

LEGISLATIVE COUNCIL BRIEF

Waste Disposal Ordinance
(Chapter 354)

Waste Disposal (Amendment) Bill 2013

INTRODUCTION

A At the meeting of the Executive Council on 11 June 2013, the Council ADVISED and the Acting Chief Executive ORDERED that the Waste Disposal (Amendment) Bill 2013, at Annex A, should be introduced into the Legislative Council (“LegCo”) to enhance the regulation of the depositing of construction waste on private land under Waste Disposal Ordinance (“WDO”).

JUSTIFICATIONS

Fly-tipping of Construction Waste on Private Land

2. Construction waste is defined under section 2 of the Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Cap. 354 sub. leg. N) to mean generally any substance, matter or thing that is generated from construction work and abandoned. Some construction waste is inert and may be reused as construction materials. Examples include rock, rubble, boulder, earth, soil, sand, concrete, asphalt, brick, tile, masonry and used bentonite. Construction waste is subject to a statutory disposal charge, which some may seek to evade through fly-tipping. This is regulated under, amongst others¹, section 16A(1) of WDO which provides that a person commits an offence if the person deposits or causes or permits to be deposited waste (including construction waste) in any place except with lawful authority or excuse, or except with the permission of any owner or lawful occupier of the

¹ Depending on the practical circumstances, statutory regulation under other legislation including the Land (Miscellaneous Provisions) Ordinance (Cap. 28) and the Town Planning Ordinance (Cap. 131) may also apply.

place.

3. Notwithstanding the above control, enforcement against fly-tipping on private land is not effective as it is sometimes difficult to prove the lack of permission of a landowner or lawful occupier. It is not unusual to receive incomplete or conflicting information from the depositor and the landowner or lawful occupier as to whether there was indeed proper permission. Some cases involve uncertainty in ownership due to outdated records (e.g. when the owner on record has deceased). More often than not, we are not able to collect sufficient evidence in a suspected fly-tipping case within the statutory time limit of six months for initiating prosecution. This has undermined the deterrent effect of the control.

4. Fly-tipping of construction waste on private land was observed to have aggravated in the New Territories in the past few years. In a notable case, an agricultural land of over 1,000 m² at Ho Sheung Heung in Sheung Shui was dumped with construction waste in 2009. Having reviewed WDO and conducted a public consultation in 2010, the Administration considered that there is scope to enhance the effectiveness of enforcing section 16A of WDO as proposed below.

The Proposed Enhancement

5. In general, it will enhance the regulatory control if the Administration can become aware of any plans to deposit construction waste on private land before the depositing takes place. The prior notification will help identify the depositing that has indeed been properly authorized thus enhancing enforcement effectiveness. At present, permission for the depositing may be given by any owner or lawful occupier even without the knowledge of individual owners (in cases of multiple ownership). It will better protect the interest of the landowners concerned if such permission has to be given by all owners. Having regard to these objectives, we **propose** that –

- (a) before a person deposits or causes to be deposited construction waste on a private land lot, the person must obtain the valid permission of **each and every** owner of that lot;

- (b) the permission will not be regarded as valid unless (I) it is given in a specified form and (II) the specified form bears an acknowledgement by the Director of Environmental Protection (“DEP”) which will not be given unless –
 - (i) the specified form is submitted to DEP, together with certain information and documents relating to the depositing activity as specified in the form, at least 21 calendar days before the intended commencement date of the depositing activity;
 - (ii) the owners identified in the specified form are the persons who appear from the register kept under the Land Registration Ordinance (Cap. 128) to be the owners of the lot (“owners on record”); and
 - (iii) the specified form is signed by or on behalf of all owners on record; and
- (c) the person who deposits the waste must display in a conspicuous place of the lot a copy of the acknowledged form.

6. The proposed new procedures represent enhanced control because at present depositing of construction waste on private land may lawfully be carried out with the permission of any owner or lawful occupier and the permission may be given in any form, even in the absence of the knowledge of all other owners if multiple ownership exists.

