

For Information

LEGISLATIVE COUNCIL

PANEL ON ENVIRONMENTAL AFFAIRS

**Noise Control (Amendment) Ordinance 2002
Codes of Practice on Good Management Practice**

PURPOSE

This paper informs Members of the outcome of the further consultation with the organisations concerned on the draft Codes of Practice and the Administration's plan to commence the Noise Control (Amendment) Ordinance 2002 on 8 October 2004.

BACKGROUND

2. The Noise Control (Amendment) Ordinance 2002 (NCAO) provides that the Noise Control Authority (i.e. Director of Environmental Protection) may issue Codes of Practice containing practical guidance for industries on good management practice to prevent violation of the Noise Control Ordinance (NCO). As undertaken, we have been drafting two Codes of Practice (CoPs) : Code of Practice for the construction industry and Code of Practice for industrial and commercial operations, in close consultation with the organisations concerned. The objective of the CoPs is to provide general guidance on good management practice for the prevention of noise offences, while allowing the management of body corporate flexibility to work out implementation details of their own management systems to suit their operations.

3. At the meeting of the Panel on Environmental Affairs (the Panel) on 26 May 2003, we briefed Members on the two draft CoPs as they were at that time (LC Paper No. CB(1)1699/02-03(03)). Members supported the draft CoPs and the commencement of the NCAO as early as practicable after the CoPs have been finalised. Members also asked the Administration to -

- (a) further discuss with the organisations concerned to address

their remaining concerns on the draft CoPs;

- (b) review the drafting of the definition of “Top Management” in the CoPs with a view to improving the clarity of new section 28A(1)(d)(i) of the NCO ^{Footnote}; and
- (c) consider providing an explicit defence in the CoPs for those who have substantially adhered to the CoPs.

FURTHER CONSULTATION WITH ORGANISATIONS CONCERNED

4. We wrote to the organisations concerned in June 2003 to further clarify the purpose of the CoPs and to address their remaining concerns. That was followed by discussions with them. Most organizations considered the draft CoPs generally acceptable and expressed no further comments except for the Mass Transit Railway Corporation Limited (MTRCL), the Hong Kong Federation of Electrical & Mechanical Contractors (HKFEMC) and the Hong Kong Construction Association (HKCA). Their major comments and the response of the Administration are summarised in paragraphs 5 to 7 below.

Mass Transit Railway Corporation Limited

5. MTRCL indicated to us that, although failure to observe any guidance given in the CoPs was not an offence, such failure might be taken into account by a court in criminal proceedings in determining whether or not a person had breached the due diligence provisions of the NCAO. Through discussions and a written reply in October 2003, we clarified with MTRCL that, pursuant to new sections 28A(3) and (4) of the NCO, it would be a defence for a director or officer if he could prove that he had

Footnote

Section 28A(1) of the NCO provides that –

“Subject to section 28B, where an offence under this Ordinance has been committed by a body corporate, any person who at the time of the offence was -

- (a) a director concerned in the management of the body corporate;
- (b) a director who has delegated his authority for the management of the body corporate to an officer;
- (c) an officer mentioned in paragraph (b); or
- (d) an officer -
 - (i) concerned in the management of the body corporate; and
 - (ii) acting under the immediate authority of a director of the body corporate,

shall be guilty of the like offence.”

taken reasonable precautions and exercised due diligence to prevent the commission of the offence by the body corporate. Also, the CoPs only served to provide guidance on good management practice and the draft CoPs had been amended to state explicitly that compliance with the CoPs was voluntary. There has been no further question from MTRCL since then.

Hong Kong Federation of Electrical & Mechanical Contractors

6. HKFEMC told us that if a body corporate had or would put in place an environmental management system to cope with other environmental objectives, the CoPs should form part and parcel of that system. We clarified with a written reply in October 2003 that the management of body corporate would be free to adopt alternative management practices and systems to prevent violation of the Noise Control Ordinance, and those could be incorporated into the overall management system of the body corporate to cope with other environmental objectives. There has been no further question from HKFEMC since then.

Hong Kong Construction Association

7. HKCA put forward a suggestion to include an explicit provision in the draft Code of Practice for the construction industry (CoPCI) to identify specific director(s) of the “Top Management” to be responsible for managing noise control matters. We have taken on board their suggestion by amending the relevant clause in the draft CoPCI accordingly. Other suggested amendments raised by HKCA have also been taken on board where appropriate. We replied to HKCA in writing enclosing the amended draft CoPCI in October 2003. HKCA responded in December 2003 expressing their appreciation that many of their suggested amendments had been incorporated in the draft CoPCI while seeking clarifications on a few minor issues. We made the clarifications requested in our last letter to HKCA in February 2004. There has been no further question from HKCA since then.

