

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 23 February 2007**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 9 February 2007**

Date of Tabling in LegCo : 28 February 2007

Amendment to be made by : 28 March 2007 (or 18 April 2007 if extended by resolution)

Air Pollution Control Ordinance (Cap. 311)

Air Pollution Control (Volatile Organic Compounds) Regulation (L.N. 20)

The main purpose of this Regulation is to prohibit the manufacture and importation of regulated products (i.e. regulated paints, regulated printing inks and regulated consumer products) if the volatile organic compound content of the product exceeds the maximum limit that is prescribed by the Regulation for that product. Volatile organic compound (“VOC”) content means the amount of volatile organic compounds contained in the product.

Regulated paints

2. Part 2 sets out the prohibitions and requirements relating to regulated paints. Schedule 1 sets out the paints to which the Regulation applies, the prescribed limit of VOC content for each regulated paint and the test methods for determining the VOC content.

3. Members may refer to paragraphs 3 to 8 of the Explanatory Note of the Regulation in the Gazette for details of the relevant provisions.

Regulated printing inks

4. Part 3 sets out the prohibitions and requirements relating to regulated printing inks. Schedule 2 sets out the printing inks to which the Regulation applies, the prescribed limit of VOC content for each regulated printing ink and the test methods for determining the VOC content.

5. Members may refer to paragraphs 10 and 11 of the Explanatory Note of the Regulation in the Gazette for details of the relevant provisions.

Regulated consumer products

6. Part 4 sets out the prohibitions and requirements relating to regulated consumer products. Schedule 3 sets out the consumer products to which the Regulation applies, the maximum VOC content for each regulated consumer product and the method of calculating the VOC content.

7. Members may refer to paragraphs 13 and 14 of the Explanatory Note of the Regulation in the Gazette for details of the relevant provisions.

Lithographic heatset web printing machines

8. Part 5 contains requirements relating to lithographic heatset web printing machines. Schedule 4 explains the meaning of volatile organic compound in relation to these machines.

9. Members may refer to paragraph 16 of the Explanatory Note of the Regulation in the Gazette for details of the relevant provision.

Offences and defences

10. Part 6 provides for the offences under the Regulation, the defences available to a person charged under the Regulation and certain presumptions.

11. Section 17 provides for offences and penalties ranging between a fine of \$200,000 and at level 5 (\$50,000), and imprisonment for 6 and 3 months.

12. Section 18 provides that it is a defence for a person being charged with an offence under the Regulation to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence. Further, it allows the defendant, subject to certain procedures, to raise the defence that the commission of the offence was due to the act or default of another person or the reliance on information given by another.

13. The prohibitions and requirements relating to the manufacture and importation of regulated products under the Regulation are imposed with reference to certain dates. Under section 19, one of the presumptions is that, in the absence of evidence to the contrary, a regulated product that is found in Hong Kong is presumed to have been imported or locally manufactured after the date on which the prohibition or requirement became effective. The other presumption is that, in the absence of evidence to the contrary, a regulated product found in Hong Kong is presumed to be not in transit, not in the course of transshipment and not goods that are solely for export or re-export.

General provisions

14. Part 7 sets out the provisions that are generally applicable to all regulated products. Notably, section 20 disappplies the Regulation to regulated products that are goods in transit, in the course of transshipment or are solely for export or re-export.

15. Members may refer to LegCo Brief (with no file reference) of February 2007 from Environmental Protection Department for background information.

Consultation with LegCo Panels

16. The control of VOCs was discussed by the Panel on Environmental Affairs on 28 June 2004 and 28 November 2005.

Public consultation

17. According to the LegCo Brief, the Administration has fully consulted the relevant trades on the Regulation and addressed their concerns on possible compliance burden.

Subcommittee to Study Issues Relating to the Air Pollution Control (Volatile Organic Compounds) Regulation

18. The Air Pollution Control (Volatile Organic Compounds) Regulation (L.N. 258 of 2006) was gazetted on 24 November 2006 and tabled in the Council on 29 November 2006. The Subcommittee on Air Pollution Control (Volatile Organic Compounds) Regulation (“the Subcommittee on L.N. 258”) was formed to examine L.N. 258. However, owing to insufficient time for the Subcommittee on L.N. 258 to complete examination of L.N. 258 before expiry of the extended scrutiny period, the Council repealed L.N. 258 at its meeting on 17 January 2007. On 12 January 2007, the House Committee formed a Subcommittee to Study Issues Relating to the Air Pollution Control (Volatile Organic Compounds) Regulation (“the Subcommittee”).

19. The Subcommittee completed its work on 8 February 2007. The Subcommittee has proposed certain technical amendments to the repealed L.N. 258 which the Administration has accepted and incorporated in the Regulation. Details of the amendments are as follows:—

- (a) The term “manufacture” is amended to exclude any act involved in the process of solely adding colourant to the tint base of a regulated produce. The term “manufacturer” is consequentially amended (section 2 of the Regulation).

- (b) During the transitional period, a manufacturer or an importer of a regulated paint that has a VOC content in excess of the prescribed limit is required to fix a prescribed label on the surface of the packaging of the regulated paint and on the surface of the container of the regulated paint.
- (c) The Authority (i.e. the public officer appointed under section 4(1) of the Principal Ordinance) may permit an alternative test method to the specified test method on a regulated product. The Authority shall, after giving the permission, publish a notice which is accessible through the internet (sections 9, 12 and 15 of the Regulation).
- (d) If the owner of a lithographic heatset web printing machine receives a notice in writing from the Authority that the Authority is not satisfied with the result of any certification, the owner shall ensure that a re-certification is carried out within the period specified by the Authority in the notice (section 16).
- (e) The Regulation does not apply to a regulated product that is goods in transit, in the course of transshipment or solely for export or re-export (section 20).
- (f) The name of a compound in an exempt compound in Schedule 3 to the Regulation is updated.

Members may refer to Annex B to the LegCo Brief for the marked-up amendments.

20. The Subcommittee will submit a report to the House Committee's meeting on 23 February 2007. The Chairman of the Subcommittee will, on behalf of the Subcommittee, recommend to the House Committee the holding of a motion debate on the Regulation at the Council's meeting on 14 March 2007. Given that the speaking time for each Member would be 15 minutes, as recommended by the Subcommittee, the Subcommittee will also recommend to the House Committee that there will only be two motion debates, including the one on the Regulation, at that Council's meeting. The wording of the motion debate is as follows—

“That this Council notes the Air Pollution Control (Volatile Organic Compounds) Regulation which was published in the Gazette as Legal Notice No. 20 of 2007 and laid on the table of the Legislative Council on 28 February 2007.”

Commencement

21. The Regulation will come into operation on 1 April 2007.

Conclusion

22. There are no difficulties identified in relation to the legal or drafting aspect of the item of subsidiary legislation.

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