

**Bills Committee on
Air Pollution Control (Amendment) Bill 2008**

**List of follow-up actions arising from the discussion
at the meeting on 13 June 2008**

Administration's Response

I. To refine both the Chinese and English renditions of the proposed section 26K(2)(d) in consultation with the Legal Adviser to the Bills Committee.

1. After reviewing the proposed section 26K(2)(d)(ii), we consider that there is room for improving the Chinese text. A draft CSA is at **Annex** for Members' reference.

II. To advise the basis upon which the fine of \$30,000 per tonne of excessive emission under the proposed section 30B(1)(a) is arrived at. To also consider increasing the fine for second or subsequent conviction under the proposed section 30B(1)(b) from \$30,000 per tonne to \$60,000 per tonne.

1. When deciding the level of fine for excessive emission under the proposed section 30B(1)(a), we have taken into account the following factors -
 - (a) the fee payable for emission allowances sought to be increased upon a failure to acquire emission credits, which is \$20,000 per emission allowance under the proposed Schedule 2B;
 - (b) the local control cost for removal of sulphur dioxide, which is about \$12,600 per tonne; and
 - (c) the penalty for excessive emission of sulphur dioxide under the Acid Rain Program of the United States, which is about \$28,700 per tonne.
2. After carefully considering members' views expressed at the Bills Committee meeting, we agree to increase the fine under the proposed section 30B(1)(b) from \$30,000 to \$60,000 (in respect of each tonne of the relevant actual emission in excess of the relevant allowed emission). A draft CSA is at **Annex** for Members' reference.

III. To consider including a separate penalty arrangement for provision of false, incorrect and misleading information in respect of emissions of the specified pollutants with reference to the Product Eco-responsibility Bill.

1. After carefully considering members' views expressed at the Bills Committee meeting and the Product Eco-responsibility Bill, we propose to include a new sub-section under the proposed section 30B so that a person would be liable to a fine of Level 6 (i.e. \$100,000) upon conviction of the offence of supplying incorrect information in relation to the specified pollutants. A draft CSA is at [Annex](#) for Members' reference.

IV. To include in the speech to be delivered by the Secretary for the Environment at the resumption of Second Reading debate of the Bill that the consultation with the Advisory Council on the Environment ("ACE") under the proposed section 26M(4B) in respect of an application for acquisition of emission credits will be conducted in accordance with the established procedure of ACE under which all relevant papers will be made available for public inspection, and that the Panel on Environmental Affairs will also be consulted accordingly.

1. The speech to be delivered by the Secretary for the Environment at the resumption of the Second Reading debate of the Bill will cover the above points.

**Environmental Protection Department
June 2008**

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Environment

<u>Clause</u>	<u>Amendment Proposed</u>
5	In the proposed section 26G(5), in the Chinese text, by deleting everything after “凡” and before “第(4)款” and substituting “局長藉着為施行第(1)款而具有效力的首份技術備忘錄，而作出任何分配，則”.
5	In the proposed section 26I – <ol style="list-style-type: none">(a) in subsection (1), by adding “of a specified licence” after “any term or condition”;(b) in subsection (1), by deleting “to the specified licence” and substituting “to the licence”;(c) in subsection (2), by deleting “section 30A” and substituting “section 30B”.
5	In the proposed section 26K – <ol style="list-style-type: none">(a) in the heading, by deleting “etc.” and substituting “or failure to acquire emission credits”;(b) in subsection (2)(b), by deleting “and”;(c) by deleting subsection (2)(c) and substituting –<ol style="list-style-type: none">“(c) (i) in the case of a special event, the occurrence of the event could not

reasonably have been foreseen by the applicant, or if the occurrence of the event could reasonably have been foreseen by the applicant, the applicant exercised all due diligence to prevent the occurrence of the event; or

(ii) in the case of a failure, the applicant exercised all due diligence to prevent the failure; and”;

(d) in subsection (2), by adding –

“(d) in the case of a special event, the applicant has also –

(i) within 5 working days after the occurrence of the event, notified the Authority in writing of the occurrence of the event; and

(ii) from promptly after the occurrence of the event, exercised all due diligence to minimize the quantity of that type of pollutant being emitted in the emission year from the licensed premises as a result of the occurrence of the event.”.

