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Piotr Wachowski

WSB University in Poznań
Faculty of Finance and Banking
e-mail: pwachowski@wsb.poznan.pl
phone: +48 61 655 33 74

Formal and Legal Considerations of Environmental Aspects in Energy Production in Poland

Abstract. *The aim of the article is to present selected Polish regulations which affect the shaping of the environment, especially its selected elements called environmental aspects. The article discusses the concept of the environmental aspect as well as basic legal instruments governing the protection of the environment and alleviating the harmful impact of energy production on the surrounding environment.*

Keywords: *environmental aspect, environmental protection, PN-EN ISO 14001:2005*

Introduction

Energy production is a complex process, where many crucial quality and environmental conditions have to be met. The process is strongly conditioned not only by Polish regulations but also by EU regulations, in particular concerning environmental protection. They were largely transferred into the Polish legal system after accession to the European Union.

One of the key problems and challenges facing the energy sector in Poland is the necessity to gradually reduce its impact on the environment. The evolving EU legislation and the main directions of economic development in the world and in Europe require a gradual reduction of emissions of primary pollutants to the environment and a policy aimed at alleviating the environmental hazards associated with the occurrence of other ecological aspects.

1. The concept of environmental aspect

Various definitions of the concept of "environmental aspect" generally provide quite a consistent idea about the underlying notion. In practice, there are two standardization systems which define interpretations of this concept.

The PN-EN ISO 14001:2005 standard makes reference to the term "environmental aspect", which is defined as "an environmental aspect is an element of an organization's activities, products, or services that can interact with the environment."[1] The environmental aspect is closely connected with the concept of environmental impact, which is defined as "any change to the environment, whether adverse or beneficial, wholly or partially resulting from an organization's environmental aspects." The classification of environmental impacts specified in the PN-EN ISO 14001:2005 standard focuses on identifying environmental aspects understood in the light of the above definition associated with an organisation's activities and determining which of them are "significant environmental aspects," i.e. those that have or can have a significant environmental impact. According to clause 4.3.1 of the standard, "The organization shall establish, implement and maintain a procedure(s) to identify the environmental aspects of its activities, products and services that have or can have significant impact(s) on the environment. The organization shall ensure that the significant environmental aspects are taken into account in establishing, implementing and maintaining its environmental management system."

The second systematic approach to the definition of environmental aspects is represented by the Eco-Management and Audit Scheme (EMAS). Like the ISO standard, the EMAS system defines both the concept of environmental aspect and significant aspect. According to EMAS, an environmental aspect is defined as "an element of an organisation's activities, products or services that has or can have an impact on the environment," while a significant environmental aspect is defined as "an environmental aspect that has or can have a significant environmental impact." Moreover, according to the EMAs requirements, it is necessary to identify direct environmental aspects, which are defined as "environmental aspects associated with activities, products or services of the organisation itself over which it has direct management control." Indirect environmental aspects, in turn, are environmental aspects associated with activities, products or services which can result from the interaction of an organisation with third parties and which can to a reasonable degree be influenced by an organisation."[2]

[1] PN-EN ISO 14001:2005 System zarządzania środowiskowego. Wymagania i wytyczne stosowania [Environmental management systems. Requirements and with guidelines for use].

[2] Regulation (EC) No 1221/2009 of The European Parliament and of The Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management

The key consideration in determining significant levels for an organisation's environmental aspects is to establish a set of criteria (determinants) for assessing the significance of an environmental aspect. These criteria can include: the scale of the impact, the seriousness of the impact, the likelihood of occurrence, the duration of the impact, factors associated with the organisation's activity, e.g. costs or impact on the public image, legal requirements (including planned changes) or concerns of the parties involved.

2. Selected Polish regulations

General references to environmental issues can be found in the Constitution of the Republic of Poland of 2 April, 1997.[3] Article 5 of the Constitution contains a provision stating that the Republic of Poland – in addition to safeguarding the independence and integrity of its territory, ensuring the freedoms and rights of persons and citizens, the security of the citizens, and safeguarding the national heritage – shall ensure the protection of the natural environment pursuant to the principles of sustainable development. This provision directly implies the implementation of a state policy based on principles ensuring that the needs of the present generation are met without compromising the ability of future generations to meet their own needs. One of the main laws governing issues connected with the organisation of the national energy system is the Energy Law Act.[4] The act contains provisions indicating its compatibility with the principle of sustainable development.

