

立法會
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seen by the Administration)

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**Subcommittee on
Water Pollution Control (Sewerage) (Amendment) Regulation 1998**

**Minutes of meeting
on Friday, 31 July 1998, at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Emily LAU Wai-hing, JP (Chairman)
Hon Christine LOH
Hon LAU Kong-wah
Hon LAW Chi-kwong, JP

Members absent : Hon Albert HO Chun-yan

Public officers attending : Mr Kim SALKELD
Deputy Secretary for Planning, Environment
and Lands (Environment)

Mr Eugene FUNG
Acting Principal Assistant Secretary for Planning,
Environment and Lands (Environment)

Mr Patrick C K LEI
Principal Environmental Protection Officer
Environment Protection Department

Dr David HA
Senior Environment Protection Officer
Environment Protection Department

Mr David CHEUNG
Senior Engineer/Sewerage Projects
Drainage Services Department

Miss Frances HUI

Government Counsel
Department of Justice

Clerk in attendance : Miss Odelia LEUNG, Chief Assistant Secretary (1)1

Staff in attendance : Mr KAU Kin-wah, Assistant Legal Adviser 6
Mrs Mary TANG, Senior Assistant Secretary (1)2

I Election of Chairman

Miss Emily LAU was elected Chairman of the Subcommittee.

II Meeting with the Administration

2. The Deputy Secretary for Planning, Environment and Lands (DS/PEL) briefly explained the background to the introduction of the Water Pollution Control (Sewerage) (Amendment) Regulation 1998 (the Regulation) as follows -

- (a) Before the Water Pollution Control Ordinance, Cap. 358 was enacted in 1994, sewerage works were treated like any utility works. Where these incurred capital works requiring land resumption, they would be dealt with under the Crown Land Resumption Ordinance, Cap. 124;
- (b) If road openings works were required, there were standard procedures to be followed. If the road opening works were of a minor scale, no gazetting was required. Where these involved major disruption, they would have to be gazetted under Roads (Works, Use and Compensation) Ordinance, Cap. 370 (the Roads Ordinance). Excavation permits would be required for all road opening works. Emergency works lasting not more than 72 hours would be covered by a block excavation permit issued by Highways Department in every six months;
- (c) The major extension of sewerage works in rural areas had led to the introduction of the Water Pollution Control (Sewerage) Regulation which gave powers to deal with land resumption in connection with village sewerage works;

- (d) When the draft Regulation was prepared, the Administration was more concerned about land resumption. It considered that the Director of Environmental Protection (DEP) could be authorised to close roads on a limited scale by exercising the power given under section 2 of the Regulation which stated that DEP might construct, maintain, repair or demolish any sewerage works. A provision similar to section 4 of the Roads Ordinance, which exempted the gazettal requirement for a scheme of works involving closure of roads on a limited scale, was therefore not included in the Regulation;
- (e) Subsequent to the enactment of the Regulation in 1994, the then Attorney General's Chambers advised that section 2 of the Regulation did not empower DEP to close roads and since section 4 of the Roads Ordinance was not applied, the only power available to close roads for the purpose of sewerage works was conferred by virtue of section 17 of the Roads Ordinance, as applied by section 26 of the Regulation, but for this gazetting was required;
- (f) In view of the vast number of sewerage works which required closure of roads on a limited scale, DEP had been resorting to administrative means to complete these types of minor but essential sewerage works without gazetting. This was because gazetting required as least six months to complete and would seriously disrupt the works schedule. However, legal advice obtained was that this practice could any time be subject to legal challenge; and
- (g) The purpose of the Amendment Regulation was to resolve the problem by applying section 4 of the Roads Ordinance to the Regulation for the purpose of carrying out sewerage works.

3. Referring to section 4(1)(b)(ii) of the Roads Ordinance which gave the Secretary for Transport the power to close roads for a period not exceeding 14 days in any period of three months, a member was concerned about what would happen if the works were delayed beyond 14 days.

4. In response, the Senior Engineer / Sewerage Projects, Drainage Services Department (SE/DSD) advised that section 4(1)(b)(ii) was seldom applied because it was more restrictive and involved full closure of a road. Section 4(1)(b)(iii) was more often applied as this allowed more flexibility and involved partial closure of road. Where a more extensive disruption was envisaged, gazettal of the scheme of works would be required.

5. SE/DSD further advised that in the event that the road works were delayed, extension of excavation permits would need to be applied. Extensions would normally be allowed for delays due to unforeseen circumstances. However, in cases where the works could not be completed on time because of inadequate resources, the road would have to be re-opened for traffic and excavation permits had to be re-applied. Prosecution/regulatory actions by Police/Highways Departments would be taken against breaches of Road Traffic (Traffic Control) Regulations/conditions of excavation permits. Also, liquidated damages would be imposed against the contractor for late completion of works.

6. On members' concern about the co-ordination of works, SE/DSD advised that the Highways Department had implemented the Utility Management System which aimed at co-ordinating and expediting the issue of excavation permits. An utility company which was identified as the first company to commence works on a road had to liaise and co-ordinate with other utility companies intending to carry out works on the same road. The Highways Department would not issue excavation permits to the utility companies concerned unless it was satisfied with the co-ordinated plan. This had effectively minimised disruption to traffic by shortening the period required for road closure. With the exception of emergency and minor maintenance works, application for excavation permits had to be submitted to the Highways Department three months in advance of the actual commencement of works.

