

立法會
Legislative Council

LC Paper No. CB(1)2623/08-09
(These minutes have been seen
by the Administration)

Ref : CB1/SS/9/08

**Subcommittee on Air Pollution Control (Volatile Organic Compounds)
(Amendment) Regulation 2009**

**Minutes of the fourth meeting on
Wednesday, 9 September 2009, at 10:45 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Hon Miriam LAU Kin-ye, GBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan

Public Officers attending : Agenda item II

Mr MOK Wai-chuen
Acting Assistant Director (Air Policy)
Environmental Protection Department

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

Mr Joe W Y FONG
Senior Environmental Protection Officer (Air Policy)²
Environmental Protection Department

Miss Emma WONG
Acting Senior Government Counsel
Law Drafting Division
Department of Justice

Clerk in attendance : Ms Debbie YAU
Chief Council Secretary (1)6

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Ms Angel SHEK
Senior Council Secretary (1)1

Action

I Confirmation of minutes

(LC Paper No. CB(1)2378/08-09 -- Minutes of meeting held on
26 June 2009

LC Paper No. CB(1)2521/08-09 -- Minutes of meeting held on 2 July
2009)

The minutes of the meetings held on 26 June 2009 and 2 July 2009 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1)2538/08-09(01) -- List of follow-up actions arising
from the discussion at the meeting
on 2 July 2009 prepared by the
Legislative Council Secretariat

LC Paper No. CB(1)2538/08-09(02) -- Administration's response to LC
Paper No. CB(1)2538/08-09(01)

LC Paper No. CB(1)2146/08-09(01) -- Assistant Legal Adviser's letter
dated 30 June 2009 to the
Administration

LC Paper No. CB(1)2538/08-09(03) -- Administration's response to LC
Paper No. CB(1)2146/08-09(01)

Other relevant papers issued previously

LC Paper No. CB(1)2029/08-09(01) -- List of follow-up actions arising
from the discussion at the meeting
on 11 June 2009 prepared by the
Legislative Council Secretariat

LC Paper No. CB(1)2029/08-09(02) -- Administration's response to LC
Paper No. CB(1)2029/08-09(01)

- LC Paper No. CB(1)1845/08-09(03) -- Assistant Legal Adviser's letter dated 27 May 2009 to the Administration
- LC Paper No. CB(1)1845/08-09(04) -- Administration's response to CB(1)1845/08-09(03)
- Ref.: EPD200905 -- Legislative Council Brief issued by the Environmental Protection Department
- LC Paper No. LS73/08-09 -- Legal Service Division Report
- LC Paper No. CB(1)1845/08-09(01) -- Marked-up copy of the Air Pollution Control (Volatile Organic Compounds) Regulation prepared by the Legal Service Division
- LC Paper No. CB(1)1845/08-09(02) -- Background brief prepared by the Legislative Council Secretariat

Relevant papers previously issued by the Panel on Environmental Affairs for the meeting on 24 November 2008

- LC Paper No. CB(1)223/08-09(05) -- Administration's paper on a proposal to control the contents of Volatile Organic Compounds in vehicle refinishing paints, marine vessel paints, pleasure craft paints, adhesives and sealants
- LC Paper No. CB(1)223/08-09(06) -- Paper on extending the scope of Air Pollution Control (Volatile Organic Compounds) Regulation to control vehicle refinishing paints, marine paints, adhesives and sealants prepared by the Legislative Council Secretariat (Background brief)

2. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

List of follow-up actions to be taken by the Administration

3. The Subcommittee requested the Administration to take the following

actions:

- (a) to include in the speech of the Secretary for the Environment to be delivered at the motion debate on the Amendment Regulation an undertaking to review the need to tighten the maximum limit of VOC content for regulated vehicle refinishing paints as set out in Annex A of CB(1)2538/08-09(02) in accordance with the standards adopted by the California Air Resources Board (i.e. the limits proposed under the Amendment Regulation) within one year after the implementation on 1 October 2011;
- (b) to further review the definition of "importer" to study whether it should include owner, consignee, agent or broker, in particular shipping agent, as "importer";
- (c) to provide detailed breakdown on the estimated amount of VOC emission reduction to be achieved by the end of 2010 given that upon the relaxation of the VOC content limits for vehicle refinishing paints, there would be a shortfall of about 35 tonnes of VOC emissions in respect of the 2010 emission target (i.e. 31 000 tonnes of VOC emissions) agreed between the Government of Hong Kong Special Administrative Region (SAR) and Guangdong Provincial Government; and
- (d) to provide information on the measures implemented or to be implemented by the Guangdong Provincial Government to meet the 2010 VOC emission target, in particular measures to promote the use of water-based and low VOC-containing paints.

