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Top Environmental Authority in China Proposes Amendment to the Solid Waste Law

On July 11, 2018, China's Ministry of Ecology and Environment ("MEE") released a [draft proposal](#) to amend the country's solid waste statute.¹ Among other changes, the draft proposed to restrict solid waste releases from industrial facilities under the pollutant emission permit program, prohibit all solid waste imports into China, require mandatory contracts between waste generators and third-party handlers, and increase penalties for violations. The deadline for submitting comments to MEE is August 18, 2018.

Background

China enacted the *Solid Waste Environmental Pollution Prevention and Control Law* ("Solid Waste Law") in 1995, and has amended or revised it four times. The *Solid Waste Law* covers the prevention and control of pollution from industrial, municipal, and hazardous waste. Over the years, China's governmental authorities, including the environmental ministry, have promulgated numerous regulations, standards, catalogues, and other rules to implement the Law.

In 2017, China's national legislature, the Standing Committee of the National People's Congress ("NPC"), organized a three-month oversight inspection on enforcement of the Law. After the inspection, the NPC Standing Committee proposed that the *Solid Waste Law* be amended, citing that some aspects of the Law "cannot accommodate the real-life situations or are not compatible with other laws."² The Standing Committee listed the proposed amendment to the *Solid Waste Law* in its 2018 legislative plan.³ MEE is now leading the initial drafting of the amendment.

Proposed Amendments

The draft amendment proposes substantial revisions to the *Solid Waste Law*. The proposed amendment evidences MEE's intention to reconcile solid waste control with other existing environmental programs currently evolving, and to strengthen waste control enforcement. Below are the key proposed changes that are likely to be of interest to companies doing business in China:

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¹ [Circular](#) on Publicly Soliciting Comments on the *Solid Waste Environmental Pollution and Prevention and Control Law of the People's Republic of China (Draft Amendment)* (Draft for Comments).

² [Inspection Report](#) on the Implementation Status of the Solid Waste Environmental Pollution Prevention and Control Law (Nov. 11, 2017).

³ The 2018 [Legislative Plan](#) of National People's Congress Standing Committee (Apr. 27, 2018).

- **Solid Waste and Pollutant Emission Permits.** The draft amendment proposes to incorporate solid waste into the pollutant emission permit system (proposed Articles 37). The proposed changes would penalize solid waste or hazardous waste generators operating without a permit or failing to change generation of wastes in accordance with the permit (proposed Article 76).

These changes would reinforce the core function of the pollutant emission permit in the regulation of facility environmental emissions. China has been striving to develop a system in which the emission control of different pollutant categories are integrated into one single permit. Following air and water pollutants,⁴ solid waste becomes the third type of pollutant added to the pollutant emission permit system. This draft amendment would help move forward the consolidation of permit-based emissions control.

- **Prohibition of Solid Waste Imports.** China currently allows import of certain types of solid wastes as raw materials; the proposed amendment would entirely ban the import of solid waste into China (proposed Article 29).

This change reflects China's recent policy movement on solid waste and provides a solid legal basis for the import ban on solid waste. Since 2017, the Chinese government has acted robustly against imports of "foreign garbage," which refers to unlawfully imported solid waste. The government adjusted the solid waste import management catalogues twice in order to significantly broaden the scope of solid waste banned from import. The customs authorities also launched nationwide enforcement campaigns against unlawful waste imports.

The outright ban of "solid waste" imports would render the definition of solid waste more critical than ever. As the proposed amendment provides no exception, nor any change in the statutory definition of "solid waste," the assessment of whether certain materials qualify as solid waste will be crucial for ensuring imports are compliant in the future.⁵

- **Legal Liability for Waste Generators and Other Waste-Handling Parties.** The draft amendment provides that waste generators must enter into written contracts with their entrusted third party vendors to transport, use, or dispose of wastes. Required environmental control measures for third parties would need to be included in the contracts (proposed Article 35). The draft amendment imposes strict liability on the waste generator for the third-party solid waste vendor management (proposed Article 76).

The changes have two key implications: 1) waste generators are required to document the contractual relationship with their vendors; however, 2) the written contract would not serve as a liability transfer tool for the benefit of the waste generators. Under this new proposed waste management system, waste generators may be exposed to a higher level of legal risk.

