

PREVENTION AND REMEDYING ENVIRONMENTAL DAMAGE IN POLAND

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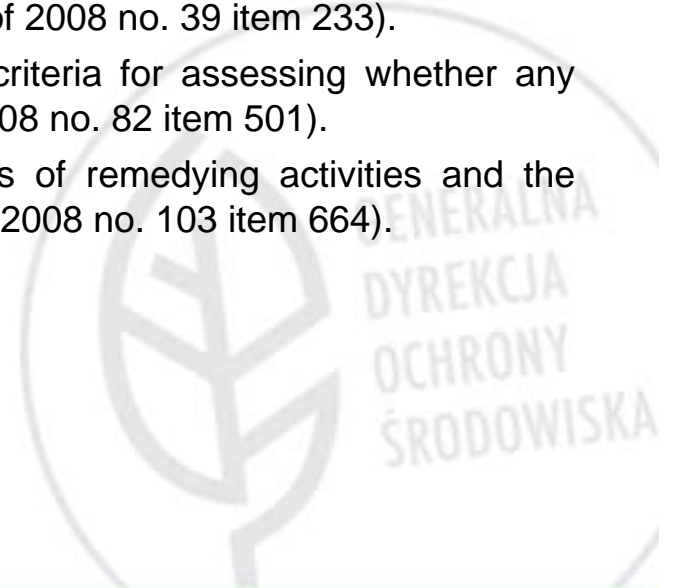


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IMPLEMENTATION OF DIRECTIVE 2004/35/EC IN POLAND

Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (Official Journal of EC L 143/56, 30/04/2004; Official Journal of UE Polish Special Edition, chapter 15, p. 357) was transposed to Polish legal system through:

1. The Prevention and Remedying of Environmental Damage Act of 13 April 2007 (Official Journal of 2007 no. 75 item 493, as amended).
2. Minister of Environment regulation of 26 February 2008 on the register of the imminent threats to the environment and environmental damages (Official Journal of 2008 no. 39 item 233).
3. Minister of Environment regulation of 30 April 2008 on the criteria for assessing whether any damage to the environment has occurred (Official Journal of 2008 no. 82 item 501).
4. Minister of Environment regulation of 4 June 2008 on kinds of remedying activities and the conditions and ways of their implementation (Official Journal of 2008 no. 103 item 664).





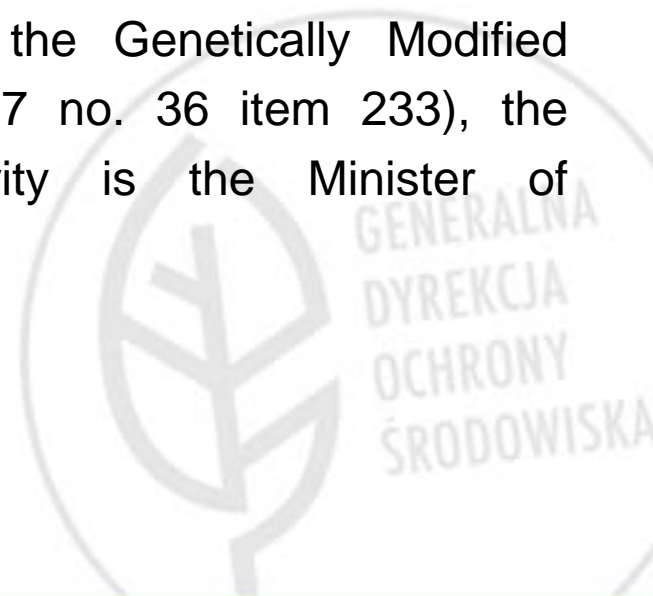
The Prevention and Remedying of Environmental Damage Act is based on **administrational responsibility model** which concerns execution of administrative responsibilities of entities using the environment.



THE COMPETENT AUTHORITY

The environmental protection authority which deals with responsibility for the prevention and remedying environmental damage is the **regional director for environmental protection.**

In the case of a imminent threat of environmental damage or environmental damage caused by an activity specified in the Genetically Modified Organisms Act of 22 June 2001 (OJ of 2007 no. 36 item 233), the responsible environmental protection authority is the Minister of Environment.



PREVENTION AND REMEDYING MEASURES

In the case of a imminent threat of environmental damage, the entity using the environment is obliged to immediately take prevention measures.

In the case of environmental damage, the entity using the environment is obliged to:

- 1) take measures in order to minimise the environmental damage, prevent further damage and negative impacts on human health or further weakening of environmental elements' function, including immediate control, stopping, removing or minimizing in other way the pollution or other harmful factors;
- 2) take remedying measures.

