

WATER POLLUTION CONTROL ORDINANCE 1980**ARRANGEMENT OF SECTIONS**

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HONG KONG

No. 41 OF 1980

I assent.

L.S.

MURRAY MACLEHOSE,
Governor.

10 July 1980.

An Ordinance to control the pollution of the waters of Hong Kong.

Ordinance not
disallowed - 200
G.N. 632/81.
L.N. 87/81.

[1 April 1981]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PART I**PRELIMINARY**

1. This Ordinance may be cited as the Water Pollution Control Ordinance 1980 and, subject to section 7, shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*.

Short title and commencement.

2. (1) In this Ordinance, unless the context otherwise requires—
“Appeal Board” means an Appeal Board constituted under Part VI;
“Authority” means—

Interpretation.

- (a) in relation to a water control zone, a public officer appointed by the Governor under section 4(1)(b) for that zone;
- (b) in relation to the powers, functions and duties mentioned in section 4(3), the Director of Public Works;

“existing deposit”, in relation to a water control zone, means a deposit of matter which—

- (a) was made, whether or not regularly or continuously, in any place and which is, or of which a component is, likely to enter the waters of Hong Kong or into inland waters or a public sewer or public drain in that zone; and
- (b) was so made during the period of 12 months ending with the day appointed by the Governor by order under section 7(2) which applies to that zone and that deposit;

“existing discharge”, in relation to a water control zone, means a discharge of matter which was made, whether or not regularly or continuously—

- (a) into the waters of Hong Kong or into inland waters; or
- (b) into a public sewer or public drain,

in that zone during the period of 12 months ending with the day appointed by the Governor by order under section 7(2) which applies to that zone and that discharge;

“inland waters” means any river, stream, watercourse, lake, pool or pond, whether natural or artificial or above or below ground, and the bed or channel of any such river, stream, watercourse, lake, pool or pond which is for the time being dry, but excluding—

- (a) a lake, pool or pond the waters of which do not enter (whether directly or by way of another lake, pool or pond) any river,

stream or watercourse or the territorial waters or tidal waters of Hong Kong unless the lake, pool or pond is brought within this definition by regulations made under section 46(1)(I);

(Cap. 102.)

(b) waters in any waterworks within the definition of waterworks in section 2 of the Waterworks Ordinance;

(c) any drain or sewer;

“licence” means a licence granted under section 20;

“public drain” means a drain which is vested in and maintained by the Government as a public utility;

“public sewer” means a sewer which is vested in and maintained by the Government as a public utility;

“register” means a register required to be kept under section 42;

“Secretary” means the Secretary for the Environment;

“water control zone” means any part of Hong Kong declared to be a water control zone under section 4;

“water quality objective” means a water quality objective established by the Secretary under section 5;

“waters of Hong Kong” means all inland waters, territorial waters and tidal waters of Hong Kong and in sections 5(1), 6(5)(a), 13(1), 17, 24 and 29(4)(a) includes the flora and fauna thereof.

(2) References in this Ordinance to discharging or making a discharge of matter into the waters of Hong Kong or into inland waters or into a public sewer or public drain are references to causing or permitting that matter to enter those waters or the public sewer or public drain (whether by emitting, throwing, placing or by any other means) at the place where the matter first enters the same.

(3) References in this Ordinance to discharging or making a discharge of matter into the waters of Hong Kong or into inland waters or into a public sewer or public drain in the water control zone include causing or permitting matter to be deposited in any place (whether in that zone or elsewhere) in circumstances where the matter, or any component of it, is likely to enter the waters of Hong Kong or inland waters in that zone or to enter the public sewer or public drain within a reasonably foreseeable time by falling, descending, percolating or being carried by wind or water.

Governor
may give
directions.

3. (1) The Governor may give such directions as he thinks fit, either generally or in any particular case, with respect to the exercise or performance by the Secretary or an Authority of any powers, functions or duties under this Ordinance.

(2) The Secretary and an Authority shall, in the exercise or performance of their respective powers, functions and duties under this Ordinance comply with any directions given by the Governor under subsection (1).

PART II

WATER CONTROL ZONES AND WATER QUALITY OBJECTIVES

Water control
zones and
Authorities
therefor.

4. (1) The Governor in Council may by order published in the *Gazette*—

(a) after consultation with the Environmental Protection Advisory Committee, declare any part of Hong Kong to be a water control zone for the purposes of this Ordinance;

(b) designate a public officer by name or office to be the Authority for any water control zone and as such, subject to subsection (3), to exercise and perform in respect of that zone the functions, powers and duties conferred on the Authority by this Ordinance.

(2) An order under subsection (1)(b) may, subject to subsection (3), designate different public officers to be Authorities for a water control zone in relation to the discharge or deposit of any specified classes or descriptions of matter or matter resulting from the operation of specified classes or descriptions of trade or industry.

(3) Notwithstanding any designation under subsection (1)(b), the Director of Public Works shall be the Authority for the purposes of enforcing the prohibition in section 9 and exercising and performing any power, function or duty under this Ordinance in relation to discharges into public sewers and public drains.

(4) An order under subsection (1) shall, for each water control zone constituted thereby—

- (a) make reference to a plan or map of that zone deposited in the Land Office at Victoria; or
- (b) sufficiently describe the zone by other means.

5. (1) The Secretary shall, after consultation with the Environmental Protection Advisory Committee, establish for the waters of Hong Kong in each water control zone a water quality objective or different objectives for different parts of a zone.

Secretary
to establish
quality
objectives.

(2) The water quality objective for any particular waters shall be the quality which, in the opinion of the Secretary, should be achieved and maintained in order to promote the conservation and best use of those waters in the public interest.

(3) Any water quality objective may be amended from time to time by the Secretary, after consultation with the Environmental Protection Advisory Committee.

(4) A statement of every water quality objective established under subsection (1) and all amendments thereto, signed by the Secretary, shall be published in the *Gazette* and shall be kept with the register and made available for inspection by the public free of charge at the same times as the register is so available.

(5) Where under subsection (1) the Secretary establishes different water quality objectives for different parts of a water control zone he shall ensure that the statement thereof kept with the register pursuant to subsection (4) sufficiently delineates each part of the water control zone.

6. (1) The Secretary shall in writing notify an Authority of the objective or objectives of quality established for a water control zone for which that Authority is responsible and of any amendment thereof under section 5(3).

Authority
to seek to
achieve quality
objectives.

(2) The Secretary shall notify the Director of Public Works of all water quality objectives and of any amendment thereof under section 5(3).

(3) Each Authority shall exercise and perform his powers, functions and duties under this Ordinance with the aim of achieving the relevant water quality objectives as soon as is reasonably practicable and thereafter maintaining the quality so achieved.

(4) If in the opinion of the Secretary the achievement or maintenance of any water quality objective would be better served by the exercise

by the Authority of any of his powers under section 17, 20(4) or 24, the Secretary may, subject to subsection (5), give directions in writing to the Authority as to the manner in which he shall exercise those powers; and, in the case of a direction which relates to section 20(4), any such direction may be of a general nature or relate to a particular case or particular cases.

(5) The Secretary shall not give any direction under subsection (4) as to the manner in which an Authority shall exercise the powers in section 17 or 24 in relation to a discharge or deposit unless he considers that—

- (a) any part of the waters of Hong Kong are in such a condition as to constitute a danger to the health of the public, or a section of the public, and the exercise of the powers in relation to that discharge or deposit would tend to lessen the danger; or
- (b) in the case of an exemption from section 9 or a licence for the purposes of that section, the discharge or deposit may be harmful to the operation of any sewage treatment plant.

(6) The Authority shall comply with any direction given to him under subsection (4) and the discretion conferred on the Authority by section 17(1), 20(4) or 24(1) shall not apply to any discharge or deposit in respect of which such a direction is in force.

PART III

PROHIBITED DISCHARGES AND DEPOSITS

Application and commencement of sections 8 and 9.

7. (1) Notwithstanding that this Ordinance has come into operation by virtue of a notice under section 1, neither section 8(1)(a), nor section 8(1)(b) nor section 9(1) shall apply—

- (a) to any discharge or deposit, not being an existing discharge or existing deposit, which would otherwise be prohibited by those sections until the day appointed by the Governor under subsection (2) which applies to that discharge or deposit;
- (b) to an existing discharge or existing deposit which would otherwise be prohibited by those sections until the day appointed by the Governor under subsection (3) which applies to that discharge or deposit.

