

Consolidating Regulation 22-03-2007 No. 282 on Contaminated Soil

as amended by the Act of 17-06-2008 no. 507 and the Act of 17-06-2008 no. 508

Future amendments to the law: the Act of 17-12-2003 no. 1151 and the Act of 20-12-2006 no. 1587

Chapter 1. Purpose, etc.

Section 1. The purpose of the act is to prevent, eliminate or reduce contamination of the soil and to avoid or prevent the harmful effects of soil contamination on groundwater, human health and the environment in general.

s.1(2). In particular, the act is intended to

- 1) protect drinking water resources,
- 2) prevent health problems when contaminated areas are used,
- 3) prepare the basis for coordinated and focussed public action with a view to avoiding the damaging effect of soil contamination,
- 4) prevent further contamination of the environment in connection with the use and removal of soil and
- 5) first and foremost hold the polluter responsible for taking the necessary measures to prevent the consequences of soil contamination and re-establish the former status.

Section 2. The act covers soil which owing to human activity may have a damaging effect on groundwater, human health and the environment in general.

s.2(2) The Minister of the Environment shall establish rules concerning what is understood by lightly contaminated soil in this act.

s.2(3). The act does not cover soil affected by agricultural spreading of slurry, manure and pesticides, etc.

Chapter 2. Surveying of contamination and permission for a change of land use, etc.

Section 3. In collaboration with the municipal council, the regional council shall undertake surveying, if necessary by means of engineering studies, of contaminated areas, cf. sections 4 and 5.

s.3(2). However, the Ministry of Defence shall undertake surveying of contaminated areas of the Ministry of Defence's properties in collaboration with the regional council at knowledge level 1.

s.3(3). Areas where the soil is only lightly contaminated shall not be surveyed. Areas shall be surveyed, however, if in certain cases the lightly contaminated soil may have a harmful effect on groundwater or the indoor environment.

s.3(4). Areas which are used for public roads shall not be surveyed at knowledge level 1.

s.3(5). When the regional council has gathered sufficient knowledge about a particular area which is used for housing to begin an assessment of whether the conditions for surveying at knowledge level 1 or 2 are met, a decision must be taken within 2 years.

s.3(6). The regional council shall notify the owner of the area hereof, when the council has sufficient knowledge of the area to start an assessment, cf. par. 5.

Section 4. An area is described as surveyed at knowledge level 1 if factual knowledge is provided of the activities in the area or activities in other areas which may have been the source of soil contamination in the area.

Section 5. An area is described as surveyed at knowledge level 2 if a documentary basis is provided which means that it is possible to ascertain with a high degree of certainty that there is soil contamination of such a nature and concentration in the area

that contamination may have a harmful effect on man and the environment.

Section 6. As part of surveying in accordance with sections 4 and 5, with a view to further public action, the regional council shall ascertain the areas where there is contamination or there are sources of contamination which may

- 1) have a harmful effect on groundwater within an area with special drinking water interests,
- 2) have a harmful effect on groundwater in a catchment area for a public water supply plant or
- 3) have a harmful effect on people in an area containing housing, childcare centres or public playing fields.

s.5(2). The municipal council shall establish the areas which are used for housing, childcare centres or public playing fields. Information about this shall be passed on to the regional council for use in determining areas in accordance with par. 1, no. 3. Furthermore, the municipal council shall determine the areas which are used for leisure centres, publicly accessible areas, allotment gardens, holiday homes or childcare centres. Information about this shall be passed on to the regional council for use in the regional council's administration of the provisions of sections 8 and 9.

Section 7. Within the areas determined pursuant to s.6(1), which are surveyed at knowledge level 1, the regional council shall undertake surveying of possible soil contamination up to knowledge level 2 by means of engineering studies in the form of excavations, wells or shafts, analyses, etc.

s.7(2). With surveying up to knowledge level 2, engineering studies may be omitted to the extent that documentation otherwise exists which provides a correspondingly reliable basis for surveying the area at knowledge level 2.

s.7(3). The surveying mentioned in s.7(1) and s.7(2) up to knowledge level 2 shall be performed no later than 1 year after the owner of a plot of land with housing has made such a request. However, this shall not apply to plots of land with housing which are entered in the Oil Industry's Environmental Pool.

s.7(4). Surveying up to knowledge level 2 may be omitted where, in the regional council's opinion, there is no question of current harmful effects on groundwater or humans as a result of the area's superstructure.

Section 8. When an owner has received notification of surveying, cf. s.12(1), the owner or user shall ask the municipal council for permission before the party concerned changes the use of the surveyed area to one of the purposes stated in s.6(2).

s.8(2). If the surveyed area is established by the regional council as the area of activity, cf. s.6(1), or if the surveyed area is used for one of the purposes stated in s.6(2), the owner or user shall ask the municipal council for permission to start construction work in the area.

s.8(3). For use in reaching a decision in accordance with par. 1 or 2, the municipal council may make it a requirement that the applicant carries out necessary engineering studies at his or her own expense or otherwise documents that the planned amended use or the planned construction work is sound in terms of the environment and health.

s.8(4). The municipal council may attach the following conditions to a permit in accordance with s.8(1) or s.8(2).

- 1) If the requested use involves one of the purposes stated in

s.6(2), conditions may be set for the implementation of necessary environmental and health measures with regard to the use of the area.

- 2) If the requested application involves the performance of construction work above contamination which may be hazardous to groundwater or in an area with greatly raised concentrations of contaminants, such conditions as are necessary to prevent an increase in the risk to groundwater may be set.
- 3) The condition that use or work shall proceed in a manner described in more detail such that subsequent public activity is not rendered impossible or substantially more difficult.
- 4) The condition that a statement is released for the change or work with documentation of the contamination conditions, when the alteration or work has been concluded.

s.8(5). The municipal council may change conditions already set or set new conditions if contamination conditions other than provided for in the permit are ascertained in connection with the change of use or performance of construction work for which a permit has been issued.

s.8(6). For areas which are entered in the Oil Industry's Environmental Pool, however, the regional council is the authority, cf. par. 2-5, in relation to involvement by the Oil Industry's Environmental Pool in the areas.

s.8(7). A permit in accordance with s.8(1) or s.8(2) shall lapse if the work for which the permit is issued is not started within 1 year of the date of the permit, unless the municipal council decides otherwise.

s.8(8). Conditions shall be binding on the owner or user of the area at any time, and long-term conditions may be registered for the property.

s.8(9). The regional council may set rules regarding which conditions are to be fulfilled in order to obtain permission, cf. s.8(1) and 2, regarding change of use and construction work in areas which are surveyed.

s.8(10). The regional council may set rules for the cases in which permission is not necessary, cf. s.8(1) and s.8(2) and s.15(1)(2).

Section 8a. The local authority's decisions in accordance with section 8 shall be subject to a report being obtained from the regional council. The regional council's report shall be submitted within 4 weeks of receipt of the case from the municipal council.

Section 9. The regional council may draw up recommendations for the owner and user of surveyed areas on the use of the areas concerned.

s.9(2). In publicly accessible external areas which are surveyed, the municipal council may issue instructions to owners that they must take or uphold less expensive measures described in more detail within a fixed period, including enclosure and tile coverage where the current use may involve a health risk.

s.9(3). For certain surveyed areas the municipal council may set rules that the owner shall for a more specifically determined period take or uphold measures for publicly accessible external areas as stated in s.9(2).

s.9(4). Instructions and rules, cf. s.9(2) and s.9(3), are binding on the owner of the property at any time and may be registered for the property.

s.9(5). Owners shall inform lessees of recommendations, instructions or rules, cf. s.9(1-3).

s.9(6). Rules issued under s.8(9 and 10), and s.9(3), shall contain provisions that the municipal council may dispense with the need for the imposed measures, provided that the owner documents this.

Section 10. If an owner or user fails to complete a project which has been started and for which a permit has been granted, cf.

section 8, or finish cleaning up work which is set as a condition for a permit, the municipal council may set a deadline for completion of the project or cleaning up work. If the deadline is not met, the municipal council may give the owner or user instructions that the plot of land is to attain an environmental status not lower than the status before the start of the project or cleaning up work.

Section 11. Provided an owner or a user so requests, after having concluded a project or cleaning up, cf. section 8, the municipal council shall issue a statement which contains a description of the project or the cleanup performed and the area's surveying status, and information on the extent to which the municipal council has supervised the project or cleanup.

Section 11 a. The municipal council shall notify the regional council of decisions in accordance with sections 8-10 and statements in accordance with section 11.

Section 12. The regional council shall give written notification of the final surveying of the area at knowledge level 1 or 2 to owners of properties within the surveyed area and to the municipality concerned. Owners shall notify lessees of the regional council's decision.

s.12(2). The regional council may make a more specific decision that notification in accordance with par. 1 shall take place in a more specifically established manner. Written notification to owners of properties which are used for all-year-round housing and are mapped at knowledge level 2 shall contain information about the options for cleaning up in accordance with chapter 4.

Section 12a. In connection with a decision on surveying of an area which is used for housing at knowledge level 2, from the knowledge available the regional council shall nuance the surveying against the background of the risk the surveyed contamination constitutes or may constitute for the current use for housing purposes, such as

- 1) F0: The contamination constitutes no risk to the property's current use for housing,
- 2) F1: The contamination constitutes no risk to the property's current use for housing, if simple advice on the property's use is followed, or
- 3) F2: The contamination constitutes or may constitute a risk to the property's current use for housing, or no knowledge is yet available to nuance the survey.

(2). The regional council shall revise the nuancing of the survey if further studies or other new information is available which makes this possible.

(3). Surveying of properties other than residential properties, which are surveyed at knowledge level 2, and which are for residential use, and surveying of residential properties which on 1 January 2007 are surveyed at knowledge level 2, shall upon written request from the owner be nuanced in accordance with (1).

(4). The regional council shall notify the owner, municipal council and fiscal authorities of nuancing of the survey in accordance with (1)–(3). The nuancing basis of the survey shall be explained, including the extent to which revision of nuancing of the survey can be expected to take place. Notification of nuancing of the survey in accordance with (1) shall take place at the same time as notification of the survey in accordance with section 12. Owners shall notify lessees of nuancing of a survey in accordance with (1)–(3).

(5). Information about nuancing of the survey shall not be entered in the land title register in accordance with section 14, unless the Minister of the Environment stipulates rules on this pursuant to section 15 (7).

Section 13. An area shall not be included in the survey if the regional council finds it proven that there are no environmental or health grounds to uphold surveying of the area concerned.

(2). The regional council shall issue written notification hereof to owners of properties within the area which are no longer surveyed, and to the municipality concerned.

