

**Bills Committee on
Air Pollution Control (Amendment) Bill 2008**

**List of follow-up actions arising from
the discussion at the meetings on 3, 5 and 6 June 2008**

Administration's Response

A. Meeting on 3 June 2008

- I. To define a scope for “special event” under the proposed section 26K(2)(b) and to limit the scope to events which occurred for reasons beyond the control of and unforeseeable by the applicant. To also make it clear that special events specified in the relevant specified licence under the proposed section 26K(5) are part and parcel of the proposed section 26K(2)(b).**
1. For a specified licence holder to apply for additional allocated allowances from the Authority, the proposed section 26K(2)(b) already stipulates that a “special event” must be occurred for reasons beyond the control of an applicant. And after carefully considering members’ views expressed at the Bills Committee meetings, we propose to amend the proposed section 26K(2)(c) to impose a further requirement that the occurrence of a “special event” must not reasonably have been foreseen by an applicant, or if the occurrence of the event could reasonably have been foreseen by an applicant, he must have exercised all due diligence to prevent the occurrence of such event. A draft CSA is at Annex for Members’ reference.
 2. The proposed section 26(K)(5) stipulates the general meaning of the term “special event”. However, for a specified licence holder to apply for additional allocated allowances from the Authority due to the occurrence of a “special event”, the proposed section 26K(1) stipulates that the “relevant circumstances” must exist. Such “relevant circumstances” are stipulated in the proposed section 26K(2). Thus, the proposed section 26K(5) is part and parcel of the proposed section 26K(2), which reflects the Administration’s policy intent.
- IV. To advise if the court’s decision on a dispute regarding transfer of allocated allowances between two specified licence holders will affect the Administration’s determination on their compliance with the emission caps.**
1. Under the proposed section 26L(2) and (3), a transfer of allocated allowances must already be completed before the relevant specified licence holders could jointly notify the Authority of the transfer. Upon receipt of such notification, the Authority would consider the supporting documents or information regarding the transfer and check that the transferor licence has sufficient quantity of allocated allowances for such transfer. If the Authority is satisfied, it would adjust the quantity of allocated allowances of the relevant specified licence holders accordingly. And under the proposed section 26I(1), the Authority would take into account such transfer when determining whether a specified licence holder has complied with the emission caps for the emission year concerned.
 2. In case there is a dispute regarding a transfer of allocated allowances, we may revise the records of the quantity of allocated allowances of the relevant specified licence holders in the light of the court’s decision. If, after the revision, the actual emission from a power plant becomes greater than the allowed emission, the prosecutor would consider whether to prosecute the specified licence holder concerned according to the established prosecution policy.

VI. To consider allowing local power companies to acquire emission credits only if they fail to meet the emission caps with all due diligence. To also consider limiting the amount of emission credits to be acquired by local power companies to a certain percentage of their allocated allowances.

1. The objective of allowing the local power plants to conduct emission trading on a project basis with those in the Pearl River Delta Region is to provide them with an alternative means for complying with the emission caps in a flexible manner. After carefully considering members' views expressed at the Bills Committee meetings, we propose to stipulate in the Bill that -
 - (a) in any emission year, a local power plant may only acquire a total quantity of emission credits which is no more than 15% of the quantity of emission allowances allocated to it at the beginning of that emission year; and
 - (b) upon receipt of an application for acquisition of emission credits, the Authority should consult the Advisory Council on the Environment ("ACE") as soon as practicable.

A draft CSA is at [Annex](#) for Members' reference.

B. Meeting on 5 June 2008

II. Alongside the Administration's proposal of consulting ACE in respect of the increase in quantity of allocated allowances further to acquisition of emission credits under a recognized emission trading scheme, consideration should also be given to including the proposed section 26M(2), (4), (5) and (6) in a technical memorandum, such that the increase in allocated allowances would be subject to the negative vetting procedure.

1. As explained above (please refer to our response to Item VI, Part A above), we propose to impose a cap on the quantity of emission credits that a local power plant may acquire through cross-boundary emission trading, as well as to consult ACE regarding such application. We trust that the revised mechanism should be adequate in further ensuring that an approval of such application would only be granted after careful consideration of all relevant factors, in particular the potential impact on local air quality.

III. To include in the proposed section 26M(3) the requirement for the specified licence holder to notify the Authority any transfer of emission credits.

1. We agree to require a specified licence holder to notify the Authority any transfer of emission credits. A draft CSA is at [Annex](#) for Members' reference.

C. Meeting on 6 June 2008

I. To consider including in the proposed new penalty arrangement for non-compliance with the emission caps the requirement for the fine to be borne by the shareholders.

We are actively considering the introduction of a CSA. However, we will need to sort out a number of legal issues before we could do so.

II. To specify in the proposed Committee Stage Amendments regarding consultation with ACE that the Authority should consult ACE within a reasonable timeframe on the increase in quantity of allocated allowances further to acquisition of emission credits under a recognized emission trading scheme.

1. As explained above (please refer to our response to Item VI, Part A above), we propose to consult ACE as soon as practicable upon receipt of an application for acquisition of emission credits. A draft CSA is at Annex for Members' reference.

III. To confirm that amendments to Schedules 2A and 2B to be made by the Secretary under the proposed section 37D is subject to the negative vetting procedure.

