

**REGIONAL DIRECTOR FOR
ENVIRONMENTAL PROTECTION
IN CRACOW**

OO.420.4.1.2020.BM

Cracow, May 20, 2020

**DECISION
ON ENVIRONMENTAL CONDITIONS**

Based upon Article 71 (2) item 2, Article 75 (1) item 1 letter i), Article 84 (1) and (2), and Article 85 (1), (2) item 2 of the Law of 3 October 2008 on access to information on the environment and its protection, public participation in environment protection and environmental impact assessments (OJ of 2020, item 283, as amended), and based upon Article 104 and Article 108 of the Act of June 14, 1960 Code of Administrative Procedure (OJ of 2020, item 256, consolidated text), as well as Article 3 (3) of the Regulation of the Council of Ministers of September 10, 2020 on investment that may significantly affect the Environment (OJ of 2019, item 1839, consolidated text),

after considering

the application dated 03/06/2020, ref. no.: POPDOW/KR/60549311/20/0496, as provided by Mrs. Barbara Chammas, representative of AECOM Polska Sp. z o.o. Odra-Vistula Flood Management Project Office (1. Pokoju Alley, Building K1, 31-548 Cracow), acting in the name of the State Water Holding Polish Waters Regional Water Management Authority in Cracow (22. Marszałka J. Piłsudskiego Street, 31-109 Cracow), on the issuance of a decision on environmental conditions due to necessary modification of a condition for the investment, which was awarded with the decision on environmental conditions dated 05/20/2015, ref. no.: OO.4233.8.2014.BM, titled: ***“Protection of Upper Vistula Towns and Cracow: Section 4 – The right embankment of the Vistula River from the estuary of Skawinka to the Kościuszko barrage”***,

I d e c i d e a s f o l l o w s :

- I. I state that there is no obligation to provide an environmental impact assessment for the contract in reference to modification of a condition for the investment, which was awarded with the decision on environmental conditions dated 05/20/2015, ref. no.: OO.4233.8.2014.BM, titled: ***“Protection of Upper Vistula Towns and Cracow: Section 4 – The right embankment of the Vistula River from the estuary of Skawinka to the Kościuszko barrage”***.
- II. I modify condition no. 1.2, item n) – referring to the time and to the performance conditions for works associated with the removal of top layer of soil – in investment titled: ***“Protection of Upper Vistula Towns and Cracow: Section 4 – The right embankment of the Vistula River from the estuary of Skawinka to the Kościuszko barrage”***, which was awarded with the decision on environmental conditions dated 05/20/2015, ref. no.: OO.4233.8.2014.BM, as follows:

1. Prior to commencing the earthworks within a particular site one shall inspect it in reference to the occurrence of protected animal species (e.g. amphibians, reptiles, bird). The works associated with the removal of top layer of soil may be done throughout the year provided that ongoing environmental supervision would be assured. Identified specimens shall be transferred to the area beyond the investment site, to the location having similar habitat conditions, placed in a distance sufficient to avoid the return of animals to the site until completing the works. The aforementioned measures shall be implemented under supervision of expert ornithologist. The top layer of soil shall be removed in stages along with the progress of works at the embankment.

III. The decision is immediately enforceable.

IV. Specificity of the assignment is determined in Appendix no. 1, which forms an integral part of this decision.

Justification

Mrs. Barbara Chammas, representative of AECOM Polska Sp. z o.o. Odra-Vistula Flood Management Project Office (1. Pokoju Alley, Building K1, 31-548 Cracow), acting in the name of the State Water Holding Polish Waters Regional Water Management Authority in Cracow (22. Marszałka J. Piłsudskiego Street, 31-109 Cracow), applied to the Regional Director for Environmental Protection in Cracow for modification of a condition for the investment, which was awarded with the decision on environmental conditions dated 05/20/2015, ref. no.: OO.4233.8.2014.BM, titled "***Protection of Upper Vistula Towns and Cracow: Section 4 – The right embankment of the Vistula River from the estuary of Skawinka to the Kościuszko barrage***" in the motion dated 03/06/2020, ref. no.: POPDOW/KR/60549311/20/0496.

The application has been updated due to formal issues with a note dated 04/02/2020, ref. no.: POPDOW/KR/60549311/20/0728.

