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**Subcommittee on
Waste Disposal (Designated Waste Disposal Facility)
(Amendment) Regulation 2004 and
Waste Disposal (Charges for Disposal of Construction Waste) Regulation**

Background brief

Background

The Waste Disposal (Amendment) (No. 2) Bill 2003 was introduced into the Legislature in December 2003. The Bill sought to strengthen the control against illegal disposal of waste and provide the statutory basis for the making of regulations for introducing a charging scheme for the disposal of construction waste at landfills, sorting facilities and public fill reception facilities. The Waste Disposal (Amendment) Ordinance 2003 (the Amendment Ordinance) was enacted after the passage of the Bill in July 2004.

Regulations

2. The Waste Disposal (Charges for Waste Disposal of Construction Waste) Regulation introduces a charging scheme for the disposal of construction waste at government waste disposal facilities.
3. The Waste Disposal (Designated Waste Disposal Facility) (Amendment) Regulation 2004 sets out the related powers for the Director of Environmental Protection (DEP) to implement the charging scheme in government waste disposal facilities.

Views of the Bills Committee on Waste Disposal (Amendment) (No. 2) Bill 2003

4. In the course of deliberation on Waste Disposal (Amendment) (No. 2) Bill 2003, the then Bills Committee noted that details of the charging scheme were to be set out in two regulations to be made after the enactment of the Amendment Ordinance. Having regard to the far-reaching implications of the regulations,

particularly the one on charges for disposal of construction waste, the then Bills Committee considered that, without prejudice to the Subcommittee to be set up to scrutinize the regulations, it was prudent to also study the draft regulations to ensure that these were consistent with the ambit of the enabling provision. The Bills Committee examined issues such as the charging mechanism, types of construction waste to be accepted at the waste disposal facilities and level of charges pertaining to the draft regulations and put forward suggested amendments for the Administration to consider with a view to improving the drafting of the regulations. Views of the Bills Committee are set out below.

Charging mechanism

5. Under the original draft Regulation, a direct payment system will be established to require all major waste producers (who are responsible for generating 70% to 80% of construction waste) to open billing accounts and pay disposal charges direct to Government. Any principal contractor who undertakes construction works valued \$1 million and above will also be required to open account and pay waste disposal charges directly to the Government. Failure to apply to DEP for a billing account within 14 days after being awarded the construction work will be an offence. For the remaining 20% to 30% of construction waste arising from construction works carried out by minor waste producers, mainly renovation contractors, the charges will be levied through waste haulers who deliver the waste to the waste facilities. The charges can be paid by means of on-site payment or through billing accounts with a credit period of 30 days. Collection of the charges from waste haulers will be suspended if they can produce evidence that they are unable to collect the same amount from the waste producers.

6. The Bills Committee noted that waste haulers were opposed to the proposed charging mechanism on the ground that the requirement for them to collect disposal charges from minor waste producers might give rise to cash flow and bad debt problems. Such a requirement was also at variance with the “polluter-pays” principle since waste haulers were not waste producers but involved in the delivery of waste. In this connection, the Administration agreed to remove the on-site payment arrangement so that all charges would be paid through the billing account.

7. To reduce the possibility of shifting of responsibility for payment of disposal charges to waste haulers, the Bills Committee also explored the feasibility of lowering the threshold for which penalty would be imposed on failure to open a billing account from \$1 million to \$0.5 million so as to cover more renovation contracts. According to the Administration, the threshold at \$1 million was modelled after the existing legislation and was in line with the registers of contractors kept by the Buildings Department and the Construction Industry Training Authority, rendering it much easier for the Administration to check whether the contractors had applied for the billing accounts. Consultation with the trade also indicated that the threshold of \$1 million was acceptable.

8. Question was raised on whether the 14-day period for opening a billing should commence upon the awarding or signing of a contract and whether it was adequate since failure to open a billing account within the specified period would constitute an offence and would be liable to a further daily fine of \$5,000 in the case of a continuing offence. The Administration's explanation was that as the signing of contract could take place any time at or after the award of the work and even after commencement of the construction works, it was more appropriate to require the opening of the billing account after the award, rather than signing, of a contract. In the light of members' concern, the Administration agreed to extend the period from 14 days to 21 days. The proposed daily fine would also be reduced from \$5,000 to \$1,000.

Level of disposal charges

9. There was concern about the high charges of \$125, \$100 and \$27 per tonne for construction waste disposed of at landfills, sorting facilities and public fill reception facilities respectively. The Bills Committee considered it necessary for the Administration to further consult the trade with a view to reaching a consensus on the levels of disposal charges. According to the Administration, many rounds of consultation on the details of the charging scheme, including levels of charges, had been carried out with the trade. The proposed disposal charges were set to recover in full the capital and recurrent costs of the reception facilities. Hence, no further consultation with the trade was necessary.

