

立法會
Legislative Council

LC Paper No. CB(1) 2226/07-08
(These minutes have been seen
by the Administration)

Ref : CB1/BC/7/07/2

Bills Committee on Air Pollution Control (Amendment) Bill 2008

**Minutes of the tenth meeting
held on Thursday, 5 June 2008, at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Martin LEE Chu-ming, SC, JP
Hon SIN Chung-kai, SBS, JP
Hon Howard YOUNG, SBS, JP
Hon CHOY So-yuk, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LEE Wing-tat
Hon WONG Ting-kwong, BBS

Member attending : Dr Hon LUI Ming-wah, SBS, JP

Members absent : Hon Emily LAU Wai-hing, JP
Hon Alan LEONG Kah-kit, SC
Hon Mrs Anson CHAN, GBM, JP

Public officers attending : Environmental Protection Department

Mr Carlson K S CHAN
Deputy Director of Environmental Protection (3)

Mr Benny WONG
Assistant Director of Environmental Protection (Air Policy)

Mr PANG Sik-wing
Principal Environmental Protection Officer (Air Policy)

Mr Gordon LEUNG
Environmental Protection Officer (Cross-Boundary &
International)31

Department of Justice

Ms Amy CHAN
Senior Government Counsel

Clerk in attendance : Miss Becky YU
Chief Council Secretary (1)1

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Mrs Mary TANG
Senior Council Secretary (1)2

I Meeting with the Administration

(LC Paper No. CB(1) 1789/07-08(01) -- List of follow-up actions arising
from the discussion on
3 June 2008)

Clause-by-clause examination

(LC Paper No. CB(3) 373/07-08 -- The Bill
Ref: EP CR 9/150/21 -- The Legislative Council Brief
LC Paper No. CB(1) 1208/07-08(03) -- Marked-up copy of the Bill
LC Paper No. CB(1) 1521/07-08(03) -- Summary of deputations' views
on individual subjects/clauses of
the Bill
LC Paper No. CB(1) 1554/07-08(01) -- Submission from
Mr David RENTON of Baker
Botts L.L.P.
LC Paper No. CB(1) 1671/07-08(01) -- Administration's response to the
submission from Mr David
RENTON of Baker Botts L.L.P.)

The Committee deliberated (Index of proceedings attached at **Annex A**).

2. The Administration was requested to -
- (a) include in the proposed Committee Stage amendment to proposed section 26K(2)(d) the requirement for the applicant to exercise all due diligence promptly to minimize the quantity of pollutant being emitted as a result of the occurrence of a special event;
 - (b) alongside the Administration's proposal of consulting the Advisory Council on the Environment on the increase in quantity of allocated allowances further to acquisition of emission credits under a recognized emission trading scheme, consideration should also be given to including proposed sections 26M(2), (4), (5) and (6) in a technical memorandum, such that the increase in allocated allowances would be subject to the negative vetting procedure;
 - (c) include in proposed section 26M(3) the requirement for the specified licence holder to notify the Authority any transfer of emission credits;
 - (d) review the specified time frames under proposed sections 26M(4) and (6) regarding acquisition of emission credits in respect of an emission year;
 - (e) advise the applicability of section 30A of the Air Pollution Control Ordinance (Cap. 311) to non-compliance with the emission caps, particularly the person who would be liable to imprisonment. To also consider providing a separate penalty clause for non-compliance with the emission caps. Consideration should be given to applying a sliding scale of penalty in accordance with the level of excessive emissions; and
 - (f) advise how the Administration could ensure that a fine for non-compliance with the emission caps by a power company would be borne by its shareholders rather than being passed on to its electricity customers.

II Any other business

3. There being no other business, the meeting ended at 10:36 am.

**Proceedings of the
Bills Committee on Air Pollution Control (Amendment) Bill 2008
Meeting on Thursday, 5 June 2008, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 001143	Chairman Administration	<p>Discussion on the Administration's response to the list of follow-up actions arising from the discussion at the meeting on 3 June 2008 (LC Paper No. CB(1)1800/07-08))</p> <p>Discussion on proposed section 26K</p>	<p>The Administration to include in the proposed Committee Stage amendment to proposed section 26K(2)(d) the requirement for the applicant to exercise all due diligence promptly to minimize the quantity of pollutant being emitted as a result of the occurrence of a special event</p>
001144 - 001817	Miss CHOY So-yuk Chairman Mr Martin LEE Administration	<p>Discussion on proposed section 26M</p> <p>Miss CHOY So-yuk's request that local power plants should be required to exercise all due diligence to reduce emissions before they would be allowed to use the cheaper and easier alternative of emission trading with their Mainland counterparts</p> <p>Administration's explanation -</p> <p>(a) power plants were required to use best practicable means to reduce emissions to meet the emission caps as well as the per MWh emission limits in terms of the maximum concentration level of the relevant pollutants set out in their specified licences;</p> <p>(b) it was prepared to consult the Advisory Council on the Environment (ACE) and the Panel on Environmental Affairs (EA Panel) in respect of applications for acquisition of emission credits under proposed section 26M</p>	