In the course of the proceeding, the documents required under Article 74 (1) of the Act of October 3, 2008 on the access to information on the environment and its protection, public participation in environment protection and environmental impact assessments were attached to the application. A fiscal charge for the issuance of the decision on environmental conditions and for the power of attorney provided was paid.

In conformity with provisions of Article 75 (1) item 1 letter i) of the Act of October 3, 2008 *on the access to information on the environment and its protection, public participation in environment protection and environmental impact assessments*, hereinafter referred to as the EIA Act, the Regional Director for Environmental Protection in Cracow is responsible for the issuance of a decision on environmental conditions for the contract in question.

In conformity with provisions of Article 80 (2) of the *EIA Act*, stating the contract location's compliance with establishments under a local spatial development plan does not refer to flood defenses to be developed based upon the Act of July 8, 2010 on the special preparation rules for flood protection investment (OJ of 2019, item 933, consolidated text).

The investment in question is qualified to group II of investments, in accordance with **Article 3 (3)** of the Regulation of the Council of Ministers of September 10, 2020 on investments that may significantly affect the Environment (OJ of 2019, item 1839, consolidated text). A condition (non-investment character) of the subject investment shall be modified in reference to the time and to the performance conditions for works associated with the removal of top layer of soil, as established in the decision of the Regional Director for Environmental Protection in Cracow on the environmental conditions (dated 05/20/2015, ref. no.: OO.4233.8.2014.BM).

A list of the parties has been adopted according to the boundaries of the implementation area and of the contract impact range. Owners of plots / units having rights to the properties within the investment impact range, i.e. located in a distance of 100 m from the boundaries of the planned investment, have also been considered as the parties. Based upon provided maps and extracts from the land register it was established that the number of parties exceeds 10. Therefore, in accordance with Article 74 (3) of the Law of October 3, 2008 on the access to information on the environment and its protection, public participation in environment protection and environmental impact assessments, Article 49 of the Code of Administrative Procedure was applied for the proceeding, stating notifications of the parties through public announcements.

The Regional Director for Environmental Protection in Cracow informed the parties of proceeding in the notification dated 04/02/2020, ref. no.: OO.420.4.1.2020.BM, about:

- Commencement of proceeding upon the Investor's motion, acting through a Proxy;
- Applying to the State District Sanitary Inspector in Cracow and to the Ministry of Maritime Economy and In-land Navigation for an opinion on the obligation to provide environmental impact assessment for the investment in question and on the potential establishments of the range of report;
- Commencement of evidence proceeding on the issuance of a decision on environmental conditions for the aforementioned investment, and about a possibility of acknowledging of and discussing with collected evidence and materials and notified claims in that case.

That Notification has been successfully published on a notice board of RDOŚ in Cracow and on notice boards of: City Office of Cracow, Commune Office of Liszki, and Town and Commune Office of Skawina. The notification informed that on the following stages of the proceeding, in accordance with Article 49 (1), the parties shall be notified through publication of notes (announcements, notifications) in the Public Information Bulletin of the RDOŚ in Cracow. Furthermore, the RDOŚ's notification in question has been published in the Public Information Bulletin, at websites of the Regional Directorate for Environmental Protection in Cracow, and in a publicly accessible data list at the website of the Center of Information on the Environment.

The State District Sanitary Inspector in Cracow issued an opinion on 04/21/2020 (reception date: 04/12/2020), ref. no.: NZ-PG-420-72/20 ZL/2020/04/131, in which it stated that the contract in question does not require provision of an environmental impact assessment.

The Minister of Maritime Economy and In-land Navigation issued an opinion in the note dated 04/16/2020 (reception date: 04/16/2020), ref. no.: DOK.DOK2.9750.1.23.2020.SK PW.121449, in which it stated that the contract in question does not require provision of an environmental impact assessment.

