is decisive but its effects on the protected goods.</p>

<p>When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?</p>	<p>Polluted sites must be remediated if such sites lead to harmful effects or nuisances, or if there is a concrete risk that such effects may arise. With regard to soil contamination a polluted site is in need of remediation if a substance in it exceeds a certain concentration value according to the AltIV. If a polluted site is in need of remediation the authority requires that a detailed investigation be conducted and the site must be monitored until the completion of the remediation.</p> <p>With regard to remediation of water pollution, certain thresholds of concentration values must be reached according to the AltIV. Additionally, if there is a concrete risk of groundwater contamination due to insufficient retention or degradation of substances coming from the contaminated site, the site must be remediated if it is already subject to monitoring.</p>
<p>What are the regulatory instruments of the competent authorities and when may they be applied?</p>	<p>The authorities can ask a polluter to provide security for its presumable share of costs for investigation, monitoring and remediation measures.</p> <p>The sale or splitting of land which is considered a polluted site requires the prior approval of the competent authorities. The authorities can – in particular if the pollution leads to harmful effects or nuisances – make the approval dependent on adequate cost security to be provided by the seller.</p>
<p>In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?</p>	<p>The costs for remediation measures requested by the authorities are – based upon public law – split between the various polluters (persons who actually caused the pollution as well as owner, tenant or other possessor). The basic principle is described in answer no 3 above.</p> <p>Each of the polluters can ask the authorities to issue an order regarding the cost split. In addition, the parties are free to agree among themselves – under a private law contract – a different cost split than the cost split under public law. Such private law agreements are, however, only binding between the parties and have no effect on the relationship with the community.</p>
<p>Which private law claims may be raised against the persons responsible for soil and groundwater contamination?</p>	<p>In the event of soil and groundwater contamination, the following private law might be raised by third parties, e.g. by neighbours:</p> <ul style="list-style-type: none"> — Claims for removal of contamination from their property or if clean-up measures have been carried out claims for reimbursement of costs; — Claims for damages in case of intended or negligent violation of life, body, health or property. <p>Further obligations may apply under contractual regulations.</p>
<p>Are there any restrictions of the public law responsibility or the private law liability?</p>	<p>Any person who is responsible simply as the owner of a contaminated site which leads to harmful effects or nuisances does not bear any costs of examination, monitoring or remediation measures if, by exercising the required care, the person could not have had any knowledge of the contamination. In such case, the community bears its share of costs. Liability under private law claims may be restricted due to contributory negligence by the affected party.</p> <p>The USG does not contain any provision with regards to limitation periods with respect to costs related to investigations and decontaminations of polluted sites. The Swiss Supreme Court held that a statute of limitations (time bar) of 5 years shall apply to costs related to investigations and decontaminations. However, the statute of limitations does not start to run as long as the infringement of the USG is still ongoing and a request for removal is still pending.</p>
<p>Is there a criminal liability for soil and groundwater contamination?</p>	<p>According to the USG and the GschG, soil and groundwater contamination can constitute criminal offences when committed intentionally or with negligence. Under the Swiss Criminal Code any person who wilfully or negligently contaminates drinking water can be held liable for a criminal offence.</p>
<p>Are soil and groundwater contamination registered in Switzerland? If yes, please provide information on the register, the access to the register and the consequence of a registration.</p>	<p>Yes, there are contaminated sites registers of the Cantons with information on contaminated sites and suspected contaminated sites. Suspected contaminated sites are – in particular – former production sites where environmentally hazardous substances were handled, former landfills or waste treatment plants and accident sites.</p> <p>The cantonal registers are publicly accessible online, c.f. (https://www.bafu.admin.ch/bafu/de/home/themen/altlasten/fachinformationen/altlastenbearbeitung/stand-der-altlastenbearbeitung-in-der-schweiz/online-kataster-von-kantonen-und-bundesstellen.html).</p> <p>The register provides information on whether a site is contaminated, but has no harmful or adverse effects on the environment, whether from a contaminated site harmful effects are to be expected and it must therefore be examined, or if a contaminated site must be monitored or remediated because of expected or already occurred harmful effects.</p>

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Turkey By Döne Yalçın and Sinan Abra, CMS Turkey	
Question	Answer
Which laws are applicable for soil and groundwater contamination in Turkey?	<p>The main legislation in Turkey on soil and groundwater contamination are as follows:</p> <ul style="list-style-type: none"> — The Environmental Law (Environmental Law); — The Regulation on Control of Soil Contamination and Fields subject to Point Source Contamination (Soil Contamination Regulation); — The Regulation on the Protection against Contamination and Harming of Groundwater; — The Water Pollution Control Regulation; and — The Regulation Regarding Water Pollution Caused by Dangerous Substances.
