

LEGISLATIVE COUNCIL BRIEF

Dumping at Sea Ordinance (Cap. 466) Dumping at Sea (Exemption) (Amendment) Order 2009

INTRODUCTION

Pursuant to section 11(1) of the Dumping at Sea Ordinance (Cap. 466) (the “DASO”), the Secretary for the Environment has made the Dumping at Sea (Exemption) (Amendment) Order 2009 (the “Amendment Order”) as at **Annex 1**, in order to apply the regulatory control regime under the DASO to the new sediment disposal facility situated in an area to the East of Sha Chau (ESC).

JUSTIFICATIONS

Existing control of the existing sediment disposal facility at ESC

2. The existing sediment disposal facility at ESC¹ is controlled under the DASO, whereby a permit has to be obtained from the Director of Environmental Protection under section 8 of the DASO² for the dumping operations at the ESC facility. The control was effected through including the affected foreshore and sea-bed in Schedule 2 to the Dumping at Sea (Exemption) Order (Cap. 466 sub. leg. B) [the “DAS(E)O”] (at **Annex 2**), so as to remove the exemption under the DASO resulting from the authorization when the affected foreshore and sea-bed is gazetted under the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127) [the “FS(R)O”].

¹ Item 18 of Schedule 2 to the DAS(E)O lists the foreshore and sea-bed affected by the previous and existing sediment disposal facilities at the east of Sha Chau so that a permit is required under section 8 of the DASO for dumping operations at these facilities.

² Following the spirit of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (the London Convention), the DASO controls the disposal and dumping of substances and articles from vessels, aircraft and marine structures in the sea and under the sea-bed, the related loading operations as well as incineration at sea. Any person intending to perform those operations is required to obtain a permit from the Director of Environmental Protection before carrying out such operations.

Proposed new sediment disposal facility at ESC

3. In order to provide a dumping site for contaminated sediment arising from local projects upon the exhaustion of the existing sediment disposal facility, the Civil Engineering and Development Department (CEDD) has commenced construction works of a new facility situated in an area to the east of Sha Chau in September 2009, with a view to putting it into service in June 2010. The Environmental Impact Assessment (EIA) report for the new facility was endorsed by the Advisory Council on the Environment in July 2005 and approved under the Environmental Impact Assessment Ordinance (Cap. 499) in September 2005. The EIA has assumed that dumping operations at the new facility will be controlled under the DASO. An environmental permit was issued to the CEDD in November 2008 for construction and operation of the new facility. It has been stipulated in the environmental permit that the Permit Holder shall ensure full compliance with all legislation from time to time in force including, among others, the DASO.

4. The foreshore and sea-bed affected by the new facility was gazetted for notification under section 5 of the FS(R)O on 20 March 2008 (G.N. 1814 of 2008). No objection was received after the gazettal, and the notice of authorization under section 9 of the FS(R)O was published on 13 June 2008 (G.N. 3966 of 2008).

5. However, in accordance with section 4(1) of the DAS(E)O, the authorization made under the FS(R)O will exempt dumping operations at the new facility from the control under the DASO, unless such area is listed in Schedule 2 "Reclamation areas specified for the purposes of section 4(2)(a)" to the DAS(E)O. In order to remove such "exemption" and apply the regulatory control regime under the DASO at the new facility, it is necessary to include the authorized foreshore and sea-bed (as mentioned in G.N. 3966 of 2008) in Schedule 2 to the DAS(E)O, similar to the arrangement for the existing sediment disposal facility at ESC.

THE AMENDMENT ORDER

6. The Amendment Order amends Schedule 2 to the DAS(E)O by specifying the new sediment disposal facility situated in ESC as a

reclamation area for the purposes of section 4(2)(a) of the DAS(E)O, so that a permit is required under section 8 of the DASO for dumping operations in that reclamation area. The Amendment Order shall come into operation on 1 January 2010.

LEGISLATIVE TIMETABLE

7. The Amendment Order is gazetted on 30 October 2009, and will be tabled at the Legislative Council for negative vetting on 4 November 2009. Subject to negative vetting by the Legislative Council, the Amendment Order will take effect from 1 January 2010.

