

**立法會**  
***Legislative Council***

LC Paper No. CB(1)1749/12-13  
(These minutes have been seen  
by the Administration)

Ref: CB1/BC/11/12

**Bills Committee on Waste Disposal (Amendment) Bill 2013**

**Minutes of the first meeting held on  
Friday, 12 July 2013, at 8:30 am  
in Conference Room 3 of the Legislative Council Complex**

**Members present** : Hon Cyd HO Sau-lan (Chairman)  
Hon WU Chi-wai, MH  
Hon Charles Peter MOK  
Hon KWOK Wai-keung

**Members absent** : Hon LEE Cheuk-yan  
Hon CHAN Hak-kan, JP  
Hon CHAN Han-pan  
Dr Hon Kenneth CHAN Ka-lok  
Hon CHUNG Kwok-pan

**Public officers attending** : **Agenda item II**  
  
Mr Albert LAM Kai-chung, JP  
Deputy Director of Environmental Protection (2)  
Environmental Protection Department  
  
Mr David WONG Tak-wai  
Assistant Director of Environmental Protection  
(Environmental Compliance)  
Environmental Protection Department

Mr Samson LAI Yiu-kei  
Assistant Director of Environmental Protection  
(Waste Management Policy)  
Environmental Protection Department

Mr Peter SZE Chun-fai  
Senior Government Counsel  
Department of Justice

**Clerk in attendance :** Ms Sophie LAU  
Chief Council Secretary (1)2

**Staff in attendance :** Ms Wendy KAN  
Assistant Legal Adviser 6

Miss Katherine CHAN  
Council Secretary (1)2

Ms Emily LIU  
Legislative Assistant (1)2

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**I Election of Chairman**

Ms Cyd HO, the member who had the highest precedence among those present at the meeting, presided at the election of Chairman of the Bills Committee. She invited nominations for the chairmanship of the Bills Committee.

2. Mr Charles Peter MOK nominated Ms Cyd HO, and the nomination was seconded by Mr WU Chi-wai. Ms Cyd HO accepted the nomination.

3. There being no other nominations, Ms Cyd HO was elected Chairman of the Bills Committee.

**II Meeting with the Administration**

(LC Paper No. CB(3)706/12-13  
File Ref: EP CR 9/150/37 Pt.10

- The Bill
- The Legislative Council Brief issued by the Environment

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- Bureau and Environmental Protection Department
- LC Paper No. LS66/12-13 - Legal Service Division Report on the Bill
- LC Paper No. CB(1)1505/12-13(01) - Paper on Waste Disposal (Amendment) Bill 2013 prepared by the Legislative Council Secretariat (background brief)
- LC Paper No. CB(1)1505/12-13(02) - Marked-up copy of the Bill prepared by the Legal Service Division
- LC Paper No. CB(1)1505/12-13(03) - Letter dated 8 July 2013 from Assistant Legal Adviser to the Administration)

4. At the invitation of the Chairman, the Administration briefed members on the Waste Disposal (Amendment) Bill 2013 ("the Bill"). The Bills Committee deliberated (index of proceedings attached at **Annex**).

Discussion

Admin 5. Members noted the Administration's proposal in the Bill that the enhanced regulatory control should not apply to the sole owner of a private lot who deposited or caused to be deposited, construction waste on the lot if the area on which construction waste had been deposited within the lot did not exceed 20 square metres ("m<sup>2</sup>"); or if the depositing activity was carried out as part of any building works commenced in accordance with the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) or the Buildings Ordinance (Cap. 123) on the lot concerned. In this connection, the Administration was requested to provide the following information –

- (a) A list of other legislation that was relevant to fly-tipping of waste (such as change of land use or deposit of waste giving rise to health hazard as a result of dumping activities);
- (b) Any restriction on the height of the waste deposited on the lot or on the depth of the permitted area of 20 m<sup>2</sup> below ground level; and
- (c) Any responsibility on the part of the owner of the lot to reinstate the lot used as the depositing area.

Admin 6. The Chairman reminded that the Administration had been asked by the

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Legal Adviser to the Bills Committee to provide response to a total of 12 questions on the Bill, and she requested that the reply should be received as soon as possible.

Date of next meeting

7. The Chairman suggested and members agreed that the next meeting could be held after the commencement of the 2013-2014 session of the Legislative Council and whether to receive public views on the Bill or not could be discussed at the next meeting.

