



T r a n s l a t i o n

**Federal Soil Protection Act
of 17 March 1998 (Federal Law Gazette I p. 502)**

The German Bundestag, with the consent of the German Bundesrat, has adopted the following Act:

Soil Protection Act

Section 1

**Act on Protection against Harmful Changes to Soil
and on Rehabilitation of Contaminated Sites
(Federal Soil Protection Act - BBodSchG)**

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Part One
General Provisions

Article 1
Purpose and Principles of the Act

The purpose of this Act is to protect or restore the functions of the soil on a permanent sustainable basis. These actions shall include prevention of harmful soil changes (to the soil), rehabilitation of the soil, of contaminated sites and of waters contaminated by such sites; and precautions against negative soil impacts. Where impacts are made on the soil, disruptions of its natural functions and of its function as an archive of natural and cultural history should be avoided as far as possible.

Article 2
Definitions

- (1) Soil within the meaning of this Act is the upper layer of the earth's crust, as far as this layer fulfils the soil functions mentioned in paragraph (2), and including its liquid components (soil solution) and gaseous components (soil air), except groundwater and beds of bodies of water.

- (2) Within the meaning of this Act, the soil performs
 1. natural functions
 - a) as a basis for life and a habitat for people, animals, plants and soil organisms,
 - b) as part of natural systems, especially by means of its water and nutrient cycles,
 - c) as a medium for decomposition, balance and restoration as a result of its filtering, buffering and substance-converting properties, and especially groundwater protection,

2. functions as an archive of natural and cultural history and

3. functions useful to man as

- a) a medium that holds deposits of raw materials,
- b) land for settlement and recreation,
- c) land for agricultural and silvicultural use,
- d) land for other economic and public uses, for transport, and for supply, provision and disposal.

(3) Harmful soil changes (to the soil) within the meaning of this Act are harmful impacts on soil functions that are able to bring about hazards, considerable disadvantages or considerable nuisances for individuals or the general public.

(4) Suspected sites (*Verdachtsflächen*) within the meaning of this Act are lands suspected to contain harmful soil changes.

(5) Contaminated sites (*Altlasten*) within the meaning of this Act are

1. closed-down waste management installations, and other real properties, in/on which waste has been treated, stored or landfilled (former waste disposal sites - *Altablagerungen*), and
2. real properties that house closed-down installations, and other real properties, on which environmentally harmful substances have been handled, except for installations that can be closed down only under a license pursuant to the Atomic Energy Act (former industrial sites - *Altstandorte*),

that cause harmful soil changes (to the soil) or other hazards for individuals or the general public.

(6) Sites suspected of being contaminated (*altlastverdächtige Flächen*) within the meaning of this Act are former waste disposal sites and former industrial sites

that are suspected to harbour harmful soil changes (to the soil) or other hazards for individuals or the general public.

- (7) Remediation (*Sanierung*) within the meaning of this Act refers to measures
1. to eliminate or reduce pollutants (decontamination measures),
 2. that prevent or reduce spreading of pollutants in a lasting way, without eliminating the pollutants themselves (securing containment measures),
 3. that eliminate or reduce harmful changes in the soil's physical, chemical or biological characteristics.
- (8) Protection and restriction measures within the meaning of this Act are other measures that prevent or reduce hazards, considerable disadvantages or considerable nuisances for individuals or the general public, especially usage restrictions.

Article 3

Scope of Application

- (1) This Act applies to harmful soil changes and contaminated sites, as far as
1. provisions of the Closed Substance Cycle and Waste Management Act regarding application of waste for use as secondary raw-material fertilizer or farm fertilizer within the meaning of Article 1 of the Fertilizer Act and of the relevant ordinances issued on the basis of the Closed Substance Cycle and Waste Management Act and of the Sewage Sludge Ordinance of 15 April 1992 (Federal Law Gazette I p. 912),
 2. provisions of the Closed Substance Cycle and Waste Management Act regarding the licensing and operation of waste management installations for waste disposal and regarding the closure of landfills,

