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**Paper for the House Committee Meeting
on 29 May 2009**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 22 May 2009**

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Amendment to be made by : 24 June 2009 (or the 1st meeting of the next session if extended by resolution)

PART I CONTROL ON VOLATILE ORGANIC COMPOUNDS

Air Pollution Control Ordinance (Cap. 311)

Air Pollution Control (Volatile Organic Compounds) (Amendment) Regulation 2009 (L.N. 107)

The Air Pollution Control (Volatile Organic Compounds) Regulation (Cap. 311 sub. leg. W) (the principal Regulation) -

- (a) prescribes the maximum limits of volatile organic compound (VOC) contents for certain products (namely, regulated paints, regulated printing inks and regulated consumer products as listed in the relevant Parts of Schedules 1, 2, and 3 to the principal Regulation);
- (b) prohibits the manufacture and import of those products if their VOC contents exceed the prescribed limits; and
- (c) provides for requirements for labelling, display of information, product notification and submission of reports.

2. The main purpose of this Regulation is to extend certain prohibitions and requirements of the principal Regulation to vehicle refinishing paints, vessel paints, pleasure craft paints, adhesives and sealants. According to the LegCo Brief, these newly regulated products are the remaining VOC-containing products that are controlled by the State of California of the USA, which is most advanced in controlling VOC emissions for better air quality. The Administration estimates that, when the extended control is fully implemented, it can help reduce about 700 tonnes

of VOC emission a year. This reduction is essential in order to secure the achievement of VOC emission reduction target.

3. A new section 2A is added to the principal Regulation. The new section 2A provides that if any representation is made by the manufacturer or importer of a product that the product may be used as two or more regulated products, the provisions applicable to each of those regulated products apply to the product.

4. Three new parts are added to the principal Regulation, namely Parts 5A, 5B and 5C.

Part 5A - Regulated vehicle refinishing paints

5. The new Part 5A sets out the prohibitions and requirements relating to vehicle refinishing paints. The new Schedule 5 sets out the vehicle refinishing paints to which the principal Regulation applies (regulated vehicle refinishing paints), the prescribed limit of VOC content for each regulated vehicle refinishing paint, and the test method for determining the VOC content.

6. The new section 16A prohibits the manufacture and import of regulated vehicle refinishing paints with VOC contents in excess of the prescribed limits. The prohibition is to be implemented with effect from 1 October 2010.

7. The new section 16B requires manufacturers or importers of regulated vehicle refinishing paints to disclose certain information in the Material Safety Data Sheets, trade catalogues, packaging or containers.

8. The new section 16C requires manufacturers or importers of regulated vehicle refinishing paints to submit annually to the air pollution control authority (the Authority) a sales report containing certain information.

Part 5B - Regulated vessel paints and pleasure craft paints

9. The new Part 5B sets out the prohibitions and requirements relating to vessel paints and pleasure craft paints. The new Schedule 6 sets out the vessel paints (regulated vessel paints) and pleasure craft paints (regulated pleasure craft paints) to which the principal Regulation applies, the prescribed limit of VOC content for each regulated vessel paint and each regulated pleasure craft paint, and the test method for determining the VOC content.

10. The new section 16E prohibits the manufacture and import of regulated vessel paints and regulated pleasure craft paints with VOC contents in excess of the prescribed limits. The prohibition is to be implemented in phases for different regulated vessel paints and regulated pleasure craft paints over a period from 1 January 2010 to 1 April 2012.

11. The new sections 16F and 16G contain requirements similar to new sections 16B and 16C.

Part 5C - Regulated adhesives and sealants

12. The new Part 5C sets out the prohibitions and requirements relating to adhesives and sealants. The new Schedule 7 sets out the adhesives (regulated adhesives) and sealants (regulated sealants) to which the principal Regulation applies, the prescribed limit of VOC content for each regulated adhesive and each regulated sealant, and the test methods for determining the VOC content.

13. The new section 16I prohibits the manufacture and import of regulated adhesives and regulated sealants with VOC contents in excess of the prescribed limits. The prohibition is to be implemented in phases for different regulated adhesives over a period from 1 January 2010 to 1 April 2012. The prohibition on sealants is to be implemented with effect from 1 January 2010.

14. The new sections 16J and 16K contain requirements similar to new sections 16B and 16C.

15. This Regulation will come into operation on 1 January 2010.

Other Observations

16. Members may refer to the LegCo Brief (with no file reference) issued in May 2009 by the Environmental Protection Department for background information. According to the Brief, the Administration has consulted the relevant trades and stakeholders, including professional bodies, manufacturers, suppliers, major users and utility companies on the proposal, and the final proposal and implementation plan are acceptable to the trades.

