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24 June 2005

Miss Monna LAI
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Miss LAI,

Waste Disposal (Amendment) Bill 2005

I refer to our telecon on your above referenced letter during which I explained that since the Waste Disposal (Amendment) Bill 2003 was not scrutinized and subsequently lapsed by the end of the second term of LegCo in September 2004, we did not reply to your questions. Now that we have re-introduced the same Bill to LegCo, namely the Waste Disposal (Amendment) Bill 2005 and that a Bills Committee has been set up and will meet next month, please find for your reference our reply below with the same numbering as in your letter.

A.

- (1) The intention is to include under "veterinary sources" veterinary practice, veterinary research and veterinary laboratory practice as stipulated under Clause 2(1).
- (2) Some dead animals and animal tissues, organs and body parts are used in Chinese medicine administered during Chinese medicine practice [海馬、蚯蚓、竹蜂 etc]. Some Chinese medicine clinics may help the patients to prepare the medicines and discard such materials as municipal solid waste afterwards. Such materials arising from Chinese medicine practice are neither obnoxious nor infectious and hence should not be classified or controlled as clinical waste.

(3) The said materials are classified as animal waste unless if they arise from medical, dental and nursing sources in which case they are classified as clinical waste.

B. There will not be two sets of the said provisions because:

- (1) S.21 is a general provision regarding the application, grant or refusal of a waste collection licence or a waste disposal licence;
- (2) S.21(1) provides for the application for a waste collection licence, while s.10(1) and s.10(5) deal with the permission that may be granted under such a licence;
- (3) S.21(2) provides for the application for waste disposal licence, while s.16 deals with the permission that may be granted under such a licence;
- (4) As opposed to licensing, the details of the authorization regime are not meant to be set out in the principal legislation;
- (5) The authorization regime is intended to be exercised only under emergency or other special circumstances where engaging licensed collectors or disposal operators are not practicable. For example, a bag of clinical waste of unknown source found in area which is not accessible by licenced clinical waste collectors may require the Authority to authorize other non-licensed collectors to pick up the waste.

C. The ordinal numbering system (first, second, third etc.) was used when the Ordinance was drafted; the system is seldom used nowadays. The cardinal numbering system is preferred because of its simplicity. It is quite common that new schedules using the cardinal numbering system are added to an existing ordinance that contains pre-existing schedules using the obsolete ordinal numbering system. Examples include the Public Health and Municipal Services Ordinance and the Pneumoconiosis (Compensation) Ordinance.

D. Item AD200 should read "Waste consisting of or containing **off** specification or outdated chemicals that render the waste as chemical waste." This wording is adopted directly from that in List B in Annex VIII of the Basel Convention (<http://www.basel.int/text/con-e.htm>).

E. In relation to your comment on the Chinese text of the proposed definition of "designation waste disposal facility" in the Waste Disposal (Amendment) Bill 2003, you may wish to note that the English version and Chinese version of the definition "designation waste disposal facility" in the Waste Disposal (Amendment) Bill 2005 have been revised.

In relation to your comment on s.23D(e), we suggest the following revision to improve the linguistics flow of the paragraph -

"(e) 檢查及複製依據本條例任何規定而備存的任何紀錄或根據本條例發出的任何牌照或許可證或根據本條例批予的任何授權或批准或發出的任何牌照；...".

Details of our suggested change is attached at Annex I.

F. Hong Kong is not a party to the Basel Convention. However, China is a party to the Convention, and its application has been extended to the Hong Kong Special Administrative Region.

I hope the above has answered your questions. Please do not hesitate to contact me if there are further queries.

Yours sincerely,



(David K.K. HA)

Senior Environmental Protection Officer
for Director of Environmental Protection

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Proposed amendment to section 23D

Clause 18 of the Bill sets out the proposed amendment to section 23D(e). The English text of the section, if amended as proposed in the Bill, would read as follows -

"23D An authorized officer ... , may -

- ...
- (e) examine and make copies of any records kept pursuant to any requirement under this Ordinance or of any licence ~~issued thereunder~~ or permit issued or any authorization granted under this Ordinance; ...".

The purpose of amending section 23D(e) is to empower the officer to examine and make copies of -

- (a) any records kept pursuant to any requirement under the Ordinance;
- (b) any licence issued under the Ordinance;
- (c) any permit issued under the Ordinance;
- (d) any authorization granted under the Ordinance.

The Chinese text of section 23D(e), if amended in the manner as suggested would read as follows -

"23D 任何獲授權人員 可 -

-
- (e) 檢查及複製依據本條例任何規定或根據本條例發出的任何牌照或許可證或批予的任何授權或批准而備存的任何紀錄或發出的任何牌照；...".

The suggested revision would give effect to a legal meaning different from that as reflected in the English text. The suggested revision hence deviates from the policy intent and it is therefore considered that the Chinese text should not be so revised.

We therefore suggest the following revision to improve the linguistics flow of the paragraph -

- "(e) 檢查及複製依據本條例任何規定而備存的任何紀錄或根據本條例發出的任何牌照或許可證或根據本條例批予的任何授權或批准或發出的任何牌照；...".