Section 14. The regional council shall permit information on surveyed areas to be entered in the land title register and shall keep the register constantly updated.

(2). The Ministry of Defence shall enter the areas surveyed by the Ministry of Defence at knowledge level 1 in a corresponding register as stated in (1) under the Ministry of Defence and keep the register constantly updated.

(3). A surveyed area shall be withdrawn from the register if the regional council finds it proven that there are no environmental or health grounds for upholding surveying of the area concerned.

(4). After negotiation with the register authorities, the Minister of the Environment and Energy may stipulate more specific rules on registration of surveying, including on setting up and keeping the register, inclusion of the land use map and issuing of information from the register and on payment for it.

Section 15. The Minister of the Environment and Energy may stipulate more specific rules on

- 1) the form and content of requests in accordance with section 8 (1) and (2), and cooperation between the municipal council and the regional council in accordance with section 8a,
- 2) cases where permission in accordance with section 8 (1) and (2), is not necessary, including for minor construction work,
- 3) the content of local rules in accordance with section 8 (9), and section 9 (3), and on publication hereof,
- 4) deadlines and procedures for contamination surveys and on the obligation of the regional council to notify other authorities,
- 5) the content of and criteria for the surveying of areas and on more precisely specified conditions being used as the basis for surveys,
- 6) the content of and deadlines, procedures and criteria for nuancing of surveying in accordance with section 12 a of a property which is used for housing, and
- 7) information on nuancing of surveying in accordance with section 12 a being entered in the land title register.

Section 16. An appeal against the decisions of the regional council and local authority in accordance with the provisions of this chapter may not be made to another administrative authority.

Chapter 3. Public inspection and remedial measures

Section 17. The regional council shall conduct inspection projects concerning soil contamination in surveyed areas and shall draw up proposals for projects for remedial measures, including cleaning up, and shall perform these. In special cases, the regional council may conduct inspection projects and take remedial measures in areas with lightly contaminated soil which is used for childcare centres or public playing fields.

(2). The regional council shall gather experience concerning the implementation of remedial measures, including cleaning up after soil and groundwater contamination.

(3). The Minister of the Environment and Energy shall undertake development and supervision of new technology in the field of soil contamination.

(4). In connection with the rules on administration laid down in (3), the Minister may enter into commitments regarding expenditure and provide subsidies for projects involving remedial measures, including the measures performed by the regional council, cf. (1). The Minister may enter into commitments regarding expenditure, including the provision of subsidies for development projects, setting criteria, risk assessment, information and gathering of experience. Likewise, commitments may be entered into regarding expenditure, including the provision of subsidies, invitations to tender for projects, administration, audits, evaluation and for insurance premiums involving any liability in connection with performance of the task. (5). Expenditure to promote the development of technology mentioned in (3) shall be entered into within the framework of the amount set in the annual national

budgets. A commitment may be made within one financial year to make payment in the following financial year.

Section 18. The regional council shall draw up an overview of public measures which is revised once a year. The regional council shall involve the public before drawing up the final overview.

(2). The overview shall not entail any rights or obligations for owners.

Section 19. The overview shall contain a statement of the areas in which investigations or remedial measures are to be undertaken, including cleaning up. The overview shall prioritise the work and it shall contain a financial overview.

Section 20. The prioritisation of the overview may be waived, and projects which are not listed in the overview may be performed if this is deemed necessary.

Section 21. The regional council shall notify the owner and those to whom instructions may be issued, cf. chapter 4 a or 5 of the act or chapter 3 of the Environmental Protection Act, before the regional council carries out inspections or implements remedial measures.

(2). The regional council shall inform the assessment authorities about cleaning up or remedial measures which the regional council has performed on a property.

(3). After conclusion of public measures in relation to the use of an area involving a residential property which continues to be surveyed, the regional council shall issue a statement that contamination is meaningless for use of the plot of land for the actual use for housing, cf. however section 9, (1) and (2). Information on this is included in the land title register, cf. section 14.

Section 22. For the performance of projects listed in the overview, cf. section 18, or projects which are deemed necessary, cf. section 20, in special cases the regional council may enter into agreements on the takeover of a property which is covered by the project.

(2). For the performance of projects listed in the overview of ownership or medium-term use, the regional council may expropriate rights to real estate.

(3). The regional council may transfer a property which the regional council has taken over or compulsorily purchased to the municipal council free of charge.

(4). The regional council may expropriate rights to ownership or medium-term use of real estate for a water supply that will involve projects related to ensuring existing or future water collection. This applies regardless of whether the areas concerned are included in the overview, cf. section 18.

(5). In implementing a compulsory purchase in accordance with (2) or (4), section 45 and sections 47-49 of the provisions of the Public Roads Act shall apply accordingly while it is the regional council who shall perform the tasks which are assigned to the highway authority in relation to the act on public roads, however.

Section 23. The Minister for the Environment and Energy may stipulate rules for the regional council's preparation of the overview mentioned in section 18, including the criteria and conditions on which the regional council will base prioritisation and performance of the public measures, and on prior involvement of the public, cf. section 18(1).

Section 24. The Minister for Energy and the Environment shall set up a council, the Land Disposal Council, which shall comply with the environmental authorities' administration of the act.

(2). The regional council shall send an annual report to the council set up in accordance with (1) on the activities performed and the planned measures, budgets, etc. for the coming year.

(3). The council shall prepare an annual statement for the Minister against the background of the regional council's reports in accordance with (2). The council shall advise the Minister on general matters involving technological development and in connection with the creation of rules pursuant to the act.

(4). The Minister for the Environment and Energy may stipulate more detailed rules on the council's composition and activity and on the regional councils' reporting in accordance with (2).

Section 25. Appeals may not be made to another administrative authority against the regional council's decisions in accordance with the provisions of this chapter, except for decisions on expropriation in accordance with section 22(2) and (4).

Chapter 4. Depreciation order for owner-occupiers, etc.

Section 26. The depreciation order covers properties which were being used for permanent residence on 18 November 1992, and which were contaminated before 1 September 1993, cf. however, (3). Properties which were being used for permanent residence on 18 November 1992 are further covered by the depreciation order if the contamination stems from an oil tank which is covered by the provision of section 48(3)(1) and if the contamination is confirmed, before the date set by the Minister of the Environment and Energy by virtue of section 48(1), cf. however (3).

(2). In this chapter contaminated properties are understood to mean properties which are surveyed at knowledge level 2, cf. section 5, or which meet the conditions for this.

(3). Notwithstanding the provision in (1), the following properties are not covered by the depreciation order:

- 1) Industrial properties and properties which are recorded as agricultural properties by virtue of the agricultural properties act, and properties in rural areas which contain areas of woodland or forest reserve by virtue of the Forest Act.
- 2) Blocks of flats which are used for both residential and business purposes, if more than 50 percent of the total floor area is used for business purposes. Ceiling and cellar areas as well as garages which are not adapted for residential and business purposes are not included in the calculation of the total floor area.
- 3) Properties on building land for holiday homes or allotment gardens, unless the property is used for permanent residence and the legality hereof is not dependent on the provisions of planning legislation section 40(2), and section 41, cf. Consolidating Regulation 563 of 30 June 1997 with subsequent amendments.
- 4) Properties which are under public ownership.

Section 27. The depreciation order covers owners who

- 1) have acquired a property, cf. section 26, in a contaminated condition and
 - 2) upon acquisition were neither aware nor ought to have been aware that the property was contaminated.
- (2). The following is covered by the depreciation order if the former owner met the conditions of (1):
- 1) Owners who have acquired the property through inheritance, either through continued community of property or sale by auction as the holder of an unsatisfied mortgage.
 - 2) Owners who have taken over the property upon divorce or separation or after having shared a household with the previous owner for at least 2 years.
 - 3) Owners who have acquired the property in a voluntary transaction with a mortgagee or upon a mortgagee's intervention as part of the mortgagee's loss-restricting measures.

(3). Owners of properties which have become owner-occupied dwellings are covered by the depreciation order notwithstanding the provisions of (1), provided the conditions of (1) were met for real estate subdivision of owner-occupied dwellings.

Section 28. The regional council shall clean up properties which are covered by the depreciation order if the owner so requests, cf. however section 34. It is a condition that upon the owner's request for cleaning up, the property continues to be used as a permanent residence, and that the contamination has a harmful effect on people or the environment or involves a risk to the same in relation to the actual residential use of the property.

(2). Measures which the municipal council can issue instructions on in accordance with section 9(2), are covered by the depreciation order. (3). Cleaning up is performed to the extent to which concessions are made for this in the annual national budgets.

(4). The regional councils' expenditure in accordance with the

provisions of this chapter shall be kept within the limits set in the annual national budgets. A commitment may be made within one financial year to make payment in the following financial year.

(5). Material which is obtained as a necessary part of performing a cleanup shall be transferred free of charge after use for further use, transfer or disposal by the regional council. Expenditure or income in this connection shall be assigned to the regional council.

(6). The regional council may enter into commitments regarding expenditure for insurance regarding any civil liability in connection with cleaning up.

Section 29. Requests for cleaning up with regard to the depreciation order shall be sent to the regional council.

(2). Entitlement to cleaning up in relation to the depreciation order may be transferred to subsequent purchasers of the property, provided that the request for cleaning up is submitted before the transfer.

(3). It is the owner's duty, at his or her own expense, to document that a property which is not surveyed at knowledge level 2 is contaminated to a corresponding degree. The regional council may set requirements for documentation material corresponding to the requirement for surveying at knowledge level 2, cf. Section 5.

(4). The regional council shall take the decision on whether the property is covered by the depreciation order. The regional council shall notify the municipal council of the decision.

Section 30. The regional council shall take decisions on the extent to which cleaning up shall be performed in relation to the depreciation order. Cleaning up corresponds to cleaning up pursuant to chapter 3. If a publicly paid for cleanup in relation to the depreciation order can be implemented, the regional council shall notify the owner of consent, including when the cleanup can be expected to start.

(2). When consent for a cleanup is given in relation to (1), the regional council shall assume the claim that the owner must have against the polluter or former owner in connection with the contamination to the extent that the owner's claim against the polluter or former owner is reduced as a result of the cleanup.

(3). No later than 9 months before cleaning up is started, the regional council shall send a request for payment of an individual contribution, cf. sections 31 and 32. The regional council may set a requirement that the individual contribution is made from a bank account. The payment deadline shall be set for no fewer than 3 months. If the owner fails to make payment before the deadline, the owner's right to cleaning up in relation to the depreciation order shall lapse. The regional council may disregard minor breaches of the deadline under special circumstances.

