ELD directive transposed to Polish legal system through:

1. Act of 13 April 2007 on the prevention and remedying of environmental damage, Dz. U z 2007 r. Nr 75, poz. 493,

2. Regulation of the Minister of Environment of 30 April 2008 on the criteria for assessing whether any damage to the environment has occurred, Dz. U. z 2008 r. Nr 82, poz. 501

3. Regulation of the Minister of Environment of 4 June 2008 on the types, conditions and implementation of remedial action, Dz. U. z 2008 r. Nr 103 poz. 664
THE LIABILITY FOR ENVIRONMENTAL DAMAGE IN THE POLISH LEGAL SYSTEM
Three types of environmental liability in Poland

- **Civil liability** (rested on the provisions on the protection of individual rights, such as ownership, use, possession, etc., its function is to repair the damage)
- **Criminal liability** (associated with the imposition of sanctions for non-compliance with a number of requirements under environmental laws)
- **Administrative liability** (associated with the fulfilment of administrative obligations imposed on entities using the environment; environment (not individual rights) is protected as a common good)

The Prevention and Remedying of Environmental Damage Act is based on administrative liability model which concerns execution of liability of entities using the environment (operator) by way of an administrative decision.
The environmental protection authority which deals with responsibility for the prevention and remedying environmental damage is the

**Regional Director for Environmental Protection (RDOŚ)**

We have 16 regional directorates for environmental protection.

*From 30/04/2007 (the date of entry into force of the environmental liability act) to 15/11/2008 (the date of entry into force of the act on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessment) competent authority was Voivode*
Map shows the administrative division of Poland into 16 voivodeships.

One RDOŚ in every voivodeship.
General Director for Environmental Protection (GDOŚ)
- is higher instance authority in relation to RDOŚ (it means that this authority (GDOŚ) considers appeals against the decision of RDOŚ imposing the obligation to undertake preventive or remedial action)
- supervising of RDOŚ
- is responsible for examination of an appeals against RDOŚ’s decisions

Minister of Environment
- supervising of GDOŚ

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.

Chief Inspector for Environmental Protection (GIOŚ)
- maintains the register of imminent threat to the environment and damage to the environment
REGISTRATION AND 
NOTIFICATION OF DAMAGES
The notification of the occurrence of the imminent threat of damage or damage to the environment may come from everyone.

If the authority (RDOŚ), recognizing the notification as well-founded:

- initiates the procedure of issuing a decision requiring the entity using the environment to undertake preventive or rectifying action.
- in some situations, when the authority is obliged itself to take preventive and remedial action, takes such action itself.

If the authority considers the notification ungrounded:

- it decides to refuse.

Send the notification to GIOŚ (only justifying notification are placing in register).
When authority is obligated to action

In Poland there is an obligation for RDOŚ to take preventive or remedial action in some situation

- If an entity using the environment cannot be identified or no enforcement proceedings can be taken against it, or the enforcement has become ineffective
- If, due to the threat to human life or health, or the possibility of irreversible damage to the environment, it is necessary to take such action immediately
## Notifications well founded and ungrounded

<table>
<thead>
<tr>
<th>Year</th>
<th>the number of all notifications filed to the RDOŚ by individuals and ecological organizations</th>
<th>the number of notification forwarded by RDOŚ to GIOŚ (to registration; register collects notifications recognized as well-founded only)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>275</td>
<td>96</td>
</tr>
<tr>
<td>2010</td>
<td>364</td>
<td>91</td>
</tr>
</tbody>
</table>
1. registration number;
2. notification ID based on the date of entry;
3. date of entry;
4. date of notifications, both of the occurrence of the imminent threat of damage and of the end of action;
5. name of the environmental protection authority submitting the notification;
6. type, description, place and date of the occurrence or detection of the imminent threat of damage or damage to the environment;
7. description of the preventive and remedial action taken up to the date of notification;
8. first and last name or the registered name, place of domicile or business address and the indication of the type of business activity, in accordance with the Polish Classification of Activities (PKD), of an entity using the environment whose activity has been the cause of the imminent threat of damage or damage to the environment, if such an entity is identified;
9. date of initiating the proceedings by the environmental protection authority, referred to in paragraph 4, in the case;
10. copies of decisions issued in the case;
11. information about existing appeals from that decision, including the identification of the appealing entity, the authority receiving the appeal, the reasons for the appeal, its content and date of final settlement;
12. information about the ongoing or completed judicial and administrative or judicial proceedings in the case;
13. end date of preventive or remedial action;
14. description of the undertaken preventive or remedial action and the achieved environmental effect.
Notification of imminent threats and damages to the environment in register 2007-2012

