

立法會
Legislative Council

LC Paper No. LS65/2024

**Paper for the House Committee Meeting
on 29 November 2024**

**Legal Service Division Report on
Air Pollution Control (Amendment) Bill 2024**

I. SUMMARY

1. The Bill

The Bill seeks to amend the Air Pollution Control Ordinance (Cap. 311) and its subsidiary legislation to:

- (a) amend the air quality objectives (“AQOs”) and empower the Secretary for Environment and Ecology to amend those objectives by notice published in the Gazette;
- (b) provide for the issue of closure notices in respect of a contravention of section 13 of Cap. 311;
- (c) revise the scope of “cement works” and the definition of “premises”;
- (d) provide for the defence of emergency for certain offences under Cap. 311;
- (e) extend the period for making applications to renew licences for the conduct of specified processes (“SP”); and
- (f) provide for consequential and related amendments.

2. Public consultation

The Administration consulted the relevant SP licence holders, local cement producers and users as well as relevant works departments from September 2023 to June 2024 on the proposal to tighten the control on SPs, and all the views received generally accepted the proposal. A two-month public consultation on the proposal to update AQOs was conducted in 2023, and the views gathered generally supported the proposal. Members of the Advisory Council on the Environment were consulted on the respective proposals in July 2024 and September 2023 and generally supported the two proposals.

**3. Consultation with
LegCo Panel**

The Panel on Environmental Affairs was consulted on the proposal to update AQOs and the proposal to combat unlicensed SP operations at its meetings on 17 October 2023 and 15 July 2024 respectively. Members in general supported the two proposals.

4. Conclusion

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to amend AQOs and to introduce a new statutory framework for the closure notice mechanism, Members may consider forming a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 27 November 2024. Members may refer to the Legislative Council (“LegCo”) Brief (File Ref.: EP 21/L3/1) issued by the Environment and Ecology Bureau (“EEB”) and the Environmental Protection Department (“EPD”) in November 2024 for further details.

Object of the Bill

2. The Bill seeks to amend the Air Pollution Control Ordinance (Cap. 311) and its subsidiary legislation to:

- (a) amend the air quality objectives (“AQOs”) and empower the Secretary for Environment and Ecology (“Secretary”) to amend those objectives by notice published in the Gazette;
- (b) provide for the issue of closure notices in respect of a contravention of section 13 of Cap. 311;
- (c) revise the scope of “cement works” and the definition of “premises”;
- (d) provide for the defence of emergency for certain offences under Cap. 311;
- (e) extend the period for making applications to renew licences for the conduct of specified processes (“SP”); and
- (f) provide for consequential and related amendments.

Background

3. Cap. 311 provides for, among others, a licensing regime to regulate 31 SPs (including cement works) specified in Schedule 1 to Cap. 311. Under section 13 of Cap. 311, it is an offence for the owner of any premises to use those premises, or permit those premises to be used, for the conduct of SP unless he is a holder of a licence to use the premises for the conduct of that SP (“SP licence”). According to paragraphs 3 and 7 of the LegCo Brief, in recent years, EPD has repeatedly found that certain former SP operators have continued to conduct SP operations even though their applications for renewal of SP licences had been refused. Furthermore, there have been attempts to bypass the SP licensing regime for cement works by using mobile facilities as extended storage facilities or transferring cement works operations onto ships or barges. The Bill is thus introduced to establish the proposed legislative framework for closure notices with a view to combating unlicensed SP operations, and to implement the recommendations of EEB’s latest AQOs review as mentioned in paragraphs 9 to 11 of the LegCo Brief. Key provisions of the Bill are summarized in the ensuing paragraphs.

Provisions of the Bill

Revision of air quality objectives

4. Schedule 5 to Cap. 311 prescribes AQOs for the air control zones declared under section 6 of Cap. 311. Pursuant to section 7A, the Secretary must, at least once every five years, review AQOs for an air control zone to ensure that they are the objectives that should be achieved and maintained in order to promote the conservation and the best use of air in the zone in the public interest, and submit to the Advisory Council on the Environment (“ACE”) a report of the review as soon as reasonably practicable after the review is carried out. To implement the recommendations of EEB’s latest AQOs review¹, clause 13 of the Bill seeks to update AQOs prescribed in Schedule 5 to Cap. 311 by:

