

## LEGISLATIVE COUNCIL BRIEF

Pesticides Ordinance (Cap. 133)

### **Pesticides Ordinance (Amendment of Schedule 1) Notice 2023**

Hazardous Chemicals Control Ordinance (Cap. 595)

### **Hazardous Chemicals Control Ordinance (Amendment of Schedules 1 and 2) Order 2023**

## INTRODUCTION

In exercise of the power under section 19A(1)(a) of the Pesticides Ordinance (Cap. 133) (“PO”), the Secretary for Environment and Ecology (“SEE”) has made the *Pesticides Ordinance (Amendment of Schedule 1) Notice 2023* (“the Notice”), as set out at **Annex 1**. The Notice amends Schedule 1 to the PO, in order to give effect to the 2015 amendment to the *Stockholm Convention on Persistent Organic Pollutants* (“the Stockholm Convention”).

2. In addition, SEE has made the *Hazardous Chemicals Control Ordinance (Amendment of Schedules 1 and 2) Order 2023* (“the Order”), as set out at **Annex 2**, under section 50 of the Hazardous Chemicals Control Ordinance (Cap. 595) (“HCCO”). The Order amends Schedule 1 and Schedule 2 to HCCO, to give effect to the 2015 and 2017 amendments to the Stockholm Convention; and the 2022 amendment to the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade* (“the Rotterdam Convention”).

## JUSTIFICATIONS

### The Stockholm Convention and the Rotterdam Convention

3. The Stockholm Convention, which has entered into force on 17 May 2004, aims to control or restrict the trade, production and use of persistent organic pollutants (“POPs”), as well as to reduce and ultimately eliminate the intentional

production of POPs and the release of unintentionally produced<sup>1</sup> POPs. The Stockholm Convention regulates POPs including pesticides, industrial chemicals and unwanted by-products of industrial processes. The Stockholm Convention has become effective in the People's Republic of China (PRC), including the Hong Kong Special Administrative Region (HKSAR), since 11 November 2004.

4. The Rotterdam Convention, which has entered into force on 24 February 2004, implements a prior informed consent procedure<sup>2</sup> in the international trade of specified hazardous chemicals. The Rotterdam Convention aims to promote shared responsibility and cooperative efforts among parties to the Convention, with a view to protecting human health and avoiding potential harm to the environment caused by such chemicals. The Rotterdam Convention has become effective in the PRC since 20 June 2005, and has applied to the HKSAR since 26 August 2008.

5. The respective Conferences of Parties (COPs) to the Stockholm Convention and the Rotterdam Convention will amend the lists of pollutants or chemicals under the respective Conventions as required after discussion, in order to include pollutants or chemicals that are hazardous to human health or the environment under the Conventions in good time, putting them under regulations.

### The Pesticides Ordinance (Cap. 133)

6. Currently, the registration, control and related matters of pesticides in Hong Kong are governed by the PO. Pesticides regulated under the Stockholm Convention and the Rotterdam Convention are specified in Schedule 1 and Part 1 of Schedule 2 to the PO respectively. Under section 7 of the PO, any person who imports, manufactures, sells or supplies etc. a registered<sup>3</sup> pesticide must have a

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<sup>1</sup> “Unintentionally produced” refers to the production of by-products or impurities during the processes of producing pesticides or industrial chemicals, incomplete combustion or chemical reaction.

<sup>2</sup> When chemicals are added in Annex III of the Rotterdam Convention, parties to the Convention may decide whether they will allow future import of such chemicals. The prior informed consent procedure is a mechanism that formally obtains and disseminates relevant decisions, and ensures exporting parties comply with these decisions.

<sup>3</sup> Under section 4 of the Ordinance, the Director of Agriculture, Fisheries and Conservation (DAFC) or the Deputy Director of Agriculture, Fisheries and Conservation (DDAFC) shall maintain a register of pesticides.

valid Pesticide Licence<sup>4</sup>. As for any pesticide specified in Schedule 1 or Part 1 of Schedule 2 to the PO (“scheduled pesticide”) and any other unregistered pesticide, under section 8 of the PO, any person who imports, manufactures, sells, supplies, is in possession of or uses etc. such pesticides, or exports a scheduled pesticide, must hold a Pesticide Permit<sup>5</sup>.

