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**Report of the Subcommittee on Combating Fly-tipping
for submission to the Panel on Environmental Affairs**

Purpose

This report gives an account of the work of the Subcommittee on Combating Fly-tipping (the Subcommittee) during the 2009-2010 session.

Background

2. The problem of fly-tipping¹ and illegal land filling² has all along been a public concern, as evidenced by the increasing number of complaints against such activities on Government land (GL) and private land. Given the limitation of the existing regulatory regime in controlling such activities, many parts of the New Territories (NT) have become dumping grounds, causing unacceptable impacts on the areas.

The Subcommittee

3. The Panel on Environmental Affairs (the Panel) has been following up the subject of depositing of inert construction and demolition (C&D) materials. To enable more focused discussion on Government's efforts in tackling fly-tipping and land filling activities, the Panel decided at its meeting on 30 March 2009 to set up a subcommittee to review the existing policies on enforcement against such activities and suggest improvement measures as and when necessary. The Subcommittee was

¹ Fly-tipping refers to illegal depositing of C&D materials, which is often associated with haphazard and casual dumping from vehicles. Fly-tipped C&D materials are usually scattered, left in heaps, and in small quantities. Most of these illegal dumping activities take place in urban built-up areas at locations with good vehicular access, such as at kerb sides or side roads branched off from main roads.

² Land filling refers to depositing or placement of C&D materials as fill material on land, which results in an elevation of ground level. Land filling activities are usually carried out for purposes of filling up ponds, levelling off uneven ground surfaces, forming sites for development, stockpiling in the form of a fill bank, or depositing of C&D materials onto land as dumping ground.

dissolved upon submission of a report to the Panel in August 2009. In view of the prevalence of fly-tipping and illegal land filling activities, Members agreed at the meeting of the House Committee on 4 December 2009 to reactivate the Subcommittee. The terms of reference and membership of the Subcommittee are given in **Appendices I and II** respectively.

4. Under the chairmanship of Hon LEE Wing-tat, the Subcommittee has held five meetings to exchange views with the Administration and deputations.

Major work

Enhanced control measures against the depositing of C&D materials

5. The Subcommittee has noted that the Environmental Protection Department (EPD) and other departments concerned have jointly drawn up enhanced complaint handling procedures to speed up the response to cases involving active and on-going depositing activities of C&D materials, particularly those that would pose risks to environmentally sensitive areas. Apart from the development and maintenance of a database on information of those land filling cases which are under constant monitoring and actions by various departments, a list of fly-tipping black-spots has been compiled and departments concerned would carry out regular patrol and other actions as appropriate to deter illegal depositing activities at these sites. Three sets of comprehensive guides, in the form of leaflets, have also been developed respectively for rural landowners, construction waste transporters and developers/contractors/managers to provide useful information on the relevant statutory requirements, and the steps to guard against illegal land filling and fly-tipping activities.

6. The Subcommittee has also noted that with the support of the Sha Tin and Tuen Mun District Councils, closed-circuit television (CCTV) systems have been installed at the two fly-tipping black-spots at Siu Lang Shui in Tuen Mun and Tai Po Road car park in January 2010 as pilot scheme for about one year to test out their effectiveness in collecting evidence on fly-tipping. Some members have enquired about the progress of the trial scheme. According to the Administration, CCTVs have been quite effective in collecting evidence for prosecution against fly-tipping activities, but care has to be taken to avoid invasion of privacy. Hence, measures have been taken to alert the public of the presence of CCTVs and to protect the latter from vandalization. Subject to the outcome of the trial scheme, the Administration would review the effectiveness and feasibility of extending the CCTV installations to other fly-tipping black-spots.

7. On the progress of the proposed extension of the trip-ticket system (TTS) to major private works projects to keep track of the movement and disposal of inert C&D materials, the Administration has advised that the matter is being followed up by the Committee on Environment and Technology of the Construction Industry Council (CIC), which in general supports the application of TTS to major private works

projects on a voluntary basis and is working out a set of guidelines on the voluntary TTS.

