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12 January 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

Administration's Response to Greenpeace's Submission on "Harmonizing Hong Kong's Waste Disposal Ordinance and China's Basel Convention Obligation"

As discussed at the 10th meeting of the captioned Bills Committee, I would like to submit our written response to the submission made by Greenpeace on 16 December 2005.

Hong Kong as a free port

2. Hong Kong is a leading international trading and services hub. It is widely recognized as one of the freest economies in the world. Our firm commitment to free trade is one of the key elements to our continuing economic success. Hong Kong has maintained no tariffs and no regulatory measures impinging on international trade. As the leading port in the region, we have a well-established system to enable maximum convenience in movement of goods and at the same time effectively

discharge our international obligations and protect public health and the environment.

3. In this respect, we have been implementing “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, with a view to sharing our global responsibility to reduce the adverse impact to the environment due to the improper management of hazardous waste.

Implementation of the Convention in Hong Kong

4. Hong Kong implements the Convention through amendments to the Waste Disposal Ordinance (WDO) in 1995, and the provisions are set out in Part IVA (Sections 20A to 20I) of the WDO. The Convention is designed to regulate the transboundary movement of hazardous wastes, and we control those hazardous wastes listed in the 7th Schedule of the WDO and any other waste contaminated by a substance to an extent which renders the waste hazardous, or not suitable for reuse or for reprocessing, recycling or recovery. Under Part IVA, the import or export of hazardous waste requires a permit from the Director of Environmental Protection (DEP). For non-hazardous wastes which are listed in the 6th Schedule of the WDO, a permit is also required unless they are uncontaminated and imported for the purpose of reuse or a reprocessing, recycling or recovery operation.

5. Both the 6th and 7th Schedules of the WDO were drawn up by reference to the green, amber and red waste lists adopted by the Organization for Economic Co-operation and Development (OECD) in 1994, well before similar listing was adopted as Annexes VIII and IX to the Convention in 1998. The OECD lists have been and are still being adopted by the Member States of the European Community (EC) under the Council Regulation (EEC) No. 259/93, which controls the import and export of waste. The 6th and 7th Schedules resemble the OECD lists in order to ensure the local waste classification system is compatible with that adopted by our trading partners in Europe and other OECD countries.

Implementation of the Basel Ban in Hong Kong

6. In 1995, the parties to the Convention agreed to ban the export of hazardous waste (commonly referred to as the Basel Ban) from Member States of the OECD, EC and Liechtenstein to other states. The objective of the Basel Ban is to reduce the environmental impact caused by the movement of hazardous waste from the developed countries to the developing countries. While Hong Kong has no obligation to implement the Basel Ban since China is not a Member State of the OECD, we have been implementing the Basel Ban since 1998 by not issuing permits for the importation of hazardous waste from Member States of the OECD, EC and Liechtenstein. We have also proposed in the Bill to give effect to the Basel Ban through amendment to the WDO so as to send a strong signal to the international community regarding Hong Kong's commitment to enforcing the Basel Ban.

Collaboration with overseas jurisdictions and the mainland authority

7. The Environmental Protection Department (EPD), as the local competent authority of the Convention, has been in close liaison with the competent authorities in overseas countries to tackle illegal transboundary movement of hazardous wastes. We have joined the Cluster on Transfrontier Shipments of Waste of the IMPEL Network¹ (IMPEL-TFS) since 2001 and participated in their enforcement projects to stop illegal waste shipments. Since 2004, we also joined the Asian Network for Prevention of Illegal Transboundary Movement of Hazardous Wastes, and share our intelligence and enforcement experience with other Asian countries.

8. EPD has also signed a Memorandum of Understanding with the State Environmental Protection Administration (SEPA) of the mainland in 2000 to formalize the arrangement for controlling waste shipment between Hong Kong and the mainland. Since June 2003, the EPD and the Hong Kong Customs and Excise Department (C&ED) have joined force with the SEPA and the customs authorities of the mainland to combat the smuggling of hazardous electronic wastes. Regular meetings with the

¹ 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.

mainland authorities are held to discuss issues of mutual concern and share enforcement experience and intelligence.

