
PROCESS OF UPGRADING THE POLISH ENVIRONMENTAL ENFORCEMENT PROCEDURES

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SUMMARY

This paper presents environmental enforcement procedures used in Poland. Mechanisms and instruments of a proved practical value that are highly effective are pointed out. Imperfections of the existing system and proposals for solutions based on world's experience, which adopt for Polish conditions tools and mechanisms used in different countries, are described.

1 INTRODUCTION

Some elements of environmental enforcement procedures have been used in Poland for many years. Some structuring of it dates 1980 i.e. when Environmental Protection Act came into force.

However, solutions applied did not appear fully effective. Still a considerable number of facilities, often very large ones, do not fulfill environmental protection requirements. Mostly, it results from the country's bad management during the last tens of years, but drawbacks of existing legal and organizational regulations have their roles, too.

Many modifications of ecological law were introduced during the last few years. Of special importance is the Act of 1991, calling into existence The State Inspectorate for Environmental Protection in its new shape, endowed with wide authorities and competencies.

In 1993, possibilities of adaptation and implementation of world's solutions in Poland were explored in detail and analysed. Appropriate conceptions and proposals were worked out, and now being the subject of widespread discussions. The proposals will be presented in detail in another section of this article. They will be preceded by a discussion of mechanisms of environmental enforcement procedures that can be considered as highly effective. Positive assessment concerns the substance of the given solution and not its detailed regulations which in many cases call for even very large modifications.

2 BASIC EXISTING MECHANISMS OF ENVIRONMENTAL ENFORCEMENT PROCEDURES

2.1 System of fines

Fines for exceeding conditions of environment usage are imposed on the basis of administrative decisions. They concern practically all forms of environment usage (air pollution, sewage discharge, water intake, waste disposal, noise, tree cutting and green vegetation damage). The basis of fining is finding an offense during inspection. The fine lasts until the offense is eliminated. Fine rate is based on legal regulations defining differentiated rates depending upon emission of pollutants or the method of environment usage. Obviously, fine rate depends upon the scale of offense also. In most cases, fines constitute a significant item in a facility budget, leading sometimes to its bankruptcy. In general, such a situation results in positive reactions and enforces automatic corrective actions to liquidate or possibly limit the scope of violation.

2.2 Postponing fines payment

Every facility fined can have fine payment term postponed if it implements an investment directed to eliminate the cause of fining within 5 years maximum. When the investment is finished in time, their own funds spent to cover investment costs are subtracted from the fine due. When a deadline is not met, additional financial sanctions appear. This instrument is considered as a very effective one. According to an analysis made, about 80% of proecological investments implemented in view of postponed fines are finished in time. It is this approach which makes the fining system highly motivating and not only restrictive in character.

2.3 Ecological fees

According to Polish law, any environment usage—with some exceptions—requires payment of fees. Fee rates are differentiated in the similar way as fine rates are, amounts to be paid are very differentiated also. A modern facility using proecological, wasteless technologies is charged many times less than a facility of similar size but old and operated in a bad way. This example, as well as the fact that cost of modernizations and necessary changes is often comparable to fees, shows that ecological fees system has motivating character. It should be emphasized also that all funds coming from fees and fines create special funds spent for environment protection programs, only.

2.4 Suspension of facility activity

Ecological law in force provides for some situations when administrative suspension of operation of a facility exceeding environmental protection requirements is possible. In case of danger to human health or life it even orders to do so. This is the most drastic form of environmental protection requirements enforcement used in practice, but it is not strained. As a rule, activity is suspended temporarily until required standards are attained. In most cases, suspension of activity becomes the ultimate action after all other possibilities are tried.

2.5 Criminal liability

Some violations against environmental protection requirements are subject to criminal liability, being a very important frightening factor. For example, criminal sanctions are imposed for large size environment pollution and for commission of new investments without environmental protection equipment required or nonoperation of such equipment.

