

For discussion
on 16 May 2008

Legislative Council Panel on Environmental Affairs

Depositing of Inert Construction and Demolition Materials on Private Land

INTRODUCTION

At a special meeting of this Panel on 11 April, Members expressed concerns over disposal of waste materials on private land with the permission of land owners and under the disguise of land-filling activities, which have caused environmental and health impacts. The following motion was carried –

“That, with regard to the issue of disposal of waste materials on private land, the Panel on Environmental Affairs urges the Chief Secretary for Administration to expeditiously convene an inter-departmental meeting with the Environment Bureau, Development Bureau, as well as all other relevant government departments, and to come up with a proposal for resolving the problem of disposal of waste materials on private land. The Administration is also requested to submit a report on the matter to the Panel on Environmental Affairs within one month.”

2. The Environment Bureau has been tasked to coordinate efforts of relevant bureaux and departments in examining how best to address the above concerns, including the need for introducing legislative changes. This paper sets out the response of the Administration after detailed examination by both the Environment Bureau and the Development Bureau and the relevant departments.

PROBLEM

3. Inert construction and demolition (C&D) materials, if put into gainful uses, should not be regarded as waste. In the arena of public works, inert C&D materials have been reused in reclamation projects or as recycled aggregates in construction works.

4. Depositing of inert C&D materials on government land or private land without the consent of the concerned owners is in breach of existing land use or environmental legislation. Even if the depositing activities are on private land and with the consent of the concerned owners, when such activities cause adverse environmental impacts, hygiene problems or violation of land use control in accordance with the relevant legislation, the relevant Government departments are also empowered to take appropriate enforcement actions. However, in the situation where the depositing of inert C&D materials on private land with the consent of the land owners concerned for legitimate purposes (such as leveling uneven ground to prepare the sites for future development or permitted short term uses), and that such activities do not cause adverse environmental and hygiene problems or violation of land use control mentioned above, the relevant Government departments do not have authority under the existing legislation to enforce against such activities. Nevertheless, there are circumstances that such depositing of inert C&D materials becomes an eyesore and is found incompatible with the surrounding natural environment, irrespective of whether it is permitted under the relevant planning and land use control. There are increasing public concern and calls for Government to extend further control to contain or eliminate such activities and to enhance inter-departmental coordination in tackling the problem.

5. Nonetheless, many private sites found used for depositing of inert C&D materials are usually smaller in scale. Many of these cases are found within “Agriculture” and conservation-related zonings like “Green Belt” and “Conservation Area” where prior planning permission from the Town Planning Board (TPB) is required for the land filling activities under the statutory plans in the development permission areas. Under such circumstances, any filling of land or pond within these zones after the publication of the relevant development permission area plan without the permission from TPB is subject to planning enforcement proceedings under the Town Planning Ordinance (Cap. 131) (TPO).

6. In addition, depositing of waste on private land without prior consent of the landowners is in breach of section 16A of the Waste Disposal Ordinance (Cap. 354) (WDO). For the Environmental Protection Department (EPD) to take action under the WDO, we would need to identify the owners of the sites and to confirm whether consent has been given by the owners concerned. Yet tracing the ownership of the sites could at times be difficult as the owners may not respond in a timely manner.

ENHANCED ENFORCEMENT ACTIONS

7. In view of the public concern, we see that there are scopes for departments concerned to step up enforcement actions within their existing authority through better information sharing and coordination.

Inter-departmental Coordination

8. As observed by Members, issues arising from depositing inert C&D materials on private land often cut across different policy areas, and coordinated efforts from relevant departments are necessary. To better monitor the situation and address the potential problems arising therefrom, EPD will set up a database capturing cases of depositing inert C&D materials on private land gathered from routine inspection and complaints received by all relevant departments. Individual departments will continue to undertake enforcement actions as appropriate upon receipt of complaints from the public or being notified through updates from the database. Enforcement actions by individual departments will be recorded in the database and joint actions may be arranged where appropriate. The information of the database will be shared amongst all relevant departments including EPD, the Food and Environmental Hygiene Department (FEHD), Planning Department (Plan D), Lands Department (Lands D) and District Offices for information and reference as individual department undertakes its enforcement actions. In addition, regular monitoring and inspection of the identified sites for enforcement under the relevant legislative controls on environmental protection, hygiene and land use will be conducted by the departments concerned. Depending on individual circumstances, the relevant 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.

9. Furthermore, the concerned departments will jointly draw up a comprehensive guideline to advise land owners that the depositing of inert C&D materials is subject to control under various legislation and regulations. The guidelines will be promulgated to the public. They will also be made available at the Public Enquiry Service Centres of the District Offices.

