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ACE Paper 3/2010

For advice on 8 February 2010

Proposal to further enhance the regulation of depositing of abandoned construction and demolition materials on private land

Purpose

This paper outlines a proposal to amend the Waste Disposal Ordinance (WDO) (Cap. 354) to enhance the regulation of depositing of abandoned construction and demolition (C&D) materials on private land. The proposal aims to:

- (a) prevent the carrying out of depositing activities on private land which contravene the WDO and cause environmental problems;
- (b) safeguard the existing interest of private landowners by preventing the abuse that arises from depositing activities on private land which are carried out without the consent of the landowners; and
- (c) through a new proposed notification mechanism, enable Government departments to be notified in advance of possible depositing of abandoned C&D materials on private land. As a result, the relevant departments could remind parties concerned of the relevant statutory requirements and thus preventing the occurrence of illegal activities. The proposal will also enhance the enforcement effectiveness of the WDO and inter-departmental co-ordination in respect of enforcement actions.

Background

2. In recent years, cases of fly-tipping of C&D waste and illegal land filling in rural areas of the New Territories have aroused public concern over such activities on private land. Improper deposition of C&D materials on private land may violate land use and planning control, and may also cause environmental hygiene problems, drainage/watercourse blockage, noise/dust nuisance and pollution. Relevant Government departments have taken appropriate enforcement actions against such

activities under their respective legislative purview. As problems arising from such activities often cut across different policy areas, the Government has introduced a number of enhanced control and preventive measures to further combat illegal depositing activities.

3. There has been suggestion that the Administration should consider introducing an authorisation mechanism under the WDO that requires owners or legal occupiers of private land (hereinafter referred to as “landowners” for simplicity) to obtain the prior authorisation from the Director of Environmental Protection (DEP) if they intend to permit other person(s) to deposit abandoned C&D materials on their land. We have examined the proposal and concluded that the introduction of an authorisation mechanism in the WDO under which DEP is to authorise such deposition on factors other than environmental grounds (such as land use, planning control and slope safety) will go beyond the authority of DEP, and the legality and reasonableness of such authorisation will also be subject to challenge.

4. Notwithstanding the above, taking account of the fact that such illegal depositing of C&D materials on private land may cause environmental problem, the current difficulties in adducing evidence when enforcing the WDO, and the possible infringement of landowners’ interest by depositing activities that are conducted without their consent, the Administration proposes to amend the WDO. The amendment aims to enhance the enforcement effectiveness of the legislation and to safeguard the existing interest of private land owners, so as to prevent the occurrence of possible environmental problems and other problems that may arise from such illegal depositing activities. In addition, the proposal seeks to respond to the public call for introducing a transparent system and enhancing the inter-departmental co-ordination in respect of enforcement actions. The proposed new notification mechanism will serve as a platform for relevant departments to make advanced assessment of the information on intended depositing activities. If such intended activities are found to possibly contravene existing legislation, the relevant departments will remind and advise the parties concerned to avoid carrying out these intended activities to prevent any contravention of existing legislation. On the other hand, the proposed amendment does not aim to expand the existing rights of landowners.

Current scope of control under the WDO

5. Currently, under section 16A of the WDO, a person commits an offence if he deposits waste on any land without the permission of the landowner. At present, the parties concerned normally would not inform the Environmental Protection Department (EPD) of such depositing beforehand. Upon knowing such depositing activity, it takes some time for EPD to get in touch with the landowners to ascertain whether the depositors have obtained the required permission in accordance with section 16A of the WDO. Therefore, the authority often faces difficulties in enforcement and adducing evidence.

Proposed amendments to the WDO

6. The Administration proposes to amend the relevant provisions of the WDO in order to enhance the effectiveness of enforcing section 16A of the legislation against unauthorised depositing of abandoned C&D materials on private land. The amended provisions will require any person who intends to carry out depositing activity on land held under private ownership to obtain the prior written permission of all the landowner(s) concerned, and to carry such written permission or its copy during the depositing activity for inspection at the request of the control authority. Under the proposal, a person commits an offence if he fails to produce the valid written permission for inspection on request by enforcement officers.

