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19 Oct 2005

Miss Monna Lai
Assistant Legal Advisor,
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Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
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Hong Kong

Dear Miss Lai

Waste Disposal (Amendment) Bill 2005 (“the Bill”)

I refer to your above referenced letter dated 28 September in which you raised questions on the draft Waste Disposal (Clinical Waste) (General) Regulation (“the draft Regulation”). Please find below our response to your enquiry.

Section 33 of the Waste Disposal Ordinance (Cap.354) (“the Ordinance”)

Under section 11 of Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1), the reference to the "Governor in Council" shall be construed as a reference to the "Chief Executive in Council". The adaptation of the Ordinance (and other ordinances) containing “application to the Crown” provisions will be dealt with separately after concrete legislative proposal has been formulated centrally by the Administration as to how such provisions should be adapted.

Waste Disposal Licence

The references to waste disposal licence under section 16 and under section 21(4) of the Ordinance are the same type of licence.

As defined in section 2 of the Ordinance, a "waste disposal licence" means a licence under section 16. Section 21(4) of the Ordinance imposes constraints (i.e. subject to section 21A of the Ordinance) on the power to grant or refuse an application for such a licence. Section 21(4) does not create a new type of licence, but refers to the same licence under section 16 of the Ordinance.

Section 8 of the draft Regulation refers to "a licence under section 21(4) of the Ordinance" to tie in with the fact that the requirements under section 8 relate to the grant of the licence under s.21(4) of the Ordinance. To simplify section 8 of the draft Regulation, we will consider omitting the words "s.21(4) of the Ordinance" from that section.

Proper Disposal of Clinical Waste

(A) To clarify in the event that a healthcare professional delivering clinical waste generated by himself and, at the same time, clinical waste generated by another healthcare professional, whether:

- (a) the healthcare professional whose clinical waste is to be delivered by the other healthcare professional does not comply with section 3(1) of the draft Regulation as such method does not fall within section 3(2); and*
- (b) there is no express provision in the Regulation to permit a healthcare professional to collect the clinical waste generated by another healthcare professional and deliver all the clinical waste on the same journey to the collection point or reception point.*

For clarity and illustration purpose, let us create a scenario where Doctor A arranges with his friend Doctor B for waste Doctor A produces to be sent to Doctor B's clinic pending collection by a licensed collector. Doctor B needs to be authorized under section 9 of the draft Regulation to set up a collection point. Separately Doctor C has also been authorized to set up a collection point in the same way as Doctor B.

(a) When Doctor A delivers the waste he produced to Doctor B, his obligation under section 3 of the draft Regulation is discharged provided that he complies with section 4 of the draft Regulation. Where the combined waste is in the custody of Doctor B, he would have complied

with section 3(1) of the draft Regulation if he uses any of the methods stipulated in section 3(2). Should he wishes to deliver such waste to the collection point at Doctor C's clinic, the conditions under section 4 would also have to be complied with.

(b) Under the new section 11 of the Ordinance, the collection or removal of clinical waste is prohibited unless the person who provides such service is a holder of a collection licence issued under the Ordinance or is authorized to provide the service pursuant to the draft Regulation made under the Ordinance. Therefore, Doctors B and C are not authorized to go to other places to collect waste without a licence. They are only authorized under section 9 to use their clinics as on-site collection points. Hence, there is no provision in the draft Regulation to permit a healthcare professional to collect waste without a licence as this is not the policy intention.

(B) Are consignees agents of the consignor in the disposal of the clinical waste? If such consignees subsequently deposit or cause or permit the clinical waste to be deposited in a public place, on any Government land or on any land other than Government land without the consent of the owner or occupier, will the consignor be held responsible for breaching section 16A of the Ordinance?

In the absence of the requisite mens rea for an offence under section 16A of the Ordinance, the consignor is not liable under the said section of the Ordinance simply because he consigns the waste to the consignee (who subsequently commits an offence).

The consignee, being a licensed waste collector or authorized waste collector, who arranges for proper disposal of clinical waste for the consignor, is bound by the terms or conditions of the relevant licence or authorization to dispose of waste properly. When a consignor consigns waste to the consignee, the consignor can reasonably expect the consignee to dispose of the waste in a manner consistent with the licence or authorization. If the licensed waste collector or authorized waste collector breaches his licence or authorization, he himself will be responsible for the breach, not the consignor. Similarly, a consignor is not responsible for the act of the collection authority or public officer providing services for the collection or removal of waste.

However, a consignor is liable under section 16A of the Ordinance if he asks a licensed waste collector or an authorized waste collector not to comply with his respective licence or authorization, but to deposit the waste in a public place without lawful authority.

Authorization for On-site Collection Point

Does the consignment of clinical waste include the waste produced by the authorized person on that land or premises? Does such record requirement also apply to other collection points?

The record requirement stipulated in section 9(4)(a) applies to the clinical waste delivered to the collection point only, and does not apply to clinical waste produced on that land or premises since the latter does not involve any consignment.

The record requirement stipulated in section 9(4)(a) does not apply to other collection points set up by a licensed waste collector or an authorized waste collector. However, the licensed collector or authorized collector may be required to follow the record requirements stipulated in the relevant licence or authorization.

Yours sincerely,



(David K.K. HA)
for Director of Environmental Protection

c.c. DoJ (Attn: Ms. Fanny Ip, SALD)
DoJ (Attn: Ms. Frances Hui, SGC)
DoJ (Attn: Ms. Betty Cheung, SGC)