Enhanced efforts in controlling hazardous electronic waste (e-waste)

9. In light of the global concerns on the export of hazardous e-waste to developing countries which are ill-equipped to manage or recycle/reprocess the waste properly, we have stepped up our enforcement efforts. Through close liaison and co-operation with the mainland and overseas enforcement authorities, EPD intercepted 164 shipments of hazardous e-waste and successfully made 70 prosecutions upon waste importers or exporters of hazardous e-wastes between 2004 and 2005, and two offenders were each convicted and sentenced with an imprisonment term of 2 months but suspended for two years. Most of the shipments intercepted by EPD have been returned to the countries of origin in accordance with the Convention.

10. Illegal cases on the transboundary movement of e-waste are usually related to false customs declaration, smuggling and import or export under the disguise of recyclable wastes. Apart from stepping up enforcement patrols, we have also promulgated a set of guidelines to the waste importers and exporters to advise them of the need to obtain a permit before importing or exporting hazardous e-waste. EPD also collaborates with our Japanese counterpart to develop a guideline on the control of transboundary movement of used electronics in the Asian region.

11. While we have been successful in curbing the transboundary movement of hazardous e-waste through enhanced efforts and collaboration with both local enforcement agencies and our counterparts and competent authorities in the mainland and overseas countries, we have also proposed to amend the existing 7th Schedule to the WDO to specifically set out the categories of e-waste which are considered hazardous and subject to the import/export permit control. It should however be noted that used electrical and electronic equipment that can be transferred to the ultimate users for direct reuse without repair is not regarded as waste and hence not subject to control under the Convention and the WDO. This is in line with the international practice to encourage the reuse of such used equipment.

Proposed amendments to the WDO to follow the spirit of the Convention

12. As mentioned above, the existing lists of wastes as set out in the 6th and 7th Schedules of the WDO were modeled along the OECD lists which are still adopted by the Members States of the EC, and hence our local classification is compatible with that of our trading partners. To ensure our waste lists are aligned with international practice, we have proposed to amend the two schedules as set out in Clauses 23 and 24 of the Bill. Under Clause 24 of the Bill, we have inserted 13 new items into the 7th Schedule so that its coverage is more comprehensive and reflects better the hazardous waste list in Annex VIII of the Convention. The new entry AD220 (i.e. chemical waste not elsewhere specified) makes reference to the chemical waste control regime, which encompasses consideration of the form, quantity or concentration of the hazardous components. This new entry complements the list of specific waste streams in the 7th Schedule and is a catch-all description to ensure that any hazardous waste not specifically listed will still be subject to control.

13. Regarding hazardous e-waste listed as item A1180 of the Convention, we have already covered the individual items under the 7th Schedule e.g. AA180 for batteries, AB040 for glass waste from cathode-ray tubes, RA010 for PCB-containing capacitors. In order to further improve the clarity of the 7th Schedule, we propose a Committee Stage amendment (CSA) such that a new item will be inserted under the 7th Schedule as follow :

“A1180 Waste electrical and electronic assemblies or scrap contaminated with constituents to an extent which renders the waste as chemical waste.”

Scope for further amendments to the WDO

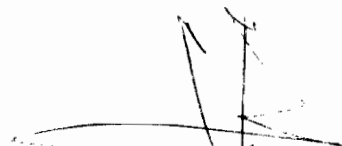
14. We have examined the scope for adopting Annex III of the Convention in enhancing our control regime. We observe that it is premature to adopt the Annex since the text of the Convention has rightly pointed out that the potential hazards posed by certain types of wastes are not fully documented and the tests do not exist to define quantitatively these hazards. However, we remain open-minded and will closely monitor the development of such tests and consider their applications in the longer

term.

15. We have also re-considered the proposal to prohibit the import of hazardous waste and to extend the permit control to recyclable non-hazardous waste, similar to the approach adopted by the mainland in banning the import of a list of controlled waste that has covered some non-hazardous waste. As pointed out earlier, Hong Kong is an international port with container cargoes coming from all over the world and their destination may be any places other than the mainland. It is important for Hong Kong to follow the international practice on the import and export control to facilitate the trading of goods, and it is neither necessary nor practicable to follow the restriction imposed by the mainland since it will have a negative and detrimental impact on the movement of recyclable materials between Hong Kong and other countries. Moreover, despite the slightly different control regime between Hong Kong and the mainland, we have close working relationship to share intelligence and enforcement practices with our mainland counterparts as enshrined under the Memorandum of Understanding signed between SEPA and EPD in 2000.

