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本函檔號 Our Ref.: EP 55/03/183

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ENVIRONMENT BUREAU
GOVERNMENT SECRETARIAT

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6 May 2009

Miss Becky YU
Clerk to Panel on Environmental Affairs
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Miss YU,

Re: Request for information on handling illegal fly-tipping and tree-felling

We write in response to the Honorable LEE Wing-tat's letter dated 20 April 2009, requesting the Administration to provide information on handling illegal fly-tipping and tree-felling. Our response is as follows:

- 1) The Environmental Protection Department (EPD) conducted 8 711 inspections/ambush operations in 2008 against fly-tipping and land filling activities involving construction waste; of these, 934 were night-time operations. There are altogether 295 inspectorate staff in our four regional offices with responsibilities for integrated enforcement actions in respect of environmental legislation including air, noise, wastewater and waste problems.

The patrols by various District Lands Offices of Lands Department (LandsD) primarily cover those black spots on Government land and are carried out intensively during office hours. In addition, mobile patrol security guard contractors will in specific cases (e.g. Nam Sang Wai) carry out inspections on a 7-day per week basis. During the period from April 2008 to February 2009, staff of LandsD carried out 8 949 routine patrols to check against illegal occupation of Government land and illegal dumping activities. In addition, many other ad-hoc patrols/inspections were also undertaken.

In 2008, the Planning Department (PlanD) conducted 3399 site inspections for the investigation and monitoring of unauthorised developments and activities, including 766 site inspections for investigating suspected unauthorised land/pond filling activities and follow-up enforcement actions. 40 staff were involved in the site inspections. As site inspections require measurements of the sites and assessment of the site condition, all of them were conducted in the daytime.

In the past one year, the Food and Environmental Hygiene Department (FEHD) respectively carried out a total of 417 and 1 752 inspections to the land filling sites and fly-tipping blackspots of public concern as listed in EPD's website. Each inspection was conducted by one to two staff and might be carried out at night, depending on the actual ground situation of each case.

- 2) The records of flooding in the past three years, kept by the Drainage Services Department, did not show any instance of flooding being caused directly or indirectly by illegal dumping.

The Civil Engineering and Development Department (CEDD) did not investigate closely the relationship between illegal dumping and landslip. The records kept by CEDD of landslips in the past three years reveal evidence of only one landslip that might have been caused by illegal dumping. In that instance, a landslip occurred on the hillside between Broadwood Road and San Francisco Tower. Related emergency works was completed. Slope stabilisation works are now underway for completion later this year.

- 3) The Administration's records did not show any instances of illegal dumping of construction and demolition (C&D) materials from public works contracts in the past three years. The Development Bureau (DEVB) operates a contractor management system which could sanction contractors involved in illegal dumping, including suspension from tendering for public works contracts. Therefore, there may not be the need to establish a suspension list specifically for illegal dumping.
- 4) In the tree-felling incident at Nam A, Tai Mong Tsai, Sai Kung, about 20 trees on Government land were felled unlawfully, which is an unauthorised act under the Forests and Countryside Ordinance (Cap 96). The other trees felled were on private agricultural land. As far as unauthorised tree-felling is concerned, the Agriculture, Fisheries and Conservation Department (AFCD) is investigating the incident. AFCD has written to the villagers of Nam A and the relevant private landowners requesting information about the incident. In addition, AFCD has also conducted a number of site-inspection to the subject

area, but no suspect could be identified so far. To deter further felling of trees, AFCD has stepped up the patrol in the area and erected a warning sign at the site. For the tree-felling that occurred on private agricultural land, LandsD is unable to take lease enforcement action, as there is no tree preservation clause in the lease of the private agricultural land. LandsD has however erected notice boards on the Government land nearby, warning against the occupation of Government land without prior approval and the unauthorised dumping of materials on Government land. LandsD has also stepped up the patrol in the area. No further tree-felling has been detected at the subject site since then.