Article 9 of the Polish act



ENTITY USING THE ENVIRONMENT

According to Article 6(9) of the Polish act, the entity using the environment is the entity using the environment as understood in Article 3(20) of the Act of 27 April 2001 – Environmental Protection Act:

- a) business entity as understood in Article 4 of the Freedom of Business Activity Act of 2 July 2004 (OJ of 2007 no. 155 item 1095 and no. 180 item 1280) as well as citizens involved in business activity aimed at production in agriculture in the field of farming, animal husbandry and breeding, gardening, vegetable growing, forestry and inland fishing and citizens working as doctors in their own practice or specialist practice,
- b) organizational unit which is not a business entity as understood in the Freedom of Business Activity Act of 2 July 2004,
- c) a natural person who is not an entity specified in a), using the environment to the degree which requires permit;

a person performing activities carrying the risk of threat of environmental damage or other activities different than these causing environmental damage (damage in protected species and protected natural habitats) which pose imminent threat of environmental damage or cause environmental damage.

The activity posing threat of environmental damage is specified in Article (3) of the Polish Damage Act



COSTS OF TAKING PREVENTION AND REMEDYING MEASURES

The costs of taking the prevention and remedying measures are incurred by **the entity using the environment.**

The entity using the environment does not bear costs of taking the prevention and remedying measures if it demonstrates that the imminent threat of environmental damage or the environmental damage were caused by another entity and they appeared despite taking appropriate safety measures by the entity using the environment.

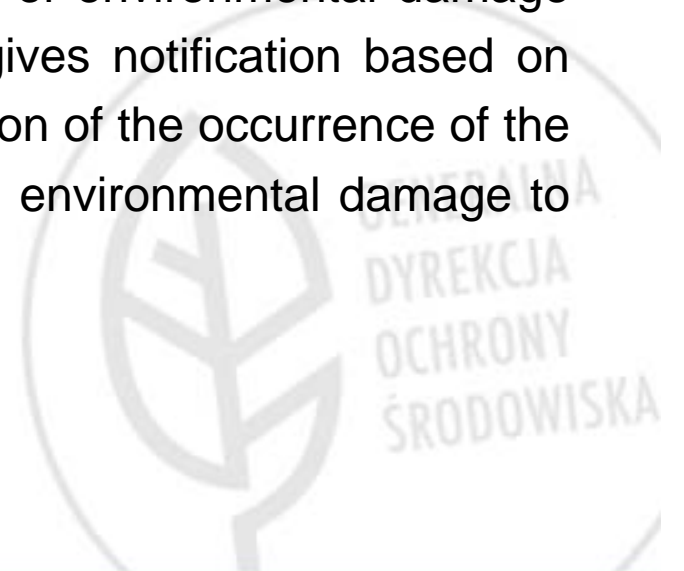
The entity using the environment which took prevention or remedying measures against the imminent threat of environmental damage or against the environmental damage can file a claim against the entity which caused the imminent threat of environmental damage or the environmental damage to receive reimbursement of costs incurred by taking the measures.

Article 22 (1, 2, 3) of the Polish Damage Act

RESPONSIBILITY OF THE LAND OWNER

If a imminent threat of environmental damage or the environmental damage were caused with approval or knowledge of the land owner, they are obliged to take prevention and remedying measures **together with the entity using the land** which caused the threat or the damage.

An exception to the aforementioned rule is a situation when immediately after getting informed about the imminent threat of environmental damage or the environmental damage the land owner gives notification based on Article 24 of the Polish Damage Act (the notification of the occurrence of the imminent threat of environmental damage or the environmental damage to the competent authority).



EVADING TAKING PREVENTION AND REMEDYING MEASURES BY THE ENTITY USING THE ENVIRONMENT

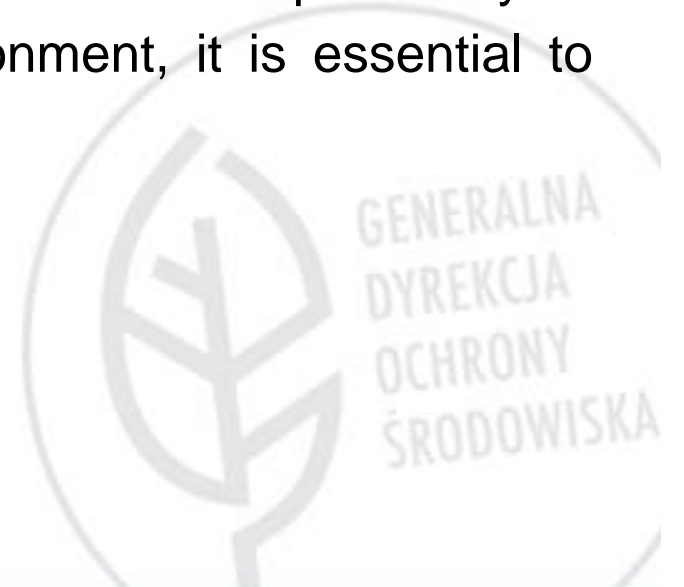
If the entity using the environment does not take any prevention and remedying measures, **the competent authority by means of a decision imposes on them an obligation to take the measures**



