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**ACE Paper 7/2024**  
***For discussion on 15 July 2024***

**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”**

**PURPOSE**

This paper proposes to amend the Air Pollution Control Ordinance (the Ordinance) (Cap. 311) to: (i) more effectively combat the conduct of unlicensed specified processes (SP) through introducing a closure notice mechanism; and (ii) amend the scope of “cement works” of SP.

**BACKGROUND**

***Specified Processes***

2. Air pollution has a significant impact on the public health and livelihood. The Ordinance has empowered the Authority the statutory power to prescribe Hong Kong’s Air Quality Objectives and formulate various measures and requirements to prevent or abate the emission of air pollutants. To control and monitor the major stationary air emission sources that can cause serious air pollution, the Ordinance stipulates a licensing regime to regulate a total of 31 polluting industrial processes known as “specified processes”<sup>1</sup>.

3. Section 12(1) of the Ordinance provides that the owner of any premises used for the conduct of any SP shall adopt the best practicable means for preventing air pollution and prejudice to health. Section 13(1) of the Ordinance further provides that, the owner of any premises shall not use those premises, or permit those premises to be used, for the conduct of a SP unless he is the holder of a licence

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<sup>1</sup> Including Electricity Works, Cement Works, Incinerators, Tar and Bitumen Works, Chemical Incineration Works, Pathological Waste Incinerators, Rendering Works, Mineral Works and Gas Works, etc. Details can be found at: <https://www.elegislation.gov.hk/hk/cap311!en-zh-Hant-HK@2018-04-26T00:00:00/sch1?lang=zh-Hant-HK>

to use the premises for the conduct of that SP. The Environmental Protection Department (EPD) is responsible for processing applications for specified process licences (SP Licence). Having regard to the application's capability in meeting the relevant requirements of the Ordinance, EPD determines whether to grant a licence and the conditions of licence to require the licensee to take adequate measures to prevent the emission of air pollutants.

4. Under the prevailing regime of SP Licence, if EPD finds that the operation of a SP operator fails to meet the requirements of licence conditions, and the applicant is unable to prove in its application for SP Licence renewal its capacity in meeting the relevant requirements of the Ordinance, EPD could refuse the related renewal application. In addition, under the existing Ordinance, SP operators may appeal to the Appeal Board in accordance with the Air Pollution Control (Appeal Board) Regulations against EPD's decision, and the related licence remains effective during the Appeal Board's consideration. The appeal mechanism has been effective in the past.

5. However, in recent years, the EPD noticed from time to time cases where SP operators failed to meet the relevant requirements of the Ordinance, and therefore the licence renewal was refused by the EPD. Even after the appeal to the Appeal Board had been dismissed, the SP operator, through the process of judicial review (JR) and various judicial procedures, has continued to carry out the operation, resulting in persistent air pollution and environmental nuisance problems, and the nearby residents continue to make complaints. Conducting unlicensed SP may potentially cause serious air pollution and posing health risks to the public. In order to protect the environment and safeguard public health, it is necessary to terminate such situation as soon as possible. We, therefore, consider that there is an imminent need to amend the Ordinance to introduce a closure notice mechanism to provide an effective legal means to close the relevant premises and suspend the operation of unlicensed SP as soon as possible.

### ***Cement Works***

6. The existing provisions of the Ordinance only regulate "cement works"<sup>2</sup> conducted on land. In the past, some cement works SP operators had tried to circumvent the definition of "cement works" under the Ordinance and the requirements of the SP Licensing regime by using mobile "extended silos" and reducing the total silo capacity of the premises to less than 50 tonnes at the same time. We consider it necessary to elaborate on the scope of cement works in clearer terms by amending the Ordinance to avoid circumvention of the control and regulation of SPs under the licensing regime.

7. Furthermore, EPD has recently found that a few operators have transferred the operation of cement works onto offshore vessels berthing near the shore, which

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<sup>2</sup> Under Schedule 1 to the Ordinance, "Cement Works" is defined as "Works in which the total silo capacity exceeds 50 tonnes and in which cement is handled or in which argillaceous and calcareous materials are used in the production of cement clinker, and works in which cement clinker is ground".

may pose potential air pollution problems. To prevent air pollution from such cement works carried out at sea, it is also necessary to timely update the Ordinance by extending the relevant licensing control to cement works conducted on vessels at sea or at berth.

## **PROPOSED AMENDMENTS**

### ***Introduce a closure notice mechanism***

8. To address the issue set out in paragraph 5 above, we consider that the illegal conduct of SP without a valid SP Licence means that the unlicensed operation will be prejudicial to public health or may cause higher health risks, necessitating immediate cessation and closure of the related premises. We therefore propose the introduction of a closure notice mechanism to the Ordinance to empower the Authority such that if he believes any premises without a valid SP Licence is conducting an SP, he could issue a statutory closure notice for immediately closing the related premises, and seek to require the relevant directors and managing staffs of the concerned body corporate to bear the relevant legal liabilities. The Authority would only exercise this power if there is a need to remove the threat of serious air pollution, i.e. where a SP is carried out without a valid SP Licence.

### ***Amend the definition of “cement works”***

9. In addition, we consider that there is a practical need for a clearer expression in the definition of "cement works" among the SP in Schedule 1 to the Ordinance, including introducing a production volume based threshold in alignment with the definition of other SP, so as to avoid misinterpretation and circumvention from control. Specifically, we propose to:

- (a) replace “total silo capacity” in the definition of "cement works" by “total storage capacity” while maintaining the capacity threshold of 50 tonnes; the said “total storage capacity” of the concerned cement works covers any fixed or mobile storage bulk cementitious container (including ships) connected to cement works and tankers for transporting cementitious materials, but will exclude one temporary tanker that is connected to the cement works; and
- (b) bring under control those operations with concrete production scale with the total installed capacity of concrete mixers exceeding 3 cubic metres, or the total hourly concrete production rate exceeding 20 cubic metres of concrete per hour.

