

## DECREE

### ON ENVIRONMENTAL DAMAGE ASSESSMENT

*Pursuant to the Law on Government organization dated December 25, 2001;*

*Pursuant to the Civil Code dated June 14, 2005;*

*Pursuant to the Law on Environment protection dated June 23, 2014;*

*At the request of the Minister of Natural Resources and Environment,*

*The Government issues a Decree on environmental damage assessment.*

#### Chapter I

### GENERAL PROVISIONS

#### Article 1. Scope

1. This Decree promulgates responsibility for claiming compensation and environmental damage assessment including: Collection of evidence for environmental damage assessment, calculation of environmental damage and compensation for environmental damage caused by pollution or degradation in the following cases:

- a) Water environment which serves the reserve, daily life, recreation, production and other purposes is polluted, considerably polluted, or severely polluted;
- b) Soil environment which serves preservation, production or other purposes is polluted, considerably polluted, or severely polluted;
- c) Natural ecosystems belong to or do not belong to a degraded nature reserve;
- d) Priority species prescribed in regulations of law die or get injured.

2. This Decree does not apply to the environmental damage caused by one of following reasons:

- a) Natural disasters;
- b) Force majeure events, state of emergency due to the compliance with request made by the competent authorities;
- c) Other cases prescribed in regulations of law.

3. The damage assessment and calculation of compensation for the health, human life, lawful assets and benefits of organizations or individuals caused by the polluted and degraded environment shall comply with law on civil.

#### Article 2. Regulated entities

This Decree applies to organizations and individuals polluting or degrading the environment in the territory of the Socialist Republic of Vietnam; other relevant organizations or individuals.

#### Article 3. Responsibility for claiming compensation and calculation of environmental damage

1. The People's Committees, organizations or individuals detecting signs of environmental pollution and degradation shall notify the authority in charge of claiming environmental compensation as prescribed in Clause 2 of this Article.

2. The responsibility for claiming compensation:

- a) The People's Committee of the commune shall claim compensation for environmental damage caused by pollution or degradation in the commune. The People's Committee of the commune shall request the People's Committee of district to collect and verify evidence for calculation of compensation for environmental damage caused by pollution or degradation;
- b) The People's Committee of the district shall claim the compensation for environmental damage caused by the pollution or degradation in the administrative division consisting of at least two communes;
- c) The People's Committee of the province shall claim compensation for environmental damage caused by the pollution or degradation in the administrative division consisting of at least two districts;
- d) The Ministry of Natural Resources and Environment shall claim compensation for environmental

damage caused by the pollution or degradation in the administrative division consisting of at least two provinces.

3. Responsibility for collection and assessment of evidence for environmental damage assessment:

a) The People's Committee of district shall collect and verify the evidence for environmental damage assessment caused by the pollution or degradation in the district, except for the cases prescribed in Point b and Point c of this Clause;

b) The People's Committee of province shall collect and verify the evidence for environmental damage assessment caused by the pollution or degradation in the administrative division consisting of at least two districts, except for the cases prescribed in Point c of this Clause;

c) The Ministry of Natural Resources and Environment take charge and cooperate with the People's Committees of provinces in collection and assessment of the evidence for environmental damage assessment caused by the pollution or degradation in the administrative division consisting of at least two provinces.

4. The agency collecting and verifying the evidence for environmental damage assessment as prescribed in Clause 3 of this Article shall assess environmental damage, calculate environmental compensation and provide the result for the agency prescribed in Clause 2 of this Article to claim environmental compensation.

5. The Ministry of Natural Resources and Environment shall provide guidance on procedures for claiming environmental compensation claims as prescribed in Clause 2, 3 and 4 of this Article.

## **Chapter II**

### **EVIDENCE FOR ENVIRONMENTAL DAMAGE ASSESSMENT**

#### **Article 4. Evidence for environmental damage assessment**

1. The required evidence for determination of an organization or individual polluting or degrading the environment includes:

a) Sources of waste, activities causing environmental incidents, directly harming the polluted or degraded area or related areas;

b) Basis information about the organization or individual relating to the polluted or degraded area includes: type of operation; products, capacity or input materials, manufacturing process; waste; point of discharge; waste treatment measures; monitoring and analysis of environmental parameters;

c) Other necessary evidence relating to the polluted or degraded areas.