2.6 Separation of services issuing ecological permits and services inspecting their observance

This principle has been introduced by the 1991 Act on State Inspectorate of Environmental Protection. More than 2 years of its functioning confirms substantial correctness of such a regulation. In Poland, ecological permit is issued by the Voivode who administers the fragment of state territory. Within his competence are, among others, social and economic development of administered area, e.g., unemployment problems. Concentration of the inspection of environment usage compliance in one hand could lead to illgrounded abandonment or easing of ecological requirements. Establishment of an independent inspection service with proper authorizations makes environmental enforcement procedures fully objective and trustworthy.

2.7 Multimedia inspections

A general rule that all inspections made by the State Inspectorate of Environmental Protection are of multimedia type has been in force for over 2 years. Departure from this rule can appear where, after multimedia inspection of a facility, checking the realization of a specific obligation becomes

necessary, or the inspection takes place as a result of citizens' complaint, or due to extraordinary environmental hazard. There is a rule also that not only the check of facility function according to obligations imposed ("end-of-pipe" inspection) but also a deep analysis of violation reasons (engineer's assessment of technology, method of operation, etc.) is made.

3 IMPERFECTIONS OF THE PRESENT SYSTEM

Imperfections of the current ecological law and organizational solutions in force, directly influencing the effectivity of environmental enforcement procedures, are discussed here.

3.1 Lack of the institution of "compliance periods"

There is no possibility to establish a "compliance period" for a facility not fulfilling required standards, which has to bring them to standards in force. As a result, it happens frequently that imposing rigorous sanctions for standards compliance prevents a facility from implementation of corrective programme and leads to suspension of its activity. Particularly negative consequences of such a situation can be seen during the ownership transformation process. New owner becomes "environment poisoner" the day he signs the contract, in spite of the fact that he obliged himself to adjust the facility in bad ecological condition to the required ecological standards. For serious investors who take care of their "ecological image," it is enough to be a cause of refusal from contract signing.

3.2 Stiff system of ecological fees

Despite the very positive, motivating character of ecological fees substance (see 2.3), the nature of detailed solutions, or lack of them, influences their effectiveness very seriously. First of all, there is no mechanism of postponing fees, which functions successfully with imposing of fines. In practice, facilities requiring very significant modernization (large emission of pollutants) pay the highest fees, in many cases far beyond their payment ability. It blocks their possibilities of making investments. Also, a stiff fees system makes impossible diversification of rates according to facility economic condition and its proecological activity.

3.3 Stiff rates for fines

Fine value is a derivative of law-defined rate and is not related to economic profits that a facility gains as a result of environment noncompliance, or to damages brought about actually. Stiff rates create a situation where for some facilities a fine is ridiculously low; for others, it overruns their payment ability many times.

3.4 Inconsistency of ecological permit legal formula

The basic defects of this formula are different legal effects of ecological permits, issued for particular environment components. The drastic example is consequences coming from the lack of sewage discharge permits and from pollutants emission into air. In the first case, we punish for all sewage load; in the second case, it is impossible to assess the fine at all. In practice, such a situation disturbs seriously the effectiveness of a fining mechanism, very positively assessed in general.

3.5 Unrealistic ambient standards, emission standards implemented to a limited extent only

In practice, instruments do not function satisfactorily. Above all, there is no correlation within particular standards and among them. They are maladjusted to the requirements of European law.

Some standards (especially ambient standards) are unrealistic. Standards-defining legal constructions are also incomplete which appears, among others, in:

- Air protection, where ambient standards dominate; they can only ensure (when attained) that specified substance concentration is not exceeded, but they do not lead to the limitation of pollutants generated during some technological processes.
- Water conservation, where general emission standards are practically not diversified according to sewage sources, so these standards do not lead to sewage quality improvement (by the use of less burdensome technologies).
- Land conservation, where standards defining land (soil) pollution do not exist, it makes rational assessment of permissible soil influencing pollutants emission difficult.