The Regional Director for Environmental Protection in Cracow issued a decision dated 05/20/2015, ref. no.: OO.4233.8.2014.BM, on the environmental conditions for the investment titled: ***“Protection of Upper Vistula Towns and Cracow: Section 4 – The right embankment of the Vistula River from the estuary of Skawinka to the Kościuszko barrage”***. The decision comprised extension and sealing of sections of the right Vistula embankment in Cracow: Section 4 - The right embankment of the Vistula River from the estuary of Skawinka to the Kościuszko barrage. The extension in question included raising and widening of embankment bodies comprised by the study, and it has been divided into three tasks, i.e.:

- Task no. 1 – km: 59+735 - 62+000 – river chainage; km: 60+325 - 61+625 – register embankment chainage; km: 60+325 to km 61+662 – actual chainage, over a length of 1337 m.
- Task no. 2 – km: 63+080 - 63+865 – river chainage; km: 62+030 - 63+190 - register embankment chainage; km: 62+017 to km 63+183 – actual chainage, over a length of 1166 m.
- Task no. 3 – km: 64+211 - 66+300 – river chainage; km: 63+790 - 65+120 - register embankment chainage; km: 63+779 to km 65+160 – actual chainage, over a length of 1381 m.

Detailed specificity of the planned investment was given in Appendix no. 1 dated 05/20/2015, ref. no.: OO.4233.8.2014.BM, to the decision of the Regional Director for Environmental Protection in Cracow on the environmental conditions dated 05/20/2015, ref. no.: OO.4233.8.2014.BM.

Currently, the subject of the investment is modification of the condition, which has been determined in the aforementioned decision on environmental conditions as follows: *“Prior to the commencement of earthworks within a particular area one shall inspect it in relation to the occurrence of protected animal species (e.g. amphibians, reptiles, birds). The works associated with the removal of top layer shall be done from September to February. Identified specimen shall be transferred to the area beyond the Works Contract site to the location having similar habitat conditions and placed in such a distance from the Works Contract that the animals would not be able to return to the site until the completion of works. The earthworks shall be performed under the Contractor’s environmental supervision.”*

The condition specifying such site restrictions disables the Investor to perform the works associated with the removal of top layer of the soil throughout the year, according to the progress of works. The Investor indicated that due to technical reasons, as well as safety, the aforementioned works need to be performed sectionally, and the provision under the condition, which is currently given in the original decision on environmental conditions, i.e.: *“The works associated with the removal of top layer shall be done from September to February”*, would significantly extend the time necessary for implementation of the investment.

The Investor informed that the works shall be performed in sections of 100-300 m, depending on land conditions. Due to safety reasons it is not allowed to remove the soil from the embankment in a reach of about 3.9 km, i.e. from the entire embankment section. Turf covering the embankment body protects it against washing-out by both: flood waters, as well as intensive rainfall. Removal of the top layer of soil within the entire length of the embankments would also result in unjustified raise of flood risk, as reduction of the crest level at simultaneous lack of its possible protection during the flood within such a long section would result in losing a possibility of providing efficient flood protection for the time of investment implementation.

The implementation site and the investment impact range are located within Małopolskie Province, in the City of Cracow (district of the City of Cracow, Municipality of Cracow) and in Piekary and in Kryspinów (district of Cracow, Commune of Liszki), as well as in Skawina (district of Cracow, Commune of Skawina).

The motion in question covers the area of about 14.7 ha, which is necessary to implement the investment. The forecasted reach of the expected investment impact is the area of about 109.3 ha.

The contract site is covered by arable crop, meadow plants, woodlot trees and shrubs, and forest plants. The embankments where the top layer of soil would be removed are covered with typical ruderal vegetation.

Modification of the condition referring to the time and of performance conditions related to the removal of the top layer of soil shall be done within the entire planned investment site.

The analyzed contract, comprising modified condition referring to the time and performance conditions related to the removal of the top layer of soil, shall not affect remaining mitigation measures and conditions determined on the stage of performance and use, which were described and analyzed within the framework of proceeding referring to the already issued environmental decision.

Within the framework of mitigating the impact of the analyzed investment on the stage of this proceeding, the following actions are expected:

- Assuring ongoing environmental supervision by a naturalist – expert ornithologist;
- In case of identifying presence of protected species – transfer them to the area beyond the investment site, having similar habitat conditions, placed in a distance sufficient to avoid the return of animals to the site until completing the works.

