

## THE TSEUNG KWAN O LANDFILL CONTROVERSY



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*This article examines the controversy that arose from the Hong Kong Government's plan to extend the South East New Territories Landfill in Tseung Kwan O into the Clear Water Bay Country Park, particularly how the proposed landfill extension led to a confrontation between the government and the legislature. The authors argue that s 14 of the Country Parks Ordinance (Cap 208) imposes an obligation on the Chief Executive to make an order which he is not free to repeal thereafter. This arrangement comports with the overall statutory scheme and purpose of the legislation which features a four-stage process with provisions for public consultation. The controversy calls into question the efficacy of this four-stage process as well as that of the environmental impact assessment regime. The authors suggest that there is a need to consider strengthening the statutory mechanism for public involvement to prevent a repetition of the present controversy. This article also examines the broader issue of the territory's waste management strategy and the need for more environmentally sustainable policies.*

### Introduction

The Hong Kong Government's plan to extend the South East New Territories (SENT) Landfill in Tseung Kwan O (TKO) into the Clear Water Bay Country Park (CWBCP) sparked a public outcry and nearly resulted in a constitutional crisis between the executive and legislature. Whilst the government has managed to keep the crisis at bay for the time being, the issue of waste management in Hong Kong remains a serious and urgent one that calls for effective solutions.

This article seeks to explore two important dimensions to this controversy over the SENT Landfill. The first is the constitutional law dimension. The article will look at how the government's proposed extension led to a confrontation between itself and the legislature. It will analyse

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the arguments advanced by different sides to the constitutional debate, and explore the crucial question of what can be done to remedy the problem.

The second is the policy dimension. The saga has brought to light questions regarding the administration's approach to waste management: In considering this landfill extension, was a proper process in place to elicit and address the views of relevant stakeholders? More fundamentally, is the extension strictly necessary? Were alternative options sufficiently explored? This article will discuss the Environmental Impact Assessment (EIA) process conducted for the proposed extension and offer some thoughts on Hong Kong's waste management policy.

### The Landfill Controversy

Hong Kong, like any other developed society, struggles to deal with its waste. With the phasing out of all incinerators in 1997, the city relies on landfills for the end-treatment of waste. In 2000, the Environmental Protection Department (EPD) commissioned a study on the potential to extend the SENT Landfill.<sup>1</sup> In 2005, "A Policy Framework for the Management of Municipal Solid Waste (2005–2014)" (Policy Framework) was issued.<sup>2</sup> It was estimated that Hong Kong's three "strategic landfills", including the SENT Landfill, would be exhausted in 6 to 10 years.<sup>3</sup> According to a Legislative Council (LegCo) Brief issued by the administration,

"The SENT Landfill will be full by around 2013/14. In view of an imminent waste disposal problem, the [EPD] has proposed to extend the lifespan of the SENT Landfill by another six years by expanding the SENT Landfill by 50 hectares (ha). The 50 ha extension covers 30 ha of piggy-backing over the existing landfill, 15 ha of the adjoining [TKO] Area 137, and an encroachment of about 5 ha of land of the CWBCP."<sup>4</sup>

<sup>1</sup> EPD, *Extension of Existing Landfills and Identification of Potential New Waste Disposal Sites*, Jan 2003, available at [http://www.epd.gov.hk/epd/english/environmentinhk/eia\\_planning/sea/waste\\_disposal\\_sites.html](http://www.epd.gov.hk/epd/english/environmentinhk/eia_planning/sea/waste_disposal_sites.html).

<sup>2</sup> EPD, *A Policy Framework for the Management of Municipal Solid Waste (2005–2014)*, Dec 2005, available at [https://www.forum.gov.hk/document\\_en/paper\\_20051214.pdf](https://www.forum.gov.hk/document_en/paper_20051214.pdf).

<sup>3</sup> *Ibid.*, s 113.

