

**REGIONAL DIRECTOR  
FOR ENVIRONMENTAL PROTECTION  
in Wrocław  
JANA MATEJKI 6  
50-333 WROCŁAW**

WOOS.420.18.2022.MS.10

Wrocław, 18.11.2022

**Decision**

Pursuant to art. 104, art. 108 § 1 and art. 155 of the *Act dated June 14<sup>th</sup> 1960 - Code of Administrative Procedure* (i.e. *Dz. U. [Journal of Laws] of 2022, as amended*), art. 71, clause 2, art. 75, clause 1a in relation to art. 75, clause 1, item 1(i) of the *act dated October 3<sup>rd</sup> 2008 on sharing information on the environment and its protection, public participation in environmental protection and the environmental impact assessments* (i.e. *Dz. U. [Journal of Laws] of 2022, pos. 1029, as amended*), as well as § 3, clause 1, item 62 and 67 of the *Regulation of Council of Ministers dated September 10<sup>th</sup> 2019, on undertakings likely to have significant effects on the environment* (*Dz. U. [Journal of Laws], pos. 1839, as amended*), having considered the application of the State Water Holding Polish Waters,

**I hereby decide**

- i. **to change, by courtesy of the entity for whom the decision on environmental conditions has been transferred, the final decision of the Regional Director for Environmental Protection in Wrocław dated 29.12.2017, file No.: WOOS.4233.2.2017.ŁCK.27 on environmental conditions for the investment project titled: “WWW Widawa - rebuilding the flood management systems in the boroughs of Czernica, Długołęka, Wisznia Mała and Wrocław” in the following way:**

**the provision included in the appendix to the decision, constituting the characteristics of the investment project, in sub-item 2.1, the second bullet, saying:**

“building the flood dykes on the right bank of the Widawa river along the Wilczyce-Śliwice section and on the left river bank along the Wilczyce-Wieściszów section, along with the engineering infrastructure”,

**shall be replaced with the wording:**

“building the flood dykes on the right bank of the Widawa river along the Wilczyce-Śliwice section, along with the engineering infrastructure”,

**and the new bullet, with the following wording, is added:**

“building the flood dykes and, segmentally, the retaining wall (flood control wall), along with floodgates on the left river bank along the Wilczyce - Wieściszów section, along with the engineering infrastructure”,

**provision included in the appendix to the decision, constituting the characteristics of the investment project, the title of sub-item 2.2 of the following wording:**

“Building flood dykes along the right and left river banks of the Widawa river, along

with the engineering infrastructure”

**shall be replaced with the following wording:**

“Building flood dykes along the right river bank of the Widawa river, along with the engineering infrastructure and flood dykes and, segmentally, the retaining wall (flood control wall), along with floodgates along the left river bank of Widawa, along with the engineering infrastructure”,

**a new bullet of the following wording is added after the last bullet in item 2.2:**

“building the retaining wall (flood control wall) on the left river bank in the area of the road bridge within the main line of the East Wrocław Ring Road”,

**the provision included in the appendix to the decision, constituting the characteristics of the investment project, the title of sub-item 2.2 of the following wording:**

“Building and extending the left-bank flood dyke of the Widawa river covers:”

**shall be replaced with the following wording:**

“Building and extending the left-bank flood dyke of the Widawa river and, segmentally, the retaining wall (flood control wall), along with the floodgates covers:”

**the provision included in the appendix to the decision, constituting the characteristics of the investment project, in the second bullet of sub-item 2.2, of the following wording:**

“Section 5 ul. Rzeczna in Wilczyce, to Przerowa weir on the Przerowa brook;”

**shall be replaced with the following wording:**

“Section 5 ul. Rzeczna in Wilczyce, to Przerowa weir on the Przerowa brook, including the retaining wall (flood control wall) in the area of the road bridge within the main line of the East Wrocław Ring Road;”

**II. I hereby make the decision immediately enforceable.**

### **Justification**

The Regional Director for Environmental Protection in Wrocław (hereinafter referred to as the RDEP), at the request of the Investor - Państwowe Gospodarstwo Wodne Wody Polskie [State Water Holding Polish Waters] dated 10.05.2022, has started administrative proceedings regarding the change of the decision on environmental conditions dated 29.12.2017, File No.: WOOŚ.4233.2.2017.ŁCK.27 on environmental conditions for the investment project titled: “WWW Widawa – reconstruction of the flood protection systems in the boroughs of Czernica, Długołęka, Wisznia Mała and Wrocław”.

The said decision dated 29.12.2017, file No.: WOOŚ.4233.2.2017.ŁCK.27, was, by virtue of the decision dated 19.05.2021, file No. WOOŚ.420.7.2020.AP.3, transferred to Państwowe Gospodarstwo Wodne Wody Polskie [State Water Holding Polish Waters].