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	<p>The Environmental Law came into force 1983, the Soil Contamination Regulation in 2010, the Regulation on the Protection against Contamination and Harming of Groundwater in 2012, the Water Pollution Control Regulation in 2004 and the Regulation Regarding Water Pollution Caused by Dangerous Substances in 2005.</p> <p>Prior to the enactment of the abovementioned legislation, soil and groundwater contamination issues were regulated under the Regulation on Control of Soil Contamination and the Water Pollution Control Regulation of 10 December 2001 and 4 September 1988, respectively.</p>
Who is responsible for soil and groundwater contamination?	<p>According to the Environmental Law, the polluter is – irrespective of any negligence – responsible for soil and groundwater contamination.</p>
Which measures may be required under public law in case of soil and groundwater contamination?	<p>Pursuant to Turkish law, all persons and entities are obligated, among others, to take measures to:</p> <ul style="list-style-type: none"> — Prevent a soil contamination (where a risk of contamination is in question); — Stop the contamination and eliminate or decrease the effects of such contamination – where such contamination has already occurred. <p>Certain specific obligations are also applicable with respect to the prevention of a groundwater contamination. In this respect, all related entities are obligated, among others, to:</p> <ul style="list-style-type: none"> — Prevent groundwater contamination by waste materials; — Preserve clean groundwater; — Perform measurements on the groundwater to determine, among others, the extent of a possible contamination; and — Regulate standards for cleaning contaminated groundwater.
When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	<p>Pursuant to the Soil Contamination Regulation, a clean-up measure will be required, in principle, when the property in question is deemed a suspected field. The procedure for the qualification of such property as a suspected field is regulated in detail under the Soil Contamination Regulation. When a property is deemed a suspected field, sampling and analysis studies shall be carried out by the relevant public authorities and measurements taken to determine the extent of the contamination therein. The measurements performed on the said samples will constitute the measured value and this value will be compared with the specific reference values under the Soil Contamination Regulation. Accordingly, the deviation of the measured value from the reference value (calculated by way of the division of the measured value by the reference value) will determine if there is a contamination on the site and if clean-up measures on the property are required.</p>

<p>What are the regulatory instruments of the competent authorities and when may they be applied?</p>	<p>Turkish authorities are entitled to conduct environmental inspections at contaminated sites to determine among others, the extent of the contamination and perform any tests and analysis related thereto.</p> <p>As a result of such inspection, the public authorities may request the contaminating entity to initiate clean-up procedures or take other relevant measures to eliminate or decrease the effects of the soil and groundwater contamination present.</p> <p>Alternatively, the public authority may directly take measures to limit or eliminate the effects of an existing contamination and claim the expenses made for such measures from the contaminator. In addition, the said authorities may also issue monetary penalties to the contaminating entity due to having caused such contamination.</p>
<p>In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?</p>	<p>In principle, the parties that have caused the contamination of soil and groundwater should have joint liability towards claims raised due to such contamination. As such, if a single party among a group of contaminators becomes obligated to pay a certain compensation to a third party or take certain measures to remedy such contamination, then that party should be able to seek recourse from the remaining contaminators for their share of involvement in the said contamination.</p>
<p>Which private law claims may be raised against the persons responsible for soil and groundwater contamination?</p>	<p>In general, the Environmental Law brings forth a strict liability principle for entities/persons involved in the contamination of soil and groundwater. As such, a compensation claim with respect to the damages arising from the said contamination may be raised based on the terms of the Environmental Law. It may also be possible for a party to claim expenses incurred by them to clean a contaminated area.</p> <p>In addition, the Turkish Code of Obligations also allows a party to claim damages arising from the failure of due operation of certain workplaces (e.g. power plants) which pose significant dangers in their operation. Such claims would also be based on a strict liability principle.</p> <p>In the event that a specific soil or groundwater contamination has occurred but the extent of such contamination is below certain thresholds or limits outlined under the relevant legislation, then the claims arising from such contamination should not fall under the abovementioned legislation. In such a case, the following private law claims might be raised, based on the general provisions of law and fault liability:</p> <ul style="list-style-type: none"> — Claims for physical damages suffered due to the contamination of soil and groundwater; — Claims for the expenses assumed by the party that undertook clean-up measures for the contaminated soil and groundwater or other measures to limit the effects of the said contamination (where applicable); — Claims for further compensation for bodily losses, non-pecuniary losses or losses to other rights.
