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(ACE 52/95)
for information

**Proposed Amendments to the
Ozone Layer Protection Ordinance Cap.403**

INTRODUCTION

This paper informs members of a proposal to amend the Ozone Layer Protection Ordinance Cap.403.

BACKGROUND

2. The Ozone Layer Protection Ordinance was enacted in June 1989 to give effect to Hong Kong's international obligations under the "1987 Montreal Protocol on Substances that Deplete the Ozone Layer". In accordance with the Protocol, the Ordinance prohibits the manufacturing of substances that deplete the ozone layer and controls the import and export of these substances.

3. An amendment to the ordinance was made in 1993 to extend its scope. Subsidiary Regulations were also made in May 1993 to prohibit the import of controlled products from a country or place which is not a party to the Montreal Protocol, and to require the conservation of controlled refrigerants used in large scale installations and motor vehicles.

PROPOSED AMENDMENTS

4. To make the enforcement more effective and efficient, as well as to improve some current procedures, it is proposed to further amend the ordinance to provide for the following:-

(a) **The Law binds the Crown**

It should be stipulated in the ordinance that it binds the Crown, i.e. the requirements are applicable to the Government in the same way as it is to those in the private sector. This change will bring this Ordinance into line with all the other pollution control ordinances.

(b) **The Advisory Council on the Environment should be consulted on any amendment or making of regulations**

Although it is already the practice, it should be stipulated in the ordinance that the Advisory Council on Environment should be consulted before regulations and any proposed amendment to the ordinance are made.

(c) Secretary to make regulations under the Ozone Layer Protection Ordinance

Under the present ordinance, regulations are to be made by the Governor in Council. Also, it is the Governor to amend the list of "scheduled substances" to be controlled. Although this procedure is largely a formality, it has created unnecessary workload for both the Governor and the Executive Council. It is proposed that the Secretary for Planning, Environment and Lands should be empowered to make regulations and amend the schedule. The Air Pollution Control Ordinance has the same provision already.

(d) Formation of an Appeal Board

The present ordinance requires that any person aggrieved by the decision of the Director of Environmental Protection to appeal to the Governor. This will create unnecessary workload to the Governor as well make the appeal process unnecessarily complicated. An independent appeal board should be formed to hear appeals. This change will also bring the ordinance into line with other pollution control ordinances.

(e) Handling of scheduled substances found without an owner

The present ordinance does not cover how to deal with "scheduled substances" found without an owner. It is proposed that the Director of Environmental Protection or an authorized officer should be empowered by law to decide on the handling of these substances in ways similar to the Import and Export Ordinance:

- 1) DEP may order the substances to be stored at a specified place,
- 2) DEP may serve a notice, to be exhibited in a place to which public has access, to call upon the owner to submit a claim of ownership within a specified period,
- 3) DEP may also declare his intention in the notice to apply for forfeiture of the substance at the expiration of the period,
- 4) DEP may also apply for forfeiture to a Magistrate if no claim of ownership has been established.

(f) Storage of seized scheduled substances

When certain scheduled substances are seized by the Government, the current practice is for the Government to arrange for storage of the seized substances pending the investigation. In order to speed up the process and to enable speedy release of the seized substances back to the owner after investigation, it is proposed that DEP or an authorized officer may require the owner of the scheduled

substances to store the substances at a specified place with conditions. The Import and Export Ordinance includes similar provision.

(g) Falsifying information etc. to be an offence

It is proposed that any person who provides false information to obtain a registration or a licence, forges a licence, or makes illegal alterations to a licence is guilty of an offence. The same provision exists in the Import and Export Ordinance.

(h) Directors of body corporate can be liable

To enhance the deterrent effect of the ordinance, it is proposed that directors of body corporate can be liable for an offence under certain circumstances. Similar provision exists in the Import and Export Ordinance and other environmental ordinances.

IMPLEMENTATION

5. Subject to approval by the Legislative Council, the intention is to implement the proposed amendments in mid 1996.

CONSULTATION

6. Consultation with relevant trade associations will commence soon. Results of consultation together with the draft regulations will be submitted to this council for advice and endorsement. As the proposed amendments are simple and straight forward, major objection is not anticipated.

ECONOMIC IMPLICATION

7. The proposed amendments should have no economic impact on the industries.

ENVIRONMENTAL PROTECTION DEPARTMENT
Air Policy Group
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