

AIR POLLUTION CONTROL (AMENDMENT) BILL 2008

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Environment

- | <u>Clause</u> | <u>Amendment Proposed</u> |
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| 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 –
(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 –
(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 –
“(c) (i) in the case of a special event, the occurrence of the event could not reasonably have been foreseen by the |

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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**”

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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

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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 –

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- (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 –

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- (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,

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the person commits an offence and is liable to a fine at 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.””.

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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%.”.

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