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| Chapter: | 311 | AIR POLLUTION CONTROL ORDINANCE | Gazette Number | Version Date |
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| | | Long title | | 30/06/1997 |
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To make provision for abating, prohibiting and controlling pollution of the atmosphere and for matters connected therewith.

(Amended 2 of 1991 s. 2)

[1 October 1983] *L.N. 303 of 1983*

(Originally 17 of 1983)

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| Part: | I | PRELIMINARY | | 30/06/1997 |
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| Section: | 1 | Short title | | 30/06/1997 |
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This Ordinance may be cited as the Air Pollution Control Ordinance.

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| Section: | 2 | Interpretation | 31 of 2008 | 18/07/2008 |
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

In this Ordinance, unless the context otherwise requires-

"actual emission" (實際排放量), in relation to a type of specified pollutant, means the quantity, as ascertained by such method as specified in a specified licence, of that type of pollutant that has been emitted from the licensed premises; (Added 31 of 2008 s. 2)

"air control zone" (空氣質素管制區) means any part of Hong Kong declared under section 6 to be an air control zone;

"air pollutant" (空氣污染物) means any solid, particulate, liquid, vapour, objectionable odour or gaseous substance emitted into the atmosphere; (Amended 13 of 1993 s. 2)

"air pollution" (空氣污染) means an emission of air pollutant which either alone or with another emission of air pollutant-

- (a) is prejudicial to health;
- (b) is a nuisance;
- (c) imperils or is likely to imperil the safety of or otherwise interferes with the normal operation of aircraft; or
- (d) is determined to be air pollution under a technical memorandum; (Replaced 13 of 1993 s. 2)

"air quality objective" (空氣質素指標) means an air quality objective established by the Secretary under section 7;

"allocated allowances" (獲配限額), in relation to a type of specified pollutant, means the emission allowances allocated under section 26G(1) for that type of pollutant in respect of a specified licence in relation to an emission year; (Added 31 of 2008 s. 2)

"allowed emission" (可排放量), in relation to a type of specified pollutant, means the quantity, as ascertained by reference to the quantity of allocated allowances for that type of pollutant as applicable to a specified licence in respect of an emission year, of that type of pollutant that may be emitted in the emission year from the licensed premises; (Added 31 of 2008 s. 2)

"Appeal Board" (上訴委員會) means an Appeal Board constituted under Part VI;

"asbestos" (石棉) includes the minerals, and substances including the minerals, amosite, crocidolite, chrysotile, fibrous actinolite, fibrous anthophyllite and fibrous tremolite; (Added 13 of 1993 s. 2)

"asbestos abatement work" (石棉消滅工程) means any work or a procedure to control fibre release from asbestos containing material, and includes the removal and transport of asbestos containing material; (Added 13 of 1993

s. 2)

"asbestos containing material" (含石棉物料) means any material, substance or product which is made with or contains more than 1 % asbestos by weight as determined by a method approved by the Secretary; (Added 13 of 1993 s. 2)

"Authority" (監督) means the public officer appointed under section 4(1) to be the air pollution control authority;

"authorized officer" (獲授權人員) means a public officer authorized under section 4(3);

"best practicable means" (最好的切實可行方法), where used with respect to the emission from a premises of an air pollutant, has reference not only to the provision and the efficient maintenance of appliances adequate for preventing such emission, but also to the manner in which such appliances are used and to the proper supervision by the owner of the premises of any operation in which such an air pollutant is evolved;

"building" (建築物) includes the whole, or a part, of a domestic or public building, arch, bridge, cavern adapted or constructed to be used for the storage of oil and petroleum products, chimney, cook-house, cowshed, dock, factory, garage, hangar, hoarding, latrine, matshed, office, oil storage installation, out-house, pier, shelter, shop, stable, stairs, wall, warehouse, wharf, workshop or tower, pylon or other similar structure supporting an aerial ropeway and such other structures as the Building Authority may declare to be a building by notice in the Gazette made under section 2(1) of the Buildings Ordinance (Cap 123); (Added 13 of 1993 s. 2)

"chimney" (煙囪) includes structures and openings of any kind from or through which air pollutant may be emitted and, in particular, includes flues, and references to a chimney of a premises include references to a chimney which serves the whole or part of a premises but is structurally separate therefrom;

"containment" (密封區) means a working area isolated from the rest of the building and other working areas to prevent the escape of asbestos fibre; (Added 13 of 1993 s. 2)

"dispensing nozzle spout" (配油噴嘴) means a spout or other device forming the end of a petrol pump nozzle and designed or constructed to dispense petrol from that petrol pump into the fuel tank of a motor vehicle; (Added 19 of 1994 s. 2)

"emission allowance" (排放限額), in relation to a type of specified pollutant, means the entitlement to emit one tonne of that type of pollutant in an emission year from a licensed premises; and, for the avoidance of doubt, each such entitlement is quantified as one emission allowance; (Added 31 of 2008 s. 2)

"emission year" (排放年度) means a period of 12 months commencing on 1 January in each year; (Added 31 of 2008 s. 2)

"engine" (引擎) means an internal combustion engine;

"furnace" (火爐) includes any kind of fireplace, grate or stove, whether open or closed and any structure enclosing a chamber where combustion takes place;

"industrial plant" (工業裝置) includes any plant, whether fixed or movable, used for industrial or trade purposes, and also includes any incinerator used for or in connection with any such purposes;

"licence" (牌照) means a licence granted under section 15, a licence renewed under section 16, a licence varied under section 17 or 18 or a licence transferred under section 18A, as may be appropriate; (Amended 31 of 2008 s. 2)

"licence holder" (牌照持有人) means the holder of a valid licence;

"licensed premises" (牌照所涉處所) means the premises to which a specified licence relates; (Added 31 of 2008 s. 2)

"motor vehicle" (汽車) has the same meaning as in section 2 of the Road Traffic Ordinance (Cap 374); (Added 19 of 1994 s. 2)

"non-friable asbestos containing material" (不鬆脆的含石棉物料) means asbestos containing material which when dry cannot be crumbled, pulverized or reduced to powder by hand pressure; (Added 13 of 1993 s. 2)

"noxious or offensive emission" (有害或厭惡性排放物) means a noxious or offensive emission designated by regulations made under section 43(1)(a);

"nuisance" (滋擾) includes an event which is obnoxious and which results in any of the effects set out in section 10(2)(h); (Added 13 of 1993 s. 2)

"oven" (烘爐) includes any form of retort or container used to subject solid fuel to any process involving the application of heat;

"owner" (擁有人) includes-

- (a) in relation to a building or premises, a lessee or occupier of the building or premises and a contractor who has possession of a site for the purposes of construction work;
- (b) in relation to the common area of a building, the management committee or other body responsible for the management or control of the building;
- (c) in relation to a specified process, a person carrying on a specified process in or on the premises; and
- (d) in relation to a ship, the master or other person in control of the ship; (Replaced 13 of 1993 s. 2)

"petrol" (汽油) has the same meaning as in section 69 of the Dutiable Commodities Ordinance (Cap 109); (Added 19 of 1994 s. 2)

"petrol delivery vehicle" (運油車) means a motor vehicle which is constructed or adapted for use primarily for the delivery of petrol to a petrol retailer; (Added 19 of 1994 s. 2)

"petrol retailer" (汽油零售商) means a person who sells, or offers for sale, petrol by retail to the public at large for use in motor vehicles; (Added 19 of 1994 s. 2)

"polluting process" (污染工序) includes an activity, process or the operation of a chimney, relevant plant, machinery or equipment that evolves air pollutant; (Added 13 of 1993 s. 2)

"prejudicial to health" (損害健康) means injurious, or likely to cause injury, to health;

"premises" (處所) includes a part of the premises and a place, building or relevant plant; (Replaced 13 of 1993 s. 2)

"register of specified processes" (指明工序登記冊) means the register required to be kept under section 39; (Replaced 13 of 1993 s. 2)

"registered asbestos consultant" (註冊石棉顧問) means a natural person whose name is entered in the register of asbestos consultants maintained under section 51(1)(a); (Added 13 of 1993 s. 2)

"registered asbestos contractor" (註冊石棉承辦商) means a natural person, company or other body corporate whose name is entered in the register of asbestos contractors maintained under section 51(1)(b); (Added 13 of 1993 s. 2)

"registered asbestos laboratory" (註冊石棉化驗所) means a laboratory whose name is entered in the register of asbestos laboratories maintained under section 51(1)(d) and includes a natural person, company or other body corporate whose name is entered in the register as the owner of a laboratory; (Added 13 of 1993 s. 2)

"registered asbestos supervisor" (註冊石棉監管人) means a natural person whose name is entered in the register of asbestos supervisors maintained under section 51(1)(c); (Added 13 of 1993 s. 2)

"relevant plant" (有關裝置) means any furnace, engine, oven or industrial plant;

"Secretary" (局長) means the Secretary for the Environment; (Replaced 78 of 1999 s. 7. Amended L.N. 106 of 2002; L.N. 130 of 2007)

"specified licence" (指明牌照) means a licence to conduct the process specified in item 7 of Schedule 1, other than a licence to conduct such process for the sole purpose of providing a stand-by power supply in the event of a loss of normal power supply; (Added 31 of 2008 s. 2)

"specified licence holder" (指明牌照持有人) means the holder of a specified licence; (Added 31 of 2008 s. 2)

"specified pollutant" (指明污染物) means an air pollutant of any of the following types-

- (a) sulphur dioxide;
- (b) nitrogen oxides;
- (c) respirable suspended particulates; (Added 31 of 2008 s. 2)

"specified process" (指明工序) means a process specified in Schedule 1; (Amended 13 of 1993 s. 2)

"technical memorandum" (技術備忘錄) means a technical memorandum issued under section 7, 9 or 26G; (Added 13 of 1993 s. 2. Amended 31 of 2008 s. 2)

"vehicle design standards" (車輛設計標準), in relation to the prohibition or control of the emission of air pollutants in respect of motor vehicles intended to be registered under the Road Traffic Ordinance (Cap 374), means the vehicle design standards applied in regulations made under section 43(1)(r). (Added 2 of 1991 s. 3)

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| Section: | 3 | Application | | 30/06/1997 |
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Except to the extent provided by section 43(1)(p) nothing in this Ordinance shall apply to any air pollutant emitted from any furnace or engine used in the propulsion of any vessel, railway locomotive or aircraft.

(Amended 2 of 1991 s. 4)

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| Section: | 4 | Authority and authorized officers | | 30/06/1997 |
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(1) For the purposes of carrying out the provisions of this Ordinance, the Governor may appoint a public officer to be the air pollution control authority.

(2) An appointment under subsection (1) shall be notified in the Gazette.

(3) The Authority may authorize in writing any public officer to perform or exercise all or any of the functions, duties or powers which are imposed or conferred on the Authority by this Ordinance.

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| Section: | 4A | Secretary to publish approved methods | | 30/06/1997 |
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Where in this Ordinance the Secretary is empowered to approve a method or standard, he shall, when he exercises the power, publish sufficient details of the method or standard in the Gazette so as to reasonably identify the method or standard.

(Added 13 of 1993 s. 3)

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| Section: | 5 | (Repealed 13 of 1993 s. 4) | | 30/06/1997 |
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| Part: | II | AIR CONTROL ZONES AND AIR QUALITY OBJECTIVES | | 30/06/1997 |
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| Section: | 6 | Air control zones | | 30/06/1997 |
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(1) The Governor in Council may, after consultation with the Advisory Council on the Environment, by order published in the Gazette, declare any part of Hong Kong to be an air control zone for the purposes of this Ordinance. (Amended L.N. 165 of 1984; L.N. 57 of 1994)

(2) An order under subsection (1) shall, for each air control zone constituted thereby-

(a) make reference to a plan or map of that zone deposited in the Land Registry at Victoria; or (Amended 8 of 1993 s. 2)

(b) sufficiently describe the zone by other means.

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| Section: | 7 | Secretary to establish quality objectives | | 30/06/1997 |
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(1) The Secretary shall, after consultation with the Advisory Council on the Environment, establish for each air control zone air quality objectives or different objectives for different parts of a zone. (Amended L.N. 165 of 1984; L.N. 57 of 1994)

(1A)The Secretary may publish air quality objectives for an air control zone by issuing a technical memorandum which may specify different objectives for different parts of the zone. (Added 13 of 1993 s. 5)

(2) The air quality objectives for any particular air control zone or part thereof shall be the quality which, in the opinion of the Secretary, should be achieved and maintained in order to promote the conservation and best use of air in the zone in the public interest.

(3) Any air quality objective may be amended from time to time by the Secretary, after consultation with the Advisory Council on the Environment. (Amended L.N. 165 of 1984; L.N. 57 of 1994)

(4)-(5) (Repealed 13 of 1993 s. 5)

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| Section: | 8 | Authority to seek to achieve quality objectives | | 30/06/1997 |
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(1) (Repealed 13 of 1993 s. 6)

(2) The Authority shall aim to achieve the relevant air quality objectives as soon as is reasonably practicable and thereafter to maintain the quality so achieved.

(3) If in the opinion of the Secretary the achievement or maintenance of any air quality objective would be

better served by the exercise by the Authority in a particular manner of any of his powers under section 15(4), 17 or 22, the Secretary may give directions in writing to the Authority as to the manner in which he shall exercise those powers; and, in the case of a direction which relates to section 15(4), any such direction may be of a general nature or relate to a particular case or particular cases.

(4) The Authority shall comply with any direction given to him under subsection (3) and the discretion conferred on the Authority by section 15(4), 17 or 22 as the case may be, shall not apply to any specified process in respect of which such a direction is in force.

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| Part: | III | CONTROL OF AIR POLLUTION | | 30/06/1997 |
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(Part III replaced 13 of 1993 s. 7)

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| Section: | 9 | Technical memorandum relating to air pollution | | 30/06/1997 |
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The Secretary may issue a technical memorandum setting out principles, procedures, guide-lines, standards and limits for-

- (a) the prediction, measurement, assessment or determination of air pollution caused, or contributed to, by the operation of a polluting process;
- (b) the issue of air pollution abatement notices for such pollution; and
- (c) the determination of whether or not an air pollution abatement notice is being complied with.

(Part III replaced 13 of 1993 s. 7)

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| Section: | 10 | Air pollution abatement notice | 31 of 2008 | 18/07/2008 |
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(1) Where the Authority or an authorized officer is satisfied that the emission of air pollutants from a polluting process is causing or contributing to air pollution which exists or which is imminent, the Authority or the authorized officer may give an air pollution abatement notice, either verbally or in writing, to the owner of the premises or to the person carrying out the activity requiring him-

- (a) to cease the emission of air pollutants from the premises or to cease the operation of the polluting process;
- (b) to reduce the emission of air pollutants from the premises or polluting process;
- (c) to take other steps to abate the emission of air pollutants from the premises or polluting process.

(2) In determining whether the emission of air pollutants is causing or contributing to air pollution which exists or which is imminent, the Authority and an authorized officer may take into account-

- (a) a technical memorandum (other than a technical memorandum issued under section 26G); (Amended 31 of 2008 s. 3)
- (b) research material results or publications which indicate that the type of emission may have adverse health effects;
- (c) the advice of a medical practitioner;
- (d) the advice of the Director-General of Civil Aviation; (Amended L.N. 326 of 2000)
- (e) the relative location of the emission source and the place affected;
- (f) the locality of the place affected;
- (g) the time, duration and frequency of the emission;
- (h) any of the following effects which, in the opinion of the Authority or the authorized officer, is caused by or contributed to by the emission-
 - (i) the deposit of dust, grit or particles of any kind;
 - (ii) an objectionable odour;
 - (iii) the staining of, corrosion or damage to, a building, plant, equipment or other material;
 - (iv) the irritation of the eye, nose or skin or any other sensory discomfort;
 - (v) the disturbance of normal activities by the colour or opacity of the emission;
 - (vi) an effect which in the opinion of the Authority or an authorized officer may affect public safety; or
 - (vii) any other effect which in the opinion of the Authority or an authorized officer is unreasonable for a member of the public to suffer.

(3) The Authority or an authorized officer may, in giving an air pollution abatement notice under subsection

(1), either-

- (a) require that the notice be complied with immediately; or
- (b) state a time by which the person given notice shall comply with the notice.

(4) An air pollution abatement notice remains in force until it is withdrawn or expires.

(5) If the Authority or an authorized officer gives or withdraws an air pollution abatement notice verbally, the Authority or the authorized officer shall confirm the notice in writing within 7 days.

(6) Subsection (1) does not apply to-

- (a) air pollution emitted from a specified process which is operated under a licence issued under section 15;
- (b) the emission of an objectionable odour from a declared offensive trade carried out under and in accordance with a licence issued under bylaws made under the Public Health and Municipal Services Ordinance (Cap. 132).

(7) A person who fails to comply with an air pollution abatement notice given to him under subsection (1) commits an offence and is liable-

- (a) if he fails to cease the operation of a polluting process as specified in the air pollution abatement notice, to a fine of \$500000 and to imprisonment for 12 months and a further fine of \$100000 for each day that the court is satisfied that the failure to cease the operation has continued; and
- (b) in any other case, to a fine of \$100000 on first conviction and to a fine of \$200000 and to imprisonment for 6 months on a second or subsequent conviction and, on a first or subsequent conviction, to a further fine of \$20000 for each day that the court is satisfied that the failure to comply with the air pollution abatement notice has continued.

(Part III replaced 13 of 1993 s. 7)

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| Part: | IV | SPECIFIED PROCESSES AND THE LICENSING OF PREMISES THEREFOR | | 30/06/1997 |
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| Section: | 11 | Power to amend Schedule 1 | | 30/06/1997 |
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The Legislative Council may by resolution amend Schedule 1.

(Amended 13 of 1993 s. 8)

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| Section: | 12 | Prevention of discharge of noxious or offensive emissions | | 30/06/1997 |
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(1) The owner of any premises used for the conduct of any specified process shall use the best practicable means for preventing the emission of noxious or offensive emissions from such premises, and for preventing the discharge, whether directly or indirectly, of such emissions into the atmosphere, and for rendering such emissions where discharged harmless and inoffensive.