**III Any other business**

8. There being no other business, the meeting ended at 9:40 am.

Council Business Division 1  
Legislative Council Secretariat  
30 August 2013

**Proceedings of the first meeting of  
the Bills Committee on Waste Disposal (Amendment) Bill 2013  
on Friday, 12 July 2013, at 8:30 am  
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<b>Agenda item I – Election of Chairman</b>			
000824 – 000949	Ms Cyd HO Mr Charles Peter MOK Mr WU Chi-wai	- Election of Chairman.  - Ms Cyd HO was elected as the Chairman of the Bills Committee ("BC").	
<b>Agenda item II – Meeting with the Administration</b>			
000950 – 001617	Chairman Administration	- Briefing by the Administration on the Waste Disposal (Amendment) Bill 2013 ("the Bill").	
001618 – 001717	Chairman Assistant Legal Adviser	- Assistant Legal Adviser 6 informed BC that a letter [LC Paper No. CB(1)1505/12-13(03)] was issued to the Administration, in which 12 questions on the Bill related to its policies reflected and interpretation were raised. The Administration's response was being awaited.	
001718 – 003305	Chairman Mr WU Chi-wai Administration	- Mr WU Chi-wai made the following enquiries/comments:  (a) with the introduction of the prior notification mechanism, what would be the estimated number of cases of depositing construction waste on private land to be received by the Director of Environmental Protection;  (b) why the Administration had proposed a benchmark of the depositing area for construction waste to be no more than 20 square metres ("m <sup>2</sup> ");  (c) for the small-scale depositing activities, Mr WU suggested the Administration to consider volume, rather than area, as the benchmark for exemption because a significant volume of waste could be placed within an area of 20 m <sup>2</sup> ; and  (d) Mr WU questioned whether the enhancement of the regulatory control proposed by the Administration would lead to legalization of depositing of construction waste on private land.	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		<p data-bbox="561 273 1066 304">- The Administration responded that:</p> <p data-bbox="609 344 1235 672">(a) it was hard to accurately predict how many cases of notification would be received by the Environmental Protection Department after the proposed mechanism became effective. The primary aim of the Bill was to enhance the regulation of depositing construction waste on private land under the Waste Disposal Ordinance (Cap. 354) ("the Ordinance");</p> <p data-bbox="609 712 1235 1330">(b) having taken into account the views collated during the public consultation, the Administration proposed that depositing activities on a lot would be exempted from the proposed notification mechanism if the total area on which construction waste had been deposited within the lot was less than 20 m<sup>2</sup>, in order to strike a balance between the additional burden on all parties concerned in complying with the new procedures and the potential environmental impact. The Bill, therefore, should not be made applicable to depositing activities of construction waste on a private lot so long as the total area of construction waste deposited within that lot was less than 20 m<sup>2</sup>;</p> <p data-bbox="609 1370 1235 1585">(c) the Administration had not proposed volume as the benchmark for exemption for small-scale depositing activities because according to previous experience, illegal dumping activities generally involved a large piece of land; and</p> <p data-bbox="609 1626 1235 2087">(d) the objective of the Bill was not to legalize the depositing of construction waste on private land, whereas in fact the existing enforcement against fly-tipping on private land was not effective because it was often difficult to prove the lack of permission of the owner or lawful occupier. After public consultation, the Administration, therefore, proposed a prior notification mechanism under which before a person deposited or caused to be deposited construction waste on a private lot, the person should obtain the valid permission of each and every owner of</p>	

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		<p>that lot. The Administration would be able to alert all relevant departments that depositing of construction waste might commence in a particular private lot such that they might take precautionary measures as appropriate.</p>	
003306 – 003925	Chairman Mr KWOK Wai-keung Administration	<p>- Mr KWOK Wai-keung expressed the following views and concerns:</p> <p>(a) realizing the proposed benchmark of 20 m<sup>2</sup> for depositing construction waste, Mr KWOK enquired how the Administration would handle the case if such exemption area on private land was dredged below ground level in order to keep more construction waste; and</p> <p>(b) if fly-tipping of construction waste occurred in the common area say an entrance of a building block on a private street in the urban area, Mr KWOK expressed concern about whether the Administration would penalize all the owners or the management committee of the owners' corporation of the block concerned.</p> <p>- The Administration made the following response:</p> <p>(a) the Administration pointed out that some construction waste was inert and might be reused as construction materials. There were cases involving temporary, small-scale deposition of construction waste on private land. In addition, having regard to the past experience and the views collated during the public consultation, the Administration proposed to make exemption for depositing activities of construction waste on a private lot so long as the area of construction waste deposited on the lot was less than 20 m<sup>2</sup>; and</p> <p>(b) the prior notification mechanism would enhance the regulatory control if the Administration could become aware of any plans to deposit construction waste on private land before the depositing activity took place. It would help identify the</p>	Administration to provide information /response (paragraph 5 of minutes)

Time marker	Speaker	Subject(s)	Action required
		<p>depositing that had indeed been properly authorised thus enhancing enforcement action. The proposed enhancement would also better protect the interest of the land owners concerned if such permission had to be given by all owners.</p> <p>- The Chairman commented that Mr KWOK Wai-keung's concerns about private streets were shared by Assistant Legal Adviser 6. She urged the Administration to try their best to respond to the Assistant Legal Adviser's questions stated in her letter to the Administration.</p>	<p>Administration to provide information /response (paragraph 6 of minutes)</p>
<p>003926 – 004849</p>	<p>Chairman Mr Charles Peter MOK Administration</p>	<p>- Mr Charles Peter MOK enquired about:</p> <p>(a) the implementation of existing regulatory control of the depositing of construction waste on private land by the Administration;</p> <p>(b) the difficulties encountered in the enforcement of law against fly-tipping on private land; and</p> <p>(c) whether the Administration would consider means, such as organizing seminars or distributing pamphlets, to raise the awareness of the stakeholders about fly-tipping after the Bill became effective.</p> <p>- The Administration explained that:</p> <p>(a) after receiving complaints about fly-tipping of construction waste on private land, the Administration would start investigation and conduct targeted inspections or ambush operations at the concerned locations. The current law against fly-tipping of waste was set out in section 16A of the Ordinance. A person was considered to have committed an offence if the person deposited or caused or permitted to be deposited waste (including construction waste) in any place except with lawful authority or excuse, or except with the permission of any owner or lawful occupier of the place; and</p> <p>(b) the Administration pointed out that it was</p>	



