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Report of the Bills Committee on Waste Disposal (Amendment) Bill 2005

PURPOSE

This paper reports on the deliberations of the Bills Committee on the Waste Disposal (Amendment) Bill 2005.

THE BILLS COMMITTEE

2. At the meeting of the House Committee on 20 May 2005, members formed a Bills Committee to study the Bill. A membership list of the Bills Committee is in **Appendix I**.

3. Under the chairmanship of Hon Audrey EU, the Bills Committee has held 13 meetings with the Administration and received views from 29 deputations. A list of the deputations which have provided views to the Bills Committee is in **Appendix II**.

THE BILL

4. The Bill seeks to amend the Waste Disposal Ordinance (WDO) (Cap. 354) to –
- (a) extend the application of WDO to clinical waste to enable regulatory control to be introduced over the collection, transportation and disposal of clinical waste (clauses 2 to 6, 15, 16, 21(a), 21(b), 22 and 25 (Schedule 8));
 - (b) give effect to the international ban prohibiting the export of hazardous waste from some developed countries (the Basel Ban), and to ensure that the import or export control of certain kinds of waste will not be in breach of Hong Kong's obligations under "The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal" (the Basel Convention) (clauses 8, 9, 13, 23 (Sixth Schedule), 24 (Seventh Schedule), and 25 (Schedule 9)), and

- (c) strengthen the control of the disposal of imported non-hazardous waste (clauses 10 to 12 and 20); and
- (d) introduce miscellaneous amendments (clauses 7, 14, 17 to 19, 25 (Schedules 10 and 11) and 26 to 30).

RELEVANT DOCUMENTS

5. In its scrutiny of the Bill, the Bills Committee has also made reference to the following relevant documents –

- (a) the Report on “Review of Alternative Technologies for the Treatment of Clinical Waste” published by the Environmental Protection Department (EPD) in December 2000;
- (b) the Fact Sheet on “Recent Developments in Clinical Waste Treatment Technologies” prepared by the Research and Library Services Division of the Legislative Council (LegCo) Secretariat in July 2005;
- (c) the draft “Code of Practice for the Management of Clinical Waste for Waste Collectors and Major Clinical Waste Producers” issued by the Administration in 2001, which was designed to provide guidance to all public and private hospitals, maternity homes, nursing homes and all government clinics and waste collectors;
- (d) the draft “Code of Practice for the Management of Clinical Waste for Small Clinical Waste Producers” issued by the Administration in 2001, which was designed to provide guidance to medical laboratories, private clinics, Chinese medicine/medical clinics and universities, etc.;
- (e) the draft Waste Disposal (Clinical Waste) (General) Regulation to be made under WDO to control handling, collection, treatment and disposal of clinical waste; and
- (f) the Basel Convention adopted by the Conference of the Plenipotentiaries on 22 March 1992.

DELIBERATIONS OF THE BILLS COMMITTEE

6. The subjects discussed by the Bills Committee are summarized in the paragraphs below –

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Control scheme on clinical waste

Background

7. Clinical waste is waste arising from practice or research for dental, medical, nursing, veterinary, pathological/laboratory testing or pharmaceutical purposes. It includes mainly used or contaminated sharps like syringes/needles, laboratory wastes, human and animal tissues/organs, infectious materials from patients, and surgical dressings. Clinical waste is potentially infectious and biohazardous, and if not properly handled will pose serious health risks.

8. At present, the Government has no special requirement for the collection and disposal of clinical waste. Most clinical waste is disposed of at landfills without treatment.

9. To safeguard public health and safety, the Administration consulted the relevant parties in October 1997 on a proposal to implement the Clinical Waste Control Scheme. Under this scheme, legislative control on major clinical waste producers (i.e. hospitals, maternity homes and Government clinics) was proposed as the first step to tackle the issue, whereas legislative control on small clinical waste producers (such as private medical, dental, and veterinary clinics and laboratories) could be held in abeyance. The collected clinical waste should be disposed of at the Chemical Waste Treatment Center (CWTC) at Tsing Yi.

10. An Environmental Impact Assessment (EIA) was carried out and concluded that CWTC is suitable for treating clinical waste in an environmentally acceptable manner. The Advisory Council for the Environment (ACE) endorsed the EIA report in May 1999. The Panel on Environmental Affairs and the Panel on Health Services of LegCo, in examining the issue, requested the Administration to provide more information on alternative technologies for clinical waste treatment.

11. Consequently, EPD engaged Mr William K. Townend, an international expert on clinical waste management, to study available treatment technologies worldwide, review international practices, and advise on the application of such technologies in Hong Kong. The Report on "Review on Alternative Technologies for the Treatment of Clinical Waste" was published in December 2000. The review recommended that the Government should adopt high-temperature incineration as a medium-term clinical waste treatment option, but in the longer term, the Government should keep abreast of developments in various technologies alternative to incineration.

12. The Administration also reviewed the control of clinical waste collection and completed the review in 2001. To better safeguard public health and safety, the Administration proposed to adopt a more robust collection system which would extend legislative control to all major and small clinical waste producers simultaneously, requiring them to segregate properly clinical waste from other wastes, and arrange for proper disposal of the waste.

13. The revised Control Scheme comprises the following key elements -

- (a) establishing a statutory licensing framework for all clinical waste collectors and operators of disposal facilities;
- (b) requiring clinical waste producers to properly manage their clinical waste by segregating those waste from other municipal solid waste and consigning the clinical waste to licensed clinical waste collectors for disposal;
- (c) promulgating Codes of Practice to provide guidance for major clinical waste producers (i.e. hospitals), waste collectors and small waste producers (i.e. clinics and medical laboratories etc) on segregation, packaging, labelling, collection, storage, transportation and disposal of clinical waste;
- (d) setting up a trip-ticket system to track clinical waste from source to disposal facility; and
- (e) designating the CWTC at Tsing Yi as the facility to treat clinical waste and levying a disposal charge on clinical waste producers for use of the facility.

14. In November 2001, the Administration issued a consultation document on the proposed Control Scheme to the medical, Chinese medical, dental, nursing and veterinary sectors, green groups, academic institutions, waste collectors and other related organizations. Except for Greenpeace and the Kwai Tsing District Council (K&TDC), respondents to the Consultation Document generally supported the proposal. In April 2002, ACE was consulted on the proposed Control Scheme, and supported the proposal.

15. The Waste Disposal (Amendment) Bill 2003 which proposed to legislate for control on the handling of clinical waste was introduced into LegCo in June 2003, but lapsed at the end of the LegCo term on 30 September 2004.

Designation of the Chemical Waste Treatment Center for treatment of clinical waste and related issues

Dioxin emission control and monitoring mechanism of the Chemical Waste Treatment Center

16. In considering the suitability of CWTC for treatment of clinical waste, members have sought information on the existing monitoring of the operation of CWTC, the dioxin emission control and monitoring mechanism, and the latest data on dioxin emissions at CWTC.

17. The Administration has explained that the operation of CWTC is closely monitored by EPD. CWTC adopts the best available technology and is equipped with advanced pollution abatement and emission control systems to meet stringent environmental standards. CWTC is designed to treat chemical wastes, and is fully equipped to prevent formation of dioxins during incineration and to minimize dioxin emissions to the atmosphere. EIA has concluded that the incineration of clinical waste at CWTC is environmentally sound, and CWTC can meet stringent emission standards. To complement the Control Scheme, CWTC will be modified to receive and treat clinical waste.

18. Dioxins are formed during incomplete combustion of materials containing organic matters and chlorine, and are also produced by natural processes such as forest fires and volcanic eruption. Dioxins can be destroyed at high temperature but they may be reformed at 400°C to 200°C. CWTC is required to meet the stringent dioxin emission standard of 0.1 nanogramme (ng) I-TEQ/m³ which is amongst the most stringent standards adopted in the world as compared to similar facilities in other countries. In 2004, the average dioxin level in the stack gas of CWTC is 0.0054 ng I-TEQ/m³, which is much lower than the emission standard of 0.1 ng I-TEQ/m³.

19. Apart from continuous monitoring of the stack emissions of CWTC, dioxin level in the ambient air is also recorded every month at the Cheung Ching Estate of Tsing Yi. Dioxin level is also monitored at two of the EPD's air monitoring stations in Central and Western as well as Tsuen Wan districts. The monitoring results show

that the dioxin level in the ambient air of Tsing Yi is comparable to those of the Central and Western as well as Tsuen Wan districts. The monitoring results of CWTC and the monitoring station at the Cheung Ching Estate are submitted to K&TDC on a quarterly basis. The Administration will continue to closely monitor the emissions and release data to the public in a transparent manner. The results of the dioxin measurements are available on EPD's website.

