

Appendix 1**Response to Written Submissions**

	Organisation	The Government's Response
1.	Kadoorie Farm and Botanic Garden	<p>As regards the suggestion on initiating sentencing guidelines with regard to fly-tipping, we will present to the court all the relevant evidence relating to each of the cases according to the Waste Disposal Ordinance (WDO) and the Statement of Prosecution Policy and Practice issued by the Department of Justice (DoJ). The court will hand down sentence after considering the circumstance of each of the cases. The Administration agrees that the sentence upon offenders of fly-tipping and illegal land filling 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 DoJ for a court review of the sentence. Separately, the Advisory Council on the Environment has written to the Judiciary Administrator in 2003 and 2008 pointing out that the sentencing of fly-tipping cases should effectively deter such illegal activities.</p> <p>We note the suggestion that the specified form can be modified to prevent any confusion and misunderstanding.</p> <p>We note the suggestion that during the filling process, the landowner is required to post a copy of the form with the site plan showing the affected area outside the area concerned.</p>

		<p>Concerning the view that CEDD should be included in the notification mechanism stated in paragraph 10 in the document CB(1) 1094/09-10(1), we will, on a need basis, notify other relevant departments to take appropriate action, including issues on slope safety.</p> <p>We note the suggestion that a new legislation should be enacted to combat fly-tipping. We need to point out that enacting new legislation is a complex task, which takes time and involves the work of different departments. Consideration should also be given to the power of other existing legislation.</p>
2.	Hong Kong Construction Association	<p>We note that the Association welcomed the amendment proposal put forth by the Administration.</p> <p>We take note of the view on the extension of the application of trip-ticket system (TTS) to private sector works and global positioning system (GPS) to monitor dump trucks in disposing construction and demolition (C&D) materials. We have relayed the views to Construction Industry Council (CIC). The Committee on Environment and Technology under CIC has been drafting the guideline for TTS.</p>
3.	Living Lamma	<p>We take note of the various views from the Association. We would like to emphasize that the Administration will take action against any illegal depositing of wastes. For the cases in Yung Shue Long and the request to find a way to better manage the waste for Yung Shue Wan and the</p>

		<p>surrounding villages, we will continue the concerted effort with local organisations and District Council to tackle the problem.</p>
4.	Greeners Action	<p>The submission suggests that all depositing activities have to be approved by the Authority. We have examined the proposal and concluded that the introduction of an authorisation mechanism in the WDO under which Director of Environmental Protection (Director) is to authorise such deposition on factors other than environmental grounds (such as land use and slope safety) will go beyond the authority of Director, and the legality and reasonableness of such authorisation will also be subject to challenge. Moreover, if the depositing activity pollutes the environment, we can restrict such activity by means of the environmental legislation.</p> <p>We take note of the opposition of the Group on the proposed exemption to be granted if the deposition involves an aggregate area of less than 100 m² on the same lot.</p> <p>We note the suggestion for improving the enforcement and prosecution procedures and establishment of a reporting mechanism. We have always encouraged citizens to report to the Government any alleged illegal activity. Besides, we have jointly drawn up enhanced complaint handling procedures to speed up the response to cases involving active and on-going C&D materials depositing activities and maintained a database on information and a list of fly-tipping black-spots. The Environmental Protection Department (EPD) and the</p>

		<p>relevant departments meet on a regular and as-needed basis to monitor the overall situation and review individual cases that are of public or environmental concern, at both territorial and district levels. All these measures have improved the coordination among relevant departments on enforcement.</p> <p>We note the view that mastermind of the illegal dumping activities should bear the criminal liability. At present, under section 16A of the WDO, “any person commits an offence if he deposits or causes or permits to be deposited waste in any place except with lawful authority or excuse, or expect with the permission of any owner or lawful occupier of the place.”.</p>
5.	Hong Kong Waste Disposal Industry Association	<p>Concerning the coverage of the sorting facilities, there are currently two sorting facilities located in Tseung Kwan O and Tuen Mun. We have conducted analysis to evaluate the demand for such facilities. The result reveals that the amount of construction waste that needs to be transported to the two facilities from the Northeastern part of New Territories is very small. The figure is around 25 trucks per day (200 tonnes per day). The two existing sorting facilities still have capacity to meet the demand. The Administration considers that using existing facilities is more cost-effective.</p> <p>It is mentioned in the submission that the Authority cannot regulate the illegal dumping activities. Currently, under section 16A of the WDO, a person commits</p>