BASIC LAW AND HUMAN RIGHTS IMPLICATIONS

8. The Amendment Order is in conformity with the Basic Law, including the provisions concerning human rights.

BINDING EFFECT OF THE LEGISLATION

9. The Amendment Order will not affect the current binding effect of the DASO, its regulation and order made thereunder.

FINANCIAL AND STAFF IMPLICATIONS

10. There are no financial and staffing implications as the Amendment Order will be implemented with existing resources.

ENVIRONMENTAL IMPLICATIONS

11. The Amendment Order is in conformity with the legislative intent of the DASO, which is to protect the marine environment through imposing regulatory control on marine dumping operations. The inclusion of the affected foreshore and sea-bed authorized under the FS(R)O (as mentioned in G.N. 3966 of 2008) in Schedule 2 to the DAS(E)O will enable the application of regulatory control regime under the DASO at the new sediment disposal facility and therefore a permit is required under section 8 of the DASO for dumping operations. Such amendment will also enable the Hong Kong Special Administrative

Region to fulfill its obligation under the London Convention through enforcing the DASO, so as to be in line with the international practices concerning the prevention of marine pollution caused by dumping of wastes and other matter at sea.

CONSULTATION

12. The CEDD consulted the Tuen Mun District Council (TMDC) in early 2008 and members had no objection to Government proceeding with the gazettal procedures for the new sediment disposal facility but requested Government to report back the public opinions collected during the gazetting of the new facility. The CEDD reported to the TMDC in January 2009 that there was no objection received up to 31 December 2008. Members of the TMDC had no further comment on the new facility. The proposal to amend Schedule 2 of the DAS(E)O was included in the Legislative Council paper (paragraph 19) on the project “5729 CL – Disposal of Contaminated Sediment – Dredging, Management and Capping of Sediment Disposal Facility at Sha Chau”. The Legislative Council Panel on Development discussed the paper at the meeting on 19 December 2008³, and members had no objection to the proposal. The project received funding support at the Finance Committee’s meeting on 13 February 2009⁴.

PUBLICITY

13. A press release will be issued when the Amendment Order is published in the Gazette.

ENQUIRIES

14. For any enquiries relating to this brief, please contact Mr. LEI Chee-kwong, Patrick, Principal Environmental Protection Officer (Water Policy and Science), at 2594 6161.

Environmental Protection Department
October 2009

³ LC Paper No. CB(1)396/08-09(07)

⁴ LC Paper No. FCR(2008-09)61

**DUMPING AT SEA (EXEMPTION) (AMENDMENT)
ORDER 2009**

(Made by the Secretary for the Environment under section 11(1) of the
Dumping at Sea Ordinance (Cap. 466))

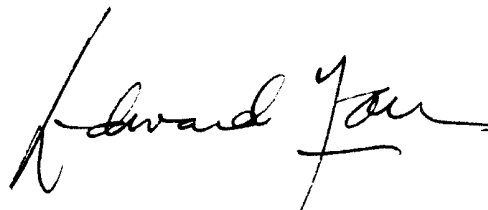
1. Commencement

This Order comes into operation on 1 January 2010.

**2. Reclamation areas specified for the purposes
of section 4(2)(a)**

Schedule 2 to the Dumping at Sea (Exemption) Order (Cap. 466 sub. leg. B)
is amended by adding –

“25. The foreshore and sea-bed situated in an area to the east of Sha
Chau as delineated and shown edged red on a plan deposited in the Land
Registry and numbered TMM2854a (as mentioned in G.N. 3966 of 2008).”.



Secretary for the Environment

9.10.2009

Explanatory Note

This Order amends Schedule 2 to the Dumping at Sea (Exemption) Order
(Cap. 466 sub. leg. B) by specifying the new Sediment Disposal Facility situated
in an area to the east of Sha Chau as a reclamation area for the purposes of
section 4(2)(a) of that Order and therefore a permit is required under section 8 of

the Dumping at Sea Ordinance (Cap. 466) for dumping operations in that reclamation area.

Chapter:	466B	DUMPING AT SEA (EXEMPTION) ORDER	Gazette Number	Version Date
		Empowering section	L.N. 106 of 2000	20/04/2000

(Cap 466, section 11(1))

[20 April 2000] *L.N. 106 of 2000*

(L.N. 64 of 2000)

Section:	1	(Omitted as spent)	L.N. 106 of 2000	20/04/2000
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(Omitted as spent)

Section:	2	Interpretation	L.N. 106 of 2000	20/04/2000
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In this Order, unless the context otherwise requires-

"exempt" (獲豁免) means exempt from the requirement for a permit under section 8 of the Ordinance;

"reclamation area" (填海區) means an area affected by a relevant reclamation;

"relevant reclamation" (有關工程) means a reclamation-

- (a) authorized under-
 - (i) the Foreshore and Sea-bed (Reclamations) Ordinance (Cap 127); or
 - (ii) the repealed Public Reclamations and Works Ordinance (Cap 113, 1984 Ed.);
- (b) ordered under the Roads (Works, Use and Compensation) Ordinance (Cap 370); or
- (c) which was the purpose of a Government lease granted under the repealed Foreshores and Sea Bed Ordinance (Cap 127, 1984 Ed.).