<sup>4</sup> EPD and the Agriculture, Fisheries and Conservation Department, "Legislative Council Brief: Country Parks (Designation) (Consolidation) (Amendment) Order 2010", EP CR 9/25/15, June 2010, available at [http://www.legco.gov.hk/yr09-10/english/subleg/brief/72\\_brf.pdf](http://www.legco.gov.hk/yr09-10/english/subleg/brief/72_brf.pdf).

In 2007, an EIA on the proposed extension was completed.<sup>5</sup> The conclusion was that “no unacceptable environmental impacts are envisaged as a result of the construction, operation, restoration and aftercare of the Extension, provided that the recommended mitigation measures are implemented”, although it is predicted that “there will be a residual odour impact on air sensitive receivers in the immediate vicinity”.<sup>6</sup>

As the proposed extension would encroach upon the CWBCP, the administration had to invoke s 15 of the Country Parks Ordinance (Cap 208) to replace the original approved map of CWBCP with a new map on which the encroached area is excised. As summarised by Mr Michael Thomas QC, SC, following the input from the Country and Marine Parks Authority (Authority) and public consultation, the final stages of the replacement process involves: (1) the Chief Executive (CE) in Council’s approval of a draft map under s 13(1); (2) its signature by the Authority and deposit in the Land Registry under s 13(4); (3) the notification by Gazette of the deposit of the approved map under s 13(5); (4) the CE’s designation of the area shown in that approved plan to be a country park by order in the Gazette under s 14.<sup>7</sup> The Country Parks (Designation) (Consolidation) (Amendment) Order 2010 (Order) was accordingly made by the CE on 31 May 2010. It was supposed to come into operation on 1 Nov 2010.<sup>8</sup>

The Subcommittee on Country Parks (Designation) (Consolidation) (Amendment) Order 2010 (Subcommittee) was formed to consider the Order which was tabled before LegCo. Meanwhile, objections against the extension were raised by different stakeholders, including TKO residents, environmental groups, the Sai Kung District Council and various LegCo members. These culminated in a cross-party plan in LegCo to move a resolution to repeal the Order.<sup>9</sup> In light of these pressures, the administration decided to defer the commencement of the Order to 1 Jan 2012.<sup>10</sup> However, it maintains its position that LegCo does not

<sup>5</sup> Environmental Resources Management, *South East New Territories (SENT) Landfill Extension – Feasibility Study: EIA Report Vol 1*, Dec 2007, available at [http://www.epd.gov.hk/eia/register/report/eiareport/eia\\_1432007/html/](http://www.epd.gov.hk/eia/register/report/eiareport/eia_1432007/html/).

<sup>6</sup> *Ibid.*, s 12.9.

<sup>7</sup> Department of Justice, “Summary of the Advice given by Mr Michael Thomas QC, SC on the Power of the LegCo to Repeal the Country Parks Designation Order 2010”, CB(1)2988/09-10(01), Oct 2010, available at [http://www.legco.gov.hk/yr09-10/english/hc/sub\\_leg/sc09/papers/sc091006cb1-2988-1-e.pdf](http://www.legco.gov.hk/yr09-10/english/hc/sub_leg/sc09/papers/sc091006cb1-2988-1-e.pdf).

<sup>8</sup> LN 72 of 2010.

<sup>9</sup> Cheung Chi-fai, “Country park battle is already over, LegCo told”, *South China Morning Post*, EDT3, 6 Oct 2010.

<sup>10</sup> Information Services Department, “Government proposes to defer commencement date of Country Parks (Designation) (Consolidation) (Amendment) Order 2010”, 6 Oct 2010. See also Colleen Lee and Natalie Wong, “Dumped”, *Standard*, P01, 7 Oct 2010.

have power to repeal the Order.<sup>11</sup> It was argued that the Order, once made, could not be withdrawn even by the CE himself.<sup>12</sup> Nevertheless, the LegCo President eventually ruled that LegCo members could move the proposed resolution and, on 13 Oct 2010, they voted overwhelmingly in support of it.<sup>13</sup> For a while, speculation had it that a constitutional crisis was looming and the administration might take the issue to court.<sup>14</sup> As at the time of writing, however, no legal action has been initiated.

