Legal regulations on soil conservation and rehabilitation of contaminated sites in the Federal Republic of Germany

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I. Point of departure

The damage to soil in the new and old Federal Länder which is becoming manifest at the moment makes it clear that the instruments of environmental law for soil protection will have to be increased and made more effective. In particular the burden placed by abandoned waste sites and abandoned industrial sites which have been in the foreground of environmental policy discussions during the past few years show the need to develop a comprehensive concept for protection from possible future burdens as well as for reducing existing burdens. Only in this way can it be ensured that such a pollution legacy cannot occur again in future and that existing burdens can be reduced purposefully.

At the moment soil protection legislation exist in the Länder Baden-Württemberg and Saxony. For the special area of contaminated sites the Acts on Waste Management of several Länder (Baden-Württemberg, Bavaria, Brandenburg, Hessen, Mecklenburg-Western Pomerania, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saxony, Saxony-Anhalt and Thuringia) contain regulations to a varying degree. According to an agreement in this regard reached between the governing coalition parties a regulation under the law on soil conservation and contaminated sites which is uniform throughout the Federal Republic of Germany is to be adopted during this legislative period of the German Bundestag. Such a federal law is required in particular in order to define standards for warding off dangers and for carrying out and defining standards for rehabilitation measures. In addition, uniform environmental standards have considerable importance for maintaining and creating the unity of law and economy in the Federal Republic of Germany which is required by the Basic Law.

II. What the planned Federal Act on Soil Protection is to regulate

1. The act is to aim at
- maintaining the soil in its functional variety,
- taking preventative action against harmful changes
- warding off damaging changes in soil,
- eliminating damage which has already occurred.
preventing that this damage has any effects on people and the environment.

2. Basic idea
The basic idea is the protection from "harmful changes in soil". Such changes are given when the soil functions are impaired and when this leads to dangers or considerable drawbacks or considerable nuisance for the individual person or for the general public. Through this act the soil as a commodity to be protected by the general public is subject to standards: this means that its functions for the eco-balance are thereby protected.

3. Preventative action
In order to ensure far-reaching protection, in particular for human health and the regulating functions of the soil, the authorities are to be given as a matter of principle the possibility of taking measures even when harmful changes of soil are only feared. Preventative actions are required in cases in which accumulation of environmentally harmful substances in the soil have to be expected in the long term. This means that a concrete danger need not be proved - in contrast to traditional administrative law.

4. Experts
External experts are to be included in order to provide support either for the authorities or private responsible bodies when analysing the soil and when choosing the necessary measures.

5. Contaminated sites
So-called contaminated sites - abandoned waste sites (e.g. waste disposal plants) and abandoned industrial sites (premises of abandoned industrial or commercial plants) - present particular dangers. Protecting human health and the environment from any hazards emanating from these contaminated sites and the rehabilitation of these sites require a comprehensive set of instruments.

For the area of contaminated sites the following stipulations are planned:
- The competent Land authorities are to record, investigate and assess the areas which are suspected to be contaminated;
- Regulations with regard to the polluter's and the owner of the premise's responsibility for rehabilitating the contaminated site;
- Provision of possibilities to require preparation of a rehabilitation plan by those responsible if a site is recognised as contaminated;
- Preparation of a rehabilitation plan by an authority is only considered as a subsidiary solution;