

## LEGISLATIVE COUNCIL BRIEF

### Waste Disposal Ordinance (Chapter 354)

#### WASTE DISPOSAL (AMENDMENT) (NO.2) BILL 2003 – CONSTRUCTION WASTE DISPOSAL CHARGING SCHEME

### INTRODUCTION

A At the meeting of the Executive Council on 2 December 2003, the Council ADVISED and the Chief Executive ORDERED that the Waste Disposal (Amendment) (No.2) Bill 2003 at **Annex A** should be introduced into the Legislative Council to introduce charging for the disposal of construction waste at landfills, sorting facilities and public fill reception facilities.

### BACKGROUND AND ARGUMENT

#### Background

2. In 2002, over 7 million tonnes of waste were disposed of in our three landfills<sup>1</sup>. About 45% of them are municipal solid waste (i.e. domestic, commercial and industrial waste), 48% are construction waste<sup>2</sup> and 7% are other special waste like sludge and animal carcasses. The three landfills occupy 270 hectares of land, cost \$6 billion to build and

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<sup>1</sup> The three landfills are located at Tseung Kwan O, Tuen Mun (Nim Wan) and North District (Ta Kwu Ling).

<sup>2</sup> Construction waste is a mixture of inert waste (also called public fill) and non-inert organic waste 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.

over \$400 million a year to operate. When planned in the 1980s, they 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 8 to 12 years. They may be filled up much earlier, probably in 4 to 7 years, if we fail to prevent construction waste from being disposed of 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 enacted but was not implemented due to strong objection from waste haulers who blockaded landfills for two days.

### **The Revised Scheme**

5. After many rounds of discussions with the relevant trades, particularly waste haulers and construction contractors<sup>3</sup>, we have developed a revised construction waste disposal charging scheme incorporating various features to address their concerns as far as practicable. The key features of the revised scheme are as follows :

- (a) to charge construction waste disposed of at landfills<sup>4</sup>, sorting facilities and public fill reception facilities;
- (b) to set the disposal charge at \$125 per tonne at landfills, around \$100 per tonne at sorting facilities<sup>5</sup> and \$27 per tonne

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<sup>3</sup> We have had some 60 meetings with the affected trades on the revised scheme between 2000 and 2002.

<sup>4</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>5</sup> If the sorting facilities are to be run as private facilities, the private operators would set the sorting charge.

at public fill reception facilities. The proposed charges represent full recovery of the capital and recurrent costs of the facilities;

- (c) to establish a direct settlement system requiring major waste producers, mainly construction contractors (which generate about 70 - 80% of construction waste), to open accounts and pay waste disposal charges direct to the Government;
- (d) to exempt all construction contracts that are awarded before the commencement of the charging scheme.

For the remaining 20-30% of construction waste mostly arising from renovation works, we have proposed to levy the charges through waste haulers that deliver the wastes to the 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 produce evidence that they are unable to collect the same amount from the waste producers. However, noting the waste haulers' grave concerns about possible cashflow and bad debt problems, we are ready to further explore alternative options. We will continue discussion with the trade with a view to reaching consensus on the charging arrangements.

6. The revised scheme focuses on construction waste as it is voluminous<sup>6</sup> and poses the greatest threat to the lifespan of landfills. Construction waste is a mixture of inert public fill and non-inert organic waste, and a large proportion of the inert public fill can be reused/recycled. Hence, an important means to reduce construction waste at landfills is to separate the inert portion from the non-inert portion, such that the inert public fill could be reused/recycled while the non-inert waste only would be disposed of at landfills.

7. Sorting of waste at source is not widely practised in Hong Kong because most construction/renovation sites have space constraints. Also, there is no economic incentive for construction firms to carry out sorting. With the implementation of the charging scheme, there would be

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<sup>6</sup> Construction works generate 14-15 million tonnes of construction waste each year. We are reusing/recycling some 80% of these waste, but the remaining 3-4 million tonnes have to be disposed of at landfills. In 2002, they accounted for 48% of the waste disposed of at landfills. We project that the total volume generated in 2003 would reach a record high of 19.6 million tonnes.

a demand for sorting facilities, particularly from contractors working on small construction sites, so as to reduce the landfill charge payable. We plan to set up two sorting facilities - one in Tuen Mun in close proximity to the West New Territories Landfill, and another in Tseung Kwan O near the Southeast New Territories Landfill. The two facilities could together handle about 2,500 tonnes of mixed construction waste each day.

