

Down on Dust



New regulations under the Air Pollution Control legislation have lately been published which will impose controls on construction dust. This month J.A. McInnis looks at the new regulations and the some of the background.

Background

Last month in this column some of the recent changes to the Noise Control legislation and in particular the move to gradually ban diesel hammers for percussive piling were looked at. It was noted in the introduction to that column that important parts of the original pollution control legislation in Hong Kong dated back to the Government's 1989 White Paper entitled Pollution in Hong Kong - A Time to Act. The Air Pollution Control Ordinance is an exception to this though and dates from 1983. In fact, prior to this legislation, there was also a Clean Air Ordinance which predated it. Thus, while air pollution legislation is not new, controls over construction dust exclusively are. The APC (Construction Dust) Regulation is the latest addition to the pollution regulatory scheme although it is by no means the only such measure.

The Air Pollution Control Legislation

The APC Ordinance deals primarily with air pollution from stationary sources and motor vehicles although importantly it also permits the passage of regulations covering a wide range of other polluting sources. The APC Ordinance originally set out a series of 10 Air Control Zones which cover all of Hong Kong. A series of Air Quality Objectives were set out in respect of these ACZs for defined major pollutants and gazetted. A similar approach was later taken with respect to the regulation of water pollution as well under the Water Pollution Control Ordinance. Under the APC Ordinance both standards and objectives were set out to be monitored and enforced. Powers were given as well to abate breaches of the standards and

commence prosecutions. Defined major pollutants from a range of sources came to be regulated; for example certain liquid and solid fuels and ozone depleting substances. A significant regulation passed in 1987 was the Air Pollution Control (Specified Processes) Regulation. This Regulation has operated along with the APC Ordinance to control certain industrial processes which are described as specified processes. While most of the specified processes which were covered in the definitions at that time were exempted, new specified processes became subject to a much stricter control regime. On the construction front two older regulations were also passed which sought to govern dust albeit not comprehensively. Thus the APC (Dust & Grit Emission) Regulation sought to regulate emissions from stationary sources as well and the Building (Demolition Works) Regulation addressed the nuisance aspect of demolitions. This latter regulation was not in fact passed under the APC Ordinance but the Buildings Ordinance although it is still directly relevant to air pollution. The APC (Dust Control) Regulation supplements these and other regulations which left gaps in the coverage in relation to construction dust.

The APC (Dust Control) Regulation

The APC (Dust Control) Regulation was made under the APC Ordinance after consultation with the Advisory Council on the Environment. The purpose behind the new Regulation is quite simply to control dust emissions from construction work. In short, the Regulation requires contractors to notify the Air Pollution Control Authority - the body charged with oversight - before undertaking notifiable works and then to also ensure that the scheduled control standards which are set out are satisfied. While it is notifiable works which are the main thrust of the Regulation, there are two further important control aspects which are also introduced; that is the control of regulatory works, and the control of storage of dusty materials associated with defined excluded works. Thus the Regulation operates to control dust emissions on three levels: (1) through notification and control requirements for notifiable works; (2) through controls over regulatory works; and (3) through controls over storage of dusty materials associated with excluded works. The definitions of these terms in the Regulation are central to their meanings.

Key Definitions

The Regulation sets out very broad definitions for several terms. Thus, and by way of summary only, a construction site means a place where construction work is or is intended to be carried out and includes any area where dusty materials are either stored or used. Construction work means not only construction but also demolition, reconstruction, shoring, alteration and maintenance work of buildings etc. The definition of construction work extends to dredging, piling, quarrying, reclamation and site formation as well. Significantly any work preparing for these activities is also covered in the definition of construction work as is the use of machinery, plant, tools, gear and equipment. Notifiable work as

defined overlaps with many of the activities defined in construction work and also includes certain tunnel work and road construction work. Regulatory work is set out as meaning external renovations, road opening or resurfacing work, slope stabilization and other described activities. Dusty materials is defined as including cement, earth, pulverized fuel ash, aggregates, silt, stonefines, sand, debris, sawdust and wooden chips. Although the definitions are cast broadly there are numerous exceptions to them - and defined as excluded work - which are also set out and thus interior work, tunnel work, sewer and drain repair among others are exempted from the notification requirement. The notification requirement itself pertains not only in the first instance to any notifiable work but also with regard to any change in the original particulars of the notifiable work and which were given to the Authority. It is the failure to so notify that is punishable under the Regulation by fine.

Dust Control Requirements

Contractors are responsible to ensure that both notifiable work and regulatory work both as defined in the Regulation and when carried out at a construction site are carried out in accordance with a Schedule to the Regulation. In addition contractors responsible for a construction site where excluded work is being carried out have to ensure that any dusty materials which are used or intended to be used or produced and although stored outside the site and still stored and handled in accordance with the same Schedule.

The Schedule

The Schedule to the Regulation is divided into four categories: Part I control requirements for notifiable works; Part II control requirements for regulatory works; Part III general control requirements; and Part IV control requirements for individual activities. Part I sets out the individual requirements in respect of each defined activity. Thus, for example, in the case of a demolition of a building it stipulates watering or chemical dust suppression immediately prior to, during and after the activity; installation of impervious dust screens or sheeting to 1 metre above the structure on all public access areas; removal of stockpiled dusty materials as well as meeting Part II and IV general requirements. In this sense it can be seen that the Schedule is prescriptive and quite readily understood. Similar details are set forth with regard to the regulatory works. The Part II general control requirements reinforce the operation of air pollution control systems as well as introduce measures pertaining for instance to site boundaries and access. Individual activities in Part IV pertain again to stockpiling, loading or transferring dusty materials and some more general activities. In summary the APC (Dust Control) Regulation closes gaps in the control of dust emissions from construction. In Hong Kong where dust from these activities can account for 30% of the suspended particulates in the air at any time reductions in this percentage would be welcome.

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