2. The evidence which is required to collect or estimate in order to assess the environmental damage in case of polluted waters or soil includes:

a) Area, volume, or mass of polluted water or soil;

b) Pollutants and content of pollutants in water or soil;

c) Decision(s), license(s), or approval(s) for the planning for use of components of the water environment in the polluted and degraded area.

3. The evidence which is required to collect or estimate in order to calculate the environmental damage with regard to degraded ecosystem includes:

a) Area of the degraded ecosystem;

b) Degradation level of the ecosystem;

c) Decision(s) or documents of competent agency on conservation status of the ecosystem.

4. The evidence which is required to collect or estimate in order to calculate the environmental damage in case the priority species as prescribed die or get injured includes:

a) The priority species die or get injured;

b) The number of individuals of the priority species which die or get injured;

c) Decision(s) or document(s) of competent agency on species protection priority.

#### **Article 5. Methods and time of collection of evidence for environmental damage assessment**

1. The evidence used for environmental damage assessment may conclude: images, tapes, data collected from monitoring, measures, analysis, remote sensing, geographic information system and other methods.

2. The evidence used for environmental damage assessment must be collected or estimated at the time in which the environment is polluted or degraded at the highest level from the time in which the pollution or degradation occurs or it is detected.

## **Article 6. Procedures for collection and assessment of evidence for environmental damage assessment**

1. The procedures for collection and assessment of evidence for environmental damage assessment:

- a) Determine the necessary evidence to assess environmental damage and claim environmental compensation;
- b) Select the organization providing monitoring, assessment, measure services to collect the evidence;
- c) Establish the Assessment council for the collected evidence.

2. The Assessment council for evidence which assesses the environmental damage has at least 30% of members who are environmental specialists; at least 30% of members who are management officials; representatives of the local governments where the evidence is collected; representatives of communities and relevant entities.

3. The Ministry of Natural Resources and Environment shall decide the selection criteria and responsibility of the organization providing monitoring, assessment, measure services to collect evidence; guidance on establishment and operation of the Assessment council for evidence.

## **Article 7. Claims for environmental compensation**

1. Article 7. A claim for environmental compensation shall include:

- a) A claim form filed by the agency in charge prescribed in Clause 2 Article 3 of this Decree;
- b) The evidence which is collected or assessed as prescribed in Clause 3 Article 3 and Clause 1 Article 6 of this Decree;
- c) A conclusion of the Assessment council for evidence;
- d) The result of environmental damage assessment and a conclusion on environmental compensation.

2. The Ministry of Natural Resources and Environment shall provide the claim form for environmental compensation.

## **Article 8. Responsibility for provision of evidence for environmental damage assessment**

The organizations, individuals, and People's Committees in the polluted or degraded areas shall cooperate and provide sufficient and accurate evidence at the request of the authority in charge of collection and assessment of evidence as prescribed in Clause 3 Article 3 of this Decree.

## **Article 9. Costs of the environmental damage assessment and procedures for claiming environmental compensation**

1. The costs of the environmental damage assessment and procedures for claiming environmental compensation consist of actual and proper expenditures on the collection and assessment of the evidence and procedures for claiming environmental compensation carried out by the competent agency.

2. When the damage assessment and the procedure for claiming compensation claims are processed, the agency in charge of collection and assessment of evidence prescribed in Clause 3 Article 3 of this Decree shall give an advance on damage assessment and procedures for claiming compensation claims, then calculate the total cost and request the organization(s) or individual(s) causing damage to refund the cost as prescribed in Clause 1 Article 14 of this Decree.

3. The Ministry of Natural Resources and Environment shall take charge and cooperate with the Ministry of Finance in providing guidance on costs of damage assessment and procedures for claiming compensation claims.

