

For discussion on
24 November 2003

Legislative Council Panel on Environmental Affairs

Waste Disposal (Amendment) (No.2) Bill 2003 – Construction Waste Disposal Charging Scheme

Purpose

This paper invites Members' support for our proposal to introduce the Waste Disposal (Amendment) (No.2) Bill 2003 into the Legislative Council (LegCo), with a view to effecting the construction waste disposal charging scheme.

Background

2. In April 2003, we informed Members, through LC Paper No CB(1)1515/02-03(03), of the detailed arrangements and associated charges relating to the proposed construction waste disposal charging scheme¹.

3. To recap, the construction waste disposal charging scheme comprises the following features –

- (a) to charge construction waste disposed of at landfills², sorting facilities and public fill reception facilities;
- (b) to set the disposal charge at \$125 per tonne at landfills,

¹ The charging scheme was formerly known as the "landfill charging scheme". As we now intend to charge construction waste disposed of at landfills, sorting facilities and public fill reception facilities, it is considered appropriate to rename the charging scheme as "construction waste disposal charging scheme".

² Landfill charge will also be imposed on the disposal of construction waste at the refuse transfer stations on the outlying islands. Other refuse transfer stations do not accept construction waste.

around \$100 per tonne at sorting facilities³ and \$27 per tonne at public fill reception facilities. The proposed charges represent full recovery of the capital and recurrent costs of the facilities;

- (c) to establish a direct settlement system requiring major waste producers, mainly construction contractors (which generate about 70 - 80% of construction waste), to open accounts and pay waste disposal charges direct to the Government;
- (d) for the remaining 20-30% of construction waste mostly arising from renovation works, to levy the waste disposal charges through waste haulers that deliver the wastes to the facilities. The charges will be collected on a monthly basis and a credit period of 30 days will be given ;
- (e) to suspend collection of the charges from waste haulers if they produce evidence that they are unable to collect the same amount from the waste producers; and
- (f) to exempt all construction contracts that are awarded before the commencement of the charging scheme.

4. The three types of construction waste disposal facilities (i.e. landfills, sorting facilities and public fill reception facilities) would receive construction waste with different content. Briefly, landfills would receive mixed construction waste with little (not more than 50%) inert content; sorting facilities would receive and sort mixed waste with higher (over 50%) inert content; and public fill reception facilities would accept pure inert fill.

³ If the sorting facilities are to be run as private facilities, the private operators would set the sorting charge.

5. To facilitate implementation of the charging scheme, site staff at these facilities will be empowered, based on visual inspection, to turn away vehicles carrying inappropriate types of waste for the facilities in question. Moreover, site staff at the waste disposal facilities (e.g. landfills) will be empowered to determine, based on visual inspection, whether a waste load is construction waste and thus should be subject to the landfill charge. The decision to turn away or charge a vehicle would not be subject to appeal.

6. At the last meeting, Members supported the charging scheme in principle and agreed that this should be put in place as soon as possible. Since then, we have been preparing for the legislative proposal to effect the charging scheme. The proposed legislation will also provide for other relevant features, which are set out in paragraphs 7-11 below.

Strengthening of Control Against Illegal Disposal of Waste

7. The Waste Disposal Ordinance (the Ordinance) has already provided for sanctions against illegal disposal of waste⁴. However, as the introduction of the charging scheme may aggravate the problem of illegal disposal of waste, we consider it necessary to strengthen legal provisions against such acts to minimize adverse impact on the environment.

8. The proposed measures to strengthen control against illegal disposal of waste include –

- (a) To empower the court to order the person convicted of illegal disposal of waste to remove the waste on Government land. In cases where the removal work has already been carried out by Government, the court could order the convicted person to pay all or part of the removal cost incurred by Government as appropriate;

⁴ Under section 20E of the Ordinance, a person who commits an offence is liable to a fine of \$200,000 and imprisonment for 6 months for the first offence; and to a fine of \$500,000 and imprisonment for 2 years for a second or subsequent offence.

