

(Translation)

**Bills Committee on Shipping Legislation
(Control of Smoke Emission) (Amendment) Bill 2014**

**The Administration's Response to
the Written Submissions from Deputations**

On 23 May 2014, the Legislative Council Secretariat forwarded submissions from five deputations on the Shipping Legislation (Control of Smoke Emission) (Amendment) Bill 2014 to the Administration and asked the Administration to respond.

In the five submissions, the deputations expressed their support for the proposed use of the Ringelmann Chart as an objective benchmark to assess dark smoke emission and take prosecution actions. As regards the suggestions and concerns about other issues raised in the submissions, the response of the Administration is set out at the **Annex**.

**Transport and Housing Bureau
Marine Department
May 2014**

Deputation	Comment	The Administration's Response
Friends of the Earth, Clean Air Network	Introduction of legislation to require ocean-going vessels ("OGVs") and local vessels to use ultra low sulphur diesel while navigating or berthing in Hong Kong waters (i.e. fuel switch at berth).	<p>The Environmental Protection Department ("EPD") advised that in order to reduce the emission of OGVs (including cruises) while berthing, the Government launched a three-year incentive scheme in September 2012 by reducing 50% of the port facilities and light dues for OGVs if they switched to fuels with sulphur content of not more than 0.5% while berthing in Hong Kong waters. The EPD is drafting legislation to require OGVs to use cleaner fuel (with sulphur content of not more than 0.5%) while berthing. The legislation is expected to come into effect in 2015. The implementation of fuel switch at berth can reduce local emission of sulphur dioxide by 12% and respirable suspended particulates by 6%. This will help to improve the air quality in Hong Kong.</p> <p>In addition, in order to improve the quality of light diesel provided for vessels within Hong Kong, the EPD has implemented a new regulation since 1 April 2014 to tighten the sulphur limit of light diesel used by vessels in Hong Kong from 0.5% to 0.05%. Vessels looking for light diesel refills in Hong Kong will be provided with this low sulphur diesel. This measure can reduce the local emission of sulphur dioxide by 10% and respirable suspended particulates by 4%. This will help to improve the air quality in Hong Kong.</p>

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Clean Air Network, Friends of the Earth	Installation of onshore power supply facilities at the Kai Tak Cruise Terminal ("KTCT"), Ocean Terminal and container terminals to facilitate vessels switching to electric power while berthing.	<p>The EPD advised that the Government had started a technical feasibility study on the installation of onshore power supply facilities at the KTCT in November 2013 which was expected to be completed in mid-2014. Upon completion of the study, the Government will work out the next step in the light of the study findings.</p> <p>In respect of the installation of onshore power supply facilities at the Ocean Terminal and container terminals, the EPD advised that the Government had written to operator of the Ocean Terminal proposing such installation for consideration. The operator of Ocean Terminal is currently studying the feasibility of the proposal. We understand that the operators of container terminals have no plan to install onshore power supply facilities in view of space constraints in the container terminals.</p>
Clean Air Network, Friends of the Earth	The setting up of Low Emission Zone and Emission Control Area ("ECA") in the Pearl River Delta ("PRD") waters and related ports in collaboration with the Guangdong Provincial Government.	The EPD advised that measures to reduce emissions from vessels in Hong Kong had been introduced to the Guangdong Provincial Government and the Shenzhen Municipal Government since early 2013. The feasibility of reducing vessel emissions through regional cooperation has also been explored. Since the setting up of ECA in the PRD waters requires the approval from the Central People's Government and can only be implemented after the related assessments and studies are completed in accordance with the requirements of the International Maritime Organization, the work involved is complicated and time-consuming. As such, the Governments of the Hong Kong Special Administrative

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		<p>Region (“HKSAR”), Guangdong as well as Shenzhen have agreed that the setting up of ECA in PRD waters should be the target of cooperation in the longer term. Before the setting up of ECA, we are actively studying the feasibility of requiring OGVs to switch to the use of cleaner fuel while berthing at ports in the PRD as a mandatory measure.</p>
<p>Guangdong and HK Feeder Association Ltd.</p>	<p>We object to the proposal in Part 2 of the Bill to amend Section 50(3) of the Shipping and Port Control Ordinance (Cap. 313) which intends to hold the vessel’s agent equally liable in case the owner commits an offence of excessive emission of dark smoke.</p>	<p>The owner of the vessel has the responsibility to ensure that the engine is properly maintained to prevent the emission of dark smoke. The owner’s agent, acting on behalf of the owner, must ensure that the vessel is properly maintained to avoid contraventions, given the owners of OGVs and river trade vessels are not in Hong Kong. Hence, the current Merchant Shipping (Local Vessels) Ordinance (Cap 548) (“Local Vessels Ordinance”) stipulates that should the vessel contravene the legislation concerned, the owner, his agent and the master/coxswain concerned must be equally held liable. We are of the view that the same principle should apply to the Shipping and Port Control Ordinance (Cap 313) (“Shipping Ordinance”). We therefore propose to amend Section 50(3) by stipulating that the owner, his agent and the master/coxswain concerned are equally liable in relation to the vessel in contravention.</p>