(2) Any person who fails to comply with subsection (1) commits an offence and is liable to a fine of \$200000 and to imprisonment for 6 months, and, in addition, if the offence is a continuing offence, to a fine of \$20000 for each day during which it is proved to the satisfaction of the court that the offence has continued. (Amended 13 of 1993 s. 9)

(3) No person shall be convicted of an offence under this section if he proves that the specified process in respect of which he is charged was conducted by him in the manner and in accordance with the particulars and information notified by him under section 19(1).

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| Section: | 13 | Licence required to use premises for specified process | | 30/06/1997 |
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(1) Subject to section 20, the owner of any premises shall not use those premises, or permit those premises to be used, for the conduct of a specified process unless he is the holder of a licence to use the premises for the conduct of that specified process.

(2) Any owner who contravenes subsection (1) commits an offence and is liable to a fine of \$200000 and to imprisonment for 6 months, and, in addition, if the offence is a continuing offence, to a fine of \$20000 for each day during which it is proved to the satisfaction of the court that the offence has continued. (Amended 13 of 1993 s. 10)

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| Section: | 14 | Application for licences | | 30/06/1997 |
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- (1) Any person who wishes to obtain a licence to conduct a specified process in any premises shall apply to the Authority in the prescribed form.
- (2) An application under subsection (1) shall be accompanied by the prescribed fee.
- (3) The Authority shall publicly notify all applications for licences-
- (a) by entering in the register such particulars thereof as may be prescribed;
 - (b) by causing a notice to be published at the expense of the applicant in an English language and a Chinese language newspaper determined by the Authority containing such particulars of the application and other information as may be prescribed and a statement of the place or places where the particulars of the application may be inspected. (Amended 23 of 1987 s. 2)
- (4) During the period of 30 days after the last notice is published pursuant to subsection (3)(b)-
- (a) the particulars of the application shall be kept at each place notified under subsection (3)(b) and shall be available for inspection by the public during normal office hours; and (Amended 23 of 1987 s. 2)
 - (b) any person may, in such manner as may be prescribed, object to the granting of a licence to conduct the specified process concerned on the grounds that-
 - (i) it would tend to inhibit the attainment or maintenance of any relevant air quality objective; or
 - (ii) the emission of noxious or offensive emissions would be, or be likely to be, prejudicial to health. (Replaced 23 of 1987 s. 2)

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| Section: | 14A | Air pollution control plan | | 30/06/1997 |
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- (1) The Authority may require an applicant for a licence under section 14 to submit an air pollution control plan which, if required to be submitted, the Authority shall have regard to in exercising his discretion to grant or refuse to grant a licence.
- (2) The Authority may require the applicant to include the following in an air pollution control plan-
- (a) a description and technical particulars of a chimney or other plant or equipment that may evolve an air pollutant;
 - (b) a description and technical particulars of air pollution control equipment or measure proposed to be used to comply with the requirement to use the best practicable means of controlling air pollution;
 - (c) a description and technical particulars of equipment or measure other than those referred to in paragraph (b) proposed to be used to reduce the emission of any air pollutant;
 - (d) a description with the aid of maps of residential buildings, schools, hospitals, medical clinics and other buildings and structures that may be affected;
 - (e) an assessment of the resulting air quality and risk to human health in the vicinity of the premises and in the buildings and structures identified in the description required under paragraph (d);
 - (f) the calculations and information which may support-
 - (i) the findings and conclusions set out in the assessment made under paragraph (e); and
 - (ii) the assertion that the best practicable means of controlling air pollution have been adopted or proposed; and
 - (g) a plan for, or scheme of, monitoring the emission at source or the ambient concentration of any air pollutant.
- (Added 13 of 1993 s. 11)

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| Section: | 15 | Grant or refusal of licences | 31 of 2008 | 18/07/2008 |
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- (1) The Authority may, not earlier than 40 days after the last notice is published in a newspaper pursuant to section 14(3)(b), either grant or refuse to grant a licence.
- (2) If he refuses to grant a licence the Authority shall notify the applicant in writing of his refusal and shall inform him of his reasons therefor.
- (3) In the exercise of his discretion to grant or refuse to grant a licence the Authority shall-
- (a) have regard to the capability of the applicant to provide and maintain the best practicable means for the prevention of the emission from his premises of any air pollutant;
 - (b) have as his purpose the attainment and maintenance of any relevant air quality objective; and

(Replaced 23 of 1987 s. 3)

(c) have regard to whether the emission of noxious or offensive emissions would be, or be likely to be, prejudicial to health. (Added 23 of 1987 s. 3)

(4) A licence granted under this section shall be for a reasonable period of not less than 2 years and- (Amended 31 of 2008 s. 4)

(a) without prejudice to any term or condition imposed under paragraph (b) (if applicable), may be subject to such terms and conditions (including terms and conditions relating to the matters set out in Schedule 2) as the Authority thinks fit; and

(b) where the licence concerned is a specified licence, shall from 1 January 2010 onwards also be subject to such terms and conditions as may be set out in Schedule 2A. (Amended 13 of 1993 s. 31; 31 of 2008 s. 4)

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| Section: | 15A | Payment of annual charges by licence holders | 30/06/1997 |
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Every licence holder shall pay such annual charge as may be prescribed.

(Added 23 of 1987 s. 4)

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| Section: | 16 | Renewal of licences | 30/06/1997 |
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(1) During such period as may be prescribed, the licence holder may apply to the Authority in the prescribed form for a renewal of the licence. (Amended 23 of 1987 s. 5)

(2) An application for renewal of a licence shall be accompanied by the prescribed fee.

(3) Except where the Secretary directs otherwise, section 14(3) and (4) shall not apply in relation to an application for renewal of a licence. (Amended 23 of 1987 s. 5)

(4) The Authority may renew or refuse to renew a licence but, where the Secretary has directed under subsection (3) that section 14(3) shall apply, shall not do so earlier than 40 days after the last notice is published in a newspaper pursuant to section 14(3)(b). (Replaced 23 of 1987 s. 5)

(5) Subsections (2), (3) and (4) of section 15 shall apply to the renewal of a licence as they apply to the grant or refusal of a licence under that section.

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| Section: | 17 | Cancellation or variation of a licence | 30/06/1997 |
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(1) Where a licence is in force and the Authority considers it necessary in the public interest, the Authority may, subject to subsection (2), by notice in writing to the licence holder-

(a) impose new or amended terms or conditions subject to the observance of which, as from a specified date, the licence shall continue in force;

(b) cancel the licence as from a specified date;

(c) revoke or amend or add to any notice previously given under this subsection, or any part of such notice, or substitute a new notice for it.

(2) Unless the Authority considers that the continuation of the specified process to which the licence relates would be, or be likely to be, prejudicial to health he may exercise any power set out in subsection (1) in relation to that licence only with the prior approval of the Governor in Council, as to both the exercise of the power and the manner of the exercise of the power, or with the agreement of the licence holder.

(3) Subject to subsection (4), the date specified in a notice for the addition, revocation or amendment of any term or condition under paragraph (a) or (c) of subsection (1) or the cancellation of a licence under paragraph (b) thereof shall be not less than 90 days after the day on which the notice is given to the licence holder.

(4) Where in the opinion of the Authority it is necessary to add, revoke or amend a term or condition under paragraph (a) or (c) of subsection (1) or cancel a licence under paragraph (b) thereof because the continuation of the specified process to which the licence relates would be, or be likely to be, prejudicial to health, he may exercise any of the said powers with effect from such date as the circumstances may require and shall not be bound to comply with subsection (3).

(5) Where a notice is given under subsection (1), the person to whom the notice is given may, within the period of 30 days after such notice is given, make written submissions to the Authority as to why any new or amended terms and conditions should not be imposed or as to why the licence should not be cancelled.

(6) The Authority, on receipt of written submissions made by any person under subsection (5) may, after

considering such submissions, exercise any of his powers under subsection (1)(c).

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| Section: | 18 | Applications for and variations of licences | | 30/06/1997 |
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- (1) A licence holder may apply to the Authority in the prescribed form for a variation of the licence.
- (2) The application shall be accompanied by the prescribed fee.
- (3) Section 14(3) and (4) shall apply for the purpose of publicly notifying an application under this section for the variation of a licence as if it were an application for a licence.
- (4) The Authority may either grant the application, with or without modification, or refuse to grant it but shall not do so earlier than 40 days after the last notice is published in a newspaper pursuant to subsection (3).
- (5) If the Authority refuses to grant an application or any part thereof he shall notify the applicant and shall inform him of the reasons for his refusal.
- (6) Section 15(3) shall apply to the exercise by the Authority of his discretion under this section as it applies to the exercise of his discretion to grant or refuse a licence.
- (7) The Authority may grant an application on such terms and conditions as he thinks fit (including terms and conditions relating to the matters set out in Schedule 2). (Amended 13 of 1993 s. 31)

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| Section: | 18A | Application for transfer of licences | | 30/06/1997 |
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- (1) Where a licence is to be transferred, the licence holder and the prospective transferee of the licence shall jointly apply to the Authority in the prescribed form for a transfer of the licence.
- (2) An application under subsection (1) shall be accompanied by the prescribed fee which shall be paid by the prospective transferee.
- (3) Except where the Secretary directs otherwise, section 14(3) and (4) shall not apply in relation to an application for the transfer of a licence.
- (4) A licence in respect of which an application for transfer is made under subsection (1) shall remain in force as against the licence holder until the application is granted under subsection (5).
- (5) The Authority may either grant an application under subsection (1), with or without modification, or refuse to grant it but, where the Secretary has directed under subsection (3) that section 14(3) shall apply, shall not do so earlier than 40 days after the last notice is published in a newspaper pursuant to section 14(3)(b).
- (6) If the Authority refuses to grant an application (or any part thereof) under subsection (5) he shall notify the applicants and shall inform them of the reasons for his refusal.
- (7) Section 15(3) shall apply to the exercise by the Authority of his discretion under this section as it applies to the exercise of his discretion to grant or refuse a licence and section 15(3)(a) shall apply in relation to the prospective transferee of the licence as it applies to the applicant.
- (8) The Authority may grant an application under subsection (5) on such terms and conditions as he thinks fit (including terms and conditions relating to matters set out in Schedule 2). (Amended 13 of 1993 s. 31)
(Added 23 of 1987 s. 6)

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| Section: | 18B | Supply of incorrect information, etc. | | 30/06/1997 |
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Any person who in any application made under this Ordinance makes any statement or gives any particular or information which he knows to be incorrect in a material respect or who recklessly makes any statement or gives any particular or information which is incorrect in a material respect or knowingly omits any material particular therefrom commits an offence and is liable to a fine of \$50000.

(Added 23 of 1987 s. 6. Amended 13 of 1993 s. 12)

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| Section: | 19 | Notices of existing premises used for specified processes | | 30/06/1997 |
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(1) The Secretary may, by order published in the Gazette, specify in relation to any specified process the particulars and information required to be furnished to the Authority by the owner of any premises used for the conduct of that specified process and, within 6 months after the publication of such an order, or such further period as the Authority may in any particular case allow, the owner of the premises concerned shall give notice of the existence of those premises to the Authority in such manner and form and containing such particulars and information as may be

specified in the order.

(2) Any owner who fails to comply with subsection (1) commits an offence and is liable to a fine of \$50000. (Amended 13 of 1993 s. 13)

(3) Any owner who in any notice under subsection (1) makes any statement or gives any particular or information which he knows to be incorrect in a material respect or who recklessly makes any statement or gives any particular or information which is incorrect in a material respect or knowingly omits any material particular therefrom commits an offence and is liable to a fine of \$50000. (Amended 13 of 1993 s. 13)

(4) Subsection (1) shall not apply to owner of any premises or any part of the premises used for conduct of a specified process, in respect of which premises-

- (a) the owner holds a licence under section 15(4);
- (b) a licence has expired but the owner continues to operate the specified process;
- (c) an application for a licence by the owner has been refused but the owner continues to operate the specified process;
- (d) the owner's licence has been cancelled under section 17(1)(b);
- (e) the owner has been exempted under section 20;
- (f) the exemption of the owner under section 20 has ceased under section 20A;
- (g) the exemption of the owner under section 20 has ceased under section 21(1)(i);
- (h) the owner has been exempted under section 20 but has to comply with the terms and conditions imposed under section 22(1)(a)(i) or (c); or
- (i) the exemption of the owner under section 20 has been cancelled under section 22(1)(a)(iii) or (b). (Added 19 of 1994 s. 3)

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| Section: | 20 | Exemption of certain premises | 29 of 1998 s. 63 | 01/07/1997 |
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Remarks:

Amendments retroactively made - see 29 of 1998 s. 63

(1) The owner of any premises used for the conduct of a specified process at the date of publication of an order under section 19 shall, subject to subsection (4) and section 21, be exempt so far as use of that premises is concerned in respect of that process from the operation of section 13 if notice of the existence of that premises has been duly given under section 19. (Amended 13 of 1993 s. 14)

(2)-(3) (Repealed 13 of 1993 s. 14)

(4) No exemption shall arise under this section if, at the time when notice is given under section 19, the premises used for the conduct of the specified process-

- (a) have been unlawfully erected on unleased land in contravention of section 4 of the Land (Miscellaneous Provisions) Ordinance (Cap 28); or
- (b) are situated on land held under a Government lease or on land occupied under a licence issued under section 5 of the Land (Miscellaneous Provisions) Ordinance (Cap 28) and the use of the premises for the conduct of the specified process is in breach of the Government lease or the licence. (Amended 29 of 1998 s. 63)

(5) Where at the date of publication of an order under section 19 any person is the owner of premises which are being developed for use for the conduct of a specified process the Authority may in writing subject to subsection (4) and section 21 exempt him in respect of those premises from the operation of section 13 upon his giving notice under section 19, which shall for the purposes of this subsection apply mutatis mutandis. (Amended 13 of 1993 s. 14)

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| Section: | 20AA | Removal of exemption to certain classes of existing premises | | 30/06/1997 |
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(1) The Secretary may by order in the Gazette declare that after a date specified in the order an exemption from the requirement to comply with section 13 granted to the owner of a class of premises under section 20 no longer applies.

(2) The owner of premises previously exempt under section 20 shall not, after the date specified in the order made under subsection (1), use those premises, or permit those premises to be used, for the conduct of a specified process unless-

- (a) he is the holder of a licence to use the premises for the conduct of the specified process; or
- (b) he has applied to the Authority for a licence to use the premises for the conduct of the specified

process in accordance with the requirements of section 14 and the Authority has not refused to grant the licence.

(3) An owner who contravenes subsection (2) commits an offence and is liable to a fine of \$200000 and to imprisonment for 6 months, and, in addition, if the offence is a continuing offence, to a further fine of \$20000 for each day during which the court is satisfied that the offence has continued.

(4) The owner of premises of a class for which an exemption no longer applies as a result of an order under subsection (1) is not entitled to compensation for loss caused by the removal of the exemption.

(Added 13 of 1993 s. 15)

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| Section: | 20A | Cessation of exemption on conviction under section 19(3) | | 30/06/1997 |
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The owner of any premises who is convicted under section 19(3) of an offence relating to those premises shall cease to be exempt under section 20 from the operation of section 13 in respect of the premises.

(Added 23 of 1987 s. 7)

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| Section: | 21 | Cessation of exemption in certain circumstances and application for licence | | 30/06/1997 |
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(1) Without prejudice to the powers in section 22 when, on or in any premises used for the conduct of a specified process the owner of which is exempt under section 20 from the operation of section 13, for any reason, including addition, alteration or modification thereto or renewal thereof, any chimney or relevant plant used in or in connection with the conduct of the specified process ceases to conform with any of the particulars in relation thereto-

- (a) given by such owner under section 19; and
- (b) recorded in a register kept under section 39(1)(b),

then, in respect of that part of the premises on or in which such chimney or relevant plant is situate, the owner thereof-

- (i) shall cease to be exempt under section 20; and
- (ii) shall apply forthwith under section 14 for a licence.

(2) Except where the Secretary directs otherwise, section 14(3) and (4) shall not apply in relation to an application for a licence in accordance with subsection (1)(ii), and section 15(1) as regards the period before which the Authority may not grant or refuse to grant a licence shall likewise not apply except where the Secretary has directed that section 14(3) shall apply. (Amended 23 of 1987 s. 8)

(3) Any owner who, without reasonable excuse, fails to comply with subsection (1)(ii) commits an offence and is liable to a fine of \$200000 and to imprisonment for 6 months and, in addition, if the offence is a continuing offence, to a fine of \$20000 for each day during which it is proved to the satisfaction of the court that the offence has continued. (Amended 13 of 1993 s. 16)

(4) Where the owner of a premises applies for a licence in accordance with subsection (1)(ii), then, pending the grant or refusal to grant the licence, the operation of section 13 shall be suspended in relation to the part of the premises which has ceased to be exempt under subsection (1)(i) and which is referred to in the application made under section 14.

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| Section: | 22 | Further powers in relation to an existing specified process | | 30/06/1997 |
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(1) Where in relation to any premises used for the conduct of a specified process the owner of which is exempt under section 20 from the operation of section 13 the Authority considers it necessary so to do in the public interest he may, by notice in writing to the owner of the premises-

- (a) (i) impose terms and conditions subject to the observance of which, as from a specified date, the exemption shall continue in force;
- (ii) declare the exemption liable to cancellation if at any time the person fails to observe any such term or condition;
- (iii) cancel the exemption as from a specified date if the person fails to observe any such term or condition;
- (b) cancel the exemption as from a specified date;
- (c) amend or add to any notice previously given under this section, or any part of such notice, or substitute a new notice for it.

(2) Unless the Authority considers that the continuation of the specified process would of itself be, or be likely

to be, prejudicial to health, he may exercise any power set out in subsection (1) only with the prior approval of the Governor in Council, as to both the exercise of the power and the manner of the exercise of the power, or with the agreement of the owner of the premises used for the conduct of the specified process.

(3) The Authority may revoke a notice previously given under this section, subject to the further approval of the Governor in Council in the case of a revocation which affects anything previously done under this section with the approval of the Governor in Council.

