

Owners of aircraft may attract environmental liability

By [Li-Fen Chien](#)

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The National Environmental Management Act, 1998 (NEMA), states that "no person may unlawfully and intentionally or negligently commit any act or omission which causes significant or is likely to cause significant pollution or degradation of the environment". NEMA specifically requires proof of fault in the conviction of this offence.

Interestingly, fault does not need to be established in a civil claim for environmental damages under the Civil Aviation Act, 2009 (the Act), making it easier to claim compensation from aircraft owners who cause environmental damage to property.

Section 8(2) of the Act imposes strict liability upon registered owners and reads:

"Where material damage or loss is caused by -

(a) an aircraft in flight, taking off or landing;

(b) any person in any such aircraft; or

(c) any article falling from any such aircraft.

to any person or property on land or water, damages may be recovered from the registered owner of the aircraft in respect of such damage or loss, without proof of negligence or intention or other cause of action as though such damage or loss had been caused by his or her wilful act, neglect or default."

This section allows for the recovery of "material damages", a term not defined, but we think is wide enough to include environmental damages. This was confirmed in the case of *Walker vs Weedair (NZ) Limited*, in which damages were awarded for the loss of crops on a farm in New Zealand.

The Walker case is particularly relevant for the aviation industry in South Africa because section 5(3) of the Civil Aviation Act, 1948 in New Zealand has identical wording to section 8(2) of the Act. In this case, the crops failed as a result of herbicide accidentally discharged from an aircraft while it was flying over the farm. (Although obviously not binding on our courts, they would be entitled to be guided by the application of an identically worded provision.)

The farmer was only required to prove a) the event; b) the identity of the registered owner; and c) the quantum of the damage. Although the defendant argued the herbicide liquid released is not an article as defined in the Act, the court held that the material damage was caused by "an aircraft in flight". Because all elements were proved, the claim was successful

and the owner had no defence to the claim.

Wide definition of "registered owner"

It is important to note the "registered owner" is defined quite widely to include not only the person in whose name the aircraft is registered, but also any person who is or has been acting as an agent in South Africa for the foreign owner, or any person by whom the aircraft is hired at the time. What if an agent, who is not responsible for maintaining the aircraft on behalf of the foreign owner, was flying the aircraft at the time?

If, for example, as a result of the failure to maintain the aircraft, dangerous fluids are discharged onto property on land or water below the flight path, causing environmental damage, the agent will ordinarily have to pay the damages as the "registered owner". Although the Act gives the agent the right to claim these damages from the foreign company where it was not responsible for committing the wrongful act, the agent must ensure that the agency agreement includes a clear provision for that recovery.

Registered owners of aircraft must ensure that appropriate provisions have been included in agreements entered into with foreign owners or lessors, or they may be faced with faultless claim under the Act and find it difficult to recover damages from the party actually responsible for the harm.

An owner of land should be mindful that if an aircraft causes environmental harm to land or water, the claim is a fairly easy one to prosecute.

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