Control under Environmental Legislation

10. The WDO provides that a person commits an offence if he

deposits waste in any place, except with lawful authority or with the permission of land owners or lawful occupiers (section 16A). EPD has clear authority to take enforcement actions if the depositing of inert C&D materials takes place on Government land, or on private land without the permission of landowners or lawful occupiers. To facilitate the necessary enforcement action, Lands D and District Offices will jointly assist EPD in seeking a timely response from land owners to confirm whether their consent has been given.

11. Dust emission, noise and waste water discharge arising from land filling activities are regulated by the Air Pollution Control Ordinance (Cap. 311), Noise Control Ordinance (Cap. 400) and Water Pollution Control Ordinance (Cap. 358) respectively. Failure to comply with any of these Ordinances would result in prosecution. EPD would step up monitoring at private land where depositing of inert C&D materials are found so that any environmental problems arising could be identified and enforcement actions be taken in a timely manner.

Environmental Hygiene

12. The Public Health and Municipal Services Ordinance (Cap. 132) has provisions to deal with nuisances and require removal of litter or waste from any place. If 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. In addition, if the depositing of inert C&D materials on private land cause an accumulation of water which allows the breeding of mosquitoes, a notice may be issued under section 27 of Cap. 132 requiring necessary action to be taken to remove such accumulation of water or to prevent mosquito breeding upon the premises within a specified period. Subject to resource availability, FEHD may also inspect such sites on private land referred to it by EPD to prevent the occurrence of any environmental hygiene problems.

Planning and Land Use

13. Planning control is effected through the preparation of statutory plans and the enforcement power under the TPO. The Planning Authority can take enforcement action against unauthorized developments that come into existence after the gazettal of statutory plans on the development permission areas in rural New Territories (NT). In line with the planning intention to protect the natural environment of the rural NT, planning enforcement would be instituted to control

unauthorized land filling activities in areas zoned for conservation-related uses (such as “Site of Special Scientific Interest”, “Conservation Area” and “Coastal Protection Area”), "Green Belt" or "Agriculture" zones, unless prior planning permission has been granted by TPB based on the individual merits of the planning applications. To require a planning permission for land filling activities that are incidental to and ancillary to the land uses that are permitted as of right in development-related zonings, such as “Village Type Development”, “Residential (Group D)” and “Open Storage”, would be regarded as unnecessarily constraining the development process.

14. In addition to planning control, the use of private land is also governed by the terms of the relevant land leases. In this context, whether depositing of inert C&D materials is allowed on private land depends on the land lease conditions. Most modern land leases contain a user clause specifying the permitted use of the land concerned. These leases also include a number of general and special conditions with which the lessees must comply. Failure to comply with the lease conditions will render the lot liable to lease enforcement action by Lands D.

15. There are however limitations as most private land in the NT is covered by the Block Government Lease (BGL) granted in the early 20th Century, under which the description of use in the Schedule to BGL has been held by the Court to be a description only and is not to be interpreted as a restriction on the use of the land concerned. This contractual arrangement cannot be varied unilaterally and Government alone cannot change the terms to tighten control over the use of the land. Nonetheless, in the event that the database on depositing of inert C&D materials shows that such activities have taken place on any private land where the lease does not allow such activities, Lands D will take lease enforcement against such breaches.

LEGISLATIVE OPTIONS TO FURTHER REGULATE DEPOSITING OF INERT C&D MATERIALS ON PRIVATE LAND

16. As set out in Paper CB(1) 1199/07-08(01), the regulatory regime under existing legislation has already provided relevant control over the environmental pollution and hygiene impacts that may arise from depositing inert C&D materials on private land. The enhanced monitoring and co-ordination among government departments as outlined above should help reduce the potential risks in respect of environmental

and hygiene impacts. In view of Members' concern over the adequacy of the existing control regime, the Administration has conducted an initial review of the relevant legislation. Some preliminary legislative options and their potential implications are set out below.

Authorization Prior to Deposit of Inert Construction and Demolition Materials on Private Land

17. Section 16A of the WDO was last amended in 2004 to strengthen the control on unlawful deposit of waste to tie in with the implementation of the construction waste charging scheme. It provides for an offence if waste is deposited or caused to be deposited in any place without lawful authority or without the permission of any owner or lawful occupier of the place. If it is deemed necessary to tighten control on the activities of depositing inert C&D materials on private land with the consent of the land owners, section 16A can be amended to the effect that any deposit of such materials on private land will require an authorization from EPD, *even if* the permission of land owners or lawful occupiers has been obtained.

18. In view of the inert nature of C&D materials, the depositing of such materials on private land would unlikely create environmental problems. Such activities, if carried out with the consent of the land owners, are arguably not covered by the existing WDO and other environmental legislations. If we are to extend our power to handle such cases in question, the Administration would need to be given power to exercise control over non-environmental factors, such as visual impact and incompatibility with surrounding landscape. It is worth noting that such amendment could risk stretching the ambit of WDO beyond its scope to cover non-environmental consideration. In addition, if the landowner or occupier has already given the consent, imposing further control on the depositing of inert C&D materials merely on the grounds of visual impact or incompatibility with surrounding landscape without justifiable environmental objectives may also be considered as a disproportionate interference with private property.