## **Chapter III**

# **ENVIRONMENTAL DAMAGE CALCULATION**

## **Article 10. Rules for environmental damage calculation**

1. The environmental damage calculation shall base on the costs of environmental remediation at the polluted or degraded areas in order for water environment quality, soil environment quality to satisfy environmental requirements; costs of ecosystem and priority species remediation in order for they returns to their original state.

2. The environmental damage calculation shall base on the evidence which is collected, estimated, or assessed as prescribed in this Decree.

3. The damage to the environment of a geographic area equals total damage of all components of that environment.

## **Article 11. Environmental damage calculation**

1. The total damage to the environment of a geographic area caused by the pollution or degradation shall be calculated according to the formula below:

$T = T^N + T^D + T^{HST} + T^{LBV}$ , where:

T means the damage to the environment of a geographic area caused by the pollution or degradation;

$T^N$  means the damage to the water environment caused by the pollution or degradation;

$T^D$  means the damage to the soil environment caused by the pollution or degradation;

$T^{HST}$  means the damage to the ecosystem caused by the pollution or degradation;

$T^{LBV}$  means the damage to priority species caused by the pollution or degradation or injury.

2. The damage to the water environment caused by the pollution or degradation;

a) In case the water environment is only used for one purpose as prescribed and it is polluted at a certain level, its damage caused by the pollution or degradation shall be calculated according to the formula below:

$T_{ij}^N = C_i^N \times W_{ij}^N \times H_j^N$ , where:

i means the water use purpose pursuant to the decision(s), license(s), or approval(s) for the planning for use of the water environment in the polluted or degraded area, which is numbered from 1 to 7 as prescribed in Appendix I of this Decree;

j means the level of the water environment pollution according to the evidence which is collected, estimated, or assessed as prescribed in this Decree, which is numbered from 1 to 3 equivalent to the water environment which is polluted, considerably polluted, or severely polluted;

$T_{ij}^N$  means the damage to the water environment used for the purpose (i) and suffered the pollution level (j);

$C_i^N$  means the damage coefficient according to the water use purposes prescribed in Appendix I of this Decree;

$W_{ij}^N$  means the total water volume used for the purpose (i) and suffered the pollution level (j) which is determined, estimated, or assessed as prescribed in this Decree;

$H_j^N$  means the quota on the cost of treatment for a unit of area, volume, or mass of polluted waters at the level (j) which satisfies technical standards for water quality;

a) In case the water environment is only used for one purpose as prescribed but including the polluted waters at different levels, the damage to the water environment caused by the pollution or degradation equals (=) total damage of all polluted waters according to the formula below:

$T_i^N = \sum_{j=1}^3 T_{ij}^N$ , where:

$T_i^N$  means the damage to the water environment used for the purpose (i);

c) In case the water environment used for more than one purposes, the damage coefficient equivalent to the purpose holding the best value shall be used for damage calculation according to the formula as prescribed in Point a and b of this Clause;

a) In case the water environment is divided into smaller areas for multiple purposes, the damage to the water environment caused by the pollution or degradation equals (=) total damage of all waters caused by the pollution or degradation.

The damage to the waters caused by the pollution or degradation shall be calculated according to the formulas prescribed in Point a, b and c of this Clause and the evidence which is collected, estimated, or assessed as prescribed in this Decree.

3. The damage to the soil environment caused by the pollution or degradation:

a) In case the soil environment is only used for one purpose as prescribed and is polluted at a certain level, its damage caused by the pollution or degradation shall be assessed according to the formula below:

$T_{ij}^D = C_i^D \times W_{ij}^D \times H_j^D$ , where:

i means the soil use purpose pursuant to the decision(s), license(s), or approval(s) for the planning for use of the soil environment in the polluted and degraded area, which is numbered from 1 to 5 as

prescribed in Appendix I of this Decree;

j means the level of the soil environment pollution according to the evidence which is collected, estimated, or assessed as prescribed in this Decree, which is numbered from 1 to 3 equivalent to the soil environment which is polluted, considerably polluted, or severely polluted;

