

Mercury Control Ordinance (Cap. 640)

Guidelines on Application for Possession Permit

Introduction

1. The Minamata Convention on Mercury (“the Convention”) entered into force on 16 August 2017. The People’s Republic of China is one of the Parties to the Convention, and the Convention is also applicable to the Hong Kong Special Administrative Region (“HKSAR”).

2. According to the Mercury Control Ordinance (Cap. 640) (“MCO”), with effect from 1 December 2021, any person who keeps and uses chemicals specified in Part 2 of Schedule 1 (“Part 2 Chemicals”) to the MCO in the HKSAR shall obtain a possession permit issued under the MCO. The permit is to be issued by the Director of Environmental Protection (“DEP”) under the MCO.

3. This document provides information on matters requiring attention when applying for possession permits for keeping or using Part 2 Chemicals. For more information on the legal requirements for permit application, please refer to the MCO.

Possession Permit

4. In order to comply with the requirements of the Convention, the DEP will consider the following conditions before issuing a possession permit under the MCO:
 - (1) Such batch of Part 2 Chemical shall be kept or used in an environmentally sound manner in accordance with Article 10 of the Convention. The applicant shall provide details for the following items:
 - i. particulars of the importer, keeper and user;
 - ii. the address of the location in Hong Kong where such batch of Part 2 Chemical will be kept and used; and
 - iii. an operation brief of the facility related to the keep or use of the Part 2 Chemical. For any person who is currently a holder of a possession permit issued under section 22 of MCO, the operation brief should include the following information:

- (a) a layout plan on an appropriate scale showing the key features of the facility;
- (b) key operating procedure of the facility involving the Part 2 Chemical, including a work flow diagram showing the processes related to the use of the Part 2 Chemical;
- (c) record keeping arrangement for the stock and usage of the Part 2 Chemical;
- (d) means of storing the Part 2 Chemical, such as storing it in containers or packages and the labelling and storage partition arrangement;
- (e) measures adopted by the facility to prevent the Part 2 Chemical from spilling and causing pollution;
- (f) contingency measures to deal with the Part 2 Chemical and related material(s) in the event of accidental spillage, emergency, or breakdown or mechanical failure of the facility;
- (g) safety equipment and measures provided in the facility, such as personal protective equipment and ventilation systems;
- (h) security arrangements of the facility;
- (i) means of disposing of the waste Part 2 Chemical or their by-products, if applicable;
- (j) management structure of the staff handling the Part 2 Chemical; and
- (k) a copy of the valid licences, permits or exemptions issued by government departments for the facility, if applicable.

For applicants who are currently not possession permit holder, apart from the above information, the operation brief should also include the following additional information:

- (l) justifications for keeping or using the Part 2 Chemical;
 - (m) measures to monitor the potential emission or release of the Part 2 Chemical from the facility (including waste, wastewater and emissions).
- (2) The batch of the Part 2 Chemical to be kept or used shall be used for the purposes allowed under the Convention (such as for laboratory-scale research or as a reference standard, etc.):
- i. Mercury(I) chloride, Mercury(II) oxide, Mercury(II) sulphate, Mercury(II) nitrate, Mercury sulphide or Cinnabar

- (a) If such batch of chemical is intended to be used for laboratory-scale research or as a reference standard, the applicant shall provide descriptions of such use; or
- (b) If such batch of chemical is intended to be used for other uses allowed by the Convention other than those mentioned in paragraph (2)(i)(a), the applicant shall provide descriptions of such use.
- ii. Mercury¹ or mercury mixture²

- (a) If such batch of chemical has been imported from any place outside the HKSAR before the effective date of the MCO (i.e. 1 December 2021) and is intended to be kept in the HKSAR from the effective date of the MCO:

The applicant shall provide description of the intended use which should be for a purpose allowed under the Convention; or

- (b) If such batch of chemical is intended to be imported from any place outside the HKSAR on or after the effective date of the MCO (i.e. 1 December 2021) and has to be kept in the HKSAR:

