

立法會
Legislative Council

LC Paper No. CB(1) 1307/06-07

(These minutes have been seen
by the Administration)

Ref: CB1/BC/2/05/2

**Bills Committee on
Hazardous Chemicals Control Bill**

**Minutes of the sixth meeting
held on Thursday, 15 March 2007, at 10:45 am
in Conference Room B of the Legislative Council Building**

Members present : Hon CHOY So-yuk, JP (Chairman)
Hon SIN Chung-kai, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP

**Public officers
attending** : Environmental Protection Department
Mr Carlson K S CHAN
Deputy Director of Environmental Protection

Dr Stephanie MA
Senior Environmental Protection Officer

Department of Justice

Ms Frances HUI
Senior Government Counsel

Ms Phyllis POON
Government Counsel

Clerk in attendance : Miss Becky EU
Chief Assistant Secretary (1)1

Staff in attendance : Miss Monna LAI
Assistant Legal Adviser 7

Mrs Mary TANG
Senior Assistant Secretary (1)2

I Confirmation of minutes

(LC Paper No. CB(1) 1077/06-07 -- Minutes of the meeting held 29 January 2007)

The minutes of the meeting held on 29 January 2007 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1) 1106/06-07(01) -- List of follow-up actions arising from the discussion on 29 January 2007
LC Paper No. CB(1) 1106/06-07(02) -- Administration's response to LC Paper No. CB(1) 1106/06-07(01)
LC Paper No. CB(1) 1106/06-07(03) -- Assistant Legal Adviser's letter dated 7 March 2007 to the Administration)

2. The Committee deliberated (Index of proceedings attached at **Annex A**).
3. The Administration was requested to -
 - (a) review the policy behind clauses 16(2), 17(2), 21(1), 29(1) and 39 and, if necessary, amend those provisions to the effect that a new permit would only be issued to the permit holder upon return of his existing permit;
 - (b) review the propriety of imposing strict liability on employers under clause 41. It was also pointed out to the Administration that clause 41(a) seemed to be different from the common law position – the latter seemed to be that the employer would not be liable where the employee acted outside the course of his employment;
 - (c) explain the policy behind clause 44 and clause 26; and whether or not failure to receive an actual notice served under clause 44 was a defence under clause 26;
 - (d) advise the rationale for not extending the proposed control regime to possession of scheduled chemicals, given that prosecution against unauthorized transfer and smuggling of scheduled chemicals might not be feasible if there was no control over the possession of such chemicals. To also provide overseas experience in respect of control over possession of convention chemicals.
4. The next meeting would be determined after consultation with members.

III Any other business

5. There being no other business, the meeting ended at 12:44 pm.

Council Business Division 1
Legislative Council Secretariat
19 April 2007

Annex A

**Proceedings of the meeting of the
Bills Committee on Hazardous Chemicals Control Bill
Meeting on Thursday, 15 March 2007, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000157	Chairman	Confirmation of the minutes of meeting held on 29 January 2007 (LC Paper No. CB(1) 1077/06-07)	
000158 - 000225	Administration	<p>Discussion on the Administration's response to the list of follow-up actions arising from the discussion at the meeting on 29 January 2007 (LC Paper No. CB(1) 1106/06-07(02))</p> <p>The Administration undertook to revert to the Bills Committee in 2-3 weeks' time its stance on the liability of the Government and public officers in the event of non-compliance with the provisions of the Bill</p>	
000226 - 002053	Administration Chairman ALA7	<p>Issuance of new permits upon return of existing permits</p> <p>Administration's explanation -</p> <p>(a) In the case where the Director decided to vary the conditions of the permit under clause 13(1), the variation would take effect on the day specified in the notice and thereafter the conditions of the permit should be read subject to the variation; and</p> <p>(b) Notwithstanding that under clause 17(1), if the conditions of a permit were varied by the Director, the Director should issue a permit with the conditions varied to the permit holder, the Director was entitled to refuse to issue a permit under clause 17(1) if the permit holder failed to return the existing permit to him.</p> <p>Chairman's request that the policy be reviewed such that a new permit would only be issued upon return of the existing permit</p>	<p>The Administration to review the policy behind clauses 16(2), 17(2), 21(1), 29(1) and 39 so that a new permit would only be issued to the permit holder upon return of his existing permit.</p>