DEFINITION OF “TOP MANAGEMENT”

8. In relation to the concern raised by a Member of the Panel that the scope of the Chinese version of new section 28A(1)(d)(i) of the NCO appeared to be wider than that of the English version, we have sought

advice from the Department of Justice (D of J). D of J has advised that the Chinese version of “concerned in the management of the body corporate” (i.e. “與該法團的管理有關”) in the new section 28A(1)(d)(i) of the NCO has been adopted in similar situations in other legislation, e.g. section 101E of the Criminal Procedure Ordinance (Cap. 221), section 40 of the Buildings Ordinance (Cap. 123), section 39 of the Waste Disposal Ordinance (Cap. 354), section 10A of the Water Pollution Control Ordinance (Cap. 358) and section 29 of the Environmental Impact Assessment Ordinance (Cap. 499). Therefore, in the CoPs, “Top Management” will be defined by referring to persons in a body corporate as described in the new section 28A(1) of the NCO.

PROVIDING AN EXPLICIT DEFENCE

9. Regarding the provision of an explicit defence in the CoPs, D of J has advised that any explicit defence in the CoPs for a person who has substantially adhered to the CoPs is inappropriate. The scope of the CoPs is governed by the express wording of new section 28C(1) of the NCO to contain practical guidance for providing industries with good management practice. The due diligence defence is governed by the express provisions in new sections 28A(3) and (4) of the NCO.

WAY FORWARD

10. After taking into account all the comments as mentioned above, we have revised the CoPs. They are attached as Annexes A and B to this note.

11. We have written to the organizations concerned to thank them for their support and input in developing the CoPs. To allow body corporate sufficient time to establish and implement proper systems to prevent violation of the NCO, we will publish in the Government Gazette on 30 April 2004 a notice to commence the NCAO on 8 October 2004. The CoPs will be published in the Government Gazette and become effective on 8 October 2004, when the NCAO commences.

Environment, Transport and Works Bureau
8 April 2004

**Code of Practice on Good Management Practice
to Prevent Violation of the Noise Control Ordinance (Chapter 400)
(for Construction Industry)**

Preamble

1. This Code of Practice provides general guidance to the construction industry on good management practice to prevent violation of the Noise Control Ordinance. It is issued in respect of section 28A(3) of the Noise Control Ordinance which relates to the establishment of a defence by a person charged under section 28A(1) to a charge brought under any provision (other than sections 6(1)(a), (2)(a) or (3)(a)) of the Noise Control Ordinance. Compliance with this Code of Practice is voluntary. Non-compliance with this Code of Practice is not an offence by itself. The Top Management of body corporate is free to establish its own management system and practice to prevent violation of the Noise Control Ordinance by the body corporate.

Management Practice for the Top Management

2. The Top Management shall apply the following practices in managing the operation or activity of the body corporate:

2.1 Prepare and issue a policy statement ratified by the board of directors or equivalent governing body of the body corporate committing all staff to:

- (a) compliance with all relevant provisions of the Noise Control Ordinance; and
- (b) prevention of noise pollution.

2.2 Establish, put in operation, and at least once annually review a management system to address issues related to the Noise Control Ordinance.

2.3 Establish noise management responsibility for different levels of staff, and identify member(s) of the Top Management with specific responsibility as appropriate with an organization chart, job and duty description, for co-ordination, policy implementation and adherence to statutory noise control requirements, including the provision of regular noise control performance reporting.

2.4 Ensure that the officer, who coordinates the noise control activities required under paragraphs 2.2 and 2.3, remains current with regard to statutory requirements and at least once quarterly keeps the Top Management up to date on noise control activities affecting the body corporate.

2.5 Include at least once quarterly an item for noise control matters on the agenda of an appropriate meeting of the Top Management that addresses the performance of any project.

2.6 Establish a regular meeting to review construction noise incidents and the operation and effectiveness of the associated noise control activities. Ensure that construction noise incidents and issues are reported to the Top Management.

2.7 Regularly check and review via reports or personally that noise control activities are being carried out on each project to ensure compliance with statutory requirements.

2.8 Ensure that a report is prepared for the personal attention of those who are part of the Top Management advising whether each project is properly addressing noise concerns raised by Government Agencies and other concerned parties.

2.9 Establish a notification system for those construction noise incidents which may lead to violations of the Noise Control Ordinance, or have resulted in warning or prosecution by the Noise Control Authority to ensure that persons who are part of the Top Management are personally advised immediately and in any case within 3 working days of such construction noise incidents occurring on a project.

2.10 Take actions to correct any construction noise incidents as referred to in paragraph 2.9 which are not forthwith satisfactorily rectified or effectively prevented from recurrence.

2.11 Ensure that a report is prepared for the personal attention of those who are part of the Top Management that the necessary corrective action related to the construction noise incidents as referred to in paragraph 2.9 has been taken to their satisfaction.

