



ENVIRONMENTAL LIABILITY REGULATIONS IN SPAIN



GOBIERNO
DE ESPAÑA

MINISTERIO
PARA LA TRANSICIÓN ECOLÓGICA
Y EL RETO DEMOGRÁFICO

LEGAL FRAMEWORK

The environmental liability regulations comprise:

- Directive 2004/35/CE of the European Parliament and of the Council, of 21 April 2004.
- Law 26/2007, of October 23, on Environmental Liability.
- Royal Decree 2090/2008, of December 22, which approves the Regulation of partial development of Law 26/2007.
- Order ARM/1783/2011, of June 22.
- Order APM/1040/2017, of October 23.
- Order TEC/1023/2019, of October 10.

The full texts of these regulations can be consulted at: [Legal basis](#).

These regulations establish an administrative regime for the prevention, avoidance and remediation of environmental damage, based on the “prevention” and “polluter pays” principles.

Their goals are:

- To encourage the implementation of **risk management measures** in order to reduce accidents that can cause environmental damage and to limit their consequences.
- To ensure that **measures to prevent, avoid and remedy** any environmental damage are carried out.
- To guarantee that the **costs** of the necessary measures are **borne by the liable operator**.

The period within which the measures set forth in the regulations can be enforced is 30 years from the occurrence of the damage or of the imminent threat of damage, caused by an emission, event or incident which took place on or after 30 April 2007.

In general, competency for the implementation and execution of Law 26/2007 corresponds to the Autonomous Communities, notwithstanding the powers of the Central Administration over state-owned assets in the public domain.

The **Technical Commission for the Prevention and Remediation of Environmental Damages**

was created to ensure the regulations are applied appropriately. Attached to General Directorate of Environmental Quality and Assessment of the Ministry for the Ecological Transition and the Demographic Challenge, the Commission is a technical body for cooperation and collaboration, enabling the Central Administration, the Autonomous Communities and local authorities to share information and advice on preventing and remedying environmental damage.

NATURAL RESOURCES PROTECTED

The natural resources within the scope of application of the regulations are:

- Wild flora and fauna species present permanently or seasonally in Spain, and the habitats of all wild native species.
- Waters, including marine waters.
- Land.
- Seashore and estuaries.

For Law 26/2007 to apply, there must be a threat of damage or actual damage causing “**significant adverse effects**” on a natural resource.

On the other hand in case of significant damage, Law 26/2007 allows either the environmental liability regulations or other sectoral legislation to be applied, as long as the same level of protection is achieved.

Given non-significant damage, or a threat of non-significant damage, the corresponding sectoral legislation shall apply.

The following types of damage are excluded:

- Damage to air, and to individuals and their property.
- Damage to the sea caused by oil pollution or by international transport of hazardous goods, and nuclear damage governed by international conventions.
- Damage arising from armed conflict or from a natural phenomenon of exceptional, inevitable and irresistible character.

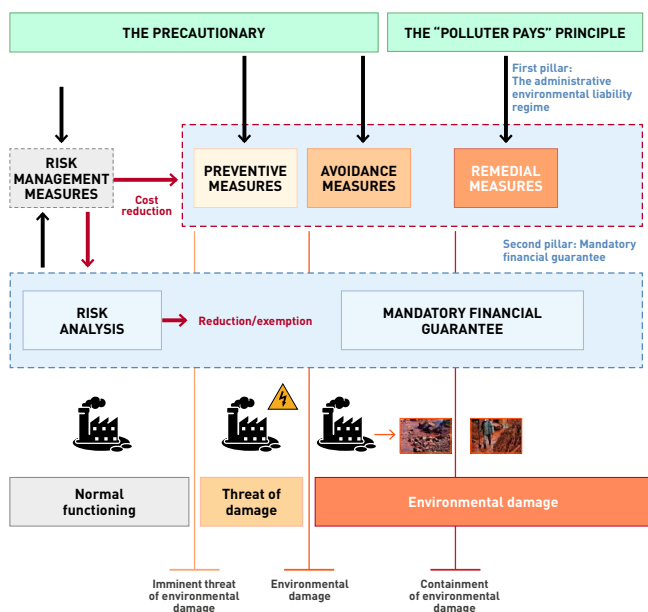


OBLIGATIONS OF OPERATORS

ENVIRONMENTAL LIABILITY

UNLIMITED LIABILITY

- The obligation to take the necessary preventive, avoidance and/or remedial measures, with **unlimited costs**.