## The Constitutional Debate

The controversy concerning the Order has centred around two issues. First, is the Order a piece of subsidiary legislation? Second, can it be repealed so as to halt the landfill extension? Both the administration and LegCo presupposed that the Order is subsidiary legislation, to be tabled before LegCo under s 34 of the Interpretation and General Clauses Ordinance (Cap 1). Professor Johannes Chan suggested however that it may be an executive act rather than a legislative instrument, which means that the debate between the administration and LegCo could have been based on a misconceived assumption.<sup>15</sup>

Whilst it can be difficult to distinguish between “what is plainly legislation and what is plainly administration”,<sup>16</sup> the Order in question quite clearly displays the characteristics of an executive act. Unlike an ordinary legislative instrument that prescribes legal standards and creates substantive obligations for general application, the Order seems to be a procedural step which implements the outcome of a policymaking process under the scheme of Part III, Cap 208.<sup>17</sup> Also, as Professor Chan has pointed out, the courts have ruled that plans produced under the

<sup>11</sup> See n 7 above.

<sup>12</sup> *Ibid.*

<sup>13</sup> Information Services Department, “LegCo President’s ruling on proposed resolution to repeal the Country Parks (Designation) (Consolidation) (Amendment) Order 2010”, 11 Oct 2010. See also Cheung Chi-fai and Tanna Chong, “Lawmakers back motion to scrap landfill plan”, *South China Morning Post*, CITY1, 14 Oct 2010.

<sup>14</sup> Cheung Chi-fai and Ambrose Leung, “Constitutional crisis looms over landfill fracas”, *South China Morning Post*, EDT1, EDT3, 12 Oct 2010. See also Colleen Lee, “Battle looms as LegCo chief gives motion nod”, *Standard*, P06, 12 Oct 2010.

<sup>15</sup> Johannes Chan, “Controversy over country park Order” (郊野公園指令的風波), *Ming Pao*, D05, 13 Oct 2010.

<sup>16</sup> H.W.R. Wade and C.F. Forsyth, *Administrative Law*, (Oxford University Press, 10th edn, 2009), p 732.

<sup>17</sup> *Ibid.* pp 731–733. See also Peter Wesley-Smith, Executive Orders and the Basic Law, in: Alice Lee (ed), *Law Lectures for Practitioners 1998* (Hong Kong: Hong Kong L J Ltd, 1998), pp 187–209 for a discussion on the features of executive acts and legislative instruments.

Town Planning Ordinance (Cap 131) are not subsidiary legislation.<sup>18</sup> It is arguable that an order under s 14 designating the use of an approved area would be similarly treated by the courts.

An implication of the above discussion is that the administration was not obliged to table the Order before LegCo in the first place. However, in light of the public discontent against the landfill extension, the crux of the matter now should really be whether any remedies are available under the Ordinance to reverse the designation. Both the administration and LegCo had sought the advice of Senior Counsel on the possibility of repealing the Order directly.<sup>19</sup> Looking at the language of s 14, it is quite obvious that the section imposes an obligation (rather than confers discretion) on the CE to make the Order, and that he is not free to repeal an order after it is made.<sup>20</sup>

That even the CE himself cannot repeal his own order may appear absurd. However, examining the Ordinance, especially Part III, as a whole, the arrangement under s 14 comports with the overall statutory scheme and purpose. Part III prescribes elaborate procedures for the public to be informed and consulted about a draft map prepared by the Authority.<sup>21</sup> The public is entitled to inspect and raise objections against it.<sup>22</sup> It is only after such public consultation and participation (the Part III mechanism) that the four-stage replacement process, outlined earlier, comes into play. If s 14 were couched in discretionary rather than obligatory terms, the CE would be able to choose not to make the Order or repeal it after it is made. This would effectively allow the circumvention of the Part III mechanism.

