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ASPECTS OF HAZARDOUS WASTE MANAGEMENT LEGISLATION IN LITHUANIA

The article analyzes the legal regulation of hazardous waste management in Lithuania and its compliance with regional waste management strategies and legislation. Noteworthy, that in Lithuania, the hazardous waste management policy is based on the EU waste management hierarchy. We can assume that the system of administrative measures applied for the management of hazardous waste: licensing, permits, is appropriate and presupposes the reduction of the negative impact of the generation and management of hazardous waste on human health and the environment. For companies, which operates with hazardous waste management the legislation imposes an obligation to operate in accordance with the general EU environmental principles of precaution and sustainability, technical feasibility and economic viability, protection of resources, and the overall impact on the environment, public health, the economy and the social environment.

Keywords: hazardous waste management; licensing of waste management; pollution permits; Lithuania.

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Правові аспекти порядку утилізації небезпечних відходів у Литовській Республіці

В епоху розвитку промисловості й постійно зростаючого споживання все більшої актуальності набувають проблеми утилізації небезпечних відходів. Литва, як і інші країни, зобов'язалася зменшити обсяги відходів, також прагне до більш економного використання природних ресурсів, але утверджуючи право на безпечне і чисте середовище, все частіше стикається з різними викликами. З метою зменшення негативного впливу на здоров'я людей і навколишнє середовище держава прагне модернізувати моделі утилізації відходів господарчої діяльності і застосовувати належні правові й адміністративні методи. У Литві для виконання робіт з утилізації небезпечних відходів у господарській діяльності існують додаткові вимоги: ліцензування, система дозволів, а це зобов'язує до підвищеного контролю господарюючих суб'єктів. У всіх випадках регулювання діяльності в цій сфері – це ліцензування, тобто неминучі обмеження в виконанні конкретної господарчої діяльності.

Статтю присвячено з'ясуванню того, чи не було порушено інтереси громадськості внаслідок ліцензування діяльності господарств з утилізації небезпечних відходів. Зроблено висновок, що правове регулювання порядку утилізації небезпечних відходів у Литовській Республіці – досить вичерпний процес, заснований на програмах ЄС з захисту навколишнього середовища, який постійно вдосконалюється в результаті оцінки економічних і демографічних процесів. У Литовській Республіці до процесу утилізації застосовуються досить суворі, чітко сформульовані правові та адміністративні методи: система дозволів, ліцензування. Ліцензування даного виду діяльності потребує від держави особливого контролю, щоб підприємства дотримувались високих стандартів щодо захисту навколишнього середовища і суспільства. Стверджується, що держава постійно змінює і доповнює порядок регулювання утилізації небезпечних відходів, прагнучи витримати баланс між захистом навколишнього середовища і прогресом в економічній діяльності, зменшує адміністративне навантаження, модернізує процес видачі ліцензій і дозволів.

Ключові слова: утилізація небезпечних відходів; ліцензування утилізації відходів; дозволи на забруднення; Литва.

Introduction. With the development of industry around the world and the constant growth of consumption, the issue of sustainable waste management is becoming increasingly important for all countries. Lithuania, like many other countries, is committed to reducing the generation of waste streams and striving for the economical use of natural resources in various forms, but in order to ensure the right to a safe and clean environment, various challenges are increasingly being faced. In order to reduce the impact on human health and nature and the use of resources, the state seeks to create and legally establish more modern waste management models, to apply the most appropriate legal and administrative regulatory measures in activities. In Lithuania, the waste management policy is based on the waste management hierarchy, which is based on the waste management priorities established by legal acts: prevention, re-use, recycling or other recovery method in order to minimize waste disposal in landfills and other waste disposal facilities. The problem is caused by the fact that additional measures are applied to the economical activity of hazardous waste management: licensing, permit system, which imposes additional requirements on economic entities, leads to increased application of activity control measures. Licensing of activities is in all cases a means of regulating these activities, i.e. it inevitably restricts the pursuit of a particular economic activity. The article analyzes whether the licensing of hazardous waste management activities has assessed the risk of the activities to harm important public interests.

