

二零零三年十一月二十四日
討論文件

立法會環境事務委員會

《2003年廢物處置(修訂)(第2號)條例草案》— 建築廢物處置收費計劃

目的

我們建議向立法會提交《2003年廢物處置(修訂)(第2號)條例草案》，以便實施建築廢物處置收費計劃。本文件旨在尋求委員支持上述建議。

背景

2. 我們曾於二零零三年四月提交文件(立法會文件第CB(1)1515/02-03(03)號)，告知委員擬議的建築廢物處置收費計劃¹的安排細節和相關收費。

3. 現將建築廢物處置收費計劃的要點覆述如下：

- (a) 就棄置於堆填區²、篩選分類設施和公眾填土設施的建築廢物徵收費用；
- (b) 把棄置廢物於堆填區、篩選分類設施和公眾填土設施的收費分別定為每公噸 125 元、100 元左右³和 27 元，以期透過擬議的收費悉數收回該等設施的建造費用和經常開支；

¹ 該收費計劃前稱“堆填區收費計劃”。由於我們現有意就棄置於堆填區、篩選分類設施和公眾填土設施的建築廢物收取費用，因此認為把有關收費計劃改稱為“建築廢物處置收費計劃”較為恰當。

² 把建築廢物棄置於離島的廢物轉運站亦須繳付堆填區費用，其他廢物轉運站則不接收建築廢物。

³ 如篩選分類設施為私營設施，篩選分類設施費用將由有關私人營辦商釐定。

- (c) 設立直接付款制度，規定大型的廢物產生者開立賬戶，直接向政府繳付廢物處置費用。大型的廢物產生者大部分為建築工程承建商，他們製造的建築廢物佔總數的 70% 至 80% 左右；
- (d) 至於餘下 20% 至 30% 的建築廢物，則主要源自裝修工程。該等廢物的處置費用將透過運送廢物往有關設施的廢物運輸商收取。我們會按月向他們收取費用，並給予 30 日的付款期；
- (e) 如廢物運輸商提出證明，顯示無法向廢物產生者收回有關費用，則可暫緩繳費；以及
- (f) 豁免所有在收費計劃實施前已批出的建築合約。

4. 上述三類建築廢物處置設施(即堆填區、篩選分類設施和公眾填土設施)將會接收不同成分的建築廢物。簡單來說，堆填區會接收有少量惰性成分(不超過一半)的混合建築廢物；篩選分類設施會接收和篩選惰性成分較高(超過一半)的混合建築廢物；公眾填土設施則會接收全屬惰性的填料。

5. 為方便實施收費計劃，上述設施的工作人員會獲授權憑肉眼檢查抵達的車輛，並拒絕運載不恰當廢物的車輛進入設施。此外，有關廢物處置設施(如堆填區)的工作人員會獲授權，憑肉眼判斷運來的廢物是否屬應繳付堆填區費用的建築廢物。對於被拒絕進入或要求繳費的決定，有關方面不得提出上訴。

6. 在上次會議中，委員原則上支持收費計劃並同意應盡快實施。其後，我們就實施收費計劃擬備有關的立法建議。建議的條例草案亦包括其他相關的要點，詳情載於下文第 7 至 11 段。

加強規管非法傾倒廢物

7. 《廢物處置條例》(條例)已訂明有關非法傾倒廢物的罰則⁴。不過，實施收費計劃可能會令非法傾倒廢物的問題惡化。因此，我們認為有需要加強有關的法律規定，杜絕非法傾倒廢物的行爲，以盡量減少對環境造成不良影響。

8. 加強規管非法傾倒廢物的建議措施包括：

- (a) 賦權法院下令被裁定觸犯非法傾倒廢物罪行的人，清理有關政府土地上的廢物；如果政府已進行清理工作，則法院可在適當情況下，下令被定罪的人向政府付還全部或部分清理費用；
- (b) 賦權環境保護署署長(環保署署長)在即將引致嚴重環境影響並須即時採取補救行動的危急情況下，無須手令進入任何地方(住宅或作住宅用途的私人土地除外)清理廢物。環保署署長如須進入住宅或作住宅用途的私人土地，則必須取得手令。環保署署長亦有權向法院提出申請，向被定罪的人追討清理廢物的費用；
- (c) 爲被告人提供抗辯理由，如能證明已獲得合法權限或辯解或有關土地(不論廢物在何處棄置)的擁有人／佔用人准許，把廢物傾倒於其土地上；或能證明已採取一切合理的預防措施及作出所有應盡的努力，避免觸犯非法傾倒廢物罪行。