8. To divert inert public fill away from landfills, and to provide outlets for inert public fill arising from sorting facilities, there will be a number of public fill reception facilities. The public fill reception facilities include most of the approved reclamation projects<sup>7</sup> and the temporary fill banks<sup>8</sup>.

9. As there is currently no provision of sorting facilities, no sorting charge is in place. For public fill reception facilities, although they have been in place for some time, no public fill charge has ever been levied. In line with the Polluter Pays Principle, apart from the landfill charge, we propose to also introduce charging for the disposal of construction waste at the sorting and public fill reception facilities.

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

11. To facilitate implementation of the charging scheme, site staff at these facilities will be empowered, based on visual inspection, to turn away vehicles carrying inappropriate types of waste for the facilities in question. Moreover, site staff at the waste disposal facilities (e.g. landfills) will be empowered to determine, based on visual inspection, whether a waste load is construction waste and thus should be subject to

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<sup>7</sup> Except special projects with time or other constraints (e.g. Penny's Bay Reclamation Stage 1), all reclamation projects are using as much public fill as possible to meet their fill requirements.

<sup>8</sup> Because of the decreasing number and scale of reclamation projects, we have set up temporary fill banks at Tseung Kwan O and Tuen Mun to stockpile inert public fill for future use when new reclamation projects are available.

the landfill charge. The decision to turn away or charge a waste load would not be subject to appeal. This is because in practice, it is not possible to re-examine the decision after the vehicle has offloaded the materials concerned, or after the vehicle has left the facility. We will, in consultation with the Department of Justice and the Independent Commission Against Corruption, put in place management and control measures to safeguard against possible abuses or malpractices.

12. The Waste Disposal Ordinance (the Ordinance) will define construction waste. Details of the charging scheme will be set out in the new Waste Disposal (Charges for Waste Disposal) Regulation, and the related powers to implement the charging scheme in Government-owned facilities will be provided in the Waste Disposal (Designated Waste Disposal Facility) Regulation, which both will be made under the Ordinance after the enactment of the Bill.

### **Strengthening of Control Against Illegal Disposal of Waste**

13. The Ordinance has already provided for sanctions against illegal disposal of waste<sup>9</sup>. However, as the introduction of the charging scheme may aggravate the problem of illegal disposal of waste, we consider it necessary to strengthen legal provisions against such acts to minimize adverse impact on the environment.

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

- (a) To empower the court to order the person convicted of illegal disposal of waste to remove the waste on Government land. In cases where the removal work has already been carried out by Government, the court could order the convicted person to pay all or part of the removal cost incurred by Government as appropriate;
- (b) To empower the Director of Environmental Protection (DEP) to enter without warrant any places, other than domestic

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<sup>9</sup> Under section 18 of the Ordinance, a person who commits an offence is liable to a fine of \$200,000 and imprisonment for 6 months for the first offence; and to a fine of \$500,000 and imprisonment for 2 years for a second or subsequent offence.

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 actions are required. DEP shall only enter domestic premises and dwelling place on private land when a warrant is obtained. DEP would be entitled to apply to the court to recover from the convicted person the cost of removing the waste; and

- (c) To revise the existing offence of unlawful depositing of waste to make available the exception of having lawful authority or excuse or the permission of the owner or occupier of the land regardless of where the waste is deposited; to further stipulate that the driver of a vehicle (not being a public transport carrier) from which waste is deposited as well as the employer of that driver are to be regarded as the persons causing waste to be deposited; and to provide for the statutory defences of reasonable precautions and due diligence to a defendant charged with the offence of illegal disposal of waste.

## **Alternative Modus Operandi of Waste Disposal Facilities**

### *Privatisation of waste disposal facilities*

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

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

Regulation<sup>10</sup>.

