

立法會
Legislative Council

LC Paper No. LS26/04-05

**Paper for the House Committee Meeting
on 7 January 2005**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 24 December 2004**

Date of tabling in LegCo : 5 January 2005

Amendment to be made by : 2 February 2005 (or 23 February 2005 if extended by resolution)

**Air Pollution Ordinance (Cap. 311)
Air Pollution Control (Petrol Filling Stations) (Vapour Recovery)
(Amendment) Regulation 2004 (L.N. 218)**

The Air Pollution Control (Petrol Filling Stations) (Vapour Recovery) Regulation (Cap. 311 sub. leg. S) (“the Principal Regulation”) was made under section 43 of the Air Pollution Ordinance (Cap. 311) (“the Ordinance”) after consultation with the Advisory Council on the Environment to regulate the vapour recovery system to be installed in a regulated vehicle and a petrol filling station by which petrol vapour displaced from a petrol storage tank receiving petrol is recovered in the petrol delivery tank from which petrol is being unloaded.

2. The Air Pollution Control (Petrol Filling Stations) (Vapour Recovery) (Amendment) Regulation 2004 (“the Amendment Regulation”):

- (a) amends the existing definition of “vapour recovery system” in the Principal Regulation. “Vapour recovery system” shall be divided into two categories, namely, “Phase I vapour recovery system” which has basically the same meaning as the existing “vapour recovery system” and “Phase II vapour recovery system” which is a system designed or constructed in such a way that by means of a vacuum created by a mechanical pump installed in the system, petrol vapour displaced from the fuel tank of a motor vehicle in the course of dispensing petrol into the tank is recovered via a coaxial dispensing hose installed in the system in the petrol storage tank from which petrol is being dispensed;
- (b) replaces Schedule 2 to the Principal Regulation to provide for new test requirements in relation to the vapour recovery system of a petrol filling station;

- (c) provides that:
 - (i) no person shall own a regulated vehicle unless it is installed with a Phase I vapour recovery system; and
 - (ii) no person shall own a petrol filling station unless each petrol storage tank of the station is installed with a Phase I vapour recovery system and each petrol dispenser of the station is installed with a Phase II vapour recovery system. The owner of a petrol filling station shall not dispense petrol with a petrol dispenser of the station into the fuel tank of a motor vehicle if he knows or reasonably ought to know that the Phase II vapour recovery system with which the dispenser is installed is not in operation; and
- (d) waives the requirement for registration and endorsement of a certificate by the Authority before issuance of the certificate by a competent examiner after testing and examination of the vapour recovery system. A competent examiner commits an offence if he issues a certificate containing any statement or information which he knows or reasonably ought to know to be false or misleading in a material manner.

3. Members may refer to the LegCo Brief on the Air Pollution Control (Petrol Filling Stations) (Vapour Recovery) (Amendment) Regulation 2004 issued by the Environment, Transport and Works Bureau in December 2004 (Ref: ETWB (E)55/01/118) (“the LegCo Brief”) and the Paper for the Panel on Environmental Affairs (“the Panel”) on a proposal to require installation of vapour recovery systems at petrol filling stations (“the Proposal”) (Ref: LC Paper No. CB(1)2231/02-03(07)) for background information.

4. The Proposal was discussed by the Panel on 22 July 2003. Members were concerned about the possible disruption of service and safety hazard associated with the retrofitting works. Given the high installation and maintenance costs of the vapour recovery system and the penalty for non-compliance, a member considered it necessary for the Administration to further consult the trade before introducing the Proposal. Members may refer to the minutes of the Panel meeting (Ref: LC Paper No. CB(1)2418/02-03) for further details. According to the LegCo Brief, the Administration has subsequently discussed the Proposal with the oil companies, which have confirmed their support to the Proposal.

5. The Amendment Regulation shall come into operation on 31 March 2005 (“the relevant date”). Section 9 of the Amendment Regulation provides that certain provisions relating to the Phase II vapour recovery system shall not apply to all existing petrol filling stations until the expiry of 36 months immediately following the relevant date, with the exception of any existing petrol

filling station which has each of its petrol dispenser installed with a Phase II vapour recovery system within 36 months immediately following the relevant date (“the exemption”).

6. We have written to the Administration to clarify the policy intent of the exemption and a copy of our letter (Annex B) and its reply (Annex A) are enclosed.

Deposit Protection Scheme Ordinance (Cap. 581)
Deposit Protection Scheme Ordinance (Commencement) (No. 3) Notice 2004 (L.N. 219)

7. By this Notice, the Secretary for Financial Services and the Treasury has appointed 25 February 2005 as the day on which sections 11, 12, 13, 48 and 55 (in so far as it relates to section 3 of Schedule 5 to the Deposit Protection Scheme Ordinance (Cap. 581) (“the Ordinance”)) of, and section 3 of Schedule 5 to, the Ordinance shall come into operation. These provisions mainly relate to the establishment and maintenance of the Deposit Protection Scheme under the Ordinance.

Companies Ordinance (Cap. 32)
Companies Ordinance (Amendment of Eighth Schedule) Order 2004 (Commencement) Notice 2004 (L.N. 220)

8. By this Notice, the Registrar of Companies (“the Registrar”) appoints 28 February 2005 as the date on which the Companies Ordinance (Amendment of Eighth Schedule) Order 2004 (“the Order”) shall come into operation. The Order amends the Eighth Schedule to the Companies Ordinance (Cap. 32) to revise the fees to be paid to the Registrar for inspecting and obtaining documents and records kept by the Registrar and other miscellaneous fees.