7. Section 19A(1)(a) of the PO provides that SEE may by notice published in the Gazette, add any Convention-regulated pesticide<sup>6</sup>, including its Chemical Abstracts Service (CAS) registry number or other description, to Schedule 1 or 2. When the COP to the two aforementioned Conventions adopt an amendment to the lists of pollutants or chemicals regulated thereunder, we amend the Schedules to the PO accordingly, to give effect to the relevant amendments. The last amendment to Schedule 1 to the PO was completed in 2014 to cover certain POPs listed under the Stockholm Convention.

#### The Hazardous Chemicals Control Ordinance (Cap. 595)

8. To fulfil the obligations under the Stockholm Convention and the Rotterdam Convention, the Government enacted the HCCO in 2008, to regulate the manufacture, export, import and use of non-pesticide hazardous chemicals through a permit system.

9. Section 50 of the HCCO stipulates that SEE may by order published in the Gazette make any amendments to the list of Convention-regulated chemicals<sup>7</sup> in Schedule 1 or Schedule 2 to the HCCO. When the COPs to the Conventions

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<sup>4</sup> Pesticide Licences shall be renewed annually and the Licence issued covers all registered pesticides in Part I of the Pesticides Register, or all registered pesticides in Part I and Part II of the Pesticides Register. Ready-for-use domestic pesticides and all other pesticides are registered in Part I and Part II respectively.

<sup>5</sup> Pesticide Permits are issued for specific pesticides and valid for six months, but may be extended for further periods of six months as approved by DAFC and DDAFC.

<sup>6</sup> The PO provides that a pesticide is a Convention-regulated pesticide if it is regulated by the Stockholm Convention or the Rotterdam Convention on the date of publication in the Gazette.

<sup>7</sup> Under the HCCO, for the purposes of section 50(1), a Convention-regulated chemical is a chemical that is subject to the regulation of the Stockholm Convention or the Rotterdam Convention on the day which SEE makes the order under section 50(1)(a) or (b) in respect of the chemical concerned. In general, Part 1 of Schedule 1 to the Ordinance includes chemicals listed in Annex A of the Stockholm Convention. Issuance and renewal of permits authorising the manufacture of any chemicals listed under Part 1 of Schedule 1 are subject to more stringent conditions. Chemicals regulated by Annex B of the Stockholm Convention or Annex III of the Rotterdam Convention may be added to Part 1 of Schedule 2 to the Ordinance.

abovementioned agreed to amend the lists of chemicals under the respective Conventions, we will amend Schedule 1 or Schedule 2 to the HCCO accordingly, to give effect to the relevant amendments. The last amendment exercise to the HCCO, which was completed in 2018, had added hazardous chemicals then listed under the Rotterdam Convention into Schedule 2 to the HCCO.

### The 2015 and 2017 amendments to the Stockholm Convention

10. Taking into account the negative impact of certain POPs on human health and the environment, as well as their risk management evaluation results, parties to the Convention passed two resolutions at the 7<sup>th</sup> and 8<sup>th</sup> meetings of the COPs to the Stockholm Convention in 2015 and 2017 respectively, to add the pollutants under the list of regulated chemicals at Annex A of the Stockholm Convention<sup>8</sup> -

	<b>Regulated pollutants</b>	<b>Common usage</b>
1.	Pentachlorophenol and its salts and esters	Used as pesticides
2.	Hexachlorobutadiene (CAS number: 87-68-3)	Used as a solvent for rubber and other polymers, and a scrubber to remove volatile organic components from gas.
3.	Polychlorinated naphthalenes (including dichlorinated naphthalenes, trichlorinated naphthalenes, tetrachlorinated naphthalenes, pentachlorinated naphthalenes, hexachlorinated naphthalenes, heptachlorinated naphthalenes and octachlorinated naphthalene)	Used as wood preservatives, additives to paints and engine oils, cable insulation materials, and in capacitors.

