

**Confirmed Minutes of the 178th Meeting of
the Advisory Council on the Environment
held on 16 May 2011 at 2:30 pm**

Present:

Prof Paul LAM, JP (Chairman)
Prof CHAU Kwai-cheong, JP (Deputy Chairman)
Ms Teresa AU
Mr Oscar CHOW
Prof FUNG Tung
Mr Michael JEBSEN, BBS
Mr Edwin LAU, MH
Prof LI Xiang-dong
Ir Dr LO Wai-kwok, BBS, MH, JP
Dr MAN Chi-sum, JP
Miss Yolanda NG
Dr Alfred TAM
Mr TSANG Kam-lam, JP
Dr Carrie WILLIS, SBS, JP
Mr Simon WONG, JP
Prof WONG Ming-hung
Prof Ignatius YU
Mr Carlson K S CHAN, JP (Secretary)

Absent with Apologies:

Dr Dorothy CHAN, BBS
Ms Betty HO
Prof Joseph LEE
Ms Pansy YAU
Dr Ray YEP
Dr YAU Wing-kwong

In Attendance:

Ms Anissa WONG, JP	Permanent Secretary for the Environment
Mr C C LAY	Assistant Director (Conservation), Agriculture, Fisheries and Conservation Department
Mr LAU Sing	Assistant Director/Technical Services, Planning Department
Ms Esther LI	Principal Information Officer, Environmental Protection Department (EPD)
Ms Josephine CHEUNG	Chief Executive Officer (CBD), EPD

Mr Steve TSOI	Executive Officer (CBD), EPD
Ms Joanne CHIN	Executive Officer (CBD) (Designate), EPD
Miss Kim KWAN	Executive Manager (CBD), EPD

In Attendance for Agenda Item 3:

Mr W C MOK	Assistant Director (Air Policy), Environmental Protection Department (EPD)
Mr S W PANG	Principal Environmental Protection Officer (Air Policy), EPD

In Attendance for Agenda Item 5:

Mr Benny WONG, JP	Deputy Director of Environmental Protection (1), EPD
Mr Simon LEE	Deputy Law Officer (Civil Law) (Planning, Environment, Lands and Housing Unit), Department of Justice (DoJ)
Miss Vivian FUNG	Acting Assistant Law Officer (Civil Law) (Planning, Environment, Lands and Housing Unit), DoJ

Action

Agenda Item 1 : Confirmation of the draft minutes of the 177th meeting held on 11 April 2011

The draft minutes were confirmed without amendments.

Agenda Item 2 : Matters arising from the minutes of the 177th meeting held on 11 April 2011

2. There were no matters arising from the minutes of the last meeting.

Agenda Item 3 : Proposal for banning all forms of asbestos (ACE Paper 6/2011)

3. Mr S W Pang briefed Members on the background and details of the proposal to amend the Air Pollution Control Ordinance (APCO) (Cap. 311) for extending the current ban on import and sale of blue and brown asbestos to all other forms of asbestos, and banning the supply and new use of all forms of asbestos.

4. A Member enquired about the availability of information on health impacts of asbestos specific to Hong Kong. Mr W C Mok explained that the health impacts of asbestos, such as the possibility of causing lung cancer, asbestosis and mesothelioma, were widely known and were applicable to Hong Kong.

5. A Member welcomed the initiative to ban all forms of asbestos in view of the proven carcinogenic effect of asbestos on health. He noted recent media coverage about suspected incidents of improper disposal of asbestos-containing materials by contractors when conducting demolition works, such as the case at Choi Yuen Village in Shek Kong. He considered that opportunity should be taken to review the provisions under the APCO on the control of asbestos handling procedures. Given that about 60% to 70% of buildings built before mid-1980s involved the use of asbestos and several major urban renewal projects were in the pipeline, the Administration should strengthen the control of asbestos handling procedures in the demolition of aged buildings. Preventive and enforcement actions were important to better protect the workers and residents affected by the projects.

