

## **LEGISLATIVE COUNCIL BRIEF**

### **Waste Disposal Ordinance (Chapter 354)**

#### **WASTE DISPOSAL (AMENDMENT) (NO.2) BILL 2003 – CONSTRUCTION WASTE DISPOSAL CHARGING SCHEME**

### **INTRODUCTION**

A At the meeting of the Executive Council on 2 December 2003, the Council ADVISED and the Chief Executive ORDERED that the Waste Disposal (Amendment) (No.2) Bill 2003 at **Annex A** should be introduced into the Legislative Council to introduce charging for the disposal of construction waste at landfills, sorting facilities and public fill reception facilities.

### **BACKGROUND AND ARGUMENT**

#### **Background**

2. In 2002, over 7 million tonnes of waste were disposed of in our three landfills<sup>1</sup>. About 45% of them are municipal solid waste (i.e. domestic, commercial and industrial waste), 48% are construction waste<sup>2</sup> and 7% are other special waste like sludge and animal carcasses. The three landfills occupy 270 hectares of land, cost \$6 billion to build and

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<sup>1</sup> The three landfills are located at Tseung Kwan O, Tuen Mun (Nim Wan) and North District (Ta Kwu Ling).

<sup>2</sup> Construction waste is a mixture of inert waste (also called public fill) and non-inert organic waste arising from construction, excavation, renovation and demolition works. The useful inert public fill comprising rocks, concrete, asphalt, rubbles, bricks, stones and earth are suitable for reuse in reclamation works. Some of the hard materials can also be recycled as aggregates for use in construction works. The non-inert waste comprising bamboo, plastic, timber and packaging waste are often mixed and contaminated. If uncontaminated, some of the materials can be recycled, but if they are contaminated, they will not be suitable for reuse or recycling, and have to be disposed of at landfills.

over \$400 million a year to operate. When planned in the 1980s, they were expected to serve our need for waste disposal till 2020. However, as the waste volume continues to grow, the landfills are filling up much faster than expected, and are projected to last 8 to 12 years. They may be filled up much earlier, probably in 4 to 7 years, if we fail to prevent construction waste from being disposed of there.

3. Disposal of waste at landfills has always been free of charge. This is undesirable and encourages indiscriminate disposal of waste at landfills. Landfill charging is an essential component of our waste management strategy as it provides an economic incentive for waste producers to reduce waste and to carry out sorting to facilitate reuse/recycling of waste, thereby helping to slow down the depletion of limited landfill capacity.

4. In 1995, we proposed to introduce a landfill charge for construction and commercial/industrial wastes. The legislation was enacted but was not implemented due to strong objection from waste haulers who blockaded landfills for two days.

### **The Revised Scheme**

5. After many rounds of discussions with the relevant trades, particularly waste haulers and construction contractors<sup>3</sup>, we have developed a revised construction waste disposal charging scheme incorporating various features to address their concerns as far as practicable. The key features of the revised scheme are as follows :

- (a) to charge construction waste disposed of at landfills<sup>4</sup>, sorting facilities and public fill reception facilities;
- (b) to set the disposal charge at \$125 per tonne at landfills, around \$100 per tonne at sorting facilities<sup>5</sup> and \$27 per tonne at public fill reception facilities. The proposed charges

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<sup>3</sup> We have had some 60 meetings with the affected trades on the revised scheme between 2000 and 2002.

<sup>4</sup> Landfill charge will also be imposed on the disposal of construction waste at the refuse transfer stations on the outlying islands. Other refuse transfer stations do not accept construction waste.

<sup>5</sup> If the sorting facilities are to be run as private facilities, the private operators would set the sorting charge.

represent full recovery of the capital and recurrent costs of the facilities;

- (c) to establish a direct settlement system requiring major waste producers, mainly construction contractors (which generate about 70 - 80% of construction waste), to open accounts and pay waste disposal charges direct to the Government;
- (d) to exempt all construction contracts that are awarded before the commencement of the charging scheme.

For the remaining 20-30% of construction waste mostly arising from renovation works, we have proposed to levy the charges through waste haulers that deliver the wastes to the facilities. The charges will be collected on a monthly basis with a credit period of 30 days. Collection of the charges from waste haulers will be suspended if they produce evidence that they are unable to collect the same amount from the waste producers. However, noting the waste haulers' grave concerns about possible cashflow and bad debt problems, we are ready to further explore alternative options. We will continue discussion with the trade with a view to reaching consensus on the charging arrangements.

6. The revised scheme focuses on construction waste as it is voluminous<sup>6</sup> and poses the greatest threat to the lifespan of landfills. Construction waste is a mixture of inert public fill and non-inert organic waste, and a large proportion of the inert public fill can be reused/recycled. Hence, an important means to reduce construction waste at landfills is to separate the inert portion from the non-inert portion, such that the inert public fill could be reused/recycled while the non-inert waste only would be disposed of at landfills.

7. Sorting of waste at source is not widely practised in Hong Kong because most construction/renovation sites have space constraints. Also, there is no economic incentive for construction firms to carry out sorting. With the implementation of the charging scheme, there would be a demand for sorting facilities, particularly from contractors working on

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<sup>6</sup> Construction works generate 14-15 million tonnes of construction waste each year. We are reusing/recycling some 80% of these waste, but the remaining 3-4 million tonnes have to be disposed of at landfills. In 2002, they accounted for 48% of the waste disposed of at landfills. We project that the total volume generated in 2003 would reach a record high of 19.6 million tonnes.

small construction sites, so as to reduce the landfill charge payable. We plan to set up two sorting facilities - one in Tuen Mun in close proximity to the West New Territories Landfill, and another in Tseung Kwan O near the Southeast New Territories Landfill. The two facilities could together handle about 2,500 tonnes of mixed construction waste each day.

