

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.

This publication focuses on general environmental regulation, waste management, implementation of best available techniques, and environmental impact assessments. 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 techniques (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.).

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).

Best Available Techniques (BAT)

According to Article 113.1 of the Code, the best available technique is the most effective and advanced stage in the development of activities and methods of operation, which indicates the practical suitability in order to serve as the basis for the establishment of technological standards and other environmental conditions aimed at preventing or, if it is practically impossible, minimising the negative anthropogenic impact on the environment.

The Code gives a clear definition of what the best available technique really is:

- a. 'techniques' does not only mean the technologies used but also the methods, processes, practices, approaches that apply to the design, construction, maintenance, operation, management and decommissioning of the facility;
- b. 'available techniques' means those developments which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside Kazakhstan, as long as they are reasonably accessible to the operator;
- c. 'best' means most effective in achieving a high general level of protection of the environment as a whole.

According to Article 113.3 of the Code, the best available techniques are determined based on a combination of the following criteria:

- 1) The use of low-waste technology;
- 2) The use of less hazardous substances;
- 3) The furthering of recovery and recycling of substances generated and used in the process and of waste, where appropriate;
- 4) Comparable processes, facilities or methods of operation which have been tried with success on an industrial scale;
- 5) Technological advances and changes in scientific knowledge and understanding;
- 6) The nature, effects and volume of the emissions concerned;
- 7) The commissioning dates for new or existing installations;

- 8) The length of time needed to introduce the best available technique;
- 9) The consumption and nature of raw materials (including water) used in the process and energy efficiency;
- 10) The need to prevent or reduce to a minimum the overall impact of the emissions on the environment and the risks to it;
- 11) The need to prevent accidents and to minimize the consequences for the environment;
- 12) Information published by public international organisations;
- 13) Industrial implementation at two or more facilities in the Republic of Kazakhstan or abroad.

The Code also provides that the facilities of the first categories are subject to obtain integrated environmental permits. An integrated permit is a single document granting authorisation to operate all or part of an installation in a manner that guarantees that the activities carried out using the best available technologies and emission standards.

The Government is employing a “carrot and stick” approach by stimulating the new operators of facilities by exempting them from emissions payments. The same mechanism is envisaged for operating enterprises, but in order to be exempted from emissions payments, they need to develop and implement a program to improve environmental efficiency and introduce the best available techniques. However, if the enterprise decides not to use BAT, they will pay increased emissions payment.

By 2023, it is planned to develop the industry-specific BAT Guide which will be based on a comprehensive technology audit. Subsequently, in accordance with the Guide, from 2024 to 2025, it is scheduled to issue integrated environmental permits.

Reformed Procedure on the Environmental Impact Assessment (EIA)

One of the changes in the new Code is mandatory conduction of an environmental impact assessment for all types of economic and other activities that may have a direct or indirect impact on the environment and public health.

What are the main differences between the old and reformed procedure?

Old procedure

- All Categories (I-IV) were required to conduct the EIA.
- Public participation was required only at the first stage of the EIA.
- The local municipality was the sole decision-maker.

Reformed procedure

Conduction of the EIA will become mandatory only for enterprises activity of Category I;

- objects of Category II will be obliged to have a screening procedure and Category III to notification procedure, for objects of Category IV the conduction of the EIA is not required, and can be done voluntarily.
- Public participation will now be considered at every stage of the EIA. The role of the interested public when making decisions has been strengthened.

- Introduction of the Institute of Peer Review of the EIA: each stage of the EIA, from the submission of the application to the completion of the procedure, will be covered on the websites of the authorised ministry, as well as local municipalities and the media.

In accordance with Article 67 of the Code the following steps are required to obtain the EIA:

- 1) Consideration of the application regarding the planned project to determine its compliance with the requirements of this Code, as well as screening the impact of the planned activity (except for the entities that are not stated under Schedule 1 section 1);
- 2) Determining the scope of the EIA;
- 3) Preparation of the report on possible impacts;
- 4) Assessing the quality of the report on possible impacts;
- 5) Making an opinion on the results of environmental impact assessment and its accounting;
- 6) Post-project analysis of the actual impact during the implementation of the activity, if the necessity to do so is determined in accordance with this code.

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.

The new Environmental Code is a promising tool to combat and control the level of industrial emissions and to prevent catastrophic incidents in the facilities. It will keep entities accountable for the damage caused to the environment.

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