

# 立法會 *Legislative Council*

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## **Bills Committee on Air Pollution Control (Amendment) Bill 2024**

### **Background brief**

#### **Purpose**

This paper provides background information on the Air Pollution Control (Amendment) Bill 2024 (“the Bill”). It also gives a brief account of the major views and concerns expressed by Members on the subject at the meetings of relevant committees of the Legislative Council.

#### **Background**

2. To regulate major sources that may cause serious air pollution, 31 specified processes (“SPs”), including cement works, are specified in Schedule 1 to the Air Pollution Control Ordinance (Cap. 311) (“APCO”). Under section 13 of APCO, subject to certain exemptions, the owner of any premises<sup>1</sup> commits an offence if the owner uses the premises, or permits the premises to be used, for the conduct of an SP without a licence to use the premises for the conduct of that SP (“SP licence”).<sup>2</sup> APCO currently does not provide the Environmental Protection Department (“EPD”) with the power to lock or seal any premises where unlicensed SP is conducted.

#### Combating unlicensed specified process operations

3. In recent years, EPD has repeatedly found that certain former SP operators have continued to conduct SP operation even though both the Director of Environmental Protection and the Air Pollution Control Appeal

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<sup>1</sup> According to section 2 of APCO, “premises (處所)” is defined to include “a part of the premises and a place, building or relevant plant”. “Owner (擁有人)” is defined to include, in relation to an SP, “a person carrying on a specified process in or on the premises”.

<sup>2</sup> Pursuant to section 13(2) of APCO, any owner who contravenes section 13(1) of APCO is liable to a fine of \$200,000 and to imprisonment for 6 months, and if the offence is a continuing offence, to a fine of \$20,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.

Board Panel (“Appeal Board”) have refused their applications for renewal of SP licences.<sup>3</sup> Some operators have even attempted to delay cessation of unlicensed SP operations by initiating legal procedures, including applying for judicial reviews<sup>4</sup> against the decisions of the air pollution control authority (the “Authority”) and the Appeal Board despite the lack of valid ground. Attempts have also been found to bypass the SP licence regime by reducing the size of silo and using mobile facilities as “extended storage facilities”, thus rendering the total silo capacity of on-site silos to fall below 50 tonnes; and transfer cement works operations onto ships or barges.

4. In view of the above, the Administration proposes to:

- (a) introduce a statutory closure notice (“CN”) mechanism, empowering the Authority to issue a CN in respect of any premises if the Authority has reasonable cause to believe that an offence under section 13 of APCO has been committed or is being committed in respect of the premises (the “subject premises”), so that the Authority may lock or seal the subject premises (“proposed CN mechanism”); and
- (b) revise the scope of “cement works” and the definition of “premises” under APCO.

#### Implementing recommendations of the latest review of air quality objectives

5. APCO vested the Government with the power to formulate air quality objectives (“AQOs”) for establishing measures and requirements to prevent or abate the emission of air pollutants. The prevailing AQOs were benchmarked against the World Health Organization (“WHO”) Air Quality Guidelines (“AQGs”), covering 12 concentration limits of seven air pollutants over different time spans. APCO also provides that the Secretary for Environment and Ecology (the “Secretary”) must, at least once every five years, review the AQOs for an air control zone to ensure that the AQOs are those that should be achieved and maintained to promote the conservation and best use of air in the zone in the public interest.

6. In September 2021, WHO updated AQGs and their interim targets. With due regard to the updated WHO AQGs, the Environment and Ecology Bureau commenced a review of AQOs in early 2022. A report of the review of AQOs was subsequently submitted to the Advisory Council on the

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<sup>3</sup> Section 31(1)(e) of APCO provides that a person may appeal to the Appeal Board if the person is aggrieved by the Authority’s decision to refuse to renew a licence.

<sup>4</sup> Under section 4(1) of APCO, the Chief Executive may appoint a public officer to be the air pollution control authority. The Director of Environmental Protection is the air pollution control authority.

