

NEW ENVIRONMENTAL CODE: WHAT TO EXPECT?

On January 2nd, 2021, the President of the Republic of Kazakhstan signed a new code: the Environmental Code of the Republic of Kazakhstan (hereinafter referred to as the Code) to introduce new mechanisms for environmental protection. The Code was under development for over 7 years, during which the working groups as well as the representatives of society made proposals and amendments. The adoption of the Code introduced amendments to the Tax Code and the Law On Permits and Notifications.

The first part of the Environmental Code Alert Series will be devoted to general environmental regulation, as well as the waste disposal. The legislation comes into effect on July 1st, 2021, with the exception of some transitional provisions specified in article 418 of the Code.

According to the Ministry of Ecology, Geology and Natural Resources, the adoption of the Code will lead to a need for significant investments in order to introduce the best available technologies (BAT). The volume of these investments will become clear once the appropriate technical audit is carried out.

One of the major amendments to the Code included the addition of a specific description of the environmental regulation principles. The basic principles stated in Article 5 of the Code are:

- The precautionary principle, according to which the lack of certainty should not be a reason for the refusal to accept or postponement of taking effective and proportionate measures aimed at preventing the risk of causing significant and irreversible damage to the environment.
- The principle of prevention and control, according to which it is necessary to prevent and control environmental pollution, using the best available technologies at an economically reasonable price. It is proposed to amend the Entrepreneurial Code, in terms of conducting fact checks directly affecting the living conditions of the population.
- The “polluter pays” principle includes pollution prevention and control measures, but also dictates a responsibility to recover from environmental damage.
- The principle of integration, according to which achieving sustainable development of the state and environmental protection are an integral part of such development and cannot be considered in isolation from it (an example of one of the tools for implementing this principle is strategic environmental assessment).
- The principle of public participation and involvement, which requires the public to have access to environmental information, including data on hazardous substances and activities. According to this principle, the public shall be involved in the processes associated with the implementation of projects that have a significant impact on the environment (including when negotiating settlements, production facilities, roads, etc.).

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The need to update the previous Code so that it is in line with international conventions and legislation of OECD/EU countries resulted in the introduction of the following new terms: waste, waste prevention, waste collection, waste accumulation, waste transportation, and landfill. Thus, the current Environmental Code replaced the concept of "temporary storage of waste" with that of "waste accumulation". Unlike temporary waste storage, waste accumulation involves the temporary storage of waste not only at the point of generation, but also at the facility where it will be subject to disposal or recovery operations. Thus, it infers that not only those who generated the waste but also the subjects who transported the waste to their facilities for disposal or recovery are entitled to accumulate waste.

The concept of "waste collection" is defined as follows: the activity of organized reception of waste from individuals and legal entities by specialized organizations to further direct such waste for recovery or disposal. People carrying out waste collection operations shall ensure separate waste collection under the requirements provided by the Code and the authorized body. The Code specifically introduced the separate collection of certain waste, divided into the following categories:

- 1) "dry" (paper, cardboard, metal, plastic, and glass); and
- 2) "wet" (food waste, organic matter, and others).

Amendments to the code also had an impact on entrepreneurship. The performance of work (provision of services) for the processing, neutralization, utilization, and/or destruction of hazardous waste will require a specific license. However, the licensing requirement will not apply to entrepreneurs performing this work if it concerns waste generated by their own activities.

Business entities planning or carrying out entrepreneurial activities for the collection, sorting, transportation, recovery, and/or destruction of non-hazardous waste shall submit a notice at the beginning and termination of such activities to the authorized body in the manner established by the Law of the Republic of Kazakhstan On Permits and Notifications.

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