20. In response to members' request for information on the disposal of dioxin residues generated from the Penny's Bay Disneyland Project, the Administration has advised that between November 2004 and March 2005, a total of 78.8 tonnes of dioxin residues generated from the project were disposed of at CWTC in four batches. During the incineration of the dioxins residues, the stack gas of CWTC, the ambient air in the nearby Tsing Yi and Kwai Chung, and the incinerator ash were closely monitored by an independent expert assessor, who is a professor of the Baptist University. The results obtained by the independent expert assessor illustrated that the concentrations of dioxins in the stack emission of CWTC were far below the prevailing international standard for incinerator dioxin emission of 0.1 ng I-TEQ/m³. The dioxin content of the ash was far below the most commonly acceptable soil contamination criteria of 1000 ng I-TEQ/kg, and the dioxin level of the ambient air was also low. The independent expert assessor concluded that the use of CWTC was both a safe and effective way to dispose of dioxin-containing residues without imposing additional load to the environment.

21. Members have also expressed concern about the cumulative impact of dioxin emissions on humans, especially nursing mothers, and whether dioxins will increase the risk of developing cancer.

22. The Administration has advised that according to the World Health Organisation (WHO), the United Nations Environment Programme and the European Union, 90 % to 98% of human exposure to dioxins is through food consumption. The WHO recommends a Tolerable Daily Intake (TDI) of 1 to 4 TEQ picogramme (pg) per kg of body weight per day. The TDI represents a tolerable daily intake for life-time exposure for an individual, and occasional short-term exceedance above the TDI would have no health consequences provided that the average intake over long periods is not exceeded. In other words, for a person weighing 70 kg, as long as his average intake over a long period does not exceed 70 TEQ pg per day, adverse health consequence is not expected, even if his daily intake of dioxins occasionally exceeds this limit.

23. In 2002-03, a study on the level of dioxins in breast milk from nursing mothers was carried out by the University of Hong Kong and the Chinese University of Hong Kong. The study was part of the WHO/EURO 3rd round dioxin exposure study and was carried out in 26 countries and regions, including Hong Kong. The findings indicated that the levels of dioxins in breast milk in Hong Kong were in the lower to middle range in the 26 countries and regions, and were lower than those observed in most of the participating European countries.

24. The Administration has further advised that while dioxins increase the risk of cancer development in general, no particular cancer predominates. Cancers may be caused by multiple factors and different cancers may have different risk factors. Apart from cancer, exposure of humans to excessive amount of dioxins during a number of industrial accidents in the past had been reported to cause skin lesions, liver damage and disturbance of the endocrine system.

25. In response to the request of the Bills Committee, the Administration has provided the percentage of cancer registered deaths out of the total number of registered deaths in the Kwai Tsing district, compared against the whole of the territory for the 10 years between 1994 and 2003. Members have noted that the figures indicated that the cancer rates for Kwai Tsing residents were similar to those of the residents in all other districts in Hong Kong.

Views of deputations

26. On the Administration's proposal to utilize CWTC to treat clinical waste, the Bills Committee has noted that some deputations consider that the disposal of clinical waste at CWTC is environmentally acceptable provided that the waste source is controlled before processing and emissions from CWTC are appropriately treated and carefully monitored. Some deputations have called upon the Government to consider setting up a body with wide representation to monitor the modification work and future operation of CWTC for the treatment of clinical waste, strengthen the monitoring of emissions of dioxin and other hazardous gases, and release the relevant data to the local community more frequently. K&TDC strongly opposes the use of CWTC for treatment of clinical waste and has expressed serious concern about dioxin emission posing health hazards to the residents in Kwai Tsing. K&TDC considers that the Government should set up a clinical waste treatment facility at a site further away from the residential area. It has requested the Government to formulate a comprehensive plan for handling different types of waste.

Consultation with the Kwai Tsing District Council

27. The Bills Committee has expressed concern about the strong opposition of K&TDC to the proposal to treat clinical waste at CWTC, while noting the efforts made by the Administration to explain the details of the proposal to K&TDC and to address the concerns of its members.

28. The Administration has explained that subsequent to the first consultation with K&TDC in 1997 on the proposal to treat clinical waste at CWTC, it briefed K&TDC again in 1999 on the findings of EIA, which concluded that the incineration of clinical waste was environmentally sound and safe, and CWTC was fully equipped to meet stringent emission standards. In response to a motion passed by K&TDC in 1999 objecting to the proposed treatment of clinical waste at CWTC, the Administration engaged an international expert on clinical waste management to review the various treatment options, and briefed K&TDC in 2002 on the expert findings which

reconfirmed the EIA findings that CWTC provided a total solution to completely treat the small amount of clinical waste in an environmentally sound and safe manner.

29. After the Bill was introduced into LegCo in May 2005, the Administration briefed K&TDC at its meeting on 14 July 2005 about the proposal to treat clinical waste at CWTC to complement the proposed control on clinical waste as provided for under the Bill. K&TDC maintained its previous position and passed a motion strongly opposing the Government to transport clinical waste to Tsing Yi for incineration.

30. In light of the submission made by K&TDC to the Bills Committee in July 2005, the Administration attended the meeting of K&TDC on 8 September 2005 to explain the Control Scheme and the stringent control on CWTC for the treatment of clinical waste. K&TDC maintained its objection to the proposal.

31. In view of the stance of K&TDC, the Bills Committee considers that the Administration should allay the concerns of residents in the Kwai Tsing district and consider setting up a body with wide representation to monitor the modification work and future operation of CWTC for the treatment of clinical waste, as suggested by some deputations.

32. In response, the Administration has proposed to set up a committee under K&TDC to monitor the modification work and operation of CWTC when it starts to receive and treat clinical waste. The Administration has also proposed that it will submit monitoring reports to the committee on a monthly basis, and to appoint an independent assessor to provide expert advice to K&TDC on the monitoring results during the commissioning and initial operational phase of CWTC when it commences to receive and treat clinical waste.

33. The Administration advised the Bills Committee at its last meeting on 21 February 2006 that it had attended the meeting of the Community Affairs Committee of K&TDC on 15 February 2006 to explain the details of the monitoring proposals. However, the majority of its DC members objected to the proposed treatment of clinical waste at CWTC and passed a motion to that effect.

34. While members have noted the position of K&TDC on the matter, they agree that since the proposals in the Bill will boost the protection of public health and provide a safer and healthier living environment to the public, the enactment of the Bill should not be further delayed. However, members have requested the Administration to consider providing community facilities for the betterment of the environment of the Kwai Tsing district, as a means to gain their acceptance of the treatment of clinical waste at CWTC. Members have also requested the Secretary for the Environment, Transport and Works to give a specific response to their request in the speech to be delivered during the resumption of the Second Reading debate on the Bill.

35. The Administration has assured the Bills Committee that it will continue to allay the concerns of K&TDC about treatment of clinical waste at CWTC and discuss the monitoring proposals with its members at the forthcoming meeting of the Planning and Environmental Hygiene Committee of K&TDC to be held in mid April 2006. It will also step up public engagement efforts through community activities, and visits would be arranged for local residents to show them the environmental features of CWTC. Regarding members' request for providing facilities for the betterment of the district, the Administration has liaised with the District Office, the Leisure and Cultural Services Department and the Highways Department to follow up on suitable projects which help improve the local environment. Details of the projects are set out in the Administration's reply dated 16 March 2006 in **Appendix III**.

Developments in clinical waste treatment technologies

36. Members have asked whether the Administration has explored alternative treatment technologies for clinical waste other than incineration. The Administration has advised that at present, all clinical waste is separated from other wastes and is disposed of in special trenches at landfills. While this is a safe and proper disposal method for clinical waste, high-temperature incineration is the best guarantee for all pathogens to be destroyed. The Administration has examined other treatment methods (e.g. autoclaving, microwaving, chemical disinfection, gasification, pyrolysis, plasma and irradiation), but has decided against them because they are either not proven or unreliable, or there is not yet any international control parameter.

37. Members have suggested that the Administration should, in the longer term, keep abreast of developments in various technologies alternative to incineration in the treatment of clinical waste. The Administration has undertaken to continue explore advanced technologies for the treatment of waste and report progress to the Panel on Environmental Affairs in due course.

Categorization of "clinical waste"

38. Under clause 2(g) of the Bill, "clinical waste" is defined to mean "wastes consisting of any substance, matter or thing belonging to any of the groups specified in Schedule 8 that is generated in connection with –

- (a) a dental, medical, nursing or veterinary practice, or any other practice or establishment providing medical care and services for the sick, injured, infirm or those who require medical treatment;
- (b) dental, medical, nursing, veterinary, pathological or pharmaceutical research; or
- (c) a dental, medical, veterinary, or pathological laboratory practice,

but does not include chemical waste or radioactive waste."

