

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

**Follow-up actions required of the Administration
(as at 24 December 2013)**

In response to the request by members at the meeting on 23 December 2013, the Administration has the following response.

1. With respect to the Chinese rendition of the English text "...and could not have reasonably known", which appears as "亦按理不可能知悉" in section 78(b) of the Air Pollution Control Ordinance (Cap. 311) and as "而按理亦不能知悉" in the proposed sections 78(1)(b) and 81(1), to provide relevant examples of "...could not have reasonably..." and their Chinese renditions in other legislation.

The Department of Justice (DoJ) advised that a structure similar to "could not have reasonably" has also been used in provisions in other statutes, such as –

- Section 40(2AAAB) of the Buildings Ordinance (Cap. 123)
"It is a defence in any prosecution for a contravention of any section referred to in subsection (2AAAA) for the person charged to prove that he had no knowledge of, and could not have reasonably discovered, the contravention referred to in the charge."
- Section 39J(11)(b) of the Road Traffic Ordinance (Cap. 374)
"he or she did not know and could not reasonably have known that the lawfully obtained specified illicit drug or the combination of such drugs found in the blood or urine would render him or her incapable of having proper control of a motor vehicle if consumed or used in accordance with advice;"
- Section 39L(10)(b) of the Road Traffic Ordinance (Cap. 374)
"he or she did not know and could not reasonably have known that the lawfully obtained non-specified drug or the combination of such drugs found in the blood or urine would render him or her incapable of having proper control of a motor vehicle if consumed or used in accordance with advice;"

2. With respect to the Chinese rendition of the English text "..., asbestos containing material that is proprietary Chinese medicine...", which appears as "...屬中成藥的含石棉物料，..." in the proposed section 82(3), to consider amending the Chinese rendition to avoid any possible ambiguity of whether the section does not prohibit a person from importing and supplying asbestos containing material (ACM) which is to be used to manufacture proprietary Chinese medicine.

The DoJ advised that the English text of the proposed section 82(3) reads "asbestos containing material *that is* proprietary Chinese medicine", and the Chinese text of the provision reads "屬中成藥的含石棉物料". The provision clearly refers to an *asbestos containing material*¹ that is a *proprietary Chinese medicine*² (but not something else). Since the proprietary Chinese medicine is itself an asbestos containing material, if a person imports the medicine and uses it to "manufacture" another kind of proprietary Chinese medicine, that person will commit an offence under the proposed section 80(1) for "using"³ an asbestos containing material. It is submitted that the Chinese text clearly reflects the policy intent and there is no ambiguity in its meaning.

3. To advise whether the Administration will consider publishing a practice note to specify the considerations which will be taken into account by the Authority in consideration of whether the proposed section 83(1)(a) and (b) have been satisfied, as listed in paragraph 6(e) of the Administration's paper (LC Paper No. CB(1)330/13-14(02)).

The Authority, i.e. the Director of Environmental Protection, may on application in writing exempt a person from a prohibition imposed under section 80(1) of the Air Pollution Control Ordinance if the Authority considers that the exemption –

- (a) is warranted; and
- (b) would be unlikely to lead to a health risk to the community.

In consideration of whether the exemption is warranted in respect of

¹ "Asbestos containing material" is a defined expression in section 2 of the Air Pollution Control Ordinance (Cap. 311), which is proposed to be amended by clause 3 of the Bill as "any material, substance or product which is made with or contains asbestos, as determined by a method approved by the Secretary".

² "Proprietary Chinese medicine" is a defined expression in the proposed new section 82(6): "has the meaning given by section 2(1) of the Chinese Medicine Ordinance (Cap. 549)". Under that Ordinance, a proprietary Chinese medicine must be "formulated in a finished dose form".

³ "Use" is defined in the proposed section 80(5) to include "adding, mixing or inserting" asbestos containing material to, with, into any material, substance, product or article "for manufacturing or producing any product or substance".

an application involving the use of ACM, the Authority will take into account of the following factors:

- (1) whether an asbestos free substitute is available;
- (2) whether there will be serious disruption to a public service if the application for exemption is not granted; and
- (3) whether there will be serious safety problem or risk to human life if the application for exemption is not granted.

In consideration of whether the exemption would be unlikely to lead to a health risk to the community, the Authority will take into account of the following factors:

- (1) the quantity of the asbestos or ACM involved;
- (2) the precautionary measures to be taken to prevent release of asbestos into the air;
- (3) the location and activity involved; and
- (4) the likelihood the asbestos or ACM involved will be disturbed.

For the sake of clarity and transparency, the Environmental Protection Department has published the above considerations on EPD's webpage – http://www.epd.gov.hk/epd/english/environmentinhk/air/guide_ref/files/Exemption_considerations_eng.pdf

As the same conditions for granting exemption have been proposed in the Air Pollution Control (Amendment) (No. 2) Bill 2013, these considerations will continue to be valid when the Bill comes into operation.

Environment Bureau/Environmental Protection Department
27 December 2013