7. On top of the enhanced regulatory control, with the prior notification mechanism, we will also be able to alert other relevant departments that depositing of construction waste may commence in a particular private lot such that they may take precautionary measures as appropriate. For instance, they may contact the landowners and offer necessary advice on legislation relating to the depositing of construction waste and any associated adverse environmental impact in a timely manner before the depositing actually commences.

Applicability

8. The enhanced control proposed in paragraph 5 should not apply to the sole owner of a private lot who deposits, or causes to be deposited, construction waste on the lot because there is no case of this sole owner fly-tipping on his or her own land. Also we **propose** that the enhanced control does not apply in either of the following circumstances –

- (a) the area on which construction waste has been deposited within the lot remains small, by which we propose a benchmark of the depositing area being no more than 20 m², so as to strike a balance between the additional burden on all parties concerned in complying with the new procedures and the potential environmental impacts, if any;
- (b) the depositing activity is carried out as part of any building works commenced in accordance with the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) or the Buildings Ordinance (Cap. 123) on the lot concerned, because such a depositing activity will have to fulfill the relevant regulatory requirements before they may lawfully commence and have not been the source of fly-tipping problems.

Penalties

9. We **propose** that the same maximum penalties apply as in similar offences under section 16A of WDO, i.e. (i) a fine of up to \$200,000 and imprisonment for up to 6 months for the first offence; (ii) a fine of up to \$500,000 and imprisonment for up to 6 months for subsequent offences; and (iii) a daily fine of \$10,000 for continuing offence. For other auxiliary offences, a fine at level 6, i.e. a maximum of \$100,000, is proposed. A total of 87 cases were convicted for offence under section 16A(1) of WDO between 2011 and February 2013, with the fine imposed by the court ranged from \$1,000 to \$20,000.

OTHER OPTIONS

10. It is not a viable option to subject the depositing of construction waste on private land to DEP's authorization. This is because requiring DEP to authorize such depositing on factors other than environmental

grounds (such as land use and slope safety) will go beyond DEP's authority under environmental legislation. The legality and reasonableness of such authorization will also be subject to challenge.

THE BILL

11. The main provisions of the Bill are as follows –
- (a) Clause 4 adds new sections 16B and 16C to WDO, under which subject to certain exceptions, depositing of construction waste on a private lot has to be carried out with the valid permission of the sole owner or all of the owners of the lot obtained according to the procedures outlined in paragraph 5(b) above;
 - (b) Clause 6 amends section 23D of WDO to empower an authorized officer to require the production of an acknowledged form referred to in paragraph 5(b) above;
 - (c) Clauses 5, 7 and 8 amend the existing provisions relating to penalties, powers and prosecutions to add appropriate references to the proposed enhanced control; and
 - (d) Clause 9 amends section 37 of WDO to empower the Secretary for the Environment to revise the scope of the exception referred to in paragraph 8(b) above by notice published in the Gazette.

B The existing provisions being amended are at Annex B.

LEGISLATIVE TIMETABLE

12. The legislative timetable of the Amendment Bill will be –

| | |
|---|--------------|
| Publication in the Gazette | 21 June 2013 |
| First Reading and commencement of Second Reading debate | 26 June 2013 |

Resumption of Second Reading to be notified
debate, committee stage and Third
Reading

IMPLICATIONS OF THE PROPOSAL

C 13. The proposal has environmental, sustainability, economic and financial and civil service implications as set out at Annex C. It is in conformity with the Basic Law, including the provisions concerning human rights. It has no family implications. The Bill will not affect the current binding effects of WDO.

PUBLIC CONSULTATION

14. We have consulted the public in 2010. During the consultation period, we have briefed the Advisory Council on the Environment, the LegCo Panel on Environmental Affairs (“EAP”), nine District Councils in the New Territories and Heung Yee Kuk. Other stakeholders, including the dump truck trade and green groups, have also expressed their views. In general, the wider community welcomed the Government to take further action to deal with the fly-tipping of construction waste and called for strengthened inspection and enforcement actions to deter such activity. Some landowners were concerned as the new mechanism will entail a more robust control. There were also views that such control will in effect impose restrictions on how they may use their own land and take it as a property rights issue. When updated on the progress of this legislative exercise in February 2013, the EAP was generally supportive of the early introduction of the Bill.