6. Mr W C Mok explained that detailed requirements were laid down in the APCO and Waste Disposal Ordinance (WDO) on proper handling and disposal of asbestos. The APCO required engagement of registered qualified professionals to conduct certain work involving asbestos-containing materials and engage in asbestos related activities as well as the need to follow a set of codes of practice. Asbestos waste must be properly handled and disposed of in accordance with the WDO. Moreover, efforts were made to promote public awareness in this aspect. In view of major development plans in the North-East New Territories, letters had been issued to owners of affected village houses in the concerned area to advise them of the proper practices for handling asbestos-containing structures, such as canopies and roof structures. Actions would be taken to issue similar letters to other remaining affected rural areas where necessary. Education programs were launched to remind contractors and owners of premises in urban areas on the legal requirements.

7. A Member enquired about the details of and follow-up actions taken by the Environmental Protection Department (EPD) on the suspected incident of improper disposal of asbestos-containing materials by the contractors of demolition works at Choi Yuen Village. Mr W C Mok undertook to provide the

information after the meeting.

(Post-meeting note: The EPD provided the following information after the meeting - Prior to the start of asbestos abatement works associated with the construction of MTRC's Express Rail Link (XRL) project in the area of Shek Kong last year, EPD had urged MTRC to ensure compliance with the relevant environmental protection legislations, including both the APCO and the Waste Disposal (Chemical Waste) (General) Regulation. The MTRC submitted its Abatement Plan in late 2010 and according to this plan, the concerned asbestos abatement works would be carried out in phases. EPD received a complaint on 7 April 2011 against the XRL project on improper handling of asbestos-containing materials. Investigation by EPD showed that there was no non-compliance. Nevertheless, EPD followed up with the persons-in-charge of the construction site, reminding them of their responsibilities to closely supervise their contractors and ensuring handling of all asbestos materials and waste generated from the demolition works in compliance with the relevant environmental legislations without causing pollution to the nearby environment. EPD would continue to closely monitor the concerned work sites. Should there be any substantiated case of contravening environmental legislation, enforcement action would be taken accordingly.)

8. A Member was concerned about the health hazard caused by debris of corrugated tiles found in many villages in the New Territories. He suggested setting up a hotline for reporting such cases to relevant government departments for follow-up actions. He considered that concerted effort by relevant departments was necessary in stepping-up actions on illegal dumping of asbestos-containing materials. Mr W C Mok explained that there was a mechanism for the Government to engage special contractors to handle unclaimed asbestos-containing materials. A hotline was available for the general public to report cases of pollution including improper disposal of asbestos-containing materials. The EPD would take appropriate actions for each case.

9. A Member asked whether there was any mechanism by which EPD would be informed of forthcoming urban renewal schemes in order to ensure compliance of the requirements of handling asbestos-containing materials. Mr W C Mok explained that EPD had been working closely with relevant bureaux and departments and was updated regularly on buildings which would be affected

by urban renewal projects. Initial screening would be conducted by EPD on whether there were asbestos-containing materials in the affected buildings. Relevant parties would be advised on the specific requirements of handling asbestos-containing materials. Regarding the “Operation Building Bright” campaign coordinated by the Development Bureau under which subsidies and technical assistance were offered to old buildings for carrying out repair works, EPD had taken part in the seminars and explained the legislative requirements of undertaking asbestos-related works to the authorised persons and contractors. As for participating buildings without owners’ corporations, repair works would be undertaken by the Buildings Department which would engage asbestos consultants and experienced contractors to carry out the works.

10. A Member enquired about the use of the 35 tonnes of white asbestos imported in 2010. Mr W C Mok explained that the most common use of white asbestos was for making corrugated cement sheets for cages, canopies or roof structures, fibre cloths for insulation and break linings for vehicles. It was likely that a large part of asbestos imported was for re-export purpose.

11. A Member enquired about more details of re-export of asbestos through Hong Kong. Mr W C Mok said that information from the Customs and Excise Department showed that about 35 tonnes of asbestos-containing materials were imported to Hong Kong and 60 tonnes were exported in 2009. It was noted that some of the asbestos were imported for re-export purpose rather than local consumption. According to parties involved in asbestos trading, such as suppliers of corrugated sheets and vehicle repairing industry, the amount of asbestos for local consumption was on the decreasing trend in the past few years.