8. Subcommittee members are disappointed at the slow progress since TTS has not only proved to be effective in monitoring the flow of C&D materials but also helped prevent overloading of dump trucks. Referring to a case conference between Duty Roster Members and a group of dump truck drivers, members have noted that dump truck drivers consider it unfair to hold them liable for overloading as they just act according to instructions, failing which might affect their livelihood. Given that the proposed extension has the full support of the Hong Kong Construction Association, and that CIC has been given sufficient time to consider the adoption of TTS in private works projects, members have opined that a deadline might need to be set for the mandatory introduction of TTS to private works projects, starting with large-scale projects. Consideration should also be given to including in the Basic Conditions of the application for a billing account for disposal of construction waste the need for contractors to ensure that dump trucks leaving construction sites are weighed and recorded in the chits for cross checking at public fill reception facilities to avoid overloading and possible fly-tipping activities.

9. According to the Administration, it has relayed to CIC the Subcommittee's view on the need to set a deadline for the mandatory introduction of TTS for private construction projects. The Committee on Environment and Technology and the full Council of CIC will discuss the issue in July and August 2010 respectively. The Subcommittee will be kept abreast of the development. As regards overloading of dump trucks, the Administration has agreed that the problem should be addressed, but this should best be tackled at source by contractors as they are responsible for management of the work sites, including the safe loading of materials for disposal. However, using the conditions of application for a billing account under the construction waste charging scheme is not an effective means to regulate the management of work sites by contractors, as the former only deals with the charging of construction waste disposed of at waste disposal facilities. Subject to the contingency allowance³ of 5%, overloaded dump trucks will not be accepted in EPD's waste disposal facilities to deter overloading of dump trucks in the first place. The Administration will remind all contractors of the dump truck trades not to overload their trucks for safety reasons.

Legislative amendment proposal

Waste Disposal Ordinance (Cap. 354)

10. The Subcommittee has noted that after reviewing its scope of legislative control, EPD has proposed to amend the Waste Disposal Ordinance (Cap. 354) (WDO) to enhance the effectiveness of enforcing section 16A of WDO against unauthorized depositing of abandoned C&D materials on private land. Under the proposal, a person who carries out unauthorized depositing activity on private land without

³ The purpose of the contingency allowance is to provide dump truck drivers a buffer against unforeseen situations like rainy weather which may increase the overall weight of the construction waste.

owners' written consent will be held liable for prosecution. The proposal aims to prevent depositing activities that will cause environmental problem, and to safeguard the interest of private landowners by preventing the abuse of private land for depositing without their consent. The new notification mechanism under the proposal will also enable Government departments to be notified in advance of possible depositing of abandoned C&D materials on private land so that the related departments could remind parties concerned of the relevant statutory requirements, thus preventing the occurrence of illegal activities. Some members have pointed out the need to amend the definition of "waste" under WDO in parallel with the proposed amendment to section 16A of WDO. If not, some landowners might circumvent the new notification requirement by claiming that the C&D materials deposited on their land were for storage purpose.

11. According to the Administration, WDO provides for the control and regulation of "waste". Under WDO, waste means any substance or article which is abandoned. A person commits an offence if he deposits waste in any place without the permission of the landowners under section 16A of WDO. 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 which needs to adduce evidence when enforcing the relevant provisions under WDO.

12. Under the proposed legislative amendment, all depositing of abandoned C&D materials on private land must have the prior written permission from the landowner and the Authority must be notified of such permission beforehand. A person commits an offence if he fails to produce the valid landowners' permission in prescribed form when conducting the depositing activity. While the proposed amendment does not provide additional rights to private landowners, it will better protect their existing rights against unauthorized depositing activities without their knowledge and consent. The proposed amendment will also enhance the enforcement effectiveness of the relevant provisions. On the suggestion of amending the definition of "waste" to cover C&D materials that are not abandoned, such as for storage purpose, the Administration has advised that this may go beyond the scope of control under WDO. The Administration will need to carefully assess and examine the implications and seek legal advice as appropriate. Notwithstanding, the question of whether the deposited C&D materials are not "waste" will be dealt with in accordance with the provisions in WDO taking into account the circumstantial situation and evidence collected in individual cases.

13. On the legislative time-table for the proposed amendment to WDO, the Administration has advised that the views received during the consultation exercise are being examined. Subject to any refinements in consultation with relevant bureaux and departments, the proposal will be submitted for further consideration by the Panel. It is expected that preparation for the legislative process will commence in the last quarter of 2010.