THE COMPETENT AUTHORITY AND PREVENTION AND REMEDYING MEASURES

The competent authority takes prevention or remedying measures if:

- 1) the entity using the environment cannot be identified or execution proceedings cannot commence or the execution proceedings failed;
- 2) in the event of a threat to human health or life or a possibility of causing irreparable damage to the environment, it is essential to immediately take the measures.



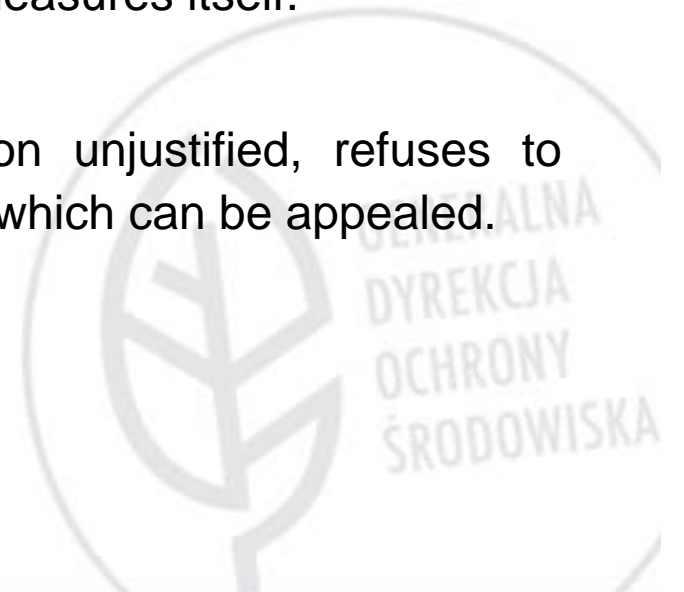
REPORTING THE IMMINENT THREAT OF ENVIRONMENTAL DAMAGE OR THE ENVIRONMENTAL DAMAGE

The competent authority is obliged to accept every notification of the imminent threat of environmental damage or the environmental damage.

Having considered a notification justified, the competent authority decides to commence proceedings to issue a decision imposing the obligation to take prevention or remedying measures or takes the measures itself.

The competent authority, finding the notification unjustified, refuses to commence the proceedings by means of a ruling which can be appealed.

Article 24(1, 5, 7) of the Polish Damage Act



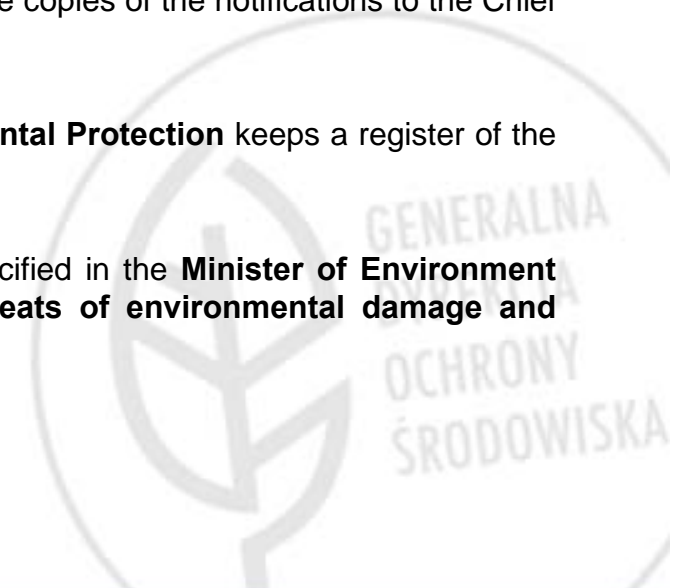
REGISTER OF IMMINENT THREATS OF ENVIRONMENTAL DAMAGE AND ENVIRONMENTAL DAMAGES

Attachment VI in the Directive 2004/35/EC specifies the range of the report on the experiences collected while implementing the directive which will have to be presented to the European Commission by the Member States. With respect to such an obligation, the Polish act contains appropriate regulations which allow collection of the data on the imminent threats of environmental damage and environmental damages which occurred in the country.

