

CONSULTATION PAPER

Proposed amendments to the Pesticides Ordinance (Cap. 133)

PURPOSE

We propose to amend the Pesticides Ordinance (Cap. 133) to enhance the control of pesticides. You are invited to read this consultation document, and contribute to the discussion.

BACKGROUND

2. Pesticides are commonly applied in domestic premises and public places to control pests, as well as in agricultural production to improve yield and quality. At present, pesticides that are available in Hong Kong should be registered under the Pesticides Ordinance with the Agriculture, Fisheries and Conservation Department (AFCD), which would examine the pesticides and register the product by their active ingredient. Activities related to the trade of pesticides are governed by a dual-licensing system under the Pesticides Ordinance and the Import and Export Ordinance (Cap 60). The former empowers the Director of Agriculture, Fisheries and Conservation (DAFC) to register pesticides and to regulate their manufacture, import, supply and sale through licensing control. The latter empowers the Director-General of Trade and Industry to control the import and export of pesticides by licence.

3. At present, pesticides are registered only on active ingredients. On registration, they are classified either as Part I pesticides (i.e. in a ready-to-use form for domestic applications), or as Part II pesticides (i.e. all other pesticides including those in a concentrate form for professional and horticultural applications). The system allows pesticide traders to put on the market any pesticide products without further scrutiny by AFCD so long as the active ingredients are registered.

PROBLEMS WITH THE PRESENT SYSTEM

4. The main problems with the present pesticide control system are as follows-

Limited control over inert ingredients and brand name

5. In general, pesticides consist of active and inert ingredients. Active ingredient means any substance or biological agent that forms the biologically active part of the pesticide, whereas inert ingredient refers to any ingredient that forms part of a pesticide but without any pest control functions (e.g. diluting agent, colour dye, etc). Different combinations of active and inert ingredients would form pesticides of different effect and toxicity. Although the active ingredients of pesticides available on the market are registered, the inert ingredients of them are not subject to registration. This means pesticides with the same active ingredients could vary a lot in effectiveness and toxicity owing to the differences in the inert ingredients used. Under the current registration system, there is little control on the actual products available in the market. Moreover, products with similar names may have very different registered active ingredients and combination of inert ingredients. These may confuse consumers as to the nature and toxicity of the pesticides they use and complicate medical diagnosis in the event of medical emergency.

Limited control on the use and availability of pesticides

6. The existing Ordinance does not regulate the use of pesticides or restrict access to hazardous registered pesticides. Any members of the public may get access to registered pesticides that are not formulated as “ready-to-use” or for household use, such as pesticides for agricultural purposes or professional pest control purposes. If such pesticides are not applied properly, it could lead to environmental hazards or affect the well being of the community.

Fulfilment of obligations under international conventions

7. The Central People's Government (CPG) has ratified two international conventions, namely the Stockholm Convention on Persistent Organic Pollutants ("Stockholm Convention") and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade ("Rotterdam Convention"), to deal with the control of hazardous pesticides. The Stockholm Convention is an international treaty aiming to protect health and the environment from persistent organic pollutants (POPs). Nine pesticides are identified to be POPs of which restrictions are imposed in terms of their import, export, production and use (*Annex A*). The Convention has been extended to the People's Republic of China, including the Hong Kong Special Administrative Region (HKSAR), since August 2004. The Rotterdam Convention is another international treaty aiming to protect human from the potential harm of hazardous chemicals. The Convention covers 28 pesticides that have been banned or severely restricted for health or environmental reasons (*Annex B*). The contracting parties are required to obtain the consent of the importing party before exporting pesticides or chemicals under control. The Convention has come into force in Mainland China since June 2005 with a declaration that it being applicable to Macau Special Administrative Region but not to the HKSAR until the CPG notifies otherwise. Governments which have ratified the Conventions are expected to introduce legal and administrative measures to fulfil the obligations with their best endeavour. As the two Conventions require control of transshipment and transit operations of the pesticides identified for regulation, we intend to incorporate the necessary measures in the Pesticides Ordinance to fulfil the convention requirements.