<p>Are there any restrictions of the public law responsibility or the private law liability?</p>	<p>The Environmental Law does foresee certain upper limits for monetary fines applicable in the case of environmental contamination. The highest monetary fine applicable under the Environmental Law, in this respect, is TL 2,431,628 (approx. EUR 348,000).</p> <p>On the other hand, the Environmental Law also indicates that the relevant public authorities are entitled to take measures to stop a contamination or decrease its effects and claim the re-payment of these amounts from the contaminators. In this respect, a specific ceiling for the expenses to be incurred by the public authorities for this purpose is not available under the relevant legislation. As such, it is not possible to set an upper limit to public liability exposure of a contaminator.</p> <p>With respect to the private law liability, Turkish law, in general, dictates that compensation for damages suffered should not result in the enrichment of the suffering party. Compensation should be limited to the amounts of the actual damages suffered by that party.</p>
<p>Is there a criminal liability for soil and groundwater contamination?</p>	<p>Soil contamination and water contamination can constitute criminal offences under the Turkish Criminal Code when committed intentionally or with negligence.</p>
<p>Are soil and groundwater contamination registered in Turkey? If yes, please provide information on the register, the access to the register and the consequence of a registration.</p>	<p>No, there are no registries in Turkey specifically held for areas with soil and groundwater contamination. However, pursuant to the Soil Contamination Regulation, certain entities are obligated to submit an Information Form with respect to their operations. This form shall be submitted through an online portal, namely the Contaminated Fields Information System and as a result of such submission, the public authorities shall determine whether a field (where a certain entity is operating) is a contaminated field. As such, while there is not a specific registry with respect to contaminated fields, certain information with respect to contaminated fields is available under the said Contaminated Fields Information System.</p>

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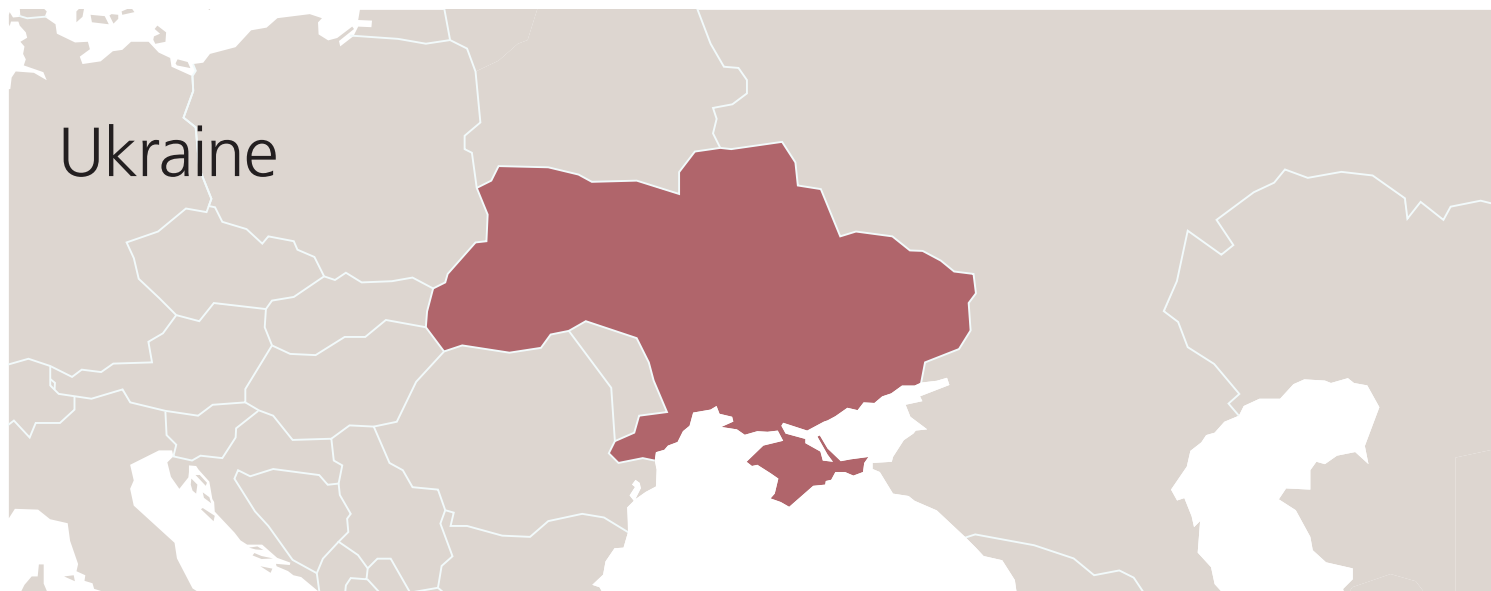


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Ukraine By Volodymyr Kolvakh and Anatolii Doludenko, CMS Ukraine	
Question	Answer
Which laws are applicable for soil and groundwater contamination in Ukraine?	<p>Matters related to the protection of the environment (including soil and groundwater contamination) are in general regulated by the Law of Ukraine No. 1264-XII On the Protection of the Environment (Environment Protection Law).</p> <p>More specific regulation for soil and groundwater use, including pollution preventive measures, is envisaged in the Land Code of Ukraine No. 2768-III dated (Land Code) and the Water Code of Ukraine No. 213/95-BP (Water Code).</p> <p>Separate matters may be regulated by other laws, for instance criminal or administrative liability imposed under the Criminal Code of Ukraine (Criminal Code) and the Code of Administrative Offences respectively.</p>
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	<p>The Environment Protection Law entered into force in 1991, the Water Code in 1995 and the Land Code in 2001.</p> <p>Before the entering into force of the abovementioned laws, soil and groundwater contamination was regulated by various legal acts adopted in USSR on local or union-wide levels.</p>
Who is responsible for soil and groundwater contamination?	<p>According to the Environment Protection Law, the Land Code and the Water Code, the polluter (legal entity or individual) is responsible for soil and groundwater contamination.</p> <p>The following entities would usually be considered as polluters, unless it is proven otherwise:</p> <ul style="list-style-type: none"> — The land owner or the user; — The owner or the operator of the facilities that caused contamination; — The performer of hazardous and other activities that may cause contamination; — The subsoil user; — The former owner of the property if it was abandoned.