39. There are six groups of clinical waste in Schedule 8, namely, used or contaminated sharps (Group 1), laboratory waste (Group 2), human and animal issues (Group 3), infectious materials (Group 4), dressings (Group 5) and other wastes (Group 6).

40. Having taken account of members' views, the Administration will move a Committee Stage amendment (CSA) to split the definition in clause 2(g) (a) into two paragraphs so as to improve the clarity of the sub-clause.

Group 1 – Used or contaminated sharps

41. Syringes, needles, cartridges, ampoules and other sharp instruments which have been used or which have been contaminated with any other group of clinical waste are classified as Group 1 clinical waste. The Hong Kong Doctors Union has pointed out that the barrel parts of uncontaminated syringes are not hazardous for a number of reasons, such as they may only contain remnants of medications and never come into contact with body fluids, or some are parts of discarded expired syringes. The Union has suggested that the definition of “clinical waste” in Group 1 should be modified to exclude barrels of uncontaminated syringes.

42. The Administration disagrees and considers that used syringes, including the barrel parts, should be disposed of as clinical waste in order to protect waste collection workers from the risk of exposure to contaminated syringes, since workers are unable to distinguish contaminated syringes from uncontaminated ones.

Group 3 - Human and animal tissues

43. Under Group 3 clinical waste, all human and animal tissues, organs and body parts as well as dead animals are classified as clinical waste. However, dead animals, animal tissues, organs and body parts arising from veterinary sources or Chinese medicine practices are excluded.

44. Members have questioned why dead animals, animal tissues, organs and body parts arising from Chinese medicine practices are not classified as “clinical waste”. The Administration has explained that some dead animals and animal tissues, organs and body parts, such as seahorse or earthworm are used as medicine administered during Chinese medicine practice. Such materials arising from Chinese medicine practice are neither obnoxious nor infectious and hence will not be classified or controlled as “clinical waste”.

45. Some members are of the view that dead animals, animal tissues and body parts generated from veterinary clinics, e.g. body parts removed during a surgical procedure could be potentially infectious and pose serious health risks. They have requested the Administration to explain the existing arrangements for disposal of dead animals, animal tissues and body parts generated from veterinary clinics, and the reasons for excluding them from the definition of “clinical waste”.

46. The Administration has advised that dead animals and animal parts arising from veterinary sources or practices are excluded from the definition of “clinical waste” under the new Schedule 8 of the Bill. However, dead animals, organs and tissues arising from medical and veterinary research and laboratory practice, and pharmaceutical testing with infectious agents, which could be potentially infectious and pose serious health risks, are controlled as clinical waste under clause 2(g) of the Bill. In addition, the Control Scheme will cover used sharps and dressings soaked with blood generated by veterinary clinics.

47. The Administration has further advised that animal carcasses and tissues generated at veterinary clinics are, in general, of low risk with regard to public health. Most veterinary clinics in Hong Kong deal with mainly pet animals such as dogs and cats, and pet carcasses would only be encountered when the animals die or are euthanized at their premises. The number of pets which die in veterinary clinics would be very small, and pet carcasses from veterinary clinics do not require special handling since the risk of disease transmission of such carcasses is low and would be the same as those which die at the owners’ premises. This is because infectious agents generally amplify in the live hosts and decay rapidly within the dead pets. The pet carcasses could be safely disposed of as other municipal solid waste at landfills which are highly engineered to safeguard against ground water and other contaminations.

48. The Administration has also pointed out that any person, who has in his possession or under his charge any animal or bird affected with or suspected of being infected with disease, is required under the Public Health (Animals and Birds) Regulations (Cap. 139A) to notify the fact to a police officer or a health inspector. The case will then be referred to the Director of Agriculture Fisheries and Conservation, and the management and disposal of such carcasses will have to be dealt with according to the kind of disease involved.

49. Members have noted that the Hong Kong Veterinary Association, a major veterinary profession organization representing veterinary surgeons in Hong Kong, supports the Bill. The Association is also of the view that the animal body parts or the carcasses of pet animals are owned by the pet owners, and should not be regarded as clinical waste from the pet owner and animal welfare point of view. In Hong Kong, most pet owners choose to cremate their pets, either through private cremation service or some veterinary clinics.

50. In response to the request of the Bills Committee, the Administration has provided information on overseas practice. Members have noted that in many overseas countries, used or contaminated sharps and dressings soaked with blood generated by veterinary clinics are regulated as clinical waste. Regarding animal body parts and tissues generated by veterinary clinics, many states in the United States and Australia do not regulate them as clinical waste. For countries such as the United Kingdom, Canada and one state in Australia which control the disposal of animal body parts and tissues from veterinary clinics as clinical waste, such control is

imposed only if the animals are suspected of carrying infectious agents hazardous to humans.

51. The dental practitioners have suggested that extracted teeth do not pose health risk and should not be classified as clinical waste. The Administration will propose a CSA to specify that teeth arising from a dental practice will be excluded from the definition of “clinical waste” under Group 3 of Schedule 8.

Group 4 - Infectious materials

52. The Bill proposes that infectious materials from patients with 15 pathogens listed under Group 4 of Schedule 8 and materials contaminated by any of such infectious materials are classified as “clinical waste”.

53. On the procedure for adding new pathogens to Group 4 of Schedule 8, the Administration has explained that clinical waste stipulated under Group 4 contains infectious materials from patients with pathogens which pose significant health risk and cause severe and deadly human diseases such as haemorrhagic fever. Such patients must be kept under strict isolation. The Bill has allowed for the Director of Environmental Protection (DEP) to amend the list of pathogens under Group 4 by a notice published in the Gazette. This will enable DEP to add new pathogens if considered necessary. Furthermore, Group 6 clinical waste will cover any other wastes which are likely to be contaminated with infectious materials (other than infectious materials referred to in Group 4) and which may pose significant health risk.

54. In response to members’ enquiry, the Administration has explained that masks contaminated by Severe Acute Respiratory Syndrome (SARS) are controlled as Group 4 clinical waste. As regards surgical masks used by visitors, staff and patients under the yellow alert of SARS and Avian Flu Contingency Plan, they can be disposed of as municipal waste.

Group 5 – Dressings

55. “Dressings” in Group 5 clinical waste are defined as “surgical dressings, swabs and all other waste dribbling with blood, caked with blood or containing free-flowing blood”.

56. In response to members’ view that the definition may not be too clear, the Administration has advised that the proposed definition is in line with the classification adopted by the Hospital Authority in its 2003 draft “Code of Practice for the Management of Clinical Waste”, and by the Hong Kong Medical Association in its “Guidelines for the Management of Clinical Wastes for Minor Clinical Wastes Producers” issued in March 2001.

Group 6 – Other wastes

57. “Other wastes” in Group 6 are defined as “other wastes which are likely to be contaminated with infectious materials (other than infectious materials referred to in Group 4), or any clinical waste being substance, matter or thing belonging to Group 1, 2, 3, 4, or 5, and which may pose a significant health risk”.

58. Having regard to the fact that any person who fails to comply with the regulatory control framework in the Bill may commit an offence, members have requested the Administration to stipulate in the Bill the mechanism for defining “other wastes” under Group 6.

59. After drawing reference to several ordinances, the Administration has proposed to move a CSA to the effect that DEP may specify Group 6 clinical wastes through a gazette notice if such wastes, in his opinion, are likely to be contaminated with infectious materials from patients falling within such case definition as specified in the notice, and may pose a significant health risk. In forming his opinion, DEP will also consult the Department of Health. At the request of the Bills Committee, the Administration has consulted the Hong Kong Medical Association and confirmed that the latter has no objection to the proposed CSA.

Wastes produced by health and beauty centres

60. Members have sought clarification whether wastes produced by health and beauty centres should be classified as “clinical waste” under the Bill, and if so the procedure and party responsible for disposal of such wastes, and the legislative provisions which govern such disposal.

61. The Administration has explained that health professionals, namely, registered doctors, registered or enrolled nurses, registered or listed Chinese medicine practitioners who have made arrangement with the health and beauty centres to provide medical treatment at these centres and produced wastes such as sharps and acupuncture needles will fall under the definition of clinical waste. Such treatment may include injection of certain medicines such as botulinum toxin or applying acupuncture in slimming programmes. Other types of medical treatment such as extraction of body fat may, though rarely, be provided at the centres, and the waste, such as body tissues, will also fall under the definition of “clinical waste”.