7. Members expressed concern about the use of administrative means by DEP to close roads in respect of minor sewerage works without going through the proper gazettal process. They wanted to know how long this practice had gone on, when the anomaly had been detected and why it had taken such a long time to introduce amendments to the Regulation to rectify the situation.

8. In response, representatives of the Administration made the following points -

(a) Subsequent to the enactment of the Regulation in June 1994, the then Attorney General's Chambers advised in early 1996 that section 2 of the Regulation did not empower DEP to close roads without gazetting and since section 4 did not apply, the only power available to DEP to close roads for the purpose of sewerage works was conferred by section 17 of the Roads Ordinance, as applied by Section 26 of the Regulation, but for this gazetting was required. The practice of using administrative means to carry out sewerage works involving road closure could at any time be subject to legal challenge;

(b) Consideration was then given to introducing amendments to

allow for the importation of section 4 of the Roads Ordinance into the Regulation. The Administration also took the opportunity to review the entire Regulation to see what other amendments were necessary to facilitate the execution of sewerage works, apart from the amendment proposed;

- (c) However, as the Amendment Regulation was not considered an essential legislation which should be introduced during the Provisional Legislative Council session, the Administration had decided to defer introduction of the Amendment Regulation until the Legislative Council 1998-99 session re-opened; and
- (d) In view of the vast number of sewerage works which needed to be completed, DEP had continued to resort to administrative means to execute minor but necessary sewerage works without gazetting them. So far, this practice had not been subject to any legal challenge.

9. As regards public consultation, members were advised that the Advisory Council on the Environment had been consulted on the Amendment Regulation but there had not been any consultation with transport operators.

10. On whether section 4(3), as applied by section 26 of the Regulation, would prevent any person from restraining or compelling anything authorised under the section or from recovering any money in respect of anything authorised under the section, the Government Counsel, Department of Justice affirmed that this was the case. She further added that a similar provision was made in section 9 and 10 of the Regulation except that compensation in pursuance of one of the rights to compensation under section 11 could be sought.

11. A member queried whether the arrangement under section 4(3) was fair to the affected residents. SE/DSD indicated that there were internal guidelines which governed the application of section 4. Where the sewerage works involved objections and land matters, section 4 would not be applied. With the exception of minor sewerage works and emergency works, public consultation with Provisional District Boards would normally be conducted before the execution of sewerage projects. The Transport Department and the Police were notified about road closure arrangements before the commencement of works.

12. Another member pointed out that since section 4(3) stipulated that there would be no right to compel or restrain anything which was authorised, it followed that if advance notification had been given such that members of the public were well aware of the impending works, they might be able to lodge their objections before the authorisation of these works. He was therefore of

the view that provision of advance notification was an important issue because it would allow objections to be raised before authorisation of works.

13. Members were concerned about the means by which members of the public were notified about the road closure. They generally considered gazetting not an effective means to convey a message to members of the public since it was unrealistic to expect them to read the Gazette. They pointed out that although minor sewerage works might only last a few days, these works might create great inconvenience to residents should their only means of access be obstructed or even be closed for the works. Members saw the need to have wider public consultation as well as more effective means to alert the public of the impending road closure.

14. In response, representatives of the Administration made the following points -

- (a) In the rural areas, it was easier to see how the residents were affected. Efforts would be made to explain to the village residents concerned about the nature and duration of works by holding meetings with the residents; installing notice signboards; and by distributing notices;
- (b) However, in urban areas, it would be more difficult to identify the people to be affected. It had been a practice for the Drainage Services Department to consult/inform members of the public, through discussions at Provisional District Boards and publication of notices in the Gazette and newspapers about a sewerage project and any associated road closure ;
- (c) Upon the actual commencement of works, a notice board containing information on the nature of works and date of completion of the works would be erected at the construction site. Telephone numbers would also be provided to enable members of the public to make enquiries or to lodge complaints. In the event that the road opening works needed to be extended, application for extension of excavation permit would be required. Also, Police/Transport Department would be consulted and notified for issuing the necessary Gazette Notice and/or press release where appropriate; and
- (d) In the event that a road which was the only means of access was closed for sewerage works, the project engineers would be required to re-open the road in emergency situations to provide access for ambulance and fire engines.

15. Members considered that notification by means of notices to be given

to the residents' organisation, which included Area Committees and Owners' Corporation would be a more effective means than publishing notices in Gazette and newspapers. They also pointed out the need to display notice boards some time before the actual commencement of works which involved road closure.

16. Members also sought information on the internal guidelines for invoking section 4 of the Roads Ordinance and the conditions for issue of excavation permits. They considered that there was a need to provide a channel to affected persons to seek redress for grievances arising from road closures.

17. Whilst the Administration agreed that the present arrangements for notification of road closure could be improved, it had reservations in introducing provisions in the Regulation for lodging objections and complaints. DS/PEL explained that there were already many channels available to members of the public to lodge objection and complaints and these would, as far as possible, be heeded by the departments concerned. He added that given the tight schedule of works, there were limits to whose requests for the re-scheduling of works could be entertained.

18. To address members' concern, the Principal Environmental Protection officer suggested that in the enactment of the Amendment Regulation, DEP, in delegating the authority to the Director of Drainage Services (DDS) in the execution of sewerage works involving road closure, would require DDS to ensure that all possible means would be employed to inform the affected residents in advance of the works.

19. Members considered that there was a need to hold another meeting to continue discussion and to allow the Administration to respond to members' concerns and proposals. It was agreed that the meeting would be held on 7 August 1998 at 2:30 pm.

III Any other business

20. There being no other business, the meeting closed at 10:00 am.

Legislative Council Secretariat

10 September 1998

