



Q&A on Environmental Law in Poland

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C H A N C E



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Introduction

Using a Q&A format, this article provides a guide to environmental law in Poland and gives a practical description of a wide range of topics including:

- Emissions to air and water
- Environmental impact assessments
- Waste
- Contaminated land
- Environmental issues in transactions

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Environmental regulatory framework

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

Key pieces of environmental legislation

The key pieces of environmental legislation include:

- Act of 27 July 2001 to Introduce the Environmental Protection Act and the Act on Waste and on Amendments to Certain Acts.
- Environmental Protection Act of 27 April 2001 (EPA) and associated secondary legislation.
- Act on Preventing and Remedying Damage to the Environment of 13 April 2007 (2007 Act) and associated secondary legislation.

- Act on Making Available Information on the Environment and the Protection of the Environment and on the Participation of Society in Environmental Protection and Information on Environmental Impact Assessments of 3 October 2008 and associated secondary legislation.
- Water Law of 18 July 2001 (Water Law) and associated secondary legislation.
- Nature Preservation Act of 16 April 2004 and associated secondary legislation.
- Act on Waste of 27 April 2001.
- Other sectoral legislation concerning, for example, chemical substances, ozone depleting substances, greenhouse gases, transboundary shipment of waste, packaging waste and waste batteries.

Health and safety issues are governed by a separate regime and to some extent the two regimes are mutually exclusive.

Additionally, from 1 May 2004, the date of Poland's accession to the EU, EU environmental law applies to Poland, subject to certain transitional arrangements. Top

Regulatory authorities

The principal body responsible for environmental policy and law is the Minister of the Environment. The main bodies responsible for issuing environmental permits are *Starosta* (head of a county) and *Marshal of the Voivodship* (head of a region). The principal enforcement authority is the regional inspector for environmental protection. For individuals not acting as entrepreneurs, the relevant environmental protection authority is the village principal, mayor or the president of the city.

In addition, since November 2008, a general directorate for environmental protection and the regional directorates for environmental protection have been created and are responsible, in particular, for:

- Preventing damage to the environment.
- Remedying damage to the environment.
- Carrying out environmental impact assessments (EIAs).
- Participating in these assessments.

Regulatory enforcement

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

Regulators do not enforce environmental requirements very strictly due to funding restrictions and the general culture of enforcement. However, during the annual inspections or ad hoc inspections of facilities a number of irregularities are usually detected and remedied as a result of binding enforcement orders.

Environmental enforcement officers impose administrative sanctions rather than criminal penalties on companies. Fiscal measures are one of the principal methods of enforcing environmental standards in Poland. The administrative fines imposed on an operator can be converted into investment obligations related to the offender's facility, provided the investment leads to the removal of the relevant breach. Consequently, only very serious cases of illegal emissions to the environment are prosecuted under criminal law, namely, those causing a threat to human health or significant damage to the environment. Penalties are imposed in the course of proceedings in misdemeanour (minor crime) cases. A

penalty for a minor crime can be either a short term of imprisonment of up to 30 days or a limitation of freedom (other than imprisonment) for up to one month. A fine can be imposed ranging from PLN20 and PLN5,000. As a rule, these penalties cannot be applied cumulatively. Also, in more serious cases of non-compliance, it may be ordered to cease operation of a facility.

Environmental NGOs

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

Environmental NGOs and pressure groups are more and more active in Poland. They can appear before administrative bodies and the administrative courts under similar rules to those applicable to parties to the proceedings. They have different legal standing depending on the type of proceedings, but their rights are strongest in integrated permit and EIA proceedings.

NGOs have played a very important role in a number of significant projects, such as Via Baltica (a proposed motorway upgrade between Helsinki and Warsaw) as well as in numerous energy projects developed in Poland (shale gas and renewable as well as conventional energy). Client Earth, Greenpeace, WWF and CEE Bankwatch co-operate in their efforts with local pressure and interest groups and have jointly established a national network of environmental movements that has proved to be very effective.

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 permitting system has existed since the transposition of Directive 96/61/EC concerning integrated pollution prevention and control (IPPC Directive) into Polish environmental legislation in 2001. This system covers the

same categories of installations as indicated in the IPPC Directive. Non-IPPC installations are covered by a different permitting system within which sectoral environmental permits are required. The sectors concerned are:

- Air.
- Water and wastewater.
- Waste.

Single/separate permits

If a company is covered by the IPPC permitting regime, it can apply for a single environmental permit (integrated permit) for all activities on a site. However, this option is not very popular because if the installation changes, the operator must apply for a change to the integrated permit, which is a complicated and time consuming process. Therefore, companies prefer to cover the IPPC installation with an integrated permit and other related installations (which are possibly subject to change in the future) with separate sectoral permits.

5. What is the framework for the integrated permitting regime?

Permits and regulator

An integrated permit is required for installations listed in the ordinance of the Minister of Environment transposing Annex 1 to the IPPC Directive (currently Annex 1 to the Directive 2008/1/EC concerning integrated pollution prevention and control), which concerns generally the most polluting industries. IPPC installations must be operated according to the best available techniques (BAT). BAT is defined very broadly and is a vague, discretionary legal concept. The competent authority must take European BREFs (technical guidelines on BAT for European industry) into account when determining BAT, but they are not binding and do not override other considerations such as the age of the installation and cost-benefit analysis.

Depending on the type of activity, three tiers of public authorities issue environmental permits, including integrated permits:

- List I activities (the most significant installations) and other activities within sites where a List I activity is operated: the relevant *Marshal of Voivodship*.
- List II activities: the relevant *Starosta*.
- Activities in closed-off areas (that is, areas restricted for the purposes of the country's defence and security, as specified by competent government ministers and heads of central administration authorities): the

regional director of the environmental protection authority.

List I and List II activities are defined in the EIA legislation (see [Question 11, Scope](#)).

