

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1039/15-16

Ref.: CB1/SS/8/15

**Paper for the House Committee meeting on 17 June 2016**

**Report of the Subcommittee on  
Waste Disposal (Charges for Disposal of Construction Waste)  
Regulation (Amendment of Schedules) Notice 2016**

**Purpose**

This paper reports on the deliberations of the Subcommittee on Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Amendment of Schedules) Notice 2016 ("the Subcommittee").

**Background**

Construction waste

2. As defined under section 2 of the Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Cap. 354N), construction waste, in essence, means generally any substance, matter or thing that is generated from construction works and abandoned. The majority of construction waste is inert and may be reused as construction materials. It has been Government's policy to encourage on-site sorting of construction and demolition ("C&D") materials by works contractors to reuse reusable inert materials in suitable projects. These reusable C&D materials are generally referred to as "public fill".

3. Two fill banks, namely the Tseung Kwan O Fill Bank and the Tuen Mun Fill Bank, were set up in 2002 and 2003 respectively to stockpile surplus public fill generated from local construction works pending reuse. The fill banks are each coupled with a sorting facility to cater for situations where on-site sorting is infeasible. As for mixed construction waste containing non-inert C&D materials, they may only be disposed of at the landfills.

## Construction Waste Disposal Charging Scheme

4. The Government has implemented the Construction Waste Disposal Charging Scheme since 2006 imposing disposal charges which comprise a public fill charge (at \$27 per tonne), sorting charge (at \$100 per tonne) and landfill charge (at \$125 per tonne).<sup>1</sup> The stratified disposal charges are intended to provide economic incentives for construction waste producers to reduce waste and to practise sorting.

5. The disposal charges have not been adjusted since their introduction in 2006. The Administration considers it necessary to increase the disposal charges having regard to the established fees and charges policy and the "polluter-pays" principle, and the diminishing effectiveness of the existing charges to reduce construction waste.

### **The Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Amendment of Schedules) Notice 2016**

6. Against the above background, the Government published in the Gazette on 6 May 2016 the Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Amendment of Schedules) Notice 2016 ("the Amendment Notice") and tabled it before the Legislative Council ("LegCo") on 11 May 2016 to implement new construction waste disposal charges with effect from 7 April 2017 as follows:<sup>2</sup>

<b>Construction waste disposal charge</b>	<b>Existing charge (per tonne)</b>	<b>New charge (per tonne)</b>	<b>Cost recovery rate of the new charge</b>
Landfill charge	\$125	<b>\$200</b>	100%
Sorting charge	\$100	<b>\$175</b>	66%
Public fill charge	\$27	<b>\$71</b>	100%

<sup>1</sup> 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.

<sup>2</sup> According to the Administration, the effective date has taken into account the need to allow for a reasonably substantial notification period before actual implementation so that stakeholders in the construction industry may re-negotiate their contracts if necessary.

## **The Subcommittee**

7. At the House Committee meeting held on 13 May 2016, Members agreed to form a subcommittee to study the Amendment Notice. The membership list of the Subcommittee is in the **Appendix**. Under the chairmanship of Hon Tony TSE Wai-chuen, the Subcommittee held one meeting with the Administration on 24 May 2016 to examine the Amendment Notice. To allow sufficient time for the Subcommittee to prepare a written report and receive views from deputations, the Subcommittee Chairman gave notice to move a motion at the Council meeting of 1 June 2016 to extend the scrutiny period of the Amendment Notice to the Council meeting of 29 June 2016. However, the motion was not dealt with at the Council meeting of 1 June 2016 due to the heavy agenda of the meeting. Nor could the motion be dealt with subsequently at the Council meeting of 8 June 2016 before the meeting was adjourned. As such, the scrutiny period of the Amendment Notice expired at the Council meeting of 8 June 2016 without being extended.

## **Deliberations of the Subcommittee**

8. The Subcommittee generally supports the Amendment Notice. The major deliberations of the Subcommittee are set out in the ensuing paragraphs.

### Measures to prevent fly-tipping of construction waste and illegal land filling

9. Many members including Hon Cyd HO, Hon LEE Cheuk-yan and Dr Hon Elizabeth QUAT have expressed concern that more fly-tipping of construction waste and illegal land filling activities may arise upon the implementation of the proposed new charges under the Amendment Notice. In this regard, these members have enquired about the measures to be taken by the Administration to prevent fly-tipping and illegal land filling activities before and after the Amendment Notice comes into operation on 7 April 2017.

