Environmental law and practice in Poland: overview

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ENVIRONMENTAL REGULATORY FRAMEWORK

1. What are the key pieces of environmental legislation and the regulatory authorities?

The key pieces of environmental legislation are:

- The Act on the Protection of the Environment, 27 April 2001 (Ustawa z dnia 27 kwietnia 2001 r. – Prawo ochrony środowiska) (Environmental Protection Law).
- The Water Law, 18 July 2001 (Ustawa z dnia 18 lipca 2001 r. - Prawo wodne).
- The Act on Waste, 14 December 2012 (Ustawa z dnia 14 grudnia 2012 r. o odpadach).

Numerous central and local administrative bodies deal with environmental protection under powers and duties derived from the relevant legislation. The most important authorities are:

- Ministry of Environmental Protection (Ministerstwo Ochrony Środowiska) (www.mos.gov.pl), the central body at governmental level, which supervises the activity of other authorities concerned with environment protection.
- Main Inspector of Environmental Protection (Główny Inspektor Ochrony Środowiska) (www.gios.gov.pl). Its main activities include supervising compliance with, and inspecting and evaluating environmental protection provisions. It also supervises the remediation of any breach of the provisions.
- Main Director of Environmental Protection (Główny Dyrektor Ochrony Środowiska) (www.gdos.gov.pl). Its main activities include supervision to ensure that environmental protection policy is put into practice, supervising investment processes and participating in issuing Environmental Impact Assessments (EIAs).

REGULATORY ENFORCEMENT

2. To what extent are environmental requirements enforced by regulators?

Polish administrative authorities strongly emphasise compliance with national and EU environmental law and regulation. The many authorities concerned with environmental protection (see Question 1) specialise in a wide range of queries and are well staffed and organised. Enforcement varies depending on the legislation concerned. However, there is a general tendency towards stricter compliance with environmental protection measures.

ENVIRONMENTAL NGOs

3. To what extent are environmental non-governmental organisations (NGOs) and other pressure groups active?

Environmental NGOs are quite active. There are many organisations; some focus on general environmental protection while others focus on stressing the need for protecting specific elements of the environment.

Some global environmental protection organisations are active in Poland, including Greenpeace and Client Earth.

All of these organisations usually participate in the legislative procedure for Acts related to environmental protection. They also participate in peaceful protests against environmental pollution. The NGOs are very active participants in the permission processes for industrial investments. They often challenge permits on the basis of Polish and EU law and are successful in delaying projects.

ENVIRONMENTAL PERMITS

4. Is there an integrated permitting regime or are there separate environmental regimes for different types of emissions? Can companies apply for a single environmental permit for all activities on a site or do they have to apply for separate permits?

Integrated/separate permitting regime

An integrated or separate permit may be required depending on the type of installation.

Integrated permits are issued when the activity (taking into account its size, type and scale) could cause harm to the environment in general or to several aspects of the environment. An integrated permit can cover all permits issued as a single permit. In general, integrated permits are issued to the installations of one entity located on the same site.
Integrated permits are more strictly regulated as the proceedings involve public consultations. An integrated permit is reviewed every five years. If the permit is new or will be significantly changed, the applicant must comply with the requirements regarding the best available techniques (BAT).

**Single/separate permits**

Single permits are issued to installations that may affect an aspect of the environment that is protected from pollution, such as:
- Air, by emitting gases and dust.
- Water, by emitting sewage into the water table.
- The general environment, by producing and disposing of waste.

A single permit is valid for a maximum period of ten years.

**Permits and regulator**

Different authorities issue integrated permits depending on the type of activity (for example, different types of Polish territory (the starost or the marshall of a voivodship (province)) can have different authorities that issue permits).

**Length of permit**

Permits are issued for an indefinite term, unless the applicant requests that a permit be issued for a definite period.

**Restrictions on transfer**

From 5 September 2014, a right under a permit automatically transfers to the entity that acquires the legal right (ownership or lease) to take over the activities of an installation.