Interpretation

“Noise Control Ordinance”

All references to the “Noise Control Ordinance” include the Ordinance and its subsidiary legislation.

“Top Management”

The “Top Management” are persons in a body corporate described under section 28A(1) of the Noise Control Ordinance, i.e.

any person who is -

- (a) a director concerned in the management of the body corporate;
- (b) a director who has delegated his authority for the management of the body corporate to an officer;
- (c) an officer mentioned in paragraph (b); or
- (d) an officer -
 - (i) concerned in the management of the body corporate; and
 - (ii) acting under the immediate authority of a director of the body corporate.

“management system”

A “management system” includes, but is not limited to:

- establishment of responsibility;
- prevention, review, report and rectification of noise incidents; and
- performance reporting.

“noise control activities”

“noise control activities” are activities which shall be adopted to:

- prevent violation of the Noise Control Ordinance; or
- rectify any non-compliance with the management system.

“construction noise incidents”

“construction noise incidents” are incidents which:

- have generated or may generate complaints;
- may lead to violations of the Noise Control Ordinance; or
- have resulted in warning or prosecution by the Noise Control Authority.

- END -

**Code of Practice on Good Management Practice
to Prevent Violation of the Noise Control Ordinance (Chapter 400)
(for Industrial/Commercial Operations)**

Preamble

1. This Code of Practice provides general guidance to industrial and commercial operations on good management practice to prevent violation of the Noise Control Ordinance. It is issued in respect of section 28A(3) of the Noise Control Ordinance which relates to the establishment of a defence by a person charged under section 28A(1) to a charge brought under any provision (other than sections 6(1)(a), (2)(a) or (3)(a)) of the Noise Control Ordinance. Compliance with this Code of Practice is voluntary. Non-compliance with this Code of Practice is not an offence by itself. The Top Management of body corporate is free to establish its own management system and practice to prevent the violation of the Noise Control Ordinance by the body corporate.

Management Practice for the Top Management

2. The Top Management shall apply the following practices in managing the operation or activity of the body corporate:

2.1 Prepare and issue a policy statement ratified by the board of directors or equivalent governing body of the body corporate committing all staff to :

- (a) compliance with all relevant provisions of the Noise Control Ordinance; and
- (b) prevention of noise pollution.

2.2 Establish, put in operation, and periodically review a management system to address issues related to the Noise Control Ordinance.

2.3 Establish management responsibility for the relevant staff in the body corporate for co-ordination, policy implementation and adherence to statutory noise control requirements.

2.4 Ensure that the officer who coordinates the noise control activities required under paragraphs 2.2 and 2.3, remains current with regard to

statutory noise control requirements and keeps the Top Management up to date on noise control activities affecting the body corporate.

2.5 Ensure that persons who are part of the Top Management are personally advised whether concerns on noise pollution raised by Government Agencies and other concerned parties have been or are being properly addressed.

2.6 Establish a regular meeting to review noise incidents and noise control activities.

2.7 Ensure that those noise incidents which may lead to violations of the Noise Control Ordinance, or have resulted in warning, serving of Noise Abatement Notice, or prosecution by the Noise Control Authority, and issues are reported to the Top Management immediately and in any case within 3 working days of such noise incidents.

2.8 Take actions to correct any noise incidents as referred to in paragraph 2.7 which are not forthwith satisfactorily rectified or effectively prevented from recurrence and ensure that persons who are part of the Top Management are personally advised that the necessary corrective action has been taken to their satisfaction.

Interpretation

“Noise Control Ordinance”

All references to the “Noise Control Ordinance” include the Ordinance and its subsidiary legislation.

“Top Management”

The “Top Management” are persons in a body corporate described under section 28A(1) of the Noise Control Ordinance, i.e.

any person who is -

- (a) a director concerned in the management of the body corporate;
- (b) a director who has delegated his authority for the management of the body corporate to an officer;

- (c) an officer mentioned in paragraph (b); or
- (d) an officer -
 - (i) concerned in the management of the body corporate; and
 - (ii) acting under the immediate authority of a director of the body corporate.

“management system”

A “management system” includes, but is not limited to:

- establishment of responsibility;
- prevention, review, report and rectification of noise incidents; and
- performance reporting.

“noise control activities”

“noise control activities” are activities which shall be adopted to:

- prevent violation of the Noise Control Ordinance (e.g. by identifying potential noise problems and, in particular when a noise problem is being identified, adopting measures to abate the noise and maintain those associated operations/equipment in proper conditions); or
- rectify any non-compliance with the management system.

“noise incidents”

“noise incidents” are incidents which:

- have generated or may generate complaints;
- may lead to violations of the Noise Control Ordinance, or
- have resulted in warning, serving of Noise Abatement Notice, or prosecution by the Noise Control Authority.

- END -