

Annex B

Waste Disposal (Designated Waste Disposal Facility) Regulation

Made by the Governor in Council after consultation with the Advisory Council on the Environment

1. Commencement

This Regulation shall come into operation on the day appointed for the commencement of the Waste Disposal (Amendment) Ordinance.

2. Interpretation

In this Regulation, unless the context otherwise requires - "designated officer" means any person designated by the Director under section 3;

"designated waste disposal facility" means any premises specified in the Schedule, being premises licenced under section 16(1) of the Ordinance to be used for the collection, removal, transportation, transfer, reception or disposal (including treatment, reprocessing or recycling) of waste;

"facility operator" means any person who has entered into an agreement with the Government for the operation or management of a designated waste disposal facility.

3. Director may appoint designated officers

(1) The Director may in writing appoint any public officer, any person employed by a facility operator, any contractor (other than a facility operator) or any person employed by such contractor to be a designated officer for the purposes of this Regulation.

(2) In this section "contractor (other than a facility operator)" means any person, other than a facility operator, who has entered into an agreement with the Government for the carrying out of any activity or the provision of any service in connection with the operation or management of a designated waste disposal facility.

4. Powers of Director

(1) The Director may, within any designated waste facility, for the purpose of -

- (a) regulating traffic in the facility;
- (b) ensuring safety to all personnel present at the facility;
- (c) avoiding any health or environmental nuisance;
- (d) preventing disruption to the operation of the facility;
- (e) preventing and detecting the commission of offences against this Ordinance in or in relation to the facility;
- (f) prosecuting any person reasonably suspected of having committed an offence against this Ordinance in or in relation to the facility; or
- (g) deterring the evasion of charges payable under this Ordinance by any person using a designated waste disposal facility,

exercise any of the powers specified in subsection (2).

(2) The powers specified for the purpose of subsection (1) are -

- (a) the power to order or signal the driver of a vehicle within or entering or leaving a designated waste disposal facility -

- (i) to stop the vehicle immediately;
 - (ii) to proceed to any place or to park the vehicle at any location within the facility; or
 - (iii) to leave the facility;
- (b) the power to require the driver of a vehicle within a designated waste disposal facility or stopped by him under paragraph (a) -
- (i) to produce his driving licence for examination;
 - (ii) to give the name and address of the registered owner of the vehicle;
- (c) the power to enter, examine and search any vehicle referred to in paragraph (b) and any thing in or on the vehicle, and to take from the vehicle and retain samples of any materials having the appearance of waste;
- (d) the power to require any person found in or on any vehicle referred to in paragraph (b) to give his name and address and to produce any document in his possession which is or contains evidence of his name and address;
- (e) where any vehicle or thing is causing disruption to the operation of any designated waste disposal facility or is otherwise likely to render the use of the facility unsafe, the power to take all reasonable steps, at the risk and expense of the owner of such vehicle or thing, to remove the vehicle or thing or

cause it to be removed to any place, including any road, that the Director may think fit and where necessary in the opinion of the Director, to provide for its safe custody;

- (f) where any person has failed to pay any charge under the Ordinance in full as required in any invoice, demand note, bill or the like issued by the Director or any person appointed by the Director to collect such charge within the period of time specified in a notice issued by the Director for the purposes of this paragraph, the power to suspend the provision to that person of the services provided at any designated waste disposal facility.

(3) The Director may in writing authorize -

- (a) any designated officer to exercise the powers and perform the duties conferred or imposed on the Director under subsection (2)(a) to (d);
- (b) any facility operator to exercise the powers and perform the duties conferred or imposed on the Director under subsection (2)(e) or (f);

(4) Any person who fails to comply with an order, requirement, direction, instruction or signal given under subsection (2), commits an offence and is liable to a fine at level 6.

5. Offence of causing disruption or disorder

(1) Any person who deliberately causes disruption or disorder to the operation of a designated waste disposal facility commits an offence and is liable to a fine of \$200,000 and to imprisonment for 6 months.

(2) A person charged with an offence in subsection (1) has a defence if he shows that he -

- (a) has reasonably complied with all orders, requirements, directions, instructions or signals given by the Director, the facility operator and any designated officer by virtue of section 4; and
- (b) has exercised all due diligence to avoid causing disruption and disorder to the operation of the facility.

6. Obligation to give information relating to the driving of vehicles

(1) Without prejudice to section 63 of the Road Traffic Ordinance (Cap. 374), where the driver of a vehicle is suspected of having committed an offence against this Ordinance at any DWDF, any person (including both the registered owner of the vehicle and the person suspected of being the driver of the vehicle at the time of the alleged offence) shall, on demand made within 3 months after the date of the alleged offence, give to an authorized officer in the manner prescribed in this section the name, address and driving licence number of the person driving the vehicle at the time of the alleged offence and his relationship (if any) to the driver.

(2) A demand under subsection (1) may be made orally or by means of a notice served personally or by post on the person on whom it is made.