- approx 455 notification about damages
- approx 65 notification about imminent threat of damage

520 notification have been registered
it could be more because RDOŚ still send notifications to register in 2013 concerning 2012

Total: 520
Notification of imminent threats and damages to the environment in register 2007-2012

- 302 of closed cases
- 218 of unresolved cases
- 520 of notifications

Closed case not always means that administrative decision (of RDOŚ) imposing the obligation to undertake preventive and remedial action has been issued. Such decision is not final and could be change by higher instance (GDOŚ) in the appeal procedure. Entity using the environment has also access to an administrative court.

Notification doesn’t mean the damage under the ELD. Notification recognized as well-founded by RDOŚ could be find as ungrounded by GDOŚ.
<table>
<thead>
<tr>
<th>Voivodeship (area of RDOŚ’s operation)</th>
<th>Number of notifications of imminent threats of environmental damage and environmental damages</th>
<th>Number of cases in progress</th>
</tr>
</thead>
<tbody>
<tr>
<td>pomorskie</td>
<td>83</td>
<td>32</td>
</tr>
<tr>
<td>mazowieckie</td>
<td>92</td>
<td>29</td>
</tr>
<tr>
<td>dolnośląskie</td>
<td>28</td>
<td>24</td>
</tr>
<tr>
<td>kujawsko-pomorskie</td>
<td>62</td>
<td>22</td>
</tr>
<tr>
<td>lubelskie</td>
<td>40</td>
<td>15</td>
</tr>
<tr>
<td>zachodniopomorskie</td>
<td>23</td>
<td>15</td>
</tr>
<tr>
<td>łódzkie</td>
<td>16</td>
<td>14</td>
</tr>
<tr>
<td>podkarpackie</td>
<td>15</td>
<td>12</td>
</tr>
<tr>
<td>warmińsko-mazurskie</td>
<td>33</td>
<td>12</td>
</tr>
<tr>
<td>podlaskie</td>
<td>21</td>
<td>9</td>
</tr>
<tr>
<td>lubuskie</td>
<td>22</td>
<td>9</td>
</tr>
<tr>
<td>śląskie</td>
<td>20</td>
<td>8</td>
</tr>
<tr>
<td>małopolskie</td>
<td>9</td>
<td>6</td>
</tr>
<tr>
<td>wielkopolskie</td>
<td>22</td>
<td>5</td>
</tr>
<tr>
<td>opolskie</td>
<td>25</td>
<td>5</td>
</tr>
<tr>
<td>świętokrzyskie</td>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>520</strong></td>
<td><strong>218</strong></td>
</tr>
</tbody>
</table>
What could happen in appeal procedure (decisions of GDOS [higher instance] in 2011)

- Reconsidering decisions by RDOS
  - 40%
- Repealing provisions
  - 3%
- Amending decisions
  - 3%
- Declaring null decisions
  - 7%
- Declaring sustaining decisions
  - 45%
- Declaring discontinuing decisions
  - 2%
What could happen in an appeal procedure (Decisions of GDOŚ (higher instance) in 2012)

- Repealing and discontinuing decisions: 0%
- Decisions declaring the nullity: 0%
- Sustaining decisions: 61%
- Returning to reconsideration decisions: 31%
- Repealing provisions: 2%
- Amending decisions: 6%
Division according to the type of damage

Total: 70 cases in 2012

- 57 concerned surface of land
- 9 concerned biodiversity (6 protected species and 3 protected natural habitats)
- 3 concerned waters

In previous years situation was similar. Most cases are connected with surface of land.
Sometimes not all notifications are forwarded by RDOŚ to the register of environmental damage maintained by the Chief Inspector for Environmental Protection.

