

立法會
Legislative Council

LC Paper No. LS31/12-13

**Paper for the House Committee Meeting
on 22 March 2013**

**Legal Service Division Report on
Air Pollution Control (Amendment) Bill 2013**

I. SUMMARY

- 1. The Bill**

The Bill proposes to repeal the power of the Secretary for the Environment to promulgate Air Quality Objectives (AQOs) in a technical memorandum. Instead, a set of updated AQOs, which is subject to review at least once every 5 years, is to be provided in the Air Pollution Control Ordinance (Cap. 311). Transitional provisions are also made so that the current AQOs set out in a technical memorandum will continue to be in force as a criterion for evaluating air quality impact in relation to applications made before 1 January 2017 to vary any condition stipulated in environmental permits issued before 1 January 2014.
- 2. Public Consultation**

According to the Administration, a four-month public consultation was conducted in 2009 to update the AQOs. The Advisory Council on the Environment (ACE) was briefed in March 2012.
- 3. Consultation with LegCo Panel**

The former Subcommittee on Improving Air Quality and the Subcommittee on Issues Relating to Air, Noise and Light Pollution (the Subcommittees), which were formed under the Panel on Environmental Affairs, were consulted on the legislative proposal on 16 April 2012 and 25 February 2013 respectively. Various concerns were expressed by members.
- 4. Conclusion**

In view of the concerns raised at the meetings of the Subcommittees, Members may wish to consider setting up a Bills Committee to study the Bill in detail. Scrutiny on its legal and drafting aspects is continuing.

II. REPORT

The date of First Reading of the Bill is 20 March 2013. Members may refer to the LegCo Brief (File Ref: EP CR 9/150/34) issued by the Environment Bureau and Environmental Protection Department dated February 2013 for further information.

Object of the Bill

2. The Bill seeks to amend the Air Pollution Control Ordinance (Cap. 311) (the Ordinance) to –

- (a) set out air quality objectives (AQOs) in the Ordinance; and
- (b) provide that the Secretary for the Environment (Secretary) must review the AQOs at least once every 5 years and submit a report of the review to the Advisory Council on the Environment (ACE).

Background

3. Under section 7 of the Ordinance, AQOs (in essence, concentration limits of certain air pollutants) are stipulated as the air quality that should be achieved and maintained in order to promote the conservation and best use of air in air control zones¹ in the public interest. According to the Administration, they are also benchmarks for assessing the air quality impact of specified processes under the Ordinance and of designated projects under the Environmental Impact Assessment Ordinance (Cap. 499) (EIAO).

4. According to the Administration, the current AQOs, which are specified in the Technical Memorandum for Specifying AQOs for Hong Kong (T.M.) issued under section 7(1A) of the Ordinance, have been in place since 1987. In 2006, the World Health Organisation released a set of Air Quality Guidelines (the Guidelines). In January 2012, the Administration announced its decision to update the AQOs. The new AQOs are benchmarked against a combination of both interim and ultimate targets of the Guidelines and are broadly comparable to the air quality standards adopted in the European Union and United States.

¹ Air control zones are zones which are declared as such under section 6 of the Ordinance.

Provisions of the Bill

Secretary's power and duty in relation to AQOs

5. Section 7 of the Ordinance empowers the Secretary to establish and amend AQOs for every air control zone and publish the AQOs by issuing a technical memorandum. The Bill proposes to repeal section 7 and substitute it with a new section to empower the Secretary to review the AQOs which are specified in a new Schedule 5 to the Ordinance. Further, the Secretary must review the AQOs at least once every 5 years beginning on 1 January 2014 and submit a report of the review to the ACE.

New set of AQOs

6. The proposed Schedule 5 is divided into 2 parts. Part 1 prescribes the application and reference conditions of the AQOs. Part 2 specifies an update set of AQOs by prescribing the respective concentrations limits² of certain air pollutants. The pollutants (which are similar to those³ specified in the T.M.) are sulphur dioxide, fine suspended particulates, respirable suspended particulates, nitrogen dioxide, ozone, carbon monoxide and lead. Further, the Bill also proposes that, subject to the transitional provisions, the current AQOs will cease to have effect on the expiry of 31 December 2013.

Transitional Provisions concerning current AQOs in relation to EPs

7. Part 3 of the Bill provides the transitional provisions concerning EPs issued before 1 January 2014. Under section 9(1)(a) of EIAO, a person shall not construct or operate a designated projects listed in Part I of Schedule 2 to EIAO⁴ or to decommission a designated project listed in Part II⁵ of the same schedule without an EP for the project, which may be granted with conditions attached. The conditions may be varied by an application made to the Director of Environmental Protection. Upon such an application, the Director may, under section 13(4) of EIAO, require an environmental impact assessment report to be submitted in relation to the application or, under section 13(5), amend the EP without calling for the

² A table of comparison between the concentration limits under the T.M. and the Bill is contained in Annex B of the LegCo Brief.

³ The air pollutants specified in the T.M. are sulphur dioxide, respirable and total suspended particulates, nitrogen dioxide, carbon monoxide, photochemical oxidants determined by measurement of ozone and lead.

⁴ Those projects include (a) certain construction works such as railways, marine and sewage facilities, power plants; (b) utility pipelines or drainage works; (c) certain industrial or agricultural activities; (d) tourist, recreational or residential developments and community facilities; and (e) gazetted or proposed country park or conservation area.

⁵ In gist, those projects involve the storage or treatment of fuels, chemicals, explosives or an electricity or gas generation power plant.

report if certain conditions are satisfied. In both cases, the project concerning the application is required to comply with the technical memorandum⁶ published under section 16(5) of EIAO, a criterion of which is to meet the AQOs in the T.M.

8. The Bill proposes that, for any application made before 1 January 2017 under section 13(1) of EIAO to vary any condition attached to an EP issued before 1 January 2014, the current AQOs prescribed under the T.M. shall continue to have effect as a criterion for evaluating air quality impact for the purposes of section 13(4) and 13(5)(b) of the EIAO.

Commencement

9. The Bill, if enacted, will come into operation on 1 January 2014.

Public Consultation

10. According to the Administration, a four-month public consultation on the proposal to update the AQOs was conducted in 2009. After the announcement of its decision in January 2012 to adopt the new AQOs, the Administration briefed the ACE and the LegCo Subcommittee on Improving Air Quality in March and April 2012 respectively.

Consultation with LegCo Panel

11. According to the Clerk to Panel on Environmental Affairs, the former Subcommittee on Improving Air Quality and the Subcommittee on Issues Relating to Air, Noise and Light Pollution (the Subcommittees), which were formed under the Panel on Environmental Affairs, were consulted on the legislative proposal on 16 April 2012 and 25 February 2013 respectively. The major concerns expressed by members included the long lead time for taking forward the proposed new AQOs, and the need to increase the frequency of reviews of AQOs and promote active public participation throughout the review process. Some members were also concerned that the provision of a 36-month transitional period might create a loophole that allowed project proponents not to comply with the more stringent requirements under the new AQOs.

⁶ Section 1.1(a) of Annex 4 to the EIAO technical memorandum states that the criteria for evaluating air quality impact include meeting the AQOs and other standards established under the Ordinance.

Conclusion

12. In view of the concerns raised at the meetings of the Subcommittees, Members may wish to consider setting up a Bills Committee to study the Bill in detail. Scrutiny on its legal and drafting aspects is continuing.

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21 March 2013

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