

LEGISLATIVE COUNCIL BRIEF

Waste Disposal Ordinance
(Chapter 354)

WASTE DISPOSAL (PERMITS AND LICENCES) (FEES) (AMENDMENT) REGULATION 2008

INTRODUCTION

At the meeting of the Executive Council on 15 January 2008, the Council ADVISED and the Chief Executive ORDERED that, under section 33 of the Waste Disposal Ordinance (WDO), the Waste Disposal (Permits and Licences) (Fees) (Amendment) Regulation 2008, as set out at Annex A, should be made.

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JUSTIFICATIONS

Control on Imported Non-hazardous Waste

2. The Waste Disposal Ordinance (Cap. 354) (WDO) stipulates that the import of non-hazardous waste into Hong Kong for disposal purposes requires a permit from the Director of Environmental Protection (DEP). Such permits are not normally issued and the disposal of imported non-hazardous waste in our waste facilities without such a permit is an offence. On the other hand, import of non-hazardous waste for recycling purposes does not require a permit, as the international trend is to encourage the free trade of non-hazardous waste which in turn would be conducive to promoting recycling. However, it is possible that such imported waste would ultimately be disposed of in Hong Kong, either because the original arrangement for recycling has fallen through, or the importer purposely imported the waste under the guise of recycling, whilst his real motive was to dispose of the waste in Hong Kong. In such circumstances, prosecution is difficult as the Government needs to establish the offender's intent to deceive at

the time of importation¹. Until now, this has been a key obstacle to achieving convictions.

3. To plug this loophole and conserve our valuable landfill space, an enhanced new control measure has been introduced in the Waste Disposal (Amendment) Ordinance 2006 enacted by the Legislative Council in April 2006. In particular, a new section 20DA has been introduced under the WDO (copy at Annex B) to make it an offence for a person to dispose of imported non-hazardous waste in our waste disposal facilities (such as landfills) without prior authorization from DEP. The new control measure will come into operation on 1 April 2008.

4 An authorization will not normally be granted unless the applicant can prove that he has exhausted all possible recycling outlets and all means to return the waste to the place of origin. The applicant will also have to bear the full cost of waste disposal at our waste facilities.

5. With the introduction of the authorization requirement, it will no longer be necessary to prove an offender's intent to deceive at the time of importation, thereby removing a major obstacle to successful prosecution. Furthermore, since an authorization will only be granted under exceptional circumstances, a person who fails to obtain an authorization will need to bear the cost of commercial storage until an alternative recycling outlet is identified, and the cost of returning the waste to the country of origin if an outlet cannot be identified. The new requirement will significantly enhance the deterrence against the importation of non-hazardous waste into Hong Kong for disposal purposes.

The Proposed Amendment

6. As an additional measure to deter the disposal of non-hazardous waste in Hong Kong, the new Section 20DA of the WDO stipulates that an application for an authorization shall be accompanied by a prescribed fee. To enable us to implement this new arrangement, we propose to amend the Waste Disposal (Permits and Licences) (Fees) Regulation to prescribe an application fee for the authorization.

7. In setting the level of the application fee, consideration has been given as to whether an element of penalty should be incorporated. Yet, given the stringent conditions under which an authorization will be granted, we anticipate only genuine cases where the original arrangement for recycling has fallen

¹ In the past three years, there were on average over 25 cases of identified attempts to dispose of imported non-hazardous waste in Hong Kong each year. The amount of waste involved each year ranged from 282 tonnes to 879 tonnes. On average, there are only two successful prosecutions each year.

through will apply for and be granted an authorization. As such, it would be more appropriate to charge the application fee in accordance with the “user pays” principle to recover the full administrative cost incurred in processing the application. This was supported by the Legislative Council during the deliberation of the Waste Disposal (Amendment) Bill 2005. On this basis, the application fee will be \$11,250. The cost computation is shown at Annex C.

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THE AMENDMENT REGULATION

8. The Waste Disposal (Permits and Licences) (Fees) (Amendment) Regulation 2008 at Annex A prescribes the application fee for obtaining an authorisation under section 20DA of the WDO.

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LEGISLATIVE TIMETABLE

9. The legislative timetable will be –

Publication in the Gazette	25 January 2008
Tabling at the Legislative Council	30 January 2008
Commencement	1 April 2008

IMPLICATIONS OF THE PROPOSAL

10. The proposal to introduce a prescribed application fee for implementing tighter control over the disposal of imported non-hazardous waste has environmental, sustainability, financial and economic implications as set out at Annex D. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal does not affect the current binding effect of the ordinance. It has no civil service or productivity implications.

D

PUBLIC CONSULTATION

11. The proposal has incorporated the suggestion of the Legislative Council. We have also informed the trade of the new statutory requirement and the associated administrative arrangement for the disposal of imported non-hazardous waste. The Advisory Council on the Environment was consulted on the proposal at its meeting on 15 October 2007. Members supported the

proposal.

PUBLICITY

12. A press release will be issued when the Amendment Regulation is gazetted. A spokesman will be available to answer media and public enquiries.

ENQUIRIES

13. Enquiries about this Brief may be directed to Mr. Patrick LEI, Principal Environmental Protection Officer of the Environmental Protection Department at telephone number 2594 6110 or fax number at 3121 5708.