(4). If cleaning up in relation to the depreciation order is not started by the notified time, annual interest shall be charged on the individual payment corresponding to the National Bank's rate on 1 January of the year in which the individual payment was made, with an addition of 5 percent. The derived interest shall be paid when the cleanup is started or if the owner withdraws the request for a cleanup. If the request is withdrawn because the cleanup is not started at the right time, the individual payment shall be released and the owner may not request cleaning up of the property again, unless the regional council decides otherwise under special conditions.

(5). If in a case other than mentioned in (4) the owner withdraws his request after the individual payment has been made, the regional council shall decide whether the cleanup shall nevertheless be performed. If the regional council concludes that the cleanup is not to be performed, the individual payment shall be waived. If the regional council has entered into commitments regarding expenditure, the regional council may, however, take the decision that the individual payment is not to be repaid in full. Upon repayment, the amount is paid and not the interest. (6) If a cleanup in relation to the depreciation order is deemed to have been requested, or if there is still contamination at the property after a depreciation cleanup, the regional council shall issue a statement that the contamination is insignificant regarding the use of the soil for the actual

application for a permanent residence, cf. however, section 9(1) and (2). Information on this is included in the land title register, cf. section 14.

(7). If contamination is left after a cleanup by virtue of the depreciation order, cf. (6), under existing buildings for permanent residence or associated wiring systems, the regional council shall decide whether the property is to continue to be covered by a commitment on cleaning up by virtue of the depreciation order.

(8). The regional council shall notify the owner of the cleanup undertaken.

Section 31. The individual payment shall be DKR 40,000 of the basic amount per property, but no less than DKR 7000 per dwelling.

(2). The individual payment shall be reduced for each whole year which passes from the time at which contamination is surveyed at knowledge level 2, or at which the owner documents, cf. section 29 (3) that the property is contaminated to a corresponding degree, until the individual payment is made. For properties which were ascertained to be contaminated before 1 September 1993, however, the reduction is calculated in relation to this date.

(3). The annual reduction, cf. (2), is DKR 2500 of the basic amount, but DKR 5000 for properties with 12 or more dwellings. The individual payment is reduced to no less than DKR 15,000 or DKR 30,000 respectively of the basic amount.

Section 32. If the owner has entered into commitments regarding expenditure for necessary inspections, cf. s. 29(3), the individual payment is reduced accordingly. If expenditure for inspections exceeds the individual payment, the excess amount shall not be refunded.

Section 33. The regional council shall upon request make a loan for the individual payment to owners who, at the time at which the request for a cleanup is submitted under the depreciation order,

- 1) have reached 65 years of age,
- 2) are in receipt of a pension under the Social Security Pension Act, the act on the highest, most average, increased standard and standard pension payable on early retirement, etc. or the Partial Pension Act or
- 3) are in receipt of voluntary early retirement pay.

(2). A request for a loan shall be submitted to the regional council together with a request for a cleanup. The regional council shall provide notification of consent to a loan at the same time as any consent on cleaning up. (3) The loans shall be used immediately for payment of the individual contribution and shall be administered by the Danish Financial Administration Agency. For the rest, the loans shall be made with the necessary adjustments to the conditions on safety, profit, maturity, etc. which are laid down in the act on loans for payment of levies on property. However, these may be waived if the loan is within the property's estimate for the cleanup.

(4). In special cases the regional council may upon request provide a guarantee for the owner's loan at special mortgage credit institutions for the individual payment.

(5) The request for a guarantee shall be submitted to the regional council together with a request for a cleanup. Consent to a guarantee shall be notified by the regional council together with any consent for a cleanup.

Section 34. The regional council may in special cases make a request to take over a property, cf. section 75. The provisions of sections 31 and 32 on individual payment shall apply accordingly.

(2). If the owner does not accept within a specific period of no less than 3 months that the property shall be taken over by virtue of (1), or does not make an individual payment within a specific period which is set at no less than 3 months, the owner's rights by virtue of the depreciation order shall lapse.

(3). Ownership shall pass to the regional council in a takeover. The regional council may transfer a property which the regional council has taken over to the municipal council free of charge.

Section 35. If the individual payment exceeds the combined expenditure for inspections and cleaning up by virtue of the depreciation order, the excess amount shall be repaid when the cleanup has been performed.

(2). If a property which is surveyed at knowledge level 2 and entered in the register, cf. section 14, after the cleanup has been

performed, cf. section 28, continues to be contaminated to such an extent that it cannot be withdrawn from the register, the individual payment shall be refunded. Correspondingly, the individual payment shall be refunded if the property continues to be contaminated after a cleanup to such an extent that it is surveyed at knowledge level 2 and shall be entered in the register as such. In special cases the regional council may take a decision during a prolonged cleanup project that the individual payment is to be refunded before the project is concluded, insofar as the property is expected to continue to be contaminated after the conclusion of the project to such an extent that it may not be withdrawn from the register, or that it is entered in the register as surveyed at knowledge level 2.

(3). Repayment shall be made to the current owner of the property to which the individual payment relates. Repayment may be made to a bank account. When making the repayment, annual interest for the period from when the individual payment was made until repayment takes place shall be added to the individual payment, with an addition of 5 percent.

(4). For owners who are granted a loan, or for whom a guarantee has been provided by virtue of section 33, the repayment is used directly to redeem the authorized loan or the loan for which a guarantee has been provided. Interest corresponding to the interest accrued on the loan shall be added.

Section 36. The Minister for the Environment and Energy may enter into commitments regarding expenditure, including providing a subsidy for information, administration, auditing, evaluation and for notification of results as part of the depreciation order.

Section 37. The Minister for the Environment and Energy may stipulate specific rules on the handling of matters in accordance with the depreciation order by the Danish Environment Agency, the regional councils, the municipal council of Bornholm Regional Municipality and the Finance Committee, including

- 1) the issue of consent for a loan or a guarantee for a loan,
- 2) which information and which documentation the owner shall submit with the request, including which form the request shall take,
- 3) inspections, cleaning up and assessment of cases,
- 4) the regional council's notification of the Minister for the Environment and Energy of cases in accordance with the depreciation order and
- 5) acquisition and sale of material and real estate in accordance with the depreciation order.

Section 38. Appeals against the regional council's decisions in accordance with this chapter cannot be lodged with another administrative authority.

Chapter 4 a. Environmental damage

Section 38 a. Environmental damage or imminent danger of environmental damage is understood in accordance with sections 7-11 of the Environmental Protection Act.

Section 38 b. The person responsible for operation is taken to mean the person who operates or controls the commercial activity.

(2). The person responsible for environmental damage or an imminent danger of environmental damage is taken to mean the person responsible for operation, regardless of how the damage or the imminent danger of damage has occurred, cf. however (3) and (4).

(3). In matters regarding the use of waste substances and manure for agricultural purposes, including livestock manure, and regarding the use of pesticides or biocides, the person considered responsible for environmental damage or an imminent danger of environmental damage is the person who has used these products as part of commercial activities, unless the user can prove that use was in accordance with the provisions for use, and that the user has not behaved irresponsibly in connection with use.

(4). If the user cannot be considered as the person responsible in matters covered by (3), the person who has commercially produced or imported the waste substances, the livestock manure or manure other than livestock manure or the pesticides or biocides which are used shall be considered as the person responsible for environmental damage or an imminent danger of environmental damage.

(5). (4) shall not apply if the producer or importer can prove that the damaging effect of contamination as a result of the use of waste substances or livestock manure is not the result of a defect in the product, and that irresponsible conduct has not been displayed in production or importation.

(6). The enforcement authorities are taken to mean the environmental authorities which are stipulated in section 39.

Section 38 c. The person responsible for an imminent danger of environmental damage shall immediately implement the necessary preventive measures which can divert the imminent danger of environmental damage. The person responsible for environmental damage shall immediately implement any practical measure which can limit the extent of the damage and prevent further damage.

(2). The enforcement authority shall take care that commitments are met, even if a decision has not yet been met in accordance with section 38 f.

Section 38 d. The commitment to restrict the extent of environmental damage and to prevent further environmental damage shall not apply if the person responsible for the environmental damage can prove that

- 1) it was caused by a third party or occurred in spite of appropriate safety measures having been taken,
- 2) it is due to compliance with essential regulations which have been stipulated by a public authority, unless the regulations are the result of enforcement or instructions which are due to the person responsible's own activities, or
- 3) it is caused by an emission or incident which was expressly permitted pursuant to and completely in accordance with the conditions of a permit or with rules which are so detailed that these may be compared with express permission, and which are not due to the person responsible's irresponsible conduct.

(2). The commitment to prevent an imminent danger of environmental damage shall not apply if the person responsible for the imminent danger of environmental damage can prove that the danger is due to conditions as stated in (1) (1) or (2).

(3). (1) (3) shall not apply to the producer and importer as stated in section 38 b (4) and (5).

Section 38 e. The enforcement authority may instruct the person responsible for operation or the user, producer or importer to provide the information which is important for assessment of whether there is environmental damage or an imminent danger of environmental damage, which shall be dealt with in accordance with the Environmental Protection Act. The person responsible for operation or the user, producer or importer may in particular be instructed to undertake inspections, analyses, measurement of substances, etc. at his or her own expense, for the purpose of identifying the cause and effect of soil contamination. If environmental damage or an imminent danger of environmental damage can be attributed to several polluters, section 43 shall apply accordingly.

(2). Instructions may be notified, regardless of whether the person responsible for operation or the user, producer or importer has the property where soil contamination is revealed at his or her disposal. A commitment to restoration of the contaminated property shall be stipulated in the instructions.

(3). If the person responsible for operation or the user, producer or importer does not have the property at his or her disposal, the enforcement authority may issue the person who has the property at his or her disposal with instructions to acquiesce that inspections, etc. are performed by the person responsible for operation or the user, producer or importer.

(4). Instructions in accordance with (3) shall be binding on the person who at any time has the property where soil contamination is revealed at his or her disposal.

Section 38 f. If there is environmental damage or imminent danger of environmental damage which is to be dealt with in accordance with the Environmental Protection Act, the enforcement authority shall reach a decision on this.

(2). The decision as to whether environmental damage has

occurred cannot be reached if the person responsible for the environmental damage can prove that conditions as stated in section 38 d (1), no. 1-3. section 38 d, (3) are applicable accordingly.

(3). The decision as to whether imminent danger of environmental damage has occurred cannot be reached if the person responsible for the imminent danger of environmental damage can prove that conditions as stated in section 38 d (1), no. (1) or (2) exist.