8. To divert inert public fill away from landfills, and to provide outlets for inert public fill arising from sorting facilities, there will be a number of public fill reception facilities. The public fill reception facilities include most of the approved reclamation projects<sup>7</sup> and the temporary fill banks<sup>8</sup>.

9. As there is currently no provision of sorting facilities, no sorting charge is in place. For public fill reception facilities, although they have been in place for some time, no public fill charge has ever been levied. In line with the Polluter Pays Principle, apart from the landfill charge, we propose to also introduce charging for the disposal of construction waste at the sorting and public fill reception facilities.

10. The three types of construction waste disposal facilities (i.e. landfills, sorting facilities and public fill reception facilities) would receive construction waste with different content. Briefly, landfills would receive mixed construction waste with little (not more than 50%) inert content; sorting facilities would receive and sort mixed waste with higher (over 50%) inert content; and public fill reception facilities would accept pure inert fill.

11. To facilitate implementation of the charging scheme, site staff at these facilities will be empowered, based on visual inspection, to turn away vehicles carrying inappropriate types of waste for the facilities in question. Moreover, site staff at the waste disposal facilities (e.g. landfills) will be empowered to determine, based on visual inspection, whether a waste load is construction waste and thus should be subject to the landfill charge. The decision to turn away or charge a waste load

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<sup>7</sup> Except special projects with time or other constraints (e.g. Penny's Bay Reclamation Stage 1), all reclamation projects are using as much public fill as possible to meet their fill requirements.

<sup>8</sup> Because of the decreasing number and scale of reclamation projects, we have set up temporary fill banks at Tseung Kwan O and Tuen Mun to stockpile inert public fill for future use when new reclamation projects are available.

would not be subject to appeal. This is because in practice, it is not possible to re-examine the decision after the vehicle has offloaded the materials concerned, or after the vehicle has left the facility. We will, in consultation with the Department of Justice and the Independent Commission Against Corruption, put in place management and control measures to safeguard against possible abuses or malpractices.

12. The Waste Disposal Ordinance (the Ordinance) will define construction waste. Details of the charging scheme will be set out in the new Waste Disposal (Charges for Waste Disposal) Regulation, and the related powers to implement the charging scheme in Government-owned facilities will be provided in the Waste Disposal (Designated Waste Disposal Facility) Regulation, which both will be made under the Ordinance after the enactment of the Bill.

### **Strengthening of Control Against Illegal Disposal of Waste**

13. The Ordinance has already provided for sanctions against illegal disposal of waste<sup>9</sup>. However, as the introduction of the charging scheme may aggravate the problem of illegal disposal of waste, we consider it necessary to strengthen legal provisions against such acts to minimize adverse impact on the environment.

14. The proposed measures to strengthen control against illegal disposal of waste include –

- (a) To empower the court to order the person convicted of illegal disposal of waste to remove the waste on Government land. In cases where the removal work has already been carried out by Government, the court could order the convicted person to pay all or part of the removal cost incurred by Government as appropriate;
- (b) To empower the Director of Environmental Protection (DEP) to enter without warrant any places, other than domestic premises and dwelling place on private land, to remove the

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<sup>9</sup> Under section 18 of the Ordinance, a person who commits an offence is liable to a fine of \$200,000 and imprisonment for 6 months for the first offence; and to a fine of \$500,000 and imprisonment for 2 years for a second or subsequent offence.

waste deposited illegally in cases where there is an imminent risk of serious environmental impact and immediate remedial actions are required. DEP shall only enter domestic premises and dwelling place on private land when a warrant is obtained. DEP would be entitled to apply to the court to recover from the convicted person the cost of removing the waste; and

- (c) To revise the existing offence of unlawful depositing of waste to make available the exception of having lawful authority or excuse or the permission of the owner or occupier of the land regardless of where the waste is deposited; to further stipulate that the driver of a vehicle (not being a public transport carrier) from which waste is deposited as well as the employer of that driver are to be regarded as the persons causing waste to be deposited; and to provide for the statutory defences of reasonable precautions and due diligence to a defendant charged with the offence of illegal disposal of waste.

## **Alternative Modus Operandi of Waste Disposal Facilities**

### *Privatisation of waste disposal facilities*

15. It is our policy direction to encourage private sector involvement in operating waste disposal facilities. There are currently no sorting facilities. Our plan to make available two sorting facilities will provide an opportunity to explore the privatization option. In April this year, we invited the industry to express interest in funding and operating the facilities. We received 14 proposals expressing interest. In view of the positive response, we plan to carry out an open tender exercise for the setting up and operation of two private sorting facilities in late 2003.

16. The Ordinance has already allowed for the co-existence of government and private waste disposal facilities. While private operators would be free to set charges for their facilities, they would not be given the legal power currently enjoyed by the operators of government facilities provided under the Waste Disposal (Designated Waste Disposal Facility)

Regulation<sup>10</sup>.