		<p>an offence if he deposits waste on Government land. At present, there are limitations on the enforcement of the WDO. As it is not a requirement for the depositors to present the relevant permission to the Authority, and for the format of such permission. The Authority can get in touch with the landowners, after the depositing activity, to ascertain whether the depositors have obtained the required permission. Without the assistance of the persons concerned, the evidence collection will become difficult and delayed the enforcement action. Therefore, We propose to amend the WDO to standard the format of the permission granted by the landowners. A new provision will also be added in the WDO to require the depositors to produce the valid written permission for inspection on request by the Authority. The proposal will further enhance the enforcement effectiveness of the WDO and carry sufficient deterrence.</p>
6.	Mr YEUNG Cheung Li, member of the Sha Tin District Council	<p>We note the request that the Administration should review the current policy and introduce measures to tackle the problem. The proposal will further enhance the enforcement effectiveness of the WDO on depositing abandoned C&D materials on private land to against such illegal activity.</p> <p>Concerning the suggestion of establishing regional transfer station for construction waste and operating with a social enterprises mode, there are already sorting facilities for construction waste, public fill reception facilities and barging points to receive the construction waste and ensure proper</p>

		<p>handling of construction waste. The two existing sorting facilities still have capacity to meet the demand. The Administration considers that using existing facilities is more cost-effective.</p> <p>For cases in Tai Sheung Hang Village and Ma On Shan village, the Authority inspected the area after receiving complaints and prosecuted the offenders during such inspection. The Authority will continue conducting inspection to the area.</p>
7.	Hong Kong Dumper Truck Drivers Association	<p>We note the opposition of the Association on the proposed exemption to be granted to depositing activity that involves an aggregate area of less than 100 m² on the same lot.</p> <p>Regarding the request in the submission of combining the CHIT system with the TTS, we are of the understanding that Development Bureau is considering the combination of these 2 systems.</p>
8.	WWF Hong Kong	<p>We note the suggestion that the Authority should strengthen manpower and improve enforcement and cooperation with the Police. We have jointly drawn up enhanced complaint handling procedures to speed up the response to cases involving active and on-going C&D materials depositing activities and maintained a database on information and a list of fly-tipping black-spots. The EPD and the relevant departments meet on a regular and as-needed basis to monitor the overall situation and review individual cases that are of public or environmental concern, at both territorial and district levels.</p>

		<p>We note the suggestion of installing closed-circuit television (CCTV). The Administration has completed the installation of CCTV at the fly-tipping black spots (Siu Lang Shui and Tai Po Road car park) as pilot schemes. Subject to the outcomes of the trial scheme, we will review the feasibility of extending the CCTV installations to other fly-tipping black-spots.</p> <p>We note the suggestion that the specified form, together with the site plan showing the affected area, should be open for public inspection.</p> <p>We take note of the view in the submission on proposed arrangement for small-scale deposition.</p>
9.	Mr. Hui Kwan Yiu	<p>We note the suggestion of increasing the maximum penalty under WDO. Under the existing WDO, any person commits an offence under section 16A (i.e. illegal depositing of wastes) will be liable to a fine of \$200,000 and to imprisonment for 6 months for the first offence, and a fine of \$500,000 and to imprisonment for 6 months for a second or subsequent offence.</p> <p>We note the suggestion of installing CCTV. The Administration has completed the installation of CCTV at the fly-tipping black spots (Siu Lang Shui and Tai Po Road car park) as pilot schemes. Subject to the outcomes of the trial scheme, we will review the feasibility of extending the CCTV installations to other fly-tipping black-spots.</p>

We note the suggestion of amending the legislation to empower the EPD inspectors to stop the dumping activity on site. We will conduct site inspection for cases on illegal land filling and dumping of waste and will collect information from the persons involved and complainant. If dumping activity is noticed on site during inspection, we will require the persons involved to cooperate and cease the activity. We will also issue to him a fixed penalty of \$1500 under Fixed Penalty (Public Cleanliness Offences) Ordinance or prosecute the offender under WDO for illegal dumping of waste. If the person involved obstructs the enforcement officers of EPD, we will inform the Police to assist in the enforcement depending on the situation. In general, person involved will not obstruct the enforcement work.

