

8 July 2013

Ms. Loh Kung Wai, Christine, JP
Under Secretary of the Environment
Environment Bureau
16/F, East Wing, Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Christine,

Air Pollution Control Amendment Bill (2013) (the “Bill”)

Thank you for your letter dated 4 July 2013.

Public health

The 2009 AQO Consultation Paper clearly stated that public health is *the* key element in the consideration of the need for the review and update of AQOs. Which is also consistent with s. 10(2)(c) of the Environmental Impact Assessment Ordinance (Cap. 499). However, as I have repeatedly pointed out during the Bills Committee stage, this key element is not reflected in the body of the Bill itself hence I see the need to move a CSA in order to expressly address this issue. The way my proposed CSA is presently worded and structured has already taken into account some of the concerns of the Administration and those of my fellow colleagues. It is a sensible midway solution, and in my view a necessary one in order to protect public health. Without the CSA, there is no way to ensure that future reviews of the AQOs would adequately take into account the need to protect public health as *the* key element and consideration.

Whilst I do not wish to undermine the role of the Advisory Panel on AQOs Review, it is not a statutory body, and its composition, deliberations and decision-making powers are not subject to any legislative framework and public scrutiny in the usual manner.

Impact on EIAO Air Quality Assessments

Furthermore, this Bill would have a fundamental impact on the way and manner in which air pollution impacts are assessed under the EIAO for future projects. Another key issue which I have raised during the Bills Committee stage.

The Bill clearly provides that the current AQOs (which are treated as standards under the EIAO) "cease to have effect" after 31 December 2013. The new AQOs are not standards but targets. As long as the Director is satisfied that granting a project an environmental permit will not be inconsistent with her duty under APCO s. 8 to aim to achieve the new AQOs "*as soon as is reasonably practicable*" she can grant the permit even if the EIA report shows that the new AQOs may not be achieved for many years.

The Secretary should be required to set minimum air quality standards consistent with the prevailing AQOs for the purposes of evaluating the acceptability of a project's cumulative air quality impacts under the EIAO. The Secretary and the Director should both have a legal duty to take the necessary measures to ensure that air quality does not breach the prevailing air quality standard at any time. The Bill should say that the existing AQOs in effect on 31 December 2013 should be the default standard until the Secretary sets a tighter one so that the replacement of the existing standard by a new target offers no opportunity for allowing existing air quality to deteriorate. Alternatively, at the very least, amendments should be made to the EIAO and the Technical Memorandum (TM) thereunder to address this same issue.

The essential difference between a target and a standard is that a target need not be achieved immediately. A standard applies as soon as it takes effect. A target may become a standard after the target has been achieved or if the person responsible for setting the target decides it should become a standard. The Secretary adopted the current AQOs as a standard under the EIAO in 1998, when the TM was issued.

Ideally, s. 8 of the APCO should be amended to impose the duty to aim to achieve the new AQOs as soon as is reasonably practicable on the Secretary as well as the Director. The Bureau is in a much better position than the Director to improve air quality - the Director can only refuse to grant new permits or impose tough conditions on new projects whereas the Secretary can make subsidiary legislation (subject to negative vetting by LegCo). Not imposing any duty on the Secretary gives

the impression that the Administration is not really serious about improving air quality. Bearing in mind that the Secretary does not have any duty under s. 8. Only the Authority (i.e. the Director) does.

The Bill makes it clear that at least some of new AQOs are still targets - it will obviously take a long time to achieve the new AQO for NO2. The fact that the AQOs are referred to as standards in Annex 4 of the TM cannot change targets into standards.

Today, we can rely on the current AQOs to provide a legal standard to prohibit projects that will cause air quality to deteriorate below the current AQOs unless there are adequate mitigation measures in place. Therefore, even if for example the Third Runway Project is to pass the air quality assessment under the new AQOs, it would only be done as against a future target. Once the Bill is enacted, the existing AQOs will cease to have effect as a legal standard. The Administration may say it could take 20 years or longer to achieve the new AQOs. The key is that we need legal standards as well as targets in order to protect the current air quality going forward and to prevent its further deterioration.

I sincerely wish the Administration would take the above into account; not only in relation to the Bill itself but also for the reform of the EIAO.

Yours sincerely,



Dennis Kwok

cc:

KS Wong, Secretary for the Environment

Director of Environmental Protection

Chairman of the Bills Committee, and all members of Bills Committee