Currently, the integrated permitting system is subject to significant revision as part of the process of alignment of the national law with the IED requirements, which is underway. (New regulations are likely to come into force from 2014 at the earliest.) The ultimate scope of the changes is yet undecided, although the procedures for issuing, revising and transferring integrated permits will probably change (with transitional arrangements to allow gradual application to existing permits).

Length of permit

Integrated permits are issued for a maximum of ten years.

The authority competent to issue integrated permits will review existing integrated permits at least once in five years. The integrated permit is also reviewed if:

- There has been a change to the BAT allowing a significant reduction in the amount of emissions without causing excessive costs.
- This results from a need to adjust the operation of the facility to reflect a change in environmental protection law.

If the review conducted indicates the need to change the content of an integrated permit which would remain valid for more than a year after the end of the review, the authority may revoke or limit the permit without compensation. Before taking the decision on revocation or limitation of the permit, the authority calls on the operator of the facility to adjust the operation of the facility to the BAT or changes in environmental protection law.

Restrictions on transfer

The rights and duties under an integrated permit can be transferred to an applicant who proposes to acquire the legal title to the installation provided that the applicant gives a warranty for proper performance of the obligations under the permit. The transfer is only possible if the applicant intends to acquire the installation as a whole. The administrative decision allowing the transfer is valid for one year only. If, within this time frame, the applicant has not obtained legal title to the installation, the decision expires.

The same rules concerning transfer of rights and duties under a permit apply also to sectoral permits related to the operation of an installation (see [Questions 7, 8 and 12](#)).

Penalties

The environmental enforcement inspector must order closure of the installation's operations if the operator does not obtain an integrated permit where one is required. The environmental enforcement inspector may also order closure if the operator does not comply with the conditions of an integrated permit. In practice, in case of non-compliance, the environmental enforcement inspector specifies a period within which non-compliance can be remedied, and the operation will be closed only if the relevant remedial action has not been taken within that timescale).

An operator that operates an installation without a required permit or violates the terms of the permit can be fined or imprisoned. In addition, a company can be subject to increased environmental fees if a required permit is not obtained.

If the activities of any installation (including non-IPPC installations) are causing large-scale environmental harm or are endangering human life or health, the environmental enforcement authority must prohibit the continuation of such activities.

Water pollution

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

Permits and regulator

Water extraction from surface or groundwater, and wastewater discharges to land or receiving waters are regulated by either:

- Integrated permits (for IPPC installations).
- Water permits (sectoral permits).

Permits for discharges into sewers are only required if specific substances hazardous to the aquatic environment are being discharged. Water permits and permits for discharges into sewers are regulated by the Water Law, which is based on Directive 2000/60/EC establishing a framework for Community action in the field of water policy (Water Framework Directive).

Water permits, as well as integrated permits covering extraction of water or discharge of wastewater, are issued by *Marshal of the voivodship* or *Starosta*, depending on the

type of activity involved (see [Question 5, Permits and regulator](#)).

Prohibited activities

There are many prohibitions and restrictions to protect against water pollution. For example, it is prohibited to (*Water Law*):

- Dispose of waste, liquid manure or snow from contaminated sites into water.
- Locate facilities such as wastewater treatment plants or landfills on areas directly endangered by flooding.

When discharging wastewater into receiving water or land, the wastewater must comply with qualitative and quantitative requirements and must not contain certain dangerous substances, such as:

- Dichlorodiphenyltrichloroethane (DDT).
- Polychlorinated biphenyl (PCB).
- Polychlorinated terphenyls (PCT).

It is forbidden to:

- Discharge wastewater directly into groundwater.
- Discharge wastewater to surface waters if such activity could violate conditions established for the protection of environmentally precious areas or water extraction protective zones.
- Discharge wastewater within one kilometre of public bathing beaches.
- Dilute wastewater with water.

Clean-up/compensation

The regulator can require a polluter to undertake remediation actions (remediation in relation to waters means the restoration of the environment, natural components of the environment or the functions thereof to their original state and removal of risks to human health). Where remediation actions have been undertaken by the regulator, it can recover the costs of the remediation actions from the polluter.

Penalties

If the operator does not have the required permit or violates the permit conditions, the operations can be closed down and the operator fined or imprisoned. An operator who is found not to have the required permit is also subject to increased environmental fees.

Air pollution

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

Permits and regulator

As a general rule, air emission permits are required for all non-IPPC installations that discharge gases or dust into the air, except for certain types of facilities that benefit from an exemption under the ordinance of the Minister of the Environment.

Emissions from an installation cannot exceed the emission limits specified in the permit and must not cause the air outside the site's boundaries to breach environmental quality standards. Consequently, an operator must include an emission dispersion model with its permit application, setting out how its air emissions will comply with environmental quality standards.

In areas that do not meet air quality standards in respect of certain pollutants, a new installation or a significantly changed installation can only obtain a permit if a 30% reduction in emissions of the pollutant can be achieved in the relevant area. This restriction usually means that the operator concerned must obtain consent from other operators in the area to reduce their emissions (and amend their air emission permits accordingly).

Like integrated permits, air emission permits are issued by the:

- Competent *Marshal of Voivodship* for List I activities.
- Competent *Starosta* for List II activities.
- Regional director of environmental protection for activities in closed-off areas.

Prohibited activities

It is generally prohibited to emit gases and dusts to the air without an air emission permit, if the permit is required.

Clean-up/compensation

There are no statutory clean-up obligations applicable to air pollution. In particular, the regulator cannot require the polluter to clean up or pay compensation for air pollution (however, certain penalties may be imposed (*see below, Penalties*)).

Penalties

If the operator does not have the required permit or violates the permit conditions, the operation can be closed down and the operator fined or imprisoned. Any operator who is found not to have the required permit is also subject to increased environmental fees.

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?

Emissions targets

Poland is subject to Kyoto Protocol emissions targets (*see Question 9*).

There are also national targets with respect to use of energy from renewable sources and energy efficiency in Poland.