3. provisions regarding the transport of hazardous materials,
4. provisions of fertilizer and plant-protection law,
5. provisions of the Genetic Engineering Act (*Gentechnikgesetz*),
6. provisions of Chapter Two of the Federal Forest Act and of the forest-management and forest laws of the *Länder*,
7. provisions of the Land Consolidation Act (*Flurbereinigungsgesetz*) regarding the relevant consolidated land, also in conjunction with the Agricultural Adjustment Act (*Landwirtschaftsanpassungsgesetz*),
8. provisions for construction, modification, maintenance and operation of transport routes, or provisions that govern transport,
9. provisions of construction-planning law and of the building regulations,
10. provisions of the Federal Mining Act (*Bundesberggesetz*) and of the ordinances issued on the basis of this Act with regard to the establishment, management or closure of installations, and
11. provisions of the Federal Immission Control Act and of the ordinances issued on the basis of this Act with regard to the establishment and operation of installations, taking paragraph (3) into account,

do not regulate impacts on the soil.

- (2) This Act does not apply to installations, activities, devices or equipment, nuclear fuels and other radioactive substances in cases in which legal provisions mandate protection from hazards of nuclear energy and from the effects of ionising radiation. Furthermore, this Act shall not apply to searches for, and to recovery, transport, storage, treatment and destruction of warfare agents.

(3) With respect to soil as a resource to be protected, harmful soil changes within the meaning of Article 2 (3) of this Act and of the statutory ordinances on the basis of this Act, where such changes are caused by immissions, shall be considered as harmful environmental impacts pursuant to Article 3 (1) of the Federal Immission Control Act, and otherwise shall be considered as other hazards, considerable disadvantages or considerable nuisances pursuant to Article 5 (1) No. 1 of the Federal Immission Control Act. For purposes of detailed determination of obligations to take precautions under immission control law, the values set forth in a statutory ordinance pursuant to Article 8 (2) shall be used, as soon as a statutory ordinance or Federal administrative provision has defined the additional burdens, arising from operation of a installation, that are not to be considered causal contributions to the occurrence of harmful soil changes. Such ordinance or administrative provision should also set forth that an installation whose emission-mass streams are below certain values shall be considered, even without determination of the additional burdens, as not contributing to harmful soil changes.

Part Two
Principles and Obligations

Article 4
Obligations to Prevent Hazards

- (1) Any person who is by his action affecting the soil shall act in such a manner that harmful soil changes do not occur.
- (2) The property owner and the occupant of a real property shall be obligated to take measures to prevent harmful soil changes originating from their property.
- (3) The party who caused a harmful soil change or a contaminated site, and his universal successor, as well as the relevant property owner and the occupant of the relevant real property, shall be obligated to remediate the soil and contaminated sites, and any water pollution caused by harmful soil changes or contaminated sites, in such a manner that no hazards, considerable disadvantages or considerable nuisances for individuals or the general public occur in the long term. In cases of burdens from pollutants, in addition to decontamination measures also securing measures are to be taken into consideration, that permanently prevent spread of pollutants. Where such measures are not possible or cannot be reasonably required, other protection and restriction measures shall be carried out. Persons who, for reasons of commercial law or company law, are required to answer for a legal entity that owns a real property that is encumbered with harmful soil changes to the soil or site contamination, and persons who give up ownership of such properties, is also obliged to carry out remediation.
- (4) As part of fulfilment of obligations relative to the soil and to contaminated sites, pursuant to paragraphs (1) through (3), the permissible use of the piece of land under planning law, and the resulting protection requirements, shall be taken into account, as far as this is compatible with the protection of the soil functions

mentioned in Article 2 (2) Nos. 1 and 2. If relevant determinations under planning law are lacking, the nature of the relevant area, taking into account its expected development, shall determine the requirements for protection. The requirements to be fulfilled in connection with rehabilitation of bodies of water shall be determined by law pertaining to water.

- (5) If harmful soil changes or contaminated sites have occurred after first of March 1999, pollutants shall be eliminated, where this is a reasonable requirement with respect to the previous soil pollution. This shall not apply to a party who, at the time the pollution was caused, expected that such impacts to the soil would not occur because he had fulfilled the applicable legal requirements, and whose good faith is worthy of protection, taking the circumstances of the relevant individual case into account.
- (6) The former owner of a real property is obligated to carry out remediation if he has transferred his property after first of March 1999., and if he was aware of, or should have been aware of, the relevant harmful soil change or site contamination. This shall not apply to a party who, when purchasing the real property, confided that such harmful soil changes or contaminated sites would not be present, and whose confidence is worthy of protection, taking the circumstances of the relevant individual case into account.