⁴ 根據條例第 20E 條的規定，凡觸犯有關罪行者，如屬第一次犯罪，可處罰款 \$200,000 及監禁六個月；如屬第二次犯罪或其後犯罪，可處罰款 \$500,000 及監禁兩年。

廢物處置設施的不同運作模式

廢物處置設施私營化

9. 我們的政策取向，是鼓勵私人機構參與營辦廢物處置設施。目前，本港並無篩選分類設施。我們計劃設立的兩個篩選分類設施，可以提供機會，讓我們探討私營化方案。今年四月，我們邀請業界表達對投資營辦有關設施的意向，共收到 14 份意向書。鑑於反應理想，我們計劃在二零零三年年底，進行有關設立及營辦兩個私營篩選分類設施的公開投標工作。

10. 條例已容許同時設有政府和私營的廢物處置設施。私人營辦商可以自由釐定其設施的收費，但不會享有目前政府設施營辦商根據《廢物處置(指定廢物處置設施)規例》所享有的法定權力⁵。

採用“扣除開支”安排營辦的政府設施

11. 如在招標過程中並未收到有效的投標，致使分類設施私營化未能實現，我們會撥款提供有關設施作為政府設施，但交由私人承辦商營辦。上述由政府擁有的篩選分類設施，估計每年經常營運開支約為 4,000 萬元。我們會採用“扣除開支”的安排，把所得的篩選分類設施收費先支付予承辦商，作為營辦分類設施的費用，如有餘款，才撥入一般收入帳目。

進一步諮詢業界

12. 上次在二零零三年四月舉行的會議上，委員原則上支持收費計劃，但認為當局應就收費安排進一步諮詢業界。

13. 二零零三年五月至十一月期間，我們就收費計劃的擬議收費水平及安排細節，諮詢所有相關諮詢組織及業界人

⁵ 《廢物處置(指定廢物處置設施)規例》賦權環保署署長及有關設施的承辦商，維持規例指定廢物處置設施的運作，以及在適用情況下，打擊規避繳付應繳費用的行為。

士⁶。獲諮詢的組織均原則上支持收費計劃，但建造業人士認為收費水平過高，而廢物運輸商則仍然是最強烈的反對者，並重申反對收費安排。最新諮詢工作所收集到業界的意見，現摘錄於附件一。

立法建議

14. 我們須修訂條例，以便為建築廢物下定義，並加強管制非法傾倒廢物的法規。收費計劃的詳情，將載於建議的《廢物處置(廢物處置收費)規例》。至於在政府擁有的設施實施收費計劃的相關權力，則會在《廢物處置(指定廢物處置設施)規例》中訂明。

建議

15. 我們建議向立法會提交《2003年廢物處置(修訂)(第2號)條例草案》(附件二)⁴。條例草案的主要條文如下—

- (a) 第2條為“建築廢物”下定義；
- (b) 第4、5及7條加強對非法傾倒廢物的規管；
- (c) 第8條訂明不能向根據條例第VI部設立的上訴委員會，就有關環保署署長拒絕在指定廢物處置設施接收廢物或向在廢物處置設施棄置可收費的廢物收取費用的決定，提出上訴；以及
- (d) 第11條訂立“扣除開支”安排，以便有關收費可用於向廢物處置設施承辦商支付費用，而不會違反禁止將某項收入指定用作某項支出的原則。

如委員同意，我們計劃在二零零三年十二月向立法會提交

⁶ 二零零三年五月至十一月期間，我們與業界體及諮詢組織舉行了11次會議，並收到12份意見書。

⁴ 中文條例草案尚在草擬中。

條例草案。條例草案如獲得通過，我們會向立法會提交有關規例，以期在二零零四年實施收費計劃。

徵詢意見

16. 請委員支持上文第 15 段所述的各項建議。

環境運輸及工務局
二零零三年十一月

建築廢物處置收費計劃
在諮詢工作中收到的業界意見摘要

二零零三年五月至十一月期間，我們曾與業界及諮詢組織舉行了 11 次會議，討論擬議建築廢物處置收費計劃的安排細節。此外，亦收到 12 份來自不同機構的意見書。我們曾諮詢的機構名單，現載於附錄 I。