<sup>8</sup> If a pollutant is added into the list of regulated chemicals in Annex A to the Stockholm Convention, governments of each party to the Convention shall prohibit and/or take the legal and administrative measures necessary to eliminate the production, use, import and export etc. of the pollutant.

	<b>Regulated pollutants</b>	<b>Common usage</b>
4.	Decabromodiphenyl ether (BDE-209) present in commercial decabromodiphenyl ether <sup>9</sup> (CAS number: 1163-19-5)	Used as flame-retardant additive in plastics, textiles and adhesives, etc.
5.	Short-chain chlorinated paraffins (Alkanes, C <sub>10-13</sub> , chloro): straight-chain chlorinated hydrocarbons with chain lengths ranging from C <sub>10</sub> to C <sub>13</sub> and a content of chlorine greater than 48% by weight. For example, the substances with the following CAS registry numbers may contain short-chain chlorinated paraffins: (i) 85535-84-8 ; (ii) 68920-70-7 ; (iii) 71011-12-6 ; (iv) 85536-22-7 ; (v) 85681-73-8 ; (vi) 108171-26-2 °	Used as a constituent of metal working fluids and lubricants. Also used as plasticiser or flame retardant in plastic (especially polyvinyl chloride (PVC)), or as a flame-retardant additive to a variety of products including rubber formulations, paint, coatings or sealants.

11. The PRC deposited an instrument of ratification on 7 March 2023 for acceptance of the above 2015 and 2017 amendments to the Stockholm Convention. The amendments will enter into force in the PRC (including HKSAR) on 6 June 2023, i.e. the 90<sup>th</sup> day after the date of the deposition of the instrument of ratification.

#### The 2022 amendment to the Rotterdam Convention

12. At the 10<sup>th</sup> meeting of the COP to the Rotterdam Convention in 2022, parties to the Convention passed a resolution to add the following hazardous chemicals under Annex III of the Rotterdam Convention (i.e. the list of regulated chemicals) -

<sup>9</sup> Commercial decabromodiphenyl ether is decabromodiphenyl ether for technical or commercial use, which is a synonym with decabromodiphenyl ether.

	<b>Regulated chemicals</b>	<b>Common usage</b>
1.	Perfluorooctanoic acid (PFOA) (CAS Registry Number: 335-67-1), its salts and its PFOA-related compounds	Used as coating agents for carpets, textiles, furniture, shoes, paper and food wraps.
2.	Decabromodiphenyl ether (CAS Registry Number: 1163-19-5)	Used as flame-retardant additive in plastics, textiles and adhesives, etc.

13. According to the provisions of the Rotterdam Convention, listing chemicals in Annex III of the Rotterdam Convention does not require further ratification by the parties to the Convention. Hence, the amendment has entered into force on 22 October 2022. Parties to the Convention are required to send a response to the Convention Secretariat within nine months after the date of the amendment entering into force, elaborating on the legislative or administrative measures to be adopted for regulating the import and export of the relevant chemicals.

## **THE NOTICE**

14. To implement the abovementioned 2015 amendment to the Stockholm Convention in HKSAR, SEE has made the Notice under section 19A(1)(a) of the PO to add “pentachlorophenol and its salts and esters (CAS registry numbers: 87-86-5 (for parent compound only))” (“PCP”) to Schedule 1 to the PO. After PCP is listed in Schedule 1 to the PO, unless a Pesticide Permit is issued by the Director of Agriculture, Fisheries and Conservation (DAFC) or the Deputy Director of Agriculture, Fisheries and Conservation (DDAFC), the export, import, manufacture, sale, supply, possession or use etc. of PCP is prohibited.

15. PCP is not registered in Hong Kong, hence its import, manufacture, sale, supply, possession or use etc. are already regulated by Pesticide Permit conditions under the PO. No person currently holds a valid Pesticide Permit in respect of PCP in Hong Kong. After PCP is listed in Schedule 1 to the PO, we will further tighten the regulatory regime to restrict its exports, i.e. apart from the import, manufacture, sale, supply, possession or use of PCP, a Pesticide Permit issued by DAFC or DDAFC would also be required for export of such pesticides.