PUBLICITY

15. A press release will be issued. A spokesperson will also be arranged to answer press enquiries.

ENQUIRIES

16. For enquiries on this brief, please contact Mr Gordon WU, Administrative Officer (Waste Management Policy Division),

Environmental Protection Department at 3509 7648 or email to gordonwu@epd.gov.hk.

**Environment Bureau/Environmental Protection Department
June 2013**

Waste Disposal (Amendment) Bill 2013
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A BILL To

Amend the Waste Disposal Ordinance to provide for enhanced control of the depositing of construction waste on private land; and to make consequential amendments.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Waste Disposal (Amendment) Ordinance 2013.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for the Environment by notice published in the Gazette.

2. Waste Disposal Ordinance amended

The Waste Disposal Ordinance (Cap. 354) is amended as set out in sections 3 to 10.

3. Section 2 amended (interpretation)

Section 2(1)—

Add in alphabetical order

“*private lot* (私人地段) means a piece or parcel of ground held under a Government lease and identified by a lot number as defined by regulation 2 of the Land Registration Regulations (Cap. 128 sub. leg. A);”.

4. Sections 16B and 16C added

After section 16A—

Add

“16B. Prohibition of depositing of construction waste on private lot without valid permission

- (1) This section applies in relation to the depositing of construction waste on a private lot except when—
 - (a) the total area on which construction waste has been deposited within the lot, regardless of who deposited the waste, does not exceed 20 m²; or
 - (b) the depositing forms part of any building works carried out on the lot that commenced in accordance with an enactment specified in Schedule 13.
- (2) In calculating the total area for subsection (1)(a), waste containing both construction waste and other waste is regarded as consisting entirely of construction waste.
- (3) Subject to subsection (5), a person who deposits, or causes to be deposited, construction waste on a private lot without the valid permission of the sole owner or all of the owners of the lot commits an offence.
- (4) For subsection (3), the permission is valid only if—
 - (a) it is given in a form specified by the Director under section 16C(2)(a); and
 - (b) the form giving the permission bears an acknowledgement affixed by the Director in accordance with section 16C(3).
- (5) For a private lot owned by a sole owner, the reference to “a person” in subsection (3) does not include the owner.

- (6) Section 16A(2), (3), (4), (5) and (6) applies in relation to an offence under subsection (3) in the same way as it applies in relation to an offence under section 16A(1). For this purpose, the reference to “subsection (1)” in section 16A(2) and (3) is taken to be a reference to subsection (3).

16C. Specified form for permission for depositing construction waste on private lot and Director’s acknowledgement

- (1) In this section—

acknowledged form (經認收表格), in relation to a depositing activity, means a specified form—

- (a) in which the permission for the depositing activity is given; and
- (b) on which an acknowledgement is affixed in accordance with subsection (3);

depositing activity (擺放活動) means the depositing of construction waste on a private lot;

owners (擁有人), in subsection (3)(b)(i) and (ii), includes a sole owner;

permission (許可), in relation to a depositing activity, means the permission of the sole owner or all of the owners of the lot on which the depositing activity is carried out;

specified form (指明表格) means a form specified under subsection (2)(a).

- (2) The Director may—

- (a) specify a form in which the permission for a depositing activity is to be given; and
- (b) specify in the form any information or document that the Director requires in relation to the permission.

- (3) The Director may affix an acknowledgement on a specified form concerning a depositing activity only if—
- (a) the form is submitted to the Director, together with the information and documents specified in it, at least 21 days before the intended date on which the depositing activity is to commence; and
 - (b) the Director is satisfied that—
 - (i) the owners identified in the form are the persons who appear from the register kept under the Land Registration Ordinance (Cap. 128) to be the owners of the lot (**owners on record**); and
 - (ii) the form is signed by or on behalf of all owners on record.
- (4) A person who deposits construction waste on a private lot must, at all times during the depositing activity, display in a conspicuous place on the lot a copy of the acknowledged form for the depositing activity.
- (5) However, subsection (4)—
- (a) only requires the display of the part of an acknowledged form which is specified in the form to be for display; and
 - (b) does not apply if the depositing activity may be lawfully carried out without the permission given in an acknowledged form.
- (6) A person commits an offence if the person submits under subsection (3)(a) a specified form, or any information or document specified in it, which the person—
- (a) knows to be incorrect or inaccurate in a material particular; or

(b) does not believe to be correct and accurate in a material particular.

