

Dariusz RAJCHEL and Anna RAJCHEL,
Opole University, Poland

WASTE MANAGEMENT IN POLAND AND ALIGNMENT TO EUROPEAN UNION REGULATIONS

The aspirations of the Republic of Poland to join the European Union (EU) means that the country is obliged to manage its waste according to EU regulations. At present, protection of the natural environment and counteracting any threats leading to its degradation are priority tasks in Poland.

The goal of this article is to present the process of aligning Polish legislation to EU legislation in the field of protection of the natural environment, particularly in the field of waste management.

The topic of environmental protection first appeared in Polish legislation in the Polish constitution (April 2nd, 1997). The first regulations in this field are found as early as Article 5 in the first chapter of the constitution, which is entitled "The Republic". This paragraph defines the basic functions of the state. Undoubtedly, the most important functions of the state are ensuring independence and defending the territory of the Republic of Poland. The realisation of these functions is necessary, in order to carry out other functions such as: protecting the freedom and rights of citizens and non-citizens, ensuring their safety, protection of national heritage, as well as environmental protection. The next paragraph regarding environmental protection is found in the second chapter of the constitution, which covers the freedom, rights and obligations of citizens and non-citizens. Article 68, Paragraph 3 of the constitution defines basic freedoms and rights in the economic, cultural and social realms, such as rights to own property and to health and safety in the workplace. This paragraph also describes the obligations of public authorities, which include, amongst others, protection against epidemics

and preventing threats to human health resulting from degradation of the environment. The tasks of the various public authorities are not limited to counteracting damage, which has already occurred in their area of jurisdiction. Their tasks also include applying available preventive measures against problems which threaten to cause damage. Everyone undertaking or intending to undertake economic activities, whose effects on the environment are not completely known, is obliged to use all possible technical means available in order to recognise and eliminate any threats to the environment. Article 74 of the constitution requires public authorities to carry out policies ensuring the ecological safety of the present, as well as future generations. Ensuring ecological safety is strongly connected with what is called in Article 5 the basis of sustainable development (Article 5 describes the means and Article 74, Paragraph 1 defines the goals [Boć et al., 2000, 152]).

The entire society of Poland takes part in these activities, thus the constitution gives the rights to access to information regarding the state of the natural environment and its protection. The public powers mentioned in Article 74 are, in accordance with Article 10, split into three: legislative, executive and judicial. They are obliged to support any social action, which protects the environment or improves the state of the environment. Article 86 of the constitution defines the obligation of every person and organisation subject to the jurisdiction of the Polish state to protect the environment. "The subjects of this obligation are Polish citizens, as well as non-citizens, Polish business and businesses subject to Polish law, both foreign and partially owned by foreign countries and other organisations, together with the organs of public authority and public administration, including national and local government administration" [Ibid., 153]. Any person or organisation, who or which degrades the natural environment as a result of their business activities, is obliged to recompense for the damage caused, either by returning the environment to its initial state, or by paying a fine. This obligation is absolute.

A milestone for Poland was the signing the European Agreement on Accession between the Republic of Poland and the European Community, together with its Member States) in Brussels on December 16th 1991. This agreement came into force in 1994. In Part VI of the agreement, entitled "Economic Cooperation", Article 80, Paragraph 2 is devoted to the natural environment. The bases of environmental protection in the field of waste management are regulated here.

"1. All sides of the agreement will develop and strengthen co-operation in such important fields as the fight against the deteriorating state of the natural environment, which is seen as a priority task.

2. Co-operation will concentrate on [...] reducing the amount of waste, utilising waste and the safe disposal of waste, together with realising the decisions of the Basle convention".¹

The full membership of the Republic of Poland in the EU requires the complete alignment of legal regulations regarding environmental protection in the field of waste management to EU norms. This requires the passing of various legal acts, such as directives, decrees and decisions, which have legal force, as well as recommendations and resolutions, which although not possessing legal force can also influence the policies of the member states.

