

**Bills Committee on
Waste Disposal (Amendment)(No.2) Bill 2003**

**List of concerns arising from the discussion
at the meeting on 27 May 2004**

Background

The Administration was requested to take into account the views expressed by members raised at the Bills Committee meeting on 27 May 2004 in finalizing the proposed “Waste Disposal (Charges for Waste Disposal) Regulation”, which has now been re-titled as “Waste Disposal (Charges for Disposal of Construction Waste) Regulation” (referred to as “the Charging Regulation” hereafter) to reflect more clearly that the charging scheme covers only construction waste.

Details

2. Please find the Administration’s responses as follows -

	Views expressed by members	The Administration’s responses
(a)	To review whether the term “principal contractor” tallies with its definition in section 2 and the propriety of using “primary contractor” as a substitute.	The term “principal contractor” is now replaced by the term “main contractor” of which the definition is in section 9(3) of the revised Regulation. There is no change in the meaning. We consider it more appropriate to adopt “main contractor” as the defined term as it is more commonly known within the trade than the term “primary contractor”.
(b)	To ensure that the drafting of section 3(2) is consistent with the relevant provisions in the Waste Disposal (Designated Waste Disposal Facility) (Amendment) Regulation 2004 (referred to as “the DWDF Amendment Regulation” hereafter) in the light of the possibility of compromising the policy intent of not allowing indiscriminate dumping at landfills.	The revised Charging Regulation (section 3) and DWDF Amendment Regulation (new section 3A) now make it clear that construction waste must conform to the appropriate inert content specifications in order to be accepted for disposal at the relevant facilities. Since landfills and refuse transfer stations also accept other types of waste not subject to charges, a mixed wasteload containing both construction waste and other waste

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		<p>is still acceptable at those facilities. However, to deter facility users from mixing or covering up a load of construction waste with other waste not subject to charges so as to evade charges, it is provided in section 14(3) of the Charging Regulation that a load containing construction waste and other waste is regarded as consisting entirely of construction waste for the purpose of calculating the landfill charge applicable to it.</p>
(c)	<p>To review the proposed daily fine under section 11(6) which seems to be on the high side. Reference should be made to similar provisions in other legislation to ascertain the propriety of the daily fine.</p>	<p>The proposal is accepted. The provision is now at section 9(7). The daily fine level has been reduced from \$5,000 to \$1,000.</p> <p>Under the environmental ordinances, the daily fines are about 5%-20% of the maximum penalty. The original proposed daily fine of \$5,000 which is equivalent to 10% of the maximum penalty is within the range.</p> <p>For other non-environmental ordinances, the range of daily fines appears to be very wide depending on the nature of the offence. Some are as low as 2% of the maximum penalty.</p> <p>In the light of comments from the Bills Committee, we have reviewed the fine level. As it is not uncommon for small and medium contractors to have contracts valued over \$1 million, and hence be subject to the provision, we consider it appropriate to lower the daily fine to \$1,000 (i.e. 2% of the maximum penalty).</p>

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(d)	To review the power of the Director of Environmental Protection (DEP) to impose conditions for granting billing accounts under section 12(2) which is too wide. Consideration should be given to making it clear that there are general conditions under which a billing account will be granted, and that only under exceptional circumstances (to be specified) should DEP impose other conditions on the granting of billing accounts.	The revised provisions concerning DEP's power to impose conditions on approving an application to establish a billing account are now set out in section 6(4) to (6). Distinction is made between "basic conditions" and "conditions of use". The Director may revoke the billing account on the breach of a basic condition but not on the breach of a condition of use. Examples of basic conditions include procedures on payment, arrangement of settlement of invoice etc.
(e)	To review whether the reference to "particulars" in section 12(6) is appropriate. Reference to "information" and "supporting materials" are made in sections s11(3) and 12(4)(a). The Administration should also consider whether the "particulars" are to be specified.	Instead of using the various terms of "particulars", "information" and "supporting materials", the redrafted provisions in sections 5 and 6 now refer to the supply of "information" and "documents" in relation to the application for a billing account. Section 5(2) provides that the application form is to specify the required information and documents.
(f)	To provide a defence of reasonable excuse under section 12(7) since the Administration has explained that even though such a defence was not expressly provided, a reasonable excuse raised by a defendant might still be recognized by the court. The penalty for contravention at level 5 is also too heavy.	The proposal is accepted. The then section 12(7) is now at section 6(8). Instead of making failure of an account-holder to inform DEP of any change in information an offence, we propose to revoke the billing account concerned as a consequence of non-compliance.
(g)	To consult the trade on the charging arrangement for disposal of inert	The proposal is accepted and the revised provisions are at sections 11

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	<p>construction waste carried by vessels at public fill reception facilities under section 13(3) and Schedule 3.</p>	<p>and 12. Civil Engineering and Development Department will operate a pre-approval system under which an user applying for the Director's approval for disposal of construction waste by vessel has to submit information / certified calculation by approved surveyors showing the the load capacity of the vessel and that load will be used for calculating the charge applicable to that particular vessel.</p> <p>The latest proposal is agreed by Hong Kong Construction Association.</p>
(h)	<p>To review the wording “from time to time” in section 14(1) and consider the propriety of using “monthly” or “periodically” as a substitute.</p>	<p>On review, we consider that the words “from time to time” are unnecessary and can be deleted. The then section 14(1) is now at section 18. It provides that an account-holder is to settle a notice of demand within 30 days from the date of the notice.</p>
(i)	<p>To express in section 15(7) the policy intent of allowing DEP to impose other conditions for granting a new billing account to the account-holder of a revoked billing account.</p>	<p>The then section 15(7) has been revised and is now at section 19(7).</p> <p>The original intention of requiring an account-holder of a revoked account to apply for a new billing account is to allow the Director to request the holder to pay a higher deposit.</p> <p>Having reviewed the arrangements, we consider it appropriate that, on the application of the account holder of a revoked billing account, the Director may, with or without conditions (e.g. to pay a larger amount of deposit for each chit), reinstate the account if all outstanding charges and surcharges</p>

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		under the revoked account have been paid.
(j)	To narrow the scope of "The exemption may apply to, but is not limited to" in section 16(1).	The then section 16(1) has been revised and is now at section 7(1). Under this section, an exemption account may be applied for only in respect of a construction contract awarded before the commencement of the Charging Regulation.
(k)	To review the scope of section 20(b) taking into account that waste haulers may inadvertently certify matters, such as waste content, which they may not have knowledge of.	<p>We understand that waste haulers will usually have the opportunity to witness their clients loading waste onto their empty vehicles. It will not be difficult for waste haulers to identify whether a wasteload is mixed with waste other than construction waste.</p> <p>However, we agree that it will not be reasonable to expect the waste haulers to tell the level of inert content of a load of construction waste.</p> <p>Hence, we propose to make it clear that waste haulers are not required to provide information on the level of inert content of the construction waste. A new section 4(4B) is added by the DWDF Amendment Regulation to this effect.</p>

Environment, Transport and Works Bureau
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