Legal issues of organizing solid waste sorting in apartment buildings

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Abstract. This work focuses on one of the most pressing issues of today’s management of apartment buildings, namely the legal issues of organizing the sorting of household waste. We have summarized significant gaps and contradictions in the legislation governing the relationship between facility management companies or housing cooperatives or associations and regional waste disposal entities. This work provides recommendations for optimizing the organization of household waste sorting in order to ensure the interests of residents of apartment buildings are accounted for.

1. Introduction
Effective January 1, 2019, after five years of legal and organizational arrangements, the so-called “waste reform” in Russia proceeded into the implementation stage. One of its main objectives is to reduce the amount of solid household waste accumulated at landfills and, consequently, to increase the proportion of solid household waste suitable for recycling. In most developed countries, this proportion ranges from 60 to 80 percent, in the Russian Federation today - less than 5 percent [1]. One of the important prerequisites for achieving this goal is to introduce waste sorting directly by its producers, that is, households. This would eliminate the necessity of its further sorting or significantly simplify this process, which means it would greatly reduce the cost of the entire waste management cycle.

The key organizational components of the new system would be, on the one hand, regional operators of solid household waste disposal facilities, and on the other hand, organizations which manage apartment buildings (management companies and homeowners associations).

The regional operator of solid household waste management (hereinafter referred to as the regional operator) is a new institution, both in terms of structure and legal status, formed on the basis of a bidding procedure and upon an agreement with an authorized executive body of a territorial entity of the Russian Federation. It is to provide for the collection, transportation, processing, disposal, storage or liquidation of solid household waste. As intended by the legislator, giving control over all stages of waste management to one entity would solve the problem of unauthorized and overflowing landfills, re-channel waste flow from storage to recycling, etc. With the exception of dumping, all other waste management activities can be regulated, in other words, the tariffs for such services are determined by the state and not by the market. Each property owner producing solid household waste is to sign a public contract for the provision of waste management services with the regional operator directly or through facility management companies, housing cooperatives or associations [2].
2. Purpose, target and object of research

The purpose of this article is to analyze the legal and regulatory system and law enforcement practice pertaining to the management of sorting household waste in apartment buildings.

The target of the research is interrelation developing in the process of interaction between the regional operator and management companies, housing cooperatives or associations and property owners.

The objects of the research are the legal provisions of the Russian law governing the procedure and requirements for entering into and executing contracts for the provision of waste management services, i.a. the organization of differentiated collection of such waste.

3. Results

The handling of solid household waste in apartment buildings is regulated by the Housing Code of the Russian Federation and a range of instruments by the Government of the Russian Federation [3]. Effective January 1, 2019, the disposal of solid household waste ceased to be a housing service and became a utility service. For large apartment buildings, an agreement with the regional operator may be signed by each individual waste producer or by the organization managing the apartment building on behalf of all tenants. Pursuant to Article 136 of the Civil Code of the Russian Federation, a producer (owner) of solid household waste is the owner of goods, tare or packaging, through the use of which the waste was generated. All utilities (gas, water, power supply) can be provided both within the standard consumption rates, which are established by the government of the respective region of the Russian Federation, and according to the physical volume of resources (services) consumed. In the latter case, to measure the amount of resources consumed, individual meters are installed in the apartments. Unfortunately, in Russia today, it is impossible to install a device for measuring the actual volume of solid household waste for each inhabitant of an apartment building. Hence, at this development stage of the legislation regulating waste management, a resident is to pay for this service at the standard rate or according to the actually accumulated solid household waste calculated per resident of the apartment building.

Apart from the accumulation standard, regional governments of the Russian Federation approve a methodology for calculating the cost of public utility services for handling solid household waste, which can be based both on the number of people living in an apartment and by the floor area of the premises. The annual standard volume of accumulated waste, converted from tons to cubic meters with a conversion factor, is multiplied by the uniform tariff of the regional operator (in rubles) and by the number of residents of the apartment. By dividing the resulting amount by 12 months, we obtain the amount the residents would theoretically see in their utility bills. Where a regional government approves the method of payment per square meter of the floor area, the standard rate of accumulation of solid household waste is multiplied by the regional operator’s tariff and then multiplied by the floor area of the apartment.

Waste sorting has not yet been consolidated in the legislation as an obligatory stage of the waste management system and left at the discretion of the regional authorities, who are entitled to decide whether they need waste sorting to solve the waste problem. As the regulatory instruments governing the activities of regional operators and the housing and utility sector of waste management contain numerous ambiguous provisions, the disputes between experts never cease, causing impediments for those who are to apply them. At the same time, waste owners retain the right to choose the option of billing for solid household waste not according to the standard, but according to the actual volumes they have accumulated. We shall discuss the contradictions of the regulatory system further on.

When choosing the cost calculation method for the solid household waste disposal services between "standard rate" and "actual", several important points should be taken into account. First, where waste accumulation standards are higher than real volumes, the residents paying for the waste management service according to the standard overpay and are not be able to manage their expenses in this budget item. Secondly, when the waste accumulation standards are lower than the actual volumes, the residents save money while the regional operator experiences losses, which results in their non-fulfillment of their
obligations, therefore affecting the development of the waste management industry in the region and, consequently, turning into an environmental issue. In this case, residents are not motivated to reduce the amount of waste they generate. Thirdly, when the “actual” cost calculation method is chosen, residents have a real motivation to produce as little solid household waste as possible in order to reduce their utility expenses. The introduction of waste sorting provides for this possibility.

