

## **What about the waste? A commentary on the current state of the law**

In recent days, the media has circulated news that, despite the extension of the deadline for municipalities willing to participate in the process of selecting a site for a new surface repository for low—and intermediate-level short-lived radioactive waste (NSPOP) by 30 June of this year, no municipality had submitted an application. This was reported by the CIRE website: <https://gospodarka.cire.pl/artykuly/serwis-informacyjny-cire-24/ministerstwo-przemyslu-nadal-nie-ma-gmin-ktore-chcialyby-u-siebie-skladowac-odpady-promieniotworcze>.

In addition, the Ministry of Industry indicated that “An increase in financial incentives is not currently planned, but is not excluded in the future.”

Given the urgent need to select a location for a new landfill, is the lack of legislative changes the right path?

## **LEGAL SOURCES ON RADIOACTIVE WASTE MANAGEMENT**

The legal framework for radioactive waste management is contained in several domestic and international legal acts. Firstly, they are defined by the Law of November 29, 2000 - Atomic Law. Under the authorization of Article 57a of the Atomic Law, the Council of Ministers issued a regulation on radioactive waste and spent nuclear fuel. Poland ratified the Joint Convention on the Safety of Spent Nuclear Fuel Management and on the Safety of Radioactive Waste Management on 5 September 1997. Radioactive waste management is also subject to Council Directive 2011/70/Euratom of 19 July 2011, implemented into national law by the Law of 4 April 2014, amending the Atomic Law and certain other laws. Radioactive waste management is also covered by strategic documents adopted by resolutions of the Council of Ministers: the Polish Nuclear Energy Program (PPEJ) and the National Plan for the Management of Radioactive Waste and Spent Nuclear Fuel (National Plan). Both acts were last updated in 2020.

## **CURRENT STATUS**

Poland has a Radioactive Waste Utilization Plant and a National Radioactive Waste Repository.

The Radioactive Waste Disposal Facility (ZUOP) is a state-owned public utility based in Otwock-Świerk and was established to carry out activities in the field of radioactive waste and spent nuclear fuel management and primarily to provide permanent storage capacity for radioactive waste and other radioactive substances and spent nuclear fuel. In addition, ZUOP performs activities involving the receipt, transport, storage, and disposal of nuclear materials, radioactive sources, and other radioactive substances, as well as educational, informational, and training activities. ZUOP operates facilities in Świerk and Różan. The Atomic Law strictly regulates ZUOP's activities.

The National Radioactive Waste Repository (KSOP) is located in Różan and was put into operation in 1961. It is designed primarily to store low—and intermediate-level radioactive waste. It is the only facility of its kind in Poland, and its capacity is limited. The fact that the storage capacity at Różan is running out is not new information.

For this reason, the construction of a New Surface Storage Site for Radioactive Waste (NSPOP) was assumed in accordance with the National Plan. Like the KSOP, the NSPOP is to be designed to store low- and intermediate-level waste. In doing so, it will not be used to store spent nuclear fuel. Its commissioning will enable the closure of the KSOP - the National Plan calls for the closure in 2038-2040, but not before the NSPOP is commissioned. The commissioning of the new repository is planned for

around 2033. However, the location of the NSPOP, as we know, has still not been selected, although the National Plan called for a selection in 2022.

### **WHAT NOW? LEGAL REASONS FOR MUNICIPALITIES' LACK OF INTEREST IN THE CALL**

The first deadline for applications for the call announced by the IOC was 15 November 2023. Due to a lack of applications, it was extended to 30 June 2024. The situation with the lack of applications has repeated itself. This raises the question regarding the reasons for municipalities' lack of interest in locating such an investment in their location.

In our view, an insufficient incentive system may be one of the reasons for this. Article 57(1) of the Atomic Law foresees an annual payment from the state budget to the municipality where the landfill is located, paid in quarterly instalments, in the amount of 400% of the income from the tax on property located in the municipality, obtained in the previous year, but no more than PLN 10.5 million. Such a top-down and arbitrary limit of PLN 10.5 million may not be enough to encourage a potential municipality to apply. The municipality of Różan, where KSOP is located, receives the maximum amount each year. In its case, 400% of the income from taxes on property located in the municipality, achieved in the previous year, exceeds the limit indicated in the law.

How has this regulation evolved over the years? First, when the previous law (the Law of April 10, 1986 - Atomic Law) was in effect, the fee for the municipality was 200% of property tax revenues. Then, after the current law was enacted, the payment was increased to 400% of property tax revenues. The upper limit was first introduced in 2005 at PLN 8.55 million. Subsequently, it was raised to 10.5 million, but there is no justification as to what formed the basis for indicating this particular amount. The proposal was only introduced later in the legislative work when the bill was already being worked on in the Sejm. When the bill was still at the public consultation stage, the mayor of Różan requested the removal of the maximum amount from Article 57 (1) of the Atomic Law, pointing to the reluctance of investors to commit funds in this location, resulting in weaker economic development.

Radioactive waste management is an integral part of the peaceful use of nuclear energy. In view of the planned construction of at least one nuclear power plant and the increase in the amount of radioactive waste, Poland - to safely develop its nuclear power program - faces new challenges in this regard, and a coherent concept of radioactive waste management must also accompany these plans. The selection of the NSPOP site is one of the key challenges. For an effective solution to this challenge, legislative intervention should be considered with regard to the amount of the fee for the municipality in which the repository is located.

The text originally appeared: CIRE, 31.07.2024