(4) Subject to subsection (5) the date specified in a notice for the imposition, amendment or addition of any term or condition under paragraph (a)(i) or (c) of subsection (1) or for the cancellation of an exemption under paragraph (a)(iii) or (b) thereof shall be not less than 90 days after the day on which the notice is given to the owner of the premises used for the conduct of the specified process.

(5) Where in the opinion of the Authority it is necessary to impose, amend or add any term or condition under paragraph (a)(i) or (c) of subsection (1) or to cancel an exemption under paragraph (a)(iii) or (b) thereof because the continuation of the specified process would of itself be, or be likely to be, prejudicial to health, he may exercise any of the said powers with effect from such date as the circumstances may require and shall not be bound to comply with subsection (4).

(6) Subject to subsection (2), the Authority may impose such terms and conditions under subsection (1) as he thinks fit including any term or condition-

- (a) requiring the person to restrict or from time to time to suspend the emission of any air pollutant;
- (b) relating to the matters set out in Schedule 2. (Amended 13 of 1993 s. 31)

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| Section: | 23 | Exempted premises-approval of changes | | 30/06/1997 |
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(1) A person who is the owner of any premises used for the conduct of a specified process and who is exempt under section 20 from the operation of section 13 may apply to the Authority in the prescribed form for a variation or cancellation of any term or condition imposed by the Authority under section 22.

(2) An application under subsection (1) shall be accompanied by the prescribed fee.

(3) Section 14(3) and (4) shall apply for the purpose of publicly notifying an application under this section as if it were an application for a licence.

(4) The Authority may either grant the application in whole or in part or refuse to grant it but shall not do so earlier than 30 days after the last notice is published in a newspaper pursuant to subsection (3).

(5) If the Authority refuses to grant an application or any part thereof he shall notify the applicant and shall inform him of the reasons for his refusal.

(6) Section 15(3) shall apply to the exercise by the Authority of his discretion under this section as it applies to the exercise of his discretion to grant or refuse a licence.

(7) The Authority may grant an application on such terms and on such conditions as he thinks fit (including terms and conditions relating to the matters set out in Schedule 2). (Amended 13 of 1993 s. 31)

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| Section: | 24 | Compensation for cancellation or variation of licences | | 30/06/1997 |
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Where a licence is, pursuant to section 17(1)-

- (a) cancelled as provided in section 17(1)(b); or
- (b) varied as provided in section 17(1)(a) so as to impose additional obligations on the licence holder,

the Authority shall be liable to pay compensation to the person whose licence is cancelled or varied if- (Amended 23 of 1987 s. 9)

- (i) such cancellation or variation was effected with the prior approval of the Governor in Council pursuant to section 17(2); or
- (ii) where the licence is cancelled or varied because the Authority considers that the continuation of the specified process to which the licence relates would be, or be likely to be, prejudicial to health, the possibility of such prejudice to health was known, or could with reasonable foresight have been known, to the Authority at the time the licence was granted or renewed; or
- (iii) the prejudice to health mentioned in paragraph (ii) is a consequence of the fact of licences having been granted or renewed after the grant (or, where a licence has been renewed, the last renewal) of the licence which is cancelled or varied.

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| Section: | 25 | Compensation for cancellation or variation of exemptions with the approval of the Governor in Council | | 30/06/1997 |
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Where an exemption under section 20 is, pursuant to section 22-

(a) cancelled as provided in section 22(1)(b); or

(b) varied as provided in section 22(1)(a)(i) or (c) so as to impose additional obligations on the owner of the premises used for the conduct of the specified process to which the exemption relates,

the Authority shall be liable to pay compensation to the owner of the premises whose exemption is cancelled or varied if such cancellation or variation was effected with the prior approval of the Governor in Council pursuant to section 22(2).

(Amended 23 of 1987 s. 10)

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| Section: | 26 | Assessment of compensation | | 30/06/1997 |
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(1) Subject to subsection (2), the manner of determining the amount of compensation payable under sections 24 and 25, the factors to be taken into account or disregarded and the principles to be applied in determining that amount shall be such as may be prescribed in regulations made under section 43.

(2) The provisions of Schedule 4 shall have effect for the purposes of determining the amount of compensation payable under sections 24 and 25 and for the purposes of the incidental matters for which they provide. (Amended 13 of 1993 s. 17)

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| Section: | 26A | Payment of annual charges by owners of exempted premises | | 30/06/1997 |
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Every owner of premises who is exempt under section 20 from the operation of section 13 shall pay such annual charge as may be prescribed.

(Added 23 of 1987 s. 11)

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| Part: | IVA | UNLEADED PETROL AND THE CONTROL OF THE EMISSION OF AIR POLLUTANTS FROM MOTOR VEHICLES | | 30/06/1997 |
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(Part IVA added 2 of 1991 s. 5)

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| Section: | 26B | (Repealed 19 of 1994 s. 4) | | 30/06/1997 |
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| Section: | 26C | (Repealed 19 of 1994 s. 5) | | 30/06/1997 |
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(Part IVA added 2 of 1991 s. 5)

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| Section: | 26D | (Repealed 19 of 1994 s. 6) | | 30/06/1997 |
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(Part IVA added 2 of 1991 s. 5)

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| Section: | 26E | (Repealed 19 of 1994 s. 7) | | 30/06/1997 |
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(Part IVA added 2 of 1991 s. 5)

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| Section: | 26F | (Repealed 19 of 1994 s. 8) | | 30/06/1997 |
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(Part IVA added 2 of 1991 s. 5)

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| Part: | IVB | SPECIFIED LICENCES | 31 of 2008 | 18/07/2008 |
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(Part IVB added 31 of 2008 s. 5)

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| Part: Division: | IVB 1 | Allocated Allowances | 31 of 2008 | 18/07/2008 |
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| Section: | 26G | Secretary to allocate emission allowances in respect of specified licence | 31 of 2008 | 18/07/2008 |
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(1) For the purposes of this Ordinance, the Secretary shall by technical memorandum allocate a quantity of emission allowances for each type of specified pollutant in respect of each specified licence in relation to each emission year commencing on or after 1 January 2010.

(2) In making an allocation under subsection (1) for a type of specified pollutant, the Secretary shall—

- (a) have regard to the best practicable means for preventing the emission of that type of pollutant;
- (b) have as his purpose the attainment and maintenance of any relevant air quality objective; and
- (c) have regard to whether the emission of that type of pollutant would be, or be likely to be, prejudicial to health.

(3) For the purposes of subsection (1), the Secretary may allocate a quantity of emission allowances also by specifying the method for ascertaining the quantity.

(4) An allocation under subsection (1) does not have effect in respect of an emission year unless the technical memorandum issued under that subsection for making the allocation has commenced to have effect at least 4 years before the commencement of the emission year.

(5) Subsection (4) does not apply to any allocation made by the first technical memorandum having effect for the purposes of subsection (1).

(Part IVB added 31 of 2008 s. 5)

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| Section: | 26H | Authority to ascertain quantity of allocated allowances etc. | 31 of 2008 | 18/07/2008 |
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(1) Where an allocation of a quantity of emission allowances is made in the manner described in section 26G(3), the Authority shall as soon as reasonably practicable ascertain the quantity by using the method specified under that section in the relevant technical memorandum.

(2) After ascertaining the quantity under subsection (1), the Authority shall as soon as reasonably practicable notify the relevant specified licence holder in writing of the quantity so ascertained.

(Part IVB added 31 of 2008 s. 5)

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| Part: Division: | IVB 2 | Determination of Compliance with Certain Terms and Conditions | 31 of 2008 | 18/07/2008 |
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| Section: | 26I | Determination of compliance with certain terms and conditions | 31 of 2008 | 18/07/2008 |
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(1) For the purposes of this Ordinance, in determining whether a person has contravened any term or condition of a specified licence that requires him, as a specified licence holder, to ensure that the actual emission of a type of specified pollutant from the licensed premises in an emission year is not greater than the allowed emission of that type of pollutant as applicable to the licence in respect of the emission year—

- (a) a reference in such term or condition to the allowed emission of that type of pollutant as applicable in respect of the emission year shall be construed as a reference to the quantity, as ascertained by reference to the quantity of the relevant allocated allowances as may be increased or reduced for the purposes of this section under Division 3 in respect of the emission year, of that type of pollutant that may be emitted in the emission year from the licensed premises; and
- (b) where there has been a contravention of such term or condition in respect of the preceding year in

relation to the licence and that type of pollutant, the quantity by which the relevant actual emission exceeds the relevant allowed emission, after taking into account the adjustments under this subsection for the purpose of determining that there has been the contravention, shall be taken as part of the actual emission of that type of pollutant in the emission year.

(2) Proceedings under section 30B for an offence relating to the contravention of any term or condition referred to in subsection (1) in respect of an emission year shall only be instituted after 31 March in the year immediately following the emission year.

(3) For the purposes of this section, “preceding year” (對上年度), in relation to an emission year, means the emission year immediately preceding that emission year.

(Part IVB added 31 of 2008 s. 5)

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| Part: Division: | IVB 3 | Adjustments to Quantity of Allocated Allowances | 31 of 2008 | 18/07/2008 |
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| Section: | 26J | Increase in quantity of allocated allowances in case of surplus of allocated allowances in preceding year | 31 of 2008 | 18/07/2008 |
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(1) Where the relevant circumstances exist in respect of a specified licence in relation to a type of specified pollutant in an emission year, the quantity of the allocated allowances for that type of pollutant as applicable to the licence in respect of the emission year is to be increased for the purposes of section 26I by the quantity specified in subsection (3).

(2) For the purposes of subsection (1), the relevant circumstances exist in respect of a specified licence in relation to a type of specified pollutant in an emission year if, for the purpose of making the relevant determination in accordance with section 26I(1) in relation to the preceding year, the relevant allowed emission exceeds the relevant actual emission, after taking into account the adjustments under that section for the purpose of making the determination.

(3) The quantity referred to in subsection (1) is—

- (a) the excess referred to in subsection (2); or
- (b) 2% of the quantity of the allocated allowances for the relevant type of specified pollutant as applicable to the relevant specified licence in respect of the preceding year,

whichever is the lesser.

(4) For the purposes of subsection (3)(b), where the result of the calculation under that subsection is a fraction, the result is to be rounded up to the next whole number.

(5) For the purposes of this section, “preceding year” (對上年度), in relation to an emission year, means the emission year immediately preceding that emission year.

(Part IVB added 31 of 2008 s. 5)

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| Section: | 26K | Increase in quantity of allocated allowances upon occurrence of special event or failure to acquire emission credits | 31 of 2008 | 18/07/2008 |
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(1) Where the relevant circumstances exist in respect of a specified licence in relation to a type of specified pollutant in an emission year, the Authority may, for the purposes of section 26I, upon application by the specified licence holder in accordance with the terms and conditions of the licence and upon payment of the fee (if applicable) prescribed in Schedule 2B, increase the quantity of the allocated allowances for that type of pollutant as applicable to the licence in respect of the emission year by such quantity as he thinks fit.

(2) For the purposes of subsection (1), the relevant circumstances exist in respect of a specified licence in relation to a type of specified pollutant in an emission year if—

- (a) (i) that type of pollutant has been emitted in the emission year from the licensed premises as a result of the occurrence of a special event; or
- (ii) further to an approval under section 26M in respect of any quantity of emission credits, the applicant has entered into an agreement for the acquisition of that quantity of emission credits or any part of it but has failed to acquire that quantity of emission credits or that part of it (as the case may be) under the agreement;

- (b) the special event or the failure (as the case may be) occurred for reasons beyond the control of the applicant;
- (c) (i) in the case of a special event, the occurrence of the event could not reasonably have been foreseen by the applicant, or if the occurrence of the event could reasonably have been foreseen by the applicant, the applicant exercised all due diligence to prevent the occurrence of the event; or
 - (ii) in the case of a failure, the applicant exercised all due diligence to prevent the failure; and
- (d) in the case of a special event, the applicant has also—
 - (i) within 5 working days after the occurrence of the event, notified the Authority in writing of the occurrence of the event; and
 - (ii) from promptly after the occurrence of the event, exercised all due diligence to minimize the quantity of that type of pollutant being emitted in the emission year from the licensed premises as a result of the occurrence of the event.

(3) An application under subsection (1) in relation to an emission year may be made during the period commencing on 1 January and ending on 1 March in the year immediately following the emission year.

(4) The Authority shall as soon as reasonably practicable, and in any event within 10 working days, after receiving an application under subsection (1), notify the applicant in writing of his decisions under that subsection.

(5) For the purposes of subsection (2), “special event” (特殊事件) means any event specified in the relevant specified licence as a special event for the purposes of this section.

(Part IVB added 31 of 2008 s. 5)

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| Section: | 26L | Increase or reduction in quantity of allocated allowances further to their acquisition or transfer | 31 of 2008 | 18/07/2008 |
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(1) A specified licence holder may, in accordance with the terms and conditions of the specified licence, acquire from or transfer to the holder of another specified licence any quantity of allocated allowances, or any quantity of allocated allowances increased under this section or section 26J, for a type of specified pollutant as applicable in respect of an emission year.

(2) Where the holder of a specified licence (“transferee licence”) has, in accordance with the terms and conditions of the transferee licence, acquired any quantity of allocated allowances or any quantity of allocated allowances increased under this section or section 26J (as the case may be) for a type of specified pollutant as applicable to another specified licence (“transferor licence”) in respect of an emission year—

- (a) the quantity of the allocated allowances for that type of pollutant as applicable to the transferee licence in respect of the emission year is to be increased for the purposes of section 26I by the quantity of the allocated allowances so acquired; and
- (b) the quantity of the allocated allowances for that type of pollutant as applicable to the transferor licence in respect of the emission year is to be reduced for the purposes of section 26I by the quantity of the allocated allowances so acquired.

(3) Subsection (2) does not apply in respect of a quantity of allocated allowances acquired in respect of an emission year unless—

- (a) the acquisition has taken place during the period commencing on 1 January in the emission year and ending on 31 March in the year immediately following the emission year; and
- (b) the relevant specified licence holders have jointly notified the Authority in writing of the acquisition, and have accompanied the notification with such supporting documents or information as might have been required by the Authority, within 5 working days after the acquisition, and in any event not later than 31 March in the year immediately following the emission year.

(Part IVB added 31 of 2008 s. 5)

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| Section: | 26M | Increase or reduction in quantity of allocated allowances further to acquisition or transfer of emission credits under recognized emission trading scheme | 31 of 2008 | 18/07/2008 |
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(1) A specified licence holder may, in accordance with the terms and conditions of the specified licence, acquire from or transfer to another person any quantity of emission credits for a type of specified pollutant in respect

of an emission year.

(2) Subject to subsection (5), where a specified licence holder has, in accordance with the terms and conditions of the specified licence, acquired any quantity of emission credits for a type of specified pollutant in respect of an emission year, the quantity of the allocated allowances for that type of pollutant as applicable to the licence in respect of the emission year is to be increased for the purposes of section 26I by the quantity of the emission credits so acquired.

(3) Where a specified licence holder has, in accordance with the terms and conditions of the specified licence, transferred to another person any quantity of emission credits for a type of specified pollutant in respect of an emission year, the quantity of the allocated allowances for that type of pollutant as applicable to the licence in respect of the emission year is to be reduced for the purposes of section 26I by the quantity of the emission credits so transferred.

(4) Subsection (2) does not apply in respect of a quantity of emission credits acquired in respect of an emission year unless—

- (a) the Authority has, upon an application made in accordance with the terms and conditions of the applicant's specified licence on or before 30 June in the emission year, granted an approval in respect of that quantity (whether the approval has been granted in respect of any further quantity of emission credits) of emission credits for the purposes of subsection (2);
- (b) the applicant has notified the Authority in writing of the acquisition, and has accompanied the notification with such supporting documents or information as might have been required by the Authority, on or before 31 March in the year immediately following the emission year; and
- (c) the applicant has, in relation to that quantity of emission credits, complied with such terms and conditions as might have been imposed under subsection (7) on or before 31 March in the year immediately following the emission year.

(5) For the purposes of a specified licence, the total quantity of allocated allowances that may be increased under subsection (2) for a type of specified pollutant in respect of an emission year may not exceed the quantity obtained by multiplying the quantity of the allocated allowances for that type of pollutant as applicable to the licence in respect of the emission year by the percentage specified in Schedule 2C.

(6) The Authority shall as soon as reasonably practicable after receiving an application referred to in subsection (4)(a), consult the Advisory Council on the Environment for the purpose of making a decision in respect of the application.

(7) The Authority may grant an approval under subsection (4)(a) subject to such terms and conditions as he thinks fit.

(8) The Authority shall as soon as reasonably practicable, and in any event within 180 days, after receiving an application referred to in subsection (4)(a), notify the applicant in writing of his decisions under this section.

(9) A specified licence holder who has, in respect of an emission year, transferred to another person any quantity of emission credits as described in subsection (3) shall notify the Authority in writing of the transfer and accompany the notification with such supporting documents or information as may be required by the Authority, within 5 working days after the transfer, and in any event not later than 31 March in the year immediately following the emission year.

(10) For the purposes of this section—

“emission credit” (排放配額), in relation to a type of specified pollutant, means the entitlement to emit one tonne of that type of pollutant as may be acquired or transferred (as the case may be) under a recognized emission trading scheme; and, for the avoidance of doubt, each such entitlement is quantified as one emission credit;

“recognized emission trading scheme” (認可排放交易計劃) means—

- (a) the “Implementation Framework of the Emission Trading Pilot Scheme for Thermal Power Plants in the Pearl River Delta Region” entered into by the Authority and the Guangdong Environmental Protection Bureau on 30 January 2007; or
- (b) any other scheme of a nature similar to the scheme referred to in paragraph (a) as recognized by the Authority.

(Part IVB added 31 of 2008 s. 5)

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| Section: | 26N | Application of certain provisions of this Division to licence that has ceased to be in force | 31 of 2008 | 18/07/2008 |
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For the purposes of this Division, where a specified licence has ceased to be in force on or before 31 March in

the year immediately following the relevant emission year, sections 26J, 26K, 26L and 26M are to be construed as having application as if the licence had continued in force subject to its terms and conditions until the end of 31 March in the year immediately following the emission year.

