

**立法會**  
**Legislative Council**

LC Paper No. CB(1) 429/06-07  
(These minutes have been seen  
by the Administration)

Ref: CB1/BC/2/05/2

**Bills Committee on  
Hazardous Chemicals Control Bill**

**Minutes of the second meeting  
held on Monday, 20 November 2006, 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 Esmond LEE  
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 YU  
Chief Assistant Secretary (1)1
- Staff in attendance** : Miss Monna LAI  
Assistant Legal Adviser 7  
  
Mrs Mary TANG  
Senior Assistant Secretary (1)2
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**I Meeting with the Administration**

- (LC Paper No. CB(1) 2287/05-06(01) -- List of follow-up actions arising from the discussion on 28 June 2006
- LC Paper No. CB(1) 2287/05-06(02) -- Administration's response to LC Paper No. CB(1) 2287/05-06(01)
- LC Paper No. CB(1) 1876/05-06(01) -- A list of questions raised by Hon CHOY So-yuk (Chinese version only)
- LC Paper No. CB(1) 2287/05-06(03) -- Administration's response to the list of questions raised by Hon CHOY So-yuk)

The Administration was requested to –

- (a) make it clear in the definition of “manufacture” under clause 2 that the Bill did not cover the unintentional production and release of scheduled chemicals. To also review the drafting of the definition to eliminate any ambiguity between the Chinese and English renditions, in particular the phrase “causing the chemicals to be manufactured” which might give an impression that the Bill would cover chemicals unintentionally produced during a manufacturing process, which was indeed not the policy intent;
- (b) consider setting out clearly the parts of the two Conventions which were relevant to the provisions in the Bill as it was not clear on the extent of power conferred on the Director in enforcing the requirements under the two Conventions on the manufacture, export, import and use of scheduled chemicals; and
- (c) re-consider the suitable legislative tool, negative vetting, positive vetting or positive resolution, to be used for the inclusion of convention and non-convention chemicals in Schedules 1 and 2 of the Bill.

2. Members agreed that the next meeting would be held on Wednesday, 6 December 2006, at 8:30 am.

**II Any other business**

3. There being no other business, the meeting ended at 12:48 pm.

**Proceedings of the meeting of the  
Bills Committee on Hazardous Chemicals Control Bill  
Meeting on Monday, 20 November 2006, at 10:45 am  
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000140	Chairman	Opening remarks	
000141 - 001407	Administration ALA7 Chairman	<p>Administration's response to the list of follow-up actions arising from the discussion at the meeting on 28 June 2006 (LC Paper No. CB(1) 2287/05-06(02))</p> <p>Definition of "manufacture"</p> <p>Chairman's and ALA7's concern that the definition of "manufacture" was not clear as to whether the unintentional production and release of scheduled chemicals during a manufacturing process was covered by the Bill –</p> <p>(a) reference was made to the definitions of "manufacture" under the Dangerous Drugs Ordinance (Cap. 134) and the Dangerous Goods Ordinance (Cap. 295) which covered the alteration of the nature and form of substances; and</p> <p>(b) the policy intent of excluding unintentionally produced by-products should be clearly spelt out in the Bill</p> <p>Administration's explanation –</p> <p>(a) the term "manufacture" involved an intention or a deliberate act to make something and would not include anything unintentionally produced; and</p> <p>(b) the definition would be reviewed in the light of members' concern</p>	<p>The Administration to make it clear in the definition of "manufacture" under clause 2 that the Bill did not cover the unintentional production and release of scheduled chemicals.</p>

Time marker	Speaker	Subject(s)	Action required
001408 - 002557	Ms Audrey YU Administration Mr SIN Ching-kai Chairman ALA7	Ms Audrey YU's request for clarification of the phrase "causing the chemicals to be manufactured" which might not be consistent with the Chinese rendition of "安排製造該化學物"  Administration's explanation that "causing the chemicals to be manufactured" would cover the scenario in which a person asked someone to manufacture a chemical on his behalf	
002558 - 002809	Chairman Administration Mr SIN Ching-kai ALA7	Discussion on the phrase "causing the chemicals to be manufactured" which might give an impression that the Bill would cover chemicals unintentionally produced during a manufacturing process	The Administration to review the drafting of the definition since the phrase "causing the chemicals to be manufactured" might give an impression that the Bill would cover chemicals unintentionally produced during a manufacturing process
002810 - 003218	Chairman Administration Mr SIN Ching-kai Ms Audrey YU ALA7	Discussion on members' proposal of specifying convention and non-convention chemicals in different schedules  Administration's explanation that it was not appropriate to specify convention and non-convention chemicals in different schedules because the policy intent was to exercise the same statutory control on hazardous chemicals regardless of whether they were covered by the two Conventions or not	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
003219 - 003638	Chairman ALA7 Ms Audrey YU Administration	<p>Discussion on the legislative tools to be used for the inclusion of convention and non-convention chemicals in Schedules 1 and 2 of the Bill</p> <p>Administration's explanation –</p> <p>(a) hazardous chemicals under the control of the Bill would include (but not limited to) chemicals under the Stockholm Convention (SC) and Rotterdam Convention (RC). This would allow for greater flexibility in the control of non-convention chemicals for the protection of the community as it might take years for these hazardous chemicals to be included in SC and RC; and</p> <p>(b) addition of non-convention chemicals to the Schedules would be subject to public consultation and negative vetting procedure, thereby leaving sufficient time for the Legislature to scrutinize such an amendment</p>	