(7) A person commits an offence if the person fails to comply with subsection (4).”.

5. Section 18 amended (penalties for offences under sections 16, 16A and 17 and defences)

(1) Section 18, heading, after “**16A**”—

Add
“, **16B**”.

(2) Section 18, heading, before “**and 17**”—

Add
“, **16C**”.

(3) Section 18(1)—

Repeal

“or 16A”

Substitute

“, 16A or 16B”.

(4) After section 18(1)—

Add

“(1AA) A person who commits an offence under section 16C(6) or (7) is liable to a fine at level 6.”.

(5) Section 18(2), after “16A”—

Add

“, 16B”.

6. Section 23D amended (other powers of authorized officers)

(1) Section 23D(g)—

Repeal

“and”.

(2) Section 23D(h)—

Repeal

“officer.”

Substitute

“officer; and”.

(3) After section 23D(h)—

Add

“(i) require any person whom the officer reasonably suspects of having deposited construction waste on a private lot to produce the original or a copy of the acknowledged form within the meaning of section 16C for the depositing activity for inspection by the officer.”.

7. Section 23EA amended (Director’s power to remove waste in case of imminent risk of adverse environmental impact)

Section 23EA(1)(a), (2) and (4)(a), after “16A”—

Add

“or 16B”.

8. Section 31 amended (mental ingredients of certain offences under the Ordinance)

Section 31, after “16A,”—

Add

“16B,”.

9. Section 37 amended (amendment of Schedules)

Section 37(2B)(b)—

Repeal

“Schedule 9”

Substitute

“Schedules 9 and 13”.

10. Schedule 13 added

After Schedule 12—

Add

“Schedule 13 [ss. 16B & 37]

**Enactments Specified for Purposes of Section
16B(1)(b)**

1. Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121)
 2. Buildings Ordinance (Cap. 123)”.
-

Explanatory Memorandum

Currently, the depositing of any waste in any place in general is regulated by section 16A of the Waste Disposal Ordinance (Cap. 354) (*Ordinance*). The object of this Bill is to amend the Ordinance to provide for an enhanced regulatory regime for the depositing of construction waste on a private lot, which is in addition to the existing regulation under section 16A of the Ordinance.

2. Clause 1 sets out the short title and provides for commencement.
3. Clause 3 amends section 2 of the Ordinance to add the definition of *private lot*, which basically means land held under a Government lease and identified by a lot number in the Land Registry.
4. Clause 4 adds new sections 16B and 16C to the Ordinance. Under the new sections—
 - (a) the depositing of construction waste on a private lot must be carried out with the valid permission of the sole owner or all of the owners of the lot (new section 16B(3));
 - (b) in order to be valid, the permission must be given in a form specified by the Director of Environmental Protection (*Director*) and the form giving the permission affixed with an acknowledgement by the Director (new section 16B(4)); and
 - (c) the form in which permission is given and acknowledged by the Director (*acknowledged form*) must be displayed (the required part of it) at all times during the depositing activity (new section 16C(4) and (5)(a)).
5. Failure to comply with the requirements mentioned in paragraph 4(a) or (c) by a relevant person is an offence. Certain cases are excepted from the above requirements under the new sections 16B(1) and 16C(5)(b). The new section 16B(5) also makes it clear

that the sole owner of a private lot is not required to declare self-permission in an acknowledged form.

6. Clause 6 amends section 23D of the Ordinance to empower an authorized officer to require the production of an acknowledged form.
7. Clause 9 amends section 37 of the Ordinance to empower the Secretary for the Environment to amend the new Schedule 13 added by clause 10, which specifies enactments for the purposes of the new section 16B(1)(b).
8. Clauses 5, 7 and 8 consequentially amend sections 18, 23EA and 31 of the Ordinance respectively to add appropriate references to the new sections 16B and 16C.