5 In the proposed section 26L(3)(b), in the Chinese text, by adding “或” after “3 月 31 日”.

5 In the proposed section 26M –

(a) in the heading, by adding “**under recognized**

emission trading scheme” after **“emission credits”**;

- (b) in subsection (2), by deleting “Where” and substituting “Subject to subsection (4A), where”;
- (c) in subsection (4)(a), by deleting “31 December” and substituting “30 June”;
- (d) by adding –

“(4A) For the purposes of a specified licence, the total quantity of allocated allowances that may be increased under subsection (2) for a type of specified pollutant in respect of an emission year may not exceed the quantity obtained by multiplying the quantity of the allocated allowances for that type of pollutant as applicable to the licence in respect of the emission year by the percentage specified in Schedule 2C.

(4B) The Authority shall as soon as reasonably practicable after receiving an application referred to in subsection (4)(a), consult the Advisory Council on the Environment for the purpose of making a decision in respect of the application.”;

- (e) in subsection (5), by deleting “subsection (4)” and substituting “subsection (4)(a)”;
- (f) in subsection (6), by deleting “20 working days” and substituting “180 days”;
- (g) in subsection (6), by deleting “subsection (4)” and substituting “subsection (4)(a)”;
- (h) by adding –

“(6A) A specified licence holder who has, in respect of an emission year, transferred to another

person any quantity of emission credits as described in subsection (3) shall notify the Authority in writing of the transfer and accompany the notification with such supporting documents or information as may be required by the Authority, within 5 working days after the transfer, and in any event not later than 31 March in the year immediately following the emission year.”.

6 By deleting everything after “is amended” and substituting “by repealing “A licence holder who contravenes any term or condition subject to which the licence is granted to him by the Authority” and substituting “Subject to section 30B, a licence holder who contravenes any term or condition of the licence”.”.

New By adding –

“6A. Section added

The following is added immediately after section 30A –

“30B. Contravention of terms and conditions of specified licence for excessive emission or supply of incorrect information, etc.

(1) A person who contravenes any term or condition of a specified licence that requires him, as a specified licence holder, to ensure that the actual emission of a type of specified pollutant from the licensed premises in an emission year is not greater than the allowed emission of that type of pollutant as applicable to the licence in respect of the emission year commits an offence and is liable –

- (a) on a first conviction, to a fine of \$30,000 in respect of each tonne of the relevant actual emission in excess of the relevant allowed emission, after taking into account the adjustments under section 26I(1) for the purpose of determining that there has been the contravention; and
- (b) on a second or subsequent conviction –
 - (i) to a fine of \$60,000 in respect of each tonne of the relevant actual emission in excess of the relevant allowed emission, after taking into account the adjustments under section 26I(1) for the purpose of determining that there has been the contravention; and
 - (ii) to imprisonment for 6 months.

(2) Where –

- (a) any term or condition of a specified licence requires a person, as a specified licence holder, to make any statement, or give any particular or information, in relation to a type of specified pollutant; and
- (b) the person, in purported compliance with the term or condition –
 - (i) makes any statement, or gives any particular or information, which he knows to be incorrect in a material respect;
 - (ii) recklessly makes any statement, or gives any particular or information, which is incorrect in a material respect; or
 - (iii) makes any statement, or gives any particular or information, from which he knows that any material particular has been omitted,

the person commits an offence and is liable on conviction to a fine of level 6.

(3) Where a person is liable for the payment of a fine imposed under subsection (1) or (2) in relation to a specified licence, for the purposes of a scheme of control agreement, the fine is not to be taken to be part of the operating cost incurred by the person in relation to the specified process to which the licence relates.

(4) For the purposes of subsection (3) –
“operating cost” (經營費用) means any cost directly or indirectly incurred in relation to –

- (a) the generation, transmission, distribution or sale of electricity;
- (b) energy efficiency or conservation; or
- (c) reduction of air pollution;

“scheme of control agreement” (管制計劃協議) in relation to a person, means an agreement entered into by the Government with the person (whether or not with any other person) that, among other things, provides for the calculation of the amount of return allowed to the person by reference to matters including the operating cost incurred by the person in relation to the specified process to which the relevant specified licence relates.”.”.

7 In the proposed section 31(1)(na), by deleting “etc.” and substituting “or failure to acquire emission credits”.

12 In the proposed section 37D(1), by deleting “and 2B” and substituting “, 2B and 2C”.

13 By deleting everything after “varied” and substituting “, transferred or cancelled, or that any exemption is granted, continued or cancelled,”.

15 (a) In the heading, by deleting “**2A and 2B**”.

(b) By adding –

“**SCHEDULE 2C** [ss. 26M & 37D]

**PERCENTAGE SPECIFIED FOR PURPOSES OF
SECTION 26M(4A) OF THIS
ORDINANCE**

15%.”.