

## LEGISLATIVE COUNCIL BRIEF

### AIR POLLUTION CONTROL (AMENDMENT) BILL 2008

#### INTRODUCTION

A At the meeting of the Executive Council on 22 January 2008, the Council **ADVISED** and the Chief Executive **ORDERED** that the Air Pollution Control (Amendment) Bill 2008 (the Bill), at **Annex A**, should be introduced into the Legislative Council to –

- (a) cap the emissions of sulphur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>) and respirable suspended particulates (RSP) of the power plants in Hong Kong in 2010 and beyond;
- (b) facilitate the use of emissions trading as a means to comply with the emission caps for power plants; and
- (c) repeal the provision that enables the Authority (i.e. the Director of Environmental Protection) to refer an Appeal Board's decision made under the Air Pollution Control Ordinance (Cap. 311) (APCO) for review by the Chief Executive in Council and bar public officers from serving on an Appeal Board, except that a judge may still be appointed as the Chairman of the Appeal Board.

## **JUSTIFICATIONS**

2. Being the largest emission source in Hong Kong, power generation accounted for 89% of SO<sub>2</sub>, 44% of NO<sub>x</sub> and 32% of RSP emitted locally in 2006. For Hong Kong to achieve the 2010 emission reduction targets, it is essential for the power companies to reduce substantially their emissions of these three key air pollutants.

3. We have been engaging the two local power companies since 2003 regarding the extent of emission reduction required on the part of the power sector for achieving the 2010 emission reduction targets. We have imposed, since 2005, emission caps on the power stations upon renewal of their respective Specified Process Licences (SPLs). These emission caps are being progressively tightened to ensure that Hong Kong can meet the 2010 emission reduction targets.

4. Apart from using cleaner fuels and installation of pollution abatement facilities, emissions trading would provide power plants in the Pearl River Delta (PRD) region a flexible and cost-effective alternative to achieve the emission caps imposed by their respective Governments. To this end, we have jointly developed with the Guangdong Environmental Protection Bureau a framework to enable power stations in the PRD region to embark upon emissions trading to meet their emission caps. Details of the implementation framework are set out in the Emissions Trading Pilot Scheme for Thermal Power Plants in the Pearl River Delta Region (the Pilot Scheme) published in January 2007.

5. To ensure a smooth, timely and transparent implementation of the emission caps for the power sector, we consider it appropriate to stipulate by legislation the maximum quantity of emission permissible for the power plants and allow them to use emissions trading as an alternative means for achieving the emissions caps. These practices have been adopted in many advanced countries such as the US and UK.

6. It is also proposed to take this opportunity to amend the appeal provisions of the APCO to further ensure that a person aggrieved by a decision of a public officer under the relevant provisions of the APCO will have a fair hearing by an independent and impartial tribunal.

**DETAILED PROPOSALS**

*Capping the Emissions of the Power Sector*

7. To cap the maximum emissions allowed for the power sector in 2010 and beyond, we propose to set out by means of a Technical Memorandum (TM) under the APCO the emission allowances for the power sector and the methodology for allocating these emission allowances to individual power plants.

8. After taking into account the need to achieve the emission reduction targets under the 2002 consensus with Guangdong, the best practicable emission reduction technologies and means available as well as emissions from other sources and sectors, the proposed 2010 emission allowances for the power sector, which were already made known to the two power companies in 2005, are as follows –

	1997 Baseline emissions (tonnes)	2010 Emission allowances (tonnes)	Reduction (%)
Sulphur dioxide	54,400	25,120	54%
Nitrogen oxides <sup>(1)</sup>	56,100	42,600	24%
Respirable suspended particulates	2,610	1,260	52%

<sup>(1)</sup> Expressed as nitrogen dioxide

9. We propose to allocate the emission allowances to individual power plants on a pro-rata basis in accordance with their respective share of the total amount of electricity generated for local consumption. In other words, all

power plants will receive the same quantity of emission allowances per unit of electricity generated. For the 2010 emission allowances, the allocation to individual power plants is determined with reference to their total amount of electricity generated for local consumption for the five-year period from 1999 to 2003. To cater for the change of the market share in electricity generation, we propose that starting from 2010, the allocation will be updated regularly, and in any event not less than once every three years, in accordance with their total amount of electricity generated for local consumption for the immediate past five years.

10. In addition to the regular updating according to individual power plants' respective market share, the overall emission cap for the power sector may also need to be revised in future taking into account of the need to continuously improve air quality. In case of such revision, we will take into account of the following considerations –

- (a) the use of best practicable means for the prevention of emissions;
- (b) the need to attain and maintain the relevant air quality objectives;  
and
- (c) whether the emissions would be, or likely to be, prejudicial to public health.

These considerations are similar to those which the Authority is required to take into account under section 15(3) of the APCO when exercising his/her discretion to grant or refuse a licence.

11. To provide sufficient lead time for power companies to adjust their operation (e.g. installation of emission abatement facilities, adjustment of fuel strategy and securing emissions trading opportunities), we propose that for any change in the allocation of emission allowances, including that resulted

from the regular updating, an advance notice of no less than four years will be given.

12. To cater for the requirements of potential new comers, we propose to allocate to each new comer a small amount of emission allowances broadly equivalent to 1% of the total emission allowances for the power sector, which should be sufficient for the new comer to enter the local electricity market. Details are as follows –

Total installed capacity of the new electricity works	Sulphur dioxide (tonnes)	Nitrogen oxides <sup>(1)</sup> (tonnes)	Respirable suspended particulates (tonnes)
Less than 300 MW	$2 \times \text{Total installed capacity in MW} / 3$	$4 \times \text{Total installed capacity in MW} / 3$	$\text{Total installed capacity in MW} / 30$
Equal or more than 300 MW	200	400	10

<sup>(1)</sup> Expressed as nitrogen dioxide

Since all new power generation units in Hong Kong must use gas or cleaner fuel, the quantity of emission allowances required is small and should have little impact on the overall emission levels of Hong Kong.

