

Hazardous Chemicals Control Bill

**List of follow-up actions arising from the discussion
at the meeting on 28 June 2006**

The Administration's Responses

To review the definition of “manufacture” under clause 2 to reflect the policy intent of excluding scheduled chemicals which are unintentionally produced

We have reviewed the definition of “manufacture”. The term “manufacture” involves an intention or a deliberate act to make something. It does not cover the unintentional production and release of scheduled chemicals during the manufacture of something else. Neither is this scenario covered by the expression “causing the chemical to be manufactured” in the definition. This expression aims to cover the scenario in which a person asks someone to manufacture a chemical on his behalf. We therefore consider it unnecessary to amend the definition of “manufacture”.

To review the drafting of the Bill in respect of the mode of implementation of the Stockholm Convention and the Rotterdam Convention applicable to Hong Kong in local legislation to ensure consistency with other similar legislation, including the Waste Disposal (Amendment) Ordinance, particularly when the proposed scope of control under the Bill is wider than the two Conventions to cover non-convention chemicals

2. The Bills Committee has asked us to conduct the above review. The Bills Committee has also asked us to consider specifying convention and non-convention chemicals in different schedules for the sake of clarity and suggested that legislative amendments to convention chemicals can be subject to negative vetting while non-convention chemicals should be done by positive resolution.

3. We have conducted the review and come to the following views. The approach adopted in this Bill is similar to that of the Waste Disposal (Amendment) Ordinance except that we have made express reference to the Convention requirements in the provisions concerning permits and directions on disposal of scheduled chemicals. The merits of having these provisions are, inter alia, –

(a) greater clarity of law, by indicating clearly that the HKSAR would observe its international obligations under the Stockholm Convention and the Rotterdam Convention through: (i) imposing a statutory duty on the “Director” (as defined in the Bill) to have regard to the requirements of the two Conventions when exercising his powers under the Bill (when enacted); and (ii) limiting the powers of the Director under the Bill to issue and renew permits, impose permit conditions and directions on the disposal of scheduled chemicals, etc. and expressly requiring him to exercise the powers in a manner consistent with the HKSAR’s obligations under the two Conventions; and

(b) making clear that the Director has power to cancel or suspend a permit currently in force in order to comply with the requirements of the two Conventions.

4. These provisions are important for clarifying that the requirements of the two Conventions are relevant considerations for the exercise of statutory powers under the Bill. The provisions referred to in (a) above are in fact of the nature of imposing obligations on the Director, or limiting the statutory discretion of the Director. Furthermore, inclusion of these provisions would also facilitate the readers’ understanding as to the extent to which the Director may exercise his statutory powers and shall perform his statutory duties, and whether the Director has exercised his powers and performed his duties under the Bill (when enacted) properly.

5. In fact, a similar approach has been adopted in the Ozone Layer Protection Ordinance (Cap. 403). Section 6(4) provides, “[i]n considering whether to issue a licence or vary the conditions of a licence the Director - (a) shall comply with Hong Kong's obligations under the 1985 Vienna Convention for the Protection of the Ozone Layer, the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer as it may be amended from time to time and any other protocols under the Convention that apply to Hong Kong; and (b) may impose more stringent measures than are required by the Convention and the protocols referred

to in paragraph (a).”.

6. We have also considered the suggestion of specifying convention and non-convention chemicals in different schedules, and concluded that this is not appropriate because our policy intent is to regulate relevant hazardous chemicals under the same statutory regime as Type 1 and Type 2 chemicals, regardless of whether they are covered by the two Conventions or not. We have proposed amendments to Schedules 1 and 2 to the Bill to be made by way of subsidiary legislation subject to the negative vetting procedure. The period for the LegCo to vet the amendments is 28 days, which can be extended by 21 days. We will issue a LegCo Brief on the amendments so that the LegCo is aware of the reasons for the amendments.

To consider amalgamating the Bill and the Pesticides Ordinance (Cap 133) to establish a complete control regime on hazardous chemicals in the long run

7. We have considered the suggestion of amalgamating the Bill and the Pesticides Ordinance and concluded that this is not appropriate. The main purpose of the Pesticides Ordinance (Cap 133) is to provide for the local control of pesticides through registration and for matters connected therewith. The existing provisions under Cap 133 essentially regulate trade-related activities i.e. the import, manufacture, sale and supply of pesticides. Pesticides in general are commonly applied and more accessible to the public than hazardous chemicals. Hence, the control regime for pesticides should be different from that for hazardous chemicals under the Bill. We consider it more appropriate for pesticides to be regulated under the Pesticides Ordinance (Cap 133) than under the Bill.

**Environmental Protection Department
September 2006**