7. Moreover, the Administration proposes to standardise such written permission to prevent the issue of false written permission without the landowners' knowledge, so as to safeguard the landowners' interest. A landowner shall give the written permission by using the form as specified by the control authority (draft form at **Annex**), and submit the completed form together with the prescribed documents (which include documents certifying the landowner(s)'s identity, a site plan showing clearly the rivers/streams/watercourses/ponds on the land and the boundary of the affected area, etc) 15 working days before the commencement of the intended deposition. If the landowner(s)'s identity tallies with the record of the Land Registry or the Home Affairs Department, and where all the requisite supporting documents are available, the authority will affix a seal on the form and return it to the person concerned within 15 working days. In cases the landowner(s)'s identity as stated on the form does not match with the record of the authority, the authority will not affix the seal on the form and it will also notify the person concerned in writing within 15 working days.

8. If the authority's records show that there are more than one landowner or legal trustee for the same lot, these persons shall jointly complete the specified form or authorise in writing one of the landowners or trustees to do so, in line with the current practice in property transactions or tenancies. Any person could only commence the depositing activity after obtaining the prescribed written permission that bears the authority's seal. For a lot with multiple ownership, if any one of the landowners or trustees intends to personally carry out the depositing activity himself, he should still comply with the amendment proposal to ensure that the deposition is permitted by all landowners or trustees concerned. If the lot is held by a single landowner and where the landowner personally carries out the depositing activity himself, the amendment proposal does not apply.

9. For some small-scale deposition, the authority considers that under the principle of reasonableness, depositors involved in these works may be exempted from the requirement for seeking the written permission in specified form, although the landowner's prior consent for carrying out such activity is still required in accordance with the existing requirement of section 16A of the WDO. We initially propose that exemption be granted if the deposition involves an aggregate area of less

than 100 m² on the same lot over a period of time (say one year). However, the depositors are reminded that such deposition should still comply with other relevant legislative requirements.

10. It must be emphasised that under the proposal, any deposition of C&D waste must continue to comply with all other relevant legislations and lease conditions. As problems arising from such activities may cut across the ambit of various Government departments, we propose to establish a notification mechanism to serve as the platform to enhance inter-departmental coordination in respect of enforcement actions and to prevent non-compliance. The control authority will, upon receiving the specified form and the required documents from the landowner, notify other relevant Government departments, including the Lands Department, Planning Department, Buildings Department, Agriculture, Fisheries and Conservation Department, Drainage Services Department, Food and Environmental Hygiene Department, Transport Department, Highways Department and the relevant District Office(s), for follow-up action where necessary in the light of the actual situation. For instance, if the intended deposition will likely contravene existing legislation, the relevant departments will advise the persons concerned and explain the requirements under the related legislations; or suggest to the person concerned to take preventive measures accordingly to prevent non-compliance with the existing legislations, and carry out inspections as necessary. If any deposition is found to have contravened the relevant legislation, the Government departments concerned may take enforcement actions accordingly.

11. Unless exempted, it is an offence for any person to deposit abandoned C&D materials on private land without obtaining from all the landowner(s) concerned the prior written permission in a specified form that bears the control authority's seal in accordance with the above requirements; or for any person, in the course of depositing abandoned C&D materials on private land, fails to produce the written permission or its copy for inspection by the authority. The existing penalties under section 16A of the WDO will apply for the proposed amendments, that is, the offender is liable to a fine of \$200,000 and imprisonment for six months on first conviction; and a fine of \$500,000 and imprisonment for six months on subsequent conviction.

12. Furthermore, any person who, without reasonable good cause, produces a false written permission to the authority, for example, by impersonating a landowner and submitting a false specified form to the authority, or produces a forged written permission to the authority during deposition, may be subject to prosecution. Such written permission may also be nullified.

13. The above amendments are proposed to further combat the illegal depositing of abandoned C&D materials on private land and to enhance inter-departmental coordination in respect of enforcement actions. We are committed to striking a balance between respecting private property rights and combating illegal depositing of abandoned C&D materials on private land.

Advice Sought

14. Members are invited to comment on the proposed legislative amendments and related arrangements set out in paragraphs 6 to 13 above.