16. As explained above, we do not consider it appropriate or timely to introduce some of the changes suggested in Greenpeace's submission. We have summarized our detailed response to the specific recommendations of Greenpeace in the Annex, and we are pleased to further explain our rationale and enforcement practices to Members of the Bills Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Raymond Fan', written over a faint grid or background.

(Raymond Fan)

for Director of Environmental Protection

cc Mr Edward Chan, Greenpeace

Response to the specific recommendations made by Greenpeace

Our detailed response to the specific recommendations made by Greenpeace is set out below.

1. Definition of “waste” (Pages 6 - 8 of the Submission)

Definition of waste in Basel is based on the ultimate fate of wastes – that is whether the material is defined for an Annex IV destination. As most waste has an “owner” as it is trafficked for profit, the notion of “abandonment” is not appropriate.

Recommendation: *We therefore strongly suggest the following change in the WDO amendments: Section 2(1), suggested new definition of “waste”: “means any substance or article which is disposed of or is intended to be disposed and includes animal waste, chemical waste, household waste, livestock waste, street waste, trade waste”. Section 2(2), replace the term “discarded” with “disposed”.*

Under the WDO, “waste” is defined as “any substance or article which is abandoned and includes animal waste, chemical waste, household waste, livestock waste, street waste and trade waste”. The term “abandoned” has a special meaning when applied to the waste import and export control. It is incorrect to consider “abandonment” being equivalent to the “absence of ownership” as suggested in the submission. In fact, this interpretation has been rejected by the magistrates in a series of local court cases in 2005. In essence, the courts ruled that “waste” should be given a broad meaning and any used article is considered to be waste once the original overseas owner has given up its ownership for exporting to Hong Kong and it is dealt with as waste during its transport. The magistrates also observed that in applying the broad meaning of “waste”, whether the article was workable or had a value in the market was irrelevant. This broad interpretation has effectively fulfilled the policy intention of the Convention. Therefore, there is no need to make changes to the definition of “waste” in light of our successful prosecution track record and the wider application of our definition of “waste” to other waste types which are subject to control under the WDO.

Recommendation: *“Disposed” or “Disposal” must be defined in all sections of the WDO as: “Disposed” or “Disposal” means any operation specified in Annex “XX” of this Convention. Annex IV of Basel needs to be replicated and placed into the WDO as Annex “XX”.*

“Disposal” is defined in Section 20I of the WDO to mean, in relation to waste, 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). Hence, the current definition has already adequately encompassed the specific processes listed in Annex IV of the Convention. There is no need to amend the definition of “disposal” and to replicate Annex IV of the Convention.

2. Definition of Hazardous waste (Pages 9 & 10 of the Submission)

The WDO does not properly define hazardous waste as those wastes subject to the Basel Convention, making true implementation of the Basel Convention impossible under the WDO.

Recommendation: *We suggest that Basel’s hazardous waste definition (Article 1(1)a) be properly transposed into the WDO and the former definition of contaminated be replaced such that it makes reference to Annex III hazardous characteristics.*

The 7th Schedule of the WDO provides a list of those waste streams which are considered hazardous. We have proposed some amendments to the Schedule in the Bill so as to improve its coverage, and to reflect better the hazardous waste list in Annex VIII of the Convention.

The word “contaminated” has already been defined in Section 20I(2) of the WDO as follows –

“waste is contaminated if it is contaminated by a substance to an extent which significantly increases the risk to human health, property or the environment associated with the waste, or prevents the reprocessing, recycling, recovery or reuse of the waste in an environmentally sound manner.”

The existing definition provides adequate control such that all hazardous

wastes listed in the 7th Schedule of the WDO and any other waste contaminated by a substance to an extent which renders the waste hazardous, or not suitable for reuse or for reprocessing, recycling or recovery, are subject to the permit control for import or export. A permit is not necessary for the import or export of waste only if it is listed in the 6th Schedule and is uncontaminated and intended for the purpose of reuse, reprocessing, recycling or recovery.

Annex III of the Basel Convention sets out the hazardous characteristics for defining waste which may be subject to control. The 7th Schedule of the WDO has already included specific hazardous waste streams, and we have also proposed a new entry AD220 (chemical waste not elsewhere specified) in the Schedule, which complements the list of specific waste streams. This allows us to make reference to the chemical waste control regime, which encompasses consideration of the form, quantity or concentration of the hazardous components.