19. On the other hand, if the depositing of inert C&D materials on private land is unlikely to create environmental problems, the Administration cannot disapprove applications for such activities if non-environmental factors are not included as factors being considered in the proposed legislative regime. Appropriate preventive measures to avoid emission of dust, noise and waste water discharge may be imposed as conditions in granting the approval, though practically enforcement

against these breaches can be achieved under the existing legislation. Under such circumstances, a requirement to obtain an authorization would create unnecessary administrative and financial burden upon the land owners concerned.

20. Given the above considerations, this legislative approach will carry significant implications on the scope of the WDO and private property rights and need to be further considered through discussions with departments concerned and various stakeholders.

Legislative Control through Environmental Impact Assessment

21. The Administration has also explored the possibility of subjecting the depositing of inert C&D materials to the control of the Environmental Impact Assessment Ordinance (EIAO) (Cap. 499). It was once suggested that such projects 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 category of designated projects under the EIAO. Any proponent of such projects would be required to apply for an environmental permit from the Director of Environmental Protection before its commencement. The option was raised at the Panel meeting in January 2005, but Members expressed reservation on its practicability.

22. The Administration has reviewed the option in view of the recent public concerns on the depositing of inert C&D materials. The Technical Memorandum issued under section 16 of the EIAO explicitly states that an environmental permit cannot be refused on land use ground. Hence it is not a tool for stopping non-conforming land uses. Furthermore, as mentioned in paragraph 5 above, the size of private sites deposited with inert C&D materials, including the recent Shing Mun Road incident, are usually smaller in scale. The suggestion will not help improve the condition of such cases, but will require many routine site formation works to go through the EIA process, which could be time-consuming and costly.

Planning Control on the Depositing of Inert C&D Materials

23. If the depositing of inert C&D materials is incidental to and directly related or ancillary to the permitted uses and developments, it is difficult to single out such activities on private land for regulation or control under the town planning regime. In addition, planning enforcement and prosecution can only take place after the illegal dumping has been carried out. As explained in paragraph 19, since the depositing

of inert C&D materials would unlikely be creating environmental problems, it would be difficult to justify additional planning control over such activities on land zoned for development purposes.

24. To help address public concerns on the depositing of inert C&D materials in the rural NT, TPB in mid-2005 has extended the land filling control from the conservation-related zonings to “Agriculture” zone on the statutory plans. This has helped to step up the planning control on land filling activities on private land at the conservation-related zonings by requiring prior planning permission from TPB for undertaking or continuing such activities, except those specifically required by Government department(s), for laying of soil not exceeding 1.2m in thickness for cultivation purpose, or for construction of any agricultural structure with prior written approval issued by Lands D.

25. There could be suggestions to extend such control to private land zoned for development purposes, e.g. “Village Type Development”, “Residential (Group D)”, “Open Storage”. However, the Administration would be seen to be stifling the development process and criticized for working against the policy objective to streamlining the development approval process, in particular as there are no other justifications for the additional control. This would draw strong objections from the construction industry and landowners.

26. As temporary uses, in particular open storage and port back-up uses, in the rural NT have brought about significant social and economic benefits to Hong Kong, stopping the processing and grant of planning permission for temporary uses or developments on private land covered by BGL is unlikely to be acceptable to affected landowners and the logistics industry.

27. TPB shall continue to prepare development permission area plans for areas that are subject to development pressure such that the Planning Authority could instigate planning enforcement action on unauthorized developments including unauthorized land filling activities. Land use compatibility and visual impact are of course relevant planning considerations which TPB shall take into account in the grant of planning permission for any temporary or permanent uses or development to protect the natural environment.

Trip-ticketing System for Construction and Demolition Waste

28. We have also considered ways to tackle the problem at source

and one option is to extend the existing trip-ticketing system to cover private projects on a voluntary basis or to make it a mandatory requirement for all public and private works projects. The trip-ticketing system is currently in use for public works projects to regulate delivery of construction waste to designated disposal facilities. The system relies heavily on 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.

29. The feasibility of extending the system or introducing a mandatory trip-ticketing system for private construction works warrants further deliberation and discussion with the trade. This would also require legislative work and additional resources to police and enforce the system. The system would require construction management staff to make sure that construction personnel on private sites exercise due diligence in issuing trip tickets, verifying delivery records, and complying with environmental requirements. We would need to consult the construction industry and other relevant stakeholders on such a proposal.

ADVICE SOUGHT

30. Members are invited to note the enhanced enforcement actions in relation to the depositing of inert C&D materials on private land and comment on the preliminary legislative options to further regulate such activities.

Environmental Protection Department
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