Town Planning Ordinance (Cap. 131)

14. In the last legislative session, the Administration was requested to review the feasibility of amending the Town Planning Ordinance (Cap. 131) (TPO) to empower the Planning Authority to take enforcement action against land filling activities undertaken within areas covered by Outline Zoning Plans (OZPs) but previously not covered by Development Permission Areas (DPA) Plans. The Subcommittee has enquired about the progress of the review.

15. According to the Administration, TPO is not considered the most appropriate tool to control land filling activities. To overhaul the planning regime to forestall a particular form of illegal or unauthorized activities on the land would have far-reaching implications. The Administration has further advised that preparation and review of statutory plans has been an on-going task of the Planning Department (PlanD). In recent years, PlanD has deployed much of the resources to review OZPs for the main urban areas and the new towns to incorporate building height and other development restrictions. Apart from OZP reviews for the built-up areas, PlanD is in parallel preparing DPAs/OZPs for the rural areas currently not covered by statutory plans so as to step up statutory control and enforcement. At present, there are about 12 000 hectares of land in the rural NT outside Country Parks which are not covered by statutory plans. These also include large areas with restricted access, remote islands, mountain areas etc. PlanD plans to complete statutory plans for the Frontier Closed Area and 12 other locations in the rural NT in the coming two years covering some high-priority areas warranting statutory planning control i.e. areas of conservation value subject to development pressure, relatively susceptible to unauthorized uses etc. The preparation of statutory plans for the rest of the rural areas would be followed up progressively.

Illegal road openings intended for fly-tipping

16. Apart from enforcement against illegal road openings intended for fly-tipping, members have opined that efforts, including erection of fences/bollards to demarcate the width of existing rural roads, should be made to prevent illegal widening of existing rural roads to enable entry of large dump trucks for land filling or fly-tipping activities. Consideration should also be given to putting in place an application mechanism for construction of village roads to take account of the need of residents on the one hand and hold the applicants responsible for any illegal use on the other.

17. According to the Administration, road openings for land filling are usually formed at the boundary of public roads, including pavements as ingress/egress for vehicles entering/leaving the adjoining land filling sites. As unauthorized vehicular access may cause damages to road paving and street furniture as well as potential hazard to road users, the Transport Department will request the Highways Department to install necessary features on the pavement, if the situation warrants, to prevent vehicles from using the unauthorized vehicular access. The Lands Department (LandsD) will take action if road openings involve unallocated GL under its control. If necessary, LandsD will carry out preventive measures, such as erection of

fences/bollards and posting of a security guard in exceptional appropriate cases. In the case of private land, LandsD will take lease enforcement if there is a breach of the relevant lease conditions. As to the construction of village roads, the Administration has advised that LandsD may, in appropriate circumstances, consider granting temporary vehicular accesses for small house developments if there is a genuine need for such accesses subject to the condition that the small house grantees will close the accesses and reinstate the land after completion of their houses. LandsD will not normally approve construction of village roads by small house applicants or villagers unless such roads will serve the purpose of an emergency vehicular access which is supported by the Fire Services Department.

Follow-up on individual cases

18. The Subcommittee has been monitoring the following nine private land filling sites in the database that are under constant monitoring or actions by Government departments as they fall within the conservation-related zonings, such as “Coastal Protection Area” and “Green Belt”. The latest position of these cases are summarized as follows –

