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ACE 45/94-95
(For advice)

Proposed subsidiary legislation to be made under the
Air Pollution Control Ordinance ---
Air Pollution Control (Open Burning) Regulation

Introduction

As per paragraphs 1 and 13 of the EPCOM's paper (Annex 1) endorsed in September 1993, a draft regulation to control Open Burning has been prepared and is attached in Annex 2 for ACE's formal advice pursuant to section 43(1) of the Air Pollution Control Ordinance.

Background

2. The proposed control scheme on open burning was considered at an EPCOM meeting held on 6 September 1993. Members were briefed on the scheme of control and were informed that the quantity of wastes to be diverted to landfill as a result of this regulation could be absorbed without causing any problem to landfill capacity, particularly in view of the fact that much of the combustible material could be recycled.
3. The chairman concluded that EPCOM supported the proposal and asked that EPCOM be consulted again when the draft regulation was ready.

Outline scheme of control

4. The main theme of the scheme of control under the draft regulation remains unchanged from that considered at the September 1993 EPCOM meeting.
5. In essence, open burning activities which generate serious air pollution such as open burning of construction waste, open burning of rubber types, and open burning for metal salvage will be prohibited (section 4). Other open burning activities such as burning of incense for ritual purposes or barbecues, which either form part of the custom of our community or have significant amenity value causing little air pollution, will be exempted from this regulation (section 2). Other necessary open burning may be allowed through the issue of a permit by the Authority, provided specific and sufficient reasons are given by the applicant (sections 3 & 5).

Consultation

6. During the regulation drafting process, the relevant government departments were further consulted. No major objections to the proposal were raised.

Implementation

7. Subject to this Council's endorsement and Legislative Council's consideration while laid on the table there, the regulation will be implemented upon gazettal.

Advice Sought

8. Members are requested to advise if they endorse the draft regulation as attached in Annex 2.



ENVIRONMENTAL POLLUTION ADVISORY COMMITTEE

EPCOM 26/92-93
(For advice)

Proposed subsidiary legislation to be made under the
Air Pollution Control Ordinance ---
Air Pollution Control (Open Burning) Regulations

Introduction

This paper seeks Members' views on the scheme of control of open burning using a regulatory approach. Members' views will be sought again on the proposed set of regulations when available.

Background

2. Good and complete combustion of materials requires sufficient amount of air, and adequate temperature, time and turbulence which can only be achieved in a properly designed furnace. Otherwise, unnecessary and excessive pollutants like smoke, dust and toxic gases will be emitted. Such emissions presently contribute to Hong Kong's poor air quality and are often a nuisance to people living nearby. Many countries such as U.K., Malaysia and Singapore have regulatory controls on open burning, a brief definition of which is "combustion not in any enclosure, but excluding burning with a mechanical appliance".

3. In Hong Kong, there is not yet any legislative control on open burning. Wastes and other materials in construction sites, dump yards and the countryside are often disposed of by open burning. The Environmental Protection Department (EPD) received a total of nearly 140 air pollution complaints against open burning between 1990 and 1992. The actual extent of the problem is believed to be more serious than that reflected by the complaint numbers.

4. Moreover, the results of the air pollution monitoring network show that there is a serious problem of dust and particulates over the territory of Hong Kong. Strict control of open burning should be one of the initiatives in ameliorating the problem.

Types of Open Burning

5. Burning of wastes is not the only type of open burning. Some hawking operators resort to burning cable and wire to facilitate the recovery of the copper metal. Also, open burning is sometimes practised by farmers to clear the land for growing crops. This avoids damage to the soil which would otherwise be sprayed with chemical fertilizers, weed killers and insecticides. There are many other daily activities in Hong Kong which also involve open burning such as various rites, campfires, barbecues and festival celebrations.

