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Secretary for the Environment, Transport and Works
(Attn : Mrs Teresa Wong, PAS(E)2).
Environment, Transport and Works Bureau
10/F, Citibank Tower
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8 November 2004

BY FAX

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Dear Mrs Wong,

**Subcommittee on
Waste Disposal (Designated Waste Disposal Facility)
(Amendment) Regulation 2004 (L.N. 165 of 2004) and
Waste Disposal (Charges for Disposal of Construction Waste)
Regulation (L.N. 166 of 2004)**

We are scrutinizing the legal and drafting aspects of the above Regulations and have the following queries for your clarification.

Waste Disposal (Designated Waste Disposal Facility) (Amendment) Regulation 2004 (L.N. 165 of 2004)

Section 4(3) – new section 4(2)(b)(ia)(B)

The Chinese rendition for the “name” of the registered owner of the vessel is “姓名或名稱”. It is appreciated that the registered owner may be a natural person or corporation. However, the Chinese rendition for the “name” of the registered owner of the vehicle in section 4(2)(b)(i)(B) is “姓名”. Noting that the registered owner of a vehicle may also be a natural person or corporation, would you consider amending the Chinese rendition for “name” of the registered owner of the vehicle to “姓名或名稱” (as that in section 4(2)(b)(ia)(B)) in section 4(2)(b)(i)(B)?

Section 4(7) – new section 4(4A)

In light of the opening wording of the new subsection that “[t]he Director or an authorized officer may also exercise the following powers”, may an “authorized officer” exercise the power conferred on the Director in paragraphs (a)-(c)? If not, why?

Section 4(7) – new section 4(4A)(c)

Section 33(4)(ba)(iv) of the Waste Disposal Ordinance (Cap. 354) confers on the Director the power to close temporarily any designated waste disposal facility for a specified period of time. But under new section 4(4A)(c), the Director’s power to close a designated waste disposal facility is not qualified to close it “temporarily” as required in the enabling provision. “For such period as the Director considers necessary” may be an indefinite closure hence not temporary in nature. Would you consider that there is a vires problem?

Section 4(7) – new section 4(4B)

How do you reconcile new section 4(4B) with new section 3A(2)?

Should an “authorized officer” be empowered to exercise the power of the Director?

Waste Disposal (Charges for Disposal of Construction Waste) Regulation (L.N. 166 of 2004)

General observation

Section 24(3) of the Waste Disposal Ordinance provides that where the decision appealed from was made under a provision mentioned in section 24(1)(e), (f) or (g) the notice thereof shall be suspended until the appeal is disposed of, etc. Would you explain the reason for not providing for similar suspension of decision made under section 6, 8 or 12 (imposition of additional conditions), or section 19 (suspension and revocation of billing account) when the decision is pending appeal?

Section 2 - Definition of “construction waste”

Would you give some examples within the definition of “construction waste”?

Section 2 - Definition of “construction work”

Is there any precedent on the definition of “construction work”?

Have you consulted the relevant industries about the definition of “construction work”?

Section 3(1)(d)

Does the term “conditions of use” include the “basic conditions”, “conditions of use” and “additional conditions” referred to in section 6(5) and (6), and section 8(6) and (7)?

Section 3(4)(c)

Does the term “conditions of use” include the “basic conditions”, “conditions of use” and “additional conditions” referred to in section 12(6) and (7)?

Section 3(5)(a)

Would you consider it necessary to extend the same exemption to waste delivered by a vessel owned by the Government?

Section 3(6)

Would you illustrate with examples of “circumstances as he [the Director] thinks fit”?

Section 5(5)

Would you consider enumerating the subsections applicable to the “requirement” (c.f. the drafting of sections 7(7) and 11(6))?

Section 6(2)(c)

Mr A is applying for a billing account. It is found that the sole shareholder of company Z is Mr A. Company Z has a billing account with outstanding prescribed charge or surcharge. Would the Director reject Mr A’s application because Mr A and company Z are treated as the same person? Would the answer be different if Mr A is only one of the shareholders of company Z?

Mr A is applying for a billing account. It is found that Mr A and Ms B have a joint billing account with outstanding prescribed charge or surcharge. Would the Director reject Mr A's application due to the deficit in the joint account?

Section 6(5) and (6)

Would you confirm whether the imposition of the "basic conditions", "conditions of use" and "additional conditions" is subject to appeal under section 24(1A) of the Waste Disposal Ordinance?

Would you give examples of "basic conditions"?

Would you give examples of "conditions of use"?

Section 7(1)

Would you explain the reason for requiring a written contract (see definition of "contract" in section 2) regardless of the value of work? There may be no written contract in small scale construction work.

Section 8(6) and (7)

Would you confirm whether the imposition of the "basic conditions", "conditions of use" and "additional conditions" is subject to appeal under section 24(1A) of the Waste Disposal Ordinance?

Would you give examples of "basic conditions"?

Would you give examples of "conditions of use"?

Section 9(5)

Would you explain the reason for leaving out the application of "reasonable consideration" to an unwritten contract even though there may be evidence showing that the value of the construction work is at or over \$1,000,000?

Section 12(6) and (7)

Would you confirm whether the imposition of the “basic conditions”, “conditions of use” and “additional conditions” is subject to appeal under section 24(1A) of the Waste Disposal Ordinance?

Would you give examples of “basic conditions”?

Would you give examples of “conditions of use”?

Section 22(b) and (c)

The Chinese rendition for the term “recklessly” is “罔顧實情” which is different from “罔顧後果” in section 33(2)(a)(ii) of the Waste Disposal Ordinance. Would you consider it necessary to reconcile the difference?

We should be grateful if you would reply, in both languages, by
10 November 2004.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

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