Therefore, should the administration wish to put a brake on the landfill extension, there appears to be no quick route to reverse a s 14 designation. Rather, it would need to go through the entire Part III mechanism again. Under the present circumstances, the Authority could put forward the previous map of CWBCP (ie adding the excised 5ha back) for public inspection and comment. Given the public sentiment, there

<sup>18</sup> See n 15 above. See also *Kwan Kong Company Ltd v Town Planning Board* HCMP No 1675 of 1994, s 107–109.

<sup>19</sup> See n 7 above. See also “Landfill Controversy: Philip Dykes SC supports LegCo’s power to repeal the Order” (堆填風波 戴啟思籲立會維護修例權力), *Ming Pao*, A08, 10 Oct 2010.

<sup>20</sup> Section 14 is in the following terms: “Where the Chief Executive in Council has approved a draft map under section 13 and it has been deposited in the Land Registry, the Chief Executive shall, by order in the Gazette, designate the area shown in the approved map to be a country park”. An overview of other Ordinances shows that few of them use the word “shall” rather than “may” in directing the CE to issue an executive order or subsidiary legislation.

<sup>21</sup> See ss 8–11.

<sup>22</sup> *Ibid.*

is little likelihood that substantial objections will be raised against the previous map.

Of course, this controversy calls into question the efficacy of the Part III mechanism. If the public's concerns had been properly addressed, it is hard to imagine there to be such widespread dissatisfaction against the Order presently. In fact, the Part III mechanism was just one of the safeguards to ensure public consultation and participation. An EIA process was conducted which, as discussed below, is also intended to elicit the views of stakeholders. Unfortunately, neither mechanism seems to have served its purpose.

The administration and LegCo therefore need to consider strengthening the statutory mechanism for public involvement to prevent a repetition of the present controversy. While Part III of the Ordinance appears to be rather detailed and comprehensive on paper, the important issue is how the procedures operate in practice. Is the public given sufficient time and information to evaluate a draft map? Are public objections duly taken into account before the Authority decides to submit a draft map for approval? This article will return to similar considerations when discussing the EIA process below.

### The EIA Process

Residents living in the vicinity of the SENT Landfill were against any extension because the EPD had failed to address odour and other nuisance issues for years.<sup>23</sup> While there is no evidence that the EIA for this project was less than satisfactory, a broader question that arises for consideration is whether the EIA process in Hong Kong gives stakeholders adequate opportunity to air their concerns and be a part of the decision-making process. It could be argued that had the residents' concerns been adequately addressed at the stages of the EIA, there would have been less fuel for discontent and disagreement which led to the public rejection of the government's proposal.

Briefly, an EIA refers to the process of predicting the likely effects of a proposed project on the environment before a decision on whether the project in question should proceed. Being procedural in nature and open to public involvement, EIA lends itself to addressing substantive environmental concerns ranging from loss of biological diversity to air quality.

<sup>23</sup> Colleen Lee and Derek Yiu, "Raising a Stink", *Standard*, P02, 14 Oct 2010.

The conceptual premise underpinning EIA is that introducing information about the effects of development into the decision-making process allows decision-makers to consider various environmental, social and economic objectives, possibly resulting in a decision which is less environmentally harmful.<sup>24</sup>

Lee and Abbot have identified a number of potential benefits of promoting public participation. These benefits include improvement in the quality of decisions as a result of the input of expertise held by members of the public or through the reflection of social and cultural values; promoting environmental citizenship; increasing governmental accountability and improving legitimacy of decision-making processes; and eliciting different values that should be reflected in the environmental decision-making process.<sup>25</sup>

The importance of public participation as a fundamental rationale for undertaking an EIA has been judicially recognised. *Berkeley (No 1)* raised the issue of whether the gathering of a body of environmental information is capable of meeting the requirement to conduct a formal EIA as laid down by domestic and European Community law.<sup>26</sup> Lord Hoffman elaborated that the EIA Directive requires not merely that the planning authority should have the necessary information but that the information must be obtained through the process of an EIA. He explained that it was an essential step of the procedure that the environmental statement by the developer be made available to the public and that the public, “however misguided or wrongheaded its views may be”, ought to have the opportunity to express its opinions. This is to give effect to the “inclusive and democratic procedure prescribed by the Directive”.<sup>27</sup>

