



Audit conclusion from audit no.

12/20

Funds collected in accordance with Act on Hazardous Waste Management

The audit was included in the audit plan of the Supreme Audit Office ('SAO') for 2012 under number 12/20. The audit was managed by and the audit conclusion drawn up by SAO member MVDr. Rudolf Němeček.

The audit aimed to examining collection of funds in accordance with Act on Hazardous Waste Management.

The audit was conducted from July 2012 to January 2013.

The period from 2007 and 2011 was audited; where relevant, the previous and subsequent periods were also scrutinised.

Auditees:

Ministry of the Environment; State Environmental Fund of the Czech Republic; Czech Environmental Inspectorate; Hradecké služby a.s., Hradec Králové; RUML-CZ a.s., Sezemice; Sběrné suroviny, a.s., České Budějovice; Společnost Horní Labe a.s., Trutnov; A.K.U.P.I. spol. s r.o., České Budějovice; .A.S.A. České Budějovice, s.r.o., České Budějovice; AVE CZ odpadové hospodářství s.r.o., Prague 10; Geemat s.r.o., Brno, Černá Pole; MAPOZ Zliv s.r.o., Zliv; OZO Ostrava s.r.o., Ostrava; RUMPOLD s.r.o., Prague 1; TALPA - RPF, s.r.o., Ostrava-Kunčičky; EKO - Chlebičov a.s., Chlebičov; Van Gansewinkel HBSS s.r.o., Modřice

The objections of the Ministry of the Environment, of the company AVE CZ odpadové hospodářství s.r.o. and the company Van Gansewinkel HBSS s.r.o. to the audit protocols were dealt with by the heads of the audit teams by means of decisions on objections. The appeals against the decision on objections lodged by the Ministry of the Environment and by the company AVE CZ odpadové hospodářství s.r.o. were dealt with by a resolution of the SAO Board.

At its 8th session held on 29 April 2013 the **SAO Board** issued Resolution no. 5/VIII/2013 **approving** **the audit conclusion** as follows:

I. Introduction

The legislation on hazardous waste is derived from the Czech Republic's international commitments with respect to European Union law. The fundamental rules of waste management, the amount charged in fees by law and the obligations of the participants in waste management are laid down by Act No. 185/2001¹ and its implementing regulations.

Supreme state supervision in the field of waste management is performed by **the Ministry of the Environment** ('MoE'). Other tasks of the MoE, established under Act No. 2/1969², include laying down by decree the List of Hazardous Waste and Catalogue of Waste; drawing up and keeping summary records of types of waste, their quantities and methods of disposal, waste disposal facilities and hazardous waste accumulation sites; and drawing up the waste management plan of the Czech Republic.

The **Czech Environmental Inspectorate** ('CEI'), established under Act No. 282/1991³, is an organisational component of the state subordinated to the MoE. It checks compliance with the legislation by persons authorised to carry on enterprise in the field of waste management and other administrative authorities in the field of waste management.

The **State Environmental Fund of the Czech Republic** ('SEF') was established under Act No. 388/1991.⁴ The SEF's administrator is the Ministry of the Environment. In waste management, the SEF is the beneficiary of fees for placing hazardous waste in landfill, or specifically the risk component of this fee.

Selected operators of landfill sites and facilities handle hazardous waste under the terms of Act No. 185/2001. Landfill site operators collect fees for the placement of hazardous waste in a landfill site from the originators of the waste; the operators then pay in these fees to the beneficiaries.

Audit no. 12/20 was a follow-up audit to audit no. 05/28 'Management of the State Funds dealing with Hazardous Waste', which the SAO undertook in 2005. These are some of the findings of audit no. 05/28: the complicated system for the collection and transfer of fees for placing hazardous waste in landfill made it possible for the originators of the waste and hazardous waste landfill site operators either not pay the fee at all for placing hazardous waste in landfill sites or to pay just a minimal amount; the amount collected in fees for landfilling hazardous waste was significantly influenced by the quantity of hazardous waste declared as technological material for securing the landfill site.

Audit no. 12/20 verified whether the collection of finances collected by law in the disposal of hazardous waste ('HW') has changed and whether the identified systemic shortcomings have been eliminated. Compliance with selected legal obligations in the field of waste

¹ Act No. 185/2001, on waste and amending certain other acts.

