

**For discussion
on 11 April 2008**

**LEGISLATIVE COUNCIL
PANEL ON ENVIRONMENTAL AFFAIRS**

**Land Filling Activities on Government Land and Private Land
Using Construction and Demolition Materials -
The Shing Mun Road Incident**

Purpose

As requested by Members, this paper sets out the regulatory regime under existing legislation in dealing with the land filling activities on government and private land at Shing Mun Road, which involve the work of various bureaux and departments.

Background

2. Complaints of land filling activities at Shing Mun Road were lodged with the government departments in late February. Kwai Tsing District Office (K&TDO) subsequently set up an interdepartmental task force on 6 March 2008 to coordinate enforcement and follow-up actions. Members of the interdepartmental task force comprise Buildings Department (BD), Civil Engineering and Development Department (CEDD), Drainage Services Department (DSD), Environmental Protection Department (EPD), Food and Environmental Hygiene Department (FEHD), Highways Department (HyD), Lands Department (Lands D), Police, and the Planning Department (Plan D).

3. Investigation revealed land filling using construction and demolition (C&D) materials happened on a piece of land incurring both government land, as well as private lots there, to form a flat platform for private purpose. A total of about 1,390 sq. m. of land has been affected, 17% being on government land, and the remaining 83% on private land.

4. The land filling has basically changed the land profile, causing

some obstruction of a portion of the stream running through one of the private lots. In the process, unauthorized deposition of C&D materials on government land were involved.

5. In respect of the unauthorized land filling on government land, EPD has collected evidence and has initiated prosecution against the person who arranged for the land filling. HyD has completed the clearance works on the government land. A total of 87 trucks with a volume of 694m³ dumping materials were removed. With the consent of the private lot owners, DSD has entered the private lots and carried out the necessary clearance works concerning the blockage of an existing stream. To assist our investigation, we are seeking confirmation from some of the private lot owners if they have given consent to such land filling activities. So far investigation has not identified breaches against existing pollution control legislations or immediate risk of adverse environmental impact but we will keep on monitoring the situation closely. Details of the departments' follow-up actions are at **Annex**.

Land filling activities on private and government land

6. Previous experience has shown that private lot owners may undertake land filling activities on private lots for purposes of filling up their land to level off uneven ground surfaces; reclaiming a piece of flat terrain to turn the land into other uses such as car parking or recreational uses; or stockpiling of C&D materials, similar to the operation of a fill bank. Such activities, if being given consent by the private lot owners and conducted in accordance with the relevant legislations regulating the activities, are not disallowed under the law. On the other hand, there are cases of unauthorized dumping of construction or renovation waste in public areas as an expedient way to dispose of such materials. These cases are different in nature and purpose from the land filling activities on private land.

Land use planning control

7. The main objectives of land use planning as enshrined in the Town Planning Ordinance (TPO) (Cap 131) is to promote the health, safety, convenience and general welfare of the community.

8. Planning control is effected through the preparation of statutory plans and the enforcement power under the TPO. The statutory plans list out those uses/developments permitted under the plan and those requiring planning approval from the Town Planning Board (TPB). In proposing the land use zoning on statutory plans to TPB, Plan D would take into account relevant factors such as government policies, planning principles, infrastructure and environmental considerations, site conditions and public aspiration etc.

9. Plan D can take enforcement actions against unauthorized land filling activities falling within the Development Permission Area, in the rural New Territories, that fail to comply with the provisions of statutory plans. Generally speaking, for areas covered by conservation-related zones (such as “Site of Special Scientific Interest (SSSI)”, “Conservation Area (CA)” and “Coastal Protection Area (CPA)”), "Green Belt" or "Agriculture" zones, prior planning permission from the TPB is required for land filling activities.

Land lease control

10. While the land use planning system guides the development and use of land at a broad zoning level, the use of a particular piece of private land is also governed by the terms of the relevant land lease. The Lands D is responsible for the disposal of land by leases and for the enforcement of the lease conditions.

11. Most modern land leases contain a user clause specifying the permitted use of the land concerned. The leases also include a number of general and special conditions that the lessees need to comply with. Failure to comply with these conditions will lead to lease enforcement action by Lands D.

12. Land lease is a form of contract. Once entered into, it cannot be altered unilaterally by either of the contractual party i.e. the lessor (the Government as the landlord) or the lessee. Hence, Government cannot impose without the agreement of the lessee additional terms on an existing lease to tighten the control over the use of the land concerned.

13. Whether land filling activity is allowed on private land depends on

the land lease conditions. Most private land outside the layout areas in the NT is covered by Block Government Leases (BGLs) granted in the early 20th Century. The description of use in the Schedule to a BGL has been held by the court to be a description only and is not to be taken as a restriction on the use of the land concerned.

