



# THE EFFECTS OF THE IMPLEMENTATION OF THE FIRE LAW

**Agnieszka Misiejuk**

Legal counsel, Vice President of the FORS Management Board  
IV International Conference on Vehicle Recycling in Poland and Abroad  
Krakow, 19 September 2019.



# “Fire laws” (“fire-fighting package”):

- ▶ The Act of 20 July 2018 amending the Act on Waste and certain other acts was published on 21 August 2018 in Journal of Laws Dz. U. under item 1592
- ▶ Act of 20 July 2018 amending the Act on the Environmental Inspection and certain other acts  
It was published on 3 August 2018 in Journal of Laws Dz. U. under item 1479

# NUMBER OF FIRES IN POLAND IN 2016-2018

2016

- ▶ 126 228, including 316 large fires and 74 very large fires

Year 2017

- ▶ 125 892, including 298 large fires and 70 very large fires

Year 2018

- ▶ 149 434, including 500 large fires and 99 very large fires

Fire department HQ data

# NUMBER OF STORAGES AND WASTE COLLECTION POINTS (legal and illegal) FIRES

- ▶ Year 2016: 117 fires
- ▶ Year 2017: 132 fires
- ▶ Year 2018: 243 fires
- ▶ Until August 15, 2019: 130 fires

**What proportion of these fires are legal waste disposal or storage sites?**

# The most important changes to the Waste Act:

- shorter storage times for waste
- securing claims
- monitoring of waste storage or disposal sites
- new obligations concerning fire protection.
- new grounds for refusal to grant an operating permit
- new penalties
- changes in the decisions already granted.

# Waste storage

- Shortening of the maximum storage period for waste to 1 year - exception: unpolluted soil or soil, waste excavated during construction works and constituting waste intended for use for construction purposes in connection with the construction of line facilities.

**This period is counted in total for all waste holders!**

- The Act of 19 July 2019 amending the Act on maintaining cleanliness and order in communes and certain other acts (entered into force on 6 September 2019) once again changed the maximum periods of waste storage
- 1 year - in case of storage of hazardous waste, combustible waste, unsorted waste (mixed municipal waste) and waste originating from municipal waste processing
- 3 years - other waste

# Effects:

- ▶ The need to dispose of waste in advance due to the shortening of waste storage periods
- ▶ Less opportunities for planning rational waste management and responding to the market situation (supply and demand, prices).
- ▶ Shortening the period of waste storage does not eliminate the pathologies associated with the abandonment of waste or its arson.

# collateral for claims:

- A waste holder is obliged to obtain a waste collection permit or a waste processing permit, with the exception of a landfill manager, is obliged to establish a claim security in the amount allowing to cover the costs of substitute performance:
  - (1) a decision requiring the waste holder to remove waste from a location not intended for storage or disposal,
  2. the obligation under Article 47(5) (after revocation of the decision)
    - including removal of waste and its management together with waste constituting residues from extinguishing action or removal of negative effects in the environment or damage to the environment within the meaning of the Act of 13 April 2007 on the prevention and repair of environmental damage within the framework of the conducted activity consisting of the collection or processing of waste - Article 48a of the Waste Act.





# Security of claims:

- ▶ The obligation to provide security does not apply to inert waste.
- ▶ The amount of the security for claims shall be calculated by multiplying the highest mass of waste that could be stored in an installation, a building or a part thereof, or the waste storage location, taking into account the dimensions of the building or a part thereof or any other waste storage location, by the rate of security for claims.
- ▶ Claims may be secured by a deposit, bank guarantee, insurance guarantee or insurance policy.



# collateral for claims:

- ▶ On 12 February 2019, the Regulation of the Minister of the Environment of 7 February 2019 on the level of security rates for claims entered into force .
- ▶ The rates are set at the level of PLN 1500, e.g. in case of hazardous waste, PLN 300 in case of end-of-life vehicles and dismantled waste, PLN 1 in case of scrap).

# Effects:

- ▶ Due to the late adoption of the implementing regulations (six months after the entry into force of the provisions on the obligation to establish collateral), many entrepreneurs had problems with obtaining or changing the current decision because the authorities issuing decisions for many months did not know how to calculate the amount of collateral.
- ▶ In many cases, entrepreneurs had to change their waste storage methods in order to rationalize the level of collateral.
- ▶ Increase in running costs and, in many cases, withdrawal from running a business in general, due to the lack of possibility to establish an adequate collateral for claims. Some of the entrepreneurs will probably switch to illegal operation.
- ▶ Reduction of the possibility to compete with illegal operators - as the illegal operation is not subject to the obligation to secure claims

# Monitoring of waste storage or disposal sites:

- ▶ The obligation applies to all holders of waste required to obtain a waste collection permit or a waste treatment permit, a waste production permit taking into account waste collection or processing or an integrated permit taking into account waste collection or processing.



