

立法會
Legislative Council

LC Paper No. CB(1) 2411/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/4/03/2

**Bills Committee on
Waste Disposal (Amendment) (No. 2) Bill 2003**

**Minutes of the seventh meeting
held on Thursday, 3 June 2004, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Dr Hon LAW Chi-kwong, JP (Chairman)
Hon LEE Cheuk-yan
Hon Miriam LAU Kin-yee, JP
Hon CHOY So-yuk
Hon LI Fung-ying, JP
Hon Michael MAK Kwok-fung
Hon Albert CHAN Wai-yip
Hon LEUNG Fu-wah, MH, JP
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, JP

Public officers attending : Environment, Transport and Works Bureau

Ms Doris CHEUNG
Deputy Secretary (Environment and Transport) E1

Mrs Teresa WONG
Principal Assistant Secretary (Environment and Transport) E2

Ms Joyce HO
Assistant Secretary (Environment and Transport) E2

Environmental Protection Department

Mr Elvis AU
Assistant Director (Environmental Assessment & Noise)

Dr Ellen CHAN
Assistant Director (Waste Facilities)

Mr Edmond HO
Principal Environmental Protection Officer (Waste Policy & Services)

Civil Engineering Department

Mr Michael LEUNG
Senior Engineer/Port Works

Department of Justice

Miss Shandy LIU
Senior Government Counsel

Clerk in attendance : Miss Becky YU
Chief Council Secretary (1)1

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Mary TANG
Senior Council Secretary (1)2

I. Meeting with the Administration

- (LC Paper No. CB(1) 2019/03-04(01) -- List of concerns arising from the discussion on 27 May 2004
- LC Paper No. CB(1) 2019/03-04(02) -- Administration's paper on "A Possible Option to Address the issue of Land Filling Activities on Private Land")

The Committee deliberated (Index of proceedings attached at **Annex A**).

2. The Administration was requested to -
 - (a) review the threshold for depth of filling under the option to regulate land filling activities under the Environmental Impact Assessment (EIA) Ordinance (Cap. 499);
 - (b) step up publicity on the care which employers and employers should take to ensure proper disposal of construction waste in order to avoid contravention of proposed section 16A;
 - (c) provide the past court case regarding the interpretation of the phrase “lawful excuse”;
 - (d) review the requirement of the part of proposed section 16A(4) on “and in either case that he took all steps reasonably open to him to ensure that an offence would not be committed”, which in members’ view was hard to comply with. Consideration should be given to revising it as “and in either case that he had no reason to believe that an offence would be committed”; and
 - (e) review the requirement of proposed section 23EA(1)(a) given that failure to establish an offence under proposed section 16A would render the entire section futile. The problem could not be resolved by deleting proposed section 23EA(1)(a) as entry to the place by the Director of Environmental Protection in the absence of such a provision might constitute an intrusion to privacy.

3. The meeting ended at 4:30 pm.

Council Business Division 1
Legislative Council Secretariat
21 July 2004

**Proceedings of the meeting of the
Bills Committee on Waste Disposal (Amendment) (No. 2) Bill 2003
Meeting on Thursday, 3 June 2004, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000119	Chairman	Introductory remarks	
000120 - 000834	Administration Ms Miriam LAU Administration	Discussion on the Administration's paper on "A Possible Option to Address the issue of Land Filling Activities on Private Land" (LC Paper No. CB(1) 2019/03-04(02))	
000835 - 001650	Mr Albert CHAN	<p>Member's enquiry on -</p> <p>(a) time frame for introducing the option;</p> <p>(b) whether the option would apply to land used for purposes other than agriculture e.g. fishponds</p> <p>Administration's response -</p> <p>(a) the option would tie in with the implementation of the waste disposal charging scheme to avoid massive landfilling activities on private land and would apply irrespective of land uses; and</p> <p>(b) fishponds within protected areas were governed under separate legislation</p>	
001651 - 001841	Mr Albert CHAN Chairman Administration	<p>Discussion on setting of the depth of filling at 1.2 metres -</p> <p>(a) need for freezing survey on private land situation; and</p> <p>(b) need to review depth of filling</p>	

Time marker	Speaker	Subject(s)	Action required
001842 - 002954	Miss CHOY So-yuk Chairman Administration	<p>Member's concerns on the option -</p> <ul style="list-style-type: none"> (a) the size of most agricultural land was less than the threshold of two hectares and therefore would not be covered by the option; (b) normal Environmental Impact Assessment (EIA) would require at least 12 months to complete; (c) the option would have no control over the content of waste to be disposed of; and (d) need to consider introducing a licensing system for land filling activities using construction waste <p>Administration's response -</p> <ul style="list-style-type: none"> (a) threshold of two hectares was set in accordance with similar requirement for public dumping areas under the EIA Ordinance; (b) existing environment and public health legislation provided for control against environmental nuisances associated with waste dumping; (c) the introduction of licensing system for land filling would cause undue inconvenience to private land owners as landowners of small plots of land would need to apply for licences to carry out land filling activities for farming or other purposes permitted under the Outline Zoning Plans; and 	