- (b) To empower the Director of Environmental Protection (DEP) to enter without warrant any places, other than domestic premises and private land for dwelling purpose, to remove the waste in cases where there is an imminent risk of serious environmental impact and immediate remedial actions are required. DEP shall only enter domestic premises and private land for dwelling purpose when a warrant is obtained. DEP would be entitled to apply to the court to recover from the convicted person the cost of removing the waste;
- (c) To make available to a defendant the defences of having lawful authority or excuse or permission of the land owner or occupier of the land regardless of where the waste is deposited; or if he can prove that he has taken all reasonable precautions and exercised all due diligence to avoid the offence of illegal disposal of waste.

Alternative Modus Operandi of Waste Disposal Facilities

Privatisation of waste disposal facilities

9. It is our policy direction to encourage private sector involvement in operating waste disposal facilities. There are currently no sorting facilities. Our plan to make available two sorting facilities will provide an opportunity to explore the privatization option. In April this year, we invited the industry to express interest in funding and operating the facilities. We received 14 proposals expressing interest. In view of the positive response, we plan to carry out an open tender exercise for the setting up and operation of two private sorting facilities in late 2003.

10. The Ordinance has already allowed for the co-existence of government and private waste disposal facilities. While private operators would be free to set charges for their facilities, they would not be given the legal power currently enjoyed by the operators of government facilities provided under the Waste Disposal (Designated Waste Disposal Facility) Regulation⁵.

⁵ The Waste Disposal (Designated Waste Disposal Facility) Regulation empowers DEP and the facility

Government Facilities Financed Under the Net-off Arrangement

11. If there are no valid tender bids in the tender exercise, and privatization of the sorting facilities could not materialize, we would then make available the facilities as Government facilities to be funded by the Government but operated by private sector contractors. The estimated recurrent expenditure for operating the Government-owned sorting facilities is estimated to be about \$40 million per year. We will adopt a “net-off” arrangement i.e. to use the sorting charge to “net off” the remuneration to the operator(s) for operating the sorting facilities before crediting the remaining revenue into the General Revenue Account.

Further Consultation with the Trades

12. At the last meeting in April 2003, Members supported the charging scheme in principle, but considered that the Administration should further consult the trades on the charging arrangements.

13. From May to November 2003, we consulted all the relevant advisory committees and stakeholders on the proposed charges and the detailed arrangements of the charging scheme⁶. All the consulted organizations support the charging scheme in principle. However, the construction industry considers that the level of the charges is too high. The waste haulers continue to be the strongest objector and have reiterated their objection to the charging arrangement. A summary of the comments received from stakeholders in the latest consultation exercise is at **Annex A**.

Legislative Proposal

14. We need to amend the Ordinance to define construction waste

contractors to maintain order and counteract the evasion of charges payable, where applicable, in waste disposal facilities designated under the Regulation.

⁶ Between May and November 2003, we had 11 meetings with stakeholders and advisory bodies and received 12 written submissions.

and strengthen legal provisions against illegal disposal of waste. Details of the charging scheme will be set out in the proposed Waste Disposal (Charges for Waste Disposal) Regulation. The related powers to implement the charging scheme in Government-owned facilities will be provided in the Waste Disposal (Designated Waste Disposal Facility) Regulation.

Recommendations

15. We recommend introducing the Waste Disposal (Amendment) (No.2) Bill 2003 into the LegCo (**Annex B**). The major provisions of the Bill are as follows –

- a) clause 2 adds a definition on “construction waste”;
- b) clauses 4, 5 and 7 strengthen the control against illegal disposal of waste;
- c) clause 8 provides that no appeal lies to the Appeal Board constituted under Part VI of the Ordinance from DEP’s decision not to accept any waste at a designated waste disposal facility or his decision whether to charge a person for disposing a chargeable waste load at a waste disposal facility; and
- d) clause 11 provides for a “net-off” arrangement whereby the charges may be used for settling the payment due to an operator of waste disposal facility without infringing the principle against hypothecation of the general revenue.

Subject to Members’ agreement, we plan to introduce the Bill into LegCo in December 2003. Subject to the passage of the Bill, we will then table the relevant regulations at LegCo, with a view to implementing the charging scheme in 2004.

Advice Sought

16. Members are invited to support the recommendations in paragraph 15 above.

Environment, Transport and Works Bureau
November 2003

Construction Waste Disposal Charging Scheme
Summary of Consultation with Stakeholders

Between May and November 2003, we attended 11 meetings with the stakeholders and advisory bodies to discuss the detailed arrangements of the proposed construction waste disposal charging scheme. We also received 12 written submissions from various organisations. A list of the organizations consulted is at Appendix I.

