

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

This note sets out our response to the issues raised by Subcommittee members at the meeting on 24 May 2016. Separately, as suggested by the Honourable Frankie Yick, a meeting with trade representatives from the waste collection trade has been arranged.

Information on cases of fly-tipping and illegal land filling and their number

(a) *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;*

2. The number of prosecutions and convictions that were initiated from records of surveillance cameras at various locations since 2013 is summarised at **Annex**.

(b) *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;*

3. The case involving the soil fill *near Kingswood Villas in Tin Shui Wai* has been discussed at the LegCo Panel on Environmental Affairs on 25 April 2016. As regards the other two cases, the relevant case background is set out below –

(a) *Chuen Lung Village in Tsuen Wan:* On 3 January 2016, the Environmental Protection Department (“EPD”) received a complaint against illegal dumping of construction waste at TWTL No. 389, Ma Tong Tsuen, Chuen Lung, Tsuen Wan, New Territories. The location is a private land lot which is designated as “Unspecified Use” under the Development Permission Area Plans.

(b) *Tsing Chuen Wai in Tuen Mun:* In May 2016, a report of suspected soil filling near Tsing Chuen Wai, Tuen Mun was

received by relevant government departments. The site concerned is near Tsing Chuen Wai, Tuen Mun. It was originally a small hill covered by vegetation and has been abandoned for years. However, some parts of the land were bulldozed in recent months to form a relatively higher platform where asphalt was paved. The original soil surface was exposed due to the removal of vegetation covering the land. The site involves several private lots with a total area of about 10 000 m<sup>2</sup>. The whole platform, with variations in height, is about 2 to 3 metres above the adjacent ground surface, while the height of the portion near residential area is about 3 metres.

4. As there are on-going developments, the relevant government departments are monitoring these three cases and will take necessary follow-up actions as appropriate.

#### Measures to prevent fly-tipping and illegal land filling

(c) *the measures to be taken by the Administration to prevent fly-tipping and illegal land filling activities before and after the Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Amendment of Schedules) Notice 2016 ('the Amendment Notice') came into operation on 7 April 2017, given that more fly-tipping and illegal land filling activities might arise upon the implementation of the proposed new charges under the Amendment Notice;*

5. It should be noted 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 that has been cleared by the Government is equivalent to less than 0.05% of the amount of construction waste handled by the designated waste disposal facilities. This notwithstanding, we will monitor the situation and step up enforcement actions together with other departments as necessary. As we mentioned at the meeting on 24 May 2016, EPD completed a trial scheme of using surveillance cameras at 12 black spots of fly-tipping of construction waste to aid our investigation. It is observed that these cameras could help provide useful information for identification of the fly-tippers, and also help deter fly-tipping at black

spots to some extent. We would further review the outcome of the trial with a view to planning for a sustained deployment of an extended surveillance camera system.

6. 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, at construction waste collection vehicles. This automatic monitoring technology may help track and log their activities, which may in turn deter fly-tipping of construction waste and facilitate investigations. We would continuously engage the affected trades on the operational details. In addition, we will also arrange necessary publicity and public education on the proper disposal of construction waste.

***(d) whether the Administration would consider increasing the penalties for fly-tipping of construction waste and illegal land filling so as to enhance the deterrent effect;***

7. At present, as provided for under section 18(1) of the Waste Disposal Ordinance (“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 to imprisonment for 6 months;
- (b) for a second or subsequent offence, a fine of \$500,000 and to imprisonment for 6 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.

8. We consider that the existing penalty provision is appropriate. As we explained at the meeting and noted above, we will continue to explore feasible measures to enhance the effectiveness of our enforcement so as to sustain the deterrent effect.

## Land filling activities on private land

- (e) *whether construction waste producers were allowed under the current legislation to deliver waste to places other than fill banks or landfills for dumping; whether in the market, there were construction waste producers who had 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;*

9. At present, it has been required under section 3A of the Waste Disposal (Designated Waste Disposal Facility) Regulation (Cap. 354L) that certain types of construction waste may only be accepted for disposal at certain designated waste disposal facilities. There is no requirement under the WDO that construction waste must only be delivered to a designated waste disposal facility. Majority of the construction waste include soil, rubble, earth, sand, brick, tile, etc, which are inert materials and do 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, we do not consider it appropriate to require that construction waste be delivered only to the designated waste disposal facilities.

- (f) *given that land filling activities on private land were not unlawful as long as the prior consent of the land owner had been obtained, the Environmental Protection Department ("EPD") had been notified and stabilization works to the fill slope had been carried out, whether the Administration would consider plugging the loopholes by amending the legislation to replace the above mechanism of notifying EPD with the requirement of registering with EPD and obtaining approval from relevant departments;*

10. As required under sections 16B and 16C of the 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 has allowed EPD to alert other relevant departments that depositing of construction waste may commence in a

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

11. The above mechanism and the relevant legislative amendments were introduced after extensive consultation with different stakeholders and the LegCo. During the deliberation, the option of introducing an authorisation system under the WDO had also been considered and discussed. However, it was not a viable option to subject the depositing of construction waste on private land to DEP's authorisation. This is because requiring DEP to authorise 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 authorisation will also be subject to challenge.

(g) *whether the Administration would consider amending the legislation to extend the application of restrictions on the height and size of fill slopes on Crown land to private land; and*

12. Under the WDO, a person will have committed an offence under section 16A(1) if he deposits construction waste on a piece of Government land without the Government's prior permission, *irrespective of* (i) the height of the bulk of construction waste that has been deposited on the lot or (ii) the total area on which construction waste has been deposited within the lot. Separately, according to the Planning Department, in the case of "Agriculture" zone falling within a Development Permission Area, any filling of land requires permission from the Town Planning Board except the filling of land that is specifically required under prior written instructions of government department(s) or for the purposes of laying of soil (*not construction waste*) not exceeding 1.2 metres in thickness for cultivation or construction of any agricultural structure with prior written approval issued by LandsD.

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

- (h) *whether the liability would be borne by the driver of the waste collection vehicle concerned, the transport company engaged or the construction waste producer in case the company engaged to collect and deliver construction waste failed to deliver the waste to a fill bank or a landfill in accordance with the terms of engagement and disposed of the waste at other places instead.*

13. Under section 16A(1) of the WDO, 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 except with the permission of any owner or lawful occupier of the place. Under section 16A(2), where waste is deposited from a vehicle other than a public transport carrier, the driver of the vehicle at the time when the waste is deposited from it will be liable. However by way of section 16A(4)(a), he may establish a defence if he proves that he acted under instructions from his employer.

**Environmental Protection Department**  
**May 2016**

**Number of Prosecutions and Convictions Initiated from Records of Surveillance Cameras  
at Various Locations since 2013**

<b>Locations with Surveillance Cameras Installed</b>	<b>Commencement Date</b>	<b>Number of Prosecution (summonses)</b>	<b>Number of Convictions (summonses)</b>	<b>Number of Fixed Penalty Notices</b>
Siu Lang Shui Road, Tuen Mun (near the road across EcoPark)	December 2009 and March 2014	24	20	6
Wan Po Wan near Chun Cheong Street Car Park, Tseung Kwan O	December 2013	6	6	4
Locations around Gin Drinkers Bay, Kwai Chung (including Kwai Yue Street, Wing Shun Street, Kwai Hei Street and Wing Lap Street)	Mid-2015	100	100	3
12 fly-tipping black spots installed with pilot surveillance cameras under the "Keep Clean 2015 @ Hong Kong: Our Home" Campaign (including 10 Refuse Collection Points and 2 roadside sites in 9 districts)	Q4 2015 - Q1 2016	75	44	72