**Penalties**

Breaching a permit or carrying out activity without the required permit is subject to administrative fines and can incur criminal liability. The voivodship’s environmental protection inspector must stop the operation of an installation if it operates without a required integrated permit. The inspector can stop the operation of an installation if it operates without a required single permit. The inspector can stop the operation of an installation if it operates without a required single permit.

**WATER POLLUTION**

6. What is the regulatory regime for water pollution (whether part of an integrated regime or separate)?

**Permits and regulator**

The Water Law is the regulatory regime for business activities that involve water management. The use of water resources may require a special permit known as a water-legal permit. Different authorities are entitled to issue a water-legal permit, for example a starost or the marshall of a voivodship.

**Prohibited activities**

Water and the environment around water are stringently protected. The Water Law lists specific types of prohibited activities. In general, it is prohibited to:
- Cause water pollution.
- Breach the scope of a permit.
- Not comply with the activities covered by a permit.

**Clean-up/compensation**

The regulator can require a polluter to pay compensation for engaging in prohibited activities under the Water Law. The polluter must remedy the damage caused to the environment (including water) (Act of 13 April 2007 on the Prevention of Damage to the Environment and its Remediation).

**Penalties**

Administrative fines and criminal liabilities are the most serious penalties for breach of the Water Law. Authorities can revoke permits and issue administrative fines. Criminal liability leads to fines, restriction of liberty and imprisonment.

There can also be civil liability for torts.

**AIR POLLUTION**

7. What is the regulatory regime for air pollution (whether part of an integrated regime or separate)?

**Permits and regulator**

A permit is required to release gases and dust from an industrial installation into the air. The head of the district where the installation is sited generally issues the permit. The permit must specify the type and amount of gas or dust that will be released into the air and the locations of measuring stands. Companies must measure the level of air pollution if they carry on an activity that may cause air pollution. Certain installations do not require a permit. These are listed in regulations issued under environmental law.

**Penalties**

Environmental law prevents air from being over-polluted and prohibits air pollution outside the scope of the permit (if a permit is required). It sets the standard level of acceptable air pollution.

**Prohibited activities**

Environmental law creates three regimes for liability for air pollution:
- Administrative liability for non-compliance with the scope of a permit, breach of a permit, or failure to obtain a permit. The most common penalties are a fine and restrictions on carrying out business activity.
- Civil liability for damages caused by the activities of the polluter. It is still possible to incur civil liability even if the pollution is within the scope of a permit.
- Criminal liability for breaching provisions in environmental legislation. In this case, the most common penalties are fines, restrictions of liberty and imprisonment.

**Clean-up/compensation**

Companies that pollute air are obliged to pay compensation for use of the environment. Compensation rates are set out in environmental law. Under the Act of 13 April 2007 on the Prevention of Damage to the Environment and its Remediation, the polluter must remediate damage caused to the environment (including water).
CLIMATE CHANGE, RENEWABLE ENERGY AND ENERGY EFFICIENCY

8. Are there any national targets or legal requirements for reducing greenhouse gas emissions, increasing the use of renewable energy (such as wind power) and/or increasing energy efficiency (for example in buildings and appliances)? Is there a national strategy on climate change, renewable energy and/or energy efficiency?

Poland has obligations as a member of the EU in addition to initiatives it has taken under the UN policy for reducing greenhouse gas emissions. So far, Poland has reduced greenhouse gas emissions by 32% since 1990. This exceeds the EU target of 20%. Poland has also taken various steps to prepare a more efficient framework for further reductions.

The main programmes related to the reduction of greenhouse gas emissions are:

- Polish Climate Policy. This is the plan to reduce greenhouse gas emissions in Poland by 2020.
- Polish Energy Policy until 2030.

These programmes are complementary and they assume many different means of reducing greenhouse gas emissions, including:

- Development of renewable energy resources.
- Minimising the use of carbon energy.
- A system of incentives for investing in energy-saving solutions.
- Promotion and development of public transport and facilities for households relating to the use of energy.
- A duty to buy energy from renewable energy resources.