The **aim** of the article is to reveal the peculiarities of the legal regulation of hazardous waste management in Lithuania by applying the relevant methods to the research of environmental law. To achieve the goal, the article sets tasks: to discuss the legal regulation of hazardous waste management in the Republic of Lithuania; to disclose the process of licensing and authorization of hazardous waste management activities.

The **subject** of the research is the legal and practical problems of the legal regulation of hazardous waste management in Lithuania and the relationship with the EU policy in the field of sustainable hazardous waste management.

The article discusses the most relevant legal acts regulating the management of hazardous waste in Lithuania, identifies some peculiarities of the national legal regulation, and considers whether the licensing of economic activities and hazardous waste management is a justified, proportionate and necessary measure.

Lithuanian law scholars E. Monkevičius [21], R. Minalga [20], A. Bakas [1], M. Vasiliauskas [27] and others are researching certain aspects of legal and environmental issues of environmental and / or hazardous waste management, but currently the problematic aspects of the current legal regulation of hazardous waste management have not been studied in detail. These circumstances determine the relevance of the topic. The author of this article has published scientific publications on the aspects of state regulation of packaging reuse [2]; together with co-author Eglė Štareike – on the development aspects of the legal regulation of hazardous waste [4] and the aspects of the legal regulation of waste sorting [3]; with co-author Žana Vašcova revealed aspects of end-of-life vehicle management in the context of safe waste management [5]. The main methods used in the preparation of the article are document analysis, systematic methods. The document analysis method was applied to the analysis of EU and national waste management legal acts, analysis of statistical data; The method of analysis of scientific literature is applied in order to find out the nature of hazardous waste management problems studied in the works of Lithuanian legal scientists. The obtained data were processed with the help of a systematic method and the conclusions were prepared.

Legal regulation for hazardous waste management

Environmental pollution is not limited to the borders of states, ecological catastrophes undoubtedly affect not only the quality of the environment, as it inevitably affect the surrounding countries as well. European Union's environmental policy is based on environmental action programs. The 7th environmental action program "Living well, with in the limits of our planet" for 2013–2020 is currently in operation, where one of the priorities is the protection of natural resources and the aim to protect the environment from impacts and risks to health and well-being. One of the most important measures is proper waste management. The 8th Environmental Action Program "Let's Change Trends Together" is currently being prepared. In 2019, the European Council announced conclusions on this program, which set out policy guidelines for the EU's environment and climate change policy for 2021–2030. [8]. The new environmental action program should also be at the heart of the effort to avoid adverse effects on human health and the natural environment.

In September 2018, the World Bank announced that our global waste production is predicted to rise by 70 per cent by 2050 unless we take urgent action. Humankind currently produces two billion tonnes of waste per year. Population increase may be part of the problem, but it's levels of consumption within a handful of developed nations, and their gross mismanagement of waste, that have led to this environmental catastrophe [10]. The importance of legal regulation of waste prevention and management is growing along with economic growth. Thus, the principles and standards of waste (especially hazardous) management must be set centrally. This is

determined by the specifics of the subject of regulation. It is customary to base the EU legal framework on waste management on the Treaty on European Union [7]. The strategy for waste management policy was formulated in the 1989 Community Strategy for Waste Management, the European Communities' Action Program for the Protection of the Environment [9]. The beginning of the legal regulation of hazardous waste in the EU can be traced back to the 1975 June 16 Council Directive 75/439 / EEC on the disposal of waste oils (valid until 11 December 2010) [22] bei Directive 78/319 / EEC on toxic and hazardous waste [23] (replaced by Council Directive 91/689/EEC on hazardous waste [24]).