13. For unspent emission allowances, we are not in favour of allowing unqualified "banking" of these emission allowances for use by the concerned power plants in the future as it may cause an undue increase of emissions in the later years. On the other hand, we recognise the case to allow some flexibility for the power plants to meet their operational requirements. We therefore propose that the validity period of a maximum of 2% of the total emission allowances issued for a particular year can be extended until the end of the following year.

### *Facilitating Emissions Trading*

14. To facilitate the power plants in Hong Kong to comply with the emission caps through emissions trading with other power plants in Hong Kong and in the PRD region, we propose that emission allowances allocated to a SPL holder of power plant will be tradable. The SPL holder is deemed to have discharged his/her legal responsibility if he/she surrenders within three months after the close of the year to the Authority sufficient amount of emission allowances or emission credits obtained through emissions trading to cover the actual emission quantities in the year. Failure to do so will constitute a breach of the terms and conditions of the SPL and subject to prosecution under the APCO. To achieve a greater deterrent effect and help restore the damage that may be resulted, we also propose to require power plants to recover any deficit emission allowances in the following year.

15. Emission allowances granted under an SPL can be transferred or traded locally subject to a joint written notification by the concerned SPL holders being duly made to the Authority. Trading of emission allowances with other power plants in PRD region will be conducted and coordinated in accordance with the framework set out under the Pilot Scheme. To distinguish the two, the emissions traded under the Pilot Scheme are named "emission credits". If a SPL holder wishes to use these emission credits for covering the actual emission quantities, the SPL holder should make an application to the Authority for approval which may be granted subject to suitable terms and conditions.

16. In cases where the emissions trading partner fails to deliver the emission credits under the Pilot Scheme but due diligence has been exercised by the SPL holder in contracting for and implementing an emissions trading contract, we propose to allow for the issue of additional and non-transferable emission allowances no more than the amount of undelivered emission credits

to the SPL holder at a uniform cost of HK\$20,000 per tonne<sup>1</sup> of air pollutant solely for reconciling the excess amount of air pollutants of the concerned year.

17. For "force majeure" events completely beyond the control of the SPL holder but resulting in excess emissions, we propose that the Authority may issue additional and non-transferable emission allowances no more than the excess emissions incurred to the SPL holder at no cost solely for reconciling the excess amount of air pollutants of that particular year.

#### *Amending the Appeal Board Provisions*

18. Section 35 of the APCO empowers the Authority to refer an Appeal Board's decision for review by the Chief Executive in Council if the Authority considers that exceptional circumstances require such a review in the public interest. This mechanism is unnecessary. To streamline the process, we propose to repeal section 35 of the APCO. Further to enhance the independence and impartiality of the Appeal Boards, we propose to revise the APCO by stipulating that public officers will be barred from serving on an Appeal Board.

#### **THE BILL**

19. The main provisions of the Bill are set out below –

- (a) **Regulation of the emission of air pollutants from power plants (Clauses 4, 5, 14 and 15)**

These clauses establish a legal framework to control the emission of three types of air pollutants (i.e. SO<sub>2</sub>, NO<sub>x</sub> and RSP) from power

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<sup>1</sup> The charge of HK\$20,000 per tonne for additional emission allowance is worked out having regard to the local control cost for removal of SO<sub>2</sub> (about HK\$12,600 per tonne) and the penalty for excess emission under the US emission trading rules (about HK\$27,100 per tonne).

plants by facilitating the implementation of a regulatory scheme under the licensing provisions for the relevant power plant. The emission from power plants is to be controlled by prohibiting a power plant from emitting air pollutants in a quantity greater than the quantity of its emission allowances. Contravention of this prohibition is an offence under the existing section 30A of the APCO.

(b) **Maximum quantity of emission (Clause 5, proposed new section 26G)**

The Secretary for the Environment will by way of a TM specify the maximum annual quantity of emission of the three types of air pollutants in respect of each power plant. The power plant concerned will then be allocated with the same quantity of emission allowances, which represents its initial entitlement to emit air pollutants in a year. The quantity of emission allowances may be increased or reduced in the cases set out in sections 26J to 26M.

(c) **Increase or reduction in the quantity of emission allowances (Clause 5, proposed new sections 26J to 26M)**

(i) The surplus of emission allowances in the preceding year may be carried forward to the following year, subject to a maximum of 2% of the initial quantity of emission allowances applicable to the preceding year (section 26J).

(ii) In the following special circumstances (section 26K) in respect of:

[a] a special event or a failure to meet the emission caps occurred for reasons beyond the control of the licence holder of the power plant; or

[b] a failure to carry out cross-boundary emission trade



the licence holder of the power plant may apply to the Authority for an increase of emission allowances.

Upon approval, the licence holder shall pay a fee of \$20,000 for each quantity of emission allowances increased under case [b]. For case [a], no charge will be imposed on the emission allowances increased.

(iii) For local emissions trading (section 26L), a licence holder is free to acquire or transfer emission allowances from or to another licence holder. After the transaction, the quantity of emission allowances for the relevant licence holders will be increased or reduced accordingly. Detailed conditions for regulating the transaction of emission allowances will be set out in the relevant licences as licensing terms and conditions.

(iv) For cross boundary emissions trading (section 26M), a licence holder may acquire emission credits from the owner of any power plant in PRD recognised under the Pilot Scheme. After the acquisition and upon approval by the Authority, the quantity of emission allowances for the relevant licence holder will be increased by the quantity of emission credits acquired. A licence holder may also transfer its emission allowances to power plants in PRD recognised under the Pilot Scheme. After the transfer, the quantity of emission allowances for the licence holder will be reduced accordingly.

(d) **Constitution of Appeal Board and review of Appeal Board's decision (Clauses 8 to 11)**

Clauses 8 to 10 amend sections 32 to 34 of the APCO so that public officers will be barred from serving on an Appeal Board. Clause 11 repeals section 35 so that the Authority will no longer be empowered to refer an Appeal Board's decision for review by the Chief Executive

in Council.

- B 20. The existing provisions being amended are at **Annex B**.

