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3 February 2006

The Hon Audrey Eu Yuet-mee, SC, JP
The Chairman,
Bills Committee on the Waste Disposal (Amendment) Bill 2005,
Legislative Council Building,
8 Jackson Road,
Central, Hong Kong

Dear Chairman,

Bills Committee on the Waste Disposal (Amendment) Bill 2005

**Compliance and implementation of the Basel Convention
through the Waste Disposal Ordinance**

In response to the discussion held at the 11th meeting of the Bills Committee on January 24, the following sets out a fuller picture of our endeavour in implementing the Basel Convention through the WDO.

Implementation of the Basel Convention in Hong Kong

2. Hong Kong implements the "The Basel Convention on the Control of Transboundary Movements of Hazardous wastes and Their Disposal" (the Convention), as concluded at Basel in Switzerland on 22 March 1989, through amendments to the Waste Disposal Ordinance (WDO) in 1995. We have effectively enforced the WDO's control on the import and export of hazardous waste since September 1996, as could be demonstrated by our enforcement track record over the last 9 years. Our close collaboration with other competent authorities of our trading partners and our counterparts in the mainland have resulted in over 200 convictions as illustrated in Annex 1, and amongst those convicted, four were sentenced to imprisonment in the last 3 years for a term of 2 months

each¹.

Implementation of the Basel Ban in Hong Kong

3. As explained previously, while Hong Kong has no obligation to implement the Basel Ban since China is not a country listed under Annex VII of the Basel Convention (even when it enters into force), we have been adhering to the spirit of the Basel Ban and no import permit has been issued since 1998 for hazardous waste shipments from any of those countries listed under Annex VII into or through Hong Kong. This measure is, in effect, a ban on the importation of hazardous waste from Annex VII's countries. We have now proposed under Clause 8 of the Bill to give effect to the Basel Ban through amendment to the WDO, and Section 20A(4) of the WDO will clearly stipulate that the authority shall not issue a permit unless the hazardous waste is not imported from the countries listed under Annex VII, namely, Member states of the OECD, EC and Liechtenstein.

Annual Reporting according to Article 13 of the Convention

4. In accordance with Article 13 (Transmission of information) paragraph 3 of the Convention, contracting parties shall transmit, through the Secretariat, to the Conference of the Parties (COP), before the end of each calendar year, a report on the previous calendar year on various issues related to the implementation of the Convention. The Hong Kong SAR Government (HKSARG) has been submitting a report annually through China as a contracting party.

Mechanism for promoting the implementation and compliance of the Convention

5. According to Decision VI/12, particularly paragraph 21, the COP has established a mechanism whereby the "Committee for administering the Mechanism for Promoting the implementation and compliance of the Convention" (the Compliance Committee) is tasked to review general issues of compliance and implementation under the Convention. An extract of the Terms of Reference of the Compliance Committee is at Annex 2.

¹ One offender was sentenced with 2-month imprisonment term in 2003, two offenders were each sentenced with 2-month imprisonment term but suspended in 2004, and one offender was sentenced with 2-month imprisonment term but suspended in 2005.

There has been no complaint lodged against Hong Kong with the Compliance Committee.

Active participation in international and regional collaboration

6. The COP, established by Article 15 of the Basel Convention, is composed of all states that are Parties to the Convention, which, *inter alia*, keeps under continuous review and evaluation the effective implementation of the Convention. The COP holds regular meeting once every 2 years, and EPD, as the local competent authority of the Convention, represents the HKSARG in joining the China's delegation to attend the meetings held in the past several years. EPD has also participated in various workshops organized by the Secretariat, and assisted the latter to host the first regional seminar in Hong Kong in 2000 for port enforcement officers in the Asian region. Our participation in these events, a list of which is at Annex 3, has enabled us to establish useful contacts with our counterparts, and share knowledge and experience in enhancing our enforcement capability and capacity.

7. To promote more effective sharing of intelligence and enforcement experience to tackle illegal transboundary movement of hazardous wastes, EPD has been in close liaison with the competent authorities in overseas countries. Direct intelligence links have been established with competent authorities of our major trading partners including Australia, Belgium, Canada, Germany, Ireland, Japan, Malaysia, the Netherlands, Singapore, South Korea, Thailand and the United Kingdom, to enable effective exchange of intelligence for prompt enforcement action by both sides in parallel.

8. Our effective control over transboundary movement of waste has been well recognized and EPD is the only competent authority in the Asia-Pacific region being invited to join the Cluster on Transfrontier Shipments of Waste of the IMPEL Network² (IMPEL-TFS). We joined IMPEL-TFS since 2001 and participated in their enforcement projects to stop illegal waste shipments. Since 2004, we also joined the Asian

² The European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) is an informal Network of the environmental authorities of the Member States, acceding and candidate countries of the European Union and Norway. The network is commonly known as the IMPEL Network.