The planned investment project and the said proceedings related to issuing the decision on environmental conditions are implemented in consideration of the regulations stipulated in the act dated 08.07.2010 *on particular preparation principles to implement an*

*investment project related to building flood control structures (i.e. Dz. U [Journal of Laws] No. 2021, pos. 1812).* Fulfilling the statutory prerequisites of art. 17, clause 3 of the act referred to, the RDEP informed the General Director for Environmental Protection about receiving an application as to a change of the aforelisted decision on environmental conditions.

The RDEP's competence to change the said decision on environmental conditions is stipulated in art. 87 in relation to art. 75, clause 1, item 1(i) *of the Act dated October 3<sup>rd</sup> 2008 on providing information on the environment and environmental protection and on environmental impact assessments* (hereinafter referred to as OOS [EIA]). The regulation of art. 87 under the EIA states that regulations of chapter V and chapter VI of the said act, and, adequately, the regulation of art. 115 under the Code of Administrative Procedure act (hereinafter referred to as CAPA) dated 14.06.1960 apply to changing decisions on environmental conditions, with a reservation that consent is only provided by the party who has applied for issuing the decision on environmental conditions, or the entity to which the decision on environmental conditions has been transferred. Meanwhile art. 155 CAPA states that the final decision, by virtue of which the Party has acquired a right, can each time, upon the party's consent, be revoked or changed by the public administration authority that issued it, unless special regulations object to such revocation or change and this is motivated by a social interest or a well-grounded interest of the party.

In the said proceedings the party applying for changing the decision on environmental conditions is also the party to which the decision on environmental conditions has been transferred. Along with the application for issuing a decision change the party submitted, in writing, consent to change the said decision on environmental conditions. The change of the final decision, under art. 155 CAPA, does not contradict to the special regulations, plus it is motivated by a well-grounded social interest and interest of the party. The planned investment project is meant to improve safety of the flood protection system for the boroughs of Czernica, Długołęka, Wisznia Mała i Wrocław, i.e. protection of human health and life and safeguarding the national economy against heavy loss (flood). The change pertains solely to segmental giving up of building the hydraulic structure in the form of an earth-fill flood dyke for the benefit of a retaining wall (flood control wall) and making the floodgates. The described change is owing to the necessity of adjusting the project to land constraints formed as a result of the implemented road investment, i.e. the East Wrocław Ring Road. The flood control purpose of the entire investment project remains unchanged, similarly as all the conditions and terms determined in the changed decision.

The planned investment is classified as an undertaking that might potentially significantly impact the environment, as stipulated in § 3, *clause 1, item 62 and 67 of the Regulation of Council of Ministers dated September 10<sup>th</sup> 2019 on undertakings likely to have significant effects on the environment* for which carrying out the environmental impact assessments might be required.

The parties to the proceedings are the Applicant and the entities entitled to the property right to the real property located within the area on the investment project will impact. The number of the parties to the proceedings exceeds 10, thus the parties, including the Applicant, were informed about all the actions, in line with general principles, pursuant to art. 49 of the CAPA, by announcements. The announcement were each time published in the Public Information Bulletin of the RDEP. The parties to the proceedings were informed about starting the proceedings by the announcement dated 18.05.2022, file No.: WOOS.420.15.2022.MS.1. In the announcement the RDEP informed the parties about the core of the proceedings related to changing the decision on environmental conditions for the said investment and the authority competent to issue decisions. possibility of reviewing the case records, reporting remarks and filing motions, during each proceedings stage, place where the case files are kept and the possible form of reporting remarks and conclusions, the authority competent to consider the remarks and applications, way of notifying the parties the authority informed the Applicant by the letter dated 18.05.2022, file No.: WOOS.420.15.2022.MS.2.

The core of the proceedings is a change of the decision on environmental conditions dated 29.12.2017, file No.: WOOS.4233.2.2017.CK.27, under which an obligation to carry out an environmental impact assessment was originally stated - by the RDEP's decision of 21.04.2017, file No.: WOOS.4233.2.2017.CK.9, stipulating it necessary to carry out the environmental impact assessment and determining the scope of the report on the investment project's impact on the environment. Owing to the fact that when changing the decision

on environmental conditions for the investment project that might potentially significantly impact the environment, issued along with carrying out the environmental impact assessment, the investment project is not re-classified for carrying out the said assessment, and, along with an application for changing the decision, the Applicant submitted *the Report on the investment project's impacts on the environment [SWECO Consulting Sp. z o.o., prepared under supervision of W. Lewandowski, Wrocław 2022 r.], hereinafter referred to as the Report.*

By the letter dated 03.06.2022, file No.: WOOS.420.18.2022.MS.4, WOOS.420.18.2022.MS.5, the authority applied to the State Poviats Sanitary Inspector in Wrocław to possibly issue an opinion and to the Minister of Infrastructure to possibly approve the implementation conditions of the investment project, prior to issuing the decision.