In the fragment of the European agreement mentioned above, the sides of the agreement took it upon themselves to realise the decisions of the Basle convention. The Basle Convention on the Control of International Transportation and Management of Hazardous Waste, which was recorded on March 22nd 1989 together with appendices, is one of the basic legal acts regarding the problem of hazardous waste. The range of the convention is defined in Article 1, Paragraphs 1–3, which defines the concept of hazardous waste as various types of hazardous waste defined in appendices, together with waste that is not covered in the appendices but is regarded as hazardous according to the legal regulations of a given state. In the light of the Basle convention waste is defined as "substances or objects which are disposed of, or about to be disposed of, or required to be disposed of by the legal regulations of the state" [The Basle Convention, 1995]. International transportation is defined as "any transportation of hazardous waste or other waste either from territory under the jurisdiction of one state to territory under the jurisdiction of another state or through territory which is not subject to the jurisdiction of any state, given that at least two states are involved in the transportation" [Ibid.]. In defining the regulations on the international transport of waste the convention differentiates between two types of waste: hazardous waste and other waste. Radioactive waste, which is the subject of other international systems of control, and waste resulting from normal activities aboard a ship, whose disposal is regulated in a separate legal act, do not come under the convention. In Article 4, amongst other things, the convention states the right of any state to ban the import of hazardous waste and to take any necessary actions in ensuring that the international transport of hazardous and other waste is kept to

¹ European Agreement on Accession between the Republic of Poland as one side and the European Community, together with its Member States as the other side. The text is taken according to the agreement still in force on October 31st 2000. [Board of the Committee on European Integration, Warsaw 2001, 56].

a minimum, in order to protect human health and the environment against hazardous effects resulting from such transportation. The sides of the convention also agreed to eliminate the traffic of waste with any country not being a signatory of the convention. In accordance with Article 5 waste should be managed in a manner which is not harmful to the environment. The state takes full responsibility for the appropriate management of waste. During international transportation hazardous waste must be packed, marked and transported according to internationally accepted rules. Any international transport of hazardous waste or other waste, which is not carried out according to international rules will, in accordance with Article 9, be classed as illegal transport, which is subject to legal prosecution. Each side of the convention is to introduce appropriate internal legislation in the field of preventing and prosecuting such illegal transport. "The sides of the Basle convention in signing the convention take it upon themselves to act in accordance with the rules of the convention, whose goal is waste management which is safe for the environment and for human health and life" [Ciechanowicz-McLean, 2001, 136].

The sides of the convention take it upon themselves to implement and execute the rules set in the convention for dealing with hazardous waste and other waste with the aid of defined legal, administrative, preventative measures and punishments.

At the conference of government representatives, which took place in Basle from March 20th to March 22nd 1989, Poland had the status of an observer. Thus, at that time Poland was not a signatory of the convention, but later signed the convention. Poland ratified the convention on March 20th 1992. In accordance with Article 25, Paragraph 1 the convention came into force in Poland on June 18th 1992. The contents of the convention were published in the government records in February 1995. In accordance with Article 91 of the constitution, the convention is now a Polish legal act in force.

In 2001 3 "ecological" acts came into force: "The Law on Environmental Protection", "Act on Waste", as well as the act implementing both of these regulations. These acts bring Polish law into line with EU law. The Law on Environmental Protection is called the Polish "ecological constitution". "It defines the basis of environmental protection, as well as conditions for use of the natural environment, which take into account the demands of sustained development" [Law on Environmental Protection, 2001]. Clarity of the act was ensured by including 50 definitions of the most important concepts. The Law on Environmental Protection does not define the term waste, but refers to the Act on Waste of April 27th 2001. A series of regulations in this act defines the norms set

for the management of waste. Due to their importance, these regulations are presented below.

Section IV of the act regards information about the environment. Chapter I regulates access to information in the field of environmental protection and the state of the environment. In accordance with Article 19, administrative organs are required to provide information about the environment and its protection. This article also gives access to documents covered in the Act on Waste such as: "conclusions proposing the implementation of policy decisions on the management of hazardous waste and decisions implementing such policy, together with information about the amount of waste produced and the methods used to manage this waste, as well as decisions on granting permits in the field of waste collection, transport, recycling and management and documents evidencing waste" [Ibid.], and documents covered in the Act on the Maintenance of Cleanliness and Order in Boroughs such as, "decisions on granting permits in the field of the collection, transport, recycling and management of communal waste" [Ibid.].