Increasing renewable energy

National targets for increasing the use of renewable energy are set out in the Energy Law 1997 (Energy Law). The regulations are based on EU legislation. Directive 2009/28/EC on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC requires renewable energy to form 20% of total EU energy consumption by 2020, although this may be raised to 30% in the future. Poland's contribution to the EU wide target is 15% by 2020. However, the provisions of the Renewable Energy Directive have not yet been fully implemented to the Polish legal system.

The Energy Law currently in force provides for a system of incentives to promote the generation of electricity from renewable energy sources (RES) based on a mechanism of the so-called certificates of origin (Green Certificates)

issued to the renewable energy producer by the President of the Energy Regulatory Authority (ERA).

The Green Certificates are issued to the producers of renewable energy and are tradable instruments. Property rights arising from them are transferable and constitute a commodity which can be exchanged.

An energy producer or an energy trading company must purchase Green Certificates on an annual basis as a proportion of the energy sold to end off-takers (or alternatively to pay a corresponding compensation fee). The proportions are currently 12% for the year 2013 and increase annually in the amount determined under an ordinance of the Minister of Economy.

Under the Ministry of Economy 2012 ordinance on the Detailed Scope of Obligations to Obtain and Present Certificates of Origin for Redemption, to Pay a Substitute Fee and to Purchase Electricity and Heat Produced from Renewable Energy Sources and the Obligation to Confirm Data Concerning the Quantity of Electricity Produced from a Renewable Energy Source, setting out the annual targets, the Green Certificates obligation are extended until 2021 with higher percentage obligations.

The Minister of the Economy recently decided to review the support scheme for renewable energy sources. In September 2013, the general outline of the new proposed support scheme was disclosed. In accordance with the proposal, the Ministry of the Economy intends to extinguish support based on green certificates within a few years and move to an auction system based on guaranteed tariffs. The new scheme aims at making the support for renewable energy sources more efficient and cheaper for end customers. The new regulations are expected to come into force in mid-2014 at the earliest (see also [Question 30](#)).

Increasing energy efficiency

National targets for efficient energy management have been set out in the Act on Energy Efficiency of 15 April 2011 (AEE) (implementing certain aspects of Directive 2006/32/EC on energy end-use efficiency and energy services). The AEE envisages the achievement of end-use energy savings of not less than 9% of the national average annual consumption of this energy by 2016 (based on the average consumption from 2001 to 2005).

The AEE has introduced a system of the so-called white certificates – a market mechanism leading to the achievement of measurable energy savings. It will be possible to obtain white certificates only for undertakings

with the highest economic effectiveness. Entities selling electrical energy, heat or fuel gas must obtain a specific number of white certificates and present them for redemption to the President of the Energy Regulatory Office or to pay a so-called substitute fee. The white certificates system is similar to the green certificates system supporting renewable energy generation (see above, [Increasing renewable energy](#)).

On 25 October 2012, the EU adopted the Directive 2012/27/EU on energy efficiency (Energy Efficiency Directive). The Energy Efficiency Directive establishes a common framework of measures for the promotion of energy efficiency within the EU, to both:

- Ensure the achievement of the EU's 2020 20% headline target on energy efficiency (that is, a 20% reduction in EU greenhouse gas emissions from 1990 levels).
- Pave the way for further energy efficiency improvements beyond 2020.

It provides rules designed to remove barriers in the energy market and overcome market failures that impede efficiency in the supply and use of energy. In particular, it provides for the establishment of indicative national energy efficiency targets for 2020 and a requirement for obligatory energy audits by larger companies every four years. Member states are required to bring into force the laws necessary to comply with the Energy Efficiency Directive by 25 June 2014 (*Article 28(1), Energy Efficiency Directive*). Discussions over implementation of the Energy Efficiency Directive in Poland are ongoing.

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?

Parties to UNFCCC/Kyoto Protocol

The EU and Poland are parties to the UNFCCC and the Kyoto Protocol. The EU's emissions reduction target under the Kyoto Protocol was to reduce its greenhouse gas emissions by 8% from 1990 levels in the period 2008 to 2012 (the end of the first commitment period). The EU's target was redistributed among member states. Poland committed to reduce its greenhouse gas emissions by 6%, selecting:

- 1988 as the base year for commitments under the UNFCCC and the Kyoto Protocol regarding emissions of the three main gases: carbon dioxide, methane and nitrous oxide.
- 1995 as the base year for industrial fluorinated gases.

A second commitment period has now been agreed until 2020, with parties setting their own reduction objectives. The parties have also agreed to an amendment to the Kyoto Protocol to provide for an overall objective of reducing emissions by 18% below 1990 levels by 2020 (the original objective was a 5% reduction below 1990 levels in the first commitment period). The EU and member states have committed to this target on a joint basis (and the EU has pledged to strengthen the commitment to a 30% reduction if a strong international agreement is reached). Parties that have signed up to the second commitment period will review their emissions reduction objectives in 2014.

Implementation

A number of measures for reducing emissions of greenhouse gases have been implemented in Poland to meet the requirements under the Kyoto Protocol, in particular:

- The EU Emissions Trading Scheme (EU ETS) for greenhouse gas emissions (see [Question 10](#)).
- The use of the Joint Implementation (JI) mechanism (see [Question 10, EU ETS overview](#)).
- Monitoring of emissions.
- Financial mechanisms supporting measures for reducing emissions of greenhouse gases.

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

EU ETS overview

As an EU member state, Poland is covered by the EU ETS, which works in four compliance stages:

- Phase I of the EU ETS ran from 2005 to 31 December 2007.
- Phase II ran from 1 January 2008 to 31 December 2012.
- Phase III started on 1 January 2013 and will run to 31 December 2020 (see below, [Phase III](#)).
- Phase IV will begin in 2021.