Date of next meetings

- 4. Members agreed to hold the next two meetings on Wednesday, 16 September 2009 at 2:30 pm, and on Tuesday, 22 September 2009 at 4:30 pm.

III Any other business

- 5. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 1
Legislative Council Secretariat
21 September 2009

**Proceedings of the fourth meeting of
the Subcommittee on Air Pollution Control (Volatile Organic Compounds)
(Amendment) Regulation 2009
on Wednesday, 9 September 2009, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000247	Chairman	<p>The Chairman's introductory remarks</p> <p>Confirmation of minutes of meetings on 26 June and 2 July 2009 (CB(1)2378/08-09 and CB(1)2521/08-09)</p>	
000248 – 001419	Administration Chairman	<p>Briefing by the Administration on its response to concerns raised at the meeting on 2 July 2009 (CB(1)2538/08-09(02) and (03))</p> <p>The Administration's further update that despite the agreement of the paint supply industry of the proposed revised VOC content limits in Annex A of CB(1)2538/08-09(02) upon the Administration's further consultation with them, one paint supplier had proposed, after the issuance of the paper, to delete item (14) "other vehicle refinishing coatings" from the list for the reason that the stringent limit for the item might constrain the introduction of new types of paints which might have a VOC content higher than the prescribed limit. The Administration considered the proposed deletion unacceptable because it would allow unscrupulous paint suppliers to bring in products not complying with the proposed limit for item (14) by arguing that the paints did not fall within any of the vehicle refinishing paints under regulation. Should there be a genuine need for paints of a new category in the future, the Administration could consider exercising the exemption provision already provided in the Regulation</p>	
001420 – 002544	Chairman Mr Vincent FANG Administration	<p>Noting the Administration's response to Mr Vincent FANG's enquiry that the VOC content of adhesion promoters (item (1) in Annex A of (CB(1)2538/08-09(02)) currently available in the market was close to 900 grammes/litre (g/l) vis-a-vis 840 g/l in the proposed revision, the Chairman's concern about the purpose of legislation and its effectiveness to reduce VOC emissions</p> <p>The Administration's explanation that under the original proposal in the Amendment Regulation, VOC emissions from regulated vehicle refinishing paints would be reduced by about 150 tonnes per year. If the proposed control was implemented, it was estimated that VOC emissions would be reduced from the current level of 360 tonnes per year to 220 tonnes per year</p> <p>The Administration's confirmation that the revised VOC content limits for vehicle refinishing paints set out in Annex</p>	

Time marker	Speaker	Subject(s)	Action required
		A of CB(1)2538/08-09(02) were equivalent to the standards adopted by the European Union (EU) (i.e. the standards under the European Paint and Products Directive)	
002545 – 002929	Chairman Ms Miriam LAU Administration	<p>In reply to Ms Miriam LAU,</p> <p>(a) the Administration's confirmation that it had proposed amendments to address the concerns of trades related to vehicle refinishing paints except the request of providing subsidy for the vehicle repair trades to upgrade their facilities; and</p> <p>(b) the Administration's advice that free training workshops would be arranged to help vehicle repair technicians to acquire the basic skills for applying water-based or low VOC-containing paints</p>	
002930 – 003659	Chairman Mr KAM Nai-wai Administration	<p>Mr KAM Nai-wai's enquiry whether the Administration would consider tightening the maximum VOC content limits of regulated vehicle refinishing paints on par with the California standards (i.e. those specified by the California Air Resources Board (CARB)) in due course, and the Chairman's support to gradually tighten the limits in phases</p> <p>The Administration's agreement to review the need to tighten the limits in accordance with the California standards but the timeframe would be subject to the supply of available products and the trades' readiness in mastering the required skills. At members' request, the Administration's agreement to include in the speech of the Secretary for the Environment to be delivered at the motion debate on the Amendment Regulation an undertaking to review the need to tighten the aforesaid VOC content limits within one year after the implementation on 1 October 2011</p> <p>In reply to Mr KAM Nai-wai, the Administration's advice that EU standards also included cleansing solvent in the painting work. The Chairman's request for the Administration to consider including the said cleansing solvent in the review</p>	The Administration to provide information as required in paragraph 3(a) of the minutes
003700 – 004153	Chairman Mr Vincent FANG Administration	<p>Mr Vincent FANG's concern whether the Guangdong Provincial Government (GPG) would adopt similar measures to regulate vehicle refinishing paints because if not, related business opportunities might be shifted to the Mainland</p> <p>The Chairman's enquiry whether GPG had any plan to tighten the VOC content limits of vehicle refinishing paints</p> <p>The Administration's response that the Ministry of Environmental Protection had promulgated a guideline on "Clean Production Standard – Automobile manufacturing (Painting)" in 2006 to promote the use of water-based vehicle paints, and its observation that GPG would adopt</p>	The Administration to provide information as required in paragraph 3(d) of the minutes