Article 5

Unsealing of Sealed Ground

Where provisions of construction law do not define the competence of the authorities, the Federal Government shall be authorised, after hearing the parties concerned (Article 20), to obligate property owners, by means of a statutory ordinance and with the consent of the Bundesrat, to maintain or restore the functional capacity of the soil within the meaning of Article 1, to the possible and reasonable extent, on land that is to remain unused in the long term and whose sealing would violate determinations under planning law. Until the entry into force of

a statutory ordinance pursuant to the first sentence of this paragraph, the competent authorities pursuant to *Länder* law may, in individual cases, issue orders to obligated parties pursuant to the first sentence of this paragraph, requiring unsealing of sealed surfaces, if the other prerequisites mentioned in the first sentence of this paragraph are fulfilled.

Article 6

Application and Introduction of Materials on to or into the Soil

The Federal Government shall be authorised, after hearing the parties concerned (Article 20), to issue ordinances, with the consent of the Bundesrat, in order to meet the requirements of this Act regarding the application and introduction of materials, with respect to pollution content and other properties, especially

1. prohibitions or restrictions based on criteria such as the type and characteristics of the relevant materials and of the soil, the place and time of application and the natural site conditions, and
2. investigations of relevant materials or of the soil, measures for pre-treatment of such materials or other appropriate measures.

Article 7

Obligation to take Precautions

The property owner, the occupant over a site and the party who carries out, or has carried out by others, actions on a site that can lead to changes in soil characteristics are obligated to take precautions against the occurrence of harmful soil changes that could be caused by their uses of the site or in its area of influence. Precautionary measures shall be required if there is concern that harmful soil change could occur as a result of the spatial, long-term or complex impacts of a use on the soil's

functions. In order to fulfil the obligations to take precautions, soil impacts shall be avoided or reduced where this is a reasonable requirement also with respect to the purpose of the use of the site. Orders to take precautions against harmful soil changes may be issued only where relevant requirements have been defined in a statutory ordinance pursuant to Article 8 (2). Fulfilment of the obligation to take precautions in connection with agricultural soil use shall be based on Article 17 (1) and (2); in connection with silvicultural soil use, it shall be based on Chapter Two of the Federal Forest Act and on the forest-management and forest laws of the *Länder*. Precautions with respect to groundwater shall be based on provisions of law pertaining to water. In cases of existing soil impacts, the obligations to be fulfilled shall be determined pursuant to Article 4.

Article 8

Values and Requirements

- (1) The Federal Government shall be authorised, after hearing the parties concerned (Article 20), to issue statutory ordinances, with the consent of the Bundesrat, setting forth provisions for fulfilment of the obligations, with respect to the soil and to contaminated sites, arising from Article 4, and for the investigation and the assessment of suspect sites, harmful soil changes, sites suspected of being contaminated and contaminated sites. Such ordinances may include, in particular, definition of
1. values which, if exceeded, shall mean that investigation with respect to the individual case in question is required, taking the relevant soil use into account, to determine whether a harmful soil change or site contamination exists (trigger values),
 2. values for impacts or pollution which, if exceeded, shall normally signal the presence of a harmful soil change or site contamination, taking the relevant soil use into account, and to mean that measures are required (action values),

3. requirements for

- a) warding off harmful soil changes; these shall include requirements relative to the handling of excavated, (shoved off) and treated soil material,
- b) remediation of the soil and of contaminated sites, especially with regard to
 - determination of the rehabilitation objective,
 - the extent of decontamination measures and safeguarding measures that prevent spreading of pollutants in the long term, and
 - protection and restriction measures.

(2) The Federal Government shall be authorised, after hearing the parties concerned (Article 20), to issue regulations, by means of a statutory ordinance and with the consent of the Bundesrat, for fulfilment of obligations pursuant to Article 7 and for definition of requirements for relevant investigation and assessment of pieces of land where there is reason for concern that they harbour harmful soil changes, especially regulations with respect to

- 1. soil values which, if exceeded, shall normally mean there is reason that concern for a harmful soil change exists, taking geogenic or wide-spread, settlement-related pollutant concentrations into account (precautionary values),
- 2. permissible additional pollution load, and requirements for prevention or reduction of substance inputs.