The most recent development in this area is the Act on Renewable Energy Resources, passed on 20 February 2015.

Poland also has a binding target on energy efficiency and the support scheme related to promotion of energy efficient projects. This is based on the Energy Efficiency Act of 15 April 2011.

9. Is your jurisdiction party to the United Nations Framework Convention on Climate Change (UNFCCC) and/or the Kyoto Protocol? How have the requirements under those international agreements been implemented?

Poland is a party to both UNFCCC and the Kyoto Protocol. In 2013, Poland hosted a Conference of Parties of UNFCCC. Polish obligations under the Kyoto Protocol for the first period (ending in 2012) were exceeded. Poland reduced greenhouse gas emissions by 32% (Poland’s obligation was 8%) from their level in 1990.

10. What, if any, emissions/carbon trading schemes operate in your jurisdiction?

The Polish emissions/carbon trading scheme is part of the European Union scheme (EU ETS).

ENVIRONMENTAL IMPACT ASSESSMENTS

11. Are there any requirements to carry out environmental impact assessments (EIAs) for certain types of projects?

Scope
EIAs are regulated by a separate act, the Act on Disclosing Information about the Environment and its Protection, the Participation of Society in Environmental Protection and Environmental Impact Assessments of 3 October 2008. An EIA is required where:

- An industrial infrastructure project may have a serious impact on the environment over a significant area.
- A project could have an impact on a Natura 2000 area. A Natura 2000 area is an area that is strictly protected because of its importance to the environment.

An EIA will include all information related to the environment in the area of the planned investment and the assumed environmental impact of the project. The procedure is complicated and requires consultations with the public, the government and NGOs.

Permits and regulator
Decisions regarding the construction of a project (such as zoning decisions and construction permits) cannot be made until an EIA has taken place and an environmental decision is made.

The EIA application is filed at the start of the process. The standard documents attached to the application are:

- Maps.
- Plans.
- Land register excerpts.
- A report on the environmental impact and the project’s information chart (in some circumstances).

Different authorities, for example the mayor of a municipality, may be entitled to issue the permit depending on the type and location of the contemplated project. The relevant authorities must consult the regional directorate of environmental protection during the procedure. The regional environmental protection directorate plays a decisive role in setting the required scope of the EIA for a project.

Penalties
Not applicable.

WASTE

12. What is the regulatory regime for waste?

Permits and regulator
An installation requires a waste production permit to operate if it produces more than 1Mg of hazardous waste or more than 5000Mg of other waste each year (Environmental Protection Law). A waste production permit is not required if the activities of the installation are conducted under an integrated permit.

Under the Act on Waste, there are two different permits related to waste collection and disposal:

- A permit for collecting waste.
- A permit for the treatment of waste.

An entity that wants to offer both of these activities can apply for a combined permit. The authority entitled to issue the relevant permits depends on the type of permit.

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### Prohibited activities

There is a wide range of prohibited activities related to waste. Most are activities that are harmful to the environment. Others are more procedural in nature, for example failing to comply with standards or providing services related to waste without permits.

#### Operator criteria

The operator must comply with certain criteria set out in the Act on Waste. The criteria mainly relate to the location of landfills and the type of management required to prevent environmental pollution in the course of the activity. The preliminary phase of the procedure to obtain permission examines these criteria.

#### Special rules for certain waste

The Act on Waste creates a different regime for certain types of waste that are regarded as dangerous or which require special treatment, for example asbestos or medical waste.

#### Penalties

There is administrative and criminal liability for failure to comply with the Act on Waste. Administrative liability can be financial and the regulator can prohibit certain kinds of activity.

### ASBESTOS

#### 13. What is the regulatory regime for asbestos?

Under Environmental Protection Law, asbestos is one of two substances that present a significant risk to the environment. The second is polychlorinated biphenyls (PCBs).