- (a) ***Shing Mun Road*** – the site is a “Green Belt”. As the previous land filling activity involved illegal dumping of waste on GL, prosecutions were initiated under WDO against a transportation company, two dump truck drivers and a person who arranged for the land filling. The offenders were convicted and fined HK\$10,000 each by the court after trials. As regards the private agricultural lots, these are held under a Block Government Lease (BGL) and it is not a breach of BGL for earth filling/dumping of C&D materials. Besides, the site was also not previously covered by DPA Plans. Though not designated as the “Main Watercourse” under the Land Drainage Ordinance (Cap. 446), a portion of the materials deposited near the stream was cleared and sand bags placed at the toe of filling with the consent of the landowners of the private lots concerned to ensure that the stream flow is not impeded. No blockage of the watercourse has been reported since the clearance. Latest inspections in November 2009 have not detected any further dumping of waste/land filling activity, environmental or sanitary nuisance;
- (b) ***DD96, Chau Tau, San Tin*** – the site is a “Green Belt”. As site inspection revealed that two containers have been deposited on the site, an Enforcement Notice (EN) under TPO requiring the discontinuation of the unauthorized storage use was issued on 4 August 2009. However, the site was still used for storage use upon expiry of the compliance period of the Notice on 4 November 2009. Consideration is being given to instigating prosecution against the notice recipient for non-compliance with the Notice. While it is not in breach of lease conditions for earth filling on Old Schedule private agricultural lot, latest inspections in November 2009 have not detected any dumping of

waste/land filling activity, environmental or sanitary nuisance. The illegal box culvert in GL has been removed, and the original natural streamcourse has also been reinstated;

- (c) ***DD99, Hop Shing Wai, San Tin*** – the site is a “Comprehensive Development and Wetland Enhancement Area”. Following the issuance of an EN under TPO on 18 May 2006, the pond filling operation was discontinued. Reinstatement Notice (RN) was later issued on 6 July 2006 to require the concerned parties to reinstate the damaged land by removing the converted containers, removing the debris on the land, and grassing the land. Compliance Notice for EN and RN were subsequently issued on 9 February 2007. While it is not in breach of lease conditions for earth filling on Old Schedule private agricultural lot, latest inspections in November 2009 have not detected any dumping of waste/land filling activity, environmental or sanitary nuisance. No streamcourse has been affected;
- (d) ***DD99, Chau Tau, San Tin*** – the site is partly a “Conservation Area” and partly “Comprehensive Development & Wetland Enhancement Area”. Following the issuance of a Stop Notice under TPO on 12 November 2008, the land filling and pond filling operations were discontinued. RN was later issued on 9 December 2008 to require the concerned parties to reinstate the damaged land by removing the leftovers and debris on the land, grassing the land, and reinstating the natural watercourse on the land. The reinstatement works are in progress. These on-going actions are being monitored in the consideration of prosecution against the notice recipients. While it is not in breach of lease conditions for earth filling on Old Schedule private agricultural lot, latest inspections in November 2009 have not detected any dumping of waste/land filling activity, environmental or sanitary nuisance;
- (e) ***DD115, Nam Sang Wai*** – the site is a “Conservation Area” entirely on GL. Clearance operation for the removal of the vehicular access was completed and stream course reinstated on 21 September 2009. As sufficient evidence indicated that the land filling activity involved illegal dumping of waste on GL, prosecution was initiated and the offender was subsequently convicted and fined \$3,000 by the court after trial. Latest inspections in November 2009 have not detected any further dumping of waste/land filling activity, environmental or sanitary nuisance;
- (f) ***Ham Tin Kau Tsuen, Pui O, Lantau*** – the site is partly a “Village Type Development” and partly “Coastal Protection Area” but the area is not previously covered by DPA Plans. The filling did not cause substantial drainage impact to the surroundings as the surface runoff within the area could be overflowed to Pui O Wan. As such, no flooding complaint in Pui O Ham Tin Kau Tsuen has been received so far. Latest inspections

in November 2009 have not detected any environmental or sanitary nuisance;