Types of construction waste to be accepted at the waste disposal facilities

10. Given that site staff at disposal facilities would be empowered to determine whether a waste load was construction waste and turn away vehicles carrying inappropriate wastes, and that the decision to turn away or charge a waste load would not be subject to appeal, the Bills Committee cautioned that such an arrangement might lead to disputes and malpractices. The Administration's explanation was that it would, in consultation with the Department of Justice and the Independent Commission Against Corruption, work out management and control measures to safeguard against possible abuses or malpractice. A tripartite working group with representatives from the construction industry, waste haulers and the waste facility operators would be set up to discuss the operational details of the charging scheme.

11. Noting that the provision of false information, knowingly or recklessly, constituted an offence and was liable to a fine at level 6, the Bills Committee urged the Administration to review the penalty level as waste haulers might inadvertently provide false information which they might not have knowledge of.

12. The report of the then Bills Committee is in the **Appendix**.

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

Purpose

This paper reports on the deliberations of the Bills Committee on Waste Disposal (Amendment) (No. 2) Bill 2003.

Background

2. Owing to continuous growth in population and economic activities, about 6.5 million tonnes of waste were disposed of in the three government landfills in 2003. Of these, 53% are municipal solid waste (including domestic, commercial and industrial waste), 38% are construction waste and 9% are other special waste like sludge and animal carcasses. Since landfill disposal is free of charge, there is no incentive for waste reduction and recycling. The indiscriminate disposal has also led to rapid depletion of limited landfill capacity and advanced the need for replacement of disposal facilities.

3. As part of its waste management strategy, the Administration proposed in 1995 to introduce a landfill charge for construction and commercial/industrial wastes with the aim to provide an incentive for waste producers to reduce waste and to carry out sorting to facilitate reuse/recycling of waste, thereby helping to slow down the depletion of limited landfill capacity. The legislation was enacted but was not implemented due to strong objection from waste haulers who blockaded landfills for two days. After many rounds of discussion with the relevant trades, the Administration has developed a revised construction waste disposal charging scheme (the Scheme) incorporating various features to address the trades' concerns as far as practicable. To give legal effect to the Scheme, the Administration introduced the Waste Disposal (Amendment) (No. 2) Bill on 5 December 2003.

The Bill

4. The Bill seeks to amend the Waste Disposal Ordinance (Cap. 354) (the Ordinance) to -

- (a) strengthen the control against illegal disposal of waste; and
- (b) provide statutory basis for the making of regulations for introducing a charging scheme for the disposal of construction waste at landfills, sorting facilities and public fill reception facilities.

For the purpose of (b), two Regulations viz. the Waste Disposal (Charges for Waste Disposal) Regulation and the Waste Disposal (Designated Waste Disposal Facility) (Amendment) Regulation are to be made and tabled after the enactment of the Bill.

The Bills Committee

5. At the House Committee meeting on 19 December 2003, members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Dr Hon LAW Chi-kwong, the Bills Committee has held eight meetings. The membership list of the Bills Committee is at **Appendix I**. Apart from examining the Bill with the Administration, the Bills Committee has also invited views from the trade and related sectors. 19 groups have made written and/or oral representation to the Bills Committee. A list of these groups is at **Appendix II**.

6. Apart from examining the Bill which is an enabling legislation, the Bills Committee also takes the opportunity to study the policy aspects of the two draft Regulations to ensure that they are consistent with the policy intent of the Bill.

Deliberations of the Bills Committee

Prohibition of unlawful depositing of waste

7. Clause 3 of the Bill recasts the existing offence of unlawful depositing of waste under section 16A(1) of the Ordinance to make it applicable to any person who deposits or causes or permits to be deposited waste in any place except with the lawful authority or excuse or the permission of the owner or lawful occupier of the place. The driver of a vehicle (not being a public transport carrier) from which waste is deposited at the material time, as well as the employer of that driver are to be regarded as the persons causing the waste to be deposited. Clause 3 also provides defences of reasonable precautions and due diligence to a defendant charged with the offence of illegal depositing of waste.

Liability of driver

8. Given that a driver who is an employee generally acts according to the instructions of his employer, the Bills Committee has examined whether it is fair to apply the presumption against the driver and require him to take all steps reasonably open to him to ensure that an offence will not be committed, which in some members' view is hard to comply with.