² Act No. 2/1969, on the establishment of ministries and other central organs of state administration of the Czech Republic.

³ Act No. 282/1991, on the Czech Environmental Inspectorate and its competence in forest protection.

⁴ Act No. 388/1991, on the State Environmental Fund of the Czech Republic.

management by the audited entities when disposing of hazardous waste was also scrutinised.

NB: All the legal regulations referred to in this audit conclusion were applied in the wording effective during the audited period.

II. Audit findings

Hazardous waste is waste with one or more of the hazardous properties referred to in Annex 2 of Act No. 185/2001. Hazardous waste may be disposed of in the following ways: accumulation, collection, buy-up, transportation, warehousing, modification, use and elimination. One method of disposing of hazardous waste is storage at land surface level or below the surface of land, i.e. landfilling. A fee is charged on this method of disposing of hazardous waste.

The fee for landfilling hazardous waste consists of two components. The basic fee component is paid for all waste landfill (communal, miscellaneous and hazardous) and is a revenue of the municipality the landfill site is located in. Landfilling hazardous waste also carries a risk component, which is a revenue of the SEF. The fee tariffs are laid down in Annex 6 to Act No. 185/2001. In 2007 and 2008 the tariff of the fee's risk component for landfilling hazardous waste was CZK 3,300 per tonne; since 2009 the tariff has been increased to CZK 4,500 per tonne. Hazardous waste containing asbestos carries only the basic fee component. Placing waste in a landfill as technological material to secure to landfill site ('technological material') and waste intended for landscaping is entirely exempted from fees.

1. Ministry of the Environment

The MoE carries out supreme state supervision in the field of waste management in the Czech Republic and is the administrator of the SEF. The MoE was regularly informed about the amount collected in the fee's risk component.

Table 1 – Collection of the fee's risk component

| Year | Fee risk component (CZK millions) |
|------|-----------------------------------|
| 2007 | 107.8 |
| 2008 | 105.0 |
| 2009 | 74.5 |
| 2010 | 59.1 |
| 2011 | 59.2 |

Source: Communication of the MoE of 4 December 2012; SEF annual reports for 2007 to 2010; Report on the Financial Management of the SEF for 2011.

The amount collected in the fee's risk component continued to display a declining tendency during the audited period. In 2007 CZK 107.8 million was collected in the fee's risk component; by 2011 the figure had fallen to just CZK 59.2 million (see Table 1). That is a decline of 45.1%. The audit found that the MoE had been preparing in the past and was currently still preparing a legislative amendment to the act on waste intended to turn this trend around, both by increasing the tariff of the fee's risk component and by changing the

proportion of hazardous waste that can be used as technological material. It is evident from the amount actually collected in the years 2007 to 2011 that increasing the fee tariff did not result in the collection of a greater amount. The SEF analysed the falling revenues from the fee's risk component in the reports that the SEF regularly passed on to the MoE for use in the relevant legislative processes.

The MoE draw up a proposal for new economic instruments; this proposal was supposed to be incorporated into the amendment of the act on waste, by the amendment was not implemented. Suggestions from the SEF and CEI were regularly passed on by MoE representatives as information for deputy ministers.

Another problematic issue is the MoE's awareness of inspections concerning the payment of fees by waste originators and their transfer to state authorities by landfill site operators. The audit discovered that the MoE possessed information about the number of inspections conducted by the regional authorities. It is not clear which of these inspections targeted fees for waste landfilling. The MoE did not possess any information about inspections conducted by municipalities. Act No. 185/2001 provides that the control authorities dealing with the payment of fees in the case of landfill site operators are the municipalities and regional authorities in whose territory the landfill site is located. However, the act does not oblige either municipalities or regional authorities to inform the MoE, i.e. to inform the supreme state supervisory body for waste management, about the conducted inspections and their results.

2. Cooperation agreement between MoE departmental organisations

On 8 March 2010 an 'Agreement on Cooperation between MoE Departmental Organisations' (the 'Agreement') was signed between the MoE, CEI and SEF. This was a response to, among other things, the audit conclusion from audit no. 05/28, the falling revenue from the fee's risk component, the legislative changes to the act on waste that were not implemented, and, above all, the fact that it was necessary to improve the quality of control work in the field of fees with a view to increasing the control work's frequency and effectiveness. The audit found that under this Agreement SEF employees were able during the audited period to participate in CEI inspections of landfill site operators on the basis of a part-time employment arrangement (agreement on work activity).