# Monitoring of waste storage or disposal sites:

- ▶ Monitoring is carried out with the use of technical devices ensuring 24-hour recording of images and identification of persons staying in this place
- ▶ Video recording of the control system is retained for one month from the date of recording
- ▶ Obligation to share a recorded image or recording with authorized authorities



# Monitoring of waste storage or disposal sites:

- ▶ On 16 September 2019, the regulation on a video surveillance system of waste storage or disposal sites was published - the delegation to issue the regulation entered into force on 22 February 2019.
- ▶ On 6 September 2019 - further changes to the video surveillance system came into force:
  - the obligation to ensure that the provincial environmental inspectorate has real-time access to the image via an IT system and to provide information enabling logging into a video surveillance system of waste storage or disposal sites in such a way as to ensure that this information is kept confidential

# Effects:

- ▶ Interpretative chaos caused by the lack of implementing rules.
- ▶ Significant increase in costs related to the conducted activity - the need to adjust the infrastructure enabling the installation of cameras, purchase of equipment, providing access to the Internet (in many places there is no access to the Internet at all).
- ▶ Increase in supervision over the way waste is stored by entrepreneurs, who are subject to the Act (this obligation does not apply to illegal operators).
- ▶ Facilities for services inspecting entrepreneurs - monitoring will not eliminate or even limit illegal operators.

# New obligations concerning fire protection:

- An application for a waste collection permit and an application for a waste treatment permit shall be accompanied by:
  - 1) a **fire-fighting assessment**, containing the fire-fighting conditions of the installation, facility or its part or other waste storage place, agreed with the district (municipal) commander of the State Fire Service, executed by:
  - 2) **decision on the assessment acceptance**).
- Mandatory checks by the fire department in case of new decisions and significant changes to existing decisions.





# Fire-fighting operations:

- Fire-fighting assessment shall be agreed upon by way of a decision of the district (municipal) head of the Fire department, against which a complaint may be lodged.
- When agreeing on the fire protection conditions of an installation, building or part thereof or any other waste storage location, the district (municipal) commander of the State Fire Department:
  - 1) consents to their use or
  - 2) consents to their use provided that additional requirements are met, or
  - 3) does not consent to their use.



# Fire-fighting assessments:

- The minister in charge of internal affairs, in consultation with the minister in charge of the environment, shall define, by way of a regulation, the fire protection requirements to be met by facilities or their parts and other places intended for waste collection, storage or processing, considering the possibility of implementing fire safety requirements and the risk related to fire hazard.



The regulation entered into force on August 22, 2019.

# Effects:

- ▶ Interpretative chaos (inter alia due to the lack of implementing regulations), resulting in the fact that many entrepreneurs have problems with obtaining and approving the assessment, e.g. refusal to agree on the assessment, because there are no implementing regulations.
- ▶ The need to adapt the places of business to the regulations in force, which improved the level of fire safety.
- ▶ After the entry into force of the executive regulations - further changes will be necessary in companies related to the need to adapt to the new regulations, and thus, it will be necessary to change the assessment and administrative decision to conduct business.
- ▶ Costs related to the obligation to adapt to fire protection requirements, but also to prepare a fire assessment (several, several dozen thousand PLN per a plant).

# New grounds for refusal to issue a decision to conduct business:

- ▶ Refusal to issue a permit for the collection or processing of waste where, in relation to
  - (1) a trader or
  - 2) in the case of e.g. companies - a shareholder, proxy, member of the supervisory board or a member of the management board of such an entrepreneur conducting business activity as a natural person - a decision was issued to withdraw the decision to conduct business activity, and not 10 years have passed since the date when the decision to withdraw the permit became final.
- ▶ This provision also applies if the partner, proxy, member of the supervisory board or member of the management board of this entrepreneur is or was, at the time when the infringement was committed, due to which the waste collection or waste processing permit was withdrawn, the partner, proxy, member of the supervisory board or member of the management board of another entrepreneur, in relation to whom the decision to withdraw the permit was issued, and not 10 years from the date on which the decision to withdraw the permit became final.

# New grounds for refusal to issue a decision to conduct business:

- ▶ The authorities shall refuse to issue a decision authorizing the collection or processing of waste to a trader who is a legal person or an organizational unit without legal personality, if at least three times:
  - a) a partner, proxy, member of the supervisory board or a member of the management board of this entrepreneur, who is a natural person, has been convicted by a final and binding court judgment for offenses referred to in Article 175, Article 183, Article 189(2)(6) or Article 191,
  - b) an administrative pecuniary penalty referred to in Article 194 has been imposed within the last 10 years in an amount exceeding the total amount of PLN 150 000: - a partner, proxy, member of the management board or member of the supervisory board of this entrepreneur conducting business activity as a natural person, - another entrepreneur whose partner, proxy, member of the supervisory board or member of the management board is or was a partner, proxy, member of the management board or member of the supervisory board of the waste holder submitting the application, at a time when an infringement was committed for which an administrative pecuniary penalty was imposed;
- ▶ This also applies to a trader who is a natural person.