We note the suggestion of enhancing communication with villages. The regional offices of EPD and other relevant departments have enhanced the communication and cooperation with the local community. The enforcement officers conduct site inspections and keep a close liaison with the local community. Besides, to ensure rural landowners, construction waste transporters, property developers/contractors/ managers understand the statutory requirements, we have developed three sets of comprehensive guides respectively for the abovementioned persons. The guides provide useful information on the relevant statutory requirements and the steps to guard against

		<p>illegal land filling and fly-tipping activities. The guides also encourage the reporting of illegal activities for our prompt follow-up. The guides, in the form of leaflets, have been widely distributed to the various stakeholders through the relevant trade associations, Government departments and their public outlets, and are also available on the EPD website.</p> <p>We note the suggestion of setting up an inter-departmental working group. We have jointly drawn up enhanced complaint handling procedures to speed up the response to cases involving active and on-going C&D materials depositing activities and maintained a database on information and a list of fly-tipping black-spots. The EPD and the relevant departments meet on a regular and as-needed basis to monitor the overall situation and review individual cases that are of public or environmental concern, at both territorial and district levels.</p>
10.	Dr YANG Mo, member of the Southern District Council	<p>The submission mentions that the cases of illegal dumping reported has been on the increase and requests the Government to address the problem in enforcement and prosecution. Although the number of cases reported has been increasing in recent years, we do not see an increasing trend on the total volume of waste involved. In view of the public concern, we have enhanced our cooperation to combat illegal dumping of construction waste. Departments concerned meet on a regular and as-needed basis to monitor the overall situation and</p>

		<p>review individual cases that are of public or environmental concern, at both territorial and district levels. Departments will also coordinate joint site visits and actions where necessary. Apart from the preventive measures including the erection of warning signs and setting up road barriers in potential problem areas pursued, we have also enhanced the education and developed and distributed three sets of comprehensive guides respectively for the landowners, construction sector and construction waste transporters. Departments also maintained a list of fly-tipping black-spots. Concerning the enforcement and prosecution procedures, EPD has complied strictly with the Statement of Prosecution Policy and Practice issued by the DoJ. EPD will conduct site inspection after receiving complaints and will collect information from the persons involved. If we have sufficient evidence, we will prosecute the offender under WDO for illegal dumping of waste.</p> <p>We note the suggestion of setting up an inter-departmental working group. We have jointly drawn up enhanced complaint handling procedures to speed up the response to cases involving active and on-going C&D materials depositing activities and maintained a database on information and a list of fly-tipping black-spots. The EPD and the relevant departments meet on a regular and as-needed basis to monitor the overall situation and review individual cases that are of public or environmental concern, at both territorial and district levels. We take</p>
--	--	--

		<p>note of the suggestion and will monitor the effectiveness of the inter-departmental meeting.</p>
11.	Advisory Council on the Environment	<p>We note the view supporting the proposed amendment to WDO put forth by the Administration.</p> <p>We note the request that the Administration should emphasize that the proposed amendment will not expand the existing rights of landowners and that any deposition of C&D waste must continue to comply with all relevant legislations.</p> <p>We agree with the suggestion in the submission that the specified form can be refined to prevent any possible confusion and misunderstanding.</p> <p>We note the view that the Authority should step up inspection and deploy more manpower to strengthen the enforcement action and respond to complaints.</p> <p>We note the suggestion that Government departments should continue to review other instruments under different legislations to come up with a package of control measures to prevent and address the problem.</p>
12.	The Real Estate Developers Association of Hong Kong	<p>We note that the Association notices the progress made by the Administration in combating illegal fly-tipping.</p> <p>We note that the Association has requested its members to make it clear to their contractors that they must follow the legislation for depositing C&D materials.</p>
13.	The Hong Kong Institution of	<p>We note the suggestion of including</p>