THE PROPOSAL

8. We propose to amend the Pesticides Ordinance and its subsidiary regulations to improve the control of pesticides, facilitate trade of non-restricted pesticides, update fines and charges and implement transitional arrangements along the following directions.

I. Proposals to improve control of pesticides

(a) Improvements to the registration system

(i) Establishment of four-part registration system for pesticides

9. We propose to replace the “active ingredient” approach with a “product” approach. The new registration system would cover both active and inert ingredients, concentration and formulation as well as intended use of each product. The existing Pesticide Register would be re-structured into four parts to reflect differences in toxicity, persistence, use pattern, and potential environmental and health hazards of pesticide products, as follows-

	Part I General	Part II General	Part III Restricted	Part IV Restricted
Usage	Domestic Ready-to-use	General Use Concentrates	Agricultural (Plant protection)	Public health, special pest control applications
Examples	Mothballs, aerosol sprays, bait stations, mosquito coils, etc.	Biopesticides, botanical extracts, less toxic pesticide concentrates, etc.	Concentrates for crop production, sport turf, landscaping, etc.	Concentrates and special formulations for public health pests, termite control, antifouling agents, etc.

10. The restricted pesticides would only be available to trained individuals with authorization from AFCD. The registration of a pesticide product is renewable every five years and the registrant can submit a request to remove the registration of a pesticide product from the Register. The system would facilitate control of availability of different pesticides and allow consumers to distinguish the nature of pesticides accordingly.

(ii) Enhanced control on product labelling

11. Under the proposed registration system, we would assess the safety of products and the accuracy of labels of all pesticide products before they are registered and placed on the market. For example, we would, where necessary, prevent individual manufacturers from supplying different products under the same product names. The proposal would help ensure products to be properly labelled and prevent misuse of pesticides caused by inaccurate labelling or confusion of product branding.

(b) Control of use of pesticides

12. We intend to ensure the safe use of pesticides by way of: (i) licensing of pesticide application service provider; (ii) requiring pesticide applicators to acquire necessary training and be registered; and (iii) restricting the accessibility of restricted pesticides to trained individuals.

(i) License pesticide application service providers

13. We propose to introduce a licensing system for any pesticide application service provider who applies registered pesticides in public places or in private places in exchange for compensation, which may include but not limited to pest control companies and companies that apply pesticides during their course of business, such as golf course operators, landscaping and horticulture companies, etc. The licensee would be required to maintain records of pesticide application; provide suitable application tools and protective equipment to pesticide applicators; and ensure proper use, storage and disposal of pesticides. A sample of pesticide application record sheet and pesticides stock record sheet are at *Annex C* and *Annex D* respectively. The licensee should nominate a “responsible person” who has been registered as a pesticide applicator with AFCD to help oversee the management and operation of the pesticide application services. The proposal would impose responsibilities on the licensee to properly manage its operations to help ensure safe use of pesticides. The licence for pesticide application service provider is to be valid for one year.

(ii) Registration of pesticide applicators

14. To ensure that applicators who handle hazardous pesticides have the knowledge of safe use of these products, we propose that pesticide applicators should complete an approved training course provided by local training institutes and be registered. The course would cover topics related to safe use of pesticides, including understanding of labelling and safety requirements, proper application and maintenance of equipment and basic principle on pest management. Alternatively, a candidate may gain registration through seeking accreditation for the qualifications acquired prior to introduction of the amendment legislation or sitting an assessment imposed by DAFC. Registration would be renewable every five years based on the track records of the applicator. Pesticide application service providers would only be permitted to employ registered pesticide applicators.

(iii) Restrict access to pesticides

15. We propose that more hazardous pesticide products should only be made available for use by qualified and trained users, while less hazardous pesticide products would be made available to the general public with little or no restriction. Part III and Part IV pesticides under the proposed four-part registration scheme would be regarded as restricted pesticides and could only be made available to licensed pesticide application service providers and authorized individuals who have completed the necessary training.