2. 我們曾諮詢的機構均原則上支持擬議的收費計劃。不過，廢物運輸商仍然對收費計劃表示反對，並重申他們並非廢物產生者，因此不應負責有關費用。業界對具體事項的意見摘要及政府的回應，現載於附錄 II。

就擬議建築廢物處置收費計劃曾諮詢的機構名單

a. 法定/諮詢組織

- 立法會環境事務委員會
- 環境諮詢委員會
- 營商諮詢小組 - 削減繁瑣規則及取締過分規管工作小組
- 臨時建造業統籌委員會
- 減少廢物委員會
- 減少廢物建築業專責小組

b. 專業組織

- 香港工程師學會
- 香港廢物管理協會

c. 環保團體

- 地球之友
- 長春社
- 綠色力量

d. 商界組織

- 香港地產建設商會
- 香港總商會
- 商界環保協會
- 香港建造商會
- 香港物業管理公司協會
- 香港建造業分包商聯會

e. 廢物運輸商協會

- 香港廢物處理業協會
- 香港泥頭車司機協會
- 汽車交通運輸業總工會
- 香港九龍的士貨車商會有限公司
- 港九及新界夾斗車商會有限公司

業界對具體事項的意見摘要 及政府的回應

業界的意見

政府的回應

堆填區收費定於每公噸 125 元的水平

營商諮詢小組建議把堆填區收費提高至每公噸 200 元的水平，以提供經濟誘因，鼓勵建造業改用其他建築方法。

建議的收費水平旨在收回全部建造費用和經常開支。我們不贊成任意釐定收費。

營商諮詢小組及環境諮詢委員會部分成員建議，堆填區收費水平應同時反映土地成本和現有堆填區的重置成本（即闢建新堆填區的成本）。

土地成本經常波動，難以計算在收費之內。

重置成本的概念不符合“用者自付”原則，因為現有使用者須補貼未來的使用者。重置成本的金額亦只能任意釐定，並無準則。

香港建造商會認為建議的收費水平過高，建議把堆填區收費調低至每公噸 60 元，只收回營運成本。該會又認為建造成本應由政府承擔，作為一項基建投資。

承建商應已把廢物處置費用計算在建築成本之內。有關費用只佔總建築成本的 1% 至 2%，應不會對建造業構成財政負擔。

強制規定獲批價值在 100 萬元以上合約的承建商，必須開立帳戶，直接支付有關費用

營商諮詢小組部分成員和廢物運輸商協會代表認為，廢物產生者可能會濫用有關的合約限值，把 100 萬元以上的合約分拆為多份價值較低的合約，藉以規避有關的強制規定。

設立 100 萬元的限值，是做照《工業訓練(建造業)條例》及《肺塵埃沉着病(補償)條例》的徵費方式。我們並無發現有人把合約分拆，以逃避付款。即使把合約分拆，有關承建商亦只能避免開立帳戶，而不能逃避付款。

廢物運輸商如有懷疑，可在提供運輸服務前，要求承建商預先支付廢物處置費用。

部分廢物運輸商認為，就大部分私人和公共屋邨的裝修廢物處置合約而言，100 萬元的限值是過高的。

這個限值是為建築合約而非廢物處置合約而設的，原因是建築工程產生的建築廢物最多。

在廢物處置設施繳付費用

部分廢物運輸商反對在廢物處置設施繳費的安排，原因是這項安排會使承建商要求他們預付有關費用的機會增加。

有需要容許使用者在有關設施繳付費用，以便沒有開立帳戶的使用者(例如非經常使用設施的人)。

廢物運輸商可在提供運輸服務前，要求廢物產生者預先支付處置費用。

為帳戶持有人而設的 30 日付款期

香港建造商會和廢物運輸商協會要求提供更長的付款期。前者要求提供 42 日的付款期，以配合公共工程合約中期金額發放的時間。廢物運輸商則建議提供三個月的付款期。

由於有關發票會於每個月月底發出，廢物產生者／運輸商因此在棄置廢物後約有 30 至 60 日的付款期。這段時間應足以紓緩廢物運輸商的現金周轉問題，並讓他們有更充裕的時間向廢物產生者／客戶收回有關費用。

