

Environment-People-Law

Policy Memo

**On the draft law**

**“On Waste Management”**

In 2017 in Ukraine, about 10 million tons of household waste was created and then buried on landfills and polygons totally covering more than 8.5 thousand hectares[[1]](#footnote-1). According to the data of the Ministry of Regional Development, as of 2017 the total number of landfills is 5,434, among them 5.7% are overloaded, and 25% do not meet environmental safety standards. Moreover, about 30 thousand of unauthorized landfills are found annually in Ukraine. People burn garbage, throw it near rivers, bury in the soil. As a result, land and water resources as well as atmospheric air are polluted, affecting the life and health of the population, which also leads to an increase of expenditures from the state and local budgets for elimination of adverse consequences.

Inefficient waste management, including legislation and technical basis, is the main cause of such environmental pollution.

Aiming to solve waste problems, the Ministry of Environment of Ukraine developed the draft law “On Waste”[[2]](#footnote-2) (changed to “On Waste Management” when posted on the web-site https://menr.gov.ua/news/32869.html?fbclid=IwAR08ITQSlpGFgJi1o\_FWS2xY8RhU2XmtAtspRDjScjNUEPAFM4KUBh31Rtk ).

Despite the fact that the draft law was also developed to implement the Association Agreement and the EU Directives, it does not contain key provisions of these acts. In addition, some of the articles and terms of the Draft Law do not comply with the EU Directives. After analyzing this draft law, EPL developed the following comments and suggestions:

**Definitions**

1. Some definitions are not in compliance with the definitions given in the Directive 2008/98/EC on waste, namely “bio-waste” definition (includes paper and cardboard should be excluded), “producer of the product”, “waste producer”.

2. The draft law lacks some important definitions of the terms defined in the Directive 2008/98/EC on waste, for instance “prevention”, “regeneration of waste oil”.

3. The Ukrainian translation of the term “recycling” should be “перероблення”, but not «рециклінг».

**Сhapter on Permits and licenses**

Taking into account EPL’s analysis of European experience of permitting system, national reforms of deregulation and decentralization, we propose to take into account the following suggestions in the chapter on permitting:

1. The waste management permit covers all types of waste while the license covers hazardous waste only. As hazardous waste is a type of waste as well and is covered by the waste management permit, there should be a provision in the text to exclude ungrounded double permitting burden on business. The provision should say that a license for commercial waste handling such as collection, transportation and treatment of hazardous waste excludes the obligation to obtain the permit for waste management operations. Moreover, we propose to extend the validity of the permit for waste management operations from 3 to 5 years.
2. To eliminate the provisions on creation of a central executive body implementing the state policy on wastes management. It suggests creation of another central authority instead of decentralization.
3. To eliminate the provisions on licencing hazardous wastes management operations and foresee permits for hazardous wastes management operations only.
4. The permitting powers for waste management operations should be delegated to local state administrations.
5. The powers to control the permit holders’ activities should be delegated from the Ministry of Environment to the State Environmental Inspectorate and its structural (territorial) departments.
6. Local state administrations should issue the permit for collection of waste on the basis of application and the following information: type of waste collected, place of waste collection; place and means of storage of waste, detailed description of waste collection methods, description of organizational and technical capabilities that will allow adequate collection of waste, with focus on professional qualification and preparation of staff, the number and quality of existing equipment facilities meeting environmental protection requirements; expected duration of waste collection activities; description of control and monitoring measures; description of activities to be undertaken in case of suspension of the activity foreseen in the permit.
7. Local state administrations should issue the permit for disposal of waste on the basis of application and the following information: type of disposed waste, annual tonnage of disposed waste, tonnage of waste generated after the disposal operations; definition of place and means of waste storage, and type of waste stored; detailed description of technology of waste disposal with indication of disposal operations in accordance with the annex to this law, description of the equipment аnd technological process with indication of annual capacity of the equipment, and in some cases – hour capacity of the equipment; certificates of origin and quality of equipment; planned duration of operation in the sphere of waste management; monitoring and controlling activities; description of activities that will be undertaken in case of suspension of the activity foreseen in the permit and measures taken to protect the territory of proposed activity; indication of minimal and maximal quantity of hazardous waste, its highest and lowest calorific value and maximal content of impurities; inspection report on availability and conformity of the equipment stated in the application.
8. to introduce the threshold for permitting in case a company generates more than 1 ton of hazardous waste annually or more than 5,000 tons of waste (except hazardous).

**Compliance with the provisions of the Basel Convention**

Article 32 of the draft should be brought into conformity with the provisions of the Basel Convention and article 5 of the Law «On Administrative Services», namely concerning the grounds for refusal to provide written consent for transboundary movement of hazardous waste.

**Landfilling of hazardous wastes**

The draft law introduces the ban on landfill of hazardous waste. (paragraph 12 art.26) In the meantime, in accordance with the provisions of Directive 1999/31/EC of 26.04.1999 on the landfill of waste, the landfill of hazardous waste is allowed on special landfills for hazardous waste. It is worth noting that not for all types of hazardous waste there are available technologies of recovery and disposal (except landfilling), and residues of hazardous waste treatment operations are also hazardous. The ban on landfill of hazardous waste could lead to the situation when such waste will be disposed in the open environment or landfilled as other types of waste. Taking into account aforementioned, we believe that such provisions of the draft law are premature and the issue of waste landfilling should be covered in detail in the draft law on waste landfilling.

**Municipal waste management**

The problem of municipal waste management should be covered by this law or by the draft law “On Municipal Waste” without a long time break. If the draft law on municipal waste is planned to be developed, it should be submitted to the government simultaneously with the current draft framework law.

**Storage of waste**

We propose to increase the storage of waste by waste producers and waste holders from 6 months as foreseen in para 4 article 26, to 1 year. Para 3 of the article 29 allowing the storage of waste by the waste management facilities without issuing the permit should be amended, increasing such storage from 6 months to 1 year. This will allow to decrease ungrounded permitting pressure on business in accordance with European legislation.

**To sum up,** the draft law “On Waste” needs some amendments in conformity with the provisions of the Directive 2008/98/EC of 19.11.2008 on waste and Directive 1999/31/EC of 26.04.1999 on the landfill of waste, the Basel Convention on the control of transboundary movements of hazardous waste and its disposal.

Without such amendments, the draft law will not bring the Ukrainian legislation in compliance with international requirements and EU legislation. In addition, in order to solve waste management problems in a comprehensive manner, it is necessary, in addition to the framework law, to develop and adopt regulations that in detail regulate the treatment of various types of waste. Details of the EPL's position regarding the handling of certain types of waste can be found at the following link: http://epl.org.ua/ekoanalityka/.

1. <http://www.minregion.gov.ua/napryamki-diyalnosti/zhkh/terretory/stan-sferi-povodzhennya-z-pobutovimi-vidhodami-v-ukrayini-za-2017-rik/> [↑](#footnote-ref-1)
2. https://menr.gov.ua/news/32869.html?fbclid=IwAR08ITQSlpGFgJi1o\_FWS2xY8RhU2XmtAtspRDjScjNUEPAFM4KUBh31Rtk [↑](#footnote-ref-2)