

立法會
Legislative Council

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by the Administration)

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**Subcommittee on Waste Disposal (Charges for Disposal of Construction Waste)
Regulation (Amendment of Schedules) Notice 2016**

**Minutes of first meeting
held on Tuesday, 24 May 2016, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

- Members present** : Hon Tony TSE Wai-chuen, BBS (Chairman)
Hon LEE Cheuk-yan
Hon Cyd HO Sau-lan, JP
Hon Frankie YICK Chi-ming, JP
Hon YIU Si-wing, BBS
Dr Hon Kenneth CHAN Ka-lok
Dr Hon KWOK Ka-ki
Dr Hon Elizabeth QUAT, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
- Member absent** : Hon CHAN Hak-kan, JP
- Public Officers attending** : For item II

Mr Donald NG
Deputy Director of Environmental Protection (4)
Environmental Protection Department

Mr Samson LAI
Assistant Director (Waste Management Policy)
Environmental Protection Department

Mr David WONG
Assistant Director (Environmental Compliance)
Environmental Protection Department

Mr Peter MOK
Chief Engineer (Fill Management)
Civil Engineering and Development Department

Mr Gary LI
Government Counsel
Department of Justice

Clerk in Attendance : Mr Derek LO
Chief Council Secretary (1)5

Staff in attendance : Miss Evelyn LEE
Assistant Legal Adviser 10

Mr Ken WOO
Senior Council Secretary (1)5

Ms Michelle NIEN
Legislative Assistant (1)5

Action

I Election of Chairman

Mr LEE Cheuk-yan, the Subcommittee member who had the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Subcommittee. Mr LEE invited nominations for the chairmanship of the Subcommittee.

2. Ir Dr LO Wai-kwok nominated Mr Tony TSE and the nomination was seconded by Mr Frankie YICK. Mr Tony TSE accepted the nomination. There being no other nominations, Mr Tony TSE was declared Chairman of the Subcommittee.

3. Members agreed that there was no need to elect a Deputy Chairman.

II Meeting with the Administration

(L.N. 60 of 2016

— Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Amendment of Schedules) Notice 2016

Action

File Ref: EP CR 9/65/7	—	Legislative Council Brief
LC Paper No. LS52/15-16	—	Legal Service Division Report
LC Paper No. CB(1)947/15-16(01)	—	Marked-up copy of relevant provisions to be amended by the subsidiary legislation prepared by the Legal Service Division (Restricted to members)
LC Paper No. CB(1)947/15-16(02)	—	Background brief prepared by the Legislative Council Secretariat)

4. The Subcommittee deliberated (index of proceedings attached at the **Appendix**).

Follow-up actions to be taken by the Administration

5. The Administration was required to provide information on and responses to the following issues and questions:

Information on cases of fly-tipping and illegal land filling and their number

- (a) the number of cases in which prosecutions were instituted based on the images captured by surveillance cameras installed at black spots of fly-tipping and the number of such cases in which the prosecutions were successful;
- (b) information on cases of illegal dumping of construction waste near Kingswood Villas in Tin Shui Wai, Chuen Lung Village in Tsuen Wan and Tsing Chuen Wai in Tuen Mun and the respective investigation reports;

Measures to prevent fly-tipping and illegal land filling

- (c) the measures to be taken by the Administration to prevent fly-tipping and illegal land filling activities after the Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Amendment of Schedules) Notice 2016 ("the Amendment Notice") came into operation on 7 April 2017, given that more

Action

fly-tipping and illegal land filling activities might arise upon the implementation of the proposed new charges under the Amendment Notice;

- (d) whether the Administration would consider increasing the penalties for construction waste fly-tipping and illegal land filling so as to enhance the deterrent effect;

Land filling activities on private land

- (e) whether construction waste producers were allowed under the current legislation to deliver waste to places other than fill banks or landfills for dumping; whether in the market, there were construction waste producers who had entered into service agreements with construction waste collection and delivery contractors for dumping construction waste on specified private land instead of delivering such waste to fill banks or landfills for disposal;
- (f) given that land filling activities on private land were not unlawful as long as the prior consent of the land owner had been obtained, the Environmental Protection Department ("EPD") had been notified and stabilization works to the fill slope had been carried out, whether the Administration would consider plugging the loopholes by amending the legislation to replace the above mechanism of notifying EPD with the requirement of registering with EPD and obtaining approval from relevant departments;
- (g) whether the Administration would consider amending the legislation to extend the application of restrictions on the height and size of fill slopes on Government land to private land;

