

立法會
Legislative Council

LC Paper No. LS45/07-08

**Paper for the House Committee Meeting
on 22 February 2008**

**Legal Service Division Report on
Air Pollution Control (Amendment) Bill 2008**

I. SUMMARY

- 1. Objects of the Bill** To establish a legal framework to regulate the emission of sulphur dioxide (SO₂), nitrogen oxides (NO_x) and respirable suspended particulates (RSP) (the specified pollutants) of the power plants and to amend the Appeal Board provisions of the principal Ordinance.
- 2. Comments** The Bill proposes to amend the principal Ordinance to:

 - (a) cap the emissions of the specified pollutants of the power plants in Hong Kong in 2010 and beyond;
 - (b) facilitate the use of emissions trading as a means to comply with the emission caps for power plants;
 - (c) abolish the power to refer an Appeal Board's decision for review by the Chief Executive in Council; and
 - (d) bar public officers from serving on an Appeal Board.
- 3. Public Consultation** The two local power companies have been consulted on the proposed amendments and have no in-principle objection to the proposed emission caps. The Advisory Council on the Environment has also been consulted and supported the proposed amendment.
- 4. Consultation with LegCo Panel** The Panel on Environmental Affairs received a briefing on the Bill at its meeting on 17 December 2007. Various concerns were expressed, such as possible increase in the costs of electricity generation and why greenhouse gases, particularly carbon dioxide, were not included in the proposed control. Members generally supported the proposed amendment to the Appeal Board provisions.
- 5. Conclusion** The Legal Service Division is still scrutinizing the legal and drafting aspects of the Bill. In view of the concerns raised by members, members may wish to form a Bills Committee to study the Bill in detail.

II. REPORT

Objects of the Bill

To amend the Air Pollution Control Ordinance (Cap. 311) (the principal Ordinance) to establish a legal framework to regulate the emission of sulphur dioxide (SO₂), nitrogen oxides (NO_x) and respirable suspended particulates (RSP) (the specified pollutants) of the power plants and its Appeal Board provisions.

LegCo Brief Reference

2. EP CR 9/150/21 issued by the Environmental Protection Department on 4 February 2008.

Date of First Reading

3. 20 February 2008.

Background

4. To improve regional air quality, the Hong Kong SAR Government reached a consensus with the Guangdong Provincial Government in April 2002 to reduce, on a best endeavour basis, the emissions of four major air pollutants, namely SO₂, NO_x, RSP and volatile organic compounds (VOC) by 40%, 20%, 55% and 55% respectively in the region by 2010, using 1997 as the base year. Hong Kong has achieved progress in reducing the total emissions of NO_x, RSP and VOC over the past few years. For SO₂, however, much of the effort has been vitiated by the increase in emissions from the power plants during the period.

5. Power generation is the largest emission source in Hong Kong and accounted for 89% of SO₂, 44% of NO_x and 32% of RSP emitted locally in 2006. To achieve the 2010 emission reduction targets, it is essential to reduce the emissions of these three key air pollutants by the power plants.

Comments

6. The Bill proposes to amend the principal Ordinance to:

- (a) control the emission of air pollutants from power plants by measures including -

- (i) setting a cap on the emissions of SO₂, NO_x and RSP of the power plants in Hong Kong produced as a result of the Electricity Works as defined in Schedule 1 to the principal Ordinance,¹ other than the process for the sole purpose of providing a stand-by power supply in the event of a loss of normal power supply, in 2010 and beyond by issuing a technical memorandum or specifying the method for ascertaining the quantity;
 - (ii) providing for adjustments to the quantity of allocated allowances in certain circumstances; and
 - (iii) facilitating the use of emissions trading as a means to comply with the emission caps for power plants;
- (b) reduce the quantity by which the actual emission from the licenced premises exceeds the relevant allowed emission in the preceding year from the allocated allowances in respect of a specified licence in relation to an emission year, in addition to the existing sanction for breach of any term and condition of the specified licence as provided under section 30A of the principal Ordinance;² and

7. The Administration also proposes to take this opportunity to amend the Appeal Board provisions in the principal Ordinance to ensure that a person aggrieved by a decision of a public officer under the relevant provisions of the principal Ordinance will have a fair hearing by an independent and impartial Appeal Board by -

- (a) repealing the provision that enables the Director of Environmental Protection to refer an Appeal Board's decision made under the principal Ordinance for review by the Chief Executive in Council as the Administration considers such mechanism is unnecessary; and
- (b) barring public officers from serving on an Appeal Board in order to enhance the independence and impartiality of the Appeal Board.

Public Consultation

8. According to the LegCo Brief, the two local power companies have been consulted on the proposed amendments. Overall, they have no in-principle objection to the proposed statutory control on the amount of emissions stemming from their operation. The Administration has taken on board many of their comments to address their concern over the arrangements for adjusting the emission cap and the

¹ Electricity Works is defined to mean works in which fossil fuel is burnt either wholly or as part of the process of electricity generation where the installed generation capacity of such works exceeds 5 MW.

² A fine of \$100,000 on conviction for a first offence and \$200,000 and imprisonment for 6 months for a second or subsequent offence and in addition, if the offence is a continuing offence, a fine of \$20,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.

issue of additional allowances due to special events as specified in the relevant specified licence which occur for reasons beyond the control of the power companies.

9. The Administration consulted the Advisory Council on the Environment on 10 December 2007 on the proposed amendments to the principal Ordinance and received the support of the Council.

Consultation with LegCo Panel

10. The Panel on Environmental Affairs received a briefing on the Bill at its meeting on 17 December 2007.

11. There was concern that the use of legislative means to enforce emission caps would undermine the negotiations between the Government and the power companies on the Scheme of Control Agreement. The imposition of emission caps might also result in the increase in the costs of electricity generation, which would likely be transferred to consumer. Besides, the high-handed approach adopted by the Administration to cap the emissions of the power sector would set a bad precedent for other sectors. Question was also raised on why greenhouse gases, particularly carbon dioxide, were not included in the proposed emission caps to be imposed on the power sector.

12. On emissions trading, there was concern that the power companies might not be very clear about the implementation details. Consideration should be given to carrying out a pilot scheme before the actual implementation of emissions trading.

13. There was general support for the proposed amendment to the Appeal Board provisions.

14. Members may wish to refer to the minutes of the meeting of the Panel on 17 December 2007 (LC Paper No. CB(1)646/07-08) for details of the discussion.

Conclusion

15. The Legal Service Division is still scrutinizing the legal and drafting aspects of the Bill. In view of the concerns raised by members, members may wish to form a Bills Committee to study the Bill in detail.

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