62. Regarding the party responsible for disposal of clinical waste generated at the health and beauty centres, the Administration has pointed out that under section 3 of the draft Waste Disposal (Clinical Waste) (General) Regulation, a person who produces or causes to be produced, or who has in his possession or custody any clinical waste, shall arrange for proper disposal of the clinical waste. Hence, both the health and beauty centre and the healthcare professionals who provide medical treatment would be required to arrange for proper disposal of the clinical waste. The health and beauty centre may consign the waste to a licensed collector for proper

disposal. Alternatively, the healthcare professionals may deliver the clinical waste to a collection point or a licensed waste disposal facility if the quantity does not exceed 5 kg subject to compliance with other requirements stipulated under the Regulation (paragraph 65 below refers).

Responsibilities of various parties in the clinical waste management chain and penalties under the Control Scheme

63. The Administration has briefed the Bills Committee on the responsibilities of various parties in the clinical waste management chain, i.e. producers, collectors and disposal facility operators, and the penalty for the various offences imposed on clinical waste producers and clinical waste collectors under the Control Scheme. The Administration has emphasized that the level of penalty is broadly in line with that for offences relating to the handling of chemical waste.

64. The Administration has explained that clinical waste producers will be required to arrange for proper disposal of clinical waste at a licensed disposal facility, and are deemed to have discharged their duty if they have consigned their waste to a licensed clinical waste collector. It will be proposed in the draft Waste Disposal (Clinical Waste) (General) Regulation that any waste producer who does not arrange for proper disposal of clinical waste commits an offence and is liable to a fine of \$200,000.

65. To facilitate disposal of clinical waste by small clinical waste producers (e.g. private clinics), the Administration has proposed that healthcare professionals (namely, registered doctors, dentists, veterinary surgeons, registered and listed Chinese medicine practitioners, registered and enrolled nurses) will be exempted from licensing and allowed to deliver their clinical waste to a licensed disposal facility or an authorized collection point set up by waste collectors and individual waste producers, subject to the following conditions –

- (a) not more than 5 kg of clinical waste shall be carried at any one time;
- (b) the healthcare professional shall not use a means of transport for delivering the clinical waste other than a private car within the meaning of the Road Transport Ordinance (Cap. 374); and
- (c) Group 4 clinical waste shall not be carried.

It will be proposed in the draft Waste Disposal (Clinical Waste) (General) Regulation that any healthcare professional who does not comply with the requirements in relation to the delivery of clinical waste commits an offence and is liable to a fine of \$100,000.

66. Clinical waste collectors and waste disposal facility operators will be required to obtain a licence from the DEP and comply with the licence conditions. Licensed clinical waste collectors will be required to deliver the clinical waste to a licensed clinical waste disposal facility, and adopt a trip ticket system. The trip ticket is a

record for each consignment of waste and is designed to track movement of waste from the source of waste generation to the licensed disposal facility. Licensed clinical waste collectors will be responsible for including the particulars of the waste handed over by the clinical waste producers in the trip ticket, and shall keep a copy of the trip ticket for inspection by DEP. The collector shall also give a copy of the trip ticket or receipt to the waste producers for record.

67. A person who collects clinical waste without a collection licence or without an authorization is liable to a fine of \$100,000. A licensed waste collector who does not comply with the licence conditions is liable for the first offence to a fine of \$100,000, and for the second and subsequent offence to a fine of \$200,000. In addition, a licensed collector who fails to deliver the clinical waste to a licensed disposal facility within 24 hours or as specified by DEP is liable to a fine of \$100,000 and imprisonment of six months.

68. The Administration has advised that it will issue two Codes of Practice, namely, the “Code of Practice for the Management of Clinical Waste for Waste Collectors and Major Clinical Waste Producers” and the “Code of Practice for the Management of Clinical Waste for Small Clinical Waste Producers” to provide guidance to the various parties on the segregation, packaging, labelling, collection, handling, storage, transport and disposal of clinical waste.

Record keeping

69. Some members support the view of the Hong Kong Medical Association that small waste producers, such as clinics, should not be required to keep a trip ticket. The Administration has explained that all parties of the clinical waste management chain have to cooperate. The proposed trip ticket system aims to facilitate tracking of the movement of clinical waste from the point of generation to the final site of disposal, and to ensure that all clinical waste produced is disposed of properly.

70. According to the Administration, the trip ticket system is stipulated in the Codes of Practice which are statutory documents published under WDO. Compliance with the Codes is not a legal requirement, but demonstration of compliance could be used as evidence of good practice in the course of defence. After the Control Scheme is implemented, inspectors of EPD may require waste producers to furnish information relating to their waste generation and disposal practices. Waste producers are therefore recommended to retain a copy of the trip ticket for 12 months after the date of collection. However, since there is no legal requirement for waste producers to keep a copy of the trip ticket or other waste delivery record, failure to provide a copy of such record will not be an offence under section 12 of the Draft Waste Disposal (Clinical Waste) (General) Regulation (draft Regulation).

71. Members have pointed out that under section 12 of draft Regulation, DEP may require a person to furnish to him any information in respect of clinical waste

produced, or consigned to a licensed collector or an authorized collector, or delivered to a reception point or collection point. However, the type of information required to be furnished to DEP and the period for which such information should be kept for inspection by DEP are not specified. Members have expressed concern whether a waste producer, who fails to produce a trip ticket as required by DEP under section 12 of the draft Regulation because he has disposed of the trip ticket after the 12-month retention period recommended in the Code of Practice, will commit an offence.

72. To address members' concern, the Administration has agreed to provide guidelines on the type of information which waste producers are recommended to keep in the Codes of Practice, and consider specifying a reasonable period for which waste producers have to keep such information for inspection by DEP under section 12 of the draft Regulation.

Charges on disposal of clinical waste

73. The Administration has advised that the capital cost of the modification work of CWTC to treat clinical waste is estimated to be \$52 million. The annual recurrent cost for treating clinical waste is estimated to be around \$22 million.

74. In accordance with the User Pays Principle, the Administration proposes to levy a charge for the reception and treatment of clinical waste at CWTC. The charge will be prescribed in the Waste Disposal (Charges for Disposal of Clinical Waste) Regulation to be made under WDO. Having regard to the current level of charges for chemical waste, the charge is proposed to be set at the same level currently applied to chemical waste, i.e. to recover 31% of the variable operation cost of CWTC. On this basis, the charge will be around \$2,387 per tonne, or \$2.38 per kg of clinical waste. The exact cost will be determined after the CWTC contractor has submitted a formal tender bid and the tender process has been approved.

75. The Administration will review the charge one year after implementation of the Control Scheme. It will increase the charge incrementally with a view to eventually recovering in full the variable operation cost in accordance with prevailing government-wide general guidelines for fees and charges increases, taking into account affordability and acceptability. Full cost-recovery is expected to be achieved in 5 to 10 years.

76. Most of the depositions which gave views to the Bills Committee support the User Pays Principle, but some of them have expressed concerns about significant increase in the cost of collection fee for clinical waste after the implementation of the Control Scheme. The Administration has advised that there are many commercial clinical waste collectors available in the market, and the competition will keep the collection fee at a reasonable level. Initial feedback from existing waste collectors indicates that the fee for collection of clinical waste from a small private clinic by the private waste collectors would likely range from \$30 to \$300 per month, depending on the location of the clinic. The Administration believes the collection fee would help

create an economic incentive for waste reduction and proper segregation by clinical waste producers.

Collection service

77. The Hong Kong Medical Association and the Hong Kong Doctors Union have expressed concern about the provision of clinical waste collection service for small waste producers such as clinics in remote areas, e.g. Tung Chung, Cheung Chau and some outlying islands. They have proposed that collection points should be set up by the Government at public hospitals or clinics to serve the small waste producers.

78. The Administration does not consider it appropriate for the Government to provide collection service, as there are already a number of clinical waste collectors in the market. Furthermore, it is neither reasonable for taxpayers to bear the collection cost nor the Government to compete with private waste collectors. The Administration has pointed out that the Control Scheme has allowed sufficient flexibility for clinical waste producers in regard to collection arrangement, e.g. waste producers may deliver clinical waste to authorized collection points set up by collectors or individual waste producers. In addition, healthcare professionals will be allowed to carry not more than 5 kg of clinical waste to the disposal facilities.

