

**AIR POLLUTION CONTROL (AMENDMENT)  
ORDINANCE 2008**

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**HONG KONG SPECIAL ADMINISTRATIVE REGION**

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ORDINANCE NO. 31 OF 2008

L.S.

Donald TSANG  
Chief Executive  
17 July 2008

An Ordinance to amend the Air Pollution Control Ordinance to—

- (a) regulate the emission of sulphur dioxide, nitrogen oxides and respirable suspended particulates as a result of the conduct of certain electricity works by measures including—
  - (i) the allocation to specified licence holders of the entitlement to emit those pollutants from premises used for the conduct of such electricity works;
  - (ii) the imposition of relevant terms and conditions on the specified licences; and
  - (iii) the specification of the manner in which such terms and conditions may be complied with;
- (b) remove the right of referring for review under section 35 of the Ordinance a decision of any Appeal Board constituted under Part VI of the Ordinance;
- (c) prohibit a public officer from being appointed as or to act as Chairman of any Appeal Board constituted under Part VI of the Ordinance, or from being appointed as a member of a panel of persons eligible for appointment as members of any such Appeal Board;
- (d) clarify the meaning of “licence” in the Ordinance and its subsidiary legislation; and
- (e) provide for incidental matters.

[18 July 2008]

Enacted by the Legislative Council.

## 1. Short title

This Ordinance may be cited as the Air Pollution Control (Amendment) Ordinance 2008.

## 2. Interpretation

(1) Section 2 of the Air Pollution Control Ordinance (Cap. 311) is amended, in the definition of “licence”, by adding “, a licence renewed under section 16, a licence varied under section 17 or 18 or a licence transferred under section 18A, as may be appropriate” after “section 15”.

(2) Section 2 is amended, in the definition of “technical memorandum”, by repealing “or 9” and substituting “, 9 or 26G”.

(3) Section 2 is amended by adding—

““actual emission” (實際排放量), in relation to a type of specified pollutant, means the quantity, as ascertained by such method as specified in a specified licence, of that type of pollutant that has been emitted from the licensed premises;

“allocated allowances” (獲配限額), in relation to a type of specified pollutant, means the emission allowances allocated under section 26G(1) for that type of pollutant in respect of a specified licence in relation to an emission year;

“allowed emission” (可排放量), in relation to a type of specified pollutant, means the quantity, as ascertained by reference to the quantity of allocated allowances for that type of pollutant as applicable to a specified licence in respect of an emission year, of that type of pollutant that may be emitted in the emission year from the licensed premises;

“emission allowance” (排放限額), in relation to a type of specified pollutant, means the entitlement to emit one tonne of that type of pollutant in an emission year from a licensed premises; and, for the avoidance of doubt, each such entitlement is quantified as one emission allowance;

“emission year” (排放年度) means a period of 12 months commencing on 1 January in each year;

“licensed premises” (牌照所涉處所) means the premises to which a specified licence relates;

“specified licence” (指明牌照) means a licence to conduct the process specified in item 7 of Schedule 1, other than a licence to conduct such process for the sole purpose of providing a stand-by power supply in the event of a loss of normal power supply;

“specified licence holder” (指明牌照持有人) means the holder of a specified licence;

“specified pollutant” (指明污染物) means an air pollutant of any of the following types—

- (a) sulphur dioxide;
- (b) nitrogen oxides;
- (c) respirable suspended particulates;”.

### **3. Air pollution abatement notice**

Section 10(2)(a) is amended by adding “(other than a technical memorandum issued under section 26G)” after “technical memorandum”.

### **4. Grant or refusal of licences**

Section 15(4) is amended by repealing everything after “2 years and” and substituting—

“—

- (a) without prejudice to any term or condition imposed under paragraph (b) (if applicable), may be subject to such terms and conditions (including terms and conditions relating to the matters set out in Schedule 2) as the Authority thinks fit; and
- (b) where the licence concerned is a specified licence, shall from 1 January 2010 onwards also be subject to such terms and conditions as may be set out in Schedule 2A.”.

### **5. Part IVB added**

The following is added—

#### **“PART IVB**

#### **SPECIFIED LICENCES**

#### **Division 1—Allocated Allowances**

#### **26G. Secretary to allocate emission allowances in respect of specified licence**

(1) For the purposes of this Ordinance, the Secretary shall by technical memorandum allocate a quantity of emission allowances for each type of specified pollutant in respect of each specified licence in relation to each emission year commencing on or after 1 January 2010.

