

**Bills Committee on
Air Pollution Control (Amendment) (No. 2) Bill 2013**

**Follow-up actions required of the Administration
(as at 21 November 2013)**

The Administration's response to the information requested by members at the meeting on 19 November 2013 –

- 1. to provide information on public sector buildings (including their fixtures) which are built of materials consisting of asbestos-containing material, and the policy considerations regarding whether to publish the information;**

The use of asbestos containing materials was quite common in the 1980s, among which corrugated asbestos cement sheets are most commonly found in old buildings, such as canopies and rooftop structures. These asbestos cement sheets should not pose health risk if they are in good condition and not disturbed. The key concern is the release of asbestos fibres during demolition and/or renovation works. However, the use of asbestos materials is not limited to the external parts of buildings, some are embedded inside buildings and individual flat units. Conducting a detailed survey on the asbestos materials will inevitably lead to unnecessary disturbance and release of asbestos fibres due to samplings. As the asbestos materials are safe if they are in good condition and remain untouched, our professional view is that a full survey is not the appropriate way to manage the asbestos issue. Hence, the Government has not conducted a detailed survey to derive a list of all public sector buildings with asbestos materials. Instead, we have advised relevant departments that they should carry out detailed asbestos survey and prepare an appropriate asbestos abatement plan as and when renovation or demolition works are planned for the buildings.

All Government departments are fully aware of the legislative requirements on safe handling of asbestos materials in buildings. Under the Air Pollution Control Ordinance, premises owners are required to engage registered asbestos consultants to carry out investigation on any intended works that may involve asbestos and to notify the Environmental Protection Department (EPD) of any works involving the handling and abatement of asbestos materials. The Labour Department also maintains a notification system for the

purpose of protecting the health of workers involved in specified asbestos works. Moreover, the Buildings Department has issued practice notes to Authorized Persons and Registered Contractors to require them to follow the relevant statutory provisions and to adopt necessary control and abatement measures when removing asbestos materials from existing buildings. To raise the awareness of the relevant parties on asbestos materials, EPD has published a full list of materials and products likely to contain asbestos in buildings for reference by professionals, which is accessible at:

http://www.epd.gov.hk/epd/english/resources_publications/files/pn97_2.pdf

2. to advise, in relation to considerations that are listed in paragraph 6(e) of the Administration's paper (LC Paper No. CB(1)330/13-14(02)) –

(a) whether the Administration will consider specifying those considerations in the Bill ;

(b) whether the considerations can be found in any internal guidelines of the Environmental Protection Department, if so, to provide the relevant guidelines; and

(c) further to (b) above, whether the Administration will consider publishing the relevant guidelines, if any;

(a) Currently, import and sale of amosite and crocidolite are banned under section 80 of the Air Pollution Control Ordinance (APCO). Under section 80(3) of the APCO, the Air Pollution Control Authority (APCA), i.e. the Director of Environmental Protection may on application in writing grant an exemption if the APCA is of the opinion that (i) such an exemption is warranted and that (ii) the exemption would unlikely lead to a health risk to the community. These are the two underlying considerations of the APCA for granting an exemption. The same considerations for granting an exemption have been proposed in the new section 83(1).

Paragraph 6(e) of the Administration's paper (LC Paper No. CB(1)330/13-14(02)) aims to elaborate the factors to be taken into account by the APCA as to the two underlying considerations mentioned above. However, as each case of

exemption has to be justified on individual circumstances, it is not practicable to set out an exhaustive list on exemption in the Bill.

- (b) Since the ban on amosite and crocidolite coming into operation in 1996, the APCA has so far only granted exemptions for three registered asbestos laboratories in Hong Kong to import amosite and crocidolite to serve as reference standards and the total amount involved was less than 3 kg. They are kept and used under the controlled environment of accredited laboratories. As indicated above, application for exemption has to be justified with reference to the considerations set out above, we do not consider it appropriate to set out guidelines for exemption.
- (c) After the Bill has come into operation, there may be applications for exemption from other sectors, e.g., the power generation sector for spare parts for special applications that do not have asbestos-free alternatives, in addition to the registered asbestos laboratories. To help the public including potential applicants understand the process, we will publish on the webpage of the Environmental Protection Department the factors that the APCA would consider for an exemption application. These factors are listed in paragraph 6(e) of the Administration's paper (LC Paper No. CB(1)330/13-14(02)) .

3. to clarify, in the light of the Administration's response that if the Bill is passed, applications made under section 14 of the Air Pollution Control Ordinance (Cap. 311) ("APCO") for works specified in item 19 of Schedule 1 to the APCO must be refused,

- (a) whether the relevant authority still has any discretion to grant a licence under section 15(3) of the APCO for any of the works specified in the item after the Bill comes into operation;**
- (b) if the answer to (a) is in the affirmative, the legal basis for the relevant authority to still grant a licence given sections 80 to 83; and**
- (c) if the answer to (a) is negative, whether item 19 should be repealed consequentially and if not, whether this would create the legitimate expectation of an applicant that a**

discretion still exists; and

Under section 15(3) of the APCO, the APCA in exercising his discretion to grant or refuse to grant a licence shall –

- (a) have regard to the capacity of the applicant to provide and maintain the best practical means for the prevention of the emission from his premises of any 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 noxious or offensive emissions would be, or likely to be, prejudicial to health.

Given the carcinogenic nature of asbestos, it is impracticable for an asbestos works to make its emissions not to be prejudicial to health, the fulfilment of which is a key consideration for the APCA to grant a licence as stipulated in section 15(3) of the APCO. As such, although the APCA has the discretion to grant or refuse a licence under section 15(3) of the APCO, the threshold to exercise the discretion in respect of asbestos works specified in item 19 of Schedule 1 to the APCO is very high. The passage of the Bill will raise the threshold further.

In addition, retaining item 19 of Schedule 1 to the APCO will have the advantage that an asbestos works will be put into operation only with the express approval of the APCA. This will provide stronger safeguard to the public against the risk of asbestos.

- 4. to clarify, in relation to asbestos that are regulated under a permit system under the Hazardous Chemicals Control Ordinance (Cap.595)("HCCO") and section 10(3) of HCCO whether, in the light of the response to the questions in sub-paragraph 3 above, consequential amendments are necessary for similar reasons.**

The HCCO has been enacted in the local context by transposing the requirements of the Stockholm Convention on Persistent Organic Pollutants or the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. Asbestos is one of the chemicals controlled under the latter convention and therefore is covered in the HCCO.

Section 10(3) of HCCO states that for the Director of Environmental

Protection (DEP) to issue or renew a permit, DEP is to “have to regard to other enactments that govern the activity to which the application relates”. Hence, in relation to asbestos that are regulated under a permit system under the HCCO, DEP shall, when the Air Pollution Control (Amendment) (No. 2) Bill 2013 comes into operation, have regard to the ban stipulated in the Bill. An exemption granted under APCO would be the prerequisite before issuing a permit under the HCCO. Otherwise, DEP would decline to grant a permit for concerned asbestos under HCCO. Hence, the HCCO will in no way affect the ban of asbestos proposed by the Bill. Consequential amendment to the HCCO is considered not necessary.

Environment Bureau/Environmental Protection Department
28 November 2013