廢物運輸商如能證明有關廢物產生者拖欠付款，可暫緩繳費

營商諮詢小組、香港地產建設商會和香港廢物管理協會質疑這項條款的需要，因為他們認為壞帳是所有行業均須面對的商業風險。

暫緩繳費的建議旨在釋除廢物運輸商對可能出現壞帳問題的疑慮。

營商諮詢小組部分成員建議這項條款應設有時限，因為廢物運輸商應逐漸知道哪些廢物產生者／客戶可能會拖欠付款，並避免與他們有生意往來。一般來說，營商諮詢小組成員認為政府的建議已足以解決壞帳的問題。

廢物運輸商認為，由於廢物處置費用遠高於運輸成本，收費計劃將會

我們已修訂收費計劃，加入可釋除廢物運輸商疑慮的措施。舉例來說，為

使他們的現金周轉問題更爲嚴重，並增加廢物產生者／客戶方面的壞帳風險。

大型廢物產生者而設的直接付款制度，可讓他們直接向政府付款。此外，爲減輕廢物運輸商對現金周轉問題的疑慮，他們的帳項會按應計項目計算，並獲給予 30 日的付款期。

部分運輸商（擁有數輛貨車的中型公司）關注到，如廢物產生者沒有付款，有關欠款往往超出小額錢債審裁處受理案件的上限，因此採取法律行動的時間和費用亦大幅增加。

小型廢物運輸商並不認爲這是問題。因此，這問題只會影響大型廢物運輸商／運輸公司，但他們應可預先收取全部或部分費用，或要求廢物產生者償付有關款項。

有一個廢物運輸商協會支持以法定聲明作爲未能向廢物產生者收回款項的證明。另一個協會則反對此項建議。不過，三個其他廢物運輸商協會認爲，在任何情況下，他們都不應負責有關費用。對於法定聲明，他們則不願表態。

我們已同意接納向小額錢債審裁處提出的索償。對於以法定聲明作爲暫緩繳費的證明，我們保持開放態度，但廢物運輸商協會對此意見分歧。

有一個廢物運輸商協會建議，收集有關廢物產生者的個人資料，然後交由環境保護署直接向其收取款項。

我們認爲從第三者(即廢物運輸商)收集廢物產生者的個人資料，並不適當。

廢物運輸商協會建議進行全港性的街道／地段編號登記工作，又建議管理公司、業主立案法團、業主及發展商開立帳戶，以便直接支付有關費用。

我們認為把此類法定責任加諸該等人士身上，並不適當，因為他們未必直接參與廢物運輸的工作。

香港物業管理公司協會曾與廢物運輸商協會舉行會議，並表示物業管理公司無權查核業主／住戶的處所曾否進行裝修工程。此外，把全體業主／住戶繳交的管理費，用於管理帳戶的行政費用，亦是不公平的。

豁免在收費計劃實施前已批出的合約

營商諮詢小組關注到，發展商可能聯同承建商，透過訂立長期合約，規避繳付有關費用。因此，小組建議把豁免期定為兩年。

同意。我們會對獲豁免的合約訂下時限，使發展商與承建商不能透過訂立長期合約，規避繳付有關費用。

香港建造商會認為，在收費計劃實施前已進行投標的項目，亦應獲得豁免。

我們認為無須擴大豁免範圍，由於法例制定與收費計劃生效的時間會相距數月，承建商應可把廢物處置成本計算在投標價內。

憑肉眼判斷不同設施是否接收廢物的權力

香港建造商會及商界環保協會關注到，憑肉眼判斷不同設施是否接收廢物，可能會造成工作人員與廢物運輸商之間的衝突。

我們同意，在收費計劃實施初期，這類問題可能會發生。不過，從所需的時間、地方、後勤支援和成本的角度來考慮，工作人員要在設施入口詳細檢查每部車輛所載的物料，並為之秤重，實際上並不可行，因此，除了要求他們憑肉眼即時作出判斷外，別無可行方法。

