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**(ACE Paper 22/96)**  
**for advice**

## **Waste Disposal (Amendment) Bill**

### **Waste Disposal (Designated Waste Disposal Facility) Regulation**

#### **INTRODUCTION**

This paper seeks Members' endorsement of the Waste Disposal (Amendment) Bill and the draft Waste Disposal (Designated Waste Disposal Facility) Regulation (at Annexes A and B) to enable the Director of Environmental Protection (the Director) to delegate the responsibility for the collection of waste disposal charges to contractors; to provide for the collection of these charges by various methods; to confer on the Director enforcement powers for the management of waste disposal facilities; and to authorise the Director to delegate selected enforcement powers to contractors.

#### **BACKGROUND**

2. The polluter pays principle (PPP) seeks to ensure that polluters pay the full real cost of the pollution they cause so that the costs are clearly identified, assigned and internalised, thus creating an economic incentive for waste minimisation. The PPP has been applied in Hong Kong in varying ways. Under the Waste Disposal Ordinance (WDO), charges for the disposal of chemical waste were introduced in March 1995; and we expect to commence landfill charges as soon as we have worked out the detailed administrative charging arrangements with affected parties.

3. Section 33(1) (j) of the WDO provides that the Governor in Council may by regulation provide for the charges payable to the Director for the disposal of any waste. At present, therefore, all charges are collected by public officers.

4. To facilitate the implementation of charging schemes, in particular the landfill charging scheme, we intend to ask the waste facility operators to set up account billing systems. This would allow more flexible implementation of the charging schemes to address the concerns of the waste producers and collectors, e.g. cashflow problems. These arrangements would require amendments to the WDO to

- a) delegate the charge collection service to contractors, such as the waste disposal facility operators; and
- b) provide for different methods of charge collection, such as account billing systems.

5. Section 23A of the WDO specifies that any public officer may be authorised in writing by the Director to perform or exercise the functions, duties or powers which are imposed or conferred by the WDO. This provision, however, does not empower the Director to delegate the enforcement powers to the facility operators. In order to discharge their new responsibility of charge collection effectively, the contractors would require certain enforcement powers to enable them to maintain operational order and security at waste disposal facilities, and to sanction non-payment and bad debts. Since these powers are not presently provided for in the WDO, we propose to amend the Ordinance to confer such powers on the Director and to allow delegation of selected enforcement powers to the contractors.

### THE BILL

6. The Bill amends section 33 of the WDO to provide regulation-making powers -

- (a) for the Director to authorise the deferral of payment of charges payable to him and to receive deposits as security for deferred payment [section 33(3)(a)];
- (b) for the appointment by the Director of a person to collect on his behalf any such charge or deposit [section 33(3)(b)];
- (c) for methods of the collection of charges by persons appointed under (b) and for the manner in which charges so collected should be accounted for [section 33(3)(c)];
- (d) to confer on the Director such powers as may be necessary to regulate traffic within, entering or leaving the premises of waste disposal facilities; to avoid any health or environmental nuisance; to prevent disruption to the operation of any relevant activity in the premises; and to prevent and detect the commission of any offence against the WDO in relation to the premises. [section 33(4)(a)]; and
- (e) to authorize the Director to delegate the powers in (d) to contractors as appropriate [section 33(4)(b)].

7. Apart from the regulation -making powers described in para. 6 above, the Bill also provides for the repeal of section 28 of the WDO, which empowers the Governor in Council to review a decision of an independent appeal board where that decision has reversed a decision of the relevant regulatory authority and the latter considers that exceptional circumstances require the review of the appeal board's decision in the public interest. To the extent that the decision of the appeal board was a "determination of rights" within the meaning of Article 10 of the Bill of Rights, permitting the decision to be overturned by the Governor in Council would be inconsistent with that Article. We therefore propose to repeal section 28 of the WDO.

WASTE DISPOSAL (DESIGNATED WASTE DISPOSAL FACILITY)  
REGULATION

8. The draft Waste Disposal (Designated Waste Disposal Facility) Regulation sets out the specific powers conferred on the Director to assist him in maintaining order in designated waste disposal facilities and counteracting the evasion of charges payable under the WDO. Designated waste disposal facilities are those specified in the Schedule of the draft Regulation. The major provisions of the draft Regulation are -

a) Powers of the Director -

The powers conferred on the Director include powers enabling him or his delegate to identify vehicles and persons within, entering or leaving designated waste disposal facilities and to take appropriate remedial action [clause (3) and 4(2)]. Any person who fails to comply with the Director's requirement commits an offence and is liable to a fine at level 6 (i.e. \$100,000) [clause 4(4)];

b) Offences of causing disruption or disorder - Any person who deliberately causes disruption 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. [clause 5]

c) obligation to give information relating to the driving of vehicles [clause 6];

d) provision of false particulars will be liable to a fine at level 6 [clause 7]; and

e) the Director may give directions to his delegate with respect to the exercise of the delegated powers [clause II].

PUBLIC CONSULTATION

9. During consultation over the detailed charging arrangements of the landfill charging scheme, many waste producers and collectors expressed concern about upfront payment problems and requested the establishment of an account billing system to run in parallel with the pre-paid ticket system. The proposed amendments to the WDO will enable us to address their concerns.

ADVICE SOUGHT

10. Members are requested to advise whether the Waste Disposal (Amendment) Bill and the draft Waste Disposal (Designated Waste Disposal Facility) Regulation at Annexes A and B should be recommended to the Governor in Council .

Planning, Environment and Lands Branch  
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