



## Liability for Environmental Pollution under Zambian Law

Environmental pollution poses a significant threat to public health and natural resources. One of the principles of environmental and natural resources management and development under Article 255 (b) of the Constitution of Zambia, is that the person responsible for polluting or degrading the environment is responsible for paying for the damage done to the environment.

In Zambia, the Environmental Management Act No. 12 of 2011 (the “**EMA**”) provides a framework for addressing pollution-related liabilities. This article outlines the obligations of offenders, the rights of affected persons, and the penalties imposed under Zambian law.

## Obligations of Offenders

Under section 105 of the EMA, the Zambia Environmental Management Agency (“**ZEMA**”) inspectors are empowered to issue an environmental restoration order where there is a discharge of a contaminant or pollutant that poses a risk to human health, property, or the environment. The restoration order may require the responsible party to:

- a) Prevent the continuation or cause of pollution;
- b) Restore land by replacing soil, replanting trees, and preserving geological, archaeological, or historical features;
- c) Cease any activity that contributes to environmental hazards;



d) Remove any waste or refuse and dispose of it properly; and

e) Restore the environment to its prior state as much as possible.

An environmental restoration order will specify a compliance timeframe. If no date is provided, compliance must be immediate. Failure to comply is an offence under section 105(4) of the EMA and attracts a fine or imprisonment (of the breaching officers) for up to three years. Additionally, non-compliance attracts a further fine for as long as the offence continues.

If the offender is a ZEMA licensee and breaches the conditions of their licence, the Director General may issue a compliance order. The compliance order may, among other things, require the licensee to take specified measures to prevent or abate any adverse effects to the environment. Failure to adhere to the compliance order may result in variation of the conditions of the licence or even revocation.

ZEMA may also take the necessary steps to remedy the breach and recover the costs of the remedies from the licensee.

### **Rights of Compensation for Affected Persons**

The EMA grants affected individuals the right to seek legal redress. Firstly, under section 109 (1) of the EMA, any person may submit a written request to the Director General of ZEMA to investigate an alleged contravention of the EMA.

Furthermore, section 110 of the EMA provides that any person may sue for damages arising from an act or omission that contravenes the EMA, even if they have not personally suffered harm. The right to sue is supplementary to other legal rights and remedies. In cases where a court awards damages, the compensation follows this order of priority:

a) reimbursement of legal costs incurred by the plaintiff;

b) compensation for the plaintiff and other affected parties; and

c) the balance is divided equally between the Environmental Protection Fund and the plaintiff.

An action can be commenced either by the persons affected or any person in the public interest for the protection and conservation of the environment.

### **Penalties under other laws**

Under section 36(1) of the Mines and Minerals Development Act No. 11 of 2015, the Director of Mines Safety or Director of Mines may direct a holder of a mining right or mineral processing licence to suspend or curtail production or close a mine where there is uncontrollable pollution resulting from mining operations.

### **Water Resources Act**

Under section 48(1) of the Water Resources Management Act, any person who discharges

or disposes of organic or inorganic matter, effluent, or wastewater into a water resource, causing pollution, commits an offence. Such an offence is punishable by a fine or imprisonment for up to one year, or both.

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Furthermore, a convicted offender may be ordered by the court to:

- a) take remedial action as specified by the court based on advice from the Water Resources Management Authority (“**WARMA**”);
- b) reimburse the WARMA for any remedial action taken; and
- c) pay compensation for any environmental damage caused.

### **Conclusion**

Environmental protection is fundamental to sustainable development. Accordingly, Zambian law imposes strict obligations on individuals and entities to prevent and mitigate pollution. Companies engaged in activities with potential environmental impacts must comply with licensing conditions and legal requirements.

Failure to do so can result in significant penalties, civil liability, or even closure of operations, depending on the severity of the violation. Moreover, as Environmental, Social, and Governance (ESG) considerations become increasingly central, companies risk losing their ‘social licence’ to operate if they fail to uphold responsible environmental practices.