*Government Facilities Financed Under the Net-off Arrangement*

17. If there are no valid tender bids in the tender exercise, and privatization of the sorting facilities could not materialize, we would then make available the facilities as Government facilities to be funded by the Government but operated by private sector contractors. As an accounting arrangement, we will use the sorting charge to remunerate the operator(s) of the sorting facilities before crediting the remaining proceeds to the General Revenue Account (netting-off arrangement).

18. As we propose to exempt all construction contracts that are awarded before the commencement of the charging scheme from paying the relevant charges, we expect the revenue to be insufficient to cover payments to the operator(s) in the initial years of the charging scheme. This problem will be overcome through an advance account arrangement whereby the initial shortfalls in payment to the operator(s) will be met by advances from the General Revenue. As the number of exempted contracts would gradually decrease upon completion of the concerned construction projects, revenue from sorting charges should exceed the remuneration to the operator(s) and the surplus revenue will be used to clear the advance account. Thereafter, all surplus amounts will be paid into general revenue.

**OTHER OPTIONS**

19. At present, all waste disposal facilities are provided by the Government and users may use them free of charge. We consider that continuation of the current practice would not be viable nor sustainable on both policy and public finance grounds. It goes against the Polluter/User Pays Principle, and results in indiscriminate use of the waste disposal facilities.

**THE BILL**

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<sup>10</sup> The Waste Disposal (Designated Waste Disposal Facility) Regulation empowers DEP and the facility contractors to maintain order and counteract the evasion of charges payable, where applicable, in waste disposal facilities designated under the Regulation.

20. The main provisions are –
- a) clause 2 adds a definition on “construction waste” to the Ordinance;
  - b) clauses 3, 4 and 5 provides for the revised section 16A and the new sections 18A and 23EA to strengthen the control against illegal disposal of waste; and
  - c) clause 6 revises section 24 to provide that no appeal lies to the Appeal Board constituted under Part VI of the Ordinance from DEP’s decision whether or not to accept any waste at a designated waste disposal facility or his decision whether or not to charge a person for disposing a chargeable waste load at a waste disposal facility.

## LEGISLATIVE TIMETABLE

21. The legislative timetable will be -

Publication in the Gazette	5 December 2003
First Reading and commencement of Second Reading debate	17 December 2003
Resumption of Second Reading debate, Committee stage and Third Reading	To be confirmed

## IMPLICATIONS OF THE PROPOSAL

22. The proposal has environmental, economic, financial, sustainability and civil service implications. They are set out at **Annex B**. The proposal is in conformity with the Basic Law, including the provisions concerning human rights, and will not affect the current binding effect of the Waste Disposal Ordinance. It has no productivity implications.

B

## PUBLIC CONSULTATION



23. We briefed the Legislative Council Environmental Affairs Panel (the Panel) on the proposal to introduce charging at the sorting and public fill reception facilities on 28 April 2003. The Panel supported the charging scheme in principle and agreed that it should be implemented as soon as possible. Nonetheless, the Panel considered that the Administration should further consult the trades on the charging arrangements.

24. From May to November 2003, we consulted all the relevant advisory committees and stakeholders on the proposed charges and the detailed arrangements of the charging scheme<sup>11</sup>. All the consulted organizations support the charging scheme in principle. However, the construction industry considers that the level of the charges is too high. The waste haulers continue to be the strongest objector and have reiterated their objection to the charging arrangement. A summary of the comments received from stakeholders in the latest consultation exercise is at **Annex C**.

C

25. We consulted the Panel on 24 November 2003 on our proposal to introduce the Bill into the Legislative Council, with a view to effecting the construction waste disposal charging scheme. The Panel supported our proposal, but had requested the Administration to continue consultation with the trades on the charging arrangements. We met with the waste haulers' associations again on 1 December 2003 to further discuss the charging arrangements. We will continue dialogue with the trade with a view to reaching consensus on the detailed arrangements.

## **PUBLICITY**

26. We will issue a press release today. A spokesperson will be available to answer media enquiries.

## **ENQUIRIES**

27. Enquiries about this Brief may be directed to Ms Doris

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<sup>11</sup> Between May and November 2003, we had 11 meetings with stakeholders and advisory bodies and

Cheung, Deputy Secretary for the Environment, Transport and Works (Environment and Transport) at telephone number 2136 3345 or fax number 2136 3304.

Environment, Transport and Works Bureau  
3 December 2003

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received 12 written submissions.

**WASTE DISPOSAL (AMENDMENT)(NO. 2) BILL 2003**

**CONTENTS**

Clause		Page
1.	Short title and commencement	1
2.	Interpretation	1
3.	Section substituted	
	16A. Prohibition of unlawful depositing of waste	2
4.	Section added	
	18A. Power of magistrate to order removal of waste from Government land or payment of Director's expenses	3
5.	Section added	
	23EA. Director's power to remove waste in case of imminent risk of adverse environmental impact	5
6.	When appeal may be brought	6
7.	Mental ingredients of certain offences under the Ordinance	6
8.	Regulations	7
9.	Amendment of Schedules	8
10.	Sections added	
	42. Charge or surcharge recoverable as civil debt	8
	43. Payment to facility operator under agreement with Government	8
11.	Schedule 12 added	
	Schedule 12      Facilities to which section 43 applies	9
12.	“擺放” substituted for “存放”	10
<b>Consequential amendments</b>		
<b>Waste Disposal (Appeal Board) Regulation</b>		
13.	Interpretation	10

14.	Commencement of an appeal	10
	<b>Waste Disposal (Refuse Transfer Station) Regulation</b>	
15.	Charge or surcharge recoverable as a civil debt	10

A BILL

To

Amend the Waste Disposal Ordinance.