(4). The Minister of the Environment can stipulate rules that the municipal council and regional council shall present a draft decision for the purpose of obtaining a binding report from the Minister of the Environment as to whether there is environmental damage or an imminent danger of environmental damage which is to be dealt with in accordance with the Environmental Protection Act. The Minister of the Environment may furthermore stipulate rules as to whether the binding report may first be appealed against as part of an appeal against a decision in accordance with chapter 2 or 3 of the Environmental Protection Act.

Section 38 g. If environmental damage has occurred which affects or may affect another EU state, the enforcement authority shall take the decision on this, notwithstanding that a decision cannot be taken in accordance with section 38 f on who is responsible for the environmental damage.

Section 38 h. The enforcement authority shall send the decision that environmental damage or an imminent danger of environmental damage exists, and the materials included in the assessment of the case, to the Minister of the Environment. Submission shall occur at the same time as notification of the person responsible for this.

(2). The enforcement authority shall publish the decision.

(3). The Minister of the Environment may stipulate rules on publication.

(4). The decision as to whether environmental damage or an imminent danger of environmental damage exists which is to be dealt with in accordance with the Environmental Protection Act may first be appealed against as part of an appeal against a decision in accordance with chapter 2 or 3 of the Environmental Protection Act. The appeal shall be submitted in accordance with section 52 of the Environmental Protection Act.

Section 38 i. Upon request by a person entitled to make an appeal in accordance with section 82 and section 83, the enforcement authority will take the decision in accordance with section 38 f or section 38 g.

(2). The request shall be accompanied by relevant information about the suspected environmental damage the imminent danger of environmental damage.

(3). The enforcement authority may refuse to take a decision as to whether environmental damage or an imminent danger of environmental damage exists if the request is not accompanied by information as stated in (2).

Section 38 j. If the person responsible cannot be identified or does not have the capacity to pay, instructions may be issued in accordance with chapter 5.

Chapter 5. Contamination other than environmental damage. Instructions to the polluter, etc.

Section 39. The municipal council shall take the decision on instructions in accordance with this chapter concerning contamination which originates from properties or installations in the municipality, notwithstanding whether the addressee of the instructions has residence in or rights over properties or installations in the municipality, cf. however (2) and (3).

(2). The Minister of the Environment shall take the decision on instructions concerning contamination originating from activities which the Minister monitors or monitored at the time at which the activity ceased.

(3). The regional council shall take the decision about contamination in raw material excavations, notwithstanding whether the addressee of the instructions has residence in or rights over properties or installations in the region.

Information, performance of inspections, etc.

Section 40. The environmental authorities, cf. section 39, may instruct a polluter, cf. section 41(3), no. (1) (1) and no. (2), to provide the information which is relevant for the assessment of corrective or preventive measures concerning any contamination.

The polluter may in particular be instructed to

- 1) carry out sampling, analyses and measurement of substances, etc. for the purpose of identifying the causes or effects of incurred contamination and the nature and extent of the contamination and
 - 2) to identify how the consequences of contamination are remedied or prevented.
- (2). Instructions in accordance with (1) may be issued, notwithstanding how any contamination has occurred, but not if the possible emission from a polluter's activity or installation ceased before 1 January 1992. Instructions in accordance with (1) may furthermore be issued, notwithstanding how any contamination occurred, cf. however, section 41 (3), no. 2.

Cleanups or other corrective measures**Contamination which occurs on or after 1 January 2001**

Section 41. For contamination which occurs on or after 1 January 2001, the environmental authorities may, cf. section 39, issue the polluter with instructions to remove established contamination and restore the former status or take corresponding corrective measures. (2) Instructions may be issued, notwithstanding how the contamination has occurred, cf. however (3), no. 2. Instructions may not be issued where the contamination has occurred as a result of war, civil unrest, nuclear damage or natural hazards. Nor may instructions be issued where the contamination has arisen as a result of fire or malicious damage which is not due to the polluter's irresponsible conduct or conduct whereby the polluter is covered by stricter liability regulations pursuant to other legislation.

(3). The polluter is considered to be:

- 1) The person who in the commercial or public sphere operates or operated the business or uses or used the installation from where the contamination originates. Contamination or part thereof shall have occurred in the operating period concerned.
 - 2) Others who have caused contamination, insofar as the contamination is due to negligence or conduct which is covered by stricter liability regulations pursuant to other legislation.
- (4). Instructions may not be issued if 30 years or more have passed since cessation of the production method or use of the installation which caused or might have caused the contamination.
- (5). For waste disposal plants, the 30 years in (4) shall be calculated from the end of the plant's post-treatment period.

Section 42. If contamination which occurred before 1 January 2001 continues after that date, the provisions of sections 41 and 43 may only apply if the environmental authorities prove that the majority of the contamination occurred after 1 January 2001.

Common provisions

Section 43. If contamination can be traced to several polluters, instructions as covered in sections 40 and 41 may be issued to them all. Instructions to the individual polluters shall be fixed with regard to the portion of the total contamination which the environmental authorities deem to stem from the party concerned. If it is not possible to assess several polluters' respective portions of the contamination, in the instructions the environmental authorities shall assume that similar portions of the contamination, including the contamination which cannot with certainty be traced to one or more polluters, shall be traced to these polluters.

(2). However, instructions may not be issued to a polluter if it may be assumed that only an insignificant proportion can be traced to these polluters.

(3). If the polluters who are issued with instructions in accordance with (1) cannot reach an agreement to jointly comply with the

instructions, new instructions to carry out inspections or cleanups of the combined contamination may be issued to the polluter who may be assumed to have contributed the greatest proportions of the contamination. If the environmental authorities in accordance with (1) have assumed that the contamination stems from the polluters in similar proportions, instructions may be issued to the polluter who has the property at his or her disposal. If no polluters have the property at his or her disposal, instructions may be given to the polluter who last had the property at his or her disposal.

(4). The party which is under an obligation to carry out the instructions in accordance with (3) may request that expenditure is covered by the other polluters, to the extent that costs can be traced to his or her proportion of the contamination and the other polluters were or might be the addressee of instructions.

Section 44. Instructions in accordance with sections 40 and 41 may be issued, notwithstanding whether the polluter has the contaminated property at his or her disposal. For contamination which occurred before 1 January 2000, however, instructions may only be issued in accordance with section 40 if the polluter had the contaminated property at his or her disposal on or before 10 February 1999. In the instructions the obligation to restore the contaminated property shall be established.

(2). If the polluter does not have the contaminated property at his or her disposal, the environmental authorities may issue instructions to the party which has the property at his or her disposal to acquiesce to inspections, cleaning up or other measures being implemented in the polluters' measures. (3). Instructions in accordance with (2) are binding on the party who has the contaminated property at his or her disposal at any time.

Section 45. Instructions in accordance with sections 40 and 41 concerning an activity in operation, are binding on subsequent contractors, insofar as the subsequent contractor knew or ought to have known that instructions had been issued at the time of acquisition. This shall also apply where prior notice of an instruction has been given.

(2). If instructions have been issued or predicted in accordance with section 40 to a business in operation at the time of acquisition of the business on inspections, etc., instructions on further measures concerning the same contamination may be issued to a subsequent contractor, insofar as the subsequent contractor knew or ought to have known that the instructions had been issued or predicted at the time of acquisition.

(3). Instructions in accordance with sections 40 and 41 to a business in operation are binding on subsequent purchasers of the contaminated property, insofar as

- 1) the instructions were issued or predicted before acquisition, but were not observed, notwithstanding that observance was stressed and the circumstances were reported to the police,
- 2) the purchaser knew or ought to have known that instructions had been issued or predicted at the time of acquisition, and
- 3) the acquisition was made by a party which itself was or could be put under an obligation to comply with the instructions.

Section 46. The environmental authorities shall have information about instructions which are issued in accordance with this chapter or predicted, registered for the property at the expense of the addressee of the instructions, cf. however 2. Information about instructions issued in accordance with section 44 (2), and forewarning of this shall not, however, be registered.

(2). Insofar as instructions which are predicted are not finally issued, the environmental authorities shall cover the registration expenses of the addressee of the instructions.

(3) The environmental authorities shall have the registration of the instructions cancelled if the instructions have been observed.

Section 47. Instructions cannot be issued in accordance with this chapter concerning publicly operated landfill sites, etc. which were put into use before 1 October 1974, and which were no longer in operation on 1 September 1990.

Owners of oil tanks with a volume of less than 6000 l for domestic heating and under an insurance obligation.

Section 48. For oil contamination which is confirmed after a specific date set by the Minister of the Environment and Energy, the environmental authorities may, cf. section 39, notwithstanding how the contamination has occurred, issue owners of oil tanks, cf. (3), with instructions on the submission of information and performance of inspections which are covered in section 40 (1), and to remove the confirmed contamination and restore the former status or take corresponding corrective measures.

(2). Instructions in accordance with (1) may not be issued if the contamination has occurred as a result of war, civil unrest, nuclear damage or natural hazards. If the conditions for issuing instructions in accordance with (1) are met but the condition is covered by section 49(2), instructions may only be issued in accordance with (1) if the contamination occurred after the act entered into force.

(3). Instructions in accordance with (1) may be issued to owners of oil tanks with a volume of less than 6000 l, where 50 percent or more of the area which is heated by the oil tank in question is residential, if the plant has been used after the date set by the Minister of the Environment and Energy, cf. (1), and has been or may have been used immediately before confirmation of the contamination. If the contamination is confirmed within 12 months of the date set by the Minister of the Environment and Energy, cf. (1), instructions in accordance with (1) may also be issued if the plant has been in use in the 12 months preceding confirmation of the contamination.

(4). Instructions may be issued, notwithstanding whether the owner of the oil tank has the contaminated property at his or her disposal. The instructions shall stipulate an obligation to restore the contaminated property.

(5). If the owner of the oil tank does not have the contaminated property at his or her disposal, the environmental authorities may issue instructions to the person who has the property at his or her disposal in order to acquiesce to the performance of inspections, cleanups or other measures. These instructions are binding on the party which has the contaminated property at his or her disposal at any time.

(6). For oil contamination which is not covered by (1), cf. (2), the other provisions of the legislation on contaminated soil shall apply.

(7). The Minister of the Environment and Energy may stipulate more specific rules on which instructions may be registered for the property.

Section 49. Owners of oil tanks which may be issued with instructions in accordance with section 48 (1), cf. section 48 (3), shall be covered by an insurance policy which covers the costs, cf. however (2), of the environmental authorities' requirement for inspections and cleaning up in accordance with the provision of section 48.

(2). Compulsory insurance does not cover expenses where the contamination

- 1) is caused intentionally by the tank owner,
- 2) stems from plants which the tank owner knew or ought to have known did not comply with public regulations to this end contained in the oil tank ordinance, or
- 3) is due to the delivery of oil in the tank owner's period of ownership not taking place in accordance with public regulations to this end, contained in the ordinance on road transport of hazardous goods.

