

The New Environmental Code: Best Available Technique and Environmental Impact Assessment

The President of the Republic of Kazakhstan signed the new Environmental Code of the Republic of Kazakhstan (hereinafter referred to as the “Code”) on January 2, 2021. One of the most important changes is a move towards the idea that “polluter pays and fixes”.

Best Available Techniques (BAT)

In Kazakhstan, the term BAT was introduced into Environmental Code in 2016. According to 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.

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 for facilities of the first category. 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 Paragraph 3 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.

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.