ALL OPERATORS ARE REQUIRED TO:

- Take the necessary measures to **prevent the occurrence** or the imminent threat of environmental damage.
- Immediately **notify** the competent authority of the existence of damage or an imminent threat of damage.
- Take the necessary measures to **avoid further damage**.
- Take the **remedial measures** which allow the natural resources to return to their baseline condition (in the case of operators not listed in Annex III of the law, when the operator has been at fault or negligent).

MANDATORY FINANCIAL SECURITY

OBLIGATED OPERATORS

Certain operators specified in Annex III of the law:

- Operators subject to the scope of application of Royal Decree 840/2015, of September 21.
- Operators subject to the scope of application of Royal Legislative Decree 1/2016, of December 16.
- Operators of installations classified as Category A according to Royal Decree 975/2009, of June 12.

DETERMINING THE AMOUNT

The operators must perform an environmental risk analysis, according to the scheme established in standard UNE 150008 and the procedure described in Article 33 of the Regulation of partial development of the law.

The environmental risk analyses will allow the implementation of risk management measures.

They may be based on sectoral risk analyses or scale charts, which may be developed voluntarily and must be approved by the Technical Commission for the Prevention and Remediation of Environmental Damages.

Preventive, avoidance and primary remedial measures must be covered, to a maximum of 20 million euros. This limit may be extended voluntarily by the operator, and does not exempt it from unlimited liability.

NOTIFYING THE COMPETENT AUTHORITY

The operator must submit an affidavit to the competent authority, stating that it has provided the financial security.

DEADLINES FOR PROVISION OF THE GUARANTEE

- Priority 1 activities: 31 October 2018
- Priority 2 activities: 31 October 2019
- Priority 3 activities: 16 October 2021 (intensive rearing of poultry or pigs on 16 October 2022)

