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CB1/PL/EA

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Mrs Mary Tang
Clerk to Panel
Legislative Council Building
8 Jackson Road
Central
Hong Kong

(Fax: 28696794)

Dear Mrs Tang,

**Panel on Environmental Affairs
Meeting on 24 November 2003**

I refer to paragraph 13 of the minutes of the captioned meeting and would like to provide additional information as requested.

At present, under section 16A of the Waste Disposal Ordinance (WDO), any person who without lawful authority or excuse deposits or causes or permits to be deposited any waste in a public place, on any Government land, or on any land other than Government land without the consent of the owner or occupier commits an offence. In other words, illegal disposal of waste is already a criminal offence under the existing law.

Under the Waste Disposal (Amendment) (No.2) Bill, the existing offence of unlawful depositing of waste under section 16A of the WDO is revised to make available the exception of having lawful authority or excuse or the permission of the owner or occupier of the land; to further stipulate that the driver of a vehicle (not being a public transport carrier) from which waste is deposited as well as the employer of that driver are to be regarded as the persons causing waste to be deposited; and to provide for the statutory defences of reasonable precautions and due diligence to a defendant charged with the offence of illegal disposal of waste.

The WDO has already provided for sanctions against illegal disposal of waste. However, as the introduction of the construction waste disposal charging scheme may aggravate the problem, we have proposed measures to strengthen control against illegal disposal of waste to minimize adverse impact on the environment. The proposed measures have been outlined in Paper CB(1)385/03-04(04). One of the proposed measures is to empower the magistrate to issue warrant to the Director of Environmental Protection (DEP) to enter any domestic premises to remove waste. Such power is subject to three conditions as set out in the new sections 23EA(4)(a), (b) and (c), that is, if the magistrate is satisfied by information on oath that there are reasonable grounds to believe that - (i) an offence under section 16A has been committed in those premises, or in a place that is accessible only through those premises; (ii) the waste deposited in those premises or in that place is likely to give rise to an imminent risk of adverse environmental impact; and (iii) action needs to be taken immediately to reduce or eliminate that risk. In the interest of protecting public health and the environment, we consider it justifiable to empower the magistrate to issue warrant for DEP to enter domestic premises to remove waste in case of imminent risk of adverse environmental impact.

There are provisions in the Buildings Ordinance which empower the Building Authority to enter into any premises or land to, inter alia, carry out necessary works to ensure that any building or street works will cease to cause a risk of injury to any person or damage to any property if a person served with an order to carry out such works fails to comply with the order. There are also similar provisions in various environmental ordinances which empower the magistrate to issue warrant for DEP to enter domestic premises for taking necessary enforcement actions. In the past three years, DEP has obtained 16 warrants from the magistrate to enter domestic premises for taking enforcement actions. Of them, 15 were obtained under section 37 of the Water Pollution Control Ordinance to obtain evidence of water pollution offences, and one was obtained under section 23(c) of the Waste Disposal Ordinance to obtain evidence of an offence of keeping livestock in premises in a livestock waste prohibition area.

Yours sincerely,

(Ms Doris Cheung)
for Secretary for the Environment, Transport and Works