November 19 th, 2008 Directive 2008/98 / EC of the European Parliament and of the Council on waste and repealing certain Directives [25] and amendments, e.g. 2018 May 30 Directive (EU) 2018/851 of the European Parliament and Council amending Directive 2008/98 / EC [6] on waste lays down measures to protect the environment and human health by preventing or reducing the harmful effects of the generation and management of waste and reducing the overall impact of resource use and increasing the efficiency of such use. This directive, as amended, is the most important regional piece of legislation on waste prevention and management.

Article 17 of the Directive, which lays down general provisions for the control of hazardous waste, provides that “Member States shall take the necessary measures to ensure that the production, collection and transport, storage and treatment of hazardous waste are carried out under conditions which best protect the environment and human health” [25]. The protection of the environment, which may be endangered by the irresponsible management of hazardous waste, has repeatedly been recognized as ad hoc public interest in the case law of Lithuanian courts.

With the progress of the economy and the growth of the population, the growth of waste is not yet effectively managed. All types of waste must be properly managed, but the biggest attention and special care must be given to the management of hazardous waste. By improving waste legislation, Lithuania is clearly making efforts to reduce the negative impact of waste generation and management on human health and the environment, to reduce the use of resources and to promote the practical application of the waste management hierarchy. Waste accounting data shows that large amounts of hazardous waste are accumulated in Lithuania¹, in addition, new accidents that cause damage to the environment are still being announced in Lithuania², therefore country itself must create preconditions for the

¹ According to the Environmental Protection Agency, in 2009 – 100,795 tons of hazardous waste were collected, however in 2018 as many as 179,978 tons of hazardous waste were collected. The largest amount in the total hazardous waste stream in 2018 was chemical sludge and residues – 40769 tons; mining minerals – 37955 tons; unused vehicles – 27532 tons; sorting waste – 21336 tons; asbestos residues – 14548 tons, etc. [viewed on 16/04/2020]. URL: <http://atliekos.gamta.lt/cms/index?rubricId=7ebea041-42a0-4b93-8c12-659ab8d5a3e7>

² E.g. On October 16, 2019, in Alytus, Lithuania, at the company Ekologistika, whose activities were related to the recycling and recycling of used tires and was considered one of the largest companies in this field in the Baltic States, a fire caused a great resonance in society. The hazardous waste management company announced that it had removed almost 8,230 tons of post-fire hazardous waste from the fire site.

management of hazardous waste in the safest way for the natural environment and human health by means of legal regulation. Strict regulation is necessary for the optimal functioning of the hazardous waste management system. Hazardous waste management processes in Lithuania are regulated by a number of legal acts: the Law on Waste Management of the Republic of Lithuania (hereafter – the Law on Waste Management), Waste Management Rules [11], Waste Management Rules [12], Hazardous Waste Management Licensing Rules [15], Batteries and Accumulators and Batteries and Accumulators Waste Management Rules [13], End-of-Life Vehicles rules [14], etc.

Paragraph 54 of Article 2 of the Law on Waste Management [11] provides a definition of hazardous waste – waste that has one or more hazardous properties specified on 18 December 2014 Commission Regulation (EU) No 1357/2014 amending Annex III to Directive 2008/98 / EC of the European Parliament and Council on waste and repealing certain Directives (OJ 2014 L 365, p. 89) [18], annex, June 8 Annex to Council Regulation (EU) 2017/997 amending Annex III to Directive 2008/98 / EC of the European Parliament and Council on the dangerous property – “eco-toxicity” of HP 14 (OJ 2017 L 150, p. 1). 2014 December 18 Annex III to Commission Regulation (EU) 1357/2014 amending Directive 2008/98 / EC of the European Parliament and of the Council on waste and repealing certain Directives [18], contains a list of properties for which waste is classified as hazardous waste: explosive (waste that can react chemically by releasing gases of such temperature and pressure at such a rate that they can cause damage to the environment) Pyrotechnic waste, explosive organic peroxide waste and explosive self-reactive waste is included; *oxidising* (waste which may, generally by providing oxygen, cause or contribute to the combustion of other materials); *flammable*; *irritant – skin irritation and eye damage* (waste which on application can cause skin irritation or damage to the eye); *specific – Target Organ Toxicity (STOT)/Aspiration Toxicity* (waste which can cause specific target organ toxicity either from a single or repeated exposure, or which cause acute toxic effects following aspiration); *acute toxic* – (waste which can cause acute toxic effects following oral or dermal administration, or inhalation exposure); *carcinogenic* (waste which induces cancer or increases its incidence); *corrosive* (waste which on application can cause skin corrosion); *infectious* (waste containing viable micro-organisms or their toxins which are known or reliably believed to cause disease in man or other living organisms); *toxic for reproduction* (waste which has adverse effects on sexual function and fertility in adult males and females, as well as developmental toxicity in the offspring); *mutagenic* (waste which may cause a mutation, that is a permanent change in the amount or structure of the genetic material in a cell); *releasing an acute toxic gas* (waste which releases acute toxic gases in contact with water or an acid); sensitising (waste which contains one or more substances known to cause sensitising effects to the skin or the respiratory organs); *ecotoxic* (Waste capable of exhibiting a hazardous property listed above not directly displayed by the original waste).