Its purpose is to create conditions for the country's sustainable development, to ensure energy security, to provide incentives for the economical and rational use of fuels and energy, to foster healthy competition, to counteract negative effects of natural monopolies, to comply with obligations resulting from international treaties and strike a balance between the interests of energy producers and energy consumers, and – which is particularly important for the purpose of this article – to meet the requirements of environmental protection.

The Environmental Protection Law Act[5] is one of the most important Polish laws about the environment, its management and protection. It implements

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and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC, Official Journal L 342, 22.12.2009.

[3] Konstytucja RP z dnia 2 kwietnia 1997 r., Dz.U. nr 78, poz. 483 z pożn. zm. [The Constitution of the Republic of Poland of 2 April 1997, Journal of Laws, no. 78, item 483 as amended].

[4] Ustawa z dnia 10 kwietnia 1997 r. Prawo energetyczne, Dz.U. 2012, poz. 1059 z późn. zm. [The Act of 10 April 1997 – Energy Law, Journal of Laws 2012, item 1059 as amended].

[5] Ustawa z dnia 27 kwietnia 2001 r. Prawo ochrony środowiska, Dz.U. 2008, nr 25, poz. 150 z późn. zm. [The Act of 27 April 2001 – Environmental Protection Law, Journal of Laws 2008, no. 25, item 150 as amended]; ustawa z dnia 27 lipca 2001 r. o wprowadzeniu ustawy Prawo ochrony środowiska, ustawy o odpadach oraz o zmianie niektórych ustaw, Dz.U. nr 100, poz. 1085, z późn.

a number of European regulations, among others the habitats directive [37], the end-of-life vehicles directive,[6] the directive on ambient air quality and cleaner air[7] and others.

The act provides detailed definitions and regulates issues associated with the environmental policy and environmental protection programmes, including the implementation of investments, environmental protection research, and the protection of different environmental resources (air, water, land surface, fossil fuels, organosphere) and protection against noise and electromagnetic fields. The act also defines restrictions related to the protection of environmental resources, limited use areas and industrial zones. A separate section of the act is devoted to measures aimed at counteracting pollution (among others, using devices and installations) and substance emission. It also sets out general principles that need to be implemented when manufacturing products to comply with environmental requirements. Another section regulates issues associated with the protection of environmental resources and the harmful effects of various forms of transport.

The following sections deal with aspects involved in applying for, granting and obtaining permissions to emit substances or energy to the environment, along with regulations concerning the expiration, revocation and limitations of emission allowances (including integrated permissions associated with conducting various forms of activity).

The act sets up and lays down the principles of maintaining a National Pollutant Release and Transfer Register and the manner of conducting environmental audits by entities using the environment at the request if environmental protection agencies in the event of indications suggesting that an installation may have a negative impact on the environment. The act defines the concept of a "major accident" and provides legal instruments to counteract major industrial accidents, lists obligations of the operator of an establishment which poses a hazard of a major accident as well as obligations of administrative authorities. The Act specifies available financial and legal measures, including fees for the use of the environment along with specific rates, the application of increased fees, special provisions and fines (civil, criminal, and administrative responsibility).

The last section of the act sets out the principles to be followed by institutions responsible for environmental protection, including the State Environmental Protection Council, the National Fund for Environmental Protection and Water Management.

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zm. [The Act of 27 July 2001 on the introduction of Environmental Protection Law, The Wastes Act and amendments to some acts, Journal of Laws no. 100, item 1085 as amended].

[6] Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles, Official Journal L 269, 21.10.2000.

[7] Directive 2008/50/EC of the European Parliament and of The Council of 21 May 2008 on ambient air quality and cleaner air for Europe, Official Journal L 152, 11.06.2008.

The Nature Conservation Act of 16 April 2004[8] sets outs objectives, principles and forms of conserving wildlife, the natural environment and landscape. According to the act, Nature conservation is defined as a system of activities aimed at the preservation, sustainable use and restoration of resources, creations and elements of nature. The act specifies the objectives of nature conservation and ways of accomplishing them. It establishes possible forms of nature conservation and agencies and services responsible for enforcing it. It also outlines the principles and forms of managing natural resource and elements of nature and legal consequences of nature conservation as well as criminal provisions.

