

Liability and insurance after Schweizerhalle

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Schweizerhalle also changed the law of liability. At the time of the fire, the liability of the holder of an industrial installation for environmental damage was governed by the general rules of the Code of Obligations and the Civil Code, in particular the liability of the landowner under Article 679 of the Civil Code and the liability of the owner of a work under Article 58 of the Code of Obligations. These rules did not fit the case of damage to the environment as such, such as the death of fish in a public river.¹ In the revision of the Environmental Protection Act in 1995, which entered into force in 1997, the legislator introduced a strict liability of the holder of an enterprise or installation that poses a particular risk to the environment. Under Article 59a, the holder is liable for damage caused by the realisation of this risk, subject to limited exceptions. The Federal Council may require security for the liability.² The Water Protection Act contains a parallel strict liability for damage to waters, whereas the compensation of public authorities for the costs of measures against pollution is covered by the polluter-pays principle in Article 59 of the Environmental Protection Act.

Schweizerhalle had consequences for the insurance industry as well. The damage claims, which affected several countries, raised questions of the coverage of environmental damage under liability insurance policies and of the limits of insurance for gradual pollution. Insurers reviewed their policy wordings in the following years, restricting the coverage of environmental damage to sudden and accidental events and introducing separate environmental impairment liability products.³ The pharmaceutical and chemical groups responded in part by expanding their own captive insurance companies, which retain a share of the risks and buy reinsurance in the market. Part I examines these captives in its chapter on the insurance industry.

For the companies, Schweizerhalle accelerated a change of culture. Safety and environmental management became board-level subjects. The groups

invested in retention basins for firefighting water, in the separation of storage facilities and in the reduction of stocks of hazardous substances in densely populated areas. The move of production away from the city centre, which was driven primarily by economic factors, also reduced the risks for the population. The remediation of contaminated sites, among them landfills used by the chemical industry in the region for decades, has remained an expensive legacy, for which the companies have set aside provisions in their accounts.⁴ The relationship between the industry and the population, which had been damaged by the disaster, recovered over time as the companies demonstrated their commitment to safety and as production moved away from the city.

1 Notes

1. Art. 679 of the Swiss Civil Code (ZGB, SR 210) on the liability of landowners for excessive use of their property and Art. 58 of the Code of Obligations (OR, SR 220) on the liability of the owner of a work. On the legal assessment of the Schweizerhalle damage under the law then applicable, see the literature on Swiss environmental liability law. To be verified. ↩
2. Art. 59a and 59b of the Environmental Protection Act (USG, SR 814.01), introduced by the amendment of 21 December 1995, in force since 1 July 1997; on the requirement of security (Art. 59b) and its implementation, see the literature on Swiss environmental liability. To be verified. ↩
3. On the reaction of the insurance industry to the Schweizerhalle disaster, in particular the revision of the coverage of environmental damage in general liability policies and the development of separate environmental liability insurance, see the publications of the Swiss Insurance Association and the literature on environmental liability insurance. To be verified. ↩
4. On the remediation of contaminated sites of the chemical industry in the Basel region, for example the landfills in Muttentz and at Bonfol in the canton of Jura, and on the related provisions in the accounts of the companies, see the reports of the cantonal environmental authorities and the annual reports of the companies concerned. To be verified. ↩

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