

**For discussion on
25 February 2013**

**LEGISLATIVE COUNCIL
PANEL ON ENVIRONMENTAL AFFAIRS**

**Measures to tackle fly-tipping of construction and demolition waste and
illegal land filling**

Purpose

This paper serves to brief Members on measures by the Administration in tackling fly-tipping¹ of construction and demolition (C&D) materials and illegal land filling² activities. It also seeks to brief Members on the recent case of asbestos waste being abandoned at a site in Ma Tong Village, Chuen Lung.

Actions taken by Government Departments

2. Efforts in tackling fly-tipping of C&D materials and illegal land filling cut across a number of policy areas including environmental protection, planning and control of land use, slope safety in construction works as well as public health and environmental hygiene. Government Departments have been taking actions under their respective jurisdiction against these problems, which include the enforcement of the relevant legislation as summarized in **Annex I**.

3. In the last term of LegCo, the Panel on Environmental Affairs convened a subcommittee to review the Government's policies on enforcement against such activities and made recommendations, amongst others, to further enhance the co-ordination of Government Departments in combating illegal deposition activities. Taking note of the recommendations

¹ Fly-tipping refers to illegal depositing of C&D materials, which is often associated with haphazard and casual dumping from vehicles. Fly-tipped C&D materials are usually scattered, left in heaps, and in small quantities. Most of these illegal dumping activities take place in urban built-up areas at locations with good vehicular access, such as at kerb sides or side roads branched off from main roads.

² Land filling refers to depositing or placement of C&D materials as fill material on land, which results in an elevation of ground level. Land filling activities are usually carried out for purposes of filling up ponds, levelling off uneven ground surfaces, forming sites for development, stockpiling in the form of a fill bank, or depositing of C&D materials onto land as dumping ground.

and feedback from the community, the relevant Government Departments, including AFCD, BD, CEDD, EPD, FEHD, HAD, HyD, LandsD and PlanD have jointly set up a co-ordination mechanism to monitor the overall situation on fly-tipping and illegal land filling, and to conduct joint site inspections and enforcement actions as necessary. Preventive measures, such as the installation of railings, warning signs and road barriers, were implemented at identified fly-tipping black spots as well as other locations with potentially serious problems. The publicity and public education efforts were also stepped up, and a guide had been drawn up and distributed to private land owners and the related trades including the construction industry, construction waste and C&D materials transporters and property management companies to help prevent illegal activities. A list of fly-tipping black spots has been uploaded onto EPD's website (www.epd.gov.hk) to facilitate monitoring of these black spots.

4. Statistics of construction waste flytipping on Government land (GL) and land filling on private land between 2010 and 2012 are at **Annex II** and **Annex III** respectively. Overall, the quantity of construction waste fly-tipped and removed by the government accounts for less than 0.1% of the total quantity of construction waste disposed of properly at government disposal facilities in the same period. Whilst the total number of complaints against fly-tipping of construction waste increased by about 9% over the past three years, most of the complaints involve mainly small-scale fly-tipping of construction waste at the roadside.

5. Law enforcement against fly-tipping activities had been difficult since they were mostly conducted at inconspicuous locations and at odd hours. Government Departments have mounted ambush operations in late hours and weekends to deter such fly-tipping activities. Moreover, EPD had conducted trials in deploying closed-circuit television (CCTV) to monitor fly-tipping activities at two black spots, namely Siu Lang Shui in Tuen Mun and Tai Po Road car park in Shatin in 2010/11. The trial findings indicate that CCTV is a useful tool to capture information on fly-tipping activities at targeted black spots. However, this measure on its own will not be effective in deterring and reducing fly-tipping activities at the black spots. Other complementary measures, such as erection of bollard, fencing and/or suitable railings to restrict access or to fence off the black spot locations, as well as alternative enforcement approaches such as targetted ambush operations at reported black spots would be required to deter fly-tipping.