9. According to the Administration, the waste will not have been deposited from the vehicle in the first place without the participation of the driver. Hence, it is fair to apply the presumption to the driver. In the case where the driver is driving the vehicle as an employee at the material time, the presumption will also apply to his employer who is generally in a position to control the manner in which his employee performs the duties. Moreover, the presumption will not operate to make the prosecution of the driver and his employer mandatory in each case because exceptions, such as having lawful authority or excuse or the permission of the owner or lawful occupier of the land for the deposit of waste, have been provided. Besides, statutory defences are also made available. It is also pointed out that in 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 that person. A prosecution will not be instituted if there is no reasonable prospect of a conviction. Nevertheless, the Administration agrees that a driver who acts under his employer's instruction may not know what additional steps the court will expect him to take to ensure that an offence will not be committed. To this end, Committee Stage amendments (CSAs) will be moved to Clause 3 such that the driver can establish a defence if he can also satisfy the court that he has no reason to believe that an offence will be committed.

Liability of employer

10. Question has also been raised on the liability of an employer as opposed to a client who employs a self-employed driver. The Administration's explanation is that the Bill intends to cover an employer, if any, who employs a vehicle driver as an employee to drive the vehicle at the material time. An employer is in a position to supervise and decide the way in which the driver should carry out the task. However, the Bill does not intend to cover a client who hires the driver as an independent contractor, say, to remove waste from a site because the client generally will not have control over the manner in which the driver performs the task. In determining whether a person is an employee or an independent contractor, the courts will take into consideration factors such as the degree of control, the manner of payment, the agreement between the parties and the ownership of the equipment or vehicle involved.

Statutory defences

11. Regarding the defences under new section 16A, question has been raised on whether a person charged with an offence under the repealed section 16A could rely on the defences if the charge is brought after the coming into operation of the

Amendment Ordinance (upon enactment of the Bill). According to the Administration, the person can rely on the new defences because the offence under the existing and the new sections 16A are the same and the defences should become available to the defendant on trial after the coming into operation of the Amendment Ordinance. Concern has been raised on whether the defences under new section 16A are made available to the person when the trial of an offence under the repealed section 16A straddles the coming into operation of the Amendment Ordinance. The Administration's explanation is that the statutory defences under new section 16A will be made available to the defendant once the Amendment Ordinance comes into force. As a matter of ordinary rules of statutory interpretation, the court will apply beneficial legislation immediately and generally to on-going situations because there is no reason to restrict its application. The immediate application of the new defences to on-going proceedings is not retroactive and does not interfere unfairly with existing rights. In practice, the availability of defences under new section 16A to the defendant will not enable him to drag on the proceedings because any abuse of the process of the court is not acceptable

Power to remove waste in case of imminent risk of adverse environmental impact

12. Under new section 23EA (Clause 5) of the Bill, the Director of Environmental Protection (DEP) has power to enter without warrant any places, other than domestic premises and dwelling place on private land, to remove the waste deposited illegally in cases where there is an imminent risk of serious environmental impact and immediate remedial action is required. DEP shall only enter domestic premises and dwelling place on private land when a warrant is obtained from a magistrate. Members note that for the issue of the warrant to DEP to enter any domestic premises, the magistrate has to be satisfied that there are reasonable grounds to believe that an offence under section 16A has been committed. Members therefore have doubt on how DEP can ascertain that an offence has been committed in the first place.

13. According to the Administration, new section 23EA(1) does not require the establishment of an offence under section 16A. It will be sufficient if DEP has reasonable grounds to believe that an offence under section 16A has been committed in a place. There are different scenarios where DEP may have reasonable grounds to believe that an offence of illegal disposal of waste on private land has been committed. These likely scenarios include -

- (a) the owner/occupier of the land concerned reports to DEP the deposit of waste in his place without his consent;
- (b) upon receipt of complaint or after inspection, DEP confirms with the owner/occupier of the land concerned that consent for the deposit of waste is not available; and
- (c) a person is caught at the scene by the enforcement officers when depositing waste on the land. The person either admits that no consent from the owner/occupier is available or fails to provide information showing that such consent is available.

Under the above scenarios, DEP will exercise his power to remove the waste provided that the deposit of such waste is likely to give rise to an imminent risk of adverse environmental impact and immediate action is required to reduce or eliminate that risk. The Administration admits that there may be situations where it will be more difficult to ascertain whether there are reasonable grounds to believe an offence has been committed, such as if the waste is found deposited on private land where no one has been caught at the scene, and the owner/occupier of the land concerned cannot be contacted by any convenient means to confirm whether consent is available. These situations however are rare. Besides, DEP can consider circumstantial evidence to exercise judgment, such as the concerned waste was deposited in an unmanaged manner or did not match the surrounding environment. The Administration recognizes that such circumstantial evidence may raise suspicion on the lack of consent of the owner/occupier, but it is believed that the owner/occupier is unlikely to allow disposal of waste which will cause imminent risk of adverse environmental impact on his place. Taking these factors into consideration, the Administration agrees with members that the requirement for DEP to ascertain whether an offence of illegal disposal of waste on private land should remain status quo since the removal of such a requirement will give DEP extensive power to remove waste on private land, which may have human right implications.