(Part IVB added 31 of 2008 s. 5)

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| Part: | V | ENFORCEMENT | | 30/06/1997 |
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| Section: | 27 | Authority may obtain information | | 30/06/1997 |
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(1) The Authority may, by notice in writing to any person, require him to furnish to the Authority, within such time and in such form as is specified in the notice, any information specified in the notice which the Authority may reasonably require for the purpose of exercising and performing his functions, duties and powers under this Ordinance.

(2) A person who-

- (a) fails without reasonable excuse to comply with any of the requirements of a notice duly served on him under subsection (1); or
- (b) in compliance or purported compliance with such a notice, makes any statement which he knows to be incorrect in a material respect or recklessly makes any statement which is incorrect in a material respect or knowingly omits any material particular,

commits an offence and is liable to a fine of \$50000. (Amended 13 of 1993 s. 18)

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| Section: | 28 | Powers of entry and inspection, etc. | | 30/06/1997 |
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(1) For the purpose of-

- (a) determining the position of any apparatus or device or sampling point to be used for the measurement of any air pollutant emitted from any polluting process or passing through any chimney; (Amended 13 of 1993 s. 19)
- (b) determining the composition, concentration, quantity, quality or density of any air pollutant emitted from any polluting process or passing through any chimney; (Amended 13 of 1993 s. 19)
- (c) determining the composition of any fuel, or other material, or viscosity of any liquid fuel used in any polluting process; (Amended 13 of 1993 s. 19)
- (d) observing and recording any process or procedure used in or in connection with-
 - (i) the operation of any polluting process; or (Amended 13 of 1993 s. 19)
 - (ii) the conduct of any specified process;
- (da) taking samples of material suspected of being asbestos containing material; (Added 13 of 1993 s. 19)
- (db) observing the condition of any premises or ship suspected of containing or known to contain asbestos containing material; (Added 13 of 1993 s. 19)
- (e) ascertaining the source of any air pollutant;
- (ea) ascertaining whether any motor vehicle has been designed or constructed to operate in accordance with any requirement imposed under this Ordinance relating to the prohibition or control of the emission of air pollutants therefrom; (Added 2 of 1991 s. 6)
- (f) ascertaining whether there is or has been on or in connection with any premises, ship or motor vehicle any contravention of any of the requirements of this Ordinance; (Amended 2 of 1991 s. 6)
- (g) establishing any other matter in connection with paragraphs (a) to (f),

the Authority or an authorized officer may-

- (i) inspect any polluting process;
- (ia) inspect any motor vehicle; (Added 2 of 1991 s. 6)
- (ib) inspect any premises, place or facility in which fuel is stored, supplied, distributed, sold or offered for sale; (Added 2 of 1991 s. 6. Amended 19 of 1994 s. 9)
- (ic) inspect premises or a ship suspected of containing or known to contain asbestos containing material; (Added 13 of 1993 s. 19)
- (ii) take samples from, and make measurements of, any air pollutant emitted from any polluting process or passing through any chimney; (Amended 13 of 1993 s. 19)
- (iii) take samples of any fuel or other material used in any polluting process; (Amended 13 of 1993 s. 19)

- (iiia) take samples of any fuel or other substance used in any motor vehicle or stored by any person; (Added 2 of 1991 s. 6. Amended 19 of 1994 s. 9)
- (iiib) take samples of material suspected of being or known to contain asbestos containing material; (Added 13 of 1993 s. 19)
- (iv) observe and record any process or procedure referred to in paragraph (d);
- (iva) require the owner of premises or a ship to label chimneys and asbestos containing material with identifying marks; (Added 13 of 1993 s. 19)
- (ivb) require the owner of premises or a ship to provide sampling points with safe access to chimneys, containments and relevant plant for taking samples and measuring air pollutants; (Added 13 of 1993 s. 19)
- (ivc) require a person present in premises or a ship being entered to give details of his identity, name and address and produce evidence of his identity; (Added 13 of 1993 s. 19)
- (ivd) require a person present in premises or a ship being entered who appears to be at the time responsible for or in charge of the premises or ship to give information or render assistance that may be necessary to enable the Authority or authorized officer to carry out his functions under this section; (Added 13 of 1993 s. 19)
- (v) require the production of and inspect any drawings, records or documents relating to any polluting process or specified process or asbestos or asbestos containing material whether or not the same are required to be kept under this Ordinance;
- (va) require the production of and inspect any drawings, records or documents relating to any motor vehicle or any premises, place or facility in which fuel is stored, supplied, distributed, sold or offered for sale; (Added 2 of 1991 s. 6. Amended 19 of 1994 s. 9)
- (vi) make copies of any drawings, records or documents referred to in paragraph (v) or (va); (Amended 2 of 1991 s. 6)
- (vii) make such examination and inquiry as may be necessary to ascertain whether the requirements of this Ordinance are complied with, and seize, remove and detain anything which may appear to be evidence of an offence against this Ordinance.

(2) Subject to subsection (3), for the purposes of subsection (1), the Authority, or any authorized officer, may without warrant enter and search premises or a ship.

(3) No premises or a ship which is used solely for dwelling purposes shall be entered or searched under subsection (2) except by virtue of a warrant issued by a magistrate, where such magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Ordinance, has been, is being or is about to be committed in the premises or ship or that there is in the premises or ship anything likely to be or to contain evidence of such offence.

(4) An authorized officer who enters premises or a ship shall- (Amended 13 of 1993 s. 19)

- (a) if so required, produce evidence of his identity and of his authorization by the Authority under section 4(3); and
- (b) if a warrant has been issued under subsection (3), produce that warrant.

(5) An authorized officer performing or exercising the powers conferred on him under this section may obtain the assistance of other persons that he reasonably requires to perform or exercise any function, duty or power. (Added 13 of 1993 s. 19)

(Amended 13 of 1993 s. 19)

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| Section: | 29 | Offences in relation to section 28 | 30/06/1997 |
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Any person who-

- (a) wilfully resists, obstructs or delays any officer in the exercise of any power conferred on such officer by or under section 28;
- (b) fails without reasonable excuse to comply with any requirement duly made by an officer under section 28;
- (c) in compliance or purported compliance with any such requirement produces any drawing, record or document which he knows to be incorrect or inaccurate in a material respect or does not believe to be correct or accurate; or
- (d) wilfully or recklessly gives information which is incorrect in a material respect or withholds information as to any of the matters in respect of which information is required to be given under

section 28,
commits an offence and is liable to a fine of \$50000.

(Amended 13 of 1993 s. 20)

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| Section: | 30 | Power to require modification etc., of chimneys and relevant plant | | 30/06/1997 |
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(1) Where it appears to the Authority that a chimney, relevant plant or other machinery or equipment may evolve any air pollutant by reason of-

- (a) unsuitable design, defective construction or lack of maintenance;
- (b) excessive wear and tear;
- (c) the use of unsuitable fuel or other material; or
- (d) improper operation,

the Authority may serve a notice on the owner of the premises in which the chimney, relevant plant or other machinery or equipment is found-

- (i) requiring him, within a reasonable time specified in the notice, to modify, replace, clean or repair the chimney, relevant plant or other machinery or equipment specified in the notice or to take the other steps specified in the notice;
- (ii) requiring him, within a reasonable time specified in the notice, to install control equipment or a control system or additional control equipment or an additional control system specified in the notice;
- (iii) requiring him, after a reasonable time specified in the notice, to operate the chimney, relevant plant or other machinery or equipment in the manner specified in the notice;
- (iv) prohibiting him from using or permitting the use in the relevant plant or other machinery or equipment, after a reasonable time specified in the notice, the fuel, or other material, or mixture of fuels, or other materials specified in the notice. (Replaced 13 of 1993 s. 21)

(1A) The Authority may withdraw a notice given under subsection (1). (Added 13 of 1993 s. 21)

(2) Any owner who fails, without reasonable excuse, to comply with any of the requirements of a notice duly served upon him under subsection (1) commits an offence and is liable to a fine of \$100000 on conviction for a first offence and \$200000 and imprisonment for 6 months for a second or subsequent offence and in addition, if the offence is a continuing offence, to a fine of \$20000 for each day during which it is proved to the satisfaction of the court that the offence has continued. (Amended 13 of 1993 s. 21)

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| Section: | 30A | Contravention of terms and conditions of licence, etc. | 31 of 2008 | 18/07/2008 |
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Subject to section 30B, a licence holder who contravenes any term or condition of the licence, or an owner of any premises who is exempt under section 20 from the operation of section 13 and who contravenes any term or condition imposed by the Authority in relation to the exemption, commits an offence and is liable to a fine of \$100000 on conviction for a first offence and \$200000 and imprisonment for 6 months for a second or subsequent offence and in addition, if the offence is a continuing offence, to a fine of \$20000 for each day during which it is proved to the satisfaction of the court that the offence has continued.

(Added 23 of 1987 s. 12. Amended 13 of 1993 s. 22; 31 of 2008 s. 6)

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| Section: | 30B | Contravention of terms and conditions of specified licence for excessive emission or supply of incorrect information, etc. | 31 of 2008 | 18/07/2008 |
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(1) A person who contravenes any term or condition of a specified licence that requires him, as a specified licence holder, to ensure that the actual emission of a type of specified pollutant from the licensed premises in an emission year is not greater than the allowed emission of that type of pollutant as applicable to the licence in respect of the emission year commits an offence and is liable—

- (a) on a first conviction, to a fine of \$30000 in respect of each tonne of the relevant actual emission in excess of the relevant allowed emission, after taking into account the adjustments under section 26I(1) for the purpose of determining that there has been the contravention; and
- (b) on a second or subsequent conviction—
 - (i) to a fine of \$60000 in respect of each tonne of the relevant actual emission in excess of the

relevant allowed emission, after taking into account the adjustments under section 26I(1) for the purpose of determining that there has been the contravention; and

(ii) to imprisonment for 6 months.

(2) Where—

(a) any term or condition of a specified licence requires a person, as a specified licence holder, to make any statement, or give any particular or information, in relation to a type of specified pollutant; and

(b) the person, in purported compliance with the term or condition—

(i) makes any statement, or gives any particular or information, which he knows to be incorrect in a material respect;

(ii) recklessly makes any statement, or gives any particular or information, which is incorrect in a material respect; or

(iii) makes any statement, or gives any particular or information, from which he knows that any material particular has been omitted,

the person commits an offence and is liable to a fine at level 6.

(3) Where a person is liable for the payment of a fine imposed under subsection (1) or (2) in relation to a specified licence, for the purposes of a scheme of control agreement, the fine is not to be taken to be part of the operating cost incurred by the person in relation to the specified process to which the licence relates.

(4) For the purposes of subsection (3)—

“operating cost” (經營費用) means any cost directly or indirectly incurred in relation to—

(a) the generation, transmission, distribution or sale of electricity;

(b) energy efficiency or conservation; or

(c) reduction of air pollution;

“scheme of control agreement” (管制計劃協議), in relation to a person, means an agreement entered into by the Government with the person (whether or not with any other person) that, among other things, provides for the calculation of the amount of return allowed to the person by reference to matters including the operating cost incurred by the person in relation to the specified process to which the relevant specified licence relates.

(Added 31 of 2008 s. 7)

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| Part: | VI | APPEALS | 31 of 2008 | 18/07/2008 |
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| Section: | 31 | When appeal may be brought; and effect thereof | 31 of 2008 | 18/07/2008 |
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(1) A person may appeal to the Appeal Board if he is aggrieved by a decision, requirement or specification of a public officer under any of the following provisions-

(a) section 10(1) (requiring the abatement of air pollution); (Replaced 13 of 1993 s. 23)

(b) (Repealed 13 of 1993 s. 23)

(c) section 15(1) (refusing to grant a licence);

(d) section 15(4) (fixing terms and conditions of licence);

(e) section 16(4) (refusing to renew a licence);

(f) section 17(1)(a) (imposing new or amended terms or conditions for continuance of a licence);

(g) section 17(1)(b) (cancelling a licence);

(h) section 17(1)(c) (revoking, amending or adding to a notice or substituting a new notice);

(i) section 18(4) (refusing to vary a licence);

(j) section 18(7) (fixing terms and conditions for variation of a licence);

(ja) section 18A(5) (refusing to transfer a licence); (Added 23 of 1987 s. 13)

(jb) section 18A(8) (fixing terms and conditions on transfer of a licence); (Added 23 of 1987 s. 13)

(k) section 22(1)(a)(i) (imposing terms and conditions subject to which an exemption may continue in force);

(l) section 22(1)(a)(iii) or 22(1)(b) (cancelling an exemption); (m) section 22(1)(c) (amending or adding to a notice or substituting a new notice);

(m) section 22(1)(c) (amending or adding to a notice or substituting a new notice);

(n) section 23(4) (refusing to vary or cancel terms or conditions subject to which an exemption may continue in force);

- (na) section 26K(1) (refusing to increase a quantity of allocated allowances upon occurrence of a special event or failure to acquire emission credits); (Added 31 of 2008 s. 8)
- (nb) section 26M(4)(a) (refusing to grant an approval for the purposes of section 26M(2)); (Added 31 of 2008 s. 8)
- (nc) section 26M(7) (imposing terms and conditions upon granting an approval for the purposes of section 26M(2)); (Added 31 of 2008 s. 8)
- (o) section 27 (requiring information to be furnished);
- (p) section 30(1)(i) (requiring the modification, replacing, cleaning or repair of or other steps to be taken relating to, a chimney, relevant plant or other machinery or equipment); (Amended 13 of 1993 s. 23)
- (pa) section 30(1)(ii) (requiring the installation of control equipment or systems); (Added 13 of 1993 s. 23)
- (pb) section 30(1)(iii) (requiring the operation of a chimney, relevant plant or other machinery or equipment in a specified manner); (Added 13 of 1993 s. 23)
- (q) section 30(1)(iv) (prohibiting the use of specified fuels or other materials); (Amended 13 of 1993 s. 23)
- (r) section 40 (refusing to withhold information from public notification or other public access); (Amended 23 of 1987 s. 13)
- (s) any regulations made under section 43;
- (t) section 58 (refusal to enter or deferral of entry of an applicant's name in the relevant register); (Added 13 of 1993 s. 23)
- (u) section 67 (ordering the suspension or removal of registered asbestos persons from the relevant register); (Added 13 of 1993 s. 23)
- (v) section 72 (requiring the owner to comply with conditions set by the Authority in an asbestos management plan or an asbestos abatement plan); (Added 13 of 1993 s. 23)
- (w) section 79 (requiring the owner to comply with requirements set by the Authority in an asbestos abatement notice). (Added 13 of 1993 s. 23)

(2) An appeal under subsection (1) shall be made by lodging notice of appeal in the prescribed manner and form within 21 days after the person aggrieved has received notice of the decision, requirement or specification.

(3) Where the decision, requirement or specification appealed from was made under a provision mentioned in paragraphs (a) or (e) to (j) or (jb) to (m) or (o) to (q) or (v) of subsection (1) the notice thereof shall be suspended from the day on which notice of appeal is duly given to the Authority and until the appeal is disposed of, withdrawn or abandoned, unless- (Amended 23 of 1987 s. 13; 13 of 1993 s. 23)

- (a) the decision, requirement or specification is considered by the Authority to be necessary because the continuation of the activities, whether licensed or otherwise, to which the notice relates would be, or be likely to be, prejudicial to health; and
- (b) the notice contains a declaration to that effect.

(4) No appeal shall lie under this section where the requirement of the Authority is made with the prior approval of the Governor in Council under section 17(2) or 22(2).

(5) The Appeal Board shall refuse to determine an appeal under this section unless-

- (a) a decision, requirement or specification-
 - (i) is not justified under this Ordinance or a technical memorandum issued under this Ordinance; or
 - (ii) has some material error in content or material defect in administrative procedure;
- (b) the opinion of the Authority or an authorized officer that air pollution which is caused or contributed to by an emission set out in section 10(2)(h) is unreasonable;
- (c) the opinion of the Authority or the authorized officer under section 10(2)(b) or (c) that the air pollution is prejudicial to health is unreasonable; or
- (d) a disciplinary order or order for costs issued under section 67 against a registered asbestos consultant, supervisor, contractor or laboratory is unjustifiable. (Added 13 of 1993 s. 23)

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| Section: | 32 | Constitution of Appeal Board | 31 of 2008 | 18/07/2008 |
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(1) Every appeal under section 31 shall be determined by an Appeal Board constituted under this Part.

(2) The Governor shall appoint as Chairman of Appeal Boards a person who is qualified in law and who is not a public officer. (Amended 31 of 2008 s. 9)

(3) Subject to section 34(3), the Chairman shall be appointed for a term of 3 years but may be re-appointed. (Amended 13 of 1993 s. 24)

(4) The Governor shall also appoint a panel of persons, not being public officers, whom he considers to be suitable for appointment as members of an Appeal Board pursuant to section 33(1). (Amended 31 of 2008 s. 9)

(4A) A member of the panel shall be appointed for a term of 3 years but may be reappointed. (Added 13 of 1993 s. 24)

(4B) A member of the panel may resign by giving notice in writing to the Governor. (Added 13 of 1993 s. 24)

(5) An appointment under subsection (2) and every appointment to the panel under subsection (4) shall be notified in the Gazette.

(6) In subsection (2) and in section 34(1) "qualified in law" (具法律專業資格) means qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap 336).

(7) In subsection (2), "public officer" (公職人員) does not include a judge or District Judge. (Added 31 of 2008 s. 9)

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| Section: | 33 | Exercise of Appeal Board's jurisdiction | 31 of 2008 | 18/07/2008 |
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(1) The jurisdiction of an Appeal Board on any appeal or group of appeals shall be exercised by the Chairman and such number of persons from the panel referred to in section 32(4) as the Chairman may appoint for that appeal or group of appeals.

(2) On any appeal an Appeal Board may confirm, reverse or vary the decision, requirement or specification appealed from.

(3) Every question before an Appeal Board shall be determined by the opinion of the majority of the Chairman and the members hearing the appeal except a question of law which shall be determined by the Chairman; in the event of an equality of votes the Chairman shall have a casting vote.

(4) (Repealed 31 of 2008 s. 10)

(5) An Appeal Board may-

(a) receive evidence on oath;

(b) admit or take into account any statement, document, information or matter whether or not it would be admissible as evidence in a court of law; and

(c) by notice in writing summon any person to appear before it to produce any document or to give evidence that may reasonably be required.