Enacted by the Legislative Council.

**1. Short title and commencement**

(1) This Ordinance may be cited as the Waste Disposal (Amendment) (No. 2) Ordinance 2003.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for the Environment, Transport and Works by notice published in the Gazette.

**2. Interpretation**

(1) Section 2(1) of the Waste Disposal Ordinance (Cap. 354) is amended by repealing the definition of “trade waste” and substituting –

““trade waste” (行業廢物) means waste from any trade, manufacture or business, but does not include animal waste, chemical waste or construction waste;”.

(2) Section 2(1) is amended, in the definition of “waste”, by adding “construction waste,” before “household”.

(3) Section 2(1) is amended by adding –

““construction waste” (建築廢物) means any substance, matter or thing defined as construction waste by regulations made under section 33, but does not include chemical waste;

“designated waste disposal facility” (指定廢物處置設施) has the same meaning as in section 2 of the Waste Disposal (Designated Waste Disposal Facility) Regulation (Cap. 354 sub. leg. L);”.

### 3. Section substituted

Section 16A is repealed and the following substituted –

#### **“16A. Prohibition of unlawful depositing of waste**

(1) A person commits an offence if he deposits or causes or permits to be deposited waste in any place except with lawful authority or excuse, or except with the permission of any owner or lawful occupier of the place.

(2) For the purposes of subsection (1), if waste is deposited from a vehicle that is not being used as a public transport carrier, the following persons are regarded as causing the waste to be deposited –

- (a) the driver of the vehicle at the time when waste is deposited from it; and
- (b) any person employing that driver to drive the vehicle at that time.

(3) A person charged with an offence under subsection (1) has a defence if he proves that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(4) Without limiting the general nature of subsection (3), a person establishes the defence under that subsection if he proves –

- (a) that he acted under instructions from his employer; or
- (b) that he relied on information supplied by another person and had no reason to believe that the information was false or misleading,

and in either case that he took all steps reasonably open to him to ensure that an offence would not be committed.

(5) If a person wishes to rely on a defence involving an allegation –

- (a) that the commission of the offence was not due to his acting under the instructions of his employer but was due to an act or omission of another person; or
- (b) that he relied on information supplied by another person,

he is not entitled, without leave of the court, to rely on the defence unless he has served on the prosecutor, at least 7 clear days before the hearing, a notice giving all information he then had that identifies or assists in identifying the other person.

(6) For the purpose of subsection (2), “public transport carrier” (公共交通工具) means a public bus, public light bus, taxi, train, light rail vehicle or tramcar.”.

#### 4. Section added

The following is added –

**“18A. Power of magistrate to order removal of waste from Government land or payment of Director’s expenses**

(1) If a person is convicted of an offence under section 16A in respect of waste deposited on Government land, the magistrate may, either on application by the Director or on the magistrate’s own initiative, order the person to –

- (a) remove the waste from that land within the period specified in the order; or
- (b) if the Director has already removed the waste, pay the Director any expenses reasonably incurred by him in carrying out the removal.

(2) An order under subsection (1) is in addition to any penalty imposed under section 18 in respect of an offence under section 16A.

(3) A person who is subject to an order under subsection (1)(a) shall inform the Director immediately upon completion of the removal of the waste concerned by delivering by hand a written notice at his office or sending a written notice by registered post to his office address.

(4) A person who, without reasonable excuse, fails to comply with an order made against him under subsection (1) commits an offence and is liable –

- (a) to a fine of \$200,000 and to imprisonment for 6 months on the first occasion on which he is convicted of the offence;
- (b) to a fine of \$500,000 and to imprisonment for 6 months on each subsequent occasion on which he is convicted of the offence; and
- (c) to an additional daily penalty of \$10,000 for each day on which the offence is proved, to the satisfaction of the magistrate, to have continued.

(5) A person who, without reasonable excuse, fails to comply with subsection (3) commits an offence and is liable to a fine at level 3.

(6) For the purposes of this section, a reference to Government land is a reference to unleased land as defined in the Land (Miscellaneous Provisions) Ordinance (Cap. 28).”.

## **5. Section added**

The following is added –



**“23EA. Director’s power to remove waste in case of imminent risk of adverse environmental impact**

- (1) If the Director has reasonable grounds to believe that –
- (a) an offence under section 16A has been committed in a place;
  - (b) the waste deposited in the place is likely to give rise to an imminent risk of adverse environmental impact; and
  - (c) action needs to be taken immediately to reduce or eliminate that risk,

then the Director may enter the place to remove the waste.

(2) If a person is convicted of an offence under section 16A in respect of waste that has been removed by the Director under subsection (1), the magistrate may, on application by the Director, order the person to pay the Director any expenses reasonably incurred by him in carrying out the removal.

(3) The Director shall not under subsection (1) enter any domestic premises unless he has first obtained a warrant issued by a magistrate under subsection (4) for that purpose.

(4) A magistrate may, for the purpose of subsection (1), issue a warrant to the Director to enter any domestic premises if the magistrate is satisfied by information on oath that there are reasonable grounds to believe that –

- (a) an offence under section 16A has been committed in those premises, or in a place that is accessible only through those premises;
- (b) the waste deposited in those premises or in that place is likely to give rise to an imminent risk of adverse environmental impact; and

- (c) action needs to be taken immediately to reduce or eliminate that risk.