6. Some of the above mentioned activities, like open burning of cable and wire, generates serious air pollution which can be avoided if the cable is burned in a properly designed furnace. Others, like rites and barbecues, which form part of the custom of our community or have significant amenity value, cause little air pollution. Therefore, the control of open burning should be carefully designed so as not to impose unnecessary disturbance to the way of life of the people of Hong Kong. In addition, the controls should allow adequate flexibility for the Authority to deal with unforeseen situations where open burning may be necessary.

Outline scheme of control

7. Open fire defined as "combustion of combustible materials of any type outdoors in the open, not in any enclosure, where the products of combustion are not directed through a chimney but does not include any combustion involving a mechanical burning appliance" shall either be classified as prohibited or fires not prohibited. The former shall be banned in the whole territory.

(a) Prohibited fires are :-

- (i) open burning for disposal of construction wastes, rubber tyre or vegetation arising from any construction work or site clearance;
- (ii) open burning for metal salvage; and
- (iii) other open burning unless a permit has been obtained from EPD.

(b) Fires not prohibited are :-

- (i) burning of candle-sticks, joss paper, incense, sacrificial articles and ritual offerings to the deceased, ghosts and gods in customary or religious rites, festivals and on festive occasions;
 - (ii) fires used solely for cooking of food for human beings; or fires used solely for recreational purposes using clean and dry wood or charcoal or a small amount of firestarter;
 - (iii) fires set for the purpose of fire testing/training and education by any Government fire fighting force or agency;
 - (iv) agricultural burning of materials grown on the site solely for the purpose of weeding, land disinfection, pest control; or burning to make firebreaks in countryside; and
 - (v) any burning required under emergency situation and for the purpose of ensuring public safety.
- (c) Nuisance potential, practicability and environmental impact of alternative means of waste disposal will be considered for approving a permit referred to in (a)(iii) above. Conditions like operating hours and burning location can be stated in the permit.
- (d) The proposed control, as stated in Section 44 of the Ordinance, will apply to the Crown.
- (e) Fines for offences under the Regulations are proposed to be \$50,000 with a continuing fine of \$500 for every 15 minutes, and 3 months imprisonment additionally on subsequent convictions.

Consultation

8. Six trade associations and relevant government departments have been consulted so far. The six trade associations are the Federation of H.K. Industries, Chinese Manufacturers' Association of Hong Kong, Hong Kong Construction Association, The Society of Builders, New Territories Commercial and Industrial General Association, and New Territories Manufacturers Association. No major objections to the proposal were raised.

Implementation

9. When the proposed Regulations are implemented, all prohibited fires will be banned and replaced by alternative means of waste disposal such as dumping at landfills or burning at suitably designed incinerators.

Economic Implications

10. The Regulations will have an economic effect on those who still use open burning as a convenient and cheap disposal method. The efficiency of operations which require a permit may be somewhat affected by the Authority's imposition of conditions like hours of operation. However, the total effect is likely to be insignificant when compared to the total project cost.

Staff Implications

11. The staffing requirements will be determined by the long-term effectiveness of the new Regulations, particularly with regard to degree of compliance and the number of permits which may need to be issued. DEP is prepared to take on the new responsibilities without initial provision of additional resources, and will review the need for further resources in the light of experience.

Public Reaction

12. The proposed ban should be welcomed by the public.

Advice Sought

13. Members are requested to consider and advise whether they support the scheme of control outlined in paragraph 7 above. After the draft regulations have been prepared, they will be submitted for Members' further consideration.