Since this batch of chemical also belongs to Part 1 Chemicals, the applicant shall also refer to the import conditions as stated in the **Guidelines on Application for Import/Export Permit under the MCO³**. Examples include:

- If such batch of chemical is intended to be used for laboratory-scale research or as a reference standard, the applicant shall provide descriptions of such use; or
- If such batch of chemical is intended to be used for other purposes allowed under the Convention other than laboratory-scale research or as a reference standard, the applicant shall provide descriptions of such use. At the same time, the applicant shall ensure that the proposed import of the batch of chemical into the HKSAR is agreeable to the Central People's Government ("CPG") before applying for an import permit for such batch of chemical, including but not limited to the fact that the Ministry of Ecology and

¹ "Mercury" (汞) means elemental mercury (Hg(0), Chemical Abstracts Service registry number 7439-97-6).

² "Mercury mixture" (汞混合物) means a mixture, having a mercury concentration of at least 95% by weight, of mercury and other substances (including alloys of mercury).

³ When the applicant applies for an import permit for the batch of chemical, the DEP will not only consider whether the use is allowed under the Convention, but also other factors such as whether the source of the batch of the chemical is allowed under the Convention.

Environment of the CPG has provided the exporting Party with its prior written consent regarding the said import in accordance with Article 3(6) of the Convention.

In addition, if the batch of chemical to be kept or used is intended to be imported into the HKSAR solely for re-export on or after the effective date of the MCO, the applicant should note that the DEP will refuse to issue the import permit in accordance with section 21 of the MCO. In that case, application for the possession permit will not be considered.

Use of Part 2 Chemicals

5. The DEP may impose conditions that he/she considers appropriate under section 22 of the MCO when issuing a possession permit, including regulating the use of such batch of chemical. Under section 26 of the MCO, the holder of a possession permit shall comply with the conditions imposed under the permit. If the possession permit holder would like to use such batch of chemical for purposes other than those specified in the permit, he/she shall apply to the DEP pursuant to section 31 of the MCO to change the relevant conditions imposed by the permit.

“Code of Practice for Keeping Part 2 Chemicals”

6. The “Code of Practice for Keeping Part 2 Chemical” (“Code of Practice”) aims to provide good practice guidelines for possession permit holders to comply with the requirements for environmentally sound interim storage of mercury and mercury compounds under Article 10 of the Convention. The Code of Practice has made reference to the “Guidelines on the environmentally sound interim storage of mercury other than waste mercury” (“the Guidelines”) adopted by the second meeting of the Conference of the Parties to the Convention. The Code of Practice covers suggestions in different aspects, such as container specifications, storage partition arrangements, contingency measures during keeping, etc., so that the possession permit holders can keep and use Part 2 Chemicals in an environmentally sound manner. The Code of Practice will be updated in accordance with the revisions to the Guidelines made by the Conference of the Parties to the Convention as appropriate.

The Guidelines can be downloaded from the website of the Convention secretariat: https://www.mercuryconvention.org/sites/default/files/documents/forms_and_guidance_document/2_5_e_Rev1_storage.pdf.

7. Under normal circumstances, the DEP will, based on the information provided by the applicant, consider whether the relevant keeping or use meets the above requirements and whether it is reasonably necessary (such as whether the keeper's and the user's business nature, the quantity of the Part 2 Chemical to be kept is consistent with the claimed use, etc.), and will issue the relevant permit on the condition that the keeping and use will not adversely affect public health or the environment and are in compliance with the Convention.

8. Any person who plans to apply for a possession permit shall submit the information listed in paragraph 4 above to the EPD not less than 30 working days in advance of the anticipated date of import, keeping and use. The EPD will provide assistance when the circumstances of a particular case require and give advice on compliance with the keeping or use requirements of the Convention. Each permit is normally valid for no more than 12 months. The DEP will also evaluate the information provided by the applicant and the nature of the keeping and use when determining the validity period of the permit.