14. Question has been raised on whether DEP may remove waste deposited on private land before the Amendment Ordinance comes into force. According to the Administration, DEP may enter any place to remove the waste deposited in the place so long as all the criteria set out in new section 23EA(1) are satisfied. In the interest of environmental protection and public interest, it is intended that DEP may invoke that power on or after the coming into operation of the Amendment Ordinance even if the waste may have been deposited before the Amendment Ordinance comes into force. Since section 23EA contemplates a situation with on-going facts, the Administration holds the view that the section will have immediate application to a subsisting state of affairs, even though that state of affairs may have come into existence before the coming into operation of the Amendment Ordinance.

15. As regards waste deposited on Government land, members note that new section 18A (Clause 4) of the Bill empowers a magistrate to order a person convicted under section 16A to remove the waste deposited on Government land or to pay DEP the expenses incurred in removing the waste. Question has been raised on whether the Government intends to cover an offence committed under the repealed section 16A. The Administration's explanation is that the number of such cases will be few and far between. This is particularly so because according to section 26 of the Magistrate Ordinance (Cap. 227), any complaint or information in respect of an offence under the existing or the new section 16A of the Ordinance must be made or laid within six months from the time when the matter of complaint or information respectively arose. Even under such unlikely scenarios, it is not intended that an order under new section 18A should be made in the case of a conviction under the existing section 16A if the offence is committed before the commencement of new sections 16A and 18A because according to the presumption against retroactivity, new section 18A should not be construed as applicable to impose punitive consequences unknown to a convicted person at the time when the offence is committed. Similarly, it is not intended that an

order under new section 23EA should be made in the case of a conviction under the existing section 16A if the offence is committed before the commencement of new section 23EA. The Administration further clarifies that legislation is generally presumed not to have a retrospective or retroactive application and the same applies to the Bill.

16. While noting that the Administration relies on a rule of construction of statute to attain the legislative intent of new sections 16A, 18A and 23EA, members also note the alternative suggestion from the Legal Adviser to the Bills Committee on the need to reflect the legislative intent of the material sections by express statutory provisions on grounds that it will be plain and certain in meaning. Having considered the Administration's explanation as set out in paragraphs 11 to 15 relating to the policy intent of the material sections, members accept that from a practical point of view, cases affected in the transitional period may be rare, and under such rare circumstances, the Administration will handle those cases in a fair and equitable manner.

Details of the construction waste disposal charging scheme to be stipulated by regulations

17. The Bill also proposes amendments to section 33(4) of the Ordinance to empower DEP to, inter alia, determine whether a charge is to be imposed in respect of any waste or class of waste accepted at a waste disposal facility as may be prescribed by regulations. Members note that details of the Scheme are to be set out in the two proposed Regulations: one on charges for construction waste disposal and one on designated waste disposal facilities. Members therefore find it necessary to also examine the major areas, including the charging mechanism, types of construction waste to be accepted at the waste disposal facilities and level of disposal charges, pertaining to the Scheme.

Waste Disposal (Charges for Waste Disposal) Regulation

♦ Charging mechanism

18. The Administration proposes to establish a direct payment system requiring major waste producers (who are responsible for generating 70% to 80% of construction waste), to open billing accounts and pay disposal charges direct to the Government. Any principal contractor who undertakes construction works valued \$1 million and above will be required to open account and pay waste disposal charges directly to the Government. Failure to apply to DEP for a billing account within 14 days after being awarded the construction work will be an offence. For the remaining 20% to 30% of construction waste arising construction works carried out by minor waste producers, mainly renovation contractors, the Administration's original proposal is to levy the charges through waste haulers who deliver the waste to the waste facilities. The charges will be collected on a monthly basis with a credit period of 30 days. Collection of the charges from waste haulers will be suspended if they can produce evidence that they are unable to collect the same amount from the waste producers.

19. Question has been raised on the adequacy of the 14-day period and whether it should commence upon the awarding or signing of a contract. According to the Administration, the policy intent is to ensure that the principal contractor will open a billing account for paying the disposal charges before the commencement of construction work. As the signing of contract can take place any time at or after the award of the work and even after commencement of the construction works, the Administration holds the view that it is more appropriate to require the opening of the billing accounts after the award, rather than signing, of the contract. The trade has raised no major difficulties in complying with such a requirement. Nonetheless, in order to facilitate the major contractors in complying with the requirement, the Administration agrees to members' suggestion to extend the period from 14 to 21 days.

