



European and Polish legal experience with contamination

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Agnieszka Skorupińska, Counsel

Head of Environmental Law Practice, CEE and Poland

Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage

Known as the Environmental Liability Directive („ELD”)

Based on the polluter-pays principle

An entity causing environmental damage is liable for it and must take the necessary preventive or remedial action and bear all the related costs

The ELD establishes framework of environmental liability

Member States may maintain or adopt more stringent provisions in relation to the prevention and remedying of environmental damage

Operator:

- means any natural or legal, private or public person who operates or controls the damaging occupational activity or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of a permit or authorisation for such an activity or the person registering or notifying such an activity

Environmental damage:

- “**damage to protected species and natural habitats**”, means any damage that has **significant adverse effects** on reaching or maintaining the favourable conservation status of such habitats or species. The habitats and species concerned are defined by reference to species and types of natural habitats identified in the relevant parts of the Birds Directive 79/409 and the Habitats Directive 92/43
- “**water damage**”, means any damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or ecological potential, as defined in the Water Framework Directive 2000/60, of the waters concerned
- “**land damage**”, means any **land contamination** that creates a significant **risk of human health being adversely affected** as a result of the direct or indirect introduction, in, on or under land, of substances, preparations, organisms or micro-organisms

Joint research center (JCR) 2018 report – **Status of local soil contamination in Europe: Revision of the indicator “Progress in the management contaminated sites in Europe”**

European countries are making progress on tackling soil contamination

Over **5,000** new sites are under remediation or risk-reduction measures since 2011

Polluting activities potentially took place in **2.8 million** sites in the EU

There are more than **650,000** officially registered contaminated sites across Europe

More than **170,000** sites still to be investigated, **68,000** are currently under investigation and more than **125,000** sites need or might need remediation

65,500 sites have already been remediated, or are under aftercare measures

The scientists call for a **common European framework** to help national governments in their efforts to prevent and remediate soil contamination

Progress in tackling soil contamination in Europe

Mineral oils and heavy metals are the most frequent contaminants

Average of **€4.3 billion** is spent to tackle soil contamination in the surveyed countries, of which more than **42%** is taken from public funds

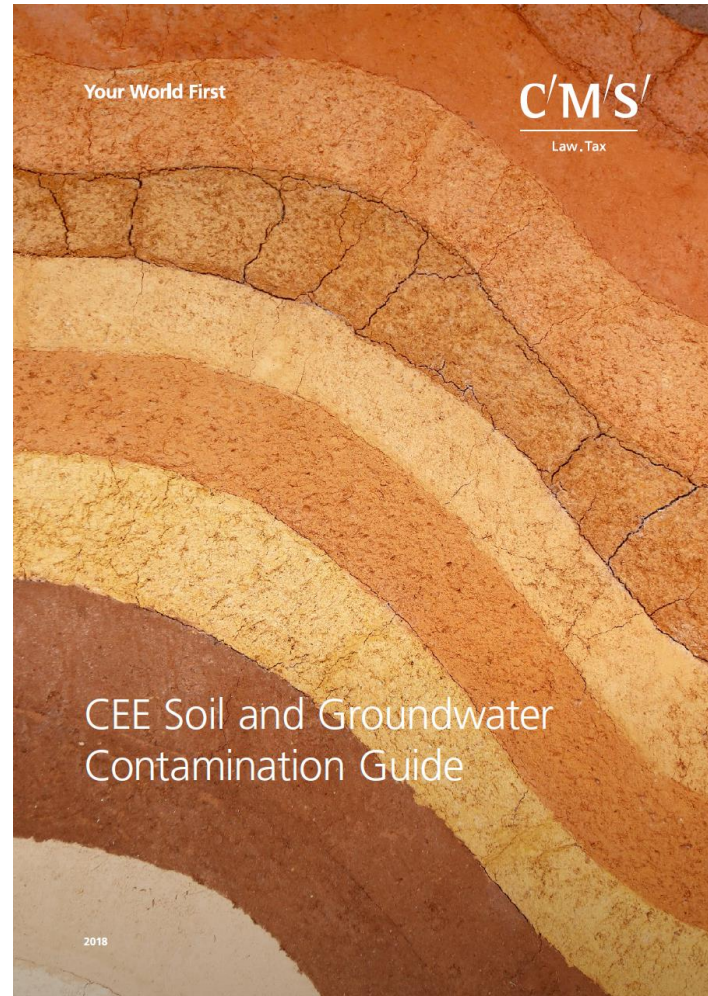
The **excavation and the off-site disposal** of contaminated plots are the most frequently used remediation techniques (“**dig-and-dump**”)

Countries who have been addressing the problem of soil contamination for at least three decades (e.g. the Netherlands, Germany, and the UK) **focus on remediating sites with known contamination**

