

**立法會**  
**Legislative Council**

LC Paper No. CB(1) 2042/07-08  
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by the Administration)

Ref : CB1/PL/EA/1

**Panel on Environmental Affairs**

**Minutes of special meeting  
held on Friday, 16 May 2008, at 8:30 am  
in the Chamber of the Legislative Council Building**

- Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)  
Hon Emily LAU Wai-hing, JP (Deputy Chairman)  
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP  
Hon SIN Chung-kai, SBS, JP  
Hon LAU Kong-wah, JP  
Hon Miriam LAU Kin-yea, GBS, JP  
Hon CHOY So-yuk, JP  
Hon LEE Wing-tat  
Hon Jeffrey LAM Kin-fung, SBS, JP  
Hon Mrs Anson CHAN, GBM, JP
- Members attending** : Hon James TIEN Pei-chun, GBS, JP  
Hon WONG Kwok-hing, MH  
Hon Daniel LAM Wai-keung, SBS, JP
- Members absent** : Hon Martin LEE Chu-ming, SC, JP  
Hon WONG Yung-kan, SBS, JP  
Hon Howard YOUNG, SBS, JP  
Hon CHEUNG Hok-ming, SBS, JP
- Public officers attending** : Environment Bureau  
  
Mr Edward YAU  
Secretary for the Environment  
  
Ms Anissa WONG  
Permanent Secretary for the Environment

Development Bureau

Mr CHAN Yun-cheung  
Principal Assistant Secretary (Works) 3

Miss Diane WONG  
Principal Assistant Secretary (Planning & Lands)1

Environmental Protection Department

Mr Albert LAM  
Deputy Director of Environmental Protection (2)

Mr TANG Kin-fai  
Assistant Director (Environmental Compliance)

Lands Department

Mr Christopher MILLS  
Assistant Director (NT)

Food and Environmental Hygiene Department

Mr CHEUNG Wai-ying  
Senior Superintendent (Cleansing & Pest Control)

Planning Department

Mr Raymond CHIU  
Assistant Director/Special Duties

Home Affairs Department

Ms Margaret HSIA  
Assistant Director (2)

**Clerk in attendance** : Miss Becky YU  
Chief Council Secretary (1)1

**Staff in attendance** : Mrs Mary TANG  
Senior Council Secretary (1)2

Miss Mandy POON  
Legislative Assistant (1)4

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**I. Measures to tackle fly-tipping**

- (LC Paper No. CB(1) 1557/07-08 — Administration's paper on "Depositing of inert construction and demolition materials on private land"
- LC Paper No. CB(1) 2107/03-04 — Report of the Bills Committee on Waste Disposal (Amendment) (No. 2) Bill 2003 to the House Committee meeting on 18 June 2004
- LC Paper No. CB(1) 2019/03-04(02) — Administration's paper on "A possible option to address the issue of land filling activities on private land" for the Bills Committee meeting on 3 June 2004
- LC Paper No. CB(1) 1199/07-08(01) — Administration's paper on land filling activities on Government land and private land using construction and demolition materials - the Shing Mun Road incident
- LC Paper No. CB(1) 1199/07-08(02) — Paper on fly-tipping and land filling activities on private land prepared by the Legislative Council Secretariat (Background brief)
- LC Paper No. CB(1) 1224/07-08(01) — Submission from Friends of the Earth (HK) (Chinese version only)
- LC Paper No. CB(1) 1246/07-08(01) — Submission from WWF Hong Kong (English version only)
- LC Paper No. CB(1) 1247/07-08(01) — Wording of the motion passed at the meeting on 11 April 2008
- LC Paper No. CB(1) 1538/07-08(01) — Administration's paper on the latest development of the proposed "clean record system" to facilitate the Town Planning Board to consider planning applications)

As the Administration had missed the deadline for provision of discussion paper, the Chairman consulted members on whether the meeting should proceed as scheduled. Members emphasized the need for the Administration to observe the deadline to allow sufficient time for members to study the paper. Given the significance of the subject under discussion, they agreed to proceed with the meeting on an exceptional basis.

2. The Secretary for the Environment (SEN) apologized for the late provision of discussion paper for the meeting. He said that it took time to work out measures, including the need for legislative changes, with relevant bureaux and departments to address the problem of depositing of inert construction and demolition (C&D) materials on private land. He then highlighted the enhanced enforcement actions and the legislative options set out in paragraphs 7 to 29 of the paper.