1. Any amendment to Schedules 2A and 2B to be made by the Secretary for the Environment under the proposed section 37D should be subject to the negative vetting procedure.

IV. To include the word "cancelled" as part of the amendments to section 42(1).

1. We agree to include the word "cancelled" as part of the amendment to section 42(1). A draft is at Annex for Members' reference.

**Environmental Protection Department
June 2008**

AIR POLLUTION CONTROL (AMENDMENT) BILL 2008

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Environment

<u>Clause</u>	<u>Amendment Proposed</u>
5	In the proposed section 26G(5), in the Chinese text, by deleting everything after “凡” and before “第(4)款” and substituting “局長藉着為施行第(1)款而具有效力的首份技術備忘錄，而作出任何分配，則”。
5	In the proposed section 26I – (a) in subsection (1), by adding “of a specified licence” after “any term or condition”; (b) in subsection (1), by deleting “to the specified licence” and substituting “to the licence”; (c) in subsection (2), by deleting “section 30A” and substituting “section 30B”.
5	In the proposed section 26K – (a) in the heading, by deleting “ etc. ” and substituting “ or failure to acquire emission credits ”; (b) in subsection (2)(b), by deleting “and”; (c) by deleting subsection (2)(c) and substituting – “(c) (i) in the case of a special event, the occurrence of the event could not

reasonably have been foreseen by the applicant, or if the occurrence of the event could reasonably have been foreseen by the applicant, the applicant exercised all due diligence to prevent the occurrence of the event; or

(ii) in the case of a failure, the applicant exercised all due diligence to prevent the failure; and”;

(d) in subsection (2), by adding –

“(d) in the case of a special event, the applicant has also –

(i) within 5 working days after the occurrence of the event, notified the Authority in writing of the occurrence of the event; and

(ii) from promptly after the occurrence of the event, exercised all due diligence to minimize the quantity of that type of pollutant being emitted in the emission year from the licensed premises as a result of the occurrence of the event.”.

5 In the proposed section 26L(3)(b), in the Chinese text, by adding “或” after “3 月 31 日”.

5 In the proposed section 26M –

(a) in the heading, by adding “**under recognized**

emission trading scheme” after **“emission credits”**;

- (b) in subsection (2), by deleting “Where” and substituting “Subject to subsection (4A), where”;
- (c) in subsection (4)(a), by deleting “31 December” and substituting “30 June”;
- (d) by adding –

“(4A) For the purposes of a specified licence, the total quantity of allocated allowances that may be increased under subsection (2) for a type of specified pollutant in respect of an emission year may not exceed the quantity obtained by multiplying the quantity of the allocated allowances for that type of pollutant as applicable to the licence in respect of the emission year by the percentage specified in Schedule 2C.

(4B) The Authority shall as soon as reasonably practicable after receiving an application referred to in subsection (4)(a), consult the Advisory Council on the Environment for the purpose of making a decision in respect of the application.”;

- (e) in subsection (5), by deleting “subsection (4)” and substituting “subsection (4)(a)”;
- (f) in subsection (6), by deleting “20 working days” and substituting “180 days”;
- (g) in subsection (6), by deleting “subsection (4)” and substituting “subsection (4)(a)”;
- (h) by adding –

“(6A) A specified licence holder who has, in respect of an emission year, transferred to another

person any quantity of emission credits as described in subsection (3) shall notify the Authority in writing of the transfer and accompany the notification with such supporting documents or information as may be required by the Authority, within 5 working days after the transfer, and in any event not later than 31 March in the year immediately following the emission year.”.

6 By deleting everything after “is amended” and substituting “by repealing “A licence holder who contravenes any term or condition subject to which the licence is granted to him by the Authority” and substituting “Subject to section 30B, a licence holder who contravenes any term or condition of the licence”.”.

New By adding –

“6A. Section added

The following is added immediately after section 30A –

“30B. Contravention of terms and conditions of specified licence for excessive emission

A person who contravenes any term or condition of a specified licence that requires him, as a specified licence holder, to ensure that the actual emission of a type of specified pollutant from the licensed premises in an emission year is not greater than the allowed emission of that type of pollutant as applicable to the licence in respect of the emission year commits an offence and is liable –

(a) on a first conviction, to a fine

of \$30,000 in respect of each tonne of the relevant actual emission in excess of the relevant allowed emission, after taking into account the adjustments under section 26I(1) for the purpose of determining that there has been the contravention; and

(b) on a second or subsequent conviction, to a fine calculated in accordance with paragraph (a) and to imprisonment for 6 months.”.”.

7 In the proposed section 31(1)(na), by deleting “etc.” and substituting “or failure to acquire emission credits”.

12 In the proposed section 37D(1), by deleting “and 2B” and substituting “, 2B and 2C”.

13 By deleting everything after “varied” and substituting “, transferred or cancelled, or that any exemption is granted, continued or cancelled,”.”.

15 (a) In the heading, by deleting “**2A and 2B**”.

(b) By adding –

“SCHEDULE 2C

[ss. 26M &
37D]

PERCENTAGE SPECIFIED FOR PURPOSES OF
SECTION 26M(4A) OF THIS
ORDINANCE

15%.”.