$T_{ij}^D$  means the damage to the soil environment used for the purpose (i) and suffered pollution level (j);

$C_i^D$  means the damage coefficient according to the soil use purposes as prescribed in Appendix II of this Decree;

$W_{ij}^D$  means the total soil used for the purpose (i) and suffered pollution level (j) which is determined, estimated, or assessed as prescribed in this Decree;

$H_j^D$  means the quota on the cost of a unit of area, volume, or mass of polluted soil at the level (j) which satisfies technical standards for soil quality;

b) In case the soil environment is only used for one purpose (i) but including the polluted soil at different levels, the damage to the soil environment caused by the pollution or degradation equals (=) total damage of all polluted soil at different levels according to the formula below:

$$T_i^D = \sum_{j=1}^3 T_{ij}^D, \text{ where:}$$

$T_i^D$  means the damage to the soil environment used for the purpose (i);

c) In case the soil environment is used for multiple purposes as prescribed, the damage coefficient shall be applied equivalent to the purpose holding the best value for the damage assessment according to the formula prescribed in Point a and Point b of this Clause;

d) In case the soil environment is divided into smaller areas used for different purposes, the damage to the soil environment caused by the pollution or degradation equals (=) total damage of all polluted soil.

The damage to every area of the soil environment caused by the pollution or degradation shall be calculated according to the formulas prescribed in Point a, b and c of this Clause and the evidence which is collected, estimated or assessed as prescribed in this Decree.

4. The damage to the ecosystem caused by the pollution or degradation:

a) In case the ecosystem is given only one conservation status or degraded at a certain level, the damage to the ecosystem shall be calculated according to the following formula:

$$T_{ij}^{HST} = C_i^{HST} \times D_j^{HST} \times W_{ij}^{HST} \times H_i^{HST}, \text{ where:}$$

i means the conservation status of the ecosystem as mentioned in the decision or document issued by the competent agency, which is numbered from 1 to 4 prescribed in Appendix III of this Decree;

j means the degradation level of the ecosystem according to the evidence which is collected, estimated, or assessed as prescribed in this Decree and regulations on assessment of degradation level of the ecosystem;

$C_i^{HST}$  means the damage coefficient according to the conservation status of the ecosystem as prescribed in Appendix III of this Decree;

$D_j^{HST}$  means the damage coefficient according to the degradation level of the ecosystem as prescribed;

$W_{ij}^{HST}$  means the total ecosystem area having the conservation status (i) and suffered the degradation level (j) which is determined, estimated, or assessed as prescribed in this Decree;

$H_i^{HST}$  means the quota on the cost of restoration of a unit of the degraded ecosystem acquiring conservation status (i);

b) In case the ecosystem acquiring only one conservation status but including degraded areas at different levels, the damage to the ecosystem caused by the pollution or degradation equals (=) total damage of all degraded areas according to the formula below:

$$T_i^{HST} = \sum_{j=1}^n T_{ij}^{HST}, \text{ where:}$$

$T_i^{HST}$  means the damage to the ecosystem at the conservation status (i);

N means the total degradation level as prescribed in regulations on assessment of degradation level of the ecosystem;

c) In case the ecosystem is divided into smaller areas with different conservation status, the damage to the ecosystem caused by the pollution or degradation equals (=) total damage of all polluted areas.

The damage to every area of the ecosystem caused by the pollution or degradation shall be calculated according to the formulas prescribed in Point a, b and c of this Clause and the evidence which is collected, estimated or assessed as prescribed in this Decree.