14. The land lease conditions have evolved over time with the development of the society. Modern land leases are more elaborate than the old leases.

Building control

15. All building works need to comply with the relevant provisions of the Buildings Ordinance (BO) (Cap. 123). For land filling activities, only if they are undertaken for the purpose of or are associated with building construction works that they are building works requiring prior approval from the Building Authority (BA) under the BO. Otherwise these activities per se will not come under the control of the BO. However, should they affect the safety of adjacent buildings or land, for example any slope formed by the land filling is in an unstable condition, the BA may consider appropriate enforcement action under the BO to render it safe.

Pollution control

16. The Administration has enacted specific environmental laws that regulate pollution problems arising from particular activities, including land filling activities. These include, inter alia, the Waste Disposal Ordinance (Cap. 354), the Air Pollution Control Ordinance (Cap. 311), Water Pollution Control Ordinance (Cap. 358) and Noise Control Ordinance (Cap. 400). These Ordinances apply to the whole territory, irrespective of their land status. Therefore the land owners of leased land also abide by these laws.

Waste Disposal Ordinance (WDO) (Cap. 354)

17. Under s.16A 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 permission of any owner or lawful occupier of the place.

18. S.23EA of WDO further provides that if the Director has reasonable grounds to believe that (i) an offence under s.16A has been committed (s.23EA(1)(a)); (ii) the waste deposited in the place is likely to give rise to an imminent risk of adverse environmental impact (s.23EA(1)(b)); and (iii) action needs to be taken immediately to reduce or eliminate that risk (s.23EA(1)(c)), the Authority may enter the place to remove the waste and recover the cost from the convicted person on application of a court order.

19. When the above s.23EA was considered by the Bills Committee on the Waste Disposal (Amendment) (No.2) Bill 2003, some Members raised concern on the need for s.23EA(1)(a), since the Director of Environmental Protection (DEP) should enter a place to remove the waste if it would pose an imminent risk of adverse environmental impact irrespective whether an offence was committed under s.16A. On the other hand, the removal of s.23EA(1)(a) might have impact on the privacy of the land owners/occupiers. Some Members were also concerned with the need to respect the rights of private land owners in using their land as long as they were permitted under the law. Having taken into account the divergent views, on balance the Administration agreed that there is no need to amend the proposed s.23EA i.e. DEP cannot enter the place to remove the waste under the proposed s.23EA if he does not have reasonable grounds to believe that an offence under s.16A has been committed.

Environmental hygiene

20. Apart from the above specific pollution control ordinances, the Public Health and Municipal Services Ordinance (Cap. 132) also has provisions to deal with nuisances and require removal of litter or waste from any place.

21. If land filling or dumping of waste on a particular piece of land gives rise to a nuisance (as defined in the Ordinance) or litter, action may be taken against the land owner under this Ordinance. The FEHD can issue abatement notice or notice of removal of litter or waste to the responsible person, requiring the person to abate the nuisance within a specified period of time. Failure to comply with the relevant notice will be subject to prosecution.

Drainage concerns

22. If the landfill activities affect existing stream, watercourses and drainage system, Drainage Services Department (DSD) will assess the likely drainage impacts of the land filling activities in the area and the potential risk of flooding and monitor the drainage system to avoid flooding. It will remove any silt/debris accumulated in channels/drains within Government land and carry out immediate desilting during flood emergencies.

Additional measures to control land filling activities

23. During the deliberation of the Waste Disposal (Amendment) (No 2) Bill 2003 in 2004, LegCo members expressed concern about land filling activities in private agricultural land. Having regard to the rights of the land owner/occupier to develop its land, it was then concluded that a *ban* of such activities under existing environmental laws unjustified.

24. On the other hand, given the wide scope of the Environmental Impact Assessment Ordinance (EIAO, Cap. 499) covering impact on air quality, noise, water, waste management, ecology, fisheries, visual, landscape and sites of cultural heritage, the Administration then undertook to examine a possible option to subject land filling to EIAO control. In particular, it was suggested that landfilling project with an area of not less than 2 hectares in size and with a depth of not less than 1.2 metres be included as a designated project under the EIAO. Any proponent of such designated projects would then be required to apply for an environmental permit from the Director of Environmental Protection before its commencement.

25. Subsequently, at the meeting of this Panel on 24 January 2005, some Members expressed reservations about the practicality of regulating land filling activities in agricultural land through the EIAO, and suggested that it might be more feasible to deal with the issue through land use control. In view of the development in planning control (paragraph 26 below) which should address the problems, the option of amending the list of designated projects under Schedule 2 of the EIAO was dropped.