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Civic Party	<p>Under the existing laws, the penalty for any subsequent offence of local vessels is heavier than that for OGVs. This is not in line with the direction of formulating the proposed penalty in the Bill.</p> <p>The HKSAR Government should unify the penalty for non-local vessels and local vessels with the heavier penalty as the indicator so as to strengthen the control of pollution problems caused by vessels.</p>	<p>For fines of \$100,000 or below, Schedule 8 of the Criminal Procedure Ordinance (Cap. 221) provides for 6 levels of fines. They are adopted in various provisions under the existing laws of Hong Kong. To tie in as far as possible with the maximum fines (i.e. \$10,000 for first offence and \$20,000 for subsequent offence) for smoke emission offences under the Shipping Ordinance, the penalty levels for the respective offences under the Local Vessels Ordinance enacted in 2007 are set at level 3 (i.e. \$10,000) for first offence and level 4 (i.e. \$25,000) for subsequent offence. The amount of fine at level 4 is the closest to the maximum fine for subsequent offence under the Shipping Ordinance.</p> <p>When drafting the Bill, we have reviewed the penalty levels for smoke emission offences under the Local Vessels Ordinance and the Shipping Ordinance. Our prime consideration is that the penalty levels should reflect the impact of such offences on the public and should have a deterrent effect. Excessive dark smoke emission from vessels is often an indicator of improper engine operation or maintenance. As compared with local vessels, the power ratings of engines fitted on board OGVs are relatively larger and hence the amount of dark smoke emitted would be proportionally greater in the event of improper engine maintenance. Our proposed higher level of maximum fine for OGVs is for it to be commensurate with the greater severity of pollution problem caused by OGVs in the event of dark smoke emission and it is well justified by the difference in engine ratings between OGVs and local vessels. Ultimately, the</p>

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		<p>decision on whether to impose the maximum fine rests with the court having regard to the circumstances of individual cases.</p>
Clean Air Network	<p>The Administration should step up enforcement actions promptly by means of visual survey and adopt more effective publicity measures in respect of vessels arriving Hong Kong and local ship owners. MD should make it clear to ship owners and masters at the earliest opportunity that Hong Kong has already adopted the standard of the Ringelmann Chart in enforcing the law on smoke emission by vessels.</p>	<p>From 2007 to 2013, the Marine Department (“MD”) observed a total of 10 554 vessels by means of visual survey, and issued 23 warning letters and 221 advisory letters in total to vessels with visible smoke emission. According to the results of the annual monitoring surveys, the number of vessels with visible emission has dropped from 40.8% in 2007 to 1.4% in 2013, indicating that MD’s efforts in controlling dark smoke emission from vessels have been effective.</p> <p>For publicity, since January 2006, MD has been distributing leaflets about the prevention of excessive dark smoke emission and the penalty concerned to the vessel owners / masters. More than 30 000 leaflets have been distributed so far. Furthermore, in their correspondence with vessel masters, vessel owners and agents, MD pointed out that the Ringelmann Chart would be used for reference in enforcement.</p> <p>After passage of the Bill, MD will issue a Marine Department Notice to inform the trade and distribute the leaflet in relation to the implementation of the new legislation to vessel masters / owners.</p>

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Clean Air Network	<p>Upon completion of the amendment to the legislation, MD should expedite training to law enforcement officers to help them identify vessels in contravention and collect evidence in a more effective manner. MD should also consider the recommendation of the Audit Commission to relaunch the Spotter Scheme.</p>	<p>The law enforcement officers of MD's Harbour Patrol Section have all along been making reference to the Ringelmann Chart when enforcing the legislation in relation to smoke emission by vessels and conducting visual survey. Officers have received training on the use of Ringelmann Chart so as to identify vessels in contravention and collect evidence in a more effective manner. Upon the completion of the amendment to the legislation, MD will consider relaunching the Spotter Scheme.</p>
Clean Air Network	<p>Suggested that the Administration refers to the provision under the Air Pollution Control (Smoke) Regulations. For convictions in respect of any subsequent offence of dark smoke emission from local and non-local vessels, the maximum penalty of possible imprisonment could be added.</p> <p>Urged the Administration to refer to the suggestions in the Audit Commission Report No.59, to expedite enforcement actions against high polluting smoke emission from vessels. Considerations should be given to raise further the penalties for contraventions, including possible imprisonment as the maximum penalty for any subsequent offence, to enhance the deterrent effect of the law. This will ensure consistency with the legislation to regulate dark smoke emissions from vehicles and chimney stacks.</p>	<p>The structure and operation of sea-going vessels differ significantly from that of onshore facilities. Since the operation space of vessels is larger and, being farther away from residential areas, the impact of vessels is comparatively small.</p> <p>Over the past years, the MD has been tackling dark smoke emission from vessels through stricter law enforcement, emission tests during local vessel examinations as well as publicity and education. We now see substantial improvement in smoke emission. The monitoring results of the MD indicate that the number of vessels with visible smoke emission has fallen from 40.8% in 2007 to 1.4% in 2013. We, therefore, do not see the need to introduce the penalty of imprisonment at the moment.</p> <p>In addition, the EPD has advised that in the past ten years, there is no record of imprisonment imposed under the Air Pollution</p>

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		Control (Smoke) Regulations.
Clean Air Network	Requiring speed reduction of vessels within ports in Hong Kong	<p>Slow steaming helps vessels save fuel and reduce emissions. As the port traffic in Hong Kong is very busy, speed restriction for vessels has already been put in place for some shipping lanes and designated zones for the purpose of marine traffic management. The EPD has advised that it has no plan to extend the scope of speed restriction for the time being. Yet it will continue to monitor the development of speed restriction schemes overseas. If further extension of speed restriction is considered in future, the Administration will study the feasibility of the relevant proposals from the perspectives of navigational safety, marine traffic density and cost-effectiveness. It will also consult the shipping sector and departments concerned.</p>