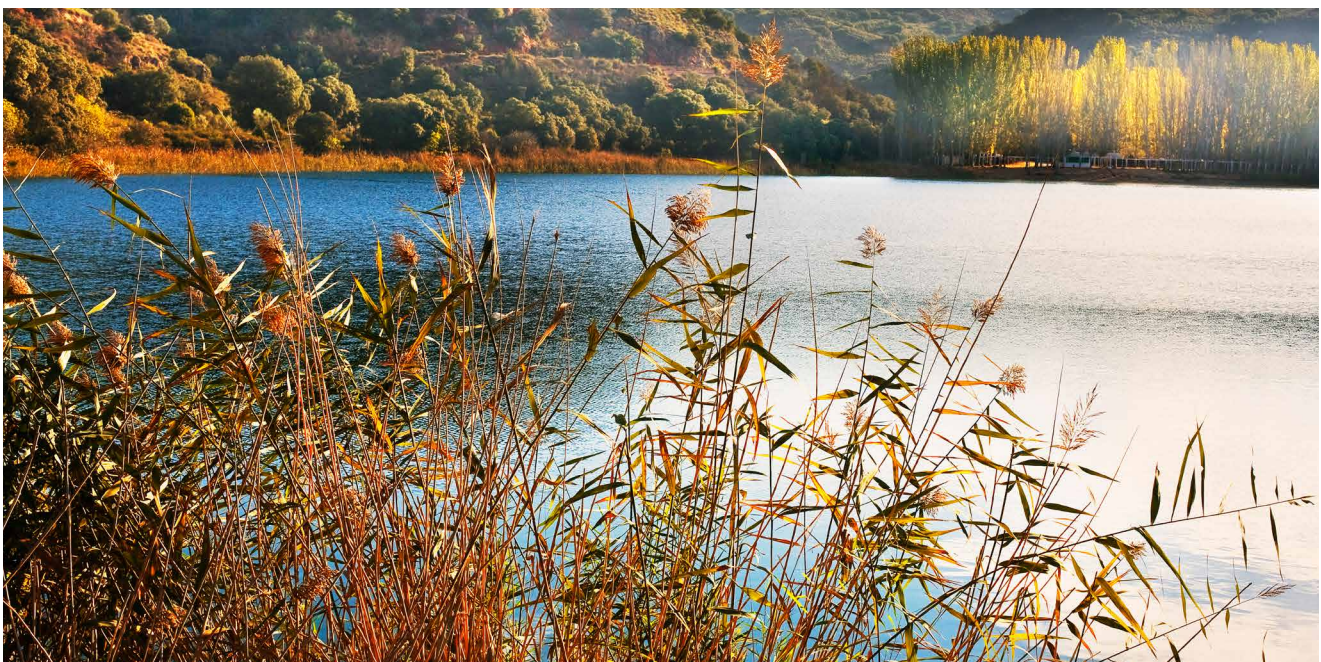
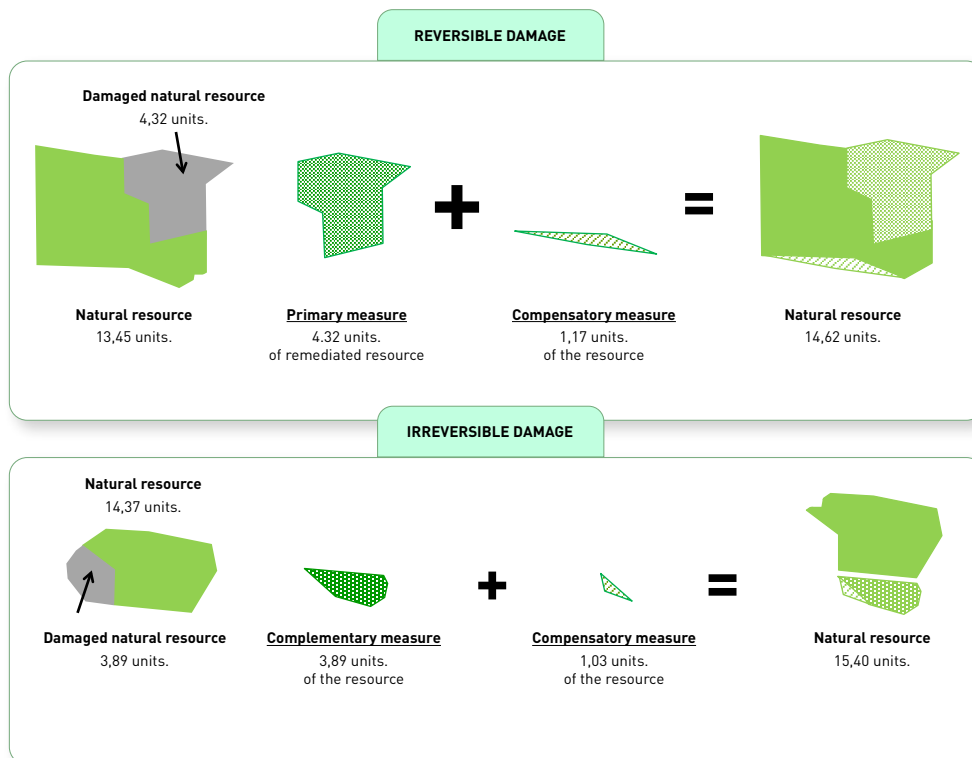
The priority level of the activities is established in Order ARM/1783/2011.

