

LEGAL ALERT



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TIGHTENING THE REGULATIONS ON ENVIRONMENTAL PROTECTION AND WASTE MANAGEMENT

On 5 July 2018 Sejm (lower chamber of the Polish Parliament) has adopted the acts amending the Act on Waste and selected other acts (the “WA Amendment Act”) and amending the Environmental Protection Inspectorate Act and selected other acts (the “EPI Amendment Act”). The new legislation will exacerbate the formal and organizational obligations for the business entities which collect and process waste. Sanctions for failure to comply with the environmental provisions will be aggravated and extended. Enforcement of the regulations will be significantly more efficient – environmental protection inspectorates (both the Regional Environmental Protection Inspectorates and the Chief Environmental Protection Inspectorate) will be given new, extensive powers, technical means and multi-million zloty budgets. Wide-ranging, detailed inspections are to be expected, as well as more restrictive interpretation of the regulations.

TIGHTENED SANCTIONS, NEW CHECKING TOOLS

The new regulations will apply to all enterprises which exploit natural environment: produce or process waste, emit gas and dust, emit noise, discharge industrial waste. The additional risk may apply to nearly all the industries.

Fundamental changes in the manner in which environmental protection inspectorates operate:

- **significantly more tools for intervention checks, including without notice, at night or 24 hours a day for several days, cross checks, etc. A number of procedural safeguards used so far has been annulled.** Night checks or non-stop checks will be possible as a shift system of work will be introduced for the inspectors;
- **it will be possible to stop the operations of an enterprise due to nearly any more severe breach of the regulations or of the terms of the permit.** The decision on stopping the operations will be effective (enforceable) immediately, regardless of the appeal procedures;
- **more opportunities for using newest technologies during checks,** including by using drones, image and sound registration and using them as evidence in administrative and criminal proceedings;
- **over PLN 1 billion** from the state budget for the performance of new EPI tasks in the years to come.

New, severe sanctions for failure to comply with the environmental protection regulations:

- **increasing the bottom limit and/or top limit for financial penalties** which may be imposed on enterprises pursuant to most of the acts regarding environmental protection, including:
 - (1) the Environmental Protection Act,

- (2) the Waste Act,
 - (3) the Act on International Shipment of Waste,
 - (4) the Act on Providing Information on the Environment and Environmental Protection, Public Participation in Environmental Protection and on Environmental Impact Assessment,
 - (5) the Act on Recycling of End-of Life Vehicles,
 - (6) the Act on Batteries and Accumulators,
 - (7) the Act on Waste Electrical and Electronic Equipment,
 - (8) the Act on Ozone-Depleting Substances and Certain Fluorinated Greenhouse Gases;
- **expanding the list of infringements contained in the abovementioned legislation which are liable to financial penalties;**
 - **obligatory doubling of certain financial penalties imposed under the Waste Act** if the penalized infringement repeats;
 - **the possibility to stop a vehicle and waste transported out of conformity with the law,** at the cost of the sender, recipient or shipper;
 - **the penalty of a fine for failure to make the measurements of substance or energy levels in the environment and the emission figures available** to the state environmental monitoring entity.

The amendments clearly highlight the goal: to enhance effectiveness of the checks conducted by EPI and to enforce the environmental protection obligations in all enterprises.

Therefore:

- it is probable that inspectors from Regional Environmental Protection Inspectorates and the Chief Environmental Protection Inspectorate will assume a more restrictive stance with respect to the interpretation of the regulations, including they will question the practices and manner of operation of the companies which were accepted to date; which means that
- the current manner of the enterprise's operations with regard to environmental protection may prove insufficient – and if it is challenged by EPI, such enterprise may be charged with multi-million zloty fines and its activities may be suspended.

We recommend:

- that you get ready for unexpected detailed checks and serious sanctions;
- that you identify – with legal and technical advisers – the law infringements and risk areas, before they are identified by EPI. Thus, you will remove/mitigate the risk individually, or will at least get prepared for the EPI check;
- if risks are identified, that you implement corrective measures constituting part of a well-considered action strategy, before EPI identifies infringements and imposes sanctions;
- that you develop internal procedures to follow during an EPI check;
- that you develop and adhere to new internal *compliance* procedures for environmental protection which account for the new regulations and for a potential new, restrictive interpretation of the regulations by EPI.

NEW FORMAL AND ORGANIZATIONAL OBLIGATIONS

The WA Amendment Act provides for a number of new obligations and restrictions for the enterprises operating in the waste sector (that is, in particular, the enterprises which deal with recovery, including energy recovery, which landfill, store or separate waste).

The consequences of new changes will also be directly felt by enterprises in other sectors if, as part of their activity, they temporarily store or individually treat waste produced in their plants (they do not delegate these tasks to external entities). Furthermore, increased regulatory obligations for the waste industry, may lead to a **significant cost increase for other entities connected with the waste disposal services.**

CHANGE

EFFECT FOR THE WASTE COLLECTING OR PROCESSING ENTERPRISE

The obligation to adjust - within one year of the WA Amendment Act effective date - the permits held for the collection and treatment of waste (including permits for the production of waste and integrated permits covering the above activities) inter alia, with respect to the definition of the maximum waste volume which may be stored at a facility, and also stating in the permit the fire protection requirements as agreed with the fire service.

- The requirement to make arrangements with the State Fire Service;
- Possibly – additional costs of adaptation work at the enterprise's premises.