9. The Order was discussed by the Panel on Financial Affairs (“the Panel”) on 7 July 2003. This Notice has not been discussed by the Panel. Members may refer to the minutes of the Panel meeting (Ref: LC Paper No. CB(1)2392/02-03) and the Legal Service Division Report on Subsidiary Legislation gazetted on 7 May 2004 (Ref: LC Paper No. LS76/03-04) for further details.

Encl

Prepared by

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Legislative Council Secretariat
4 January 2005

() in EP 21/L3/33 Pt.IX

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LS/S/13/04-05

5 January 2005

Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central, Hong Kong
(Attn. Ms. Monna LAI, Assistant Legal Adviser)

Dear Ms. LAI,

**Air Pollution Control (Petrol Filling Stations)(Vapour Recovery)
(Amendment) Regulation 2004 (“the Amendment Regulation”)**

We refer to your letter of 4 January 2005.

Our policy intent is to require existing petrol filling stations to take the necessary steps within 36 months to comply with the requirements of the proposed Amendment Regulation.

To fulfill the requirements, old petrol dispensers will have to be replaced with dispensers that meet the phase II specifications. During replacement, the use of the petrol dispensers concerned will have to be suspended, irrespective of the legal requirements. Furthermore, as part of the engineering process, new petrol dispensers can be deployed for use only after they have been properly tuned and tested to be fit for operation. Under the proposed Regulation, all tests are to be arranged by the owner who will have full control on the work schedule. No approval or scrutiny will be required by the Authority. Therefore the required testing and display of certificate will not cause any significant additional suspension required.

We expect that the owner of a petrol filling station will carefully consider his own case before deciding whether to suspend all petrol dispensers at the same time for replacement work during the 36-month period. Owners of small petrol filling stations will more likely close down the entire station for the replacement work and owners of large petrol filling stations may consider arranging replacement in phases to maintain partial operation. Of course, there are also other factors to be considered such as business planning and the maintenance/renovation requirements of the concerned petrol filling station and the 36-month period is to allow an owner to work out the most suitable plan.

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If you require further information, please contact the undersigned.

Yours sincerely,

(Joe Fong)
Senior Environmental Protection Officer
for Secretary for the Environment, Transport and Works

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Secretary for the Environment, Transport
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Environment, Transport and Works Bureau
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Wan Chai
Hong Kong

By Fax (2136 1877) and By Post

4 January 2005

Dear Mr FONG

**Air Pollution Control (Petrol Filling Stations) (Vapour Recovery)
(Amendment) Regulation 2004 (“the Amendment Regulation”)**

We are scrutinizing the legal and drafting aspects of the Amendment Regulation and note that:

- (a) the proposed new section 8 of the Air Pollution Control (Petrol Filling Stations) (Vapour Recovery) Regulation (Cap. 311 sub. leg. S) (“the Principal Regulation”) provides that “paragraph (b)(ii) of the definition of “vapour recovery system” in section 2, sections 3(2)(b) and 6A and section 2.1 of Part 1 of Schedule 2 and Part 2 of that Schedule shall not apply in relation to all existing petrol filling stations until the expiry of 36 months immediately following the relevant date, with the exception of any existing petrol filling station which has **each** of its petrol dispenser installed with a Phase II vapour recovery system within 36 months immediately following the relevant date.”;
- (b) section 4(1)(a) of the Principal Regulation as proposed to be amended provides that “The owner of a petrol filling station shall cause its vapour recovery system and all pipes connected therewith to be tested and examined by a competent examiner in accordance with the test requirements specified in section 8A upon the completion of the installation of the system and before the system is put into use for the first time.”;

- (c) the section 6(1) of the Principal Regulation as proposed to be amended provides that “The owner of... a petrol filling station shall display the latest certificate showing his compliance with the requirements on testing and examination under section 4 or 4A at a conspicuous location... in the station...”; and
- (d) the proposed new section 6(3) of the Principal Regulation provides that “The owner of a petrol filling station shall **not** dispense, or cause or permit petrol to be dispensed with any petrol dispenser of the station into the fuel tank of a motor vehicle or any other container unless there is the latest certificate displayed in respect of the station in accordance with subsection 6(1).”.

In these circumstances, it appears that if an owner of an existing petrol filling station installs **all** of its petrol dispensers in the station with a Phase II vapour recovery system **at the same time** within the 36 months grace period provided under section 8, the petrol filling service of the station has to be suspended as he cannot dispense, or cause or permit petrol to be dispensed with any petrol dispenser of the station into the fuel tank of a motor vehicle or any other container until the vapour recovery system and all the pipes connected therewith have been tested and examined by a competent examiner in accordance with section 4(1)(a) and the latest certificate has been issued by the competent examiner and displayed in respect of the station in accordance with section 6(1). Please clarify the policy intent.

The Amendment Regulation will be considered in the House Committee meeting to be held on 7 January 2005. It is appreciated that your reply in both Chinese and English could reach us by close of play, 5 January 2005.

Yours sincerely

(Monna LAI)
Assistant Legal Adviser