Chapter 2 of the act regards state monitoring of the environment, as well as distributing information on the state of the environment. According to Article 25, Paragraph 2, monitoring of the environment covers "systems of measuring, assessing and predicting the state of the environment, as well as the collection, analysis and distribution of information regarding the environment" [Ibid.].

Information regarding environmental protection, e.g. the amount of waste produced and its management, is obtained by regular monitoring. Point V of the Act in Section II is devoted to the question of payments for making use of the environment. A system of special, higher rates is regulated by Article 293 of the act. Section III covers fines mentioned in Chapter I and regulates the procedures in setting the level of a fine. In accordance with Article 298, Paragraph 1, a regional environmental protection inspector sets the level of fines for "breaking the conditions of an agreement on the management of a waste disposal site, a decision regarding the location and means of disposing of waste, or breaking regulations regarding waste as to the type of waste and its management" [Ibid.]. Article 309 defines activities which are subject to fines and the levels of such fines.

The Act on Waste of April 27th 2001 introduced 30 EU directives into the Polish legal system. Article 1 of the act defines the range of the act and the general principles of waste management. "The majority of regulations in force regarding waste management are based on the three following concepts:

- waste should not be produced,
- if waste is produced it should be made use of,

– if waste cannot be made use of, then it should be completely destroyed or completely isolated from the environment” [Jerzmański et al., 1999, 22].

The concept of waste, together with its definition, is a key point of the act in defining its range. According to the act waste is “any substance or object, belonging to one of the categories defined in Appendix 1 of the act, the possessor is disposing of, intends to dispose of or whose disposal is obligatory” [Act on Waste, 2001]. The act divides waste into the following groups: hazardous, communal sewage, communal waste, medical waste, biodegradable waste, veterinary waste. The categories of hazardous waste are defined in appendices to the act. The following can be regarded as the most important decisions contained in the act:

- defining the obligations of the creators of waste,
- defining the obligations of the possessors of waste,
- defining the bases of making use of and managing waste,
- making plans for the management of waste at local, regional and national level,
- the bases of international transport of waste,
- defining administrative fines and sanctions,
- Above all, waste management is based on the three following bases:
 - preventing the creation of waste or minimising its creation,
 - waste collection,
 - making use of waste or managing waste in a manner protecting the quality of life and health of the population, as well as environmental protection.

The act defines a hierarchy of the goals of waste management. Segregation of waste is the prime element of waste management. After obtaining such secondary materials, the waste can be treated physically, chemically or biologically. Only types of waste whose transformation is economically, ecologically and technologically unsuitable for such transformation should be transported to rubbish dumps. The act also defines the concept of *close location*.² This concept states that waste should either be recycled or dealt with at the place where it is produced or passed on to the nearest place where it can be treated.

The act implementing the Law on Environmental Protection and the Law on Waste, together with amendments to other acts sets up a timetable for the implementation of these legal regulations, as well as defining the bases of waste management until the regulations are fully implemented.

² Nowe przepisy o ochronie środowiska (New regulations on environmental protection), <http://euro.pap.com.pl/cgi-bin/europap.pl?grupa=1&ID=30614>.

The EU commission has passed many directives, decisions, decrees, recommendations and opinions regarding waste management and environmental protection in this field. As Poland has applied to join the EU, it is obliged to align its regulations to EU law. Due to the large number of legal acts passed by EU organs, I will limit the description of environmental legislation to chosen directives, decisions and decrees.