我們計劃成立由建造業、廢物運輸商及設施營辦商代表組成的三方工作小組，以便在計劃實施前解決可能出現的初期問題。

其他相關事宜

把惰性建築廢料再用於內地的填海工程

由於收費計劃會增加工程項目的成本，臨時建造業統籌委員會及香港總商會建議，政府應考慮把惰性建築廢料輸往外地。

我們正與內地當局積極商討，研究可否把本地建築工程所產生的惰性公眾填料，再用於內地的填海工程。不過，必須注意的是，這個做法即使可行，也會涉及一定的費用，而有關費用會反映在公眾填土設施費用內。

推廣建造業廢物管理計劃

地球之友、長春社、香港地產建設商會及香港建造商會建議，政府應推廣廢物管理／循環再用。

我們已在公共工程中帶頭實施廢物管理計劃，最近又推行“支付安全及環境計劃”，以提供經濟誘因，鼓勵承建商加強廢物管理及減廢工作。我們亦正擬訂適用於私營機構的廢物管理計劃。

推廣使用再造碎石料

地球之友、香港地產建設商會及香港建造商會促請政府鼓勵建築專業人士，盡量使用再造建築物料。

我們已經以身作則，致力在政府工程中使用再造碎石料。我們曾修訂物料規格，以容許在公共工程中使用再造碎石料。二零零二年七月，我們在屯門設立一個臨時再造設施，把硬料加工為再造碎石料，用於公共工程。我們亦正與多所大學合作進行研究，以擴大再造碎石料的用途。

擬稿

DRAFT

2003 年廢物處置(修訂)(第 2 號)條例草案
WASTE DISPOSAL (AMENDMENT) (NO. 2) BILL 2003

A BILL

To

Amend the Waste Disposal Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Waste Disposal (Amendment) (No. 2) Ordinance 2003.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for the Environment, Transport and Works by notice published in the Gazette.

2. Interpretation

(1) Section 2(1) of the Waste Disposal Ordinance (Cap. 354) is amended, in the definition of “disposal”, by repealing “in relation to chemical waste” and substituting “, in relation to chemical waste and construction waste,”.

(2) Section 2(1) is amended by repealing the definition of “trade waste” and substituting –

““trade waste” () means waste from any trade, manufacture or business, but does not include animal waste, chemical waste or construction waste;”.

(3) Section 2(1) is amended, in the definition of “waste”, by adding “construction waste,” before “household”.

(4) Section 2(1) is amended by adding –

““construction waste” () means any substance, matter or thing defined as construction waste by regulations made under section 33, but does not include chemical waste;

“designated waste disposal facility” () means a designated waste disposal facility as defined in

section 2 of the Waste Disposal (Designated Waste Disposal Facility) Regulation (Cap. 354 sub. leg. L);”.

3. Prohibition of unauthorized use of land or premises for disposal of waste

(1) Section 16(2)(d) is amended by adding “or construction waste” after “chemical waste”.

(2) Section 16(4) is amended by adding “or construction waste” after “chemical waste”.

4. Section substituted

Section 16A is repealed and the following substituted –

“16A. Prohibition of unlawful depositing of waste

(1) A person commits an offence if he deposits or causes or permits to be deposited waste in any place except with lawful authority or excuse or the permission of any owner or occupier of the place.

(2) If waste is deposited from a vehicle that is not being used as a public transport carrier, the following persons are regarded as causing the waste to be deposited for the purpose of subsection (1) –

- (a) the driver of the vehicle at the time when waste is deposited from it; and
- (b) any person who employs that driver to drive the vehicle at that time.

(3) If a person mentioned in subsection (2) is charged with an offence under subsection (1), he has a defence if he proves that he has taken all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(4) Without limiting the general nature of subsection (3), a driver mentioned in subsection (2)(a) establishes the defence under subsection (3) if he proves –

- (a) that he acted under instructions from and relied on information given by his employer referred to in subsection (2)(b); and
- (b) that he had no reason to believe that the waste was deposited without lawful authority or excuse or without the permission of the owner or occupier of the place concerned.