(iv) Authorize trained individuals to access and use restricted pesticides

16. DAFC may authorize the purchase and use of Part III and Part IV pesticides by an individual who is not engaged in providing pesticide application service and does not apply such pesticides in public place. The individual should complete an approved training course or pass an assessment imposed by DAFC so as to obtain a five-year authorization. This proposal mainly caters for amateur gardeners and farmers who would apply restricted agricultural pesticides on their own premises or for the purpose of agricultural production. AFCD would offer training to farmers as an extension to the existing training programmes on pesticide applications.

(c) Control of transshipment and transit operations of pesticides regulated by the Stockholm Convention and the Rotterdam Convention

17. Both Conventions deal with the control of hazardous chemicals including pesticides. At present, pesticides in transshipment or transit are exempted from the control of the Pesticides Ordinance. To fulfil the obligations under the Conventions, we propose to require shipping companies, carriers or other parties concerned to obtain a permit under the Pesticides Ordinance to import, export and tranship pesticides governed by the Conventions and for transit operations of the pesticides listed in the Stockholm Convention. As those pesticides are not registered in Hong Kong and are banned in many countries, we anticipate that the impact on the trade would be minimal. There was no import, export, production nor use of any of the nine pesticides listed under the Stockholm Convention in Hong Kong for the past five years and there had been no stockpiling of such pesticides since 2001. In the past two years, there has been no trade of any convention-listed pesticides. The last recorded trade activities have to trace back to a number of transshipments of two convention-listed pesticides from 2000 to 2004.

18. Licensing requirement under the Import and Export Ordinance would continue to apply to the above trading activities except that carriers need not apply for such licences for air transshipment and transit cargoes provided that the following permit conditions under the Pesticides Ordinance are met:

- (a) they have valid permission to import and export the pesticides regulated under the Conventions from both exporting and importing countries; and
- (b) they notify DAFC within a period of seven days of arrival of the cargo with its details and relevant documents.

II. Facilitation of trade of non-restricted pesticides

(a) Deregulate the retail of pesticide products for domestic application

19. To streamline control procedures without compromising public safety, we propose to repeal the current licensing requirement for pesticide retailers who only sell Part I domestic pesticides in a ready-to-use form. The new product registration system would substantially reduce the risk of these products as every single ingredient of the product as well as the product label would be evaluated. The deregulation of such retail-licensing requirement is expected to benefit the current 1 600 licensed retailers involving a total of about 3 500 retail outlets.

(b) New permit system to facilitate trading of currently registered pesticides

20. Upon the implementation of the four-part registration system, pesticides presently registered but without a brand name (e.g. raw pesticides for production of other products) would be considered as unregistered pesticides. At present, a permit for trading of unregistered pesticides covers only one type of pesticide. We propose to introduce a new type of permit to allow traders to trade more than one of such pesticides of which status affected by the change in registration system under a single permit to facilitate trading activities. As the safety of those pesticides have already been evaluated during the product registration process, there would be no need for submission of technical data to support the permit application.

III. Update Fines and Charges

21. We would take the opportunity to update the charges taking into account the inflation rates and consider increasing the fines of the Ordinance. The updates fees will be charged on a cost recovery basis. A comparison of the fines is set out in *Annex E*.

IV. Transitional arrangement

22. We propose a transitional period of six months to re-register pesticides on a product basis and realign the licence class for the existing trading activities in accordance with the four-part registration system for pesticides. A two-year grace period would be provided to license pesticide application service providers, to register pesticide applicators, and to authorize individuals for getting access to restricted pesticides. The provisions that concern the two Conventions would come into immediate effect upon passage of the amendment legislation.