Environmental Protection Department
February 2010

**Written permission form
for depositing construction and demolition materials that have been abandoned
issued under section 16A of the Waste Disposal Ordinance (Cap. 354)**

Part A – Content of written permission

I am / We are * _____ (HKID no. / Business Registration no.* _____) the landowner / lawful occupier * of the land located at _____. In accordance with section 16A of the Waste Disposal Ordinance (Cap. 354), I / we * write to permit _____ (HKID no. _____) to deposit on the above specified land construction and demolition materials that have been abandoned, with details as follows:

(a) depositing quantity of the construction and demolition materials that have been abandoned	_____ cubic metres
(b) source of the construction and demolition materials to be deposited (e.g. the location and person/organisation in charge of the construction site)	
(c) total area of the deposition	_____ square metres
(d) height of deposited construction and demolition materials that have been abandoned (as measured from the original ground level interpreted from the topographical plan available prior to any filling)	_____ metres
(e) period of deposition (year/month/day)	From _____ to _____
(f) daily operation hours	From _____ (am/pm*) to _____ (am/pm*)
(g) Number of vehicles involved in the deposition of construction and demolition materials that have been abandoned	
(h) Vehicle registration number(s) of the vehicles involved in the deposition of construction and demolition materials that have been abandoned	
(i) Name and contact number of person(s)-in-charge	
(j) purpose of deposition	

I / We submit to the Environmental Protection Department (EPD) the following documents and information as certification:

- i) copy of my / our Hong Kong Identity Card(s) / Business Registration(s)*;
- ii) a site plan showing clearly the rivers/streams/watercourses/ponds on the land and the boundary of the affected area for the depositing activity;
- iii) the land lease or other related land documents (such as tenancy agreement or other documents that certify the identity of the trustee(s));
- iv) written permission from the person / organisation in charge of the construction site (if the construction and demolition materials that have been abandoned come from a construction site); and
- v) other information or documents (please specify) : _____.

Part B – Declaration and signature

<p>I / We hereby certify that I am / we are the landowner(s) / lawful occupiers of the above land. The personal information and attached documents are both true and correct.</p> <p>I / We understand and agree that these information and documents may be distributed to relevant Government departments and, if necessary, be used in follow-up or enforcement action.</p> <p>I / We understand and agree that these information and documents may be adduced as evidence in court.</p> <p>Signature: _____</p> <p>Contact telephone number: _____</p> <p>Date: _____</p>	<p>Where the landowner(s) / lawful occupier(s)'s information is found to be consistent with the record of Land Registry or Home Affairs Department, the EPD will affix a seal on this form. By this seal the EPD certifies that the landowner(s) / lawful occupier(s)'s information on the form is found to be consistent with the relevant record. In any event, the depositing activity has to be conducted in compliance with the requirement of existing legislation, and this seal cannot be used as defence for non-compliance.</p> <p>EPD Seal: _____</p> <p>Processed by: _____</p> <p>Date of receipt: _____</p>
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**delete as appropriate*

Notes:

1. The EPD will, upon receiving this written permission and the relevant information/documents from the landowner(s) or lawful occupier(s), notify other relevant Government departments, and such is exempted from the Personal Data (Privacy) Ordinance. If the intended deposition may contravene relevant legislation, the relevant Government department(s) may take follow-up or enforcement action where necessary.
2. Landowner(s) / Lawful occupier(s) shall submit this written permission and the necessary information/documents to the EPD at least 15 working days prior to the commencement of the intended deposition. The authority will affix a seal on the form if the landowner(s)'s information on the written permission tallies with the record of the Land Registry, or the Home Affairs Department, and where all the requisite support documents are available, the authority will return the form with EPD's affixed seal to the person concerned within 15 working days. In cases where the authority cannot affix a seal on the form due to discrepancies between the landowner(s)'s information on the form and that on the authority's records, the person concerned will also be given a written notice within 15 working days. For any intended amendment to the content of this written permission, a revised written permission shall be submitted to the EPD at least three work days before the commencement of the deposition.
3. Unless exempted, it is an offence for any person to deposit on private land C&D materials that have been abandoned without obtaining, in accordance with the above requirements, from the landowner the prior written permission in a specified form bearing the control authority's seal, or any person, in the course of depositing on private land C&D materials that have been abandoned, fails to produce the written permission or its copy for inspection on request by the authority.
4. This written permission shall be completed by the relevant landowner(s) or lawful occupier(s) himself/themselves. Any person who, without reasonable good cause, produces a false written permission to the authority, for example, by impersonating a landowner and submitting a false specified form to the authority, or produces a forged written permission to the authority during deposition, may be subject to prosecution. Such written permission may also be nullified.