

立法會
Legislative Council

LC Paper No. CB(1)66/09-10
(These minutes have been seen
by the Administration)

Ref : CB1/SS/9/08

**Subcommittee on Air Pollution Control (Volatile Organic Compounds)
(Amendment) Regulation 2009**

**Minutes of the fifth meeting on
Wednesday, 16 September 2009, at 2:30 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Hon Miriam LAU Kin-ye, GBS, JP
Hon CHAN Hak-kan
- Members absent** : Hon Vincent FANG Kang, SBS, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
- Public Officers attending** : Agenda item I
- Mr MOK Wai-chuen
Assistant Director (Air Policy)
Environmental Protection Department
- Mr PANG Sik-wing
Principal Environmental Protection Officer (Air Policy)
Environmental Protection Department
- Mr Joe W Y FONG
Senior Environmental Protection Officer (Air Policy)²
Environmental Protection Department
- Miss Emma WONG
Senior Government Counsel
Law Drafting Division
Department of Justice

Clerk in attendance : Ms Debbie YAU
Chief Council Secretary (1)6

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Ms Angel SHEK
Senior Council Secretary (1)1

Action

I Meeting with the Administration

(LC Paper No. CB(1)2599/08-09(01) -- List of follow-up actions arising from the discussion at the meeting on 9 September 2009 prepared by the Legislative Council Secretariat

LC Paper No. CB(1)2599/08-09(02) -- Administration's response to LC Paper No. CB(1)2599/08-09(01)

Other relevant papers issued previously

LC Paper No. CB(1)2538/08-09(01) -- List of follow-up actions arising from the discussion at the meeting on 2 July 2009 prepared by the Legislative Council Secretariat

LC Paper No. CB(1)2538/08-09(02) -- Administration's response to LC Paper No. CB(1)2538/08-09(01)

LC Paper No. CB(1)2146/08-09(01) -- Assistant Legal Adviser's letter dated 30 June 2009 to the Administration

LC Paper No. CB(1)2538/08-09(03) -- Administration's response to LC Paper No. CB(1)2146/08-09(01)

LC Paper No. CB(1)2029/08-09(01) -- List of follow-up actions arising from the discussion at the meeting on 11 June 2009 prepared by the Legislative Council Secretariat

LC Paper No. CB(1)2029/08-09(02) -- Administration's response to LC Paper No. CB(1)2029/08-09(01)

- LC Paper No. CB(1)1845/08-09(03) -- Assistant Legal Adviser's letter dated 27 May 2009 to the Administration
- LC Paper No. CB(1)1845/08-09(04) -- Administration's response to CB(1)1845/08-09(03)
- Ref.: EPD200905 -- Legislative Council Brief issued by the Environmental Protection Department
- LC Paper No. LS73/08-09 -- Legal Service Division Report
- LC Paper No. CB(1)1845/08-09(01) -- Marked-up copy of the Air Pollution Control (Volatile Organic Compounds) Regulation prepared by the Legal Service Division
- LC Paper No. CB(1)1845/08-09(02) -- Background brief prepared by the Legislative Council Secretariat)

The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

Follow-up action to be taken by the Administration

2. The Subcommittee requested the Administration to amend the definition of "toilet or urinal care product" under Part 1 of Schedule 3 to the Air Pollution Control (Volatile Organic Compounds) Regulation (Cap. 311 sub. leg. W) to spell out the types of toilet or urinal to be included.

Date of next meeting

3. The Chairman reminded members that the next meeting of the Subcommittee would be held on Tuesday, 22 September 2009 at 4:30 pm.

