

WATER ASSESSMENT PERMITS – A NEW REQUIREMENT FOR THE IMPLEMENTATION OF INVESTMENT PROJECTS

The rules governing the implementation of investment projects have changed following the coming into force of the provisions of the new Water Law (the "Act"). As of 1 January 2018, investors implementing such projects must take into account that they will need to fulfil an additional requirement at the stage of the implementation of investment projects – namely obtain a water assessment permit.

Investment projects subject to a new obligation

The general list of investment projects which require obtaining such a permit is very broad. Under the Act, a water assessment permit is required in the case of investment projects and activities related, among other things, to:

- the use of water services, e.g. the use of water for the production of energy, discharge of sewage into waters or into the ground (as well as into water facilities), discharge of rainwater or meltwater into water facilities;
- the construction of water facilities, e.g. outlet pipes which discharge sewage into waters, into the ground or sewers, or the construction of drainage ditches;
- the performance of works that have an impact on the reduction of an area's natural retention.

A detailed list of investment projects and activities which will require obtaining a prior water assessment permit will be specified on the basis of an ordinance. Although the Act has been in force already for several months, not even a draft of the said ordinance has yet been presented.

Impact of a water assessment permit on the issuance of an environmental permit

A water assessment permit is issued by way of a decision, on the application of an entity planning to implement an investment project or carry out activities which require such an assessment. The decision will be issued by the relevant body of Polish Waters.¹ However, in the case of investment projects for which

Key issues

- Investment projects subject to a new obligation
- Impact of a water assessment on the issuance of an environmental permit
- Problematic transitional provisions

¹ Legislative work is in progress on the change of the competences of the specific bodies of the State Water Holding – Polish Waters (*Państwowe Gospodarstwo Wodne – Wody Polskie*), referred to as "Polish Waters." This state-owned entity is responsible for the management of waters in Poland.

an environmental permit is required,² the investor will not need to obtain a separate water assessment permit, because in the course of the proceedings relating to the issuance of an environmental permit the authority conducting the proceedings will be obliged to carry out an assessment of the fulfilment of the environmental objectives in terms of water management (the provisions that regulate the issuance of a water assessment permit apply accordingly).

It is worth reminding that an environmental permit is obtained prior to the issuance of, among other things, a planning permit, a building permit, a water permit for the construction of water facilities, and a so-called ZRID decision.³ The catalogue of investment projects which require obtaining an environmental permit is very broad⁴ and to a large extent overlaps with the list of investment projects that require a water assessment permit.

If an investment project is to be implemented on the basis of an environmental permit, it will not be necessary to obtain a separate decision (water assessment permit) at the implementation stage, however, the investor should take into account that the project documentation will be subject to additional review carried out by the water protection authorities. For under the Act as of 1 January 2018 the competent authority responsible for determining whether the investment project requires carrying out of the environmental assessment (preparation of an environmental report) it is obliged to obtain an additional opinion of the water protection authorities. It is also necessary for the competent authority to obtain an additional opinion prior to the issuance of a ruling concerning the scope of the environmental report and prior to issuance of the environmental permit (in the case where an assessment of the investment project's impact on the environment is carried out).

The purpose of the issuance of water assessment permits is to further the achievement of the environmental objectives set out in the Act, i.e., among other things, the protection of waters, improvement of their ecological and chemical status, prevention and reduction of the discharge of pollutants into waters. The said objectives are set out in detail in water management plans prepared for specific river basins and their identification is of key importance in the water assessment permit procedure.

At present such objectives are determined on the basis of water management plans which have been prepared based on ordinances issued under the repealed Water Law Act and will remain in force until 22 December 2021 (unless they are amended earlier).

If the authority determines that the given investment project has a positive impact or no impact on the possibility of achieving the environmental objectives with respect to the protection of waters, the investor will obtain a water assessment permit (or an environmental decision, as appropriate). If, however, it is determined that it will not be possible to achieve these objectives, unless the investment project meets exceptional conditions (e.g. its implementation is justified by an overriding public interest), the investor will be refused a water assessment permit.

² This also applies to a decision prior to the issuance of which a second environmental impact assessment is carried out.

³ A ZRID decision is a permit for the implementation of a road investment project.

⁴ Such investment projects include, for example: warehouse development on an area not smaller than 1 ha, the construction of shopping centres with a usable floor area of not less than 2 ha.

Problematic transitional provisions

Numerous concerns have arisen as to how the new provisions of the Water Law should be applied with respect to investment projects in relation to which proceedings for the issuance of environmental permits were pending on 1 January 2018. The new provisions of the Water Law had to be applied with respect to all proceedings concerning the issuance of environmental decisions. This considerably complicated proceedings which have not been completed prior to 1 January 2018. The authorities were forced to return the investment project documentation to the authorities that issued opinions with respect to it and repeat certain administrative procedures. In order to resolve this problem a draft act amending the Water Law has been prepared, which excludes the application of the new provisions to proceedings which have not been completed prior to 1 January 2018. The said amendment has just been signed by the President of Poland on 5th April 2018 and will come into force 14 days after its promulgation.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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