The EU ETS is currently the only emissions trading scheme in Poland, which has been based on Directive 2003/87/EC establishing a scheme for greenhouse gas emissions allowance trading within the Community (Emissions Trading Directive).

The EU ETS applies to specified heavy industrial activities and establishes a mandatory cap and trade system. Participants must surrender allowances (or other credits) at the end of each compliance period to match their emissions. Non-compliance is subject to penalties. Each allowance represents the emission of one tonne of carbon dioxide.

Following allocation and auctioning, allowances are subsequently traded in an online registry enabling companies to buy additional allowances to meet their obligations. To obtain and surrender allowances, a participant must have an account in an online registry.

Operators can obtain credits (that can be traded in the EU ETS) also by investing in:

- Qualifying projects to reduce emissions in industrialised countries and certain countries in economic transition (known as JI under the Kyoto Protocol).
- Projects to reduce emissions in developing countries (known as the clean development mechanism (CDM) under the Kyoto Protocol).

Operators can surrender any such credits as well as EU allowances to comply with their obligations under the EU ETS.

In Poland, operators of the installations to which the EU ETS applies, must hold a valid permit to participate in the EU ETS in order to surrendering allowances (or other credits) to match their emissions.

Aviation

From 1 January 2012, the EU ETS covers any aircraft operator, whether EU- or foreign-based, operating international flights on routes to, from or between EU airports. There are certain exemptions, including, for light aircraft, military flights, flights for government business and testing flights. Various complaints were made by non-EU countries over the inclusion of flights to or from destinations outside the EU into the EU ETS. As a result, the EU have excluded these flights during 2012 from the EU ETS pending discussions at international level over the future position of international aviation in the scheme.

Phase III

The main changes for Phase III are as follows:

- There is a single EU registry for all users, which was activated on 20 June 2012, rather than national member state registries.
- There is a single EU-wide cap on emissions, which will decrease annually meaning that the former National Allocation Plans will no longer be required.
- Other greenhouse gases and industrial sectors will be included.
- Allocation of allowances will be gradually replaced by auctioning, with at least 50% of allowances auctioned from 2013.
- The use of credits from JI and CDM projects is limited.

In 2011 a new Act on Greenhouse Gases Emission Trading Scheme came into force in Poland replacing the Act on Emission Trading of 2004 and implementing EU Directive 2009/29/EC amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community into Polish law for Phase III of the EU ETS.

Large combustion plants scheme

A second scheme in sulphur dioxide, nitrogen oxide and dust emissions trading was being designed to implement Poland's emission reduction targets under the European Accession Treaty. However, as the planned regulation did not come into force sufficiently early, the works on the new scheme have been abandoned. An appropriate mechanism reducing sulphur dioxide and nitrogen oxides emissions will be implemented in the form of harsher standards for emissions from installations, which will be transferred to integrated permits. This mechanism was contained in the draft amendment to the Environmental Protection Act that transposes Directive 2010/75/EC on industrial emissions (integrated pollution prevention and control) (IED). (See [Question 30.](#))

Environmental impact assessments

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

Poland's EIA regime is regulated by the EIA Act and the EIA Ordinance (2010), which is based on Directive

85/337/EEC on the assessment of the effects of certain public and private projects on the environment (EIA Directive) (codified, together with its three amendments, by Directive 2011/92/EU).

Scope

An EIA is or can be required for various types of projects (List I and List II Projects). Key elements of the EIA procedure include submission of the EIA report to the appropriate authority (see *below*, [Permits and regulators](#)) on the environmental impact of the planned project and a public consultations phase.

The EIA Ordinance 2010 defines the List I and List II projects as follows:

- **List I projects.** These are projects that Polish law deems likely to significantly affect the environment, such as, for example:
 - highways;
 - oil refineries;
 - power plants of installed capacity over 300MW;
 - onshore wind farms over 100MW of installed capacity;
 - all offshore wind farms.

List I projects always require full EIA.

- **List II projects.** This covers projects that Polish law deems likely to cause a potentially significant effect on the environment, such as, for example:
 - large shopping centres;
 - hydropower plants;
 - on-shore wind farms of below 100MW of installed capacity.

List II projects may be subject to an EIA requirement depending on the decision of the appropriate environmental authorities (based on the likelihood of significant environmental effects). These projects may only require initial EIA screening to determine whether a full EIA is required.

EIA is carried out in the process of issuing an EIA decision (that is, decision on environmental conditions), which is required for all List I and List II projects. The EIA decision is issued in a separate regulatory procedure before an application for the main project permits (for example, a building permit or planning permit). The EIA decision must be enclosed with any application for a project permit.

In certain situations, an additional EIA procedure may be required at the stage of obtaining a project permit (in particular, a building permit). The procedure is carried out if:

- The authority issuing the EIA decision requires that an additional EIA procedure be carried out.
- The competent authority for issuing the project permit identifies that the application for the project permit differs from the details of the project set out in the EIA decision.
- The applicant himself requests that the additional EIA procedure be carried out.

EIA is also required for projects outside of Lists I and II that are likely to significantly affect Natura 2000 sites (a network of protected sites in Europe). In these circumstances EIA is carried out within the process of issuing a project permit.

Permits and regulator

Where an EIA decision is required, it must be obtained before the planned project can be implemented. An EIA decision is valid for four years and can be additionally extended for two years. Before the EIA decision is issued it must be approved by certain environmental and sanitation authorities.

EIA decisions can be transferred to a third party with the consent of the party to which the decision has been issued.

The public and NGOs have the right to participate in the EIA process. NGOs have unique legal standing and a right of appeal to administrative courts without requiring consent from any other party to the EIA process.

The authority responsible for EIA decisions depends on the type of project, but for most projects, it is the local municipal authority (that is, the mayor). The regional director of environmental protection is the competent authority for EIA concerning:

- Roads.
- Railways.
- Pipelines.
- Gas lines.
- Artificial reservoirs.
- Some other projects comprising List I projects.