10. The above amendments aim to avoid circumvention of the related control by deliberately reducing the silo capacity, while using additional storage such as ships at sea or mobile storage vehicle on land. Meanwhile, works using bagged cement to produce concrete or grout is generally of smaller scale. Considering the

air pollution impact of such works is relatively limited, and such works is subject to control under the Air Pollution Control (Construction Dust) Regulation, we will clearly state that “cement works” will exclude works using bagged cement to produce concrete or grout<sup>3</sup>.

### ***Extend the control of “cement works” conducted at sea***

11. The dust problem generated by "cement works" is the same regardless of whether the operation takes place on land and at sea. To ensure a level playing field, we propose to amend the Ordinance such that the statutory requirements for SP Licences shall also be applicable to "cement works" carried out on vessels at sea/at berth. This serves to ensure that the concerned processes are properly controlled and operate in accordance with the conditions specified in the SP Licence to prevent the emission of air pollutants.

### ***Streamlining the approval of SP Licences***

12. Furthermore, we propose to streamline the application procedures for SP Licences and enhance the provisions relating to the time requirement for submitting a licence applications under the Ordinance, so as to bring convenience to the trade and expedite the issuance of licences. Specific measures include relaxing the time requirements under Sections 4 to 6 of the Air Pollution Control (Specified Processes) Regulation for submitting applications for renewal of SP Licences. The amendment proposed to allow more flexibility on SP Licence renewal by accepting application no earlier than 120 days before the expiry of the SP Licence instead of only within the period between the 120 days and 60 days before the SP Licence expiry.

### ***Add provisions for allowing emergency operations***

13. We also propose adding new provisions to allow emergency operations to be carried out in times of crisis and disaster so as to expeditiously deal with unforeseen critical situations that may arise under extreme weather or disaster situation, such as emergency grouting for repairing slopes or pavements during landslides, etc.

### ***Transitional arrangement***

14. To ensure the smooth implementation of the amended Ordinance, the Authority will provide a transition period of no less than 6 months after the amendments take effect to allow the newly included "cement works" to register with the EPD and apply for SP Licences pursuant to the prevailing sections 19, 20 and 20AA of the Ordinance.

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<sup>3</sup> However, the proposed control set out in paragraph 9(b) above is still applicable.

## TRADE CONSULTATION

15. In the course of drafting the above control proposal, the EPD has been liaising with the SP Licence holders, the cement works industry and the construction industry to listen to their views. In March 2024, the EPD launched a trade consultation on the control proposal, and organised two large-scale trade consultation sessions to solicit views from over 160 stakeholders, including the Federation of Hong Kong Industries, the Hong Kong Construction Association, the Hong Kong Construction Materials Association, the Construction Industry Council, SP Licence holders and the relevant government departments, etc. From April to May 2024, the EPD, in collaboration with the Development Bureau, further held 5 focus group meetings with the cement works trade and the construction trade to gauge their concerns and seek alternative suggestions. The salient concerns and views from the trade are as follows:

- The power to issue the closure notice should be appropriately balanced and it is suggested that the closure notice should be signed by the Director of Environmental Protection;
- Concerned whether amending the definition of "cement works" will lower the 50 tonnes threshold for the cementitious materials storage capacity or cover construction works using bagged cement for producing small quantities of concrete/cement grout, thereby subjecting smaller-scale cement operations to the SP Licence control;
- Whether the cementitious materials storage capacity will cover vehicles for transportation of materials or bagged cement after amending the definition of "cement works"; and the amendment to the definition of "cement works" should not affect slope shotcreting stabilisation works carried out during emergency situations, and there should also be a transitional period when the amendments to the Ordinance come into effect;
- The current definition of "cement works" only covers processes on land, resulting in some operators shifting the processes to vessels at sea in order to circumvent the relevant controls, which has brought about potential air pollution problems and is unfair to law-abiding operators; and
- The current time taken by the application process for a SP Licence may affect or not be able to fit in with the progress of the works.

16. In addition, the EPD is exploring to streamline the application and approval processes for SP Licences, and has launched relevant workshops with the "cement works" trade. The trade welcomes the EPD's following suggestions:

- to provide professional advice to applicants before their submission of SP Licence applications;

- to provide a checklist to assist applicants in submitting sufficient information for SP Licence applications;
- to establish an online platform to assist applicants in conducting air quality impact assessment by modelling tools;
- to adopt the Significant Impact Level (SIL) approach to simplify the process of air quality impact assessments; and
- to exempt the need to conduct air quality impact assessment if enclosed-type cement grouting equipment is adopted.

17. Based on the views received in the consultation, we have reviewed and refined our amendment proposal. After several rounds of discussions, the trade in general accepted our proposals in paragraphs 8 to 14 above. The EPD also confirmed in writing with the trade on the salient points and consensus of the mutual discussions.

## **IMPLEMENTATION PROGRAMME**

18. The Government will consult the Panel on Environmental Affairs of the Legislative Council in this month and plans to introduce the amendment bill to the Legislative Council for vetting in November 2024, with a view to implementing the new requirements in 2025. The amendment bill to be introduced will also include the part on updating the Air Quality Objectives. The related proposal was reported to the Advisory Council on the Environment on 4 September 2023, and was supported by Members.

## **ADVICE SOUGHT**

19. Members are invited to offer views on the above proposals in paragraphs 8 to 14 above.

**Environment and Ecology Bureau**  
**Environmental Protection Department**  
**July 2024**