By the letter dated 04.07.2022, file No.: DOK-2.7751.18.2022, the Minister of Infrastructure called the authority to determine whether the investment project would be implemented under the act dated 08.07.2010 *on particular preparation principles to implement an investment project regarding flood control structures.* By the letter dated 11.07.2022, file No.: WOOS.420.18.2022.MS.6, the RDEP responded to the call and confirmed that the said investment would be implemented pursuant to the said act.

The State Poviats Sanitary Inspector in Wrocław did not take a stance timely, within the deadline referred to in art. 77, clause 6 of the EIA and, pursuant to art. 79, clause 4 of the EIA, this is treated as no objections.

The Minister of Infrastructure, in the decision of 09.08.2022 (received on 16.08.2022), file No. DOK-2.7751.18.2022, acting pursuant to art. 77, clause 1, item 4, in relation to art. 87 of the EIA, taking into account the scope of the planned change, did not report additional conditions for the investment project implementation under the change requested for the decision on environmental conditions.

Fulfilling the statutory prerequisites of art. 79, clause 1 of the EIA, the RDEP, following the principles stipulated in art. 33 of the quoted act, by the announcement dated 01.09.2022, file No.: WOOS.420.18.2022.MS.7, provided the public with information about the planned investment project, i.e. about

- starting the proceedings,
- starting to carry out the environmental impact assessment of the investment project,
- the subject of the case-related decision that is to be issued,
- the authority competent to change the said decision on environmental conditions and the authorities competent to possibly issue an opinion and possibly approve the conditions for the investment project implementation,
- possibility of getting to know the relevant case documentation and the place where it is available for review,
- possibility of reporting remarks and conclusions,
- way and address of reporting remarks and conclusions, specifying, at the same time, 30-days' period for reporting and submitting such,
- the authority competent to consider the remarks and conclusions.

Everyone could review the entire case documentation from 07.09.2022 to 06.10.2022. The documents were available for review in the RDEP's office, between 8:00 and 14:00. In the said period everyone could also report remarks and conclusions regarding the planned investment project, in writing and verbally, to the protocol, or in a digital form. The authority competent to consider the remarks and conclusions was the RDEP. In the

announcement the authority informed the society that the remarks and conclusions submitted after the specified deadline shall remain unconsidered. No remarks or conclusions were submitted within the specified period.

Pursuant to art. 3, clause 1, item 11 of the EIA, information about the plane investment project were published in the form of:

- announcement on the information board of the authority competent for the case, i.e. the information board of the RDEP,
- publishing the information in the Public Information Bulletin of the RDEP,
- providing information in the investment project implementation location,
- announcing the information about the planned investment project by the usual way in the locality relevant for the subject of the proceedings, i.e. by publishing that in the way typical for the Borough of Wrocław, Długołęka and Czernica.

Moreover, the announcement dated 06.09.2022, file No.: WOOS.420.18.2022.MS.8, the local authority informed the parties to the proceedings about its stages, including the stances, or lack of such, taken by the authorities granting approvals and giving opinions and beginning the public participation procedure.

Before issuing the decision, under the principle defined in art. 10, § 1 of the CAPA, the RDEP, by the announcement dated 17.09.2022, file No.: WOOS.420.18.2022.MS.8, informed the parties to the proceedings about collecting the evidence material for the case related to issuing the decision on environmental conditions, for the said investment project and about the possibility of expressing an opinion about the collected evidence and the reported demands. In the said announcement the local authority informed the parties to the proceedings that a resolution ending the administrative proceedings for the said case would be announced no earlier than after seven days following its delivery date. Pursuant to art. 49 CAPA the announcement is considered as delivered after fourteen days following its publication date.

None party reported remarks or filed motions regarding the proceedings.

Following the undertaken administrative proceedings related to the environmental impact assessment, a set of documents, compliant with art. 74, clause 1 of the EIA, was submitted for consideration. Based on the analyses of the collected evidence materials concerning the planned investment project, the authority assessed the potential impacts and environmental hazards related to implementation and operation of the project. The Regional Director for Environmental Protection in Wrocław, having analysed the planned investment project regarding the conditions referred to in art. 80 of the EIA, stated that the planned change should not generate significant adverse impacts on the environment.