4 PROPOSAL OF NEW SOLUTIONS

The above analysis shows clearly that appropriate changes in both legal and organizational regulations are necessary. However, changes should not harm highly effective and positively tested mechanisms. Solutions proposed should also be adjusted to ecological and economic conditions of environment users in Poland. Even the best solution not fulfilling this condition will not bring required effects.

Deep analysis of the issue leads to the conclusion that, besides obvious secondary corrections and very important but easy to implement issues (e.g., standards adjustment), the basic system operation should be made within the area of ecological permits. The aim is to give facilities a chance for quick improvement of their ecological condition with the guarantee means making impossible any attempt at dishonest use of this chance, that is, to avoid environmental protection requirements. This concept covers two basic issues:

- Unification of ecological permits.
- Making conditions specified in ecological permits flexible, through negotiations.

4.1 Unification of ecological permits

Ecological permits should be issued according to the unified legal formula for all kinds of environment (and its components) usage. The ultimate goal to be reached as soon as possible is to issue integrated permits. Until this time it is absolutely necessary to practice the rule of analysing conditions of all other permits issued to the given facility before a specific permit is issued. Sanctions for lack of permit or for the noncompliance of its requirements should be the same for all types of ecological permits, respectively. The base for permit issue should be environmental impact assessment.

4.2 Negotiation procedures

4.2.1 Implementation

Implementation of the possibility to negotiate ecological permits with the entity interested presumes that, from the point of view of environmental protection as well as of law certitude and effectivity, decisions adjusted to real implementation possibilities are more advantageous than the more restrictive ones, theoretically optimal from an ecological point of view but practically not implementable or implemented only partially. Also, there is a better chance for implementation of decision where the entity interested was able to influence its contents. This does not mean departure from all or some protection obligations, but only their spreading into longer periods.

The fundamental justification of the proposal to implement negotiative procedures is stiff existing solutions and, as a result of them, practical impossibility of procedure individualization depending upon the situation of specific entities.

4.2.2 Negotiative mode

The negotiative mode would not be of general character. Its application would be limited to:

- Earnest issues determined by the law.
- Existing entities facing difficulties in implementation of protective obligations, but submitting the real program of attainment the requirements in force.

The purpose of negotiations would be temporary alleviation of rigors applied to the particular entity on his motion. It is presumed that it can attain the status fulfilling environmental protection requirements without negative social consequences (e.g., its bankruptcy). The alleviation would be connected with appropriate, painful sanctions in case obligations are not fulfilled.

4.2.3 Negotiation requirements

Entitled for negotiations are exclusively entities which have already taken, or are prepared to take actions necessary for environmental protection. The requirement should be set that the motion should contain type and character of the undertaking, its importance for environmental protection aims (to attain ambient and emission standards in force, in particular), stage of advancement, and proposal of negotiation object which is important from entity's point of view.

4.2.4 Contents of ecological permit

Contents of ecological permit (within the scope of the law) could be subject to negotiations. Included are specified obligations, terms of their demanding, terms of attaining level of requirements as stated in general standards, and fees for use of environmental resources belong to the scope of negotiations.

4.2.5 Negotiations on fees

The scope of negotiations on fees for environmental resources usage should be limited by:

- Admission, that the basic element of negotiations should be payment of fees due in installments: in some cases, their postponement; in exceptional cases only, their reduction.
- Ascertainment, that fees can be negotiated only in case when they facilitate the implementation of entity's undertakings serving environmental protection.

4.2.6 Facilitating the execution of guarantee

To facilitate the execution of guarantee means when requirements of ecological permits with negotiated contents are not implemented, obligation for introduction of provisions on guarantees of their implementation should exist. Provisions as above would provide for fines levied for nonimplementation of obligations as given in the permit within specified period or scope (a kind of "stipulated penalties"), as well as for circumstances justifying stopping improper activity. Definition of appropriate provisions during negotiations should facilitate the use of guarantee means given in case of necessity, due to definitely limited possibilities of opposing it by the entity interested. (The means, previously accepted by the entity, would be used in a very specific situation.)