2. All the consulted organisations supported the proposed charging scheme in principle. However, the waste haulers continued to object to the charging scheme, reiterating that they were not waste producers and therefore should not be responsible for the charges. A summary of the stakeholders' views on specific issues and the Administration's responses is provided at Appendix II.

**List of organizations consulted on the
proposed construction waste disposal charging scheme**

a. Statutory/Advisory Bodies

- LegCo Panel on Environmental Affairs
- Advisory Council on the Environment (ACE)
- Business Advisory Group – Subgroup on Cutting Red Tape and Elimination of Over Regulation (BAG)
- Provisional Construction Industry Coordination Board (PCICB)
- Waste Reduction Committee (WRC)
- Waste Reduction Task Force for the Construction Industry

b. Professional Organisations

- Hong Kong Institution of Engineers (HKIE)
- Hong Kong Waste Management Association (HKWMA)

c. Green Groups

- Friends of the Earth (FoE)
- Conservancy Association (CA)
- Green Power (GP)

d. Business Sector

- The Real Estates Developers Association of Hong Kong (REDA)
- Hong Kong General Chamber of Commerce (HKGCC)
- Business Environment Council (BEC)
- The Hong Kong Construction Association (HKCA)
- The Hong Kong Association of Property Management Companies Limited (HKAPMC)
- The Hong Kong Construction Sub-Contractors Association

e. Waste Haulers Associations

- 香港廢物處理業協會（簡稱「廢物處理業協會」）
- 香港泥頭車司機協會（簡稱「泥車協會」）
- 汽車交通運輸業總工會（簡稱「交運總工會」）
- 香港九龍的士貨車商會有限公司（簡稱「貨車商會」）
- 港九及新界夾斗車商會有限公司（簡稱「夾斗車商會」）

**Summary of the stakeholders' views on specific issues
and the Administration's responses**

Stakeholders' views

The Administration's responses

Charging level of \$125/tonne at landfills

BAG suggested to increase the landfill charge to \$200/tonne to provide financial incentive for the industry to use alternative construction methods.

The proposed charging level aims to recover the full capital and recurrent costs. We do not agree to set a charge arbitrarily.

Some BAG and ACE members suggested that the landfill charge should also reflect the costs of land and the replacement costs for the existing landfills i.e. the cost to build new landfills.

It is very difficult to include the land cost, which always fluctuates, in the charge.

The notion of replacement cost does not tie in with the User Pays Principle as it requires existing users to subsidize future users. Any replacement cost is only an arbitrary figure with no basis.

HKCA suggested lowering the landfill charge to \$60/tonne to cover only the operating cost, as the proposed charge was too high. It also commented that the capital cost should be borne by Government as infrastuctural investment.

The contractors should have included the waste disposal charges in the construction cost. Such charges should only constitute some 1-2% of the total construction cost and should not create financial burden to the construction industry.

Mandatory requirement for contractors with contracts costing over \$1 million to set up a billing account to pay charges direct

Some members of BAG and representatives of waste haulers associations commented that waste producers could abuse the \$1 million threshold by splitting contracts into multiple contracts costing below \$1 million to get around the mandatory requirement.

The \$1 million threshold follows the levies under the Industrial Training (Construction Industry) Ordinance and the Pneumoconiosis (Compensation) Ordinance. We are not aware of any splitting of contracts to avoid payment in those cases. Even if the contractors do split contracts, they can only avoid setting up of accounts, not paying the charges.

The waste haulers may request upfront payment of waste disposal charges before providing services for such suspicious cases.

Some waste haulers commented that the \$1 million threshold was too high for most renovation waste disposal contracts in private and public housing estates.

The threshold is for construction contracts, not waste disposal contracts, as construction works generate most construction waste.

On-site payment at the waste disposal facilities

Some waste haulers opposed to the on-site payment arrangement because this would increase the likelihood for the contractors to ask them to pay the charges upfront.

It is necessary to allow on-site payment to enable users with no billing account (e.g. infrequent users) to pay charges.

The waste haulers may ask for upfront payment of the disposal charges from waste producers before providing transportation services.