(6) In hearing an appeal, the Appeal Board may make an award for the costs involved in the appeal that is just and equitable in all the circumstances of the case, and for an appeal under section 31(1)(a) or (w) where the appellant was required to cease operations in order to comply with an abatement notice pending the hearing of the appeal, for compensation that is just and equitable in all the circumstances of the case, including the conduct and comparative blameworthiness of the appellant and his servants and agents, and of the public officers and any other persons concerned. (Replaced 13 of 1993 s. 25)

(7) The Appeal Board shall have the powers which are vested in the Court of First Instance in the exercise of its powers under subsection (5)(a) or (c). (Amended 25 of 1998 s. 2)

(8) The Chairman may determine any form or matter of practice or procedure in so far as no provision is made therefor by or under this Ordinance.

(9) If a person-

(a) on being summoned as a witness before the Appeal Board fails to attend;

(b) attending as a witness refuses to be sworn or to produce a document or to answer a question as the Appeal Board may legally require of him; or

(c) does any other thing which would, if the Appeal Board had been a court of law with power to commit for contempt, have been contempt of that court,

the Chairman may certify under his hand the act of the person as contempt and the Court of First Instance may inquire into the alleged contempt. (Added 13 of 1993 s. 25. Amended 25 of 1998 s. 2)

(10) After hearing any witnesses who may give evidence against or on behalf of the person charged with contempt, the Court of First Instance may punish the person as if he had been guilty of contempt of the Court of First Instance. (Added 13 of 1993 s. 25. Amended 25 of 1998 s. 2)

(11) A witness before the Appeal Board is entitled to the same immunities and privileges as if he were a witness in civil proceedings before the Court of First Instance. (Added 13 of 1993 s. 25. Amended 25 of 1998 s. 2)

(12) A sum awarded as costs or compensation on an appeal is enforceable as a civil debt and costs payable by the Authority on an appeal are a charge on the general revenue. (Added 13 of 1993 s. 25)

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| Section: | 34 | Supplementary provisions as to Appeal Board | 31 of 2008 | 18/07/2008 |
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(1) If the Chairman is precluded by illness, absence from Hong Kong or any other cause from exercising his functions the Governor may appoint any other person who is qualified in law and who is not a public officer to act as Chairman and as such to exercise and perform all of the functions, duties and powers of the Chairman during the period of his appointment. (Amended 31 of 2008 s. 11)

(2) If a person appointed by the Chairman under section 33(1) to hear an appeal or group of appeals is precluded by illness, absence from Hong Kong, or any other cause from exercising his functions, the Chairman may appoint any other person from the panel provided for in section 32(4) to act in his place.

(3) The Chairman may at any time resign his office by notice in writing to the Governor.

(4) The hearing of an appeal may be continued notwithstanding any change in the membership of an Appeal Board as if the change had not occurred:

Provided that no person shall be appointed as a member of an Appeal Board before which the hearing of an appeal has been commenced without the consent of the parties.

(5) In subsection (1), “public officer” (公職人員) does not include a judge or District Judge. (Added 31 of 2008 s. 11)

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| Section: | 35 | (Repealed 31 of 2008 s. 12) | 31 of 2008 | 18/07/2008 |
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| Section: | 36 | Case may be stated | | 30/06/1997 |
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(1) The Chairman may of his own motion, before an appeal is determined, refer any question of law to the Court of Appeal by way of case stated.

(2) On the hearing of the case the Court of Appeal may amend the case or order it to be sent back to the Appeal Board for amendment.

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| Part: | VII | MISCELLANEOUS | | 30/06/1997 |
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| Section: | 37 | Codes of Practice | | 30/06/1997 |
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(1) For the purpose of encouraging reduction and the better control of air pollution, the Secretary may, after consultation with the Advisory Council on the Environment, issue general advice in the form of Codes of Practice or give particular advice in writing to a person- (Amended L.N. 57 of 1994)

- (a) operating or maintaining a chimney, relevant plant, machinery or equipment;
- (b) conducting a specified process;
- (c) operating, maintaining, repairing, modifying or adapting a motor vehicle;
- (d) engaging in any asbestos related activities;
- (e) engaging in any other polluting process,

as to any matter concerning-

- (i) the construction, operation and maintenance of a chimney, relevant plant, machinery, equipment or containment;
- (ii) the conduct of a process or activity or the carrying out of any work;
- (iii) the storage, transportation, distribution, handling or use of materials;
- (iv) the preparation of asbestos investigation reports, asbestos management plans and asbestos abatement plans; and
- (v) the maintenance and manner of using motor vehicles. (Replaced 13 of 1993 s. 26)

(1A)(Repealed 13 of 1993 s. 26)

(2) Failure on the part of any person to observe the provisions of any such Code or to, accept any such advice shall not of itself render that person liable to criminal proceedings of any kind, but any such failure may, in any proceedings whether civil or criminal and including proceedings for an offence under this Ordinance, be relied upon by any party to the proceedings as tending to establish or to negative any liability which is in question in those

proceedings.

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| Section: | 37A | Technical memorandum | | 30/06/1997 |
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If the Secretary issues a technical memorandum under this Ordinance, he shall make available a copy of the technical memorandum for inspection by the public free of charge at such offices of the Government that the Secretary directs during business hours.

(Added 13 of 1993 s. 27)

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| Section: | 37B | Placing of technical memorandum before Legislative Council | 8 of 2002 | 03/05/2002 |
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(1) The Secretary shall publish a technical memorandum issued under this Ordinance in the Gazette and shall cause it to be laid on the table of the Legislative Council at the next sitting after publication.

(2) Where the Secretary has caused a technical memorandum to be laid on the table of the Legislative Council, the Legislative Council may, by resolution passed at a sitting of the Legislative Council held before the expiration of a period of 28 days after the sitting at which it was so laid, provide that the technical memorandum be amended in any manner consistent with the power to issue the technical memorandum.

(3) If the period for passing a resolution would, but for this subsection, expire-

- (a) after the end of a session of the Legislative Council or after a dissolution of the Legislative Council; but
- (b) on or before the day of the second sitting of the Legislative Council in the next following session of the Legislative Council,

the period shall be deemed to extend to and expire on the day after that second sitting.

* (4) Before the expiry of the period referred to in subsection (2) or that period as extended by virtue of subsection (3), the Legislative Council may by resolution in relation to a technical memorandum specified therein-

- (a) in the case of the period referred to in subsection (2), extend that period to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of its expiry;
- (b) in the case where the period referred to in subsection (2) has been extended by virtue of subsection (3), extend that period as so extended to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of the second sitting in that next following session. (Replaced 8 of 2002 s. 9)

(5) A resolution passed by the Legislative Council under this section shall be published in the Gazette not later than 14 days after the resolution is passed or within such further period as the Secretary may allow in any particular case.

(6) A technical memorandum published under subsection (1) is not subsidiary legislation.

(7) In this section, "sitting" (立法局會議), when used to calculate time, means the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included on the order paper. (Added 89 of 1993 s. 34)

(Added 13 of 1993 s. 27)

Note:

* **For the transitional provision relating to this subsection as amended by section 9 of the Extension of Vetting Period (Legislative Council) Ordinance 2002 (8 of 2002), see section 10 of that Ordinance.**

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| Section: | 37C | Commencement of technical memorandum | | 30/06/1997 |
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A technical memorandum shall commence to have effect-

- (a) if the Legislative Council does not pass a resolution amending the technical memorandum, upon the expiry of the period or, the period as extended, as the case may be, for passing an amending resolution; and
- (b) if the Legislative Council passes a resolution amending the technical memorandum, at the beginning of the day of the publication in the Gazette of the resolution.

(Added 13 of 1993 s. 27)

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| Section: | 37D | Amendment of Schedules | 31 of 2008 | 18/07/2008 |
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- (1) The Secretary may, by notice published in the Gazette, amend Schedules 2A, 2B and 2C.
- (2) Any fee prescribed in Schedule 2B—
 - (a) may be fixed at levels that provide for the recovery of the expenditure incurred or likely to be incurred in relation generally to the administration, regulation and control of the emission of specified pollutants that may take place or is likely to take place as a result of increases in the quantity of allocated allowances under section 26K; and
 - (b) shall not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred in the provision of any particular service, facility or matter.

(Added 31 of 2008 s. 13)

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| Section: | 38 | Authority may hold a hearing | | 30/06/1997 |
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(1) Where on an application under section 14, 16, 18 or 18A, any objection to the grant of the application is duly made to the Authority, he may hear the applicant and any objector if he considers it expedient for the purpose of obtaining information relevant to any question to be decided. (Amended 23 of 1987 s. 14)

(2) The procedure to be followed at, or for the purpose of convening, any hearing under subsection (1) shall be determined by the Authority.

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| Section: | 39 | Authority to keep a register | | 30/06/1997 |
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(1) The Authority shall cause to be kept, in such form as the Secretary may determine, a register containing details of-

- (a) applications required to be entered under section 14(3)(a);
- (b) the particulars and information contained in notices given to the Authority pursuant to section 19(1);
- (c) all exemptions under section 20;
- (d) all licences;
- (e) such other matters as may be required by regulations made under section 43 to be recorded in the register.

(2) Upon application in writing to the Authority, the register shall be open for inspection by the public during normal office hours at such places as the Secretary thinks fit.

(3) A person shall be entitled, upon payment of the prescribed fee, to a copy of any entry in the register certified by or on behalf of the Authority.

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| Section: | 40 | Protection of private information from publicity | | 30/06/1997 |
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(1) Any person may apply to the Secretary to withhold from public notification or other public access under this Ordinance any information concerning a specified process, whether appearing in a licence or an application therefor or in any notice, return or other document.

(1A) Any person may apply to the Secretary to withhold from public notification or other public access under this Ordinance any information relating to the design, construction, modification or adaptation of any motor vehicle, fuel pump, equipment used for the storage of fuel or other similar apparatus or any petrol delivery vehicle, whether appearing in a licence or an application or in any notice, return, drawing, record or other document, if the release of that information would otherwise reveal to a competitor of that person vehicle designs, manufacturing techniques or strategy or other details of a confidential nature known only to the applicant, his employees or his professional advisers or consultants. (Added 2 of 1991 s. 8. Amended 19 of 1994 s. 10)

(1B) Any person may apply to the Secretary to withhold from public notification or other public access under this Ordinance any information concerning measures taken to prevent air pollution caused or contributed to by emissions from motor vehicles, whether appearing in a licence or an application or in any notice, return, drawing, record or other document, if the release of that information would otherwise reveal to a competitor of that person vehicle designs, manufacturing techniques or strategy or other details of a confidential nature known only to the applicant, his employees or his professional advisers or consultants. (Added 2 of 1991 s. 8)

(2) An application under subsection (1) (1A) or (1B) shall be granted by the Secretary to the extent that he is

satisfied that public notification or other public access to the information would- (Amended 2 of 1991 s. 8)

- (a) be contrary to the applicant's private interest to an unreasonable degree; or
 - (b) be contrary to the public interest.
- (3) Where an application under this section is refused by the Secretary, whether in whole or in part-
- (a) notice of the refusal and of the reasons therefor shall be given in writing by the Secretary to the applicant;
 - (b) the information shall not be publicly notified or otherwise made accessible to the public until the time for appeal under section 31(2) has expired, or, if notice of appeal is lodged before that time, until determination or withdrawal of the appeal.

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| Section: | 41 | Offence to disclose secret information obtained officially | | 30/06/1997 |
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(1) A person commits an offence who, except in the circumstances provided for in subsection (2), discloses or gives to another person any information or document concerning a trade, business or manufactory secret which has come to his knowledge or into his possession in the course of the exercise or performance of his powers, functions or duties under this Ordinance.

(2) A person does not commit an offence under subsection (1) if he discloses or gives any information or document to another person-

- (a) for the purpose of the exercise or performance of his functions, duties or powers under this Ordinance or proceedings connected therewith;
- (b) pursuant to an order of a court under subsection (3);
- (c) with the consent in writing of all such persons as appear to him, after reasonable inquiry, to be interested in the confidentiality of the information or document.

(3) Where in any proceedings a court considers that the justice of the case so requires, the court may order the disclosure of any information or the giving of any document referred to in subsection (1).

(4) Any person who commits an offence under subsection (1) is liable to a fine of \$10000 and to imprisonment for 6 months.

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| Section: | 42 | Protection of Government and public officers | 31 of 2008 | 18/07/2008 |
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(1) No liability shall rest on the Government or upon any public officer by reason of the fact that any licence is granted, renewed, varied, transferred or cancelled, or that any exemption is granted, continued or cancelled, under this Ordinance. (Amended 31 of 2008 s. 14)

(2) A public officer shall not be personally liable in respect of any act or omission of his if it was done or made by him in the honest belief that it was required or authorized in the exercise of any function, duty or power of his under this Ordinance.

(3) The protection conferred on public officers by subsection (2) in respect of any act or omission shall not in any way affect any liability of the Government in tort for that act or omission.

(Amended 29 of 1998 s. 64)

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| Section: | 43 | Regulations | | 30/06/1997 |
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(1) For the purposes of this Ordinance, the Secretary may, after consultation with the Advisory Council on the Environment, by regulation provide for- (Amended L.N. 165 of 1984; 13 of 1993 s. 28; L.N. 57 of 1994)

- (a) the designation of noxious or offensive emissions;
- (b) the abatement, prohibition and control of the emission into the atmosphere of air pollutants;
- (c) methods to be used for the measurement of the composition, concentration, quantity, quality or density of any air pollutant emitted from any polluting process or passing through any chimney;
- (d) the provision of any apparatus or device for indicating the composition, concentration, quantity, quality or density of any air pollutant emitted from any polluting process or passing through any chimney;
- (e) the modification or replacement of or prohibition of a polluting process, or class of chimney, relevant plant or regulated activity, either generally or in any particular case;
- (f) the prohibition of the installation of any chimney, relevant plant or an activity that may evolve an air pollutant without the approval of the Authority;

- (g) the court to make orders prohibiting the continuation of an activity that may evolve an air pollutant or the use of a chimney or relevant plant installed, altered, modified or operated in contravention of this Ordinance or requiring the chimney or relevant plant to be dismantled; (Replaced 13 of 1993 s. 28)
- (h) the adoption of precautions against the emission of air pollutants from any polluting process, or class of chimney, relevant plant or regulated activity;
- (i) the employment of competent persons to be in charge of a polluting process, or class of chimney, relevant plant or regulated activity;
- (j) the prohibition or restriction of the burning in or at any place whatsoever of any kind of material that may evolve air pollutants;
- (k) the prohibition or control of any process or procedure used in or in connection with-
 - (i) a polluting process, or class of chimney, relevant plant or regulated activity; or (Replaced 13 of 1993 s. 28)
 - (ii) the conduct of any specified process, or any class thereof;
- (l) in relation to any specified process, or any class thereof, the installation and use or operation of any specified type of equipment;
- (m) any matters required to implement the provisions of Part IV relating to licences or exemptions;
- (ma) the time when an annual charge prescribed for the purposes of section 15A or 26A is to be paid, the recovery of such charge (if not paid) as a civil debt, the waiver or refund of such charge and for other matters relating to such charge; (Added 23 of 1987 s. 15)
- (n) the particulars and information to be contained in a register;
- (o) the imposition of requirements as to the composition, concentration, quantity, quality, viscosity or density and the use of any kind of fuel or any kind of other material that may evolve air pollutants; (Replaced 13 of 1993 s. 28)
- (oa) the prohibition, restriction or control of the production, treatment, distribution, import, storage, sale or use of any fuel, or any kind of other material that may evolve air pollutants and which is for use in Hong Kong; (Added 13 of 1993 s. 28. Amended 19 of 1994 s. 11)
- (p) the specification of the kinds of fuel, or any kind of other material that may evolve air pollutants (including fuel or other material used in the propulsion of any vessel, motor vehicle, railway locomotive or aircraft), and the kinds of relevant plant (including any furnace or engine used in the propulsion of any vessel, motor vehicle, railway locomotive or aircraft) to which the regulations are to apply;
- (q) the making of orders prohibiting the use of any particular fuel, or any kind of other material that may evolve air pollutants, or class or mixture of fuels, or such other materials, in any relevant plant or an activity that may evolve air pollution;
- (r) the application of standards (including vehicle design standards), specifications, descriptions, methods, procedures, requirements or tests laid down in documents (whether or not published or produced in Hong Kong) not forming part of the regulations and relating to the prevention or reduction of the emission of air pollutants including the application of such standards, specifications, descriptions, methods, procedures, requirements or tests in relation to the prohibition or control of the emission of air pollutants from motor vehicles; (Replaced 2 of 1991 s. 9)
- (ra) the inspection, examination, measurement or testing of motor vehicles and motor vehicle engines in relation to the prohibition or control of the emission of air pollutants therefrom and the fuels used or intended to be used therein, and the methods, equipment and procedures to be used or followed for such inspection, examination, measurement or testing; (Added 2 of 1991 s. 9)
- (rb) the fitting or installation of any apparatus or device to motor vehicles to prevent or reduce the emission of air pollutants therefrom; (Added 2 of 1991 s. 9)
- (rc) the prohibition or control of any material, lubricants or liquids that may evolve air pollutants if added to any fuel; (Added 2 of 1991 s. 9)
- (rd) the prohibition or control of the removal, replacement, modification, adaptation or alteration of any apparatus or device fitted to or installed in any motor vehicle or motor vehicle engine and so fitted or installed to prevent or reduce the emission of air pollutants therefrom; (Added 2 of 1991 s. 9)
- (re) the prohibition or control of the use of any motor vehicle modified, adapted, altered, maintained or operated in contravention of any requirement imposed under this Ordinance; (Added 2 of 1991 s. 9)
- (rf) the prohibition or control of the removal, replacement, modification, adaptation or alteration of any motor vehicle or motor vehicle engine that has the effect or intended effect of increasing the emission