(5) For the purposes of this section, a reference to domestic premises includes a reference to a dwelling place on any private land.”.

## **6. When appeal may be brought**

(1) Section 24(1)(g) is amended by repealing the semicolon and substituting a full stop.

(2) Section 24(1)(h) is repealed.

(3) Section 24 is amended by adding –

“(1A) Subject to subsection (1B), a person who is aggrieved by a decision or direction of the Director made pursuant to regulations made under section 33 may also appeal to the Appeal Board established under section 25.

(1B) No appeal lies under subsection (1A) from any of the following –

- (a) the Director’s decision whether or not to accept any waste at a designated waste disposal facility;
- (b) the Director’s decision whether or not a charge is to be imposed in respect of any waste or class of waste accepted for disposal at a waste disposal facility as may be prescribed by regulations made under section 33.”.

(4) Section 24(2) is amended by adding “or (1A)” after “subsection (1)”.

## **7. Mental ingredients of certain offences under the Ordinance**

Section 31 is amended by adding “18A,” after “17,”.

## 8. Regulations

(1) Section 33(1) is amended by adding immediately after paragraph (e) –

“(eaa) any substance, matter or thing to be defined as construction waste;”.

(2) Section 33(1B)(a) is amended by adding “facility,” before “transfer”.

(3) Section 33(4) is amended by adding –

“(ba) confer on the Director the power –

(i) to refuse to accept any waste at a designated waste disposal facility in such circumstances as the Director may think fit;

(ii) to determine whether a charge is to be imposed in respect of any waste or class of waste accepted for disposal at a waste disposal facility as may be prescribed by regulations made under section 33;

(iii) to require any person who delivers any waste to a designated waste disposal facility to state the nature of the waste and give such other information as the Director may consider necessary to determine whether or not to accept the waste at that facility;

(iv) to close temporarily any designated waste disposal facility for a specified period of time;”.

(4) Section 33 is amended by adding –

“(6) If a Schedule to any regulations made under this section specifies –

(a) the premises used for or in connection with any of the relevant activities referred to in subsection (4);

- (b) the charges for the disposal of construction waste; or
- (c) the types of waste to be accepted at the premises for the disposal of waste,

the regulations containing the Schedule may provide that the Secretary may, by notice published in the Gazette, amend the Schedule.”.

## **9. Amendment of Schedules**

Section 37 is amended by adding –

“(3) Subject to the approval of the Financial Secretary, the Secretary may, by notice published in the Gazette, amend Schedule 12.”.

## **10. Sections added**

The following are added –

### **“42. Charge or surcharge recoverable as civil debt**

Any charge or surcharge payable under this Ordinance is recoverable by the Director as a civil debt due to the Government.

### **43. Payment to facility operator under agreement with Government**

(1) Those parts or percentages of any charges imposed by any regulations made under section 33 which are required for –

- (a) settling a payment that a facility operator is entitled to receive under an agreement with the Government ; or
- (b) clearing or closing any advance account opened for that purpose,

shall, subject to the approval of the Financial Secretary, not form part of the general revenue and may, in the case of paragraph (a), be paid to the facility operator in accordance with the agreement.

(2) For the purpose of subsection (1), “facility operator” (設施經營人) means a person who has entered into an agreement with the Government for the operation or management of a facility specified in Schedule 12.”.

## 11. Schedule 12 added

The following is added –

### “SCHEDULE 12

[ss. 37 & 43]

#### FACILITIES TO WHICH SECTION 43 APPLIES

Item	Name	Address	Boundaries delineated by drawing number/ plan number
1.	Tuen Mun Area 38 Temporary Construction Waste Sorting Facility	Southern side of Tuen Mun Area 38, near River Trade Terminal, Tuen Mun, N.T.	Plan Number P 20332-1
2.	Tseung Kwan O Area 137 Temporary Construction Waste Sorting Facility	Southern side of Tseung Kwan O Area 137, N.T.	Plan Number P 20332-2”.

**12. “擺放” substituted for “存放”**

Sections 16(2)(c) and (d), 20I(1) (the definition of “處置”) and 36(5) and (6) are amended by repealing “存放” wherever it appears and substituting “擺放”.

**Consequential Amendments**

**Waste Disposal (Appeal Board) Regulation**

**13. Interpretation**

(1) Section 2 of the Waste Disposal (Appeal Board) Regulation (Cap. 354 sub. leg. B) is amended, in the definition of “appellant”, by repealing “24(1)” and substituting “24”.

(2) Section 2 is amended, in the definition of “authority”, by repealing “24(1)” and substituting “24”.

**14. Commencement of an appeal**

Section 3 is amended by repealing “24(1)” and substituting “24”.

**Waste Disposal (Refuse Transfer Station) Regulation**

**15. Charge or surcharge recoverable  
as a civil debt**

Section 15 of the Waste Disposal (Refuse Transfer Station) Regulation (Cap. 354 sub. leg. M) is repealed.

**Explanatory Memorandum**

The main purposes of this Bill are to amend the Waste Disposal Ordinance (Cap. 354) (“the principal Ordinance”) to –

- (a) provide statutory basis for introducing a charging scheme for the disposal of construction waste at landfills, sorting facilities and public fill reception facilities; and
- (b) strengthen the control against illegal disposal of waste.