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		(d) EIA process would not take a long time to complete unless the land concerned was of a high ecological value. Each case had to be considered on individual merits	
002955 - 003118	Ms LI Fung-ying	Need to respect private land owners' right to use their land as long as it was permitted under the law	
003119 - 003449	Ms Miriam LAU Chairman	(a) Support for the option which would be able to regulate land filling activities without causing undue hardship to landowners; and (b) Concern about the high cost incurred from the introduction of a licensing system and the control over the content of waste to be disposed of	
003450 - 003727	Miss CHOY So-yuk	(a) Concern about the effectiveness of the option, which only applied to land filling areas of 2 hectares and a depth of 1.2 metres, in preventing dumping activities on a smaller scale; and (b) Absence of control over content of waste to be disposed of would create environmental problems	
003728 - 003817	Chairman Administration	Need to review the depth of filling given that the depth required for landscape tree planting was already 1.2 metres	The Administration to review the threshold for depth of filling under the option to regulate land filling activities under the Environmental Impact Assessment Ordinance (Cap. 499)

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003818 - 004128	Chairman	<p>Clause-by-clause examination of the Bill (LC Paper No. CB(1) 1497/03-04))</p> <p>Clause 1 - Short title and commencement</p> <p>Clause 2 - Interpretation</p>	
004129 - 010760	ALA4 Chairman Administration Ms LI Fung-ying	<p>Clause 3 - Section 16A</p> <p>Discussion on the provisions concerning the offence and defences in sections 16A, 18 and 31 and their application on defendants (LC Paper No. CB(1) 1497/03-04(03))</p> <p>(a) the reference to instructions of one's employer in the defence under section 16A should be construed to cover the instructions of a corporate employer's management, e.g. a foreman;</p> <p>(b) need to be clear about what constituted "all reasonable precautions and exercised all due diligence" under section 16A(3)</p>	The Administration to step up publicity on the care which employers and employers should take to ensure proper disposal of construction waste in order to avoid contravention of proposed section 16A
010761 - 011455	ALA4 Administration Chairman	<p>ALA4's queries -</p> <p>(a) whether section 31 created an absolute offence in relation to sections 16A and 18A; and</p> <p>(b) whether the word "reasonable" should be added before "excuse" in section 16A(1) in line with section 18A(4)</p>	The Administration to provide the past court case regarding the interpretation of the phrase "lawful excuse"

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		<p>Administration's explanation -</p> <p>(a) section 31 would not make sections 16A and 18A an "absolute offence" since exceptions, defences and excuses were provided in new sections 16A(1) and (3) as well as 18A(4) and (5);</p> <p>(b) new section 16A in the Bill maintained the expression "lawful authority or excuse" under the current section 16A with no intention to propose a deliberate change; and</p> <p>(c) interpretation of mistaken belief as a "lawful excuse" was set out in <i>HKSAR v Leung Chun Wai Sunny</i></p>	
011456 - 013660	<p>Ms Miriam LAU Administration Chairman Ms LI Fung-ying Ms Audrey EU ALA4</p>	<p>Members' concerns -</p> <p>(a) new section 16A(4) as drafted was too harsh and might not be practicable; and</p> <p>(b) consideration could be given to replacing the sentence "he took all steps reasonably open to him to ensure that an offence would not be committed" in new section 16A(4) with "he had no reason to believe that an offence would be committed"</p> <p>Administration's response -</p> <p>(a) the sentence "all steps reasonably open to him to ensure that an offence would not be committed" was meant to supplement section 16A(4)(a) and (b) to provide sufficient grounds for defence; and</p>	<p>The Administration to review the requirement of the part of proposed section 16A(4) on "and in either case that he took all steps reasonably open to him to ensure that an offence would not be committed", which in members' view was hard to comply with. Consideration should be given to revising it as "and in either case that he had no reason to believe that an offence would be committed"</p>

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		(b) “all steps reasonably open to him” would include acts such as consultation with peers	
013661 - 013911	Chairman	Clause 4 - Section 18A	
013912 - 015843	Chairman Ms Miriam LAU Administration Ms Audrey EU	<p>Clause 5 - Section 23EA Director’s power to remove waste in case of imminent risk of adverse environmental impact</p> <p>Members’ concern -</p> <p>(a) need to specify the circumstances under which a warrant should be issued for entry to “domestic premises” under section 23EA(4) given that waste deposited with the permission of the owner would not constitute an offence under section 16A(1);</p> <p>(b) who should be held responsible for the payment incurred from the removal of waste;</p> <p>(c) the Director of Environmental Protection (DEP) should only require the owner to remove the waste deposited in a domestic premises without having to resort to the issue of a warrant; and</p> <p>(d) the need for section 23EA(1)(a) since DEP should enter a place to remove the waste if this would pose an imminent risk of adverse environmental impact irrespective whether an offence was committed under section 16A. However, the removal of section 23EA(1)(a) might have impact on the privacy of the occupier</p>	<p>The Administration to review the drafting of proposed section 23EA(1)(a) given that failure to establish an offence under proposed section 16A would render the entire section futile. The problem could not be resolved by deleting proposed section 23EA(1)(a) as entry to the place by DEP in the absence of such a provision might constitute an intrusion to privacy</p>

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		<p>Administration's response -</p> <p>(a) section 23EA(1) meant to allow DEP to remove waste which he had reasons to believe to have been deposited illegally at a place, and would pose an imminent risk of adverse environmental impact if not removed;</p> <p>(b) warrants would need to be issued to enable DEP to enter domestic premises as otherwise he would be intruding in the privacy of the occupier; and</p> <p>(c) charges for removal of waste incurred by DEP could be recovered from the person who was found guilty of illegal disposal of the waste</p>	
015844 – 015913	Chairman	Date of next meeting	