The SEF made use of the information gained from the joint inspections when drawing up analyses. It also compared the data (from interim records) with incoming payments of the fee's risk component from individual hazardous waste landfill site operators, thus ascertaining the differences between the actual amount as per the records and the amount paid. In addition, the SEF performed cross-inspections to verify among the suppliers of hazardous waste to landfill sites data on actual placements in landfill sites, the production of 'miscellaneous' waste from hazardous waste or also theoretical non-payment of finances made possible, then and now, by the applicable legislation whereby hazardous waste is used as technological material or for landscaping. The outcome consisted in 'Inspection Reports' which the SEF referred to in negotiations with the MoE during the preparation of the amendment of Act No. 185/2001 and which flagged up the shortcomings in the currently applicable legislation.

3. Czech Environmental Inspectorate

As part of its powers the Czech Environmental Inspectorate conducts inspections of legal and natural persons authorised to carry on enterprise in the field of hazardous waste disposal and inspections of municipalities to check whether they are complying with the hazardous waste legislation. These are inspections of records and the reporting of waste, inspections of the use of waste as technological material and inspections of the validity of certificates regarding the elimination of the hazardous properties of waste. If non-compliance with the law is found by an inspection, CEI commences administrative proceedings with the inspected entity. Besides fines, the CEI may impose remedial measures. Fines are paid into the CEI's account to be later distributed between municipalities and the SEF. If a fine is not paid, after one month the receivable is passed on to the local customs office for collection.

The CEI does not therefore have powers to check the payment and transfer of fees for landfilling waste.

In the audited period the CEI conducted a total of 138 inspections of hazardous waste landfill sites. The inspections were performed by inspection teams, whereby some CEI employees were also SEF employees. This practice was based on the concluded Agreement. During these inspections the inspection teams scrutinised, in line with Act No. 185/2001, the obligations of the operators of facilities and landfill sites with regard to waste disposal, focusing primarily on the keeping of interim records about waste. The SEF then compared the acquired information with its data on fees actually received.

The audit found that the CEI proposed to the MoE during the audited period that the control powers be allocated to the SEI, which is the beneficiary of the fee's risk component. This proposed legislative amendment was not adopted.

4. State Environmental Fund of the Czech Republic

In waste management, the SEF is the beneficiary of fees for placing hazardous waste in landfill, or the risk component of this fee. It is also the beneficiary of fifty per cent of the finances from fines imposed by the CEI for non-compliance with the legal regulations on waste management and fifty per cent of the finances from fines collected by customs offices. Fifty per cent of the finances from fines imposed by the CEI and fifty per cent of the finances from fines collected by the customs offices are a revenue of the municipalities in whose territory a hazardous waste landfill site is located.

The audit found that under the current legislation the SEF, as the beneficiary of the risk component of the fee, cannot monitor and check the correctness of the collection of the fee's risk component. Municipalities, as beneficiaries of the basic fee component, have this power. It is true that during the audited period the SEF was sporadically informed by regional and municipal authorities about issued decisions concerning the payment of the fee for landfilling hazardous waste and the number of performed inspections. However, this did not concern all the issued decisions and information about performed inspections, which is a consequence of the non-existence of a legal obligation for regional and municipal authorities to pass this information on to the SEF. The Agreement of 8 March 2010, which laid down a number of obligations for the SEF, was a response to this state of affairs. These obligations included,

for example, assessing inspection work in the field of revenues received in fees by the SEF and the performance of interim analysis of the results and data ascertained in the inspections and crucial for planning the revenue side of the SEF budget, for use in the relevant legislative processes of the MoE and for the purposes of assessing the work of the CEI. This Agreement is no substitute for the necessary legislation, however.