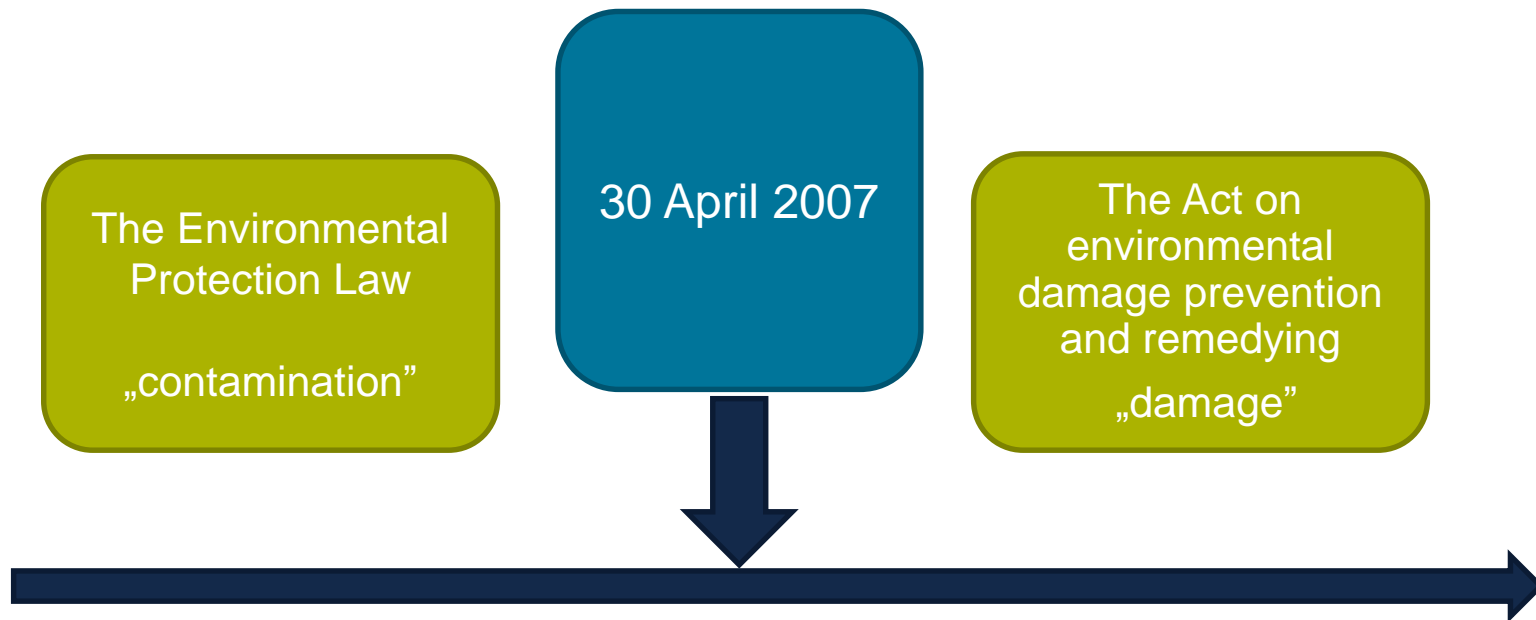
Countries with a shorter history of addressing soil contamination are currently **focusing on identifying contaminated sites**

- Variety of soil types, land uses, depths of groundwater tables, and site and building characteristics in Europe
- Flexibility in dealing with soil contamination in Europe (site-specific risk assessment)
- Data collected from the countries are **not fully comparable**
- **A common European framework would support the prevention and remediation of soil contamination**

CMS Contamination Guide



Two environmental liability regimes under Polish law



„historic soil surface contamination”

- Holder of land liability
- Remediation

„environmental damage in soil surface and groundwater”

- Polluter pays principle
- Corrective and prevention actions

2014: New regulations concerning historical soil surface contamination introducing risk based approach

Impact: Possibility to waive remediation or limit its scope

2016: New regulation on soil and ground quality standards and testing methods (Soil Surface Assessment Regulation)