According to the Law on Waste Management [11], the same order of priorities in the field of waste prevention and management is applied in Lithuania also with regard to hazardous waste: 1) prevention; 2) preparation for re-use after separation of products or their components unsuitable for re-use; 3) recycling after separation of waste unsuitable for recycling; 4) other uses, such as energy recovery from waste, unsuitable for recycling or other recovery; 5) Disposal after separation of suitable waste for recycling or other recovery. This order of priority applies in accordance with the general principles of environmental protection: precaution and sustainability, technical feasibility and economic viability, protection of resources, as well as the overall impact on the environment, public health, the economy and the social environment.

Companies that have stored hazardous waste at the waste generation site for more than six months in Lithuania must be registered in the State Register of Waste Managers. The holder of hazardous waste must identify and declare the hazardous waste he holds. Hazardous waste that is temporarily collected, stored and transported must be packaged and labeled. The Ministry of Environment of the Republic of Lithuania has established a special procedure for these processes. Hazardous waste is transported in accordance with the requirements for the transport of dangerous goods established in the legal acts of the Republic of Lithuania and the European Union and international agreements. Companies intending to carry out waste treatment, ship recycling, and companies holding hazardous waste at the place of generation for more than six months must obtain a permit or obtain a hazardous waste management license.

Thus, the legal regulation of hazardous waste management in the Republic of Lithuania is sufficiently detailed, based on the EU environmental action programs and in line with regional regulation, also constantly improving, taking into account dynamic economic and demographic processes. Strict regulation is based on the need to take measures to maximize the protection of nature and human health from adverse effects.

Administrative measures for hazardous waste management activities: licensing and permits system

A license is a document required for the commencement or performance of certain economic activities, entry or entry in a list, register, state information system, which acquires the right to commence or perform certain economic activities, mandatory provision of information prior to the commencement of economic activities, and other permits granting economic activity. When considering the licensing of certain activities, the risk of the activity harming important public interests must be assessed. Licensing of activities is in all cases a means of regulating these activities, i.e. it inevitably restricts the pursuit of a particular economic activity. Licensing is only an appropriate regulatory instrument if it fulfills both of the following conditions: licensing aims to address a clearly identified problem and protect important public interests and there are no less restrictive means to address the identified problem and protect important public

interests, i.e. the assessment of alternatives to operating licensing shows that other measures would not achieve the objectives of operating licensing and that operating licensing does not unduly restrict the rights and freedoms of economic operators beyond what is necessary to achieve the objective of licensing and is not limited to market participants or whether it is not intended solely to generate additional budget revenue [19]. The right of an undertaking to carry out certain activities may be restricted only by law. The laws regulating the licensing of activities must establish the requirement to have a license; the licensed activities and types of licenses have been determined (indicating to which type of license which activity is assigned); the conditions for issuing a license based on the principle of prudence, the essential conditions of the licensed activity and the prohibitions and restrictions that have a significant impact on economic activity are defined. An undertaking seeking a license and a licensee shall only be subject to requirements which, if not complied with, would expose the undertaking or the licensee to the risk of harming important public interests.