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| Chapter: | 354 | Title: | WASTE DISPOSAL ORDINANCE | Gazette Number: | L.N. 87 of 2010 |
| Section: | 2 | Heading: | Interpretation | Version Date: | 19/11/2010 |

Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

(1) In this Ordinance, unless the context otherwise requires-

"analyst" (化驗師) means the Government Chemist or any person appointed by the Governor under section 23E(5); (Added 58 of 1987 s. 2)

"animal waste" (動物廢物) means-

- (a) the manure or urine of any animal; or
- (b) any dead animal or any part of any dead animal not fit for, or not intended for, human consumption; or
- (c) any bedding, straw or other waste contaminated by the manure or urine of any animal, (Replaced 58 of 1987 s. 2)

but does not include clinical waste; (Amended 6 of 2006 s. 2)

"authorized officer" (獲授權人員) means a public officer authorized under section 23A; (Added 58 of 1987 s. 2)

"chemical waste" (化學廢物) means any substance, matter or thing defined as chemical waste by regulations made under section 33; (Added 86 of 1991 s. 3)

"clinical waste" (醫療廢物) means waste consisting of any substance, matter or thing belonging to any of the groups specified in Schedule 8 that is generated in connection with-

- (a) a dental, medical, nursing or veterinary practice;
- (b) any other practice, or establishment (howsoever described), that provides medical care and services for the sick, injured, infirm or those who require medical treatment;
- (c) dental, medical, nursing, veterinary, pathological or pharmaceutical research; or
- (d) a-
 - (i) dental;
 - (ii) medical;
 - (iii) veterinary; or
 - (iv) pathological, laboratory practice,

but does not include chemical waste or radioactive waste; (Added 6 of 2006 s. 2)

"Code of Practice" (工作守則) means any Code of Practice prepared or revised by the Secretary under section 35; (Added 58 of 1987 s. 2. Amended L.N. 244 of 1989; 78 of 1999 s. 7)

"collection authority" (廢物收集當局) means-

- (a) in relation to chemical waste and clinical waste, the Director; (Amended 6 of 2006 s. 2)
- (b) in relation to any other waste, means the Director of Food and Environmental

Hygiene and the Director; (Replaced 78 of 1999 s. 7. Amended L.N. 183 of 2000)

"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; (Added 17 of 2004 s. 2)

"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); (Added 17 of 2004 s. 2)

"Director" (署長) means the Director of Environmental Protection; (Added L.N. 74 of 1986)

"disposal" (處置) in relation to chemical waste and clinical waste includes treatment, reprocessing or recycling; (Added 86 of 1991 s. 3. Amended 6 of 2006 s. 2)

"enlarged area" (放大區) means those parts of-

- (a) a livestock waste prohibition area;
- (b) a livestock waste control area; or (Amended 28 of 1994 s. 2)
- (c) a livestock waste restriction area, (Added 28 of 1994 s. 2)

specified in the third column of the Third Schedule by reference to maps identified therein and signed by the Director, an officer of the Environmental Protection Department not below the rank of Environmental Protection Officer or a Chief Environmental Protection Inspector and deposited with the Land Registry, which abut or share a common boundary with one or more livestock waste control areas or one or more livestock waste restriction areas; (Added 58 of 1987 s. 2. Amended 28 of 1994 s. 2)

"exempt person" (獲豁免的人) means any person or any classes of person specified in the Fourth Schedule; (Added 58 of 1987 s. 2)

"household waste" (住戶廢物) means waste produced by a household, and of a kind that is ordinarily produced by a dwelling when occupied as such;

"keep" (飼養) includes breed, house, tend, look after or control and "kept" and "keeping" shall be construed accordingly; (Added 58 of 1987 s. 2)

"lairage" (圍欄) means that part of a slaughterhouse or abattoir used for the admission or confinement of animals; (Added 58 of 1987 s. 2)

"livestock" (禽畜) means pigs or poultry; (Added 58 of 1987 s. 2)