12. The Chairman and a Member asked about the arrangements for handling the stock of asbestos-containing materials which had been imported into Hong Kong upon enactment of the new legislative requirements. Mr W C Mok said that relevant parties would be required to dispose of the materials according to the required procedures upon enactment of the new legislative requirements.

13. A Member asked about the locations for disposing asbestos and quantity of asbestos disposed of in Hong Kong in the past few years. Mr W C Mok said that asbestos had to be disposed of at designated areas in the landfills. As regards the quantity of asbestos disposed of in the past few years, he undertook to provide the information after the meeting.

(Post-meeting note: The EPD provided information after the meeting that the quantities of asbestos disposed of from 2008 to 2010 were 1,943 tonnes, 2,622 tonnes and 2,014 tonnes respectively.)

14. A Member enquired about the use of asbestos in the Mainland. Another Member considered that there was a need for increased vigilance on imports of goods from countries which still allowed the use of asbestos. Mr W C Mok explained that the use of amosite (brown asbestos) and crocidolite (blue asbestos) was already banned in the Mainland. As regards chrysotile (white asbestos), it was an international trend to ban its use. Chrysotile was already banned in the United Kingdom, European Union, Australia and Japan. Upon the enactment of the new legislative requirements, imports of goods from countries which still allowed the use of asbestos would be closely monitored to ensure compliance with the legislative requirements.

15. A Member enquired about the feasibility of imposing a complete ban on import of asbestos. Mr W C Mok explained that consultation was being conducted with relevant trades, especially on the technical aspect of banning the import, sale, supply and new use of asbestos-containing materials. The response so far was positive. Considerations would be given to the granting of exemption having regard to the availability of asbestos-free alternatives and measures required to prevent the release of asbestos. For example, the power companies had said during the consultation that some asbestos-containing components of special equipment, such as transformers or generators, might need to apply for exemptions as asbestos-free alternatives were not available.

16. A Member was concerned about the control of consumer products, such as asbestos-containing kitchen and household items. Mr W C Mok explained that the consultation sessions included the trading sector covering those items. So far, they had not asked for exemptions or raised any concerns.

17. A Member noted that some ships manufactured by other countries might contain asbestos and he was concerned about the release of asbestos fibres and their impacts on workers' health during the maintenance works. Mr W C Mok explained that asbestos-containing materials would not pose a health risk if they were in good condition and undisturbed. Same as other asbestos-related works, shipyards were required to take precautionary measures under the legislative requirements for maintenance works involving disturbance to asbestos.

As regards works carried out on ships or vessels which were navigating on the sea rather than in shipyards, the provisions under the APCO would be applicable to works carried out within the jurisdiction of Hong Kong.

18. The Member was also concerned about the release of asbestos fibres in the course of repairing asbestos-containing water pipes. Mr W C Mok explained that works for repairing or replacing asbestos-containing water pipes were required to follow the required procedures. Under normal circumstances, works on water pipes were carried out by government departments which would ensure that contractors would strictly follow the legislative requirements.

19. A Member asked about available alternatives for asbestos in the market and whether they were environment-friendly. Mr S W Pang said that asbestos-containing corrugated sheets for roof structures could be substituted by polypropylene combined with cellulose. The substitute was about 15% more expensive but had the benefits of being environment-friendly, higher impact resistance, lighter in weight, less brittle and better nail ability. As for vehicle break linings, fibreglass, which would be more environmentally acceptable, could be used as the alternative.

20. A Member enquired about the health hazard of exposure to particles of fibreglass. Another Member said that, to his knowledge, inhalation of dust containing fibreglass might cause irritation to human body. A Member added that direct contact with fibreglass might cause skin problems. There was no sufficient evidence at this stage to substantiate that mineral fibres, including fibreglass, were carcinogenic.

