

环境保护法律热点问题

环保专题系列（九）- 固废法修订后企业面临的合规新挑战

导言：4月29日，十三届全国人大常委会第十七次会议审议通过了修订后的《固体废物污染环境防治法》（以下简称《固废法》），自2020年9月1日起施行。本次修订是继2016年通过《固废法》之后的第五次修正，截至目前，我国在固体废物污染环境防治方面的立法已经相对完善。本文将梳理新《固废法》的重点变化，并基于此提醒企业（特别是工业企业）注意在固体废物管理方面的一些重点合规要求。

一、新《固废法》的重点变化有哪些？

相比现行《固废法》，我们将新《固废法》的一些实质或重大的变化简要归纳如下：

1. 明确环境污染责任的主体。新《固废法》结合参与方所实施的具体行为将产生、收集、贮存、运输、利用、处置固体废物的主体均认定为环境污染责任主体，环境污染责任的主体更广（现行《固废法》下为生产者、销售者、进口者、使用者）。

2. 明确固体废物污染环境防治设施的自主验收。建设项目投入生产或者使用前，配套建设的固体废物污染环境防治设施可由建设单位进行自主验收（现行《固废法》要求固体废物污染环境防治设施必须经验收合格后方可投入生产或者使用）。

3. 提出建立工业固体废物管理台账的要求，实现固体废物信息化追溯（现行法律仅

规定建立危险废物管理台账）。

4. 明确固体废物产生单位委托他人运输、利用、处置固体废物时，应对受托方进行资格和技能核实，并在合同中约定污染防治要求，否则将与受托方承担连带责任。

5. 明确从事收集、贮存、运输、利用、处置危险废物的单位，应当投保环境污染责任保险。

6. 明确固体废物产生企业应当取得排污许可证并且执行排污许可证管理制度，实现了与《排污许可管理条例》等排污许可管理制度的衔接。

7. 大幅加重企业违法行为的处罚力度。一方面对新增违法行为规定罚则，例如，针对新增的工业固体废物管理台账的要求，若未建立台账并如实记录，企业将可能面临“5-20万元罚款，没收违法所得，情节严重还可能面临责令停业或关闭”的处罚；另一方面对现有罚则进行调整，实质上加重了处罚，例如，未采取相应防范措施，造成工业固体废物扬散、流失、渗漏或者其他环境污染的企业所面临的处罚从现行《固废法》规定的“1-10万元罚款”修改为“处所需处置费用一倍以上三倍以下的罚款，所需处置费用不足十万元的，按十万元计算”。

8. 从《固废法》的立法层面增加了对于

法定代表人、主要负责人、直接负责的管理人员和其他责任人员的处罚规定，包括经济罚款和行政拘留。例如，针对无经营许可证或者不按照经营许可证规定从事收集、贮存、利用、处置危险废物经营活动的企业，其法定代表人、主要负责人、直接负责的主管人员和其他责任人员可能面临 5-50 万元罚款，并且可能面临 10-15 日拘留（情节较轻的，处 5-10 日拘留）。

二、新《固废法》项下企业应注意的合规重点事项有哪些？

1. 严格执行排污许可证要求。新《固废法》将固废纳入排污许可证管理，而排污许可证是环保部门的重要执法依据，固体废物产生企业应当依法取得排污许可证，并严格按照排污许可证规定的污染物排放种类、浓度、总量、排放去向等要求进行生产和排污。

2. 完善企业内部合规制度。新《固废法》提出了固体废物产生至处置全过程污染防治责任制度、固体废物追溯体系、固体废物管理台账制度等多项制度体系或要求，企业应依法制定或完善相关管理制度，加强培训和管理、贯彻落实该等制度，并通过定期审查和改进来实现和提升合规管理。

3. 加强供应商管理。转移、利用、处置

固体废物过程中应谨慎履行法定义务。新《固废法》加强了固体废物产生企业的法律责任，尤其需要注意的是，委托他人运输、利用、处置固体废物时，应对受托方进行资格和技能核实，并在合同中约定污染防治要求。

三、结语与建议

此次修订对《固废法》的条文结构和内容均作出了较大幅度的调整和修改，对企业违法行为的类型做出了更明确的规定，处罚力度显著提高，大大增加了企业的环境违法成本和环保合规压力。企业须及时根据新《固废法》的规定建立或完善内部合规制度，提高管理水平，防范环境违法风险。如您有任何具体的问题，欢迎邮件联系我们：ecoenvpro@junhe.com。

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Environmental Protection

Environmental Protection (No. 9) – New Compliance Challenges after the Amendment of the Solid Waste Law

Introduction: The 17th session of the Standing Committee of the 13th National People's Congress, which concluded on 29 April, deliberated and adopted a revised Law on the Prevention and Control of Environmental Pollution by Solid Waste (hereinafter referred to as the "Solid Waste Law") which will come into force on September 1, 2020. This represents the fifth amendment of the Solid Waste Law, with its last amendment being in 2016. To date, China's legislation on the prevention and control of environmental pollution by solid waste has been relatively perfect. This article will sort out the key changes of the new "Solid Waste Law", and based on that, remind enterprises (especially industrial enterprises) of some of the key compliance requirements of solid waste management.