10. The Administration has advised that overall, the amount of construction waste involved in illegal depositing cases is relatively small as compared to the total amount of construction waste properly disposed of every year. For instance, in the recent two years, the amount of illegally deposited construction waste cleared by the Government was equivalent to less than 0.05% of the total amount of construction waste handled by the designated waste disposal facilities. This notwithstanding, the Environmental Protection Department ("EPD") will monitor the situation and step up enforcement actions together with other departments as necessary. EPD has launched a trial scheme of using surveillance cameras at 12 black spots of fly-tipping of construction waste to aid its investigation. It has been observed that the installation of surveillance cameras at black spots can help provide useful information for identification of

fly-tippers, and can also help deter fly-tipping at black spots to some extent. The Administration will further review the outcome of the trial scheme with a view to planning for a sustained deployment of an extended surveillance camera system.

11. Separately, the Civil Engineering and Development Department is conducting a pilot trial to examine the technical feasibility and stakeholder acceptance of mandating the use of positioning technology, e.g. the global positioning system, on construction waste collection vehicles. The use of automatic monitoring technology can help track and log the activities of the vehicles, which can in turn deter fly-tipping of construction waste and facilitate investigations. EPD will continue to liaise with the trades affected by the use of the aforesaid technology. EPD will also arrange publicity and public education activities on the proper disposal of construction waste as necessary.

12. Dr Hon Elizabeth QUAT supports the use of the aforesaid positioning technology to help track the activities of construction waste collection vehicles. Hon LEE Cheuk-yan considers that the relevant arrangement should be implemented as soon as possible.

13. Many members have expressed concern about the effectiveness of the Administration's measures to regulate and monitor fly-tipping of construction waste and illegal land filling. Hon LEE Cheuk-yan has pointed out that with the emergence of black spots of fly-tipping and illegal land filling in various locations in the New Territories, it will be of no avail to merely monitor such black spots without taking effective enforcement actions. The existing inter-departmental coordination mechanism mentioned by the Administration obviously has failed to effectively forestall and deal with the soil filling situation in the New Territories. In this connection, Mr LEE has further requested for information on cases of illegal dumping of construction waste near Kingswood Villas in Tin Shui Wai, Chuen Lung Village in Tsuen Wan and Tsing Chuen Wai in Tuen Mun and the respective investigation reports. Hon Cyd HO has enquired about the number of cases in which prosecutions were instituted based on the images captured by surveillance cameras installed at black spots of fly-tipping and the number of such cases in which the prosecutions were successful. The Administration has provided information on the issues.<sup>3</sup>

---

<sup>3</sup> The information has been circulated to members vide LC Paper No. [CB\(1\)985/15-16\(02\)](#).

Criminal liability and penalties for fly-tipping of construction waste and illegal land filling

14. Hon Cyd HO has enquired whether the liability will be borne by the driver of the waste collection vehicle concerned, the transport company engaged or the construction waste producer if the company engaged to collect and deliver construction waste fails to deliver the waste to a fill bank or a landfill in accordance with the terms of engagement under the relevant contract and disposes of the waste at other places instead. Hon YIU Si-wing has emphasized the need to clearly set out the criminal liability of construction waste producer for improper treatment of waste to prevent construction waste collection and delivery contractors from being unnecessarily held legally liable for it.

15. The Administration has advised that under section 16A(1) of the Waste Disposal Ordinance ("WDO") (Cap. 354), a person commits an offence if that person deposits or causes or permits to be deposited waste in any place except with lawful authority or excuse, or except with the permission of any owner or lawful occupier of the place. Under section 16A(2)(a), for the purposes of subsection (1), if waste is deposited from a vehicle that is not being used as a public transport carrier, the driver of the vehicle at the time when the waste is deposited from it is regarded as causing the waste to be deposited. However, by way of section 16A(4)(a), the driver may establish a defence if he proves that he acted under instructions from his employer. The Administration has also pointed out that the persons establishing billing accounts for disposal of waste at landfill facilities are mostly construction waste producers. The amount of fly-tipped construction waste cleared by the authorities every year accounts for less than 0.1% of the total amount of construction waste properly treated every year. This shows that the waste collection and delivery trade is well aware of the lawful way to dispose of construction waste properly.

