

## LEGISLATIVE COUNCIL BRIEF

### Waste Disposal Ordinance (Chapter 354)

#### WASTE DISPOSAL (DESIGNATED WASTE DISPOSAL FACILITY)(AMENDMENT) REGULATION 2004

#### WASTE DISPOSAL (CHARGES FOR DISPOSAL OF CONSTRUCTION WASTE) REGULATION

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### CONSTRUCTION WASTE DISPOSAL CHARGING SCHEME

## INTRODUCTION

At the meeting of the Executive Council (ExCo) on 26 October 2004, the Council ADVISED and the Chief Executive ORDERED that the Waste Disposal (Designated Waste Disposal Facility)(Amendment) Regulation 2004 at **Annex A** and Waste Disposal (Charges for Disposal of Construction Waste) Regulation<sup>1</sup> at **Annex B** should now be made.

## BACKGROUND AND ARGUMENT

### Background

2. In 2003, about 6.5 million tonnes of waste were disposed of in our three landfills<sup>2</sup>. About 53% of them are municipal solid waste (i.e.

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<sup>1</sup> The draft Regulation was originally entitled “Waste Disposal (Charges for Waste Disposal) Regulation”. The draft Regulation has now been re-titled “Waste Disposal (Charges for Disposal of Construction Waste) Regulation” to reflect more clearly that the charging scheme covers only construction waste.

<sup>2</sup> The three landfills are located at Tseung Kwan O, Tuen Mun (Nim Wan) and North District (Ta Kwu Ling).

domestic, commercial and industrial waste), 38% are construction waste<sup>3</sup> and 9% are other special waste like sludge and animal carcasses. The three landfills occupy 270 hectares of land, cost \$6 billion to build and over \$400 million a year to operate. When planned in the 1980s, these landfills were expected to serve our need for waste disposal till 2020. However, as the waste volume continues to grow, the landfills are filling up much faster than expected, and are projected to last 7 to 11 years. They may be filled up much earlier, probably in 4 to 7 years, if we fail to regulate the disposal of construction waste there.

3. Disposal of waste at landfills has always been free of charge. This is undesirable and encourages indiscriminate disposal of waste at landfills. Landfill charging is an essential component of our waste management strategy as it provides an economic 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.

4. In 1995, we proposed to introduce a landfill charge for construction and commercial/industrial wastes. The legislation was made but was not brought into operation due to strong objection from waste haulers who blockaded landfills for two days.

5. After many rounds of discussions with the relevant trades, particularly waste haulers and construction contractors<sup>4</sup>, we have developed a revised construction waste disposal charging scheme incorporating various features to address their concerns as far as practicable.

6. The Waste Disposal (Amendment) (No.2) Bill is a piece of enabling legislation for implementing the construction waste disposal charging scheme. The Bill was passed by the LegCo on 2 July 2004 with

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<sup>3</sup> Construction waste is a mixture of inert construction and demolition (C&D) materials (also called public fill) and non-inert organic C&D materials arising from construction, excavation, renovation and demolition works. The useful inert public fill comprising rocks, concrete, asphalt, rubbles, bricks, stones and earth are suitable for reuse in reclamation works. Some of the hard materials can also be recycled as aggregates for use in construction works. The non-inert waste comprising bamboo, plastic, timber and packaging waste are often mixed and contaminated. If uncontaminated, some of the materials can be recycled, but if they are contaminated, they will not be suitable for reuse or recycling, and have to be disposed of at landfills.

<sup>4</sup> We have had some 90 meetings with the affected trades on the revised scheme between 2000 and 2004.

amendments. It was signed by the Chief Executive on 8 July 2004 and promulgated on 9 July 2004. The details of the charging scheme are now set out in the Regulations.

### **The Charging Scheme**

7. The key features of the revised scheme are as follows -
- (a) to charge construction waste disposed of at landfills<sup>5</sup>, sorting facilities and public fill reception facilities;
  - (b) to set the disposal charge at \$125 per tonne at landfills, \$100 per tonne at sorting facilities<sup>6</sup> and \$27 per tonne at public fill reception facilities. The proposed charges represent full recovery of the capital and recurrent costs of the facilities;
  - (c) to establish a direct settlement system requiring all waste disposal charges to be paid direct to the Government through billing accounts;
  - (d) to exempt all construction contracts that are awarded before the commencement of the charging scheme;
  - (e) to collect the charges on a monthly basis with a credit period of 30 days.

### **Bills Committee Scrutiny**

8. The LegCo Bills Committee set up to scrutinize the Bill has deliberated on the draft Regulations. Separately, to address waste haulers' concern over possible cashflow and bad debt problems, we have revised the charging arrangements by removing on-site payment and requiring all charges to be paid through billing accounts. Under this arrangement, all charges will need to be paid through billing accounts rather than levied through waste haulers. The waste haulers' associations welcome this

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<sup>5</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>6</sup> If the sorting facilities are to be run as private facilities, the private operators would set the sorting charge.

arrangement. We have revised the relevant provisions in the draft Regulations to take into account the Bills Committee's suggestions as appropriate and reflect the latest payment arrangement. We have also taken the opportunity to refine the provisions in the draft Regulations. The major changes are set out in paragraphs 9 – 17 below.

### *Waste Disposal (Charges for Disposal of Construction Waste) Regulation*

#### Payment arrangements

9. Under the original draft Regulation, the charges can be paid by means of on-site payment or through billing accounts. As stated in paragraph 8 above, we have reached consensus with the waste haulers' associations that on-site payment will be removed and that all the charges will be paid through billing accounts. Section 13 provides that the charges shall be paid through billing accounts only.