- 5) According to the Country Parks and Special Areas Regulations (Cap 208A), cutting any plant within a country park without authorisation is liable to a fine of \$2,000 and to imprisonment for 3 months. Such level of penalty is considered appropriate in deterring illegal tree-felling activities inside the country parks while the court would determine the appropriate sentence on the merits of individual cases. For more serious crime related to massive destruction of trees, the enforcement officers may consider applying the Crime Ordinance (Cap 200) or the Theft Ordinance (Cap 210) for prosecution, the maximum penalty of which is imprisonment for 10 years.
- 6) In the rural New Territories outside country parks, there are about 9 760 hectares (ha) of land (or about 8.9% of the total area of Hong Kong) currently not covered by statutory plans. These areas exclude those which currently fall within Frontier Closed Area (about 2 310 ha) and military land (about 2 536 ha). The distribution of these areas by district is provided in the table below. The 9 760 ha of land include large areas with restricted access, remote islands, mountain areas, etc.

Rural New Territories not covered by Statutory Plans, by District Council Districts:

District Council Districts	Land Area (in ha)
Yuen Long	110
Tuen Mun	800
North	1 300
Tai Po	1 770
Sha Tin	940
Sai Kung	1 870
Islands	2 970
Total	9 760 (8.9% of the whole territory)

- 7) Unauthorised developments or activities on private land in the rural New Territories are subject to control under the ambit of various Government departments. PlanD has been progressively and systematically preparing

Development Permission Area Plans/Outline Zoning Plans for the rural areas currently not covered by statutory plans. These areas will be subject to statutory planning control by the Town Planning Board and enforcement action by the Planning Authority against unauthorised developments. PlanD is currently preparing a number of Development Permission Area Plans to achieve this objective. Subject to the availability of additional resources, the preparation of statutory plans for the rest of the rural areas would be expedited. Priority would be given to areas with conservation value, subject to development pressure, in proximity to urban development, with vehicular access, etc. Views of concerned departments would be sought, where appropriate, in the process.

- 8) When removing dumped materials under the Land (Miscellaneous Provisions) Ordinance (Cap 28), there is no standard notice period. LandsD would however examine individual cases and critically consider the minimum notice period to be imposed with a view to facilitating the possible removal work.
- 9) According to section 18A of the Waste Disposal Ordinance (Cap 354) (WDO), if a person is convicted of an offence under section 16A in respect of waste deposited on Government land, the magistrate may, either on application by the Director (of Environmental Protection) or on the magistrate's own initiative, order the person to remove the waste from that land within the period specified in the order.

Under the Town Planning Ordinance (Cap 131) (TPO), the Planning Authority can serve statutory notices requiring the landowners, occupiers or responsible persons to discontinue an unauthorised land/pond filling activity. The Planning Authority, where appropriate, can further issue Reinstatement Notice to require the notice recipients to reinstate the land. Such requirements may include the removal of filled materials. Prosecution action can be instituted if the Reinstatement Notices are not complied with. The compliance with the statutory notices is undertaken by the notice recipients on their own costs.

Sometimes the placing and maintaining of C&D materials on unleased land may be treated as unlawful occupation of unleased land under the Land (Miscellaneous Provisions) Ordinance (Cap 28). If the occupier does not cease the occupation as required by a notice posted under the Ordinance, the Director of Lands may remove the C&D materials.

There is no provision under the WDO or TPO that empowers the authorities to confiscate the vehicles used for illegal fly-tipping or land filling activities.

Under the WDO, enforcement actions can only be undertaken against the persons found to be responsible for the activities, but not against the owners of the vehicles used for such activities. As the defendants of such cases are mostly drivers, instead of owners, of the vehicles, this proposal may not effectively deter fly-tipping.

- 10) The Administration agrees that the sentence upon offenders of fly-tipping and tree-felling cases should carry sufficient deterrence. In case the penalty imposed by the court is considered too lenient or insufficient to reflect the severity of the offence, the Administration will, where the circumstances of an individual case justify, apply via the Department of Justice for a court review of the sentence. Separately, the Advisory Council on the Environment wrote to the Judiciary Administrator in 2003 and 2008 to express their views on the sentencing of fly-tipping cases, that the sentences imposed should effectively deter such illegal activities.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Alain Lam', written in a cursive style.

(Alain Lam)
for Secretary for the Environment

c.c. Secretariat of Legislative Councillors of the Democratic Party
(fax: 2537 4874)