### **LEGISLATIVE TIMETABLE**

21. The legislative timetable is as follows –

Publication in the Gazette 6 February 2008

First Reading and commencement of 20 February 2008  
Second Reading debate

Resumption of Second Reading debate, To be notified  
committee stage and Third Reading

22. Subject to enactment of the Bill, the amendments will come into operation on the day on which the Ordinance is published in the Gazette.

### **IMPLICATIONS OF THE PROPOSAL**

- C 23. The proposal has economic, environmental and sustainability implications as set out at **Annex C**. It will not incur additional financial implications for Government. Enforcement of the proposed emission caps and emissions trading will be carried out by existing staff. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. The proposed legislative amendments will not affect the current binding effect of the APCO.

## **PUBLIC CONSULTATION**

24. The two local power companies have been consulted on the proposed amendments. Overall, they have no in-principle objection to the proposed statutory control on the amount of emissions stemming from their operation. We have taken on board many of their comments to address their concern over the arrangements for adjusting the emission cap and the issue of additional allowances due to “force majeure” events.

25. We consulted the Advisory Council on the Environment and Panel on Environmental Affairs of the Legislative Council on 10 and 17 December 2007 respectively on the proposed amendments to the APCO.

## **PUBLICITY**

26. A press release will be issued before the gazette of the Bill. A line-to-take will be prepared and a spokesman will be made available for media enquiries.

## **BACKGROUND**

27. To improve regional air quality, the Hong Kong SAR Government reached a consensus with the Guangdong Provincial Government in April 2002 to reduce, on a best endeavour basis, the emissions of four major air pollutants, namely SO<sub>2</sub>, NO<sub>x</sub>, RSP and volatile organic compounds (VOC) by 40%, 20%, 55% and 55% respectively in the region by 2010, using 1997 as the base year. Achieving these targets will not only enable Hong Kong to meet its air quality objectives but also significantly improve the air quality of the PRD and relieve the regional smog problem.

28. Hong Kong has achieved good progress in reducing the total emissions of NO<sub>x</sub>, RSP and VOC over the past few years. For SO<sub>2</sub>, however, much of the effort has been vitiated by the increase in emissions from the power plants during the period. Details are presented in the table below –

	Emission level in 1997 (tonnes)	Changes in emission level during 1997- 2006	Reduction target for 2010
Sulphur dioxide	65,900	+12%	-40%
Nitrogen oxides	123,000	-23%	-20%
Respirable suspended particulates	11,400	-48%	-55%
Volatile organic compounds	68,900	-40%	-55%

## **BACKGROUND**

29. For any enquiry relating to this brief, please contact Mr Benny Wong, Assistant Director of Environmental Protection (Air Policy), at 2594-6031.

**Environmental Protection Department**  
**4 February 2008**

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

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**PART IVB**

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**A BILL**

**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.

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 –

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- (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 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 specified 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 30A 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 etc.**

(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; and
- (c) the applicant exercised all due diligence to prevent the occurrence of the special event or the failure (as the case may be).

(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**

(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) 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 31 December 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 (5) on or before 31 March in the year immediately following the emission year.

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

(6) The Authority shall as soon as reasonably practicable, and in any event within 20 working days, after receiving an application referred to in subsection (4), notify the applicant in writing of his decisions under this section.

(7) 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 “subject to which the licence is granted to him by the Authority” and substituting “of the licence”.

**7. 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 etc.);
- (nb) section 26M(4)(a) (refusing to grant an approval for the purposes of section 26M(2));
- (nc) section 26M(5) (imposing terms and conditions upon granting an approval for the purposes of section 26M(2));”.

## **8. 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.”.

## **9. Exercise of Appeal Board’s jurisdiction**

Section 33(4) is repealed.

## **10. 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.”.

## **11. Review of Appeal Board’s decision by Governor in Council**

Section 35 is repealed.

## **12. Section added**

The following is added –

### **“37D. Amendment of Schedules**

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

(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.”.

### **13. 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 or transferred or any exemption is granted or continued”.

### **14. 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.”.

**15. Schedules 2A and 2B 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”.

**Explanatory Memorandum**

The object of this Bill is to amend the Air Pollution Control Ordinance (Cap. 311) (“the Ordinance”) to –

- (a) regulate the emission of sulphur dioxide, nitrogen oxides and respirable suspended particulates (“specified pollutants”) as a result of the conduct of the process specified in item 7 of Schedule 1 to the Ordinance (other than the conduct of such process for the sole purpose of providing a stand-by power supply in the event of a loss of normal power supply) (“electricity works”) by measures including –
  - (i) the allocation to specified licence holders of the entitlement to emit specified 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 (“Appeal Board”);
  - (c) prohibit a public officer from being appointed as or to act as Chairman of any Appeal Board, or from being appointed as a member of a panel of persons eligible for appointment as members of any Appeal Board; and
  - (d) clarify the meaning of “licence” in the Ordinance and its subsidiary legislation.
2. Clause 1 provides for the short title.
  3. Clause 2(1) clarifies the meaning of the definition of “licence” in section 2 of the Ordinance. Clause 2(3) contains the definitions with reference to which the provisions of the Bill are to be interpreted.
  4. Clause 4 amends section 15(4) of the Ordinance to provide that, from 1 January 2010 onwards, a specified licence shall, in addition to such terms and conditions as may be imposed under the proposed section 15(4)(a), also be subject to such terms and conditions as may be set out in the proposed Schedule 2A.
  5. Clause 5 adds a new Part IVB to the Ordinance. The proposed Part IVB contains 3 Divisions.
  6. Division 1 (proposed sections 26G and 26H) provides for the allocation of emission allowances.
  7. The proposed section 26G requires the Secretary for the Environment (“the Secretary”) to 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.