5. The damage to the priority species caused by the pollution or degradation:

a) If the individuals of a priority species as prescribed die or get injured, the damage to that priority species caused by the pollution or degradation shall be calculated according to the formula below:

$$T_k^{LBV} = C_k^{LBV} \times W_k^{LBVc} \times H_k^{LBVc} + C_k^{LBV} \times W_k^{LBVt} \times H_k^{LBVt}, \text{ where:}$$

k means the priority species whose individuals die or get injured caused by the pollution or degradation or injury;

$C_k^{LBV}$  means the damage coefficient according to the priority level of the species (k) as prescribed in Appendix IV of this Decree;

$W_k^{LBVc}$  means the number of dead individuals in the priority species (k) which are determined, estimated, or assessed as prescribed in this Decree;

$H_k^{LBVc}$  means the quota on the cost for recovery or replacement of a dead individual of the priority species (k)

$W_k^{LBVt}$  means the number of hurt individuals in the priority species (k) which are determined, estimated, or assessed as prescribed in this Decree;

$H_k^{LBVt}$  means the quota of costs of rescue or recovery of a hurt individual of the priority species (k);

b) In case there are many priority species having dead or hurt individuals, the damage to the priority species caused by the pollution, degradation or infringement equals (=) total damage of all priority species caused by the pollution or degradation.

The damage to every priority species caused by the pollution or degradation shall be calculated according to the formula as prescribed in Point a Clause 5 of this Article.

## **Article 12. The degradation level of the ecosystem and quotas on costs of pollution reduction and environmental remediation**

1. The Ministry of Natural Resources and Environment shall provide guidance on assessment of degradation level of the ecosystem for environmental damage assessment.

2. The Ministry of Natural Resources and Environment shall take charge and cooperate with the Ministry of Finance in regulations on quotas on the cost of a unit of area, volume, or mass of polluted waters or soil which satisfies technical standards for soil or water quality as prescribed in Point a Clause 2, Point a Clause 3 Article 11 of this Decree; quotas on the cost of restoration of a unit of degrade ecosystem as prescribed in Point a Clause 4 Article 11 of this Decree; quotas on the cost of recovery or replacement of a dead individual of the priority species and quotas on the cost of rescue or recovery of a hurt individual of the priority species as prescribed in Point a Clause 5 Article 11 of this Decree as the basis for environmental damage assessment.

## **Chapter IV**

# **CALCULATION OF ENVIRONMENTAL COMPENSATION**

## **Article 13. Rules for calculation of environmental compensation**

1. The determination of organizations or individuals polluting or degrading the environment shall follow the fundamental rules below:

a) A geographic area is polluted or degraded caused by pollutant sources and infringement in the area or not in that area but it cause bad effects on that area;

b) There is scientific basis for the relation between the pollutants possible released from the waste sources or infringement and the impairment of the function and the usefulness of the environment;

c) The determination of the organization or individual polluting or degrading the environment must be conducted promptly and equally.

2. The organizations or individuals polluting or degrading the environment must pay full compensation for environmental damage due to their fault, and pay total cost for damage assessment and procedures for claiming compensation claims to the agency which given the advance as prescribed in Clause 2 Article 9 of this Decree.

3. In case there is more than one organization or individual polluting or degrading the environment, they must pay the compensation for environmental damage, pay the cost for damage assessment and procedures for claiming compensation claims filed by every organization or individual which is determined in proportion to damage rate in the total environmental damage.

4. If an organization or individual complies with regulations of law on environment protection, has waste treatment system and proves that they do not pollute or degrade the environment, they shall not pay environmental compensation and related costs for damage assessment and procedures for claiming compensation claims.

5. The Ministry of Natural Resources and Environment shall provide guidance on procedures for proving that the organizations or individuals do not pollute the environment as prescribed in Clause 4 of this Article.

#### **Article 14. Compensation for environmental damage**

1. According to the evidence and results of damage assessment, the agency prescribed in Clause 2 Article 3 of this Decree shall decide to process the compensation claims as follows:

a) Conclude agreement on compensation with the damage-causing person;

b) Request the arbitrator to process the compensation claims;

c) File a lawsuit.

2. The agency prescribed in Clause 2 Article 3 of this Decree shall use the compensation after deducting from the costs of damage assessment and follow procedures for claiming compensation claims to invest in pollution reduction and environmental remediation at the polluted or degraded area.