# Effects:

- ▶ Elimination of dishonest entrepreneurs from the market.
- ▶ Introduction of the principle of collective liability in the event that, for example, in a company at least one partner commits an offense listed in the Act, is punished three times within 10 years with an administrative penalty in the amount exceeding PLN 150,000 or at least one partner is revoked within the last 10 years with an administrative decision.
- ▶ Retroactive law application - assuming responsibility for actions prior to the entry into force of new regulations - i.e. prior to 5 September 2018.

# New penalties:

- not maintaining the collateral for claims or not submitting an application for a change in the form or amount of collateral for claims
- collection or treatment of waste without a required permit
- waste management not in accordance with the permit held
- non-delivery of waste by the waste carrier contrary to Article 24(4) to
  - (1) the holder of the waste,
  2. the destination of the waste- indicated by the ordering party for the waste transport service.



# Effects:

- ▶ Establishing new basis for the enforcement of existing legislation.
- ▶ Reduction of pathologies in waste management - ?



# Changes to granted decisions:

- ▶ By 5 September 2019, all entrepreneurs conducting business activity on the date of entry into force of the amending Act should have submitted applications for changing their decisions.
- ▶ The Act of 19 July 2019 amending the Act on maintaining cleanliness and order in municipalities and certain other acts postponed the deadline until 5 March 2020.

# Effects:

- ▶ The lack of stability and legal certainty commonly felt by entrepreneurs - it is another change of the decision within the last few years (after the Waste Act entered into force, after changes related to the obligation to collect parts from dismantling by the operators of dismantling stations).
- ▶ Discouraging entrepreneurs from investing and developing their business - problems with obtaining decisions and lack of certainty that this activity will be possible in the years to come.
- ▶ The need to prepare a proposal to amend the decision and a number of annexes, including a fire safety assessment and a decision to agree on and secure claims, which involves time and considerable financial resources.
- ▶ A state of uncertainty concerning the possibility of conducting further business activity, which lasted for almost a year, because in July, when the law extending the deadline for submitting applications was adopted, most companies were at the stage of preparing an assessment or agreeing on it. The consequence of not submitting the application on time is the expiry of the decision.

# Effects:

- ▶ Chaos caused by ambiguous provisions of the Act (e.g. how to determine the maximum or total weight of waste that can be stored in a given storage location).
- ▶ A common belief among entrepreneurs that changes do not eliminate or even limit pathologies in waste management, and that new obligations are imposed mainly on honest entrepreneurs.
- ▶ Concerns about the future of the industry - as further changes are announced, e.g. related to waste storage.

|   | Małopolskie voivodship | Wielkopolskie voivodship | Lower Silesian voivodship | Lubuskie voivodship         | Podkarpackie voivodship | Pomeranian voivodship | Podlaskie voivodship |
|---|------------------------|--------------------------|---------------------------|-----------------------------|-------------------------|-----------------------|----------------------|
| Number of entrepreneurs, who in the period from 5.09.2018r. by 3 September 2019, they submitted applications for changes in their administrative decisions regarding waste management                           | 92                     | 95                       | 82                        | 14                          | 42                      | 77                    | 18                   |
| Number of decisions issued in the period from 5.09.2018r. until 3 September 2019 in accordance with the new provisions introduced by the Act of 20 July 2018 on the amendment of the Waste Act and certain acts | 18                     | 29                       | 20                        | 3                           | 6                       | 9                     | 7                    |
| Number of entrepreneurs running dismantling stations, who in the period from 5.09.2018r. by 3 September 2019, they submitted applications for changes in their decisions  | 19<br>(per 73 in BDO)  | 27<br>(per 111 in BDO)   | 22<br>(per 51 in BDO)     | 16<br>(per 68 in BDO)       | 19<br>(per 53 in BDO)   | 1<br>(per 40 in BDO)  | 3<br>(per 33 in BDO) |
| Number of decisions issued in the period from 5 September 2018 to 3 September 2019 for entrepreneurs running dismantling stations adjusting their decisions to the new regulations                              | 1                      | 0                        | 0                         | 0<br>(Pending applications) | 1<br>(18 pending)       | 0                     | ?                    |
| Number of entrepreneurs, who in the period from 5.09.2018 until September 3, 2019 obtained a new decision to operate dismantling stations (entrepreneurs who did not conduct this activity before)              | 2                      | 1                        | 0                         | 2                           | 1                       | 0                     | ?                    |

THANK YOU FOR YOUR ATTENTION