

For discussion on
19 January 2012

**LEGISLATIVE COUNCIL
PANEL ON ENVIRONMENTAL AFFAIRS**

Proposal for Banning All Forms of Asbestos

PURPOSE

This paper informs Members of the outcome of a consultation with stakeholders about our proposal to ban all forms of asbestos and seeks Members' advice on the proposed way forward.

BACKGROUND

2. Asbestos is a proven carcinogen which can cause asbestosis, lung cancer and mesothelioma, a rare form of cancer that develops from the protective lining that covers body's internal organs mainly caused by exposure to asbestos, when inhaled. It includes the more common forms of chrysotile (white asbestos), amosite (brown asbestos) and crocidolite (blue asbestos) and the less common forms of fibrous actinolite, fibrous anthophyllite and fibrous tremolite. Due to its very high tensile strength and good heat and chemical resistance properties, it had been widely used before the mid-1980s in friction, fireproofing, insulation and building materials.

3. In order to further abate the risk of asbestos and better protect the public from exposure to environmental asbestos, we propose to amend the Air Pollution Control Ordinance (APCO) (Cap. 311) to extend the existing statutory ban on import and sale of blue and brown asbestos to prohibiting the import, transshipment, sale, supply and new use of all forms of asbestos.

4. We briefed Member about our proposal to ban all forms of asbestos on 20 April 2011 (LC paper no. CB(1)1913/10-11(05)) as part of the consultation for stakeholders, which was completed on 31 May 2011 and last for two months.

FINDINGS OF THE CONSULTATION WITH STAKEHOLDERS

5. We consulted the Advisory Council on the Environment (ACE), the trade and other stakeholders about our proposal. Two public consultation sessions were held for the relevant sectors at **Annex A**. The ACE welcomed the proposal. We also received 26 written responses, all of which are supportive of the proposal.

6. Comments from stakeholders mainly focus on the following key issues-

(a) Relocation of existing equipment with embedded parts containing asbestos

Some stakeholders suggest that the proposal should allow relocation of existing equipment, in particular, power transformers, which have parts containing asbestos embedded inside without counting the relocation as new use. As these asbestos-containing parts are embedded inside the existing equipment, the relocation will not disturb the asbestos-containing parts and the asbestos-containing parts remain where they are. The relocation will also not cause any release of asbestos to the ambient environment. We have taken this suggestion on board in our revised proposal.

(b) Exemption of special uses

Some stakeholders including representatives of the power generation sector request for general exemptions for asbestos-containing items for special applications that do not have reliable asbestos-free alternatives, e.g., special asbestos gaskets for high pressure and temperature steam boilers for power generation. These cases should be the exception rather than the norm because the concerns of the international community on the adverse health effects of asbestos have driven the development of asbestos-free alternatives. We have explained to these stakeholders that their request should be dealt with by the exemption mechanism already in our proposal (i.e. granting exemption to justified cases provided that the exemption would unlikely lead to a health risk to the community). The stakeholders have no objection to this approach.

(c) Chinese herbal medicines

Some Chinese herbal medicines may contain special forms of asbestos, such as tremolite and actinolite. The Chinese Medicine Council of Hong Kong considers these herbal medicines seldom used by Chinese medicine practitioners and there are alternatives of similar efficacy such as *Cornu Cervi Pantotrichum*, *Herba Epimedii*, *Radix Morindae, Officinalis* and *Semen Cuscutae*. The Council supports our proposal to ban the import and use of these Chinese herbal medicines.

The Council, however, is of the view that import, sale and use of proprietary Chinese medicines with tremolite and actinolite formulated in a finished dose form should still be allowed as there is no scientific evidence showing that ingestion of these asbestos materials would be harmful to health. The view is also shared by the Department of Health. As such, we will allow in our revised proposal that these proprietary Chinese medicines be excluded from the proposed control so

far as they are registered under the Chinese Medicine Ordinance (CMO) (Cap. 549).

(d) Existing stocks

There were enquiries on whether existing stocks of asbestos-containing materials kept for special applications including those mentioned in (b) above could be used or sold upon implementation of the proposed controls, and whether Government would provide compensation for the disposal of existing stocks of asbestos-containing materials after the proposed ban has come into force. Under our proposal, existing stocks of asbestos-containing materials will not be allowed for sale or put into use even if the stocks are for special applications, unless we have granted exemption approval before the sales or use. Owners of these materials are advised to arrange for proper disposal of the remaining stock.

THE REVISED PROPOSAL

7. Taking account of the feedback of the consultation, we have revised the proposal to incorporate provisions to -

- (a) ban the import and transshipment of any quantity of asbestos or goods made with or containing asbestos except proprietary Chinese medicine registered under section 121 of the CMO and goods in transit;
- (b) ban the sale, supply and new use^[1] of any quantity of asbestos or substance or item made with or containing asbestos except proprietary Chinese medicine registered under section 121 of the CMO;
- (c) allow the Authority upon receiving application in writing to grant exemption to the ban as detailed in (a) and (b) above if the Authority considers that such an exemption is warranted and that the exemption would unlikely lead to a health risk to the community.
- (d) allow the Authority to impose conditions to or withdraw any exemption granted;
- (e) allow the Authority upon discovery of an offence to the ban as detailed in (a) and (b) above to issue a notice requiring the offender to discontinue the noncompliance, or to remove, dispose of or destroy the asbestos, or goods, substance or item in question;

^[1] “New use” does not include the continuation of the existing use after relocation of equipment with asbestos-containing parts embedded inside.

- (f) provide that violation of the ban as detailed in (a) and (b), any condition of exemption and any requirement specified in a notice issued by the Authority shall be an offence;
- (g) provide that a person committing any of the offences shall be liable to a fine of \$200,000 and imprisonment of 6 months; and
- (h) provide that a person does not commit any of the offences as detailed in (f) above if he adduces evidence showing that, despite taking due diligence, he did not know or could not have known of the presence of asbestos at the time when the noncompliance was committed.

NEXT STEPS

8. Should Members support the revised proposal in paragraph 7, we will proceed to draft the Bill for amendment of the APCO for effecting the proposal. Our target is to seek Legco's approval of the Bill in end 2012.

ADVICE SOUGHT

9. Members' advice on the revised proposal set out in paragraph 7 above is sought.

Environmental Protection Department
January 2012

Trades and stakeholders consulted

1. The Hong Kong General Chamber of Commerce , the Chinese General Chamber of Commerce, the Chinese Manufacturers' Association of Hong Kong, the Federation of Hong Kong Industries and other chambers of commerce and trade associations
2. The Hong Kong Medical Association, the Hong Kong Institute of Occupational and Environmental Hygiene and other medical professional institutions
3. The Hong Kong Institution of Engineers, the Hong Kong Institute of Architects and other professional institutions
4. Chinese medicine and pharmaceutical manufacturers, professionals and institutions
5. Power and utilities companies
6. Transportation and logistic industries
7. Import and export, trading and retail industries
8. Construction and engineering industries
9. Asbestos professionals and companies
10. Universities and tertiary institutions
11. Green groups and safety concern groups
12. Relevant government departments and statutory organisations