According to Polish law, the competent authority, having received notifications of the imminent threat of environmental damage and environmental damage (notification made by the entity using the environment or each entity directly exposed to environmental damage or facing negative impacts of environmental damage – Article 11(1), Article 24 of the Damage Act) is obliged to immediately hand over the copies of the notifications to the Chief Inspector for Environmental Protection.

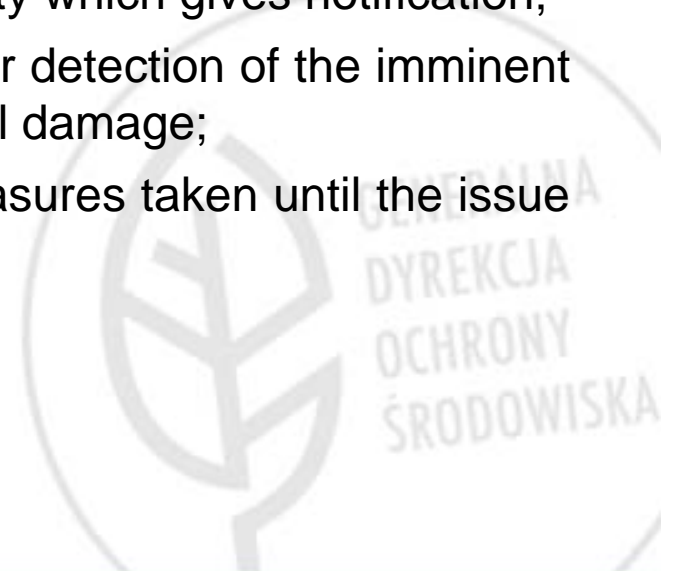
On the basis of received notifications **the Chief Inspector for Environmental Protection** keeps a register of the imminent threats of environmental damage and environmental damages.

The scope of information which has to be included in the register is specified in the **Minister of Environment Decision of 26 February 2008 on the register of the imminent threats of environmental damage and environmental damages (OJ of 2008 no. 39 item 233)**.



CONTENTS OF THE REGISTER

1. register number;
2. notification's identification number in the order of receiving;
3. the dates of entries;
4. the date of receiving the notification of the imminent threat of environmental damage or environmental damage by the environmental protection authority or the date of notification of completing prevention or remedying measures taken by the authority;
5. the name of the environmental protection authority which gives notification;
6. kind, description, place and date of occurrence or detection of the imminent threat of environmental damage or environmental damage;
7. the description of prevention and remedying measures taken until the issue of notification;



CONTENTS OF THE REGISTER

8. first or last name or company name, address or the address of the registered office and description of the type of business activity, according to Polish Classification of Activity; all the data should concern the business entity whose activities were a cause of the imminent threat of environmental damage or environmental damage if the entity was identified;
9. the date of the commencement of proceedings instituted by the environmental protection authority in a particular case;
10. copies of decisions issued in this case;
11. information on the appeal against the decision, including the appealing entity, the authority to which the appeal was lodged, the reasons for the appeal, the date and content of final settlement;
12. information on the ongoing or finished court-administrational or court proceedings in a particular case;
13. the final date of prevention and remedying measures implementation;
14. the description of prevention and remedying measures taken and the achieved ecological effect.



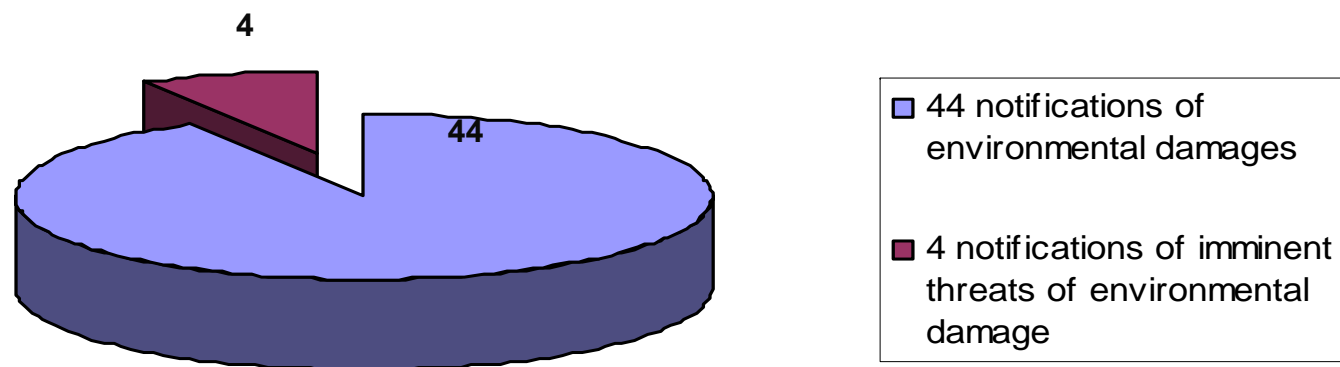
The regional director for environmental protection hands over to the Chief Inspector for Environmental Protection only **justified notifications** for which **proceedings have been instituted** on taking prevention or remedying measures.

