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Paper for the House Committee

Report of the Subcommittee on Waste Disposal (Designated Waste Disposal Facility) (Amendment) Regulation 2013 and Waste Disposal (Refuse Transfer Station) (Amendment) Regulation 2013

Purpose

This paper reports on the deliberations of the Subcommittee on Waste Disposal (Designated Waste Disposal Facility) (Amendment) Regulation 2013 ("DWDF Amendment Regulation") and Waste Disposal (Refuse Transfer Station) (Amendment) Regulation 2013 ("RTS Amendment Regulation") (collectively as "Amendment Regulations").

Background

2. The South East New Territories ("SENT") Landfill, located in Tseung Kwan O ("TKO"), is one of the three strategic landfills in Hong Kong, with the other two being the North East New Territories ("NENT") Landfill and the West New Territories ("WENT") Landfill. All the three strategic landfills currently accept municipal solid waste ("MSW"), construction waste and other special wastes including sewage sludge. The objective of the Amendment Regulations is to implement the legislative measures relating to the Waste Diversion Plan for the SENT Landfill and other complementary measures to ensure that the diverted MSW can be properly handled and any potential traffic and environmental impact arising from unsatisfactory hygienic conditions of refuse collection vehicles ("RCVs") can be minimized.

Refuse transfer stations

3. About 63.7% of landfilled MSW went through a refuse transfer station ("RTS") which is a facility that compacts MSW for bulk transfer. There are currently seven RTSs, being West Kowloon Transfer Station ("WKTS"), Shatin Transfer Station ("STTS"), Island West Transfer Station ("IWTS"), Island East Transfer Station ("IETS"), North Lantau Transfer Station, Northwest New Territories Transfer Station ("NWNTTS") and Outlying Islands Transfer Facilities. They are located in different parts of the territory forming a network that helps to achieve a balanced distribution of facilities for the transfer of waste in bulk to the landfills.

Waste diversion and increased use of refuse transfer stations

4. According to the latest projections, the SENT Landfill will almost be completely exhausted by the end of 2015. The Administration will seek for extension of all the three existing landfills. In view of the growing residential development in the TKO area, the Administration considers that there is a case to change the use of the SENT Landfill (and its extension) to accept only construction waste so that the odour concern arising from MSW could be removed at root. The DWDF Amendment Regulation therefore amends the Waste Disposal (Designated Waste Disposal Facility) Regulation (Cap. 354L) ("DWDF Regulation") to specify the SENT Landfill as one which only accepts construction waste for disposal. If the SENT Landfill no longer accepts MSW and special wastes, a considerable number of RCVs collecting MSW will have to find their way to divert MSW to alternative designated waste disposal facilities, such as the WENT and NENT Landfills.

5. To supplement WKTS, IETS and IWTS as alternative waste disposal facilities to the SENT Landfill, the RTS Amendment Regulation amends the Waste Disposal (Refuse Transfer Station) Regulation (Cap. 354M) ("RTS Regulation") in order to open up STTS, which is at present exclusively used by the Food and Environmental Hygiene Department ("FEHD") and its contractors, for use by private waste collectors. The use of an RTS by private waste collectors is subject to a fee. To encourage them to use an RTS instead of going to a landfill direct, the RTS Amendment Regulation further amends the RTS Regulation to reduce the fees for disposal of waste at IETS and IWTS from \$40 per tonne to \$30 per tonne, i.e. the same levels as those for WKTS, and to set the fee at STTS also at \$30 per tonne.

New equipment requirements for refuse collection vehicles

6. To enhance the environmental performance of certain RCVs and avoid nuisance (such as leachate dripping, waste spattering or dust) arising from their operation, the DWDF Amendment Regulation also amends the DWDF Regulation so that when a person who drives into a landfill or an RTS an RCV that does not meet the relevant equipment standard requirements commits an offence and is liable to a fine at level 6 (i.e. \$100,000).

7. The DWDF Amendment Regulation and the RTS Amendment Regulation were gazetted on 29 November 2013 and tabled at the LegCo on 4 December 2013 for negative vetting. The Administration will separately appoint the commencement dates for individual components of the Waste Diversion Plan by notice in the Gazette taking into account their progress.

