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Amendment to China Solid Waste Law ---- Every Waste Business Operator Should Know

On April 29, 2020, the Standing Committee of the National People's Congress of China approved the amendments to the <Law on the Prevention and Control of Environment Pollution Caused by Solid Wastes> ("**Solid Waste Law**"), which will take effect on September 1, 2020 ("**Revised Solid Waste Law**"). This is the fifth amendment to the Solid Waste Law since it was first enacted in 1995.

The Solid Waste Law covers the prevention and control of pollution from industrial waste, household waste, construction waste, agricultural waste, and hazardous waste (collectively, "**Solid Waste**"). The Ministry of Ecology and Environment of China ("**MEE**") have through the years promulgated detailed regulations, standards, catalogs and rules to implement the Solid Waste Law.

The Revised Solid Waste Law makes substantial changes to the Solid Waste Law and is likely to have substantial impact on enterprises providing the Solid Waste collection, storage, utilization, and treatment services to the waste generator, such as hazardous waste treatment company and household waste treatment company ("**Waste Business Operator**").

In this newsletter, we will introduce the main changes of the Revised Solid Waste Law and its potential impact on the Waste Business Operators.

1. New Requirements on the Waste Business Operator

As a general rule, the Revised Solid Waste Law expressly requires that the Waste Business Operator shall adopt measures to prevent and reduce environmental pollution caused by the Solid Waste and shall be liable for any environmental pollution caused. In particular, the Revised Solid Waste Law has imposed the following new requirements concerning the Waste Business Operator:

1.1 Notification

Instead of merely picking up and removing the industrial waste (i.e. solid waste discharged in industrial facilities) from the waste generator's place, the Revised Solid Waste Law adds a new obligation on the Waste Business Operator that it shall notify the waste generator of the information on the transportation, utilization and treatment of the industrial waste.

The reason for imposing such notification obligation is to help the waste generator to keep track on the industrial waste as required by the Revised Solid Waste Law. The Revised Solid Waste Law does not further stipulate what and how such information on transportation, utilization and treatment should be disclosed. In practice, such information is likely to be the location where the industrial waste are delivered and how they are utilized and treated. Usually, the service contract between the Waste Business Operator and the waste generator will set forth the detailed rule on this issue.

1.2 Insurance

The Waste Business Operator engaging in the business of hazardous wastes¹ is required to purchase environmental pollution liability insurance under the Revised Solid Waste Law.

Since 2013, the MEE has been encouraging the Waste Business Operator to purchase environmental pollution liability insurance. However, it is the first time the legislators wrote into a law that it is a compulsory obligation for the Waste Business Operator to purchase such environmental pollution liability insurance.

The environmental pollution liability insurance covers claims for personal injury, damage to property, clean-up expenses etc. incurred by the environmental pollution. We expect more detailed regulations on this insurance to be enacted shortly.

1.3 Acceptance Inspection

The Waste Business Operator usually needs to build environmental pollution prevention facilities for carrying out treatment services.

Since the implementation of the <Interim Measures of the Completion and Acceptance of Environmental Protection of Construction Projects> (“**Measures**”) on November 20, 2017, the construction entity is no longer required to seek the approval of the <Acceptance Report of Environmental Protection Facility> (“**Report**”) from the local MEE for environmental protection facilities. Instead, the construction entity should only ensure the normal operation of the environmental protection facility after the completion of the construction project and post the Report on the MEE to accept the supervision from the MEE and the general public. However, the Measures makes an exception for facilities for prevention of environmental pollution by the Solid Waste of which the acceptance shall still be approved by the local MEE.

The Revised Solid Waste Law has specified that the acceptance of facilities for prevention of environmental pollution by the Solid Waste will be carried out by the construction entity itself and thus approval from the local MEE is no longer required.

1.4 Household Waste Treatment Monitoring

The Revised Solid Waste Law requires the Waste Business Operator treating the household waste (i.e. solid waste discharged from daily life or from services provided to daily life) to install the real-time pollutant discharge monitoring equipment and disclose data on pollutant discharge to the public. Such monitoring equipment shall also be connected to the monitoring equipment of the local MEE.

2. **Stricter Government Supervision**

Along with the trend of strengthening the supervision of environmental protection in various areas, the Revised Solid Waste Law also granted new supervisory powers and responsibilities to the MEE and the relevant departments:

¹ Hazardous waste refers to those solid waste included in the <National List of Hazardous Waste> or identified to be dangerous according to the identification criteria and methods of hazardous waste as prescribed by the State.

2.1 Implementation of Credibility System

For any violation of the provisions of the Revised Solid Waste Law, the Waste Business Operator shall be punished and fined. The local MEE will record any information related to environmental violations in the social integrity archives and post the list of offenders and violation details on the publicly accessible National Credibility Sharing Platform (<http://gsxt.gdgs.gov.cn/>).

