

For information

Legislative Council Panel on Environmental Affairs

**Information Note on
Land Contamination Policy**

PURPOSE

This note provides an update on the current policy for managing contaminated land in Hong Kong and the actions taken to enhance contaminated land management, drawing reference from the Cheoy Lee Shipyard (CLS) case.

BACKGROUND

2. Pending the outcome of the legal pursuits arising from the decommissioning of the CLS, the Administration was requested to report to the Panel on the progress of the formation of a land contamination policy. In October 2008, the Legislative Council Panel on Environmental Affairs has requested the Administration to provide a progress report.

LATEST STATUS OF THE CHEOY LEE SHIPYARD CASE

3. The site of CLS was surrendered to the Government in 2001 for the construction of the Disney Theme Park. After completion of the land contamination assessment, the Government found that the site was contaminated by ship building and breaking operation and the Government paid for the full cost of cleaning up the land contamination at the former CLS site.

4. The CLS issue was discussed at an Environmental Affairs Panel meeting held in 2002. The then members opined that the liability issue related to the decommissioning of the CLS remained unresolved and legal advice had to be sought.

5. In 1999 and 2005, the CLS filed two applications under the Foreshore and Sea-bed (Reclamations) Ordinance to claim compensation from the Government for the marine access rights extinguished by the reclamation. The respondent for both cases was the Director of Lands. The two cases were later combined and heard as one by the Lands Tribunal in 2007. The Government won the court case but the CLS filed an appeal. The appeal case was heard in September 2008 but no judgment has been handed down up to December 2008. When the appeal judgment is handed down, the losing party could lodge an appeal to the Court of Final Appeal.

CURRENT LAND CONTAMINATION POLICY

6. The current land contamination policy adopts various strategies, including planning approval procedure, land administration mechanism, internal procedures, guidelines and existing legislation, to manage and control land contamination and remediation in Hong Kong to protect human health and the environment. They are described in the following paragraphs.

Planning Approval Procedure

7. Presently, whenever there is a need to apply for planning permission for certain use / development from the Town Planning Board under section 16 of the Town Planning Ordinance, the Planning Department will circulate the applicant's proposal to the Environmental Protection Department (EPD), among others, for comments. If considered necessary, the EPD will advise that if the application is to be approved, condition should be imposed to require the applicant to conduct land contamination assessment and to complete the necessary remedial works before the commencement of the new use / development.

Land Administration Mechanism

8. To address the possible land contamination liability issue, the Lands Department has been inserting a decontamination clause and an

indemnity clause on an as-needed basis into new land leases and new short-term waiver agreements respectively.

Government Internal Procedures

9. Under the current system, Government project proponents need to follow the existing guidelines and procedures in assessing the environmental impacts of proposed projects and developments, including any relevant land contamination issues.

Guideline on Land Contamination Assessment and Remediation

10. The EPD has issued guidelines and guidance notes on land contamination assessment and remediation. In August 2007, the EPD has issued a Guidance Note for Contaminated Land Assessment and Remediation which introduced the risk-based standards to reflect the latest international practices on assessment approach and remediation goals. The latest guidance note and manual for the use of the new standards are available on the EPD's web site and workshops with professionals have been held to disseminate the international practices.

Existing Legislation

11. Land contamination is subject to control under the following legislation in the scenario as specified -

- *Building (Oil Storage Installations) Regulations* – Contaminated land assessment and remediation is required in demolition of oil installations under the Regulations;
- *Environmental Impact Assessment Ordinance (EIAO)* – Contaminated land assessment and remediation is required for designated projects under the EIAO;
- *Waste Disposal Ordinance (WDO)* – The WDO sets out the framework for the management and prevention of waste. It is an offence for improper waste disposal which leads to land contamination;

- *Water Pollution Control Ordinance* (WPCO) – The WPCO provides that the discharger may be liable to prosecution unless his discharge of waste or polluting matter into the inland waters (e.g. groundwater) or water bodies is made in accordance with the terms of the WPCO.

ACTIONS TAKEN TO ENHANCE CONTAMINATED LAND MANAGEMENT

12. Since November 2003, the Lands Department has incorporated a decontamination clause in new land leases for sites susceptible to contamination (e.g. petrol filling station and industrial/godown land uses), to require the lessee to assess and clean up land contamination to the satisfaction of the EPD before lease expiry or termination. The clause also provides the means for the Government to recover the decontamination cost from the lessee should he / she fail to carry out the required assessment and remediation work.

13. Moreover, the Lands Department has strengthened the indemnity clause and incorporated it into new short-term waiver agreements for sites subject to potential contamination since November 2004. The indemnity clause ensures that the tenant who pollutes the land due to his / her day-to-day operations should be held responsible for the cost of cleaning up the land contamination. The clause is imposed in those waiver agreements, which are considered as contaminated uses, including but not limited to industrial operation, motor vehicle repairing / service center, petrol filling station, concrete/asphalt production, waste recycling workshop, scarp yard and dangerous goods store.

CONCLUSION

14. The existing planning approval procedure, land administration mechanism, internal procedures and legislation for contaminated land management in Hong Kong together with the actions taken to enhance the existing system as described above are considered appropriate and

effective in protecting human health and the environment against land contamination. The liability for decontamination has been covered by the introduction of decontamination clause and strengthened indemnity clause in new land leases and short-term waiver agreements respectively. The Administration will continue to utilize these means to regulate land contamination in Hong Kong.

Environmental Protection Department
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