

Environmental Protection Series

Environmental Protection Series (XVIII). The “most stringent plastic restriction order” has now been issued. How can companies navigate this order?

Introduction:

Along with the implementation of the Law of the People’s Republic of China on the Prevention and Control of Environmental Pollution Caused by Solid Wastes, a series of documents such as the *Opinions of the National Development and Reform Commission* and the *Ministry of Ecology and Environment on Further Strengthening the Treatment of Plastic Pollution* (“Plastic Restriction Order”) was issued in January 2020 to prohibit and restrict the production and use of disposable plastic products. It is now regarded as “the most stringent plastic order” to be issued. The Plastic Restriction Order has now been in place for several months. This article will briefly introduce the latest practices related to the Plastic Restriction Order, and aims to provide compliance advice for companies which produce or use plastic products (such as enterprises in the consumer goods industry).

I. What legal consequences will be incurred if a company violates the Plastic Restriction Order?

The Law of the People’s Republic of China on the Prevention and Control of Environmental Pollution Caused by Solid Wastes stipulates that

the state now bans and restricts the production, sale and use of non-degradable plastic bags as well as other similar disposable plastic products and sets up a basic principle that the state should encourage and issue guidelines about the use of recyclable products and degradable alternative products. In addition, the Law imposes a duty of reporting in relation to the use and recycling of disposable plastic products on specific industries such as sponsors of retail outlets (such as large shopping malls), e-commerce platform companies, and logistics companies. In case of any violation of the above regulations, the Law further stipulates a provision regarding the administrative penalties which authorize the commercial and postal authorities of local people’s government at or above the county level to make corrections and issue a fine of no less than RMB 10,000 and no more than RMB 100,000. It is also noted that the State Administration for Market Regulation in Shanghai, Hainan and some other regions have already imposed administrative penalties on food and catering outlets for illegally providing disposable non-degradable plastic products in accordance with the above-mentioned Law or local regulations.

We have also observed that in practice, local regulatory authorities may take other restrictive measures against companies that illegally produce disposable non-degradable plastic products, including the trial implementation of differential electricity price policies, public exposure, interviews, inclusion in credit information service platforms, etc.; Under certain circumstances, a producers' illegal income shall be confiscated while their business licenses may also be revoked.

What challenges and problems will companies face in complying with the Plastic Restriction Order?

II. The Importance of Environmental Compliance Review and Information Disclosure Compliance for Pre-IPO Companies

According to the Opinions of the National Development and Reform Commission and the Ministry of Ecology and Environment on Further Strengthening the Treatment of Plastic Pollution and other documents, the state has proposed different schedules for different industries in terms of the restriction, prohibition, production, sale, and use of relevant plastic products. For instance, by the end of 2020, the use of non-degradable plastic bags will be banned in built-up urban areas of municipalities directly under the central government, provincial capitals and cities specifically designated in the state plan, including shopping malls, supermarkets, pharmacies, bookstores as well as food take-away services and various exhibition activities. In addition, all market places shall regulate and restrict the use of non-degradable plastic bags.

However, since the Plastic Restriction Order has just recently been put in place, the relevant complementary regulations and documents are incomplete, which gives rise to obstacles for companies to obey such rules. For example, although the national Plastic Restriction Order stipulates the restriction and prohibition of the use of non-degradable plastic bags, the current order is just a principle and specific standards are yet

to be implemented. There is no unified definition of "disposable plastic bags", "non-degradable" or "biodegradable" in the relevant laws, regulations or mandatory national standards. The definitions differ from each other at local level and the requirements and timings of the implementation in different industries vary in different places, which makes it difficult for companies to accurately determine which rules to follow. If you have any questions in this regard, please confirm with your environmental law lawyer in a timely manner.

It is said that the Ministry of Ecology and Environment and other relevant departments are taking the lead in formulating national standards for "non-degradable plastics" and related plastic products. The Ministry of Commerce and the State Administration for Market Regulation are also improving and implementing relevant policies and enforcement measures. It is foreseeable that the state will further introduce specific policies and regulations to make the Plastic Restriction Order more feasible.