(3). The obligation to be covered by an insurance policy shall cease 6 months after the tank has been taken out of use and dismantled in accordance with regulations.

(4). The insurance shall be effective no later than the date stipulated by the Minister of the Environment and Energy, cf. section 48 (1).

(5). The insurance shall cover costs as stated in (1). If expenditure to comply with instructions, cf. section 48 (1), looks as if it will exceed DKR 2 million, the insurance company shall contact the environmental authorities so that they can approve the part of the project which exceeds DKR 2 million. Expenditure which exceeds DKR 2 million shall be paid by the environmental authorities. The environmental authorities shall provide a guarantee for this in

advance if so required.

(6). Central government, the regions and municipalities shall be exempt from compulsory insurance.

(7). An insurance company may not terminate the insurance policy on account of failure to pay the premium without evidence that another insurance policy has been taken out.

(8). The insurance company has the right of distraint for premiums with accrued interest and other costs. Furthermore, the company has the right of lien for services in the insured property after property tax to central government and the municipality for 1 year after it falls due.

(9). After negotiation with suppliers of oil tank insurance policies, the Minister of the Environment and Energy may stipulate more specific rules for the contents of the insurance.

Chapter 6. Removal and use of soil

Section 50. Anyone who removes soil from the property where it is excavated and anyone who uses such soil shall ensure that the soil does not give rise to harmful effects on groundwater, human health and the environment in general.

(2). Excavation and removal of contaminated soil and soil from a surveyed property, a surveyed portion of a property or an area which is used for public roads, and from a property which is covered by regional classification in accordance with section 50 a, shall be notified by the party concerned to the municipal council. Likewise, the municipal council shall be notified of the removal of soil from an approved reception facility for soil.

(3) The Minister of the Environment may stipulate rules on the notification order in accordance with (2), including

- 1) the distribution of tasks between the authorities,
- 2) the requirements concerning the notification's form and content,
- 3) requirements for the notifier and recipient of the soil regarding sampling and analysis of the soil covered by the notification,
- 4) that in certain types of areas or in regions which are stipulated by the local authority, analyses of the soil shall not be made,
- 5) that the party which is involved in moving a lot of soil from areas with uniform contamination and the party which moves soil from an approved reception facility for soil, may notify the combined moving of soil for a given period,
- 6) that small quantities of soil from certain types of area or from regions which are stipulated by the municipal council are exempt from the requirement for notification,
- 7) that notification may take place at the same time or after the soil has been moved, including that notification may take place at the same time as delivery of soil to an approved reception facility for soil, and the conditions for
- 8) the deadline of 4 weeks in accordance with 5 and 6 is restricted under more specific conditions,
- 9) subsequent evidence and a requirement for the notifier and recipient to provide documentation of how the soil has been handled, including documentation that recycling has taken place in accordance with the rules in force, and
- 10) special rules for notification of soil from areas which are used as public roads, and as private roads where there might be an obligation to provide notification, and from an approved reception facility for soil.

(4). The Minister of the Environment may stipulate rules that with the involvement of the public, the local authority shall stipulate regulations on the notification order in accordance with (2). Furthermore, the Minister may stipulate rules on how the public is to be involved in connection with the preparation of the regulations, the publication and entry into force of the regulations.

(5). Excavation and handling of soil which is performed in accordance with rules issued by virtue of (3) and section 51 as well as regulations, cf. (4), must be performed 4 weeks after notification, cf. however (6).

(6). If excavation and handling cannot be performed in accordance with the rules stated in (5), or if the municipal council where the soil is to be used wish to oppose recycling of the soil or to set

conditions for this, cf. section 51, the local authority shall inform the notifier of this within 4 weeks of notification. In such cases the notifier may not perform excavation and handling. (7). Appeals may not be lodged with another administrative authority against the local authority's decisions in accordance with (6) that excavation and handling cannot be performed in accordance with the rules and decisions stated in (5) in accordance with rules issued by virtue of (3) or (4).

Section 50a. Urban areas, cf. section 34 of the planning legislation, shall be classified as regions which may be lightly contaminated, cf. however (2).

(2). If the municipal council is aware that a large, coherent region within an urban area is not lightly contaminated, the municipal council shall exempt the region from classification by means of a regulation.

(3). If the municipal council is aware that a large, coherent region outside the urban area is lightly contaminated, the municipal council shall withdraw the region covered by the classification by means of a regulation. Properties belonging to the Ministry of Defence shall be exempt from this because without regulation in collaboration with the local authority, the Ministry of Defence shall withdraw such regions covered by the classification.

(4). The municipal council shall withdraw the public from classification of a large, coherent region in a regulation in accordance with (2) and (3).

(5). The local authority shall publish the regulation. Publication shall take place by means of announcement in local papers and on the municipal website. The municipal council shall likewise publish information about the background to the regulation. On the same occasion, the local authority shall provide information about the health risks of areas with lightly contaminated soil.

(6). A regulation shall enter into force on the day after publication or later in accordance with the local authority's decision.

(7). The Minister of the Environment and Energy may stipulate rules on the preparation, publication, scope and content of regulations, including rules on exemption or inclusion of certain types of regions, cf. (2) and (3), and rules on principles for demarcation of large, coherent regions.

Section 51. The Minister of the Environment and Energy may stipulate rules on recycling of earth for particular purposes, including rules on criteria and limit values, on notification and on the municipal council being able to oppose recycling or set conditions for it where the use of soil is desired in special cases.

Section 52. The incorporation of both contaminated and uncontaminated soil into raw material excavations and former raw material excavations is forbidden.

(2). The regional council may waive the ban, provided that

- 1) the raw material detector or the owner documents that contractual obligations existed regarding the incorporation of soil into the property before 19 December 1996,
- 2) the raw material detector or the owner shall lose the benefit of the property with major financial loss as a result, which in accordance with the rules hitherto applicable they have had special reason to expect, or
- 3) there is not a risk of contamination for the water collection plant or the groundwater which is expected to contribute to the future drinking water supply, and other corresponding environmental aspects do not indicate otherwise.

(3). An exemption in accordance with (2) from the ban on depositing contaminated soil may include conditions, including on the handling of soil or on evidence that there is talk of uncontaminated soil.

(4). An exemption in accordance with (2) from the ban on depositing contaminated soil may include conditions, including on the handling of soil or compliance with any requirements for documentation. In addition, notification of exemption presupposes that by virtue of section 19 of the Environmental Protection Act, the local authority or the authorising authority in accordance with section 33 of the Act stipulates conditions for the depositing of soil. If the county council has given permission to deposit soil in

raw material excavations by virtue of section 19 or section 33 of the Environmental Protection Act, this permission shall continue to apply.

Section 53. The Minister of the Environment and Energy may stipulate specific rules on monitoring the depositing of earth in raw material excavations, including that the party which receives the soil shall carry out sampling, analyses and measurements of the soil at his or her own expense.

Chapter 7. Administrative provisions Decisions

Section 54. The addressee shall be notified in writing of decisions in accordance with this act. Persons, organisations and authorities entitled to lodge an appeal shall also be notified of decisions against which appeals may be lodged, cf. sections 82 and 83, and the authorities who have otherwise been involved in dealing with the matter. However, only the associations and organisations which are listed in section 83 (2) and (3) shall be notified of decisions if they have asked the Minister of the Environment to receive notification of decisions, cf. section 56 a 2.

(2). Notification of the persons who are listed in section 82(1), no. (2), may take place by means of a public announcement.

(3). Instructions may be communicated orally if there is a health hazard or immediate intervention is required to prevent major environmental damage. An oral decision shall be confirmed in writing as soon as possible.

Section 55. Instructions shall contain a deadline for compliance with the decision. However, if there are special circumstances, a decision may be taken that the instructions are to be complied with at once.

Section 56. If special reasons speak in favour of this, the environmental authorities may take a decision that appeals on decisions shall not have a delaying effect.

Section 56 a. Local associations and organisations which have the protection of the environment and nature as their chief aim may notify the municipal council, the regional council and the Minister of the Environment about which particular types of decisions in accordance with chapter 4 a the association wishes to be notified, cf. section 54 (1), and section 83 (1). The association shall at the same time submit statutes which document that it is organised locally and that its main purpose is the protection of the environment. The same shall apply to local associations and organisations which are responsible for major recreational interests, if the decisions are based on such interests.

(2). National associations and organisations which according to their statutes have the protection of nature and the environment as their main purpose, may notify the Minister of the Environment about which particular types of decisions in accordance with chapter 4 a the association or organisation wishes to be notified, cf. section 54 (1), according to which the Minister of the Environment shall notify the local authority or regional council in question within 14 days. The same shall apply to national associations and organisations which according to their statutes have as their purpose the responsibility for major recreational interests, if the decisions are based on such interests.

(3). Local departments of national associations and organisations are not covered by the provisions of (1) and (2).

Access to property

Section 57. If it is deemed necessary, the environmental authorities shall at any time with appropriate legitimacy without a court ruling, cf. however (2), have access to public and private properties and premises and means of transport to carry out inspections in accordance with sections 65, 66 and 66 a as well as in accordance with corresponding rules issued by virtue of the act and to take measures in accordance with chapter 2-4, g 68 (1), (2) and (4), section 73 a and section 73 b. The environmental authorities shall have access to photograph, copy or take away documents and to take away other objects without remuneration. Receipts shall be issued for objects which are taken away. The same shall apply to those people who

of these authorities are authorized for this, the National Board of Health and people who are given access in accordance with section 58 (1) (2). Access in accordance with (1) shall require a court ruling where access takes place with a view to having mandatory measures performed, cf. section 68 (1). However, a court ruling shall not be required if

- 1) a situation exists as described in section 68 (2), or
- 2) access to perform a mandatory inspection or cleanup is required in order to prevent the situation referred to in section 68 (2), from arising.

(3). The police shall provide the authorities and people who are authorised by them with support to exercise responsibilities in accordance with (1) and (2). The Minister of the Environment and Energy may stipulate specific rules on this after consulting the Minister of Justice.

Section 58. The regional council may decide that inspections or cleanups may be performed at a particular property by others than the authorities in accordance with this act. The regional council may oblige those concerned to restore the contaminated property. The regional council may issue instructions to the party which has the property at its disposal to acquiesce to such works being performed.

(2). Instructions in accordance with (1) are binding on the owner or user at any time.