10. Sections 11 and 12 are added to set out clearly the arrangements for seeking the approval of the Director of Environmental Protection ("the Director") for the use of vessels to deliver construction waste to the public fill reception facilities. On approving the application, the Director will also determine the maximum load which the vessel concerned may carry for the purpose of calculating the public fill charge applicable to it.

#### Penalty level

11. We originally proposed that if a main contractor who undertakes construction work valued \$1 million or above fails to apply to the Director for a billing account within 14 days after being awarded the construction work, he commits an offence and, in the case of a continuing offence, is liable to a further daily fine of \$5,000.

12. The Bills Committee considered that the proposed daily fine was too high. Having re-examined the issue, we consider it appropriate to reduce the daily fine level from \$5,000 to \$1,000 because it is not uncommon for small and medium contractors to undertake contracts valued \$1 million or above. Also, in order to facilitate the main contractors in complying with the requirement, we propose to extend the period from 14 to 21 days as suggested by the Bills Committee. Section 9 has been amended to reflect the latest proposal.

13. Separately, the Bills Committee also considered that a fine at level 5 for failure to inform the Director of any change in the information in relation to a billing account by an account-holder was too heavy. Having re-examined the issue, we propose that non-compliance shall lead to revocation of the billing account, which is proportional to the act. Section 6(8) has been amended accordingly.

*Waste Disposal (Designated Waste Disposal Facility) (Amendment) Regulation 2004*

14. We originally proposed that giving false information, knowingly or recklessly, commits an offence and is liable to a fine at level 6. The offence provision was intended to apply to two situations i.e. providing information on whether the waste to be disposed of at a waste disposal facility is construction waste, and on the inert content of the construction waste. The Bills Committee suggested reviewing the penalty level by taking into account that waste haulers might inadvertently provide false information which they might not have knowledge of.

15. We have re-examined the relevant provisions. To determine whether to accept or to impose a charge in respect of waste delivered to a waste disposal facility (e.g. the Director will not accept any waste other than construction waste for disposal at a sorting facility and a public fill reception facility, or will not charge the disposal of waste other than construction waste at a landfill), the Director may request the waste haulers to provide information on the types of waste. Waste haulers who provide false information on the types of waste, knowingly or recklessly, commit an offence. This is necessary to deter mainly evasion of the landfill charge by waste producers or haulers who may claim that the waste is commercial/industrial waste and is not subject to charging.

16. Separately, the Director may also refuse to accept construction waste at a facility due to inappropriate inert content. Unlike identifying the types of waste, it may be very difficult for the waste haulers to distinguish the inert content of the construction waste. Hence, we propose that waste haulers will not be required to give information on the inert content of the construction waste. New provisions have been added to section 4 accordingly.

17. As vessels can be used for delivery of construction waste to the public fill reception facilities, the Regulation has also been amended to provide the Director with the power to regulate vessels in addition to vehicles at the designated waste disposal facilities.

## **THE REGULATIONS**

### *The Waste Disposal (Designated Waste Disposal Facility) (Amendment) Regulation 2004*

18. The amendment to the Regulation serves the following purposes –

- (a) sections 3, 9 and 10 specify the waste disposal facilities that are available for disposal of construction waste and the inert content specifications that the construction waste must conform to in order to be accepted for disposal at those facilities;
- (b) sections 4(1) to 4(6) empower the Director to regulate the delivery of waste by vessels to designated waste disposal facilities;
- (c) section 4(7) empowers the Director to refuse to accept any waste at a designated waste disposal facility in such circumstances as he thinks fit and to close a designated waste disposal facility temporarily; and
- (d) section 6 makes it an offence for a person to make incorrect statement or give incorrect information.

### *Waste Disposal (Charges for Disposal of Construction Waste) Regulation*

19. The main provisions are –

- (a) section 3 sets out the requirements to be complied with in delivering construction waste to the prescribed facilities for disposal;
- (b) sections 5 to 10 provide for the application to establish a billing account so that charges for the disposal of construction waste at

the prescribed facilities can be paid using the account, and that an exemption account may be applied for in respect of a construction contract awarded before the commencement of the Regulation;

- (c) sections 11 and 12 provide that certain types of vessels may be used for delivering construction waste to prescribed facilities subject to the Director's approval; and
- (d) sections 13 to 17 specify how charges payable for the disposal of construction waste at the designated waste disposal facilities are to be calculated.

## **IMPLICATIONS OF THE PROPOSAL**

C 20. The environmental, economic, financial, sustainability and civil service implications of the charging scheme were examined by the LegCo when the Bill was passed by the LegCo in July 2004. They are recapped at **Annex C**. The proposal is in conformity with the Basic Law, including the provisions concerning human rights, and will not affect the current binding effect of the Waste Disposal Ordinance. It has no productivity implications.

## **PUBLIC CONSULTATION**

21. Before the Bill was passed, we consulted all the relevant advisory committees and stakeholders on the proposed charges and the detailed arrangements of the charging scheme. All the consulted organizations supported the charging scheme in principle. The construction industry and the waste haulers are concerned about the details of the implementation of the charging scheme. A Tripartite Working Group has been established to keep dialogue with the trade, including the developers, contractors and waste haulers, with a view to collecting suggestions on the operation details and enabling better understanding of the scheme.

## **PUBLICITY**

22. We will issue a press release on 28 October 2004. A spokesperson will be available to answer media enquiries.

## **ENQUIRIES**

23. Enquiries about this Brief may be directed to Mrs Teresa Wong, Acting Deputy Secretary for the Environment, Transport and Works (Environment and Transport) at telephone number 2136 3352 or fax number 2136 3304.

Environment, Transport and Works Bureau  
28 October 2004