The aim of the recently started legislative work on amending the *Act on the prevention and remedying of environmental damage* is changing competent authority who maintains the register.

It will be GDOŚ (not GIOŚ as now) who has power in supervision of RDOŚ. Such solution will be more effective for registration of notifications.
Imminent threat of environmental damage and environmental damage in the protected natural habitat and protected species of black grouse (Tetrao tetrix)

- Imminent threat of environmental damage and environmental damage has occurred in connection with the implementation of an investment of the construction of the ski lift.
- On 7 January 2008 non–governmental organization (NGO’s) had notified to the competent authority the imminent threat of environmental damage and environmental damage (notification of the environmental damage).
- The area covered by the investment is located within Sites of Community Importance - Natura 2000 - designated Special Protection Areas of Habitats Natura 2000 Torfowiska Gór Izerskich and Special Protection Areas of Birds Natura 2000 Góry Izerskie.
- In 2008 the number of black grouse was estimated at about 20 roosters and 15 hens. Unfortunately low number of black grouse in significant part of the areas was ascertained in the period of March-April 2008.
- Investment caused the destruction and damage to the habitat of the black grouse and their decrease in the area around the investment and worsening possibility of reproduction of the species.
Entity using the environment is an investor.

On 10 July 2012 Regional Director for Environmental Protection in Wrocław issued a decision imposing to investor an obligation to take preventive and remedial measures. This is the next decision in that case because the administrative proceeding takes from 2008 (appeal procedure).

Authority identifies in decision a number of preventive and remedial measures:

- restriction of decrease of black grouse due to reconstruct local population individuals from the breeding;
- the reduction of predators (foxes, raccoon dog);
- security of refuge of black grouse;
- the protection of individual components of the environment.

The investor appeals against a decision of competent authority (appeals to the court).

At the moment General Directorate for Environmental Protection prepares reply to this complaint.
Polish experience - cases

**Black grouse**
(Tetrao tetrix)

ROOSTER
HEN
Environmental damage in the protected species and protected natural habitats of swallow (Delichon urbicum)

- Environmental damage is the result of the renovation work of the bridge „Cłowy” in Szczecin.
- Nests with baby birds were dropped into the water.
- On 15 July 2009 NGO’s had notified to the competent authority the environmental damage (notification of the environmental damage).
- In connection with the renovation of the bridge investor destroyed 320 swallow’s nests. Works conducted by the investor had significant negative impact on the appropriate conservation status of these species and their habitats.
- Entity using the environment was an investor (investor supervised building works) and building company/contractor.
On 17 February 2012 the authority issued a decision imposing to the investor and contractor obligation to undertake remedial measures involving suspension an artificial nests and situation rugged plaster on the elements of the bridge. It’s the next decision in that case because administrative proceedings takes from 2009 (appeal procedure).

On 6 march 2012 investor appeals against a decision competent authority.

As a result of the court proceedins complaint was dismissed.
 Polish experience

- Case not covered by ELD (transport of milk is not an occupational activity listed in Annex III)
- Transport of milk by the tanker and fuel leak from the tank
- Transport of hazardous substances (fuel) by the tanker and leak this substances

Road transport and accidents

Transport of milk by the tanker and fuel leak from the tank

Case covered by ELD
When Environmental Damage Act (EDA) came into force pre-existing legislation connected with protection of surface of land was repealed (but it is still in use to historical soil damages which has occurred before 30 April 2007)

Every incident is examined as ELD case because EDA is *lex specialis* in relation to other framework acts (ex. Water Act and Environmental Protection Act which have special relation provisions; in accordance with them EDA has to be used in taking prevention and remedial action. Only when the incident cannot be qualified as a ELD case the other law is used.
THANK YOU FOR YOUR ATTENTION

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