(3). The regional council shall allow information about instructions which are issued in accordance with (1) or predicted to be registered for the property. The regional council shall allow registration of the aforementioned information to be deleted if the measures have been taken at the property. Expenditure on registration and deletion shall be borne by the party which after the decision is taken in accordance with (1) performs inspections or cleanups at the property.

Delegation of powers, etc.

Section 59. The Minister of the Environment and Energy may authorise an official authority set up under the Ministry or, after negotiation with the Minister concerned, other official authorities to exercise the responsibilities which are conferred on the Minister in this act.

(2). The Minister of the Environment and Energy may stipulate rules on access to appeal against decisions which are taken in accordance with the authorisation in accordance with (1), including that appeals may not be lodged against the decisions.

(3). Furthermore, the Minister may stipulate rules on the exercise of responsibilities which another official authority is authorised to exercise in accordance with (1) after negotiation with the minister concerned.

Section 60. (Repealed).

Section 61. The Minister of the Environment and Energy may oblige the regional councils or municipal council to consider issues, including concrete matters, concerning soil contamination for handling and decision-making.

(2) The Minister of the Environment may in special cases oblige a regional council to perform inspection and remedial measures in areas which are surveyed or might have been surveyed, cf. section 5.

(3). Furthermore, the Minister of the Environment may place the regional council and municipal council under an obligation to produce information for use for assessment of conditions which are regulated under this act within the individual municipality's or the individual region's area. Information may be requested in a particular form.

(4). The Minister of the Environment may stipulate specific rules for the regional councils and municipal council to submit reports on their surveying and supervisory activity, including the results of measurement and investigations. In addition, the Minister may stipulate rules that the reports are to be drawn up in a particular form.

Section 62. The local authority or the Minister of the Environment as the regulatory authority respectively shall upon request provide the regional council with all information which is relevant for assessment of the situation, which is regulated in

accordance with this act within the individual municipality's area.

Section 62 a. The Minister of the Environment shall stipulate rules with regard to fulfilment of The European Community's Directives and Resolutions on nature conservation on the cases in which and under which conditions authorisations in accordance with section 8 (1) and (2), and section 52 (2), shall be granted.

Section 63. Approval, authorisation, planning and exemption in relation to the Planning Act, the Nature Conservation Act, the Raw Materials Act, the Environmental Protection Act, the Water Act, the Water Rights Act and the Forest Act are not required in connection with the performance of investigations and remedial measures in accordance with chapter 3 and 4. However, this shall not apply if the acts in question or provisions therein implement or are part of the implementation here in Denmark of The European Community's Directives or regulations. Likewise, the provisions of the Environmental Protection Act shall continue to apply to the handling of soil.

(2). If a remedial measures project means that pumped, contaminated groundwater is to be discharged into the water course, lakes or sea, the regional council shall publish a draft proposal such that the public is given access to make objections to the proposal within a period of 4 weeks.

(3). No appeal may be lodged with another administrative authority against the regional council's final decision, cf. (2).

Section 64. In Bornholm's Regional Local Municipality, the municipal council shall perform the tasks which the law assigns to the regional council in relation to rules issued under the law.

Chapter 8. Supervision and enforcement

Section 65. The municipal council shall check

- 1) that the law and the rules which are stipulated pursuant to the law are observed,
- 2) that instructions issued by the municipal council are observed, and
- 3) that conditions stipulated by the municipal authorities in connection with authorisations and exemptions, including by virtue of general rules, are observed.

(2). The municipal council shall forward cases concerning failed observance of instructions issued by the regional council to the regional council. The municipal council shall forward cases concerning failed observance of instructions issued by the Minister of the Environment to the Minister of the Environment.

(3). The municipal council shall notify the local Labour Inspectorate if the municipal council ascertains problems with the indoor climate of a business property which are presumed to be due to soil contamination.

Section 66. The regional council shall check and monitor the development of the state of contamination of the soil. The regional council shall check deposits in raw material excavations and previous raw material excavations as well as in areas covered by section 8 6.

(2). The regional council shall be responsible for detecting sources of contamination in collaboration with the municipal council, if contamination of the groundwater is confirmed.

(3). The regional council shall ensure that instructions issued by the regional council, cf. section 39 (3), are observed.

(4). The regional council shall notify the local building authorities if the regional council ascertains problems with the indoor climate in a residential property as a result of soil contamination.

(5). The regional council shall notify the local Labour Inspectorate if the regional council ascertains problems with the indoor climate of a business property which are presumed to be due to soil contamination.

(6). The regional council shall notify the water supplies concerned as soon as contamination is ascertained.

Section 66a. The Minister of the Environment shall check that instructions issued by the Minister of the Environment, cf. section 39 (2), are observed.

(2). The Minister shall notify the local Labour Inspectorate if the Minister confirms problems with the indoor climate at a business property which are presumed to be due to soil contamination.

(3). The Minister shall notify the local building authorities if the minister ascertains problems with the indoor climate in a residential property as a result of soil contamination.

(4) The Minister shall notify the water supplies concerned as soon as contamination is ascertained.

Section 67. Regulatory authority, cf. Sections 65, 66 and 66 a, shall see to it that an illegal circumstance is made legal, unless it is of lesser significance.

(2). The regulatory authority may omit to deal with circumstances which it deems to be of lesser importance for environmental protection.

(3). Appeals may not be lodged with another administrative authority against the regulatory authority's decision in accordance with (1) and (2).

Section 68. The regulatory authority, cf. sections 65, 66 and 66 a, may at the expense of the addressee of the instructions have mandatory measures performed when the fixed deadline has expired.

(2). In the event of imminent grave danger to health and in cases where immediate intervention is required in order to prevent major contamination or the spreading of contamination, the regulatory authority shall do what is necessary without instructions.

(3). Appeals may not be lodged with another administrative authority against the regulatory authority's decisions in accordance with (1) and (2).

(4). In cases where an area has been surveyed, covered by regional classification in accordance with section 50 a or lightly contaminated, the municipal council may carry out inspections and take remedial measures.

Section 69. The Minister of the Environment and Energy may stipulate more specific rules concerning the regulatory authority's supervisory activity concerning contaminated soil.

(2). The Minister may stipulate more specific rules on detecting sources of contamination in those situations in which the source of contamination is not sufficiently clear.

(3). The Minister may specifically stipulate the scope of the regulatory commitment of a municipal council or a regional council for a particular period.

(4). The Minister may stipulate rules that supervision shall be performed by other authorities or according to a distribution other than that stipulated in sections 65, 66 and 66 a in certain cases.

Chapter 9. Various provisions
Notification of contamination, etc.

Section 70. If the municipal council receives notification of soil contamination, the municipal council shall notify the regional council of this. The municipal council shall also notify the Minister of the Environment in cases where the Minister of the Environment is the regulatory authority.

(2). The municipal council shall notify the local Labour Inspectorate if contamination of the soil is confirmed during construction or earthwork, cf. section 71 1.

(3). The regional council shall notify the municipal council if the regional council becomes aware that there is lightly contaminated soil in an area which is not surveyed, cf. section 2 (2). The regional council shall also notify the owner and make him/her aware in this connection of the obligation to provide notification in accordance with section 50 (2), and the opportunity for consultancy in accordance with section 72 a. The regional council shall at the same time make the owner aware of the owner's obligation in accordance with (4).

(4). The owner shall notify tenants in writing within 4 weeks of information which the owner has received in writing from the environmental authorities in accordance with (3), unless the tenants have received corresponding notification from the environmental authorities.

Section 71. If soil contamination is ascertained during construction or earthwork in an area which is not surveyed, the work shall be stopped. The same shall apply to a surveyed area if the ascertained contamination is not described in the survey. It is the obligation of the property's owner and the party which

performs or has the work concerned performed.

(2). The work may only be restarted 4 weeks after the regional council has received notification of the ascertained contamination, unless the regional council has previously communicated in writing that it is not a question of taking a decision on whether the area concerned is to be surveyed, or that the basis for the area survey has not changed.

(3). If before the expiry of the deadline specified in (2), the regional council provides written notification that it is a question of taking a decision on the area in question being surveyed, or that the basis for the area survey has changed, the work may not be restarted before the regional council has provided notification of surveying or of changes in the survey, and if the work is covered by the requirement for authorisation in accordance with section 8, such authorisation has been given or the necessary revision of a previously granted authorisation has been undertaken.

(4). The regional council shall at the same time notify the municipal council and the local Labour Inspectorate of notifications in accordance with (2) and (3).

Section 72. Any owner or user of a property shall upon request by the municipal authority, regional council or Minister of the Environment, provide all the information for use in the authorities' performance of tasks in accordance with the law or in accordance with the rules which are stipulated pursuant to the law.

(2). The obligation to provide information comprises all the information which is important for the assessment of the contamination and for any remedial or preventive measures.

Section 72a. The municipal council in collaboration with the regional council shall provide general advice about the health risks associated with areas which are covered by the regional classification in accordance with section 50 a or are lightly contaminated. The municipal council shall in its general advice draw attention to the owner's obligation in accordance with (2).

(2). Owners of properties shall notify tenants in writing and within 4 weeks of advice on health risks concerning areas which are covered by regional classification in accordance with section 50 a or are lightly contaminated, which owners have received from the environmental authorities in writing, unless the tenants have received corresponding notification from the environmental authorities.

(3). The municipal council may in publicly accessible outdoor areas which are covered by the regional classification or section 50 a or are lightly contaminated, issue instructions to owners that they shall within a fixed period take or uphold less expensive measures described in more detail, including enclosure and tile coverage where a health risk may exist with the current use.

(4). For certain mapped areas which are covered by the regional classification in accordance with section 50 a or are lightly contaminated, the municipal council may set rules that owners shall take or uphold measures for publicly accessible outdoor areas as stated in (3).

(5). Instructions and rules, cf. par. 2 and 3, are binding on the owner of the property at any time and may be registered for the property.

(6). Owners shall inform tenants of instructions or rules, cf. (3) and (4).

(7). Rules issued by virtue of (4) shall contain provisions that the municipal council may dispense with the need for the imposed measures, provided that the owner documents this. (5) The Minister of the Environment may stipulate rules on collaboration between the municipal council and the regional council in accordance with (1) and the rules on the content of local rules in accordance with (4) and on publication thereof.

Requirements concerning topsoil in areas containing housing, childcare centres, public playing fields, allotment gardens or holiday homes

Section 72b. Before an owner or user of an area changes the use of the area to housing, childcare centres, public playing fields, allotment gardens or

holiday homes, the owner or the user shall ensure either that the top 50 cm of soil of the undeveloped portion of the area is not contaminated or that a permanent, firm layer is established.