21. The Chairman summarized Members' views as follows –

- (a) the Council welcomed the proposal to extend the current ban on import and sale of blue and brown asbestos to all other forms of asbestos, and to ban the supply and new use of all forms of asbestos to better protect the public from the health hazard of asbestos;
- (b) the Council considered that enforcement actions should be stepped up on the compliance of legislative requirements and monitoring of asbestos-related works, in particular on the demolition of village houses, dismantling of aged buildings and illegal dumping of

asbestos-containing materials, in light of the upcoming large-scale redevelopment projects; and

- (c) the Council considered that there was a need for increased vigilance on imports of goods and products from countries which still allowed the use of asbestos.

Agenda Item 4: Report on 117th Environmental Impact Assessment Subcommittee meeting

(ACE Paper 7/2011)

22. The Chairman informed Members that the purpose of the paper was to report on the recommendation of the Environmental Impact Assessment (EIA) Subcommittee on the EIA report on “Pilot Project for Public-Private Partnership Conservation Scheme at Sha Lo Tung Valley, Tai Po” submitted by the Sha Lo Tung Development Company Ltd. which was discussed at the Subcommittee meeting on 18 April 2011. A Member declared interest as the organization in which he served as the Chief Executive Officer was the Conservation Agent of the project. To avoid any potential conflict of interest, he would abstain from the meeting for this item.

(Note – The Member left the meeting at this juncture.)

23. The Chairman said that he had just been informed by the EPD that the applicant of the EIA report had withdrawn the application for approval of the EIA report shortly before the Council meeting. In view of the latest development, the meeting agreed that there was no need for the Council to discuss the report submitted by the EIA Subcommittee. The Chairman concluded that the Council noted that the applicant had withdrawn the application for approval of the EIA report before the Council meeting. The Council thus did not make any comments on the EIA report.

Agenda Item 5: Any other business

The Hong Kong-Zhuhai-Macao Bridge Judicial Review
(ACE Paper 8/2011)

24. The Chairman informed Members that the EPD would like to take the opportunity to brief Members on the judgment handed down by the Court of First Instance (CFI) on 18 April 2011 in respect of the Hong Kong-Zhuhai-Macao Bridge (HZMB) Judicial Review (JR)¹.

(Note – The Member who abstained from the meeting for discussion of agenda item 4 joined the meeting at this juncture.)

25. Mr Benny Wong informed Members that an information note (ACE Paper 8/2011) on “The Hong Kong-Zhuhai-Macao Bridge Judicial Review” was tabled for Members’ reference. He briefed Members on the background of the JR, the gist of the judgment handed down by the CFI and its implications on the EIA process. He said that the CFI judgment had adopted an interpretation of the EIA Ordinance (EIAO) requirements which had profound implications on the EIA process as well as how the environmental impacts of designated projects should be assessed as acceptable. Having examined in detail the issues concerned and considered the legal advice obtained, EPD had decided to lodge an appeal against the CFI judgment. However, as long as the CFI judgment stood, EPD was duty bound to take into account its findings in considering applications and making decisions under the EIAO. It was also necessary for project proponents to take into account the CFI judgment and provide sufficient justifications to satisfy EPD that the relevant requirements had been fully met.

26. A Member enquired about the chance of the appeal being allowed by the Court of Appeal. Mr Simon Lee said that the decision of lodging an appeal had taken into account the Senior Counsel’s assessment of the merits of the appeal. The litigation team of the Department of Justice handling the appeal was working closely with EPD to ensure that the considerations supporting the appeal and concerns on the interpretation of the EIAO requirements would be fully reflected in the submissions to the Court of Appeal.

27. A Member asked whether the applicant of the JR could lodge an appeal to the Court of Final Appeal (CFA) again if the Court of Appeal allowed the appeal and whether EPD could lodge an appeal direct to the CFA to expedite the legal process. Mr Simon Lee said that a litigant would have the right to

¹ Judgment of Hon Fok JA (sitting as an additional Judge of the Court of First Instance) in Chiu Yee Wah v Director of Environmental Protection HCAL 9/2010 handed down on 18 April 2011.

consider whether to lodge an appeal to the CFA.