(5) Without limiting the general nature of subsection (3), an employer referred to in subsection (2)(b) establishes the defence under subsection (3) if he proves –

- (a) that he relied on information given by another person; and
- (b) that he had no reason to believe that the waste was deposited without lawful authority or excuse or without the permission of the owner or occupier of the place concerned.

(6) If a person wishes to rely on a defence involving an allegation –

- (a) that the commission of the offence was due to an act by or omission of another person (other than his acting under instructions from his employer);
or
- (b) that he relied on information supplied by another person,

he is not entitled, without leave of the court, to rely on the defence unless he has served on the prosecutor a notice giving all information he then had that identifies or assists in identifying the other person at least 7 clear days before the hearing.

(7) In this section –

“occupier” (), in relation to any place, means the lessee or principal tenant of the owner of the land under a form of lease or the licensee of the owner under a licence;

“owner” (), in relation to any place, includes –

- (a) a person holding premises direct from the Government whether under lease, licence or otherwise;
- (b) a mortgagee in possession of the place;
- (c) a person receiving the rent of the place, solely or with another, on his own behalf or that of any person, or a person who would receive the rent if the place was let to a tenant; and
- (d) if the person mentioned in paragraph (a), (b) or (c) cannot be found or ascertained, or is absent from Hong Kong or under disability, the agent of that person;

“public transport carrier” () means a public bus, public light bus, train, light rail vehicle or tramcar.”.

5. Section added

The following is added –

“18A. Power of court and magistrate to order removal of waste or payment of expenses

(1) If a person is convicted of an offence under section 16A, a magistrate may, either on application by the Director or on the magistrate’s own initiative, make in addition to any penalty that may be imposed under section 18 an order that the person -

- (a) remove the waste concerned within a specified period if it was deposited on Government land; or

- (b) pay the Director, or any other person acting on his behalf, all or part of the expenses he has incurred in removing the waste from that land.

(2) When making an order under subsection (1)(b), the magistrate may take into consideration all or any of the following factors in determining the amount to be paid by the convicted person –

- (a) the total quantity of waste being found on the land where the offence was committed;
- (b) the quantity of waste being deposited on the land by that person;
- (c) the number of convicted persons and their respective roles in the offence;
- (d) the cost incurred in removing the waste;
- (e) any other factors that the court or magistrate considers relevant.

(3) A person who is subject to an order under subsection (1)(a) shall notify the Director in writing immediately upon completion of the removal of the waste concerned.

(4) On receiving a notification from a person under subsection (3), the Director shall –

- (a) consider and form a conclusion on whether the person has complied with the order properly; and
- (b) inform the person in writing of his conclusion and, if the Director concludes that the person has not complied with the order properly, the reasons for that conclusion.

(5) A person who fails to comply with an order made against him under subsection (1) commits an offence and is liable –

- (a) to a fine of \$200,000 and to imprisonment for 6 months on the first occasion on which he is convicted of the offence;

- (b) to a fine of \$500,000 and to imprisonment for 6 months on each subsequent occasion on which he is convicted of the offence; and
- (c) to an additional daily penalty of \$10,000 for each day on which the offence is proved, to the satisfaction of the court or magistrate, to have continued.

(6) A person who fails to comply with subsection (3) commits an offence and is liable to a fine of \$100,000.

(7) For the purposes of this section, a reference to Government land is a reference to unleased land as defined in the Land (Miscellaneous Provisions) Ordinance (Cap. 28).

6. Circumstances under which waste disposal licence for certain types of waste is to be granted

Section 21A is amended by adding “or construction waste (as the case may be)” after “chemical waste” wherever it appears.

7. Section added

The following is added –

“23G. Director’s power to remove waste

- (1) If the Director is satisfied that -
 - (a) an offence under section 16A has been committed;
 - (b) there is an imminent risk of serious environmental impact; and
 - (c) immediate actions need to be taken without delay to reduce or eliminate that risk,

then the Director, or any other person acting on his behalf, may remove the waste deposited in the place where the offence was committed.

(2) If the Director acts in accordance with subsection (1), he is entitled to apply to the court or a magistrate to recover from the person

convicted of the offence the expenses reasonably incurred by the Director or any other person acting on his behalf.