Network for Prevention of Illegal Transboundary Movement of Hazardous Wastes.

Close liaison with our mainland counterparts

9. While the mainland and Hong Kong have separate legal systems and different control philosophy, the State Environmental Protection Administration (SEPA) of the mainland and EPD signed a Memorandum of Understanding (MoU) to strengthen the communication and co-operation on transboundary movement of hazardous wastes in 2000. The MoU formalised the control arrangements for waste shipments between Hong Kong and the mainland, and under the control framework, shipments of hazardous waste are not allowed unless prior written consent is given by the control authorities of both the place of import and place of export.

10. Since signing the MoU, we have stepped up our liaison and in 2003, we joined force with the Hong Kong Customs and Excise Department (C&ED), the Marine Police, the SEPA and the customs authorities of the mainland to combat the smuggling of hazardous electronic wastes. Regular meetings with the mainland authorities are also held to discuss issues of mutual concern and share enforcement experience and intelligence. Noting that the mainland has banned some second-hand or used products (e.g. used electronic appliances and equipment), we maintain close liaison with the mainland authority and alert our counterparts of any waste shipments from Hong Kong that may be subject to their import control.

Compliance with the Convention – Legal Aspects

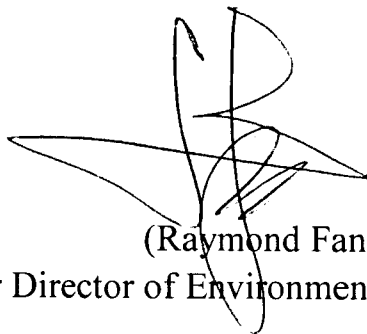
11. As explained at the 11th meeting of the Bills Committee, the Convention allows individual countries to define waste according to their local regime. Some countries, including the mainland, do not directly copy the Convention's definition into their local legislation. The Convention has made it clear in Article 2 that member states would be allowed to define waste through their national law. Through successful prosecution cases, the court has accepted a broad interpretation of waste as currently defined in the WDO, which is equally effective in controlling the import and export of waste and hence fulfilled the policy intention of the

Convention. There is also no requirement in the Convention to copy the waste lists of the Convention verbatim as long as the wastes stated in the lists are subject to the required control under local legislation.

12. We consider that it is not necessary and inappropriate to strictly follow the definitions and waste descriptions of the Convention since we are already in full compliance with the spirit of the Convention, as confirmed by the expert view of the International Law Division of the Department of Justice ("ILD") attached at Annex 4 ("the Advice"). ILD has set out their conclusion at paragraph 33 of the Advice, in particular, the question on the definitions of "waste" and "disposal" is considered at paragraphs 23, 24, 26, 27 and 28 of the Advice, and the question on waste descriptions is considered at paragraphs 19, 20 and 30.

13. Upon Members' request, we furnish at Annex 5 further information on the waste descriptions, and the waste lists adopted by other signatory states to the Convention.

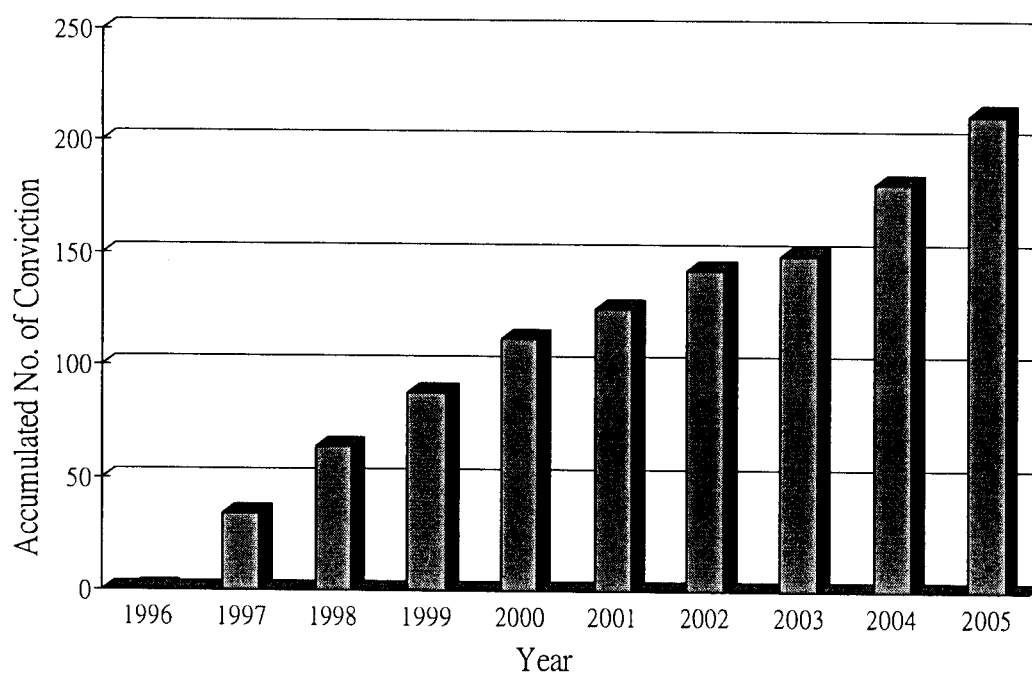
Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'R' and 'F' intertwined, with a horizontal line crossing through the middle.