- **Public and Private Enforcement.** The proposed amendment would introduce a number of measures to strengthen enforcement and elevate the legal risks of improper solid waste control or violations of the *Solid Waste Law*.
 - The proposal requires a significant increase in penalties for a number of violations (increases ranging from two to ten times) (e.g., proposed Articles 76, 77, 83, 87).
 - The proposal authorizes citizen groups to launch environmental public interest litigation in the solid waste domain and imposes daily consecutive penalties on certain violations (proposed Articles 91 and 92).
 - The proposal specifies that environmental authorities may seal or seize facilities, equipment, tools, and articles involved in unlawful solid waste practices that cause or potentially cause environmental harm

⁴ [Administrative Measures](#) for Pollutant Emission Permits (Trial), art. 15.

⁵ [Identification Standards for Solid Wastes](#) - General Rules (GB 34330-2017).

(proposed Article 17).

- **Information Disclosure.** The proposed amendment requires that companies generating, using, or disposing of solid waste must promptly disclose information relating to their activities and accept the supervision of the public. Publicly traded companies must disclose information relating to their solid waste pollution control to the public (proposed Article 13).
- **Environmental Tax and Insurance.** The proposal requires that waste generators pay environmental protection taxes in accordance with the *Environmental Protection Tax Law* (proposed Article 20). Entities that collect, store, transport, use, or dispose of hazardous waste are required to participate in the mandatory environmental pollution liability insurance program (proposed Article 73).

These changes echo other regulatory developments and (along with the securities information disclosure) exemplify China's policy experiments with the use of fiscal and market tools in environmental governance. China's new *Environmental Protection Tax Law*, which took effect on January 1, 2018, set up a new tax to replace the pollutant emission fee that had been charged for over three decades.⁶ Following MEE's release of a 2015 policy document envisioning mandatory environmental liability insurance for "areas of high environmental risks,"⁷ MEE "passed in principle" a draft of the *Administrative Measures on the Mandatory Liability Insurance for Environmental Pollution* in May 2018.⁸

- **Extended Producer Responsibility (EPR) and Product and Packaging Recycling.** The proposed amendment requires the establishment of EPR programs for electronic and electrical "as well as other products." Entities and individuals that "generate" waste vehicles and vessels would be responsible for recycling waste vehicles and vessels through qualified entities (proposed Article 42). The design and manufacturing of products and packaging are required to comply with clean production requirements. Further, the proposed amendment envisions a catalogue management system for products and packaging subject to mandatory recycling. Manufacturers, sellers and importers are required to recycle the products and packaging included in the management catalogue (proposed Article 21). In addition, non-degradable thin film coverings and commodity packaging are prohibited under proposed Article 22.

These changes provide a legal foundation for the further development of China's circular economy policies and practices. Electronics and vehicles are two primary product categories listed in a 2016 State Council policy document pushing for EPR policies, along with lead batteries and beverage packaging.⁹ With regard to recycling, China's *Circular Economy Promotion Law*¹⁰ and other administrative measures have already established a mandatory recycling catalogue.

What is Next?

Under China's *Legislation Law*, a number of state authorities, including the State Council, may propose bills to the NPC Standing Committee for deliberation.¹¹ A bill may go through one or more deliberations before a vote. The 2018 legislative plan from the NPC Standing Committee, published this April, expected that the *Solid Waste Law* amendment would be presented to the Committee for a first deliberation by December 2018.

Therefore, while the current proposal reflects MEE's positions, the final amendment may vary slightly or significantly from this released draft, depending on the subsequent legislative process. Nevertheless, the current proposal reveals the

⁶ [Environmental Protection Tax Law](#).

⁷ [Overview Plan](#) for Systematic Reform towards Ecological Civilization (Sept. 21, 2015), art. 45.

⁸ [MEE Held Ministerial Meetings](#) to Review and Pass in Principle the *Administrative Measures on the Mandatory Liability Insurance for Environmental Pollution (Draft)* (May 7, 2018).

⁹ [State Council Plan](#) on Promoting the System of Extended Producer Responsibility (Dec. 25, 2016).

¹⁰ [Circular Economy Promotion Law](#).

¹¹ [Legislation Law](#), art. 26, para. 2.



policy preferences from China's top environmental authority, which stakeholders should monitor as they design and review their solid waste practices in China. Comments on the proposal are due August 18, 2018 and should be submitted to MEE.

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