Commission Directive EWG 75/442 of July 15th 1975, together with its appendices sets up a framework in the field of waste management and is the fundamental EU legal act in this domain. This directive contains a formal definition of waste, which is defined as "any substance or object (defined in Appendix 1), the possessor is disposing of, or intends to dispose of, or whose disposal is obligatory" [Mering, 1999, 177]. Other basic concepts are also defined in this directive, e.g. waste management, which is understood as "the collecting, transport, recycling and neutralisation of waste, together with the maintenance of waste disposal sites" [Streżyńska, 2000, 91], as well as defining the basic tasks of the member states connected with waste management. The member states are obliged to undertake a wide range of activities aimed at counteracting the creation of waste and minimising the amount of waste produced, together with its toxicity by promoting so called *clean technologies* [Mering, 1999, 177]. This means the technical improvement of products and of the techniques used in their disposal. The directive prohibits the emission of waste into bodies of water, which leads to water pollution, as well as the degradation of fauna and flora. The member states are obliged to make use of the most modern advances in science and technology, in order to counteract or reduce waste creation using the development of waste free technology, waste recycling and using waste as a source of energy. Companies involved in the collection and utilisation of waste must periodically apply to the relevant authorities for a permit in order to carry out such activities. The authorities granting such permits are obliged to inspect the activities of such companies. According to Article 15 of the directive, the costs of removing waste is incurred by the possessor or creator of the waste. This directive has been changed twice. The most important changes were introduced by Commission Directive EWG no. 91/156 of March 18th 1991, which created a framework for activities counteracting the production of waste, as well as activities in the field of waste management and waste neutralisation.

This directive is being gradually implemented by Poland. Its implementation started after its complete acceptance into Polish law in 2000. Due to the large amount of investment and reorganisation required, the implementation of the entire directive will not be complete until 2012.

The next act of law to be considered is Commission Directive EWG 75/439 of June 16th 1975 in the field of removing waste oils. The goal of the directive was "the creation of a uniform system of collecting, treating, managing and removing waste oils" [Mering, 1999, 178]. The priority task of the member states is the regeneration of waste oils, if there exists a technical possibility for such action. According to Article 1 of the directive, waste oils are understood as "all mineral lubricants or solutions of a mineral origin arising from industrial oils, which can no longer be used for their original purpose, in particular waste oils from combustion engines, turbine oils, hydraulic oils and lubricants" [Ibid.]. As in the framework directive the emission of waste oils into bodies of water, irrigation systems and the soil is prohibited. Also, treatment of waste oil causing air pollution exceeding limits given in other legal acts is prohibited. Companies involved in the collection of waste oils must be registered and are subject to inspection by the appropriate authorities. Companies involved in the regeneration of waste oils cannot carry out such activities without obtaining a permit and without the relevant authorities stating that all possible means of protecting the environment and human health are being used. The member states are obliged to carry out routine inspections of such companies.

Commission Directive 87/101 of December 22nd 1986 amended this directive, most importantly by giving priority to the regeneration of waste oils and by placing wide ranging constraints on the burning of waste oils. The member states were empowered to set limits on the permissible emissions of sulphur dioxide and dust. Due to the costs involved in implementing this directive, Poland requested a transition period, which is to last until December 31st 2005.

The range of Commission Directive 78/319 of March 20th 1978 on Toxic and Hazardous Waste is defined in the Framework Directive 75/442. The goal of this directive was "to set up a well defined range of plans regarding the reduction of the amount of toxic and hazardous waste, counteracting their production, recovery of raw materials, as well as recycling" [Mering, 1999, 180]. The directive contains a definition of toxic waste and hazardous waste, which are understood as "all types of waste containing substances or materials mentioned in the appendices, or contaminated by such materials, in such a form and in such amounts or concentrations that they are a threat to health or to the environment" [Ibid.]. The member states are obliged to create conditions such that the disposal of toxic and hazardous waste does not cause a threat to the environment nor negatively influence human health. Only companies that have obtained the relevant permit can store and treat such waste.