One of the essential normative acts that makes a direct reference to environmental aspects, e.g. associated with heat production, is the act on greenhouse gas emissions trading.[9] It lays down the principles of the emissions allowances trading system, which is designed to stimulate an economically efficient way of reducing emission levels. The act defines the notion and organisation of the emissions allowances trading system and the National Emissions Trading Registry. It also outlines the principles of the national plan of distributing emissions allowances and the manner of granting and surrendering emissions allowances as well as ways of applying for allowances by installations obliged to participate in the system. The act lists obligations of installations and establishments concerning the monitoring of emission levels, the surrendering of allowance, and regulations governing the imposition of fines.

The Act of 13 April 2007 sets out the principles concerning the prevention and remedying of environmental damage.[10] It defines preventive and remedying measures in the event of a direct hazard to the environment and the occurrence of environmental damage. The act classifies costs of conducting preventive and remedying measures and specifies ways of reporting direct threats of environmental damage and actual cases of environmental damage and the completion of preventive and remedying measures.

The act on the release of information about the environment and its protection, participation of the public in environmental conservation and assessments of environmental impact[11] regulates, among other things, procedures of assessing en-

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[8] Ustawa z dnia 16 kwietnia 2004 r. o ochronie przyrody, Dz.U. nr 92, poz. 880, z późn. zm. [The Nature Conservation Act of 16 April 2004, Journal of Laws no. 92, item 880 as amended].

[9] Ustawa z dnia 22 grudnia 2004 r. o handlu uprawnieniami do emisji do powietrza gazów cieplarnianych i innych substancji, Dz.U. nr 281, poz. 2784, z późn. zm. [The Act of 22 December 2004 on the Trade of Emissions Allowances of Greenhouse Gases and Other Substances to the Atmosphere, Journal of Laws no. 281, item 2784 as amended].

[10] Ustawa z dnia 13 kwietnia 2007 r. o zapobieganiu szkodom w środowisku i ich naprawie, Dz.U. nr 75, poz. 493, z późn. zm. [The Act of 13 April 2007 on the Prevention and Remedying of Environmental Damage, Journal of Laws no. 75, item 493 as amended].

[11] Ustawa z dnia 3 października 2008 r. o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko,

vironmental impact and outlines the principles of public participation in environmental conservation. Article 49 addresses the issue of performing environmental impact assessment (including strategic environmental impact assessment) and the usefulness of considering environmental aspects, particularly in order to support balanced development and implement the EC law on environmental protection.

The Act of 17 July 2009 sets out the principles of managing greenhouse gas emissions and other substances.[12] It also defines the tasks of the National Centre for Emission Balancing and Management and the National System for Emission Balancing and Forecasting. It provides a list of greenhouse gases and other substances released into the air and covered by the system for the management of emissions of greenhouse gases and other substances. The act establishes the National Green Investment Scheme whose proceeds are used to finance environmental programmes or projects, measures of adaptation to climate change and other measures in the field of air protection. It also sets out the principles of the operation of the National Registry of the Kyoto Units.

3. Administrative decisions

Administrative responsibility is the third kind of responsibility (in in addition to civil, criminal responsibility) that should be taken into account by organisations that use the environment and have a harmful impact on it. It is understood as responsibility enforced by administrative organs by means of administrative decisions. The basic instruments of administrative responsibility, listed on the Act on the Environmental Protection Law,[13] include decisions:

– ordering an organisation to reduce its harmful impact on the environment and restore it to the previous state;

– ordering an organisation or a natural person using the environment to stop its activity or the operation of an installation.

The act in question defines cases in which a particular agency responsible for environmental protection should issue a decision ordering an installation operator to stop its activity. The provisions generally refer to activities that cause a con-

Dz.U. nr 199, poz. 1227, z późn. zm. [The Act of 3 October 2008 on the Release of Information about the Environment and its Protection, Participation of the Public in Environmental Conservation and Assessments of Environmental Impact, Journal of Laws no. 199, item 1227 as amended].

[12] Ustawa z dnia 17 lipca 2009 r. o systemie zarządzania emisjami gazów cieplarnianych i innych substancji, Dz.U. nr 130, poz. 1070, z późn. zm. [The Act of 17 July 2009 on the System to Manage the Emissions of Greenhouse Gases and Other Substances, Journal of Laws no. 130, item 1070 as amended].