6. Efforts have also been made to monitor flow of C&D materials of major private works projects. Since the Construction Industry Council (CIC) issued the Guidelines on Trip Ticket System for Disposal of C&D Materials

in Private Sector Works³ in May 2011, CIC has been exploring the use of automatic monitoring technology to replace the manual process required in the trip ticket system and to facilitate a closer monitoring of construction waste movement for both private and public construction works. The CIC has identified the potential of adopting the technology of radio frequency identification (RFID) and the global positioning system (GPS) to improve the monitoring of the movement of construction waste.

7. To take the initiative forward, CIC's Committee on Environment and Technology has recently set up a new Task Force on Schematic Design for Application of RFID, GPS and Sensor Technology in Monitoring the Movement of Construction Waste (Task Force) with a view to deriving a practical solution. The Task Force consists of representatives from the industry practitioners, construction and information technology professionals, contractors and government officials. The Task Force aims to suggest a solution for better and more effective management of construction waste transportation.

Town Planning Ordinance (Cap. 131)

8. In the 2009-2010 legislative session, the Government was requested to review the feasibility of amending the Town Planning Ordinance (Cap. 131) (TPO) to empower the Planning Authority to take enforcement action against land filling activities undertaken within areas covered by Outline Zoning Plans (OZPs) but previously not covered by Development Permission Areas (DPA) Plans.

9. The preparation and review of statutory plans has been an on-going task of the PlanD. Apart from OZP reviews for the built-up areas, PlanD is in parallel preparing DPA Plans/OZPs for the rural areas currently not covered by statutory plans so as to step up statutory planning control in areas of high conservation value, subject to development pressure, or susceptible to unauthorized use etc. For the period from early 2010 up to the last reporting to LegCo in June 2011, PlanD has prepared 12 DPA Plans, covering the Frontier Closed Areas, some country park enclaves (CP enclaves⁴) and other rural areas, amounting to about 2,550 hectares of land. Since then, PlanD has

³ The Guidelines model on the trip ticket system set out in the Development Bureau's Technical Circular (Works) No 6/2010.

⁴ CP enclaves are sites that are surrounded by or adjacent to the country parks, but not part of the country parks. Most of these enclaves comprise both private land and Government land. Control on developments on private land at these enclaves relies on terms and conditions of the land leases, Buildings Ordinance and, if available, DPA Plans or OZPs under the TPO.

prepared 11 more DPA Plans covering an additional 1,182 hectares of land.

10. For CP enclaves already covered by DPA Plans or OZPs prepared under TPO, enforcement action could be taken against unauthorized development, if a breach of the provision of the relevant plan can be established. To meet conservation and social development needs, the Government will either include CP enclaves into country parks or determine their proper uses through statutory planning, having regard to various factors such as accessibility of the enclave, immediate development threats, conservation value, geographical location of the enclave, and existing scale of human settlement. In early 2010, there were 77 country park enclaves. Of these, 23 were already covered by OZPs. For the remaining 54 enclaves not covered by OZPs, PlanD will prepare DPA plans for about half of them. From early 2010 to end 2012, 16 DPA plans covering 21 CP enclaves (about 648 hectares) have been published. PlanD shall endeavour to complete the preparation of new DPA Plans for the remaining enclaves deemed suitable to be covered by statutory town plans in 2013. In tandem with the above, AFCD is also undertaking parallel protection work pursuant to the provisions of the Country Parks Ordinance for enclaves suitable for inclusion as country parks. In November 2012, draft maps of three CP enclaves were prepared to designate three enclaves as part of CP and were made available for public inspection. AFCD will continue its patrolling efforts in these 54 enclaves and alert the relevant departments of any irregular activities so that prompt enforcement action could be taken against unauthorized activities under the existing legislative framework.

11. A number of reported private land filling sites have been monitored closely as they fall within the conservation-related zonings, such as "Coastal Protection Area" and "Green Belt". The position (up to January 2013) of the identified sites which are subject to monitoring and/or actions by Government Departments is summarized in **Annex IV**.