The obligation for the waste collecting or processing enterprise to establish and maintain a security against claims resulting from damage arising from waste storage – a deposit or bank/insurance guarantee, or insurance policy for an amount depending on the maximum waste volume which, under the permit, may be stored at a specified time at the premises of a specific facility (the security rate is to be PLN 300/t of waste other than hazardous and PLN 600/t – for hazardous waste).

- A significant increase in the start-up costs and costs of operations in the waste industry;
- If no required security is submitted – revocation of the permit.

It is impossible to be granted permit for collection and treatment of waste (or permits for the production of waste and an integrated permit covering the activity) in the following instances:

- **the entrepreneur, partner, proxy, management board member or supervisory board member has been convicted for an offence against the environment** or has been three times punished for the misdemeanor against selected Waste Act provisions;
- **the permit was revoked from the entrepreneur, partner, management board member or supervisory board member** in the period of 10 years before the application for a new permit was submitted.

Weakening of the so-called “corporate veil” for partners, proxies, and members of the management and supervisory boards of commercial law companies.

If a person has been convicted for an offence against the natural environment or their permit for the collection or treatment of waste has been revoked, they are barred from continuing activities in the waste industry.

The obligation to install at the enterprise's own cost video monitoring of the premises in which waste is stored or landfilled, within 6 months of the WA Amendment Act's entry into force, followed by the obligation to store the records and to make them available upon request of the authorities.

Additional costs of installation and maintenance of the video system.

Ban on shipments to Poland:

- **of mixed municipal waste and waste obtained through treatment of municipal waste – notwithstanding the purpose;**
- **other waste – for disposal in the territory of Poland.**

Still stronger connection between the waste stream for waste treatment installations (such as incinerators) and the stream of waste generated in the domestic market.

It is possible to conduct the business of collection and treatment of hazardous waste, municipal waste and waste obtained through treatment of municipal waste, solely in the territory:

- **which is used by the entity handling waste on the basis of:**
 - (1) **ownership right, or**
 - (2) **perpetual usufruct right, or**

If operations on particular land are conducted on the basis of the legal title other than ownership, perpetual usufruct, usufruct or lease (Pol. dzierżawa):

- **it is required to purchase**

(3) usufruct or lease agreement concluded in the form of notarial deed specifying mass and type of waste that may be collected or treated on that land;

AND CONCURRENTLY

- which is covered by the local zoning plan or a decision on zoning decision.

the land (perpetual usufruct) or conclude the usufruct or lease agreement in the form of notarial deed

OR

- it is required to discontinue the operations on expiry of the current permit.

It is also recommended to adjust already concluded usufruct and lease agreements to the requirements resulting from the WA Amendment Act.

The maximum period for storage of waste has been shortened - from 3 years to 1 year.

It is required to reorganize the process of obtaining waste or transferring waste to the subsequent owners.

THE EFFECTIVE DATE OF THE NEW LEGISLATION

It is very probable that the proposed regulations will be adopted by Senat (higher chamber of Polish Parliament) as early as in the first half of July 2018. The WA Amendment Act would become effective, as a matter of principle, within 14 days of the date of announcement in the Journal of Laws, while the EPI Amendment Act – on 1 January 2019 (controls of the new type may start as soon as 14 days after announcement of the EPI Amendment Act – the most probable date of the first checks is autumn 2018).



HOW CAN WE HELP YOU?

SUPPORT AREA

Audit of enterprise in the field of compliance with the environmental protection and waste management regulations

Training and preparing instructions on how to behave during a check

PURPOSE AND SCOPE OF SUPPORT

Strategic purpose: to avoid severe sanctions. **Operating purpose:** to identify risks and minimize them individually; to get ready for the possible check (to avoid being surprised by the findings of EPI - which impedes reaction and increases the risk of penalties); to prepare data and arguments to defend against a sanction, if any.

Scope: analysis of the current operations of the enterprise from the perspective of conformity with the amended environmental regulations and new, strict interpretation. Identification and evaluation of risk and recommendations how to limit the risk. We may perform the audit in cooperation with technical experts.

Purpose: to prepare the client's personnel for the EPI check, including an unexpected or night check, so that the personnel is not surprised, does not act haphazardly and does not make mistakes which may increase the risk of sanctions.

	<p>Scope: training of personnel and preparing instructions, in cooperation with the client, taking account of the client's organizational structure. We may work on the instruction in cooperation with technical experts.</p>
<p>Mitigating the adverse consequences of infringements identified by the Chief Environmental Protection Inspectorate and Regional Environmental Protection Inspectorates</p>	<p>Purpose: to avoid or minimize the sanctions by effecting specific actions – for example, investments, updates of permits – to reach conformity with the law;</p> <p>Scope: identification of the required actions (if necessary: in cooperation with technical experts) and developing the optimum legal strategy of how to effect them.</p>
<p>Internal compliance procedures</p>	<p>Purpose: to limit the risk of future law infringements and sanctions.</p> <p>Scope: developing internal procedures regulating the conduct of operations, including documents and reporting to environmental protection authorities, assuring that operations are conducted in conformity with law. The procedures would be developed in cooperation with the client, taking account of its operating specifics and organizational structure, and with the participation of technical experts (if required).</p>
<p>Interpretation of environmental regulations</p>	<p>Purpose: to confirm that the operations are conducted correctly and to mitigate the risk of sanctions.</p> <p>Scope: obtaining – on the basis of new regulations (the Business Entities Act) – official, binding interpretations of regulations, official acknowledgement that specific practices are correct to secure the enterprise from imposing sanctions (if any).</p>
<p>Representation in proceedings</p>	<p>Representation of clients in administrative proceedings regarding the updating of permits, the obtaining of new permits. Defending clients against the imposition of sanctions in offices and courts.</p>



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