[13] Ustawa z dnia 27 kwietnia 2001 r. Prawo ochrony środowiska, Dz.U. 2008, nr 25, poz. 150 z późn. zm. [The Act of 27 April 2001 on the Environmental Protection Law, Journal of Laws 2008, no. 25, item 150 as amended].

siderable deterioration of the environment, and in particular, when its continuation poses a threat to health or life. The use of an active installation needs to be stopped immediately if it is operated with the required integrated permit or is operated in violation of the conditions of the integrated permit for a period exceeding 6 months. The act also specifies situations when it is obligatory to postpone the bringing into use of a building, a complex of structures or installations related to a project which has been classified as one of those that may have significant impact on the environment. An activity that has been stopped can only be resumed if a consent has been granted by the authority that ordered it to be stopped. Such a consent can be granted if the grounds for stopping an activity have ceased to exist.

3.1. Integrated permits

Integrated permits are a special form of administrative decisions. Their use is regulated by the Council Directive 96/61/EC, called „the IPPC directive," issued in 1996. The provisions of the directive have been transposed into the Polish law in the form of the Environmental Protection Law.

An integrated permit is an administrative decision which regulates the principles of releasing into the air, water or land substances or energy causing pollution and produced by some kinds of installations. The list of installations is provided in the ordinance of the Minister of the Environment of 27 August 2014 concerning the kinds of installations that may cause considerable pollution in different elements or the environment as a whole[14], issued by virtue of Article 201, Section 2 of the Environmental Protection Law Act. An integrated permit holder is, in fact, able to operate an installation. An integrated permit, which is a kind of licence to operate an industrial installation (or other kinds of activity, such as breeding farms, sewage treatment) is intended as a replacement for sectoral environmental permits that have been in use so far, and includes all kinds of environmental impacts specified in sectoral environmental permits and interactions between them.

In principle, an application for an integrated permit is supposed to demonstrate the company's approach to environmental protection, manifested by, for example, the use of best available practices, i.e. the most effective techniques to ensure the highest level of protection of the environment as a whole, developed on a scale which allows implementation under economically and technically viable conditions, taking into consideration the costs and environmental benefits, as long as they are reasonably accessible to the operator.

[14] Rozporządzenie Ministra Środowiska z dnia 27 sierpnia 2014 r. w sprawie rodzajów instalacji mogących powodować znaczne zanieczyszczenie poszczególnych elementów przyrodniczych albo środowiska jako całości, Dz.U. poz. 1169 [The ordinance of the Minister of the Environment of 27 August 2014 concerning the kinds of installations that may cause considerable pollution in different elements or the environment as a whole, Journal of Laws item 1169].

3.2. Licences

Energy generation, processing, storage, transmission, distribution and trade require a licence which enables an enterprise to conduct economic activity in this area. Licences for the generation, distribution and trading in heat are granted by the President of the Energy Regulatory Office (ERO) in response to an application from an entrepreneur. According to Article 33, Section 1 of the Energy Law Act,[15] the licence applicant must meet the following requirements:

– their principal place of business or place of residence is located within a member state of the European Union or a member state of the European Free Trade Agreement (EFTA) – a party to the European Economic Area Agreement;

– has financial resources sufficient for the proper performance of their activity or can document their ability acquire such resources;

– has the technical potential ensuring the proper performance of their activity;

– can ensure the employment of persons with appropriate professional competences referred to in Article 54;

– has obtained a land development conditions decision (a planning permission) for the area.

The process of granting a licence can start upon the submission of an application containing decisions and permissions concerning land development conditions, environmental protection and ecological safety, including:

– an integrated permit, or in the case of its absence, a permission to release pollutants into the atmosphere, a permit required by the Water Law act and a waste generation permit,

– a document notifying the environmental protection agency about the existence of an active installation releasing gases or particulates into the air (if such notification is required).

A licence is granted for a specified period of time, not shorter than 10 years and not longer than 50 years.

4. ISO and EMAS standards

In 2004 the International Organization for Standardization published the second edition of the ISO 14001 standard for an Environmental Management System. The requirements and guidelines for use were introduced in Poland a year later. The standard sets out requirement concerning an environmental management system in organisations, regardless of their kind or geographical, cultural or

[15] Ustawa z dnia 10 kwietnia 1997 r. Prawo energetyczne, Dz.U. 2012, poz. 1059 z późn. zm. [The Act of 10 April 1997 on the Energy Law, Journal of Laws 2012, item 1059 as amended].

social conditions. The main objective of the standard is to foster activities related to environmental protection and to reduce and prevent pollution through a system model geared towards continuous improvement.