In case of any posting of violation on such National Credibility Sharing Platform, the Waste Business Operator would likely be negatively affected in its future applications for financing and environment-related approvals.

2.2 Property Seizure or Freezing

Under the Revised Solid Waste Law, before reaching a final decision, the MEE and the relevant departments have the power to freeze or seize the solid wastes that are illegally collected, stored, transported, utilized or treated as well as facilities, equipment, sites, tools and articles, if there is or may be serious environmental pollution consequences. The Revised Solid Waste Law has added such measures to be consistent with the current rule and practice as prescribed in the <Environmental Protection Law> and other applicable regulations.

Such seizure or freeze of the property measures, if executed, is likely to severely affect the continuance of the Waste Business Operators' business.

3. Severer Penalties for Violations

In the past, heavy polluters would rather pay a one-time penalty than fix pollution problems because the penalty was very light. In the current war on pollution, the Chinese government has substantially increased the sanction to deter environmental violation. The Revised Solid Waste Law has also significantly increased monetary penalties and added other types of penalties for violations by the Waste Business Operator.

3.1. Higher Monetary Penalties on Enterprises

Overall, the monetary penalties are all jumped by almost 10 times under the Revised Solid Waste Law. The main violation of the Revised Solid Waste Law and their respective penalty amounts are shown in the table below:

Violations	Amount of the Fine Before 1 September 2020	Amount of the Fine After 1 September 2020
Unauthorized dumping, stacking, discarding, or shedding industrial solid wastes	Between RMB 5,000 and 50,000	Not less than one time and not more than three times the required cost of treatment; such treatment cost shall be deemed as RMB 100,000 if it is less than RMB 100,000
Scattering, run-off, or seepage of industrial solid wastes, or other type of pollution due to failure to take precautionary measures	Between RMB10,000 and 100,000	

Scattering, run-off, or seepage of hazardous wastes, or other type of pollution due to failure to take precautionary measures	Between RMB10,000 and 100,000	Not less than three times and not more than five times the required cost of treatment; such treatment cost shall be deemed as RMB 200,000 if it is less than RMB 200,000
Dumping, littering, stacking, or incinerating household wastes at will	Between RMB 5,000 and 50,000	Between RMB 50,000 and 500,000
Discarding or shedding household wastes en route in the process of transportation		
Closing down, abandoning or dismantling facilities or sites for treating household wastes without approval	Between RMB10,000 and 100,000	Between RMB 100,000 and 1,000,000
Constructing any centralized industrial solid waste or hazardous waste storage, utilization, and treatment facility or site or household waste landfill in an red ecological protection area, farmland area, or any other protection area		
Failing to install distinguishing marks of hazardous waste as required		
Failing to store, utilize, or treat hazardous wastes in accordance with national environmental protection standards, or mixing hazardous wastes with non-hazardous wastes for storage		
Collecting, storing, transporting and treating mixed hazardous wastes of incompatible nature without safety treatment		
Using, without the treatment to eliminate pollution, sites, facilities, equipment or containers, packages or other articles for collecting, storing, transporting or disposing hazardous wastes for other purposes		

3.2. Personal Liabilities on Responsible Persons

The Revised Solid Law extends the liabilities to the legal representative, person chiefly in charge, person directly in charge and other responsible person of the Waste Business Operator, which include monetary penalties ranging from RMB 50,000 to RMB 1,000,000 and detentions of 5 to 15 days.

Moreover, it is likely that the personnel of the Waste Business Operator who is responsible for environmental matters (usually EHS manager) will be held personally liable for any non-compliance, for example dumping, stacking, discarding or shedding the Solid Waste which causes serious consequences.

DS Comments

Overall, the Revised Solid Waste Law extends the obligation of, and strengthens the supervision, on the Waste Business Operator. Meanwhile, penalties for violations have been significantly increased, including personal liabilities of the legal representatives and responsible persons. Therefore, we suggest that the Waste Business Operator conduct compliance check in particular on:

- whether its business is conducted in compliance with the scope and provisions set forth in its waste operation license;
- whether it has duly adopted all necessary precautions to prevent from environmental pollution in the course of handling the Solid Waste, including reviewing the previous incidents of environmental pollution to double check whether any precaution need to be upgraded; and
- whether there is any non-compliance in the course of handling the Solid Waste, e.g. marks for hazardous waste, standard on Solid Waste collection, storage, utilization, or treatment.

The Revised Solid Waste Law provides the foundation for further implementation of detailed rules. In the next few months, we expect to see the development of implementing regulations/measures to provide practical guidance to companies for compliance with the new requirements of the Law.

If you need more detailed information and consultants, please feel free to contact us.

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