

ENVIRONMENT

The presentation hereby has in view the legal provisions in force on the 31st of March 2004

Applicable legislation in this field

- Order no. 1621/1995 of the Minister of waters, forests and environmental protection for the authorization of the economic entities that have activities related to waste, published in the Official Gazette no. 295/21st of December 1995
- Law no. 137/1995 on environmental protection, republished in the Official Gazette no. 70/17th of February 2000 as further amended and completed by:
 - Government Emergency Ordinance no. 91/2002 for the amendment and completion of the Environment protection Law no. 137/1995, published in the Official Gazette no. 465/28th of June 2002
 - Law no. 294/2003 on the approval of the Government Emergency Ordinance no. 91/2002 for the amendment and completion of the Environment protection Law no. 137/1995, published in the Official Gazette no. 505/14th of July 2003
- Law no. 125/1996 of the Minister of waters, forests and environmental protection approving the Procedures for the regulation of the economic and social activities having an impact on environment, published in the Official Gazette no. 73/11th of April 1996
- Law no. 107/1996 on waters protection, published in the Official Gazette no. 244/8th of October 1996
- Order no. 184/1997 of the Minister of waters, forests and environmental protection approving the procedures for the performing of the environment balance, as amended, published in the Official Gazette no. 303 bis/6th of November 1997

- Government Emergency Ordinance no. 78/2000 on the toxic waste regime, published in the Official Gazette no. no. 283/22nd of June 2000 approved by the Law no. 426/2001
- Government Emergency Ordinance no. 243/2000 on the protection of the atmosphere, published in the Official Gazette no. 633/6th of December 2000 approved by the Law no. 655/2001
- Government Emergency Ordinance no. 16/2001 on the administration of the industrial recyclable waste, republished in the Official Gazette no. 104/7th of February 2002
- Government Decision no. 918/2002 on the establishing of the procedure for the evaluation of the impact on environment and for the approval of the list of public or private projects subject to this procedure, published in the Official Gazette no. 686/17th of September 2002

I. Scope of the legal regulations on environment

According to the Law no. 137/1995 republished, further amended and completed, the environment protection is an obligation of all natural and legal persons.

For the purpose of fulfillment of the environment protection obligation, natural and legal persons:

- apply for and obtain the environmental approval, permit and/or authorization, according to law;
- comply with the conditions of the environmental permit and/or environmental authorization;
- fulfill the environmental obligations at the established terms through the privatization approval;
- provide assistance to persons empowered with inspection activities by ensuring their access to measurements and other relevant documents and by facilitating them the control of activities and the collecting of samples;
- to ensure the access of empowered persons to the technological installations with impact on the environment, to equipments and installations for the removal of pollution from the environment, as well as in the spaces or in the areas potentially generators of impact on the environment;

- fulfill the measures previously imposed by the persons empowered to perform inspections;
- comply with the order of temporary or permanent cessation of activity;
- bear the costs pertaining to prejudice and eliminate their consequences, reestablishing the conditions prior to the occurrence of the accident;
- provide surveillance systems for the technological installations and processes, analysis, control and results evidence systems for the polluting substances over the relevant areas of activities in order to prevent and avoid technological risks and accidental leaks of polluting substances in the environment and draw monthly reports of the environment surveillance to the relevant authorities for environment protection;
- inform the relevant authorities and public in case of any accidental leaks of polluting substances in the environment or in case of severe accidents;
- adopt adequate solutions for environment while proposing new projects or activities, as well as while modifying the already existing ones;
- do not alter the natural or anthropic environment through uncontrolled deposit of waste.

The titular of the named activities in the areas with a high risk of pollution are obliged to conclude insurance policies for damages.

II. Public authorities in charge in the field of environment protection

The public authorities in charge in this field are: the Ministry of Agriculture, Forests and Rural Development, Administration of the Environment Fund, National Environment Guard, Ministry of Health, Ministry of Trade and Economy, Ministry of Transportations, Constructions and Tourism, Ministry of National Defense, local and county councils.

III. Authorization of economic and social activities having an impact on the environment

Natural and legal persons that perform or intend to perform one of the activities having impact on the environment are bound to apply for the issuance of the environmental permit and/or authorization.