(Raymond Fan)

for Director of Environmental Protection

**Import & Export Control of
Hazardous Waste Movement under the WDO
Enforcement Track Record (since September 1996)**



Note: One offender was sentenced with 2-month imprisonment term in 2003, two offenders were each sentenced with 2-month imprisonment term but suspended in 2004, and one offender was sentenced with 2-month imprisonment term but suspended in 2005.

**Committee for Administering the Mechanism
for Promoting the Implementation and Compliance of the Convention**

The Committee for Administering the Mechanism for Promoting the Implementation and Compliance of the Convention (Compliance Committee) is tasked to review general issues of compliance and implementation under the Convention relating to, *inter alia*:

- (a) Ensuring the environmentally sound management and disposal of hazardous and other wastes;
- (b) Training customs and other personnel;
- (c) Accessing technical and financial support, particularly for developing countries, including technology transfer and capacity building;
- (d) Establishing and developing means of detecting and eradicating illegal traffic, including investigating, sampling and testing;
- (e) Monitoring, assessing and facilitating reporting under article 13 of the Convention; and
- (f) The implementation of, and compliance with, specified obligations under the Convention.

If, after undertaking the facilitation procedure and taking into account the cause, type, degree and frequency of compliance difficulties, as well as the capacity of the Party whose compliance is in question, the Compliance Committee considers it necessary to pursue further measures to address a Party's compliance difficulties, it may recommend to the COP that it consider :

- (a) Further support under the Convention for the Party concerned, including prioritization of technical assistance and capacity building and access to financial resources; or
- (b) Issuing a cautionary statement and providing advice regarding future compliance in order to help Parties to implement the provisions of the Convention and to promote cooperation between all Parties.

Major International and Regional Collaboration

Year	Month	International & Regional Meetings
1998	Feb	The 4 th Meeting of the COP to the Basel Convention
	Nov	The 5 th International Conference on Environmental Compliance & Enforcement
1999	Mar	The Sub-regional Training Seminar for the Implementation of the Basel Convention
	Dec	The 5 th Meeting of the COP to the Basel Convention
2000	Dec	The 1 st Regional Training Seminar for Port enforcement officers on Basel control jointly organized by the Basel Secretariat, SEPA and EPD in Hong Kong
2001	May	The Annual Conference of IMPEL-TFS 2001
2002	Jun	The Annual Conference of IMPEL-TFS 2002
	Dec	The 6 th Meeting of the COP to the Basel Convention
2003	Jun	The Annual Conference of IMPEL-TFS 2003
	Sep	The National Workshop on Environmental Management of Import Waste organized by SEPA in China
	Dec	The Workshop on Material Cycles and Waste Management in Asia
2004	Aug	UNEP Regional Training Programme in Environmental Policy Analysis and Law
	Oct	The 7 th Meeting of the COP to the Basel Convention
	Nov	The 1 st Workshop on Asian Network for Prevention of Illegal Transboundary Movement of Hazardous Waste
2005	Mar	The IMPEL-TFS Management Meeting
	Nov	The 2 nd Workshop on Asian Network for Prevention of Illegal Transboundary Movement of Hazardous Waste
	Nov	The Asia-Pacific Regional Inception Workshop on the Environmental Sound Management of Electronic and Electrical Waste

**Legal Advice of the International Law Division of
the Department of Justice**

Background

The Department of Justice (DoJ) was asked to advise whether the relevant provisions in the WDO are in full compliance with the Convention which has been applicable to Hong Kong since 1995, and specifically, whether certain definitions in the WDO are in conformity with the Convention.

2. In forming the opinion, DoJ has to rely on the technical advice from the experts of EPD in making the assessment below, in particular, the technical information and the professional judgment provided are presumed to be accurate and sound.