The Amendment Regulations

8. The key provisions of the DWDF Amendment Regulation are as follows –

- (a) sections 3 and 7 amend the DWDF Regulation so as to specify the SENT Landfill to receive only construction waste that contains not more than 50% by weight of inert construction waste;
- (b) section 4 adds a new provision to the DWDF Regulation to require that certain RCVs driven into a specified landfill or RTS must be equipped with the specified devices; and
- (c) section 5 amends the DWDF Regulation to empower the Director of Environmental Protection to conduct compliance check on such RCVs.

As regards the RTS Amendment Regulation, section 3 amends the RTS Regulation to reduce the fees for disposal of waste at IETS and IWTS and to allow STTS to be used by a registered account-holder at a prescribed fee.

The Subcommittee

9. At the House Committee meeting held on 6 December 2013, members agreed to form a Subcommittee to study the Amendment Regulations. The membership list of the Subcommittee is in **Appendix I**.

10. Under the chairmanship of Hon WU Chi-wai, the Subcommittee has held four meetings with the Administration and received views from the public at one of those meetings. A list of the deputations and individuals who have submitted views to the Subcommittee is in **Appendix II**.

11. To allow sufficient time for the Subcommittee to study the Amendment Regulations, a resolution was passed at the Council meeting of 11 December 2013 to extend the scrutiny period to 22 January 2014.

Deliberations of the Subcommittee

Rationale for the proposed charges of refuse transfer stations

12. The Subcommittee notes that the designation of the SENT Landfill to receive construction waste only will result in the diversion of MSW for disposal from the SENT Landfill to other facilities, thereby incurring extra costs to the waste collection trade. Some members including Hon Tony TSE wai-chuen have questioned the rationale for setting the fee level of four RTSs (i.e. IETS, IWTS, WKTS and STTS) at \$30 per tonne. They have queried whether the potential impact on the private waste collection trade of the additional operating costs from longer haulage has been taken into account when setting such fee level.

13. The Administration considers the alignment of the fee levels of the above RTSs to \$30 per tonne, which is the current fee level for WKTS and the lowest in the RTS system, meaning a fee reduction for waste disposal at IETS and IWTS (whose current fee level are \$40 per tonne), would help optimize the utilization of the whole RTS network and encourage the private waste collectors to use RTS in close proximity to where the waste is generated. Based on the current utilization of WKTS by private waste collectors, the Administration believes that the fee level of \$30 per tonne is not commercially unviable to the trade and will provide the necessary incentives for optimizing the utilization of these four RTSs.

Impact on the operating costs of the waste collection trade

14. However, the Subcommittee notes the grave concern of the private waste collection trade that its operating costs will increase as a result of waste diversion from the SENT Landfill (which does not charge fees for disposal of MSW) to fee-charging RTSs. Such increase may render the business of small operators unsustainable as the operators may not be able to pass the increased cost onto the affected waste collection service users (for example, building management committees or owners' corporations). Some members including Hon Emily LAU Wai-hing have suggested that the Administration should consider the feasibility of abolishing RTS fees.

15. The Administration does not support the proposed fee abolition on the ground that it is contradictory to the "polluter pays" principle and that deviating from this principle will have serious adverse impact on the waste reduction initiatives/programmes being pursued including the proposed implementation of MSW charging in the territory. The Administration considers it likely that if the RTS fees were abolished, those RTSs located near the population centres and business areas would attract more private waste collectors thus causing queuing problems to the facilities. These are likely to be WKTS, STTS and NWNTTS at West Kowloon, Shatin and North West New Territories respectively. In the event that the design capacity of a particular RTS is exceeded, the RTS would also have to suspend its operation. The consequential traffic and environmental impacts may lead to dissatisfaction and complaints from the communities in the vicinity of the RTSs concerned.

16. Furthermore, according to the Administration, many private waste collectors are already using RTSs, which shows that the current RTS fees are not unacceptable. The Administration has stressed that the reduction of the fee of IETS and IWTS to the lowest existing fee level of RTSs represents a reasonable approach in balancing the practical considerations of mitigating the impacts to private waste collectors due to the imminent need of waste diversion upon exhaustion of the SENT Landfill and its change to receive only construction waste, and upholding the "polluter pays" principle.

Transitional arrangements and assistance for the trade

17. To address the concern of operators in the waste collection trade about the potential increase in their operating costs, particularly the small operators who often find it difficult to pass the increased cost onto their service users, members including Hon Emily LAU Wai-hing, Hon Cyd HO Sau-lan, Hon Frankie YICK Ch-ming and Dr Hon Elizabeth QUAT

have urged the Administration to work out the transitional arrangements for the implementation of waste diversion with a view to allowing adequate time for the trade to discuss with their service users about the impact on the operating costs and negotiate the contract terms for renewal of waste collection service contracts. The Subcommittee has also called on the Administration to provide assistance to the waste collection operators to enable them to adapt to the changes brought about by the implementation of the Amendment Regulations.