However, in cases of some specific projects, the EIA decisions are issued by different authorities, namely the:

- General Director for Environmental Protection, in the case of investments relating to the construction of a nuclear power facility and auxiliary investments.

- *Starosta*, in the case of a merger, exchange or division of land.
- Director of a Regional Directorate of State Forests, in the case of a change of forestland owned by the State Treasury into agricultural land. The competent authority is responsible for undertaking public consultations.

The additional EIA procedure is carried out by the regional director of environmental protection.

Penalties

A planned project cannot be implemented without a valid EIA decision if one is required. If the terms of a decision are breached, a project cannot be allowed to begin operation.

Waste

12. What is the regulatory regime for waste?

Existing waste management law is mainly based on EU waste legislation. The main legislating act is the Waste Act 2012, which implements Directive 2008/98/EC on waste (Revised Waste Framework Directive). The Waste Act 2012 provides for:

- General waste management rules.
- Hierarchy of waste management.
- Definition of key terms.
- Waste management plans.
- Permitting regime.
- Thermal treatment.
- Landfills.
- Sanctions for non-compliance.

The following statutes deal with specific categories of waste:

- Act on Packaging and Packaging Waste 2001.
- Act on Product and Deposit Fees 2001.
- Act on End-of-Life Vehicles 2005.
- Act on Electric and Electronic Waste 2005.
- Act on Trans-boundary Shipment of Waste 2007.
- Act on the Maintenance of Cleanliness and Order in Municipalities 1996.
- Act on Mining Waste 2008.
- Act on Batteries 2009.
- Act – Atomic Law 2000.

The basic obligations associated with waste generation or management are as follows (*Waste Act 2012*):

- To prevent or limit waste generation during the entire production process and the life cycle of a product.
- To ensure recovery where waste generation cannot be prevented.
- To ensure disposal when waste generation cannot be prevented and proper recovery is not possible or economically feasible.
- Recovery or disposal of waste should be carried out as near as possible to the waste generation site.
- If waste is transferred to a recovery or disposal installation, the installation should meet the BAT standard.
- The waste generator has a duty of care in relation to waste. In general, liability for management of waste passes to a subsequent holder of waste on transfer. There are two exceptions to this rule:
 - an entity transporting waste as a transportation service does not assume liability for processing the waste;
 - a seller of waste and an intermediary in trading in waste do not assume liability for waste management if they are not holders of that waste.

Permits and regulator

Under the new waste management regime, the following types of permits are required for the generation or management of waste:

- A permit to generate waste or an integrated permit (covering, among other activities, waste generation).
- A permit to process waste.
- A permit to collect waste.

The Waste Act 2012 transferred all the provisions on permits to generate waste to the Environmental Protection Act.

The basic system of waste permits is as follows.

Waste generation. Where more than one tonne of hazardous waste or 5,000 tonnes of non-hazardous waste is generated from an installation, the operator must obtain a waste generation permit.

Waste collection and treatment. Waste collection permits are required for activities associated with collecting waste for recovery from the general public or industrial operators.

Integrated permits are required for the majority of waste recovery and hazardous waste disposal installations. A permit to undertake waste recovery or waste disposal operations (if the operator does not fall under the IPPC

regime) is required, subject to exemptions for certain types of waste. Where an exemption applies it is sufficient that the entity be registered on a waste register.

A permit or registration (depending on the type of waste) is required for conducting any hazardous waste shipment. Storage permits are required for waste storage on industrial sites.

The *Marshal of the voivodship* is the competent permitting authority for waste installations that fall under List I projects (see [Question 11, Scope](#)), and *Starosta* is the competent permitting authority in the remaining cases. The Chief Inspector for Environmental Protection is the competent authority for trans-boundary shipment of waste.

Prohibited activities

There is a long list of prohibited activities in the field of waste management. These include:

- Generation of waste without obtaining the necessary administrative decisions.
- Transfer of waste to unauthorised persons (that is, those who do not have the required licences).
- Collection, transportation, recovery or disposal of waste without the necessary licences.
- Illegal disposal of waste and inappropriate landfilling of waste.
- Mixing hazardous and non-hazardous waste, subject to certain exceptions.
- Thermal treatment of waste outside incinerators or co-incinerators.
- Recovery of PCB and incineration of PCB on ships.
- Recovery or inappropriate disposal of infectious medical or veterinary waste.

Operator criteria

Operators may need to provide financial security to obtain:

- Waste generation permits.
- Waste recovery and disposal permits.
- Waste collection and shipment permits.

An operator of a landfill site must employ a manager of the landfill site, who has a certificate confirming his qualifications in the area of waste management. A similar requirement applies to an operator of a waste incineration plant or a joint waste incinerator.

Special rules for certain waste

In addition to the rules applicable to hazardous waste mentioned above, there are special rules for the following types of waste:

- Packaging.
- End-of-life vehicles.
- Electrical and electronic waste.
- Batteries and accumulators.

The rules for such waste are based on the concept of producer responsibility. They impose a number of requirements in respect of recovery and recycling. In addition, there are special rules applicable to:

- PCB.
- Used oils.
- Asbestos.
- Medical and veterinary waste.
- Sewage.
- Scrap metals.

Penalties

If the operator does not have the required permit or violates the permit conditions, the operation can be closed down and the operator fined or imprisoned.

Asbestos

13. What is the regulatory regime for asbestos ?

Prohibited activities

The production, distribution or reuse of asbestos, including products containing asbestos, has been prohibited in Poland since 1997. There is currently no prohibition on the ongoing presence of asbestos in buildings or structures. However, asbestos must be removed from all existing and operational buildings, structures and installations by 2032.

Main obligations

Owners or managers of buildings or installations must evaluate the condition of asbestos in buildings, structures and equipment. A copy of the evaluation report must be delivered to the competent building supervision authority.

