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2 June 2009

(By Fax: 2877 5029)

Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central, Hong Kong
(Attn. Mr Stephen LAM, Assistant Legal Adviser)

Dear Mr LAM,

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

We refer to your letter of 27 May 2009 on the captioned, and are pleased to list out in below the clarifications on the points raised in your letter:

Section 2(1)

Aerosol coatings are not regulated in the State of California, USA, which is recognized internationally to have implemented the most stringent and comprehensive programme to control emission of volatile organic compounds (VOCs). The amendment is necessary to clarify the policy intention that these products are excluded from the scope of VOC products to be covered by the Regulation, which is on a par with the requirements in the State of California.

Section 2(2)

The amendment provides clarification and makes no substantive change on the scope of control, i.e. to prohibit the importing of the non-compliant products. An importer who has imported these products has committed an offence and should be held liable under the Regulation, whether or not the importer is still in possession of the product. However, under the repealed definition, it appears that such liability might have been discharged once the importer sells or disposes of the imported non-compliant product.. The amendment is to make clear that an importer who has been in possession, etc. of the product should still be held liable under the relevant provisions of the Regulation.

Section 2(5) and (7)

The replacement of "regulated paint" by "regulated architectural paint" is merely a drafting change

rather than a substantive one. The change is necessitated by the fact that, while originally only architectural paint is covered by the principal Regulation, new types of paints, i.e. vehicle refinishing paint, vessel paint and pleasure craft paint, are to be regulated. Accordingly, using a generic name for a particular type of paint will be inappropriate.

Before amendment, "regulated paint" means a product listed in Part 2, 3 or 4 of Schedule 1. After amendment, "regulated architectural paint" means a product listed in Part 2, 3 or 4 of Schedule 1. As it is only a drafting change, it is not necessary to add a saving provision to the Amendment Regulation.

Section 10(4), Section 12, Section 13

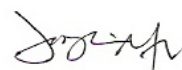
According to section 8(1), 11(1), 14(1) of the principal Regulation, an importer / local manufacturer is required to submit, on or before 31 March each year, an annual sales report for regulated products imported or manufactured during the preceding calendar year. However, all the products imported or manufactured may not be entirely sold in the same reporting period in which the products are imported or manufactured, while the unsold items will be carried forward for sale in subsequent years. Section 8(3), 11(4) and 14(4) of the principal Regulation may now be mis-interpreted that only sales of those products imported or manufactured during the reporting period need to be reported, which deviates from our policy intent that any remaining volume sold in subsequent years would be required to be reported in subsequent years. It is thus necessary to make this requirement more clearly in order to avoid mis-interpretation. Items (a) to (e) specified in the relevant sections to be included in the report in the new provisions are the same items required in the principal Regulation.

New sections 16A, 16E and 16I, New sections 16B, 16F and 16J, New sections 16C, 16G and 16K, New sections 16D, 16H and 16L

The Law Drafting Division considers it appropriate to use "must" in the newly added provisions, as it is the latest drafting convention of the Law Drafting Division that "must" should be used instead of "shall" when imposing a duty, and there is a mixture in the use of "shall" and "must" in the principal Regulation.

Please contact the undersigned if you want further information.

Yours sincerely,



(Joe Fong)

Senior Environmental Protection Officer
for Director of Environmental Protection