28. A Member noted that there were accusations against EPD and ACE on the failure to perform duties under the EIAO. He asked whether it should be a case of different interpretations of the EIAO. The Chairman asked whether the Authority had to undertake some tasks in the EIA process which were not explicitly laid down in the Ordinance. Mr Simon Lee said that the crux of the matter was what duties DEP and ACE were required to perform under the legislation. The decision of the Court of Appeal would in due course assist in clarifying the interpretation and EIAO requirements.

29. A Member enquired about the implication of the CFI judgment on EIA reports which had been approved and Environmental Permits issued by the Director of Environmental Protection (DEP) but construction works had yet to start. Another Member enquired about the potential of approved projects which did not include a “stand-alone analysis” being overturned. Mr Simon Lee said that the decision of DEP on the approved projects would remain legally valid and effective unless the decision of the particular project was quashed by the Court.

30. A Member asked whether it was technically feasible to conduct a “stand-alone analysis” in the future assessment year without the project in place. He doubted the reliability and usefulness of such analysis in view of uncertainties, such as new projects to be constructed near the project site, between the existing assessment year and future assessment year. Mr Benny Wong said that the feasibility of conducting a “stand-alone analysis” depended very much on the parameters or issues to be addressed in the EIA. Some parameters, such as ecological impacts, would be more difficult to be quantified than the others. At this stage, he could not say that it could not be done. Mr Simon Lee said that consideration had to be given on the circumstances of individual case which depended very much on the submission by the project proponent.

31. A Member enquired about the need to amend the EIAO or introduce new procedures for assessing future EIA reports in case the Court of Appeal dismissed the appeal. Mr Simon Lee said that it would be premature at this stage to consider such issues as it would depend very much on the ruling of the Court of Appeal.

(Note – Mr Simon Lee and Miss Vivian Fung left the meeting at this juncture.)

32. The Chairman invited Members to exchange views on the implications of the JR on submissions of EIA reports to ACE in light of the HZMB JR and pending the Court of Appeal's ruling on the appeal. The Chairman of EIA Subcommittee informed Members that there was no outstanding EIA report which the ACE had received and the EIA Subcommittee had not discussed.

33. Ms Anissa Wong said that two EIA reports were in the public consultation stage before handing down of the CFI judgment. The report on “Development of Integrated Waste Management Facilities Phase 1” (IWWMF) had been considered by the ACE and decision had yet to be made by EPD on approval of the EIA report. The project proponent (i.e. EPD) withdrew the application for approval of the EIA report on 11 May 2011 and would review the report in light of the CFI judgment. The EIA report on Sha Lo Tung had been considered by the EIA Subcommittee and the report of the Subcommittee was submitted to the full Council for consideration under Agenda Item 4. The project proponent informed EPD shortly before the Council meeting that they decided to withdraw the application for approval of the EIA report. As long as the CFI judgment stood, EPD was duty bound to take into account its findings in considering applications and making decisions under the EIAO.

34. A Member asked whether EPD would take forward the IWWMF project by providing additional information on the “stand-alone analysis” in the EIA report, in parallel with the appeal, as the appeal process would take some time. Another Member considered that it would be difficult to devise an objective yardstick to assess and consider the acceptability of the “stand-alone analysis” as required by the CFI judgement. EPD should consider including the relevant requirements in the study briefs for the project proponents to follow. Ms Anissa Wong said that project proponents would be advised to refer to the CFI judgment which was in the public domain and consider how their applications would be affected. They would be recommended to get in touch with subject teams of EPD to seek clarification and advice on how to address the requirements for each specific case.

35. A Member asked whether there were controversial or large-scale projects with Environmental Permits granted which might be subject to challenge on similar grounds. Ms Anissa Wong said that the time limit for application of JR was normally three months from the decision granted.

36. A Member asked whether the project proponents who had withdrawn the applications for approval of EIA reports would need to re-submit the project profiles and application for study briefs again before re-submitting the EIA reports. Ms Anissa Wong said that the current assessment was that the project proponent would have to re-submit the EIA report in the light of the CFI judgment without the need to re-submit the project profile or application for study brief again as the CFI judgement was related to the consideration of EIA report.

Agenda Item 6 : Date of next meeting

37. The Chairman informed Members that the next meeting was scheduled for 13 June 2011.

ACE secretariat
June 2011