

本署檔案
OUR REF : EP 55/03/183
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19 February 2010

Miss Becky YU
Clerk to Panel on Environmental Affairs
Legislative Council Building
8 Jackson Road
Central, Hong Kong
(Fax : 28696794)

Dear Miss YU,

**Re: Subcommittee on Combating Fly-tipping
Administration's response to follow-up actions**

Thank you for your letter dated 3 February 2010. Please find below our response to item (a) in the list of follow-up actions (Appendix 1 of your letter).

2. The Waste Disposal Ordinance (Cap 354) (WDO) is an environmental legislation and provides for the control and regulation of "waste". Under the WDO, waste means any substance or article which is abandoned. Currently, under Section 16A of the WDO, a person commits an offence if he deposits waste in any place without the permission of the land owner. Our proposed legislative amendment aims to enhance the enforcement effectiveness over such depositing of abandoned construction and demolition (C&D) materials on private land. To amend the 'waste' definition to cover C&D materials that are not abandoned, such as for storage purpose, may go beyond the scope of control under the WDO and we need to carefully assess and examine its implications and seek legal advice as appropriate. On the other hand, where it is argued that the deposited C&D materials are not wastes, the circumstantial situation and evidence collected in such individual case will be taken into account in accordance with the provisions of the WDO.

3. As mentioned above, the current Section 16A of the WDO prescribed that depositing of waste in any place must have the permission of the landowner. However, there are no specific requirements in relation to how the landowner's permission is made, and the onus of confirming whether the landowner's permission has been made is rested with the enforcement agent as it needs to adduce evidence when enforcing the relevant provision of the WDO. Under our amendment proposal, all such depositing of abandoned C&D materials on private land must have the prior, written permission from the landowner and such permission be notified to the Authority beforehand. A person commits an offence if he fails to produce the valid landowner's permission in prescribed form in conducting the depositing activity. While the proposed amendment does not provide additional rights to private land owners, it will better protect the private landowner's existing right against unauthorized depositing activity without his knowledge and consent. The proposed amendment will also enhance the enforcement effectiveness of the relevant provision.

4. We will brief and consult Members of the Panel on Environmental Affairs of the Legislative Council on details of the amendment proposal to the WDO (vide LC Paper No. CB(1) 1094/09-10(01)) on 22 February 2010.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Alain Lam', with a long horizontal flourish extending to the right.

(Alain Lam)

for Director of Environmental Protection