30-day payment period for account holders

HKCA and the waste haulers associations asked for longer payment period. HKCA wanted the payment period to be 42 days to tie in with the time for receiving interim payments in public works contracts. Waste haulers suggested a 3-month credit period.

As the invoice would be issued at the end of a month, this will give waste producers/haulers some 30- to 60-day credit period after the disposal of waste. This period should be sufficiently long to help ease the waste haulers' cash flow problem and allow them more time to recover the charges from the waste producers/clients.

Suspension of payment for waste haulers with proof of the waste producers' default in payment

BAG, REDA and HKWMA doubted the need for such a provision as they considered bad debts as part of the commercial risks encountered by all businesses.

The proposed suspension of payment aims to address waste haulers' concern over possible bad debt problems.

Some BAG members suggested that there should be a time limit on such a provision, as waste haulers should get to know and avoid dealing with waste producers/clients that might default. In general, they considered that the government's proposal had adequately addressed the bad debt issue.

Waste haulers felt that the charging scheme would worsen their cashflow problem and increase the risk of bad debt by waste producers/clients because the waste disposal charges are much higher than their

We have already revised the charging scheme to incorporate measures to address waste haulers' concerns. For example, there will be a direct settlement system for major waste producers so that the latter will settle the bill with

transportation cost.

Government direct. Also, to allay their concern about cashflow problems, waste haulers would be billed on an accrual basis and be given a credit period of 30 days.

Some (medium size companies with several trucks) were concerned that if waste producers did not pay, the outstanding sum could easily exceed the ceiling handled by the Small Claims Tribunal. The time and expenses for taking legal actions would be much higher.

Small waste haulers do not consider this a problem. Hence, this problem only applies to the large waste hauling / transportation companies, which should be able to secure pre-payment of all or part of the charges, or seek reimbursement from the waste producers.

One waste hauler association supported statutory declaration as a form of proof that they could not recover the charges from the waste producers. Another association objected to this suggestion. However, three other waste haulers associations considered that they should not be responsible for the charges under any circumstances. They would not wish to commit their position with regard to statutory declaration.

We have already agreed to accept a claim lodged against the waste producers at the Small Claims Tribunal. We maintain an open mind regarding the use of statutory declaration as a form of proof for suspension of payment, but the waste haulers associations have split views over this matter.

One waste hauler association suggested collecting personal information of the waste producers and passing them on to the Environmental Protection Department to collect the charges direct from the waste producers.

We consider it not appropriate to collect waste producers' personal data through a third party i.e. waste haulers.

The waste haulers associations proposed a territory-wide registration by street number/lot number and suggested that the management companies, owners' incorporations, owners or developers setting up billing accounts for direct settlement of charges.

We consider it not appropriate to impose such statutory obligations on these parties as they may not be directly involved in the delivery of waste.

A meeting had been arranged for HKAPMC to meet with the waste haulers associations. HKAPMC stated that property management companies had no right to check whether any renovation works had taken place in the owners/residents' premises. Moreover, it was not fair to use the management fees collected from all owners/residents to cover the administrative expenses for operating the billing account.

Exemption of contracts awarded before the commencement of the charging scheme

BAG is concerned that developers and contractors might cooperate and evade the charges by having long-term contracts. It therefore suggested limiting the exemption period to 2 years.

Agreed. A time limit will be set for such exempted contracts. It is therefore not possible for developers and contractors to have long-term contracts to evade the charges.

HKCA considered that exemptions should also be granted to projects tendered before the commencement of the charging scheme.

We do not agree with the need to extend the exemption since there would be several months between the enactment of the legislation and commencement of the charging scheme to allow contractors to factor in the disposal costs in tenders.

Power to determine the acceptance of waste at different facilities by visual inspection

HKCA and BEC were concerned that visual inspection to determine the acceptance of waste at different facilities could lead to confrontation between the staff and the waste haulers.

We agree that such problems might arise during the initial period of implementing the charging scheme. However, as it is not practicable in terms of time, space, logistical and cost requirements to carry out detailed inspection and weighing of the detailed content of each vehicle at the gate of facilities, there are no other practicable means but to ask site staff to make an immediate judgment based on visual inspection.

We plan to set up a tripartite working group with representatives from the construction industry, waste haulers and the facilities operators to resolve possible teething problems prior to the implementation of the scheme.