#### Inter-departmental coordination

3. Mr Daniel LAM said that the recent fly-tipping activities at Ting Kok Road had reflected the lack of coordination on the part of the Administration in tackling the problem. Mrs Anson CHAN enquired about the bureau/department which would take the lead in coordinating actions to deal with the depositing of inert C&D materials on Government and private land. She also asked if consideration would be given to setting up a standing committee to deal with such activities, so that the public could approach the committee for assistance in this regard. SEN said that to better monitor the situation and address the potential problems, the Environmental Protection Department (EPD) would set up a database capturing cases of depositing of inert C&D materials on private land gathered from routine inspection and complaints received by all relevant departments. Information of the database would be shared among all individual relevant departments, which would continue to undertake enforcement actions as appropriate upon receipt of complaints from the public or being notified through updates from the database. While better information sharing and coordination could enhance departments concerned to take actions, the Administration could only exercise its enforcement power provided for under the existing legislation. Hence, legislative changes might be needed if further extension in control was required. He also undertook to consider the feasibility of setting up a standing committee to deal with such activities.

4. Mr SIN Chung-kai considered it appropriate for the Environment Bureau to take the lead in coordinating regulatory control over depositing of inert C&D materials on private land. He also agreed that more should be done by the Government to regulate such activities, including the setting up of a standing committee for the purpose, and that prosecution should be taken against fly-tipping to deter future recurrences. SEN said that the relevant departments would deal with the depositing activities within their jurisdiction having regard to past experience. By way of illustration, action would be taken under the Public Health and Municipal Services Ordinance (Cap.132) (PHMSO) if the filling or dumping of waste on a particular piece of land had given rise to a nuisance or litter. However, they could not extend further control beyond what was allowed under the law.

5. Mr LEE Wing-tat opined that the rampant depositing activities in the New Territories, as evidenced by the Shing Mun Road, Shek Wu Wai Village, Fung Ka Wai, Ting Kok Road and San Fu Village incidents, were partly attributed to the lack of action by relevant departments, including the Food and Environmental Hygiene Department (FEHD), against nuisances such as flooding and mosquito breeding associated with such activities. The Permanent Secretary for the Environment (PS(Env)) said that upon receipt of complaints against depositing activities, the

relevant departments would first examine whether there was any breach of existing legislation under their respective jurisdictions. With the setting up of the database on cases of depositing of inert C&D materials on private land, the Administration could better monitor the situation and enhance the co-ordination among different departments in enforcement actions. On the incidents referred to by Mr LEE, SEN said that the relevant departments had been cooperating with the District Office concerned in resolving the problem at Shing Mun Road. It was worth noting that the Administration would need to identify the landowners, and confirm with them whether consent had been given for the depositing activities before action could be taken under the Waste Disposal Ordinance (Cap. 354) (WDO). Tracing of ownership of the sites could at times be difficult as the owners might not respond in a timely manner. The Assistant Director of Environmental Protection (Environmental Compliance) (ADEP(EC)) added that legal proceedings were being considered against the depositing activities at Ting Kok Road, which appeared to be carried out without the consent of at least one of the concerned landowners. Investigation on the other incidents was also underway. The Principal Assistant Secretary for Development (Works) 3 (PAS(W)3) added that dangerous slope rectification order would be served if the land filling activities posed danger to the surrounding areas. The Senior Superintendent (Cleansing & Pest Control) said that a notice under PHMSO could be issued if the depositing of inert C&D materials on private land caused an accumulation of water, which allowed the breeding of mosquitoes.

6. Mr Jeffrey LAM agreed that there should be more coordination on the part of the Administration in regulating depositing activities. He also opined that measures, including development of recycling industries in the EcoPark, had to be worked out to reuse and recycle inert C&D materials, as otherwise these materials would be stored for an indefinite period of time. SEN said that some of the inert C&D materials had been used for leveling of land in land formation projects, while others were transported to the Mainland for reclamation purposes given the limited number of reclamation projects in Hong Kong.

