

Amendment to China Solid Waste Law

— Every Waste Generator Should Know



ASIA

Following our previous newsletter¹ which introduced the main changes of the < *Law on the Prevention and Control of Environment Pollution Caused by Solid Wastes* >² (“**Revised Solid Waste Law**”) concerning the enterprises engaging in the solid waste collection, storage, utilization, and treatment services (“**Waste Business Operator**”), we will highlight in this newsletter the key compliance requirements that the solid waste³ generators (“**Solid Waste Generator**”) should pay attention to.

■ NEW REQUIREMENTS ON THE SOLID WASTE GENERATORS

1. *Pollutant Emission Permit*

China wishes to develop a unified system to control different pollutant emission categories by including them in one single emission permit. Before the Revised Solid Waste Law, the permit concern only the emission of air and water pollutants. However, after the Revised Solid Waste Law, the Solid Wastes are also included in the permit. The Solid Waste Generators concerned shall obtain the permit and provide to the local Environmental Protection Bureau (“**EPB**”) the information on the types, quantity, flow direction, storage, utilization and disposal of solid wastes.

Currently, in determining whether a Solid Waste Generator shall apply for a Pollutant Emission Permit, the EPB still needs to look at whether the Solid Waste Generator falls in the industry provided in the *Classification Management Catalog of Pollutant Discharge Permits for Stationary Sources of Pollution (2019 version)*⁴ (“**Classification Catalog**”) and its generating/discharge volume and the impact it may cause to the environment. According to the < *Administrative Measures for Pollutant Discharge Licensing (for Trial Implementation)* >⁵:

- Entities that generate and discharge relatively large volumes of Solid Waste and cause relatively serious impact on the environment are subject to key pollutant discharge management.
- Entities that generate and discharge relatively small volumes of Solid Waste and cause relatively minor impact on the environment are subject to simplified pollutant discharge management.
- Entities that generate and discharge very small volumes of Solid Waste and cause very minor impact on the environment do not need to apply for a Pollutant Emission Permit. Only *filling* in the Pollutant Discharge Registration Form on the National Information Platform for Pollutant Emission Permit management will suffice.

Therefore, each Solid Waste Generator may check the catalogue to see whether a Pollutant Emission Permit is required and keep an eye on any update of the Catalogue due to the Revised Solid Waste.

2. *Internal Compliance System*

The previous Solid Waste Law promulgated in 2016 generally stipulates that Solid Waste Generators shall establish and improve their responsibility system

1 Our previous newsletter <Amendment to China Solid Waste Law - Every Waste Business Operator Should Know> is available at https://dsavocats.com.cn/wp-content/uploads/2020/10/DS_EN_Amendment-to-China-Solid-Waste-pdf

2 which takes effect on September 1, 2020

3 The solid waste include industrial waste, household waste, construction waste, agricultural waste, and hazardous waste

4 Available at: http://www.mee.gov.cn/xgk/xgk02/202001/t20200103_757178.html

5 which takes effect on January 1, 2018 and amended on August 22, 2019



for environmental pollution prevention and treatment, and adopt measures to prevent and treat environmental pollution by industrial solid waste. It was very general and did not specify what shall be included in such system and measures.

The Revised Solid Waste sets forth more detailed requirements for handling the Solid Waste during the whole process of the generation, collection, storage, transport, utilization and disposal. These include the pollution prevention responsibility system, the solid waste tracing system, and the solid waste management ledger system. Basically, every step of handling the Solid Waste shall be recorded in ledgers for tracing.

Additionally, the Revised Solid Waste Law requires the Solid Waste Generators to conduct clean production audit in compliance with laws. Usually, clean production audit is governed by the Clean Production Promotion Law (2012 Revision) and Measures for Clean Production Audit (2016 Revision), under which the enterprises shall perform a production auditing process by itself or through a third-party to identify the reasons for heavy pollution, propose solutions for reducing and recycling wastes, and select and implement a technically, economically, and environmentally feasible clean production scheme. However, the Revised Solid Waste Law merely sets forth the principle for the Solid Waste Generators to perform such audit without giving more details, which are likely to be provided for in specific regulations or practical guidance in the future.