Other impacts and mitigation measures remain unchanged and have been described and analyzed in the issued decision on environmental conditions. The Decision of the Regional Director for Environmental Protection in Cracow dated 05/20/2015, ref. no.: OO.4233.8.2014.BM, on the environmental conditions for the investment to be implemented, have been preceded with an environmental impact assessment, and an environmental impact report – identifying environmental conditions and natural sites for implementation of the investment, as well as technical, organizational, and spatial conditions referring to the stages of performance, use, and completion of the investment use – was developed for its purpose. The assessment has been done based upon a natural inventory provided in 2014.

In accordance with Article 84 (1) of the EPA, in case an environmental impact assessment would not be done, a relevant authority states the lack of necessary development of environmental impact assessment in a decision on environmental conditions. In conformity with Article 85 (1) and (2) of the EPA, the decision on environmental condition requires justification, but if the environmental impact assessment has not been done, a proper authority shall inform about the criteria discussed under Article 63 (1), included at stating the lack of necessary development of such an assessment, in justification of the decision on environmental conditions.

The investment in question – comprising modification of the assignment to be implemented in the condition referring to the time and to performance conditions related to the removal of the top layer of soil – shall not result in changing the scope of assumed volume of gas and dust pollution emission to the air, pollution emission to water, and volume of waste emission, as well as it shall not result in changing the volume of applied, water, raw materials, fuel, and power. It is also not expected to modify solutions applied to protect the environment. Except for the modified condition referring to

the time and performance conditions related to the removal of the top layer of soil, any other assumption remain coherent with those, which have been adopted on the stage of obtaining the decision on environmental conditions dated 05/20/2015, ref. no.: OO.4233.8.2014.BM.

Analysis of conditions listed under Article 63 (1) of the Act of 3 October 2008 on access to information on the environment and its protection, public participation in environment protection and environmental impact assessments allows for stating that modification of the conditions analyzed during this proceedings does not refer to modification of the investment impacts in relation to water and mud areas and other areas with shallowly occurring ground water, shores, mountainous and forest areas, areas under protection, areas requiring special protection due to occurrence of plant species and animal species and their habitats, as well as natural habitats under protection – including Natura 2000 sites – where environmental quality standards have been exceeded, areas of direct protection for water intakes, areas of health-resort protection, and areas with landscape of historic, cultural or archaeological significance.

It shall be additionally emphasized that due to the type of investment, the impacts shall be of local reach, without a risk of transboundary impact. Due to the range of planned investment there is no possibility of impact accumulation, and application of natural resources, emission risk, occurrence of other nuisance, or occurrence of a serious industrial failure is minor. Implementation of the investment in question shall also not cause not reaching the environmental objectives included in the water management plan for the Vistula river-basin. All those and other required aspects determined under Article 63 (1) of the Act of 3 October 2008 on access to information on the environment and its protection, public participation in environment protection and environmental impact assessments have been analyzed in details on the stage of obtaining the decision of the Regional Director for Environmental Protection in Cracow dated 05/20/2015, ref. no.: OO.4233.8.2015.BM, and they are still binding.

Based upon an application of the Investor, acting through the Proxy – Mrs. Barbara Chammas, dated 04/07/2020, ref. no.: POPDOW/KR/60549311/20/0777, this decision has been made immediately enforceable based upon the mode under Article 108 (1) of the APC.

In accordance with Article 108 of the CAP, in case of a decision against which one may appeal, immediate enforceability mode may be implemented, if it is necessary due to protection of health or life of people or for protection of the national business against heavy losses or due to other social interest or extremely overriding interest of the party.

While reasoning its application the Investor informed the overriding social interest, i.e. the protection of human health and life in areas under flood risk. The planned extension of the right Vistula embankments from the estuary of Skawinka to the Kościuszko Barrage – Class I hydraulic structures – shall allow for complex flood protection of the Municipality of Cracow and of the Commune of Liszki, including residential houses and outbuildings, arable land, and areas beyond the embankment. Furthermore, the investment shall limit the risk of sanitary contamination caused by a potential flood for adjacent sites. The present technical condition of the embankments does not meet relevant parameters referring to that type of structure, e.g. due to insufficient condensation, height and width of the embankment.

And also significant interest of the party, i.e. State Water Holding Polish Waters Regional Water Management Authority in Cracow, which refers to the possibility of accounting financial penalties or to the loss of funding for the investment due to losing a possibility of investment implementation as a result of prolonged administrative procedures.

