



# Liability in the French system

- An overview of the French system
- Recent juridical evolutions
- Funding « orphan » sites
- Actual developments of the policy

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# Brief overview of the system





# The French regulatory framework

- « Classified installations » regulatory framework
- The policy for soil contamination has been tackled through this regulation

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## What does the law say ?

- Decree nr 77-1133 (21/9/1977) : when an activity ceases, the responsible has to clean the site, so it can be fitted for a determined use
- The prefect can impose him to take all measures necessary for environment and public health protection, event after the end of activity process

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# Who is responsible ?

- The (last) owner of the permit
- If he disappeared :
  - The owner of the land ?...

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# Owner's liability

- 2000 instructions to the prefects : going towards the land owner's responsibility
- Decisions of administrative courts :
  - After some decisions in favour of the land owner's liability, the courts now mainly consider remediation can't be assigned to the land owner
- No integration of the owner's liability in the 2003 law

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# Recent juridical decisions





## Recent decisions

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- State supreme court (*Conseil d'Etat*), July 8, 2005 :
  - Administrative constraints don't have a limit in time
  - But thirty year regulation applies to the financial consequences...
- Consequences : our legislation is more or less inoperative :
  - Towards the land owner
  - After 30 years







# Explanations...

- Confusion between
  - Remediation obligation at the site closure
  - Obligation of maintaining sites in a state of safety
- It was in some cases asked the same thing to an owner as it would have been asked to the industrial

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## The actual situation

- No means to act once the responsible disappeared
- Important risk some people could make juridical action to force the State to « depollute » their own piece of land

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# Funding « orphan sites »





~~« Orphan sites »  
« Sites orphelins »~~

1999



« Sites with the person in charge failing »  
« Sites à responsables défailnants »

**Because there should always be somebody responsible for it !**

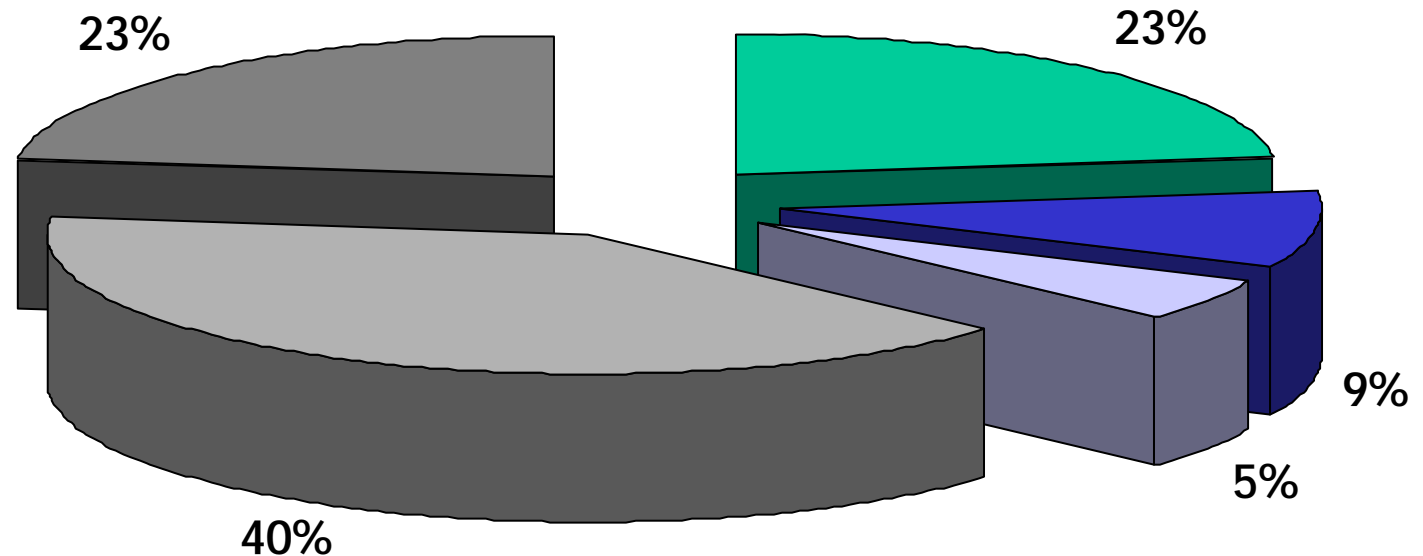
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# Public intervention on sites



- On site containment
- Liquid waste processing
- Studies, risk assessments
- Waste evacuation
- Monitoring (groundwater)

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## The mechanism

- It is not « the State does the remediation »
- Mechanism of public intervention (ADEME does the work under supervision of the Ministry)
  - To put the site in a state of safety
  - When there are safety problems
  - Limited to it
- It's no question to give value to the sites through this mechanism

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# Actual developments





## A new decree (September 16)

- Clarification of responsibilities when cessation of activity
- The use of the piece of land is determined after a discussion involving the land owner and the mayor
- It enables the decisions to be clear and traceable
- Limitation of liability for the industrial
  - Fit for the determined use
  - For “old site”, compatibility with an “industrial” use

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# Evolution of the concepts

- Differentiation between :
  - Putting the site « in safety »
  - Rehabilitation = fit for a determined use
- Differences in approach/different stakes
  - Evacuation of dangerous wastes
  - Treatment of « historical » pollutions

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# Dealing with « historical contaminations »





# Different philosophies

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Value of the land Use of the land	Management philosophy
No value No project	Limited to monitoring
High value Re-use project	Funding of remediation, with possible agreement between industrial/mayor/property developer
Low value Re-use project	Public funding to develop in order to avoid use of « clean » land ?