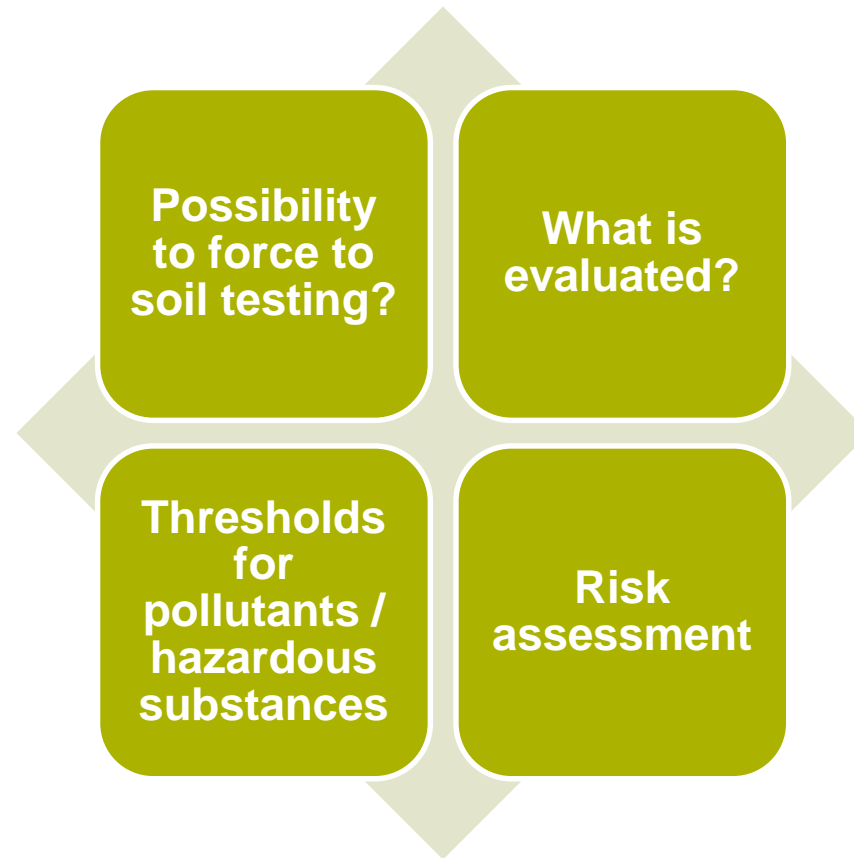
Impact: Possible discovery of additional contamination at a property. Tests of the soil made before 2016 cannot be used in the administrative procedure anymore

If the entity liable for remediation wishes to instigate any new procedure right now, it needs to retest the soil in accordance with new law

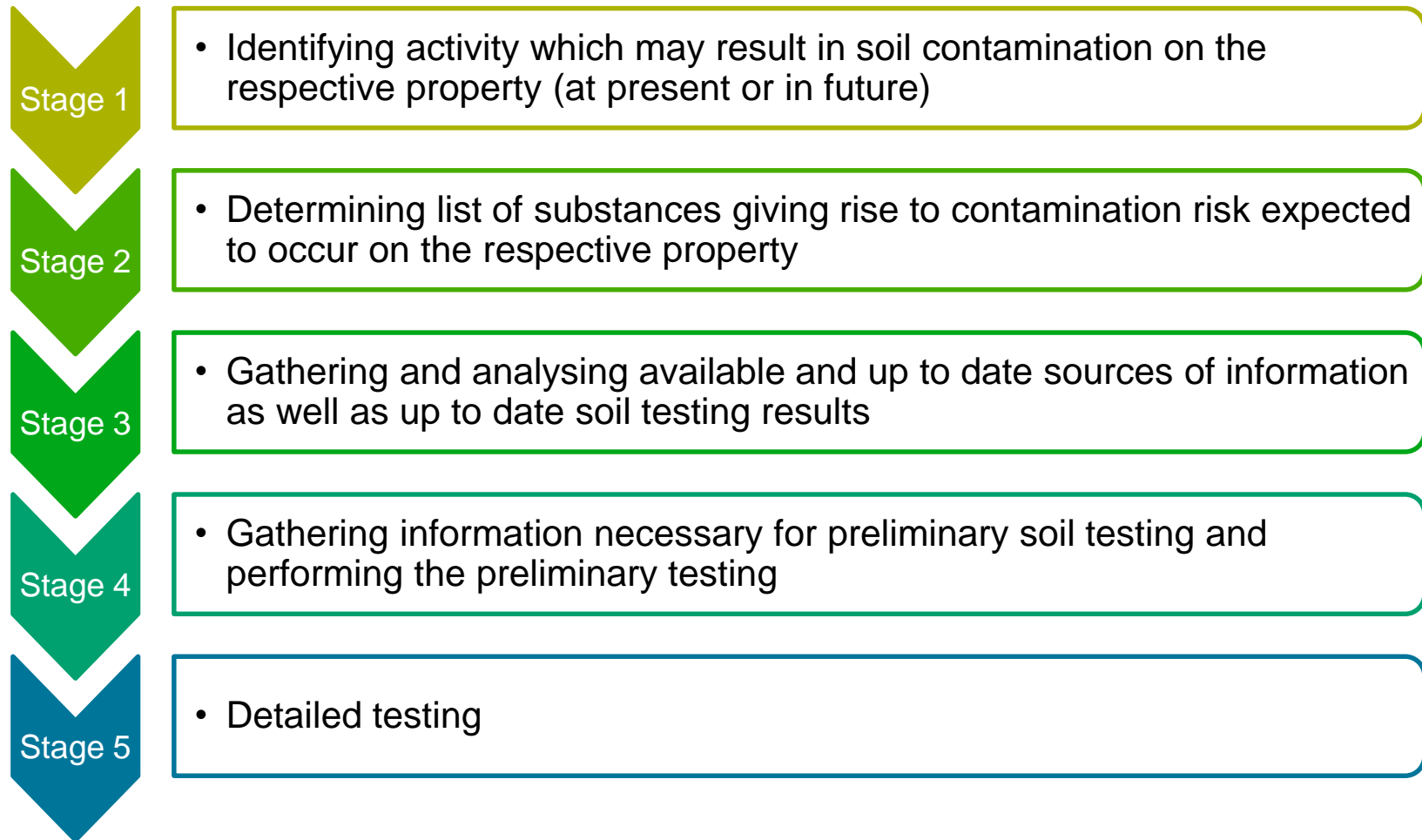
Historical soil surface contamination – step by step



