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**Paper for the House Committee meeting
on 13 October 2006**

**Report of the Subcommittee to Study the
Proposed Resolution on Increase of Fines in
Waterworks Ordinance and Waterworks Regulations**

Purpose

This paper reports on the deliberations of the Subcommittee formed to study the proposed resolution on increase of fines in Waterworks Ordinance (Cap. 102) and Waterworks Regulations (Cap. 102 sub. leg. A).

Background

2. The Waterworks Ordinance (WVO) provides for the regulation and control of the waterworks and of all water therein. The Waterworks Regulations (WVR), which are made under section 37 of WVO, provide for matters such as the quality and type of water supply, the method of measuring or assessing water consumption, the prevention of waste or misuse of water supply and the deposits to be paid by consumers. For the purpose of enforcement, certain acts relating to the use of water are made unlawful and constitute offences under WVO and WVR. These offences include unlawful taking of water, polluting water forming part of the waterworks, wastage or misuse of water supply, damage to waterworks, fishing in waters forming part of the waterworks without a licence and use of fresh water for flushing without permission.

3. The existing fines provisions in WVO and WVR have not been revised for a long time, with some dating back to 1975 while the most up-to-date provisions were made in 1983. According to the Administration, owing to the eroded value of money caused by inflation, the punitive effect of the fines provisions has significantly diminished throughout the years. When reporting on convictions for offences under WVO and WVR, the media have often criticized the lack of deterrent effect of the existing fines provisions.

The proposed resolution

4. In June 2006, the Secretary for the Environment, Transport and Works (SETW) gave notice to move a motion under section 100A of the Interpretation and General Clauses Ordinance (Cap. 1) at the Council meeting of 5 July 2006 to –

- (a) adjust the fines in WWO and WWR in line with the past cumulative inflation rate; and
- (b) convert the fines in WWO and WWR, after adjustment based on inflation, to the appropriate levels according to the standard scale of fines under the Criminal Procedure Ordinance (CPO).

5. The proposal in (a) above is aimed at restoring the deterrent effect of the fines provisions, while the proposal in (b) above is to facilitate future revision of fines by a single legislative measure when the existing maximum fines become outdated due to changing value of money.

6. The existing penalty provisions in WWO and WWR are summarized in **Appendix II**. Details of the existing fines in WWO and WWR and the proposed fines after inflation adjustment together with the corresponding level of fines under CPO are shown below –

Section or Regulation	Existing fine	Date of last adjustment since enactment in 1975	Rate of inflation since enactment or last adjustment ⁽¹⁾	Proposed fine after inflation adjustment	Corresponding level of proposed fine ⁽²⁾
WWO					
S 30(4)	\$ 20,000	1983	+ 148.9 %	\$49,780	Level 5 (\$ 50,000)
S 32	\$ 5,000	-	+ 415.8 %	\$25,790	Level 4 (\$ 25,000)
S 35(1)	\$ 5,000	-	+ 415.8 %	\$25,790	Level 4 (\$ 25,000)
S 35(2)	\$ 200/day	-	+ 415.8 %	\$1,032/day	\$ 1,000/day ⁽³⁾
S 37(2)	\$ 4,000	1983	+ 148.9 %	\$9,956	Level 3 (\$ 10,000)

⁽¹⁾ The rate of inflation and proposed level of fines are calculated based on the change in CPI(A) up to 2005 as advised by the Census and Statistics Department.

⁽²⁾ The figures in brackets denote the maximum fines for the relevant level as provided in CPO.

⁽³⁾ The standard scale under CPO is not applicable to a daily fine which has to be expressed as a monetary value.

Section or Regulation	Existing fine	Date of last adjustment since enactment in 1975	Rate of inflation ⁽¹⁾ since enactment or last adjustment	Proposed fine after inflation adjustment	Corresponding level of proposed fine ⁽²⁾
WWR					
Reg 44	\$ 4,000	1983	+ 148.9 %	\$9,956	Level 3 (\$ 10,000)
Reg 51(2)	\$ 4,000	1983	+ 148.9 %	\$9,956	Level 3 (\$ 10,000)

The Subcommittee

7. At the meeting of the House Committee on 23 June 2006, Members agreed that a subcommittee should be formed to study the proposed resolution.

8. At the request of the House Committee, SETW has withdrawn her notice for moving the proposed resolution to allow time for the Subcommittee to study the proposed resolution.

9. Under the chairmanship of Hon Fred LI Wah-ming, the Subcommittee has held two meetings. The membership list of the Subcommittee is in **Appendix I**.