(3) The Director, or any other person acting on his behalf, shall not under subsection (1) enter into any domestic premises, or the part of any private land that is used for dwelling purposes, 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 or any other person acting on his behalf to enter into any domestic premises, or the part of any private land that is used for dwelling purposes, if the magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that –

- (a) an offence against section 16A has been committed;
- (b) there is an imminent risk of serious environmental impact; and
- (c) immediate actions need to be taken without delay to reduce or eliminate that risk.”.

8. When appeal may be brought

(1) Section 24(1)(g) is amended by repealing the semicolon and substituting a full stop.

(2) Section 24(1)(h) is repealed.

(3) Section 24 is amended by adding -

“(1A) A person who is aggrieved by a decision or direction of the Director made pursuant to regulations made under section 33 may also appeal to the Appeal Board established under section 25, except that no appeal lies under this subsection from any of the following –

- (a) the Director’s decision not to accept any waste at a designated waste disposal facility;
 - (b) the Director’s decision whether or not to charge a person for disposing a waste load at a waste disposal facility as defined in the regulations made under section 33 in relation to charges for waste disposal.”.
- (4) Section 24(2) is amended by adding “or (1A)” after “subsection (1)”.

9 Regulations

- (1) Section 33(1) is amended by adding after paragraph (e) –
- “(eaa) any substance, matter or thing to be defined as construction waste;”.
- (2) Section 33(1) is amended by adding –
- “(hc) any premises to be defined as designated waste disposal facility;”.
- (3) Section 33(1A)(a)(vi)(A) is amended by adding “or construction waste (as the case may be)” after “chemical waste”;
- (4) Section 33(1B)(a) is amended by adding “facility,” before “transfer”.
- (5) Section 33(4) is amended by adding –
- “(ba) confer on the Director the power –
 - (i) to refuse to accept any waste at a designated waste disposal facility in such circumstances as the Director may think fit;
 - (ii) to determine if any waste or class of waste shall be charged;

- (iii) to require any person who delivers any waste to any designated waste disposal facility to state the nature of the waste and give such other information as the Director may consider necessary to determine whether or not to accept the waste at that facility;
- (iv) to close temporarily any designated waste disposal facility for a specified period of time;”.

(6) Section 33 is amended by adding –

“(6) Regulations made under this section may provide that the Secretary may, by notice published in the Gazette, amend any Schedule to such regulations where the Schedule specifies the premises or charges for the disposal of construction waste, or the types of waste to be accepted at the premises.”.

10. Amendment of Schedules

Section 37 is amended by adding –

“(3) Subject to the approval of the Financial Secretary, the Secretary may, by notice published in the Gazette, amend Schedule 12.”.

11. Savings

Section 41 is amended by adding –

“(3) Those parts or percentages of any charges imposed by any regulation made under section 33 which –

- (a) are required to settle a contract payment that a facility operator is entitled to receive under an agreement entered into by the Government with the facility operator; or
- (b) are required to clear or close any advance account opened for that purpose,

shall, subject to the approval of the Financial Secretary, not form part of the general revenue and may, in the case of paragraph (a), be paid to the facility operator in accordance with the agreement.

(4) For the purpose of subsection (3), a facility operator means a person who has entered into an agreement with the Government for the operation or management of any land or premises specified in Schedule 12.”.

12 Section added

The following is added –

“42. Charge or surcharge recoverable as civil debt

Any charge or surcharge payable under this Ordinance may be recoverable by the Director as a civil debt due to the Government.”.

13. Schedule added

The following is added –

“SCHEDULE 12 [s. 41(3) & (4)]

LAND OR PREMISES TO WHICH SECTION 41(3) and (4) APPLIES

Item	Name	Address	Boundaries delineated by drawing number/ plan number
1	Tuen Mun Area 38 Temporary	Southern side of Tuen Mun Area 38 near	Plan Number P 20332-1

	Construction Waste Sorting Facility	River Trade Terminal, Tuen Mun, N.T.	
2	Tseung Kwan O Area 137 Temporary Construction Waste Sorting Facility	Southern side of Tseung Kwan O Area 137, N.T.	Plan Number P 20332-2".

