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Secretary for the Environment, Transport
and Works

Environmental Protection Department
(Attn: Mr Esmond LEE,
Dep Dir of Env Protection(4))
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5 Gloucester Road
Wan Chai, Hong Kong

By Fax (2511 6775) and By Post

5 December 2006

Dear Mr LEE

Hazardous Chemicals Control Bill (“the Bill”)

I refer to the Administration’s Responses to Comments from Assistant Legal Adviser in her Letter of 12 June 2006 (LC Paper No. CB(1)1799/05-06(03)), Administration’s responses to List of follow-up actions arising from the discussion at the meeting on 28 June 2006 (LC Paper No. CB(1)2287/05-06(02)) and Administration’s Responses to Comments from the Bills Committee Chairman on 27 June 2006 (LC Paper No. CB(1)2287/05-06(03)) and have the following comments:

Administration’s Responses to Assistant Legal Adviser’s Comments

Section 10(4)(a)(i)

Doubt on the inconsistency between the English and Chinese versions is not removed.

Sections 10(3) and (4), 11(2) and (3), 13(2) and (3), 19(1)(d), 22(2) and (3), 23(2) and (3) and 27(1)

Doubt on the uncertainty of the reference to “any of the requirements under the Rotterdam Convention and the Stockholm Convention” in the above sections is not removed. The Administration has advised in its responses to list of follow-up actions arising from the discussion at the meeting on 28 June 2006 that the merits of such drafting are greater clarity of law and facilitating the readers’ understanding as to the extent to which the Director may exercise his statutory powers

and whether the Director has exercised his powers and performed his duties under the Bill (when enacted) properly. However, the Administration has failed to elaborate on how such merits can be achieved.

As the Administration has mentioned in the Draft Hong Kong Implementation Plan under the Stockholm Convention on Persistent Organic Pollutants (POPs) (LC Paper No. CB(1)950/05-06(03)) that the Stockholm Convention requirements will be met by various proposed legislative action items undertaken by various departments and the Bill mainly covers the import, export, production and use of non-pesticide POPs, the scope of the Director's statutory power and duties with reference to "any of the requirements under the Rotterdam Convention and the Stockholm Convention" remains unclear. Does it cover other aspects of the convention requirements implementation of which are regulated by other Ordinances and undertaken by other departments? How about modification of the convention requirements to suit the local needs? How can the readers' know the extent of such requirements and whether the Director has exercised his powers and performed his duties under the Bill (when enacted) properly when the Director is empowered to impose condition which may result in a more stringent measure than any of those required by the conventions and the languages of the Stockholm Convention has been criticized as "regrettably vague"¹?

Sections 41(a) and 41(b)

As a general rule, no act or default on the part of an agent imposes any criminal liability on the principal in respect thereof, unless the principal himself takes part in, authorizes, or connives at the commission of such act or default. The general rule is, however, subject to two exceptions. First... Secondly, a particular statute may, by its express terms or by implication, impose a criminal liability upon the principal in respect of the acts or defaults of his agent by imposing a liability which can exist **without proof of any criminal intent**. These exceptions do not apply where negligence is an essential ingredient in the offence; in this case the principal is not criminally responsible for the negligence of his agent².

Please clarify your reply in the light of the above common law principles.

Administration's Responses to Comments from the Bills Committee Chairman on 27 June 2006

Binding Effect – Section 4

Please clarify the policy intent enunciated in your reply. Does it mean

¹ Two Cheers For Global POPs: A Summary and Assessment of the Stockholm Convention on Persistent Organic Pollutants 14 Geo. Int'l Env'tl. L. Rev. 319

² Halsbury Vol. 2(1) para. 182

that the Government and the related public officers will be criminally liable if they are in breach of the obligations imposed by the Bill? Under what circumstances will the fine be paid by the public officer? How about the penalty of imprisonment?

Clause 26

The Administration has confirmed that the policy intent is that the provision imposes a strict liability offence.

Section 44(c)(i) provides that “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-

- (c) in the case of a body corporate-
 - (i) it is delivered to any place in Hong Kong at which the body carries on business and giving it to a person **apparently** concerned in the management of, or **apparently** employed by, the body;”.

Is the body corporate liable for breach of the obligations imposed under section 26 if the notice served under sections 22 and 23 has not actually been received by it?

It is appreciated that your reply in both Chinese and English could reach us by close of play, 12 December 2006.

Yours sincerely

(Monna LAI)
Assistant Legal Adviser