Other related issues

Reusing inert construction waste in Mainland reclamation projects

Since the charging scheme will add to the cost of projects, the PCICB and HKGCC suggested that the Government should consider exporting inert construction waste to other places.

We are actively exploring with Mainland authorities the feasibility of reusing the inert public fill generated from local construction activities in Mainland reclamation projects. However, it must be noted that even if this is viable, there will still be a cost involved, and this would be reflected in the public fill reception charge.

Promoting waste management plan in construction industry

FOE, CA, REDA, HKCA suggested that the Government should promote waste management/ recycling.

We have taken the lead in implementing waste management plans in public works projects and have recently introduced the 'Pay for Safety and Environment' scheme to provide financial incentive for contractors to do more in waste management and reduction. We are also developing waste management plans for use in the private sector.

Promoting the use of recycled aggregates

FoE, REDA and HKCA urged the Government to encourage building professionals to use recycled construction materials.

We are committed to promoting the use of recycled aggregates in Government projects so as to set an example for others to follow. We have amended the materials specifications to allow the use of recycled aggregates in public works. In July 2002, we set up a temporary recycling plant at Tuen Mun to process hard materials into recycled aggregates for use in public works. We are also collaborating with universities in researches to expand the use of recycled aggregates.

擬稿

DRAFT

2003 年廢物處置(修訂)(第 2 號)條例草案
WASTE DISPOSAL (AMENDMENT) (NO. 2) BILL 2003

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, in the definition of “disposal”, by repealing “in relation to chemical waste” and substituting “, in relation to chemical waste and construction waste,”.

(2) Section 2(1) is amended by repealing the definition of “trade waste” and substituting –

““trade waste” () means waste from any trade, manufacture or business, but does not include animal waste, chemical waste or construction waste;”.

(3) Section 2(1) is amended, in the definition of “waste”, by adding “construction waste,” before “household”.

(4) Section 2(1) is amended by adding –

““construction waste” () 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” () means a designated waste disposal facility as defined in

section 2 of the Waste Disposal (Designated Waste Disposal Facility) Regulation (Cap. 354 sub. leg. L);”.

3. Prohibition of unauthorized use of land or premises for disposal of waste

(1) Section 16(2)(d) is amended by adding “or construction waste” after “chemical waste”.

(2) Section 16(4) is amended by adding “or construction waste” after “chemical waste”.

4. 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 the permission of any owner or occupier of the place.

(2) 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 for the purpose of subsection (1) –

- (a) the driver of the vehicle at the time when waste is deposited from it; and
- (b) any person who employs that driver to drive the vehicle at that time.

(3) If a person mentioned in subsection (2) is charged with an offence under subsection (1), he has a defence if he proves that he has taken 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 driver mentioned in subsection (2)(a) establishes the defence under subsection (3) if he proves –

- (a) that he acted under instructions from and relied on information given by his employer referred to in subsection (2)(b); and
- (b) that he had no reason to believe that the waste was deposited without lawful authority or excuse or without the permission of the owner or occupier of the place concerned.

(5) Without limiting the general nature of subsection (3), an employer referred to in subsection (2)(b) establishes the defence under subsection (3) if he proves –

- (a) that he relied on information given by another person; and
- (b) that he had no reason to believe that the waste was deposited without lawful authority or excuse or without the permission of the owner or occupier of the place concerned.

(6) If a person wishes to rely on a defence involving an allegation –

- (a) that the commission of the offence was due to an act by or omission of another person (other than his acting under instructions from his employer);
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 a notice giving all information he then had that identifies or assists in identifying the other person at least 7 clear days before the hearing.

(7) In this section –

“occupier” (), in relation to any place, means the lessee or principal tenant of the owner of the land under a form of lease or the licensee of the owner under a licence;

“owner” (), in relation to any place, includes –

- (a) a person holding premises direct from the Government whether under lease, licence or otherwise;
- (b) a mortgagee in possession of the place;
- (c) a person receiving the rent of the place, solely or with another, on his own behalf or that of any person, or a person who would receive the rent if the place was let to a tenant; and
- (d) if the person mentioned in paragraph (a), (b) or (c) cannot be found or ascertained, or is absent from Hong Kong or under disability, the agent of that person;

“public transport carrier” () means a public bus, public light bus, train, light rail vehicle or tramcar.”.