Criminal liability for fly-tipping of construction waste and illegal land filling

- (h) whether the liability would be borne by the driver of the waste collection vehicle concerned, the transport company engaged or the construction waste producer in case the company engaged to collect and deliver construction waste failed to deliver the waste to a fill bank or a landfill in accordance with the terms of engagement and disposed of the waste at other places instead; and

Action

The engagement of contractors by the Food and Environmental Hygiene Department to clear refuse from streets

- (i) Mr Frankie YICK pointed out that the Food and Environmental Hygiene Department ("FEHD") often required the contractors it engaged for clearing refuse from streets and litter bins to clear construction waste dumped in the streets as well in order to cut expenses. As a result, such contractors had been prosecuted for dumping construction waste while dumping waste at refuse transfer stations. Mr YICK requested that a joint meeting be held by EPD and FEHD to meet with relevant trade representatives and himself to discuss the issues concerned and explore feasible solutions.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(1)985/15-16(02) on 1 June 2016.)

Invitation of public views

6. The Subcommittee agreed that subject to the extension of the scrutiny period of the Amendment Notice and the corresponding arrangements regarding the meeting time and venue, the Chairman would consider whether it was necessary to hold another meeting to receive views from the public on the Amendment Notice.

Legislative timetable

7. The Chairman concluded that the Subcommittee had completed scrutiny of the provisions of the subsidiary legislation. Mr Frankie YICK indicated that he would consider proposing an amendment to the Amendment Notice to postpone its commencement date if the Administration did not accede to his request that the Administration should hold a joint meeting as detailed in paragraph 5(i) above.

8. The Subcommittee agreed that the Chairman would move a proposed resolution at the Council meeting of 1 June 2016 to extend the scrutiny period of the Amendment Notice to the Council meeting of 29 June 2016.

(Post-meeting note: Members were informed vide LC Paper No. CB(1)1021/15-16 issued on 10 June 2016 that:

Action

- (a) the proposed resolution to extend the scrutiny period of the Amendment Notice was not dealt with at the Council meeting of 8 June 2016. As such, the scrutiny period of the Amendment Notice expired after that Council meeting; and
- (b) the Chairman would report the Subcommittee's deliberations to the House Committee on 17 June 2016.)

III Any other business

- 9. There being no other business, the meeting ended at 12:18 pm.

Council Business Division 1
Legislative Council Secretariat
19 July 2016

**Subcommittee on Waste Disposal (Charges for Disposal of Construction Waste)
Regulation (Amendment of Schedules) Notice 2016**

**Proceedings of the first meeting
on Tuesday, 24 May 2016, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Election of Chairman			
000118 – 000331	Mr LEE Cheuk-yan Ir Dr LO Wai-kwok Mr Tony TSE Mr Frankie YICK	Election of Chairman Mr Tony TSE was elected Chairman of the Subcommittee on Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Amendment of Schedules) Notice 2016 ("the Subcommittee").	
Meeting with the Administration			
000332 – 000403	Chairman Ms Cyd HO	Ms Cyd HO expressed concern about the aggravation of the problem of construction waste fly-tipping and illegal land filling upon the implementation of the proposed new charges under the Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Amendment of Schedules) Notice 2016 ("the Amendment Notice"). She considered it necessary for the Subcommittee to hold a public hearing and invite relevant parties to give views, so as to understand the difficulties faced by drivers of construction waste collection vehicles.	
000404 – 000733	Chairman Administration	Briefing by the Administration on the Amendment Notice.	
000734 – 001248	Chairman Dr Kenneth CHAN Administration	Dr Kenneth CHAN indicated support for the Amendment Notice from Members belonging to the Civic Party. He was concerned about the sprawling of construction waste fly-tipping and illegal land filling activities from brownfield sites in some areas of the New Territories to Deep Bay. Considering that the Subcommittee had the responsibility to adopt the views of the community on relevant issues, he suggested that the Subcommittee should hold a public hearing and invite green groups and drivers of construction waste collection vehicles to give their views at the hearing, with a view to assisting the Administration to enhance the complementary work to combat such illegal activities, their monitoring and penalties. He urged the Environmental Protection	