"livestock keeper" (禽畜飼養人) means-

- (a) an owner of livestock; or
- (b) an owner, lessee or occupier or person responsible for the management of livestock premises; or
- (c) any person keeping livestock or having the custody or possession of livestock; or
- (d) any former livestock keeper,

but does not comprise exclusively any exempt person; (Added 58 of 1987 s. 2)

"livestock premises" (禽畜飼養場) means-

- (a) any premises, buildings, land or land covered by water owned, leased or occupied by a livestock keeper, his dependants or employees for the purpose of keeping livestock and any dwelling-place and ancillary buildings or structures connected therewith;
- (b) any other premises in or on which livestock are kept other than any premises comprising any abattoir, slaughter-house, market, fresh provision shop, lairage or hatchery in which poultry of not more than 12 days old are kept; and
- (c) any former livestock premises; (Added 58 of 1987 s. 2)

"livestock waste" (禽畜廢物) means, subject to section 2A, animal waste produced by, or connected with, livestock; (Added 58 of 1987 s. 2. Amended 28 of 1994 s. 2)

"livestock waste control area" (禽畜廢物管制區) means a livestock waste control area specified in the second column of the Second Schedule by reference to maps identified therein and signed by the Director, an officer of the Environmental Protection Department not below the rank of Environmental Protection Officer or a Chief Environmental Protection Inspector and deposited with the Land Registry; (Added 58 of 1987 s. 2. Amended 28 of 1994 s. 2)

"livestock waste prohibition area" (禽畜廢物禁制區) means a livestock waste prohibition area specified in the second column of the First Schedule by reference to maps identified therein and signed by the Director, an officer of the Environmental Protection Department not below the rank of Environmental Protection Officer or a Chief Environmental Protection Inspector and deposited with the Land Registry; (Added 58 of 1987 s. 2. Amended 28 of 1994 s. 2)

"livestock waste restriction area" (禽畜廢物限制區) means a livestock waste restriction area specified in column 2 of the Fifth Schedule by reference to maps identified therein and signed by the Director, an officer of the Environmental Protection Department not below the rank of Environmental Protection Officer or a Chief Environmental Protection Inspector and deposited with the Land Registry; (Added 28 of 1994 s. 2)

"livestock waste treatment plant" (禽畜廢物處理裝置) means a waste treatment plant at which livestock waste is treated by biological, chemical, physical or other means or any combination thereof in accordance with regulations made under section 33; (Added 58 of 1987 s. 2)

"poultry" (家禽) means chickens, ducks, geese, pigeons and quail; (Added 58 of 1987 s. 2)

"relevant date" (有關日期) means-

(a) in the case of a livestock waste prohibition area, the date shown in the third column of the First Schedule in respect of that area; or

(b) in the case of a livestock waste control area, the date shown in the third column of the Second Schedule in respect of that area; (Added 58 of 1987 s. 2)

"Secretary" (局長) means the Secretary for the Environment; (Added 78 of 1999 s. 7. Amended L.N. 106 of 2002; L.N. 130 of 2007)

"slaughterhouse" (屠房) and "abattoir" (屠場) has the meaning assigned to it in the Public Health and Municipal Services Ordinance (Cap 132); (Added 58 of 1987 s. 2)

"street waste" (街道廢物) means dust, dirt, rubbish, mud, road scapings or filth, but does not include human excretal matter;

"trade waste" (行業廢物) means waste from any trade, manufacture or business, but does not include animal waste, chemical waste, clinical waste or construction waste; (Replaced 17 of 2004 s. 2. Amended 6 of 2006 s. 2)

"waste" (廢物) means any substance or article which is abandoned and includes animal waste, chemical waste, clinical waste, construction waste, household waste, livestock waste, street waste and trade waste; (Amended 86 of 1991 s. 3; 17 of 2004 s. 2; 6 of 2006 s. 2)

"waste collection licence" (廢物收集牌照) means a licence under section 10;

"waste disposal authority" (廢物處置當局), in respect of all classes of waste, means the Director; (Replaced L.N. 74 of 1986)

"waste disposal licence" (廢物處置牌照) means a licence under section 16;

"waste treatment plant" (廢物處理裝置) means a plant at which waste is treated for the purpose of removing therefrom (wholly or in part) pollutants contained therein. (Added 58 of 1987 s. 2)

(Amended 78 of 1999 s. 7)

(2) For the purposes of this Ordinance any substance or article which is discarded or otherwise dealt with as

waste shall be presumed to be waste until the contrary is proved.