20. The Bills Committee notes that waste haulers remain opposed to the proposed charging mechanism on the ground that the requirement for them to collect disposal charges from minor waste producers, mainly renovation contractors, may give rise to cash flow and bad debt problems. Some members also point out that such a requirement is at variance with the "polluter-pays" principle since waste haulers are not waste producers but only involved in the delivery of waste. They therefore consider it more appropriate to extend the direct payment system to cover both major and minor waste producers, thereby obviating the need to involve waste haulers in the collection of disposal charges. In the light of waste haulers' concerns and members' repeated requests, the Administration agrees to remove the on-site payment arrangement. Instead of levying disposal charges through waste haulers, all charges will need to be paid through billing accounts.

21. While welcoming the revised payment arrangement which may help tackle the cash flow problem, there is still concern about the bad debt problem. Some members consider that to ensure effective implementation of the Scheme and to avoid shifting of responsibility to sub-contractors, most likely waste haulers, consideration should be given to requiring those who are registered as renovation contractors under the Business Registration Ordinance (Cap. 310) (BRO) to open billing accounts. Other members however take a different view. Given the far-reaching implications of the proposed registration requirement, they consider it imprudent for any suggestion to include such a requirement in the Bill without prior consultation with the trade.

22. In this connection, the Administration explains that 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 BRO. If all companies registered as "renovation" companies are required to open billing accounts, those which do not actually carry out renovation works, such as companies selling renovation items, may also be included. This will create undue inconvenience to these companies. It is also worth noting that some renovation works can be undertaken by companies that do not describe themselves as "renovation" or "decoration" companies, and that a lot of renovation works may not involve the hiring of contractors. The suggestion to require all renovation contractors to open billing accounts for the purpose of the Scheme will affect at least 7 000 renovation contractors. Detailed discussion and full consultation with the trade on the suggestion will be

necessary. However, there are difficulties and time will be taken in conducting the consultation as there is no representative trade union for the renovation contractors. As such, the Administration holds the view that the proposed requirement for renovation contractors to open billing accounts is neither practicable nor enforceable. While acknowledging that it may not be the most suitable timing or remit under this Bill to introduce a registration system for renovation contractors, members stress that this should be the way forward in the long run to regulate the trade to prevent malpractice such as tax evasion. Members suggest that the subject should be followed up by the relevant Panel.

23. The Bills committee has also explored the feasibility of lowering the threshold for which penalty will be imposed on failure to open a billing account from \$1 million to \$0.5 million, thereby covering more renovation contracts and thus further reducing the possibility of shifting of responsibility for payment of disposal charges to waste haulers. To avoid undue inconvenience which may arise, separate provisions should be provided for projects valued under \$1 million such that a principal contractor is not required to open a billing account for every project but to inform DEP the account from which disposal fees arising from additional projects should be charged.

24. According to the Administration, the threshold at \$1 million is set having regard to the Construction Industry Levy under the Industrial Training (Construction Industry) Ordinance (Cap. 317) and the Pneumoconiosis Levy under the Pneumoconiosis (Compensation) Ordinance (Cap. 360). This is also in line with the registers of contractors kept by the Buildings Department and the Construction Industry Training Authority, rendering it much easier for the Administration to check whether the contractors have applied for the billing accounts. If the threshold of \$1 million is to be lowered to \$0.5 million, the number of works projects to be covered under the mandatory requirement will increase significantly in the order of 100 000, while the percentage of construction waste covered as a result will increase by only 5%. Moreover, as construction works contracts with a value in the range of \$0.5 million to \$1 million are usually of smaller scale, the lowering of threshold will cause undue inconvenience to small businesses as they will have to bear legal liability even for simple minor works. The Administration has also consulted the trade on the proposal to lower the threshold. Preliminary feedback from the trade indicates that the threshold of \$1 million is acceptable in terms of the scale of construction works to be involved. However, if the threshold is lowered to \$0.5 million which is different from the two ordinances referred to, this may cause confusion and require additional administrative resources to handle the different requirements.

- ♦ Types of construction waste to be accepted at the waste disposal facilities

25. Under the Regulation, three types of waste disposal facilities (i.e. landfills, sorting facilities and public fill reception facilities) will be made available to receive construction waste with different content as follows -

- (a) landfills will receive mixed construction waste with little (not more than 50%) inert content;
- (b) sorting facilities will receive and sort mixed construction waste with higher (over 50%) inert content; and
- (c) public fill reception facilities will accept pure inert fill.