Environment (“ACE”) in September 2023 with support obtained from ACE. The Administration proposes to:

- (a) update AQOs according to the said report of the review ([Appendix 1](#));
- (b) provide a transitional period (a 36-month period beginning on the commencement date of the Bill after it is enacted) to designated projects with environmental permits issued under the Environmental Impact Assessment Ordinance (Cap. 499) (“EIAO”) before the updated AQOs come into effect; and
- (c) empower the Secretary to, by notice published in the Gazette, update the AQOs prescribed in Schedule 5 to APCO; and add a new Schedule 5 to EIAO to provide for arrangements regarding the evaluation of air quality impact on accounts of any revisions made to AQOs, and empower the Secretary to amend the new Schedule 5 to EIAO by notice published in the Gazette where there is an update of AQOs under APCO in the future. Both of the said notices will be subject to the negative vetting of the Legislative Council.

### **Air Pollution Control (Amendment) Bill 2024**

7. The Bill was published in the Gazette on 15 November 2024 and received its First Reading at the Council meeting of 27 November 2024. The Bill seeks to amend APCO, EIAO and the Air Pollution Control (Specified Processes) Regulations (Cap. 311F) to implement the proposals set out in paragraphs 4 and 6 above.

### **Members’ views and concerns**

8. At the meeting on 17 October 2023, the Administration consulted the Panel on Environmental Affairs (the “Panel”) on the latest review of AQOs. At the meeting on 15 July 2024, the Panel discussed with the Administration the legislative proposal to introduce the proposed CN mechanism, etc. Duration examination of the Government’s Estimates of Expenditure, Members also raised questions relating to Hong Kong’s air quality.

### **Combating unlicensed specified process operations**

9. Some Members raised concerns about **the ambit of the power of the Authority under the proposed CN mechanism**. The Administration emphasized that the Authority’s power to issue a statutory notice to close

down the relevant premises could only be used against unlicensed SP operations whereby an SP was conducted without a valid SP licence, including after going through the appeal mechanism in relation to SP licence renewal.

10. Members reminded the Administration **not to broaden the definition of “cement works” excessively lest it would inadvertently catch work processes on construction sites or affect the normal operations of law-abiding companies**. The Administration explained that:

- (a) some unscrupulous operators had been circumventing the control by using mobile “extended silos” such as vessels at sea or land-based mobile storage vehicles while reducing the total capacity of their on-site silos;
- (b) SP licensees, the cement works trade and the construction industry had been consulted extensively on the proposal of amending the definition of “cement works”. These stakeholders were generally supportive of the refined proposal, which could achieve a balance between enhancing control and avoiding disruption to normal operations;
- (c) it was expected that about 10 SP licence applications would be received from operators whose businesses would be newly covered by the amended definition; and
- (d) a grace period of no less than six months from the commencement of the amended control would be put in place so that affected operators would have more time to submit licence applications.

#### Air quality levels

11. Members enquired about the **major sources of local air pollutants, and the comparison of air quality with the benchmarks specified in WHO AQGs**.

12. The Administration advised that EPD compiled the Hong Kong Air Pollutant Emission Inventory every year to analyse the distribution and trends of major air pollution sources in Hong Kong. The main emission sources of major air pollutants in Hong Kong (sulphur dioxide nitrogen oxides, respirable suspended particulates, fine suspended particulates (“PM<sub>2.5</sub>”) and carbon monoxide) from 2017 to 2021 were vessels, power plants and vehicles, whereas the main sources of volatile organic compounds emissions were non-combustion sources (including the use of paints and consumer products such as hairspray and adhesives).

13. The Administration advised that WHO AQGs had promulgated a set of “ultimate targets” and interim targets for various key air pollutants which enabled governments to, having regard to their local circumstances, progressively tighten their air quality standards through adopting interim targets, and meet WHO’s “ultimate targets” eventually. At present, no area had fully adopted WHO’s “ultimate targets” as its statutory air quality standards. Currently, half of Hong Kong’s AQOs had adopted the “ultimate targets” as specified in WHO AQGs, with the rest pitching at WHO’s interim targets.