Amendment of Waste Disposal Ordinance (Cap. 354)

12. In the 2009-2010 legislative session, the Subcommittee was briefed on the proposal to amend the Waste Disposal Ordinance (Cap. 354) (WDO) to enhance the effectiveness of enforcing section 16A of WDO against unauthorized depositing of abandoned C&D materials on private land. At present, under the section, a person commits an offence if he deposits or causes or permits to be deposited waste (including C&D waste) in any place except with lawful authority or excuse, or except with the permission of any owner or lawful occupier of the place. Notwithstanding the control under section 16A of WDO, law enforcement against unauthorized deposition of

C&D waste on private land has been less than effective as it is difficult to prove the lack of permission by the owner or lawful occupier. It is not unusual to receive conflicting or incomplete information from the depositor and the owner (or lawful occupier) as to whether there was indeed proper authorization. Some cases involved uncertainty in ownership due to outdated records (e.g. when the owner on record is deceased). More often than not, it is difficult to collect sufficient evidence in a suspected fly-tipping case within the statutory time of six months for initiating prosecution. This has undermined the deterrence effect of the control.

13. EPD conducted a public consultation in 2010 seeking views on a proposal to introduce a notification procedure to EPD conveying the authorization by all owners concerned for depositing of C&D materials on private land in advance of the activity. Planning, lands and other authorities may also be alerted of such activity. The objective of the proposed notification procedure is to enable the related Departments to remind the parties concerned of relevant statutory requirements, including precaution against adverse environmental impacts. Enforcement against unauthorized depositing of C&D wastes will be also enhanced, thus better protecting the interest of private landowners.

14. The views of the public were generally positive and we reported to the Sub-committee our intention to put in place the proposal through legislative amendments. Having regard to these objectives and after taking into account the feedback received during the public consultation, we intend to propose the following procedure –

- (a) before a person deposits or causes or permits to deposit C&D waste on private land, he must obtain the valid permission of *each and every owner* of that land;
- (b) an owner will not be regarded as having given valid permission unless (i) the permission is given in a specified form; and (ii) the specified form bears an acknowledgement by EPD which will not be given unless –
 - (i) the specified form is submitted to EPD, together with the information specified in the form, at least 21 calendar days before the commencement of the depositing activity;
 - (ii) the owners identified in the specified form are the persons who for the time being appear from the records at the Land Registry to be the owners of the land (“owners on record”);

and

(iii) the specified form is signed by or on behalf of all owners on record; and

(c) the depositor must display in a conspicuous place of the land the original or a copy of the acknowledged specified form.

15. During the public consultation, we acknowledged that there may be circumstances that depositing of C&D waste on private land that may be exempted from the proposed notification procedure based on the principle of reasonableness. The circumstances that we consider relevant are (i) the depositing is carried out as part of any building works commenced in accordance with the Buildings Ordinance or the Buildings Ordinance (Application to the New Territories) Ordinance. The exemption under this category will deal with cases of small developments, which we previously proposed in the public consultation stage to exclude depositing that involves an aggregate area of deposition of 100 m², or (ii) the total area of depositing of C&D materials is small, say less than 20 m².

16. At this stage we are finalizing the legislative proposal with a view to introducing the amendment bill into the LegCo within 2012-13 legislative session.

Clearance of waste at Ma Tong Village, Chuen Lung

17. The site is located within water gathering ground and involves both GL and private lots. A complaint on a suspected case of unauthorized development of private agricultural land at Ma Tong Village, Chuen Lung and the adjoining GL was first reported in September 2011. PlanD advised that enforcement action under the TPO is not applicable since the site does not fall within any DPA plan. Investigation by DLO revealed that the private agricultural land was held under the Block Government Lease and it was not in contravention with the land lease to carry out site formation and land filling works there.

18. In late October 2012, site inspections conducted by relevant departments following receipt of a public complaint found that land filling activities with inert C&D materials were carried out at the site. No offenders were caught during site inspections and ambushes by EPD. The private lot owner denied any knowledge of the land filling activities and later blocked off the vehicular access to the site.