5. Section added

The following is added –

“18A. Power of court and magistrate to order removal of waste or payment of expenses

(1) If a person is convicted of an offence under section 16A, a magistrate may, either on application by the Director or on the magistrate’s own initiative, make in addition to any penalty that may be imposed under section 18 an order that the person -

- (a) remove the waste concerned within a specified period if it was deposited on Government land; or

- (b) pay the Director, or any other person acting on his behalf, all or part of the expenses he has incurred in removing the waste from that land.

(2) When making an order under subsection (1)(b), the magistrate may take into consideration all or any of the following factors in determining the amount to be paid by the convicted person –

- (a) the total quantity of waste being found on the land where the offence was committed;
- (b) the quantity of waste being deposited on the land by that person;
- (c) the number of convicted persons and their respective roles in the offence;
- (d) the cost incurred in removing the waste;
- (e) any other factors that the court or magistrate considers relevant.

(3) A person who is subject to an order under subsection (1)(a) shall notify the Director in writing immediately upon completion of the removal of the waste concerned.

(4) On receiving a notification from a person under subsection (3), the Director shall –

- (a) consider and form a conclusion on whether the person has complied with the order properly; and
- (b) inform the person in writing of his conclusion and, if the Director concludes that the person has not complied with the order properly, the reasons for that conclusion.

(5) A person who 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 court or magistrate, to have continued.

(6) A person who fails to comply with subsection (3) commits an offence and is liable to a fine of \$100,000.

(7) 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).

6. Circumstances under which waste disposal licence for certain types of waste is to be granted

Section 21A is amended by adding “or construction waste (as the case may be)” after “chemical waste” wherever it appears.

7. Section added

The following is added –

“23G. Director’s power to remove waste

- (1) If the Director is satisfied that -
 - (a) an offence under section 16A has been committed;
 - (b) there is an imminent risk of serious environmental impact; and
 - (c) immediate actions need to be taken without delay to reduce or eliminate that risk,

then the Director, or any other person acting on his behalf, may remove the waste deposited in the place where the offence was committed.

(2) If the Director acts in accordance with subsection (1), he is entitled to apply to the court or a magistrate to recover from the person

convicted of the offence the expenses reasonably incurred by the Director or any other person acting on his behalf.

(3) The Director, or any other person acting on his behalf, shall not under subsection (1) enter into any domestic premises, or the part of any private land that is used for dwelling purposes, 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 or any other person acting on his behalf to enter into any domestic premises, or the part of any private land that is used for dwelling purposes, if the magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that –

- (a) an offence against section 16A has been committed;
- (b) there is an imminent risk of serious environmental impact; and
- (c) immediate actions need to be taken without delay to reduce or eliminate that risk.”.

8. 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) 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, except that no appeal lies under this subsection from any of the following –

- (a) the Director’s decision not to accept any waste at a designated waste disposal facility;
 - (b) the Director’s decision whether or not to charge a person for disposing a waste load at a waste disposal facility as defined in the regulations made under section 33 in relation to charges for waste disposal.”.
- (4) Section 24(2) is amended by adding “or (1A)” after “subsection (1)”.

9 Regulations

- (1) Section 33(1) is amended by adding after paragraph (e) –
- “(eaa) any substance, matter or thing to be defined as construction waste;”.
- (2) Section 33(1) is amended by adding –
- “(hc) any premises to be defined as designated waste disposal facility;”.
- (3) Section 33(1A)(a)(vi)(A) is amended by adding “or construction waste (as the case may be)” after “chemical waste”;
- (4) Section 33(1B)(a) is amended by adding “facility,” before “transfer”.
- (5) 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 if any waste or class of waste shall be charged;

- (iii) to require any person who delivers any waste to any 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;”.

(6) Section 33 is amended by adding –

“(6) Regulations made under this section may provide that the Secretary may, by notice published in the Gazette, amend any Schedule to such regulations where the Schedule specifies the premises or charges for the disposal of construction waste, or the types of waste to be accepted at the premises.”.

10. 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.”.

11. Savings

Section 41 is amended by adding –

“(3) Those parts or percentages of any charges imposed by any regulation made under section 33 which –

- (a) are required to settle a contract payment that a facility operator is entitled to receive under an agreement entered into by the Government with the facility operator; or
- (b) are required to clear or close 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.