Time marker	Speaker	Subject(s)	Action required
		<p>Department ("EPD") to join hands with relevant departments such as the Planning Department, the Lands Department and the Home Affairs Department to combat such illegal activities.</p> <p>The Administration responded that it was very concerned about the cases of construction waste fly-tipping and illegal land filling and had been maintaining communication with relevant departments to address the problems concerned.</p>	
001249 – 001742	Chairman Mr Frankie YICK Administration	<p>Mr Frankie YICK pointed out that the Food and Environmental Hygiene Department ("FEHD") often required the contractors it engaged for clearing refuse from streets and litter bins to clear construction waste dumped in the streets as well in order to cut expenses. As a result, such contractors had been prosecuted for dumping construction waste while dumping waste at refuse transfer stations. However, in order to be awarded further contracts of FEHD, these contractors could not but stay silent. Given that increasing the charges for disposal of construction waste might aggravate the problem of construction waste fly-tipping, Mr YICK suggested inviting representatives from FEHD and the trade to the next meeting to explore the problem and improvement measures. He also asked the Administration to explain the measures in place to help track the whereabouts of construction waste collection vehicles.</p> <p>The Administration responded that EPD and relevant departments had been coordinating the frontline work. The Administration would refer members' concerns to FEHD for follow-up.</p>	
001743 – 002314	Chairman Mr LEE Cheuk-yan Administration	<p>While supporting charging on the "polluter-pays" principle, Mr LEE Cheuk-yan was concerned that increasing the charges for disposal of construction waste in the absence of effective measures to curb construction waste fly-tipping and illegal land filling activities might give rise to more fly-tipping and illegal land filling activities. In this regard, he enquired about the measures to be taken by the Administration to prevent fly-tipping and illegal land filling activities after the Amendment Notice came into operation on 7 April 2017.</p> <p>In response, the Administration concurred that while contemplating an increase in the disposal charges, it should also keep the actual situation in</p>	The Administration to take follow-up action as per paragraph 5(c) of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>view and explore measures to enhance efforts to combat fly-tipping and illegal land filling activities. The Administration was exploring, inter alia, the use of appropriate technology to enhance the existing control, including planning for a sustained deployment of an extended surveillance camera system to achieve a greater deterrent effect on fly-tipping at black spots. The Administration was also exploring the use of positioning technology to help track and log the activities of construction waste collection vehicles. The Administration would maintain communication with the affected trades regarding the trial schemes concerned. In addition, EPD would, in cooperation with relevant departments, continue to enhance the collection of intelligence and information regarding black spots of fly-tipping, erect fences and barricades at such black spots, and step up law enforcement including conducting patrols and ambush operations.</p> <p>Unconvinced by the Administration's reply, Mr LEE pointed out that with the emergence of black spots of fly-tipping and illegal land filling in various locations in the New Territories, it would be of no avail to merely monitor such black spots without taking effective enforcement actions. The existing inter-departmental coordination mechanism mentioned by the Administration obviously was unable to effectively forestall and deal with the soil filling situation in the New Territories. Moreover, as pointed out by the Hong Kong Dumper Trucks Drivers Association, although two trials had been conducted on the installation of position technology in construction waste collection vehicles, the Administration indicated that it would conduct a third trial. He was perplexed by such arrangement.</p>	
002315 – 002938	Chairman Ms Cyd HO Administration	Ms Cyd HO enquired about the number of cases in which prosecutions had been instituted based on the images captured by surveillance cameras installed at black spots of fly-tipping and the number of such cases in which the prosecutions had been successful. She also noted that at present, land filling activities on private land were not unlawful as long as slope stabilization works had been carried out. She enquired whether the Administration knew if in the market, there were construction waste producers who had entered into service agreements with construction waste collection and delivery contractors for dumping	The Administration to take follow-up action as per paragraphs 5(a) and 5(e) of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>construction waste on specified private land instead of delivering such waste to fill banks or landfills for disposal.</p> <p>The Administration advised that the service agreements between private construction waste producers and their waste collection and delivery contractors were commercial arrangements.</p>	