Environmental Protection Department
January 2008

**WASTE DISPOSAL ORDINANCE
(CHAPTER 354)**

**WASTE DISPOSAL (PERMITS AND LICENCES)
(FEES) (AMENDMENT) REGULATION 2008**

ANNEXES

- Annex A The Waste Disposal (Permits and Licences) (Fees) (Amendment) Regulation 2008
- Annex B The new Section 20DA of the Waste Disposal Ordinance extracted from the Waste Disposal (Amendment) Ordinance 2006
- Annex C Cost computation for the proposed new fee for application for disposal of imported non-hazardous waste
- Annex D Implications of the Proposal

**WASTE DISPOSAL (PERMITS AND LICENCES)
(FEES)(AMENDMENT) REGULATION 2008**

(Made by the Chief Executive in Council under section 33 of the Waste Disposal Ordinance (Cap. 354) after consultation with the Advisory Council on the Environment)

1. Commencement

This Regulation shall come into operation on 1 April 2008.

2. Title amended

The title to the Waste Disposal (Permits and Licences)(Fees) Regulation (Cap. 354 sub. leg. D) is amended by adding “, **AUTHORIZATIONS**” after “**PERMITS**”.

3. Fees for permits and licences

(1) Section 4 is amended, in the heading, by adding “, **authorizations**” after “**permits**”.

(2) Section 4 is amended by adding “20DA(3)(b),” before “21(3)”.

4. Fees

Schedule 2 is amended by adding –

“1C. Authorization required for the disposal of imported waste referred to in section 20DA(2) of the Ordinance 11,250”.

Clerk to the Executive Council

COUNCIL CHAMBER

2008

Explanatory Note

This Regulation prescribes the application fee to be paid in respect of an authorization required for the disposal of waste the import of which into Hong Kong does not require a permit, referred to in section 20DA(2) of the Waste Disposal Ordinance (Cap. 354).

10. Section added

The following is added—

**“20DA. Authorization for disposal
of certain imported waste**

(1) This section applies only to waste the import of which into Hong Kong does not require a permit under section 20A, and the reference to “imported waste” (進口廢物) in this section shall be construed as a reference to waste of this category that has been imported into Hong Kong.

(2) The disposal of any imported waste at a designated waste disposal facility requires an authorization granted by the waste disposal authority under this section.

(3) An application for the authorization shall be—

- (a) made in writing in such form as the waste disposal authority may specify; and
- (b) accompanied by such application fee as may be prescribed by regulations made under section 33.

(4) On receipt of an application made by any person (“the applicant”) for the authorization, the waste disposal authority may, subject to subsection (5)—

- (a) grant the authorization, with or without conditions; or
- (b) refuse to grant the authorization,

and shall notify the applicant of his decision and, in the case of refusal, the reasons for such refusal.

(5) The waste disposal authority shall not grant an authorization under subsection (4)(a) unless the applicant proves to the satisfaction of the authority that—

- (a) the import of the waste concerned into Hong Kong did not require a permit under section 20A;
- (b) it is not practicable to make alternative arrangement for the imported waste to be used (whether in Hong Kong or elsewhere) for the purpose of reuse, or a reprocessing, recycling or recovery operation (“the specified purpose”), in a manner acceptable to the authority; and
- (c) it is not practicable for the applicant to return, or cause the importer of the imported waste to return, the imported waste to the state of export,

and in determining the practicability of the matters specified in paragraphs (b) and (c), the lack of financial means to carry out an alternative arrangement or return the imported waste to the state of export (as the case may be) shall not be a relevant consideration.

(6) Without prejudice to the generality of subsection (4)(a), a condition attached to an authorization may—

- (a) require the applicant to pay such charge as the waste disposal authority may determine for recovery of the cost of disposal of the imported waste;
- (b) specify the manner, place and time of the disposal;
- (c) specify the arrangements to be made and the procedures to be observed in relation to the disposal.

(7) The waste disposal authority may require an applicant to furnish him with such information as he considers necessary for determining whether or not to grant the authorization, and in particular, such information may relate to—

- (a) the details of the original arrangement made for the imported waste to be used for the specified purpose after the import;
- (b) the reasons why the original arrangement cannot be carried out;
- (c) proof of any attempt made in making alternative arrangement for the imported waste—
 - (i) to be used (whether in Hong Kong or elsewhere) for the specified purpose;
 - (ii) to be returned to the state of export.

(8) The provisions in this section shall be in addition to and shall not derogate from any other provision of this Ordinance.”.

COST COMPUTATION

**Application for Disposal of Imported Non-Hazardous Waste
under the Waste Disposal Ordinance**

2008-09 Price

	\$
Staff Costs	9,564
Departmental Expenses	910
Accommodation Costs	346
Depreciation	50
Cost of services provided by other department	0
Central Administrative Overheads	368

Total Cost (a)	<u>11,238</u>
Estimated Number of Cases (b)	1
Unit Cost (\$) [(a) / (b)]	<u>11,238</u>
Proposed Fee (\$)	<u>11,250</u>

Implications of the Proposal

Environmental Implications

The proposal to introduce a new application fee for an authorization to dispose of imported non-hazardous waste will have positive environmental implications, since waste importers and owners will have to plan carefully beforehand to ensure that their imported waste can be properly recycled so as to avoid the waste being stranded in Hong Kong due to the lack of recycling outlets.

Sustainability Implications

2. The introduction of a new application fee for an authorization for the disposal of imported non-hazardous waste would deter attempts to import non-hazardous waste for disposal in Hong Kong, and hence help conserve our limited landfill capacity and contribute towards the sustainable development of Hong Kong.

Financial Implications

3. The proposal has negligible financial implications in terms of revenue generation, since authorization will only be granted under exceptional circumstances for disposal of imported non-hazardous waste at local landfills.

Economic Implications

4. The new application fee for the disposal of imported non-hazardous waste will not in general have any significant cost impact on the recycling trade, since it is not a usual practice for the waste importers or owners to dispose of their waste, which was originally destined for recycling, at the landfills.