The goal of Directive 94/62/WE on Packaging and Waste Packaging was the realisation of the European Union's general strategy regarding waste management. The directive regulates the management of packaging and used packaging with the aim of reducing their effects on the state of the environment. The basic tasks of this field of waste management include: "counteracting the creation of waste packaging, promoting the multiple use of packaging, as well as recycling" [<http://www.negocjacje.gov.pl/okpr/okpr10.html>]. With regard to waste packaging the directive aims at a minimum threshold for the recovery of waste packaging 50% of the mass [Ibid.] as well as a minimum level for recycling 25% of the mass [Ibid.] of waste packing. The EU commission will take a decision on whether to increase these levels 10 years after the implementation of the directive. In order to achieve these limits, it is essential to set up national systems which allow the return and/or collection of waste packaging, together with their multiple use and recovery of packaging materials, including recycling. The directive also sets maximum concentrations for the concentration of heavy metals in packaging, in order to minimise their negative effect on the environment. The implementation of the directive in Poland requires deriving a system of collecting and segregating waste. One element of such a system will be the introduction of so called *product payments* [Ibid.], based on the fact that producers of packaging will be subject to the costs connected with the utilisation of waste. The implementation of such payments requires the setting up of organisations carrying out waste treatment and organisations dealing with environmentally friendly burning of the waste. Taking into account the enormous costs, together with the fact that the effects of the implementation of such actions will only become significant in 5–6 years, Poland requested a transition period lasting until the end of 2007 with the aim of achieving a level of 25% for the recovery of packaging materials.

Directive 99/31/WE on Waste Management divides waste tips into the following categories: "tips of hazardous waste, tips of inert and non-hazardous waste" [Ibid.]. The member states are obliged to reduce the level of biodegradable waste stored at tips, improving the technical specifications of tips, as well as setting tariffs for storing waste, so that this income covers the exploitation costs of the tip and the costs connected with management and closure of tips over the next 30 years. Due to the costs involved in implementing such an improvement in technical specifications, Poland requested a transition period, which is to last until July 1st 2012.

The next type of secondary act of law are resolutions. Commission Resolution 259/93/EWG of February 1st 1993 on the Management and

Control of the Transportation of Waste within, to and from the EU implemented the Basle Convention, the Decision of the OECD on the International Transportation of Hazardous Waste and the Lome Convention. This resolution replaced Commission Directive 84/631/EEG on the Management and Control of the Transportation of Hazardous Waste within the EU. The aim of the resolution is to organise the management and control of waste transportation in such a way as to protect human health and the environment from damage. In accordance with the framework directive on waste, which created a type of constitution for waste management, member states may co-operate with each other in order to utilise waste. It is thus possible to export waste to another state in order to ensure its utilisation. Hence, this resolution defines the requirements for waste management and the transportation of waste through the territory of any member state. This resolution includes the so called "green list". This is a list of the types of waste which are not subject to these transportation regulations, due to the ease and safety (with regard to the environment and human health) of management of such types of waste. Such waste is free to be transported between the member states. The EU entitled Poland to a transition period until the end of 2007. Poland also has the option of lengthening this transition period to 2012 in respect to waste from man made materials and the group of materials found on the so called "yellow" list (a list of waste which is dangerous, or difficult to recover, but which can be recovered). This postulate also includes some wastes on the "green list" such as "man made materials, paper, glass and tyres" [Ibid.]. Poland is obliged to create a system of recycling and segregating waste and trading in secondary materials recovered from waste.

Commission Decision EWG 90/170/EEG of April 2nd 1990 accepts the decision of the OECD on the Control of International Transportation of Hazardous Waste. EU member States are obliged to prohibit the export of hazardous waste to countries which have prohibited its import. The member states also accepted the decisions of the Basle convention of 1989 on the International Transportation of Hazardous Waste.

Commission Decision 94/3/EEC of December 20th 1993 defined a list of the types of waste in accordance with Article 1, Paragraph A of the Framework Directive on Waste of 1975. The European Waste Catalogue (EWC) was accepted [Mering, 1999, 186-7]. This catalogue is not fixed and is subject to periodic changes.

