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Legal Bulletin



Environmental Law

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Management of potentially contaminated and contaminated sites

Law No. 74/2019 on the management of potentially contaminated and contaminated sites was published in the Official Gazette of Romania, Part I, No. 342 of 3 May 2019 (“Law No. 74/2019”).

By the entry into force of Law No. 74/2019, Government Decision No. 1403/2007 regarding the remediation of those areas where the soil, subsoil and terrestrial ecosystem were affected and Government Decision No. 1408/2007 regarding the investigation and assessment modalities of the soil and subsoil pollution are repealed. Nevertheless, the provisions of the two repealed legislative acts continue to apply to the legal situations arising under their governance, insofar as it has been proceeded with the enforcement of the measures comprised in the remediation project of a contaminated site.

The purpose of the new regulation is to safeguard human health and environment from the effects of soil contamination by regulating the measures designed to improve the quality of the environmental factors affected by the confirmed presence of pollutants at levels which represent a significant hazard to human health and environment, in consideration of the current and future purpose of the land.

1. Scope of application

The provisions of Law No. 74/2019 are applied to the following categories of land:

- Land contaminated further to anthropogenic activities, as set out in Appendix No. 1 to the law;
- Land affected by the occurrence of accidents causing their contamination, less the accidents involving radioactive substances;

- Land managed by the institutions of the defence, public order and security system, provided there is no threat to the national security and/or the observance of confidentiality;
- Land occupied by landfills, after closing and post-closing monitoring of such landfills according to the legal provisions on storage of waste.

2. Management of potentially contaminated and contaminated sites

The law provides a gradual mechanism for the management of such sites, for purposes of preventing and mitigating the adverse effects of pollutants on human health. Such mechanism includes the following stages:

A. Identifying the potentially contaminated and contaminated sites

Identification of potentially contaminated or contaminated sites consists in localization of an area potentially affected or affected by pollutants. Identification can be made either on the ground, by expedite measurements, or by satellite or aerial images.

The local public authorities and the competent environmental protection bodies will locate such sites. The local public authorities identify potentially contaminated sites and communicate such list to the county environmental protection agency within 9 months from the entry into force of Law No. 74/2019. The county environmental protection agency communicates questionnaires to the site holders and the economic operators who carry out activities on such land.¹

B. Making an inventory of the potentially contaminated and contaminated sites

After reviewing the information from the above questionnaires, the county environmental protection agency decides whether to include the land on the county list of potentially contaminated sites. Such list is made and managed by the county environmental protection agency.

The county environmental protection agencies communicate the county lists of the potentially contaminated sites to the National Environmental Protection Agency, for centralization purposes, and the latter completes the national inventory of potentially contaminated, contaminated and remedied sites.

A complete list of potentially contaminated sites shall be published.

C. Preliminary and/or detailed investigation

a) Preliminary investigation

According to article 14, the holder of a potentially contaminated site, or, if applicable, the operator of the activity carried out on such site, has the obligation to make the preliminary investigation.

¹ The content of the questionnaires is set out in Appendices Nos. 3 and 4 of Law No. 74/2019.

The preliminary investigation is mandatory:

- a) Upon the cessation of the activity with impact on the environment;
- b) Upon the change of the activity or use of the potentially contaminated site;
- c) In case of change of the legal treatment of the land on which an activity with impact on the environment has been or is carried out;
- d) Upon occurrence of accidents leading to environment contamination, after removal of the source and discharged pollutants;
- e) Upon declaration of bankruptcy or judicial liquidation of an economic operator;
- f) At the grounded request of the competent environmental protection authority;
- g) And in other cases, as provided by law.

The preliminary investigation involves the collection and review of information on the history of the activities performed on the potentially contaminated site and in its immediate proximity. It shall seek to identify:

- Any potential contamination sources;
- Any potential migration paths whereby the contamination sources could reach the potential receivers;
- Any potential recipients that could be affected.

b) Detailed investigation and environmental risk assessment

The objective of this stage is to confirm the existence and intensity of contamination, and to analyse and estimate the likelihood of the adverse effects on the environment by reference to the identified pollutants.

The detailed investigation and risk assessment are mandatory:

- If the results of the preliminary investigation report indicate the necessity of undergoing the stage of detailed investigation and risk assessment of the site;
- If the site is or will be used for a sensitive purpose;
- If the site was previously occupied by a landfill, which was closed and monitored post-closing according to the legal provisions in force on storage of waste;
- At the request of the competent environmental protection authority;
- Upon occurrence of accidents leading to environment contamination, after removal of the source and discharged pollutants.

Noteworthy, the law provides that, for all potentially contaminated sites, the environmental protection body decides to proceed with the detailed investigation and risk assessment if such sites are (currently) or will be designated for a sensitive purpose (sensitive purpose means the

use of land for residential areas and amenities, for agricultural purposes, as protected areas or restricted sanitary areas).

Further to reviewing the detailed investigation and risk assessment, the authority registers the site in one of the following categories:

- **site suitable for any purpose;**
- **site suitable for less sensitive purposes** (less sensitive purposes include industrial and commercial uses);
- **contaminated site.**

Classification on basis of said categories is registered in the land book at the request of the Environmental Protection Agency.

Also, for contaminated sites, the existence of contamination will be indicated by displaying warning panels with the message “CONTAMINATED SITE WITH HAZARD TO HUMAN HEALTH AND ENVIRONMENT” and, potentially, by installing barriers, an obligation to be performed by the holder of the land or the economic operator performing activities on the site.

D. Remediation of the site declared to be contaminated

For contaminated sites, the environmental authority may decide remediation or, if applicable, change of the purpose of the land in question. If remediation is decided, the holder or the operator of the activity which is performed on the site has the obligation to perform the feasibility survey and the remediation project.

The law provides that the polluter is bound to bear the costs for the remediation of contaminated sites that are subject to a feasibility survey and a remediation project, which have been drafted after completion of the detailed investigation and risk assessment. However, the liability sharing between the polluter and the holder of the land is unclear, if they are not one and the same person.

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Environmental Law and Permitting are two of the niche practice areas of Romanian and EU law in which Țuca Zbârcea & Asociații's attorneys have gained unique expertise by handling some of the most complex projects undertaken so far in Romania in the mining sector, energy and oil & gas, as well as in the steel industry. Our services cover all procedural steps to be undertaken before the competent authorities (city halls, local environmental authorities, Ministry of Environment, Water and Forests, etc.) in relation to complex procedures such as IPPC, BAT, environmental impact assessment procedures, issuance of city planning certificates, public debates and environmental organisations, cross border environmental procedures, etc. Also, our services include advice on the environmental aspects of projects such as mergers and acquisitions, partnerships, long term exploitation contracts etc. and drafting and negotiating environmental agreements for the separation of environmental liabilities, both historical and forthcoming.



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