19. Another complaint was received by departments in mid January 2013 concerning disposal of asbestos waste at the site. Site investigation by DLO and EPD confirmed two piles of asbestos wastes were deposited at the GL and the private land respectively. A Government contractor completed clearing the asbestos waste at GL on 28 January 2013. EPD issued a statutory notice to the private land owner to require clearance of asbestos wastes at the private lot which was subsequently completed on 2 February 2013. DLO has since erected warning signs on site and fenced up the subject GL. The land owner of the private lots also indicated intention to fence off the private lots in the near future. The relevant Government Departments would continue to monitor the site and take enforcement action against any fly-tipping or illegal land filling activities.

20. In addition to regular water monitoring by WSD, water samples were taken by WSD and EPD at a nearby stream course which is upstream of the intake to the Tai Lam Chung Catchwater. The testing results indicated that there was no sign of water pollution. WSD would continue to monitor the water quality of the stream course near the intake of the catchwater.

Advice sought

21. The Panel is requested to note the actions taken by Government Departments in tackling the fly-tipping and land filling problems of C&D materials.

**Environmental Protection Department
February 2013**

Statutory Control over Land filling and Fly-tipping Activities

Land filling and fly-tipping activities are regulated by various planning, environmental, drainage, public health or country park legislations which are enforced by a number of government departments.

| | |
|---|---|
| 1. Environmental Protection Department (EPD): <i>Waste Disposal and Pollution Control</i> | |
| Waste Disposal Ordinance (Cap. 354) (WDO) | Enforce against land filling and fly-tipping activities for waste deposition on government land, or on private land without the consent of the land owners or lawful occupiers. |
| Air Pollution Control Ordinance (Cap. 311), the Noise Control Ordinance (Cap. 400) and the Water Pollution Control Ordinance (Cap. 358) | Control dust emission, noise and wastewater discharges arising from land filling activities. |
| 2. Lands Department (LandsD): <i>Land management</i> | |
| Land (Miscellaneous Provisions) Ordinance (Cap. 28) | To remove C&D materials illegally dumped on unallocated Government land excluding Government land under the control of other Government departments where formal land allocation is not required as unlawful occupation. |
| 3. Planning Department (PlanD) : <i>Planning control</i> | |
| Town Planning Ordinance (Cap. 131) (TPO) | Enforce against unauthorized land filling activities falling within the Development Permission Areas (DPAs) in the rural area when provisions of statutory plans are not complied with. (Planning permission from the Town Planning Board is required for land filling activities at conservation-related zones within DPAs.) |

| | |
|---|---|
| 4. Food and Environmental Hygiene Department (FEHD): <i>Environmental Hygiene</i> | |
| Public Health and Municipal Services Ordinance (Cap.132) (PHMSO) | Enforce against the responsible person if filling or dumping of C&D materials on a particular piece of private land gives rise to sanitary nuisances. Also against deposition that leads to an accumulation of water resulting in breeding of mosquitoes. |
| Public Cleansing and Prevention of Nuisances Regulation (Cap.132BK). | Against the registered owner or hirer of the specified vehicle for littering offences. |
| 5. Buildings Department: Building approvals | |
| Buildings Ordinance (Cap. 123) | Enforce against unapproved building works ; building works including those associated with land filling on private land have to comply with the Buildings Ordinance. |
| 6. Agriculture, Fisheries and Conservation Department (AFCD): <i>Country Park management</i> | |
| Country Park Ordinance (Cap. 208) | Enforce against illegal dumping within country park. |
| 7. Drainage Services Department (DSD): Flood control | |
| Land Drainage Ordinance, (Cap.446) | Gain access onto private land to remove illegal structure that causes stormwater drainage obstructions to designated watercourses so as to control flooding. |

Note: Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570) is also being applied by Government Departments (HKPF, AFCD, EPD, FEHD, HD, LCSD and MD) to tackle certain public cleanliness offences including littering and minor waste deposition.