2. Clause 2 adds a definition for “construction waste”, revises the existing definitions of “trade waste” and “waste” as a consequence, and adopts the definition of “designated waste disposal facility” as used in the existing Waste Disposal (Designated Waste Disposal Facility) Regulation (Cap. 354 sub. leg. L) for the purposes of the principal Ordinance.

3. Clause 3 recasts the existing offence of unlawful depositing of waste under section 16A(1) of the principal Ordinance so that having lawful authority or excuse or the permission of the owner or lawful occupier of the place concerned will be an exception regardless of where the waste is deposited. Clause 3 further stipulates in the proposed section 16A(2) that the driver of a vehicle that is not a public transport carrier, from which waste is deposited, as well as the employer of that driver are to be regarded as the persons causing the waste to be deposited for the purpose of the offence in section 16A(1). Defences of reasonable precautions and due diligence are provided by the proposed section 16A(3) to (5).

4. Clause 4 adds a new section 18A to the principal Ordinance to empower a magistrate to order a person convicted of the offence of unlawful waste depositing under section 16A to remove the waste if deposited on Government land or to pay the Director of Environmental Protection (“the Director”) the expenses he has reasonably incurred in removing the waste. Failure without reasonable excuse to comply with the order or to notify the Director on completion of the waste removal is an offence under the proposed section 18A(4) and (5). Section 31 of the principal Ordinance is amended by clause 7 to make it clear that the prosecution is not required to prove a fault element in relation to any physical element of those offences.

5. Clause 5 adds a new section 23EA to the principal Ordinance to authorize the Director to enter a place to remove waste deposited in contravention of the proposed new section 16A if there is an imminent risk of adverse environmental impact requiring immediate remedial actions. However, the Director may not for this purpose enter any domestic premises without first obtaining a warrant issued by a magistrate. This new section also empowers a magistrate to order a person convicted of the offence under section 16A to pay the Director's expenses reasonably incurred in removing the waste.

6. Clause 6 amends section 24 of the principal Ordinance to provide that no appeal lies to the Appeal Board constituted under Part VI of that Ordinance from the Director's decision whether or not to accept any waste at a designated waste disposal facility or his decision whether a charge is to be imposed in respect of the disposal of any waste at a waste disposal facility. Cross-references in the Waste Disposal (Appeal Board) Regulation (Cap. 354 sub. leg. B) are consequentially revised by clauses 13 and 14.

7. Clause 8 amends section 33 of the principal Ordinance to –

- (a) empower the Chief Executive in Council to make regulations to provide for substances to be defined as construction waste;
- (b) allow regulations made under that section to confer on the Director certain powers in relation to the operation of designated waste disposal facility and the charging of waste disposal; and
- (c) empower the Secretary for the Environment, Transport and Works to amend any Schedule to those regulations specifying premises used for activities such as the collection or disposal of waste, charges for the disposal of construction waste, or the types of waste to be accepted at premises for waste disposal.

8. Clause 10 adds firstly a new section 42 to the principal Ordinance to provide that any charge or surcharge payable under that Ordinance is recoverable



by the Director as a civil debt due to the Government. Section 15 of the Waste Disposal (Refuse Transfer Station) Regulation (Cap. 354 sub. leg. M) becomes redundant as a result and is consequentially repealed by clause 15.

9. Clause 10 adds secondly a new section 43 to the principal Ordinance to provide for the netting-off and advance account arrangements for making payments to an operator of a waste disposal facility specified in the proposed Schedule 12 (added by clause 11) in accordance with his agreement with the Government. Clause 9 adds a new subsection (3) to section 37 of the principal Ordinance to empower the Secretary for the Environment, Transport and Works to amend Schedule 12 by Gazette notice subject to the approval of the Financial Secretary.

## **Implications of the Proposals**

### **Environmental Implications**

The proposed charging scheme is in line with the Polluter/User Pays Principle and will encourage construction waste reduction and recovery.

### **Economic Implications**

2. The charging scheme will affect mainly the construction industry, which is a major user of landfills, sorting facilities and public fill reception facilities. Based on the average amount of construction waste generated by works projects in past years, we estimate that the proposed charges would lead to an increase in the cost of construction projects by 0.2-2.4%. However, the actual cost impact should be smaller as the industry would have the economic incentive to adopt waste minimisation measures which in turn would reduce the amount of waste to be disposed of at the three facilities.

3. Privatisation or else contracting out the operation of the waste disposal facilities could help bring out explicitly the need, hitherto not well recognized by the waste disposers, for paying charge for cost recovery and for adherence to the polluter pays principle. Also, the introduction of private sector operators through competitive bidding could engender better efficiency and cost-effectiveness in running the facilities.

### **Civil Service Implications**

4. The charging scheme will be implemented through internal redeployment of staff resources within EPD and CED.

## **Sustainability Implications**

5. The proposed charging scheme contained in the Amendment Bill aligns with the Polluter/User Pays Principle and provides an incentive to reduce construction waste in particular. It should help slow down the depletion of the limited landfill capacity, and is conducive to the sustainability principle of minimising the use of non-renewable sources, and reusing and recycling waste. We would demonstrate to the public that the proposal has balanced interests or concerns of both the green groups and the construction industry and waste haulers.

## **Financial Implications**

6. The charging scheme will bring about revenue and savings to the public coffer. Assuming a 20% reduction in the amount of construction waste generated, and that the sorting facilities would operate to its full capacity, the gross revenue to the Government is estimated to be over \$540 million, and savings in contractual payment to the landfill operators could be over \$60 million.