(2) The Governor may from time to time by order published in the *Gazette* which is declared to be applicable to any water control zone appoint a day by reference to which the following shall be classified as an existing discharge or existing deposit for the purposes of this Ordinance—

- (a) the discharge of any matter, or any specified category of discharge, into the waters of Hong Kong or inland waters in that zone, being a discharge within the prohibitions in section 8(1);
- (b) the deposit of any matter, or any specified category of deposit, which, or a component of which, is likely to enter the waters of Hong Kong or inland waters in that zone, being a deposit within the prohibitions in section 8(1);
- (c) the discharge of any matter, or any specified category of discharge, into a public sewer or public drain in that zone, being a discharge within the prohibition in section 9(1);
- (d) the deposit of any matter, or any specified category of deposit, which, or a component of which, is likely to enter a public sewer or public drain.

(3) The Governor may from time to time by order published in the *Gazette* which is declared to be applicable to any water control zone appoint a day on and after which—

- (a) section 8(1)(a) shall apply to all existing discharges into the waters of Hong Kong in that zone or to all existing deposits which, or a component of which, is likely to enter the waters in that zone or to any specified category of such discharges or deposits;
- (b) section 8(1)(b) shall apply to all existing discharges into inland waters in that zone or to all existing deposits which, or a component of which, is likely to enter the inland waters in that zone or to any specified category of such discharges or deposits;
- (c) section 9(1) shall apply to all existing discharges into a public sewer or public drain in that zone or to all existing deposits which, or a component of which, is likely to enter a public sewer or public drain in that zone, or to any specified category of such discharges or deposits.

(4) For the purposes of an order under this section, a category of discharge or deposit may be determined by reference to—

- (a) the discharge or deposit of a particular class or description of matter or of matter resulting from the operation of a particular class or description of trade or industry;
- (b) the discharge or deposit of matter at a particular rate or in a particular quantity during a specified period;
- (c) where section 9 applies, in addition to paragraphs (a) and (b), the fact that the discharge or deposit is of domestic sewage or surface water and is made into a public sewer or public drain provided for the carriage of foul water or of surface drainage water,

or a combination of all or any such factors.

(5) An order under this section may, in respect of the same water control zone, appoint different days for discharges, or any category thereof, and for deposits, or any category thereof.

8. (1) Subject to section 12, a person commits an offence who discharges—

- (a) any poisonous, noxious or polluting matter into the waters of Hong Kong in a water control zone;
- (b) any matter into any inland waters in a water control zone which tends (either directly or in combination with other matter which has entered those waters) to impede the proper flow of the water in a manner leading or likely to lead to a substantial aggravation of pollution.

(2) Where any matter referred to in subsection (1)(a) or (b) is discharged from any premises or vessel, then, subject to section 12, the occupier of the premises or the person having command or charge of the vessel commits an offence, in addition to any other person who may be guilty of an offence under subsection (1).

(3) This section does not apply to any of the following discharges or deposits—

- (a) a discharge which is made by way of a public sewer or public drain;
- (b) a discharge of oil or a mixture containing oil into the waters of Hong Kong (within the meaning of each of these terms in sections 45 and 46 of the Shipping and Port Control Ordinance); (Cap. 313.)

Prohibited discharges into waters of Hong Kong and inland waters.

- (SI 1975/1831.)
- (c) a discharge incidental to, or derived from, the normal operation of a vessel (including a dynamically supported craft) or of its equipment;
- (d) a discharge which requires to be licensed under paragraph 1 of Schedule 1 to the Dumping at Sea Act 1974 (Overseas Territories) Order 1975;
- (e) a discharge or deposit made—
- (i) by, or with the consent of, the Director of Marine for the purpose of carrying out harbour works or providing moorings or aids to navigation;
- (ii) as part of an undertaking authorized by the Governor in Council under subsection (2) of section 3 of the Public Reclamations and Works Ordinance or by the Governor under subsection (3) of that section;
- (iii) under, and in accordance with, a Crown lease granted under the Foreshores and Sea Bed Ordinance;
- (Cap. 113.)
- (Cap. 127.)
- (Cap. 295.)
- (f) a discharge or deposit which is forbidden by the Dangerous Goods Ordinance or any regulations made thereunder.

Prohibited discharges into public sewers and public drains.

9. (1) Subject to section 12, a person commits an offence who discharges any matter into a public sewer or public drain in a water control zone other than—

- (a) a discharge of domestic sewage into—
- (i) a public sewer, or
- (ii) a public drain,
- for the carriage of foul water;
- (b) a discharge of unpolluted water into—
- (i) a public sewer, or
- (ii) a public drain,
- for the carriage of surface drainage water.

(2) Where any matter is discharged into a public sewer or public drain in a water control zone from any premises, then, subject to section 12, the occupier of the premises commits an offence, in addition to any other person who may be guilty of an offence under subsection (1).

(3) In subsection (1)—

“domestic sewage” means any waste of a kind and quantity which is ordinarily disposed of in a household by the normal use of a toilet, watercloset, bath, shower, sink, basin or other sanitary fitment by persons residing therein;

“unpolluted water” means—

- (a) rain water from any part of a building, including any area appurtenant to a building;
- (b) water which does not contain any poisonous, noxious or polluting matter.

(4) This section does not apply to—

- (Cap. 295.)
- (a) a discharge or deposit which is forbidden by the Dangerous Goods Ordinance or any regulations made thereunder; or
- (b) water used—
- (i) for firefighting purposes;
- (ii) in connexion with an occurrence in which life or property is endangered;
- (iii) for the cleansing of streets, thoroughfares, and other areas.

10. In any proceedings for an offence under section 8(1), 8(2), 9(1) or 9(2) in which it is alleged that the defendant caused matter to enter the waters of Hong Kong or inland waters or a public sewer or public drain or caused matter to be deposited as provided in section 2(3) it shall not be necessary for the prosecution to prove that the acts or omissions in question were accompanied by any intention, knowledge or negligence on the part of the defendant as to any element of the offence.

Mental ingredient of offences under sections 8 and 9.

11. A person who commits an offence under section 8(1), 8(2), 9(1) or 9(2) is liable to—

Penalties.

(a) for a first offence, a fine of \$50,000;

(b) for a second or subsequent offence, a fine of \$100,000,

and in addition, if the offence is a continuing offence, to a fine of \$500 for each day during which it is proved to the satisfaction of the court that the offence has continued.

12. (1) A person does not commit an offence under section 8(1), 8(2), 9(1) or 9(2) if he proves that—

Defences.

(a) the discharge or deposit in question is an existing discharge or deposit which is exempt under section 15; or

(b) the discharge or deposit in question is made under, and in accordance with, a licence granted under section 20; or

(c) where section 2(3) applies, the matter was deposited pursuant to an approval under subsection (2) and in accordance with the terms and conditions thereof; or

(d) he exercised all such care and took all such steps as the court considers reasonable in the circumstances to avoid the occurrence of the prohibited discharge or deposit; or

(e) the discharge or deposit was made in an emergency in order to avoid danger to life or property and as soon as was reasonably practicable he informed the Authority thereof in writing; or

(f) he acted under instructions given to him by his employer and complied with paragraph (d) to the extent which the court considers reasonable having regard to his position as an employee.

(2) The Director of Agriculture and Fisheries may by order published in the *Gazette* approve the making of any particular kind of deposit as a farming practice to which the provisions of subsections (1)(a) and (1)(b) of section 8, or either of those provisions, do not apply so far as it is made in such areas by such persons and in such manner as may be specified in the order.

(3) The power of the Director of Agriculture and Fisheries under subsection (2) extends to practices employed in all kinds of farming, including agriculture, animal husbandry and fish farming.

13. (1) Where any person has been convicted of an offence under section 8(1), 8(2), 9(1) or 9(2) the Authority may if he is of the opinion that—

Restoration of waters by convicted person.

(a) any part of the waters of Hong Kong suffered continuing damage as a direct result of the commission of the offence; and

(b) it is reasonably practicable to restore, or partially restore, that part to the condition it was in before the commission of the offence,

by notice in writing require the person so convicted to carry out such work as is specified in the notice to effect such restoration or partial restoration.

(2) A notice under subsection (1)—

(a) may specify the manner in which the work is to be carried out;

- (b) shall stipulate the time before which the work shall be commenced and the time by which it shall be completed;
- (c) shall be addressed to and served personally or by registered post on the person who committed the offence.

