

Letterhead of Environment and Food Bureau Government Secretariat

Our Ref: TC/EFB 9/55/20/07 Pt 2

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25 April 2001

Ms. Pauline Ng
Clerk to Finance Committee
LegCo Secretariat
8 Jackson Road
Central

Dear Ms. Ng,

**Remuneration Package for the Chairman of
Environmental Impact Assessment Appeal Board**

At the Finance Committee (FC) meeting held on 5 January 2001, Members asked the Administration to provide additional information on the various statutory time limits of the Environmental Impact Assessment (EIA) Ordinance and on whether the cost of constituting the EIA Appeal Board could be awarded against a party to the appeal.

Under section 4(2) of the Environmental Impact Assessment (Appeal Board) Regulation, the respondent of the appeal (i.e. DEP) shall within 60 days of receipt of a copy of the notice of appeal serve notice on the Chairman of the Appeal Board and the appellant of details about the respondent's authorized representative, details about the proposed witnesses and particulars of the evidence to be given by the witnesses. Section 7 of the said Regulation provided that following the expiration of the 60 days or the compliance by the respondent of that section, whichever is the earlier, the Chairman of the Appeal Board shall fix the date, time and place of the hearing of the appeal so as to enable the hearing to commence as soon as is reasonably practicable and shall, not less than 28 days before the date so fixed, serve on the appellant and on the respondent notice of the date, time and place of the hearing.

The Administration's concerns at the FC meeting, however, are not so much about not being able to meet the above statutory time limits. Our concerns were that without the Chairman of the Appeal Board, the appeal proceedings would be held in abeyance as both parties of the appeal would not be able to obtain directions on matters in relation to their preparation of the hearings. It would, therefore, be highly desirable in the public interest for the Chairman to be appointed quickly, thereby enabling the hearings to commence as soon as practicable.

The question of cost is something to be decided by the Appeal Board pursuant to section 19(7) of the EIAO in due course. As to whether the cost of constituting the EIA Appeal Board could be awarded against a party to the appeal, we are not aware of any instances whereby parties to a statutory appeal have to bear the cost of constituting the appeal board or tribunal (which is normally absorbed by the Administration) in the absence of clear provision thereof in the relevant ordinances which set up the board or tribunal. We note that there is neither such an express provision nor a definition of the expression "cost of the appeal" in the EIAO. In view of the fact that there is a pending appeal before the said Appeal Board, we are of the view that it is not appropriate for the Administration to express a view on this issue at this stage.

Yours sincerely,

(Donald Tong)
for Secretary for the Environment and Food

c.c. Secretary for the Treasury (Attn: Mr Charles Tsang) - 2147 5237