(2) In making an allocation under subsection (1) for a type of specified pollutant, the Secretary shall—

- (a) have regard to the best practicable means for preventing the emission of that type of pollutant;
- (b) have as his purpose the attainment and maintenance of any relevant air quality objective; and
- (c) have regard to whether the emission of that type of pollutant would be, or be likely to be, prejudicial to health.

(3) For the purposes of subsection (1), the Secretary may allocate a quantity of emission allowances also by specifying the method for ascertaining the quantity.

(4) An allocation under subsection (1) does not have effect in respect of an emission year unless the technical memorandum issued under that subsection for making the allocation has commenced to have effect at least 4 years before the commencement of the emission year.

(5) Subsection (4) does not apply to any allocation made by the first technical memorandum having effect for the purposes of subsection (1).

#### **26H. Authority to ascertain quantity of allocated allowances etc.**

(1) Where an allocation of a quantity of emission allowances is made in the manner described in section 26G(3), the Authority shall as soon as reasonably practicable ascertain the quantity by using the method specified under that section in the relevant technical memorandum.

(2) After ascertaining the quantity under subsection (1), the Authority shall as soon as reasonably practicable notify the relevant specified licence holder in writing of the quantity so ascertained.

### **Division 2—Determination of Compliance with Certain Terms and Conditions**

#### **26I. Determination of compliance with certain terms and conditions**

(1) For the purposes of this Ordinance, in determining whether a person has contravened 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—

- (a) a reference in such term or condition to the allowed emission of that type of pollutant as applicable in respect of the emission year shall be construed as a reference to the quantity, as ascertained by reference to the quantity of the relevant allocated allowances as may be increased or reduced for the purposes of this section under Division 3 in respect of the emission year, of that type of pollutant that may be emitted in the emission year from the licensed premises; and
- (b) where there has been a contravention of such term or condition in respect of the preceding year in relation to the licence and that type of pollutant, the quantity by which the relevant actual emission exceeds the relevant allowed emission, after taking into account the adjustments under this subsection for the purpose of determining that there has been the contravention, shall be taken as part of the actual emission of that type of pollutant in the emission year.

(2) Proceedings under section 30B for an offence relating to the contravention of any term or condition referred to in subsection (1) in respect of an emission year shall only be instituted after 31 March in the year immediately following the emission year.

(3) For the purposes of this section, “preceding year” (對上年度), in relation to an emission year, means the emission year immediately preceding that emission year.

### **Division 3—Adjustments to Quantity of Allocated Allowances**

#### **26J. Increase in quantity of allocated allowances in case of surplus of allocated allowances in preceding year**

(1) Where the relevant circumstances exist in respect of a specified licence in relation to a type of specified pollutant in an emission year, the quantity of the allocated allowances for that type of pollutant as applicable to the licence in respect of the emission year is to be increased for the purposes of section 26I by the quantity specified in subsection (3).

(2) For the purposes of subsection (1), the relevant circumstances exist in respect of a specified licence in relation to a type of specified pollutant in an emission year if, for the purpose of making the relevant determination in accordance with section 26I(1) in relation to the preceding year, the relevant allowed emission exceeds the relevant actual emission, after taking into account the adjustments under that section for the purpose of making the determination.

(3) The quantity referred to in subsection (1) is—  
(a) the excess referred to in subsection (2); or  
(b) 2% of the quantity of the allocated allowances for the relevant type of specified pollutant as applicable to the relevant specified licence in respect of the preceding year, whichever is the lesser.

(4) For the purposes of subsection (3)(b), where the result of the calculation under that subsection is a fraction, the result is to be rounded up to the next whole number.

(5) For the purposes of this section, “preceding year” (對上年度), in relation to an emission year, means the emission year immediately preceding that emission year.

**26K. Increase in quantity of allocated allowances upon occurrence of special event or failure to acquire emission credits**

(1) Where the relevant circumstances exist in respect of a specified licence in relation to a type of specified pollutant in an emission year, the Authority may, for the purposes of section 26I, upon application by the specified licence holder in accordance with the terms and conditions of the licence and upon payment of the fee (if applicable) prescribed in Schedule 2B, increase the quantity of the allocated allowances for that type of pollutant as applicable to the licence in respect of the emission year by such quantity as he thinks fit.

(2) For the purposes of subsection (1), the relevant circumstances exist in respect of a specified licence in relation to a type of specified pollutant in an emission year if—

- (a) (i) that type of pollutant has been emitted in the emission year from the licensed premises as a result of the occurrence of a special event; or  
(ii) further to an approval under section 26M in respect of any quantity of emission credits, the applicant has entered into an agreement for the acquisition of that quantity of emission credits or any part of it but has failed to acquire that quantity of emission credits or that part of it (as the case may be) under the agreement;  
(b) the special event or the failure (as the case may be) occurred for reasons beyond the control of the applicant;



- (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 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.