(3) Together with the values mentioned in paragraphs (1) and (2) procedures for determination of levels of environmentally harmful substances in soils, in biological materials and in other materials are to be defined. Such procedures shall also include requirements for taking of representative samples, for

treatment of samples and for quality assurance, including determination of values for different types of pollution.

Article 9

Risk Assessment and Orders for Investigations

- (1) If the competent authority has a clue about the presence of a harmful soil change or a contaminated site, it should take appropriate measures to determine the facts of the relevant matter. If the trigger values defined in a statutory ordinance pursuant to Article 8 (1) second sentence No. 1 are exceeded, the competent authority should take the measures necessary to determine whether a harmful soil change or contaminated site exists . Such investigation and assessment shall include, in particular, consideration of the type and concentration of the pollutants concerned; of the possibility of their spreading into the surrounding environment; of the possibility of their being ingested or absorbed by people, animals and plants; and the use of the piece of land pursuant to Article 4 (4). The property owner and the occupant of the real property, if the latter is known, shall upon application be informed in writing, regarding the relevant findings and the results of the assessment.

- (2) If, as a result of specific indications, there is sufficient suspicion that a harmful soil change or contaminated site exists, the competent authority may order the persons mentioned in Article 4 (3), (5) and (6) to carry out the studies necessary to assess the relevant hazards. The competent authority may require the carrying out of studies by competent experts or by investigation agencies pursuant to Article 18. Other obligations relative to co-operation by the persons mentioned in Article 4 (3), (5) and (6), and relative to obligations of affected parties pursuant to Article 12 to tolerate shall be determined in accordance with *Länder law*.

Article 10
Other Orders

- (1) The competent authority may take the measures necessary in order to fulfil the obligations pursuant to Articles 4 and 7 and pursuant to ordinances issued on the basis of Article 5 first sentence, Articles 6 and 8. If securing measures are ordered for fulfilment of the obligation from Article 4 (3) and (6), the competent authority may require the obligated party to provide security for maintenance of the relevant securing and monitoring measures in future. Orders may be issued for fulfilment of obligations pursuant to Article 7 if the relevant requirements are defined in an ordinance. The competent authority may not issue an order that would be out of proportion with the justified interests of individual parties.

- (2) If the competent authority issues orders to the property owner or to the occupant, for fulfilment of obligations pursuant to Article 4, regarding restriction of agricultural and silvicultural soil use and regarding the management of soils, then, if said parties are not responsible for the relevant harmful soil changes, the competent authority shall provide appropriate compensation for economic disadvantages remaining after reasonable internal company adjustments, in keeping with *Länder* law, if the restriction on the use of the ground would otherwise lead to particular hardship considerably in significant excess of the relevant general burden.

Part Three
Supplementary Provisions for Contaminated Sites

Article 11
Identification

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

Article 12
Informing Affected Parties

The parties obligated, pursuant to Article 9 (2) first sentence, to investigate the contaminated site, and the parties obligated, pursuant to Article 4 (3), (5) and (6) to carry out rehabilitation of the contaminated site, shall inform the owners of the affected pieces of land, as well as the other affected authorised users and the affected neighbourhood (affected parties) regarding the pending execution of the planned measures. The main existing documents required to estimate the measures shall be made available for examination. If documents contain business or company secrets, their content shall be so comprehensively described, to the extent possible without disclosure of such secrets, that affected parties are able to estimate the impacts of measures on their interests.

Article 13
Investigation and Planning for Remediation

(1) If for the rehabilitation of contaminated sites a coordinated approach is required, due to the differences between the necessary measures pursuant to Article 4, or of sites with particularly harmful soil changes or that hold particularly great hazards for individuals or the general public, due to the type, spreading or

amount of relevant pollutants, the competent authority should require, from parties obligated to carry out rehabilitation pursuant to Article 4 (3), (5) or (6), the necessary investigations for decisions regarding the type and extent of the necessary required measures (rehabilitation investigations), as well as the submission of a rehabilitation plan, with such plan containing especially

1. a summary of the risk assessment and of the remediation investigations,
2. information regarding the use up to now and future use of the pieces of land that are to be remediated,
3. a description of the remediation objective and of the relevant necessary decontamination, securing, protection, restriction and self-monitoring measures, as well as the schedule for execution of these measures.