Section:	3	General exemptions	L.N. 106 of 2000	20/04/2000
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The operations specified in Schedule 1 are exempt.

Section:	4	Other exemptions	L.N. 106 of 2000	20/04/2000
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- (1) Subject to subsection (2), a relevant reclamation is exempt.
- (2) The following operations are not exempt-
 - (a) an operation for dumping of substances or articles (other than the deposit of any waste or other matter directly arising from, or related to the exploration, exploitation and associated off-shore processing of sea-bed materials) in a reclamation area, the location and description of which is referred to in Schedule 2;
 - (b) scuttling a vessel, aircraft or marine structure in a reclamation area;
 - (c) loading an aircraft, vessel, marine structure or floating container in a reclamation area with substances or articles for dumping anywhere in the sea or under the sea-bed other than within that reclamation area; and
 - (d) loading a vehicle in a reclamation area with substances or articles for dumping from the vehicle anywhere in the waters of Hong Kong other than within that reclamation area.

Section:	5	Conflicts	L.N. 106 of 2000	20/04/2000
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In the event of a conflict between sections 3 and 4, section 3 shall prevail.

Schedule:	1	OPERATIONS NOT REQUIRING A PERMIT	L.N. 106 of 2000	20/04/2000
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[section 3]

1. Disposal from an aircraft, vehicle, vessel or marine structure of sewage originating on the aircraft, vehicle, vessel or marine structure.
2. Disposal from, or incineration on, an aircraft, vehicle, vessel or marine structure of garbage originating in or on the aircraft, vehicle, vessel or marine structure; and for this purpose 'garbage' means any kind of victual or domestic waste, but does not include bulky or industrial waste.
3. Disposal from a vessel of cooling water and of ballast water, tank washings or other residues resulting from tank cleaning or tank ballasting after carriage of a substance other than a substance deposited or incinerated under a permit.
4. Deposit of cable, pipe, watermain, outfall or utility and associated equipment (other than to dispose of it) in the course of laying or maintenance.
5. Deposit of a substance from a vessel, vehicle, aircraft or marine structure in fighting a fire or preventing the spread of a fire.
6. Disposal (by way of return to the sea) of fish or shellfish or parts of fish or shellfish in the course of fishing operations or fish processing at sea.
7. Disposal (by way of return to the sea) by a fishing vessel of an article (other than a fish or shellfish) taken from the sea by the vessel in the course of normal fishing operations.
8. Disposal (by way of return to the sea) of a substance or article dredged from the sea-bed in the propagation or cultivation of shellfish.
9. Deposit of a substance or article (other than to dispose of it) in the course of salvage operations.
10. Deposit of an article to provide moorings or aids to navigation-
 - (a) by a harbour authority or lighthouse authority; or
 - (b) by any other person with the consent of a harbour authority or lighthouse authority.
11. Deposit of a substance or article in constructing or maintaining bridges, harbour, coast protection (other than beach replenishment), submerged tunnels, drainage or flood control works, if made on the site of the works.
12. Deposit to treat oil on the surface of the sea of a substance produced for that purpose subject to the conditions-
 - (a) that the Authority has approved the use of the substance; and
 - (b) that the substance is used in accordance with the conditions to which the approval was subject.
13. Deposit of equipment to control, contain or recover oil, mixtures containing oil, flotsam or algal blooms on or near to the surface of the sea.
14. Deposit of an instrument, article, material or associated equipment (other than to dispose of it) for scientific experiment or survey, habitat or marine life management.
15. Launching or undocking of vessels or marine structures.
16. Deposit under the sea-bed of a substance or article (other than to disposal of it) to construct or operate a bored tunnel subject to the conditions-
 - (a) that notice of intention to construct the tunnel is first given to the Authority; and
 - (b) that the approval of the Authority is first obtained to carry out anything which might disturb the marine environment or the living resources which it supports.