Step 1: Testing



Step 1: Stages of identifying contamination



Step 5: Manners of performing remediation

Removal of contamination at least to the maximum allowed level of concentration of hazardous substances in soil and ground

Other measures allowing to remove significant threat for human health and condition of environment, taking into account the current and planned use of land, through:

diminishing volume of contamination, or

reducing the possibility of contamination spread and controlling the contamination by means of periodic soil and ground testing, or

self-attenuation of the soil surface, possible supporting activities, controlling the contamination by means of periodic soil and ground testing, restricting access of people to the contaminated area, change of manner of use of the area

REMEDICATION THROUGH SELF-ATTENUATION:

- biological, chemical and physical **processes**, resulting in **reducing** amount, load, concentration, toxicity, availability and spreading of contamination in soil, land and water, being made **independently, without human intervention**, but which **may be supported by human**



Step 5: Remediation in a manner other than removal of contamination

CONDITIONS:

Lack of technology or manners allowing to remove the contamination

Effects of conducted activities aimed at the contamination removal would be disproportionately high compared to the environmental benefits to be obtained

The contamination removal costs would be disproportionately high compared to the expected environmental benefits to be obtained

Contamination occurred before 1 September 1980

Step 5: Release from remediation obligation

Risk assessment have to prove that **no material risk to human health or to the environment occurs**

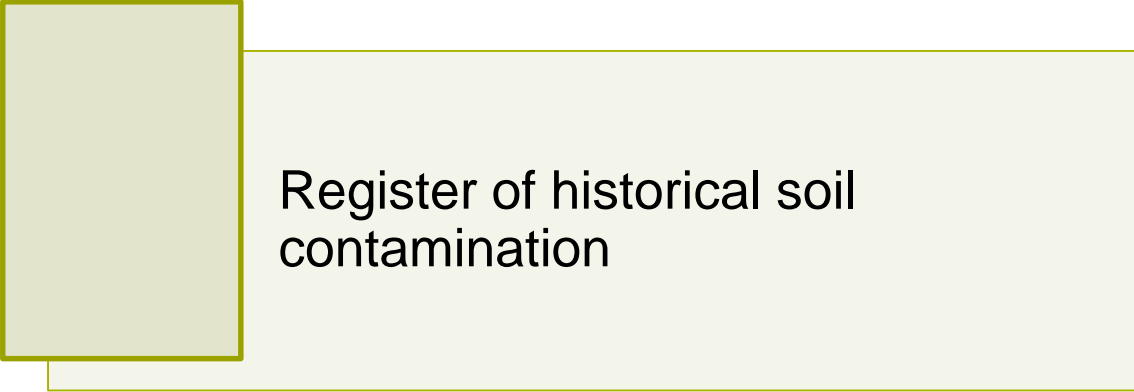
The Minister of Environment may issue regulation on rules concerning the risk assessments in this respect

Penalties for „latecomers”?

Penalty for a failure
to notify

Penalty for a failure
to perform
remediation

Sanctions:
Fine of up to
PLN 5000
Forced remediation



Register of historical soil
contamination



Register of environmental damage

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Thank you for your attention

Contact



Agnieszka Skorupińska
Counsel
Head of Environmental Law Practice, CEE and Poland

T +48 22 520 8336

M +48 693 545 183

E agnieszka.skorupinska@cms-cmno.com

CMS Cameron McKenna Nabarro Olswang Pośniak i Sawicki Sp. k.

Warsaw Financial Center

ul. Emilii Plater 53

00-113 Warsaw

Poland



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