5. Selected landfill site operators

Originators of waste are obliged to pay fees for landfilling hazardous waste (disposal code D1 'disposal on the surface of land or beneath the surface of land'⁵); these fees are collected by the landfill site operator when the hazardous waste is placed in the landfill site. The landfill site operator pays in the collected fees to the fee beneficiary. Placing waste in a landfill as technological material to secure to landfill site and waste intended for landscaping are entirely exempted from fees. The audit found that during the audited period all the landfill site operators audited by the SAO disposed of landfilled hazardous waste mainly in these fee-exempted ways (see Table 2 and the chart)

Table 2 – Overview of landfilled hazardous waste at selected hazardous waste landfill sites

| Year | Landfilled hazardous waste | | | | | | | | |
|--------------|--------------------------------|--|------------------------|---|------------------------|---|------------------------|--|------------------------|
| | Total for the year [in tonnes] | D1 disposal code – storage on or beneath the surface of land (for a fee) [in tonnes] | Share of the total [%] | D1 disposal code – storage on or beneath the surface of land (containing asbestos – exempted) [in tonnes] | Share of the total [%] | N1 disposal code – use of waste for landscaping, with the exception of the use of sludge (exempted) [in tonnes] | Share of the total [%] | N12 disposal code - storage of waste as technological material for securing the landfill site (exempted) [in tonnes] | Share of the total [%] |
| 2007* | 81,209.34 | 5,857.54 | 7.21 | 2,915.05 | 3.59 | 0.00 | 0.00 | 72,436.75 | 89.20 |
| 2008** | 168,825.88 | 7,848.01 | 4.65 | 4,294.10 | 2.54 | 58,522.94 | 34.67 | 98,160.84 | 58.14 |
| 2009 | 169,664.38 | 4,681.47 | 2.76 | 4,155.31 | 2.45 | 110,740.41 | 65.27 | 50,087.19 | 29.52 |
| 2010 | 133,070.08 | 3,334.69 | 2.51 | 3,912.02 | 2.94 | 78,306.32 | 58.84 | 47,516.95 | 35.71 |
| 2011 | 164,350.04 | 2,484.74 | 1.51 | 3,671.57 | 2.24 | 103,691.19 | 63.09 | 54,502.54 | 33.16 |
| Total | 717,119.72 | 24,206.45 | x | 18,948.04 | x | 351,260.86 | x | 322,704.27 | x |

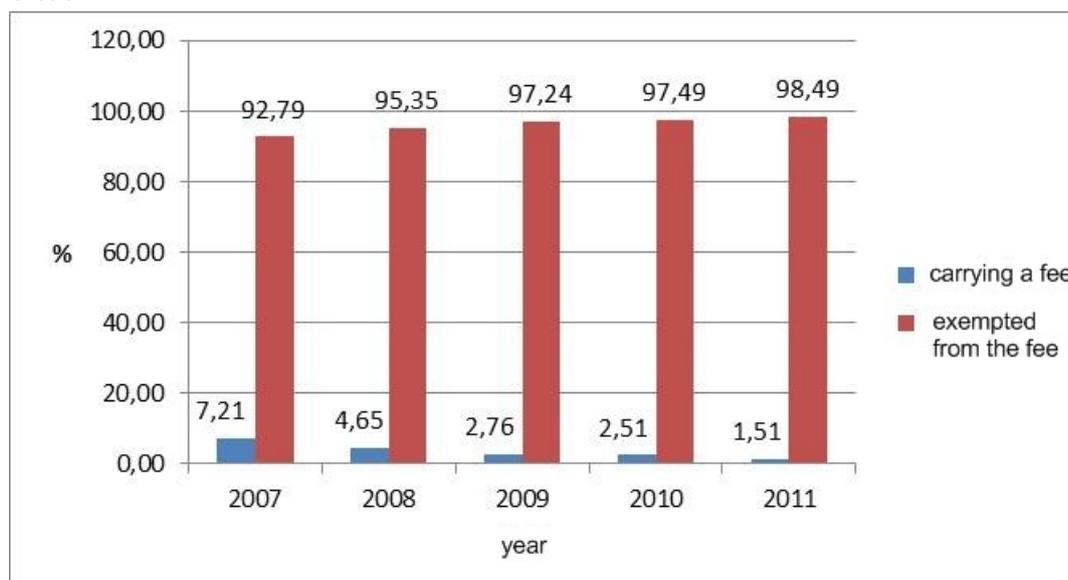
Source: Reports on the production and disposal of waste for the years 2007 to 2011; Annex 20 to Decree No. 383/2001, on the details of waste disposal.