79. The Administration has also advised that at present, among the dozen or so commercial waste collectors providing clinical waste collection service, some are providing collection service to remote areas such as Tung Chung and Discovery Bay. Since mid-January 2006, one of the waste collectors has started to collect clinical waste from the hospitals and clinics of the Hospital Authority located at three outlying islands (Cheung Chau, Lamma Island and Peng Chau) on a regular basis. The waste collector has also approached the private clinics and other clinical waste producers on the outlying islands to provide door-to-door collection service. At the request of the Bills Committee, the Administration has agreed that it will continue to liaise with the service providers and waste producers to ensure that such service is available after the enactment of the Bill.

Fee and validity of a clinical waste collection licence

80. Under section 10 of WDO, any person who provides a service for the collection of clinical waste is required to obtain a clinical waste collection licence from DEP. The Administration has proposed that the application fee for a clinical waste collection licence is \$19,270 (for a validity period of two years), and the licence renewal fee is \$9,320 (for a validity period of five years).

81. Some members have queried that as compared with a renewal licence, the fee of a new licence is higher but the validity period is shorter. They have requested the Administration to explain the basis for setting the fee level. The Administration has explained that the fee for a clinical waste collection licence would be similar to that for a chemical waste collection licence. This is because similar to that for chemical

waste control, applications for a clinical waste collection licence will involve the appraisal of the Operational Plan and Emergency Response Plan submitted by the applicant, inspection of the collection fleet and the vehicle maintenance depot (if any), appraisal of the level of competency of the waste collection staff, etc. The Administration has pointed out that the licence fee is calculated on the basis of full cost recovery and does not cover enforcement cost nor is it connected to the operational cost of CWTC.

82. Some members have suggested that the two-year validity period of a new licence be extended to a longer period in order to attract more people to enter into the market as clinical waste collectors. The Administration has explained that in proposing an initial period of two years for a new clinical waste collection licence, it has taken account of the experience in implementing the chemical waste control scheme. The Administration considers that a prudent approach is essential since improper collection of clinical waste may lead to public health risk and pollution to the environment. The Administration has pointed out that the licence can have a longer validity period of five years upon renewal when the collectors have acquired more experience and possessed a good track record in proper handling of clinical waste.

Training programme

83. In view of the concern expressed by some deputations about the training for clinical waste collectors, members have requested the Administration to provide details of the training programme on clinical waste management.

84. The Administration has advised that licensed collectors and the operator of a licensed waste disposal facility will be required, under the conditions of a waste collection licence and a waste disposal licence respectively, to provide training to their staff in handling clinical waste. The Occupational Safety and Health Council (OSHC) has been organizing two training courses on the safe handling of clinical waste since the third quarter of 2004. One course is designed for front-line staff and the other course is for management staff. The courses are held on a quarterly basis and the size of a class is normally 30 students. To complement the Control Scheme, OSHC, EPD and the Department of Health are reviewing the content of the courses, and will consider enriching the course content to cover infection control measures.

Grace period

85. Some deputations have suggested that a grace period should be provided in the Bill to allow waste producers to have sufficient time to make necessary arrangements for proper collection of clinical waste before implementation of the Control Scheme. The Administration does not consider it necessary to stipulate a specified grace period as the Control Scheme will only be introduced after the modification of CWTC, which will take about 12 months, is completed.

Disposal on imported non-hazardous waste

Background

86. One of the main purposes of the Bill is to strengthen the control of the disposal on imported non-hazardous waste. The Administration has advised that at present, WDO requires that the import of any waste requires a permit from DEP under WDO. The only exception is the import of non-hazardous waste for recycling purposes as the international trend is to encourage free movements of such waste which in turn would be conducive to promoting recycling. However, it is possible that the imported waste would ultimately be disposed of in Hong Kong, either because the original arrangement for recycling has fallen through, or the importer has purposely imported the waste under the disguise of recycling, when his real motive is to dispose of waste in Hong Kong. Prosecution has been extremely difficult as the Government needs to establish the offender's intent to deceive at the time of importation. During 2000 – 2002, there were on average over 30 cases of identified attempts to dispose of imported non-hazardous waste at landfills in Hong Kong. The amounts of waste involved each year range from 130 tonnes to 470 tonnes. On average, there are only six successful prosecutions each year.

Cost for disposal of imported waste

87. To tighten control and conserve the valuable landfill space, the Administration has proposed to make it an offence, under clauses 10 and 11 of the Bill, for a person to dispose of imported non-hazardous waste without prior authorization from DEP, which will only be granted if the applicant can prove that the import of the waste concerned did not require a permit and he has exhausted all possible recycling outlets and all means to return his waste to the place of origin. The applicant will be required to pay the full disposal cost involved which is currently set at \$125 per tonne.

88. Members consider that a higher rate of disposal cost should be imposed in order to deter parties from using local landfills for disposal of imported waste.

89. After consideration, the Administration agrees to also recover the administrative cost for processing an application for such authorization which will be around \$9,500. However, some members consider the charges imposed (i.e. the application fee of around \$9,500 plus the full cost of disposal at the landfill at \$125 per tonne) are still inadequate to achieve the desired deterrent effect.

90. The Administration has explained that the following measures as proposed under clauses 10 and 11 of the Bill would be able to provide sufficient deterrent effect –

- (a) under clauses 10 and 11 of the Bill, it will be an offence to dispose of imported non-hazardous waste without proper authorization. Any person who, without prior authorization, disposes of imported

non-hazardous waste will commit an offence and is liable for the first offence to a fine of \$200,000 and imprisonment of six months, and for a second and subsequent offence to a fine of \$500,000 and imprisonment of two years; and

- (b) under clause 10 of the Bill, an authorization for disposal of imported non-hazardous waste at local landfills will not be granted if the import was made under the disguise of recycling.

91. The Administration has also explained that an authorization will not be granted by DEP unless the applicant is able to fully satisfy the following conditions –

- (a) the import of the waste concerned into Hong Kong is for the purpose of reuse, or a reprocessing, recycling or recovery operation, and does not require a permit under WDO;
- (b) it is not practicable to make alternative arrangement for the imported waste to be used, whether in Hong Kong or elsewhere, for the purpose of reuse, or a reprocessing, recycling or recovery operation, in a manner acceptable to DEP; and
- (c) it is not practicable to return the imported waste to the state of export.

92. In addition, the applicant, in applying for an authorization, has to furnish information on the details of the original arrangement for a reprocessing, recycling or recovery operation, the reasons why the arrangement cannot be carried out, and proof of any attempt in making alternative arrangement. Any person who, in the course of applying for an authorization, makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in material particular will commit an offence and will be liable to a fine of \$200,000 and imprisonment of six months.

93. In response to members' enquiry about overseas experience, the Administration has advised that it is not aware of any overseas jurisdictions which impose similar legislative control on the disposal of imported non-hazardous waste. Most landfills in many overseas countries are privately owned and operated.

94. Having regard to the Administration's explanations, the Bills Committee has no objection to the Administration moving a CSA to new section 20DA of the Bill to spell out its intention to recover the administrative cost for processing an application for authorization for disposal of imported waste at the landfill.

Implementation of the Basel Ban

Background

95. The Basel Convention was adopted in Basel, Switzerland on 22 March 1989 and came into force in May 1992. It aims to define global means to control the movement of hazardous waste, minimize their production and ensure that these wastes are disposed of in an environmentally sound manner. The Basel Convention is applicable to the Hong Kong Special Administrative Region (HKSAR) since China is a Party to the Convention. As at 22 August 2005, there are 167 Parties to the Basel Convention.

96. In 1995, the Parties to the Basel Convention agreed to ban the export of hazardous waste from Annex VII countries (i.e. countries of the Organization for Economic Cooperation and Development (OECD), European Community (EC) and Liechtenstein) to other states (known as the Basel Ban), but it does not impose any obligation on non-Annex VII countries to prohibit the import of such wastes. The objective of the Basel Ban is to reduce the environmental impact caused by the movement of hazardous waste from developed countries to developing countries. The Basel Ban has not come into force as it has to be ratified by three-fourths of the Parties to the Basel Convention.

97. The HKSAR implements the Basel Convention through amendments to WDO in 1995, and the provisions are set out in Part IVA (sections 20A to 20I) of WDO. The Convention is designed to regulate the transboundary movement of hazardous wastes, and Hong Kong exercises import and export control over those hazardous wastes listed in the Seventh Schedule of WDO, wastes not listed in the Sixth Schedule and any other waste contaminated by a substance to an extent which renders the waste hazardous, or not suitable for reuse or for reprocessing, recycling or recovery. Under Part IVA, the import or export of all these wastes requires a permit from DEP. For non-hazardous wastes which are listed in the Sixth Schedule of WDO, a permit is also required unless they are uncontaminated and imported for the purpose of reuse or reprocessing, recycling or recovery.