If identified asbestos is in good condition and considered safe for further use, nothing needs to be done. However, if asbestos is friable or in bad condition it needs to be sealed, or removed and disposed of. A licensed asbestos removal contractor must be commissioned to do this.

The contractor must:

- Inform the building supervision authorities about any planned asbestos removal operations.
- Supply information on the date, address and type of asbestos.
- Provide a copy of the previous asbestos evaluation.

The owner, manager or occupier of a building or site must notify the work to the building works department of the competent local authority.

On completion, the contractor must give the owner a written certificate confirming the completion of work and the clean-up of asbestos dust, according to relevant sanitary and technical requirements.

Permits and regulator

The asbestos removal contractor must obtain a hazardous waste generation permit from the appropriate environmental authority or a decision approving the waste management programme (depending on the quantity of the waste generated), as asbestos waste is considered waste generated by the contractor.

Penalties

Placing on the market or reusing asbestos is punishable by fine or imprisonment. The fine is imposed in daily rates, and the number of rates and the amount of a daily rate is determined on a case-by-case basis. Generally, the number of daily rates varies between 10 and 540 and the amount of a daily rate must be between PLN10 and PLN 2,000. The imprisonment can last from three months to five years.

There is no sanction for failing to undertake asbestos evaluations.

Contaminated land

14. What is the regulatory regime for contaminated land?

The regime for contaminated land (regime) formally came into force on 1 October 2001, and is contained within the:

- EPA.
- Act introducing the EPA and the Act on Waste (Introductory Act) of 27 July 2001.

In practice, the regime came into force on 18 October 2002 when the ordinance of the Minister of the Environment on soil quality standards became effective.

Additionally, Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage (Environmental Liability Directive) was implemented in Poland by the 2007 Act. While the EPA contaminated land regime only applies to "damage to the environment" (soil and subsoil) that occurred before 30 April 2007, the 2007 Act is applicable to an "imminent threat of damage" or "damage to the environment" occurring after 30 April 2007. The relationship between the two acts is complicated and not easily reconciled.

Contaminated land is considered as land that does not comply with soil quality standards set out in the ordinance of the Minister of the Environment on soil quality standards. This definition does not cover groundwater although there has been a controversial interpretation by the Ministry of the Environment that in certain cases groundwater is also covered.

In light of the transposition of the IED Directive currently being prepared, there are plans to reform the existing land protection and contaminated land reclamation regime. This will involve, among other things, making the provisions on land surface contamination assessments and the methods of remediating contaminated land more detailed and certain. New obligations will be imposed on existing installations with regard to the protection of the soil and underground waters, aimed at:

- Identification and remediation of soil contamination (during the operation of the installations and following their closure).
- Monitoring the risks of soil contamination occurrence in the future.

(See also [Question 30](#).)

Regulator and legislation

Up until 30 April 2007, *Starosta* was the authority responsible for the enforcement of the contaminated land regime. After that date, *Starosta*'s responsibilities were taken over by *Wojewoda* and in November 2010 (when the EIA Act came into force), by the regional director of environmental protection who currently remains the authority responsible for contaminated land matters.

Investigation and clean-up

If contamination of land has occurred, the entity responsible for it must promptly notify an environmental protection authority or a *voivodeship* environmental protection inspector of this fact (under a threat of fine). An entity which has caused, or may cause contamination of land or other

environmental damage, or has caused a direct threat of damage to the environment, must, at the request of an environmental protection authority, provide it with information on any such matters.

The regulator can order the entity liable for contamination to undertake remediation of contaminated land. A remediation order will be granted unless that entity applies to the regional director of environmental protection for a remediation decision (and no voluntary remediation is allowed without such a decision). The method, scope and the date of completion of the remediation is set out in the authority's remediation decision.

A remediation order (and remediation decision) will require such remediation as is necessary to bring the environment back to a condition where soil quality standards are met.

Penalties

Any entity liable for contamination that does not undertake clean-up activities or that does not comply with a clean-up decision can be fined.

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

Liable party

Administrative liability applicable to land contamination in Poland depends on when the contamination occurred. Land contamination that occurred before 30 April 2007 is, as a rule, governed by the provisions of the EPA and is based on the principle of owner/occupier liability (see *below*).

Liability for contamination caused after that date is governed by the 2007 Act and is based, as a rule, on the "polluter pays" principle.

Owner/occupier liability

The EPA contaminated land regime introduced a new principle: that the owner of contaminated land is liable for cleaning-up the contamination. However, if the registered title holder is a different entity, the title holder is liable. The owner (or other registered title holder) of contaminated land can be released from liability by proving that a third party caused contamination after the owner acquired the property. If the owner is released from liability, the regulator cleans up the land and seeks reimbursement of costs (as a tax liability) from the actual polluter.

If pollution migrates to neighbouring land, the owner of the land where the contamination originated can still be liable under the Civil Code, which allows claims against

landholders who have not caused contamination by their own activities. Landowners must prevent migration of contaminants onto neighbouring land, and the Civil Code allows for claims requiring preventative measures to be taken.

Previous owner/occupier liability

Former owners of contaminated land that has been sold to a third party can be liable under the Civil Code warranty provision. Under this provision, the seller is liable to the buyer if the asset sold has defects or lacks other relevant properties, which reduce its value or use with respect to the purpose stipulated in the contract or to other relevant circumstances. Contamination of the land can be considered as a defect. The seller is released from the warranty liability if the buyer knew about the defect when the contract was being concluded.

Limitation of liability

As a general rule, there are no limits on administrative liability for clean-up of contaminated land.

As mentioned in *Question 14*, remediation to specified soil quality standards is generally required. However, where a landowner can prove that the pollution was caused before 1980, the owner can insist on an alternative risk assessment approach and remediation will only need to be undertaken where the risk assessment analysis reveals a threat to environment or human life.

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 can incur liability for contaminated land if they take over the legal title to property when foreclosing on a mortgage, due to the owner's liability regime for contaminated land (see *Question 15*). However, there are no known cases of this occurring in Poland.