Schedule:	2	RECLAMATION AREAS SPECIFIED FOR THE PURPOSES OF SECTION 4(2)(a)	L.N. 106 of 2000	20/04/2000
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[section 4(2)]

1. The foreshore and sea-bed situated in an area at Mirs Bay as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered P 11894A (as mentioned in G.N. 3337 of 1979).
2. The foreshore and sea-bed situated in an area to the south of Cheung Chau as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered P 12181 (as mentioned in G.N. 339 of 1981).
3. The foreshore and sea-bed situated in an area to the east of Ninepin Group as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered P 12180B (as mentioned in G.N. 340 of 1981).
4. The foreshore and sea-bed situated in two areas to the north of Lantau Island and to the south of Tsing Yi Island as delineated and shown edged red on plans deposited in the Urban Land Registry and numbered KTM 9 and KTM 8 respectively (as mentioned in G.N. 3798 of 1987).
5. The foreshore and sea-bed situated in an area to the south of Cheung Chau as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered ISM 783 (as mentioned in G.N. 1880 of 1988).
6. The foreshore and sea-bed situated in an area at the South Tathong Channel as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered SKM 3299 (as mentioned in G.N. 311 of 1990).
7. The foreshore and sea-bed situated in an area to the west of Green Island as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered ISM 844 (as mentioned in G.N. 1688 of 1990).
8. The foreshore and sea-bed situated in an area at North Tathong Channel as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered SKM 3363A (as mentioned in G.N. 1948 of 1990).
9. The foreshore and sea-bed situated in an area at Mid Tathong Channel as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered SKM 3364A (as mentioned in G.N. 1949 of 1990).
10. The foreshore and sea-bed situated in an area to the east of Tung Lung Chau as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered SKM 3468A (as mentioned in G.N. 4295 of 1990).
11. The foreshore and sea-bed situated in an area at Soko Islands as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered ISM 866 (as mentioned in G.N. 1329 of 1991).
12. The foreshore and sea-bed situated in an area to the south of Ma Wan as delineated and shown edged black on a plan deposited in the Urban Land Registry and numbered NANTM 4 (as mentioned in G.N. 1404 of 1991).
13. The foreshore and sea-bed situated in an area at Kap Shui Mun as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered TWM 2406 (as mentioned in G.N. 1680 of 1991).
14. The foreshore and sea-bed situated in an area at Urmston Road as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered TMM 1275 (as mentioned in G.N. 1846 of 1991).
15. The foreshore and sea-bed situated in an area at the Brothers as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered TMM 1273 (as mentioned in G.N. 1939 of 1991).
16. The foreshore and sea-bed situated in two areas to the north of Lantau as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered KTM 137A (as mentioned in G.N. 2483 of 1991).
17. The foreshore and sea-bed situated in an area at Outer Deep Bay as delineated and shown edged red on a plan

deposited in the Urban Land Registry and numbered TMM 1299 (as mentioned in G.N. 2853 of 1991).

18. The foreshore and sea-bed situated in an area to the east of Sha Chau as delineated and shown edged black on a plan deposited in the Urban Land Registry and numbered NANTM 30 (as mentioned in G.N. 462 of 1992).

19. The foreshore and sea-bed situated in an area to the west of Tsing Yi as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered KTM 151 (as mentioned in G.N. 892 of 1992).

20. The foreshore and sea-bed situated in an area to the east of the Soko Islands and south of Cheung Chau Island as delineated and shown edged black on a plan deposited in the Urban Land Registry and numbered ISM 869 (as mentioned in G.N. 1382 of 1992).

21. The foreshore and sea-bed situated in an area at Po Toi West as delineated and shown edged black on a plan deposited in the Urban Land Registry and numbered NANTM 47 (as mentioned in G.N. 1810 of 1992).

22. The foreshore and sea-bed situated in an area at Po Toi East as delineated and shown edged black on a plan deposited in the Urban Land Registry and numbered ISM 875 (as mentioned in G.N. 2363 of 1992).

23. The foreshore and sea-bed situated in an area at East Lamma Channel as delineated and shown edged black on a plan deposited in the Urban Land Registry and numbered MH 4979 (as mentioned in G.N. 2899 of 1993).

24. The foreshore and sea-bed situated in an area to the west of Sulphur Channel as delineated and shown edged black on a plan deposited in the Urban Land Registry and numbered ISM 928 (as mentioned in G.N. 4297 of 1993).