The EIA process in Hong Kong has, thus far, placed less importance on the public participation element and is driven by a mentality that can be described as pro-development. For example, in deciding whether parties other than the project proponent should be given the right to appeal to the Appeal Board during the second reading of the EIA Bill, one of the major concerns that the government had about extending the right

<sup>24</sup> J. Holder & M. Lee, *Environmental Protection, Law and Policy: Text and Materials* (Cambridge University Press, 2nd edn, 2007) at p 550.

<sup>25</sup> M. Lee & C. Abbot, “The Usual Suspects? Public Participation under the Aarhus Convention” (2003) 66 *Modern Law Review* 80.

<sup>26</sup> *Berkeley v Secretary of State for the Environment* [2001] Env LR 16.

<sup>27</sup> It should be noted that in the early days of the EIA directive, the courts tended to ignore the public participation aspect of the EIA process or, as Bell & McGillivray put it, “[a] number of the early cases tended to view public participation as the ‘icing on the cake’ of what was merely an information-gathering exercise”; S. Bell & D. McGillivray, *Environmental Law*, at p 313.

of appeal to members of the public was possible delay in implementing development projects.<sup>28</sup> There may well be other good reasons for not granting a statutory right of appeal to third parties, but this ostensible concern with project delays is a sign of a pro-development mentality and an inclination towards a more restrictive conception of the role of EIA. This view of the EIA holds the assumption that the project in question will proceed because of the overarching presumption in favour of development. As such, the function of the EIA process is primarily to investigate the possible negative effects of the project on the environment and to identify the options for reducing these impacts (ie mitigation options). The EIA process is therefore an information-gathering mechanism. While there was recognition of the growing environmental consciousness amongst the Hong Kong people and aspiration for involvement in the management and care of their environment, public participation appeared to be perceived as a necessary evil that had to be tolerated but would best be done away with as the public would try to delay or derail projects. Efforts by third parties to use the appeal mechanism to force the EPD to reconsider a project, for example, was viewed as tantamount to abuse of the system and ultimately detrimental to the city's economic prosperity rather than legitimate involvement in the political process for the expression of less materialistic values or the protection of property rights.<sup>29</sup>

The landfill controversy indicates that such attitudes may have to change to meet Hong Kong society's rising environmental awareness and concern for quality of life as the people would not hesitate to use political and legal action to halt governmental plans.

<sup>28</sup> *Ibid.*, "The Administration has emphasized that it is appropriate to confine the rights of appeal to project proponents for the purpose of the Bill. The Administration is deeply concerned about the likely impacts on the programming and implementation of approved development projects should the appeal process be opened up to third parties", para 38.

<sup>29</sup> It can be argued that third parties who wish to contest an EIA decision may resort to judicial review. However, as pointed out by Hon Christine Loh, who was the deputy chairperson of the Bills Committee on the EIA Bill, judicial review is not a substitute for a statutory right of appeal. A plaintiff will have to demonstrate sufficient interest in the matter in order to satisfy standing requirements and this technical hurdle is not easy to cross in cases concerning the environment. Further, judicial review is concerned with the legality and procedural correctness of a decision. The substantive merits of a decision by the executive branch of government cannot be challenged by judicial review. Hon Christine Loh had proposed allowing members of the public who had participated at the early stages of the EIA process and had cogent objections to the EPD's decisions to bring the matter to the Appeal Board for an independent re-assessment. This proposal did not receive much support and a decision not to proceed with it was eventually taken; see paras 37 and 40 of the Paper for the House Committee meeting on 10 Jan 1997: Report of the Bills Committee on Environmental Impact Assessment Bill, LegCo Paper No CB(1)640/96-97, Ref: CB1/BC/20/95.