18. Regarding the trade's concerns, the Administration has acknowledged the need of private waste collectors for a reasonable lead time upon the designation of the SENT Landfill to receive construction waste only and implementation of the Waste Diversion Plan so that they could make arrangements with their clients such as adjustments to their collection schedules, collection routes as well as contract variation to their existing refuse collection contracts reasonably. The Administration has undertaken that it would allow sufficient time for the trade to make the necessary preparation.

19. The Administration has advised that it notes that some private waste collectors are currently not using any RTS service and that it will pay particular attention in assisting these new RTS users in understanding the operation arrangement of RTSs and the RTS charging scheme by providing briefing sessions, service hotline, RTS site visits and familiarization programme to new users as necessary.

20. Furthermore, the Administration plans to commence the implementation of the RTS Amendment Regulation at an earlier time for private waste collectors to enjoy the adjusted fees and to get used to using the appropriate RTSs, as soon as the existing FEHD users have been diverted. During this transitional period, private waste collectors can choose to continue with their existing practice of delivering the waste directly to the SENT Landfill or use the RTS facilities. According to the Administration, this transitional period will allow the trade sufficient time to make the necessary arrangements. Nevertheless the Administration will encourage the trade to use the RTS service as early as possible because transporting the waste in bulk helps reduce traffic and vehicle emissions caused by long haulage of waste.

21. The Administration has also undertaken to continue to liaise closely with the trade in drawing up the details of the waste diversion arrangements so as to ensure a smooth implementation of the Waste Diversion Plan. In addition, the Government will publicize the need for this waste diversion to facilitate the trade operators to liaise with their

clients in adjusting the necessary waste collection fees to reflect the latest development.

22. To help the waste collection trade to meet the new equipment requirements of RCVs, a one-off subsidy scheme for private RCV owners to retrofit their vehicles will be launched in early 2014. The Administration will take into account the progress of retrofitting works in the above subsidy scheme before appointing the commencement date of the amended regulation concerning the equipment standard requirements of RCVs by notice in the Gazette separately.

Guidelines on the new equipment requirements for refuse collection vehicles

23. The Subcommittee notes that a key component of the new equipment requirements as added by the DWDF Amendment Regulation is the mandatory installation of the specified devices. The Subcommittee has studied the draft "Guidelines on the Design and Construction of Metal Tailgate Cover and Waste Water Sump Tank installed on Refuse Collection Vehicle", which set out the detailed technical specifications of the specified devices. The guidelines have been prepared by the Administration which will be published in due course to assist the trade in understanding how to meet the performance requirements as added by the DWDF Amendment Regulation.

24. Some members including Hon Charles Peter MOK have expressed concern whether there are adequate measures to ensure compliance with the administrative guidelines as they are not stipulated in the legislation. These members consider that the Administration should set out in the DWDF Regulation the basic technical/functional requirements of the specified devices of RCVs to facilitate compliance and enforcement. Alternatively, the Administration should consider incorporating in the DWDF Regulation references to the administrative guidelines so as to enhance the enforceability of the guidelines.

25. The Administration has advised that there are many RCV models and new models will continue to emerge in future. It has therefore adopted a performance-based approach for the equipment standard requirements. The Administration considers that the relevant guidelines should be administrative by nature. The enforcement of the DWDF Regulation as amended will be determined on the evidence of the case, not by relying on the administrative guidelines. The guidelines will also be reviewed from time to time and updated as necessary to reflect the developments in RCV design. This will help ensure that the prevailing

version of the administrative guidelines can provide advice to the trade how the serving RCVs can meet the performance requirements.

Concerns on enforcing the new RCV equipment requirements

26. The Subcommittee has concern about the effectiveness of specifying the new RCV equipment requirements in the DWDF Regulation because even when an RCV meets the requirements, the RCV driver/user may not use the equipment properly (for example, failing to close the metal tailgate cover or maintain the waste water sump tank). Consequently, RCVs will still cause undesirable nuisance to the environment such as leachate dripping or waste spattering.