III. Conclusion and suggestions

In conclusion, our country's laws and policies regarding Plastic Restriction Orders will gradually improve. Therefore, companies producing and using plastic products need to pay special attention to the national and local legislative processes as well as the regulatory requirements in this regard. In view of this, we believe it is necessary to carry out internal audits and product/business risk assessments in a timely manner to make prompt adjustments (if necessary) as well strengthening compliance management to avoid compliance risk. If you have any specific questions in relation to services involving plastic restriction compliance consultation and product risk assessment, or have questions regarding staff training around plastic restriction related laws or compliance, please contact us via: ecoenvpro@junhe.com

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daily commercial operations, EHS related audit and compliance, government investigations, administrative punishments and reconsiderations, and other litigation.

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环境保护法律热点问题

环保专题系列(十八)——“最严限塑令”初见成效,企业如何摆脱“塑缚”?

导言: 随着《固体废物污染环境防治法》的生效和实施,2020年1月起我国颁发了《关于进一步加强塑料污染治理的意见》(以下简称“**限塑令**”)等一系列文件,禁止、限制一次性塑料制品的生产和使用,被称为“最严限塑令”。目前,限塑令已实施数月,本文简要介绍限塑令相关最新实践情况,希望为塑料制品生产、使用企业(如消费行业企业)提供合规思路。

一、违反限塑令,企业将面临什么法律后果?

《固体废物污染环境防治法》规定了国家依法禁止、限制生产、销售和使用不可降解塑料袋等一次性塑料制品,鼓励和引导使用可循环、可降解替代产品的基本原则,并且针对商品零售场所开办单位(例如大型商场)、电子商务平台企业、快递企业等特定行业提出了一次性塑料制品使用、回收情况的报告义务。若违反上述规定,《固体废物污染环境防治法》进一步规定“由县级以上地方人民政府商务、邮政等主管部门责令改正,处一万元以上十万元以下的罚款”的行政处罚。目前,我们注意到上海、海南等地方市场监督管理局已经根据上述法规或地方性法规对某些餐饮店铺违规提供一次性不可降解塑料制品采取行政处罚的案例。

此外,我们观察到,实践中,地方监管部门可能对违规生产一次性不可降解塑料制品的企业采取其他限制性措施,包括试行差别电价政策、公开

曝光、约谈、纳入信用信息服务平台等;在特定情况下,生产国家明令淘汰的不可降解塑料制品还可能面临没收违法所得、吊销营业执照等法律后果。

二、遵守限塑令,企业将面临哪些挑战和问题?

根据《关于进一步加强塑料污染治理的意见》等一系列文件的规定,国家对不同行业限制、禁止生产、销售、使用相关塑料制品提出不同的时间表,例如,到2020年底,直辖市、省会城市、计划单列市城市建成区的商场、超市、药店、书店等场所以及餐饮打包外卖服务和各类展会活动,禁止使用不可降解塑料袋,集贸市场需要规范和限制使用不可降解塑料袋。

但是,由于限塑令刚刚施行,相关配套法规文件并不完整,客观上给企业实际执行限塑令造成障碍。例如,限塑令规定了限制、禁止使用“不可降解塑料袋”,但目前限塑令的规定较为原则性而缺少具体施行标准;并且我国并没有相关法律法规或强制性国家标准对于“一次性”、“不可降解”、“生物降解”做出统一的定义。而地方层面的定义以及限塑令配套政策法规对不同行业的推进要求和时点也并不统一,企业往往较难准确判断应当遵循何种标准。若企业对此方面存在疑问的,应及时与环境律师进行确认。

据了解,生态环境部等相关部门正在牵头制定

关于“不可降解塑料”及相关塑料制品的国家标准，商务部、市场监督管理总局等部门也正在完善、贯彻相关政策及执法实践要求。可以预见，国家将进一步出台具体政策法规，使得限塑令的实施有规可依。

三、结语与建议

结合上述讨论，我国限塑令相关法律政策将逐步完善。塑料制品生产、使用企业需要特别关注这方面的国家及地方立法进程和实践中监管要求，及时开展内部审核、产品/经营风险评估。如有必要的，应及时进行调整，加强合规管理，避免合规风险。

如您有任何具体问题，需要限塑令合规咨询和

产品风险评估等方面的服务或限塑令相关法律或合规培训的，欢迎邮件联系我们：

ecoenvpro@junhe.com。

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