Fly-tipping Statistics (involving C&D materials on Government Land)

| | 2010 | | | | | | 2011 | | | | | | 2012 | | | | | |
|------------------------------------|-------|--------|-------|-------|--------------------|-----------|-------|--------|-------|-------|--------------------|-----------|-------|--------|-------|-------|--------------------|-----------|
| | EPD | LandsD | HyD | FEHD | Other Departments# | Sub-total | EPD | LandsD | HyD | FEHD | Other Departments# | Sub-total | EPD | LandsD | HyD | FEHD | Other Departments# | Sub-total |
| <u>Complaints</u> | | | | | | | | | | | | | | | | | | |
| Public complaints received | 1,710 | 1,052 | 1,843 | 1,511 | 37 | 6,153 | 1,614 | 1,192 | 2,095 | 1,355 | 31 | 6,287 | 1,580 | 1,279 | 2,712 | 1,102 | 26 | 6,699 |
| <u>Actions taken</u> | | | | | | | | | | | | | | | | | | |
| Warning letters issued | 47 | 55 | 0 | 0 | 0 | 102 | 8 | 59 | 0 | 0 | 0 | 67 | 2 | 0 | 0 | 0 | 0 | 2 |
| Cases with barriers erected | n/a | 4 | 0 | 0 | 2 | 6 | n/a | 18 | 0 | 0 | 0 | 18 | n/a | 21 | 0 | 2 | 1 | 24 |
| Cases with warning signs erected | n/a | 80 | 0 | 6 | 14 | 100 | n/a | 94 | 0 | 3 | 6 | 103 | n/a | 47 | 0 | 23 | 1 | 71 |
| <u>Prosecution</u> | | | | | | | | | | | | | | | | | | |
| No. of prosecutions (by summonses) | 35 | 0 | 0 | 5 | 0 | 40 | 24 | 0 | 0 | 63 | 0 | 87 | 32 | 0 | 0 | 14 | 1 | 47 |
| Fixed penalty tickets issued* | 97 | 0 | 0 | 7 | 0 | 104 | 85 | 0 | 0 | 34 | 0 | 119 | 101 | 0 | 0 | 4 | 0 | 105 |

* For cases involving unlawful deposition of small quantity of construction wastes, EPD and FEHD enforcement officers will issue Fixed Penalty Notices (\$1500) to offenders.

Other Departments include AFCD, BD, CEDD, DSD & HAD

Private Land Filling (involving C&D materials)

| | 2010 | | | | | 2011 | | | | | 2012 | | | | |
|--|------|--------|-------|--------------------|-----------|------|--------|-------|--------------------|-----------|------|--------|-------|--------------------|-----------|
| | EPD | LandsD | PlanD | Other Departments# | Sub-total | EPD | LandsD | PlanD | Other Departments# | Sub-total | EPD | LandsD | PlanD | Other Departments# | Sub-total |
| <u>Complaints</u> | | | | | | | | | | | | | | | |
| Public complaints received | 187 | 41 | 195 | 22 | 445 | 116 | 48 | 207 | 18 | 389 | 110 | 53 | 233 | 11 | 407 |
| <u>Actions taken</u> | | | | | | | | | | | | | | | |
| Warning letter issued | 5 | 109 | 183 | 0 | 297 | 1 | 36 | 485 | 0 | 522 | 0 | 13 | 436 | 0 | 449 |
| Enforcement/ stop notice issued | n/a | 0 | 274 | 0 | 274 | n/a | 0 | 662 | 0 | 662 | n/a | 0 | 462 | 2 | 464 |
| Re-instatement/ compliance notice issued | n/a | 0 | 185 | 0 | 185 | n/a | 0 | 296 | 0 | 296 | n/a | 0 | 419 | 2 | 421 |
| <u>Prosecution</u> | | | | | | | | | | | | | | | |
| No. of prosecutions (by summonses) | 12 | 0 | 32 | 0 | 44 | 0 | 0 | 11 | 0 | 11 | 0 | 0 | 25 | 0 | 25 |

* Other Departments include BD, CEDD, DSD, FEHD and HAD.

