

## 2. Interpretation

(1) In this Ordinance, unless the context otherwise requires –

“authorized officer” (獲授權人員) means the Director or any public officer appointed to be an authorized officer under section 38;

“container” (容器) includes a packet;

“court” (法院) includes a magistrate;

“Director” (署長) means the Director of Environmental Protection ~~or any Deputy Director of Environmental Protection;~~

~~“duplicate permit” (許可證複本) means a duplicate permit issued under section 39;~~

“export” (出口), in relation to a scheduled chemical, means to take the chemical, or cause the chemical to be taken, out of Hong Kong by air, land or water;

~~“function” (職能) includes a power and a duty;~~

“hazardous chemical” (有毒化學品) means any chemical that –

- (a) is not a pesticide; and
- (b) has potentially harmful or adverse effect on human health or the environment,

including any such chemical that is subject to the regulation of the Rotterdam Convention or the Stockholm Convention;

“import” (進口), in relation to a scheduled chemical, means to bring the chemical, or cause the chemical to be brought, into Hong Kong by air, land or water;

~~“manufacture” (製造), in relation to a scheduled chemical, includes causing the chemical to be manufactured;~~

“notice of cancellation” (取消通知) means a notice referred to in section 19;

~~“notice of suspension” (暫時吊銷通知) means a notice referred to in section 27;~~

“part” (部分), in relation to any thing, means any part of that thing, whether or not that part is a constituent element of that thing;

“permit” (許可證) means a permit issued or renewed under section 10;

“permit holder” (許可證持有人), where the context requires, includes a holder of a permit which –

- (a) has been or is to be cancelled or suspended under section 19 or 27; or
- (b) has been or is to be partially cancelled or suspended under section 31;

“pesticide” (除害劑) means a pesticide as defined in section 2 of the Pesticides Ordinance (Cap. 133);

“premises” (處所) includes any place and in particular includes any aircraft, vehicle or vessel;

“prescribed fee” (訂明費用), in relation to any matter, means the fee payable under this Ordinance in relation to that matter and prescribed by any regulation made under section 46;

“Rotterdam Convention” (《鹿特丹公約》) means the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade adopted on 10 September 1998 as amended from time to time and as applied to Hong Kong;

“scheduled chemical” (受管制化學品) means a Type 1 chemical or Type 2 chemical;

“Secretary” (局長) means the Secretary for the Environment, Transport and Works;

“Stockholm Convention” (《斯德哥爾摩公約》) means the Stockholm Convention on Persistent Organic Pollutants adopted on 22 May 2001 as amended from time to time and as applied to Hong Kong;

“thing” (物品) includes a substance;

“Type 1 chemical” (第 1 類化學品) means a hazardous chemical specified in Part 1 of Schedule 1;

“Type 2 chemical” (第 2 類化學品) means a hazardous chemical specified in Part 1 of Schedule 2;

“vary” (更改) –

- (a) in relation to the conditions of a permit, means –
  - (i) to modify any of those conditions;

- (ii) to substitute any condition for any of those conditions;
  - (iii) to add any condition to those conditions;
  - (iv) to cancel any of those conditions; or
  - (v) to do 2 or more of the acts mentioned in subparagraphs (i), (ii), (iii) and (iv); or
- (b) in relation to the directions given under section 22, means –
- (i) to modify any of those directions;
  - (ii) to substitute any direction for any of those directions;
  - (iii) to add any direction to those directions;
  - (iv) to cancel any of those directions; or
  - (v) to do 2 or more of the acts mentioned in subparagraphs (i), (ii), (iii) and (iv).

(2) In this Ordinance, unless the context otherwise requires, a reference to manufacture, in relation to a scheduled chemical, includes causing the chemical to be manufactured.

(3) For the avoidance of doubt, a scheduled chemical is not regarded as having been manufactured if it is produced incidentally in the course of the manufacture of any other thing.

#### 4. Ordinance binds Government

(1) Subject to ~~subsection (2)~~this section, this Ordinance binds the Government.

(1A) Neither the Government nor any public officer in the officer's capacity as such is liable to be prosecuted for an offence against this Ordinance.

(2) No prescribed fee is payable by the Government.

## 10. Issue and renewal of permits, etc.

(1) The Director may, on an application that complies with any regulation made under section 45, and subject to the compliance by the applicant with any other requirement imposed under or by virtue of any such regulation in relation to the application, issue a permit for the carrying out of the following activities –

- (a) the manufacture of one or more scheduled chemicals;
- (b) the export of one or more scheduled chemicals;
- (c) the import of one or more scheduled chemicals;
- (d) the use of one or more scheduled chemicals.