Which measures may be required under public law in case of soil and groundwater contamination?	<p>Under the Environment Protection Law, the Land Code and the Water Code the following measures are required in the case of soil and groundwater contamination:</p> <ul style="list-style-type: none"> — Immediate elimination of the consequences of contamination; and — Notification of the state and local authorities about the contamination. <p>In addition, the Land Code establishes that land plots where soils are contaminated by chemical substances in a way that their usage becomes hazardous for the environment and economically not feasible, are subject to conservation. Activities on conserved land plots must be restricted and land plots must be either forested or alkalisied.</p> <p>In turn, the Water Code provides that groundwater decontamination activities shall be carried out at the expense of the polluter taking into account the recommendations of central governmental authorities.</p> <p>The Land Code and the Water Code also require the polluter to compensate damages caused to the state by soil and groundwater contamination. Damages are calculated according to methodologies established by the respective regulating state authorities. Compensation of damages does not relieve the polluter from other liabilities (administrative / criminal), its clean-up responsibilities or payment of mandatory state fees and duties.</p>
When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	<p>Clean-up measures are required in the event of soil and groundwater contamination that exceeds threshold values established by Ukrainian authorities, or which are harmful for human health or the environment. Assessment has to be made on a case-by-case basis.</p>

<p>What are the regulatory instruments of the competent authorities and when may they be applied?</p>	<p>The authorities perform scheduled and unscheduled inspections of entities whose activity poses risks to the environment.</p> <p>The authorities have the right to request Ukrainian courts to restrict or suspend the business activities of an entity in the case of its non-compliance with environment protection legislation or exceeding threshold values for soil and groundwater contamination. The court may also terminate a polluter's title to land which was contaminated due to the polluter's breach of environmental regulations.</p> <p>In addition, the authorities can impose an administrative penalty or provide documentary evidence on environmental violations to law enforcement authorities for criminal prosecution of the polluters.</p> <p>Authorities can also perform clean up measures by themselves, but mostly in the case of emergencies.</p>
<p>In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?</p>	<p>Under the general principle of Ukrainian civil law, if more than one party is responsible for damages, a claim may be raised to either of them. Upon an application by the affected party, the court may determine the scope of liability of each responsible party proportional to their fault.</p> <p>A party which compensated damages caused jointly by itself and other parties has the right of recourse to the other party(-ies).</p>
<p>Which private law claims may be raised against the persons responsible for soil and groundwater contamination?</p>	<p>Under the law, third parties whose rights are infringed by groundwater and soil contamination, may claim from polluters: (i) removal of contamination from their property (specific performance) and/or (ii) reimbursement of damages caused by such contamination in the full amount (including the cost of clean-up measures). However, from the practical standpoint option (ii) is more viable, as enforcement of specific performance may be far more complicated in Ukraine.</p> <p>Apart from tort claims, liability for contamination may also arise from contracts.</p>
<p>Are there any restrictions of the public law responsibility or the private law liability?</p>	<p>Responsibility of the polluter under the public law is limited to the maximum amount of fines and methodologies for calculation of environmental damages (including for soil and groundwater contamination).</p> <p>Claims for suspension of business activity, which is a cause for soil or groundwater contamination, are generally brought with Ukrainian courts by environmental authorities, which are specifically authorised to initiate such proceedings under the law. Court practice shows that such claims have little chance of success if initiated directly by third parties.</p> <p>Tort liability is not limited by law and the default rule is that damages must be compensated in full. However, when awarding damages the court may take into account the market value of the property or other factors.</p> <p>Apart from tort claims, liability for contamination may also arise from contracts.</p>
<p>Is there a criminal liability for soil and groundwater contamination?</p>	<p>Contamination of soil or groundwater (whether intentionally or by negligence) can constitute a criminal offence under the Criminal Code, if contamination creates a threat to life, health or environment as a result of unlawful use of substances, waste or other materials that can pose such a threat.</p> <p>Failure to take measures to minimise the consequences of soil or groundwater contamination can also be considered as a criminal offence, if it resulted in death or other severe consequences.</p>
