

本署檔案  
OUR REF : EP CR 9/150/20  
來函檔案  
YOUR REF : LS/R/5/07-08  
電話  
TEL NO : 2594 6032  
圖文傳真  
FAX NO : 2511 3658  
電子郵件  
E-MAIL : alfredlee@epd.gov.hk  
網址  
HOMEPAGE : <http://www.epd.gov.hk/>

**Environmental Protection Department  
Headquarters**

46/F Revenue Tower  
5 Gloucester Road  
Wanchai, Hong Kong



環境保護署總部

香港  
灣仔告士打道五號  
稅務大樓四十六樓

**CB(1) 829/08-09(04)**

16 February 2009

Ms Kitty Cheng  
Assistant Legal Adviser  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road  
Central, Hong Kong  
[Fax: 2877 5029]

Dear Ms. Cheng,

**Product Eco-responsibility (Plastic Shopping Bags) Regulation**

Thank you for your letter of 4 February 2009. Our responses to your questions are set out below please.

**Section 3**

**Application for registration of prescribed retailers**

2. Under section 3 of the Product Eco-responsibility (Plastic Shopping Bags) Regulation (“the Regulation”), an applicant for registration is required to make the application to the Director in writing and in the specified form according to section 3(1), and to give the Director notice in writing according to section 3(3) if a change in the information provided occurs before the determination of the application unless it has been withdrawn under section 3(2). The purpose of section 3(4) is to provide that non-compliance with any such requirements will result in the application being treated as not properly made, which is a ground for rejecting the application under section 4(2)(a). We consider that the requirements set out in section 3 are clear and straightforward and there is no need to enumerate the requirements twice within section 3.

## **Section 4**

### **Determination of application for registration**

3. Under section 19(6) of the Product Eco-responsibility Ordinance (32 of 2008) (“the Ordinance”), the Director may determine, among other things, an application for registration under section 19(2) in accordance with the regulation. The detailed provisions dealing with the determination of an application for registration are now contained in section 4 of the Regulation. It is appropriate for that section to make a cross-reference to section 19(6) of the Ordinance. The fact that section 19(6) of the Ordinance also mentions other matters will not affect the operation of section 4 of the Regulation.

## **Section 6**

### **Application for deregistration of registered retailers or registered retail outlets**

4. Under section 6 of the Regulation, an applicant for deregistration is required to make the application to the Director in writing and in the specified form according to section 6(1), and to give the Director notice in writing according to section 6(3) if a change in the information provided occurs before the determination of the application unless it has been withdrawn under section 6(2). The purpose of section 6(4) is to provide that non-compliance with any such requirements will result in the application being treated as not properly made, which is a ground for rejecting the application under section 7(2)(a). We consider that the requirements set out in section 6 are clear and straightforward and there is no need to enumerate the requirements twice within section 6.

## **Section 7**

### **Determination of application for deregistration**

5. If a registered retailer applies for deregistration in respect of a registered retail outlet, he would be required to make a declaration in the specified form on the relevant circumstances specified in section 19(5) of the Ordinance under which an application may be made. If the Director considers that the circumstances as declared by the registered retailer exist, the Director would approve the application unless there are other grounds for rejection according to section 7(2). If the Director, through investigation or other means, considers that the circumstances as declared by the registered retail do not exist, the Director would reject the application and must provide the reasons for the decision in accordance with section 7(4).



6. As provided in section 13(2)(a) of the Ordinance, an aggrieved party may appeal to the Appeal Board with respect to a rejection of an application for deregistration. In hearing and determining the appeal, the Chairman of the Appeal Board may determine any matter of practice and procedure, including the procedure relating to the proof of disputed facts.

### **Section 8**

#### **Application for exemption of part of the area of registered retail outlets or variation of exemption**

7. According to section 29(1)(f) of the Ordinance, the Secretary for the Environment has the power to make regulations with respect to any matter ancillary or incidental to those specified in other preceding provisions of section 29. The power to make regulations with respect to the exemption of part of the area of a registered retail outlet will therefore also include the power to make regulations for ancillary or incidental matters concerning the variation of an exemption.

8. Under section 8 of the Regulation, an applicant for exemption is required to make the application to the Director in writing and in the specified form accompanied by a floor plan according to section 8(1) and (2), and to give the Director notice in writing according to section 8(4) if a change in the information provided occurs before the determination of the application unless it has been withdrawn under section 8(3). The purpose of section 8(5) is to provide that non-compliance with any such requirements will result in the application being treated as not properly made, which is a ground for rejecting the application under section 9(2)(a). We consider that the requirements set out in section 8 are clear and straightforward and there is no need to enumerate the requirements twice within section 8.