8. The proposed section 26H requires the Authority to ascertain the quantity of allocated allowances and notify the relevant specified licence holders of the quantity so ascertained in certain cases.
9. Division 2 (proposed section 26I) provides that, in determining whether or not a person has contravened a particular term or condition of a specified licence, the adjustments to the relevant quantity of allocated allowances under Division 3 of the proposed Part IVB and to the relevant actual emission shall be taken into account.
10. Division 3 (proposed sections 26J to 26N) provides for the adjustments to the quantity of allocated allowances.
11. The proposed section 26J provides for the increase in the quantity of allocated allowances where there has been a surplus of allocated allowances in the year immediately preceding the relevant emission year.
12. The proposed section 26K provides for the increase in the quantity of allocated allowances upon occurrence of certain events and upon approval by the Authority of the relevant application. Any fee prescribed in the proposed Schedule 2B is to be charged for each emission allowance sought to be increased under the relevant application.
13. The proposed section 26L provides for the increase or reduction in the quantity of allocated allowances further to their acquisition or transfer among specified licence holders.
14. The proposed section 26M provides for the increase or reduction in the quantity of allocated allowances further to the acquisition or transfer of emission credits under any recognized emission trading scheme. That section empowers the Authority to grant or refuse to grant an approval for the purposes of a proposed increase in the quantity of allocated allowances.
15. The proposed section 26N provides for the application of the proposed sections 26J, 26K, 26L and 26M to a specified licence that has ceased to be in force on or before 31 March in the year immediately following the relevant emission year until the end of that day.

16. Clause 7 provides for appeals under section 31 of the Ordinance against a decision by the Authority under the proposed sections 26K(1) and 26M(4)(a) and (5).

17. Clauses 8, 9 and 10 amend sections 32, 33 and 34 respectively of the Ordinance to prohibit a public officer (other than a judge or District Judge) from being appointed as or to act as Chairman of any Appeal Board, and to prohibit a public officer from being appointed as a member of a panel of persons eligible for appointment as members of any Appeal Board.

18. Clause 11 repeals section 35 of the Ordinance to remove the right of referring a decision of any Appeal Board for review under that section.

19. Clause 12 empowers the Secretary to amend the proposed Schedules 2A and 2B by notice published in the Gazette. It also provides for the prescription of fees in the proposed Schedule 2B.

20. Clause 14 adds a new Part 2 to Schedule 2 to the Ordinance. The proposed Part 2 provides for the additional matters to which the terms and conditions of a specified licence may relate.

21. Clause 15 adds new Schedules 2A and 2B to the Ordinance. The proposed Schedule 2A sets out the terms and conditions to which a specified licence shall, by virtue of the proposed section 15(4)(b), be subject from 1 January 2010 onwards. The proposed Schedule 2B prescribes the fees payable for an application made by reference to the proposed section 26K(2)(a)(i) and (ii).

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Section:	2	Interpretation	L.N. 130 of 2007	01/07/2007
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In this Ordinance, unless the context otherwise requires-

"air control zone" (空氣質素管制區) means any part of Hong Kong declared under section 6 to be an air control zone;

"air pollutant" (空氣污染物) means any solid, particulate, liquid, vapour, objectionable odour or gaseous substance emitted into the atmosphere; (Amended 13 of 1993 s. 2)

"air pollution" (空氣污染) means an emission of air pollutant which either alone or with another emission of air pollutant-

- (a) is prejudicial to health;
- (b) is a nuisance;
- (c) imperils or is likely to imperil the safety of or otherwise interferes with the normal operation of aircraft; or
- (d) is determined to be air pollution under a technical memorandum; (Replaced 13 of 1993 s. 2)

"air quality objective" (空氣質素指標) means an air quality objective established by the Secretary under section 7;

"Appeal Board" (上訴委員會) means an Appeal Board constituted under Part VI;

"asbestos" (石棉) includes the minerals, and substances including the minerals, amosite, crocidolite, chrysotile, fibrous actinolite, fibrous anthophyllite and fibrous tremolite; (Added 13 of 1993 s. 2)

"asbestos abatement work" (石棉消滅工程) means any work or a procedure to control fibre release from asbestos containing material, and includes the removal and transport of asbestos containing material; (Added 13 of 1993 s. 2)

"asbestos containing material" (含石棉物料) means any material, substance or product which is made with or contains more than 1 % asbestos by weight as determined by a method approved by the Secretary; (Added 13 of 1993 s. 2)

"Authority" (監督) means the public officer appointed under section 4(1) to be the air pollution control authority;

"authorized officer" (獲授權人員) means a public officer authorized under section 4(3);

"best practicable means" (最好的切實可行方法), where used with respect to the emission from a premises of an air pollutant, has reference not only to the provision and the efficient maintenance of appliances adequate for preventing such emission, but also to the manner in which such appliances are used and to the proper supervision by the owner of the premises of any operation in which such an air pollutant is evolved;

## Annex B

- "building" (建築物) includes the whole, or a part, of a domestic or public building, arch, bridge, cavern adapted or constructed to be used for the storage of oil and petroleum products, chimney, cook-house, cowshed, dock, factory, garage, hangar, hoarding, latrine, matshed, office, oil storage installation, out-house, pier, shelter, shop, stable, stairs, wall, warehouse, wharf, workshop or tower, pylon or other similar structure supporting an aerial ropeway and such other structures as the Building Authority may declare to be a building by notice in the Gazette made under section 2(1) of the Buildings Ordinance (Cap 123); (Added 13 of 1993 s. 2)
- "chimney" (煙 ) includes structures and openings of any kind from or through which air pollutant may be emitted and, in particular, includes flues, and references to a chimney of a premises include references to a chimney which serves the whole or part of a premises but is structurally separate therefrom;
- "containment" (密封區) means a working area isolated from the rest of the building and other working areas to prevent the escape of asbestos fibre; (Added 13 of 1993 s. 2)
- "dispensing nozzle spout" (配油噴嘴) means a spout or other device forming the end of a petrol pump nozzle and designed or constructed to dispense petrol from that petrol pump into the fuel tank of a motor vehicle; (Added 19 of 1994 s. 2)
- "engine" (引擎) means an internal combustion engine;
- "furnace" (火爐) includes any kind of fireplace, grate or stove, whether open or closed and any structure enclosing a chamber where combustion takes place;
- "industrial plant" (工業裝置) includes any plant, whether fixed or movable, used for industrial or trade purposes, and also includes any incinerator used for or in connection with any such purposes;
- "licence" (牌照) means a licence granted under section 15;
- "licence holder" (牌照持有人) means the holder of a valid licence;
- "motor vehicle" (汽車) has the same meaning as in section 2 of the Road Traffic Ordinance (Cap 374); (Added 19 of 1994 s. 2)
- "non-friable asbestos containing material" (不鬆脆的含石棉物料) means asbestos containing material which when dry cannot be crumbled, pulverized or reduced to powder by hand pressure; (Added 13 of 1993 s. 2)
- "noxious or offensive emission" (有害或厭惡性排放物) means a noxious or offensive emission designated by regulations made under section 43(1)(a);
- "nuisance" (滋擾) includes an event which is obnoxious and which results in any of the effects set out in section 10(2)(h); (Added 13 of 1993 s. 2)
- "oven" (烘爐) includes any form of retort or container used to subject solid fuel to any process involving the application of heat;
- "owner" (擁有人) includes-
- (a) in relation to a building or premises, a lessee or occupier of the building or