#### Prohibited activities

It is forbidden to sell asbestos or reuse products that contain asbestos. Asbestos waste is continuously eliminated with an obligation to stop using it and clean up the installations in which it was used by 31 December 2032. Legislation forbids the production, use and trade in asbestos. Asbestos must only be stored in locations specifically intended for that purpose.

#### Main obligations

Entities that use asbestos must keep specific documentation on the use, storage locations, type and use of asbestos.

#### Permits and regulator

Matters related to asbestos are regulated on a national and a regional level. The Ministry of the Environment and the Ministry of the Economy are both responsible for registering and providing procedures to eliminate asbestos. Governmental and local authorities carry out these procedures to prevent the spread and reuse of asbestos.

#### Penalties

Individuals that breach these provisions are subject to criminal liability that can result in fines, restriction of liberty and imprisonment.

### CONTAMINATED LAND

#### 14. What is the regulatory regime for contaminated land?

**Regulator and legislation**

The rules that govern the contamination of land depend on when the land was contaminated:

- Liability for contamination that happened before 30 April 2007 is dealt with under the Environmental Protection Law.
- Contamination caused since 30 April 2007 is dealt with under the Act of 13 April 2007 on the Prevention of Damage to the Environment and its Remediaiton.

The regional directorates of environmental protection deal with contamination issues.

#### Investigation and clean-up

The landowner must notify the contamination, or suspicion of contamination of land, to both the regional director of environmental protection and to the voivodship (province) inspectorate of environmental protection. An investigation is obligatory following a notification. Every contamination must be cleaned up and remediated.

#### Penalties

There are two categories of penalties for contaminating land:

- Administrative fines and the possible revocation of permits.
- Clean-up and remediation of the contaminated land.

Criminal liability can also result from the contamination of land and can result in fines, restriction of liberty and imprisonment.

#### 15. Who is liable for the clean-up of contaminated land? Can this be excluded?

**Liable party**

**Contamination of land caused before 30 April 2008.** The landowner is responsible for the clean-up unless it can prove that the contamination was caused by another entity acting without its consent following the acquisition of land by the owner.

**Contamination of land caused since 30 April 2008.** The polluter is liable although the owner may also be liable if it consented to the pollution. In such situations the owner/occupier is liable jointly and severally with the polluter, unless it notified both the regional director of environmental protection and the voivodship (province) inspectorate of environmental protection of a direct threat of a pollution immediately after obtaining such knowledge (see Question 14).

**Previous owner/occupier liability**

**Contamination of land caused before 30 April 2008.** The previous owner is released from the liability at the moment it disposes of the land.

**Contamination of land caused since 30 April 2008.** The owner is not released from its liability when it disposes of land.

**Limitation of liability**

The obligation to remedy the contamination is unlimited.

#### 16. Can a lender incur liability for contaminated land and is it common for a lender to incur liability? What steps do lenders commonly take to minimise liability?

**Lender liability**

Lenders cannot incur liability for contaminated land, unless they acquire the land as a result of enforcement.

**Minimising liability**

Lenders generally do not acquire land in the enforcement proceedings as land is sold to the public by the court bailiff.
17. Can an individual bring legal action against a polluter, owner or occupier?

Civil liability rules allow an individual to pursue claims against a polluter. They can claim for compensation and for remediation of the contaminated land.

HYDRAULIC FRACTURING

18. Is fracking being pursued or considered in your jurisdiction? If so, please describe the regulatory framework which applies to manage environmental risks.

Consenting and environmental impact assessment
The Geological and Mining Law regulates legal procedures related to hydraulic fracturing. However, the provisions of the Polish Environmental Protection Law supplement those provisions in the context of environmental protection.

To apply for a fracking licence, applicants must attach either an excerpt indicating the areas of environmental protection or an EIA related to the scope of the project. Applications must include the measures to be taken to avoid environmental degradation.