3. *Waste Vendor Management*

The Revised Solid Waste stipulates that where an entity generating Solid Wastes entrusts the Waste Business Operator to transport, utilize or dispose of solid wastes, it shall verify the qualifications and technical capacities of such Waste Business Operator, lawfully conclude a written contract, and stipulate the requirements for pollution prevention and control in the contract.

As such, the Solid Waste Generators needs to check

- whether the entrusted service is included in the Waste Business Operator's business scope,
- whether the Waste Business Operator has a permit (if required) to perform the entrusted service, and
- whether the technical capacity of the Waste Business Operator is up to the standard for handling such industrial solid waste.

The Solid Waste Generators who fail to check the Waste Business Operator's qualification and capacity will be subject to administrative liabilities (e.g. order to make corrections, a fine from RMB 100,000 to RMB 1,000,000, confiscation of illegal gains, order to suspend business or being closed down if the violation is serious) and be held jointly and severally liability with the Waste Business Operator for any damages resulted from the pollution caused by the Waste Business Operator.

■ SEVERER PENALTIES FOR VIOLATIONS

Similar to the Waste Business Operators' case, the Revised Solid Waste Law has also significantly increased monetary penalties and added other types of penalties for violations by the Solid Waste Generators.

1. *New or Higher Monetary Penalties*

Those new penalties include, for example, the Solid Waste Generators that fail to create and record ledgers for its Solid Waste as explained in section 1.2 above will be subject to a fine of RMB 50,000 to RMB 200,000, confiscation of the illegal income, and possible suspension or even termination of business if the circumstances are serious.

Also, existing illegal acts under the previous Solid Waste Law have been subject to heavier fines. For example, the Solid Waste Generators that dump, stack, discard, or shed its Solid Wastes were previously been imposed on a fine between RMB 5,000 and 50,000. Now, under the Revised Solid Waste



Law, they could face a fine equal to 1-3 times the required treatment cost. If such treatment cost is less than RMB 100,000, then it shall be calculated as RMB 100,000.

2. Consecutive Daily Fine

In case of non-compliance of the Solid Waste Generators in discharging the Solid Wastes and failure to make the rectification as ordered by the EPB, the consecutive daily fine will be imposed on Solid Waste Generators until the illegal activities is actually rectified.

This penalty was first provided for in the Environmental Protection Law issued in 2014. This Revised Solid Waste Law follows this mechanism and will urge the Solid Waste Generators to actively and timely take action to rectify their non-compliance.

■ OUR OBSERVATION AND RECOMMENDATION

Since the effectiveness of the Revised Solid Waste Law, many local EPBs have been actively monitoring the enterprises' environmental compliance issues by applying the measures and imposing the penalties under the Revised Solid Waste Law to the non-compliance Solid Waste Generators. For example, in September, Sichuan EPB seized 14 tons of hazardous waste for suspected illegal cross-regional transfer. Fujian EPB also punished two enterprises according to the higher penalty provided under the Revised Solid Waste Law.

Given the Chinese government has strengthened the legalization and law enforcement in the environmental protection and eco system in the recent years, the Solid Waste Generators are advised to adopt a more comprehensive environmental compliance system for legal risk control, in particular:

- regularly check the Classification Catalog and when necessary, apply for a new pollutant emission permit or expand the scope of its existing pollutant emission permit;
- establish management ledger for the solid waste as required;
- diligently check the qualification and technical capacity of the Waste Business Operator and then conclude a written contract with the vendors as required; and
- check and rectify if there is any non-compliance in the course of handling the Solid Waste.

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



For any additional information
please contact:

LIU Yimin
Senior Legal Advisor - Shanghai Office
liuyimin@dsavocats.com

YANG Lili
Associate - Shanghai Office
Yanglili@dsavocats.com

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