3. In case there are at least two central-affiliated cities and provinces which are polluted or degraded, the compensation after deducting the costs for damage assessment and procedures for claiming compensation claims shall be transferred to the Vietnam Environment Protection Fund in order to invest in pollution reduction and environmental remediation at the polluted or degraded area.

#### **Chapter V**

### **IMPLEMENTATION**

#### **Article 15. Implementation**

1. This Decree shall take effect from March 1, 2015 and replace with the Decree No. 113/2010/ND-CP dated December 3, 2010 of the Government on environmental damage assessment.

2. Any organization or individual polluting or degrading the environment caused damage to the environment performed before the effective date of the Law on Environment protection 2014 but fail to pay compensation, the damage assessment and compensation claims shall comply with regulations of this Decree.

3. The Ministry of Natural Resources and Environment shall provide guidance of this Decree.

4. Ministers, Heads of ministerial-level agencies, Heads of Governmental agencies, the President of the People's Committee of central-affiliated cities and provinces and relevant organizations or individuals shall be responsible for the implementation of this Decree./.

**ON BEHALF OF THE GOVERNMENT  
PRIME MINISTER**

**Nguyen Tan Dung**

### **APPENDIX I**

### DAMAGE COEFFICIENT EQUIVALENT TO THE WATER USE PURPOSES ( $C_i^N$ )

(Issued together with the Decree No.03/2015/ND-CP dated January 6, 2015 of the Government)

Water use purpose (i)	Coefficient ( $C_i^N$ )
Belonging to the restricted area of the nature reserve, historical – cultural remains, ranked scenic beauties (i=1)	5
Belonging to other areas of the nature reserve, historical - cultural remains, ranked scenic beauties (i=2)	3
Belonging to buffer zone of the nature reserve, historical - cultural remains, ranked scenic beauties (i=3)	2
Serving daily life (i=4)	2
Serving the production of industry, agriculture, or aquaculture (i=5)	1,5
Serving the recreation (i=6)	1,5
Serving other purposes or not belonging to any planning (i=7)	1

### APPENDIX II

#### DAMAGE COEFFICIENT EQUIVALENT TO SOIL USE PURPOSE ( $C_i^D$ )

(Issued together with the Decree No.03/2015/ND-CP dated January 6, 2015 of the Government)

Soil use purpose (i)	Coefficient ( $C_i^D$ )
Belonging to the restricted area of the nature reserve, historical – cultural remains, ranked scenic beauties (i=1)	5
Belonging to other areas of the nature reserve, historical - cultural remains, ranked scenic beauties (i=2)	3
Belonging to buffer zone of the nature reserve, historical - cultural remains, ranked scenic beauties (i=3)	2
Serving the production of industry, agriculture, or aquaculture (i=4)	1,5
Serving other purposes or not belonging to any planning (i=5)	1

### APPENDIX III

#### DAMAGE COEFFICIENT EQUIVALENT TO CONSERVATION STATUS OF THE ECOSYSTEM

( $C_i^{HST}$ )

(Issued together with the Decree No.03/2015/ND-CP dated January 6, 2015 of the Government)

Conservation status of the ecosystem (i)	Coefficient ( $C_i^{HST}$ )
1. Nature reserve, historical - cultural remains, ranked scenic beauties	
a) Restricted area (i=1)	5
b) Other areas (i=2)	3
c) Buffer zone (i=3)	2
2. Other natural ecosystem not belonging to nature reserve (i=4)	1

### APPENDIX IV

#### DAMAGE COEFFICIENT EQUIVALENT TO SPECIES PROTECTION PRIORITY ( $C_k^{LBV}$ )

(Issued together with the Decree No.03/2015/ND-CP dated January 6, 2015 of the Government)



Protection priority	Coefficient ( $C_k^{LBV}$ )
The species on the List of endangered, precious and rare species prioritized protection	10
The species on the List of wild fauna protected from exploitation	8
The species on the List of wild fauna possible for exploitation	6
Other priority species prescribed in regulations of law	4