Other issues
Obtaining a fracking licence can be burdensome and time consuming.

ENVIRONMENTAL LIABILITY AND ASSET/SHARE TRANSFERS

19. In what circumstances can a buyer inherit pre-acquisition environmental liability in an asset sale/the sale of a company (share sale)?

Asset sale
If an asset sale involves an acquisition of a whole business or an organised part of a business, then the buyer and the seller are jointly and severally liable for the seller's pre-acquisition liabilities, unless the buyer could not have discovered them in the due diligence process.

On the acquisition of a single asset or a collection of assets, the buyer inherits some of the seller's liabilities. In particular, the buyer assumes the rights and obligations under permits relating to the operation of acquired installations. The acquisition results in the transfer of liability for the contamination of acquired land caused before 30 April 2007.

Share sale
In a share deal the buyer does not become liable for the obligations of the seller. However, it acquires the shares of the company with all environmental risks and liabilities of that company. In other words, the change of ownership of the company does not release it from its environmental liabilities.

20. In what circumstances can a seller retain environmental liability after an asset sale/a share sale?

Asset sale
Unless a specific legal provision releases a seller from its liabilities, the sale of an asset does not release the seller from its past liabilities. However, the seller does cease to be responsible for future environmental liabilities relating to the sold assets.

Share sale
As the shareholders are not liable for the environmental liabilities of companies, the seller does not retain any liability unless it agrees to bear the liability under the share sale agreement.

21. Does a seller have to disclose environmental information to the buyer in an asset sale/a share sale?

Asset sale
Under the Civil Code, the seller is obliged to disclose all important information regarding the assets that are being sold.

Share sale
The scope of mandatory disclosure in share sales is disputed under Polish law. The subject of sale is the shares and not the assets of the company. Therefore it may be disputed whether the seller must disclose any of the company's environmental liabilities as the information would not relate to the subject of the sale.

22. Is environmental due diligence common in an asset sale/a share sale?

Scope
Environmental due diligence is usual in both asset and share sales. However, it also depends on the type of business activity carried out by the company. During the due diligence process, the following areas are usually covered:

- Permits related to the use of the environment.
- Pollution and damage to the environment caused by the activities of the company.
- Correctness and accuracy of the investment process regarding the building and use of the company's properties.
- Use of hazardous substances such as asbestos, PCB and others that may have a serious impact on the environment.
- Water and sewage management, and potential pollution of the ground and water caused by the activity of the company.
- Administrative and court proceedings related to environmental issues.
- Inspections by the authorities and sanctions for non-compliance and violation of permits.
- Compliance with the reporting obligations demanded by the authorities.
- Others, such as the company being qualified as a company where there is an increased risk of an industrial accident occurring, the realisation of obligations resulting from EU legislation (regulations REACH and CLP), the realisation of environment management systems or of duties resulting from participation in emissions trading systems.

The environmental due diligence process is focused mainly on the possible risks that may be caused by the company's previous activity. However, there has been a notably-increased focus on climate change and sustainability issues.

Types of assessment
During the legal due diligence process the environmental assessment examines risks resulting from the revocation of permits, fines and the suspension of investment, as well as possible threats to the environment.
Environmental consultants
It is common practice to use environmental consultants.

23. Are environmental warranties and indemnities usually given and what issues do they usually cover in an asset sale/a share sale?

Asset sale
The most common warranties and indemnities concern:
- Obtaining all required permits for using the environment and compliance with their terms.
- Contamination of the company's land.
- Payment of the fees for use of the environment.
- Proper waste management.

Share sale
Warranties and indemnities are the same in share sale and asset sale transactions.

24. Are there usually limits on environmental warranties and indemnities?

The same time and financial caps as apply to other warranties and indemnities in the same transaction usually limit environmental warranties and indemnities.

REPORTING AND AUDITING

25. Do regulators keep public registers of environmental information? What is the procedure for a third party to search those registers?

