

26 November 2008

Legislative Council Secretariat
Legislative Council Building
No. 8 Jackson Road, Central,
Hong Kong
(Attn.: Miss Becky Yu, Clerk to Subcommittee)

Dear Miss Yu,

**Subcommittee on Technical Memorandum for
Allocation of Emission Allowances in Respect of Specified Licences
Follow-up to Meeting on 25 November 2008**

Thank you for your letter of 25 November 2008.

We should be grateful if you could circulate to members of the Subcommittee our following responses to their requests:

- (1) To advise the feasibility and legality of including an expiry date for the first Technical Memorandum (TM)

We have consulted DoJ. In essence, its advice is as follows-

- i. The APCO itself does not contain any provisions which specifically allow or prohibit the Secretary from including an expiry date for the first TM, under s.26G of Cap. 311.
- ii. However, the Secretary has a duty to make sure that emission allowances are allocated by TM for each type of specified pollutant in respect of each specified licence in relation to each emission year commencing on or after 1 January 2010 continuously without any interruption. Therefore, if the first TM is subject to an expiry date, the Secretary must ensure that a valid TM is in place immediately upon the expiry date of the first TM. It is legally unacceptable for there to be any broken period where there is no valid TM in place to govern the allocation of emission allowances, bearing in mind that there is no express or implied deeming provision in the law whereby the expired TM could continue to be regarded as valid.

In view of the above, to ensure achievement of the emission reduction targets for attainment of the air quality objectives, we do not consider it appropriate or acceptable

for the TM to be subject to an expiry date.

- (2) To relay to the Secretary for the Environment members' request for his written confirmation that a review of TM will be conducted within two years after the coming into operation of the first TM

We have relayed the request to the Secretary for the Environment. He has authorized us to confirm on his behalf that a review of TM will be conducted within two years after the first TM has come into operation.

Yours sincerely

(PANG Sik-wing)
for Director of Environmental Protection

c.c. Secretary for Environment (Attn.: Mr Eric SW Chan)
DoJ (Attn: Miss Bonnie YM Chau)