Until the end of February each year, the Chief Inspector for Environmental Protection prepares and hands over to the Minister of Environment a summary record on the contents of the register for the previous year.



CONTENTS OF THE REGISTER ON THE BASIS OF A SUMMARY RECORD PREPARED BY THE CHIEF INSPECTOR FOR ENVIRONMENTAL PROTECTION FOR 2010

Notifications of imminent threats of environmental damage and environmental damages

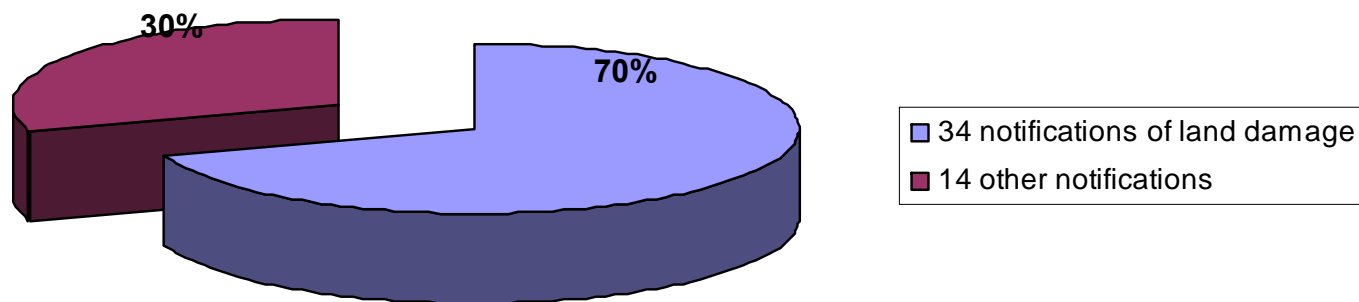


48 notifications of imminent threats of environmental damage or environmental damages which occurred in 2010