- of air pollutants therefrom; (Added 2 of 1991 s. 9)
- (rg) the imposition of requirements as to the design, construction, maintenance, adjustment, repair or operation of any motor vehicle or motor vehicle engine in order to prevent or reduce the emission of air pollutants therefrom; (Added 2 of 1991 s. 9)
 - (rh) the prohibition or control of the modification, adaptation or alteration of any fuel pump or other equipment and fittings used for or in connection with the dispensing of fuel, and the prohibition or control of the removal, alteration or defacement of any information required to be displayed in respect of such fuel pump or other equipment and fittings; (Added 2 of 1991 s. 9. Amended 19 of 1994 s. 11)
 - (ri) the prohibition or control of the use of any fuel pump or other equipment and fittings used for or in connection with the dispensing of fuel modified, adapted, altered or operated in contravention of this Ordinance; (Added 2 of 1991 s. 9. Amended 19 of 1994 s. 11)
 - (s) the keeping of records and statistics relating to the emission of air pollutants from any chimney, relevant plant, an activity that may evolve air pollution, or the composition, concentration, quantity, quality or density of fuel, or any kind of other material that may evolve air pollutants, used in any relevant plant, an activity that may evolve air pollution, or any class of relevant plant or regulated activity;
 - (sa) the imposition of requirements on the handling, transportation or storage of a substance or thing which may evolve an air pollutant; (Added 13 of 1993 s. 28)
 - (sb) the forfeiture of a substance or thing which may evolve an air pollutant and which is not handled, transported or stored in accordance with this Ordinance; (Added 13 of 1993 s. 28)
 - (t) the manner of determining the amount of compensation payable under sections 24 and 25, the factors to be taken into account or disregarded and the principles to be applied in determining that amount;
 - (u) the information to be included in forms to be used and the procedure to be followed for the purposes of appeals under Part VI;
 - (v) authorizing the Authority to confer exemptions from any provisions of the regulations;
 - (w) (Repealed 13 of 1993 s. 28)
 - (x) the application of section 31(3) in the case of any appeal from a decision, requirement or specification of a public officer under any regulations made under this Ordinance;
 - (xa) the qualifications, conditions, procedures, information to be included in forms and fees payable for the registration of a person, company or laboratory for the control of asbestos; (Added 13 of 1993 s. 28)
 - (xb) the duties and liabilities of a person, company or laboratory registered under provisions relating to the control of air pollution from asbestos; (Added 13 of 1993 s. 28)
 - (xc) the practices, standards, procedures and guide-lines to follow for a person, company or laboratory registered under provisions relating to the control of air pollution from asbestos; (Added 13 of 1993 s. 28)
 - (xd) the labelling and manner of labelling of a substance or object known to contain asbestos; (Added 13 of 1993 s. 28)
 - (xe) the investigation for asbestos in premises or a ship in Hong Kong before, or during, repair, maintenance or demolition work is carried out, the preparation of an asbestos investigation report, the preparation and implementation of an asbestos management plan and the implementation of an asbestos abatement work at specified places by registered asbestos consultants, supervisors, contractors and laboratories, with conditions that may be considered necessary; (Added 13 of 1993 s. 28)
 - (xf) the registration of premises or a dock as a specified place for the purpose of a regulation made under paragraph (xe) subject to conditions that the Secretary may consider reasonably necessary; (Added 13 of 1993 s. 28)
 - (xg) the application of Part IX (which deals with asbestos control work) to the extent that the Secretary considers necessary to ships and docks used for the repair and breaking of ships; (Added 13 of 1993 s. 28)
 - (y) unless otherwise provided prescribing anything which under this Ordinance is to be or may be prescribed;
 - (z) the better carrying out generally of the provisions and purposes of this Ordinance.

(2) Regulations made under this section may be of general application or limited to any particular air control zone or other area or district or to any polluting process or specified process, or any class or kind thereof or to any particular motor vehicle, or any type, class or kind thereof, or to any particular motor vehicle engine, or any type, class or kind thereof. (Amended 2 of 1991 s. 9)

(3) Without prejudice to the generality of subsection (1), where fuel, or other material, is subject to the requirements as to composition, concentration, quantity, quality, viscosity or density imposed by regulations under this section, the regulations may, in order that persons to whom the fuel, or other material, is supplied are afforded information as to its composition, concentration, quantity, quality, viscosity or density, impose requirements for securing that the information is displayed at such places and in such manner as may be prescribed.

(4) Regulations made under this section may provide that a contravention of specified provisions thereof or of specified conditions of a licence shall be an offence and may provide penalties therefor not exceeding a fine of \$200000 and imprisonment for 6 months, and in addition, if the offence is a continuing offence, to a fine not exceeding-

- (a) \$1000 in respect of every one quarter of an hour; or
- (b) \$50000 in respect of each day,

during the whole or any part of which the offence continues, as the circumstances may require. (Amended 23 of 1987 s. 15)

(Amended 13 of 1993 s. 28)

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| Section: | 44 | Application of Ordinance to Crown | L.N. 362 of 1997 | 01/07/1997 |
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(1) Subject to this section, this Ordinance shall bind the Crown.

(2) Section 10, 12 or 13 shall not have effect to permit proceedings to be taken against, or to impose any criminal liability on, the Crown or on any person who causes or permits to be emitted any air pollutant or conducts any specified process which he is required to emit or conduct in the course of carrying out his duties in the service of the Crown.

(3) If it appears to the Authority that any emission of an air pollutant or conduct of a specified process is being, or has been, emitted or conducted in contravention of section 10, 12 or 13, by any person in the course of carrying out his duties in the service of the Crown, the Authority shall, if the contravention is not forthwith terminated to his satisfaction, report the matter to the Chief Secretary for Administration. (Amended L.N. 362 of 1997)

(4) On receipt of a report under subsection (3) the Chief Secretary for Administration shall enquire into the circumstances and, if his enquiry shows that a contravention of section 10, 12 or 13 is continuing or likely to recur, he shall ensure that the best practicable steps are taken to terminate the contravention or avoid the recurrence. (Amended L.N. 362 of 1997)

(5) Any notice or application under this Ordinance concerning the emission of an air pollutant or the conduct of a specified process which is to be, or may be, given or made by or on behalf of the Crown may be given or made by any public officer on behalf of the Crown.

(6) Any notice under this Ordinance concerning the emission of an air pollutant or the conduct of a specified process which is to be, or may be, given by the Authority to the Crown shall be given to the principal officer of the Government Department which appears to the Authority to be responsible for the emission or conduct or, in the event of any question arising as to which Department is responsible, to such public officer as the Chief Secretary for Administration shall determine. (Amended L.N. 362 of 1997)

(7) No fee or charge prescribed for the purposes of this Ordinance shall be payable by the Crown.

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| Section: | 45 | Advisory Council on the Environment | L.N. 362 of 1997 | 01/07/1997 |
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If any question arises as to who are the body of persons for the time being constituting the Advisory Council on the Environment mentioned in sections 6, 7, 37 and 43 the matter shall be referred to the Chief Secretary for Administration, who shall determine the question by certificate under his hand.

(Amended L.N. 165 of 1984; L.N. 57 of 1994; L.N. 362 of 1997)

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| Section: | 46 | Limit of time for laying informations, etc. | | 30/06/1997 |
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(1) A complaint or information in respect of an offence under this Ordinance shall be made or laid, as the case may be, within- (Amended 13 of 1993 s. 29)

- (a) 6 months from the time when the matter of such complaint or information respectively first came to the knowledge of the Authority or an authorized officer; or
- (b) 1 year from the time of the commission of the offence,

whichever is the earlier.

(2) Subsection (1) does not apply to the making of a complaint or laying of an information for an offence which is a continuing offence. (Added 13 of 1993 s. 29)

(3) Where an offence is of a continuing nature a complaint or information in respect of the offence shall be made or laid, as the case may be, within 6 months after the continuance of the offence first coming to the notice of the Authority or an authorized officer. (Added 13 of 1993 s. 29)

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| Section: | 47 | Prosecution of offences | L.N. 362 of 1997 | 01/07/1997 |
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(1) Subject to this section, prosecutions for offences against this Ordinance may be brought in the name of the Authority, and may be commenced and conducted by any public officer appointed under section 13 of the Magistrates Ordinance (Cap 227).

(2) Nothing in this section shall be deemed to derogate from the powers of the Secretary for Justice in relation to the prosecution of offences. (Amended L.N. 362 of 1997)

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| Section: | 47A | Directors of body corporate liable in certain circumstances | | 30/06/1997 |
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(1) Where a person convicted of an offence under this Ordinance is a body corporate and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect or omission on the part of, a director, manager, secretary or other person concerned in the management of the body corporate, the director, manager, secretary or other person also commits the offence.

(2) Where a person convicted of an offence under this Ordinance is a partner in a partnership and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect or omission on the part of, any other partner or any person concerned in the management of the partnership, the partner or the person concerned in the management also commits the offence.

(Added 13 of 1993 s. 30)

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| Section: | 48 | Defences in proceedings relating to emission of air pollutants | | 30/06/1997 |
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In any proceedings for an offence under this Ordinance relating to the emission of an air pollutant it shall be a defence to prove the contravention complained of was-

- (a) solely due to the lighting up of a relevant plant which was cold and that the best practicable means had been taken to prevent or minimise the emission of the air pollutant; or
- (b) solely due to some failure of a chimney or relevant plant or of an apparatus used in connection with a chimney or relevant plant and that-
 - (i) the failure could not have reasonably been foreseen, or if foreseen, could not reasonably have been provided against;
 - (ii) the contravention could not reasonably have been prevented by action taken after the failure occurred; and
 - (iii) as soon as was reasonably practicable after the occurrence of the failure the Authority was informed thereof in writing.

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| Section: | 49 | Provisions of Ordinance to be in addition to any other Ordinance | | 30/06/1997 |
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The provisions of this Ordinance shall be in addition to and not in lieu of the provisions of any other Ordinance.

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| Section: | 50 | Service of notices | | 30/06/1997 |
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The Authority may serve a notice to be served on a person under this Ordinance-

- (a) by serving a copy personally or by registered post addressed to the last known place of business or residence of the person to be served; or
- (b) where the notice is to be served on the owner of any premises or a ship, by fixing a copy on a conspicuous part of the premises or ship.

(Added 13 of 1993 s. 32)

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| Part: | VIII | CONTROL OF ENVIRONMENTAL ASBESTOS | | 30/06/1997 |
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(Part VIII added 13 of 1993 s. 32)

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| Section: | 51 | Registers of asbestos consultants, etc. | | 30/06/1997 |
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- (1) The Authority shall keep registers of-
- (a) asbestos consultants for natural persons who are qualified to perform the duties and functions of a registered asbestos consultant;
 - (b) asbestos contractors for natural persons, companies and other bodies corporate which are qualified to perform the duties and functions of a registered asbestos contractor;
 - (c) asbestos supervisors for natural persons who are qualified to perform the duties and functions of a registered asbestos supervisor;
 - (d) asbestos laboratories for all laboratories which are qualified to perform the duties and functions of a registered asbestos laboratory together with details of the natural persons, companies and other bodies corporate that have an interest in a registered asbestos laboratory.
- (2) The Authority shall maintain a copy of the registers for inspection by the public free of charge during business hours.

(Part VIII added 13 of 1993 s. 32)

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| Section: | 52 | Appointment of the Administration Committee | | 30/06/1997 |
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- (1) The Authority shall appoint an Administration Committee to be known as the Asbestos Administration Committee.
- (2) A member of the Administration Committee-
- (a) shall be appointed for 2 years or a lesser period that may be specified in the terms of his appointment;
 - (b) may resign by giving notice in writing to the Authority; and
 - (c) may be reappointed.
- (3) Where a member of the Administration Committee is precluded by temporary absence or incapacity from carrying out his functions as a member, the Authority may appoint another person, with similar qualifications as set out in section 54 as the precluded member, to hold office in the place of the member during the period of absence or incapacity.

(Part VIII added 13 of 1993 s. 32)

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| Section: | 53 | Functions of the Administration Committee | | 30/06/1997 |
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The Administration Committee shall-

- (a) assist the Authority in processing applications for entry in the registers as set out in this Part;
- (b) hear complaints of a disciplinary nature against persons whose names are on any of the registers and make recommendations that it sees fit in accordance with this Part; and
- (c) carry out other functions and duties of the Authority relating to asbestos, its use and disposal that the Authority may delegate in writing to it.

(Part VIII added 13 of 1993 s. 32)

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| Section: | 54 | Composition and meeting of the Administration Committee | | 30/06/1997 |
|----------|----|---|--|------------|

- (1) The Administration Committee shall consist of-
- (a) an Assistant Director of Environmental Protection as Chairman;
 - (b) a Principal Environmental Protection Officer of the Environmental Protection Department;
 - (c) a representative of the Commissioner for Labour;
 - (d) a representative of the Director of Housing;
 - (e) a representative of the Director of Architectural Services;
 - (f) an architect nominated by The Hong Kong Institute of Architects;

- (g) an engineer nominated by The Hong Kong Institution of Engineers;
- (h) a surveyor nominated by The Hong Kong Institute of Surveyors;
- (i) 3 members appointed by the Authority who are not employed in the Civil Service.

(2) A Senior Environmental Protection Officer of the Environmental Protection Department shall act as Secretary of the Administration Committee.

(3) The Administration Committee shall meet at the times and places as the Authority may direct.

(Part VIII added 13 of 1993 s. 32)

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| Section: | 55 | Application for registration | | 30/06/1997 |
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(1) A person may apply to the Secretary of the Administration Committee to have his name entered in a register in a form approved by the Authority with the fee set by the Authority and published in the Gazette.

(2) The Authority shall not enter the name of a person, company, body corporate or laboratory in a register unless the Authority is satisfied that the person is qualified to perform the duties and functions required of a person entered in the register.

(Part VIII added 13 of 1993 s. 32)

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|----------|----|---|--|------------|
| Section: | 56 | Restriction on entry on certain registers, etc. | | 30/06/1997 |
|----------|----|---|--|------------|

(1) The Authority shall not enter the name of a registered asbestos consultant or of a registered asbestos laboratory on the register of asbestos contractors or the register of asbestos supervisors.

(2) The Authority shall not enter the name of a registered asbestos contractor or of a registered asbestos supervisor on the register of asbestos consultants or the register of asbestos laboratories.

(3) The Authority may refuse to register, or may remove from the relevant register, an asbestos consultant or an asbestos laboratory if the person or owner holds a pecuniary interest, either directly or indirectly, in a registered asbestos contractor or a registered asbestos supervisor.

(4) The Authority may refuse to register, or may remove from the relevant register, an asbestos contractor or an asbestos supervisor if the person or owner holds a pecuniary interest, either directly or indirectly, in a registered asbestos consultant or a registered asbestos laboratory.

(Part VIII added 13 of 1993 s. 32)

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| Section: | 57 | Function of Administration Committee in registration | | 30/06/1997 |
|----------|----|--|--|------------|

The Administration Committee shall assist the Authority in considering applications for inclusion in the registers by-

- (a) examining the qualifications of an applicant;
- (b) making inquiries and conducting tests that the Administration Committee considers necessary to ascertain whether an applicant has the appropriate experience;
- (c) conducting a professional interview, if the Administration Committee considers it necessary, with an applicant; and
- (d) advising the Authority as to the acceptance, deferral or rejection of an application for entry on the registers.

(Part VIII added 13 of 1993 s. 32)

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| Section: | 58 | Registration | | 30/06/1997 |
|----------|----|--------------|--|------------|

(1) The Authority shall, within 3 months after the receipt of advice from the Administration Committee as to the acceptance, deferral or rejection of an application-

- (a) enter in the appropriate register, the name of the applicant; or
- (b) defer the application for a period not exceeding 12 months; or
- (c) refuse the application.

(2) The Authority shall inform an applicant of his decision and reasons for his decision in the case of a deferral or rejection under subsection (1) immediately after making the decision.

(Part VIII added 13 of 1993 s. 32)

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|----------|----|-------------------------|--|------------|
| Section: | 59 | Annual registration fee | | 30/06/1997 |
|----------|----|-------------------------|--|------------|

A registered person, company or laboratory shall pay the prescribed annual fee for continued registration within the prescribed period.

(Part VIII added 13 of 1993 s. 32)

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|----------|----|---------------------------------|--|------------|
| Section: | 60 | Removal of names from registers | | 30/06/1997 |
|----------|----|---------------------------------|--|------------|

The Authority may remove from a register-

- (a) the name of a person who is deceased;
- (b) the name of a person who, or a company, body corporate or laboratory which, in the opinion of the Authority has ceased to carry on relevant business;
- (c) the name of a person who, or a company, body corporate or laboratory which, has not paid the prescribed annual fee within the prescribed period;
- (d) a name at the request of the person, company, body corporate or laboratory.

(Part VIII added 13 of 1993 s. 32)

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|----------|----|-----------------------------------|--|------------|
| Section: | 61 | Restoration of names to registers | | 30/06/1997 |
|----------|----|-----------------------------------|--|------------|

(1) A person, company, body corporate or laboratory whose name has been removed from a register under section 60(c) may apply to the Authority in writing within 2 years from the date of the removal for restoration of the name to the register.

(2) Subject to the payment of the prescribed fee to restore a name, the Authority shall restore the name to the register.

(Part VIII added 13 of 1993 s. 32)

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| Section: | 62 | Disciplinary proceedings | | 30/06/1997 |
|----------|----|--------------------------|--|------------|

Where it appears to the Authority or a member of the Administration Committee that-

- (a) a registered asbestos consultant, registered asbestos contractor, registered asbestos supervisor or registered asbestos laboratory; or
 - (b) a director, partner or owner of a registered asbestos contractor or registered asbestos laboratory,
- has committed neglect or misconduct that-
- (i) renders the person, company, body corporate or laboratory unfit to continue to be entered on the relevant register; or
 - (ii) makes further entry of the person, company, body corporate or laboratory on the relevant register prejudicial to the administration of this Ordinance; or
 - (iii) renders the person, company, body corporate or laboratory deserving of censure,

the Authority or the member may refer the matter to the Administration Committee which may conduct an inquiry.

(Part VIII added 13 of 1993 s. 32)

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|----------|----|---------------|--|------------|
| Section: | 63 | Legal adviser | | 30/06/1997 |
|----------|----|---------------|--|------------|

The Administration Committee may appoint a legal adviser to advise it on any points of law or procedure that may arise before, during or after a disciplinary inquiry.

