

**For discussion on  
15 July 2024**

**Legislative Council Panel on Environmental Affairs**

**Proposal to Amend the 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 (Cap. 311) (the Ordinance) to combat the conduct of unlicensed specified processes (SPs) more effectively through introducing a closure notice mechanism and amend the coverage of “cement works” listed under the SPs.

**BACKGROUND**

Specified Processes

2. Air pollution has significant impacts on the health and lives of the public. Under the Ordinance, the Government is vested with the statutory power to formulate air quality objectives for Hong Kong and establish various measures and requirements to prevent or abate the emission of air pollutants. To control and regulate the major stationary pollution sources that may cause serious air pollution, the Ordinance specifically stipulates a licensing regime to regulate a total of 31 SPs, including electricity works, cement works, incinerators, tar and bitumen works, chemical incineration works, pathological waste incinerators, rendering works, mineral works and gas works, etc.<sup>1</sup>

3. Section 12(1) of the Ordinance provides that the owner of any premises used for the conduct of any SPs 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 an SP unless he is the holder of a licence to use the premises for the conduct of that SP. As the responsible authority for processing SP licence applications, the Environmental Protection Department (EPD) will consider if the applications have met the relevant

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<sup>1</sup> Details are available at:  
<https://www.elegislation.gov.hk/hk/cap311!en-zh-Hant-HK@2018-04-26T00:00:00/sch1?lang=zh-Hant-HK>

requirements of the Ordinance in determining whether or not to grant a licence and specifying the necessary licensing conditions requiring the licensees to take adequate measures to prevent the emission of air pollutants.

4. Under the existing SP licensing regime, if an SP operator is found to have failed to comply with the requirements of the licensing conditions in its operation and cannot demonstrate the ability to comply with the relevant requirements of the Ordinance in the SP licence renewal application, the EPD may refuse its licence renewal application. On the other hand, under the current Ordinance, SP operators may appeal to the Appeal Board against the EPD's decision in accordance with the Air Pollution Control (Appeal Board) Regulations. The licence concerned remains valid throughout the Appeal Board hearing period. The appeal mechanism has all along been effective.

5. Nevertheless, the EPD has in recent years repeatedly found that certain SP operators remained in operation even though their SP licences were refused renewal due to failing to meet the relevant requirements of the Ordinance. Some of them maintained their operation through judicial reviews (JR) and various judicial procedures after their appeals had been dismissed by the Appeal Board, thus bringing about continual air pollution, environmental nuisance problems and complaints from nearby residents. The conduct of unlicensed SPs can cause serious air pollution and public health hazards. To protect the environment and safeguard public health, the situation must be stopped as soon as possible. Therefore, we consider it an urgent need to amend the Ordinance by introducing a closure notice mechanism to provide an effective legal means to shut down the relevant premises and the ongoing operation of unlicensed SPs as soon as possible.

### Cement Works

6. The current Ordinance only regulates cement works<sup>2</sup> conducted on land. Previously, some cement works SP operators tried to work around the definition of "cement works" and the requirements of the SP licensing regime under the Ordinance by using mobile "extended silos" while reducing the total capacity of on-site silos to below 50 tonnes. We deem it necessary to elaborate on the coverage of "cement works" with more specific provisions through amendments to the Ordinance against such acts to circumvent the control and regulation of the SP licensing regime for the works processes concerned.

7. Recently, the EPD has also discovered that some operators transferred their cement works operation onto vessels berthed at inshore areas, thus posing potential air pollution problems. To prevent such cement works carried out at

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<sup>2</sup> According to Schedule 1 to the Ordinance, "cement works" refers to 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.

sea from causing air pollution to the nearby environment, we also need to update the Ordinance with the relevant control extended to cover cement works conducted on vessels at sea or berthed.

**PROPOSED AMENDMENTS**

Introduction of closure notice mechanism

8. To combat the problems mentioned in paragraph 5, we opine that the illegal conduct of SPs without a valid licence implies that such unlicensed operation will give rise to public health hazards or higher health risks, and we must immediately stop such operation and shut down the premises. As such, we propose to introduce a closure notice mechanism under the Ordinance. The Authority will therefore be empowered to, where he or she is satisfied that an SP is conducted without a valid SP licence in whichever premises, issue a statutory closure notice closing down the premises at once and making the directors and the managing staffs of the body corporate involved to bear the corresponding legal liabilities. The Authority will invoke this power only upon the need to remove the threat of serious air pollution, which is when an SP is conducted without a valid SP licence. We believe that air pollution caused by knowingly conducting illegal unlicensed SPs shall be dealt with through the introduction of a closure notification mechanism and prompt, efficient enforcement actions to stop such operation at once.