(3) If a person fails to comply with a notice under subsection (1) served on him, the Authority may, without further notice but subject to subsection (4), carry out or cause to be carried out the work, or the remaining work, specified in the notice and recover from that person the cost of so doing as a civil debt due to the Crown.

(4) The Authority shall not exercise the power in subsection (3)—

- (a) until after the expiry of the time allowed under section 29(3) for appeal against a requirement under subsection (1); and
- (b) where an appeal is brought, until it is determined, withdrawn or abandoned.

(5) A copy of a document which purports to be a notice signed by the Authority for the purposes of subsection (1) shall be admitted in evidence in proceedings under subsection (3) on its production without further proof and—

- (a) until the contrary is proved, the court before the document is produced shall presume that the signature to the document is genuine and the person signing it was the Authority at the time when he signed it; and
- (b) such document shall be sufficient evidence of the opinion of the Authority and of all other matters contained therein.

PART IV

EXEMPTION OF EXISTING DISCHARGES AND DEPOSITS

Notices of existing discharges and deposits.

14. (1) After a day appointed by order under subsection (2) of section 7 and before a day appointed by order under subsection (3) of that section a person may give notice to the Authority of an existing discharge or deposit to which those orders apply.

(2) A notice under subsection (1) shall be given in such manner and form and contain such information and estimates as may be prescribed.

(3) Any person who in any notice under subsection (1) makes any statement or gives any estimate which he knows to be incorrect in a material particular or who recklessly makes any statement or gives any estimate which is incorrect in a material particular or knowingly omits any material particular therefrom commits an offence and is liable to a fine of \$5,000.

Exemption of existing discharges and deposits.

15. (1) Subject to sections 16 and 17—

- (a) an existing discharge or deposit to which subsection (1)(a) of section 8 would otherwise apply is exempt from the operation of that subsection if notice of the existing discharge or deposit has been duly given under section 14;
- (b) an existing discharge or deposit to which subsection (1)(b) of section 8 would otherwise apply is exempt from the operation of that subsection if notice of the existing discharge or deposit has been duly given under section 14;
- (c) an existing discharge or deposit to which section 9(1) would otherwise apply is exempt from the operation of that section if notice of the existing discharge or deposit has been duly given under section 14.

(2) An exemption under subsection (1) is not limited to the making of the discharge or deposit by the person who gave the notice under

section 14 but extends to the discharge or deposit in question when made by any person.

(3) No exemption shall arise under this section if, at the time when notice is given under section 14, the existing discharge or deposit is being or has been made—

- (a) from premises that have been unlawfully erected on unleased land in contravention of section 4 of the Crown Land Ordinance; (Cap. 28.)
or
- (b) from premises on land held under a Crown lease or on land occupied under a licence issued under section 5 of the Crown Land Ordinance and such discharge or deposit is in breach of that Crown lease or licence.

(4) A person may apply for a licence for any discharge or deposit notwithstanding that the discharge or deposit is already exempt under subsection (1) and the Authority may, subject to Part V, grant a licence therefor.

(5) The exemption conferred by this section shall apply to the discharge or deposit as from time to time varied under section 17 or 18.

16. (1) Subject to section 29(4) and without prejudice to the powers in section 17, an exemption conferred by section 15(1) ceases to be operative during any time when—

Cessation and
cancellation
of exemption.

- (a) either of the following ceases to be the same as that described in the notice given under section 14 or the same as that required or approved by the Authority under section 17 or 18—
 - (i) the place at which the discharge or deposit is made;
 - (ii) the period within which the discharge or deposit is made;
- (b) any one of the following exceeds by more than 30 *per cent*, calculated in such manner as may be prescribed, the information or estimate relating thereto in the notice given under section 14—
 - (i) the quantity of the discharge or deposit or any component of it;
 - (ii) the rate at which a discharge or deposit or any component of it is made;
 - (iii) the temperature of the discharge or deposit;
- (c) a new component is added thereto without the approval of the Authority under section 18.

(2) If it appears to the Authority that a statement in any notice given under section 14 is incorrect in a material particular, but that no contravention of subsection (3) of that section arises therefrom, he may—

- (a) by notice in writing call upon the person who is making the existing discharge or deposit, within such time as the Authority may allow, to give reasons why the notice under section 14 should not be declared inoperative; and
- (b) after considering such reasons (if any), by notice in writing addressed to the said person declare the notice under section 14 to be inoperative for the purpose of conferring the exemption provided for in section 15(1) as from such date as the Authority may fix.

(3) If, in any proceedings for an offence against section 8(1) or 9(1), it appears to the court that an incorrect statement in a notice under section 14 has been made in contravention of subsection (3) of that section (whether or not the person who gave the notice is convicted under that subsection) the court shall declare the notice to be inoperative for the purpose of section 15(1) and it shall be treated as never having been operative for that purpose.

Further powers
in relation to
an existing
discharge or
deposit.

17. (1) Subject to section 6(6), the Authority may, by notice in writing to a person who is making a discharge or deposit which is exempt under section 15(1), exercise any of the powers set out in subsection (3) if he considers that—

- (a) any part of the waters of Hong Kong are in such a condition as to constitute a danger to the health of the public, or a section of the public, and the exercise of the power in relation to the exempt discharge or deposit would tend to lessen that danger; or
- (b) in the case of an exemption from section 9, the discharge or deposit may be harmful to the drainage or sewerage system, or any part thereof, or to the health or safety of any person engaged in the operation thereof.

(2) Where neither paragraph (a) nor paragraph (b) of subsection (1) applies to a discharge or deposit, the Authority may (by notice in writing as provided in that subsection) exercise any power set out in subsection (3), in relation to that discharge or deposit, only with the prior approval of the Governor in Council, as to both the exercise and the manner of the exercise of the power, or with the agreement of the person who is making the discharge or deposit.

(3) The powers referred to in subsections (1) and (2) are—

- (a) (i) to impose terms and conditions subject to the observance of which, as from a specified date, the exemption shall continue in force;
 - (ii) to declare the exemption liable to cancellation if at any time the person fails to observe any such term or condition;
 - (iii) to cancel the exemption as from a specified date if the person fails to observe any such term or condition;
- (b) to cancel the exemption as from a specified date;
- (c) to amend or add to any notice previously given under this section, or any part of such notice, or to substitute a new notice for it.

(4) The Authority may revoke a notice previously given under this section, subject to the further approval of the Governor in Council in the case of a revocation which affects anything previously done under this section with the approval of the Governor in Council.

(5) The date specified in a notice for the imposition, amendment or addition of any term or condition under paragraph (a)(i) or (c) of subsection (3) or for the cancellation of an exemption under paragraph (a)(iii) or (b) thereof shall be not less than 90 days after the day on which the notice is given to the person who is making the discharge or deposit.

(6) Subject to subsection (2), the Authority may impose such terms and conditions under subsection (3) as he thinks fit including any term or condition—

- (a) requiring the person to restrict or from time to time to suspend the discharge or deposit;
- (b) relating to the matters set out in the First Schedule.

First Schedule.

Applications
for approval
of changes in
discharges
or deposits.

18. (1) A person who is making a discharge or deposit which is exempt under section 15(1) may apply to the Authority in the prescribed form for—

- (a) a variation or cancellation of any term or condition imposed by the Authority under section 17;
- (b) approval of a change in the period within which the discharge or deposit may be made;
- (c) approval of the addition to the discharge or deposit of a new component, being a substance normally resulting from the carrying on of the trade or business carried on by the applicant at

the date appointed by the Governor by order under section 7(2) which applies to the discharge or deposit.

(2) An application under subsection (1) shall be accompanied by the prescribed fee.

(3) Section 19(3) and (4) shall apply for the purpose of publicly notifying an application under this section which relates to an exemption from section 8(1)(a) or 8(1)(b) as if it were an application for a licence.

(4) The Authority may either grant the application in whole or in part or refuse to grant it but in the case of an application which relates to an exemption from section 8(1)(a) or 8(1)(b) shall not do so earlier than 30 days after the last notice is published in a newspaper pursuant to subsection (3).

(5) If the Authority refuses to grant an application or any part thereof he shall notify the applicant and shall inform him of the reasons for his refusal.

(6) Section 20(3) shall apply to the exercise by the Authority of his discretion under this section as it applies to the exercise of his discretion to grant or refuse a licence.