#### Review of air quality objectives

14. Members in general supported the tightening of AQOs. Regarding the Administration’s proposal to tighten **the 24-hour AQO for PM<sub>2.5</sub> with the number of exceedances allowed decreased** from the current 35 to 18 times per year, Members enquired about the prevailing level of PM<sub>2.5</sub> and **whether it was practicable** to meet the new parameter in the future.

15. The Administration advised that over the past decade, the annual number of exceedances for the 24-hour AQO for PM<sub>2.5</sub> had been more than 35 times and had reached the highest level in 2019 due to frequent occurrence of meteorological conditions that were favourable for pollutants dispersion. To assess the scope for tightening this AQO, the consultants commissioned by the Government used 2019 as the base year, and conducted the assessment by inputting the corresponding meteorological conditions and the forecasted 2030 emission data in Hong Kong, the Greater Bay Area, Guangdong Province and other regions outside the Guangdong Province to the air quality model in order to simulate the transport and chemical reaction of air pollutants and project the air quality conditions in 2030. The assessment had also taken into account the future implementation of relevant emission reduction measures in these regions. According to the assessment results, the Administration considered it appropriate to set the number of allowable exceedances for the 24-hour AQO for PM<sub>2.5</sub> at 18 times per year.

#### **Relevant papers**

16. A list of relevant papers is set out in [Appendix 2](#).

### **Air Pollution Control (Amendment) Bill 2024** **Recommendations on updating the air quality objectives**

The Air Pollution Control (Amendment) Bill 2024 proposes to update AQOs as follows:

- (a) tighten the 24-hour AQO for SO<sub>2</sub> from IT-2 level (50µg/m<sup>3</sup>) to the World Health Organization (“WHO”) Air Quality Guidelines (“AQGs”) level (40µg/m<sup>3</sup>) with the current number of exceedances allowed (three) remains unchanged;
- (b) tighten the annual AQO for respirable suspended particulates/PM<sub>10</sub> from IT-2 (50µg/m<sup>3</sup>) to IT-3 (30µg/m<sup>3</sup>); and its 24-hour AQO from IT-2 (100 µg/m<sup>3</sup>) to IT-3 (75µg/m<sup>3</sup>) with the number of exceedances allowed (nine) remains unchanged;
- (c) tighten the annual AQO for fine suspended particulates/PM<sub>2.5</sub> from IT-2 (25µg/m<sup>3</sup>) to IT-3 (15µg/m<sup>3</sup>); and its 24-hour AQO from IT-2 (50µg/m<sup>3</sup>) to IT-3 (37.5µg/m<sup>3</sup>) with the number of exceedances allowed decreased from the current 35 to 18; and
- (d) add three new AQO parameters introduced by WHO (namely the 24-hour AQO for nitrogen dioxide and set at IT-1 (120µg/m<sup>3</sup>) with the number of exceedances allowed at nine; the peak season AQO for ozone and set at IT-1 (100µg/m<sup>3</sup>); the 24-hour AQO for CO and set at AQG level (4 000µg/m<sup>3</sup>) with no exceedance allowed).

[Source: Adapted from the [Legislative Council Brief](#) on Air Pollution Control (Amendment) Bill 2024 issued by the Environment and Ecology Bureau and the Environmental Protection Department in November 2024.]

## Bills Committee on Air Pollution Control (Amendment) Bill 2024

### List of relevant papers

Committee	Date of Meeting	Paper
Panel on Environmental Affairs	17 October 2023	<a href="#">Agenda</a> Item II: Air quality improvement strategies <a href="#">Minutes</a>
	15 July 2024	<a href="#">Agenda</a> Item III: Proposal to amend Air Pollution Control Ordinance to combat the conduct of unlicensed specified processes more effectively through introducing closure notice mechanism and amend the coverage of “cement works” <a href="#">Minutes</a>
Finance Committee	13 April 2021	<a href="#">Administration’s written replies to Members’ initial questions on the Estimates of Expenditure 2021-2022</a> (Reply serial numbers: ENB067, 100, 129 and 162)
	17 April 2024	<a href="#">Administration’s written replies to Members’ initial questions on the Estimates of Expenditure 2024-2025</a> (Reply serial numbers: ENB(E)032 and 034)