Consequential amendment

Waste Disposal (Refuse Transfer Station) Regulation

(Cap. 354 sub. leg. M)

14. Charge or surcharge recoverable as a civil debt

Section 15 of the Waste Disposal (Refuse Transfer Station) Regulation (Cap. 354 sub. leg. M) is repealed.

Explanatory Memorandum

The main purposes of this Bill are to amend the Waste Disposal Ordinance (Cap. 354) (“the Ordinance”) to –

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

2. Clause 2 adds a definition on “construction waste”, makes corresponding revisions to the existing definitions of “disposal”, “trade waste” and “waste”, and adopts the definition of “designated waste disposal facility” as used in the existing Waste Disposal (Designated Waste Disposal Facility) Regulation (Cap. 354 sub. leg. L) for the purposes of the Ordinance.

3. Clause 3 amends section 16 of the Ordinance to ensure that disposal of construction waste is not exempted under section 16(2)(d) and (4) from the

general licensing requirement for using land or premises for waste disposal under section 16(1).

4. Clause 4 recasts the existing offence of unlawful depositing of waste under section 16A(1) of the Ordinance to streamline its working by making available to a person charged under that section the defence of having lawful authority or excuse or permission of the land owner or occupier concerned regardless of where the waste is deposited. Clause 4 further stipulates in the proposed section 16A(2) 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 the waste to be deposited for the purpose of the offence in the proposed new section 16A(1) but they are provided with statutory defences under the proposed section 16A(3) to (6).

5. Clause 5 adds a new section 18A to the Ordinance to empower a magistrate to order a person convicted of the offence of unlawful waste depositing under section 16A to remove the waste if deposited on Government land or to pay the Director of Environmental Protection (“the Director”) the expenses he has incurred in removing the waste. Failure to comply with the order or to notify the Director on completion of the waste removal is an offence under the proposed section 18A(5) and (6).

6. Clause 6 amends section 21A of the Ordinance to make the requirements concerning waste disposal facilities apply also to construction waste for the purpose of granting a waste disposal licence.

7. Clause 7 adds a new section 23G to the Ordinance to authorize the Director to remove waste deposited in contravention of the proposed new section 16A if there is an imminent risk of serious environmental impact requiring immediate remedial actions. However, the Director may not for this purpose enter into any domestic premises or private land used for dwelling purposes without first obtaining a warrant issued by a magistrate. The Director may apply to the court or a magistrate to recover from the person convicted of the offence

under the proposed section 16A the expenses reasonably incurred by the Director in taking the remedial actions.

8. Clause 8 amends section 24 of the Ordinance to provide that no appeal lies to the Appeal Board constituted under Part VI of the Ordinance from the Director's decision 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.

9. Clause 9 amends section 33 of the Ordinance to –

- (a) empower the Chief Executive in Council to make regulations to provide for matters to be defined as construction waste and premises to be defined as designated waste disposal facility;
- (b) allow regulations made under that section to confer on the Director certain powers in relation to the operation of designated waste disposal facility and the charging of waste; and
- (c) empower the Secretary for the Environment, Transport and Works to amend any Schedule to those regulations in relation to premises or charges for the disposal of construction waste, or the types of waste to be accepted at the premises.

10. Clause 11 adds the new subsections (3) and (4) to section 41 of the Ordinance to provide for a “netting-off” arrangement whereby the charges imposed by regulations made under section 33 may be used for settling the payment due to an operator of a waste disposal facility specified in the proposed Schedule 12 (added by clause 13) in accordance with his agreement with the Government without infringing the principle against hypothecation of the general revenue. Clause 10 adds a new subsection (3) to section 37 of the Ordinance to empower the Secretary for the Environment, Transport and Works

to amend Schedule 12 by Gazette notice subject to the approval of the Financial Secretary.

11. Clause 12 adds a new section 42 to the Ordinance to provide that any charge or surcharge payable under the Ordinance is recoverable by the Director as a civil debt due to the Government. Section 15 of the Waste Disposal (Refuse Transfer Station) Regulation (Cap. 354 sub. leg. M) becomes redundant as a result and is consequentially repealed by clause 14.