premises and a contractor who has possession of a site for the purposes of construction work;

- (b) in relation to the common area of a building, the management committee or other body responsible for the management or control of the building;
- (c) in relation to a specified process, a person carrying on a specified process in or on the premises; and
- (d) in relation to a ship, the master or other person in control of the ship; (Replaced 13 of 1993 s. 2)

"petrol" (汽油) has the same meaning as in section 69 of the Dutiable Commodities Ordinance (Cap 109); (Added 19 of 1994 s. 2)

"petrol delivery vehicle" (運油車) means a motor vehicle which is constructed or adapted for use primarily for the delivery of petrol to a petrol retailer; (Added 19 of 1994 s. 2)

"petrol retailer" (汽油零售商) means a person who sells, or offers for sale, petrol by retail to the public at large for use in motor vehicles; (Added 19 of 1994 s. 2)

"polluting process" (污染工序) includes an activity, process or the operation of a chimney, relevant plant, machinery or equipment that evolves air pollutant; (Added 13 of 1993 s. 2)

"prejudicial to health" (損害健康) means injurious, or likely to cause injury, to health;

"premises" (處所) includes a part of the premises and a place, building or relevant plant; (Replaced 13 of 1993 s. 2)

"register of specified processes" (指明工序登記冊) means the register required to be kept under section 39; (Replaced 13 of 1993 s. 2)

"registered asbestos consultant" (註冊石棉顧問) means a natural person whose name is entered in the register of asbestos consultants maintained under section 51(1)(a); (Added 13 of 1993 s. 2)

"registered asbestos contractor" (註冊石棉承辦商) means a natural person, company or other body corporate whose name is entered in the register of asbestos contractors maintained under section 51(1)(b); (Added 13 of 1993 s. 2)

"registered asbestos laboratory" (註冊石棉化驗所) means a laboratory whose name is entered in the register of asbestos laboratories maintained under section 51(1)(d) and includes a natural person, company or other body corporate whose name is entered in the register as the owner of a laboratory; (Added 13 of 1993 s. 2)

"registered asbestos supervisor" (註冊石棉監管人) means a natural person whose name is entered in the register of asbestos supervisors maintained under section 51(1)(c); (Added 13 of 1993 s. 2)

"relevant plant" (有關裝置) means any furnace, engine, oven or industrial plant;

"Secretary" (局長) means the Secretary for the Environment; (Replaced 78 of 1999 s. 7. Amended L.N. 106 of 2002; L.N. 130 of 2007)

"specified process" (指明工序) means a process specified in Schedule 1; (Amended 13 of 1993

s. 2)

"technical memorandum" (技術備忘錄) means a technical memorandum issued under section 7 or 9; (Added 13 of 1993 s. 2)

"vehicle design standards" (車輛設計標準), in relation to the prohibition or control of the emission of air pollutants in respect of motor vehicles intended to be registered under the Road Traffic Ordinance (Cap 374), means the vehicle design standards applied in regulations made under section 43(1)(r). (Added 2 of 1991 s. 3)

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Section:	10	Air pollution abatement notice	L.N. 326 of 2000	01/01/2001
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(1) Where the Authority or an authorized officer is satisfied that the emission of air pollutants from a polluting process is causing or contributing to air pollution which exists or which is imminent, the Authority or the authorized officer may give an air pollution abatement notice, either verbally or in writing, to the owner of the premises or to the person carrying out the activity requiring him-

- (a) to cease the emission of air pollutants from the premises or to cease the operation of the polluting process;
- (b) to reduce the emission of air pollutants from the premises or polluting process;
- (c) to take other steps to abate the emission of air pollutants from the premises or polluting process.

(2) In determining whether the emission of air pollutants is causing or contributing to air pollution which exists or which is imminent, the Authority and an authorized officer may take into account-

- (a) a technical memorandum;
- (b) research material results or publications which indicate that the type of emission may have adverse health effects;
- (c) the advice of a medical practitioner;
- (d) the advice of the Director-General of Civil Aviation; (Amended L.N. 326 of 2000)
- (e) the relative location of the emission source and the place affected;
- (f) the locality of the place affected;
- (g) the time, duration and frequency of the emission;
- (h) any of the following effects which, in the opinion of the Authority or the authorized officer, is caused by or contributed to by the emission-

- (i) the deposit of dust, grit or particles of any kind;
- (ii) an objectionable odour;
- (iii) the staining of, corrosion or damage to, a building, plant, equipment or other material;
- (iv) the irritation of the eye, nose or skin or any other sensory discomfort;
- (v) the disturbance of normal activities by the colour or opacity of the emission;
- (vi) an effect which in the opinion of the Authority or an authorized officer may affect public safety; or
- (vii) any other effect which in the opinion of the Authority or an authorized officer is unreasonable for a member of the public to suffer.

(3) The Authority or an authorized officer may, in giving an air pollution abatement notice under subsection (1), either-

- (a) require that the notice be complied with immediately; or
- (b) state a time by which the person given notice shall comply with the notice.