3. Before examining the issues, it would be useful to learn briefly the purpose and the operation of the Convention. It has been succinctly summarized by a learned scholar that the Convention “*is intended to establish a global regime for the control of international trade in hazardous and other wastes.... The Convention sets forth general obligations requiring all parties to ensure that transboundary movements of wastes are reduced to the minimum consistent with environmentally sound and efficient management, and it reflects an approach premised upon the view that waste should, as far as possible, be disposed of in the state where they were generated... The Convention sets forth detailed conditions for the international regulation of transboundary movements of hazardous and other wastes between parties based upon a system of ‘prior informed consent’.*” (Sands, *Principles of International Environmental Law*, 2003, pp.692-3) It would also be useful to note that the terms “wastes” and “disposal” are defined in Article 2, and guidance on the meaning of “hazardous” can be found in Annex I, Annex III and Annex VIII which in effect determine the scope of application of the Convention as set out in Article 1 (see paragraph 19 below).

Issues in question

4 It is noted that the definitions of “waste” and “disposal” as well as the descriptions of a number of substances in the WDO are literally different from those in the Convention.

5 Under the WDO, “waste” is defined as “*any substance or article which is abandoned and includes animal waste, chemical waste, construction waste, household waste, livestock waste, street waste and*

trade waste” (section 2). On the other hand, under the Convention, “*wastes are substance or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law*” (Article 2).

6. Under the WDO, “disposal” in relation to waste, is defined as “*any transfer operation, storage, reprocessing, recycling, material recovery, deposit, destruction, discharge (whether into water or into a sewer or drain or otherwise) or burial (whether underground or otherwise), and ‘dispose of’ shall be construed accordingly*” (section 20I). On the other hand, under the Convention, “disposal” means any operations specified in Annex IV of the Convention” (Article 2).

7. It is also noted that the description of substances in 7th Schedule of the WDO, including the new entries to be added to the Schedule under the Bill, are somewhat different from those in Annex VIII of the Convention – which are generally characterized as hazardous under Article 1(1)(a) of the Convention.

8. Given the differences identified above, there is a question whether the said provisions under the WDO provide sufficient coverage in scope as required by the Convention.

Basic Principles

Internal Law and Observance of Treaties

9. First of all, it must be noted that “international law imposes obligations upon and grant rights to states. So far as concerns rights, states are free to choose whether or not to exercise their rights to the full. So far as concerns international obligations, however, international law requires that states fulfil their obligations and they will be held responsible if they do not. ... It is firmly established that a state when charged with a breach of its international obligations cannot in international law validly plead as a defence that it was unable to fulfil them because its internal law was defective or contained rules in conflict with international law; this applies equally to a state’s assertion of its inability to secure the necessary changes in its law by virtue of some legal or constitutional requirement which in the circumstances cannot be met or severe practical or political difficulties which would be caused. The obligation is the obligation of the state, and the failure of an organ of the state, such as a Parliament or a court, to give effect to the international obligations of the state cannot be invoked by it as a justification for failure to meet its international obligations.” (*Oppenheim’s International Law*, 1992, pp.82-85)

10. Article 27 of the Vienna Convention on the Law of Treaties

(which is also applicable to the HKSAR) clearly provides that “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”.

11. Therefore, it is necessary to ensure that the requirements under an international convention which is applicable to the HKSAR can be fully complied with through legislative or administrative means. The question whether the relevant provisions in an international convention fall foul of any domestic law is not acceptable from the international law perspective.

Implementation of a treaty in domestic law

12. On the other hand, full compliance with an international convention does not necessarily mean following exactly the same terms and wording used in the convention itself. In some places including the HKSAR, an international convention generally cannot, without express incorporation, operate as part of the municipal law. The incorporation can be done by adopting the convention in full through local legislation or by enacting specific legislative provisions to implement the convention without adopting the same terms and wording used in the convention. The latter was often the case when the terms and wording used in the convention were not readily understandable or might cause confusion in the local context. As long as the convention can be fully implemented, both approaches are acceptable. (see also the UK practice in Anthony Aust, *Modern Treaty Law and Practice*, 2000, pp.152-153)

Interpretation of an implementing legislation to a treaty

13. It is also trite under common law that domestic law will be interpreted in the light of and, if possible,* in such a way as to be consistent with the international obligations of the state (*Ellerman Lines Ltd v Murray* [1931] AC 126; *Pan-American World Airways Inc v Dept of Trade* [1976] 1 Lloyd's Rep 257; *Minister of Public Works of the Government of Kuwait v Sir Frederick Snow and Partners* [1984] AC 426, 435-6; *Winfat Enterprise(HK) Co Ltd. v Attorney-General of Hong Kong* [1985] AC 733).