To facilitate implementation of the Scheme, site staff at these facilities will be empowered, based on inspection, to turn away vehicles carrying inappropriate wastes other than the three types of acceptable wastes under the Regulation. The site staff at the waste disposal facilities will also be empowered to determine, based on visual inspection, whether a waste load is construction waste and thus should be subject to construction waste disposal charge. The decision to turn away or charge a waste load will not be subject to appeal.

26. Members caution that the use of inspection to determine the content of waste load may lead to disputes and malpractice, particularly in the absence of an appeal mechanism against such a determination. Clear guidelines are therefore necessary to assist site staff to reach an objective decision on the content of waste load. Measures should also be put in place to minimize the waiting time at the facilities as a result of a vehicle being turned away by site staff.

27. The Administration's explanation is that it will, in consultation with the Department of Justice and the Independent Commission Against Corruption, work out management and control measures to safeguard against possible abuses or malpractice. Comments from the trade will be taken into account before finalizing the control measures. The Administration also recognizes the need for objective guidelines for determination of the waste content to avoid argument and has prepared a draft reference table for determining the waste content at **Appendix III**. Moreover, only designated site staff who have received adequate training will be allowed to carry out inspection of waste and determine the waste content. Measures, such as upgrading of computer system at the facilities and streamlining of procedures, will also be taken to minimize waiting time at the facilities. A tripartite working group with representatives from the construction industry, waste haulers and the waste facility operators will be set up to discuss the operational details of the Scheme. Moreover, there will be a dry run to test out the operational arrangements prior to implementation of the charging scheme.

◆ Level of disposal charges

28. The Regulation proposes to charge \$125, \$100 and \$27 per tonne for construction waste disposed of at landfills, sorting facilities and public fill reception facilities respectively. The Bills Committee notes that the trade has expressed concern about the high fee levels and enquires about the bases upon which these charges are arrived at. The Administration's explanation is that the disposal charges are set to recover in full the capital and recurrent costs of the reception facilities. Details on the determination of the fee levels are at **Appendix IV**. While

acknowledging the Administration's explanation, members consider it necessary for the Administration to further consult the trade with a view to reaching a consensus on the levels of disposal charges. According to the Administration, many rounds of consultation on the details of Scheme, including the proposed levels of charges, have been carried out with the trade. The Administration therefore holds the view that the proposed levels of disposal charges are appropriate, and that no further consultation with the trade is necessary.

Waste Disposal (Designated Waste Disposal Facility) (Amendment) Regulation

29. The Bills Committee notes that the proposed Regulation aims to set out the related powers for DEP to implement the Scheme in the Government-owned facilities. No policy implications will be involved.

Other measures to prevent the production and disposal of construction waste

30. In the course of deliberation, members have pointed out the lack of measures to prevent land filling activities in private land and indiscriminate demolition of buildings by developers.

Land filling activity in private land

31. While agreeing to the need to respect the rights of private land owners in respect of the use of their land, members consider that measures should be put in place to prevent private land, particularly agricultural land in the New Territories, from becoming land filling areas or dumping sites of waste.

32. According to the Administration, it has been examining the control and regulatory regimes under the relevant ordinances in an attempt to identify a valid basis for enforcement against the land filling activity. However, there is so far no sufficient evidence to instigate prosecution under the relevant ordinances. Notwithstanding, the Administration agrees that there is a need to regulate the activity to prevent it from causing unacceptable environmental impacts. To this end, the Housing, Planning and Lands Bureau will explore with members of the Town Planning Board (TPB) the feasibility of a clean record system from which TPB can make reference to in considering planning applications. Consideration is also being given to including in the second stage amendments to the Town Planning Ordinance (Cap. 131) deeming provisions to control the scale and duration of land filling activities. From the environmental protection perspective, a possible option is to subject major land filling activities for any purposes to the control of the Environmental Impact Assessment (EIA) Ordinance (Cap. 499). Under the possible option, land filling areas of not less than two hectares in size and with a depth of filling of not less than 1.2 metres will be regarded as designated project under the EIA Ordinance. Project proponents of such designated projects will be required to apply for an environmental permit from DEP before the construction or operation of the designated projects can start, non-compliance will be liable to prosecution. The proposal will help ensure that only land filling activities not causing unacceptable environmental impact will be allowed. It will also help identify the potential impact of major land filling activities in the early

planning stage such that avoidance, and if necessary, mitigation can be considered at the earliest possible opportunity before the operation begins.