(4) An air pollution abatement notice remains in force until it is withdrawn or expires.

(5) If the Authority or an authorized officer gives or withdraws an air pollution abatement notice verbally, the Authority or the authorized officer shall confirm the notice in writing within 7 days.

(6) Subsection (1) does not apply to-

- (a) air pollution emitted from a specified process which is operated under a licence issued under section 15;
- (b) the emission of an objectionable odour from a declared offensive trade carried out under and in accordance with a licence issued under bylaws made under the Public Health and Municipal Services Ordinance (Cap. 132).

(7) A person who fails to comply with an air pollution abatement notice given to him under subsection (1) commits an offence and is liable-

- (a) if he fails to cease the operation of a polluting process as specified in the air pollution abatement notice, to a fine of \$500000 and to imprisonment for 12 months and a further fine of \$100000 for each day that the court is satisfied that the failure to cease the operation has continued; and
- (b) in any other case, to a fine of \$100000 on first conviction and to a fine of \$200000 and to imprisonment for 6 months on a second or subsequent conviction and, on a first or subsequent conviction, to a further fine of \$20000 for each day that the court is satisfied that the failure to comply with the air pollution abatement notice has continued.

(Part III replaced 13 of 1993 s. 7)

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Section:	15	Grant or refusal of licences		30/06/1997
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(1) The Authority may, not earlier than 40 days after the last notice is published in a newspaper pursuant to section 14(3)(b), either grant or refuse to grant a licence.

(2) If he refuses to grant a licence the Authority shall notify the applicant in writing of his refusal and shall inform him of his reasons therefor.

(3) In the exercise of his discretion to grant or refuse to grant a licence the Authority shall-

(a) have regard to the capability of the applicant to provide and maintain the best practicable means for the prevention of the emission from his premises of any air pollutant;

(b) have as his purpose the attainment and maintenance of any relevant air quality objective; and (Replaced 23 of 1987 s. 3)

(c) have regard to whether the emission of noxious or offensive emissions would be, or be likely to be, prejudicial to health. (Added 23 of 1987 s. 3)

(4) A licence granted under this section shall be for a reasonable period of not less than 2 years and may be subject to such terms and conditions as the Authority thinks fit including terms and conditions relating to the matters set out in Schedule 2. (Amended 13 of 1993 s. 31)

Chapter:	311	AIR POLLUTION CONTROL ORDINANCE	Gazette Number	Version Date
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Section:	30A	Contravention of terms and conditions of licence, etc.		30/06/1997
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A licence holder who contravenes any term or condition subject to which the licence is granted to him by the Authority, or an owner of any premises who is exempt under section 20 from the operation of section 13 and who contravenes any term or condition imposed by the Authority in relation to the exemption, commits an offence and is liable to a fine of \$100000 on conviction for a first offence and \$200000 and imprisonment for 6 months for a second or subsequent offence and in addition, if the offence is a continuing offence, to a fine of \$20000 for each day during which it is proved to the satisfaction of the court that the offence has continued.

(Added 23 of 1987 s. 12. Amended 13 of 1993 s. 22)



Chapter:	311	AIR POLLUTION CONTROL ORDINANCE	Gazette Number	Version Date
Section:	31	When appeal may be brought; and effect thereof		30/06/1997

**PART VI**

**APPEALS**

(1) A person may appeal to the Appeal Board if he is aggrieved by a decision, requirement or specification of a public officer under any of the following provisions-

- (a) section 10(1) (requiring the abatement of air pollution); (Replaced 13 of 1993 s. 23)
- (b) (Repealed 13 of 1993 s. 23)
- (c) section 15(1) (refusing to grant a licence);
- (d) section 15(4) (fixing terms and conditions of licence);
- (e) section 16(4) (refusing to renew a licence);
- (f) section 17(1)(a) (imposing new or amended terms or conditions for continuance of a licence);
- (g) section 17(1)(b) (cancelling a licence);
- (h) section 17(1)(c) (revoking, amending or adding to a notice or substituting a new notice);
- (i) section 18(4) (refusing to vary a licence);
- (j) section 18(7) (fixing terms and conditions for variation of a licence);
- (ja) section 18A(5) (refusing to transfer a licence); (Added 23 of 1987 s. 13)
- (jb) section 18A(8) (fixing terms and conditions on transfer of a licence); (Added 23 of 1987 s. 13)
- (k) section 22(1)(a)(i) (imposing terms and conditions subject to which an exemption may continue in force);
- (l) section 22(1)(a)(iii) or 22(1)(b) (cancelling an exemption); (m) section 22(1)(c) (amending or adding to a notice or substituting a new notice);
- (m) section 22(1)(c) (amending or adding to a notice or substituting a new notice);
- (n) section 23(4) (refusing to vary or cancel terms or conditions subject to which an exemption may continue in force);
- (o) section 27 (requiring information to be furnished);
- (p) section 30(1)(i) (requiring the modification, replacing, cleaning or repair of or other steps to be taken relating to, a chimney, relevant plant or other machinery or

- equipment); (Amended 13 of 1993 s. 23)
- (pa) section 30(1)(ii) (requiring the installation of control equipment or systems); (Added 13 of 1993 s. 23)
- (pb) section 30(1)(iii) (requiring the operation of a chimney, relevant plant or other machinery or equipment in a specified manner); (Added 13 of 1993 s. 23)
- (q) section 30(1)(iv) (prohibiting the use of specified fuels or other materials); (Amended 13 of 1993 s. 23)
- (r) section 40 (refusing to withhold information from public notification or other public access); (Amended 23 of 1987 s. 13)
- (s) any regulations made under section 43;
- (t) section 58 (refusal to enter or deferral of entry of an applicant's name in the relevant register); (Added 13 of 1993 s. 23)
- (u) section 67 (ordering the suspension or removal of registered asbestos persons from the relevant register); (Added 13 of 1993 s. 23)
- (v) section 72 (requiring the owner to comply with conditions set by the Authority in an asbestos management plan or an asbestos abatement plan); (Added 13 of 1993 s. 23)
- (w) section 79 (requiring the owner to comply with requirements set by the Authority in an asbestos abatement notice). (Added 13 of 1993 s. 23)

(2) An appeal under subsection (1) shall be made by lodging notice of appeal in the prescribed manner and form within 21 days after the person aggrieved has received notice of the decision, requirement or specification.