<p>Are soil and groundwater contamination registered in Ukraine? If yes, please provide information on the register, the access to the register and the consequence of a registration.</p>	<p>Although there are no public registries for soil and groundwater contamination, state authorities must record every instance of contamination of which they become aware. State authorities have an obligation to inform the population regarding the state of the environment or environmental emergencies, and must disclose such information to anyone.</p>

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United Kingdom*

By Paul Sheridan, Olivia Jamison, Valentina Keys and Laura Swithinbank, CMS UK

Question	Answer
Which laws are applicable for soil and groundwater contamination in the UK?	<p>* <i>The laws outlined in this section are similar in principle across the several jurisdictions of the UK. For convenience we have set out the position in England and Wales. In some cases, there are different referable laws in Scotland and Northern Ireland; however, the principles are much the same.</i></p> <p>European Directive 2000/60/EC establishing a framework for Community action in the field of water policy (Water Framework Directive) is implemented in England and Wales by the Water Framework Directive (England and Wales) Regulations 2017 (SI 2017/407) (WFD Regulations 2017) and establishes a legal framework for the protection of groundwater. The provisions of European Directive 2006/118/EC on the protection of groundwater against pollution and deterioration (Groundwater Directive) introducing specific environmental quality standards for groundwater is implemented through the Water Framework Directive regime. The provisions of the Groundwater Directive preventing inputs of hazardous substances and non-hazardous pollutants into groundwater is implemented in England and Wales through the Environmental Permitting (England and Wales) Regulations 2016 (SI 2016/1154) (EP Regulations 2016).</p> <p>The contaminated land regime, which imposes strict and retrospective liability for land contamination, is set out in Part 2A of the Environmental Protection Act 1990 (EPA) and must be read in conjunction with the following legally binding statutory guidance:</p> <ul style="list-style-type: none"> — Defra: Contaminated Land Statutory Guidance (April 2012), for England. — BEIS: Radioactive contaminated land: statutory guidance (June 2018), for England. — WG: Contaminated Land Statutory Guidance (April 2012), for Wales. — WG: Radioactive Contaminated Land Statutory Guidance for Wales 2012 (2013 No.6) for Wales (due to be updated). <p>The Environmental Damage (Prevention and Remediation) (England) Regulations 2015 (SI 2015/810) (as amended) and the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 (SI 2009/995) implement European Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage (EDR) in England and Wales (respectively) and requires polluters to deal with environmental damage or risk of environmental damage to soil and/or groundwater caused on or after 1 March 2009. The EDR do not apply to historic contamination.</p>
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	<p>The Water Framework Directive was transposed in England and Wales by the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (SI 2003/3242) on 2 January 2014. The 2003 Regulations were revoked and replaced by the WFD Regulations 2017, which came into force on 10 April 2017.</p> <p>The EP Regulations 2016 came into force on 1 January 2017 and consolidate and replace the EP Regulations 2010 (SI 2010/1154), which had been amended a number of times.</p> <p>Part 2A of the EPA (the contaminated land regime) was inserted by s.57 of the Environment Act 1995 and came into force on 1 April 2000.</p> <p>From 19 July 2015, the Environmental Damage (Prevention and Remediation) (England) Regulations 2015, revoke, replace and consolidate the Environmental Damage (Prevention and Remediation) Regulations 2009 (SI 2009/153). In Wales, the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 came into force on 6 May 2009.</p>