(2). In connection with the owner or user performing building and construction work in an undeveloped part of an area which is used for housing, childcare centres, public playing fields, allotment gardens or holiday homes, the owner or user shall ensure either that the top 50 cm of soil is not contaminated or that a permanent, firm layer is established in the area affected by the work.

(3). Subsequent removal of the required topsoil or the required layer in accordance with (1) and (2) may only take place if owner or user once again ensure either that the top 50 cm of soil is not contaminated or that a permanent, firm layer is established. (4). Building and construction work which the owner or the user of one or two-family houses performs at the property is not covered by the requirement of (2), unless the construction of new housing is involved. (5). The Minister of the Environment may stipulate rules on establishing and upholding measures in accordance with (1) - (4), including on restricting measures where the preservation of natural amenities is concerned, in wiring work, and where the measures may result in major technical problems, and rules on documentation for compliance with the provisions.

Requirement for statement on contamination status

Section 72c. The municipal authority may upon request by an owner or user who has performed an inspection of contamination, to the extent to which the submitted documentation provides an opportunity for this, provide a statement on the contamination status of the area. The statement shall be in accordance with a report obtained from the regional council. The municipal council shall notify the regional council of the statement. (2). The Minister of the Environment may stipulate rules on collaboration between the municipal council and the regional council in accordance with 1. (3). An appeal may not be lodged with another administrative authority against a statement in accordance with (1).

Requirement for covering costs and compensation, etc.

Section 73. The Minister of the Environment, the regional council or the municipal council may request expenditure for which by virtue of this act commitments are entered into for inspections, cleanups, other remedial measures, acquisition or compensation for compulsory purchase of a property covered by whoever is or might be an addressee for an instruction concerning the property in question.

(2). An appeal may not be lodged with another administrative authority against the decision by the Minister of the Environment, the regional council or the municipal council in accordance with (1) to request effected expenditure be covered. However, an appeal may be lodged against the decision by the Minister of the Environment, the regional council or the municipal council concerning whom the requirement may be addressed to if prior instructions have not been issued.

(3). If a cleanup is performed, for which by virtue of this act the environmental authorities have entered into commitments regarding expenditure, the environmental authorities shall become responsible for the requirements which the owner might have of the polluter or former owner in connection with contamination, to the extent that the owner's requirements of the polluter or former owner are reduced as a result of the cleanup.

Section 73 a. In cases where section 10 of the act on legal certainty regarding the administration's application of measures of constraint and obligations to provide information apply, the regulatory authority may perform necessary inspections at the expense of the responsible party to clarify the situation about which the latter either is or could be obliged to provide information.

Section 73 b. In cases where section 10 of the act on legal certainty regarding the administration's application of measures of constraint and obligations to provide information applies, or where it might otherwise be deemed necessary for enforcement or environmental reasons, the regulatory authority may for a limited period take the decision to carry out the self-regulatory control which a business would otherwise perform, at the business' expense. In the decision to assume self-regulatory control, the authority may stipulate the requirements which are necessary for

the authorities' performance of the control.

Section 74. The act does not restrict the environmental authorities' right to compensation in accordance with general regulations on compensation in or outside a contract or by virtue of regulations which are stipulated in other legislation.

(2). Repayment of the amount paid in accordance with the depreciation order, cf. chapter 4, may be demanded if the amount paid is too large by mistake or as a result of inaccurate information being provided, etc.

Section 75. When stipulating compensation for a compulsory purchase, cf. section 22 or in an agreement on purchase, cf. sections 22 and 34, the party from whom the compulsory purchase is being made may request that the property's value be calculated without consideration of the reduction in value which is due to the contamination risks from the contaminated property, if the party concerned purchased the property in good faith. If the owner is or might be the addressee of an instruction in accordance with chapter 4 a or 5 of the act or chapter 3 of the Environmental Protection Act, the property's value shall be calculated, however, taking the contamination into consideration.

(2). Setting of compensation and setting of the property's value in cases of compulsory purchase, cf. section 22, and in agreements on purchase, cf. sections 22 and 34, undertaken in the absence of agreement by the tax authorities, as laid down in the Public Roads Act. The provisions of the Public Roads Act section 51 (1) and (3) - (7), sections 52-56 and sections 58a-66 shall apply accordingly as it is the regional council which performs the tasks which are assigned to the highway authority in relation to the Public Roads Act.

Section 76. If in the execution of measures in accordance with this act, people other than the environmental authorities have caused damage to another person's property, the owner or user of the property may submit a claim against the environmental authorities if agreement cannot be reached on fixing compensation, or if the person responsible for the damage cannot meet the compensation claim.

(2). If the environmental authority has covered the compensation claim by virtue of (1), the authority shall assume the injured party's claim for compensation against the party which has caused the damage.

(3). Assignment of compensation in accordance with (1) and (2) and assignment of compensation regarding damage which is caused in the environmental authorities' performance of measures in accordance with this act, shall be undertaken in the absence of agreement by the tax authorities, as laid down in the Public Roads Act. The provisions of sections 51-56 and sections 58 a-66 of the Public Roads Act shall apply accordingly while it is the environmental authority, however, which shall perform the tasks which are assigned to the highway authority in relation to the Public Roads Act.

(4). If a mandatory inspection, cf. section 40, reveals that contamination is not ascertained in the area inspected, or that the contamination cannot be attributed wholly or in part to the addressee of the instructions, the environmental authority which has instructed the inspection shall cover the expenses for which the addressee of the instructions has entered into a commitment in observance of the instructions.

Section 76a. After having sold an area, the municipal council, the regional council or the authority for a local community may omit to plead the statute of limitations in matters involving claims for shortcomings as a result of soil contamination in an area which has been or could have been surveyed, cf. section 5.

(2). Appeals cannot be lodged with another administrative authority against a decision in accordance with (1).

Chapter 10. Claims for judicial remedy
Claims

Section 77. Claims may not be lodged with the Environment Complaints Board which is laid down by virtue of the Environmental Protection Act against the following decisions:

- 1) Decisions taken by the municipal council and regional council in accordance with the act or rules issued by virtue of this law, unless the other provisions of the act dictate otherwise.

2) The Minister of the Environment's decisions in accordance with chapter 4 a, section 39 (2), section 72, section 73 (2) (2), section 73a and section 73b.

(2). Section 102, Section 104 (1) and (2), section 105, section 106 and section 109 of the Environmental Protection Act shall apply accordingly in the Environment Complaints Board's handling of cases in accordance with 1.

(3). Claims to the Environment Complaints Board shall be submitted in writing to the authority which has taken the decision by those entitled in accordance with section 82. Immediately after expiry of the period for lodging a claim, the authority shall send the claim to the Environment Complaints Board accompanied by the contested decision and the material which has been included in the assessment of the case.

(4). The Minister of the Environment may stipulate more specific rules on the composition and activity of the Environment Complaints Board when handling cases by virtue of this act.

Section 78. The Minister of the Environment and Energy may stipulate rules that appeals may not be lodged with another administrative authority against decisions which are of lesser importance.

Section 79. An appeal shall have a suspensive effect on an instruction, unless the Environment Complaints Boards reaches a decision otherwise.

(2). If a decision is taken that in accordance with section 56 instructions shall be complied with immediately, the appeal shall not have suspensory effect, unless the Environment Complaint Board reaches a decision otherwise.

(3). An appeal against a decision on notification or application for a waiver in accordance with section 52 shall not have suspensory effect, unless the Environment Complaint Board reaches a decision otherwise.

(4). The provisions of (3) involve no restrictions on the Environment Complaint Board's access to changing or rescinding a mandatory waiver.

(5). Appeals against decisions in accordance with section 73 a and section 73 b have suspensory effect, unless the Environment Complaint Board determines otherwise.

Section 80. An appeal against a decision on compulsory purchase shall have suspensory effect unless the Environment Complaints Board decides otherwise.

Section 81. The period for lodging an appeal is 4 weeks from the day on which the decision is communicated. If the decision is announced publicly, however, the period for lodging an appeal is calculated from the time of the announcement.

(2). If the period for lodging an appeal expires on a Saturday or public holiday, the period shall be extended to the following working day.

Section 82. Appeals may be lodged against decisions by the municipal council, the regional council and the Minister of the Environment by

- 1) the addressee of the decision,
- 2) anyone who has an individual major interest in the outcome of the case, and
- 3) the Health Authority.

(2). The municipal council may appeal against the regional council's decision, the regional council may appeal against the municipal council's decisions, and the municipal council and the regional council may appeal against the Minister of the Environment's decisions.

(3). The Minister of the Environment and Energy may stipulate rules that appeals may be lodged by particular authorities in other countries against decisions in accordance with the act.

Section 83. Local associations and organisations which have the protection of nature and the environment as their main purpose may appeal against decisions regarding which the association or organisation has requested notification, cf. section 56 a (1). Local associations and organisations which in accordance with their purpose protect major recreational interests may appeal against decisions regarding which the association or organisation has requested notification, cf. section 56 a (1), if the decision is based on such interests and the appeal aims to protect nature and the environment.

(2). National associations and organisations which according to their statutes have the protection of nature and the environment as their main purpose may appeal against decisions in accordance with the

provisions of chapter 4 a.

(3) National associations and organisations which according to their statutes have the purpose of protecting major recreational interests,

may appeal against decisions in accordance with the provisions of chapter 4 a, if the decision

is based on such interests and the appeal aims to protect nature and the environment.

(4). Local departments of national associations and organisations are not covered by the provisions of (1)-(3).

(5). To test eligibility to lodge an appeal, the Environment Complaints Board may request that the association or organisation submits the statutes.

Section 84. (Repealed).

Section 85. (Repealed).

Section 86. The Environment Complaints Board may prepare information and undertake inspections in accordance with the rules of sections 40, 48 and 57.

Judicial remedy

Section 87. Judicial remedy to verify decisions in accordance with the act or the rules which are stipulated in accordance with the act shall be requested no later than 12 months after the decision has been communicated. If the decision is announced publicly, however, the time limit for bringing action is always calculated from the time of the announcement.

(2). Queries which can be examined by the tax authorities may not be brought before the courts before the decision of the overtaxation committee is available.