17. The Regulation was discussed by the Panel on Environmental Affairs at its meeting on 24 November 2008. Members noted that the proposal would be implemented by phases during the period from 1 January 2010 to 1 April 2012 in view of the time required for development of compliant products, and that the affected trades had been consulted.

18. While acknowledging that the Regulation only applied to vehicle refinishing paints, vessel paints, pleasure craft paints, adhesives and sealants, some members pointed out that the paints used by toy manufacturers were very much similar to vehicle refinishing paints. Hence, there was a need for the Administration to devise a more comprehensive plan on consultation with the affected trades, suppliers and manufacturers to ensure the ready supply of affordable compliant products in the local market before imposing the new VOC limits.

19. As the new controls would also affect the construction industry, some members held the view that the Administration should consider commissioning the Construction Industry Council to conduct studies on the proposed VOC limits to ascertain the applicability of the California VOC standards to Hong Kong where most construction materials were imported. The Administration should also take the lead in applying the new VOC limits in its works projects to set an exemplary role and provide the trades with the needed confidence on the availability and practicality of the compliant products.

20. Some members were still concerned about the lack of control over retailers under the Regulation lest some unscrupulous retailers might smuggle non-compliant regulated products into Hong Kong if retailers were not held liable for selling regulated products exceeding the prescribed VOC limits.

21. The Legal Service Division is still scrutinising the legal and drafting aspects of the Regulation. We would make a further report to the House Committee on this item if necessary.

PART II ADDING HUMAN SWINE INFLUENZA VIRUS TYPE A (SUBTYPE H1) TO THE LIST OF SCHEDULED INFECTIOUS AGENTS

Prevention and Control of Disease Ordinance (14 of 2008)

Prevention and Control of Disease Ordinance (Amendment of Schedule 2) Notice 2009 (L.N. 108)

22. Under section 15 of the Prevention and Control of Disease Ordinance (Ord. No. 14 of 2008) (the Ordinance), the Director of Health (the Director) may by notice published in the Gazette amend Schedules 1 (which specifies a list of infectious diseases known as "scheduled infectious diseases")¹ and 2 (which specifies a list of infectious agents known as "scheduled infectious agents")² to the Ordinance.

23. The addition of "human swine influenza virus type A (subtype H1)" to the list of scheduled infectious agents has effect in the following statutory contexts -

- (a) The Secretary for Food and Health may by regulation empower the Director to impose any precautionary measure relating to the handling of

¹ Members may recall that the Director has amended Schedule 1 to the Ordinance by adding "Swine Influenza" to the list of scheduled infectious diseases (L.N. 72 of 2009). The Secretary for Food and Health has also amended the Prevention and Control of Disease Regulation (L.N. 159 of 2008) (the Regulation) by adding "Swine Influenza" to the list of "specified diseases" under section 56 of the Regulation (L.N. 71 of 2009).

² Section 2 of the Ordinance defines the term "infectious agent" to mean a parasite, a fungus, a bacterium, a virus, a prion or any other agent that can cause an infectious disease. At present, there are 31 infectious agents listed in Schedule 2 to the Ordinance.

any scheduled infectious agent in a laboratory (section 7(2)(r) of the Ordinance);

- (b) The term "specified infectious disease" under the Prevention and Control of Disease Regulation (L.N. 159 of 2008) (the Regulation) means a scheduled infectious disease or a disease caused by a scheduled infectious agent (which now includes human swine influenza virus type A (subtype H1)) (section 2 of the Regulation);
- (c) If a health officer has reason to suspect that there is a leakage of a scheduled infectious agent in a laboratory that may pose a public health risk, he may enter the laboratory, etc. (section 10(1) of the Regulation);
- (d) The Director may require the owner or the person in charge of a laboratory to surrender a scheduled infectious agent under his control or possession for disposal by the Director in specified circumstances (section 42 of the Regulation); and
- (e) If it comes to the knowledge of the owner or the person in charge of a laboratory that there is a leakage of a scheduled infectious agent in the laboratory that may pose a public health risk, the owner or that person shall notify the Director immediately (section 43 of the Regulation).

24. Members may refer to the LegCo Brief (with no file reference) issued in May 2009 by the Food and Health Bureau and Department of Health for background information. According to paragraph 4 of the Brief, in line with the recommendation of the World Health Organization (WHO) to ensure biosafety, laboratories performing virus isolation for the human swine influenza A virus (subtype H1) are required to comply with the stringent requirements of biosafety level 3 practices. As the virus is a potentially dangerous pathogen, it is important for incidents of leakage of human swine influenza A virus (subtype H1) from laboratories to be subject to the statutory notification requirement, so as to facilitate early detection of such incidents, and to enable appropriate control measures to be implemented in a timely manner for the protection of laboratory workers and prevention of spread of diseases.