Time marker	Speaker	Subject(s)	Action required
		similar measures, such as recovery of petrol vapour, one to two years after they had been implemented in Hong Kong	
004154 – 005342	Chairman Mr Vincent FANG Ms Miriam LAU Administration	<p>Mr Vincent FANG's concern about the discrepancy on the capital cost for upgrading vehicle repair shops estimated by the industry (i.e. \$50,000 to 100,000) and the Administration (i.e. \$5,000 to \$30,000). His consideration that the Administration should share part of the cost to protect the environment. Ms Miriam LAU's echo that given the small number of shops involved, it was the Government's goodwill to provide one-off subsidy. Her further concern that the extra time for drying the paint could be longer if the primer and topcoat were also low VOC-containing paints</p> <p>The Administration's explanation that –</p> <ul style="list-style-type: none"> (a) in switching to water-based paints, the vehicle repair shops would require a new set of spray gun for applying water-based colour coatings, paint disposal facilities, a few air blowers and upgrading of the compressor capacity to increase compressed air supply used for drying, the cost of which would be workshop specific, ranging from \$5,000 to \$30,000, which should be affordable to the trades; and (b) both the primer and topcoat were solvent-based and it would likely take just a few minutes more for drying even if both were low VOC-containing 	
005343 – 010155	Chairman Administration Ms Miriam LAU	<p>The Chairman's concern about the need to notify GPG that Hong Kong might not be able to meet the 2010 emission target</p> <p>The Administration's explanation that among the 700 tonnes of VOC emission a year to be reduced by implementing the Amendment Regulation, about 150 tonnes were from vehicle refinishing paints. As the relaxation of the VOC content limits for vehicle refinishing paints would lead to a shortfall of about 35 tonnes of VOC emissions, the impact on the 2010 emission target (i.e. 31 000 tonnes of VOC emissions) was relatively small. The actual extent of the shortfall could only be ascertained by the time of compiling the 2010 emission figures</p>	
010156 – 011505	Chairman Ms Miriam LAU Administration	<p>Ms Miriam LAU's concern whether the same relaxation would be adopted for vessel paint if the maximum limits of VOC content for regulated vehicle refinishing paint would be relaxed. Her view that the vessel repair trades, especially the small operators, should be adequately consulted to ensure that they were aware of and accepted the prescribed VOC limits for vessel paint</p> <p>The Chairman's enquiry about the comparison of the VOC limits for vehicle refinishing paint and vessel paint</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration's response that –</p> <p>(a) the vessel repair trades (e.g. Hong Kong United Dockyard), vessel paint suppliers and yacht clubs had been consulted about the proposed control for vessel paint. In response to their concerns, the effective dates of implementation for certain vessel paints as listed in Part 3 of Schedule 6 had already been deferred to allow time for making available the paints in the local market. Given also that the trades could continue to use the old products in stock imported before the effective dates, the trades had not raised any other concerns about compliance with the requirements in the Amendment Regulation; and</p> <p>(b) unlike vehicle refinishing paint, regulated vessel paint did not involve switching from solvent-based to water-based paints that would require facilities upgrade and changes in application techniques. The vessel paint suppliers had indicated that compliance products were available in the market</p>	
011506 – 011840	Chairman Mr Vincent FANG Administration	<p>In reply to Mr Vincent FANG, the Administration's clarification that among the 700 tonnes of VOC emission a year to be reduced by the implementation of the Amendment Regulation, about 150 tonnes would be reduced by the new control measures for regulated vehicle refinishing paint, which was now lowered to about 75 tonnes after relaxation of the VOC limits for vehicle refinishing paints stated in Annex A of CB(1)2538/08-09(02)</p> <p>The Chairman's enquiry whether there were more measures to reduce VOC emissions to compensate the shortfall of 35 tonnes. The Administration's response that the actual extent of the shortfall would depend on the actual consumption of the compliant products</p>	The Administration to provide information as required in paragraph 3(c) of the minutes
011841 – 012000	Chairman Assistant Legal Adviser (ALA)	ALA's reference to the Administration's clarification in its letter dated 4 September 2009 (CB(1)2538/08-09(03)), addressing the concern (CB(1)2146/08-09(01)) whether a retailer or a purchaser of a regulated product would be held liable under the definition of "importer" in the Amendment Regulation if he was in possession of the product after the time of importation	
012001 – 013217	Chairman Mr Vincent FANG Administration Ms Cyd HO	Mr Vincent FANG's concern about enforcement action against illegal importation of non-compliant paint products after the Amendment Regulation had come into operation and whether any local laboratory was accredited under the Hong Kong Laboratory Accreditation Scheme (HOKLAS) to undertake tests for the VOC content of regulated products	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration's response that –</p> <ul style="list-style-type: none"> (a) the Environment Protection Department (EPD) would, in joint efforts with the Customs and Excise Department where necessary, conduct inspections and arrange the Government Laboratory to carry out the relevant tests to ensure effective control; and (b) while some local laboratories not accredited under HOKLAS were capable of performing the tests, the Amendment Regulation did not require importers to undertake prescribed tests for their products as compliance information should be available from the manufacturers <p>Mr Vincent FANG and the Chairman's enquiry whether the importer had to exercise due diligence to undertake sample tests, or whether they would be held strictly liable for importing non-compliant paint products</p> <p>The Administration's response that –</p> <ul style="list-style-type: none"> (a) the Amendment Regulation imposed liabilities on importers and local manufacturers of the newly regulated products for local sale and use (b) under section 18 of Air Pollution Control (VOC) Regulation (Cap. 311 sub. leg. W) (the Regulation), it was a defence for a person to prove that he had taken all reasonable steps and exercised all due diligence to avoid committing the offence in any proceedings against that person for an offence under the Regulation; and (c) if in doubt, importers should, apart from checking the VOC contents label of the products, require the manufacturers to produce test reports proving that the VOC contents were up to prescribed standards <p>Ms Cyd HO's enquiry whether the importers would be exempted from liability if they had obtained the test reports from the manufacturers proving that the products were compliant with the Amendment Regulation</p> <p>Referring to section 18(4) of the Regulation, the Administration's response that a person was not entitled to rely on the defence by reason of his reliance on information given by another person, unless he showed that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular to the steps which he had taken, and those which might reasonably have been taken, for the purpose of verifying the information; and to whether he had any reasons to disbelieve the information</p>	