26. To help address the land filling problem within the “Agriculture” zone, the TPB in April and July 2005 had incorporated the landfilling clause into the Notes of the rural Outline Zoning Plans for “Agriculture” zones. Such amendments have helped to step up development control on land filling activities by requiring prior planning permission from TPB under section 16 of TPO for undertaking or continuing land filling activities, except those specially required under prior written instructions of Government department(s), for laying of soil not exceeding 1.2m in thickness for cultivation, or for construction of any agricultural structure with prior written approval issued by the Lands Department.

Coordination among government departments

27. As described in the paragraphs above, land filling activities are being regulated under various pieces of existing legislation. Government departments will take appropriate actions depending on the circumstances of individual cases and within the authorities that the respective legislations permit. At present, complaints against land filling activities are lodged with individual government departments for their investigations and actions under their jurisdiction. Depending on individual circumstances, the government department receiving a complaint may refer the case to the other concerned government departments for parallel actions and the District Officer may convene district interdepartmental meetings or ask the department concerned to set up a task force with a view to dealing with the case expeditiously.

28. In the case of the complaints against dumping of C&D materials at Shing Mun Road, the District Officer (Kwai Tsing) has acted promptly to coordinate relevant departments to take follow-up actions on the complaints. The District Office has played an overall monitoring role in overseeing that all the government departments are aware of the complaints and taking appropriate actions. The arrangement will ensure better sharing of information and more effective actions to be taken.

Land Filling Activities at Shing Mun Road Responsibilities and follow-up actions by relevant departments

Land use planning

- ◆ The subject site falls within an area zoned “Green Belt” on the Kwai Chung Outline Zoning Plan which does not fall within a development permission area. As such, no enforcement action can be taken under the TPO.

Land lease control

- ◆ The land filling activities at Shing Mun Road involve both government land as well as private land.
- ◆ In view of the unauthorized land filling on government land, Lands D has taken immediate steps to remove the C&D materials from the government land through the employment of the HyD’s works contractor. The clearance work, as far as slope stability and land status are allowed, was completed on 17 March 2008.
- ◆ The private agricultural lots are held under a Block Government Lease (BGL). Lands D has examined the site with the land leases concerned and reported that they did not find anything that was in contravention with the terms of the lease, nor provisions of the Land (Miscellaneous Provisions) Ordinance (L(MP)O) (Cap. 28). They nevertheless issued advisory letters to the land owners to ask them to take appropriate action in view of the environmental nuisances arising. So far, they have received no response from the land owners.

Building control

- ◆ The Buildings Department has assessed the situation that the land filling

activities at the site concerned are not associated with building construction works and there exists no unstable slopes that would endanger human lives. It is therefore not in its jurisdiction to take enforcement action under the Buildings Ordinance (BO) (Cap. 123).

Pollution control and waste management

◆ *Waste Disposal Ordinance (WDO) (Cap. 354)*

The WDO spells out that 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 permission of any owner or lawful occupier of the place (S.16A).

From the site concerned, violation of the WDO provisions is suspected for having deposited the C&D materials on the government land. EPD has collected evidence in respect of the government land and has initiated prosecution against the person who arranged for the land filling.

◆ *Dust nuisance*

Dust emission was no longer an issue as soon as the land filling activities on site had been stopped. EPD would, however, carry out close surveillance at the site and take immediate actions if there would be any dust nuisance to the public.

◆ *Water pollution control*

Under the provisions of the Water Pollution Control Ordinance (WPCO, Cap. 358), a person commits an offence if he discharges any waste or polluting matter into the waters of Hong Kong in a water control zone, or, any matter into any inland waters in a water control zone which tends to impede the proper flow of the water in a manner leading or likely to lead to a substantial aggravation of pollution.

EPD had been collecting water samples daily from the stream adjacent to the site concerned to keep track if pollution of the stream water

incurred. The laboratory results do not show that the water quality had been affected by C&D materials deposited at that location, nor that there was a discharge of waste or polluting matter into the waters of Hong Kong.

◆ *Noise concerns*

In the Shing Mun Road case, EPD did not receive any noise complaint from the public. As the site had been fenced off and further land filling activities stopped, there was no imminent noise issue. Should the activities resume, EPD would advise the occupier to comply with the requirements of the Noise Control Ordinance (Cap. 400).

Drainage concerns

- ◆ Drainage Services Department (DSD) has confirmed that the watercourse within the concerned site is not designated as the “Main Watercourse” under the Land Drainage Ordinance. So they have no legal grounds for them to take any action for the land filling concerned. Nevertheless, DSD with the consent of the land owners of the private lots concerned had cleared a portion of the materials deposited near the stream and placed sand bags at the toe of filling to ensure the stream flow is not impeded.

Environmental hygiene

- ◆ The FEHD has conducted inspections at the site. However, the accumulation of C&D materials in the private lots is not in such a manner as to be a nuisance. Therefore no action can be taken under the Public Health and Municipal Ordinance (PHMO, Cap. 132) at this stage.