14. It is noted that “the court may look at the relevant multilateral convention implemented by the statute in order to resolve ambiguities in the statute, even though the statute does not mention the convention, or does not exactly correspond with the convention in wording or in effect, or even if the statute is enacted before the ratification of the convention.”

* This rule of construction does not apply if the statute is clear and unambiguous. (See *Collco Dealings Ltd. v IRC* [1962] AC 1 at 19, *Polites v Commonwealth* (1945) 70 CLR 60, *Salmon v Customs and Excise Commissioners* [1967] 2 QB 116)

(*Starke's International Law*, p.71 note 15, see also *The Banco* [1971] P 137, at 145, 151, 157 and *D and R Henderson (MFG) Pty Ltd v Collector of Customs (NSW)* (1974) 48 ALJR 132 at 135)

15. Therefore, based on the above authorities, one may conclude that where a piece of domestic legislation is open to different possible interpretations, the court should, as far as the statutory language permits, adopt the interpretation that will further any applicable treaty obligation.

Applying the Principles to the Present Case

Introduction

16. It is not disputed that the Convention must be implemented to its fullest extent and cannot be restricted in its application by the domestic law in the HKSAR. Thus, it is necessary to examine whether our domestic law (in particular, the provisions in the WDO mentioned above) are in conformity with the Convention.

17. Although there is no requirement under the Convention that the HKSAR must copy verbatim its provisions in domestic legislation, it is necessary to look into the relevant provisions in the WDO to see whether they are sufficient to implement the provisions in the Convention. In this connection, it would also be useful to note Article 4(11) of the Convention that "*nothing in this Convention shall prevent a party from imposing additional requirements that are consistent with the provisions of this Convention, and are in accordance with the rules of international law, in order to better protect human health and the environment*". Thus, the requirements under the Convention may be considered as minimum requirements and it is generally acceptable to impose stricter measures under the domestic law in the field of waste management and control.

18. In the examination of the provisions below, the principle of interpretation mentioned above should also be borne in mind and some relevant judicial precedents would be referred to.

Definition of "Waste"

19. The definition of "waste" in the Convention refers to substances which are subject to disposal (Article 2(1)) and the term "disposal" in turn is defined by reference to a technical annex (Annex IV) listing certain disposal operations (Article 2(4)). A "waste" is covered by the Convention if it is a "hazardous waste" which belongs to any category in Annex I unless it does not possess the characteristics set out in Annex III (Article 1(1)(a)) or which is defined as hazardous by the law of the country of import, export or transit (Article 1(1)(b)). Annex VIII was also added to the

Convention in 1998 which set out the wastes that are characterized as hazardous under Article 1(1)(a) but it does not preclude the use of Annex III to demonstrate that the waste is not hazardous.

20. Given such complexity, it is noted that “the Basel Convention’s system of classifying hazardous wastes and hazardous characteristics by reference to technical annexes has been subject to criticism ... one of the key problems with the efficient implementation of the Convention concerns use of Annex III which lists hazardous characteristics. There is a lack of criteria to define some of these characteristics ... For similar reasons, there are difficulties with the application of some of the categories of wastes listed in Annex I (e.g. Y18 ‘residue’ arising from industrial waste disposal operation)” (Kummer, *International Management of Hazardous Wastes*, 1999 p.50). It is also noted that “by using such a blanket definition, the emphasis of the Convention then became defining what is ‘hazardous’ rather than what is a ‘waste’. The Basel Convention did not define a hazardous waste as such, only listing hazardous waste streams, hazardous constituents and hazardous characteristics (Annex I and Annex III). Definitions of hazardous, however, are not universal either” (Krueger, *International Trade and the Basel Convention*, 1999, p.101). For this consideration or otherwise, a number of States have developed their own definition of “waste” and the meaning of “hazardous” instead of following the exact definition in the Convention.

21. While it is not objectionable not to follow the exact definition on “waste” in the Convention, it is necessary to examine whether the definition of “waste” in the WDO has sufficiently met the scope of coverage under the Convention. It may first appear that the general definition of “waste” in the WDO is narrower than that under Article 2.1 of the Convention. In particular, it has been argued that the use of the word “abandoned” has restricted the meaning of waste to the concept of absence of ownership which is not relevant under the Convention.

22. In this regard, it is necessary to refer to the judicial interpretation on the term “waste” and the operation of the WDO as a whole in the HKSAR. There are several judicial precedents in the HKSAR that have confirmed a very broad and liberal interpretation of the term “waste” in the WDO. On a close examination of the WDO, it is also clear that the WDO has a very extensive and comprehensive coverage.