Time marker	Speaker	Subject(s)	Action required
013218 – 015409	Chairman Administration Ms Miriam LAU Ms Cyd HO	<p><u>Section-by-section examination (CB(1)1845/08-09(01))</u></p> <p><u>Proposed section 1 – Commencement</u></p> <p>In reply to the Chairman, the Administration's explanation that where the effective date would vary from the commencement date of the Amendment Regulation, i.e. 1 January 2010, for individual category of regulated products, the effective date would be specified in the relevant parts of the Amendment Regulation</p> <p><u>Proposed section 2 – Interpretation</u></p> <p>In reply to the Chairman, the Administration's advice that in line with CARB's control, the definition of "coating" did not include an aerosol coating</p> <p>Briefing by the Administration on the proposed revision to the definition of "importer" (CB(1)2538/08-09(03)), which would cover owner, consignee, agent or broker by or for whom a regulated product was or had been brought, or had caused to be brought into Hong Kong</p> <p>In response to Ms Cyd HO's query, ALA's view that "agent" should include both the shipping agent and product agent</p> <p>The Chairman and Ms Cyd HO's concern that it was difficult for shipping agents to exercise due diligence to avoid committing an offence under the Regulation while being involved in bringing or causing the regulated product to be brought into Hong Kong. Ms HO's view that shipping agents should be entitled to the defence under section 18 of the Regulation as long as they had obtained relevant information or test reports from the freight forwarders that the VOC content limits for the regulated products on board met the statutory requirements</p> <p>The Administration's response that the shipping agent should be held liable for the products they brought into Hong Kong by taking all reasonable steps and exercising all due diligence to avoid committing the offence before they were entitled to the aforesaid defence</p> <p>Ms Miriam LAU's concern how far the shipping agents could duly check and ensure that the regulated products they were shipping were compliant products, given the complexity and technicalities of the matter and possible amendments of the VOC content limits from time to time</p> <p>The Administration's agreement to review the definition of "importer"</p>	<p>The Administration to provide information as required in paragraph 3(b) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
015410 – 020111	Chairman Administration	<u>Proposed section 2(3) to 11</u> Members did not raise any queries	
020112 – 020651	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
21 September 2009