Who is responsible for soil and groundwater contamination?	<p>“Polluter pays” principle generally applies unless the original polluter cannot be found in which case innocent purchasers and even lenders may be left to bear the liability burden (see below).</p> <p>Under the EP Regulations 2016, an operator of a regulated facility is responsible for causing or knowingly permitting a water discharge activity or groundwater activity without a permit. Permit operators can also be liable for migration of contamination if a permit condition prohibits discharges to land or water or emission levels are breached.</p> <p>Under Part 2A of the EPA (the contaminated land regime), the following “appropriate persons” are responsible for clean-up of heavily contaminated soil and groundwater which poses or is likely to pose significant harm to human health and/or the environment:</p> <ul style="list-style-type: none"> — Those who caused or knowingly permitted the contaminating substances to be present in, on or under the land (“Class A persons”). — If no Class A person can be found, liability passes to the current owner or occupier of the site (regardless of knowledge of contamination) (“Class B persons”) unless such liability was excluded contractually when acquiring the contaminated site. <p>The EDR apply to environmental damage / imminent threat of environmental damage resulting from permitted as well as non-permitted occupational activities, where it is possible to establish a causal link between the damage and the activities. Operators are responsible for both on and off site damage to soil and groundwater.</p>
Which measures may be required under public law in case of soil and groundwater contamination?	<p>In terms of historic (pre 1 March 2009) contamination, remediation of the soil or groundwater contamination by the appropriate persons is required under the contaminated land regime, where it appears to the local authority which has inspected and designated land as “contaminated land”, that (i) significant harm to the environment or human health is or is likely to be caused; or (ii) significant pollution of controlled waters is or is likely to be caused. A remediation notice is then served by the local authority on the appropriate person.</p> <p>Where contamination results from environmental damage that occurred on or after 1 March 2009, then the EDR require the operator to inform the competent authority of the environmental damage or of the threat of imminent environmental damage, and to take all practicable steps to immediately control, contain, remove or otherwise manage the relevant contaminants to prevent further environmental damage and adverse effects on human health.</p>

<p>When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?</p>	<p>Under the contaminated land regime, liability is triggered when the local authority deems land to be significantly contaminated such that it poses a serious risk of harm to environment and/or human health. A risk-based and reasonable approach is taken in respect of remediation, and clean-up requirements are set out in the remediation notice, considering (i) the practicability, effectiveness and durability of remediation; (ii) the health and environmental impacts of the remedial actions; (iii) the financial cost; and (iv) the benefits of remediation compared to the seriousness of the harm or water pollution. Remediation is not limited to clean-up and can include measures to investigate, monitor, prevent and mitigate contamination.</p> <p>Under the EDR, operators are required to identify potential remedial measures and submit them to the competent authority for its approval. The competent authority decides which remedial measures to implement. Remediation must remove any significant risk to human health and the objective is to achieve the same level of natural resources or services as would have existed had the damage not occurred. Complementary remediation may also be required where primary remediation does not result in fully restoring the damaged natural resources or impaired services. Compensatory remediation must also be provided to compensate for interim losses of natural resources from the date of damage until remediation has met the objective.</p> <p>Remedial measures are evaluated using best available methods and a considering range of factors including (but not limited to) the effect on public health and safety, cost, time and the extent and likelihood of success. The authority may at any time decide no further remedial measures need be taken where (a) 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 measures needed for restoration would be disproportionate to the environmental benefits to be obtained.</p>