33. While agreeing that the proposed option is a step forward, members stress the need for timely completion of the relevant legislative amendments to tie in with the coming into operation of the Amendment Ordinance so that they are complementary to each other. To ensure that land with high ecological value will not be destroyed as a result of land filling by land owners for redevelopment before the enactment of the Bill, freezing surveys may need to be carried out. The proposed size of two hectares for land filling areas to be covered under the EIA Ordinance is too large and may need to be downsized. Besides, there is no control over the types of waste to be disposed of at land filling areas under the possible option. Consideration should therefore be given to requiring land owners to apply to DEP for a permit for any land filling activities. The Administration's explanation is that the threshold of two hectares is set in accordance with existing similar requirement for public dumping areas under the EIA Ordinance, and that the introduction of licensing system for all land filling activities will cause undue inconvenience to private land owners, particularly those of small plots of land, as they will need to apply for licences to carry out land filling activities for farming or other purposes permitted under the Outline Zoning Plans. Nonetheless, the Administration agrees to further examine the details of the possible option in the light of members' comments.

Indiscriminate demolition of buildings

34. The Bills Committee notes that the possible demolition of the new building blocks in Hunghom Peninsula by the developers has aroused much public concern on the need for measures to prevent and minimize the production of construction waste by private construction works. In this connection, members suggest that apart from measures to foster an environment conducive to the development of recycling business for construction waste, consideration should also be given to including in the Bill punitive measures for indiscriminate demolition of buildings.

35. According to the Administration, it has been carrying out various measures to facilitate the development of the recycling business for construction materials. A temporary construction materials recycling facility has been set up in Tuen Mun since July 2002. Plans are in hand to establish another recycling facility in Kai Tak. Quasi-government bodies, such as the Urban Renewal Authority, Kowloon-Canton Railway Corporation and MTR Corporation Limited, as well as private developers/contractors are encouraged to deliver hard inert materials to the recycling facility for processing. To promote the use of recycled construction material products, public works contracts are required to use recycled aggregates as far as possible. While there are at present no punitive measures for indiscriminate demolition, it is a mandatory requirement under the waste management plan of public works projects for demolition works under contracts invited on or after 1 July 2003 to carry out "selective demolition", which involves demolition and removal of materials of the same category one at a time to avoid mixing of recyclable with non-recyclable materials and inert with non-inert materials. For private projects, the Buildings Department has provided guidelines for planning the sequences of demolition to allow for separation

and sorting of building materials. Furthermore, the differential charges under the Scheme will provide economic disincentive for developers/contractors to demolish buildings indiscriminately as they will have to pay more for disposal of mixed demolition waste.

36. Members express concern that the introduction of waste disposal charges will not have much effect in reducing construction waste since the charges are negligible as compared to the huge gains in property development. It is therefore necessary for the Administration to work out with relevant bureaux/departments measures to prevent indiscriminate demolition of buildings. At members' request, the Administration agrees to include in the speech to be delivered by the Secretary for the Environment, Transport and Works at the resumption of Second Reading debate on the Bill measures which the Administration will take to respond to public concern on indiscriminate demolition of buildings by developers.

Committee Stage amendments

37. A set of CSAs to be moved is at **Appendix V**.

Recommendations

38. The Bills Committee recommends the resumption of the Second Reading debate on the Bill on 30 June 2004. To ensure that the construction waste disposal charging scheme is implemented without further delay, the Bills Committee recommends the timely establishment of a subcommittee to scrutinize the Waste Disposal (Charges for Waste Disposal) Regulation and the Waste Disposal (Designated Waste Disposal Facility) (Amendment) Regulation to be made and tabled after the passage of the Bill.

Consultation with the House Committee

39. The House Committee at its meeting on 11 June 2004 supported the recommendation of the Bills Committee to resume the Second Reading debate on the Bill on 30 June 2004.

Prepared by
Council Business Division 1
Legislative Council Secretariat
23 June 2004

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

Membership list

Chairman	Dr Hon LAW Chi-kwong, JP
Members	Hon LEE Cheuk-yan Hon Miriam LAU Kin-yea, JP Hon Emily LAU Wai-hing, JP Hon CHOY So-yuk Hon Abraham SHEK Lai-him, JP Hon LI Fung-ying, JP Hon Michael MAK Kwok-fung Hon Albert CHAN Wai-yip Hon LEUNG Fu-wah, MH, JP Hon Audrey EU Yuet-mee, SC, JP

(Total : 11 Members)

Clerk	Miss Becky YU
Legal Adviser	Mr Stephen LAM
Date	28 April 2004

Appendix II

List of organizations which have made written and/or oral representations to the Bills Committee

