

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

**List of follow-up actions arising from the discussion
at the meeting on 13 May 2004**

	Follow up actions	The Administration's responses
(1)	To include in the speech to be delivered by the Secretary for the Environment, Transport and Works at the resumption of Second Reading debate of the Bill measures which the Administration will take to respond to public concern about indiscriminate demolition of buildings by real estate developers.	From the waste management perspective, we support measures that could reduce waste. We are consulting the relevant bureaux/departments and will endeavour to come up with measures to prevent indiscriminate demolition of buildings. We will include possible measures in the speech to be delivered by the Secretary for the Environment, Transport and Works at the resumption of Second Reading debate.
(2)	To provide the number and details of prosecutions under section 9(1)(b) of the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132 sub. leg. BK) in 2003.	In 2003, the number of prosecutions under section 9(1)(b) of the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132 sub. leg. BK) is 29. All were convicted and the penalties imposed on these convicted cases ranged from \$800 to \$2,000.

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(3)	<p>To consider requiring those who are registered as renovation contractors under the Business Registration Ordinance (Cap. 310) to open billing accounts.</p> <p>To also consider lowering the threshold of \$1 million for which penalty will be imposed in the event of failure to open a billing account.</p>	<p>At present, business operators are free to describe the nature of their businesses in the manner they like. There is also no defined meaning of "renovation" or "decoration" under the Business Registration Ordinance. If we require all companies registered as "renovation" companies to open billing accounts, those which do not actually carry out renovation works (e.g. companies selling renovation items) may also be included. This will create undue inconvenience for these companies.</p> <p>On the other hand, some renovation works can be undertaken by companies that do not describe themselves as "renovation" or "decoration" companies. In addition, a lot of renovation works may not involve the hiring of contractors. Hence, we consider that proposal to require those who are registered as renovation contractors under the Business Registration Ordinance to open billing accounts not practicable or enforceable.</p> <p>Under the current proposal, any principal contractor who undertakes construction works valued \$1 million or above will be required to open an account and pay waste disposal charges directly to the Government. Failure to apply to the Director of Environmental Protection for a billing account within 14 days after award of the contract for a billing account will be an offence.</p> <p>If the threshold of \$1 million is to</p>

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		<p>be lowered to \$0.5 million, the number of works projects to be covered under the mandatory requirement will be increased significantly. We estimate that the increase will be in the order of 100 000. Given the large number of contractors involved, and such works are usually of smaller scale and do not require approval from the Government before the works can commence, it would be highly difficult to identify the contractors, thus making enforcement not practicable. Moreover, this may cause undue inconvenience to the general public and small businesses since they would have to bear legal liability even for simple works.</p> <p>We consider the \$1 million threshold appropriate as we can make reference to the registers of contractors kept by the Buildings Department and the Construction Industry Training Authority to help check whether the contractors have applied for the billing accounts.</p>
(4)	To advise the modus operandi, effectiveness and outcome of review of the trip-ticket system under the waste management plan of public works contracts as well as the timetable for extending such a plan to the private sector.	The requested information is provided at Annex.
(5)	To review the drafting of new section 16A(1) to prevent private land from becoming dumping sites of waste while preserving the rights of owners in respect of use of their land.	While the Administration overall is examining the best approach and regulatory regime to tackle the problem, we are formulating a proposal from the environmental protection angle. We will report to the Bills Committee on our

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		proposal to address the issue at the next meeting.
(6)	To review new section 16A(2) to see whether it is fair to have presumption against the driver because it would be difficult for him to establish a defence under new section 16A(3) or (4).	<p>As a measure to strengthen control against illegal disposal of waste, new s.16A(2)(a) and (b) in the Bill proposes that if waste is deposited from a vehicle (not being used as a public transport carrier), the driver of the vehicle at that time as well as the driver's employer (if any) are regarded as causing the waste to be deposited for the purposes of new s.16A(1).</p> <p>We consider it fair for this presumption to apply to the driver in the first place because without his participation, the waste would not have been deposited from the vehicle. If the driver was driving the vehicle as an employee at the material time, it is also fair for the presumption to be applied to his employer because the employer is generally in a position to control the manner in which his employee performs the duties.</p> <p>Having said that, the proposed presumption will not operate to make the prosecution of the driver and his employer mandatory in every case because there are statutory exceptions provided in new s.16A(1). Moreover, statutory defences are also provided in new s.16A(3) or (4). When deciding whether to institute criminal proceedings against a person, the prosecutor will take into account factors such as the sufficiency of evidence and any defences that are open to or have been indicated by</p>