Minimising liability

To minimise the liability for contaminated land the lenders often require that the land contamination risk be evaluated by a technical advisor during technical and environmental due diligence. Depending on the materiality of the occurrence of the risk, Phase I or more extensive Phase II environmental site assessment is carried out.

17. Can an individual bring legal action against a polluter, owner or occupier?

A private individual can bring a legal action against a polluter, owner or occupier under the Civil Code or the EPA. The EPA allows a private individual or a company to take legal action to cease, remove or mitigate the threat of environmental damage and/or to restore the environment to the state required by law.

Liability for damages (to third parties) is not excluded by the fact that the activity causing the damage was authorised by an administrative decision (*EPA*).

Environmental liability and asset/share transfers

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

Asset sale

The buyer is at risk of inheriting pre-acquisition liabilities in any asset transaction for two reasons:

- Under the contaminated land regime, a buyer purchasing land after 1 October 2001 usually assumes regulatory liability for historic contamination. Even if the parties agree to the contrary, the agreement will not be effective against third parties, including the regulatory authorities.
- Under private law, the transfer of a business as a going concern leads to the joint and several liability of the seller and the buyer for all liabilities associated with the business, subject to certain conditions and limitations. Asset transactions that do not transfer a business as a going concern do not result in such risks.

The buyer takes on the obligation to maintain property in an environmentally sound condition, which may require investment in, for example, environmental abatement equipment to comply with regulatory standards.

Share sale

In a share sale, the buyer does not directly inherit any pre-acquisition liabilities, but all liabilities remain with the target company being transferred. The value of the target company's shares acquired by the buyer could be affected

by the target's environmental liabilities. The buyer will be concerned with the target company's ability to conduct business, namely:

- The validity of the permits.
- The company's historical environmental conduct and environmental investment obligations.

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

Asset sale

Liability for contaminated land under the owner/occupier liability regime transfers to the buyer by operation of law, regardless of any agreement to the contrary by the parties, while the liability under the "polluter pays" regime (concerning contamination that occurred after 30 April 2007) remains with the polluter.

Share sale

In share transactions, liability does not lie with the buyer or seller but with the target company. The seller should therefore not be at risk of retaining any environmental liabilities post-acquisition.

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

Asset sale

The seller grants the buyer a statutory warranty in an asset sale, unless the sale contract provides otherwise. The statutory warranty establishes liability for material defects affecting the value or the expected use of the assets sold, in circumstances where a seller is deemed to have a duty to disclose. In some circumstances, contaminated land could be seen as a material defect. The seller could have a duty to disclose if, for example, the future use of land would be impossible without the buyer incurring considerable remediation costs. It is rare in asset transactions to exclude the statutory warranty.

Share sale

Because only shares are transferred in a share sale, the statutory warranty generally does not apply to the target company's assets. For this reason, a mechanism is often provided in share transactions whereby the seller makes disclosures concerning the target company's assets and the parties provide in the contract that the statutory

warranty rules apply to such disclosures. This mechanism is therefore not a mandatory disclosure obligation, but a contractual one.

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

Scope

In both share and asset transactions, it is standard practice in Poland to undertake a phase I environmental audit (desk-top survey of environmental information and site inspection) where the buyer is a foreign-owned entity or large company (otherwise they are rare). Phase II investigations (covering intrusive investigation of the soil and groundwater) are increasingly being conducted. This practice originated from the first privatisation deals after 1989, as environmental audits are mandatory in privatisation deals. Real estate transactions usually involve a more thorough study of land contamination. Environmental assessments are gradually extending to domestic transactions. Lenders typically take a more cautious approach to environmental risk than trade buyers.

There is beginning to be an increased focus on climate change and sustainability issues in environmental due diligence processes, with energy efficiency verification becoming a standard procedure in real estate transactions.

Types of assessment

A complete environmental assessment covers both phase I and phase II investigations.

In addition, in due diligence on buildings and installations, buyers:

- Review and assess asbestos surveys and PCB reports for compliance with legal requirements.
- Check environmental abatement and monitoring equipment against regulatory requirements.
- Scrutinise cooling equipment in buildings for the presence of ozone-depleting substances.

Environmental consultants

The environmental consultancy market in Poland is fragmented and only a handful of companies have more than ten professional staff employed full time. Environmental due diligence services are dominated by international players. Environmental consultants are engaged in all significant asset and share transactions. It is advisable to confirm whether consultants have an

appropriate level of professional insurance coverage, which may not be the case when local consultants are involved.

Where subsidiaries of multinational consultancies are involved, the engagement letter should be signed by a parent company to ensure its direct responsibility for the project. Environmental consultants usually cap their liability and the cap is sometimes non-negotiable due to the scope of professional insurance coverage. Before engaging an environmental consultant in Poland, it is advisable to verify the consultancy's capabilities and ensure a conflict check is undertaken, as the same consultant is often engaged by a number of investors.

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

Asset sale

A buyer can expect to obtain the following warranties and/or indemnities for a limited period of time and up to a certain limit of liability:

- The soil and subsoil are not contaminated within the meaning of Polish law.
- No waste, hazardous substances, asbestos or PCBs are stored, buried or used on the property.
- The business has continuously held all environmental permits for the last five years.
- All statutory environmental fees and fines have been paid.
- There are no threatened or pending regulatory or civil procedures related to environmental liabilities or obligations.
- Environmental permits have been obtained and, subject to regulatory consent for the transfer of permits, they are valid and in force.

Share sale

Similar warranties and indemnities are expected in a share transaction, although they apply to the target company. Additional warranties focussing on the conduct of the target company may be obtained, for example, that the target company has not caused environmental damage on third party property by illegally disposing of waste, directly or through an unlicensed contractor.

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

There are usually time limits and financial caps on environmental warranties and liabilities.

Reporting and auditing

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

Public registers

As required by EU law, environmental information, such as environmental permits or data on contaminated land, is publicly available in Poland, with very limited exceptions.