COMMENTS ON THE PROPOSAL

23. Please send your views **on or before 20 March 2007** for the attention of the Plant and Pesticides Regulatory Division, Agriculture, Fisheries and Conservation Department by email, by post or by fax at the following addresses and fax number-

Email : pesticides@afcd.gov.hk
Post : Agriculture, Fisheries and Conservation Department
5th floor Cheung Sha Wan Government Offices
303 Cheung Sha Wan Road
Kowloon
Fax : 2736 9904

24. You are also invited to attend one of the open discussion forums scheduled for 9 March 2007-

Date : 9 March 2007
Time : *Session 1*: 9:30 a.m. – 11:00 a.m. ; or
Session 2: 2:00 p.m. – 3:30 p.m.
(The content of both sessions are the same.
Please choose one session only)
Venue : Lecture Theatre, Hong Kong Central Library
66 Causeway Road, Causeway Bay, Hong Kong

If you are interested in attending the forum, please fill out the form at **Annex F** and forward to the Agriculture, Fisheries and Conservation Department **on or before 5 March 2007**. The relevant addresses and fax number are set out in paragraph 23.

Health, Welfare and Food Bureau
Agriculture, Fisheries and Conservation Department
February 2007

Pesticides listed under the Stockholm Convention (as at 31.12.2006)

Pesticides		Relevant CAS No.
1.	Aldrin	309-00-2
2.	Chlordane	57-74-9
3.	DDT	50-29-3
4.	Dieldrin	60-57-1
5.	Endrin	72-20-8
6.	Heptachlor	76-44-8
7.	Hexachlorobenzene	118-74-1
8.	Mirex	2385-85-5
9.	Toxaphene	8001-35-2

Annex B**Pesticides listed under the Rotterdam Convention (as at 31.12.2006)**

Pesticides		Relevant CAS No.
1.	2,4,5-T and its salts and esters	93-76-5*
2.	Aldrin	309-00-2
3.	Binapacryl	485-31-4
4.	Captafol	2425-06-1
5.	Chlordane	57-74-9
6.	Chlordimeform	6164-98-3
7.	Chlorobenzilate	510-15-6
8.	DDT	50-29-3
9.	Dieldrin	60-57-1
10.	Dinitro-ortho-cresol (DNOC) and its salts (such as ammonium salt, potassium salt and sodium salt)	534-52-1 2980-64-5 5787-96-2 2312-76-7
11.	Dinoseb and its salts and esters	88-85-7*
12.	1,2-dibromoethane (EDB)	106-93-4
13.	Ethylene dichloride	107-06-2
14.	Ethylene oxide	75-21-8
15.	Fluoroacetamide	640-19-7
16.	HCH (mixed isomers)	608-73-1
17.	Heptachlor	76-44-8
18.	Hexachlorobenzene	118-74-1
19.	Lindane	58-89-9
20.	Mercury compounds, including inorganic mercury compounds, alkyl mercury compounds and alkyloxyalkyl and aryl mercury compounds	---
21.	Monocrotophos	6923-22-4
22.	Parathion	56-38-2
23.	Pentachlorophenol and its salts and esters	87-86-5*
24.	Toxaphene	8001-35-2
25.	Dustable powder formulations containing a combination of : Benomyl at or above 7 per cent, Carbofuran at or above 10 per cent, Thiram at or above 15 per cent	17804-35-2 1563-66-2 137-26-8
26.	Methamidophos (Soluble liquid formulations of the substance that exceed 600g active ingredient/l)	10265-92-6
27.	Phosphamidon (Soluble liquid formulations of the substance that exceed 1000 g active ingredient/l)	13171-21-6) (mixture, (E)&(Z) isomers); 23783-98-4 ((Z)-isomer); 297-99-4 ((E)-isomer)
28.	Methyl-parathion (Emulsifiable concentrates (EC) at or above 19.5% active ingredient and dusts at or above 1.5% active ingredient)	298-00-0

*Only the CAS numbers of parent compounds are listed.