Time marker	Speaker	Subject(s)	Action required
003639- 004828	<p>Mr SIN Ching-kai Administration ALA7 Ms Audrey YU</p>	<p>Discussion on the feasibility of amending Schedules by way of positive resolution</p> <p>Administration’s response –</p> <p>(a) inclusion of non-convention chemicals in the Schedules aimed to protect the community; and</p> <p>(b) the Administration had no strong opinion in introducing amendments to the Schedules in the form of a subsidiary legislation under a negative vetting procedure or a positive resolution as prior consultation would be conducted</p> <p>Mr SIN Chung-kai’s support for amendments to the Schedules by way of positive resolution, in line with the Pharmacy and Poisons Ordinance (Cap. 138)</p> <p>Chairman’s support for amendments to the Schedules involving convention chemicals to be introduced in the form of subsidiary legislation subject to the negative vetting procedure; while those involving non-convention chemicals to be introduced in the form of positive resolution as the latter would allow more time for scrutiny. Consideration could also be given to specifying convention and non-convention chemicals in different schedules. Her views were shared by Ms Audrey EU</p>	

Time marker	Speaker	Subject(s)	Action required
004829 - 011915	Ms Audrey YU Administration Chairman ALA7 Mr SIN Chung-kai	<p>Discussion on negative vetting procedure and positive resolution with reference to previous discussions by the Bills Committee on the Protection of Endangered Species of Animals and Plants Bill</p> <p>Administration's views –</p> <p>(a) same statutory regime should apply to both convention and non-convention chemicals;</p> <p>(b) use of different vetting procedures for amendments to the same schedules to a bill was unprecedented and further consideration was required; and</p> <p>(c) separate schedules for non-convention chemicals might have to be introduced if a different vetting procedure was to apply to these chemicals. However, the amendment procedures would be very cumbersome indeed if the non-convention chemicals were subsequently covered by the two Conventions at a later stage and needed to be included in the appropriate schedules through different vetting procedures</p>	<p>The Administration to re-consider the suitable legislative tool, negative vetting, positive vetting or positive resolution, to be used for the inclusion of convention and non-convention chemicals in Schedules 1 and 2 of the Bill.</p>

Time marker	Speaker	Subject(s)	Action required
011916 - 020212	Chairman ALA7 Administration	<p>Discussion on the mode of implementation of the two Conventions and their applicability to local legislation</p> <p>ALA7's concerns about the power of the Director of Environmental Protection (the Director) to automatically incorporate requirements under SC and RC (which were not specified in the Bill) as conditions for issuance/variation/cancellation of permits, since some of these requirements might need to be suitably modified to cater for local situation and should be subject to the scrutiny of the Legislature-</p> <p>(a) the present drafting would have the effect of automatically applying the latest requirements of the two Conventions to Hong Kong, which might or might not be suitable to the local situation and would not be subject to the scrutiny of the Legislature. It was pointed out that provisions under the Waste Disposal (Amendment) Bill relating to Hong Kong's obligations under the Basel Convention were subsequently deleted to avoid creating an undesirable precedent on the mode of implementation of international conventions applicable to Hong Kong in local legislation without scrutiny by the Legislative Council; and</p> <p>(b) in line with present practice, if any, reference to the conventions was drawn, it should be set out clearly in the Bill. Requirements of the two Conventions, like "environmentally sound disposal" and "best practice" etc, which were quite vague, should also be clarified</p>	<p>The Administration to consider setting out clearly the parts of the two Conventions which were relevant to the provisions in the Bill as it was not clear on the extent of power conferred on the Director in enforcing the requirements under the two Conventions on the manufacture, export, import and use of scheduled chemicals</p>



Time marker	Speaker	Subject(s)	Action required
011916- 020212	Chairman ALA7 Administration	<p>Administration's response –</p> <p>(a) the Bill as presently drafted would impose duty on the Director to have regard to the requirements of the two Conventions when exercising his powers under the Bill and would also limit the discretionary power of the Director;</p> <p>(b) the Bill had set out clearly the mechanism of control over hazardous chemicals; and</p> <p>(c) similar provisions were provided in sections 23(3) and 24(2) of the Protection of Endangered Species of Animals and Plants Ordinance</p> <p>Ms Audrey EU's views –</p> <p>(a) the deletion of the reference to Convention requirements concerning permits would have the effect of giving the Director unlimited discretionary power in the issuance/variation/cancellation of permits;</p> <p>(b) there might be technical difficulties in setting out concisely the requirements of the Convention relevant to the provisions in the Bill in view of the changing developments in hazardous chemicals control, but consideration could be given to providing some guidance in the respect; and</p> <p>(c) a person aggrieved by the decision of the Director could appeal to the Administrative Appeal Board</p>	
020213 - 020307	Chairman	Next meeting to be held on Wednesday, 6 December 2006, at 8:30 am	