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		<p>sometimes difficult to prove in a timely manner the lack of permission of a landowner or lawful occupier and it explained why enforcement against fly-tipping on private land was not effective. It was not unusual to receive incomplete or conflicting information from the depositor and the owner or lawful occupier as to whether there was indeed proper permission. As a result, the Administration was not able to collect sufficient evidence in a suspected fly-tipping case within the statutory time limit of six months for initiating prosecution, which undermined the deterrent effect of the control. The Administration added that they had successfully prosecuted 8, 1 and 2 fly-tippers in 2010, 2011 and 2012 respectively. The success rate of prosecution was relatively low as the total numbers of complaints received were between 100 and 200 each year over the past few years. The Administration was not able to prosecute a fly-tipper even though a member of the public saw the fly-tipper's vehicle registration number. The regulatory control should therefore be enhanced.</p> <p>- The Chairman shared that the Hong Kong Dumper Truck Drivers Association had helped to combat fly-tipping activities by advising its members/truck drivers/owners to install a global positioning system device on a voluntary basis to prove that the dump trucks had not been driven to the locations where illegal dumping took place to show their innocence. The Association might propose such installation as a good practice despite that it might provoke privacy concerns.</p>	
004850 – 011022	Chairman Mr WU Chi-wai Administration	<p>- Mr WU Chi-wai expressed the following views and concerns:</p> <p>(a) Mr WU enquired whether landowners had any legal responsibility to remove the fly-tipped construction waste on their land;</p> <p>(b) Mr WU was concerned about whether the</p>	

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		<p>Administration would make compensation to the landowners in case they had to bear the cost for clearing the fly-tipped construction waste;</p> <p>(c) in order to better understand the impact of the Bill, Mr WU requested the Administration to prepare a list of other legislation that was relevant to fly-tipping of waste for members' consideration;</p> <p>(d) Mr WU said that the dumper truck drivers, on the one hand, might like to save cost for depositing construction waste at random. On the other hand, the landowners might also wish to open their land for such activities for profit-making. Mr WU was worried that the Bill might lead to legalization and increase of depositing activities due to the benefits brought to the dumper truck drivers and landowners; and</p> <p>(e) Mr WU asked if there was any restriction on the height of the waste deposited on the lot.</p> <p>The Administration made the response as follows:</p> <p>(a) the Bill aimed to enhance the enforcement effectiveness of section 16A of the Ordinance to deter the unauthorised disposal of abandoned construction materials on private land. Under the proposed amendment, any person who intended to carry out depositing activity on private land would be required to obtain the prior written permission of the owner, and the depositor should display such written permission during the depositing activity. Under the proposal, the person would have committed an offence if he or she failed to produce the valid written permission for inspection on request by enforcement officers. It would therefore facilitate the Administration to handle the complaints against fly-tippers and enhance the regulatory control; and</p> <p>(b) unlike chemical waste, the fly-tipped construction waste would not give rise to an imminent risk of adverse environmental</p>	<p>Administration to provide information/response (paragraph 5 of minutes)</p> <p>Administration to provide information/response (paragraph 5 of minutes)</p>

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		<p>impact and, in any event, the Bill did not stipulate any duty of the landowners to clear the waste.</p> <p>- The Chairman expressed the following views:</p> <p>(a) as regards Mr WU's concern about compensation for those owners whose land was fly-tipped with waste, the Chairman cited a burglary case as an illustration. If a burglar who damaged a person's property during the course of crime was caught, the victim might ask for compensation of the damaged property from insurance companies (if applicable) or from the burglar by means of civil claims. The Administration, however, would not provide compensation to the victim under such circumstances. In other words, even though the fly-tippers were caught, the landowners might be compensated by insurance companies (if applicable) or the fly-tippers by civil claims, but not by the Administration; and</p> <p>(b) the Chairman agreed to Mr WU's suggestion that the Administration should prepare a list of other legislation that was relevant to fly-tipping of waste for members' reference. The Chairman took an ordinance relating to the New Territories as an example. If an outsider fly-tipped part of a landowner's fish pond, the landowner might not be able to use it as a fish pond any more. The Chairman showed concern about whether the landowner had the legal responsibility to reinstate his/her pond.</p>	<p>Administration to provide information /response (paragraph 5 of minutes)</p>
011023 – 011202	Chairman	- Date of next meeting and items to be discussed.	