Third party procedures

Public authorities must provide access to environmental information without undue delay. Access is free of charge, however, research and copying of documents by public authorities is chargeable. The rejection of an application for access to environmental information must be issued in the form of a decision, which can be appealed.

25. 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

If an installation is likely to have a negative impact on the environment, an environmental authority can require an operator to carry out an environmental audit of its existing operation (*EPA*). The documentation from the audit is publicly available.

In privatisation transactions, the State Treasury must carry out an environmental health and safety audit, which forms part of the privatisation assessment by the State Treasury or delegated institutions. These are confidential to the State Treasury and are rarely disclosed.

Voluntary audits are often undertaken for certification under the international environmental management systems standard ISO 14000, or the European Eco- Management

and Audit Scheme (EMAS). There is no obligation to provide the regulators with environmental audits conducted voluntarily.

Reporting requirements

Companies must report twice each year on their emissions levels. The data is made publicly available by the authorities. This reporting is connected with the obligation to pay fees for the use of the environment and is an important indication of a company's environmental performance.

Various additional reporting requirements may apply under specific environmental protection regimes depending on the pattern of "use of the environment" by the company (see [Question 29](#)).

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

Companies must report information to the regulators and the public about environmental incidents involving water pollution and soil contamination. This obligation results from the EPA, Waste Act and the 2007 Act.

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

Environmental enforcement inspectors can enter the property (together with accompanying employees, experts and equipment) and:

- Demand information and documents.
- Carry out sampling.
- File the information collected with public prosecutors.

In criminal proceedings before local courts, inspectors can act as public prosecutors.

Environmental insurance

28. 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

Insurance policies covering the risk of regulatory liability for environmental pollution, or the risk of damage caused by gradual migration of pollutants, are very rare in Poland. They are usually sought in project finance transactions and individually negotiated on a case-by-case basis with Polish subsidiaries of global insurance companies. In such cases, the Polish subsidiary offers the insurance product developed by the parent company and the policy needs to be individually tailored to reflect the requirements of national legislation.

In addition, guaranteed cost remediation programmes are currently being offered in Poland by certain internationally based consultancy firms.

Obtaining insurance

Although many types of environmental insurance are in theory available in Poland, policies are not readily available in Poland. Insurance companies are reluctant to provide environmental insurance policies as a standard product and they make them available only after detailed assessment of the risks associated with a particular situation and client. It is costly and time-consuming to obtain environmental insurance, as this requires individual negotiations to agree a bespoke policy with the insurance company.

Environmental tax

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

Tax liability

There are no environmental taxes in place. However, a number of environmental fees and fines apply, including the following:

- Fees for "the use of the environment", which are environmental charges payable per unit of "environmental resource" (for example, surface water or groundwater) consumed, or per unit of pollution emitted. They include:
 - fees for gas or dust emissions into air;
 - wastewater discharge fees;
 - water extraction fees (surface water or groundwater); and

- waste disposal fees.

The fees are calculated by the operators and reported to the competent authorities. They are paid into the accounts of a competent authority (*marszałek województwa*) and revenues are then redistributed for environmental investment by the various tiers of environmental protection funds.

- Fees for not reaching the target packaging waste and waste electrical and electronic equipment (WEEE) recovery thresholds.
- Fees for the recovery of an end-of-life vehicle.
- Fines for exceeding emission limit values or discharge standards. Theoretically, these are administrative law sanctions for breaching emission or discharge standards. In practice, however, they operate like taxes. Subject to a competent authority's consent, fines can be converted into investment obligations that must be fulfilled within a given period of time (for example, a fine converted into a payment for a fuel gas desulphurisation plant).

Unlike fees, fines are not income tax deductible. However, the investment costs are.

Tax rates

The maximum rates of the fees for "the use of the environment" are set in respective environmental acts. Detailed fees are published in the secondary legislation.

Reform

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

In December 2011, the government published a first draft of the Act on Renewable Energy Sources. Changes to the existing scheme were being pursued to promote differentiation of generation technologies and also in order to implement Directive 2009/28/EC on the promotion of the use of energy from renewable sources (Renewable Energy Directive). Following ongoing work in the intervening period, during which various approaches with respect to the future shape of the new renewable energy support scheme have been presented, the main principles for the Act are settled. In September 2013, the government published a new framework of the Act (based on which, a new draft Act is to be prepared). The new proposal seeks to extinguish

support based on certificates of origin (Green Certificates) within a few years and move to an auction system based on guaranteed tariffs. Work continues on the new Act and it is expected to come into force in mid-2014 at the earliest.

Work on implementing Directive 2010/75/EC on industrial emissions (integrated pollution prevention and control) (IED) into the Polish legal system is underway and this will result in significant amendments to the Environmental Protection Act and relevant secondary legislation. In particular, significant changes to the integrated permitting system will be introduced with respect to the procedure for issuance, revision and transferring of integrated permits, as well as with respect to emission standards applicable to installations covered by the IPPC regime (see [Question 10, Large combustion plants scheme](#)). Current work includes preparation of amendments to regulations relating to remediation of soil contamination (see also [Question 14](#)). The changes are expected to come into force in the beginning of 2014.

The regulatory authorities

Ministry of the Environment

Main activities. The Ministry sets environmental policy and legislation.

W www.mos.gov.pl

General Directorate for Environmental Protection

Main activities. The General Directorate for Environmental Protection is an institution responsible for implementation of environmental protection policy as regards environmental protection management including Natura 2000 sites and others, and investment process control.

W www.gdos.gov.pl

Online resources

W www.sejm.gov.pl

Description. The website is maintained by the Parliament of Poland. The texts of the statutes available on the website are not binding, although mistakes are not common. The database of statutes available through the website is up-to-date.

Appendix: Author details

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Areas of practice.
Environment; energy and climate change; administrative proceedings.

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