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		that person. A prosecution will not be instituted if there is no reasonable prospect of a conviction.

Environment, Transport and Works Bureau
May 2004

Implementation of the trip-ticket system

Since July 1999, the Government has been implementing a trip-ticket system for all public works contracts involving disposal of construction waste to ensure that different types of construction waste go to the appropriate reception sites and to deter improper disposal. At present, all contractors of public works projects are required to include the implementation of the trip-ticket system as part of their waste management plan.

Modus operandi of the system

2. At the planning stage of a contract, the project office is required to agree with the Civil Engineering Department (CED) and Environmental Protection Department (EPD) on the designated outlet for the disposal of inert construction waste (at public fill reception facilities) and non-inert construction waste (at landfills) generated. During the contract period, the contractor is required to complete all relevant details (e.g. the name of the disposal outlet, vehicle registration number, date and time of the dumping activity, etc.) on a form in duplicate for every trip transporting the inert/non-inert waste off the works site. The contractor is also required to present the form to the site supervisory staff for checking and stamping. The contractor will then pass the stamped form to the truck driver, who will then have to present the form to the operator of the designated outlet for checking and a second stamping prior to disposal of the inert/non-inert construction waste. The operator of the designated outlet will then return the form, together with a separate acknowledgement receipt, to the truck driver. The truck driver will need to return both documents to the site supervisory staff within 2 working days. The government works departments concerned will conduct audit inspections to ensure compliance by the contractor.

3. If the contractor intends to use an alternative disposal site in place of the disposal outlet designated under the contract, he is required to seek prior approval from the supervising engineer of the concerned works department. The supervising engineer will consult the relevant authorities on the suitability of the proposed alternative site.

4. In case of non-compliance with the trip-ticket system, regulatory actions will be taken against the concerned contractor, including issuance of warning letter and deduction of contract payment. Also, the contractor's compliance with the system will be a consideration in the assessment of the contractor's performance. Any non-compliance will result in adverse performance report, which may lead to disqualification of the contractor from tendering for future public works contracts.

Effectiveness of the system

5. We consider that the trip-ticket system implemented on public works contracts is generally effective in deterring illegal waste disposal. In the last 3 years, there were some 1 200 public works contracts, which generated some 9.1 million tonnes of construction waste. During this period, we have recorded 14 non-compliance cases which involved the use of construction wastes as fill materials by private landowners without prior authorization of the relevant works departments. The amount of waste involved in these 14 cases was about 74 000 tonnes (i.e. less than 1 % of the total construction waste generated).

Review of the system

6. We have reviewed the trip-ticket system and implement the following additional measures to tighten the control of the disposal of construction materials/waste from public works contracts –

- (a) the works departments concerned to conduct regular independent audit to ensure effective implementation of the system;
- (b) site supervisors to review the implementation of the system with the contractor at the monthly site meeting; and
- (c) the Public Fill Committee formed under CED to provide daily records of disposals at the public fill reception facilities to the site supervisors direct to enhance monitoring.

We are exploring further improvement measures to enhance the system.

Extending the trip-ticket system to the private sector

7. A Working Group on Construction Waste, led by the private sector with representatives from the trade and Government, has been formed under the Provisional Construction Industry Coordination Board. The Working Group will, among other things, consider how best to extend the waste management plan and other related measures adopted in the public works projects to the private sector. The Working Group will evaluate the existing waste management plan in mid-2004 and formulate an action plan on extending the plan to the private sector in late 2004.