Inapplicable Cases

9. Section 6 of the MCO states that the MCO does not apply in relation to mercury, mercury mixtures, mercury compounds or mercury-added products falling within any of the following descriptions:

- (1) pesticide as defined by section 2 of the Pesticides Ordinance (Cap. 133);
- (2) waste as defined by section 2 of the Waste Disposal Ordinance (Cap. 354);
- (3) Chinese herbal medicine as defined by section 2 of the Chinese Medicine Ordinance (Cap. 549);
- (4) article in transit⁴;
- (5) thing that is, or is a part of, an air transshipment cargo⁵;

⁴ "Article in transit" (過境物品) has the meaning given by section 2 of the Import and Export Ordinance (Cap. 60), which means an article -

(a) is brought into Hong Kong solely for the purpose of taking it out of Hong Kong; and

(b) remains at all times in or on the vessel or aircraft in or on which it is brought into Hong Kong.

⁵ "Air transshipment cargo" (航空轉運貨物) has the meaning given by section 2 of the Import and Export Ordinance (Cap. 60), which means transshipment cargo that is both imported and consigned for export in an

- (6) thing that is brought into Hong Kong by a person who:
- i. arrives at the Hong Kong International Airport from a place outside Hong Kong solely for the purpose of leaving Hong Kong; and
 - ii. does not pass through immigration control while in Hong Kong.

10. Section 7 of the MCO states that the MCO does not apply in relation to mercury, mercury mixtures or mercury compounds falling within any of the following descriptions:

- (1) naturally occurring trace quantities of mercury or mercury compound present in any of the following or in the products derived from any of the following:
 - i. non-mercury metals;
 - ii. non-mercury ores;
 - iii. non-mercury mineral products (such as coal);
- (2) unintentional trace quantities of mercury or mercury compound present in a chemical product.

11. Under sections 11 and 12 of the MCO, any person shall not keep or use Part 2 Chemicals except under a possession permit. If the following conditions are met, the application for a possession permit can be exempted:

Keeping of Part 2 Chemical

- (1) the Part 2 chemical is kept in a **specified laboratory** for use for laboratory-scale research or as a reference standard; and
- (2) the total quantity of mercury in the type of chemical to which the chemical belongs being kept in the laboratory does not exceed 500 g.

Use of Part 2 Chemical

- (3) When conditions (1) and (2) above are met, the chemical is used in a **specified laboratory** for laboratory-scale research or as a reference standard.

Specified laboratory is defined in section 8 of the MCO⁶. If two or more separate specified laboratories are situated on the same floor of a building, and the operation of those

aircraft and which, during the period between its import and export, remains within the cargo transshipment area of Hong Kong International Airport.

⁶ Under section 8 of MCO, “specified laboratory”(指明實驗室) means (a) a laboratory maintained by a medical establishment; (b) a laboratory maintained by a specified institution as defined by the Second Schedule to the Education Regulations (Cap. 279 sub. leg. A); (c) a science laboratory as defined by regulation 2 of the Education Regulations (Cap. 279 sub. leg. A); (d) a medical laboratory supervised by a registered

laboratories is supervised by the same person (whether alone or jointly with another person), those laboratories are regarded as a single laboratory.

Who Should Apply

12. Any person who keeps or uses Part 2 Chemicals in the HKSAR, in particular local chemical traders, academic institutions, testing and laboratory institutions, carriers who assume the capacity of an importer and exporter, as well as manufacturers using mercury or mercury compounds as raw material, should apply for a possession permit under section 22 of MCO.