* the data for 2007 include information for selected landfill sites excluding the Horní Benešov landfill site of Van Ganswinkel HBSS s.r.o.

** the information for 2008 is merely a guideline owing to the fact records were kept in two different systems by Van Ganswinkel HBSS s.r.o. for the Horní Benešov landfill site

⁵ Decree No. 383/2001, on the details of waste disposal; Annex 20.

Chart – Development of disposal by landfilling for selected hazardous waste landfill sites



Source: Table 2

In the period from 2007 to 2011, a constantly growing difference between the quantity of landfilled hazardous waste carrying a fee and the quantity of landfilled hazardous waste exempted from the fee was found in the audited sample of landfill site operators. As the chart shows, in 2007 92.79% of the total quantity of hazardous waste placed in landfill sites was exempted from the fee, compared to 7.21% that carried a fee. In 2011 the proportion of landfilled hazardous waste exempted from the fee had increased to 98.49%, leaving fees collected on just 1.51% of hazardous waste placed in landfill sites. The audit found that the audited landfill site operators paid the correct amount of the collected risk component of the fee into the SEF. A serious systemic shortcoming was detected, however. In the case of the selected landfill site operators, almost one hundred per cent of the hazardous waste placed in landfill sites is currently disposed of in ways that are exempted from fees.

Technological material for securing landfill sites

Hazardous waste may be used as technological material. This is regulated by Decree No. 294/2005⁶, whose Article 6 (3) provides that: *“The quantity of technological material for the technical securing of a landfill site... may amount to at most 25% of the volume of all waste placed in the landfill site for every calendar year.”*

It needs to be stressed that waste is received in landfill sites in tonnes and that the formulation *“25% of the volume of all waste placed in the landfill site”* leaves room for using a large percentage of hazardous waste as technological material. The operators of hazardous waste landfill sites use a conversion coefficient to convert weight units into volume units. However, there is no binding procedure for this conversion and this results in differences between landfill sites in the quantities of hazardous waste used as technological material.

⁶ Decree No. 294/2005, on the conditions for placing waste in landfill sites and its use on the surface of the land and amending Decree No. 383/2001, on the details of waste management.

Landscaping

The audit also found that a large proportion of hazardous waste was used for landscaping since 2008. This is a case of building or demolition material and surplus excavated earth, for example. No fee is charged on this storage method (disposal code N1) and there is no legislation regulating the quantity of hazardous waste that may be used for landscaping as there is for technological material.

III. Assessment

The system for collecting, paying in and checking the collection of fees for the placement of hazardous waste in landfill sites is still very complicated.

The SEF, which is the beneficiary of the fee's risk component, has no powers to check that these fees have been paid by waste originators and paid in by the landfill site operators, unlike municipalities, which are the beneficiaries of the basic fee component. At the same time, municipalities have no obligation to inform the SEF about the inspections performed and their results. Under the legislation, the SEF therefore has not had and does not have any idea whether it has obtained the correct amount in fines. The concluded Agreement at least enabled the SEF to assess information about the disposal of hazardous waste. This Agreement was concluded in response to the previously unsuccessful endeavour to change the legislation with regard to control powers in waste management.

Raising the tariff of the fee's risk component in 2009 did not result in an increase in the SEF's revenues, even though the audit found that in the audited sample of landfill site operators the quantity of hazardous waste placed in landfill sites has been increasing. One of the main reasons for the SEF's falling revenues from the risk component of the fee is that the system makes it possible to dispose of hazardous waste in ways that are exempted from fees, even though this hazardous waste is actually being placed in landfill sites. This results in a large quantity of hazardous waste being placed in landfill sites without any fees being paid to the SEF, fees which the SEF would then use in waste management or environmental protection.

As regards the finances collected by law in the disposal of hazardous waste, no significant positive changes occurred in comparison with the circumstances found by audit no. 05/28. On the contrary, negative changes can be observed. In 2011 it was found that as much as 98.49% of hazardous waste placed in landfill sites was exempted from fees in the audited sample.

Based on this audit, the SAO recommends that the system for collecting finances by law in the disposal of hazardous waste, including the powers of the concerned bodies, and the use of hazardous waste placed in landfill sites should be reassessed, with a categorical definition of the quantity of landfilled hazardous waste in units of weight or a stipulation of a single conversion coefficient for landfilled hazardous waste.