(3) Where the decision, requirement or specification appealed from was made under a provision mentioned in paragraphs (a) or (e) to (j) or (jb) to (m) or (o) to (q) or (v) of subsection (1) the notice thereof shall be suspended from the day on which notice of appeal is duly given to the Authority and until the appeal is disposed of, withdrawn or abandoned, unless- (Amended 23 of 1987 s. 13; 13 of 1993 s. 23)

- (a) the decision, requirement or specification is considered by the Authority to be necessary because the continuation of the activities, whether licensed or otherwise, to which the notice relates would be, or be likely to be, prejudicial to health; and
- (b) the notice contains a declaration to that effect.

(4) No appeal shall lie under this section where the requirement of the Authority is made with the prior approval of the Governor in Council under section 17(2) or 22(2).

(5) The Appeal Board shall refuse to determine an appeal under this section unless-

- (a) a decision, requirement or specification-
  - (i) is not justified under this Ordinance or a technical memorandum issued under this Ordinance; or
  - (ii) has some material error in content or material defect in administrative

- procedure;
- (b) the opinion of the Authority or an authorized officer that air pollution which is caused or contributed to by an emission set out in section 10(2)(h) is unreasonable;
  - (c) the opinion of the Authority or the authorized officer under section 10(2)(b) or (c) that the air pollution is prejudicial to health is unreasonable; or
  - (d) a disciplinary order or order for costs issued under section 67 against a registered asbestos consultant, supervisor, contractor or laboratory is unjustifiable. (Added 13 of 1993 s. 23)

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Section:	32	Constitution of Appeal Board		30/06/1997
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(1) Every appeal under section 31 shall be determined by an Appeal Board constituted under this Part.

(2) The Governor shall appoint as Chairman of Appeal Boards a person who is qualified in law.

(3) Subject to section 34(3), the Chairman shall be appointed for a term of 3 years but may be re-appointed. (Amended 13 of 1993 s. 24)

(4) The Governor shall also appoint a panel of persons whom he considers to be suitable for appointment as members of an Appeal Board pursuant to section 33(1).

(4A) A member of the panel shall be appointed for a term of 3 years but may be reappointed. (Added 13 of 1993 s. 24)

(4B) A member of the panel may resign by giving notice in writing to the Governor. (Added 13 of 1993 s. 24)

(5) An appointment under subsection (2) and every appointment to the panel under subsection (4) shall be notified in the Gazette.

(6) In subsection (2) and in section 34(1) "qualified in law" (具法律專業資格) means qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap 336).

Chapter:	311	AIR POLLUTION CONTROL ORDINANCE	Gazette Number	Version Date
Section:	33	Exercise of Appeal Board's jurisdiction	25 of 1998 s. 2	01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

(1) The jurisdiction of an Appeal Board on any appeal or group of appeals shall be exercised by the Chairman and such number of persons from the panel referred to in section 32(4) as the Chairman may appoint for that appeal or group of appeals.

(2) On any appeal an Appeal Board may confirm, reverse or vary the decision, requirement or specification appealed from.

(3) Every question before an Appeal Board shall be determined by the opinion of the majority of the Chairman and the members hearing the appeal except a question of law which shall be determined by the Chairman; in the event of an equality of votes the Chairman shall have a casting vote.

(4) An Appeal Board shall not at any time consist of a majority of persons who are public officers.

(5) An Appeal Board may-

- (a) receive evidence on oath;
- (b) admit or take into account any statement, document, information or matter whether or not it would be admissible as evidence in a court of law; and
- (c) by notice in writing summon any person to appear before it to produce any document or to give evidence that may reasonably be required.

(6) In hearing an appeal, the Appeal Board may make an award for the costs involved in the appeal that is just and equitable in all the circumstances of the case, and for an appeal under section 31(1)(a) or (w) where the appellant was required to cease operations in order to comply with an abatement notice pending the hearing of the appeal, for compensation that is just and equitable in all the circumstances of the case, including the conduct and comparative blameworthiness of the appellant and his servants and agents, and of the public officers and any other persons concerned. (Replaced 13 of 1993 s. 25)

(7) The Appeal Board shall have the powers which are vested in the Court of First Instance in the exercise of its powers under subsection (5)(a) or (c). (Amended 25 of 1998 s. 2)

(8) The Chairman may determine any form or matter of practice or procedure in so far as no provision is made therefor by or under this Ordinance.

(9) If a person-

- (a) on being summoned as a witness before the Appeal Board fails to attend;

(b) attending as a witness refuses to be sworn or to produce a document or to answer a question as the Appeal Board may legally require of him; or

(c) does any other thing which would, if the Appeal Board had been a court of law with power to commit for contempt, have been contempt of that court,

the Chairman may certify under his hand the act of the person as contempt and the Court of First Instance may inquire into the alleged contempt. (Added 13 of 1993 s. 25. Amended 25 of 1998 s. 2)

(10) After hearing any witnesses who may give evidence against or on behalf of the person charged with contempt, the Court of First Instance may punish the person as if he had been guilty of contempt of the Court of First Instance. (Added 13 of 1993 s. 25. Amended 25 of 1998 s. 2)

(11) A witness before the Appeal Board is entitled to the same immunities and privileges as if he were a witness in civil proceedings before the Court of First Instance. (Added 13 of 1993 s. 25. Amended 25 of 1998 s. 2)

(12) A sum awarded as costs or compensation on an appeal is enforceable as a civil debt and costs payable by the Authority on an appeal are a charge on the general revenue. (Added 13 of 1993 s. 25)

Chapter:	311	AIR POLLUTION CONTROL ORDINANCE	Gazette Number	Version Date
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Section:	34	Supplementary provisions as to Appeal Board		30/06/1997
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(1) If the Chairman is precluded by illness, absence from Hong Kong or any other cause from exercising his functions the Governor may appoint any other person qualified in law to act as Chairman and as such to exercise and perform all of the functions, duties and powers of the Chairman during the period of his appointment.