## Waste Management in Hong Kong

As discussed earlier, the administration justifies the landfill extension on its prediction that all landfills will be filled up in 2010s.<sup>30</sup> In the Policy Framework, EPD proposed to develop Integrated Waste Management Facilities (IWMF) as another mechanism for the end-treatment of waste.<sup>31</sup> However, the administration's position is that, even when IWMF are commissioned in mid-2010s as planned, "landfills will still be required as the final repositories for non-recyclable waste, inert waste and waste residues after treatment".<sup>32</sup> It is further estimated that "the demand for landfill space from 2006 to 2025 is around 200 million tonnes, while the remaining landfill capacity, at the end of 2004 was 90 million tonnes".<sup>33</sup> These justifications beget two questions. First, is the shortfall of capacity as imminent as the administration has portrayed? Second, have alternatives to landfill disposal been sufficiently explored as part of our waste management policy?

### *Shortfall of Landfill Capacity*

The first question was taken up in a representation by a Sai Kung District Council member, Mr Raymond Ho.<sup>34</sup> Reviewing figures from EPD on the amount of solid waste disposed at landfills from 2001 to 2008,<sup>35</sup> it was found that the amount has in fact been "decreasing steadily since 2006".<sup>36</sup> Mr Ho attributed this to the introduction of a charging scheme for construction and demolition (C&D) waste in 2006<sup>37</sup> and (to a lesser extent) the increase in "our domestic waste recovery rate from 14% in

<sup>30</sup> See n 5 above, s 2.2.

<sup>31</sup> IWMF are described as "state-of-the-art" facilities with "incineration as the core technology". See n 2 above, p 3.

<sup>32</sup> See n 5 above, s 2.2.

<sup>33</sup> *Ibid.*

<sup>34</sup> Ho Man Kit, Raymond, "Written Submission to the Legislative Council's Subcommittee on Country Parks (Designation) (Consolidation) (Amendment) Order 2010", CB(1)2469/09-10(06), 5 July 2010, available at [http://www.legco.gov.hk/yr09-10/english/hc/sub\\_leg/sc09/papers/sc090713cb1-2469-6-e.pdf](http://www.legco.gov.hk/yr09-10/english/hc/sub_leg/sc09/papers/sc090713cb1-2469-6-e.pdf).

<sup>35</sup> The author retrieved the figures from EPD, "Monitoring of Solid Waste in Hong Kong: Waste Statistics for 2008", Nov 2009, available at <https://www.wastereduction.gov.hk/en/materials/info/mw2008.pdf>.

<sup>36</sup> *Ibid.*, p 4, s 5.

<sup>37</sup> *Ibid.* See also n 2 above, s 118.

2004 to 35% in 2009”.<sup>38</sup> He further took issue with EPD’s claim that “the demand for landfill space from 2006 to 2025 is around 200 million tonnes”,<sup>39</sup> ie an average of 10 million tonnes per year.<sup>40</sup> Based on his calculations, the amount of solid waste actually disposed in 2008 was only 4.93 million tonnes.<sup>41</sup> This figure could be even lower in the coming years should the decreasing trend continue. The shortfall of landfill capacity does not appear to be as critical as asserted.

### *Alternatives to Landfill Disposal*

The basic principles of environmental law and policy governing waste management are (1) reduction at source and (2) polluter-pays. While the Policy Framework encompasses elements of both, the proposals therein are far from progressive, and their implementation has been piecemeal at best. For instance, despite the encouraging improvement in our domestic waste recovery rates, no effort has been made to build on this momentum and strengthen voluntary schemes on waste separation and recycling.<sup>42</sup> Also, despite the success of C&D charging, the equivalent scheme for municipal solid waste (MSW) has remained in the pipeline for years. It was envisaged in the Policy Framework that a “MSW Charging Bill can be introduced in 2007”, but this has not happened so far.<sup>43</sup>