The Federal Government shall be authorised, after hearing the parties concerned (Article 20), to issue regulations, by means of a statutory ordinance and with the consent of the Bundesrat, regarding the requirements for remediation investigations and for the content of remediation plans.

- (2) The competent authority may require the rehabilitation investigations and the remediation plan to be carried out by an expert pursuant to Article 18.
- (3) A party who, pursuant to paragraph (1), is required to submit a remediation plan shall inform the affected parties pursuant to Article 12 at an early date, by appropriate means and without special request, regarding the relevant planned measures. Article 12 second and third sentences apply *mutatis mutandis*.
- (4) The draft of a remediation agreement regarding the execution of the remediation plan may be submitted with the plan, and such agreement may involve third parties.
- (5) If removed soil material is to be reintroduced within the area of the land affected by the rehabilitation of the contaminated site, Article 27 (1) first sentence of the

Closed Substance Cycle and Waste Management Act shall not apply if, by means of a remediation plan accepted as binding or of an order for enforcement of obligations pursuant to Article 4, it is ensured that the public interests are not impaired.

- (6) The competent authority may declare the plan to be binding, also in cases in which it is modified or given auxiliary clauses. A plan declared to be binding shall include other authorities' decisions with regard to the rehabilitation - with the exception of licensing decisions for projects that, pursuant to Article 3 in conjunction with the Annex to Article 3 of the Environmental Impact Assessment Act (*Gesetz über die Umweltverträglichkeitsprüfung*) or pursuant to *Länder* law, are subject to environmental impact assessment - if such decisions are issued in agreement with the relevant competent authority and if the included decisions are listed within the plan declared to be binding.

Article 14

Remediation Planning by Authorities

The competent authority may itself prepare or supplement the remediation plan pursuant to Article 13 (1), or it may have such plan prepared or supplemented by an expert pursuant to Article 18, if

1. the plan has not been prepared, has not been prepared within the deadline set by the authority or has been prepared in a technically unsatisfactory manner,
2. it is not possible to call on a party obligated pursuant to Article 4 (3), (5) or (6), or it is not possible to call on such party within the available time or
3. due to the wide spreading of the site contamination, of the widespread water-body pollution resulting from the site contamination or due to the

number of the parties obligated pursuant to Article 4 (3), (5) or (6), a co-ordinated approach is required.

Article 13 (3) through (6) shall apply mutatis mutandis.

Article 15

Supervision by Authorities, Self-Monitoring

- (1) Contaminated sites and sites suspected of being contaminated shall be subject to monitoring by the competent authority as necessary. In cases involving former industrial sites and former waste disposal sites, the effectiveness of authorities' licensing decisions and of subsequent orders shall not be affected by application of this Act.
- (2) In cases of contaminated sites, the competent authority may require obligated parties pursuant to Article 4 (3), (5) or (6), where necessary, to carry out self-monitoring measures, especially soil and water investigations and installation and operation of measuring stations. The results of such parties' self-monitoring measures shall be recorded and kept on file for five years. The competent authority may ordain a longer period for storing records where this is necessary in individual cases. The competent authority may require such self-monitoring measures even after execution of decontamination, securing and restriction measures. It may require such self-monitoring measures to be carried out by an expert pursuant to Article 18.
- (3) The obligated parties pursuant to Article 4 (3), (5) or (6) shall provide the results of self-monitoring measures to the competent authority upon request. It shall keep such records and results of its monitoring measures on file for five years.

Article 16

Supplementary Orders Regarding Remediation of Contaminated Sites

- (1) In addition to the orders called for by Part Two of this Act, the competent authority may issue the orders necessary for fulfilment of obligations arising from Part Three of this Act.
- (2) If no remediation plan that has been accepted as binding within the meaning of Article 13 (6) exists, orders for enforcement of obligations pursuant to Article 4 shall include other authorities' decisions with regard to the remediation - with the exception of licensing decisions for projects that, pursuant to Article 3 in conjunction with the Annex to Article 3 of the Environmental Impact Assessment Act (Gesetz über die Umweltverträglichkeitsprüfung) or pursuant to *Länder* law, are subject to environmental impact assessment - if such decisions are issued in agreement with the relevant competent authority and if the included decisions are listed within the plan declared to be binding.