Time Marker	Speaker	Subject(s)	Action Required
001818 - 002345	Mr Martin LEE Administration	<p>Discussion on whether the provisions in relation to acquisition of emission credits under proposed section 26M could be included in the technical memorandum (TM), which would be subject to the negative vetting procedure</p> <p>Administration's explanation -</p> <p>(a) arrangements for cross-boundary emission trading scheme had been mapped out after extensive negotiation with the Guangdong Environmental Protection Bureau (GDEPD);</p> <p>(b) further negotiation would need to be held with GDEPD on the proposed inclusion of the provisions in relation to the acquisition of emission credits in a TM, which would be subject to the negative vetting procedure and this would take time; and</p> <p>(c) as an alternative, the Authority would be prepared to consider applications for acquisition of emission credits in consultation with ACE and the EA Panel, taking into account the impact on the environment</p>	<p>Alongside the Administration's proposal of consulting ACE in respect of the increase in quantity of allocated allowances further to acquisition of emission credits under a recognized ETS, consideration should also be given to including proposed sections 26M(2), (4), (5) and (6) in a TM, such that the increase in allocated allowances would be subject to the negative vetting procedure</p>
002346 -004508	Miss CHOY So-yuk Chairman Administration Mr Martin LEE	<p>Discussion on the time frame for the acquisition of emission credits under proposed sections 26 M(4) and (6)</p> <p>Administration's explanation -</p> <p>(a) applications for conducting an emission reduction project for generating tradable emission credits under the Pearl River Delta (PRD) emission trading pilot scheme had to be vetted by the joint Management Panel prior to submission for approval by the Authority in Hong Kong;</p> <p>(b) the Authority would be empowered</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>under proposed section 26M(5) to include terms and conditions before granting approval;</p> <p>(c) to facilitate consultation with ACE and the EA Panel, the time frames for application of acquisition of emission credits would be revised as follows -</p> <p>(i) applications had to be made before 30 June in the emission year (proposed section 26M(4)(a));</p> <p>(ii) supporting documents had to be submitted and the terms and conditions had to be complied with by 31 March in the year following the emission year (proposed sections 26M(4)(b) and (c)); and</p> <p>(iii) notification of Authority's decision had to be made within 180 days after receipt of application</p>	
004509 - 005950	Mr Martin LEE Administration Chairman	<p>Mr Martin LEE's views -</p> <p>(a) the Administration had to ensure that local power plants had exercised all due diligence to reduce emissions before they were allowed to acquire emission credits under recognized ETS; and</p> <p>(b) applications for acquisition of emission credits should be vetted by the Legislative Council (LegCo) given their impacts on the air quality of Hong Kong</p> <p>Administration's explanation -</p> <p>(a) ETS merely offered an alternative means for power plants to meet their emission caps. Participation in ETS was a business decision to be made by eligible thermal power companies in the PRD Region;</p>	

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		<p>(b) the current ETS agreed with GDEPB was already a project-based scheme which required the implementation of additional emission reduction projects before tradable emission credits could be generated. Imposition of too many hurdles on ETS would discourage power plants from participating in the scheme; and</p> <p>(c) the need for scrutiny of ETS projects by LegCo had not been brought up during negotiation with GDEPB</p>	
005951 - 010603	Miss CHOY So-yuk Administration	<p>Discussion on the time frame for acquisition of emission credits and whether such applications should be subject to the negative vetting procedure</p> <p>Administration's explanation -</p> <p>(a) ETS was meant to provide a flexible and cost-effective alternative to meet the emission caps which would be progressively tightened; and</p> <p>(b) eligible power plants would need to make significant investments in undertaking additional emission reduction projects, which would need to be approved by the joint Management Panels. Further hurdles, including the proposed scrutiny of projects by LegCo, would discourage them from participating in ETS</p>	
010604 - 010723	Ir Dr Raymond HO	<p>Ir Dr Raymond HO's views -</p> <p>(a) ETS might not be viable if too many hurdles were imposed; and</p> <p>(b) procedures should be simplified as far as possible to encourage participation</p>	