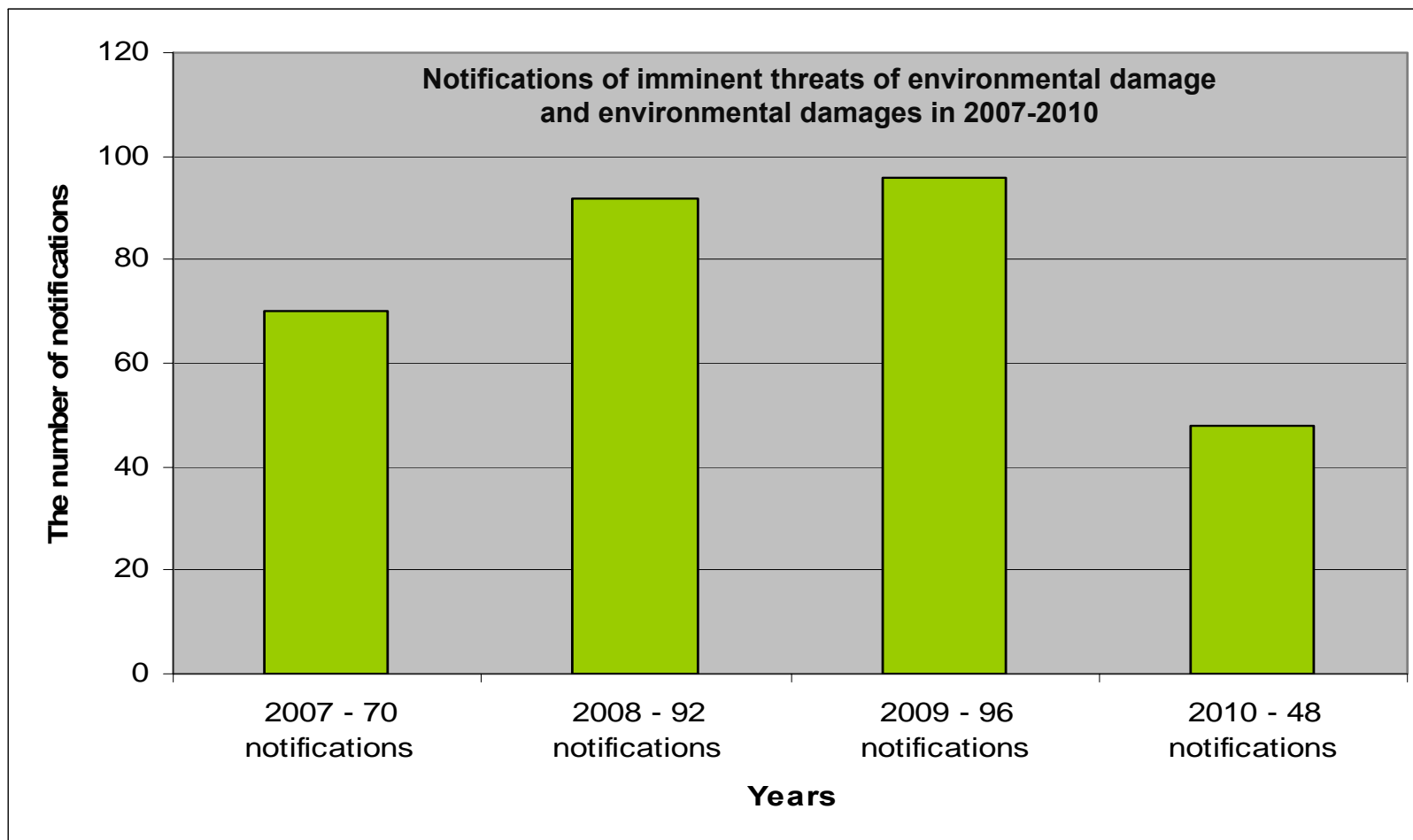


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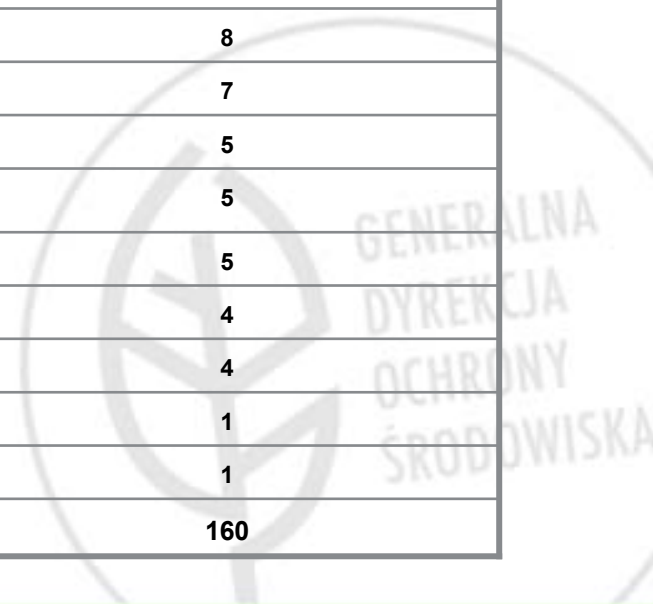


CONTENTS OF THE REGISTER ON THE BASIS OF A SUMMARY RECORD PREPARED BY THE CHIEF INSPECTOR FOR ENVIRONMENTAL PROTECTION FOR 2010



**CONTENTS OF THE REGISTER ON THE BASIS OF A SUMMARY RECORD
PREPARED BY THE CHIEF INSPECTOR FOR ENVIRONMENTAL PROTECTION FOR
2010 – imminent threats of environmental damage and environmental damages in
2007-2010**

Voivodeship	Number of imminent threats of environmental damage and environmental damages	Number of cases in progress
mazowieckie	54	33
dolnośląskie	27	25
pomorskie	61	24
kujawsko-pomorskie	28	11
zachodniopomorskie	15	10
podkarpackie	10	9
lubelskie	14	8
małopolskie	8	8
łódzkie	7	7
śląskie	11	5
warmińsko-mazurskie	20	5
wielkopolskie	11	5
lubuskie	7	4
podlaskie	7	4
opolskie	17	1
świętokrzyskie	9	1
TOTAL	306	160