In Lithuania, companies wishing to engage in hazardous waste management must have a license for such activities or obtain the necessary permits. A license is issued if the entity meets the established requirements. The state seeks to ensure the quality of hazardous waste management services and regulate the market with licenses.

The Environmental Protection Agency of Lithuania is an authorized institution that issues or refuses to issue licenses, corrects their data, suspends the validity of licenses, revokes the suspension of a license, revokes a license and issues a duplicate. Issuance of hazardous waste management licenses, refusal to issue them, revision of license data, suspension of licenses, revocation of suspension of licenses, revocation of licenses, issuance of duplicate licenses are regulated by the Hazardous Waste Management Licensing Rules [15], and the principles are established by the Law on Waste Management [11].

Companies intending to manage hazardous waste that do not have a permit for integrated pollution prevention and control or a permit for waste recovery or disposal activities must obtain a hazardous waste management license.

On January 1st, 2019 Licensing rules for hazardous waste management have been changed to reduce the bureaucratic burden on hazardous waste managers. Prior to this change, a hazardous waste management company, even a holder of an Integrated Pollution Prevention and Control Permit or a Pollution Permit for waste recovery or disposal activities, was also required to obtain a hazardous waste management license. From January 1st, 2019 a hazardous waste management license is no longer required, and the document authorizing the management of hazardous waste contains the mentioned permits. A license is required only for those wishing to engage in hazardous waste collection.

Except in the case of companies collecting hazardous waste generated in their activities and transporting it to a waste recovery or disposal facility, and to companies whose activities have an Integrated Pollution Prevention and Control Permit or a Pollution Permit for Waste Recovery or Disposal without a valid

license to collect hazardous waste is forbidden. Such illegal actions are subject to administrative liability.

The hazardous waste management license entitles the holder to collect hazardous waste, that is to say, to take hazardous waste from waste holders, including sorting and preparatory storage of hazardous waste, before collection at hazardous waste facilities, in which hazardous waste is unloaded, so it can be prepared to transport to hazardous waste recovery or disposal facilities.

Article 4 (11) of the Law on Waste Management [11] provides that companies collecting, transporting, disposing of or using hazardous waste are insured against civil liability for damage that may be caused to third parties and / or their property and the environment in the course of such activities. Thus, a company wishing to obtain a hazardous waste management license must submit a copy of its activity insurance policy to the Environmental Protection Agency. Another prerequisite for obtaining a hazardous waste management license is that the company's employees responsible for hazardous waste collection must have completed training courses for waste management specialists and that these persons work in the company seeking a license have the right to carry out hazardous waste management assembly work.

In Lithuania, it is imperative that only waste management companies that employ persons who have attended training courses for waste management specialists in accordance with the training programs for waste management specialists approved by the Minister of the Environment and have received their knowledge certificate in the relevant field of waste management may collect, transport, treat hazardous waste, nationals of a Member State, other natural persons exercising the rights of movement within the Member States conferred on them by EU law in possession of a document issued by a Member State authorizing them to carry out the waste management operations referred to in this paragraph. Such certificates must be held by: the managers of the companies operating the landfills and other employees responsible for the operation of the landfills appointed by them; company employees responsible for the collection, transport, storage and treatment of hazardous waste; company employees responsible for the operation and control of waste incineration. These specialists must improve their competence in specialist training courses at least every three years. The activities of the licensee in the management of hazardous waste are supervised by the authorities of the controlling state in accordance with their area of activity. Although hazardous waste management licenses are issued for an indefinite period, they can be revoked – Article 12 (8) of the Law on Waste Management [11] provides four cases: at the request of the licensee; when it transpires that the licensee is providing false information in order to obtain it; when the validity of the license is suspended and violations are not eliminated within the period set by the state environmental protection control officers (violated operational requirements; the licensee does not have competent employees or a valid activity insurance certificate (policy)); the licensee violates the requirements for the management of hazardous waste and has not complied with the mandatory instruction of the state

environmental control officers to eliminate the violations [11]. The principle of transparency and the right of the public to participate in environmental processes and decision-making means that legal or natural persons have the right to receive oral and written information from the responsible authority on whether a company has a license, whether that license is valid, and so on.