- (a) tightening the concentration limit in air averaged over a day (“24-hour AQO”) for sulphur dioxide (from $50\mu\text{g}/\text{m}^3$ to $40\mu\text{g}/\text{m}^3$), respirable suspended particulates (from $100\mu\text{g}/\text{m}^3$ to $75\mu\text{g}/\text{m}^3$), and fine suspended particulates (from $50\mu\text{g}/\text{m}^3$ to $37.5\mu\text{g}/\text{m}^3$ with the number of exceedances allowed decreased from 35 to 18 days per calendar year);
- (b) tightening the concentration of respirable suspended particulates (from $50\mu\text{g}/\text{m}^3$ to $30\mu\text{g}/\text{m}^3$) and fine suspended particulates (from $25\mu\text{g}/\text{m}^3$ to $15\mu\text{g}/\text{m}^3$) in air averaged over a calendar year; and
- (c) adding three new AQO parameters, namely 24-hour AQO for nitrogen dioxide set at $120\mu\text{g}/\text{m}^3$ with the number of exceedances allowed at nine days per calendar year, the peak season concentration of ozone in air of a calendar year set at $100\mu\text{g}/\text{m}^3$, and 24-hour AQO for carbon monoxide set at $4000\mu\text{g}/\text{m}^3$ with no exceedance allowed.

5. Currently, updates of AQOs prescribed in Schedule 5 to Cap. 311 must be made by an amendment bill. Clause 7 of the Bill seeks to add a new section 37D(3) to Cap. 311 to empower the Secretary, after consultation with ACE, to amend Schedule 5 to Cap. 311 by notice published in the Gazette. Such notice would be subsidiary legislation subject to the negative vetting procedure of LegCo under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

Introduction of a statutory closure notice mechanism

6. The Director of Environmental Protection, who is the air pollution control authority appointed by the Chief Executive under section 4(1) of Cap. 311 (“Authority”), does not have any power under the existing Cap. 311 to close down unlicensed SP operations. Clause 4 of the Bill seeks to introduce a statutory closure notice mechanism by adding a new Part VA (proposed new sections 30C to 30N) to Cap. 311. The proposed new Part VA mainly seeks to:

- (a) empower the Authority to issue a closure notice in respect of any premises (“subject premises”) to a person who conducts SP on the subject premises

¹ According to paragraph 10 of the LegCo Brief, the report of EEB’s latest AQOs review was submitted to ACE in September 2023.

(“specified person”) if the Authority has reasonable cause to believe that an offence under section 13 of Cap. 311 has been or is being committed (proposed new section 30D);

- (b) empower the Authority to lock or seal, and disconnect all gas, water and electricity supplies to, the subject premises, permit any person to enter or remain on any subject premises for certain purposes, and cancel a closure notice (proposed new sections 30G, 30J and 30N);
- (c) require the specified person of the subject premises to ensure that no SP described in the closure notice is conducted on the subject premises (proposed new section 30H); and
- (d) prohibit any person from entering or remaining on the subject premises, removing or defacing any copy of the closure notice that is affixed at a conspicuous place on the subject premises, and breaking or interfering with any lock or seal attached to any part of the subject premises (proposed new sections 30I, 30K and 30L).

7. Under the proposed new section 30H(2) of Cap. 311, a person who contravenes the prohibition on conducting SP on the subject premises would commit an offence. The person would be liable on conviction on indictment to a fine of \$1,000,000 and imprisonment for 12 months, on summary conviction to a fine at level 6 (i.e. \$100,000) and imprisonment for six months, and in the case of a continuing offence, to a further fine of \$50,000 for each day during which the offence continues.

8. The Bill also proposes to introduce new offences for contravention of the prohibitions under the proposed new sections 30I (prohibition on entering or remaining on subject premises), 30K (prohibition on removing or defacing closure notices) and 30L (prohibition on breaking or interfering with lock or seal attached to subject premises). The person who commits any of these offences would be liable on conviction to a fine of \$200,000 and imprisonment for six months, and in the case of a continuing offence under the proposed new section 30I, to a further fine of \$20,000 for each day during which the offence continues.

9. Clause 5 of the Bill seeks to amend section 31 of Cap. 311 to provide for the rights of a person to appeal against the Authority’s decision to issue or refuse to cancel a closure notice.

Revising the scope of “cement works” and the definition of “premises”

10. Clause 12 of the Bill seeks to amend the description of “cement works” in Schedule 1 to Cap. 311 to expand the coverage of cement works under the SP licensing regime by using the following criteria instead of “the total silo capacity exceeds 50 tonnes”:

- (a) the total bulk storage capacity (i.e. the aggregate of the storage capacity of any fixed or mobile form of installed storage facilities connected to any operational equipment involved in the operation of the works for which bulk cementitious materials are stored on land, ships or barges) exceeds 50 tonnes;
- (b) the total installed capacity of concrete mixers exceeds 3m³; or
- (c) the total hourly concrete production rate exceeds 20m³.

11. Currently, Cap. 311 only regulates cement works conducted on land. To expand the SP licensing regime to cover cement works conducted at sea, clause 3 of the Bill seeks to amend the definition of “premises” under section 2 of Cap. 311 to include a ship or barge and a part of a ship or barge in relation to the conduct of “cement works”.