(3) An application under subsection (1) in relation to an emission year may be made during the period commencing on 1 January and ending on 1 March in the year immediately following the emission year.

(4) The Authority shall as soon as reasonably practicable, and in any event within 10 working days, after receiving an application under subsection (1), notify the applicant in writing of his decisions under that subsection.

(5) For the purposes of subsection (2), “special event” (特殊事件) means any event specified in the relevant specified licence as a special event for the purposes of this section.

#### **26L. Increase or reduction in quantity of allocated allowances further to their acquisition or transfer**

(1) A specified licence holder may, in accordance with the terms and conditions of the specified licence, acquire from or transfer to the holder of another specified licence any quantity of allocated allowances, or any quantity of allocated allowances increased under this section or section 26J, for a type of specified pollutant as applicable in respect of an emission year.

(2) Where the holder of a specified licence (“transferee licence”) has, in accordance with the terms and conditions of the transferee licence, acquired any quantity of allocated allowances or any quantity of allocated allowances increased under this section or section 26J (as the case may be)

for a type of specified pollutant as applicable to another specified licence (“transferor licence”) in respect of an emission year—

- (a) the quantity of the allocated allowances for that type of pollutant as applicable to the transferee licence in respect of the emission year is to be increased for the purposes of section 26I by the quantity of the allocated allowances so acquired; and
- (b) the quantity of the allocated allowances for that type of pollutant as applicable to the transferor licence in respect of the emission year is to be reduced for the purposes of section 26I by the quantity of the allocated allowances so acquired.

(3) Subsection (2) does not apply in respect of a quantity of allocated allowances acquired in respect of an emission year unless—

- (a) the acquisition has taken place during the period commencing on 1 January in the emission year and ending on 31 March in the year immediately following the emission year; and
- (b) the relevant specified licence holders have jointly notified the Authority in writing of the acquisition, and have accompanied the notification with such supporting documents or information as might have been required by the Authority, within 5 working days after the acquisition, and in any event not later than 31 March in the year immediately following the emission year.

**26M. Increase or reduction in quantity of allocated allowances further to acquisition or transfer of emission credits under recognized emission trading scheme**

(1) A specified licence holder may, in accordance with the terms and conditions of the specified licence, acquire from or transfer to another person any quantity of emission credits for a type of specified pollutant in respect of an emission year.

(2) Subject to subsection (5), where a specified licence holder has, in accordance with the terms and conditions of the specified licence, acquired any quantity of emission credits for a type of specified pollutant in respect of an emission year, the quantity of the allocated allowances for that type of pollutant as applicable to the licence in respect of the emission year is to be increased for the purposes of section 26I by the quantity of the emission credits so acquired.

(3) Where a specified licence holder has, in accordance with the terms and conditions of the specified licence, transferred to another person any quantity of emission credits for a type of specified pollutant in respect of an emission year, the quantity of the allocated allowances for that type of pollutant as applicable to the licence in respect of the emission year is to be reduced for the purposes of section 26I by the quantity of the emission credits so transferred.

(4) Subsection (2) does not apply in respect of a quantity of emission credits acquired in respect of an emission year unless—

- (a) the Authority has, upon an application made in accordance with the terms and conditions of the applicant's specified licence on or before 30 June in the emission year, granted an approval in respect of that quantity (whether the approval has been granted in respect of any further quantity of emission credits) of emission credits for the purposes of subsection (2);
- (b) the applicant has notified the Authority in writing of the acquisition, and has accompanied the notification with such supporting documents or information as might have been required by the Authority, on or before 31 March in the year immediately following the emission year; and
- (c) the applicant has, in relation to that quantity of emission credits, complied with such terms and conditions as might have been imposed under subsection (7) on or before 31 March in the year immediately following the emission year.

(5) 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.

(6) 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.

(7) The Authority may grant an approval under subsection (4)(a) subject to such terms and conditions as he thinks fit.

(8) The Authority shall as soon as reasonably practicable, and in any event within 180 days, after receiving an application referred to in subsection (4)(a), notify the applicant in writing of his decisions under this section.

(9) 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.