7. If the two sorting facilities are to be Government facilities operated by contractors under the Civil Engineering Department, their recurrent expenditure is estimated to be about \$40 million per year. However, we wish to encourage the private sector to fund and operate the facilities and will thus invite open tender from the industry in late 2003.

8. If there is no private sector interest in funding and operating the sorting facilities, we would have to make available these facilities as Government facilities. We would use the revenue from the sorting charge to remunerate the operator(s) of the sorting facilities before crediting the remaining proceeds to the General Revenue Account (netting-off arrangement). This would obviate the need to seek additional resources from the centre and at the same time enable the sorting facilities to be provided which in turn would bring about additional revenue and savings to the Government.

**Construction Waste Disposal Charging Scheme**  
**Summary of Consultation with Stakeholders**

Between May and November 2003, we attended 11 meetings with the stakeholders and advisory bodies to discuss the detailed arrangements of the proposed construction waste disposal charging scheme. We also received 12 written submissions from various organisations. A list of the organizations consulted is at Appendix I.

2. All the consulted organisations supported the proposed charging scheme in principle. However, the waste haulers continued to object to the charging scheme, reiterating that they were not waste producers and therefore should not be responsible for the charges. A summary of the stakeholders' views on specific issues and the Administration's responses is provided at Appendix II.

**List of organizations consulted on the  
proposed construction waste disposal charging scheme**

a. Statutory/Advisory Bodies

- LegCo Panel on Environmental Affairs
- Advisory Council on the Environment (ACE)
- Business Advisory Group – Subgroup on Cutting Red Tape and Elimination of Over Regulation (BAG)
- Provisional Construction Industry Coordination Board (PCICB)
- Waste Reduction Committee (WRC)
- Waste Reduction Task Force for the Construction Industry

b. Professional Organisations

- Hong Kong Institution of Engineers (HKIE)
- Hong Kong Waste Management Association (HKWMA)

c. Green Groups

- Friends of the Earth (FoE)
- Conservancy Association (CA)
- Green Power (GP)

d. Business Sector

- The Real Estates Developers Association of Hong Kong (REDA)
- Hong Kong General Chamber of Commerce (HKGCC)
- Business Environment Council (BEC)
- The Hong Kong Construction Association (HKCA)
- The Hong Kong Association of Property Management Companies Limited (HKAPMC)
- The Hong Kong Construction Sub-Contractors Association

e. Waste Haulers Associations

- 香港廢物處理業協會（簡稱「廢物處理業協會」）
- 香港泥頭車司機協會（簡稱「泥車協會」）
- 汽車交通運輸業總工會（簡稱「交運總工會」）
- 香港九龍的士貨車商會有限公司（簡稱「貨車商會」）
- 港九及新界夾斗車商會有限公司（簡稱「夾斗車商會」）

**Summary of the stakeholders' views on specific issues  
and the Administration's responses**

**Stakeholders' views**

**The Administration's responses**

Charging level of \$125/tonne at landfills

BAG suggested to increase the landfill charge to \$200/tonne to provide financial incentive for the industry to use alternative construction methods.

The proposed charging level aims to recover the full capital and recurrent costs. We do not agree to set a charge arbitrarily.

Some BAG and ACE members suggested that the landfill charge should also reflect the costs of land and the replacement costs for the existing landfills i.e. the cost to build new landfills.

It is very difficult to include the land cost, which always fluctuates, in the charge.

The notion of replacement cost does not tie in with the User Pays Principle as it requires existing users to subsidize future users. Any replacement cost is only an arbitrary figure with no basis.

HKCA suggested lowering the landfill charge to \$60/tonne to cover only the operating cost, as the proposed charge was too high. It also commented that the capital cost should be borne by Government as infrastuctural investment.

The contractors should have included the waste disposal charges in the construction cost. Such charges should only constitute some 1-2% of the total construction cost and should not create financial burden to the construction industry.

Mandatory requirement for contractors with contracts costing over \$1 million to set up a billing account to pay charges direct

Some members of BAG and representatives of waste haulers associations commented that waste producers could abuse the \$1 million threshold by splitting contracts into multiple contracts costing below \$1 million to get around the mandatory requirement.

The \$1 million threshold follows the levies under the Industrial Training (Construction Industry) Ordinance and the Pneumoconiosis (Compensation) Ordinance. We are not aware of any splitting of contracts to avoid payment in those cases. Even if the contractors do split contracts, they can only avoid setting up of accounts, not paying the charges.

The waste haulers may request upfront payment of waste disposal charges before providing services for such suspicious cases.

Some waste haulers commented that the \$1 million threshold was too high for most renovation waste disposal contracts in private and public housing estates.

The threshold is for construction contracts, not waste disposal contracts, as construction works generate most construction waste.

On-site payment at the waste disposal facilities

Some waste haulers opposed to the on-site payment arrangement because this would increase the likelihood for the contractors to ask them to pay the charges upfront.

It is necessary to allow on-site payment to enable users with no billing account (e.g. infrequent users) to pay charges.

The waste haulers may ask for upfront payment of the disposal charges from waste producers before providing transportation services.



### 30-day payment period for account holders

HKCA and the waste haulers associations asked for longer payment period. HKCA wanted the payment period to be 42 days to tie in with the time for receiving interim payments in public works contracts. Waste haulers suggested a 3-month credit period.