**Summary of the remaining cases covered in the report submitted
by the Subcommittee on Combating Fly-tipping in 2011**

| Land filling sites | Location | Earlier actions and observations | Current status | Actions |
|----------------------------|---|---|--|--------------------|
| 1. DD99, Chau Tau, San Tin | The site is partly zoned "Conservation Area" and partly zoned "Other Specified Uses (Comprehensive Development & Wetland Enhancement Area)" | A Stop Notice under TPO requiring the discontinuation of the land filling and pond filling operation and subsequently a Reinstatement Notice were issued in late 2008. The site was largely reinstated in 2011. No breach of lease conditions for earth filling on the Old Schedule private agricultural lot. | New land filling on part of the site was subsequently observed. After the issuance of an Enforcement Notice in 2012, the land filling had been discontinued. A new Reinstatement Notice was then issued and the compliance period will expire in March 2013. | Regular monitoring |
| 2. DD115, Nam Sang Wai | The site is zoned "Conservation Area" situated entirely on GL. | Clearance operation for the removal of the vehicular access was completed. Stream bed and embankment had been reinstated to their original width in 2009. Convicted under WDO. | Latest inspections in 2013 did not detect any dumping of waste/land filling activity or environmental or sanitary nuisance. | Regular monitoring |
| 3. Ham Tin Kau | The site is partly zoned "Village Type | No breach of land lease. No contravention of WDO as owners' consent was obtained. | Latest inspections in 2013 have revealed that there is no | Regular monitoring |

| Land filling sites | Location | Earlier actions and observations | Current status | Actions |
|---------------------------------|---|--|--|--------------------------|
| Tsuen, Pui O, Lantau | Development" and partly "Coastal Protection Area", but not previously covered by DPA Plans. | | major change in the subject situation. There is no extension of the filled area and environmental nuisance has not been detected. | |
| 4. Ho Sheung Heung, Sheung Shui | The site is zoned as "Agriculture". | <p>Prosecution under WDO was also made in 2009 and 2010.</p> <p>A removal order under BO on two unauthorized structures was issued in 2009.</p> <p>Summonses were laid under TPO for unauthorized land filling in 2009.</p> <p>Reinstatement Notices under TPO were issued. Some noncompliant recipients were convicted and fined in late 2010. The site was subsequently reinstated in 2011.</p> <p>No breach of lease conditions for earth filling on the Old Schedule private agricultural lot.</p> | <p>No obvious landslip danger.</p> <p>LandsD advised BD that, after further consultation with DoJ, there was no case to proceed with prosecution action under Cap. 28. As joint prosecution under Cap. 123 and Cap. 28 could not be proceeded, BD is reviewing the case for the next course of action.</p> <p>Notice under Land (Misc. Provisions) Ordinance requiring the occupier to cease occupation of GL was also issued in 2011. Site inspection by LandsD in Jan 2013 found the situation remained unchanged.</p> | Follow up and monitoring |

| Land filling sites | Location | Earlier actions and observations | Current status | Actions |
|-----------------------------|-----------------------------------|--|---|--------------------|
| 5. Hung Shui Kiu, Yuen Long | The site is zoned as "Green Belt" | <p>An Enforcement Notice under TPO was issued in 2011.</p> <p>Unauthorized development had been discontinued.</p> <p>A Reinstatement Notice under TPO was issued to the concerned parties requiring reinstatement of the damaged land. The noncompliant notice recipients were convicted and fined by the court in 2011.</p> | The site had already been reinstated. Compliance Notices for the Enforcement Notice and Reinstatement Notice were issued in Sep 2012. Recent inspection in Feb 2013 indicated that the site has turned into a farmland and there was no land filling activity observed. | Regular monitoring |