25. It is noted that the Prevention and Control of Disease (Amendment) Regulation 2009 (L.N. 71 of 2009) adds "Swine Influenza" to the list of specified diseases set out in section 56 of the Regulation and the Prevention and Control of Disease Ordinance (Amendment of Schedule 1) (No. 2) Notice 2009 (L.N. 72 of 2009) adds "Swine Influenza" to the list of scheduled infectious diseases specified in Schedule 1 to the Ordinance. However, this Notice adds "human swine influenza virus type A (subtype H1)" to the list of scheduled infectious agents in Schedule 2 to the Ordinance. Upon our enquiry, the Administration explains the use of the different description as follows -

"Schedule 1 to the Ordinance refers to human diseases for the purpose of disease control and disease surveillance. Section 4 of the Prevention and Control of Disease Regulation (the Regulation) requires a medical practitioner to notify the Director of Health (the Director) of cases of infectious diseases specified in Schedule 1. Therefore, it requires a more encompassing term, "swine influenza", to ensure responsiveness and effective disease surveillance in relation to the human swine influenza infection.

On the other hand, Schedule 2 consists of a list of dangerous pathogens. It is required under [s]ection 43 of the Regulation for owners or persons in charge of laboratories to notify the Director of leakage of an infectious agent as specified in Schedule 2 to the Ordinance in the laboratory that can cause human disease. This is for the purpose of implementing specific control measures in the case of leakage in laboratories, but not for disease surveillance. Moreover, the recommendation of biosafety level 3 practices by the World Health Organization (WHO) applies only to the new swine influenza A virus (subtype H1). In order to specifically identify the current virus referred to in the WHO's recommendation on laboratory biosafety and also to avoid catching inadvertently other swine influenza A viruses with no evidence of causing human infections as in the current situation, such as those handled by veterinary laboratories, "human swine influenza virus type A (subtype H1)" is proposed to be added as an amendment to Schedule 2 to the Ordinance."

PART III COMMENCEMENT NOTICES

Fixed Penalty (Smoking Offences) Ordinance (26 of 2008)

Fixed Penalty (Smoking Offences) Ordinance (Commencement) Notice (L.N. 109)

Fixed Penalty (Smoking Offences) Regulation (L.N. 66 of 2009)

Fixed Penalty (Smoking Offences) Regulation (Commencement) Notice (L.N. 110)

Fixed Penalty (Smoking Offences) (Specification of Authorities and Public Officers) Notice (L.N. 67 of 2009)

Fixed Penalty (Smoking Offences) (Specification of Authorities and Public Offences) Notice (Commencement) Notice (L.N. 111)

26. The Fixed Penalty (Smoking Offences) Ordinance (Commencement) Notice (L.N. 109 of 2009) specifies 1 September 2009 as the day on which the Fixed Penalty (Smoking Offences) Ordinance (26 of 2008) (the Ordinance) will come into operation. The Ordinance provides for a fixed penalty at \$1,500 to be payable for certain offences under the Smoking (Public Health) Ordinance (Cap. 371) (the scheduled offence) and the recovery of the fixed penalty.

27. The Fixed Penalty (Smoking Offences) Regulation (Commencement) Notice (L.N. 110 of 2009) specifies 1 September 2009 as the day on which the Fixed Penalty (Smoking Offences) Regulation (the Regulation) (L.N. 66 of 2009) will come into operation. The purposes of the Regulation are to -

- (a) prescribe the forms of the notices demanding payment of fixed penalties under the Ordinance;
- (b) prescribe the form of a certificate as proof of non-payment in proceedings for recovery of fixed penalties under the Ordinance; and
- (c) specify the manner of payment of fixed penalties.

28. The Fixed Penalty (Smoking Offences) (Specification of Authorities and Public Officers) Notice (Commencement) Notice (L.N. 111 of 2009) specifies 1 September 2009 as the day on which the Fixed Penalty (Smoking Offences) (Specification of Authorities and Public Officers) Notice (L.N. 67 of 2009) will come into operation. The Notice specifies the persons and classes of public officers respectively as the "Authority" and "public officer" referred to in the provisions of the Ordinance relating to the scheduled offence.

29. The Panel on Health Services has no objection to the Administration's plan to commence the operation of the Fixed Penalty (Smoking Offences) Ordinance on 1 September 2009. The Subcommittee formed to study the Fixed Penalty (Smoking Offences) Regulation and Fixed Penalty (Smoking Offences) (Specification of Authorities and Public Officers) Notice also has no objection to the commencement of these two pieces of subsidiary legislation on 1 September 2009.

30. There are no difficulties identified in relation to the legal or drafting aspect of L.N. 108 – L.N. 111.

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