Part Four

Agricultural Soil Use

Article 17

Good Agricultural Practice

- (1) In cases of agricultural soil use, the obligation to take precautions pursuant to Article 7 shall be fulfilled by good agricultural practice. In their advising, the competent agricultural advising bodies pursuant to *Länder* law should impart the principles of good agricultural practice pursuant to paragraph (2).
- (2) The principles of good practice in agricultural soil use are the permanent protection of the soil's fertility and of the soil's functional capacity as a natural resource. In particular, the principles of good agricultural practice include:

1. in general, the soil shall be worked in a manner that is appropriate for the relevant site, taking weather conditions into account,
 2. the soil structure shall be conserved or improved,
 3. soil compaction shall be avoided as far as possible, especially by taking the relevant soil type and soil humidity into account, and by controlling the pressure exerted on the soil by equipment used for agricultural soil use,
 4. soil erosion shall be avoided wherever possible, by means of site-adapted use, especially use that takes slope, water and wind conditions and the soil cover into account,
 5. the predominantly natural structural elements of field parcels that are needed for soil conservation, especially hedges, field shrubbery and trees, field boundaries and terracing, shall be preserved,
 6. the soil's biological activity shall be conserved or promoted by means of appropriate crop rotation and
 7. the soil's humus content, as is typical for the site in question, shall be conserved, especially by means of adequate input of organic substances or of reduction of the intensity with which the soil is worked.
- (3) Obligations pursuant to Article 4 shall be fulfilled by means of compliance with the provisions mentioned in Article 3 (1); where these provisions contain no requirements for prevention of hazards and no such provisions result from the principles of good agricultural practice pursuant to paragraph (2), the other provisions of this Act shall apply.

Part Five
Final Provisions

Article 18
Experts and Investigating Bodies

Experts and investigating bodies that carry out tasks pursuant to this Act shall possess the necessary expert knowledge and reliability for such tasks and shall have the appropriate required equipment. The *Länder* may set forth the details of the requirements pertaining to experts and investigating agencies pursuant to the first sentence of this paragraph, as well as to the nature and extent of their tasks, submission of the results of their activities and the official naming of experts that fulfil the requirements pursuant to the first sentence of this paragraph.

Article 19
Data Transmission

- (1) Where data transmission between the Federal Government and the *Länder* is required for fulfilment of relevant tasks pursuant to this Act, the extent, content and costs of such mutual data transmission shall be set forth by an administrative agreement between the Federal Government and the *Länder*. Transmission of personal data shall not be permitted.
- (2) The Federal Government may establish a national soil-information system, using data transmitted by *Länder*, for tasks of the Federal Government.

Article 20
Hearing of Parties concerned

In cases in which authorisations for issuance of ordinances mandate hearing of the parties concerned, a group of representatives shall be heard that has been selected, for the case in question, from the areas of science, affected parties, business and industry, agriculture, silviculture, nature and environmental conservation associations, archaeological monument protection, top-level municipal associations and the supreme *Länder* authorities responsible for soil protection, contaminated sites, geoscientific concerns and water resources management. If the legal provisions mentioned in the first sentence of this paragraph contain regulations relative to agricultural and silvicultural soil use, the supreme *Länder* authorities responsible for agriculture and silviculture shall also be heard.

Article 21
Provisions under *Länder* Law

- (1) The *Länder* may issue supplementary procedural regulations for the implementation of Parts Two and Three of this Act.
- (2) The *Länder* may mandate that certain suspected sites, in addition to the sites which are suspected of being contaminated and covered by Part Three
 1. shall be identified by the competent authority and
 2. shall be reported to the competent authority by the relevant obligated parties and

in cases of harmful soil changes that, due to their nature, spreading or amount of pollutants, present a particularly high degree of hazards, considerable disadvantages or considerable nuisances for individuals or the general public,

1. remediation investigations and the preparation of remediation plans and
2. execution of self-monitoring measures

may be required.