(7) The Authority may grant an application in such terms and on such conditions as he thinks fit (including terms and conditions relating to the matters set out in the First Schedule) except that, without prejudice to section 17, he shall not impose any new obligation on the applicant in relation to that part of the discharge or deposit which is already exempt unless, in his opinion, such part would have a significantly different effect on the relevant waters as a result of the granting of the application.

First Schedule.

PART V

LICENSING OF DISCHARGES AND DEPOSITS

19. (1) A person who wishes to obtain a licence for the purposes of section 8(1)(a), 8(1)(b) or 9(1) shall apply to the Authority in the prescribed form.

Applications for licences.

(2) An application under subsection (1) shall be accompanied by the prescribed fee.

(3) The Authority shall publicly notify all applications for licences for the purposes of section 8(1)(a) or section 8(1)(b)—

- (a) by entering in the register such particulars thereof as may be prescribed;
- (b) by causing a notice to be published at the expense of the applicant in an English language and a Chinese language newspaper determined by the Authority containing such particulars of the application and other information as may be prescribed and a statement of the place or places where a copy of the application may be inspected.

(4) During the period of 30 days after the last notice is published pursuant to subsection (3)—

- (a) a copy of the application shall be kept at each place notified under subsection (3)(b) and shall be available for inspection by the public during normal office hours;
- (b) any person may, in such manner as may be prescribed, object to the granting of the application on the ground that it would tend to inhibit the attainment or maintenance of the relevant water quality objective.

Grant of
licences.

20. (1) Subject to section 21, the Authority may, not earlier than 40 days after the last notice is published in a newspaper pursuant to section 19(3), either grant or refuse to grant a licence.

(2) If he refuses to grant a licence the Authority shall notify the applicant in writing of his refusal and shall inform him of his reasons therefor.

(3) In the exercise of his discretion to grant or refuse to grant a licence the Authority shall—

- (a) have as his purpose the attainment and maintenance of the relevant water quality objective;
- (b) grant a licence unless he considers that to do so would tend to inhibit the achievement of that purpose,

and for the purposes of this subsection it shall be relevant for the Authority to have regard to the need to protect and ensure the efficient operation of the drainage and sewerage systems and the health and safety of persons engaged in the operation of those systems.

(4) Subject to section 21, the Authority may grant the licence in such terms and on such conditions as he thinks fit including terms and conditions relating to the matters set out in the First Schedule.

First Schedule.

(5) A licence shall specify a period of time during which any cancellation or variation thereof which imposes additional obligations on the person making the discharge or deposit shall, unless that person agrees otherwise, give rise to the liability to pay compensation provided for in section 25.

Special
provisions
where discharge
licensed after
cessation of
exemption.

21. Where a licence is applied for in respect of a discharge or deposit which, having been exempt under section 15(1), has ceased to be exempt by reason of section 16(1)(b), the following provisions shall apply—

- (a) the applicant shall be entitled to a licence for so much of the discharge or deposit as was previously exempt;
- (b) the Authority shall not under section 20(4), but without prejudice to section 24, impose any new obligation on the applicant in relation to that part of the discharge or deposit which was previously exempt unless, in the opinion of the Authority, such part would have a significantly different effect on the relevant waters as a result of the change whereby the discharge or deposit ceased to be exempt under section 16(1)(b).

Effect of a
licence.

22. (1) A licence for the purposes of section 8(1)(a) shall, subject to the terms and conditions of the licence and during the period specified therein, authorize—

- (a) the discharge of matter or any specified class or description of matter into the waters of Hong Kong;
- (b) the deposit of matter or any specified class or description of matter (as provided in section 2(3)),

which, but for such authorization, would be a contravention of section 8(1)(a).

(2) A licence for the purposes of section 8(1)(b) shall, subject to the terms and conditions of the licence and during the period specified therein, authorize—

- (a) the discharge of matter or any specified class or description of matter into inland waters;
- (b) the deposit of matter or any specified class or description of matter (as provided in section 2(3)),

which, but for such authorization, would be a contravention of section 8(1)(b).

(3) A licence for the purposes of section 9(1) shall, subject to the terms and conditions of the licence and during the period specified therein, authorize—

- (a) the discharge of matter, or any specified class or description of matter, into a public sewer or public drain;
- (b) the deposit of matter, or any specified class or description of matter (as provided in section 2(3)),

which, but for such authorization, would be a contravention of section 9(1).

(4) A licence shall not be limited to a discharge or deposit by a particular person but shall extend to the discharge or deposit in question when made by any person.

23. (1) During such period before the expiry of a licence as may be prescribed, the person who is making the discharge or deposit may apply in the prescribed form for a renewal of the licence. Renewal of licences.

(2) An application for renewal of a licence shall be accompanied by the prescribed fee.

(3) Section 19(3) and (4) shall apply for the purpose of publicly notifying an application for the renewal of a licence for the purposes of section 8(1)(a) or 8(1)(b) as if it were an application for a licence.

(4) The Authority may renew or refuse to renew the licence but in the case of an application for renewal of a licence for the purposes of section 8(1)(a) or 8(1)(b) shall not do so earlier than 30 days after the last notice is published in a newspaper pursuant to subsection (3).

(5) Subsections (2), (3), (4) and (5) of section 20 shall apply to the renewal of a licence as they apply to the grant or refusal of a licence under that section, but section 21 shall not apply on the renewal of a licence.

24. (1) Subject to section 6(6), the Authority may, by notice in writing to a person who is making a discharge or deposit for which a licence is in force, exercise any of the powers set out in subsection (3) if he considers that— Cancellation or variation of a licence.

- (a) any part of the waters of Hong Kong are in such a condition as to constitute a danger to the health of the public, or a section of the public, and the exercise of the power in relation to the discharge or deposit would tend to lessen that danger; or
- (b) in the case of a licence for the purposes of section 9(1), the discharge or deposit may be harmful to the drainage or sewerage system, or any part thereof, or to the health or safety of any person engaged in the operation thereof.

(2) Where neither paragraph (a) nor paragraph (b) of subsection (1) apply to a discharge or deposit, the Authority may (by notice in writing as provided in that subsection) exercise any power set out in subsection (3), in relation to that discharge or deposit only with the prior approval of the Governor in Council, as to both the exercise and the manner of the exercise of the power, or with the agreement of the person who is making the discharge or deposit.

- (3) The powers referred to in subsections (1) and (2) are—
- (a) (i) to impose new or amended terms and conditions subject to the observance of which, as from a specified date, the licence shall continue in force;
 - (ii) to declare the licence liable to cancellation at any time the person fails to observe any such term or condition;
 - (iii) to cancel the licence as from a specified date if the person fails to observe any such term or condition;
 - (b) to cancel the licence as from a specified date;
 - (c) to amend or add to any notice previously given under this section, or any part of such notice, or to substitute a new notice for it.

(4) The Authority may revoke a notice previously given under this section, subject to the further approval of the Governor in Council in the case of a revocation which affects anything previously done under this section with the approval of the Governor in Council.

(5) The date specified in a notice for the amendment or addition of any term or condition under paragraph (a)(i) or (c) of subsection (3) or the cancellation of a licence under paragraph (a)(iii) or (b) thereof shall be not less than 90 days after the day on which the notice is given to the person who is making the discharge or deposit.

(6) Subject to subsection (2), the Authority may impose such terms and conditions under subsection (3) as he thinks fit including any term or condition—

- (a) requiring the person to restrict or from time to time to suspend the discharge or deposit;
- (b) relating to the matters set out in the First Schedule.

First Schedule.

Compensation for cancellation or variation of certain licences.

25. (1) Where a licence is, pursuant to section 24(1)—
- (a) cancelled as provided in section 24(3)(b); or
 - (b) varied as provided in section 24(3)(a)(i) or (c) so as to impose additional obligations on the person making the discharge or deposit,

within the period specified pursuant to section 20(5), the Authority shall be liable to pay compensation if the circumstances set out in subsection (2) are present.

- (2) The circumstances mentioned in subsection (1) are—
- (a) that the possibility of danger to health or harm to the drainage or sewerage system or to the health or safety of any person engaged in the operation thereof (as provided in section 24(1)(a) and (b)) was known or could with reasonable foresight have been known, to the Authority at the time the licence was granted or renewed; or
 - (b) that the danger or harm mentioned in paragraph (a) is a consequence of licences granted or renewed after the grant, or, where a licence has been renewed, the last renewal of the licence which is cancelled or varied.