23. In the decision dated 3 June 2005 (KCS13242/2004), it was held that the term “waste” should be given a simple and reasonable interpretation referring to anything that is unwanted, or when its ownership or possession has been given up. Only the mind of the original user would be looked at, instead of the person in possession.

24. In the decision dated 22 June 2005 (TWS20010-11/2004), it was held that, following the purposive approach in the UK case, *Mayer Parry Recycling Limited v Environmental Agency* CH1998 EWHC286, “the intention of the legislature was to control cathode-ray tubes [the substance in question] once they had reached a stage where the original owner abandoned his use of them for their original purpose (i.e. unsuitable, unwanted or surplus of requirements).”

25. In both decisions, the presumption in section 2(2) of the WDO was also considered, which provides that “*for the purposes of this Ordinance any substance or article which is discarded or otherwise dealt with as waste shall be presumed to be waste until the contrary is proved*”.

26. Therefore, it is clear that a very wide interpretation has been given to the term “waste” under the WDO which may even go beyond the Basel. It seems that whenever the original user no longer uses an item for its original purpose, that item might be regarded as a “waste” covered by the WDO. The operation of section 2(2) also assists in the application of the WDO. In other words, the definition of “waste” in the WDO relates to a general act by which an item is no longer used for its original purpose. As such, it seems wide enough to cover the concept of disposal in the definition of “wastes” under the Convention that refers to various specific operations in Annex IV of the Basel Convention.

Definition of “Disposal”

27. Based on the comparison table in the Appendix, the general description under the term “disposal” in the WDO seems to be wide enough to cover the various technical processes mentioned in Annex IV of the Convention. So long as the general definition is wide enough to cover each of the specific processes mentioned in Annex IV, there is no need to specify each of these particular processes in the WDO.

28. Given that it is one of the purposes of the WDO to implement the Convention, the term should be given a liberal meaning in a way consistent with the Convention. In fact, such wide and liberal interpretation of the term was confirmed in the decision dated 3 June 2005 (KCS13242/2004).

Descriptions under the WDO and the Annex of the Convention

29. Bearing in mind the observations in paragraph 20 above, as long as the descriptions of various wastes in the WDO are wide enough to cover all the hazardous substances in the relevant Annexes of the Convention, it would not be necessary to set out the details of the descriptions in the way set out in the Annexes.

30. Based on the comparison table of the waste descriptions covered by the 7th Schedule (including the new entries to be added to the Schedule under the Bill) and that covered by Annex VIII of the Convention, and EPD's professional judgment, almost all substances are fully covered and some discrepancies in the description with respect to a few substances may be addressed by reference to chemical wastes under the Waste Disposal (Chemical Waste) (General) Regulations (the Regulations), Cap 354C. The term "chemical wastes" is defined in section 3 of the Regulations referring to, *inter alia*, the substances specified in Schedule 1 to the Regulations, which could provide additional coverage.

31. Although DoJ is unable to comment whether the substances are fully covered in spite of the discrepancies in the description and whether the discrepancies are sufficiently addressed by reference to chemical wastes (in particular, reference to the substances listed in Schedule 1 to Regulations, It is noted that sections 20A(1)(b) and 20B(1)(b) of the WDO in fact regulate not just substances listed in the 7th Schedule but also any substances not listed in the 6th Schedule. Therefore, even though certain substances have not been sufficiently covered by the descriptions in the 7th Schedule, so long as they are not listed in the 6th Schedule, they are still regulated by the WDO.

32. On this basis, regardless of the question whether the descriptions in the 7th Schedule match exactly the relevant descriptions in the Convention, it seems that the substances in Annex VIII of the Convention have been covered by the WDO since EPD has advised that no substance in Annex VIII have been included in the 6th Schedule (as amended by the Bill).

Conclusion

33. In summary, at present, the relevant provisions in the WDO identified above are not inconsistent with the Convention on the following basis:

(i) it is not a requirement under the Convention that the HKSAR must copy verbatim its provisions in the WDO and in fact, it has been observed by some learned scholars that certain provisions in the Convention lack a clear criteria (see paragraphs 19 and 20 above);

(ii) the definition of "waste" in the WDO is of very general application which is wide enough to cover the concept of disposal in the definition of "wastes" under the Convention, which has been confirmed by judicial decisions mentioned in paragraphs 23 and 24 above and supported by the presumption under section 2(2) of the WDO;

(iii) the definition of “disposal” in the WDO has been set out in an all-embracing manner which, according to EPD’s technical assessment mentioned in paragraph 27 above, covers all the specific processes referred to in Annex IV of the Convention;

