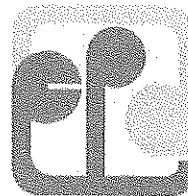


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By Fax (2877 5029)

31 October 2013

Mr Bonny LOO
Assistant Legal Advisor
Legislative Council Secretariat
Legislative Council Complex,
Legislative Council Road,
Central, Hong Kong

Dear Mr LOO,

**Air Pollution Control (Air Pollutant Emission)
(Controlled Vehicles) Regulation (L.N. 160 of 2013)**

Thank you for your letter dated 29 October 2013, enquiring about L.N. 160 of 2013 (the Regulation). Our responses are set out below.

- (a) *According to the LegCo Brief, the purpose of L.N. 160 is to phase out pre-Euro IV diesel commercial vehicles and effect the retirement deadlines for these vehicles. Since no reference is made to the types of categories of Euro diesel vehicles in L.N. 160, please clarify which of the controlled vehicles specified in section 3 of L.N. 160 is pre-Euro, Euro I, Euro II and Euro III diesel vehicles.*

As explained in paragraph 5 of the LegCo Brief, we propose to use first registration dates for distinguishing pre-Euro IV vehicles of different emission standards in the Regulation (i.e. the controlled vehicles). The corresponding first registration dates are set out in section 3(a), 3(b), 3(c) and 3(d) of the Regulation for pre-Euro, Euro I, Euro II and Euro III diesel commercial vehicles respectively.

- (b) *Section 6 of the Regulation provides for the granting of exemption in exceptional circumstances where it is impractical or unreasonable for a diesel vehicle or a type of diesel vehicle to comply with the Regulation. In this regard:*

- (i) *What is the procedure for applying for such an exemption? Must an owner of a diesel vehicle apply for an exemption before or at the time of making an application for a vehicle licence under the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap.374 sub leg. E)? Is any fee payable for applying for such an exemption? Do these procedural matters need to be set out in the Regulation?*

If a vehicle owner would like to seek exemption for his controlled vehicle from the emission standards stipulated in section 4(1) of the Regulation, he could apply in writing to the Director of Environmental Protection (DEP) before his vehicle licence application. In line with the existing practice for applying exemption from vehicle exhaust and noise emissions requirement for the first registration of vehicles, the procedures for exemption application are set out administratively and are not provided in the law. Besides, no fee is charged for applying the exemption.

- (ii) *Please provide examples of "exceptional circumstances" in which an exemption may be granted under section 6(1).*

Section 6(1) serves to provide the exemption power to DEP to cater for unforeseeable situations. We do not have a list of circumstances that warrants exemption or else we would have provided them explicitly in the Regulation. One possible scenario where an exemption may be granted is that the supply of new vehicles for replacing a controlled vehicle or a type of controlled vehicles has been disrupted under certain exceptional circumstances and vehicle owners cannot replace their old vehicles with new ones, leaving them with no choice but to discontinue their operation. After considering other relevant factors such as the actions that the vehicle owners have taken to secure the replacement vehicles and the timing for taking the actions, the reason for having no supply of new vehicles, the availability of alternative replacement vehicles, the duration of the period without supply of new vehicles and the impact of discontinuing the operation to the vehicle owners and the public,

DEP may grant exemption to the owners of the concerned vehicle or type of vehicles should he/she be satisfied that it is impracticable or unreasonable for the vehicle(s) concerned to comply with this Regulation.

(iii) *What types of conditions may be attached to an exemption under section 6(2)?*

In granting an exemption under section 6(1) of the Regulation, DEP may set a validity period for the exemption, especially if the exceptional circumstances that support the granting of the exemption are time specific and warrant regular review for abuse prevention.

(iv) *It is noted that under sections 6(4) and (5), a notice of exemption in respect of a type of diesel vehicle published in the Gazette is not subsidiary legislation. Please advise whether such notice will also be published on any government website(s).*

The exemption notice will be accessible in the government's website of the Gazette.

Yours sincerely,



(WC MOK)

for Director of Environmental Protection

c.c. Secretary for Justice (Attn: Mr Alan CHONG, SGC, by fax: 2869 1302)
(Attn: Ms Queenie WU, GC, by fax: 2869 1302)