#### Database on cases of depositing of C&D materials

7. Ms Emily LAU enquired about the number of complaint cases on depositing of inert C&D materials. ADEP(EC) said that there were 406 cases in 2005 (before the charging scheme for disposal of construction waste came into effect), 1 546 cases in 2006 and 1 697 cases in 2007. These cases included depositing of inert C&D materials on both Government and private land. Of the 1 697 cases in 2007, about 900 cases involved depositing activities at roadside and less than 200 cases on private land. There were 16 cases of successful prosecution under WDO and 19 fixed penalty notices issued. The number of complaints cases were much higher than the number of prosecution cases because many of the cases involved temporary depositing activities at roadside, mostly originated from renovation works which would go out of sight within a short period of time. The Assistant Director of Planning (Special Duties) added that since mid-2005, the Planning Department had instigated planning enforcement actions against 84 sites of all the land/pond filling cases on private land in rural New Territories. In reply to the Chairman's further enquiry on the number of complaints cases in 2008, ADEP(EC) said that as far as he could recall, the number of

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complaints cases received during the first quarter of 2008 were similar to that of 2007. At members' request, the Administration agreed to provide a list of cases of depositing activities on Government and private land which took place between 2005 and 2008, the actions taken by relevant authorities and the reasons for non-action.

#### Authorization prior to depositing of inert C&D materials on private land

8. Mr LEE Wing-tat noted with concern the increase in the number of complaints against fly-tipping from 406 in 2005 to 1 546 in 2006. To ensure that waste producers would not dump their C&D waste on private land, with or without the consent of landowners, in an attempt to evade the waste disposal charges, he supported the proposed amendment to section 16A of WDO to require authorization from EPD for any depositing of C&D materials on private land, even with the permission of landowners or lawful occupiers. Reference could be made to section 16 of the Town Planning Ordinance (Cap. 131), where prior written approval had to be obtained for laying of soil exceeding 1.2 metres in thickness for cultivation or construction of any agriculture structure. In this way, the Government would be in a position to better control the problem at source. SEN said that concerted efforts from both the Government and the public were required to tackle the problem of fly-tipping. Notwithstanding, the relevant government departments were empowered to take appropriate enforcement against depositing activities, even if these were carried out on private land with the consent of landowners, when such activities caused adverse environmental impacts, hygiene problems or violation of land use control. The proposed legislative approach would need further deliberation given its significant implications on the scope of WDO and private property rights.

9. The Chairman said that she was inclined to support the need for authorization, with a view to controlling depositing activities, on the condition that clear delineation between lawful land filling activities and illegal dumping would be drawn. SEN said that there were difficulties in drawing a line on what should be regarded as lawful land filling activities and consensus had yet to be reached. That was why the Administration had set out the possible legislative options, which could be pursued for further deliberation.

#### Legislative control through environmental impact assessment

10. Mr Daniel LAM said that Heung Yee Kuk (HYK) supported regulatory control over the depositing of inert C&D materials on private land, but emphasized the need to differentiate between lawful land filling activities and illegal dumping. To this end, HYK was prepared to explore with the Administration measures to regulate depositing activities without infringing on property rights or adversely affecting the environment. These could include the feasibility of including land filling projects with an area of not less than two hectares in size and with a depth of not less than 1.2 metres as designated projects under the Environmental Impact Assessment Ordinance (Cap 499). However, the shortcoming of this measure was that many routine site formation works might need to undergo the environmental impact assessment process. While acknowledging that the community might not want to see depositing activities, SEN said that such activities, particularly those with the consent

of landowners and carried out in accordance with relevant legislation, were not disallowed. As such, legislative changes to further regulate depositing activities might not be acceptable to all stakeholders. He agreed that public consultation on the legislative options was essential.

Planning control on depositing of inert C&D materials

11. Mr WONG Kwok-hing noted the limitations in planning control and enquired whether the Lands Department could be able to take enforcement against depositing activities on private land which were not permitted under the land lease. SEN said that while the Administration had endeavoured to take actions as appropriate under the existing legislation, there were some depositing activities on private land which fell outside the jurisdiction of government departments. Legislative amendments were required if it was considered necessary to tighten control over depositing activities on private land with the consent of landowners. The Assistant Director of Lands (NT) explained that the use of private land was also governed by the terms of the relevant leases. While most modern land leases contained a user clause and other restrictions governing the use of the land concerned, there were limitations in the case of private land in the New Territories, most of which was covered by the Block Government Lease (BGL) granted in the early 20<sup>th</sup> Century. Under BGL, the description of use had been held by the Court to be a description only and not to be interpreted as a restriction on the use of land concerned. The relevant legal reference was a Court of Appeal judgement in 1983 commonly known as the “Melhado” case. As BGL was a contractual arrangement which could not be varied unilaterally, the Government alone could not change the terms to tighten control over the use of land. Generally, therefore, stockpiling and depositing of inert C&D materials on private agricultural land was not contrary to the terms of BGL.