(iv) as summarized in paragraphs 26 and 28 above, both definitions in the WDO have been interpreted in a broad and flexible way by the court which is consistent with the requirements under the Convention;

(v) in spite of the discrepancies in the description of some substances, according to EPD’s technical assessment mentioned in paragraph 30, the substances in Annex VIII of the Convention are either precisely covered by the 7th Schedule (including the new entries to be added to the schedule under the Bill) or indirectly covered through the operation of sections 20A(1)(b) and 20B(1)(b) of the WDO which catch any substances not listed in the 6th Schedule;

(vi) if the above analysis indicates that the regulatory regime under the WDO may be more stringent than that under the Convention, it is acceptable and permitted by Article 4(11) of the Convention (see paragraph 17 above).

34. Based on the above premises, the present operation of the abovementioned legislative provisions in the HKSAR is consistent with the requirements of the Convention.

**Comparison of “Disposal” under the WDO and
Annex IV of the Convention**

Item	Descriptions	Relevant Wordings Under section 20I of the WDO
D1	Deposit into or onto land, (e.g., landfill, etc.)	Deposit
D2	Land treatment, (e.g., biodegradation of liquid or sludgy discards in soils, etc.)	Burial (whether underground or otherwise)
D3	Deep injection, (e.g., injection of pumpable discards into wells, salt domes of naturally occurring repositories, etc.)	Burial (whether underground or otherwise)
D4	Surface impoundment, (e.g., placement of liquid or sludge discards into pits, ponds or lagoons, etc.)	Discharge (whether into water or into a sewer or drain or otherwise)
D5	Specially engineered landfill, (e.g., placement into lined discrete cells which are capped and isolated from one another and the environment, etc.)	Deposit
D6	Release into a water body except seas/oceans	Discharge (whether into water or into a sewer or drain or otherwise)
D7	Release into seas/oceans including sea-bed insertion	Discharge (whether into water or into a sewer or drain or otherwise)
D8	Biological treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations in Section A	Reprocessing
D9	Physico chemical treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations in Section A, (e.g., evaporation, drying, calcination, neutralization, precipitation, etc.)	Reprocessing
D10	Incineration on land	Destruction
D11	Incineration at sea	Destruction
D12	Permanent storage (e.g., emplacement of containers in a mine, etc.)	Storage
D13	Blending or mixing prior to submission to any of the operations in Section A	Reprocessing
D14	Repackaging prior to submission to any of the operations in Section A	Reprocessing
D15	Storage pending any of the operations in Section A	Storage

Item	Descriptions	Relevant Wordings Under section 20I of the WDO
R1	Use as a fuel (other than in direct incineration) or other means to generate energy	Reprocessing/Recycling/ Material recovery
R2	Solvent reclamation/regeneration	Material recovery
R3	Recycling/reclamation of organic substances which are not used as solvents	Recycling
R4	Recycling/reclamation of metals and metal compounds	Recycling
R5	Recycling/reclamation of other inorganic materials	Recycling
R6	Regeneration of acids or bases	Material recovery
R7	Recovery of components used for pollution abatement	Material recovery
R8	Recovery of components from catalysts	Material recovery
R9	Used oil re-refining or other reuses of previously used oil	Reprocessing/Recycling/ Material recovery
R10	Land treatment resulting in benefit to agriculture or ecological improvement	Burial (whether underground or otherwise)
R11	Uses of residual materials obtained from any of the operations numbered R1-R10	Recycling/Material recovery
R12	Exchange of wastes for submission to any of the operations numbered R1-R11	Transfer operation
R13	Accumulation of material intended for any operation in Section B	Storage

Harmonization with the Basel Convention's Waste descriptions Rationale for Hong Kong's Approach

The Convention allows flexibility in transposing the requirements into local legislation. The table at the Appendix summarises the approach adopted by the signatory states to the Convention in defining waste and the list of hazardous wastes.

Hong Kong's approach

Though Hong Kong has made reference to the OECD's green, amber and red waste lists in drawing up the 6th and 7th Schedules of the WDO, the WDO has also stipulated that any wastes not listed in the 6th and 7th Schedules are also subject to the same permit control of those listed in the 7th Schedule.

