



嘉道理農場暨植物園公司
Kadoorie Farm & Botanic Garden Corporation

Clerk to Subcommittee on Combating Fly-tipping
Legislative Council Secretariat
3rd floor Citibank Tower
3 Garden Road
Central
(Email: mpoon@legco.gov.hk)

25 March 2010

By email only

Dear Sir/Madam,

**Re: Panel on Environmental Affairs - Subcommittee on Combating Fly-tipping:
Meeting on 13 April 2010**

We would like to make some comments and recommendations with regard to the Environmental Protection Department's (EPD) papers CB(1) 1026/09-10(01) and CB(1) 1094/09-10(01).

1. Feedback on EPD's paper CB(1) 1026/09-10(01): The Fly-tipping Issue – low court fines

1.1. The fly-tipping problem in Hong Kong is a cross-department/bureau issue. **One of the root causes is the low fines handed down by the court**, which then results in a low deterrent effect regarding subsequent cases. A classic example is the illegal filling of farmlands at Ho Sheung Heung in 2006 (Planning Department's enforcement case no: E/NE-KTN/084). The subject area is of high conservation value and is situated within the priority site for enhanced conservation at Long Valley and Ho Sheung Heung under the new conservation policy of Government. A successful prosecution resulted and the defendant received a total fine of \$25,000 (STS 5690/06 and STS 5691/06). Unfortunately, this fine had no deterrent effect and more farmland was filled in 2009 (Enforcement case no: E/NE-KTN/085, fine - \$20,000, court case no: STS 2085/2009).

1.2. Another example concerns illegal pond filling at Nam Chung Lei Uk. The subject area is a mangrove marsh which is zoned as "Agriculture". Filling of the mangrove marsh was first observed in 2007 and it was considered "Unauthorized Development" by the Planning Department (Enforcement case no: E/NE-LK/048). The defendant was convicted and the total fine was \$25,000 (STS 8292/2008). In March 2010, the mangrove marsh was again filled up with construction and demolition waste again, suggesting that the court fine had had no deterrent effect.



1.3. The above-mentioned cases clearly illustrate that **the existing fines handed down by the courts related to pond/farming destruction cases are totally inadequate to send a clear message to the public that such environmental destruction is unacceptable.**

1.4. In order to demonstrate a determination to protect the natural environment of Hong Kong, **sentencing guidelines with regard to fly-tipping should be initiated by the authority concerned**, in this case the Department of Justice.

2 Feedback on EPD's paper CB(1) 1094/09-10(01) "Proposal to further enhance the regulation of depositing of abandoned construction and demolition materials on private land"

2.1. We welcome the proposed regulation as the landowners, at the site in question, have to be informed by the applicant.

2.2. Under the new practice, **comments from various departments will be included in the application document.** If the applicant has been previously advised by the control authority that deposition of C&D materials is an offence, it would not be possible to claim ignorance to the fact. It is hoped that the court will refrain from giving the defendant sympathetic consideration in such enforcement cases.

2.3. The nature of the proposed application document is a notice of information, rather than an approval document. We are concerned that **this document may deceive readers into thinking that the waste disposal practice has been approved by Government.** In view of this concern, it is suggested that the front page of the proposed document should clearly state (in highlighted font) that emphasize that the document is not an approval certificate from Government.

2.4. In order to make the process more transparent to the public, it is recommended that **the applicant should post a copy of the proposed application document, including clear site boundaries at the subject area, at the subject area during the filling process.** Therefore, the public can investigate whether the actual dumping area is within the application site or not.



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2.5. Relevant departments mentioned in the paragraph 10, of the paper CB(1) 1094/09-10(1) should include the Civil Engineering and Development Department as application sites may be situated on unstable slopes.

2.6. Currently, neither the Waste Disposal Ordinance (WDO) nor the Town Planning Ordinance (TPO) is effective enough to stop the disposed of C&D materials in the countryside. There are loop holes in these two ordinances: the WDO is concerned with fill materials and has no legal authority to control the land use, while the TPO focuses on the land use, but has limited authority regarding the materials involved. **The authority concerned and law makers should consider whether we should have a new ordinance to combat the fly-tipping issue in Hong Kong.**

Thank you for your attention.

Yours faithfully,

Mr. L. C. Wong
Conservation Officer