Chapter 11. Penalties

Section 88. Unless higher penalties are due in accordance with other legislation, a fine shall be imposed on anyone who

- 1) fails to observe instructions in accordance with the act,
- 2) fails to file an application in accordance with section 8 (1) or (2),
- 3) fails to take measures as specified in section 38 c.
- 4) begins excavation, removal and use without notification in accordance with section 50 (2),
- 5) contrary to section 8 (1) or (2), or section 50 (5), changes use or starts works which have been notified and for which authorisation has been applied respectively,
- 6) without authorisation excavates or handles soil contrary to notices from the municipal council in accordance with section 50 (6),
- 7) fails to comply with conditions related to authorisation or exemption under the law,
- 8) breaches section 9 (2), section 49, section 50 (1) or section 52,
- 9) submits inaccurate or misleading information in connection with a request in accordance with sections 29 and 33 or a notice in accordance with section 50 (2)
- 9) fails to stop the work as specified in section 71 upon contamination being ascertained,
- 10) submits inaccurate or misleading information or fails to submit information as specified in section 72,
- 11) breaches section 70 (4), and section 72 a (2) and (3),
- 12) breaches section 72 b (1)-(4),
- 13) prevents access to a property contrary to section 57,
- 14) fails to meet the requirements of a decision in accordance with section 73 b or removes or changes equipment which the regulatory authority has installed by virtue of a decision in accordance with section 73 a or section 73 b, or
- 15) intentionally removes, distorts or damages markings which are undertaken in connection with works and inspections under the law.

(2). The penalty may increase to a term of imprisonment of up to 2 years if the breach was committed intentionally or as a result of gross negligence, and if the breach caused damage to the environment or gave rise to danger thereof or with the breach an economic advantage was obtained or intended for the person concerned themselves or for others, including with savings.

(3). In rules and regulations which are issued by virtue of this act, a penalty of a fine may be stipulated. Furthermore, it may be stipulated that the penalty

may increase to a term of imprisonment of up to 2 years under corresponding circumstances as specified in (2).

(4). Companies, etc. (legal entities) may be held legally responsible under the rules of chapter 5 of criminal law.

(5). If an economic advantage is obtained as a result of a breach, this shall be confiscated in accordance with the rules of chapter 9 of the Criminal Act, even if the breach has not caused damage to the environment or given rise to a danger thereof. If confiscation is not possible, special jurisdiction shall be applied by calculating a fine, including a possible supplementary fine.

(6). The limitation period for criminal liability is 5 years for breaches, etc. as dealt with in (1) (1), however except for failure to comply with inspection instructions in accordance with sections 40 and 48, and (1) (2)-(8) and (9).

Section 89. Searching in cases of breaches of provisions of this act may take place in accordance with the rules of procedural law on searching in cases which under the law may result in a custodial sentence.

Chapter 12. Changes in the Environmental Protection Act, the Assessment Act, the Property Profit Margin Taxation Act and the Raw Materials Act

Section 90. In the Environmental Protection Act, cf. Consolidating Regulation no. 698 of 22 September 1998, last amended by Act 908 of 16 December 1998, the following amendments have been made:

1. Sections 20 and 20 b are repealed.
2. After section 21 insert:
»Section 21 a. It shall be the responsibility of the owner of a property at any time to ensure that tanks for storing petroleum products which have been taken out of use are dismantled in accordance with regulations. A request may not later be made to excavate or dismantle a legally dismantled tank again.«
3. Insert in section 24 as (3):
»(3). Instructions may not be issued in accordance with (1) or (2) on measures concerning contaminated soil, cf. section 83 c.«
4. After section 64 a insert:
»section 64 b. If in the execution of measures having regard to section 83 a (1), people other than the environmental authorities have caused damage to another person's property, the owner or user of the property may submit a claim against the environmental authorities if agreement cannot be reached on fixing compensation, or if the person responsible for the damage cannot meet the compensation claim.
(2) If the environmental authorities have covered a compensation claim by virtue of (1), the authority shall assume the injured party's claim for compensation against the party which has caused the damage.«
5. In section 70 (3), insert as point 2:
»However, there shall be no right of distraint for expenditure which involves inspection and cleaning up of contaminated soil, cf. section 83 c.«
6. After section 83 insert:
»**Section 83 a.** In accordance with the provisions of this act, instructions may be issued, including on the implementation of measures in accordance with section 69, concerning contaminated soil, cf. section 83 c, to a polluter of a property, even if the latter does not have the property at his or her disposal, where the contamination is found, if the person concerned had the property at his or her disposal on 10 February 1999 or later. In the instructions the obligation to restore the contaminated property shall be established.
(2). If the polluter does not have the contaminated property at his or her disposal, the authorities may issue instructions to the party which has the property at his or her disposal to acquiesce to inspections, cleanups or other remedial measures being implemented by the

party which has received the instructions in accordance with the provisions of this act.

(3). Instructions in accordance with (2) are binding on the party who has the contaminated property at his or her disposal at any time.

(4). Instructions in accordance with this act, including on the implementation of measures in accordance with section 69, which are issued to a business in operation, and which involve inspections, cleanups or other remedial measures concerning contaminated soil, cf. section 83 c, are binding on subsequent contractors, insofar as the subsequent contractor acquired the business after 1 January 2000 and at the time of acquisition knew or ought to have known that instructions had been issued. section 83 c, in accordance with this act or in accordance with the act on contaminated soil for a business in operation, instructions on the implementation of further measures, including in accordance with section 69, concerning the same contamination may be issued to a subsequent contractor in accordance with the provisions of this act, insofar as the subsequent contractor has acquired the business after 1 January 2000 and at the time of acquisition knew or ought to have known that instructions had been issued or predicted.

(6) Instructions in accordance with this act, including on the implementation of measures in accordance with section 69, which are issued to a business in operation, and which concern inspections, cleanups or other remedial measures concerning contaminated soil, cf. section 83 c, are binding on subsequent purchasers of the contaminated property, insofar as

- 1) the instructions were issued or predicted before acquisition, but were not observed, notwithstanding that observance was stressed and the circumstances were reported to the police,
- 2) the purchaser knew or ought to have known that instructions had been issued or predicted at the time of acquisition,
- 3) the acquisition was made by a party which itself was or could be put under an obligation to comply with the instructions, and
- 4) the property was acquired after 1 January 2000.

(7). Instructions may not be issued in accordance with (1)-(6) regarding publicly operated landfill sites, etc. which were put into use before 1 October 1974, and which were no longer in operation on 1 September 1990.

Section 83 b. The environmental authorities shall have information on instructions, including on the implementation of measures in accordance with section 69, which are issued or predicted in accordance with this act, and which concern inspection, cleanup or remedial measures regarding contaminated soil, cf. section 83 c, to be registered for the property at the addressee of the instructions' expense. However, this shall not apply to information on instructions predicted or issued in accordance with section 83 a (2). (2). Insofar as an instruction which is predicted is not finally issued, the environmental authorities shall cover the registration expenses of the addressee of the instructions.

(3). The environmental authorities shall have the registration of information on instructions and warning of instructions deleted if the instructions are complied with.

Section 83 c. Contaminated soil is taken to mean soil which due to human activity may have a damaging effect on groundwater, human health and the environment in general. Contaminated soil does not cover soil affected by agricultural spreading of slurry, manure and pesticides, etc.«

Section 84 a is repealed.

Insert in section 87 after (1) as a new item:

»(2). Access in accordance with (1) requires a court ruling, where access takes place in relation to having mandatory measures performed in accordance with section 69 in connection with inspection and cleaning up of contaminated soil, cf. section 83 c. However, a court ruling is not required if 1) there is a situation as described in section 70 (1), or

- 2) access to implement inspection instructions or cleaning up instructions is required to prevent the situation specified in section 70 (1), arising.«
 (2) and (3) now become (3) and (4).
9. In section 110 (1) (1), »section 20 a 1,« shall be deleted.
10. In section 110 (1), insert after (4) as a new item:
 »5) fails to dismantle or close off a tank for petroleum in accordance with the applicable rules, cf. Section 21 a«. Nos. (5)-(12) now become (6)-(13).
11. In section 110 (3) »section 20 b (2)« shall be deleted.
12. In section 110 7. »and 5« shall be changed to: »5 and 6«.

Section 91. In the assignment of income tax (Assessment Act), cf. Consolidating Regulation 819 of 3 November 1997, last amended by section 10 of Act 288 of 12 May 1999, shall be replaced by section 17 A (2) (2). as follows:

»The same shall apply to interest on borrowings in accordance with section 33 of the act on contaminated soil.«

Section 92. In the act on taxation of profit in the transfer of real estate (Property Profit Margin Taxation Act), cf. Consolidating Regulation 631 of 17 August 1998, last amended by section 5 of Act 166 of 24 March 1999; section 11 (3) shall be replaced as follows:

»Profit obtained upon transfer in accordance with section 34 of the act on contaminated soil is not included in the calculation.«

Section 93. In the Raw Materials Act, cf. Consolidating Regulation 569 of 30 June 1997, section 10 (5) (2). shall be replaced as follows:

»Revised conditions which follow from the prohibition in accordance with section 52 of the act on contaminated soil shall be registered at the county council's expense.«

Chapter 13. Entry into force and transition provisions

Section 94. The act shall enter into force on 1 January 2000, cf. however, (2).

(2). The Minister of the Environment and Energy shall stipulate the time for the entry into force of section 14

(3). At the same time as this act enters into force,

- 1) Act 420 of 13 June 1990 on waste depots, cf. Consolidating

Regulation 939 of 27 October 1996, and

- 2) Act 214 of 28 April 1993 on a depreciation order for owner-occupiers, etc.

(4). Instructions are only binding on a mortgagee in accordance with section 45 or section 83 a (4) – (6) of the Environmental Protection Act as indicated by section 90 (6) of this act, if the mortgage was taken out after 1 January 2000.

Section 95. Decisions taken and entered into amicably in accordance with the laws specified in section 94 (3) or in accordance with the rules issued in accordance with the laws specified in section 94 (3), shall remain valid until new decisions are taken in accordance with this act or in accordance with rules issued in accordance with this act. Breaches of such agreements shall be punished in accordance with the rules applicable to date.

(2). Decisions taken before this act entered into force in accordance with the Environmental Protection Act or in accordance with rules issued in accordance with the Environmental Protection Act on instructions and conditions related to authorizations, exemptions or approvals, which concern contaminated soil before that act entered into force, shall be upheld.

(3) Decisions on repayment of individual payments in accordance with the act on a depreciation order for owner-occupiers, etc. shall be made in accordance with the rules which were valid when the request for cleaning up was submitted. However, the regional council may take a decision on repayment in accordance with section 35(2)(3).

(4). Registration of the waste depots which are registered in accordance with the Waste Depot Act shall be upheld until the depots are entered in the register stated in section 14.

(5). The members of the Depot Council appointed by the Minister of the Environment and Energy shall continue to exercise their powers in accordance with the rules in force hitherto.

Section 96. The act shall not apply to the Faroe Islands and Greenland, but may be implemented by royal decree for these departments with the derogations justified by the special conditions in the Faroe Islands or Greenland.