Deliberations of the Subcommittee

Frequency of review of fines provisions

10. The Subcommittee has sought explanation for not revising the fines for offences under WWO and WWR for such a long time (23 to 31 years), necessitating the currently proposed drastic increases based on the relevant cumulative inflation rates. The Administration's explanation is that a review on the fines was conducted in 1994 and thereafter a proposal for revision of the fines was prepared. The proposal had not been further pursued because there were then many legislative proposals that needed to be taken on board before 1 July 1997 and the proposal to revise the fines in WWO and WWR was considered less urgent than the other legislative proposals. For some years since 1998, the Consumer Price Index (A) had shown a downward trend and the trend has been reversed only in the recent few years.

11. On a member's suggestion of increasing the fines by phases instead of making a one-off drastic increase to alleviate the impact on the public, the Administration has advised that it is conducting a study on Total Water Management and would complete the study in late 2007. Subject to the results of the study, further amendments to WWO and WWR may be proposed. The Administration considers that increasing the fines by phases and then introducing further amendments after completion of the aforesaid study may cause confusion and additional disturbance to the public.

12. Members consider that the present arrangement of not reviewing the fines for a very long time and then making a one-off drastic increase is highly unsatisfactory in that the intended deterrent effect of the fines provisions has not been properly maintained and the public may be unduly affected by the currently proposed drastic increases. Members therefore urge the Administration to ensure that in future, the fines provisions in WWO and WWR would be reviewed at appropriate intervals, and request that SETW make such an undertaking in her speech when moving the proposed resolution at the Council.

Unlawful taking of water (section 29 of WWO)

13. The Subcommittee has taken note of the Administration's confirmation that using salt water supplied through an inside service⁽⁴⁾ for keeping live seafood is an offence under section 29 of WWO. Section 29(1)(c) of WWO provides that except with the permission of the Water Authority, no person shall take water through an inside service for any purpose other than that for which the water is supplied. According to the Administration, the Water Authority has recently instituted prosecution through the summary procedure against some food premises for illegal use of salt water supplied through an inside service for non-flushing purposes.

14. The Subcommittee has noted that in the old days, some villages had constructed facilities for collection or diversion of stream water for agricultural and domestic uses as there was no fresh water supply for the villages at that time. While fresh water supply is available to these villages nowadays, many villagers still maintain the facilities for irrigation uses and as a backup measure to meet the need at times of temporary suspension of water supply. Members have sought clarification on whether these acts of villagers would constitute an offence under section 29 of WWO, and whether the villagers would be subject to prosecution.

15. According to the Administration, taking stream water outside gathering grounds is not illegal as stream water outside gathering grounds does not fall under the regulation and control of WWO, whereas diverting water continuously from the

⁽⁴⁾ "inside service" (内部供水系統) means the pipes and fittings in premises, and any pipes and fittings between the premises and a connection to the main, (other than the pipes and fittings forming part of a fire service) which are used or are intended to be used for the purposes of a supply.

waterworks⁽⁵⁾ and taking stream water within gathering grounds without the permission of the Water Authority are acts in contravention of section 29 of WWO. The boundaries of gathering grounds, which are made public through publication of notices in the Gazette, have been defined in the form of maps prepared under section 23 of WWO and may be altered from time to time. There are signs erected at appropriate places within gathering grounds to advise the public not to take or pollute the water carried by streams or other facilities within the gathering grounds.

16. As regards enforcement, the Subcommittee notes that no prosecution has ever been instituted in the past against the collection and diversion of stream water for irrigation and domestic uses. Past prosecution cases in respect of stream water within gathering grounds mainly involve continuous diversion of the stream water for commercial or industrial uses. As regards the reasons for not instituting prosecution in respect of the former type of cases, the Administration has explained that many villagers were already inhabitants using stream water when the relevant gathering grounds were mapped and the consumption of stream water by villagers for irrigation and domestic uses so far has not posed a significant problem to the water supply system. As such, the Water Authority has been adopting a lenient approach in handling those cases.

17. Members however note that there is no provision in WWO empowering the Water Authority to exercise discretion in the enforcement of section 29 of WWO nor is there any provision that grants exemption for those villagers who had been consuming stream water before the relevant gathering grounds were mapped. Members therefore have questioned the legal basis for not enforcing section 29 in these cases. They consider that if it is the Government's policy to exclude the taking of stream water within gathering grounds by villagers for certain uses from the application of section 29, the Administration should introduce in WWO a legislative provision to that effect.

18. Having regard to the need to adjust the fines for offences under WWO and WWR without further delay, the Subcommittee has agreed that it would support the moving of the proposed resolution on the condition that the Administration would, as a matter of priority, review section 29 in relation to the taking of stream water within gathering grounds to clearly reflect the Government's policy intention. The Subcommittee also suggests that SETW make an undertaking in this regard in her speech in moving the proposed resolution. The Administration has agreed that it would review section 29 taking into account the Subcommittee's views as soon as possible.

⁽⁵⁾ "waterworks" (水務設施) means any property occupied, used or maintained by the Water Authority for the purposes of WWO and any gathering ground.

