Waste management in Ukraine: new legal regulation

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On 9 July 2023, the new Law of Ukraine "On Waste Management" (hereinafter referred to as the "Law"), adopted on 20 June 2022, came into force. The Law regulates relations in connection with the management of waste generated in Ukraine, transported through the territory of Ukraine, exported abroad and imported into Ukraine for the purpose of recovery or recycling.

It is prohibited to import waste into Ukraine for the purpose of its disposal. The Law also regulates the management of waste containing metals or their alloys, but subject to the particularities set out in the Law of Ukraine "On Scrap Metal".

Some wastes are not covered by the Law. The following may be of interest:

- uncontaminated soil and other natural materials extracted during construction works, if such materials are used in construction where they were extracted;
- by-products of animal origin not intended for human consumption, if such products are not incinerated, buried, or used for biogas and compost;
- feed materials that are not animal by-products not intended for human consumption;

- waste and drainage water.

1. Waste classification

Waste is generally divided into hazardous and non-hazardous types.

The classification is carried out in accordance with the National Waste List and the Waste Classification Procedure, which are approved by the Ukrainian government and reviewed every 3 years. The procedure currently exists in draft form.

2. Are by-products of production considered waste?

Production by-products are not considered waste. However, they must meet a set of requirements stipulated by the Law (they can be used without further processing, are formed as an integral part of the production process, etc.).

3. Who is the owner of waste?

Waste owners can be waste generators, business entities in the field of waste management, territorial communities, extended producer responsibility organisations, the state, and owners of the land plot where the waste is located.

An interesting practical nuance is the determination of ownership of waste disposed of on a land plot. The owner of the land plot is considered to be the waste owner. And if the land plot is sold and the contract does not specify that the previous owner of the land plot remains the owner of the waste, the new owner will have to dispose of the waste at his own expense.

If the owner of the waste is not known, the Law provides for a set of actions to identify the owner. If the waste owner is found, they will be obliged to reimburse all costs of searching for the owner, as well as the costs of collection, transportation and treatment of waste by the waste management company, and compensate for other losses and damage caused by pollution and other negative impacts of the waste. Otherwise, the transfer of waste to a waste management entity and the elimination of the negative consequences caused by waste are financed by the state or local budget.

Unfortunately, the Law does not define a number of very important issues of ownership of waste generated as a result of hostilities under war conditions.

4. Who is a waste generator?

A waste generator is a person whose activities generate waste, as well as waste management entities that carry out sorting, mixing, or other operations that lead to a change in the waste characteristics or composition. Waste generators do not include households.

5. How to manage waste

Waste generators or owners are obliged to safely store waste and transfer it to waste management entities within 1 year of its generation. Waste transfer is carried out on the basis of an agreement, which shall specify the waste code, its volume, name and the code of the waste recovery or disposal operation.

During storage or transfer, it is prohibited to mix waste with other waste or materials if such actions complicate recovery operations.

During the construction or demolition of buildings and engineering structures, separate collection of construction and demolition waste shall be ensured and kept in records.

6. Producers' obligations

The Law establishes extended producer liability for manufacturers of products that generate waste as a result of consumption or use (packaging, electrical and electronic equipment, batteries and accumulators, decommissioned vehicles, lubricants, oils, tyres, textiles, etc.).

For producers, this responsibility primarily means financing the organisation of extended producer responsibility, which shall, in particular:

- provide services for the reception and collection of waste generated as a result of the product use;
- ensure that the targets for waste collection, preparation for reuse and recycling established by law are met.

At the same time, producers bear administrative and economic responsibility for failure to achieve such targets.

Extended producer responsibility organisations are established by producers as non-profit organisations.

7. Business entities in the field of waste management

An economic operator in the field of waste management may be an entrepreneur or an enterprise that collects, purchases, stores, transports, reclaims and/or disposes of waste.

8. Peculiarities of hazardous waste management

Hazardous waste includes waste that has one or more properties from the list attached to the Law, e.g., flammability, skin irritation or eye damage, corrosiveness, infectivity, general or selective toxicity, carcinogenicity, etc.

Generators and owners of such waste may only collect, transport and/or treat hazardous waste on their own if they have a permit for waste treatment operations and a licence to carry out economic activities related to hazardous waste management. Otherwise, they are obliged to conclude an agreement with a waste management entity, making sure that this entity has the appropriate permit and licence.

9. Requirements for waste incineration

Waste incineration is carried out at waste incineration facilities and co-combustion facilities.

The Law establishes a list of mandatory components that must be part of such

facilities (e.g., on-site pretreatment equipment, waste gas treatment systems, treatment or storage of residues and wastewater, etc.).

Such facilities must be constructed taking into account the special requirements for their design, construction, and operation (e.g., the temperature of the gas generated in the facilities as a result of waste incineration, the level of incineration, etc.)