Public registers
The majority of information on the environment is publicly available. The relevant authorities keep registries of the decisions they issue and information they collect.

Third party procedures
Generally, a third party is granted access to all public information, free of charge (subject to covering the costs of disclosure). In some situations the information can be refused due to the protection of other legally protected interests. Such refusals can be appealed to the administrative courts.

26. Do companies have to carry out environmental auditing? Do companies have to report information to the regulators and the public about environmental performance?

Environmental auditing
Companies are obliged to carry out various environmental surveys and measurements and provide the relevant authorities with the results.

Reporting requirements
Depending on the specific type of activity of a given entity and the permits required to conduct it, different scopes of reporting duties apply (see Question 29). Failing to comply with reporting obligations can result in a fine.

27. Do companies have to report information to the regulators and the public about environmental incidents (such as water pollution and soil contamination)?

Under the provisions of Act on the Prevention of Damage to the Environment and its Remediation, all damage to the environment or a threat of immediate damage must be notified to the relevant authorities.

28. What access powers do environmental regulators have to access a company?

The authority responsible for supervising compliance with the legal provisions and the scope of permits is the Main Inspectorate of Environmental Protection. It has the authority to:
- Enter company buildings.
- Demand documents and explanations of the company's activities.
- Sample and measure pollution levels.
- Evaluate installations and the conduct of business.
- Evaluate applied technologies.
- Evaluate the effectiveness of the measurements provided by the company.

ENVIRONMENTAL INSURANCE

29. What types of insurance cover are available for environmental damage or liability and what risks are usually covered? How easy is it to obtain environmental insurance and is it common in practice?

Types of insurance and risk
Environmental damage can be covered by third-party liability insurance or special environmental liability insurance. Except for mandatory third-party liability insurance for some activities (for example, nuclear activities) environmental insurance is not mandatory. Therefore, the scope of environmental insurance varies depending on the needs of a given activity. Environmental insurance has become more popular recently.

Obtaining insurance
The number of insurance companies providing this type of insurance is constantly increasing.

ENVIRONMENTAL TAX

30. What are the main environmental taxes in your jurisdiction?

Environmental fees
Entities using the environment must pay environmental fees (for example if they emit gases, use water for industrial purposes or produce waste). The fees are self-assessed and payable to the relevant local authorities. They are subject to the same enforcement rules as tax liabilities.

Tax liability
The environmental fee must be paid by each entity that uses the environment, unless it is covered by a de minimis exemption.
Tax rates
Rates for this tax are set out in the Environmental Protection Law. Rates differ for each type of activity.

REFORM

31. What proposals are there for significant reform (changes) of environmental law in your jurisdiction?

The Ministry of the Environment is considering imposing fees for the use of water for industrial purposes (for example for cooling nuclear reactors and generating power in hydro-generation plants). If the plans are implemented, the cost of certain activities is likely to increase significantly.

Environmental regulations change constantly as they tend to follow developments in the EU legal system.

THE REGULATORY AUTHORITIES

Minister of Environmental Protection (Ministerstwo Ochrony Środowiska)
Main activities. This is the central body at the governmental level and supervises the activity of other authorities concerned with environment protection.
W www.mos.gov.pl

Main Inspector of Environmental Protection (Główny Inspektor Ochrony Środowiska)
Main activities. Main activities include supervising compliance with provisions related to environmental protection, carrying out inspections and evaluations of environmental protection procedures and counteracting breakdowns.
W www.gios.gov.pl

Main Director of Environmental Protection (Główny Dyrektor Ochrony Środowiska)
Main activities. Main activities include supervising the realisation of the environmental protection policy, supervising investment processes, and participating in issuing EIA.
W www.gdos.gov.pl

ONLINE RESOURCES

Internet System of Legal Acts (Internetowy System Aktów Prawnych) (ISAP)
W http://isap.sejm.gov.pl
Description. This is the official website of the Polish Parliament dedicated for searching acts. No official translation of Polish environmental laws is available.

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