- (3) The *Länder* may define the areas in which wide-spread harmful soil changes exist or are to be expected, as well as the measures to be taken in these areas, and they may issue additional regulations regarding area-oriented soil-protection measures.
- (4) The *Länder* may require the establishment and operation of soil-information systems for all or certain parts of their territories. In particular, such systems may collect data from areas under long-term monitoring and from soil-condition studies focusing on the soil's physical, chemical and biological characteristics and on soil use. The *Länder* may obligate real property owners and occupants of sites to tolerate soil investigations that are required for soil-information systems. In this connection, consideration shall be given to the justified concerns of such parties and compensation shall be provided for damage caused as part of investigations.

Article 22

Compliance with Binding Decisions of the European Communities

- (1) To comply with binding decisions of the European Communities, the Federal Government may issue statutory ordinances, with the consent of the Bundesrat, for the purpose mentioned in Article 1, and regarding definition of the values mentioned in Article 8 (1) and (2), including the necessary measures for obtaining and monitoring these values.

- (2) The measures defined in ordinances pursuant to paragraph (1) shall be enforced by means of orders or other decisions of the agencies responsible for public administrations pursuant to this Act or pursuant to other legal provisions of the Federal Government and the *Länder*, where determinations under planning law are called for, the competent planning bodies shall determine whether, and to what extent, planning shall be required.

Article 23

National Defence

- (1) The Federal Ministry of Defence may issue exceptions to this Act and to the ordinances based on this Act, where this is required by compelling reasons of national defence or in order to fulfil international commitments. In such cases, protection against harmful soil changes shall be taken into account.
- (2) The Federal Government shall be authorised to determine, by means of a statutory ordinance and with the consent of the Bundesrat, that the execution of this Act and of the ordinances based on this Act, within the area of responsibility of the Federal Ministry of Defence and for the armed forces stationed in the Federal Republic of Germany as a result of agreements under international law, shall be the responsibility of the Federal Ministry of Defence or of bodies chosen by that Ministry.

Article 24

Costs

- (1) The costs of measures ordered pursuant to Article 9 (2), Article 10 (1), Articles (12), (13), (14) first sentence No. 1, Article 15 (2) and Article 16 (1), shall be borne by the parties obligated to carry out such measures. If, in the case of Article 9 (2) first sentence, investigations do not confirm the suspicion, or if the

prerequisites of Article 10 (2) are fulfilled, the parties required to carry out the investigation shall be reimbursed for relevant costs if they are not responsible for the circumstances upon which the suspicion was founded. In the cases of Article 14 first sentence Nos. 2 and 3, that party of whom the preparation of a rehabilitation plan could have been required shall bear the costs.

- (2) In cases involving several obligated parties, such parties shall have claims to compensation among themselves, regardless of the manner in which they were obligated. Where no other arrangements are agreed, the obligation to provide such compensation, and the extent of the compensation to be provided, shall depend on the extent to which the hazard or damage was caused primarily by one party or the other; Article 426 (1) second sentence of the Civil Code shall apply mutatis mutandis. The claim to compensation shall be subject to a period of prescription of three years. The prescription period shall begin following collection of costs, when an authority carries out measures itself; otherwise, it shall begin following completion of measures by the obligated party and at the time at which the obligated party becomes aware of the identity of the party obligated to provide compensation. The claim to compensation shall be subject to a period of prescription, regardless of such knowledge, of thirty years following the completion of measures. The course of law to the ordinary courts shall be available for legal action.

Article 25

Value Compensation

- (1) If the market value of a site is increased, not solely insignificantly, through use of public funds in measures for fulfilment of obligations pursuant to Article 4, and if the owner has not borne the relevant costs, or has not borne such costs completely, the owner has to pay a value equalization, to be determined by the competent authority, in the amount of the value increase resulting from the relevant measure, to the public agency responsible for the relevant financing. The amount of such value compensation shall be no larger than the amount of

the public funds used. There shall be no obligation to provide value equalization if, with respect to harmful soil changes or contaminated sites present on a site, exemption from responsibility or from the obligation to pay costs pursuant to Section 1 Article 4 (3) first sentence of the Environmental Framework Act (*Umweltrahmengesetz*) of 29 June 1990 (Federal Law Gazette I No. 42 p. 649), last amended by Article 12 of the Act of 22 March 1991 (Federal Law Gazette I p. 766), in the relevant applicable version in each case, has been provided. Where measures within the meaning of the first sentence of this paragraph have been carried out by a community in formally defined remediation areas or development areas, as administrative measures, the relevant increase of the market value shall be covered within the framework of the compensation amount pursuant to Article 154 of the Building Code.