Air Policy Group
Environmental Protection Department
August 1993

AIR POLLUTION CONTROL (OPEN BURNING) REGULATION

(Made under section 43 of the Air Pollution Control Ordinance (Cap. 311) after consultation with the Advisory Council on the Environment)

1. Interpretation

In this Regulation -

"construction site" means a place where construction work is carried out;

"construction waste" means any waste emanating from or located at a construction site;

"construction work" means -

- (a) the alteration, construction, demolition, maintenance, reconstruction, repair or shoring of the whole or any part of any airport, arch, bridge, building, channel, chimney, dock, drain, embankment, hoarding, lighting, pier, public utility, railway, road, service lane, shelter, slope, street, tramway, tunnel, wall, water conduit, wharf or other structure;
- (b) dredging;
- (c) the extraction from the earth of any matter whatsoever;
- (d) piling;
- (e) quarrying; and
- (f) the reclamation of any foreshore and sea-bed;

"open burning" means combustion of materials of any type outdoors without any enclosure, where the products of combustion are not

directed through a chimney, but does not include any combustion involving a soldering iron or a blowtorch or any similar appliance;

"permit" means a permit issued by the Authority under section 5.

2. Application

This Regulation shall not apply to the following open burning -

- (a) burning of candle-sticks, joss paper, incense, sacrificial articles and ritual offerings to the deceased, spirits or gods in customary or religious rites, festivals and on festive occasions;
- (b) fires used solely for cooking of food for human consumption, or fires used solely for recreational purposes using wood or charcoal or a small amount of firestarter;
- (c) fires set for the purpose of fire testing, training and education by any Government fire fighting force or agency;
- (d) agricultural burning of materials grown on the site, solely for the purpose of weeding, land disinfection, pest control, or burning to make firebreaks in the countryside; and
- (e) any open burning which in the opinion of the Director of Environmental Protection is required in an emergency for the purpose of ensuring public safety.

3. Permitted open burning

Open burning to which this Regulation applies, except open burning for the purposes described in section 4, may be carried out in accordance with a permit.

4. Prohibited open burning

Open burning for the following purposes is prohibited -

- (a) the disposal of construction waste;
- (b) the clearance of a site in preparation for construction work;
- (c) the disposal of rubber tyres; and
- (d) the salvage of metal.

5. Application for and issue of permit

(1) The Authority may issue a permit to an applicant upon application and payment of the fee of \$6,000.

(2) An application for a permit -

- (a) shall be made in such form as may be specified by the Authority; and
- (b) shall contain such particulars as may be specified in the form.

(3) The fee specified in subsection (1) -

- (a) shall be paid by the applicant in respect of each application; and
- (b) shall not be refundable.

(4) The Authority shall, within 28 days of the receipt of an application, issue a permit or inform the applicant in writing of his refusal to do so and of the reasons therefor, and a permit shall be deemed to have been issued in accordance with the application if the Authority does not so inform the applicant of his refusal to issue the permit within the period of 28 days of the receipt of the application.

(5) A permit -

- (a) shall be in such form as specified by the Authority;

- (b) shall be valid for such period of not longer than one year as specified by the Authority; and.
- (c) may contain such conditions as may be imposed by the Authority including conditions as to the permitted hours and location of the open burning, having regard to the abatement of air pollution which is existing or imminent, the practicability and environmental impact of alternative means of waste disposal and the attainment of any relevant air quality objective.

(6) The Authority may issue a new permit to supersede a permit previously issued by the Authority.

6. Offences and penalties

Any person who -

- (a) carries out open burning for any of the purposes described in section 4;
- (b) carries out open burning without a permit where a permit is required; or
- (c) being a permit holder contravenes any conditions contained in the permit,

commits an offence and is liable -

- (i) upon first conviction to a fine of \$50,000 and a further fine of \$500 for every 15 minutes during which the offence has continued; and
- (ii) upon subsequent conviction to a fine of \$50,000 and a further fine of \$500 for every 15 minutes during which the offence has continued and imprisonment for 3 months.

Secretary for Planning,
Environment and Lands.

1994.

Explanatory Note

Sections 2 to 4 of this Regulation specify -

- (a) the types of open burning to which the Regulation does not apply;
 - (b) the types of open burning which are permitted; and
 - (c) the types of open burning which are prohibited.
2. Section 5 provides for the procedure for applying for and the issuing of a permit.
 3. Section 6 sets out the penalties for committing an offence.