In 2008, the Product Eco-responsibility Ordinance (Cap 603) was enacted to provide the legal basis for introducing mandatory producer responsibility schemes (PRS).<sup>44</sup> The following year saw the launch of the Environmental Levy Scheme on Plastic Shopping Bags.<sup>45</sup> While this is a welcome move, there should be wider implementation of PRS to include a greater range of items and producers (rather than just consumers). The administration should, for instance, speed up the introduction of the PRS scheme on waste electrical and electronic equipment.<sup>46</sup>

<sup>38</sup> The author retrieved these figures from the Policy Framework, n 2, above s 88 and EPD’s Paper for LegCo’s Panel on Environmental Affairs discussion on 29 Mar 2010. See EPD, “Update on the Progress of the Key Initiatives in the ‘Policy Framework for the Management of Municipal Solid Waste (2005-2014)’”, CB(1) 1443/09-10(04), Mar 2010, available at <http://www.epd.gov.hk/epd/psb/files/ea0329cb1-1443-4-e.pdf>.

<sup>39</sup> See n 5 above, s 2.2.

<sup>40</sup> See n 26 above, p 5, s 6.

<sup>41</sup> *Ibid.*

<sup>42</sup> See, for example, EPD, Subcommittee on Country Parks (Designation) (Consolidation) (Amendment) Order 2010 Information Paper, CB(1)2283/09-10(01), June 2010, available at [http://www.legco.gov.hk/yr09-10/english/hc/sub\\_leg/sc09/papers/sc090622cb1-2283-1-e.pdf](http://www.legco.gov.hk/yr09-10/english/hc/sub_leg/sc09/papers/sc090622cb1-2283-1-e.pdf).

<sup>43</sup> See n 2 above.

<sup>44</sup> See n 30 above, s 10.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*, s 11.

In fact, if the administration has the political will, there is much to be learnt from similar schemes in nearby jurisdictions. In South Korea, for example, a standard plastic garbage bag has to be purchased for the discharge of waste.<sup>47</sup> This creates an incentive for individual households to minimise their rubbish. In Taiwan, there is regulation on a weight-based fee for waste disposal.<sup>48</sup> Legislation is also in place mandating households to sort recyclable materials from waste.<sup>49</sup> In addition, there is a levy on producers for the processing costs of the waste generated by their products.<sup>50</sup> This is an effective means to encourage packaging minimisation along the production line. The use of such financial incentives and legislative tools is currently absent in Hong Kong. They should nevertheless be actively considered and pursued in order to reduce our reliance on landfills and enhance the sustainability of our waste management strategy.

## Conclusion

The controversy no doubt offers a timely opportunity for the administration and Hong Kong society to rethink our approach to waste management, as well as other critical environmental and developmental problems that confront our society. This article has demonstrated that the landfill saga is one which could have been averted. Now that the matter is temporarily put to a halt, stakeholder concerns about the proposed extension should be properly addressed by the administration which should also remain receptive to other possibilities, including that of not pressing forward with the extension. This would require the EPD to explore more sustainable waste management strategies, which is precisely what our city needs in the long term.

<sup>47</sup> Ministry of Environment, Republic of Korea, "Volume Based Waste Fee System", available at [http://eng.me.go.kr/content.do?method=moveContent&menuCode=pol\\_rec\\_pol\\_system](http://eng.me.go.kr/content.do?method=moveContent&menuCode=pol_rec_pol_system).

<sup>48</sup> Environmental Law Library, Taiwan, "General Waste Clearance and Disposal Fee Collection Regulation", available at <http://law.epa.gov.tw/en/laws/868325166.html>.

<sup>49</sup> Environmental Protection Administration, Taiwan, "Source minimization and resource recycling", available at <http://www.epa.gov.tw/en/epashow.aspx?list=112&path=162&guid=ea7fe796-431b-4947-a63f-c10726312734&lang=en-us>.

<sup>50</sup> See "Introduction of the Recycling Fund Management Board", available at <http://www.epa.gov.tw/en/epashow.aspx?list=115&path=483&guid=afb5d630-f644-42ea-9fa0-80b16db88037&lang=en-us>.