Considering the arguments stated above, the request of the Investor on making the decision immediately enforceable was accepted, as the arguments provided refer to the rationale indicated under Article 108 of the APC.

For the purpose of the contract in question it is not obligatory to provide an environmental impact assessment.

The analysis done provided an unequivocal conclusion that provision of the environmental impact assessment is not necessary in case of the investment in question. The aforementioned features of the contract – analyzed in terms of the criteria discussed under Article 63 (1) of the EPA – prove accuracy of the settlement given in the conclusion.

In conformity with Article 84 (2) of the EPA, specificity of the investment forms appendix to this decision on environmental conditions.

Analysis of the provided application and of information on the planned investment proves that the intended investment shall not cause nuisance to the environment exceeding the standards.

As a result it was decided as given in the conclusion.

Instruction

One may appeal against this decision to the General Director for Environmental Protection in Warsaw (00-922 Warsaw, 52/54. Wawelska Street) through the Regional Director for Environmental Protection in Cracow within 14 days from its serving date.

One may relinquish the right to appeal to the public administration unit, which issued the decision, in case of this decision. On the day the public administration unit received statements relinquishing the right to appeal by the last of the proceeding parties, the decision becomes final and binding.

**Regional Director for
Environmental Protection in Cracow**
Rafał Rostecki MSc
/electronic signature/

Recipients:

1. Mrs. Barbara Chammas – Investor's Proxy,
2. Remaining parties of the proceeding notified in the mode under Article 49 APC,
3. OO.BM file.

CC:

1. State District Sanitary Inspector in Cracow (ePUAP),
2. Ministry of Maritime Affairs and Inland Navigation in Warsaw (ePUAP).

INFORMATION OF THE ADMINISTRATOR ON PERSONAL DATA PROCESSING

Due to enactment of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 *on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC* (hereinafter referred to as GDPR) on 25 May 2018, we hereby inform that:

- 1) The Regional Director for Environmental Protection with its office in Cracow, 25. Mogilska Street, 31-542 Cracow, administers your personal data.
- 2) Your personal data shall be processed by the Regional Directorate for Environmental Protection for the purpose of administrative / court-administrative proceedings, in accordance with Article 6 (1) letter c) of the GDPR.
Provision of your personal data is voluntary, but necessary for fulfilling the legal obligation of addressing the case.
- 3) Your data may be provided by the Regional Director for Environmental Protection in Cracow to units authorized to obtain information based upon commonly valid provisions of the law.
- 4) Personal data provided by you shall be stored by the time required by provisions of the law.
- 5) You have a right to access your personal data and a right to adjust them, limit their processing, and a right to transfer the data.
- 6) Due to processing of your personal data you have a right to file a claim to the President of the Personal Data Protection Office.
- 7) Contact data to the Data Protection Inspector: e-mail address: iod.krakow@rdos.gov.pl, mail address: 25. Mogilska Street, 31-542 Cracow.

Appendix no. 1 to the decision
ref. no.: OO.420.4.1.2020.BM
dated May 20, 2020

SPECIFICITY OF THE INVESTMENT

The planned investment comprises modification of a condition (non-investment) for the contract to be implemented, which was provided with a decision on environmental conditions dated 05/20/2015, ref. no.: OO.4233.8.2014.BM, titled: ***“Protection of Upper Vistula Towns and Cracow: Section 4 – The right embankment of the Vistula River from the estuary of Skawinka to the Kościuszko barrage”***.

The implementation site and the investment impact range are located within Małopolskie Province, in the City of Cracow (district of the City of Cracow, Municipality of Cracow) and in Piekary and in Kryspinów (district of Cracow, Commune of Liszki), as well as in Skawina (district of Cracow, Commune of Skawina).

The motion in question covers the area of about 14.7 ha, which is necessary to implement the investment. The forecasted reach of the expected investment impact is the area of about 109.3 ha.

The analyzed contract – comprising modification of a condition (of non-investment character) given in the issued decision on environmental conditions, referring to the time and to the performance conditions related to the works associated with the removal of the top layer of soil – does not modify technical parameters of the planned investment, which were presented within contents of the issued decision and in Appendix no. 1 to this decision (ref. no.: O.4233.8.2014.BM).

**Regional Director for
Environmental Protection in Cracow**
Rafał Rostecki MSc
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