***Recommendation:** Schedule 7 must be replaced to include, as a minimum, Annex VIII of the Basel Convention. Schedule 6 must be replaced with Basel Convention Annex IX. Annexes I and III of Basel must be included and properly referenced with their new numbers.*

There is 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 proper control under local legislation. The 7th Schedule of the WDO has a comprehensive waste list, and we have proposed amendments to further improve its coverage.

Annex III of the Convention has spelt out clearly that “*The potential hazards posed by certain types of wastes are not fully documented; tests to define quantitatively these hazards do not exist...*” This implies that there are still many technical areas in the Basel waste lists which need to be addressed by individual Member States through their local legislation, having taken into account the enforcement aspects. Nevertheless, we will continue to monitor the development of such tests and consider their application.

3. Basel Ban decisions (Pages 12 & 13 of the Submission)

Recommendation:

(a) Prohibit the import of any waste of a kind specified in the 6th Schedule, unless the waste is uncontaminated and is imported for the purpose of a reprocessing, recycling or recovery operation or the reuse of the waste.

(b) Prohibit the import of any hazardous waste and apply Basel Annex VIII as the new Schedule 7.

(c) Prohibit the import of any waste not found in the 6th and 7th Schedules.

(d) A new permit system is required for the import of any uncontaminated waste of a kind specified in the 6th Schedule, and is imported for the purpose of a reprocessing, recycling or recovery operation or the reuse of the waste.

While Hong Kong has no obligation to implement the Basel Ban since China is not a Member State of the OECD, we have been implementing the Basel Ban since 1998 by not issuing permits for the importation of hazardous waste from Member States of the OECD, EC and Liechtenstein. We have also proposed to give effect to the Basel Ban through amendment to the WDO as reflected in Clause 8 of the Bill so as to send a strong signal to the international community regarding Hong Kong's commitment to enforcing the Basel Ban.

We do not agree to adopt the approach of blanket prohibition since the existing permit control provides the flexibility to regulate the import or export of waste, and Hong Kong has to share global responsibility to assist other neighbouring countries to manage the waste in an environmentally sound manner.

As explained above, the 7th Schedule of the WDO provides a list of waste streams which are considered hazardous. We have proposed some amendments to the Schedule in the Bill so as to improve its coverage, and to reflect better the hazardous waste list in Annex VIII of the Basel Convention. There is no need to adopt Basel Annex VIII to replace the existing 7th Schedule.

For non-hazardous waste which is not contaminated and is imported for the purpose of reuse, or for a reprocessing, recycling or recovery operation,

a permit is not required from EPD since this practice is in line with the international trend to encourage the movement of non-hazardous waste for beneficial reuse and recycling. Hence, there is no need to introduce a permit system which will impose unnecessary red tapes.

4. China's Import prohibitions (Page 14 of the Submission)

***Recommendation:** The WDO must, in accordance with China's Basel Convention obligations, be harmonized with mainland China's hazardous waste definitions and prohibitions.*

The mainland has adopted a list of controlled waste, and the list has included some non-hazardous waste which is banned from import into the mainland.

The existing WDO provides adequate control such that a permit is required for the import or export of any waste which contains hazardous constituents. Since the Convention encourages the recycling of waste, Hong Kong follows the spirit of the Convention and the existing control does not require a permit for the import of recyclable waste that is uncontaminated, non-hazardous and imported for the purpose of reuse or recycling.

Moreover, waste coming to Hong Kong may be destined for areas other than the mainland for recycling; and imposing a ban on them will deprive the opportunity in using our port for transshipment in the Asia Pacific Region. Furthermore, the mainland's ban lists cover some second-hand or used products (e.g. used electronic appliances and equipment), which are beyond the scope of the WDO's control. Adopting mainland's ban lists will also mean that local consumers cannot procure second-hand or used goods from overseas, such as used cars or machinery with electronic equipment or parts. We therefore consider it not appropriate to adopt the mainland's ban lists.

Recognizing the differences in the legal systems and control philosophy of the mainland and Hong Kong, the SEPA and EPD signed a Memorandum of Understanding to strengthen the communication and co-operation on transboundary movement of hazardous wastes in 2000. Since then, it has been our practice to alert the mainland authority of waste shipments from Hong Kong that may be subject to their import control.