According to clause 1 of Article 13 of the current Federal Law No. 89-FZ “On Industrial and Household Waste”, solid household waste can only be collected at properly equipped container sites.

At the same time, the authority of a regional operator over the solid household waste collected at a container site begins only from the moment that solid household waste is loaded into the garbage truck: “The regional operator is responsible for the solid household waste from the time of loading the waste into the garbage truck at the sites where the solid household waste has been collected and accumulated” (cl. 13 of the RF Government Decree No. 1156 dated November 12, 2016).

Waste sorting at the container sites is allowed by law, however, it can be organized only with the written permission of the regional operator: “It is forbidden to organize sites for the collection of waste from the use of consumer goods and packaging which have lost their consumer properties, which are part of solid household waste, at container sites and special sites for the storage of bulky waste without the written consent of the regional operator ” (cl. 21 of the RF Government Decree No. 1156 dated November 12, 2016).

This vagueness of the current legislation allows regional operators to interpret the situation as follows: all waste entering the container site is: firstly, solid household waste; secondly, a priori belongs to the regional operator; thirdly, can be sorted only with their written consent. Hence, it can be concluded that waste sorting can be organized at the container site either by the regional operator or by some other operator upon the written consent of the regional operator. Since the law permits a regional operator to manage other types of waste (not solid household waste) under separate civil contracts, situations may arise where the same company exercises the authority of a regional operator for solid household waste and an operator for product waste. As we have already mentioned, the objective of a management company or house owners’ association deciding to introduce waste sorting is to reduce payments for the disposal of unsorted waste. In other words, by and large, a management company sees no fundamental difference in who organizes the waste sorting as long as the residents can reduce the volume of unsorted solid household waste and save some money on it. The most logical option would be for the management company or house owners’ association to request this service from the regional operator first. The decision of the regional operator to introduce or not to introduce sorting household waste at the container site is determined by the general waste management policy of the territorial entity of the Russian Federation. Simply stated, as far as the regional policy agrees with the basic national policy in this aspect, the hierarchy of waste management methods is observed.

Regional policy is reflected in the Territorial Plan for Waste Management, including solid household waste (hereinafter - the Territorial Plan) [4]. If the Territorial Plan is designed in accordance with the national plan, i.e. it provides for the methods to prevent waste generation, waste sorting at collection sites, further sorting and subsequent disposal, the regional operator, obliged to act according to the Territorial Plan, is likely to inform a management company or house owners’ association, that containers for waste sorting will appear at the container site within the specified time. If the Territorial Plans provide for incineration plants and waste sorting stations without focusing on the introduction of waste sorting at collection sites, such would reduce the chances of the regional operator’s introducing waste sorting.

Until sufficient statistics for future differentiated tariffs is collected, the regional operator’s organizing household waste sorting will be unprofitable for residents, with rare exceptions. At this stage it is advisable to remember that solid household waste is Hazard Category 4 waste, handling which requires a license. However, if the waste is not mixed but collected separately, it becomes Hazard Category 5 waste (according to the Federal Waste Classification Catalog). Used paper, glass containers, clean tare and some types of plastic packaging, metals are Hazard Category 5 waste, and some of them are not solid household waste, but “waste from the use of goods, containers and packaging” included in
Block 4 of the Waste Catalog. The introduction of the concept of “waste from the use of goods, containers and packaging” to the legislation created a contrariety: some part of the consumption waste may not become solid household waste if collected separately. And since it is no more solid household waste, the requirements for its storage also change. It does not have to be a container site any more.

These conclusions are confirmed by clause 22 of the RF Government Decree No. 1156 dated November 12, 2016: “Collection and accumulation of waste from the use of consumer goods and packaging, which have lost their consumer properties, constituting solid household waste, can be conducted by organizing stationary and mobile waste collection facilities, including automatic waste collection devices”.

The most important issue to consider at this stage is that solid household waste can be collected only at a container site, and product waste should be collected outside such sites outside, and recyclable materials can be hauled out not on a daily basis but as accumulated.

If a facility management company or a house owner understands that waste sorting in the form of a regional operator’s service is not cost efficient, and their residents insist on saving, their best option may be sorting waste from using goods outside the container site.

As the legislation does not give a clear definition of the concept of “recyclable materials collection site”, and of the very concept of “recyclable materials”, containers for product waste can be designated as waste collection sites.

4. Conclusion
Summarizing the above, we concluded the following. Today, the introduction of sorting household waste at a container site remains at the discretion of the regional operator. This is a new scheme of waste management, within which one should understand all the difficulties of establishing a new system, take into account the requirement to collect statistics on sorting household waste and the unavailability of efficient tools to reduce the tariffs for the disposal of sorted solid household waste.

If residents are informed that during the transition period, waste sorting will not let them significantly reduce their utility payments, but their active participation in the “experimental” waste sorting will allow to introduce a differentiated payment system for separately collected waste in one year’s time, and then their bills will be smaller, then the residents may decide to participate in the sorting of household waste at the container site, with the expectation of future tariff reductions.

References
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