- (g) ***DD125 various lots, Ha Tsuen*** – the site is partly a “Green Belt” and partly “Recreation area”. Following the issuance of an EN under TPO, the land filling/pond filling operation was discontinued. RN was later issued to require the concerned parties to reinstate the damaged land by removing the leftovers, including construction wastes and debris on the land, as well as grassing the land. Compliances Notices for EN and RN were issued on 14 and 15 October 2009 respectively. While it is not in breach of lease conditions for earth filling on Old Schedule private agricultural lot, latest inspections in November 2009 have not detected any dumping of waste/land filling activity, environmental or sanitary nuisance. No streamcourse has been affected;
- (h) ***DD129 various lots, Lau Fau Shan*** – the site is a “Green Belt”. Following the issuance of an EN under TPO on 12 March 2009, the land filling operation was discontinued. RN was issued on 10 September 2009 to require the concerned parties to reinstate the damaged land. The site condition is being monitored regarding the compliance with RN. While it is not in breach of lease conditions for earth filling on Old Schedule private agricultural lot, latest inspections in November 2009 have not detected any dumping of waste/land filling activity, environmental or sanitary nuisance. No streamcourse has been affected; and
- (i) ***DD129 various lots, Sha Kiu Tsuen, Lau Fau Shan*** – the site is a Coastal Protection Area. Following the issuance of an EN under TPO on 1 September 2008, the pond filling operation was discontinued. As site inspection revealed that the site was already covered with vegetation, Compliance Notice was issued on 15 January 2009. While it is not in breach of lease conditions for earth filling on Old Schedule private agricultural lot, latest inspections in November 2009 have not detected any dumping of waste/land filling activity, environmental or sanitary nuisance. No streamcourse has been affected.

Given that item (b) is no longer a land filling case, and that the relevant statutory notices issued under items (c), (g), (i) have been complied with, the Administration has recommended deletion of these items from the list.

Ho Sheung Heung, Sheung Shui

19. The site is an “Agriculture” land. According to the Administration, site inspections were conducted following receipt of public complaints between July and October 2009, which revealed that C&D waste/waste soil deposition, earth moving works and turfing were carried out at the site. RNs under TPO were subsequently issued to the parties concerned to remove all the fill materials and grass the land. As

applications for review of RNs were received, responses to these applications were being processed. On the other hand, evidence is being collected to facilitate prosecution. So far, there is a total of 16 prosecution cases related to the incident, including nine cases being handled by EPD, six by PlanD and one by the Police. One of the nine EPD cases was completed, under which a truck driver was convicted and fined \$3,000, while the remaining cases are still underway. Among the six PlanD cases, two are on the persons who undertook the unauthorized land filling and the other four on the truck drivers/bulldozer operators. The case handled by the Police is related to criminal damage of crops as a result of illegal land filling. Two unauthorized buildings were found being constructed at the site, one of which is on private land while the other straddled on both private land and GL. A removal order was served on the owner requiring the removal of the two structures.

20. To ascertain the latest situation of the case, the Subcommittee conducted a visit to the site on 19 January 2010. Subcommittee members have expressed concern about the slow progress of the case. They have also enquired about the planning applications for village house in the area. According to the Administration, the Rural and New Town Planning Committee of Town Planning Board approved four applications for village house in mid-2008 and one in May 2010. The planning approval in 2008 did not cover land filling activities for the respective application sites while the one in 2010 has duly included such aspect. As regards the two unauthorized buildings, the Administration has advised that the Buildings Department has requested the owners to give a definite time frame within which the unauthorized buildings will be demolished.

Shek Wu Wai, Yuen Long

21. The case involves allegation of illegal dumping of waste without the consent of owners of some private land as well as GL. According to the Administration, land filling is predominantly located within private land but it is not in breach of the lease conditions as the land concerned is zoned "Open Storage" in the relevant statutory plan. Hence, land filling within the zone is not an operation subject to planning control. Besides, land filling activities have been taken place since 2007. No blockage to water courses has been found so far. Given that a case conference on the incident has been scheduled for 3 August 2010, the Administration has been requested to conduct a site inspection to ascertain the latest situation before the case conference.

Way forward

22. Given that fly-tipping and illegal land filling activities are still rampant, members have decided that the Subcommittee should continue its work in the next legislative session.

Advice sought

23. The Panel is invited to note the work of the Subcommittee and the recommendation set out in paragraph 22.

Council Business Division 1
Legislative Council Secretariat
27 September 2010

Panel on Environmental Affairs

Subcommittee on Combating Fly-tipping

Terms of Reference

"To review the existing policies on enforcement against fly-tipping and suggest improvement measures as and when necessary."

Panel on Environmental Affairs

Subcommittee on Combating Fly-tipping

Membership list

Chairman Hon LEE Wing-tat

Members Hon Audrey EU Yuet-mee, SC, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon KAM Nai-wai, MH

(Total : 4 Members)

Clerk Miss Becky YU

Legal Adviser Miss Kitty CHENG

Date 4 January 2010