Pollution of water forming part of the waterworks (section 30 of WWO)

19. On the concern that small houses in the New Territories not provided with public sewerage facilities would be susceptible to prosecution for polluting water forming part of the waterworks, the Administration has explained that in the old days when public sewerage facilities were not provided for villages, all small houses were required to be built with septic tanks to collect domestic sewage and effluent. Nowadays, most villages are provided with public sewerage facilities and the facilities are being expanded to cover old villages in a progressive manner.

Use of fresh water for flushing without permission (regulation 12 of WWR)

20. The Subcommittee has sought clarification on the circumstances under which the use of fresh water for flushing would be regarded as in contravention of regulation 12 of WWR. According to the Administration, affixing a pipe to the flushing cistern to supply fresh water for flushing without permission would be an offence but pouring fresh water into the flushing cistern for flushing during suspension of the supply of salt water would not be prosecuted. In the latter case, a defence is available under regulation 12(2) to the occupier or owner of the relevant premises for the use of fresh water for flushing.

Installation or use of apparatus using water, or apparatus for treatment or filtration of water, without permission (regulation 24 of WWR)

21. Regulation 24 of WWR prohibits the installation or use of water filters without the permission in writing of the Water Authority. The Subcommittee has expressed concern on this regulation as installation and use of water filters is very common among the households in Hong Kong. The Administration has explained that the regulation is intended to cater for the possibility that polluted water filters installed at individual households may pollute or have polluted the main water supply system of a building, thus jeopardizing public health. To avoid this situation, there should be devices installed to avoid reversion of water flow from the water pipes of individual households to the main water supply system. According to the Administration, such devices are commonly installed in multi-storey buildings in Hong Kong.

22. The Subcommittee notes that there has not been any prosecution made under regulation 24. The Administration has explained that it has not detected any case involving the use of apparatus for treatment or filtration of water with the danger of polluting the main water supply system of a building. Moreover, under regulation 25 of WWR, the Water Authority has the power to relax the provisions of WWR regarding the size, nature, materials or disposition of any pipe or fitting. The Subcommittee further notes that the Administration has been advising the

public through media publicity to engage licensed plumbers for installation of water filters and guidelines have been prepared for plumbers to follow.

Figures on prosecution and conviction under WWO and WWR in the past 10 years

23. In response to the Subcommittee's request, the Administration has provided figures on the prosecution and conviction for the past one year, five years and 10 years in respect of each of the existing offence provisions in WWO and WWR. The information is in **Appendix III**.

Recommendation

24. The Subcommittee supports the proposed resolution and the Administration's giving fresh notice to move the proposed resolution at a future Council meeting.

Advice sought

25. Members are requested to note the recommendation of the Subcommittee in paragraph 24.

**Subcommittee to Study the
Proposed Resolution on Increase of Fines in
Waterworks Ordinance and Waterworks Regulations**

Membership list

Chairman Hon Fred LI Wah-ming, JP

Members Hon SIN Chung-kai, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LEE Wing-tat
Hon CHEUNG Hok-ming, SBS, JP

(Total: 5 members)

Clerk Ms Anita SIT

Legal Adviser Ms Connie FUNG

Date 21 July 2006

**Summary of existing penalty provisions
in the Waterworks Ordinance and the Waterworks Regulations**

Section/ Regulation	Particulars	Penalty	Date of enactment
Waterworks Ordinance (Chapter 102)			
S 30(4)	Any person who is guilty of an offence under section 30(1) or (2) (with regard to polluting water forming part of the waterworks) shall be liable on summary conviction to a fine and imprisonment.	Fine: \$ 20,000 Imprisonment: 2 years	1983
S 32	Any person who obstructs the Water Authority, or any person authorised by him in writing, from exercising any power, performing any duty or carrying out any function under this Ordinance shall be guilty of an offence and liable on conviction to a fine and imprisonment.	Fine: \$ 5,000 Imprisonment: 6 months	1975
S 35(1)	Any person who is guilty of an offence under this Ordinance shall, unless a penalty is otherwise expressly provided, be liable on summary conviction to a fine. The following sections are pertinent – (i) section 13 (with regard to taking of water from public standpipes without permission for non-domestic purpose); (ii) section 14 (with regard to construction, installation, alteration or removal of fire or inside service without permission); (iii) section 15 (with regard to construction, installation, alteration, repair or removal of fire or inside service	Fine: \$ 5,000	1975

