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Mr Carlson CHAN
Dep Dir of Env Protection(4)
Environmental Protection Department
46/F, Revenue Tower
5 Gloucester Road
Wan Chai
Hong Kong

By Fax (2511 6775) and By Post

23 May 2007

Dear Mr CHAN

Hazardous Chemicals Control Bill (the Bill)

We refer to the draft Committee Stage amendments of the Bill received by us today and enclose our comments marked in manuscript.

It is appreciated that your reply in both Chinese and English could reach us as soon as possible.

Yours sincerely

(Monna LAI)
Assistant Legal Adviser

Encl

50A. 對公職人員的保障

(1) 任何公職人員如在作出某作為或沒有作出某作為時，真誠地相信該作為或不作為是本條例規定或授權的，或是根據本條例須作出或不作出或獲授權作出或不作出的，則他無須就該作為或不作為承擔任何個人民事法律責任或對任何民事申索負上個人法律責任。

(2) 第(1)款賦予的保障，並不會在任何方面影響政府就該公職人員的作為或不作為而承擔的法律責任。

~~41. Proceedings for or in connection with acts of employees~~

~~In any proceedings against a person under this Ordinance for or in connection with an act of his employee—~~

- ~~(a) it is not a defence for that person to show that his employee acted without his authority; and~~
- ~~(b) in the absence of evidence to the contrary, any material fact that is known to the employee is to be regarded as having been known to the employer.~~

41. Liability of employers

How about omission?

(1) Any act done or conduct engaged in by a person in the course of his employment (the "employee") is treated for the purposes of this Ordinance as done or engaged in by his employer, as well as by him.

(2) In any proceedings for an offence under this Ordinance brought against an employer in respect of an act or conduct alleged to have been done or engaged in by his employee, the employer is liable to be convicted of and be punished for that offence unless he establishes the defence described in subsection (3).

(3) Where any proceedings are brought against an employer by virtue of this section, it is a defence for the employer to prove that —

- (a) the act or conduct alleged to have been done or engaged in was done or engaged in without his knowledge or consent;
- and

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Section (1) will not apply if the conduct is not in the course of employment.
The conduct engaged in is not in the course of employment.

(b) he exercised all reasonable diligence to prevent the employee from doing the act or engaging in the conduct or from doing or engaging in, in the course of employment, acts or conduct of that description.