(3) A notice under subsection (2) shall require the person to whom it is addressed -

- (a) to furnish, within 21 days after the date of the notice, to an authorized officer specified therein, a

written statement, in such form as may be specified in the notice, giving the name, address and driving licence number of the person driving the vehicle at the time of the alleged offence and his relationship (if any) to the driver; and

(b) to sign the said statement.

(4) Subject to subsection (5), any person who contravenes subsection (1) commits an offence and is liable to a fine at level 6.

(5) In proceedings for an offence under subsection (4), it shall be a defence to show that the accused person did not know, and could not with reasonable diligence have ascertained, the name or address or driving licence number of the person driving the vehicle at the time of the alleged offence.

7. False particulars

Any person who knowingly makes a false statement in supplying particulars required under section 6 or who omits any material particular required under that section commits an offence and is liable to a fine at level 6.

8. Proof of identity of driver

If, in a prosecution for an offence under this Ordinance, there is produced to the court a statement which -

- (a) purports to have been signed by the person on whom a demand is made under section 6(1);
- (b) was furnished in accordance with a notice served on him under section 6(2); and
- (c) states that the accused person was the driver of the vehicle at the time of the offence,

the courts shall admit the statement as prima facie evidence that the accused person was the driver of the vehicle at the time of the offence.

9. Certificates of image recording,
and printing device

(1) A document in such form as may be specified by the Director purporting -

- (a) to be a record of the testing of the functioning, inspection or servicing of an image recording device, with or without any associated image printing device, used for the purpose of recording and, where appropriate, reproducing the images of vehicles within, entering or leaving a designated waste disposal facility, specified in the document; and
- (b) to be certified by a person authorized in this behalf by the Director,

shall be admitted in any criminal or civil proceedings before any court on its production without further proof.

(2) On the production of a document under subsection (1) -

- (a) the court before which it is produced shall, in the absence of evidence to the contrary, presume
 - (i) that it was signed at the time and place specified therein by a person authorized by the Director;
 - (ii) that the facts stated in the document relating to the testing of the functioning, inspection or servicing of the image recording device and the associated image printing device, if any, specified in the document are true; and

(iii) that the record of the facts stated in the document was made and compiled at the time stated in the document;

(b) the document shall be evidence of all other matters contained in the document; and

(c) the recording and print, if any, produced by using the image recording device and the associated image printing device, where appropriate, shall be evidence of all matters contained in the document.

(3) Where any document is produced and admitted as evidence under subsection (1), the court may, if it thinks fit, on its own motion or on the application of any party to the proceedings, summon the person who signed the document and examine him as to the subject-matter of the document.

10. Certificates as to photographic process

(1) A document in such form as may be specified by the Director purporting to be signed by a person duly appointed under subsection (2) and purporting to be a certificate as to the processing of exposed film received and processed by him shall, together with the photographic prints or photographic enlargements referred to in the document, be admitted in evidence in any criminal or civil proceedings before any court on its production without further proof, and -

(a) in the absence of evidence to the contrary, the court before which such document is produced shall presume that the signature to the document is genuine and that the person signing it was duly appointed under subsection (2) at the time when he signed it; and

(b) such document shall be evidence of all matters contained in the document.

(2) The Director may appoint in writing such persons as he thinks fit to carry out the processing of exposed film and to sign certificates under subsection (1) in relation to such processing.

(3) Where any document is produced and admitted as evidence under subsection (1), the court may, if it thinks fit, on its own motion or on the application of any party to the proceedings, summon the person who signed the document and examine him as to the subject-matter of the document.

11. Directions

The Director may, if he considers the public interest so requires, give directions of a general character in writing to a facility operator or designated officer in relation to the performance of the functions or the exercise of the powers vested by this Regulation in the facility operator or designated officer and the facility operator or designated officer shall comply with those directions.

12. Amendment of Schedule

The Secretary for Planning, Environment and Lands may, by notice published in the Gazette, amend the Schedule.

Schedule

[s. 2]

Designated Waste Disposal Facilities

Item	Name of Facility	Address of Facility	Contract Number of Facility	Boundaries of Facility Delineated by Drawing number/plan number
1.	West New Territories (WENT) Landfill	Lung Kwu Tan Road, Num Wan, Tuen Mun, N.T.	EP/SP/9/91	WENT/GEN/102 Rev. B (Contract Document Vol. 3 of 12)
2.	South-East New Territories (SENT) Landfill	Shek Miu Wan, Tseung Kwan O, N.T.	EP/SP/10/91	CONTRACT DRG. NO. 90872/SP10/014B
3.	North East New Territories (NENT) Landfill	Wo Keng Shan Road, Ta Kwu Ling, N.T.	EP/SP/12/92	CONTRACT DRG. NO. 90303/CON-01 TO 04
4.	Pillar Point Valley Landfill	Pillar Point Valley, Tuen Mun, N.T.	CV/95/14	SWW 1061
5.	Chemical Waste Treatment Facilities	51 Tsing Yi Road South, Tsing Yi, N.T.	EP/WM/C1/89	KT 1047-DA

In this Schedule -

"Contract Number" means

"Drawing Number/Plan Number" means