### *Government Facilities Financed Under the Net-off Arrangement*

17. If there are no valid tender bids in the tender exercise, and privatization of the sorting facilities could not materialize, we would then make available the facilities as Government facilities to be funded by the Government but operated by private sector contractors. As an accounting arrangement, we will use the sorting charge to remunerate the operator(s) of the sorting facilities before crediting the remaining proceeds to the General Revenue Account (netting-off arrangement).

18. As we propose to exempt all construction contracts that are awarded before the commencement of the charging scheme from paying the relevant charges, we expect the revenue to be insufficient to cover payments to the operator(s) in the initial years of the charging scheme. This problem will be overcome through an advance account arrangement whereby the initial shortfalls in payment to the operator(s) will be met by advances from the General Revenue. As the number of exempted contracts would gradually decrease upon completion of the concerned construction projects, revenue from sorting charges should exceed the remuneration to the operator(s) and the surplus revenue will be used to clear the advance account. Thereafter, all surplus amounts will be paid into general revenue.

## **OTHER OPTIONS**

19. At present, all waste disposal facilities are provided by the Government and users may use them free of charge. We consider that continuation of the current practice would not be viable nor sustainable on both policy and public finance grounds. It goes against the Polluter/User Pays Principle, and results in indiscriminate use of the waste disposal facilities.

## **THE BILL**

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<sup>10</sup> The Waste Disposal (Designated Waste Disposal Facility) Regulation empowers DEP and the facility contractors to maintain order and counteract the evasion of charges payable, where applicable, in waste disposal facilities designated under the Regulation.

20. The main provisions are –
- a) clause 2 adds a definition on “construction waste” to the Ordinance;
  - b) clauses 3, 4 and 5 provides for the revised section 16A and the new sections 18A and 23EA to strengthen the control against illegal disposal of waste; and
  - c) clause 6 revises section 24 to provide that no appeal lies to the Appeal Board constituted under Part VI of the Ordinance from DEP’s decision whether or not to accept any waste at a designated waste disposal facility or his decision whether or not to charge a person for disposing a chargeable waste load at a waste disposal facility.

## **LEGISLATIVE TIMETABLE**

21. The legislative timetable will be -

Publication in the Gazette	5 December 2003
First Reading and commencement of Second Reading debate	17 December 2003
Resumption of Second Reading debate, Committee stage and Third Reading	To be confirmed

## **IMPLICATIONS OF THE PROPOSAL**

22. The proposal has environmental, economic, financial, sustainability and civil service implications. They are set out at **Annex B**. 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**

23. We briefed the Legislative Council Environmental Affairs Panel (the Panel) on the proposal to introduce charging at the sorting and public fill reception facilities on 28 April 2003. The Panel supported the charging scheme in principle and agreed that it should be implemented as soon as possible. Nonetheless, the Panel considered that the Administration should further consult the trades on the charging arrangements.

24. From May to November 2003, we consulted all the relevant advisory committees and stakeholders on the proposed charges and the detailed arrangements of the charging scheme<sup>11</sup>. All the consulted organizations support the charging scheme in principle. However, the construction industry considers that the level of the charges is too high. The waste haulers continue to be the strongest objector and have reiterated their objection to the charging arrangement. A summary of the comments received from stakeholders in the latest consultation exercise is at **Annex C**.

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25. We consulted the Panel on 24 November 2003 on our proposal to introduce the Bill into the Legislative Council, with a view to effecting the construction waste disposal charging scheme. The Panel supported our proposal, but had requested the Administration to continue consultation with the trades on the charging arrangements. We met with the waste haulers' associations again on 1 December 2003 to further discuss the charging arrangements. We will continue dialogue with the trade with a view to reaching consensus on the detailed arrangements.

## **PUBLICITY**

26. We will issue a press release today. A spokesperson will be available to answer media enquiries.

## **ENQUIRIES**

27. Enquiries about this Brief may be directed to Ms Doris

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<sup>11</sup> Between May and November 2003, we had 11 meetings with stakeholders and advisory bodies and

Cheung, Deputy Secretary for the Environment, Transport and Works (Environment and Transport) at telephone number 2136 3345 or fax number 2136 3304.

Environment, Transport and Works Bureau  
3 December 2003