TYPES OF REMEDIAL MEASURES

Primary remediation: Any remedial measure which returns the damaged natural resources or impaired services to their baseline condition.

Complementary remediation: Any remedial measure taken in relation to natural resources or services to compensate for the fact that primary remediation does not result in fully restoring the damaged natural resources or services.

Compensatory remediation: Any action taken to compensate for interim losses of natural resources or services that occur from the date of damage occurring until primary remediation has achieved its full effect. It does not consist of financial compensation to the public.



ADMINISTRATIVE POWERS

DAMAGE PREVENTION OR AVOIDANCE

- Require the operator to provide information on any imminent threat of environmental damage where there are indications that such damage may occur.
- Require the operator to immediately take measures to prevent damage and avoid new damage, and enforce compliance.
- Give the operator mandatory instructions concerning measures to prevent damage or avoid further damage, or the cancellation of such measures, as appropriate.
- Execute the prevention or avoidance measures with all costs to be borne by the liable operator.

DAMAGE REMEDIATION

- Require the operator to provide supplementary information on the damage that has occurred.

- Take, require the operator to take, or give instructions to the operator concerning all urgent measures to immediately control, contain, remove or otherwise manage the relevant contaminants and/or any other damage factors in order to limit or to prevent further environmental damage, adverse effects on human health, or further impairment of services.
- Require the operator to take the necessary remedial measures, in accordance with Annex II of Law 26/2007.
- Give mandatory instructions to the operator with regard the remedial measures to be taken, or the cancellation of such measures.
- Execute the remedial measures, with all costs to be borne by the liable operator, in the case of direct action by the Government, emergencies and/or enforced compliance.

ENVIRONMENTAL LIABILITY ENFORCEMENT CASES

In 2013, Spain submitted to the European Commission the report required in Article 18.1 of Directive 2004/35/CE, including information on the 12 instances of environmental liability processed as of that date.

[Report on article 18.1](#) (updated in 2014).

From 2013 to 2017, 22 instances of environmental liability were processed, making for a total of 34 cases since 2007.

In March 2019, the [register of environmental liability enforcement cases](#) processed from 30 April 2007 to 31 December 2017 was published. This register updated both the information in the report presented by Spain to the European Commission in line with Article 18.1 of Directive 2004/35/CE, and the assessment report on the implementation of Law 26/2007, of 23 October, presented by the Ministry for the Ecological Transition and the Demographic Challenge to the Environmental Advisory Council in July 2018. [Report to the Environmental Advisory Council.](#)

The competent authorities drew the following conclusions regarding the **advantages of using the environmental liability regulations** rather than sectoral regulations when there is significant damage:

- They constitute a useful, effective and efficient tool.
- Notably, companies respond quickly and effectively. In some of the cases, applying the sectoral legislation would have led to a slower and less effective response.
- It considerably speeds up the application of the most urgent measures.
- The application of sectoral regulations works well in most cases. They are particularly efficient in cases of damage to land.
- Law 26/2007 is especially effective in cases where several natural resources are affected.