## **THE ORDER**

16. To implement the 2015 and 2017 amendments to the Stockholm Convention in HKSAR, we will add the hazardous chemicals mentioned in paragraph 10 to Part 1 of Schedule 1 to the HCCO, so as to put them under the HCCO control mechanism. Among these chemicals, short-chain chlorinated paraffins have been listed under Part 1 of Schedule 2 to the HCCO. However, as chemicals specified in Part 1 of Schedule 1 are subject to a more stringent control than those specified in Part 1 of Schedule 2, we suggest removing short-chain chlorinated paraffins from Part 1 of Schedule 2 while adding them to Part 1 of Schedule 1.

17. At the same time, to implement the 2022 amendment to the Rotterdam Convention in HKSAR, we shall add PFOA, its salts and PFOA-related compounds (as mentioned in paragraph 12) to Part 1 of Schedule 2 to the HCCO. As decabromodiphenyl ether is covered in the amendments to both Conventions, and it will be added to Part 1 of Schedule 1, which is subject to a more stringent control, it is not necessary to add it to Part 1 of Schedule 2 to the HCCO.

## **LEGISLATIVE TIMETABLE**

18. The legislative timetable is as follows –

Publication in the Gazette	9 June 2023
Tabling at the Legislative Council	14 June 2023
Commencement date	20 October 2023

## **IMPLICATIONS OF THE PROPOSALS**

19. With the proposed amendments, more of the pollutants or chemicals listed in the Stockholm Convention and the Rotterdam Convention will be subject to control under the PO and the HCCO. This can reduce public exposure to these pollutants or chemicals, thus protect public health and the environment.

20. The Notice and the Order are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the current binding effect of the existing provisions of the PO and the HCCO. It has no economic, productivity, family, gender, civil service or financial implications. Apart from the impacts mentioned in paragraph 19, the amendments have no other impacts on sustainable development.

## **PUBLIC CONSULTATION**

### The Pesticides Ordinance

21. Regarding the amendment to the PO, in July 2017 and April 2023, the Agriculture, Fisheries and Conservation Department (AFCD) informed holders of Pesticide Licences and Permits under the PO, as well as shipping and logistics companies of the aforementioned decision of the 7<sup>th</sup> Meeting of COP to the Stockholm Convention, and the proposed amendment to Schedule 1 to the PO respectively. No comments or concerns have been raised by the trade. We also submitted an information paper to the Legislative Council Panel on Food Safety and Environmental Hygiene in May 2023, to brief Members of the proposed amendments to Schedule 1 to the PO.

### The Hazardous Chemicals Control Ordinance

22. As for the amendments to the HCCO, we conducted surveys and consulted the trades in June 2018, November 2020 and March 2021, to gather information about the local use of the chemicals covered in the above amendments, and assess the impact of listing such chemicals in Schedule 1 and Schedule 2 to the HCCO on the trades and stakeholders. The surveys covered around 400 stakeholders from 31 industry groups, including the chemical industry, pharmaceutical and petroleum products industry, chemical waste collectors, construction contractors, certified laboratories, trade associations, and permit holders under the HCCO.

23. As revealed in the surveys, only around 30 organisations have imported or used the relevant chemicals as standard reference materials for laboratory testing, certification services or research purposes. Quantities used or stocked ranged



only from 1µg to 100g. The surveys found neither manufacturing activities of such chemicals nor use of them in manufacturing processes in Hong Kong. We have not received any adverse comments on the proposed control of the relevant chemicals under the HCCO. We also submitted an information paper to the Legislative Council Panel on Environmental Affairs in May 2023, to brief Members of the proposed amendments to Schedule 1 and Schedule 2 to the HCCO.

## **PUBLICITY**

24. We will gazette the Notice and the Order on 9 June 2023. Press releases will be issued. A government spokesperson will be available to answer media enquiries. AFCD will notify the trade of the effective date of the amendment to the PO, and the Environmental Protection Department will inform the trade of the amendments to the HCCO in good time.

## **ENQUIRIES**

25. For enquiries about the amendment to PO in this brief, please contact Ms Anna CHOR, Principal Assistant Secretary for Environment and Ecology (Food) 3, at 3509 7927. For enquiries about the amendment to HCCO in this brief, please contact Miss LAM I-ching, Assistant Secretary for Environment and Ecology (Air Policy) 1, at 3509 8643.