Compensation for cancellation of licences and exemptions with the approval of the Governor in Council.

26. (1) Where an exemption under section 15(1) is, pursuant to section 17(2)—
- (a) cancelled as provided in section 17(3)(b); or
 - (b) varied as provided in section 17(3)(a)(i) or (c) so as to impose additional obligations on the person making the discharge or deposit,

the Authority shall be liable to pay compensation.

- (2) Where a licence is, pursuant to section 24(2)—
- (a) cancelled as provided in section 24(3)(b); or
 - (b) varied as provided in section 24(3)(a)(i) or (c) so as to impose additional obligations on the person making the discharge or deposit,

within the period specified pursuant to section 20(5) the Authority shall be liable to pay compensation.

27. (1) Subject to subsection (2), the manner of determining the amount of compensation payable under sections 25 and 26, the factors to be taken into account or disregarded and the principle to be applied in determining that amount shall be such as may be prescribed in regulations made under section 46. Assessment of compensation.

(2) The provisions of the Second Schedule shall have effect for the purposes of determining the amount of compensation payable under sections 25 and 26 and for the purposes of the incidental matters for which they provide. Second Schedule.

28. (1) A person who is making a discharge or deposit for which a licence is in force may apply to the Authority in the prescribed form for a variation of the licence. Applications for variation of licences.

(2) The application shall be accompanied by the prescribed fee.

(3) Section 19(3) and (4) shall apply for the purpose of publicly notifying an application under this section for the variation of a licence for the purposes of section 8(1)(a) or section 8(1)(b) as if it were an application for a licence.

(4) The Authority may either grant the application, with or without modification, or refuse to grant it but in the case of a variation of a licence for the purposes of section 8(1)(a) or 8(1)(b) shall not do so earlier than 30 days after the last notice is published in a newspaper pursuant to subsection (3).

(5) If the Authority refuses to grant an application or any part thereof he shall notify the applicant and shall inform him of the reasons for his refusal.

(6) Section 20(3) shall apply to the exercise by the Authority of his discretion under this section as it applies to the exercise of his discretion to grant or refuse a licence.

(7) The Authority may grant an application on such terms and conditions as he thinks fit (including terms and conditions relating to the matters set out in the First Schedule) except that, without prejudice to section 24, he shall not impose any new obligation on the applicant in relation to that part of the discharge or deposit which is already licensed unless— First Schedule.

(a) the place at which the discharge or deposit may be made is being varied; or

(b) in his opinion such part would have a significantly different effect on the relevant waters as a result of the granting of the application.

PART VI

APPEALS

29. (1) Subject to subsection (2), a person who is aggrieved by a requirement or decision of the Authority or the Secretary under any of the following provisions may appeal to an Appeal Board constituted under this Part— When appeal may be brought.

- (a) section 13(1) (requiring a convicted person to restore waters);
- (b) section 16(2)(b) (declaring an exemption to be inoperative);
- (c) section 17(3)(a)(i) (imposing terms and conditions subject to which an exemption may continue in force);
- (d) section 17(3)(a)(iii) or 17(3)(b) (cancelling an exemption);
- (e) section 17(3)(c) (amending or adding to a notice or substituting a new notice);
- (f) section 18(4) (refusing to vary an exemption);
- (g) section 20(1) (refusing to grant a licence);
- (h) section 20(4) (fixing terms and conditions of a licence);
- (i) section 20(5) (fixing the period for non-cancellation of a licence without compensation);
- (j) section 23(4) (refusing to renew a licence);
- (k) section 24(3)(a)(i) (imposing new or amended terms or conditions for continuance of a licence);
- (l) sections 24(3)(a)(iii) and 24(3)(b) (cancelling a licence);
- (m) section 24(3)(c) (amending or adding to a notice or substituting a new notice);
- (n) section 28(4) (refusing to vary a licence);
- (o) section 35 (requiring information to be furnished);
- (p) section 43 (refusing to withhold information from the register).

(2) No appeal shall lie under this section where the requirement of the Authority is made with the prior approval of the Governor in Council under section 17(2) or 24(2).

(3) An appeal under subsection (1) shall be made by lodging a notice of appeal in the prescribed manner and form within 21 days after the person aggrieved has received notice of the decision or requirement.

(4) Where the decision or requirement appealed from was made under a provision mentioned in paragraphs (a) to (e), (j) to (m) or (o) of subsection (1) the notice thereof shall be suspended and cease to have effect as from the day on which notice of appeal is duly given to the Authority and until the appeal is disposed of, withdrawn or abandoned, unless—

- (a) the decision or requirement is considered by the Authority to be necessary because—
 - (i) in any case, the quality of the part of the waters of Hong Kong to which the decision or requirement relates may constitute a danger to the health of the public or a section of the public; or
 - (ii) in the case of a licence for the purposes of section 9, the discharge or deposit to which the decision or requirement relates may be harmful to the drainage or sewerage system, or any part thereof, or to the health or safety of any person engaged in the operation thereof; and
- (b) the notice contains a statement to that effect.

(5) Where the appeal is from a decision of the Secretary under section 43, he shall not enter in the register the information to which the appeal relates until the appeal is disposed of, withdrawn or abandoned.

30. (1) Every appeal under section 29 shall be determined by an Appeal Board constituted under this Part. Constitution of Appeal Board.

(2) The Governor shall appoint as Chairman of Appeal Boards a person who is qualified in law.

(3) Subject to section 32(3), the Chairman shall be appointed for a term of 2 years but may be reappointed.

(4) The Governor shall also appoint a panel of persons whom he considers to be suitable for appointment as members of an Appeal Board pursuant to section 31(1).

(5) An appointment under subsection (2) and every appointment to the panel under subsection (4) shall be notified in the *Gazette*.

(6) In subsection (2) and in section 32(1) "qualified in law" means qualified for appointment as a District Judge under section 5 of the District Court Ordinance. (Cap. 336.)

31. (1) The jurisdiction of an Appeal Board on any appeal or group of appeals shall be exercised by the Chairman and such number of persons from the panel referred to in section 30(4) as the Chairman may appoint for that appeal or group of appeals. Exercise of Appeal Board's jurisdiction.

(2) On any appeal an Appeal Board may confirm, reverse or vary the decision or requirement of the Authority or the Secretary.

(3) Every question before an Appeal Board shall be determined by the opinion of the majority of the Chairman and the members hearing the appeal except a question of law which shall be determined by the Chairman; in the event of an equality of votes the Chairman shall have a casting vote.

(4) An Appeal Board shall not at any time consist of a majority of persons who are public officers.

(5) An Appeal Board may—

(a) receive evidence on oath;

(b) admit or take into account any statement, document, information or matter whether or not it would be admissible as evidence in a court of law; and

(c) by notice in writing summon any person to appear before it to produce any document or to give evidence.

(6) The Chairman may determine any form or matter of practice or procedure in so far as no provision is made therefor in this Ordinance.

32. (1) If the Chairman of Appeal Boards is precluded by illness, absence from Hong Kong or any other cause from exercising his functions the Governor may appoint any other person qualified in law to act as Chairman and as such to exercise and perform all of the powers, functions and duties of the Chairman during the period of his appointment. Supplementary provisions as to Appeal Board.

(2) If a person appointed by the Chairman under section 31(1) to hear an appeal or group of appeals is precluded by illness, absence from Hong Kong, or any other cause from exercising his functions, the Chairman may appoint any other person from the panel provided for in section 30(4) to act in his place.

(3) The Chairman of Appeal Boards may at any time resign his office by notice in writing to the Governor.

(4) If the parties to an appeal consent, the hearing of the appeal may be continued notwithstanding any change in the membership of an Appeal Board as if the change had not occurred.

Review of
Appeal
Board's
decision by
Governor
in Council.

33. (1) This section applies where—

- (a) an Appeal Board has reversed or varied a decision or requirement of the Authority or the Secretary; and
- (b) the Authority or Secretary considers that exceptional circumstances require the review of the Board's decision in the public interest.

(2) The Authority or Secretary may, where this section applies, within 14 days of being notified of a decision of an Appeal Board refer the case for review by the Governor in Council.

(3) Where the Authority or the Secretary has referred a case for review under subsection (2), he shall forthwith notify the other party in writing of the reference, giving his reasons for seeking the review and inviting him to submit written representations concerning the review, within 14 days of receiving the notice, for consideration by the Governor in Council.