(4) For the purpose of subsection (3), a facility operator means a person who has entered into an agreement with the Government for the operation or management of any land or premises specified in Schedule 12.”.

12 Section added

The following is added –

“42. Charge or surcharge recoverable as civil debt

Any charge or surcharge payable under this Ordinance may be recoverable by the Director as a civil debt due to the Government.”.

13. Schedule added

The following is added –

“SCHEDULE 12 [s. 41(3) & (4)]

LAND OR PREMISES TO WHICH SECTION 41(3) and (4) APPLIES

Item	Name	Address	Boundaries delineated by drawing number/ plan number
1	Tuen Mun Area 38 Temporary	Southern side of Tuen Mun Area 38 near	Plan Number P 20332-1

	Construction Waste Sorting Facility	River Trade Terminal, Tuen Mun, N.T.	
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”.

Consequential amendment

Waste Disposal (Refuse Transfer Station) Regulation

(Cap. 354 sub. leg. M)

14. 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.

Explanatory Memorandum

The main purposes of this Bill are to amend the Waste Disposal Ordinance (Cap. 354) (“the Ordinance”) to –

- (a) provide statutory backing 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 on “construction waste”, makes corresponding revisions to the existing definitions of “disposal”, “trade waste” and “waste”, 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 Ordinance.

3. Clause 3 amends section 16 of the Ordinance to ensure that disposal of construction waste is not exempted under section 16(2)(d) and (4) from the

general licensing requirement for using land or premises for waste disposal under section 16(1).

4. Clause 4 recasts the existing offence of unlawful depositing of waste under section 16A(1) of the Ordinance to streamline its working by making available to a person charged under that section the defence of having lawful authority or excuse or permission of the land owner or occupier concerned regardless of where the waste is deposited. Clause 4 further stipulates in the proposed section 16A(2) that the driver of a vehicle (not being 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 the proposed new section 16A(1) but they are provided with statutory defences under the proposed section 16A(3) to (6).

5. Clause 5 adds a new section 18A to the 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 incurred in removing the waste. Failure to comply with the order or to notify the Director on completion of the waste removal is an offence under the proposed section 18A(5) and (6).

6. Clause 6 amends section 21A of the Ordinance to make the requirements concerning waste disposal facilities apply also to construction waste for the purpose of granting a waste disposal licence.

7. Clause 7 adds a new section 23G to the Ordinance to authorize the Director to remove waste deposited in contravention of the proposed new section 16A if there is an imminent risk of serious environmental impact requiring immediate remedial actions. However, the Director may not for this purpose enter into any domestic premises or private land used for dwelling purposes without first obtaining a warrant issued by a magistrate. The Director may apply to the court or a magistrate to recover from the person convicted of the offence

under the proposed section 16A the expenses reasonably incurred by the Director in taking the remedial actions.

8. Clause 8 amends section 24 of the Ordinance to provide that no appeal lies to the Appeal Board constituted under Part VI of the Ordinance from the Director's decision not to accept any waste at a designated waste disposal facility or his decision whether or not to charge a person for disposing a chargeable waste load at a waste disposal facility.

9. Clause 9 amends section 33 of the Ordinance to –

- (a) empower the Chief Executive in Council to make regulations to provide for matters to be defined as construction waste and premises to be defined as designated waste disposal facility;
- (b) allow regulations made under that section to confer on the Director certain powers in relation to the operation of designated waste disposal facility and the charging of waste; and
- (c) empower the Secretary for the Environment, Transport and Works to amend any Schedule to those regulations in relation to premises or charges for the disposal of construction waste, or the types of waste to be accepted at the premises.

10. Clause 11 adds the new subsections (3) and (4) to section 41 of the Ordinance to provide for a “netting-off” arrangement whereby the charges imposed by regulations made under section 33 may be used for settling the payment due to an operator of a waste disposal facility specified in the proposed Schedule 12 (added by clause 13) in accordance with his agreement with the Government without infringing the principle against hypothecation of the general revenue. Clause 10 adds a new subsection (3) to section 37 of the 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.

11. Clause 12 adds a new section 42 to the Ordinance to provide that any charge or surcharge payable under the 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 14.