As the invoice would be issued at the end of a month, this will give waste producers/haulers some 30- to 60-day credit period after the disposal of waste. This period should be sufficiently long to help ease the waste haulers' cash flow problem and allow them more time to recover the charges from the waste producers/clients.

### Suspension of payment for waste haulers with proof of the waste producers' default in payment

BAG, REDA and HKWMA doubted the need for such a provision as they considered bad debts as part of the commercial risks encountered by all businesses.

The proposed suspension of payment aims to address waste haulers' concern over possible bad debt problems.

Some BAG members suggested that there should be a time limit on such a provision, as waste haulers should get to know and avoid dealing with waste producers/clients that might default. In general, they considered that the government's proposal had adequately addressed the bad debt issue.

Waste haulers felt that the charging scheme would worsen their cashflow problem and increase the risk of bad debt by waste producers/clients because the waste disposal charges are much higher than their

We have already revised the charging scheme to incorporate measures to address waste haulers' concerns. For example, there will be a direct settlement system for major waste producers so that the latter will settle the bill with

transportation cost.

Government direct. Also, to allay their concern about cashflow problems, waste haulers would be billed on an accrual basis and be given a credit period of 30 days.

Some (medium size companies with several trucks) were concerned that if waste producers did not pay, the outstanding sum could easily exceed the ceiling handled by the Small Claims Tribunal. The time and expenses for taking legal actions would be much higher.

Small waste haulers do not consider this a problem. Hence, this problem only applies to the large waste hauling / transportation companies, which should be able to secure pre-payment of all or part of the charges, or seek reimbursement from the waste producers.

One waste hauler association supported statutory declaration as a form of proof that they could not recover the charges from the waste producers. Another association objected to this suggestion. However, three other waste haulers associations considered that they should not be responsible for the charges under any circumstances. They would not wish to commit their position with regard to statutory declaration.

We have already agreed to accept a claim lodged against the waste producers at the Small Claims Tribunal. We maintain an open mind regarding the use of statutory declaration as a form of proof for suspension of payment, but the waste haulers associations have split views over this matter.

One waste hauler association suggested collecting personal information of the waste producers and passing them on to the Environmental Protection Department to collect the charges direct from the waste producers.

We consider it not appropriate to collect waste producers' personal data through a third party i.e. waste haulers.

The waste haulers associations proposed a territory-wide registration by street number/lot number and suggested that the management companies, owners' incorporations, owners or developers setting up billing accounts for direct settlement of charges.

We consider it not appropriate to impose such statutory obligations on these parties as they may not be directly involved in the delivery of waste.

A meeting had been arranged for HKAPMC to meet with the waste haulers associations. HKAPMC stated that property management companies had no right to check whether any renovation works had taken place in the owners/residents' premises. Moreover, it was not fair to use the management fees collected from all owners/residents to cover the administrative expenses for operating the billing account.

#### Exemption of contracts awarded before the commencement of the charging scheme

BAG is concerned that developers and contractors might cooperate and evade the charges by having long-term contracts. It therefore suggested limiting the exemption period to 2 years.

Agreed. A time limit will be set for such exempted contracts. It is therefore not possible for developers and contractors to have long-term contracts to evade the charges.

HKCA considered that exemptions should also be granted to projects tendered before the commencement of the charging scheme.

We do not agree with the need to extend the exemption since there would be several months between the enactment of the legislation and commencement of the charging scheme to allow contractors to factor in the disposal costs in tenders.

## **Power to determine the acceptance of waste at different facilities by visual inspection**

HKCA and BEC were concerned that visual inspection to determine the acceptance of waste at different facilities could lead to confrontation between the staff and the waste haulers.

We agree that such problems might arise during the initial period of implementing the charging scheme. However, as it is not practicable in terms of time, space, logistical and cost requirements to carry out detailed inspection and weighing of the detailed content of each vehicle at the gate of facilities, there are no other practicable means but to ask site staff to make an immediate judgment based on visual inspection.

We plan to set up a tripartite working group with representatives from the construction industry, waste haulers and the facilities operators to resolve possible teething problems prior to the implementation of the scheme.

## Other related issues

### *Reusing inert construction waste in Mainland reclamation projects*

Since the charging scheme will add to the cost of projects, the PCICB and HKGCC suggested that the Government should consider exporting inert construction waste to other places.

We are actively exploring with Mainland authorities the feasibility of reusing the inert public fill generated from local construction activities in Mainland reclamation projects. However, it must be noted that even if this is viable, there will still be a cost involved, and this would be reflected in the public fill reception charge.

*Promoting waste management plan in construction industry*

FOE, CA, REDA, HKCA suggested that the Government should promote waste management/ recycling.

We have taken the lead in implementing waste management plans in public works projects and have recently introduced the 'Pay for Safety and Environment' scheme to provide financial incentive for contractors to do more in waste management and reduction. We are also developing waste management plans for use in the private sector.

*Promoting the use of recycled aggregates*

FoE, REDA and HKCA urged the Government to encourage building professionals to use recycled construction materials.

We are committed to promoting the use of recycled aggregates in Government projects so as to set an example for others to follow. We have amended the materials specifications to allow the use of recycled aggregates in public works. In July 2002, we set up a temporary recycling plant at Tuen Mun to process hard materials into recycled aggregates for use in public works. We are also collaborating with universities in researches to expand the use of recycled aggregates.