(4) Upon a reference under subsection (2) and upon the expiry of the period of 14 days referred to in subsection (3) the Governor in Council may review the case, considering any representations submitted under subsection (3), and may confirm, reverse or vary the decision of the Appeal Board.

Case may be
stated for
Court of
Appeal.

34. (1) The Chairman of Appeal Boards may of his own motion, before an appeal is determined, refer any question of law to the Court of Appeal by way of case stated.

(2) On the hearing of the case the Court of Appeal may amend the case or order it to be sent back to the Appeal Board for amendment.

PART VII

POWERS OF ENFORCEMENT

Authority
may obtain
information.

35. (1) The Authority may by notice in writing to any person require him to furnish to the Authority, within a period and in a form stipulated in the notice, any information specified in the notice being information which he is authorized to obtain by regulations made under section 46(1)(j) or which the Authority may reasonably require for the purpose of exercising and performing his powers, functions and duties under this Ordinance.

(2) A person who—

- (a) fails without reasonable excuse to comply with the requirements of a notice served on him under subsection (1); or
- (b) in compliance or purported compliance with such a notice, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular or knowingly omits any material particular,

commits an offence and is liable to a fine of \$5,000.

Authorized
officers.

36. (1) Subject to subsection (2), the Authority may in writing authorize public officers to exercise the powers conferred on an authorized officer by sections 37 and 38, or such of those powers as the Authority may specify.

(2) The Authority shall under subsection (1), authorize only a public officer of or above the rank specified to exercise the following powers—

- (a) the powers in section 38(b) and (c), an officer of or above the rank of Pollution Control Officer;
- (b) any other power conferred by section 37 or 38 on an authorized officer, an officer of or above the rank of Assistant Pollution Control Inspector.

(3) An authorized officer exercising any power in section 37 or 38 may take with him such persons as he reasonably requires to assist him in the discharge of his duties.

37. (1) Subject to subsection (2), an authorized officer may, for the purposes of this Ordinance, without a warrant enter any place or premises or stop and board any vessel—

Powers of authorized officers to enter premises etc.

- (a) from or on which he has reason to suspect that, in contravention of section 8(1), matter has been or is being discharged or deposited into the waters of Hong Kong or inland waters, or, in contravention of section 9(1), matter has been or is being discharged or deposited into any public sewer or public drain;
- (b) from or on which matter is being discharged or deposited as mentioned in paragraph (a) pursuant to a licence or an exemption conferred by section 15(1), whether or not there is a suspected contravention of section 8 or 9;
- (c) on which he has reason to believe there is any thing likely to be, or to contain, evidence of an offence against this Ordinance.

(2) An authorized officer shall not under subsection (1) enter domestic premises (other than that part of such premises on which there is a private sewage treatment plant) or board any vessel used wholly or principally for dwelling purposes without a warrant issued by a magistrate under subsection (3).

(3) A magistrate may issue a warrant empowering any authorized officer to enter domestic premises or to board any vessel used wholly or principally for dwelling purposes if the magistrate is satisfied by information on oath that there is reasonable ground for suspecting that—

- (a) contrary to section 8(1), any matter is being or has been discharged or deposited into the waters of Hong Kong or inland waters from those premises or that vessel; or
- (b) contrary to section 9(1), any matter is being or has been discharged or deposited from those premises or that vessel into any public sewer or public drain;
- (c) there is on those premises or on that vessel any thing likely to be, or to contain, evidence of an offence against this Ordinance.

(4) An authorized officer who enters any place or premises or boards any vessel—

- (a) shall, if so required, produce evidence of his identity and of his authorization by the Authority under section 36; and
- (b) shall, if a warrant is under subsection (3) required for entry, produce that warrant.

38. An authorized officer who has pursuant to section 37 or any warrant issued thereunder, entered any place or premises or boarded any vessel, or who has been admitted to any place, premises or vessel in the course of his duties, may—

Further powers of authorized officers.

- (a) inspect any plant or equipment or observe any process or procedure which he has reason to suspect is being, or has been, or is intended to be, used in connexion with—
 - (i) a discharge or deposit which is being, or has been, made contrary to section 8(1) or 9(1), or is made pursuant to a licence or an exemption conferred by section 15(1);
 - (ii) the treatment of any matter which is being, or is intended to be, discharged or deposited into the waters of Hong Kong or inland waters or into any public sewer or public drain, and may require any person in charge of the place, premises or vessel to do anything which the officer reasonably considers to be necessary for facilitating the inspection or observation;
- (b) require the person in charge of the place, premises or vessel to produce for examination any drawing, record or document which is in the possession of such person, or which he can reasonably obtain, relating to any plant or equipment referred to in paragraph (a) or to any discharge or deposit to which section 8(1) or 9(1) applies or the officer has reason to suspect may apply;
- (c) seize, remove and detain any drawing, record or document referred to in paragraph (b) or any other article or thing if he has reason to suspect that it is, or contains, evidence of an offence under this Ordinance;
- (d) examine and make copies of records kept pursuant to a condition of the kind mentioned in paragraph 9 of the First Schedule;
- (e) take samples of any matter which is within the description in paragraph (a)(ii) or which he has reason to believe may come within that description.

First Schedule.

Analysis of samples.

39. (1) A certificate of analysis of a sample of any matter may be tendered in evidence in any proceedings under this Ordinance and shall, until the contrary is proved, be sufficient evidence of the facts stated therein if the procedure set out in this section has been complied with, or substantially complied with so far as is reasonably practicable, in relation to that sample.

(2) An authorized officer who takes a sample of any matter for the purposes of subsection (1) shall—

- (a) divide it into 3 approximately equal parts;
- (b) place each part in a separate container and suitably mark or label each container;
- (c) ensure that the person appearing to be in occupation of the premises on which the sample was taken or his servant or agent—
 - (i) is handed such one of the parts as that person or his servant or agent may select or, if that is not reasonably practicable, is handed or sent by registered post such one of the parts as the officer shall select; and
 - (ii) is informed that one of the other 2 parts is intended to be submitted to the analyst for analysis;
- (d) except where an analysis proves to be unnecessary, personally submit one of the remaining 2 parts to the analyst for analysis and retain the other for the purposes of comparison.

(3) As soon as the analyst has completed the analysis he shall furnish to the relevant Authority and to the person referred to in subsection (2)(c), or his servant or agent, a certificate of the results of the analysis.

(4) A certificate under subsection (3) shall be signed by the analyst but the analysis may be made by a person acting under his directions;

and any certificate purporting to have been signed by the analyst shall be presumed, until the contrary is proved, to have been signed by him.

(5) In this section "analyst" means the Government Chemist or any person appointed by the Governor as an analyst for the purposes of this section.

(6) An appointment by the Governor under subsection (5) shall be notified in the *Gazette*.

40. A person who—

- (a) wilfully obstructs an authorized officer in the exercise of any power conferred on such officer by or under section 37 or 38; or
- (b) fails without reasonable excuse to comply with any requirement duly made by an officer under those sections; or
- (c) in compliance or purported compliance with any such requirement produces any drawing, document or record which he knows to be incorrect or inaccurate in a material particular or does not believe to be correct and accurate,

Offences in relation to sections 37 and 38.

commits an offence and is liable to a fine of \$5,000.

PART VIII

MISCELLANEOUS

41. (1) Where on an application under section 18, 19, 23 or 28, any objection to the grant of the application is duly made to the Authority, he may hear the applicant and any objector if he considers it expedient for the purpose of obtaining information relevant to any question to be decided.

Authority may hold a hearing.

(2) The procedure to be followed at, or for the purpose of convening, any hearing under subsection (1) shall be determined by the Authority.

42. (1) The Authority shall cause to be kept, in such form as the Secretary may determine, a register containing the prescribed particulars in relation to such of the following as fall under his jurisdiction—

Authority to keep register.

- (a) all discharges and deposits which are exempt pursuant to section 15 and applications and notices under this Ordinance in respect thereof;
- (b) all discharges and deposits for which a licence is in force, applications for such licences and other applications and notices under this Ordinance in respect thereof;
- (c) such other matters as may be required by regulations made under section 46 to be recorded in the register.

(2) The register shall be open for inspection by the public during normal office hours at such places as the Secretary thinks fit.