002939 – 003355	Chairman Mr YIU Si-wing Administration	<p>Mr YIU Si-wing supported the proposed charge increase. He emphasized the need to clearly set out the criminal liability of construction waste producers for improper treatment of waste to prevent construction waste collection and delivery contractors from being held legally liable for it.</p> <p>The Administration pointed out that the persons establishing billing accounts for disposal of waste at landfill facilities were mostly construction waste producers. The amount of fly-tipped construction waste cleared by the administration every year accounted for less than 0.1% of the total amount of construction waste properly treated every year. This showed that the waste collection and delivery trade was well aware of the lawful way to dispose of construction waste properly.</p>	
003356 – 003816	Chairman Dr Elizabeth QUAT Administration	<p>While expressing support for the proposed charge increase, Dr Elizabeth QUAT was concerned about how construction waste fly-tipping and illegal land filling could be effectively prevented after the charge increase. She supported the use of positioning technology to help track the whereabouts of construction waste collection vehicles, and enquired if the Administration would consider increasing the penalties for construction waste fly-tipping and illegal land filling so as to enhance the deterrent effect.</p> <p>The Administration advised that under the Waste Disposal Ordinance ("WDO") (Cap. 354), before a person could deposit construction waste on private land, the person was required to obtain the prior consent of the land owner and notify EPD. It should be noted that the notification did not imply full compliance of the depositing activity with other legislative requirements. Under the notification mechanism, other relevant departments would be informed that a construction waste depositing activity might commence on a particular private land lot, so that such departments might</p>	The Administration to take follow-up action as per paragraph 5(d) of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>take follow-up actions under their respective purview and ensure compliance of the proposed depositing activity with relevant legislative requirements. A heavy penalty had already been imposed on the depositing activities in contravention of the aforesaid requirement under WDO.</p> <p>The Administration further advised that when amendments had been made to WDO in 2013, there had been views in favour of introducing an authorization system to subject construction waste depositing activities on private land to the authorization of the Director of Environmental Protection ("DEP"). However, requiring DEP to authorize such depositing activities based on factors other than environmental protection (such as land use and slope safety) would go beyond DEP's authority under environmental legislation. The legality and reasonableness of such authorization would also be subject to challenge. The decision to introduce the existing mechanism of notifying EPD had been made by the Administration after extensive consultation and discussion.</p>	
003817 – 004752	Chairman Mr LEE Cheuk-yan Administration	<p>In order to study the inadequacies in the existing monitoring mechanism, Mr LEE Cheuk-yan requested for information on cases of illegal dumping of construction waste near Kingswood Villas in Tin Shui Wai, Chuen Lung Village in Tsuen Wan and Tsing Chuen Wai in Tuen Mun and the respective investigation reports. He pointed out that there existed an enormous law enforcement loophole in the existing mechanism under which construction waste could be disposed of on private land as long as the consent of the land owner had been obtained. He opined that the Administration should consider plugging the loophole completely by amending the legislation to replace the above mechanism of notifying EPD with the requirement of registering with EPD and obtaining approval from relevant departments, and supplementing it with the use of positioning technology.</p>	The Administration to take follow-up action as per paragraphs 5(b) and 5(f) of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration responded that the relevant departments had made a report on the incident of soil filling near Kingswood Villas in Tin Shui Wai under their respective purview at the meeting of the Panel on Environmental Affairs on 25 April 2016.</p>	
004753 – 005712	Chairman Dr KWOK Ka-ki Administration	<p>Dr KWOK Ka-ki supported the proposed charge increase. Given that soil filling was found on private land in various rural areas in the New Territories, he expressed disappointment at the law enforcement efforts of the Administration. He was concerned that private land owners might be incentivized by a change of the land use, etc. to allow land filling activities to take place, and that the situation might deteriorate following an increase in the charges for the disposal of construction waste. He asked about the measures to be taken by Administration to target at such activities. He also proposed that the Subcommittee should hold a public hearing and invite interested persons and representatives of the Development Bureau and the relevant departments under it to the hearing.</p> <p>The Chairman pointed out that the Amendment Notice was intended to adjust upwards the various charges for the disposal of construction waste and with its clear and simple provisions, the members present generally showed support for the Amendment Notice. He shared members' concern that more construction waste fly-tipping and illegal land filling activities might arise after the Amendment Notice came into operation. However, given that the scrutiny period of the Amendment Notice was tight and members' concerns involved policy issues and the work of different government departments, he proposed that members' concerns be referred to the relevant Panel for follow-up, and subject to the extension of the scrutiny period of the Amendment Notice, consideration be given to whether a public hearing should be held.</p>	