Time Marker	Speaker	Subject(s)	Action Required
010724 - 010946	Chairman Administration	<p>Chairman's enquiry on the consequences if proposed section 26M(2) on the acquisition of emission credits was repealed by members</p> <p>Administration's explanation that ETS could not proceed as part of the proposed emission control framework for power plants under the Air Pollution Control Ordinance (Cap. 311) (APCO).</p>	
010947 - 011618	Mr WONG Ting-kwong Chairman Mr Martin LEE Administration	Discussion on the situation involving the transfer of emission credits under proposed section 26M(3) which were not covered by the Bill	
011619 - 012159	Mr Martin LEE Administration	Discussion on the need to specify in the Bill the consultation process with ACE and the EA Panel in respect of applications for acquisition of emission credits	
012200 - 012349	Mr Howard YOUNG	<p>Mr Howard YOUNG's views -</p> <p>(a) did not support the use of the negative vetting procedure for applications for acquisition of emission credits; and</p> <p>(b) as consultation with the EA Panel on major environmental issues was a standard practice, it was not necessary to spell this out in the Bill</p>	
012350 - 012422	Mr WONG Ting-kwong	Mr WONG Ting-kwong's remark that he had no strong view on whether applications for acquisition of emission credits should be subject to the negative vetting procedure	
012423 - 012947	Dr LUI Ming-wah Administration Chairman	<p>Dr LUI Ming-wah's concern that there were difficulties in defining the "best practicable means" for emission reduction given the ever advancing technological development</p> <p>Administration's explanation that it would take into account, inter alia, the local situation, technology available, the air quality objectives and the fuel mix in power generation in deciding</p>	

Time Marker	Speaker	Subject(s)	Action Required
		what should be regarded as the best practicable means to reduce emissions	
012948 -013559	Mr SIN Chung-kai Mr Martin LEE	Mr SIN Chung-kai's views - (a) need for transparency in implementing ETS and expert advice in the monitoring of power plants; and (b) scrutiny of applications for acquisition of emission credits by LegCo would enhance the bargaining power of the Administration in negotiating the terms of ETS	
013600 - 014406	Chairman Administration ALA7 Mr Martin LEE	Discussion on - (a) the arrangements for transfer of emission credits under proposed section 26M(3) which were not covered by the Bill; and (b) the increase in quantity of allocated allowances in case of surplus of allocated allowances in preceding year under proposed section 26J	The Administration to include in proposed section 26M(3) the requirement for the specified licence holder to notify the Authority any transfer of emission credits
014407 - 014507	Mr SIN Chung-kai	Mr SIN Chung-kai's views that consideration should be given to including proposed sections 26M(2), (4), (5) and (6) in a TM, so that the increase in allocated allowances through acquisition of emission credits would be subject to the negative vetting procedure	
014508 - 014846	Chairman Administration	Discussion on proposed section 26N - Application of certain provisions of this Division to licence that has ceased to be in force	
014847 - 015015	Mr SIN Chung-kai Chairman Administration	Discussion on clause 6 regarding contravention of terms and conditions of licences under section 30A of APCO Mr SIN Chung-kai's views - (a) there should be a separate penalty clause for non-compliance with emission caps;	The Administration to - (a) consider providing a separate penalty clause for non-compliance with the emission caps;

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) consideration should be given to introducing a sliding scale of penalty in accordance with the level of excessive emissions with a view to increasing the deterrent effect; and</p> <p>(c) need to ensure that the fine for non-compliance with the emission caps by a power company would be borne by its shareholders</p>	<p>(b) consider applying a sliding scale of penalty in accordance with the level of excessive emissions; and</p> <p>(c) advise how the Administration could ensure that a fine for non-compliance with the emission caps by a power company would be borne by its shareholders rather than being passed on to its electricity customers</p>
015016 - 020322	Chairman Administration Martin LEE	<p>Chairman's enquiry on -</p> <p>(a) the applicability of section 30A to non-compliance with the emission caps; and</p> <p>(b) the person who would be liable to imprisonment for non-compliance with emission caps</p>	The Administration to advise the applicability of section 30A of APCO to non-compliance with the emission caps, particularly the person who would be liable to imprisonment
020323 - 020544	Chairman	Date of next meeting	