



Environmental damage regulations successfully enforced

Case study

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Following an oil spill on residential property, the Mid Devon District Council successfully enforced the new Environmental Damage (Prevention and Remediation) Regulations 2009 (the 'EDR').

A fuel company accidentally transferred oil into a disused tank, instead of into a new replacement one. Oil leaked out of the old tank, entered the ground and permeated through the walls and floor of the property. The kerosene fumes caused the residents to suffer from nausea, headaches and sore throats.

The Council determined that 'Environmental Damage' had occurred as defined by the EDR given that

- the damage occurred after the regulations had come into effect
- a hazardous substance had entered the ground
- the spill was caused by the fuel company
- none of the exemptions to the EDR applied
- the residents had suffered adverse health effects

After emergency action was taken to prevent further leakage, the Council liaised with the fuel company and the residents to agree on a remediation strategy. The Council felt that the enforcement procedure under the EDR "certainly focused attention on dealing with the incident promptly/effectively and provided clarity as to the requirements on relevant parties...".

The case study demonstrates how a pollution event that initially resulted in third party damages (bodily injury and property damage) ended up as a statutory liability (remediation legal liability under the ERD). The case highlights the importance of ensuring adequate environmental insurance given that public liability policies, more often than not, only address the third party triggers and not the statutorily enforced clean up costs.