In drawing up the proposed amendment to the 6th and 7th Schedules, we have compared the 7th Schedule with Annex VIII of the Convention. At present, the 7th Schedule has 86 coded entries while Annex VIII has 59 entries, 6 of which contain 23 sub-entries (i.e. altogether 76 entries). We observe that:

- 5 entries in 7th Schedule are found to be listed in Annex IX of the Convention which sets out the list of "green waste" not subject to control (i.e. we have imposed more stringent control as allowed for under the Convention);
- 30 entries in 7th Schedule have no corresponding entries in Annex VIII of the Convention (i.e. we have imposed more stringent control as allowed for under the Convention);
- 26 entries in the 7th Schedule are practically identical with those listed in Annex VIII;
- 13 entries in the 7th Schedule have similar or comparable entries in Annex VIII;
- 12 entries in the 7th Schedule have wider scope than the corresponding entries in Annex VIII; and
- 12 entries/sub-entries in Annex VIII of the Convention have no corresponding entries in the 7th Schedule. (The 12 entries are AA190, AA200, AA210, AA220, AB160, AC280, AC290, AD170, AD180, AD190, AD200 and AD210).

We consider it not necessary to replace the existing waste descriptions in the 7th Schedule by Annex VIII, as long as the Schedule is able to cover those hazardous wastes which are subject to control under the Convention. Although any wastes not listed in the 6th and 7th Schedules are also subject to the same permit control of those listed in the 7th Schedule, we have proposed, as set out in Clause 24 of the Bill, to enhance the 7th Schedule by inserting 12 entries using similar wordings of the waste descriptions in Annex VIII of the Convention.

**Table: Summary of Waste Definition and Waste Lists
adopted by China and other Countries***

Countries	Definition of Waste	Waste lists being adopted
EU & OECD countries (Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Poland, Portugal, Slovak Republic, Spain, Sweden, United Kingdom)		
	<i>Waste</i> means any substances or object which the holder disposes of or is required to dispose of pursuant to the provisions of national law in force.	OECD's old lists**
Other OECD countries		
Australia	<i>Waste</i> means a substance or object that: (a) is proposed to be disposed of; or (b) is disposed of; or (c) is required by a law of the Commonwealth, a State or a Territory to be disposed of.	List of Basel Convention.
Canada	Each province and territory defines its own meaning of wastes for the purpose of transboundary movement <i>Hazardous waste</i> means a product, substance or organism that is intended for disposal or recycling, including storage prior to disposal or recycling, and that is - listed in Schedule III; or - included in any of classes 2 to 6 and 8 and 9 of the <i>Transportation of Dangerous Goods Regulations</i> , except a product, substance or organism that is (a) household in origin, or (b) returned directly to its manufacturer or supplier for reprocessing, repackaging or resale, including a product, substance or organism that is (i) defective or otherwise not usable for its original purpose, or (ii) in surplus quantities but still usable for its original purpose.	National list, as set out in Schedule III of the Export and Import of Hazardous Wastes Regulations, is different from that of the OECD and Basel Convention.
Japan	<i>Waste</i> refers to refuse, bulky refuse, ashes, sludge, excreta, waste oil, waste acid and alkali, carcasses and other filthy and unnecessary matter, which are in solid or liquid state (excluding radioactive waste and waste polluted by radioactivity).	OECD's new list and list of Basel Convention.

Countries	Definition of Waste	Waste lists being adopted
Korea	<i>Waste</i> subject to transboundary movement control is defined as the substance or object listed in Annexes to Basel Convention and the substance to be controlled in accordance with bilateral, multilateral and regional agreements pursuant to the Article 11 of the Convention.	OECD's new list and list of Basel Convention.
Switzerland	<i>Waste</i> means all moveable materials of which the owner rids himself or disposal of which is necessary in the public interest.	National list different from that of OECD and Basel Convention.
Non-OECD countries		
China	固體廢物，是指在生產、生活和其他活動中產生的喪失原有利用價值或者雖未喪失利用價值但被拋棄或者放棄的固態、半固態和置於容器中的氣態的物品、物質以及法律、行政法規規定納入固體廢物管理的物品、物質。	National list different from that of OECD and Basel Convention.
Malaysia	<i>Waste</i> is defined as any matter prescribed to be scheduled waste or any matter whether in a solid, semi-solid or liquid form, or in the form of a gas or vapour, which is emitted, discharged or deposited in the environment in such volume, composition or manner as to cause pollution	National list different from that of OECD and Basel Convention.
Singapore	<i>Waste</i> means a substance or object that is proposed to be disposed of; disposed of; or required by any written law to be disposed of.	List of Basel Convention plus selected wastes.

* Most of the information is extracted from the country fact sheets (as at January 2004) of the Convention's website at <http://www.basel.int/natreporting/compilations.html>. Detailed information of other contracting parties is not readily available.

** Another list, which is a combination of Basel Convention, OECD and specific hazardous waste lists, applies to the export of hazardous waste from the EU countries to non-EU and non-OECD countries.