The Law also determines cases when such requirements do not apply. For instance, waste incineration requirements do not apply to facilities that process agricultural and forestry waste, vegetable waste from the food processing industry (if the heat generated is recovered), wood waste (except for those that may contain halogenated organic compounds or heavy metals as a result of preservative treatment or wood coating), including those generated from construction and demolition waste, etc.

10. Requirements for waste disposal

Waste shall be disposed of at specialised landfills. The equipment of such landfills must ensure the protection of groundwater, the extraction and disposal of biogas and leachate, and the control of emissions into the air, soil and groundwater pollution.

A company operating a landfill must have a permit for waste treatment operations and, in the case of hazardous waste disposal, a licence for hazardous waste management. In addition, the landfill owner or the company operating the landfill must ensure the development of a landfill monitoring programme, carry out landfill remediation once its operation is terminated, and maintain the landfill after remediation for 30 years.

11. Permitting documents

Permit for waste treatment operations

Prior to commencing such activities, a relevant permit must be obtained. For this, one must submit an application (according to the draft relevant procedure, such an application is submitted to the Ministry of Environmental Protection and Natural Resources of Ukraine) and attach documents to it. The list of documents depends on the operations to be carried out (e.g., for waste disposal, waste incineration).

The validity of such permits is indefinite, except for the permit for waste disposal, which is issued for the estimated life of the landfill.

Written consent for cross-border waste transportation

A written consent (it is expected that the authority granting such consent will be the Ministry of Environmental Protection and Natural Resources of Ukraine) for the cross-border transportation of waste (export, import, transit) is required for the following types of waste:

- hazardous waste;
- household waste;
- residues from the incineration of household waste;

- plastic waste and its mixtures, except for plastic waste, the list of which is established by the Ukrainian government.

To obtain such a consent, a relevant application must be submitted in writing along with a package of documents, the list of which depends on the purpose of cross-border transportation (export, import or transit).

The written consent (notification) for the cross-border transportation of hazardous waste is valid for 1 year from the date of its provision.

Statement on cross-border waste transportation

Cross-border transportation of waste, other than those for which a written consent is required, is carried out on the basis of a statement on cross-border transportation of waste. An application for such a statement is submitted in electronic form through the Unified State Electronic Services Web Portal.

The application must be accompanied by documents, the list of which depends on the purpose and characteristics of the waste (import of waste for recovery, import of used clothing, footwear and textile materials, import of plant origin waste, pneumatic tyres, metal waste, fur and leather waste).

A statement on cross-border waste transportation is valid for 1 year.

Licence for hazardous waste management activities

A licence is required for:

- a set of operations for the collection and treatment of hazardous waste;
- collection and storage of hazardous waste for further export from Ukraine for the purpose of its treatment or disposal.

No licence is required for:

- waste collection and storage activities if the received or generated waste is transferred to a person licensed to carry out a set of hazardous waste management operations within one year. In this case, a declaration must be submitted;
- activities related to the collection of hazardous waste contained in household waste;
- activities of emergency rescue units related to the elimination of emergencies and their consequences.

12. Who submits reports?

Reports to the waste management information system are submitted by:

- waste generators;
- business entities in the field of waste management;
- extended producer responsibility organisations;
- manufacturers of products for waste from which extended producer responsibility has been established;

- business entities announcing the termination of waste status.

In addition, a Ukrainian company that has obtained the relevant permit for waste treatment operations must separately submit information on, inter alia:

- facts of violation of technological workflow, occurrence of an accident, emergency situation that may lead or has led to a threat to human life and health, environmental pollution – within one day of its occurrence;
- compliance with the indicators and conditions of the permit – on a quarterly basis.

13. Who submits a waste declaration and how?

Waste owners whose activities lead to generation of hazardous waste or owners of non-hazardous waste, but whose annual generation exceeds 50 tonnes, submit a waste declaration once a year.

Such a declaration must be submitted electronically through the Unified State Web Portal of Electronic Services.

The Ukrainian government has already amended the relevant regulations on the procedure for submitting the declaration and established its forms, but these changes will come into force on 1 January 2024.

14. Who keeps records of waste and how?

Waste accounting must be kept by waste generators and owners. The accounts shall be kept electronically in accordance with standard forms of waste accounting. Such standard forms have not yet been approved.

Accounting is not required for household waste generators who transfer such waste to household waste management facilities, points of reception or separate collection of waste from products, or who treat bio-waste on their own by composting it on their own in their backyards, summer cottages, and gardens.

15. What should be done now?

Currently, the vast majority of regulations that should govern the implementation of the Law exist only in draft form. However, certain steps should be taken already to prepare for their implementation, namely:

- defining and classifying one's waste according to the draft National Waste List;
- determining which waste is hazardous based on the criteria established by the Law;
- examining the processes and operations with waste at the enterprise and determining the need to obtain appropriate permits (or licences);
- if permits are required, starting to prepare documents for obtaining them (the list of such documents is already established by the Law);
- conducting an audit of waste storage conditions for compliance with the Law;
- regulating the issue of transfer of waste ownership in land sale and purchase agreements.