TECHNICAL INSTRUMENTS DEVELOPED

ENVIRONMENTAL LIABILITY SUPPLY MODEL

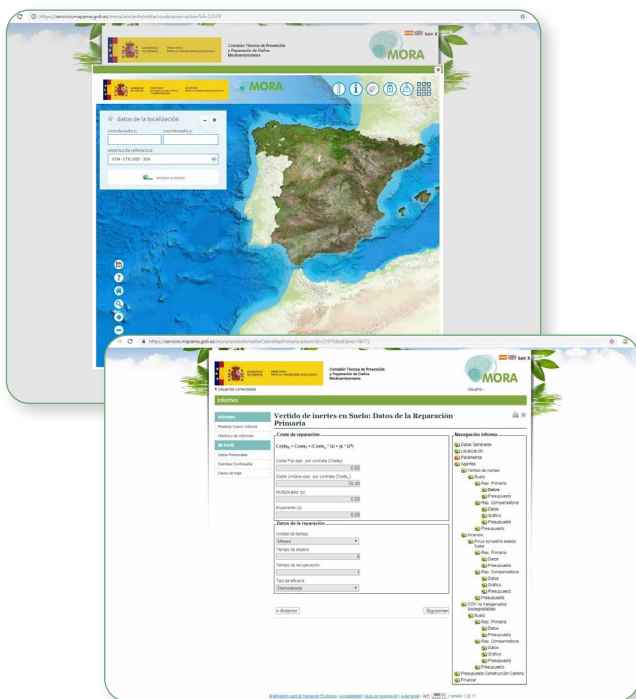
This methodology calculates the costs of primary remediation in the risk scenarios identified by the operator, which is necessary for determining the amount of the mandatory financial security. It also calculates the costs of complementary and compensatory remediation.

An IT tool was developed based on this methodology, available free of charge since April 2013: [MORA Tool](#).

The following are also available:

[Methodology document](#) and [application user guide](#).

[Web service](#) which enables computer risk analysis tools to connect automatically with the MORA IT tool.



ENVIRONMENTAL DAMAGE INDEX

This methodology calculates the Environmental Damage Index, which is necessary for determining the amount of the mandatory financial security

An IT tool was developed based on this methodology, available free of charge since April 2015:

[IDM Tool](#).

A [User guide to the application](#) is also available.



SUPPORT SERVICE FOR PROFESSIONAL SECTORS

- Development of the structure and general content of the sectoral instruments for environmental risk analysis (Standardised Environmental Risk Report or MIRATs, and Methodological Guides) and the Scale charts.
- Technical support service for the professional sectors that voluntarily choose to develop one of these sectoral environmental risk analyses or scale charts.
- Funding and development of sectoral environmental risk analysis instruments and scale charts.
- Funding and development of individual environmental risk analyses.

All these instruments are available in the Environmental Liability section of the Ministry for the Ecological Transition and the Demographic Challenge website ([risk analysis section](#)).



GUIDELINES AND PROTOCOLS FOR ACTION

GUIDE TO DRAFTING SIMPLIFIED RISK ASSESSMENT FOR RISK MANAGEMENT

For operators exempted from performing environmental risk analyses, as they are not required to provide a financial security, this instrument enables them to manage the environmental risks of their activity appropriately.

It focuses on risk management, damage prevention and avoidance.

[Guide y annexes](#)

PROTOCOL FOR ACTION IN THE CASE OF INCIDENTS AND ENVIRONMENTAL LIABILITY ENFORCEMENT PROCEEDINGS

Protocol for action providing **guidelines for the actions** to take, both for operators and for the competent authorities, in the case of an incident which causes environmental damage or the imminent threat of environmental damage.

This also sets out a **procedure for environmental liability enforcement proceedings**.

It includes a **catalogue of prevention and avoidance measures**.

[Documents and example](#)

DOCUMENT ON THE STRUCTURE AND GENERAL CONTENT OF REMEDIATION PROJECTS

It provides a description, in accordance with environmental liability regulations, of the structure and content which operators must consider when creating a **remediation project proposal**.

It includes the **catalogue of remediation techniques** of the Environmental Liability Supply Model IT tool.

[Document and example](#)

GUIDE TO THE PROVISION OF A FINANCIAL SECURITY

Guide to the procedure for its determination and notification of the competent authority, and other elements relevant to environmental risk analyses.

[Section on the environmental liability financial security](#)

GUIDANCE DOCUMENT FOR DETERMINING THE SIGNIFICANCE OF DAMAGE

This establishes criteria for determining the significance of damage, based on the criteria established in the Regulation of partial development of Law 26/2007.

[Guidance document](#)

MORE INFORMATION

Website of the Ministry for the Ecological Transition and the Demographic Challenge:

[Environmental liability section FAQs](#)

[Frequently Ask Questions \(FAQ\)](#)





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