III Any other business

4. There being no other business, the meeting ended at 4:10 pm.

**Proceedings of the fifth meeting of
the Subcommittee on Air Pollution Control (Volatile Organic Compounds)
(Amendment) Regulation 2009
on Wednesday, 16 September 2009, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000448 – 000548	Chairman	The Chairman's introductory remarks	
000549 – 001102	Administration Chairman	<p>Meeting with the Administration</p> <p>Briefing by the Administration on its response to concerns raised at the meeting on 9 September 2009 (CB(1)2599/08-09(02))</p> <p>The Chairman's enquiry whether the "Measures for Prevention and Control of Air Pollution in the Pearl River Delta Region of Guangdong Province" introduced by the Guangdong Provincial Government (GPG) (paragraph 3 of Attachment 2 to CB(1)2599/08-09(02)) were legislative measures or incentive schemes. The Administration's advice that it did not have the information in hand but according to the past experience, some of the measures in question, such as phasing out paint and coating products with high VOC content, were likely to be statutory requirements while others might not</p> <p>In reply to the Chairman's further question about the measure of requiring industries, including vehicle manufacturing and repairs industry, to control fugitive VOC emissions (paragraph 3(d) of Attachment 2 to CB(1)2599/08-09(02)), the Administration's response that as some industries had not taken any measures to control the fugitive VOC emissions during their operation, GPG required them to do so in accordance with relevant technical standards and specifications</p>	
001103– 002345	Chairman Ms Miriam LAU Administration	<p>Referring to the Administration's response that all persons, including shipping agent, involved in the import of products could adduce evidence, e.g. bill of lading or shipping order to show that the offence was committed due to the act or default of another person or due to reliance on information given to him, Ms Miriam LAU's concern</p> <p>(a) whether the VOC content limits of the goods concerned had to be stated on the documents in question, and if so, whether the shipping agent was obliged to ascertain that the level so stated complied with the law;</p> <p>(b) that it was practically difficult for shipping agents to keep abreast of the latest standards of VOC contents for the regulated products; and</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(c) how far the shipping agent should act in order to be considered as having taken all reasonable steps and exercised all due diligence to avoid committing the offence before he was entitled for the defence provided under section 18 of the Air Pollution Control (Volatile Organic Compounds) Regulation (Cap. 311 sub. leg. W)</p> <p>The Administration's response that the inclusion of shipping agent under the definition of "importer" was widely adopted in other legislation (e.g. Trade Descriptions Ordinance (TDO) (Cap. 362), Consumer Goods Safety Ordinance (Cap. 456) and Toys and Children's Products Safety Ordinance (Cap. 424)). The Administration's further explanation, with reference to a court case in relation to violation of TDO, that if a shipping agent who became aware of or suspected certain facts about the goods arranged to be carried, say noting in the process of packing the goods into the cargo for shipment that the VOC content level as indicated on the product labels exceeded the prescribed limits, he should take action of further checking. Otherwise, in the normal course of a shipping agent's duties, there was no positive duty on his part to check the VOC contents of the regulated products</p> <p>In reply to Ms Miriam LAU's further enquiry, the Administration's confirmation that under general circumstances, no enforcement action would be taken against the shipping agent if he could produce evidence to support that he was acting on behalf of others to carry out the import of the regulated goods</p>	
002346 – 002525	Chairman Administration	<p><u>Continuation of section-by-section examination (CB(1)1845/08-09(01))</u></p> <p><u>Proposed section 3 – Section added "2A Representation as to use"</u></p> <p>Members did not raise any query</p>	
002526 – 002850	Chairman Administration	<p><u>Proposed sections 4 to 9</u></p> <p>Members did not raise any query</p>	
002851 – 003605	Chairman Administration Ms Miriam LAU	<p><u>Proposed section 10 – Requirement to submit a report: regulated paints</u></p> <p>In reply to Ms Miriam LAU and the Chairman's enquiries, the Administration's clarification that proposed section 10(3) and (4) were drafting improvement to provide greater clarity about the requirement to report annual sales quantities and particulars of regulated architectural paints for the preceding calendar years, by 31 March of each year,</p>	