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| Chapter: | 354 | Title: | WASTE DISPOSAL ORDINANCE | Gazette Number: | |
| Section: | 18 | Heading: | Penalties for offences under sections 16, 16A and 17 and defences | Version Date: | 30/06/1997 |

(1) Any person who commits an offence under section 16 or 16A is liable-

- (a) for the first offence, to a fine of \$200000 and to imprisonment for 6 months;
 - (b) for a second or subsequent offence, to a fine of \$500000 and to imprisonment for 6 months; and
 - (c) in addition, if the offence is a continuing offence to a fine of \$10000 for each day during which it is proved to the satisfaction of the court that the offence has continued.
- (Amended 28 of 1994 s. 15)

(1A) Any person who commits an offence under section 17 is liable-

- (a) for the first offence, to a fine of \$100000;
 - (b) for a second or subsequent offence, to a fine of \$200000 and to imprisonment for 6 months; and
 - (c) in addition, if the offence is a continuing offence to a fine of \$10000 for each day during which it is proved to the satisfaction of the court that the offence has continued.
- (Added 28 of 1994 s. 15)

(2) A person does not commit an offence under section 16, 16A or 17 if he proves that the waste was disposed of in an emergency to avoid danger to the public and as soon as was reasonably practicable he informed the Director thereof in writing. (Amended L.N. 76 of 1982; L.N. 74 of 1986; 28 of 1994 s. 15)

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| Chapter: | 354 | Title: | WASTE DISPOSAL ORDINANCE | Gazette Number: | L.N. 184 of 2007 |
| Section: | 23D | Heading: | Other powers of authorized officers | Version Date: | 01/12/2007 |

An authorized officer who has, pursuant to section 23C or any warrant issued thereunder, entered any place or premises, stopped any vehicle or boarded any vessel, or who has been allowed access to any place, premises, vehicle or vessel in the course of his duties, may-

- (a) inspect therein any waste treatment plant or other plant or equipment or observe any process or procedure which he has reason to suspect is being, has been, or is intended to be, used in connection with the collection, storage, treatment, transportation or disposal of any waste;
- (b) require the person who appears to him to be in charge of the place, premises, vehicle

or vessel to do anything which the authorized officer reasonably considers to be necessary for facilitating an inspection or observation under paragraph (a); (Amended 28 of 1994 s. 18)

(c) require the person who appears to him to be in charge of the place, premises, vehicle or vessel to produce for examination any drawing, record or document which is in the possession of such person, or which such person can reasonably obtain, relating to any waste treatment plant or other plant or equipment inspected under paragraph (a); (Amended 28 of 1994 s. 18)

(d) seize, remove and detain any such drawing, record or document produced under paragraph (c) or any other article or thing found therein if he has reason to suspect that it is, or contains, evidence of an offence against this Ordinance; (Amended 6 of 2006 s. 17)

(e) examine and make copies of any records kept pursuant to any requirement under this Ordinance or of any licence or permit issued or any authorization granted under this Ordinance; (Amended 6 of 2006 s. 17)

(f) obtain samples of-

(i) any waste or any constituent of waste or of any matter contaminated thereby; or

(ii) any waste which he has reason to believe may be subject to disposal under section 17; (Amended 28 of 1994 s. 18)

(g) carry out any necessary tests or take any photographs for the purposes of obtaining evidence in connection with any offence against this Ordinance; and (Added 28 of 1994 s. 18)

(h) require any person whom he reasonably suspects of having committed an offence against this Ordinance or of having contravened any regulation made under section 33 to state his name and address and to produce documentary evidence showing the name and address, including an identity card issued under the Registration of Persons Ordinance (Cap 177), for inspection by the authorized officer. (Added 28 of 1994 s. 18. Amended 6 of 2006 s. 17)

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| Chapter: | 354 | Title: | WASTE DISPOSAL ORDINANCE | Gazette Number: | L.N. 143 of 2005 |
| Section: | 23EA | Heading: | Director's power to remove waste in case of imminent risk of adverse environmental impact | Version Date: | 01/12/2005 |

(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) Where the Director enters any domestic premises in accordance with a warrant issued under subsection (4), he shall, if required, produce that warrant.