A change of the decision, being the core of the proceedings, is related to land constraints in the investment project implementation area due to building the East Wrocław Ring Road. The change regarding the investment project includes making a water device - the S5 flood control wall, periodically damming the flood waters of the Widawa river, along the left river bank of Widawa, along the section No. 5, from km 1+304.0 to km 1+428,7 its length being L=124.7 m, plus an anchoring made in the body of the earth-fill embankment, along the sections from km 1+304.0 to km 1+309.0 and from km 1+423.7 to km 1+428.7 and making the water devices functionally related to the designed flood control wall - the BR1 floodgate (8.0 m wide at the section No. 5 along the left river bank of Widawa, at km 1+331) and the BR2 floodgate (8.0 m wide at the section No. 5 along the left river bank of Widawa, at km 1+401). What was given up were the elements of the investment project originally planned in that location, i.e. the earth-fill embankment along the left river bank of Widawa, at the section No. 5, from km 1+309.0 to km 1+423.7, length being L=114.7 m, in the location of the designed S5 flood control wall, the embankment crossing point - P17 at km 1+400 of the section No. 5 of the flood dyke along the left river bank of Widawa, in the location of the designed BR2 floodgate.

The planned wording changes of the decision on environmental conditions only include a local change of the technical solution and they do not impact the nature of the investment project that will still be periodically damming the flood waters thus enabling protection against flooding for the areas located in Czernica, Długołęka and Wrocław boroughs. The

requested change does not require formulating additional conditions for the investment project implementation. "The conditions defined in the decision being changes are sufficient to minimise the impact of the investment undertaking on the environment and additional conditions within the scope need not be determined.

Considering the type, scale, location and nature of the investment project that will be implemented following the conditions minimising its impact on the environment and pursuant to the applicable regulations, one does not anticipate a significant adverse impact of the investment on the uniform surface and underground water body (UWB) and the opportunity of achieving the environmental goals.

In the course of the proceedings related to issuing the said decision, the environmental protection authority allowed, as a matter of fact, any evidence that could add a right settlement of the case and the settlement basis was assessment of the entire evidence material collected in the course of the proceedings, therefore the authority met the conditions stipulated in art. 75 § 1 and art. 80 of the CAPA.

In the application for changing the decision, the PGW WP applied, pursuant to art. 108 § 1 CAPA for making the decision immediately enforceable stating that the investment project under the proceedings was planned for implementation in the current planning period, by virtue of the applicable Flood Risk Management Plan for the Odra River Basin, adopted by the Regulation of the Council of Ministers of 18.10.2016 on adopting the Flood Risk Management Plan for the Odra River Basin (*Dz. U. [Journal of Laws] pos. 1938*). Implementation of the investment project in the specified periods will add to a higher public purpose related to protection of human health and life against flood.

In accordance with the legal regulation referred to, i.e. art. 108 § 1 CAPA, which can be appealed against, immediate enforceability can be applied when this is necessary owing to protection of human health and life, or when it is to prevent the state economy against heavy loss, or owing to a different public purpose or important welfare of the party.

The investment project covered by the proceedings, as mentioned in the case documentation, will make it possible to solve the problem of land constraints and, at the same time, ensure flood protection. The local authority stated that providing flood protection under the said investment was necessary owing to protection of human health and life and safeguarding the state economy and the inhabitants of the areas adjoining the Widawa river against losses that might occur as a consequence of flood. Therefore there are grounds listed in art. 108 § 1 CAPA (i.e. protection of human health and life, safeguarding the state economy against heavy loss, a different public purpose - protecting the inhabitants against material loss) that justify making the said decision immediately enforceable.

Given the above it is decided as in the beginning.

#### **Information**

The parties may appeal against the decision to the General Director for Environmental Protection through the Regional Director for Environmental Protection in Wrocław within 14 days of its delivery date.

Pursuant to art. 127a of the Code of Administrative Procedure, during the course of the period specified for the appeal, the Party may revoke the right to appeal against a public administration authority that has issued the decision. Upon the date of submitting the statement about waiving the right to appeal by the last party to the procedure to the public administration body, the decision becomes final and binding.

#### Sent to:

1. Państwowe Gospodarstwo Wodne Wody Polskie [State Water Holding Polish Waters],  
ul. Żelazna 59A, 00-848 Warszawa  
represented by  
Joanna Kabarowska, Sweco Polska sp. z o.o., ul. Armii Krajowej 61 (bud. C ) 50-950 Wrocław
2. Parties to the proceedings, pursuant to art. 49 CAPA.

#### CC:

1. Państwowy Powiatowy Inspektor Sanitarny we Wrocławiu, ul. Kleczkowska 20, 50-227 Wrocław
2. Minister of Infrastructure, ul. Chałubińskiego 4/6, 00-928 Warszawa