Time marker	Speaker	Subject(s)	Action required
002054 - 002222	Administration	<p>Review clause 40(4)(b) to make it clear how the period of six months should be counted</p> <p>Administration's explanation -</p> <ul style="list-style-type: none"> (a) Clause 40(4)(b), as it was drafted, already had the effect that the period of six months was to be counted from the first discovery of the alleged commission of the offence by the Director himself or any member of staff of the EPD acting on behalf of the Director. (b) In the light of Members' view, the Administration could consider amending clause 40(4)(b) so that the period of six months would be counted from the first discovery of the alleged commission of the offence by the Director or an authorized officer appointed by the Director under clause 38. 	
002223 - 004209	Administration Mr Andrew LEUNG ALA7 Chairman	<p>Response to ALA7's question on the employer's liability under clause 41</p> <p>Mr Andrew LEUNG's concern -</p> <ul style="list-style-type: none"> (a) Clause 41 as drafted would impose strict liability on the employer who would be held liable for the acts of the employee who had acted without the former's authority; (b) The provisions were inconsistent with the common law under which the employer would be held liable for the torts of the employee only if a wrongful act was authorized by the former; and (c) There was a need to review the propriety of imposing strict liability on the employer given that the nature of the offence under the Bill itself might not be serious enough to justify the said imposition 	<p>The Administration to review the propriety of imposing strict liability on employers under clause 41. It was also pointed out to the Administration that clause 41(a) seemed to be different from the common law position – the latter seemed to be that the employer was not liable where the employee acted outside the course of his employment</p>

Time marker	Speaker	Subject(s)	Action required
		<p>Administration's explanation -</p> <p>(a) Clause 41 did not impose any criminal liability on an employer. The Administration further supplemented that the presumption under clause 41(b) may be rebutted by evidence that the employer did not know the material facts known to the employee; and</p> <p>(b) The defence under clauses 6(3), 7(3), 8(3) and 9(3) was also available to an employer</p> <p>ALA7's queries -</p> <p>(a) The provision of defence under clauses 6(3), 7(3), 8(3) and 9(3) ran contrary to the imposition of strict liability on the employer under clause 41 in which mens rea of the employer should not be considered; and</p> <p>(b) An employee who acted outside his course of employment to use a hazardous chemical in the possession of the employer without knowing that the chemical was a scheduled chemical may be able to rely on the defence available but the employer might not have the same defence if he knew that the chemical was a scheduled chemical</p> <p>Chairman's view that the scenario as described by ALA7 would likely occur as possession of scheduled chemicals was not an offence. It would be difficult to raise evidence to the contrary to rebut the presumption</p>	

Time marker	Speaker	Subject(s)	Action required
004210 - 010710	ALA7 Administration Chairman	<p>Discussion on whether or not failure to receive an actual notice served under clause 44 was a defence under clause 26</p> <p>ALA7's concern -</p> <ul style="list-style-type: none"> (a) Permit holders might not be aware of the notice given by Director under clause 26 if it was served to "a person apparently concerned in the management of, or apparently employed by, the body corporate"; and (b) Permit holders who failed to receive an actual notice served under clause 44 and thus was unaware of the directions would still be held liable for the offence since failure to receive the notice was not a defence <p>Administration's explanation -</p> <ul style="list-style-type: none"> (a) The effect of clause 44 was that a notice would be regarded as having been duly served if the mode of service as prescribed in clause 44 was complied with; and (b) Regarding paragraph (b) of ALA's concern above, the defence of "reasonable and honest belief" was available to the offence under clause 26. Whether certain facts/evidence from the permit holder could establish such a defence under clause 26 was a matter for the court to decide 	<p>The Administration to explain further the policy behind clause 44 and clause 26; whether or not failure to receive an actual notice served under clause 44 was a defence under clause 26</p>
010711 - 011820	Administration	<p>Committee Stage amendments proposed by the Administration</p> <p>To be considered later with other amendments</p>	

Time marker	Speaker	Subject(s)	Action required
011821 - 012912	ALA7 Administration Chairman	Discussion on the power of the Director and whether he could make reference to the requirements of the two Convention when performing his statutory functions under the Bill	
012913 - 015124	Administration Mr SIN Chung-kai Chairman	<p>Continuation of clause-by-clause examination of the Bill</p> <p>Clauses 6 to 9</p> <p>Chairman's query on the rationale for not extending the proposed control regime to possession of scheduled chemicals, given that prosecution against unauthorized transfer and smuggling of scheduled chemicals might not be feasible if there was no control over the possession of such chemicals.</p> <p>Administration's explanation -</p> <ul style="list-style-type: none"> (a) Control over possession of scheduled chemicals might not be necessary under the Bill so long as their manufacture, import, export and use were being regulated; (b) The scope of control of the Bill to cover the manufacture, import, export and use of scheduled chemicals was in line with Convention requirements; and (c) Restriction on the possession of scheduled chemicals could have a much wider implication as permits would be required by carriers for storage and transport of chemicals <p>Chairman's request that reference be made to the Protection of Endangered Species of Animals and Plants Ordinance regarding the control on the possession of scheduled species</p>	<p>The Administration to advise the rationale for not extending the proposed control regime to possession of scheduled chemicals, given that prosecution against unauthorized transfer and smuggling of scheduled chemicals might not be feasible if there was no control over the possession of such chemicals. To also provide overseas experience in respect of control over possession of convention chemical</p>
015125 - 015200	Chairman	Arrangements for the next meeting	