An integrated pollution prevention and control permit must be obtained by an entity that intends to carry out the following activities related to the management of hazardous waste: disposal or recovery of hazardous waste with a capacity exceeding 10 tonnes per day, covering one or more of the following activities: biological treatment; physico-chemical treatment; mixing / blending, repackaging before transfer to any other waste disposal or recovery operation or waste co-incineration plant or hazardous waste disposal or recovery operation; solvent renewal and / or regeneration; regeneration of acids or bases; the use of catalyst components; oil refining or other reuses of petroleum products; the disposal or use of hazardous waste in waste incineration plants or waste co-incineration plants with a capacity exceeding 10 tonnes per day, etc. The procedure for issuing an integrated pollution prevention and control permit is laid down in the rules for issuing, amending and revoking integrated pollution prevention and control permits [16]. The integrated pollution prevention and control permit system set out in these rules is intended to ensure that greenhouse gas emissions, pollutants into the air, water, soil or, where that is not possible, are reduced or the waste is prevented achieving a high level of environmental protection.

Permits shall be issued in accordance with the procedures set out in the rules for issuing, amending and revoking permits [17]. Thus, in the Republic of Lithuania, sufficiently strict but clearly defined administrative measures are established for the management of hazardous waste: permitting system, licensing. This confirms that hazardous waste management activities are classified by the state as activities that pose a risk of harming important public interests. In addition, the licensing of these activities creates preconditions for the state to control that such activities that are significant for society and nature are carried out only by companies that can ensure high performance standards. However, it is important to mention that the state is constantly changing and supplementing the legal regulation of waste management in order to maintain a balance between environmental and economic progress, reduce administrative burdens, and modernize licensing or permitting processes.

Conclusions. The legal regulation of hazardous waste management in the Republic of Lithuania is based on the EU environmental action programs and in line with regional regulation, is constantly being improved by assessing dynamic economic and demographic processes. The state classifies hazardous waste management activities as activities that pose a risk of violating important public interests, therefore legal and administrative measures are established in the Republic of Lithuania for hazardous waste management activities: permitting system, licensing. Licensing of activities is in all cases a means of regulating these activities, i. y. it inevitably restricts the pursuit of a specific economic activity, but in this case the

State seeks to protect important public interests and considers that there are no less restrictive measures to address the identified problem and important public interests: licensing and permits are effective and presuppose negative effects on hazardous waste generation and management reducing the impact on human health and the environment. The state is constantly changing and supplementing the legal framework for waste management in order to maintain a balance between environmental and economic progress, reduce administrative burdens, and modernize licensing or permitting processes.

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Правовые аспекты порядка утилизации опасных отходов в Литовской Республике

В статье анализируется правовой порядок утилизации опасных отходов в соответствии со стратегиями и правовыми актами ЕС. Утверждается, что политика утилизации опасных отходов в Литве опирается на законы утилизации отходов ЕС. Делается вывод, что применяемая система административных мер по утилизации опасных отходов, лицензирование разрешений действительны и уменьшают негативное воздействие на здоровье людей и окружающую среду. На предприятия, выполняющие работы по утилизации опасных отходов, возложены те же задачи, что и в ЕС – безопасность и долговечность, технические возможности и экономическая обосно-

ванность, защита ресурсов, также общее воздействие на окружающую среду, здоровье окружающих, экономику и социальное окружение.

Ключевые слова: утилизация опасных отходов; лицензирование утилизации отходов; разрешения на загрязнение; Литва.

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