- (a) Advisory Council on the Environment
- (b) Business Environment Council
- (c) Conservancy Association
- (d) Friends of the Earth (HK)
- (e) Greenpeace
- (f) Green Power
- (g) HK, Kowloon & NT Grab Mounted Lorries Association Ltd
- (h) Hong Kong Association of Property Management Companies Ltd
- (i) Hong Kong Construction Association
- (j) Hong Kong Construction Sub-Contractors Association
- (k) Hong Kong Dumper Truck Drivers Association
- (l) Hong Kong General Chamber of Commerce
- (m) Hong Kong Institution of Engineers
- (n) Hong Kong Kowloon Taxi & Lorry Owners' Association Ltd
- (o) Hong Kong Waste Disposal Industry Association
- (p) Hong Kong Waste Management Association
- (q) Motor Transport Workers General Union
- (r) Real Estate Developers Association of Hong Kong
- (s) Working Group on Construction Waste under Provisional Construction Industry Coordination Board

Draft reference table for determining the content of waste at landfills, sorting facilities and public fill reception facilities

The waste acceptance criteria of the three types of construction waste disposal facilities are as follow –

- (a) Landfills – to receive mixed construction waste with not more than 50% inert content;
- (b) Sorting Facilities – to receive mixed construction waste with more than 50% inert content; and
- (c) Public fill reception facilities – to accept pure inert public fill.

A survey had been carried out to determine the relation between the inert content and the weight of the waste load. It was found that for the range of inert content between 45% and 55%, the corresponding “Net Weight/ Permitted Gross Vehicle Weight of a vehicle” (Net Wt/GVW) would be about 9-20%.

We initially consider that the dividing line for acceptance of waste at landfills or sorting facilities should be set at 20% Net Wt/ GVW (i.e. inert content of the waste load is not less than 50%). If the “Net Wt/GVW” of a vehicle is greater than 20%, it will not be allowed to enter the landfill for waste disposal. Similarly, if the “Net Wt/GVW” of a vehicle is smaller than 20%, it will not be allowed to enter the sorting facilities. Some examples are shown below –

Gross vehicle weight of vehicles (GVW)	Net Weight of Waste load (Net Wt) (tonnes)	In-weight of the vehicle carrying a waste load with more than 50% inert content (i.e. 20% Net Wt/GVW) (tonnes)
10 tonnes	2	8
16 tonnes	3.2	13.2
24 tonnes	4.8	18.8
30 tonnes	6	24

For example, if the in-weight of a vehicle of 24 tonnes GVW is greater than 18.8 tonnes, the vehicle will be refused to enter the landfill for waste disposal.

For public fill reception facilities, as these facilities will only accept 100% inert construction waste, visual inspection is sufficient to differentiate inert and non-inert construction wastes. No reference to the weight of the truckload is needed for determining whether the truckload should be accepted.

Determination of the levels of disposal charges

Landfill charge

The proposed charge (\$125/tonne) represents full cost recovery of the capital (\$56/tonne) and recurrent (\$69/tonne) costs.

Sorting charge

The proposed charge (\$100/tonne) represents full cost recovery of the estimated capital and recurrent costs of the sorting facilities. With the estimated annual capital and operation costs of about \$76.7 million, and the estimated quantity of about 737,500 tonnes of mixed construction waste to be handled each year, the average unit sorting cost per tonne is about \$100.

Public fill charge

The proposed charge (\$27/tonne) represents full cost recovery of the capital and recurrent costs of the public fill reception facilities. With the annual capital and operation costs of about \$325.6 million, and the estimated quantity of about 12 million tonnes of public fill handled each year, the average unit sorting cost per tonne is about \$27.

WASTE DISPOSAL (AMENDMENT) (No. 2) BILL 2003

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Environment, Transport
and Works

<u>Clause</u>	<u>Amendment Proposed</u>
3	In the proposed section 16A(4), by deleting "took all steps reasonably open to him to ensure that an offence would not be committed" and substituting "had no reason to believe that an offence would be committed".
4	In the proposed section 18A(4), by adding "(a)" after "subsection (1)".
5	In the proposed section 23EA, by adding after subsection (4) - "(4A) Where the Director enters any domestic premises in accordance with a warrant issued under subsection (4), he shall, if required, produce that warrant."
10	By deleting the proposed section 42 and substituting -

**"42. Recovery of charges and other
sums by the Director as
civil debts**

The following is recoverable by the Director
as a civil debt due to the Government -

- (a) any charge or surcharge
payable under this Ordinance;
- (b) any amount payable pursuant to
an order made under section
18A(1)(b) or 23EA(2)."