**Environment and Ecology Bureau  
Agriculture, Fisheries and Conservation Department  
Environmental Protection Department  
June 2023**

**Pesticides Ordinance (Amendment of Schedule 1)  
Notice 2023**

(Made by the Secretary for Environment and Ecology under section 19A of  
the Pesticides Ordinance (Cap. 133))

**1. Commencement**

This Notice comes into operation on 20 October 2023.

**2. Pesticides Ordinance amended**

The Pesticides Ordinance (Cap. 133) is amended as set out in section 3.

**3. Schedule 1 amended (pesticides listed under Stockholm Convention)**

Schedule 1, after item 15—

**Add**

- |   |                                      |
|---|--------------------------------------|
| “16. Pentachlorophenol and its salts and esters | 87-86-5 (for parent compound only)”. |
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Secretary for Environment and  
Ecology

5.6.2023

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**Explanatory Note**

This Notice amends Schedule 1 to the Pesticides Ordinance (Cap. 133) to add to that Schedule a pesticide that has become subject to the regulation of the Stockholm Convention on Persistent Organic Pollutants.

## Hazardous Chemicals Control Ordinance (Amendment of Schedules 1 and 2) Order 2023

(Made by the Secretary for Environment and Ecology under section 50(1)  
of the Hazardous Chemicals Control Ordinance (Cap. 595))

### 1. Commencement

This Order comes into operation on 20 October 2023.

### 2. Hazardous Chemicals Control Ordinance amended

The Hazardous Chemicals Control Ordinance (Cap. 595) is amended  
as set out in sections 3 and 4.

### 3. Schedule 1 amended

Schedule 1, Part 1, after item 7—

#### Add

- “8. Hexachlorobutadiene 87-68-3
9. Polychlorinated naphthalenes, including:
- dichlorinated naphthalenes
  - trichlorinated naphthalenes
  - tetrachlorinated naphthalenes
  - pentachlorinated naphthalenes
  - hexachlorinated naphthalenes
  - heptachlorinated naphthalenes
  - octachlorinated naphthalene
10. Decabromodiphenyl ether 1163-19-5

11. Short-chain chlorinated paraffins (Alkanes, C<sub>10-13</sub>, chloro): straight-chain chlorinated hydrocarbons with chain lengths ranging from C<sub>10</sub> to C<sub>13</sub> and a content of chlorine greater than 48% by weight

For example, the substances with the following CAS registry numbers may contain short-chain chlorinated paraffins:

- 85535-84-8
- 68920-70-7
- 71011-12-6
- 85536-22-7
- 85681-73-8
- 108171-26-2”.

### 4. Schedule 2 amended

- (1) Schedule 2, Part 1—

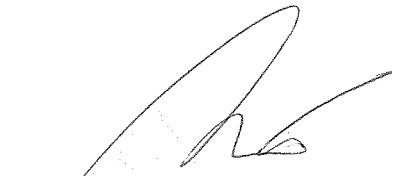
#### Repeal item 5.

- (2) Schedule 2, Part 1, after item 9—

#### Add

- “10. Perfluorooctanoic acid, its salts and related compounds:

- perfluorooctanoic acid (PFOA) 335-67-1”.
- salts of perfluorooctanoic acid
- related compounds of perfluorooctanoic acid



Secretary for Environment and  
Ecology

2023 . 05 . 31

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### Explanatory Note

The Hazardous Chemicals Control Ordinance (Cap. 595) (***Ordinance***) regulates the manufacture, export, import and use of certain hazardous chemicals. These chemicals are specified in Schedules 1 and 2 to the Ordinance, and include those subject to the regulation of the Stockholm Convention on Persistent Organic Pollutants (***Stockholm Convention***) and those subject to the regulation of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (***Rotterdam Convention***).

2. The list of chemicals subject to the regulation of the Stockholm Convention and the list of chemicals subject to the regulation of the Rotterdam Convention have been amended. Correspondingly, this Order amends Schedules 1 and 2 to the Ordinance to update the lists of chemicals regulated by the Ordinance.