<p>Engineers</p>	<p>environmental issues in the specified form. The purpose of the proposed amendment is to standardise the written permission to prevent the issue of false written permission without the landowners' knowledge, so as to safeguard the landowners' interest. The proposed amendment seeks to respond to the public call for introducing a transparent system and enhancing the inter-departmental co-ordination in respect of enforcement actions. The proposed new notification mechanism will serve as a platform for relevant departments to make advanced assessment of the information on intended depositing activities. If such intended activities are found to possibly contravene existing legislation, the relevant departments will remind and advise the parties concerned to avoid carrying out these intended activities to prevent any contravention of existing legislation.</p> <p>It is mentioned in the submission that landowners should be consulted on the proposed amendment. We have consulted Heung Yee Kuk and the Advisory Council on the Environment and consulting the 9 NT District Councils. The proposed amendment is available on the EPD website. We welcome the public to submit their views.</p> <p>Regarding the boundary of the affected area, under the proposed WDO amendment, we propose that the landowner shall submit the completed specified form together with a site plan showing clearly the rivers/ streams/ watercourses/ ponds on the land and the</p>
------------------	--

		<p>boundary of the affected area to the control authority.</p> <p>For the use of filling material generated from public works contracts in private works, the technical circular ETWB TC(W) No. 31/2004 has stipulated that in order to make use of C&D materials generated by the site, the contractor shall use his best endeavours to identify other construction projects where such materials can be used. The approval procedure has also been stated in the technical circular.</p>
14.	Heung Yee Kuk New Territories	<p>We note the views that the right of the landowner should be protected and clarification is needed on the responsibility of the illegal depositing activities. The purpose of the proposed amendment is to safeguard the existing interest of private landowners by preventing the abuse that arises from depositing activities on private land which are carried out without the consent of the landowners. The proposed amendment enhances the effectiveness of enforcing section 16A of the WDO against unauthorised depositing of abandoned C&D materials on private land. The amended provisions will require any person who intends to carry out depositing activity on land held under private ownership to obtain the prior written permission of all the landowner(s) concerned, and to carry such written permission or its copy during the depositing activity for inspection at the request of the control authority. A person commits an offence if he fails to produce the valid written permission for inspection on request by enforcement officers. Under the</p>

		<p>proposed amendment, the persons concerned without permission from the landowners will be prosecuted.</p> <p>We note the concern that the landowners may be misled to grant the approval. The regional offices of EPD and other relevant departments have enhanced the communication and cooperation with the local community. The enforcement officers conduct site inspection and keep a close liaison with the local community. Besides, to ensure rural landowners, construction waste transporters, property developers/contractors/ managers understand the statutory requirements, we have developed three sets of comprehensive guides respectively for the abovementioned persons. The guides provide useful information on the relevant statutory requirements and the steps to guard against illegal land filling and fly-tipping activities. The guides also encourage the reporting of illegal activities for our prompt follow-up. The guides, in the form of leaflets, have been widely distributed to the various stakeholders through the relevant trade associations, Government departments and their public outlets, and are also available on the EPD website.</p> <p>We note the concern on the boundary of the land and its corresponding site plan, we propose that the landowner shall submit the completed specified form together with a site plan showing clearly the rivers/ streams/ watercourses/ ponds on the land and the boundary of the affected area to the control</p>
--	--	---

		<p>authority.</p> <p>We note the concern on the notification mechanism. The proposed notification mechanism serves as a platform to enhance inter-departmental coordination in respect of enforcement actions and to prevent non-compliance. The control authority will, upon receiving the specified form and the required documents from the landowner, notify other relevant Government departments for follow-up action where necessary in the light of the actual situation. For instance, if the intended deposition will likely contravene existing legislation, the relevant departments will advise the persons concerned and explain the requirements under the related legislations; or suggest to the person concerned to take preventive measures accordingly to prevent non-compliance with the existing legislations.</p> <p>An important purpose of the proposed amendment is to safeguard the existing interest of private landowners by preventing the abuse that arises from depositing activities on private land which are carried out without the consent of the landowners. It also seeks to prevent the carrying out of depositing activities on private land which contravene the Waste Disposal Ordinance (Cap 354) and cause environmental problems. The landowners can perform depositing activities in accordance with the proposed mechanism if such activities comply with other relevant legislation and land lease. We have sought DoJ's advice</p>
--	--	--

