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**Compensation of
lawful environmental damage**

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Compensation of environmental damage in the doctrine of environmental law in Russia has traditionally been considered as a type of civil liability for violation of environmental legislation.

As a result, the elements of a civil offence include details inherent to any elements of an environmental offence: an unlawful act (act or omission); the fact of causing damage to the environment; the cause-and-effect connection between the act and causing damage; the fault of the perpetrator.

Federal law of 10.01.2002 № 7-FZ

"On environmental protection»:

damage to the environment – negative change of the environment as a result of its pollution, resulting in degradation of natural ecological systems and depletion of natural resources

The environmental legislation establishes the obligation of full compensation for damage to the environment

This approach allows to build clear elements of the civil offence and to include this type of liability in the system of legal liability for environmental violations, along with criminal, administrative and disciplinary liability.

BUT...

From the system analysis of the term “damage to the environment“ it is possible to draw an unambiguous conclusion that the environmental damage is not only **a consequence of the offense.**

BUT...

The analysis of environmental legislation of the Russian Federation allows to make a conclusion that it doesn't clearly distinguish cases of causing damage caused by lawful activity and as a result of violation of the legislation.

For example, almost all the methods and fees that regulate the procedure for assessing the damage caused to objects of flora and fauna, provide for compensation of environmental damage caused as a result of a committed offense.

Examples of lawful environmental damage:

- deforestation by the construction of roads;
- destruction of habitats of wildlife along the creation of reservoirs and laying pipelines;
- the fall of separating parts of space objects in the process of space rocket launches;
 - conducting military exercises.

The damage to the environment caused as a result of this economic activity can be very significant.

Thus, with rare exceptions, the Russian legislation does not set out the forms, the procedure of compensation of lawful environmental damage.

Good, but rare experience

Fishing legislation provides for mechanisms for the participation of nature resources users in the conservation and restoration of aquatic biological resources.

It provides for measures for the conservation of biological resources and their habitat.

These include measures to eliminate the consequences of negative impact on the state of biological resources and their habitat through artificial reproduction, acclimatization of biological resources or fishery reclamation of water bodies, including the creation of new, expansion or modernization of existing production facilities that ensure the implementation of such measures.

The analysis of Directive 2004/35/CE of the European Parliament and of the Council of environmental liability with regard to the prevention and remedying of environmental damage shows, that the EU adopts a broader approach to understanding environmental liability. For applying measures of environmental responsibility, it is enough to commit an act and cause damage to the environment.

Thus, it can be assumed that the Directive applies to environmental damage caused by both the offence and the legitimate activity, independently from the legal regime.

Environmental damage

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graph TD; A[Environmental damage] --> B["unlawful environmental damage"]; A --> C[lawful environmental damage]; C --> D["lawful environmental damage caused by existing activity (real damage)"]; C --> E["future lawful environmental damage by planning and designing of project (prospective damage)"];
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**“unlawful”
environmental damage**

**lawful
environmental damage**

**lawful
environmental damage
caused by existing
activity (real damage)**

**future lawful
environmental damage
by planning and
designing of project
(prospective damage)**

Environmental damage caused by the offence

Lawful environmental damage

The basis is the commitment of the offence

The basis is planning or existing economic activity

The principle of full compensation for environmental damage

Compensation for real environmental damage

The fee for the negative impact on the environment is not taken into account assessing of the amount of environmental damage

The fee for the negative impact on the environment should be taken into account by assessing of the amount of environmental damage

Special methods of assessment are available

No special methods of assessment at the moment

The procedure of compensation is available

No special procedure of compensation at the moment

Stages of lawful environmental damage's compensation

lawful environmental damage caused by existing activity (real damage):

- determination of compensation cases in the legislation;
- ongoing assessment;
- control over process of compensation;
- follow-up monitoring.

future lawful environmental damage by planning and designing of project (prospective damage):

- a preliminary assessment;
- inclusion in the project;
- adjustments during the implementation of the project;
- control over process of compensation;
- follow-up monitoring.

Conclusions:

It seems necessary to distinguish in the Russian legislation cases of causing environmental damage as a result of the committed environmental offense and as a result of a lawful activity.

It is necessary to establish features of compensation of the lawful environmental damage caused by planning economic activity (future environmental damage), and the environmental damage, caused as a result of existing economic activity without violation of the legislation.

Thank you for your attention!