12. With the proposed expansion of the scope of “cement works”, some existing operations would be subject to the control under the SP licensing regime. According to paragraph 7 of the LegCo Brief, following the established arrangement under section 19 of Cap. 311, which provides that the owner of any premises used for the conduct of a specified SP must give notice of the existence of those premises to the Authority within six months after the publication of an order specifying the information in relation to any specified SP required to be furnished to the Authority, there would be a six-month transitional period from the enactment of the Ordinance (if the Bill is passed) for the relevant operators to apply for the necessary SP licences.

Provision for the defence of emergency

13. Clause 9 of the Bill seeks to add a new section 48A to Cap. 311 to provide for a defence of emergency for certain offences under Cap. 311 (e.g. failure to use the best practical means for preventing the emission or the discharge of noxious or offensive emissions in contravention of section 12(1) of Cap. 311, and using premises for SP without an SP licence in contravention of section 13(1) of Cap. 311). It would be a defence for a person charged with the relevant offence to establish that the commission of the offence was for any or all of the following purposes: (a) the prevention of injury to, or the saving of the life of, any person; (b) the prevention of damage to any property in an emergency situation; or (c) the prevention of a serious interruption or disruption to any public transport systems or public utilities in an emergency situation. Clause 11(1) of the Bill also seeks to amend section 78(1)(a) of Cap. 311 by adding the defence of emergency (concerning risk of damage to property) for a person charged under section 77 in respect of an offence relating to asbestos control work.

Extension of the period for making applications for renewal of SP licences

14. Clause 14 of the Bill seeks to amend regulation 4(2) of the Air Pollution Control (Specified Processes) Regulations (Cap. 311F) to extend the period for the applications for renewal of SP licences from not later than 60 days before the expiry of the licence to one day before such expiry. Clauses 15 to 21 of the Bill seek to make consequential amendments to Cap. 311F.

Consequential and related amendments

15. Clause 22 of the Bill seeks to make related amendments to the forms contained in the Schedule to the Air Pollution Control (Appeal Board) Regulations (Cap. 311D).

16. Clauses 23 to 25 of the Bill seek to make consequential and related amendments to the Environmental Impact Assessment Ordinance (Cap. 499). The proposed new section 13(5A) of and the proposed new Schedule 5 to Cap. 499 seek to provide for transitional arrangements relating to the application of AQOs to applications made under section 13(1) of Cap. 499 for a variation of the conditions of an environmental permit issued before the commencement date of clause 13 of the Bill (if passed) (“Commencement Date”). It is

proposed that if the application is made within 36 months beginning on the Commencement Date, the pre-amended AQOs prescribed in Schedule 5 to Cap. 311 (as in force immediately before the Commencement Date) would continue to apply. The proposed new section 13(7) of Cap. 499 seeks to empower the Secretary to amend the proposed new Schedule 5 to Cap. 499 by notice published in the Gazette. Such notice would be subsidiary legislation subject to the negative vetting procedure of LegCo under section 34 of Cap. 1.

Commencement

17. The Bill, if passed, would come into operation on 11 April 2025.

Public consultation

18. According to paragraphs 21 and 24 of the LegCo Brief, the Administration's consultation on the proposal to combat unlicensed SP operations conducted from September 2023 to June 2024 covered relevant SP licence holders, local cement producers and users as well as relevant works departments, and all the views received generally accepted the proposal. On the proposal to update AQOs, a two-month public consultation was conducted from 31 August to 31 October 2023, and the views gathered generally supported the proposal. According to paragraph 25 of the LegCo Brief, ACE was consulted on the tightened control on SPs and the AQOs update in July 2024 and September 2023 respectively. Members of ACE generally supported the two proposals.

Consultation with LegCo Panel

19. As advised by the Clerk to the Panel on Environmental Affairs ("Panel"), the Panel was consulted on the proposal to update AQOs, and the proposal to combat unlicensed SP operations more effectively through introducing a closure notice mechanism and to amend the coverage of "cement works" specified in Cap. 311 at its meetings on 17 October 2023 and 15 July 2024 respectively. Members in general supported the two proposals. Major issues discussed at the meeting on 17 October 2023 included the number of exceedances allowed for certain AQO parameters, and consultation and publicity on the updating of AQOs. Major issues discussed at the meeting on 15 July 2024 included the justifications for the proposal, impact on the relevant trades, powers to close down the premises of unlicensed SP operations, definition of "cement works", and streamlining approval of SP licences.

Conclusion

20. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to amend AQOs and to introduce a new statutory framework for the closure notice mechanism, Members may consider forming a Bills Committee to study the Bill in detail.

Prepared by
CHUI Ho-yin, Alvin
Assistant Legal Adviser
Legislative Council Secretariat
28 November 2024