27. Regarding such concern, the Administration has advised that where an RCV has caused nuisance such as leachate dripping or waste spattering, prosecution may be initiated under the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132BK). Enhanced enforcement actions against dripping of leachate in the vicinity of the three landfills have been undertaken jointly by the Police, FEHD and the Environmental Protection Department ("EPD"). The Administration has pointed out that the DWDF Amendment Regulation seeks to address a more fundamental problem where at present many RCVs simply do not have the adequate device to avoid such nuisance. If the construction of the specified devices meets the requirements specified in section 3B(3)(b) and such devices are in good working condition as required under section 3B(3)(c), they will be adequate (when used properly) in achieving the desired outcome in minimizing environmental nuisance during RCV operations. Enhanced enforcement will step up deterrent effect which will encourage the proper use of the devices and address any non-compliance cases that cause nuisance.

28. As a way to help strengthen the compliance of the DWDF Regulation as amended, the Subcommittee has examined the suggestion by some members that the Administration should consider increasing the level of penalty on illegal dumping from RCVs by private waste collectors.

29. On such suggestion, the Administration has advised that under section 16A of the Waste Disposal Ordinance (Cap. 354), unauthorized depositing of waste is subject to a fine of \$200,000 and imprisonment for 6 months for the first offence, and a fine of \$500,000 and imprisonment for 6 months for a second or subsequent offence. According to the Administration, the court in general will take into account various factors, such as the nature or seriousness of the offence, environmental impacts

and mitigation, before sentencing in each case. In scrutinizing the Waste Disposal (Amendment) Bill 2013 (which seeks to enhance the control of the depositing of construction waste on private land), the Bills Committee noted that among the relevant convicted cases, the average fine showed an increasing trend over the past few years. The Administration has assured members that it will keep the penalty level under constant review taking into account relevant factors.

Liability of non-compliance in relation to the new RCV equipment requirements

30. The Subcommittee notes the concern of some members including Hon POON Siu-ping and Hon Tony TSE Wai-chuen that under section 3B(2) of the DWDF Regulation as added by the DWDF Amendment Regulation, if a person drives a specified RCV into a specified landfill or an RTS, the vehicle must conform with the new equipment requirements, and that if an RCV driver employed by an RCV owner who has not equipped an RCV properly and drives such RCV into a specified landfill or RTS, the driver will commit an offence.

31. The Subcommittee has considered whether in such case it should be the RCV owner instead of the RCV driver who should be liable for contravention of section 3B(2). There are also concerns about situations where the specified devices may fail to function properly due to accidents rather than the fault of the RCV driver. However, the Administration considers it inappropriate to impose liability on the owner of an RCV on the ground that he may not actually operate the waste collection business and therefore may not necessarily be the user of the relevant designated waste disposal facilities.

32. To allay such concerns, the Administration will propose amendment to the DWDF Amendment Regulation so that if the RCV driver is acting on the instructions of his employer, then the employer rather than the RCV driver will be the person who commits an offence. Moreover, to better cater for unintended non-compliance (for example, unexpected failure of the specified devices), the Administration will propose that the RCV driver or his employer may have a "due diligence" defence when charged for contravention of section 3B(2).

Measures for improving refuse collection and transportation

33. During the scrutiny of the Amendment Regulations, the Subcommittee has studied various issues for improving refuse collection and transportation including the ways for minimizing leachate dripping

from RCVs as well as the measures which the Administration has been undertaking in improving the operation of RTSs, particularly WKTS.

34. The DWDF Amendment Regulation is to introduce new equipment requirements to RCVs which are purpose-built vehicles for the collection of MSW characterized as having equipped with loading devices from the collection bins and compactors to reduce waste volume. The Subcommittee has also taken the opportunity to study the improvement measures and enforcement actions to address the environmental concerns arising from other types of collection vehicles which will not be subject to the new equipment requirements specified in the DWDF Regulation as added by the DWDF Amendment Regulation. The Subcommittee has urged the Administration to consider requiring the waste collectors concerned to adopt a fully-enclosed type of design for the other types of collection vehicles, or to cover the waste properly during delivery, to prevent waste from falling onto the road.

35. The Administration has explained that apart from RCVs, there are different types of vehicles that are commonly used for the transportation of waste to the designated waste disposal facilities. Some of these vehicles are by design fully enclosed already (for example, tanker) or have been equipped to enable full enclosure (for example, some tipper lorries) such that statutory equipment standard requirements may not be necessary. For the other vehicle types, technical feasibility has yet to be established as to whether any retrofitting work may enable the vehicles to be fully enclosed. On the other hand, operation of these vehicles is regulated under existing legislation including Cap. 132BK. Enhanced enforcement actions have been undertaken jointly by the Police, FEHD and EPD along the access roads near the three strategic landfills.