005713 – 010703	Chairman Ms Cyd HO Administration	<p>Ms Cyd HO asked for clarification on the following issues:</p> <p>(a) whether construction waste producers were allowed under the current legislation to deliver waste to places other than fill banks or landfills for dumping; and</p>	<p>The Administration to take follow-up action as per paragraph 5(e) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		<p>(b) whether the liability would be borne by the driver of the waste collection vehicle concerned, the transport company engaged or the construction waste producer in case the company engaged to collect and deliver construction waste failed to deliver the waste to a fill bank or a landfill in accordance with the terms of engagement and disposed of the waste at other places instead.</p> <p>The Administration explained that as it had been encouraging works contractors to reuse reusable inert materials in suitable projects, it was not mandatory under existing legislation for construction waste to be delivered to fill banks or landfills for disposal.</p> <p>Ms HO indicated that although land filling activities on private land might not be unlawful, the emergence of soil slopes everywhere was not acceptable to Hong Kong society. She urged the Administration to plug the loophole by amending the legislation to, for example, extend the application of restrictions on the height and size of fill slopes on Government land to private land.</p> <p>The Chairman urged the Administration to formulate measures to address members' concern that increasing the charges might aggravate the problem of construction waste fly-tipping and illegal land filling.</p>	<p>The Administration to take follow-up action as per paragraph 5(h) of the minutes</p> <p>The Administration to take follow-up action as per paragraph 5(g) of the minutes</p>
010704 – 011013	Chairman Mr Frankie YICK Administration	<p>Mr Frankie YICK opined that compared with holding a public hearing by this Subcommittee, it would be more effective to identify another forum outside the Subcommittee where Members and deputations interested in this subject would be invited to meet with relevant government departments to discuss information to be provided by the Administration on relevant cases and explore improvement measures.</p> <p>Mr YICK also requested that a joint meeting be held by EPD and FEHD to meet with relevant trade representatives and himself to discuss the difficulties currently faced by the trade as mentioned by him above and explore ways to overcome such difficulties. He indicated that if his request was not acceded to, he would consider proposing an amendment to the Amendment Notice to postpone its commencement date.</p>	<p>The Administration to take follow-up action as per paragraph 5(i) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		The Administration undertook to relay Mr YICK's request to FEHD for follow-up.	
011014 – 011646	Chairman Mr LEE Cheuk-yan Administration	Mr LEE Cheuk-yan enquired whether more resources would be put in to combat construction waste fly-tipping and illegal land filling activities after the proposed charge increase took effect. The Administration advised that it would continue to enhance inter-departmental coordination and sought additional resources under the established mechanism as necessary.	
011647 – 012036	Chairman Ms Cyd HO	Ms Cyd HO expressed her views on whether the Subcommittee should hold a public hearing.	
<i>Examination of the provisions of the Amendment Notice section by section</i>			
012037 – 012540	Chairman Administration	Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Amendment of Schedules) Notice 2016 (L.N. 60 of 2016) <u>Section 1 - Commencement</u> <u>Section 2 - Waste Disposal (Charges for Disposal of Construction Waste) Regulation amended</u> <u>Section 3 - Schedule 1 amended (charges for disposal of construction waste at landfills)</u> <u>Section 4 - Schedule 2 amended (charges for disposal of construction waste at refuse transfer stations)</u> <u>Section 5 - Schedule 3 amended (charges for disposal of construction waste at sorting facilities)</u> <u>Section 6 - Schedule 4 amended (charges for disposal of construction waste at public fill reception facilities)</u> Members raised no query.	
012541 – 013329	Chairman Ms Cyd HO Mr Frankie YICK Dr Kenneth CHAN	Members agreed that the scrutiny period of the Amendment Notice should be extended to 29 June 2016. Members reiterated their views on holding a public hearing by the Subcommittee.	

Time marker	Speaker	Subject(s)	Action required
013330 – 013400	Chairman	Meeting arrangement	

Council Business Division 1
Legislative Council Secretariat
19 July 2016