



On April 30, 2007, the European Union (EU) will promulgate a Superfund-like regulation; the Environmental Liability Directive (ELD). This directive focuses on a “polluter pays” principle similar to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, in the United States.

The intent of the directive is to remedy existing environmental impacts in EU member states, ensure businesses responsible for environmental damages are held legally and financially accountable for any damages, and to prevent future damage.

What is the significance of the EU ELD?

With the introduction of the ELD, environmental liabilities for mergers and acquisitions in the EU that were not historically a significant risk will now require additional attention and review.

Several of the EU countries are discussing the potential for requiring financial assurance mechanisms including environmental insurance or surety bonds in order to confirm businesses have the financial means to address environmental impacts.

Although the EU does not currently have a program comparable to the US SEC environmental reserve process; it is likely that in the future a similar program will be developed.

How Can EHS Support Help?

EHS Support can assist you in interpreting the EU ELD and identify what new risks this presents to your business.

For more information about EHS Support’s services please contact:

Andrew Patz, CHMM

andy.patz@ehs-support.com

(412) 215-7703

www.ehs-support.com



Differences between the scope of Superfund and the ELD

One key difference between Superfund and the ELD is that the ELD is not retroactive - it only addresses damages that occur on or after April 2007. The ELD will regulate:

- impacts to endangered species and their natural habitats;
- requires that an operator take preventative action where environmental damage is imminent; and
- includes any damage to land that is the result of the introduction of organisms, or the misuse of genetically modified organisms.

There are currently a significant number of unanswered questions and data gaps concerning how this Directive will be interpreted and implemented. It is expected that case law will better clarify the Directive over time. However, in the interim it is critical that acquisitions completed in the EU take this new regulation, and the potential business risks it represents, into account.

As has been proven with Superfund liabilities in the US; the ELD will likely create significant new liabilities that need to be accounted for during mergers and acquisitions in the EU. These liabilities need to be identified and mitigated in order ensure they do not impact investments and existing operations in Europe.