<p>What are the regulatory instruments of the competent authorities and when may they be applied?</p>	<p>The contaminated land regime imposes an obligation on local authorities to inspect and identify contaminated land in their area. Where a local authority identifies contaminated land, it must serve a remediation notice on the Environment Agency (EA) or Natural Resources Wales; the landowners and any occupiers; and any other "appropriate person" (s.78B, EPA 1990). The enforcing authority is under an obligation to serve a remediation notice on the appropriate persons requiring them to remediate the contamination.</p> <p>The EDR require the operator to inform the competent authority of any environmental damage that has occurred or is likely to occur. Legal advice should be sought before a decision to self-notify is made, as in certain cases, such a notification may be unnecessary. Operators are required to identify potential remedial measures and submit them to the competent authority for its approval. The competent authority decides which remedial measures to implement. As a last resort, the competent authority may take measures itself to manage the contamination / environmental damage. Civil sanctions are not available in respect of offences under EDR, although regulators could choose to prosecute under the EP Regulations 2016 where there is environmental damage, in which case an Enforcement Undertaking may be accepted.</p>
<p>In case of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?</p>	<p>Under the contaminated land regime, where there are several Class A persons, or several Class B persons, the enforcing authority will apply complex rules on the exclusion and apportionment of liability. In certain cases, liability may have to be shared between a number of responsible parties.</p>
<p>Which private law claims may be raised against the persons responsible for soil and groundwater contamination?</p>	<p>Where the enforcing authority serves a remediation notice on a Class B person under the contaminated land regime, that person could seek contractual recourse against the previous seller of the land, if, for example, the sale agreement contained an environmental indemnity from the seller to the purchaser.</p> <p>Private nuisance claims can be brought against the suspected or actual 'polluter' if a third party's land or water is damaged by migration of contaminants or where there is unlawful interference with a person's use or enjoyment of land or of some right over or in connection with that land. Anyone who creates the nuisance emanating from land can be sued and the person held liable for nuisance is the wrongdoer, whether or not he remains the owner of the land in question. However, a subsequent owner/occupier of that land will also be liable if they continue or adopt that nuisance, even where they did not start the nuisance, if they became aware of the nuisance and had the resources to stop it, but did not. Class actions against operators of polluting and high emitting activities are on the rise.</p>
<p>Are there any restrictions of the public law responsibility or the private law liability?</p>	<p>When two or more persons are identified as Class A persons under the EPA 1990, the enforcing authority must apply six statutory tests to ascertain if any of the parties should be legally excluded from liability. One such test is whether a Class A person is in financial hardship.</p>
<p>Is there a criminal liability for soil and groundwater contamination?</p>	<p>The contaminated land regime does not make it a criminal offence to contaminate land, although it is a criminal offence not to comply with a remediation notice, which is punishable by an unlimited fine and/or imprisonment.</p> <p>Under the EDR, offences include failing to take measures to prevent or remediate environmental damage and failing to comply with a remediation notice. Offences are punishable by a fine and/or imprisonment. Compensatory, restorative as well as complementary measures may also be imposed on the wrongdoer.</p>
<p>Are soil and groundwater contamination registered in the UK? If yes, please provide information on the register, the access to the register and the consequence of a registration.</p>	<p>Each local authority maintains its own public register of contaminated land in its area throughout the UK. Enforcing authorities are required to keep public registers of any land that has been identified as contaminated. The registers are accessible through the relevant local authority website, or by enquiry. The register will not include details of historic land use or other records used in the investigation of potentially contaminated land. The register may include:</p> <ul style="list-style-type: none"> — Copies of remediation notices served; — Site information and details of site reports obtained by the authority relating to remediation notices; — Designation of sites as 'special sites'; — Site specific guidance issued by the EA; — Remediation declarations, remediation statements and notifications of claimed remediation; — Any appeals lodged against remediation and charging notices; — Convictions for non-compliance with notices; and — Statements regarding the existence of confidential information.

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