Procedure for Possession Permit Application

13. Applicants are required to complete a Possession Permit Application Form (Form No. EPD MCO3) according to the relevant activity under application. The application forms can be obtained from the EPD office as mentioned in paragraph 15 below or downloaded from the EPD's website at:http://www.epd.gov.hk/epd/english/application_for_licences/applic_foms/forms.html

14. Every section on the application form must be completed. The completed form should be submitted by hand or by post together with the following documents:

- (1) a copy of the Business Registration Certificate if the application is made by a limited company;
- (2) a copy of the Business Registration Certificate, a copy of the business owner's Hong Kong Identity Card or Passport if the application is made by an unlimited company;
- (3) a copy of the applicant's Hong Kong Identity Card or passport if the application is made by a person;
- (4) the information list in paragraph 4 above.

medical laboratory technologist (within the meaning of the Medical Laboratory Technologists (Registration and Disciplinary Procedure) Regulations (Cap. 359 sub. leg. A)); or (e) a laboratory accredited under the Hong Kong Laboratory Accreditation Scheme managed by the Commissioner for Innovation and Technology on behalf of the Government.

15. Permit applications should be sent to the following address:

Territorial Control Office (Hazardous Chemicals Control Section)
Environmental Protection Department
Room 3404, 34/F, Hopewell Centre
183 Queen's Road East
Wan Chai, Hong Kong

16. The processing time of an application will depend on the complexity of the application and whether all the requisite information has been submitted. Applicants are required to submit the completed application form and all relevant information not less than 30 working days before the anticipated date of the proposed activity.

Application Fee

17. Upon receipt of the application, a demand note for the application fee, specifying the date by which it should be paid, will be sent to the applicant by post. A permit application will not be processed unless the fee is settled by the due date. Please note that the application fee is not refundable regardless of the result of the application pursuant to section 80 of the MCO.

Renewal of Permit

18. The validity period of a permit is generally 12 months. The permit holder may apply to the EPD for renewal one calendar month before the expiry date and pay the prescribed renewal fee.

19. No application for renewal will be accepted after the expiry date. Application made after the expiry date will be treated as a fresh application.

Enquiries

20. For enquiries, please contact the EPD at 2838 3111 or email to enquiry@epd.gov.hk.

Remarks

- Under sections 11 and 12 of MCO, any person who keeps or uses Part 2 Chemicals without a possession permit (except if the conditions stated in paragraph 11 are met) shall be guilty of an offence and shall be liable on conviction to a fine of \$50,000 and to imprisonment for 1 year.
- Under section 63 of MCO, any person who (a) provides any information to a public officer for the purpose of an application under this Ordinance; or in purported compliance with a regulatory requirement; (b) the information is false or misleading in a material particular; and (c) the person knows that, or is reckless as to whether, the information is false or misleading in that material particular, commits an offence. That person shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months unless he/ she has taken all reasonable steps to establish a defence under sections 67 or 68 of the MCO.
- The possession of a permit issued under the MCO does not in any way exempt the permit holder from compliance with the provisions of other legislation.

Environmental Protection Department

10 2021

Personal Information Collection Statement

Purpose of Collection

1. The personal data provided by means of this form will be used by Environmental Protection Department for one or more of the following purposes:

- a. activities relating to the processing of your submission in this form;
- b. administration and enforcement of the Mercury Control Ordinance;
- c. pollution complaint investigations;
- d. statistical and any other legitimate purposes; and
- e. to facilitate communications between Government and yourself.

2. The provision of personal data by means of this form is voluntary. If you do not provide sufficient information, we may not be able to process your application.

Classes of Transferees

3. The personal data you provided by means of this form may be disclosed to:

- a. other Bureaux and Departments of the Government of the HKSAR for the purposes mentioned in paragraph 1 above, and
- b. other persons as permitted by the relevant legislation.

Access to Personal Data

4. You have a right of access and correction with respect to personal data as provided for in sections 18 and 22 and principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance. Your right of access includes the right to obtain a copy of your personal data provided by this form.

Enquiries

5. Enquiries concerning the personal data collected by means of this form, including the making of access and corrections, should be addressed to:

Senior Environmental Protection Officer (Knowledge Management)
Room 1201, Guardian House
32 Oi Kwan Road,
Wan Chai, Hong Kong
Tel: (852) 2838 3111
Fax: (852) 2838 3111