The ISO 14001 standard helps to develop and implement an environmental policy and ecological objectives that take into account legal requirements and other norms, for examples those specified in directives and regulations issued by institutions the European Union. The standard places a lot of emphasis on identifying environmental aspects and informing all interested parties about significant aspects. The success of an environmental management system depends on the involvement and awareness of departments in a given organisation, especially the management. The development of an environmental policy and the establishment of objectives and processes requires the whole organisation to take actions in order to improve its performance, facilitates environmental protection and prevents pollution in a way which meets the social and political needs.

The standard does not set out any absolute requirements concerning the assessment of outcomes of environmental performance. It only requires an organisation to implement the obligations specified in the environmental policy and operate in accordance with the existing legal requirements and the norms that the organisation has committed itself to observe, which should motivate the company to continue the process of self-improvement and prevent environmental-pollution.

One important element of the standard is the requirement to establish and implement a procedure of identifying emergency situations and malfunctions or failures which can have an impact on the environment, and to establish an emergency response plan in order to prevent and limit the negative environmental impact. According to the provisions of the standard, an organisation commits itself to regularly monitor and measure key characteristics of its operations which can have a significant impact on the environment. The procedure involves keeping a record of such information in order to monitor effects, methods of operational control and compliance with the organisation's environmental objectives and tasks.

The requirements of ISO 14001 are complimented by the National Community Eco-management and Audit Scheme (EMAS).[16] EMAS is one of EU instruments for organisations (enterprises and institutions) which decide to make a voluntary commitment to monitor its own environmental impact and continuously improve its environmental performance. The act lists competent bodies designated to perform tasks specified in the EU law, which register the voluntary participation of an organisation in EMAS; it provides information about where to find a sample application form and the rate of the registration fee for an applicant organisation. One of the requirements of EMAS is the need for a periodical renewal of the

[16] Ustawa z dnia 15 lipca 2011 r. o krajowym systemie ekozarządzania i audytu (EMAS), Dz.U. nr 178, poz. 1060 [The Act of 15 July 2011 on the National Community Eco-management and Audit Scheme (EMAS), Journal of Laws no. 178, item 1060].

registration and the use of external and independent validation by an accredited environmental verifier. Thanks to its principles, EMAS is currently one of the most reliable systems of environmental management. EMAS requirements are generally modelled after the PN-EN ISO 14001:2005 standard, but includes four additional elements:

– evidence of continuous improvement of the organisation's environmental performance,

– evidence of full compliance with EU and national environmental regulations that apply to the organisation,

– informing (by means of environmental declarations) the public and all interested parties (customers and the local community) about the environmental impact of the organisation, its products and services and its environmental performance aimed at minimising the negative environmental impact,

– involvement of the organisation's employees in the process of improving its environmental performance.

Compared to the PN-EN ISO 14001:2005 standard, EMAS places a lot more emphasis on the question of identification and classification of direct and indirect environmental (ecological) aspects associated with the company's operation.

Summary

Polish formal and legal considerations of environmental aspects are closely connected with the EU legislation, which is aimed at reducing the negative impact of economic activity on the environment, relying strongly on the directives and sectoral programmes. The Polish legislation has transposed the environmental requirement of the EU law into the Constitution and relevant acts, which are the basis for individual administrative decisions, such as integrated permits and licences, which have a considerable effect on improving the quality of environmental aspects used to generate energy.

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Polskie uwarunkowania formalnoprawne aspektów środowiskowych w produkcji energii

Streszczenie. *Celem publikacji jest przedstawienie wybranych polskich przepisów prawnych, które mają wpływ na kształtowanie środowiska naturalnego, a szczególnie jego wybranych elementów zwanych aspektami środowiskowymi. W opracowaniu omówiono pojęcie aspektu środowiskowego, a także podstawowe instrumenty prawne szczegółowo regulujące kwestie ochrony środowiska i zmniejszające uciążliwość produkcji energii na otaczające środowisko naturalne.*

Słowa kluczowe: *aspekt środowiskowy, ochrona środowiska, PN- EN ISO 14001:2005*