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ADVISORY COUNCIL ON FOOD AND ENVIRONMENTAL HYGIENE

Proposed Amendments to the Pesticides Ordinance (Cap. 133)

PURPOSE

This paper seeks Members' views on our proposal to enhance the control of pesticides.

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 (Cap. 133) 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. 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 member 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 Peoples' 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. The Convention has been extended to 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 29 pesticides that have been banned or severely restricted for health or environmental reasons. 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 there are no provisions to regulate transhipment and transit operations of the pesticides listed under the two Conventions, it is necessary to amend 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 on pesticides so as to enhance public safety, and fulfil the obligations to the Stockholm Convention and the Rotterdam Convention along the following directions.

(a) Improvements to the registration system

(i) Establishment of a 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 pest control service provider; (ii) requiring pesticides applicators to acquire necessary training and be registered; and (iii) restricting the accessibility of restricted pesticides to trained individuals.

(i) License pest control service providers

13. We propose to introduce a licensing system for any pest control 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 licencee would be required to maintain records of pesticide application; provide suitable application tools and protective equipment to pesticide applicators; ensure proper use, storage and disposal of pesticides; and provide guidelines on safe operations for staff's reference. The licencee should nominate a "responsible person" who has been registered as a pesticide applicator with AFCD. The proposal would impose responsibilities on the licencee to properly manage its operations to help ensure safe use of pesticides. The licence for pest control 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. Pest control 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 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 pest control 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 pest control 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 in pesticide applications.

(c) Fulfilment of obligations to the Stockholm Convention and the Rotterdam Convention

17. Both Conventions deal with the control of hazardous chemicals including pesticides. At present, pesticides in transhipment or transit are exempted from the control of the Pesticides Ordinance. We propose to require shipping companies or carriers 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 (Cap. 60) would continue to apply for the above trading activities except that carriers need not apply for such licences for air transhipment and transit cargoes provided that the following Cap.133 permit conditions are met:

(a) they have valid permission to import and export the concerned pesticides 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.

(d) Update Fines and Charges

19. We would take the opportunity to update the charges and fines of the Ordinance taking into account the inflation rates.

(e) Transitional arrangement

20. We propose a transitional period of six months to re-register pesticides on a product basis and for all trading activities which are already in operation prior to the enactment of the amendment legislation. A two-year grace period would be provided to license pest control 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.

CONSULTATION

21. We will conduct a public consultation exercise on the proposals covering some 4,000 parties, including farmers' associations, pesticide and pest control trade associations, existing pesticide licencees, green groups, public utilities, etc., and organize public forums for open discussion. We anticipate that the trade would be concerned about the costs for providing training for the pesticide applicators and meeting the licensing conditions such as providing protection gears to the applicators and arranging for the additional administrative work. As many pest control staff have already attended training courses organized by pest control trade associations and local institutions, the training cost implication to the trade should be manageable. The benefits of the new control system in terms of improving public safety and better protection of the pesticide applicators and the community would outweigh the increase in costs.

THE NEXT STEP

22. We will take into account comments received during consultation in preparing the Pesticides (Amendment) Bill.

ADVICE SOUGHT

23. Members are invited to comment on the proposals set out in paragraphs 8 to 20.

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