- (2) The increase of the market value of a site resulting from rehabilitation measures shall consist of the difference between the value the piece of land would have had if the measures had not been carried out (initial value) and the market value of the piece of land following execution of the exploration and remediation measures (final value).
- (3) The compensation payment shall become due when the securing or remediation has been completed and the amount of the payment has been determined by the competent authority. The obligation to provide value compensation shall expire if the relevant amount has not been determined by the end of the fourth year following the completion of the securing or remediation.
- (4) The competent authority shall subtract from the value compensation pursuant to (1) those expenses that the owner has paid for his own measures for securing or remediation, or for acquisition of the site, in the justified confidence that no harmful soil changes or site contamination would be present. If the owner is able to require compensation from third parties, this shall be taken into account in the decision pursuant to the first sentence of this paragraph.
- (5) In individual cases, a partial or complete exception can be made from the requirement for an compensation payment, if this is in the public interest or is

needed to prevent unjust hardship. If costs for securing or remediation are reimbursed to the public agency responsible for the relevant financing, then such payment must be appropriately acknowledged in that no compensation payment is required, a determined compensation payment is waived or a paid compensation payment is reimbursed.

- (6) The compensation payment amount shall encumber the site as a public encumbrance. The Federal Ministry of Justice shall be authorised to determine, by means of a statutory ordinance and with the consent of the Bundesrat, the manner and means by which attention is to be called, in the land register (*Grundbuch*), to the presence of such public encumbrances.

Article 26

Provisions Regarding Fines

- (1) Anyone who intentionally or negligently
1. contravenes a statutory ordinance pursuant to Article 5 first sentence, Articles 6, 8 (1) or Article 22 (1) or an enforceable order based on such an ordinance, where the ordinance refers to this regulation on fines for a certain offence,
 2. contravenes an enforceable order pursuant to Article 10 (1) first sentence, where it refers to an obligation pursuant to Article 4 (3), (5) or (6),
 3. contravenes an enforceable order pursuant to Article 13 (1) or Article 15 (2) first, second or third sentence, or
 4. notwithstanding Article 15 (3) first sentence, fails to provide notification, fails to provide correct notification, fails to provide complete notification or fails to provide notification in time,

shall be deemed to have committed an administrative offence.

- (2) In the cases covered by paragraph (1) No. 2, the administrative offence may be penalised with a fine of up to DM one hundred thousand; in other cases, with a fine of up to DM twenty thousand.

Section 2
Amendment of the Closed Substance Cycle
and Waste Management Act

The Closed Substance Cycle and Waste Management Act of 27 September 1994 (Federal Law Gazette I p. 2705), amended by the Act of 12 September 1996 (Federal Law Gazette I p. 1354), shall be amended as follows:

1. The following second sentence shall be appended to Article 36 (2):

"If a closed landfill pursuant to paragraph (1) is suspected to cause harmful soil changes or other hazards for individuals or the general public, the provisions of the Federal Soil Protection Act shall apply to relevant identification, investigation, assessment and remediation."

2. Article 40 (1) second sentence shall be deleted.

Section 3
Amendment of the Federal Immission Control Act

The Federal Immission Control Act, in the version promulgated on 14 May 1990 (Federal Law Gazette I p. 880), last amended by the Act of 9 October 1996 (Federal Law Gazette I p. 1498), shall be amended as follows:

1. The introductory part of the sentence in Article 5 (3) shall read as follows:

"Installations subject to licensing shall be established, operated and closed-down in such a way that even after cessation of operations"

2. In Article 17 (4a), the words "ten years" shall be replaced by the words "one year".

Section 4

Entry into Force

The provisions of this Act that provide empowerment for issuance of ordinances, and Section 1 Article 20, shall enter into force on the day following their promulgation. Otherwise, the Act shall enter into force on 1st of March 1999.