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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Section 16A is repealed and the following substituted—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 the 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)—

“(*eea*) 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 this section;
- (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 to be imposed in respect of any construction waste accepted for disposal at a waste disposal facility as may be prescribed by the regulations; 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	Number of drawing or plan held by the Director by which boundaries of the facility are delineated
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.

Fixed Penalty (Public Cleanliness Offences) Ordinance**16. Scheduled offence**

Schedule 1 to the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570) is amended, in item 8, by repealing “存放” and substituting “擺放”.

Fixed Penalty (Public Cleanliness Offences) Regulation**17. Schedule amended**

The Schedule to the Fixed Penalty (Public Cleanliness Offences) Regulation (Cap. 570 sub. leg. A) is amended, in Form 1, by repealing “存放” and substituting “擺放”.

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 any waste accepted for disposal 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 waste disposal facilities; and
- (c) empower the Secretary for the Environment, Transport and Works to amend any Schedule to those regulations specifying certain matters.

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.