12. Mr WONG Kwok-hing enquired about the actions which could be taken in the meantime pending consideration on the need for legislative amendments to extend control over depositing activities. SEN said that government departments were empowered to take appropriate enforcement in accordance with the relevant legislation, if the depositing activities had caused adverse environmental impacts, hygiene problems or violation of land use control. The relevant government departments would not be able to take enforcement action, if the depositing activities on private land were carried out with the consent of the landowners for legitimate purposes (such as leveling uneven ground to prepare the sites for future development or permitted short term uses) without giving rise to the said problems.

13. Given the increasing public concern over depositing of inert C&D materials, Ms Emily LAU supported the extension of regulatory control over depositing activities, which were an eyesore and not compatible with the surrounding environment, irrespective of whether these were permitted under the relevant planning and land use control. However, extensive public consultation on such extension should be conducted. SEN said that if regulatory control were extended to cover depositing activities, which were an eyesore and not compatible with the surrounding environment, the Administration would need to be empowered to take enforcement on grounds of non-environmental considerations. This might not be in line with the

scope of WDO. In addition, imposing further control on the depositing activities on grounds of visual impact or incompatibility with surrounding landscape without justifiable environmental objectives might be considered as a disproportionate interference with private property, particularly if such activities were carried out with the consent of the landowners or occupiers. The implications associated with the legislative options would need to be discussed in greater detail within the community.

#### Trip-ticketing system for C&D waste

14. Mr LEE Wing-tat called upon the construction trades to exercise self-discipline to ensure C&D waste was properly disposed of. He enquired whether the trip-ticketing system currently applicable to public works projects could be extended to cover private projects. PAS(W)3 explained that the trip-ticketing system was currently in use for public works projects to regulate delivery of C&D materials to designated disposal facilities. The system relied heavily on the conscientious effort of the site supervisory staff to issue a trip ticket to every truck leaving the site, and to compare regularly site delivery records against the reception records at the designated facilities. As for private construction projects, the Buildings Department had issued guidelines on the proper disposal of C&D materials at designated facilities. SEN added that the feasibility of extending the trip-ticketing system to private construction works would warrant further deliberation and discussion with the trade. This, if implemented on a mandatory basis, would also require legislative work and additional resources to police and enforce the system.

15. Miss CHOY So-yuk said that the problem of fly-tipping was raised during the scrutiny of the Waste Disposal (Amendment) (No.2) Bill 2003. The Administration had then agreed to increase manpower resources to tackle the problem, following the implementation of the charging scheme for disposal of C&D waste. To avoid fly-tipping, there was a need to ensure that waste haulers would properly dispose of their waste loads at designated facilities. PS(Env) said that the charging scheme for disposal of C&D waste had been effective in reducing the disposal of C&D waste in Hong Kong, despite some cases of fly-tipping.

#### Other measures

16. Miss CHOY So-yuk supported that consideration should be given to pursuing the various legislative options as set out in the Administration's paper as soon as possible. More regular inspections should be conducted at notorious black spots of fly-tipping, and heavier penalties should be imposed to deter such activities. She also asked whether photographs showing the licence plate number of the vehicles engaged in illegal dumping activities could be used as evidence for prosecution. SEN said that apart from the stakeholders, the Administration might also need to consult other relevant Panels on the legislative options as they would involve different policy areas. As to whether photographs could be admitted as evidence, SEN said that whether a piece of evidence was sufficient to satisfy the burden of proof was a matter to be decided by the court. Meanwhile, members of the public were encouraged to report fly-tipping activities to the relevant departments, and act as witnesses in courts during prosecution.

Way forward

17. Ms Emily LAU proposed to hold an additional meeting in late June 2008 to invite all relevant stakeholders, including green groups and affected parties, to express their views. Mr Daniel LAM and Mr LEE Wing-tat supported the proposal. Miss CHOY So-yuk however considered it more appropriate to hold the meeting after the Administration had provided more details on the proposed course of actions. Members decided that a special meeting should be held on Monday, 30 June 2008, at 8:30 am, to discuss the inadequacies of the existing arrangement and the way forward in dealing with depositing activities on private land. Relevant stakeholders, including the transport and construction trades, green groups as well as HYK, would be invited to attend the meeting. Miss CHOY added that the problem of depositing activities at roadside should also be included for discussion at the special meeting. At members' request, the Administration would provide the progress of development of the database on cases of depositing of inert C&D materials on private land.

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**II. Any other business**

18. There being no other business, the meeting ended at 10:27 am.

Council Business Division 1  
Legislative Council Secretariat  
27 June 2008