(3) A person shall be entitled, upon payment of the prescribed fee, to a copy of any entry in the register certified by or on behalf of the Authority.

43. (1) Any person may apply to the Secretary to withhold from public notification or other public access under this Ordinance any specified information concerning a discharge or deposit, whether appearing in a licence or an application therefor or in any notice, return or other document.

Protection of private information from publicity.

(2) An application under subsection (1) shall be granted by the Secretary to the extent that he is satisfied that public notification or other public access to the information would—

- (a) be contrary to the applicant's private interest to an unreasonable degree; or
- (b) be contrary to the public interest.

(3) Where an application under this section is refused by the Secretary, whether in whole or in part—

- (a) notice of the refusal and of the reasons therefor shall be given in writing by the Secretary to the applicant;
- (b) the information shall not be publicly notified or otherwise made accessible to the public until the time for appeal under section 29(3) has expired.

Offence to disclose secret information obtained officially.

44. (1) A person commits an offence who, except in the circumstances provided for in subsection (2), discloses or gives to another person any information or document concerning a trade or business secret which has come to his knowledge or into his possession in the course of the exercise or performance of his powers, functions or duties under this Ordinance.

(2) A person does not commit an offence under subsection (1) if he discloses or gives any information or document to another person—

- (a) for the purpose of the exercise or performance of his powers, functions or duties under this Ordinance and proceedings connected therewith;
- (b) pursuant to an order of a court under subsection (3);
- (c) with the consent in writing of all such persons as appear to him, after reasonable inquiry, to be interested in the confidentiality of the information or document.

(3) Where in any proceedings a court considers that the justice of the case so requires, the court may order the disclosure of any information or the giving of any document referred to in subsection (1).

(4) A person who commits an offence under subsection (1) is liable to a fine of \$10,000 and to imprisonment for 6 months.

Protection of Crown and public officers.

45. (1) No liability shall rest on the Crown or upon any public officer by reason of the fact that any licence or exemption is granted or continued under this Ordinance for the discharge or deposit of any matter into the waters of Hong Kong or into inland waters or into a public sewer or public drain.

(2) A public officer shall not be personally liable in respect of any act or omission of his if it was done or made by him in the honest belief that it was required or authorized in the exercise of any power, function or duty of his under this Ordinance.

(3) The protection conferred on public officers by subsection (2) in respect of any act or omission shall not in any way affect any liability of the Crown in tort for that act or omission.

Regulations.

46. (1) The Governor in Council may, after consultation with the Environmental Protection Advisory Committee, by regulation provide for—

- (a) the manner in which quantities and rates of discharges and deposits are to be calculated for the purposes of section 16(1)(b);
- (b) the form and contents of—
 - (i) a notice under section 14;

- (ii) an application for approval under section 18;
 - (iii) an application for a licence under section 19;
 - (iv) an application for a renewal of a licence under section 23;
 - (v) an application for a variation of a licence under section 28;
- (c) the period within which a licensee shall make an application for a renewal of the licence, and the circumstances in which a licence may continue in force pending the determination of any such application;
- (d) the particulars to be entered in the register;
- (e) the particulars to be contained in a notice referred to in section 19(3)(b);
- (f) the manner in which objections shall be made under section 19(4)(b);
- (g) the manner of determining the amount of compensation payable under sections 25 and 26, the factors to be taken into account or disregarded and the principles to be applied in determining that amount;
- (h) the forms to be used and the procedure to be followed for the purpose of appeals under Part VI;
- (i) fees and charges which may be imposed by an Authority or the Secretary—
- (i) on persons who are making discharges or deposits which are exempt under section 15 or for which a licence is in force, or on any class or description of such persons or in respect of such discharges or deposits or any class or description thereof, including charges for the reception, treatment and disposal of matter discharged pursuant to a licence for the purposes of section 9;
 - (ii) persons making any application referred to in paragraph (b);
- (j) matters about which information may be obtained under section 35(1);
- (k) the manner in which notices required or authorized by this Ordinance may be given or sent to the person to whom they are addressed;
- (l) the inclusion of a lake, pool or pond or any description of lake, pool or pond within the definition of "inland waters" in section 2 as provided for in paragraph (a) of that definition;
- (m) prescribing anything (including any fee) which is to be or may be prescribed by regulations;
- (n) generally for the better carrying out of the provisions and purposes of this Ordinance.
- (2) Regulations made under subsection (1)(a) may delegate to the Authority the power to determine in any particular case the method of making any calculation for the purposes of section 16(1)(b).
- (3) Regulations made under this section may provide that a contravention of specified provisions thereof or of specified conditions of an exemption conferred by section 15 or of specified conditions of a licence shall be an offence and may provide penalties therefor not exceeding a fine of \$5,000 and imprisonment for 6 months.

Application
of Ordinance
to Crown.

47. (1) Subject to this section, this Ordinance shall bind the Crown.

(2) Sections 8 and 9 shall not have effect to permit proceedings to be taken against, or to impose any criminal liability on, the Crown or on any person who makes any discharge or deposit which he is required to make in the course of carrying out his duties in the service of the Crown.

(3) If it appears to an Authority that any discharge or deposit is being, or has been, made in contravention of section 8(1) or 9(1) by any person in the course of carrying out his duties in the service of the Crown, he shall, if the contravention is not forthwith terminated to the satisfaction of the Authority, report the matter to the Chief Secretary.

(4) On receipt of a report under subsection (3) the Chief Secretary shall inquire into the circumstances and, if his inquiry shows that a contravention of section 8(1) or 9(1) is continuing or likely to recur, he shall ensure that the best practicable steps are taken to terminate the contravention or avoid the recurrence.

(5) Any notice or application under this Ordinance concerning a discharge or deposit which is to be, or may be, given or made by or on behalf of the Crown may be given or made by any public officer on behalf of the Crown.

(6) Any notice under this Ordinance concerning a discharge or deposit which is to be, or may be, given by the Authority to the Crown shall be given to the principal officer of the Government Department which appears to the Authority to be responsible for the discharge or deposit or, in the event of any question arising as to which Department is responsible, to such public officer as the Chief Secretary shall determine.

(7) No compensation shall be payable under section 25 in respect of any discharge or deposit made by or on behalf of the Crown.

(8) No fee or charge prescribed for the purposes of this Ordinance shall be payable by the Crown.

Environmental
Protection
Advisory
Committee.

48. If any question arises as to who are the body of persons for the time being constituting the Environmental Protection Advisory Committee mentioned in sections 3, 5 and 46, the matter shall be referred to the Chief Secretary who shall determine the question by certificate under his hand.

Ordinance
not to affect
or be affected
by other
Ordinances.

49. (1) No exemption which arises for the purposes of this Ordinance by operation of section 15 and no licence shall be construed as a dispensation from the requirements of any other Ordinance except where that other Ordinance so provides.

(2) Without limiting section 8(3), the giving, granting or making of any direction, licence, permit, consent, approval or other requirement or authority under any other Ordinance shall not be taken to authorize any act or omission which contravenes section 8(1) or 9(1).

Consequential
amendments.
Third
Schedule.

50. The enactments specified in the Third Schedule are amended in the manner specified therein.

Disapplication
of certain
enactments.
Fourth
Schedule.

51. Upon section 8(1)(a) or 9(1) becoming applicable to a discharge or deposit pursuant to section 7 the enactments mentioned in the first column of the Fourth Schedule shall have effect in relation to that discharge or deposit as if they were amended in the manner specified in the second column of that Schedule.

FIRST SCHEDULE

[ss. 17(6), 18(7),
20(4), 24(6),
28(7) & 38.]

TERMS AND CONDITIONS SUBJECT TO WHICH A LICENCE MAY BE
GRANTED OR AN EXEMPTION CONTINUED

1. The place and times or periods at or during which the discharge or deposit may be made.
2. The design and construction of any plant or equipment used in making the discharge or deposit.
3. The rate of discharge or deposit or the total amount thereof in relation to the matter discharged or deposited or any constituent thereof.
4. The nature, composition, colour and temperature of the matter discharged or deposited or of any constituent thereof.
5. The treatment of matter before it is discharged or deposited and the plant and equipment to be provided, maintained and used therefor.
6. The equipment and facilities to be provided for inspecting, sampling or measuring the discharge or deposit or any constituent thereof.
7. The maintenance and security of any equipment and facilities referred to in paragraph 6.
8. The provision to the Authority of samples, and of the results of the analysis of samples, of discharges and deposits.
9. The keeping of records in relation to the matters mentioned in paragraphs 3 and 4.
10. The access of authorized officers to the equipment, facilities and records referred to in paragraphs 6 and 9.
11. Precautions to be taken against matter discharged or deposited entering any specified part of the waters of Hong Kong or any public drain or public sewer.