I. What are the key changes in the newly-amended Solid Waste Law?

We have briefly summarized some of the substantial or significant changes made in the newly-amended Solid Waste Law. In particular, the new Solid Waste Law:

1. Made clear the subject that could be held responsible for environmental pollution.

The new-amended Solid Waste Law identifies the participants engaged in the generation, collection, storage, transportation, utilization and disposal of solid waste as subjects that could be held accountable for environmental pollution. This definition effectively expands the scope of responsibility for environmental pollution as the current Solid Waste Law identifies the subject as '*producers, sellers, importers and users*'.

2. Made clear the role of independent inspections for environmental protection facilities used for solid waste pollution prevention. Before starting a construction project, the construction unit can carry out an independent inspection for the supporting solid waste pollution prevention and control facilities used in the project (the current Solid Waste Law requires inspection to be conducted and approved by the environmental protection administrative department).
3. Put forward the requirement for entities to establish an industrial solid waste management ledger and to implement information tracing of solid waste (the

current Solid Waste Law only requires the establishment of an industrial solid waste management account for hazardous solid waste).

4. Made clear that when solid waste generators entrust others to transport, utilize and dispose of solid waste, the solid waste generator should verify the qualifications and skills of the entrusted party and stipulate the pollution prevention and control requirements in the contract. If not, the solid waste generator will bear joint and several liability with the entrusted party.
5. Made clear that the party engaged in the collection, storage, transportation, utilization and disposal of hazardous wastes should take out environmental pollution liability insurance.
6. Made clear that the solid waste generating entity should obtain a pollution discharge permit and implement a pollution discharge permit management system. This realizes the convergence of the Solid Waste Law with the pollution discharge permit management system as required by the Regulations on the Administration of Pollution Discharge Permits.
7. Substantially increased the punishment for violations of the Solid Waste Law by enterprises. On the one hand, new penalties are provided for newly-added illegal acts under the amended Solid Waste Law. For example, enterprises that fail to establish and record ledgers for its solid waste as explained previously in point 3 will be subject to *“a fine of RMB 50,000 to RMB 200,000 Yuan, confiscation of the illegal income, and possible suspension or even termination of business if the circumstances are serious”*. On the other hand, existing penalties of the Solid Waste Law have been adjusted to

become substantially heavier. For example, the penalties for enterprises that fail to adopt corresponding preventive measures which result in the scattering, outflow and leakage of hazardous waste or other environmental pollution have previously been subject to *“a fine of RMB 10,000 to RMB 100,000 Yuan”*. However, in the newly-amended Solid Waste Law, the penalty is now significantly higher as entities could face *“a fine of more than one time but less than three times the required disposal cost, and if the required disposal cost is less than RMB 100,000 Yuan, it shall be calculated as RMB 100,000 Yuan”*.

8. Added penalties for legal representatives, main responsible persons, directly responsible managers and other responsible persons including financial fines and administrative detention. For example, these people may face *“a fine of RMB 50,000 to RMB 500,000, and possible detention for 10-15 days (or detention for 5-10 days if the circumstances are relatively minor) if they are involved in an enterprise that engages in the collection, storage, usage or disposal of hazardous solid waste without obtaining an operating license or without abiding by its operating license.*

II. Under the newly-amended Solid Waste Law, what are the key compliance matters that enterprises should pay attention to?

1. Enterprises should strictly abide by and implement the requirements for pollution discharge permits. The new Solid Waste Law provides that solid waste should also be subject to the pollution discharge permit management system as that pollution discharge permits are an important basis for law enforcement by environmental protection departments.

Enterprises that generate solid waste should obtain pollution discharge permits in accordance with the law and discharge solid waste strictly according to the authorized pollutant emission types, concentrations, total amount, emission destination and other requirements stipulated in the pollution discharge permit.

2. Enterprises should improve their internal compliance systems. The newly-amended Solid Waste Law proposes multiple systems or requirements covering the whole waste discharge process (from generation to disposal). These include the pollution prevention responsibility system, the solid waste tracing system, and the solid waste management ledger system. Enterprises should formulate or improve their management systems, strengthen training and management of these systems, and implement these systems as required by law. They should also realize and enhance their compliance management systems through regular review and improvement.
3. Enterprises should strengthen their supplier management. Enterprises should carefully perform their legal obligations during the transportation, utilization and disposal of solid waste. The newly-amended Solid Waste Law has strengthened legal responsibility of solid waste generating enterprises. It should be especially noted that when entrusting others to transport, utilize and

dispose of solid waste, waste generating enterprises should verify the qualifications and skills of the entrusted party as well as specify the relevant pollution prevention requirements in the contract.

III. Conclusion and Suggestions

There have been substantial adjustments and amendments to the structure and contents of the newly-amended Solid Waste Law. It has set forth clearer provisions on the types of illegal acts that can be committed by enterprises. Thus, enterprises should work on establishing or improving their internal compliance systems according to the newly-amended Solid Waste Law, as well as improve their solid waste management to prevent risks of environmental violations. If you have any specific questions or need any assistance, you may contact us via email at ecoenvpro@junhe.com.

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