98. While the HKSAR has no obligation to implement the Basel Ban since China is not a Member State of OECD, DEP has been implementing the Basel Ban since 1998 by not issuing permits for the import of hazardous waste from Member States of OECD, EC and Liechtenstein. The Administration has also proposed to give effect to the Basel Ban through amendment to WDO, as reflected in clause 8 of the Bill, so as to send a strong signal to the international community regarding Hong Kong's commitment to enforcing the Basel Ban.

Written submission from Greenpeace

99. Representatives of Greenpeace, together with other deputations, had attended the meeting of the Bills Committee on 26 July 2005 to give views on the Bill. In mid

December 2005, Greenpeace commissioned Mr Jim Puckett, an international expert in the field of toxic waste trade representing the Basel Action Network, to prepare a written submission entitled “Harmonizing Hong Kong’s Waste Disposal Ordinance and China’s Basel Convention Obligation” for consideration of the Bills Committee.

100. The main views of Greenpeace are as follows. Greenpeace considers that the HKSAR has failed to properly implement the Basel Convention, e.g. the description of substances in the Seventh Schedule of WDO, the definitions of “waste” and “disposal” and the new entries to be added to the Schedule under the Bill, are different from those in Annex VIII of the Convention which are generally characterized as hazardous. In addition, Greenpeace considers it inappropriate for the Administration to adopt the OECD waste lists as the basis for drawing up the Sixth and Seventh Schedules to WDO which specify the kind of hazardous wastes which will be subject to the import and export control.

The Administration’s response

101. The Administration has prepared a detailed response to the written submission of Greenpeace, which has been considered by the Bills Committee and Greenpeace.

102. In brief, the Administration has explained that the Basel Convention allows flexibility in transposing the requirements into local legislation. There is no requirement for the parties or states to the Convention to copy the waste lists verbatim as long as the wastes stated in the lists are subject to proper control under local legislation. The existing lists of wastes as set out in the Sixth and Seventh Schedules of WDO were modeled along the OECD lists which are still adopted by the Members States of EC, and the local classification is compatible with that of Hong Kong’s trading partners. WDO has also stipulated that any wastes not listed in the Sixth and Seventh Schedules are also subject to the same permit control of those listed in the Seventh Schedule. In drawing up the proposed amendment to the two Schedules, it has compared the Seventh Schedule with Annex VIII of the Convention. The Administration considers it unnecessary to replace the existing descriptions in the Seventh Schedule by Annex VIII, as long as the Schedule is able to cover those hazardous wastes which are subject to control under the Convention.

103. The Administration has further advised that although any wastes not listed in the Sixth and Seventh Schedules are also subject to the same permit control of those listed in the Seventh Schedule, the Administration has proposed, as set out in clause 24 of the Bill, to enhance the Seventh Schedule by inserting 14 entries using similar wordings of the waste descriptions in Annex VIII of the Convention. The new entry AD220 (i.e. chemical waste not elsewhere specified) makes reference to the chemical waste control regime, which encompasses consideration of the form, quantity or concentration of the hazardous components. This new entry complements the list of specific waste streams in the Seventh Schedule and is a catch-all description to ensure that any hazardous waste not specifically listed will still be subject to control. To address public concern over transboundary movements of hazardous electronic waste

in recent years, the Administration has proposed a CSA to insert a new entry AA1180 (i.e. waste electronic and electrical assemblies and scrap contaminated by ...) to the Seventh Schedule.

104. The Bills Committee has sought information on the mechanism for handling complaints against Parties to the Basel Convention for non compliance with the Convention and whether complaints has been lodged against Hong Kong in this respect.

105. The Administration has advised that the Conference of the Parties (COP), established under Article 15 of the Basel Convention and is composed of all states that are Parties to the Convention, keeps under continuous review and evaluation the effective implementation of the Convention. In accordance with Article 13 of the Convention, HKSAR Government has been submitting a report annually through China as a contracting party to COP on various issues related to the implementation of the Convention. In addition, COP has established a Compliance Committee to review general issues of compliance and implementation under the Convention. There has been no complaint lodged against Hong Kong with the Compliance Committee.

106. Notwithstanding the Administration's response, Greenpeace remains of the view that the HKSAR has failed to comply with the Basel Convention as the annexes to the Convention form an integral part of the Convention and are to be followed as a matter of international law, and the Convention does not allow for reservations or exceptions.

107. In response to the enquiry of the Bills Committee, the Administration has responded that a revamp of WDO for the purpose of adopting the definitions and lists of wastes in the Basel Convention involves not only technical amendments to WDO but also new rounds of consultation with the trade, and an assessment on the enforceability of the new controlled measures, given that the existing system has been in use for over 10 years and supported by successful court cases. Members also note that such an approach would delay the enactment of the Bill considerably.

Legal advice of the Department of Justice

108. The Bills Committee resolved to request the Department of Justice (DoJ) to provide legal advice on whether the relevant provisions in WDO are in full compliance with the Basel Convention, and specifically, whether certain definitions in WDO are in conformity with the Convention.

109. The International Law Division of DoJ has advised members that it has adopted some basic principles in considering the issues raised by the Bills Committee. First, it is necessary to ensure that the requirements under an international convention which is applicable to the HKSAR can be fully complied with through legislative or administrative means. Second, full compliance with an international convention

does not necessarily mean following exactly the same terms and wording used in the convention itself. The incorporation can be done by adopting the convention in full through local legislation, or by enacting specific legislative provisions to implement the convention without adopting the same terms and wording used in the convention, and both approaches are acceptable. Third, in interpreting and implementing legislation to an international convention, the court should, as far as the statutory language permits, adopt the interpretation that will further any applicable treaty obligations.

110. DoJ has advised the Bills Committee that the present operation of the relevant provisions in WDO is consistent with the requirements of the Basel Convention on the following basis -

- (a) it is not a requirement under the Convention that the HKSAR must copy verbatim its provisions in WDO and in fact, it has been observed by some learned scholars that certain provisions in the Convention lack a clear criteria;
- (b) the definition of “waste” in WDO is of very general application which is wide enough to cover the concept of disposal in the definition of “wastes” under the Convention, which has been confirmed by judicial decisions and supported by the presumption under section 2(2) of WDO;
- (c) the definition of “disposal” in WDO has been set out in an all embracing manner which, according to EPD’s technical assessment, covers all the specific processes referred to in Annex IV of the Convention;
- (d) the definitions of the “waste” and “disposal” in WDO have been interpreted in a broad and flexible way by the court which is consistent with the requirements under the Convention;
- (e) in spite of the discrepancies in the description of some substances, according to EPD’s technical assessment, the substances in Annex VIII of the Convention are either precisely covered by the Seventh Schedule (including the new entries to be added to the schedule under the Bill) or indirectly covered through the operation of sections 20A(1)(b) and 20B(1)(b) of WDO which catch any substances not listed in the Sixth Schedule; and
- (f) if the above analysis indicates that the regulatory regime under WDO may be more stringent than that under the Convention, it is acceptable and permitted by Article 4(11) of the Convention.

111. Having noted the legal advice of DoJ, members have agreed to support the proposal in the Bill and the Chairman has given a reply to Greenpeace explaining the situation on behalf of the Bills Committee.

States or parties included in Annex VII of the Basel Convention

112. The new Schedule 9 of the Bill lists out the countries which are applicable for the purpose of import control on hazardous waste as provided for under the new section 20A(4)(e) set out in clause 8 of the Bill.

113. In response to the suggestion from Greenpeace to also make reference to the phrase "member countries of OECD and the European Union (EU)" as a catch-all formulation, the Administration has proposed to introduce a CSA to include the phrase "any other state, or party to the Basel Convention, that is a member of OECD or EU" in the new Schedule 9. By adopting this arrangement, the import control would immediately apply to a new member of OECD or EU without any time-gap before legislative amendment could be put in place to include the new member in Schedule 9.

114. The legal adviser to the Bills Committee is of the view that for the sake of clarity, the CSA should be revised as "any other state, or party included in Annex VII of the Basel Convention, that is a member of OECD or EU". The Administration considers it undesirable to do so. Annex VII of the Convention embraces all parties and other states which are members of OECD or EU. The proposed revision may give the impression that there may be members of OECD or EU that will not be included in Annex VII. After discussion, the Bills Committee has agreed that the CSA proposed by the Administration be adopted. The Administration has undertaken to insert a footnote in the loose-leaf edition of the Laws of Hong Kong in relation to Schedule 9 to the effect that the formulation used in that Schedule (i.e. the states expressly named as read with the catch-all phrase of "any other state, or party to the Basel Convention" in the CSA to Schedule 9) represent all states or parties referred in Annex VII of the Basel Convention.