16. In view of the prevalence and recurrence of fly-tipping and illegal land filling, many members have enquired whether the Administration will consider increasing the penalties for fly-tipping of construction waste and illegal land filling<sup>4</sup> so as to enhance the deterrent effect. The Administration considers

---

<sup>4</sup> As provided for under section 18(1) of WDO, the maximum penalty for a person who commits an offence under section 16A or 16B (which are relevant to the unauthorized depositing of construction waste) is:

- (a) for the first offence, a fine of \$200,000 and imprisonment for six months;
- (b) for a second or subsequent offence, a fine of \$500,000 and imprisonment for six months; and
- (c) in addition, if the offence is a continuing offence, a fine of \$10,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.

that the existing penalties are appropriate and has indicated that it will continue to explore feasible measures to enhance the effectiveness of law enforcement so as to sustain the deterrent effect.

#### Land filling activities on private land

17. Hon Cyd HO has enquired whether construction waste producers are allowed under the current legislation to deliver waste to places other than fill banks or landfills for dumping. Ms HO is also concerned whether in the market, there are construction waste producers who have entered into service agreements with construction waste collection and delivery contractors for dumping construction waste on specified private land instead of delivering such waste to fill banks or landfills for disposal.

18. The Administration has advised that at present, section 3A of the Waste Disposal (Designated Waste Disposal Facility) Regulation (Cap. 354L) provides that certain types of construction waste may only be accepted for disposal at certain designated waste disposal facilities. There is no requirement under WDO that construction waste may only be delivered to designated waste disposal facilities. The majority of construction waste is inert materials including soil, rubble, earth, sand, brick, tile, etc., and does not pose any inherent environmental threat. As the substances can be reused for land formation, ground levelling and other construction works, construction waste may be delivered to other construction sites or recycling plants for reuse and recycling. Therefore, the Administration does not consider it appropriate to require that construction waste may only be delivered to the designated waste disposal facilities.

19. Some members including Hon Cyd HO and Hon LEE Cheuk-yan have pointed out that under the existing WDO, land filling activities on private land are not unlawful as long as the prior consent of the land owner has been obtained and EPD has been notified. These members consider that the above mechanism of notifying EPD has created an enormous law enforcement loophole and the Administration should consider plugging the loophole by amending the legislation to replace this mechanism with the requirement of registering with EPD and obtaining approval from relevant departments.

20. The Administration has explained that in gist, as required under sections 16B and 16C of WDO, 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. The permission will not be regarded as valid unless (a) it is given in a specified form and (b) the specified form bears an acknowledgement by the Director of Environmental Protection ("DEP"). This prior notification mechanism allows EPD to alert other relevant departments that depositing of construction waste may commence on a

particular private land lot, so that such departments may take follow-up actions under their respective purview and ensure compliance of the proposed depositing activity with relevant legislative requirements. Indeed, the depositing activity will continue to be subject to the regulation of laws in general in Hong Kong including those on planning, environmental protection, slope safety, environmental hygiene, conservation etc.

21. The Administration has stated that the above mechanism and the proposed legislative amendments have been introduced after extensive consultation with different stakeholders and LegCo. During the deliberation, the option of introducing an authorization system under WDO has also been considered and discussed. However, 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 based on factors other than environmental protection (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.

### **Recommendation**

22. The Subcommittee has no objection to the Amendment Notice and will not propose any amendment.

### **Advice sought**

23. Members are invited to note the deliberations of the Subcommittee as set out above.

**Subcommittee on  
Waste Disposal (Charges for Disposal of Construction Waste)  
Regulation (Amendment of Schedules) Notice 2016**

**Membership list**

**Chairman**                      Hon Tony TSE Wai-chuen, BBS

**Members**                      Hon LEE Cheuk-yan  
   Hon Cyd HO Sau-lan, JP  
   Hon CHAN Hak-kan, JP  
   Hon Frankie YICK Chi-ming, JP  
   Hon YIU Si-wing, BBS  
   Dr Hon Kenneth CHAN Ka-lok  
   Dr Hon KWOK Ka-ki  
   Dr Hon Elizabeth QUAT, JP  
   Ir Dr Hon LO Wai-kwok, SBS, MH, JP

(Total : 10 members)

**Clerk**                              Mr Derek LO

**Legal Adviser**                Miss Evelyn LEE