Section/ Regulation	Particulars	Penalty	Date of enactment
	by unauthorised persons other than licensed plumbers); (iv) section 28 (with regard to wastage or misuse of water supply); (v) section 29 (with regard to unlawful taking of water); and (vi) section 31 (with regard to damage to waterworks).		
S 35(2)	Any person convicted of an offence under section 29 (with regard to unlawful taking of water) or section 30(1) or (2) (with regard to polluting water forming part of the waterworks) shall, if the offence is a continuing one, be liable to a further fine for every day or part of a day during which the offence continues.	Fine: \$ 200/day	1975
S 37(2)	A regulation made under this section may provide that a contravention thereof shall be an offence and may prescribe a penalty for such offence.	Fine: \$ 4,000	1983
Waterworks Regulations (Chapter 102 sub. leg. A)			
Reg 44	Any person who- (i) contravenes regulation 41 (with regard to fishing in waters forming part of the waterworks without licence, by any means other than by rod and line, or using explosive or toxic substance); (ii) contravenes any condition of a fishing licence; (iii) without lawful excuse fails to comply with a requirement of an authorised officer under regulation 43(1) (with regard to production of	Fine: \$ 4,000	1983

Section/ Regulation	Particulars	Penalty	Date of enactment
	<p>fishing licence for inspection); or</p> <p>(iv) wilfully resists or obstructs an authorised officer in the exercise of his powers under regulation 43(2) and (3) (with regard to carrying out arrest and seizure on a person believed to have committed an offence under regulation 44),</p> <p>shall be guilty of an offence and shall be liable on summary conviction to a fine.</p>		
Reg 51(2)	<p>Any person who is guilty of an offence under the following regulations shall be liable on summary conviction to a fine –</p> <p>(i) regulation 9 (with regard to use of inside service without permission for reception or conveyance of any water other than water from the waterworks);</p> <p>(ii) regulation 10 (with regard to installation of draw-off points in, or drawing of water from, any part of inside service, or for extension or alteration of inside service, without permission);</p> <p>(iii) regulation 11 (with regard to drawing of fresh water from inside service by means of hosepipe or similar apparatus without permission);</p> <p>(iv) regulation 12 (with regard to use of fresh water for flushing without permission);</p> <p>(v) regulation 13 (with regard to use of water from the waterworks without permission for heating, cooling or humidification plant, or swimming pool);</p> <p>(vi) regulation 15(1) (with regard to use or supply of salt water for flushing water-closets, latrines and</p>	Fine: \$ 4,000	1983

Section/ Regulation	Particulars	Penalty	Date of enactment
	<p>urinals);</p> <p>(vii) regulation 15(2) or (3) (with regard to construction material used for pipes and fittings of water-closets, latrines or urinals in which salt water is used or is required to be used for flushing);</p> <p>(viii) regulation 21 (with regard to testing of pipes and fittings before installation or use);</p> <p>(ix) regulation 23 (with regard to installation or use of booster pump on fire or inside service without permission and the associated arrangement for pumping water);</p> <p>(x) regulation 24 (with regard to installation or use of apparatus using water, or apparatus for treatment or filtration of water, without permission);</p> <p>(xi) regulation 26(4) (with regard to unauthorized removal of meter from fire or inside service);</p> <p>(xii) regulation 32(2) (with regard to testing of private check meter);</p> <p>(xiii) regulation 32(4) (with regard to removal of private check meter found to be operating unsatisfactorily or restricting the supply to any premises);</p> <p>(xiv) regulation 39 (with regard to inappropriate use of, or preventing without authorization other persons from taking water from, public standpipes); or</p> <p>(xv) regulation 47 (with regard to sale, or offer for sale, of water from the waterworks without permission).</p>		

Prosecution, Conviction & Fines Summary Report

Year	Item	Section / Regulation *													Total
		S14	S15	S28	S29	S30(4)	S31	R9	R11	R12	R23	R39	R41	R44(b)	
2005	No. of Prosecutions	70	0	2	74	4	32	0	21	1	7	0	2	0	213
	No. of Convictions	67	0	2	74	4	31	0	20	1	7	0	2	0	208
	Sum of Fines	\$124,600	\$0	\$4,000	\$154,600	\$2,000	\$62,100	\$0	\$25,900	\$1,500	\$13,600	\$0	\$1,200	\$0	\$389,500
2001-2005	No. of Prosecutions	249	8	3	452	6	143	0	100	2	23	0	8	2	996
	No. of Convictions	242	8	3	440	6	140	0	98	2	23	0	8	2	972
	Sum of Fines	\$375,600	\$8,300	\$5,500	\$785,300	\$6,800	\$233,100	\$0	\$118,150	\$4,100	\$32,850	\$0	\$4,500	\$1,200	\$1,575,400
1996-2005	No. of Prosecutions	528	14	4	1055	13	336	1	206	2	33	2	24	2	2220
	No. of Convictions	510	14	4	1028	13	327	1	203	2	33	2	24	2	2163
	Sum of Fines	\$920,150	\$17,800	\$7,500	\$2,031,800	\$25,600	\$668,300	\$750	\$283,850	\$4,100	\$49,550	\$2,000	\$13,450	\$1,200	\$4,026,050