### **Section 9**

#### **Determination of application for exemption or variation of exemption**

9. If a registered retailer applies for exemption or variation of exemption, he would be required to submit the specified form accompanied by a floor plan of the retail outlet, indicating (a) any area in which only non-specified goods are displayed or offered for sale; and (b) which part of the area of the retail outlet is intended to be exempted, or how an exempted part is intended to be varied. The registered retailer would also be required to make a declaration in the specified form that the retail outlet meets the criteria for exemption as set out in section 9(3). If the Director considers that the retail outlet meets those criteria, the Director would approve the application unless there are other grounds for rejection according to section 9(2). If the Director, through

investigation or other means, considers that the retail outlet does not meet the criteria for exemption, the Director would reject the application and must provide the reasons for the decision in accordance with section 9(7).

10. As provided in section 13(2)(b) of the Ordinance, an aggrieved party may appeal to the Appeal Board with respect to a rejection of an application for exemption. In hearing and determining the appeal, the Chairman of the Appeal Board may determine any matter of practice and procedure, including the procedure relating to the proof of disputed facts.

11. As provided in section 9(3)(b) of the Regulation, each part of the exempted area must be a cashier's counter that accepts payment for non-specified goods only. The area where non-specified goods are displayed or offered for sale would *not* be exempted.

12. It is not necessary to define the familiar term "cashier's counter" as it is used in its general and common sense, and the ordinary and natural meaning of the language applies. A desk at which a person performs the function of a cashier is a "cashier's counter", regardless of the description used in its signpost and whether or not it also serves as a customer service desk or enquiry desk.

13. According to section 9(1) of the Regulation, the Director must approve an application for exemption unless there is a ground for rejection under section 9(2). Once the Director has determined to approve the application, the procedure set out in section 9(5) should be followed, i.e. the Director must exempt the part of the area of the registered retail outlet concerned as indicated in the application subject to certain conditions. The conditions specified in section 9(5)(a) are ongoing requirements that the Director must impose on a registered retailer after the Director has decided to approve the application according to section 9(1). In other words, the exemption must be made subject to the continuous compliance with those conditions, any breach of which will be a ground for revocation of the exemption under section 10(1).

14. As suggested in your letter, different retailers may have different setups in their retail outlets. Such setups and the related sales and marketing practice may also change from time to time. The power of the Director to reasonably impose other conditions is to tackle the possible emergence of new practice that may circumvent the levy scheme and abuse the exemption mechanism so as to avoid the objects of the legislation being defeated.



## **Section 12**

### **Submissions of quarterly returns**

15. If a person who does not purchase any goods obtains a plastic shopping bag and passes it to another customer, the bag is provided "indirectly" to that customer.

## **Section 16**

### **Specified Forms**

16. The Secretary for the Environment is authorized to make regulations under section 29 of the Ordinance and the regulation-making power may not be delegated by the Secretary to other public officers. But according to section 5 of the Ordinance, the regulation made under section 29 may provide for the performance by the Director or an authorized officer of a function under the regulation, and may authorize a matter to be determined, applied or administered by a specified person.

17. The forms to be specified by the Director are to be determined administratively by the Director in the course of performing her functions in dealing with various applications under the regulation. These forms are not intended to be prescribed within the regulation.

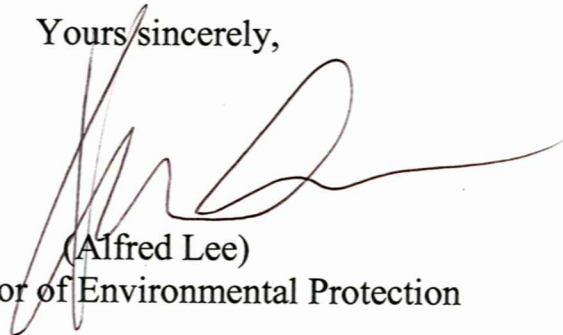
18. As the specified forms are to be used by the retail trade, they would be consulted on the drafts of the specified forms. As a high-level advisory body on environmental policies and initiatives, the Advisory Council on the Environment would not be an appropriate forum to consider the contents of the specified forms. The Administration would be pleased to provide the drafts of the specified forms for reference of the Subcommittee after consultation with the retail trade.

### **Practice guidelines**

19. The practice guidelines will be issued administratively by the Environmental Protection Department to facilitate understanding of and compliance with the legislation by the retail trade. The practice guidelines would provide procedural guidance on various aspects of the environmental levy scheme where necessary. The retail trade would be consulted on the draft of the practice guidelines. As a high-level advisory body on environmental policies and initiatives, the Advisory Council on the Environment would not be an appropriate forum to consider the contents of the practice guidelines. The Administration would be pleased to provide the draft of the practice guidelines for reference of the Subcommittee after consultation with the retail trade.

20. We hope the above has addressed your questions. Please feel free to contact the undersigned if we could be of further assistance.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Alfred Lee', written in a cursive style with a long horizontal flourish extending to the right.

(Alfred Lee)  
for Director of Environmental Protection

c.c.

Miss Shandy LIU SGC/D of J

(fax: 2869 1302)