

## Spotlight on Soil Protection Law in Germany

### **Soil protection – a matter of liability**

In Germany the Federal Soil Protection Act (Bundes-Bodenschutzgesetz, BBodSchG) and the Federal Soil Protection and Contaminated Sites Ordinance (Bundes-Bodenschutz- und Altlastenverordnung, BBodSchV), represent the central regulations for the area of soil protection in sectoral environmental law.

For companies, measures related to the investigation or remediation of contaminated properties can have significant economic consequences. For them as polluter, property (pre-)owner, as well as tenant or leaseholder of a property, soil protection law entails a high liability risk. This is because soil protection law does not always ask who is "to blame" for a harmful soil change. On the contrary, the ownership or possession of the property is sufficient for the soil protection authority to issue official orders - for example, if the property owner unknowingly takes over a contaminated property from the previous owner. It is therefore necessary to collaborate with the authorities.

The enforcement of soil protection law is about taking precautionary measures to prevent harmful soil changes from occurring as far as possible, but also to identify any damage that has occurred to soil or groundwater by means of investigations, to avert hazards and, if necessary, to carry out remediation. Dealing with soil contamination, contaminated sites, groundwater damage and contamination caused by other punctual sources of pollution is a matter of hazard prevention.

### **Laying the ground work**

As legal advisors, we have made it our business to accompany and provide qualified legal advice to you as a property owner, possessor or potential polluter of harmful soil changes during risk assessments and investigation orders as well as during the planning and implementation of remediation measures. We also have huge expertise in representing clients interests vis-à-vis authorities or private individuals, for example in defending against remediation orders or drafting remediation contracts.

At the same time, we advise public authorities on the implementation and ordering of investigations to identify hazards, monitoring measures and, if necessary, remediation measures to avert hazards emanating from contaminated sites or harmful soil changes.

The large number of legal regulations governing soil protection, some of which take precedence over soil protection law, make the enforcement of soil protection law complicated for those involved, but also bring excitement. At the interfaces of the numerous technical regulations, we work across legal and technical teams and thus particularly



efficiently. For this reason, we have a network of experts and engineers that has grown over the years, whose expert experience and expertise are of decisive importance in addition to our legal advice, and with whom we have been in trusting cooperation for years.

## Our expertise

We advise both public legal entities and private companies in dealing with suspected contaminated sites as well as with harmful soil changes and contaminated sites including contaminated groundwater. Upon request, we accompany our clients through all stages, from the historical and orienting investigation to the detailed investigation (including risk assessment), the remediation investigation and the remediation planning to the completion of the remediation and any subsequent aftercare measures (e.g. monitoring). Our legal work includes in particular:

- the legal and practical support of remediation procedures,
- negotiations with authorities,
- preparation and analyses with internal and external experts, engineers and technical environmental consultants
- the drafting of contracts under public law, in particular remediation agreements, both on the part of private legal entities and on the part of public legal entities (in particular municipalities),
- the evaluation of liability risks in connection with the acquisition or sale of potentially contaminated or (partially) remediated properties, in particular the performance of due diligence,
- advising public legal entities on the identification and appointment of persons responsible for the remediation process,
- advising public legal entities on the consideration of soil protection issues in their planning and approval procedures, and
- assertion or defence of compensation claims according to Section 24 para. 2 BBodSchG (out of court and in court).



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