(Part VIII added 13 of 1993 s. 32)

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| Section: | 64 | Rules of procedure | | 30/06/1997 |
|----------|----|--------------------|--|------------|

The Administration Committee may make rules providing for the conduct of its inquiries and for other matters relating to the investigation of an alleged court conviction, neglect or misconduct.

(Part VIII added 13 of 1993 s. 32)

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| Section: | 65 | Notice of hearing | | 30/06/1997 |
|----------|----|-------------------|--|------------|

(1) The Administration Committee shall not hear evidence regarding a complaint leading to disciplinary proceedings against a registered person unless the person is given 28 days' notice of the date, time and place of the hearing and the reason for the hearing.

(2) The registered person who is the subject of a hearing, and the directors, partners and proprietors of a registered asbestos contractor or registered asbestos laboratory, are entitled to hear and to have access to all evidence produced at the hearing and to cross-examine witnesses adducing the evidence.

(Part VIII added 13 of 1993 s. 32)

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|----------|----|--|--|------------|
| Section: | 66 | Finding and recommendation of Administration Committee | | 30/06/1997 |
|----------|----|--|--|------------|

(1) After an inquiry, the Administration Committee shall advise the Authority whether or not it is satisfied that the person, company, body corporate or laboratory has committed neglect or misconduct referred to in section 62 and, where appropriate, make a recommendation as to penalty that should be imposed.

(2) The Authority shall advise the registered person, company, body corporate or laboratory of the findings and recommendation of the Administration Committee and the order of the Authority under section 67.

(Part VIII added 13 of 1993 s. 32)

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|----------|----|------------------------|--|------------|
| Section: | 67 | Order of the Authority | | 30/06/1997 |
|----------|----|------------------------|--|------------|

(1) The Authority may, on receiving the recommendation of the Administration Committee, order-

- (a) that the name of the person, company, body corporate or laboratory be removed, either permanently or for a specified period, from the relevant register;
- (b) that the person, company, body corporate or laboratory be reprimanded;
- (c) that a shareholder, director or other officer of a company or body corporate be reprimanded;
- (d) that the findings and order be published in the Gazette.

(2) The Authority may make an order as to the payment of the costs of the inquiry, the costs of the Authority and the costs of any person in respect of whom the inquiry is held.

(3) Costs awarded under this section are recoverable as a civil debt.

(Part VIII added 13 of 1993 s. 32)

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|----------|----|---------------------------------------|--|------------|
| Section: | 68 | Power of the Administration Committee | | 30/06/1997 |
|----------|----|---------------------------------------|--|------------|

(1) For the purpose of an inquiry under this Part, the Administration Committee has the following powers-

- (a) to hear, receive and examine evidence on oath;
- (b) to summon a person to attend the inquiry either as the person whose conduct is the subject of the inquiry or to give evidence or produce any document or other thing in his possession and to examine him as a witness or require him to produce any document or other thing in his possession, subject to all lawful exceptions;
- (c) to admit or exclude the public or any member of the public from the inquiry;
- (d) to admit or exclude the press from the inquiry;
- (e) to order the inspection of any premises or ship not used solely for dwelling purpose;
- (f) to enter upon and view any premises or ship not used solely for dwelling purpose;
- (g) to award any person summoned to attend the inquiry as a witness an amount which in the opinion of the Administration Committee has been reasonably expended by him in connection with his attendance.

(2) The Chairman shall sign summonses to witnesses.

(3) No person is required to answer a question or produce a document or other thing which, in the opinion of the Administration Committee, may tend to incriminate him.

(4) A witness is, in respect of evidence given by him before the Administration Committee, entitled to the same immunities and privileges to which he would be entitled as if he were giving evidence in court.

(5) A person who-

- (a) having been summoned by the Administration Committee to attend as a witness or to produce a

- document or other thing under this section without reasonable excuse refuses or fails to do so;
- (b) attends as a witness before the Administration Committee and, without lawful excuse, refuses or fails to answer a question put to him by the Administration Committee;
- (c) fraudulently obtains registration as a registered asbestos consultant, contractor, supervisor or laboratory for himself or any other person;
- (d) obtains registration as a registered asbestos consultant, contractor, supervisor or laboratory for himself or any other person by means of any misleading, false or fraudulent representation or statement, either orally or in writing,

commits an offence and is liable to a fine of \$50000 and to imprisonment for 1 year.

(Part VIII added 13 of 1993 s. 32)

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|-------|----|-----------------------|--|------------|
| Part: | IX | ASBESTOS CONTROL WORK | | 30/06/1997 |
|-------|----|-----------------------|--|------------|

(Part IX added 13 of 1993 s. 32)

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|----------|----|----------------------------|--|------------|
| Section: | 69 | Investigation for asbestos | | 30/06/1997 |
|----------|----|----------------------------|--|------------|

(1) The owner of premises which contain or may reasonably be suspected of containing asbestos containing material shall engage a registered asbestos consultant to carry out an investigation on any asbestos containing material which may be in the premises and submit an asbestos investigation report in accordance with section 70 and, if asbestos containing material is found in the premises, an asbestos abatement plan in accordance with section 71 at least 28 days before he carries out any intended asbestos abatement work or work which involves the use or handling of any asbestos containing material.

(2) An owner is not required to submit an asbestos investigation report or an asbestos abatement plan under subsection (1) if the asbestos abatement work or work involving the use or handling of asbestos containing material is of a class specified by the Secretary.

(3) The Secretary shall publish notice in the Gazette of a class of work specified under subsection (2).

(4) The owner of premises specified by the Authority shall, unless the premises have been certified in writing by the Director of Architectural Services or a public officer authorized by the Secretary as being free of asbestos containing material, engage a registered asbestos consultant to carry out an investigation on any asbestos containing material which may be present in the premises.

(5) If premises are-

- (a) converted to a use; or
- (b) constructed for a purpose,

that would make them premises specified by the Authority under subsection (4)-

- (i) the owner of the premises shall comply with; and
- (ii) the premises are deemed to be premises specified by the Authority under,

that subsection.

(6) The Secretary shall publish notice of the specification of premises under subsection (4) in the Gazette.

(7) The owner of premises specified under subsection (4) shall submit an asbestos investigation report in accordance with section 70 to the Authority before the date stated in the notice specifying the premises.

(8) If the registered asbestos consultant finds the presence of asbestos containing material in premises specified under subsection (4), the owner of the premises shall submit to the Authority an asbestos management plan in accordance with section 71 and an asbestos investigation report both prepared by the registered asbestos consultant.

(9) A person who-

- (a) carries out work on premises contrary to subsection (1);
- (b) fails to submit an asbestos investigation report contrary to subsection (7); or
- (c) fails to submit an asbestos management plan contrary to subsection (8),

commits an offence and is liable to a fine of \$200000 and to a further fine of \$5000 for each day during the whole or part of which the court is satisfied that the offence has continued.

(Part IX added 13 of 1993 s. 32)

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|----------|----|---|--|------------|
| Section: | 70 | Contents of asbestos investigation report | | 30/06/1997 |
|----------|----|---|--|------------|

A registered asbestos consultant shall sign an asbestos investigation report on premises or a ship when required

under this Ordinance and the report shall include details of-

- (a) the identity of the owner of the premises or ship;
- (b) the location and type of the premises or ship;
- (c) the names of the registered asbestos consultant and registered asbestos laboratory carrying out the investigation;
- (d) the methods adopted for the investigation;
- (e) the results of the investigation;
- (f) an assessment of hazards of asbestos containing material in the premises or ship with particular reference to-
 - (i) the quantity, type and composition;
 - (ii) the friability;
 - (iii) the physical condition;
 - (iv) the accessibility;
 - (v) the position in relation to the path of natural and artificial ventilation; and
 - (vi) the population and activities in the immediate vicinity.

(Part IX added 13 of 1993 s. 32)

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|----------|----|--------------------------------------|------------|
| Section: | 71 | Contents of asbestos management plan | 30/06/1997 |
|----------|----|--------------------------------------|------------|

(1) A registered asbestos consultant shall sign an asbestos management plan when required under this Ordinance and the plan shall include-

- (a) an operation and maintenance plan for asbestos containing material not requiring asbestos removal work; and
- (b) an asbestos abatement plan for any asbestos abatement work or work which involves the use or handling of any asbestos containing material.

(2) The registered asbestos consultant shall include in the operation and maintenance plan-

- (a) a detailed description of the premises or ship;
- (b) the names, positions and structure of the organization of people in charge of the implementation of the plan;
- (c) the location and type of all the identified asbestos containing material;
- (d) the physical condition of the identified asbestos containing material;
- (e) a statement of reasons why any asbestos containing material should not be removed;
- (f) the method of labelling of all asbestos containing material;
- (g) the method of informing all people who may be affected about the existence and the location of the asbestos containing material;
- (h) a surveillance scheme;
- (i) a record keeping scheme;
- (j) the methods by which the disturbance of asbestos containing material can be avoided; and
- (k) the actions to be taken in case the condition of the asbestos containing material is found to be deteriorating.

(3) The registered asbestos consultant shall include in an asbestos abatement plan-

- (a) a detailed description of the premises or ship;
- (b) the names of the registered asbestos consultant, registered asbestos contractor, and registered asbestos laboratory;
- (c) a statement of reasons why any asbestos containing material should not be removed;
- (d) a programme for asbestos abatement work;
- (e) descriptions of methods, measures and steps for checking the performance of the asbestos control measures before, during and after the asbestos abatement work or work which involves the use or handling of asbestos containing material;
- (f) the amount of asbestos waste and the method of disposal; and
- (g) any emergency procedures and contingency measures which may be required.

(4) The Authority may, after receiving an asbestos management plan or an asbestos abatement plan, require the owner of the premises or ship to submit further plans and specifications within the period specified by the Authority.

(Part IX added 13 of 1993 s. 32)

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|----------|----|---------------------|--|------------|
| Section: | 72 | Issue of conditions | | 30/06/1997 |
|----------|----|---------------------|--|------------|

(1) The Authority may, by notice in writing to the owner of premises or a ship, require additional measures or impose conditions as he considers necessary to be included in an asbestos management plan or an asbestos abatement plan.

(2) A person who is aggrieved by a requirement or specification of the Authority under subsection (1) may appeal, within 21 days after he has received notice of the requirement or specification, to an Appeal Board.

(Part IX added 13 of 1993 s. 32)

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|----------|----|---|--|------------|
| Section: | 73 | Notification of commencement of asbestos abatement work | | 30/06/1997 |
|----------|----|---|--|------------|

(1) The owner of premises shall give not less than 28 days' written notice to the Authority of the date on which the asbestos abatement work or work involving the use or handling of asbestos containing material is to be commenced.

(2) A person who fails to comply with subsection (1) commits an offence and is liable to a fine of \$200000.

(Part IX added 13 of 1993 s. 32)

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|----------|----|---|--|------------|
| Section: | 74 | Appointment and duties of registered asbestos consultants | | 30/06/1997 |
|----------|----|---|--|------------|

(1) An owner of premises who implements an asbestos management plan or an asbestos abatement plan in the premises shall appoint a registered asbestos consultant to supervise the carrying out of the work specified in the plan.

(2) If a registered asbestos consultant so appointed becomes unwilling to act or unable to act, whether by reason of the termination of his appointment or for any other reason, the owner shall appoint another registered asbestos consultant and notify the Authority.

(3) A registered asbestos consultant so appointed shall-

- (a) supervise the carrying out of the asbestos management plan or an asbestos abatement plan and the conduct of any asbestos abatement work;
- (b) notify the Authority of any modification of the content of the asbestos management plan or an asbestos abatement plan before implementing the modification; and
- (c) notify the Authority of any contravention of a requirement under this Ordinance or in respect of a step, measure, requirement and condition in an asbestos management plan or an asbestos abatement plan, or required by the Authority.

(Part IX added 13 of 1993 s. 32)

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|----------|----|---|--|------------|
| Section: | 75 | Appointment and duties of registered asbestos contractors | | 30/06/1997 |
|----------|----|---|--|------------|

(1) An owner of premises who implements an asbestos abatement plan or carries out work which involves the use or handling of any asbestos containing material in the premises shall appoint a registered asbestos contractor to carry out the work.

(2) If a registered asbestos contractor so appointed becomes unwilling to act or unable to act, whether by reason of the termination of his appointment or for any other reason, the owner shall appoint another registered asbestos contractor and shall notify the Authority.

(3) A registered asbestos contractor appointed under this section shall give continuous supervision through registered asbestos supervisors stationed continuously at the asbestos abatement area to supervise the carrying out of the asbestos abatement plan, asbestos abatement work or work which involves the use or handling of any asbestos containing material and any related work.

(4) An owner is not required to appoint a registered asbestos contractor to carry out any work which involves the use or handling of any asbestos containing material in premises if the work is of a class specified by the Secretary.

(5) The Secretary shall publish notice in the Gazette of a class of work specified under subsection (4).

(Part IX added 13 of 1993 s. 32)

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|----------|----|--|--|------------|
| Section: | 76 | Appointment and duties of registered asbestos laboratories | | 30/06/1997 |
|----------|----|--|--|------------|

(1) An owner of premises who is required to carry out sampling, measurement or analysis of a substance

containing, or suspected to contain, asbestos containing material in the premises to comply with an asbestos management plan or an asbestos abatement plan or otherwise to comply with this Part, shall appoint a registered asbestos laboratory to carry out the sampling, measurement or analysis.

(2) If a registered asbestos laboratory so appointed becomes unwilling to act or unable to act, whether by reason of the termination of its appointment or for any other reason, the owner shall appoint another registered asbestos laboratory and notify the Authority.

(Part IX added 13 of 1993 s. 32)

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|----------|----|----------|--|------------|
| Section: | 77 | Offences | | 30/06/1997 |
|----------|----|----------|--|------------|

(1) A person who implements or causes the implementation of an asbestos management plan or asbestos abatement plan contrary to section 74 commits an offence.

(2) A person who implements or causes the implementation of an asbestos management plan or carries out or causes the carrying out of work involving the use or handling of asbestos containing material contrary to section 75 commits an offence.

(3) A person who carries out or causes the carrying out of the sampling, measurement or analysis of a substance containing or suspected to contain asbestos containing material contrary to section 76 commits an offence.

(4) A person who does not follow the specifications, steps or measures specified in an asbestos management plan or an asbestos abatement plan and any additional measures or steps stipulated by the Authority and any conditions imposed on the plan by the Authority commits an offence.

(5) A person who is convicted of an offence under this section is liable to a fine of \$200000 and to imprisonment for 6 months and to a further fine of \$20000 for each day during the whole or part of which the court is satisfied that the offence has continued.

(Part IX added 13 of 1993 s. 32)

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|----------|----|----------|--|------------|
| Section: | 78 | Defences | | 30/06/1997 |
|----------|----|----------|--|------------|

A person does not commit an offence under section 77 if he adduces evidence that shows-

- (a) he carried out the work, or caused or permitted the work to be carried out, in an emergency situation that did not permit him to comply with that section without risk to human life or serious disruption to a public service; or
- (b) he did not know and could not have reasonably known of the presence of asbestos or asbestos containing material at the time when he carried out the work, or caused or permitted the work to be carried.

(Part IX added 13 of 1993 s. 32)

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|----------|----|------------------------------------|--|------------|
| Section: | 79 | Issue of asbestos abatement notice | | 30/06/1997 |
|----------|----|------------------------------------|--|------------|

(1) If in the opinion of the Authority, any premises, relevant plant or activity contains, or is believed may release, any asbestos, the Authority or an authorized officer may issue a notice either verbally or in writing to require the person to whom the notice is given to-

- (a) take measures or steps and within the time as specified to prevent, control, reduce or eliminate the release of asbestos;
- (b) hire a registered asbestos consultant to prepare an investigation report and to prepare an asbestos management plan;
- (c) hire a registered asbestos contractor to implement an asbestos management plan and to carry out any asbestos abatement work or work involving the use of handling of any asbestos containing material;
- (d) hire a registered asbestos laboratory to carry out sampling and measurement to assess fibre concentration.

(2) The Authority or an authorized officer may by notice require the owner of premises to suspend immediately the operation of a relevant plant or activity until the Authority or the authorized officer is satisfied that sufficient measures have been taken to prevent the release of asbestos, if-

- (a) the premises or activity releases any visible asbestos containing material in any form of dust, debris, effluent or contaminated item; or
- (b) any visible dust, debris, untreated effluent or contaminated item is observed to be originating from a

containment in which asbestos abatement work or work involving the use of handling of asbestos containing material is being carried out; or

(c) the premises or activity causes or contributes to a concentration of asbestos of more than 0.01 fibres per millilitre in ambient air at any time as determined by a method approved by the Secretary.

(3) The Secretary shall publish in the Gazette notice of any method of measurement approved by him under subsection (2)(c).

(4) A notice issued under subsection (1) or (2) shall remain in force until it is withdrawn.

(5) If a notice is given or withdrawn verbally, the Authority or an authorized officer shall confirm the notice or its withdrawal in writing within 7 days.

(6) Where the relevant person cannot be found or fails to comply with a requirement in a notice issued under subsection (1) or (2), the Authority may carry out or cause to carry out a measure or step specified in the notice or other work as he considers necessary and the costs shall be recoverable from the person.

(7) A person who fails to comply with any of the requirements of a notice given to him under subsection (1) or (2) commits an offence and is liable-

(a) in a case of failure to stop immediately the operation of any process as required, to a fine of \$500000 and to imprisonment for 12 months and to a further fine of \$100000 for each day that the court is satisfied that the offence has continued; and

(b) in any other case, to a fine of \$100000 on first conviction and to a fine of \$200000 and to imprisonment for 6 months on a second or subsequent conviction and, on a first or subsequent conviction, to a further fine of \$20000 for each day that the court is satisfied that the offence has continued.

(8) Subsections (1) to (7) shall apply to a ship.

(Part IX added 13 of 1993 s. 32)

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|----------|----|---|------------|
| Section: | 80 | Ban on import and sale of amosite and crocidolite | 30/06/1997 |
|----------|----|---|------------|

(1) Subject to this section, a person shall not import into Hong Kong or sell any quantity of asbestos known as amosite or crocidolite or any substance or item made with or containing amosite or crocidolite.

