

Introduction

With the coming into force of the remediation rules in the Soil Protection Act in 1994, the term 'guilty owner' has been introduced.

In 1995, article 55, the duty for registration of serious soil contamination in the real estate register, based on the Land Registry Act, came into force. The authorities' decisions whether the site is seriously contaminated and the necessity for an urgent decontamination mean that there are using restrictions for the soil and also a duty to remediate for the guilty owner.

The reason for the amendment of the law in 1995 was the introducing of the term guilty owner: everybody who knew or ought to have known that he bought contaminated soil is a guilty owner. This means that he is completely liable for contamination and he has the duty to remediate when urgent decontamination is necessary.

Even if a site is remediated, there could be still restrictions. In 2006, because it was obvious that the aftercare measures needed to be registered, so with the amendment of the Soil Protection Act, a decision about aftercare came into force. This decision was also included in the register.

There was no one standard for registration.

Increasingly the registration was used for a wider purpose, namely information about the actual situation besides the question if a restriction for normal use applies for the owner.

New law

In the scope of realization the Law recognizability public restrictions real estate, which came into force 1 July 2007, is considered again in which situations a registration should have done. The basic principle was the term public restrictions. About 16 laws (for instance the Monuments and Historic Buildings Act, the Soil Protection Act, the Public Works Act, the Earth Removal Act, the Housing Act etc.) have restrictions based on this law.

Soil regulation based on the new Law

The 'Regulation restrictions registration Soil protection act' is based on the Soil Protection Act and came into force August 1. This regulation gives the duty for uniformity and makes conditions about the interpretation of the term 'public restrictions' to all the parties.

The 'restriction in the allowance to use' or the 'guilty owner' will be indicated when decisions about soil have been taken. This means a more restrictive registration and less freedom for the authorities in recording whatever they think useful.

Notification of the decisions

The competent authorities that take the decisions and give the orders with regard to soil contamination are responsible for the notification to the Cadastre.

The competent authorities are: the Provincial Executive and the Burgomaster and Alderman of 29 more or less big cities. The Provincial Executives do their notifications to the national register; the cities have their own local register, which is linked to the national register.

Registration is now related to serious soil contamination (without groundwater) and it is digitalized.

Registration

The following decisions are to be registered by the competent authorities:

The decision whether the site is seriously contaminated.

The decision about the necessity for urgent measures to manage unacceptable risks.

The order to cease the act of causing the contamination.

The order to make a site assessment, or the order to take temporary measures.

The decision of the approval of the aftercare plan.

Only the restriction decisions, which apply, will be shown in the register, not the decisions resulting no current restrictions, because either the decision does not exist anymore or the restriction is terminated, as a result of which the registration has been removed.

As far as there is no liability for the groundwater, only the contaminated soil will be registered, not the contaminated groundwater.

Cadastre (Real estate register)

In the real estate register (or Land Registry Office) one can find a well-defined duty registration and the liabilities of the owner. It can be consulted on line:

www.kadaster.nl. The site is not free of charge for detailed information about the real estate, contrary to the bodemloket, which has a lot of free of charge information for everyone.

Bodemloket

'Bodemloket' can be translated as soil portal. Bodemloket is a website from the government and open for the public. It is in compliance with the treaty of Aarhus. With this site the government wants to give an insight in the taken measures with regard to the quality of the soil and the remediation in the past years. Moreover the site shows the former activities of industrial sites, which need particular attention. It is possible that in the future site assessments will be needed.

Bodemloket shows if a survey of the soil has taken place on a particular site, if this survey has ended in further steps: a more detailed survey or remediation, or if there has been already a remediation. In the report one can see which steps are taken and the decisions, which are given by the authorities.

The site www.bodemloket.nl is a site free of charge.

Let's have a look!

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