Conditions for issuance of a permit for import or export of waste

115. Under the new section 20A(4)(f) in clause 8 and new section 20B(4)(g) in clause 9 of the Bill, one of the conditions that DEP must be satisfied before a permit for import or export of waste can be issued is that "such permit is not in breach of Hong Kong's obligations under The Basel Convention".

116. Members have expressed a number of concerns about the two new sections. First, Hong Kong's obligations under the Basel Convention are not specified in the Bill. Second, whether all obligations, including future obligations, under the Basel Convention would automatically be binding on Hong Kong following passage of the Bill without further legislative processes. Third, the Bill would set an undesirable precedent for the mode of implementation of international conventions applicable to Hong Kong in local legislation. Members have requested the Administration to consider whether the obligations under the Basel Convention as applied to Hong Kong should be spelt out specifically in a schedule to the Bill, or whether the two new sections, which only refer generally to Hong Kong's obligations under the Basel Convention as applied to it, should be deleted altogether from the Bill.

117. The Administration has explained that the general approach adopted for the Bill is not unique. The two new sections proposed under the Bill are narrow in scope and are designed to enable the permit applicants to be aware of DEP's duty to take into account Hong Kong's obligations under the Convention as applied to Hong Kong when DEP considers a permit application for the import or export of waste. Nevertheless, in view of members' concern, and after consideration, the Administration has agreed to delete the two new sections from the Bill.

FOLLOW UP ACTIONS REQUIRED OF THE ADMINISTRATION

118. In response to the request of the Bills Committee, the Administration has agreed to take follow up actions as set out below –

- (a) the Administration will consider providing community facilities for the betterment of the environment of the Kwai Tsing district, and the Secretary for the Environment, Transport and Works will give a specific response in this respect in the speech to be delivered during the resumption of the Second Reading debate on the Bill (paragraph 34 above refers);
- (b) the Administration will continue its efforts to allay the concerns of the K&TDC about treatment of clinical waste at CWTC, and discuss the monitoring proposals with K&TDC at its future meetings (paragraph 35 above refers);
- (c) the Administration will continue to explore advanced technologies for the treatment of waste and report progress to the Panel on Environmental Affairs in due course (paragraph 37 above refers);
- (d) the Administration will provide guidelines on the type of information which waste producers are recommended to keep in the Codes of Practice and specify a reasonable period for which waste producers have to keep such information for inspection by DEP under section 12 of the Draft Waste Disposal (Clinical Waste) (General) Regulation (paragraph 72 above refers);
- (e) the Administration will continue to liaise with the service providers and waste producers to ensure that collection service is available at outlying islands (e.g. Cheung Chau, Lamma Island and Peng Chau) on a regular basis after the enactment of the Bill (paragraph 79 above refers); and
- (f) the Administration will insert a footnote in the loose-leaf edition of the Laws of Hong Kong in relation to Schedule 9 to the effect that the formulation used in that Schedule (i.e. the states expressly named as

read with the catch-all phrase of “any other state, or party to the Basel Convention”) represent all states or parties referred in Annex VII of the Basel Convention (paragraph 113 above refers).

Committee Stage amendments

119. Apart from the CSAs mentioned in this report, the Administration will also move other textual and minor amendments of a technical nature. A full set of CSAs to be moved by the Administration is in **Appendix IV**. The Bills Committee supports the CSAs.

RECOMMENDATION

120. The Administration has advised the Bills Committee that after enactment of the Bill, it will seek funding approval from the Finance Committee for the required modification work of CWTC, finalize the preparation of the relevant subsidiary legislation for submission to LegCo, and promulgate the Codes of Practice. As the introduction of a control scheme for clinical waste has been discussed since 1997, the Bills Committee agrees that the Bill should be enacted at the earliest possible opportunity and recommends that the Second Reading debate on the Bill be resumed at the Council meeting on 29 March 2006.

ADVICE SOUGHT

121. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 2
Legislative Council Secretariat
16 March 2006

Bills Committee on Waste Disposal (Amendment) Bill 2005

Membership list

Chairman

Hon Audrey EU Yuet-mee, SC, JP

Members

Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
Dr Hon LUI Ming-wah, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon LI Fung-ying, BBS, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Dr Hon KWOK Ka-ki

(Total : 11 Members)

Clerk

Mrs Percy MA

Legal Adviser

Miss Monna LAI

Date

8 July 2005

《 2005年廢物處置(修訂)條例草案 》委員會
Bills Committee on Waste Disposal (Amendment) Bill 2005

曾向委員會表達意見的團體/個別人士名單
List of organizations/individuals who have
submitted views to the Subcommittee

<u>團體/個別人士名稱</u>	<u>Names of organizations and individuals</u>
* 1. 世界環衛服務有限公司	World Environmental Services LTD
2. 沙田國際醫務中心仁安醫院	Shatin International Medical Centre Union Hospital
* 3. 威務香港有限公司	Service Master (HK) LTD
4. 香港中文大學	The Chinese University of Hong Kong
* 5. 香港中華中醫學會	
6. 香港中華總商會	The Chinese General Chamber of Commerce
* 7. 香港牙醫管理委員會	Dental Council of Hong Kong
* 8. 香港牙醫學會	Hong Kong Dental Association
* 9. 香港西醫工會	The Hong Kong Doctors Union
10. 香港城市大學	The City University of Hong Kong
* 11. 香港浸會大學	Hong Kong Baptist University
* 12. 香港浸會大學中醫藥學院	School of Chinese Medicine Baptist University
13. 香港理工大學	Hong Kong Polytechnic University
* 14. 香港港安醫院	Hong Kong Adventist Hospital
* 15. 香港廢物管理學會	Hong Kong Waste Management Association
16. 香港醫務委員會	The Medical Council of Hong Kong
17. 香港醫學會	The Hong Kong Medical Association
* 18. 香港獸醫學會有限公司	Hong Kong Veterinary Association Ltd.

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|--------------------|---|
| * 19. 荃灣港安醫院 | Tsuen Wan Adventist Hospital |
| * 20. 新界廠商聯合會 | New Territories Manufactures Association |
| * 21. 聖保祿醫院 | St. Paul's Hospital |
| 22. 葵青區議會 | Kwai Tsing District Council |
| * 23. 葵青區議會議員黃光武先生 | Mr WONG Kwong-mo, Member of Kwai Tsing District Council |
| 24. 綠色力量 | Green Power |
| * 25. 綠色和平 | Greenpeace |
| * 26. 增力服務有限公司 | Tsang Lik Services LTD |
| * 27. 輝然環保服務公司 | Fai In Environmental Services CO. |
| * 28. 錦明環保工程有限公司 | Kam Ming E. P. Engineering CO. LTD |
| * 29. 環保工程商會 | Environmental Contractors Management Association |
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| * 曾向小組委員會口頭申述意見的團體代表 | |
| Deputations who have made oral representations to the Subcommittee | |

本署檔案
OUR REF : EP170/3P/051

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Appendix III

環境保護署總部

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灣仔告士打道五號
稅務大樓四十六樓

16 March 2006

The Hon Audrey Eu Yuet-mee, SC, JP
The Chairman
Bills Committee on the Waste Disposal (Amendment) Bill 2005
Legislative Council Building
8 Jackson Road
Central, Hong Kong
(By Fax 2509-9055)

Dear Chairman,

Bills Committee on the Waste Disposal (Amendment) Bill 2005

Projects in Kwai Tsing District

Further to my letter dated 7 March 2006 regarding Members' request for providing facilities for the betterment of the Kwai Tsing district, we have liaised with the Home Affairs Bureau, the Kwai Tsing District Office, the Leisure and Cultural Services Department (LCSD) and the Highways Department (HyD) to follow up on suitable projects.

Noise abatement projects

- To minimize the impact of traffic noise on the residents, a noise barrier will be built at the Tsing Tsuen Bridge. HyD has started the design of the noise barrier, and subject to funding approval in mid 2007, the construction works is tentatively scheduled to commence in December 2007 with a view to completion in December 2010. The estimated cost of the project is \$100 Million.

- We have also identified 2 sections of roads in the district suitable for the trial of resurfacing low noise material to reduce traffic noise impact. These two sections are located at Kwai Foo Road and Kwai Yik Road, and the resurfacing works will commence later this year.

Recreational & Leisure facilities


- The Administration has reserved some \$214 Million for LCSD to carry out the following new capital works projects:
 - (a) District Open Space in Shek Yam Estate (Phases I and IV), Kwai Chung; and
 - (b) District Open Space in Area 9, Tsing Yi

These 2 projects are scheduled to commence construction in mid 2007 and late 2007 and respectively.