Sample – Pesticide Application Record Sheet**施用除害劑工作記錄表 Job Sheet For Pesticide Application**

除害劑施用服務提供者名稱: _____ 牌照號碼: _____
 Name of Pesticide Application Service Provider: _____ Licence No.: _____

施藥地址: _____ 客戶/聯絡人姓名: _____ 電話: _____
 Address of Application Location: _____ Name of client/contact person: _____ Tel: _____

地點用途: 住宅 食肆 寫字樓 醫院 酒店 公共汽車 學校
 Land use of Location: Residence Restaurant Office Hospital Hotel Public Vehicle School
 倉庫 商場 花園 其他
 Warehouse Shopping Centre Garden Others _____

蟲害類別: 蟑螂 老鼠 白蟻 虱 蠅 蚊 蟻 蟎 其他 (如: 野草)
 Pest Type: Cockroach Rodent Termite Flea Fly Mosquito Ant Mite Others (e.g. weeds) _____

施藥地點: 廚房 客廳 房 廁所 走廊 花園 寫字樓 儲物室 其他
 Application Site: Kitchen Dining Room Room Toilet Corridor Garden Office Store Room Others _____

除害劑資料 Pesticide's Information:

施藥日期 Application date	產品編號 Product No.	使用量(稀釋前) Quantity used (before dilution)	*施藥方法 *Treatment method	施藥之面積 Size of area treated (平方米/平方尺)(m ² /ft ²)	操作員姓名 Name of Applicator	從業員編號 Applicator No.	簽署 Signature

*ST: 空間噴霧 Space Treatment SP: 定點處理 Spot Treatment C&C: 間隙處理 Crack & Crevice Treatment
 PT: 周邊處理 Perimeter Treatment AT: 全面處理 All Surface Treatment

Annex E

**Comparison of existing and proposed maximum penalty for offences
under the Pesticides Ordinance**

Offence	Existing maximum penalty	Proposed maximum penalty
<ul style="list-style-type: none">- Engaging in trade of pesticides without pesticide licence or permit*- Providing pesticide application service without pesticide application service provider licence- Engaging in pesticide application service as a pesticide applicator without registration- Purchase and use of restricted pesticide without authorization	Level 5 (\$50,000) and 1 year imprisonment	Level 6 (\$100,000) and 1 year imprisonment
<ul style="list-style-type: none">- Contravention of pesticide licence or permit conditions*- Contravention of pesticide application service provider licence conditions- Contravention of pesticide applicator registration conditions- Contravention of authorization conditions for purchase and use of restricted pesticides	Level 4 (\$25,000) and 6 months imprisonment	Level 5 (\$50,000) and 6 months imprisonment
<ul style="list-style-type: none">- Obstruction of public officers*	Level 3 (\$10,000) and 6 months imprisonment	Level 4 (\$25,000) and 6 months imprisonment
<ul style="list-style-type: none">- Failure to apply for variation of ingredient of registered pesticide- Contravention of regulations and other minor offences*	Level 1 (\$2,000) and 6 months imprisonment	Level 2 (\$5,000) and 6 months imprisonment

* *Existing offences*

**Public Consultation Forum
on Proposed Amendments to the Pesticides Ordinance
Reply Slip**

(Please reply to AFCD before 5th March)

To: Agriculture, Fisheries and Conservation Department **Fax No.:** 2736 9904
Plant and Pesticides Regulatory Division

Address: Agriculture, Fisheries and Conservation Department
5th floor, Cheung Sha Wan Government Offices,
303 Cheung Sha Wan Road,
Kowloon,
Hong Kong

I/ My company's representative * will attend Session 1/Session 2* of the public consultation forum on 9th March 2007 at the Lecture Theatre of the Hong Kong Central Library, 66 Causeway Road, Causeway Bay, Hong Kong.

Name: _____

Tel. No.: _____ **Fax :** _____

E-mail: _____

District Council
(For representative of
District Council): _____

For company representative, please provide the following information:

Company Name
(In Chinese): _____

(In English): _____

Nature of business: Pest Control / Cleaning / Horticulture /
Environmental Engineering / Others _____

Post Title: _____

Office Tel.: _____

**Delete as appropriate*

Signature: _____

Date: _____