(2) If a person appointed by the Chairman under section 33(1) to hear an appeal or group of appeals is precluded by illness, absence from Hong Kong, or any other cause from exercising his functions, the Chairman may appoint any other person from the panel provided for in section 32(4) to act in his place.

(3) The Chairman may at any time resign his office by notice in writing to the Governor.

(4) The hearing of an appeal may be continued notwithstanding any change in the membership of an Appeal Board as if the change had not occurred:

Provided that no person shall be appointed as a member of an Appeal Board before which the hearing of an appeal has been commenced without the consent of the parties.

**Annex B**

Chapter:	311	AIR POLLUTION CONTROL ORDINANCE	Gazette Number	Version Date
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Section:	35	Review of Appeal Board's decision by Governor in Council		30/06/1997
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(1) This section applies where-

- (a) an Appeal Board has reversed or varied a decision, requirement or specification of the Authority or an authorized officer; and
- (b) the Authority considers that exceptional circumstances require the review of the Board's decision in the public interest.

(2) The Authority may, where this section applies, within 14 days of being notified of a decision of an Appeal Board refer the case for review by the Governor in Council.

(3) Where the Authority has referred a case for review under subsection (2), he shall forthwith notify the other party in writing of the reference, giving his reasons for seeking the review and inviting the other party, within 14 days of receiving the notice, to submit written representations concerning the review for consideration by the Governor in Council.

(4) Upon a reference under subsection (2) and upon the expiry of the period of 14 days referred to in subsection (3) the Governor in Council may review the case, considering any representations submitted under subsection (3) and may confirm, reverse or vary the decision of the Appeal Board.

Chapter:	311	AIR POLLUTION CONTROL ORDINANCE	Gazette Number	Version Date
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Section:	42	Protection of Government and public officers	29 of 1998 s. 64	01/07/1997
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Remarks:

Amendments retroactively made - see 29 of 1998 s. 64

(1) No liability shall rest on the Government or upon any public officer by reason of the fact that any licence or exemption is granted or continued under this Ordinance.

(2) A public officer shall not be personally liable in respect of any act or omission of his if it was done or made by him in the honest belief that it was required or authorized in the exercise of any function, duty or power of his under this Ordinance.

(3) The protection conferred on public officers by subsection (2) in respect of any act or omission shall not in any way affect any liability of the Government in tort for that act or omission.

## Annex B

(Amended 29 of 1998 s. 64)

Chapter:	311	AIR POLLUTION CONTROL ORDINANCE	Gazette Number	Version Date
Schedule:	2	TERMS AND CONDITIONS SUBJECT TO WHICH A LICENCE MAY BE GRANTED OR AN EXEMPTION CONTINUED		30/06/1997

[sections 15(4), 18(7), 18A(8),  
22(6) & 23(7)]

(Amended 13 of 1993 s. 34)

1. The place and times or periods at or during which the emission of air pollutant may take place.
2. The design and construction of any chimney or relevant plant or equipment used in connection with the emission of any air pollutant.
3. The rate of discharge of any air pollutant or total amount thereof in relation to the matter discharged or any constituent thereof.
4. The nature, composition, colour or temperature of the matter discharged or any constituent thereof.
5. The treatment of any potential air pollutant before it is discharged and the chimney or relevant plant or equipment to be provided, maintained and used therefor.
6. The equipment and facilities to be provided for inspecting, sampling or measuring the emission and ambient concentration of any air pollutant or any constituent thereof.  
(Amended 13 of 1993 s. 34)
7. The maintenance and security of any equipment and facilities referred to in paragraph 6.
8. The provision to the Authority of samples, and of the results of the analysis of samples, of air pollutants or any material that may evolve air pollutants.

## **Annex B**

9. The keeping of records in relation to the matters mentioned in paragraphs 3 and 4.
10. The access of authorized officers to the equipment, facilities and records referred to in paragraphs 6 and 9.
11. Any matters relating to care and maintenance in relation to the provisions of paragraphs 3 and 4.



## **IMPLICATIONS OF THE PROPOSAL**

### **ECONOMIC IMPLICATIONS**

We have been communicating with the power companies on the requirements to achieve the 2010 emission reduction targets since 2003. Power companies have therefore already built into their operational plans to provide for the installation of the necessary pollution abatement equipments and use of cleaner fuels to achieve the emission reduction targets. The proposed legislative amendments therefore will not have major negative impact on the operation of the local power plants. However, further tightening of the emission cap beyond 2010 may require the adoption of additional emission control devices and changing the fuel mix for power generation. This may translate into higher production costs and hence may cause tariff implications on consumers.

2. The provisions to enable emissions trading will allow for a more flexible and cost-effective means for the power companies to achieve the emission caps. It will also provide incentives for power plants to adopt more efficient pollution control measures, especially if the potential transaction price for emission allowances is high.

3. An effective statutory control on the emissions by power plants would go a long way in improving the air quality in Hong Kong, which in turn will help enhance the image of Hong Kong, strengthen Hong Kong's attractiveness to tourists and foreign investment, thereby maintain the competitiveness of Hong Kong in the long run.

## **ENVIRONMENTAL IMPLICATIONS**

4. The proposal will provide an effective and transparent statutory framework to ensure compliance by the power companies with the emission reduction targets for 2010 and beyond. It will allow for the implementation of emissions trading, which is a more flexible and cost-effective means for achieving the emission reduction targets. The accomplishment of the emission reduction targets is instrumental in meeting the air quality objectives of Hong Kong. It will also alleviate the visibility, smog as well as acid rain problems plaguing the region.

## **SUSTAINABILITY IMPLICATIONS**

5. Achieving a better air quality for Hong Kong through statutory control on power plants' emissions and emissions trading is in line with the sustainability principles of seeking to find opportunities to enhance the quality of our living environment that promotes and protects the physical health of the people of Hong Kong.