- In addition, the LCSD will, in consultation with Kwai Tsing District Council, start the preliminary planning work for the Indoor Recreation Centre capital works project in Area 4, Tsing Yi, and take forward the partial opening of the Kwai Chung Park project under the Minor Building Works Programme.
- The Administration will also devote more resource to carry out more greening and beautification works so as to further improve the living environment of the local residents of Tsing Yi.

We shall contribute to the on-going discussions through the Kwai Tsing District Council and its committees in considering these projects, with a view to improving the local environment at the earliest opportunity.

Yours sincerely,



(Raymond Fan)
for Director of Environmental Protection



WASTE DISPOSAL (AMENDMENT) BILL 2005

COMMITTEE STAGE

Amendments to be moved by the Secretary for the
Environment, Transport and Works

<u>Clause</u>	<u>Amendment Proposed</u>
1(3)	By deleting "13,".
2(d)	By deleting everything after ""trade waste", by" and substituting "adding ", clinical waste" before "or construction waste";".
2(g)	<p>(a) In the proposed definition of "clinical waste", by deleting paragraph (a) and substituting –</p> <p>"(a) a dental, medical, nursing or veterinary practice; (aa) any other practice, or establishment (howsoever described), that provides medical care and services for the sick, injured, infirm or those who require medical treatment;"</p> <p>(b) By deleting the proposed definition of "designated waste disposal facility".</p>
8(c)	By deleting "a semicolon" and substituting ""; and"".
8(d)	<p>(a) In the proposed section 20A(4)(e), by deleting everything after "state" and substituting "or party that is referred to in Schedule 9.".</p> <p>(b) By deleting the proposed section 20A(4)(f).</p>
9(b)	By deleting "a semicolon;" and substituting ""; and".".

- 9 By deleting paragraphs (c) and (d).
- 10 In the proposed section 20DA(3), by deleting everything after "shall" and substituting –
 "be –
 (a) made in writing in such form as the waste disposal authority may specify; and
 (b) accompanied by such application fee as may be prescribed by regulations made under section 33.".
- 13 By deleting the clause.
- 18(b) In the Chinese text, by deleting "或批准".
- 21(a) By adding –
 "(iia) in paragraph (eb), by repealing "thereof" and substituting "of the regulations";".
- 21(b)(iii) In the proposed section 33(1A)(a)(ix), by deleting everything after "(1)(ca)" and substituting –
 "–
 (A) to receive clinical waste at such location as the Director may specify in his authorization; and
 (B) to remove the waste so received in such manner as may be prescribed;".
- 22 (a) By renumbering the proposed section 37(2) and (3) as proposed section 37(2A) and (2B) respectively.
 (b) By adding –

"(2) The Director may, by notice published in the Gazette, specify as wastes that belong to Group 6 of Schedule 8 any wastes that, in his opinion –

- (a) are likely to be contaminated with infectious materials from patients falling within such case definition as specified in the notice; and
- (b) may pose a significant health risk."

23 By adding –

"(aa) under the heading of "GC – 其他含金屬廢物", in the entry of "GC 010", by repealing "配件" and substituting "組件";".

24(a) By adding –

"AA1180 Waste electronic and electrical assemblies or scrap contaminated with any substance to an extent which renders the waste as chemical waste"

after –

"AA220 Spent etching solutions containing dissolved copper".

25 (a) In the proposed Schedule 8, in Group 3, by deleting everything after "but excluding" and substituting –

" –

- (a) dead animals and animal tissues, organs and body parts arising from a veterinary practice or a Chinese medicine practice; and
- (b) teeth arising from a dental practice."

(b) In the proposed Schedule 8, in Group 4, by adding –

"Nipah virus (立百病毒);"

after –

"Marburg virus (瑪堡病毒);".

- (c) In the proposed Schedule 8, by deleting Group 6 and substituting –

"Group 6 – Other wastes

Such other wastes as specified by the Director under section 37(2) of this Ordinance."

- (d) In the proposed Schedule 9, by deleting the heading and substituting –

"STATES OR PARTIES INCLUDED IN ANNEX VII OF THE
BASEL CONVENTION ON THE CONTROL OF
TRANSBOUNDARY MOVEMENTS OF
HAZARDOUS WASTES AND THEIR
DISPOSAL CONCLUDED AT BASEL
IN SWITZERLAND ON 22 MARCH
1989 AS AMENDED FROM TIME
TO TIME AND AS APPLIED TO
HONG KONG ("Basel
Convention")".

- (e) In the proposed Schedule 9, by deleting –

"United States of America"

and substituting –

"United States of America

and any other state, or party to the Basel Convention, that is a
member of –

- (a) the Organization for Economic Co-operation and
Development; or
- (b) the European Union".

《2005年廢物處置(修訂)條例草案》

委員會審議階段

由環境運輸及工務局局長動議的修正案

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建議修正案

- 1(3) 刪去“13、”。
- 2(d) 刪去在“中，”之後的所有字句而代以“在“或建築廢物”之前加入“、醫療廢物”；”。
- 2(g) (a) 在建議的“醫療廢物”的定義中，刪去(a)段而代以 —
- “(a) 牙科、醫科、護理或獸醫業務；
- (aa) 對病人、傷者、身體衰弱者或需要醫療的人提供醫療護理和服務的任何其他業務或機構(不論以何種方式稱述)；”。
- (b) 刪去建議的“指定廢物處置設施”的定義。
- 8(c) 刪去“分號”而代以““；及””。
- 8(d) (a) 在建議的第20A(4)(e)條中，刪去在“所”之後的所有字句而代以“提述的任何國家或締約方輸出的。”。
- (b) 刪去建議的第20A(4)(f)條。
- 9(b) 刪去“分號；”而代以““；及”。”。

- 9 刪去(c)及(d)段。
- 10 在建議的第 20DA(3)條中，刪去在“的申”之後的所有字句而代以 —
- “請 —
- (a) 須採用廢物處置當局指明的格式以書面提出；及
- (b) 須附同根據第 33 條訂立的規例訂明的申請費用。”。
- 13 刪去該條。
- 18(b) 在中文文本中，刪去“或批准”。
- 21(a) 加入 —
- “(iia) 在(eb)段中，廢除在“受”之後的所有字句而代以“該等規例或其任何規定規管的豁免或除外情況；”；”。
- 21(b)(iii) 在建議的第 33(1A)(a)(ix)條中，刪去在“的人”之後的所有字句而代以 —
- “ —
- (A) 於署長在其授權中指明的地點接收醫療廢物；及
- (B) 以訂明的方式移去如此接收的廢物；”。
- 22 (a) 將建議的第 37(2)及(3)條分別重編為建議的第 37(2A)及(2B)條。
- (b) 加入 —

“ (2) 署長可藉於憲報刊登的公告將任何他認為 —

(a) 相當可能受源自屬該公告指明的
病例定義涵蓋的病人的傳染性物
料污染；及

(b) 可能嚴重危害健康，

的廢物指明為屬於附表 8 第 6 組的廢物。”。

23 加入 —

“(aa) 在“**GC — 其他含金屬廢物**”的標題下，在
“GC 010”的條目中，廢除“配件”而代以
“組件”；”。

24(a) 在 —

“AA 220 含有溶解銅的廢蝕刻溶液”

之後加入 —

“AA 1180 受任何物質污染以致成為化學廢物
的廢電子或電器組件和電子或電器
廢件”。

25 (a) 在建議的附表 8 中，在第 3 組中，刪去在“但不包
括”之後的所有字句而代以 —

“ —

(a) 來自獸醫業務或中醫業務的動物的
屍體、組織、器官及身體部
分；及

(b) 來自牙科業務的牙齒。”。

(b) 在建議的附表 8 中，在第 4 組中，在 —

“天花病毒(Variola virus)；”

之後加入 —

“立百病毒(Nipah virus)；”。

(c) 在建議的附表 8 中，刪去第 6 組而代以 —

“第 6 組 — 其他廢物

署長根據本條例第 37(2)條指明的其他廢物。”。

(d) 在建議的附表 9 中，刪去標題而代以 —

“於 1989 年 3 月 22 日在瑞士巴塞爾締結而經不時
修訂並適用於香港的《控制危險廢物越境轉移
及其處置巴塞爾公約》(《巴塞爾公約》)
的附件 VII 所指的國家或締約方”。

(e) 在建議的附表 9 中，刪去 —

“盧森堡”

而代以 —

“盧森堡

及屬以下組織成員的任何其他國家或《巴塞爾公約》
締約方 —

(a) 經濟合作與發展組織；或

(b) 歐洲聯盟”。