(2) The Director may, on an application that complies with any regulation made under section 45, and subject to the compliance by the applicant with any other requirement imposed under or by virtue of any such regulation in relation to the application, renew a permit issued under subsection (1).

(3) When considering whether to exercise his power under subsection (1) or (2), the Director is to have regard to other enactments that govern the activity to which the application relates.–

~~(a) other enactments that govern the activity to which the application relates; and~~

~~(b) the requirements under the Rotterdam Convention and the Stockholm Convention.~~

~~(4) The Director may not~~

~~(a) issue or renew a permit authorizing the manufacture of any Type 1 chemical unless~~

~~(i) the chemical is only for~~

~~(A) use for laboratory scale research purpose;~~

~~(B) use as a reference standard for chemical analysis; or~~

~~(C) use for laboratory scale research purpose and as a reference standard for chemical analysis; and~~

~~(ii) the issue or renewal of the permit would not be inconsistent with any of the requirements under the Rotterdam Convention and the Stockholm Convention; and~~

~~(b) issue or renew a permit authorizing the manufacture of any Type 2 chemical, or export, import or use of any scheduled chemical unless the issue or renewal of the permit would not be inconsistent with any of the requirements under the Rotterdam Convention and the Stockholm Convention.~~

(4) The Director may not issue or renew a permit authorizing the manufacture of any Type 1 chemical unless the chemical is only for –

(a) use for laboratory-scale research purpose;

(b) use as a reference standard for chemical analysis; or

(c) use for laboratory-scale research purpose and as a reference standard for chemical analysis.

**28. When suspension of permits takes effect**

(1) Where the Director decides to suspend a permit under section 27, the suspension is to take effect on the day specified in the notice of suspension for that purpose.

(2) A suspension is to take effect under subsection (1) notwithstanding that an appeal has been or is to be lodged under section 42(f) against the Director's decision.

(3) In subsection (1), "notice of suspension" (暫時吊銷通知) means a notice referred to in section 27.

**~~41. Proceedings for or in connection with acts of employees~~**

~~In any proceedings against a person under this Ordinance for or in connection with an act of his employee—~~

- ~~(a) it is not a defence for that person to show that his employee acted without his authority; and~~
- ~~(b) in the absence of evidence to the contrary, any material fact that is known to the employee is to be regarded as having been known to the employer.~~

**41. Liability of employers**

(1) Any act done or conduct engaged in by a person in the course of his employment (the “employee”) is treated for the purposes of this Ordinance as done or engaged in by his employer, as well as by him.

(2) In any proceedings for an offence under this Ordinance brought against an employer in respect of an act or conduct alleged to have been done or engaged in by his employee, the employer is liable to be convicted of and be punished for that offence unless he establishes the defence described in subsection (3).

(3) Where any proceedings are brought against an employer by virtue of this section, it is a defence for the employer to prove that —

- (a) the act or conduct alleged to have been done or engaged in was done or engaged in without his knowledge or consent;
- and

(b) he exercised all reasonable diligence to prevent the employee from doing the act or engaging in the conduct, or from doing or engaging in, in the course of employment, acts or conduct of that description.

#### 44. Service of notices, etc.

A notice or other document (however described) required or permitted to be served or sent (however described) under this Ordinance is to be regarded as having been duly served or sent if –

- (a) in the case of the Director –
  - (i) it is addressed to the Director and delivered to him at his principal office; or
  - (ii) it is sent to him by registered post addressed to him at his principal office;
- (b) in the case of an individual –
  - (i) it is ~~delivered~~ addressed to the individual and delivered to him by personal service; or
  - (ii) it is sent to the individual by registered post addressed to the individual at the individual's last known address; or
- (c) in the case of a body corporate –
  - (i) it is addressed to the body corporation, delivered to any place in Hong Kong at which the body carries on business and ~~giving it~~ given to a person apparently concerned in the management of, or apparently employed by, the body; or
  - (ii) it is sent to the body by registered post addressed to the body at the body's last known address.

**48. Delegation**

(1) The Secretary may in writing delegate any of his functions under section 47 to a public officer.

(2) The Director may in writing delegate any of his functions under this Ordinance, other than the functions under this subsection and section 38, to a public officer.

(3) In this section, “functions” (職能) includes powers and duties.

**50A. Protection of public officers**

(1) A public officer is not personally liable for any civil liability or claim whatever in respect of any act done or omitted to be done by the officer if the officer did or omitted to do the act in the honest belief that the act or omission was required or authorized by or under this Ordinance.

(2) The protection conferred by subsection (1) does not in any way affect the liability of the Government for the act or omission of the public officer.