Time marker	Speaker	Subject(s)	Action required
		starting in the years immediately after the year in which the relevant VOC content limits had taken effect	
003606 – 003650	Chairman Administration	<p><u>Proposed sections 11 to 13</u></p> <p>Members did not raise any query</p>	
003651 – 004842	Chairman Administration	<p><u>Proposed section 14 – Parts added</u></p> <p>The Administration's advice that the effective date stated in the Amendment Regulation with regard to the control measures for regulated vehicle refinishing paints would be changed from 1 October 2010 to 1 October 2011, in response to the views collated from the further consultation with paint suppliers and the vehicle repair trades</p> <p>The Administration's advice that having taken into consideration the views of trades related to regulated vehicle refinishing paints, proposed section 16C(4)(f)(ii) would be amended to delete "volume of exempt compounds" as use of exempt compounds would not be necessary to meet the revised VOC content limits</p> <p>In reply to the Chairman's enquiry, the Administration's advice that while currently no regulated vessel paints were manufactured in Hong Kong, provision would be made in advance in the legislation on prohibition on manufacture of regulated vessel paint products which had a VOC content in excess of the prescribed limits</p>	
004843 – 005643	Chairman Administration Ms Miriam LAU	<p><u>Proposed section 15 – Offences and penalties</u></p> <p>In response to Ms Miriam LAU's concern about the need to standardize the description of penalties, the Administration's explanation that it was a prevalent drafting practice in local legislation to specify the fine level (i.e. Level 1 to Level 6) unless the fine exceeded Level 6 (i.e. \$100,000) in which case the actual amount would be stated. This would save the need to amend individual legislation when the amount of fines corresponding to the specified level had to be revised</p> <p>Ms Miriam LAU's reflection of the trades' grave concern about the imposition of imprisonment for failing to comply with the statutory requirement under legislation related to environmental protection as the penalty was not proportional to the nature of the offences in question</p> <p>The Administration's advice that the penalties stated in the Amendment Regulation only referred to the maximum level of penalties and its reference about a precedent case in which a person who had been convicted of contravening the Air Pollution Control (VOC) Regulation (Cap. 311 sub. leg. W), and fined \$4,000 for failing to display information on the regulated products found during an inspection</p>	

Time marker	Speaker	Subject(s)	Action required
		conducted by the Environmental Protection Department	
005644 – 005920	Chairman Administration	<p><u>Proposed sections 16 to 18</u></p> <p>Members did not raise any query</p>	
005921 – 011530	Chairman Administration Ms Miriam LAU	<p><u>Proposed section 19 – Schedule 3</u></p> <p>The Chairman's enquiry about the reason for repealing the definition of "toilet bowl, toilet tank or urinal" and Ms Miriam LAU's suggestion that if this definition was repealed, the definition of "toilet or urinal care product" should be amended accordingly to spell out the types of toilet or urinal to be included</p> <p>The Administration's explanation that "toilet or urinal care product" meant any product that was designed or labeled to clean or to deodorize toilet bowl, toilet tank or urinal. As such, the products concerned would be used in any type of toilet bowl, toilet tank or urinal</p> <p>In response to the Chairman's enquiry about the operation of the Amendment Regulation if the regulated consumer products had multi purposes, the Administration's advice, with reference to proposed section 3, that these products would be subject to the maximum VOC limit that was most stringent among the products concerned</p>	The Administration to provide information as required in paragraph 2 of the minutes
011531 – 013047	Chairman Administration Ms Miriam LAU Assistant Legal Adviser	<p><u>Proposed section 20 – Schedules added</u></p> <p>In reply to the Chairman, the Administration's advice that as the types of compounds for each category of regulated products were different, it was necessary to provide a separate definition for "VOC" for each of them</p> <p>In reply to the Chairman's enquiry, the Administration's advice that adhesives used for treatment of dental decay was an example of adhesive products used exclusively on humans, and they were exempted since the scale of usage was relatively small and alternative product with lower VOC content could not achieve the purpose of the trade concerned</p> <p>Ms Miriam LAU's concern about the difficulty for the relevant trades to ensure that their products were compliant with the prescribed standard under the Amendment Regulation, given the diverse types of products involved, complexity of the technical terms and different prescribed VOC limits for individual products</p> <p>The Administration's response that the terminology adopted in the Amendment Regulation followed those used in international standards with which the industries concerned should be familiar</p>	

Time marker	Speaker	Subject(s)	Action required
013048 – 013233	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
19 October 2009