DATA ON ENVIRONMENTAL DAMAGES HANDED OVER BY REGIONAL DIRECTORATES FOR ENVIRONMENTAL PROTECTION FOR 2009

The number of notifications of imminent threats of environmental damage and environmental damages received by regional directors for environmental protection	The number of cases in which the proceedings were not initiated, the proceeding were dismissed or the obligation to take prevention or remedying measures was not imposed	The number of cases in which the obligation to take prevention or remedying measures was imposed	The number of cases which were not settled
275	149	84	46

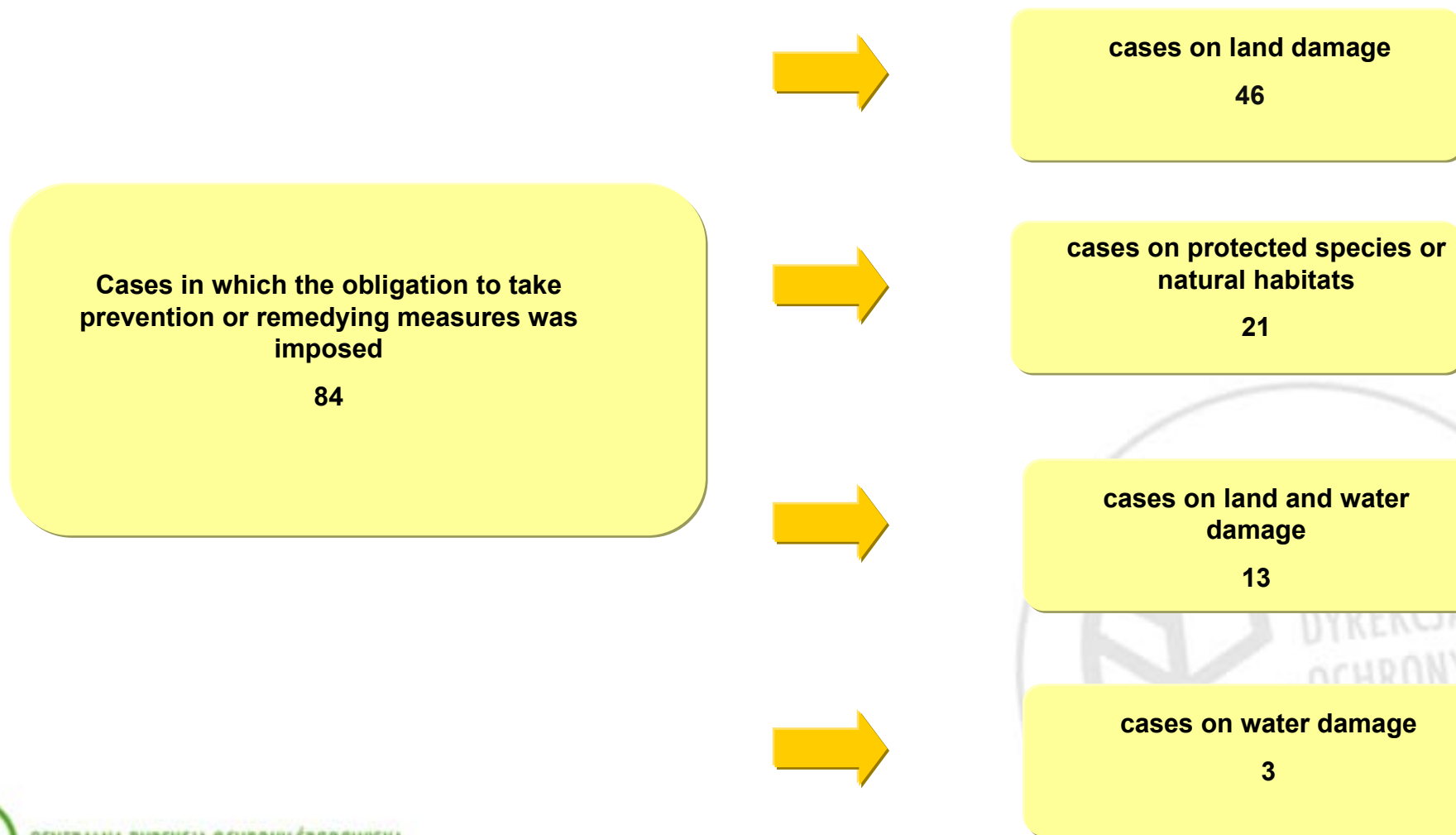


DATA ON ENVIRONMENTAL DAMAGE HANDED OVER BY REGIONAL DIRECTORATES FOR ENVIRONMENTAL PROTECTION FOR 2010

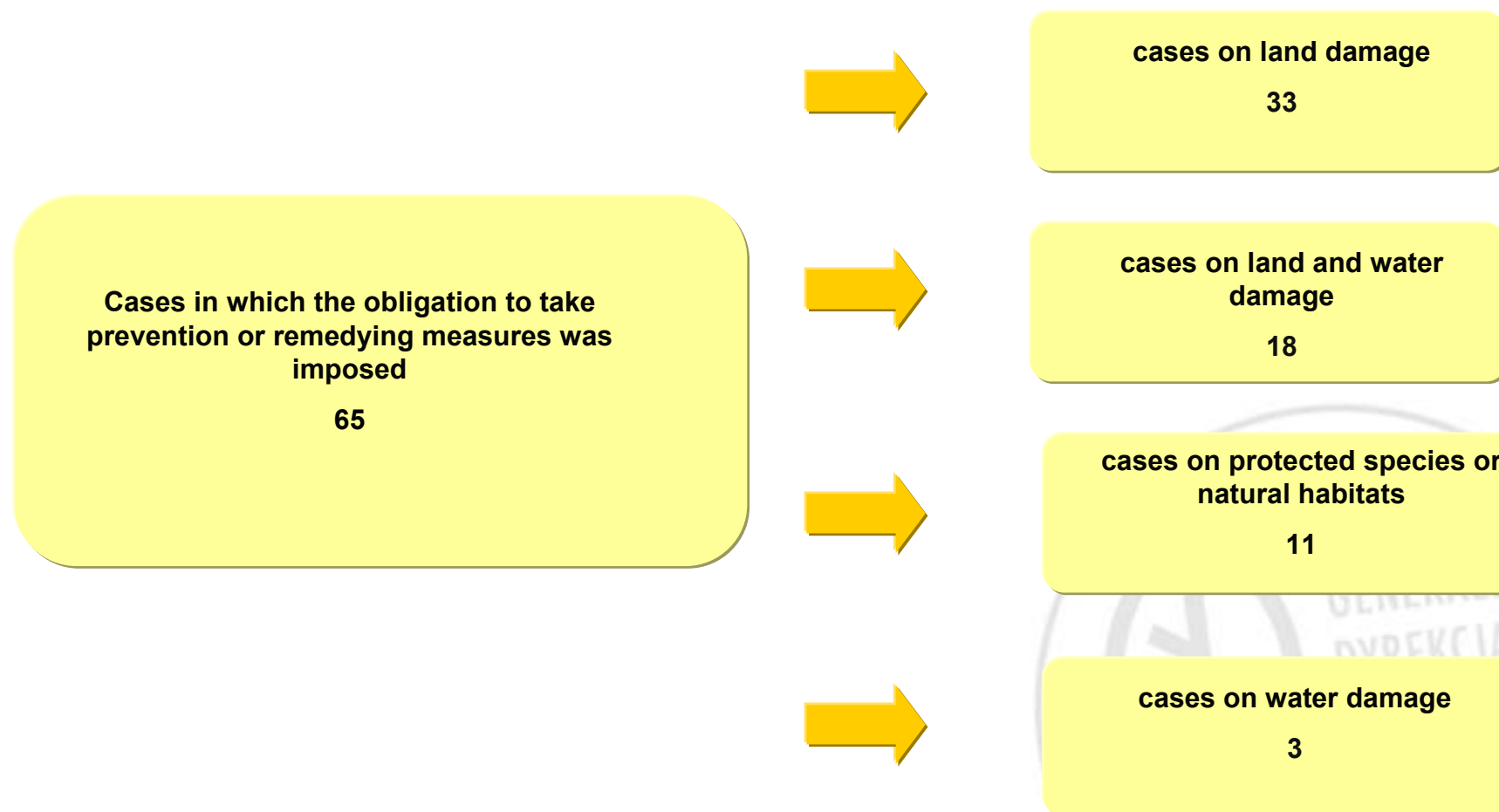
The number of notifications of imminent threats of environmental damage and environmental damages received by regional directors for environmental protection	The number of cases in which the proceedings were not initiated, the proceeding were dismissed or the obligation to take prevention or remedying measures was not imposed	The number of cases in which the obligation to take prevention or remedying measures was imposed	The number of cases which were not settled
364	210	65	89



DATA ON ENVIRONMENTAL DAMAGE HANDED OVER BY REGIONAL DIRECTORATES FOR ENVIRONMENTAL PROTECTION FOR 2009



DATA ON ENVIRONMENTAL DAMAGE HANDED OVER BY REGIONAL DIRECTORATES FOR ENVIRONMENTAL PROTECTION FOR 2010



**THANK YOU FOR YOUR
ATTENTION**



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