(2) It is not an offence to import amosite and crocidolite if the substances form an integral part of the structure or fittings of a ship brought into Hong Kong for repair or breaking up.

(3) The Authority may on application in writing grant an exemption to a person to permit the importation or sale in Hong Kong of amosite or crocidolite or substance or item made with or containing amosite or crocidolite subject to such conditions as the Authority may specify if he is of the opinion that such an exemption is warranted and that the exemption would be unlikely to lead to a health risk to the community.

(4) The Authority may withdraw an exemption given under subsection (3) at any time.

(5) The Authority's decision in respect of an application for exemption under subsection (3), a condition or restriction to be imposed in relation to any exemption or a withdrawal of an exemption under subsection (4) is final.

(6) This section does not apply to goods in transit or transshipment goods.

(7) A person who fails to comply-

(a) with subsection (1); or

(b) with any condition or restriction of an exemption granted under subsection (3),

commits an offence and is liable to a fine of \$200000 and to imprisonment for 6 months.

(8) It shall be presumed that goods are not in transit or transshipment goods in the absence of evidence to the contrary.

(9) In this section-

"goods in transit" (過境貨品) means goods that are brought into Hong Kong solely for the purpose of taking them out of Hong Kong and that remain at all times on the vessel, vehicle or aircraft that brought them into Hong Kong;

"transshipment" (轉運) means the importation of an article that is consigned on a through bill of lading or a through air waybill from a place outside Hong Kong to another place outside Hong Kong and is or is to be removed from the vessel, vehicle or aircraft in which it was imported and either returned to the same vessel, vehicle or aircraft or transferred to another vessel, vehicle or aircraft before being exported, whether it is or is to be transferred directly between such vessels, vehicles or aircraft or whether it is to be landed in Hong Kong after its importation and stored, pending exportation.

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|-----------|---|---------------------|--|------------|
| Schedule: | 1 | SPECIFIED PROCESSES | | 30/06/1997 |
|-----------|---|---------------------|--|------------|

[sections 2 & 11]

| Process | Description |
|--------------------|---|
| 1. Acrylates Works | <p>Works in which acrylates are-</p> <ul style="list-style-type: none"> (a) made or purified; (b) made and polymerised; or (c) purified and polymerised. |
| 2. Aluminium Works | <p>Works of the following kinds in which the processing capacity exceeds 1 tonne (expressed as aluminium) or, if the mode of operation is continuous, 0.67 tonne (expressed as aluminium) per hour, and in which-</p> <ul style="list-style-type: none"> (a) aluminium swarf is degreased by the application of heat; or (b) aluminium or aluminium alloys are recovered from aluminium or aluminium alloy scrap fabricated metal, swarf, skimmings, or other residues by melting under flux cover; or (c) molten aluminium or aluminium alloys are treated by chlorine or its compounds; or (d) aluminium is extracted from any compound containing aluminium by a process evolving any noxious or offensive gases; or (e) oxide of aluminium is extracted from any ore; or (f) aluminium is recovered from slag or drosses; or (g) materials used in the above processes or the products thereof are treated or handled by methods which cause noxious or offensive gases to be evolved. |
| 3. Cement Works | <p>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.</p> |
| 4. Ceramic Works | <p>Works in which the processing capacity exceeds 2 tonnes or, if the mode of operation is continuous, 0.67 tonne per day, and in which any ceramic products including bricks, tiles, pipes, pottery goods, or refractories are manufactured in furnaces or kilns fired by any fuel.</p> |
| 5. Chlorine Works | <p>Works in which chlorine is made or used in any manufacturing process.</p> |
| 6. Copper Works | <p>Works in which the processing capacity exceeds 0.5 tonne (expressed as copper) or, if the mode of operation is continuous, 0.45 tonne (expressed as copper) per hour and in which-</p> <ul style="list-style-type: none"> (a) by the application of heat- <ul style="list-style-type: none"> (i) copper is extracted from any ore or |

- concentrate or from any material containing copper or its compounds; or
- (ii) molten copper is refined; or
 - (iii) copper or copper alloy swarf is degreased; or
 - (iv) copper alloys are recovered from scrap fabricated metal, swarf or residues; or
- (b) copper or copper alloy is melted and cast.
7. Electricity Works
Works in which fossil fuel is burnt either wholly or as part of the process of electricity generation where the installed generation capacity of such works exceeds 5 MW.
8. Gas Works
Works in which-
- (a) coal, coke, oil, carbonaceous material or any mixtures or derivatives of such materials or any waste materials are handled or prepared for carbonization or gasification and in which such materials are carbonized or gasified; or
 - (b) natural gas is reformed, refined or odorised.
9. Iron and Steel Works
Works in which the installed furnace capacity exceeds 1 tonne, or, if the mode of operation is continuous, 1 tonne per hour, and in which a ferrous metal melting process for casting is carried out.
10. Metal Recovery Works
Works in which scrap metals are treated in any type of furnace for recovery of metal with a processing capacity exceeding 50 kg per hour, where this is the primary object of the works.
11. Mineral Works
Works in which the processing capacity exceeds 5000 tonnes per annum and in which-
- (a) metallurgical slags; or
 - (b) pulverised fuel ash; or
 - (c) minerals, other than moulding sand in foundries or coal at electricity works,
- are subjected to any size reduction, grading or heating by a process giving rise to dust, not being any works described in any other specified process.
12. Incinerators
Works in which the installed capacity exceeds 0.5 tonne per hour and which are used for the destruction by burning of wastes or refuse, not being any works described in any other specified process.
13. Petrochemical Works
Works in which the processing capacity exceeds 100 tonnes per annum (expressed as total chemical products), and in which-
- (a) any hydrocarbons are used for the production of olefins or derivatives of olefins; or
 - (b) any olefins, derivatives of olefins or mixture of thereof are used in any chemical manufacturing process, not being any works described in any other specified process; or
 - (c) any olefins, derivatives of olefins or mixture of

thereof are polymerised.

14. Sulphuric Acid Works
Works in which the installed capacity exceeds 100 tonnes per annum and in which the manufacture of sulphuric acid is carried on by any process, and works for the concentration or distillation of sulphuric acid.
15. Tar and Bitumen Works
Works of the following kinds in which the installed capacity exceeds 250 kg per hour and in which-
- (a) gas tar or coal tar or bitumen is distilled or is heated in any manufacturing process; or
 - (b) any product of the distillation of gas tar or coal tar or bitumen is distilled or heated in any process involving the evolution of any noxious or offensive gas; or
 - (c) heated materials produced from gas tar or coal tar or bitumen are applied in coating or wrapping of iron or steel pipes or fittings.
16. Frit Works
Works in which the installed furnace capacity exceeds 1 tonne and in which frit is made by fusion of materials and quenching.
17. Lead Works
Works of the following kinds in which-
- (a) by application of heat-
 - (i) lead is extracted or recovered from any material containing lead or its compounds; or
 - (ii) lead is refined; or
 - (iii) lead is applied as a surface coating to other metals by spraying; or
 - (b) compounds of lead are manufactured, extracted, recovered or used in processes which give rise to particulates emission, excluding the manufacture of electric accumulators and the application of glazes or vitreous enamels; or
 - (c) organic lead compounds are made.
18. Amines Works
Works in which the processing capacity exceeds 1000 tonnes per annum and in which-
- (a) any methylamine or any ethylamine is made; or
 - (b) any methylamine or any ethylamine is used in any chemical process.
19. Asbestos Works
Works in which-
- (a) raw asbestos is milled, ground, opened or blended prior to use in a manufacturing operation; or
 - (b) asbestos or any material containing asbestos is used in the manufacture of asbestos cement or asbestos cement pipes, or asbestos insulating board, or asbestos textiles, or asbestos jointing or packaging materials, or asbestos brake or clutch materials, or asbestos floor coverings, or fillers or reinforcements.
20. Chemical Incineration Works
Works, not being any works described in any other specified process, of the following kinds in which the installed capacity

exceeds 25 kg per hour and which are used for the destruction by burning of-

- (a) wastes produced from chemical manufacturing processes; or
- (b) chemical wastes containing combined bromine, chlorine, fluorine, iodine, lead, mercury, cadmium, zinc, nitrogen, phosphorus or sulphur; or
- (c) wastes produced in the manufacturing of plastics.

21. Hydrochloric Acid Works

Works in which the installed capacity exceeds 100 tonnes per annum (expressed as hydrochloric acid) where hydrochloric acid gas is evolved either during the preparation of liquid hydrochloric acid or for use in any manufacturing process or as the result of the use of chlorides in a chemical process.

22. Hydrogen Cyanide Works

Works in which the installed capacity exceeds 100 tonnes per annum and in which hydrogen cyanide is made or used in any chemical manufacture.

23. Sulphide Works

Works of the following kinds and in which-

- (a) hydrogen sulphide is evolved by the decomposition of metallic sulphide in any manufacturing process; or
- (b) hydrogen sulphide is used in the production of such sulphides; or
- (c) hydrogen sulphide or mercaptans are made or used in any chemical process or evolved as part of any chemical process.

24. Pathological Waste Incinerators

Works in which the installed capacity exceeds 50 kg per hour and which are used for the destruction by burning of any medical, hospital or pathological wastes, not being any works described in any other specified process.

25. Organic Chemical Works

Works, not being a chemical process described in any other specified process, of the following kinds in which-

- (a) the installed capacity exceeds 100 tonnes per annum (expressed as the total organic chemical products), and in which-
 - (i) any organic chemicals, including organic intermediate products, pesticides, fertilisers, and specialty chemicals, are manufactured in any organic chemical process; or
 - (ii) any organic solvent or mixture of solvents is recovered by any thermal process; or
- (b) any organic liquids, including liquid fuel, are stored in tanks having an installed capacity exceeding 100 m³.

26. Petroleum Works

Works in which the processing capacity exceeds 100 tonnes per annum (expressed as petroleum product) and in which-

- (a) crude or stabilised crude petroleum or associated gas, or condensate is-
 - (i) handled or stored; or
 - (ii) refined; or

- (b) any product of such refining is subjected to further refining or to conversion; or
- (c) used lubricating oil is prepared for re-use by any thermal process.

27. Zinc Galvanising Works
Works in which the installed capacity exceeds 5000 tonnes per annum (expressed as galvanised product) and in which zinc galvanising is carried out.
28. Rendering Works
Works in which the processing capacity exceeds 250 kg per hour (expressed as the raw material) and in which rendering or reduction or drying through application of heat, or curing by smoking, of animal matter (including feathers, blood, bone, hoof, skin, offal, whole fish, and fish heads and guts and like parts, and organic manures but not including milk or milk products) is carried out.
29. Non-ferrous Metallurgical Works
Works in which the processing capacity exceeds 1 tonne per hour and in which melting of any non-ferrous metal, other than aluminium, copper, lead and zinc for galvanising is carried out.
30. Glass Works
Works in which the processing capacity exceeds 200 tonnes per annum (expressed as the glass products) and in which manufacturing process for making glass or glass products including mineral fibre and glass fibre is carried out.
- *31. Paint Works
Works in which the processing capacity exceeds 35m³ (expressed as coating products) and in which coating products including paints, vanishes and lacquers are produced or manufactured.

(Schedule 1 replaced 13 of 1993 s. 33)

Note:

* **Not yet in operation.**

| | | | | |
|-----------|---|---|------------|------------|
| Schedule: | 2 | MATTERS TO WHICH TERMS AND CONDITIONS OF LICENCE OR EXEMPTION MAY RELATE* | 31 of 2008 | 18/07/2008 |
|-----------|---|---|------------|------------|

[sections 15(4), 18(7), 18A(8),
22(6) & 23(7)]
(Amended 13 of 1993 s. 34)

PART 1

(Added 31 of 2008 s. 15)

1. The place and times or periods at or during which the emission of air pollutant may take place.
2. The design and construction of any chimney or relevant plant or equipment used in connection with the emission of any air pollutant.
3. The rate of discharge of any air pollutant or total amount thereof in relation to the matter discharged or any constituent thereof.
4. The nature, composition, colour or temperature of the matter discharged or any constituent thereof.

5. The treatment of any potential air pollutant before it is discharged and the chimney or relevant plant or equipment to be provided, maintained and used therefor.
6. The equipment and facilities to be provided for inspecting, sampling or measuring the emission and ambient concentration of any air pollutant or any constituent thereof. (Amended 13 of 1993 s. 34)
7. The maintenance and security of any equipment and facilities referred to in paragraph 6.
8. The provision to the Authority of samples, and of the results of the analysis of samples, of air pollutants or any material that may evolve air pollutants.
9. The keeping of records in relation to the matters mentioned in paragraphs 3 and 4.
10. The access of authorized officers to the equipment, facilities and records referred to in paragraphs 6 and 9.
11. Any matters relating to care and maintenance in relation to the provisions of paragraphs 3 and 4.

PART 2

SPECIFIED LICENCES—ADDITIONAL MATTERS
TO WHICH TERMS AND CONDITIONS
MAY RELATE

1. Any matters to which any of the terms and conditions set out in Schedule 2A relates.
2. Any matters relating to the operation of Part IVB of this Ordinance.

(Added 31 of 2008 s. 15)

Note:

* (Replaced 31 of 2008 s. 15)

| | | | | |
|-----------|----|---|------------|------------|
| Schedule: | 2A | MANDATORY TERMS AND CONDITIONS OF SPECIFIED LICENCE | 31 of 2008 | 18/07/2008 |
|-----------|----|---|------------|------------|

[sections 15 & 37D
& Schedule 2]

Actual emission not greater than allowed emission

1. The specified licence holder shall ensure that the actual emission of a type of specified pollutant from the licensed premises in an emission year is not greater than the allowed emission of that type of pollutant as applicable to the specified licence in respect of the emission year.

(Schedule 2A added 31 of 2008 s. 16)

| | | | | |
|-----------|----|---|------------|------------|
| Schedule: | 2B | FEE PRESCRIBED FOR PURPOSES OF SECTION 26K(1) OF THIS ORDINANCE | 31 of 2008 | 18/07/2008 |
|-----------|----|---|------------|------------|

[sections 26K & 37D]

| Item | Description | Amount |
|------|--|---------------------------|
| 1. | Fee payable for an application made by reference to section 26K(2)(a)(i) of this Ordinance | nil |
| 2. | Fee payable for an application made by reference to | \$20000 for each emission |

section 26K(2)(a)(ii) of this Ordinance

allowance sought to be increased
(Schedule 2B added 31 of 2008 s. 16)

| | | | | |
|-----------|----|---|------------|------------|
| Schedule: | 2C | PERCENTAGE SPECIFIED FOR PURPOSES OF SECTION 26M(5) OF THIS ORDINANCE | 31 of 2008 | 18/07/2008 |
|-----------|----|---|------------|------------|

[sections 26M & 37D]

15%.

(Schedule 2C added 31 of 2008 s. 16)

| | | | | |
|-----------|---|-----------------------------|--|------------|
| Schedule: | 3 | (Repealed 13 of 1993 s. 35) | | 30/06/1997 |
|-----------|---|-----------------------------|--|------------|

| | | | | |
|-----------|---|-------------------------------|-----------|------------|
| Schedule: | 4 | DETERMINATION OF COMPENSATION | 6 of 2001 | 12/04/2001 |
|-----------|---|-------------------------------|-----------|------------|

[section 26(2)]
(Amended 13 of 1993 s. 36)

1. A person who claims compensation under section 24 or 25 shall submit to the Authority particulars in writing of his claim.

2. (1) A claim under paragraph 1 shall be submitted-

(a) where a licence or exemption is cancelled, within 1 year after the cancellation;

(b) where a licence or exemption is varied so as to impose additional obligations on either the licence holder or the owner of the premises used for the conduct of the specified process to which the exemption relates, as the case may be within 1 year after the completion of the works attributable solely to the requirement of the Authority.

(2) The period referred to in sub-paragraph (1) may, upon application made to the Governor either before or after the expiry of that period, be extended in accordance with this paragraph.

(3) Notice of an application under sub-paragraph (2) shall be given to the Authority by the applicant.

(4) The Governor may extend the period within which particulars of a claim must be submitted to the Authority if he considers that the delay in submitting such particulars was occasioned by mistake of fact or mistake of any matter of law (other than the matters contained in sub-paragraph (1)) or by any other reasonable cause or that the Crown is not materially prejudiced by the delay.

(5) An extension may be granted by the Governor under sub-paragraph (4) with or without conditions for such period as he thinks fit but not in any case exceeding 6 years from the time when the right to compensation first arose.

3. If the Authority and the claimant do not agree on the settlement or compromise of the claim within 3 months of the submission or particulars under paragraph 1, the claimant may notify the Authority that he desires a reference to the Lands Tribunal and the Authority shall thereupon refer the claim with the particulars thereof to the Lands Tribunal.

4-7. (Repealed 23 of 1987 s. 18)

*8. (1) The Lands Tribunal may direct that interest be paid on compensation (but not on costs) from such date and for such period as the Lands Tribunal thinks fit, at the rate specified in subparagraph (2) or at such other rate as may be determined by resolution of the Legislative Council. (Amended 6 of 2001 s. 7)

(2) For the purposes of subparagraph (1), the rate of interest paid-

(a) in respect of a working day shall be the lowest of the interest rates paid on deposits at 24 hours' call by note-issuing banks at the close of business on that day; and

(b) in respect of a non-working day shall be the lowest of the interest rates paid on deposits at 24 hours' call by note-issuing banks at the close of business on the last working day before that day. (Added 6 of 2001 s. 7)

(3) In this paragraph-

"non-working day" (非工作日) means a day that is not a working day;

"note-issuing bank" (發鈔銀行) has the meaning assigned to it by section 2 of the Legal Tender Notes Issue Ordinance (Cap 65);

"working day" (工作日) means any day other than-

- (a) a public holiday; or
- (b) a gale warning day or black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap 1). (Added 6 of 2001 s. 7)

(Schedule 4 amended 23 of 1987 s. 18)

Note:

* **For the validation of interest payments and application provisions relating to the amendments made by 6 of 2001, see section 13 of 6 of 2001.**