

ETWB(E) 55/03/113 pt.29  
ETWB(E) 55/03/113B pt.2  
LS/B/7/03-04

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3 May 2004

Mr Stephen Lam  
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Dear Mr Lam,

**Waste Disposal (Amendment) (No.2) Bill 2003**

Our responses to the questions raised in your letter dated 20 April 2004 are as follows –

**Clause 3 – New section 16(A)5**

We consider that new section 16A(5)(a) does not constitute an independent defence. It only imposes a procedural requirement for the defendant to serve prior notice if he wishes to rely on a defence involving, among other matters, an allegation that the commission of the offence was due to an act or omission of another person. The defence will only be established if the defendant is able to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence as required by new section 16A(3).

Although the allegation stated in new section 16A(5)(b) coincides with part of the descriptions in new section 16A(4)(b), the former operates as a separate procedural requirement and should not be regarded as flowing directly from the latter. A defence involving an allegation that the defendant “relied on information supplied by another person” as stated in subsection (5)(b) may at the same time involves other allegations that do not coincide exactly with the remaining descriptions in subsection (4)(b). The defence can still be established so long as the defendant can prove that “he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence” as required by subsection (3).

As new section 16A(5) is meant to be a procedural requirement and should not be regarded as providing for further substantive defences independent of that provided by subsection (3), we consider that subsections (4) and (5) need not be redrafted for the purpose of regrouping the provisions.

Likewise, we do not consider that the requirement of “he took all steps reasonably open to him to ensure that an offence would not be committed” need to be added into new subsection 16A(5)(a) because this substantive element of the defence is already provided in subsection (3).

As previously explained, new section 16A(5) does not emanate directly from, and is not restricted by, the matters mentioned in new section 16A(4). Although the allegation stated in new section 16A(5)(b) coincides with part of the descriptions in new section 16A(4)(b), the former operates as a separate procedural requirement and should not be regarded as flowing directly from the latter. We therefore consider it unnecessary to show the relationship between the two.

**Clause 8(3) – New section 33(4)(ba)**

The existing section 33(1)(j) empowers the Chief Executive-in-Council (CE-in-Council) to make regulation to set out the amounts of charges payable to the Director for public services such as those in relation to waste disposal.

The proposed new section 33(4)(ba)(ii) at clause 8(3) of the Bill proposes that the regulations made by CE-in-Council under section 33 may include provisions, as regards any premises used for or in connection with activities such as waste disposal, to confer power on the Director of Environmental Protection to determine whether or not a charge is to be imposed in respect of any waste or class of waste accepted for disposal at a certain facility. This proposed power is intended to be exercised on-site by the Director in determining whether the waste carried by a vehicle to a facility is subject to a charge according to the relevant classification. You would note that under the proposed construction waste disposal charging scheme, only the disposal of construction waste at the facilities would be charged. The proposed power in new section 33(4)(ba)(ii) is different from the power of the CE-in-Council in prescribing the levels of charges by subsidiary legislation.

Yours sincerely,

(Joyce Ho)  
for Secretary for the Environment, Transport and Works