(10) For the purposes of this section—  
“emission credit” (排放配額), in relation to a type of specified pollutant, means the entitlement to emit one tonne of that type of pollutant as may be acquired or transferred (as the case may be) under a recognized emission trading scheme; and, for the avoidance of doubt, each such entitlement is quantified as one emission credit;

“recognized emission trading scheme” (認可排放交易計劃) means—

- (a) the “Implementation Framework of the Emission Trading Pilot Scheme for Thermal Power Plants in the Pearl River Delta Region” entered into by the Authority and the Guangdong Environmental Protection Bureau on 30 January 2007; or
- (b) any other scheme of a nature similar to the scheme referred to in paragraph (a) as recognized by the Authority.

**26N. Application of certain provisions of this Division to licence that has ceased to be in force**

For the purposes of this Division, where a specified licence has ceased to be in force on or before 31 March in the year immediately following the relevant emission year, sections 26J, 26K, 26L and 26M are to be construed as having application as if the licence had continued in force subject to its terms and conditions until the end of 31 March in the year immediately following the emission year.”.

**6. Contravention of terms and conditions of licence, etc.**

Section 30A is amended 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”.

**7. 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 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.”.

## 8. When appeal may be brought; and effect thereof

Section 31(1) is amended by adding—

- “(na) section 26K(1) (refusing to increase a quantity of allocated allowances upon occurrence of a special event or failure to acquire emission credits);
- (nb) section 26M(4)(a) (refusing to grant an approval for the purposes of section 26M(2));
- (nc) section 26M(7) (imposing terms and conditions upon granting an approval for the purposes of section 26M(2));”.

## 9. Constitution of Appeal Board

(1) Section 32(2) is amended by adding “and who is not a public officer” after “in law”.

(2) Section 32(4) is amended by adding “, not being public officers,” after “of persons”.

(3) Section 32 is amended by adding—

“(7) In subsection (2), “public officer” (公職人員) does not include a judge or District Judge.”.

**10. Exercise of Appeal Board's jurisdiction**

Section 33(4) is repealed.

**11. Supplementary provisions as to Appeal Board**

(1) Section 34(1) is amended by repealing “qualified in law” and substituting “who is qualified in law and who is not a public officer”.

(2) Section 34 is amended by adding—

“(5) In subsection (1), “public officer” (公職人員) does not include a judge or District Judge.”.

**12. Review of Appeal Board's decision by Governor in Council**

Section 35 is repealed.

**13. Section added**

The following is added—

**“37D. Amendment of Schedules**

(1) The Secretary may, by notice published in the Gazette, amend Schedules 2A, 2B and 2C.

(2) Any fee prescribed in Schedule 2B—

(a) may be fixed at levels that provide for the recovery of the expenditure incurred or likely to be incurred in relation generally to the administration, regulation and control of the emission of specified pollutants that may take place or is likely to take place as a result of increases in the quantity of allocated allowances under section 26K; and

(b) shall not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred in the provision of any particular service, facility or matter.”.

**14. Protection of Government and public officers**

Section 42(1) is amended by repealing “or exemption is granted or continued” and substituting “is granted, renewed, varied, transferred or cancelled, or that any exemption is granted, continued or cancelled”.

**15. Terms and conditions subject to which a licence may be granted or an exemption continued**

- (1) The heading of Schedule 2 is repealed and the following substituted—  
“MATTERS TO WHICH TERMS AND CONDITIONS OF LICENCE OR EXEMPTION MAY RELATE”.
- (2) Schedule 2 is amended by adding immediately before paragraph 1—  
“PART 1”.
- (3) Schedule 2 is amended by adding—  
“PART 2

SPECIFIED LICENCES—ADDITIONAL MATTERS  
TO WHICH TERMS AND CONDITIONS  
MAY RELATE

1. Any matters to which any of the terms and conditions set out in Schedule 2A relates.
2. Any matters relating to the operation of Part IVB of this Ordinance.”.

**16. Schedules added**

The following are added—

“SCHEDULE 2A

[ss. 15 & 37D  
& Sch. 2]

MANDATORY TERMS AND CONDITIONS OF SPECIFIED LICENCE

*Actual emission not greater than allowed emission*

1. The specified licence holder shall 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 specified licence in respect of the emission year.



SCHEDULE 2B

[ss. 26K & 37D]

FEE PRESCRIBED FOR PURPOSES OF  
SECTION 26K(1) OF THIS  
ORDINANCE

Item	Description	Amount
1.	Fee payable for an application made by reference to section 26K(2)(a)(i) of this Ordinance	nil
2.	Fee payable for an application made by reference to section 26K(2)(a)(ii) of this Ordinance	\$20,000 for each emission allowance sought to be increased

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SCHEDULE 2C

[ss. 26M & 37D]

PERCENTAGE SPECIFIED FOR PURPOSES OF  
SECTION 26M(5) OF THIS  
ORDINANCE

15%.”.