		<p>on this matter, and it considered that the proposed notification mechanism only amounts to a control of use of private land in the public interest, which is going to be imposed in accordance with law. It is consistent with Article 105 of the Basic Law (BL 105) since the right to the use of property protected thereunder is subject to restrictions in the public interest that may be lawfully imposed: see, for instance, (a) <i>Yook Tong Electric Company Limited v Commissioner for Transport</i>, HCAL 94/2002, para 58, where Hartmann J (as he then was) when considering the scope of protection of the right to the use of property under BL 105, held that the use of property must always be subject to the principle of general regulation in the public interest; and (b) <i>Fine Tower Associates Limited v Town Planning Board</i>, FAMV 20/2008, where the Appeal Committee of the Court of Final Appeal said that the property rights protected under BL 105 are intrinsically subject to restrictions that may be lawfully imposed. Further, even if it is assumed that BL 105 requires that restrictions to the right to the use of property need to meet a fair balance test (ie that there shall be a reasonable relationship between the means of control employed and the aims sought to be realized) (though there is yet to be a clear authority in local case law which supports such a requirement), the proposed amendment would no doubt satisfy that test in view of (a) the clear public interest that it serves, and (b) the burdens that it would put on private landowners cannot be reasonably argued as excessive.</p>
--	--	--

		<p>We note that the proposed amendment does not affect the existing planning restriction on land use for land filling under statutory plans station.</p>
15.	Designing Hong Kong	<p>We note the suggestion on the additional information to be provided in the specified form.</p> <p>Regarding the suggestion that landowners should submit the specified form regarding all depositing of C&D materials to the control authority, given there are circumstances involving small-scale deposition, the Administration considers that under the principle of reasonableness, depositors involved in these works may be exempted from the requirement for seeking the written permission in specified form. We have to point out that the landowner's prior <u>consent</u> for carrying out such activity is still required in accordance with the existing requirement of section 16A of the WDO even though the <u>written consent</u> is not required from the landowner. Without such consent, the depositor will still be liable for the offence.</p>
16.	The Conservancy Association	<p>We note the concern that the proposed amendment will recognize the reasonableness of the depositing of C&D materials on private land. The purpose of the proposed amendment is to safeguard the existing interest of private landowners but does not aim to expand the existing rights of landowners. Besides, all depositing activity with permission from the landowners must comply with other relevant legislations and land lease.</p>

		<p>We note the opposition of the Group on the proposed exemption to be granted if the deposition involves an aggregate area of less than 100 m² on the same lot.</p> <p>As regards the suggestion to expand the Development Permission Area (DPA) Plans to cover the remaining rural areas of the New Territories, The Planning Department considers that to overhaul the planning regime of the Town Planning Ordinance to forestall illegal or unauthorized activities on the land would have far reaching implications. With regard to the area currently not covered by statutory plans or outside Country Parks, including frontier closed area, Planning Department will determine the need, timing and priority for preparing statutory plans for these areas, taking into account factors such as conservation value, development pressure and vehicular access. The preparation of a number of DPA Plans has been programmed. However, the progress and the relevant information cannot be disclosed due to their sensitivity, particularly the need to prevent establishment of “existing uses” to circumvent subsequent planning enforcement.</p> <p>We note the view of the Association that the sentence should reflect the severity of illegal fly-tipping cases. The Administration agrees that the sentence upon offenders of fly-tipping and illegal land filling cases should carry sufficient deterrence. In case the penalty imposed by the court is</p>
--	--	---

		<p>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 DoJ for a court review of the sentence. Separately, the Advisory Council on the Environment has written to the Judiciary Administrator in 2003 and 2008 pointing out that the sentencing of fly-tipping cases should effectively deter such illegal activities.</p>
--	--	---