(6) For the purposes of this section, a reference to domestic premises includes a reference to a dwelling place on any private land.

(Added 17 of 2004 s. 5)

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| Chapter: | 354 | Title: | WASTE DISPOSAL ORDINANCE | Gazette Number: | L.N. 143 of 2005 |
| Section: | 31 | Heading: | Mental ingredients of certain offences under the Ordinance | Version Date: | 01/12/2005 |

In any proceedings for an offence under section 11, 15, 15A, 15AA, 16, 16A, 17, 18A, 20E or 23 it shall not be necessary for the prosecution to prove that the acts or omissions in question were accompanied by any intention, knowledge or negligence on the part of the defendant as to any element of the offence.

(Amended 58 of 1987 s. 10; 28 of 1994 s. 21; 14 of 1995 s. 7; 17 of 2004 s. 7)

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| Chapter: | 354 | Title: | WASTE DISPOSAL ORDINANCE | Gazette Number: | L.N. 87 of 2010 |
| Section: | 37 | Heading: | Amendment of Schedules | Version Date: | 19/11/2010 |

(1) The Chief Executive in Council may, by notice published in the Gazette, amend the First, Second, Third, Fourth and Fifth Schedules and Schedule 8. (Replaced 6 of 2006 s. 21)

(2) The Director may, by notice published in the Gazette, specify as wastes that belong to Group 6 of Schedule 8 any wastes that, in his opinion-

(a) are likely to be contaminated with infectious materials from patients falling within such case definition as specified in the notice; and

(b) may pose a significant health risk. (Replaced 6 of 2006 s. 21)

(2A) The Director may, by notice published in the Gazette, amend the list of pathogens listed in Group 4 of Schedule 8 and Schedules 10 and 11. (Added 6 of 2006 s. 21)

(2B) The Secretary may, by notice published in the Gazette, amend-

(a) the relevant dates specified in the First, Second and Fifth Schedules;

(b) Schedule 9. (Added 6 of 2006 s. 21)

(3) Subject to the approval of the Financial Secretary, the Secretary may, by notice published in the Gazette, amend Schedule 12. (Added 17 of 2004 s. 9)

(Added 58 of 1987 s. 13)

IMPLICATIONS OF THE PROPOSAL

Environmental Implications

The fly-tipping of construction waste on private land will damage the natural environment of the rural land in the New Territories. The Bill will enhance the effectiveness of enforcement and will help better protect the environment.

Sustainability Implications

2. As part of the waste management strategy, we need to ensure that all types of waste are properly disposed of for possible gainful reuse and to avoid any adverse impact on the environment. Moreover, the tightened control will deter the disposal of construction waste outside the designated waste disposal facilities and thus help ensure that construction waste disposal is subject to a charge. This will facilitate the charging to kick in to serve as an economic incentive to generate and discard less waste.

Economic Implications

3. The proposal will improve the enforcement against fly-tipping activities and help ensure proper disposal of construction waste. Tightened control will enhance the effectiveness of the construction waste disposal charging scheme in providing an economic incentive for source reduction and recycling, which is conducive to sustainable waste management in Hong Kong. Deterring fly-tipping activities will also better protect the property rights of the owners of private land and help avoid additional costs for any associated clean-up and restoration of the affected land.

Financial and Civil Service Implications

4. The proposal will incur extra work procedures in the Environmental Protection Department in processing the notifications and enforcing the new measures introduced in the amendment bill but the exact staffing requirement will depend on case load and cannot be determined at this stage. As an indication based on complaint statistics,

there were 932 cases of alleged construction waste fly-tipping on rural lands in 2012. We will review and assess the overall manpower requirements for implementing the enhanced control and will endeavor to absorb the additional workload within its existing resources as far as possible. Additional financial and staffing resources, if required, will be justified and sought through the established mechanism.