SECOND SCHEDULE

[s. 27(2).]

DETERMINATION OF COMPENSATION

1. A person who claims compensation under section 25 or 26 shall submit to the Authority particulars in writing of his claim.
2. (1) A claim under paragraph 1 shall be submitted—
 - (a) where a licence or exemption is cancelled, within 1 year after the cancellation;
 - (b) where a licence or exemption is varied so as to impose additional obligations on the person making the discharge or deposit, within 1 year after the completion of the works attributable solely to the requirement of the Authority.
- (2) The period referred to in sub-paragraph (1) may, upon application made to the Governor either before or after the expiry of that period be extended in accordance with this paragraph.

(3) Notice of an application under sub-paragraph (2) shall be given to the Authority by the applicant.

(4) The Governor may extend the period within which particulars of a claim must be submitted to the Authority if he considers that the delay in submitting such particulars was occasioned by mistake of fact or mistake of any matter of law (other than the matters contained in sub-paragraph (1)) or by any other reasonable cause or that the Crown is not materially prejudiced by the delay.

(5) An extension may be granted by the Governor under sub-paragraph (4) with or without conditions for such period as he thinks fit but not in any case exceeding 6 years from the time when the right to compensation first arose.

3. If the Authority and the claimant do not agree on the settlement or compromise of the claim within 3 months of the submission of particulars under paragraph 1, the claimant may notify the Authority that he desires a reference to a tribunal; and the Authority shall thereupon refer the claim with the particulars thereof to a tribunal, consisting of a District Judge nominated by the Chief Justice for the purpose.

4. The tribunal shall hear any evidence which the Authority or the claimant may wish to tender and, if so desired, hear counsel on behalf of the Authority and the claimant, and shall determine the amount of compensation, if any, to be paid to the claimant.

5. For the purposes of paragraph 4, the tribunal shall have powers similar to those vested in the Supreme Court for hearing evidence, determining claims for damages and awarding costs.

6. The practice and procedure in connexion with any proceedings before a tribunal under this section shall be such as the tribunal may determine.

7. Any award or decision of a tribunal under this Schedule shall be final but if a party is dissatisfied with the decision as being erroneous in point of law, he may, within 1 month after the decision, require the tribunal to state and sign a case for the decision of the Court of Appeal.

8. The tribunal may direct that interest be paid on compensation (but not on costs) from such date and for such period as the tribunal thinks fit, at the lowest rate paid from time to time by members of the Exchange Banks Association on time deposits or at such other rate as may be determined by resolution of the Legislative Council.

9. All compensation, including interest thereon and costs, shall be paid from such money as may be provided from time to time by the Legislative Council.

THIRD SCHEDULE

[s. 50.]

*Enactment**Amendment*

(Cap. 132,
sub. leg.)

Public Cleansing and
Prevention of
Nuisances By-laws

By-law 4 is amended by inserting after paragraph
(3) the following—

“(4) No offence under paragraph
(1)(c) is committed by a person who

*Enactment**Amendment*

makes a discharge or deposit under and in accordance with—

- (41 of 1980.)
- (a) a licence granted under section 20 of the Water Pollution Control Ordinance 1980; or
 - (b) an exemption which arises under section 15 of that Ordinance.”.

Public Cleansing and Prevention of Nuisances (New Territories) Regulations

Regulation 4 is amended by inserting after paragraph (3) the following paragraph— (Cap. 132, sub. leg.)

- (41 of 1980.)
- “(4) No offence under paragraph (1)(c) is committed by a person who makes a discharge or deposit under and in accordance with—
- (a) a licence granted under section 20 of the Water Pollution Control Ordinance 1980; or
 - (b) an exemption which arises under section 15 of that Ordinance.”.

Marine Hawkers Regulations

Regulation 19 is revoked. (Cap. 160, sub. leg.)

Country Parks and Special Areas Regulations

Regulation 12 is amended— (Cap. 208, sub. leg.)

- (a) by being renumbered as paragraph (1);
 - (b) by inserting after paragraph (1) the following—
- “(2) No offence under paragraph (1)(b) is committed by a person who makes a discharge or deposit under and in accordance with—
- (a) a licence granted under section 20 of the Water Pollution Control Ordinance 1980; or
 - (b) an exemption which arises under section 15 of that Ordinance.”.
- (41 of 1980.)

Mining Ordinance

The Ordinance is amended by adding after section 28 the following— (Cap. 285.)

“Discharges and deposits under Water Pollution Control Ordinance.

(41 of 1980.)

28A. No offence under section 27 or 28 is committed by a person who makes a discharge or deposit under and in accordance with—

- (a) a licence granted under section 20 of the Water Pollution Control Ordinance 1980; or
- (b) an exemption which arises under section 15 of that Ordinance.”.

	<i>Enactment</i>	<i>Amendment</i>
(Cap. 307.)	Pearl Culture Control Ordinance	<p>Section 9 is amended—</p> <p>(a) by being renumbered as subsection (1);</p> <p>(b) by inserting after subsection (1) the following—</p> <p style="padding-left: 40px;">“(2) No offence under subsection (1) is committed by a person who makes a discharge or deposit under and in accordance with—</p> <p style="padding-left: 80px;">(a) a licence granted under section 20 of the Water Pollution Control Ordinance 1980; or</p> <p style="padding-left: 80px;">(b) an exemption which arises under section 15 of that Ordinance.”.</p>
(Cap. 313.)	Shipping and Port Control Ordinance	<p>The Ordinance is amended by adding after section 48 the following—</p> <p style="padding-left: 40px;">48A. No offence under section 46 is committed by, and no obligation arises under section 48 on the part of, any person who makes a discharge or deposit of oil or a mixture containing oil under and in accordance with a licence for the purposes of section 9 of the Water Pollution Control Ordinance 1980 granted under section 20 of that Ordinance.”.</p>
	“Discharges under the Water Pollution Control Ordinance.	(41 of 1980.)

FOURTH SCHEDULE

[s. 51.]

*Enactment**Amendment deemed to have been made for the purposes of section 51*

(Cap. 132.)	Public Health and Urban Services Ordinance	<p>The Ordinance shall have effect as if section 6(1) were amended as follows—</p> <p>(a) by deleting paragraphs (a), (c) and (d);</p> <p>(b) by deleting paragraph (b) and substituting the following—</p> <p style="padding-left: 40px;">“(b) causes or permits any solid matter, mud or waste to be placed or thrown, or to fall, or to be carried over any grate communicating with any public sewer or drain;”.</p>
(Cap. 132, sub. leg.)	Public Cleansing and Prevention of Nuisances By-laws	<p>The By-laws shall have effect as if they were amended as follows—</p> <p>(a) in by-law 10, by deleting sub-paragraph (c);</p>

Enactment

Amendment deemed to have been made for the purposes of section 51

- (b) in by-law 14, by deleting paragraph (2) and substituting the following—

“(2) No person shall discharge, deposit, or place any pigwash in or into a public place.”.

Public Cleansing and Prevention of Nuisances (New Territories) Regulations

The Regulations shall have effect as if they were amended as follows— (Cap. 132, sub. leg.)

- (a) in regulation 10, by deleting subparagraph (c);

- (b) in regulation 14, by deleting paragraph (2) and substituting the following—

“(2) No person shall discharge, deposit, or place any pigwash in or into a public place.”.

Summary Offences Ordinance

The Ordinance shall have effect as if it were amended as follows— (Cap. 228.)

- (a) in section 4(1), by deleting the words “, or into the waters of the Colony”, the words “, stream, watercourse, ford or reservoir, or into any drain or sewer” and the words “, stream or watercourse”;

- (b) in section 5(1), by deleting paragraph (c).

Pearl Culture (Control) Ordinance

The Ordinance shall have effect as if section 9(b) were amended by deleting “or to pollute or to be likely to pollute the waters in any such area”. (Cap. 307.)

Passed by the Hong Kong Legislative Council this 9th day of July 1980.

LORNA LEUNG,
Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

LORNA LEUNG,
Clerk to the Legislative Council.