36. In addition to enforcement actions, the Government has been promoting the use of properly covered dump trucks through administrative measures, for example, by requiring all public works capital projects with contract sums of \$20 million or more to use dump trucks equipped with mechanical covers for delivery of construction and demolition materials to and from construction sites.

Administration's proposed amendments

37. The Administration will propose amendments to the DWDF Amendment Regulation, namely, section 4 in respect of the liability of non-compliance with the requirements in relation to RCVs (as discussed in paragraphs 30 to 32 above) as well as drafting amendments to the

Chinese texts of sections 3 and 5 as set out in **Appendix III**. Members raise no objection to the Administration's proposed amendments.

Recommendation

38. The Subcommittee supports the Amendment Regulations and does not propose any amendment to the Amendment Regulations. The Chairman of the Subcommittee has made a verbal report on the deliberations of the Subcommittee at the House Committee meeting on 10 January 2014.

Advice sought

39. Members are invited to note the deliberations of the Subcommittee as set out above.

Council Business Division 1
Legislative Council Secretariat
15 January 2014

**Subcommittee on Waste Disposal (Designated Waste Disposal Facility)
(Amendment) Regulation 2013 and Waste Disposal (Refuse Transfer Station)
(Amendment) Regulation 2013**

Membership list

Chairman Hon WU Chi-wai, MH

Members Hon Emily LAU Wai-hing, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan, JP
Hon Frankie YICK Chi-ming
Hon Charles Peter MOK
Hon CHAN Chi-chuen
Hon Alice MAK Mei-kuen, JP
Dr Hon Elizabeth QUAT, JP
Hon POON Siu-ping, BBS, MH
Hon Tony TSE Wai-chuen

(Total : 12 members)

Clerk Mr Derek LO

Legal Adviser Ms Wendy KAN

**Subcommittee on Waste Disposal (Designated Waste Disposal Facility)
(Amendment) Regulation 2013 and Waste Disposal (Refuse Transfer
Station) (Amendment) Regulation 2013**

**List of organizations and individuals who have given views to
the Subcommittee**

1. Business Environment Council
2. Civic Party
3. Construction Industry Council
4. Environmental Contractors Management Association
5. Green Council
6. Hong Kong Construction Association
7. Hong Kong Waste Disposal Industry Association
8. Mr SIU Tak-hung
9. The Hong Kong Association of Property Management Co., Ltd
10. The Hong Kong Institution of Engineers
11. 反對擴建將軍澳堆填區關注組
12. 龍春秀女士

Interpretation and General Clauses Ordinance

Resolution of the Legislative Council

**Waste Disposal (Designated Waste Disposal Facility)
(Amendment) Regulation 2013**

Resolution made and passed by the Legislative Council under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) on [] 2014.

Resolved that the Waste Disposal (Designated Waste Disposal Facility) (Amendment) Regulation 2013, published in the Gazette as Legal Notice No. 188 of 2013 and laid on the table of the Legislative Council on 4 December 2013, be amended as set out in the Schedule.

Schedule

Amendments to Waste Disposal (Designated Waste Disposal Facility) (Amendment) Regulation 2013

1. **Section 3 amended (section 3A amended (facilities that accept construction waste))**
 - (1) Section 3, Chinese text—
Repeal
““第 3””
Substitute
““第 3 或””.
 - (2) Section 3, Chinese text—
Repeal
““第 1(b)、3””
Substitute
““第 1(b)、3 或””.
2. **Section 4 amended (section 3B added)**
Section 4, new section 3B—
Repeal subsection (4)
Substitute
“(4) If subsection (2) is contravened, the following person commits an offence and is liable to a fine at level 6—
 - (a) (if the driver of the vehicle drives the vehicle into the specified facility on the instructions of the driver’s employer) the employer; or

(b) (in any other case) the driver of the vehicle.

(5) It is a defence for a person charged under subsection (4) to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.”.

3. Section 5 amended (section 4 amended (powers of Director))

(1) Section 5(4), Chinese text, before ““第(2)(a)至(d)款””—

Add

“所有”.

(2) Section 5(5), Chinese text, before ““第(2)(c)或(d)款””—

Add

“所有”.

Clerk to the Legislative Council

2014