Amendments to the definition of “cement works”

9. In addition, we believe that there is a practical need for a more express definition of “cement works” listed under the SPs in Schedule 1 to the Ordinance for the avoidance of misinterpretation and control circumvention, including the addition in the definition a capacity threshold based on the production volume which is in line with the definitions of other SPs. Specifically, we propose to:

- (1) revise “total silo capacity” in the definition of “cement works” to “total storage capacity” while keeping the capacity threshold of 50 tonnes unchanged. The above “total storage capacity” takes into account any fixed or mobile storage containers (including vessels) for storage of bulk cementitious materials connected to the cement works and tankers for the transportation of cementitious materials, but at any one time excludes one tanker temporarily connected to the cement works; and
- (2) bring under control any operation with concrete mixers at a production scale exceeding a “total installed capacity” of 3 cubic metres or exceeding a “total concrete production rate” of 20 cubic metres per hour.

10. The above amendments aim to avoid deliberate reduction of the silo capacity coupled with the concurrent use of other storage modes, such as vessels at sea or land-based mobile storage vehicles, for control circumvention. For works using concrete or cement slurry made from bagged cement, which are generally smaller in scale, the air pollution impacts are relatively confined and such works are subject to the control under the Air Pollution Control (Construction Dust) Regulation. Therefore, we will expressly specify that “cement works” does not cover works using concrete or cement slurry made from bagged cement<sup>3</sup>.

#### Control to cover “cement works” conducted at sea

11. Since it makes no difference to the dust problem to arise no matter whether the “cement works” are conducted on land or at sea. Also, in order to guarantee a level playing field, we propose to amend the Ordinance by revising the statutory requirements of SP licences to make them applicable unvaryingly to “cement works” conducted on vessels at sea or at berth. This is to ensure that the processes concerned proceed in accordance with the licensing conditions to prevent the emission of air pollutants.

#### Streamlined approval process of SP licence

12. On other enhancements to the control mechanism, we also propose to streamline the application procedures for SP licences and enhance the provisions on the approval period under the Ordinance to facilitate the trade and expedite the granting of licences. Specific measures include relaxing the time requirement for submission of SP licence renewal applications under Sections 4 to 6 of the Air Pollution Control (Specified Processes) Regulation. After the amendment, SP licence renewal application could be submitted 120 days before the expiry of the SP licence instead of the previous requirement of within the period between 120 days and 60 days before the expiry of the licence which would provide more flexibility of licence renewal applications.

#### Additional provision for allowing emergency operations

13. We also propose to add a new provision to allow emergency operations to be conducted in times of crisis and disaster to avoid endangering life or property, or to prevent serious interruption or disruption to any public transport system so that unforeseen critical situations which may arise under extreme weather conditions or disastrous situations can be dealt with expeditiously, such as applying shotcrete for urgent repairs for slopes or road surfaces during a landslide.

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<sup>3</sup> Nonetheless, the proposed control mentioned in paragraph 9(2) above is still applicable.

## Transitional arrangements

14. To ensure the smooth implementation of the amended Ordinance, a grace period of no less than six months from the commencement of the amended Ordinance will be given to allow for registration of the newly included “cement works” with the EPD and application for an SP licence pursuant to the existing sections 19, 20 and 20AA of the Ordinance.

## **Trade Consultation**

15. In the course of drafting the above control proposal, the EPD maintained communication with the SP licencees, the cement works trade and the construction industry to listen to their views. In March 2024, the EPD consulted the trade on the control proposal at two large-scale trade consultation sessions to seek 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, the SP licencees and the relevant government departments. Subsequently in April and May, the EPD collaborated with the Development Bureau to hold five focus group meetings with the cement works trade and the construction industry regarding their concerns and proposed alternatives. The major views collected are summarised 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 ways to streamline the application and approval procedures for SP licences. Relevant workshops have been conducted with the cement works trade. The trade welcomed the following suggestions of the EPD:

- professional advice will be provided to applicants before their submission of an SP licence application;
- a checklist will be provided to help applicants submit sufficient information for the licence application;
- an online platform will be set up to facilitate applicants to conduct air quality modelling assessment;
- the Significant Impact Level approach will be adopted to simplify the air quality assessment process; and
- cement works using sealed cement slurry equipment will be exempted from air quality assessment.

17. In the light of the views received during the consultation, we have reviewed and refined our proposed legislative amendments. After several rounds of negotiation, the trade generally accepted the proposals given in paragraphs 8 to 14 above. The EPD also confirmed clearly in writing with the trade on the salient points of the discussions and the consensus reached.

### **Legislative Timetable**

18. The Government will consult the Advisory Council on the Environment this month and plans to introduce the amendment bill into the Legislative Council in November 2024, with a view to implementing the new control measures in early 2025. The amendment bill to be introduced also includes a section on updating the air quality objectives. The relevant proposal was reported to the Legislative Council Panel on Environmental Affairs on 17 October 2023 and was supported by Members.

### **Advice Sought**

19. Members are invited to comment on the proposed amendments set out in paragraphs 8 to 14 of this paper.

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