Protecting the environment against waste and the bases of the utilisation and treatment of waste is a specific and special field of environmental protection. Rational waste management will bring about a series of ecological effects, such as the elimination or minimisation of threats

producing ecological disasters and material losses, as well as recovering materials and producing energy. Waste is a source of pollution in all the realms of the environment: surface and ground waters, soil, land, the atmosphere. No other problem requires such a series of costly investments, the creation of management plans, particularly plans for dealing with toxic waste and waste containing heavy metals, such as mercury, lead, cadmium, as well as fundamental reorganisation aimed at the realisation of objectives such as granting permits, the control and registration of waste and organisations involved in its treatment. The creation of an appropriate system for waste management and the minimisation of waste has become a priority task for all countries. The types of waste and the threats posed have changed along with economic development. It is a tautology to state that the type of waste created and its management are a reflection of society.

Our article has considered articles from the Polish constitution, together with selected EU regulations. These regulations serve to underline the seriousness of the problem of waste management and environmental protection. We did not present any regulations in the field of the neutralisation of waste: polychlorides are subject to Directive 76/403/EWG, industrial waste containing titanium dioxide is subject to Directive 78/176/EWG, the management of communal sewage is covered by Directive 91/271/EWG. Apart from these acts, there is a wide range of legal acts which have not been mentioned. These acts require separate treatment.

Poland temporarily closed negotiations in the "Environmental Field" in October 2001. Much of Polish legislation has come into line with EU law. Some legal acts in fields where Poland was granted a transition period still need to be adapted to EU regulations. The new environmental protection program, including a program for waste management, will be passed by the regional governments by the middle of 2003 and by the middle level of local government by the end of 2003. The lowest level of local government will pass the new environmental protection programme by the middle of 2004.

Literature

- Boć J., Nowacki K., Samborska-Boć E., *Ochrona Środowiska (Environmental Protection)*. Cologne, 2000.
- European Agreement on Accession between the Republic of Poland as one side and the European Community, together with its Member States as the other side. Warsaw: Board of the Committee on European Integration, 2000.
- Ciechanowicz-McLean, J., *Międzynarodowe prawo ochrony środowiska*, wyd. II (International law on environmental protection, 2nd Edition). Warsaw, 2001.

- Grabowska, G., *Europejskie prawo środowiska* (European Environmental Law). Warsaw, 2001.
- Grabowska G., "Ochrona środowiska w procesie integracji Polski z Unią Europejską" (Environmental protection in the process of Polish integration with the European Union), in: Kudeja, M. (ed.), *W kręgu zagadnień konstytucyjnych*. Katowice, 1999.
- Jerzmański, J., Mazrkiewicz, M., Radecki, W., *Ustawa o odpadach z komentarzem* (The Act on Waste together with a Commentary), 2nd Edition. Wrocław, 1999.
- Mering, L., *Ochrona środowiska w prawie wspólnotowym i w prawie polskim. Harmonizacja polskiego prawa ochrony środowiska z normami prawa Wspólnot Europejskich* (Environmental protection in EU and Polish law. The harmonisation of Polish environmental protection law with the norms contained in EU law). Sopot, 1999.
- Pacuzki R., *Prawo ochrony środowiska w Unii Europejskiej* (Environmental Protection Law in the European Union). Toruń, 1999.
- Streżyńska, A., *Ochrona środowiska w Polsce na tle regulacji europejskich. Gospodarka odpadami*. (Environmental protection in Poland against the background of EU regulations. Waste management). Warsaw, 2000.

Legal Acts

- Law on Environmental Protection, government records 2001 (*Ustawa Prawo ochrony środowiska*), Dziennik Ustaw, No. 62, Item 627, 2001.
- Act on Waste, government records 2001 (*Ustawa o odpadach*), Dziennik Ustaw, No. 62, Item 628, 2001.
- The Basle convention on the control of international transportation and management of hazardous waste, government records 1995 (*Konwencja Bazylejska o kontroli transgranicznego przemieszczania odpadówniebezpiecznych*), Dziennik Ustaw, No. 19, Item 88, 1995.

Web-sites

- www.negocjacje.gov.pl
www.euro.pap.com.pl
www.ukie.gov.pl