Specification

The economic and social activities having an impact on the environment are the following:

- activities regarding the producing, introduction on the market, use, temporary or final depositing, internal transportation, elimination, manipulation, as well as the introduction and the removing from the country of the dangerous substances and chemical preparations;
- waste management;
- activities connected with the production, commercialization and/or use of the fertilizers and products of phyto-sanitary use;
- activities in the nuclear field;
- activities of harvesting, capturing and/or purchasing and commercialization on the internal market of the plants and animals from the wild terrestrial and aquatic flora and fauna or of some parts or products of these ones, in a live, fresh or semi-prepared state;
- activities of management and protection of water supplies and of the aquatic ecosystems;
- activities that may have an impact on the atmosphere;
- activities that may have an impact on the soil and subsoil and of the terrestrial ecosystems;
- activities that may have an impact on the human settlements.

Public authorities for the environment protection apply differentiated procedures, according to the situation, of issuing of the environmental approval, permit or authorization, depending on the impact on the environment of the projects and activities subject to the authorization procedure.

1. Environmental approval

The applying for and obtaining of the environmental approval are compulsory in the event in which the owners of activities are to perform or to be subject to a procedure of: selling of the main stock, selling of assets, merger, division, granting, dissolving followed by liquidation according to law.

The environment approval is **valid for a period of 2 years from the date of the issuance**, if no modifications of the conditions in which it has been issued or used of the purpose of its issuance intervene.

2. Environmental permit

Law provides for the compulsoriness of the applying for and obtaining of the environmental permit for public or private projects for new investments or for the modification of the already existing ones, including for projects of closing down, afferent to the activities having an impact on environment.

For the obtaining of the environmental permit the public or private projects that may have a significantly impact on environment, through their nature, size or localization, are subject, according to the decision of the relevant authority for the environment protection, to the **evaluation of the impact on environment**. Public or private projects subject to the evaluation of the impact on the environment are stipulated in the Annex 1 of the Government Decision no. 918/2002.

The environmental permit is valid for the entire period of enforcing the project, but loses its validity if the investment works for which it has been issued do not start within a maximum of 2 years from the date of the issuance. The relevant authorities for the environment protection control the compliance with the conditions imposed in the environment permit.

3. Environmental authorization

The requesting and the obtaining of the environmental authorization are compulsory for both the performing of the existing activities and for the beginning of new ones, only for those activities established through the order of the manager of the central public authority for the environment protection.

Procedure for the obtaining of the environmental authorization

For the purpose of obtaining the environmental authorization *the existing activities, which are not corresponding to the environment norms and regulations in force* are subject, according to the decision of the relevant authority for the environment protection, to an **environment balance**. The environment balance is requested, according to the decision of the relevant authority for the environment protection, including for the case of unfolding of the procedures for the selling of the main stock, of the selling of assets, merger, division, granting, dissolving followed by liquidation.

Performing of the environment balance by the titular of the activity is compulsory for the purpose of establishing the obligations and costs

regarding the restoring of the environment quality in the areas of impact of the activities unfolded on the location.

On the basis of the environment balance and of the proposal of program for conformation, presented by the titular of the activity, the relevant authority for the environment protection issues an environmental authorization.

The validity of the environmental authorizations is of 5 years at the most.

Specification

For the existing activities that do not comply with the conditions of authorization, the relevant authority for the environment protection orders the performing of the environment balance within maximum one year from the date of the establishing of the failure to comply with these conditions and negotiate with the titular of the activity the program for compliance, on the basis of the conclusions and recommendations from the environment balance.

Revision of the environmental approval/permit/authorization

The appearance of new elements having impact on the environment, not known at the date of the issuance of the environmental approval/permit/authorization, attracts their revision.

In this event, the restoring of the evaluation of the impact on the environment or of the environment balance may be requested.

Suspension, cancellation of the environmental permit and authorization

The environmental permit and authorization are suspended for the failure to comply with their provisions or of the programs for compliance, after a prior summon, with term. The suspension is maintained until its causes are remedied, but **no longer than 6 months**.

In the event in which, after the expiring of the suspension term, the relevant authority for the environment protection establishes that the conditions established in the summons have not been complied with, shall order the cancellation of the environmental permit and authorization, as the case may be and the stopping of the execution of the project or ceasing of the activity.

The suspension orders, as well as those of ceasing of the project or of the activity are enforceable.

The litigations generated by the issuance, revision, suspension of the environment approval, permit or authorization are settled according to the

Law of administrative contentious no. 29/1990, as further amended and completed.

The making public of the projects and activities subject to the authorization procedure

Law provides for the obligation of making public the projects and activities for which environmental approval, permit, respectively authorization are requested.

This obligation is borne by the titular and the making public shall be performed on the basis of the evaluation of the impact on the environment, under the guidance of the environment protection authorities. The consulting of the public is compulsory in the event of issuance of the environment permits and authorizations.

Specification

The projects and activities in the field of defense, public order and national safety, as well as the commercial or industrial activities, whose making public is performed according to the specific regulations referring to the compliance with the confidentiality character.

IV. Issuance of the environment authorization for the purpose of functioning of the traders

The issuance of the environmental authorization for the purpose of functioning of the traders is regulated by the Procedure for authorization from 2002 of the activities having an impact on environment approved by the Government Decision no. 573/2002.

The relevant authority in the territorial jurisdiction and capacity of which the traders' registered office and/of secondary offices are, respectively the public authority for the environment protection, issues the environment authorization.

The authorization procedure is established according to the impact of the activity on the environment.

According to the impact on the environment, the activities are classified as follows:

- a) **activities having a non-significant impact;** for such kind of activities no environment authorizations are issued. For these

activities the applicants shall only present declarations on their own responsibility; in this case, no fees or tariffs are levied.

- b) **activities having a low impact on the environment;** these activities are not subject to a specific procedure of authorization or for which the performance of an environment balance is not necessary with the view of issuing the environment authorization. With a view to a correct classification of these activities, the applicants shall file a record containing the presentation of the activity;
- c) **activities having a significant impact on the environment;** these activities are subject to an integrated authorization procedure or for the authorization of which the performance of an environment balance is necessary. With a view to authorizing, there are also included in this category, but there are excepted from the performance of the environment balance, the new activities for which the issuance of the environment permit had on its basis a study for the evaluation of the impact on the environment. With a view to a correct classification of these activities, the applicants shall file a record containing the presentation of the activity.

Initial evaluation of the request for regulation

On the basis of the declaration on one's own responsibility or, as the case may be, of the record for the presentation of the activity lodged and forwarded by the trader, the relevant authority for the environment protection establishes, according to the impact on the environment of the activity subject to the authorization, one of the following **alternatives for the continuation of the procedure:**

- a) no environment authorization is issued for the activities having a non-significant impact on the environment;
- b) the simplified procedure for the environment authorization is applied for the activities having a low impact on the environment;
- c) environment authorization is issued through the execution of the complete environment authorization procedure for the projects or activities having a significant impact on the environment.

Issuing of the environment authorization

With a view to obtaining the authorization, the applicant shall file with the Unique Bureau the registration application, in which both identification data of the registered offices and of the secondary offices shall

be written and the activities that are to be effectively performed in these offices, codified according to the CAEN classified list.

Period of validity of the environment authorization

The period of validity of the environment authorization is of 5 years if within this period no changes to affect the conditions established through the authorization intervene. The relevant public authorities for the environment protection verify and approve annually the situation of the compliance.

The relevant public authority for the environment protection shall cancel the authorization in the event in which the trader is no longer in compliance with the functioning conditions for which he has been authorized.

The trader has the obligation or reconvening, through the Unique Bureau, of the procedures for the obtaining of the authorizations that have been cancelled, after the removing of the situations that imposed the measure of canceling, with the payment of the afferent fees and tariffs.

V. Liability for activities affecting the environment

The violation of the legal provisions regarding environment protection brings about civil, criminal or contravention liability.

The liability for the prejudice caused through pollution (**civil liability**) has a reparatory function and sometimes an objective character, being independent from the existence or non-existence of the fault of the titular of the polluting activity.

The prejudice is appreciated through the point of view of the quantifiable negative effect on the human health, goods and environment produced by the polluting substances, harmful activities and disasters. Repairs in kind being impossible in general, the rule in this field is represented by the repairs through money equivalent.

Contravention liability is independent from the scope of the prejudice and guilt. But the scope of the prejudice has importance under the aspect of the quantum of the fine. In Romania, unlike other states having a legislation that does not stipulate maximum fine ceilings, the law provides for such a ceiling, which has to be re-updated. The quantum of the fine fluctuates in the present moment between lei 5,000,000 and lei 45,000,000 for natural persons and between lei 25,000,000 and lei 225,000,000 for legal persons.

Regarding the **criminal liability**, the establishing and the investigation of the offences are made ex officio, by the criminal investigation bodies, according to their legal capacities.