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**Paper for the House Committee meeting on 27 June 2008**

**Subcommittee on Sewage Services  
(Trade Effluent Surcharge) (Amendment) Regulation 2008**

**Purpose**

This paper reports on the deliberations of the Subcommittee on Sewage Services (Trade Effluent Surcharge) (Amendment) Regulation 2008 (the Amendment Regulation).

**Background**

Trade Effluent Surcharge scheme

2. The Trade Effluent Surcharge (TES) scheme was introduced in Hong Kong in 1995 pursuant to the enactment of the Sewage Services Ordinance (Cap. 463) and the Sewage Services (Trade Effluent Surcharge) Regulation (Cap. 463, sub. leg. B) (the TES Regulation). A water consumer whose premises are connected to a public sewer has to pay a sewage charge<sup>1</sup>. The TES is an additional charge on top of the sewage charge, currently applying to 30 specified trades which produce effluents of strength stronger than domestic sewage, to reflect the additional costs incurred in treating the effluents. The rate of TES is calculated based on the average strength of effluents, expressed in terms of generic Chemical Oxygen Demand (COD)<sup>2</sup> values, discharged by the specified trades. The higher the COD value, the higher the treatment cost and hence the higher the TES rate. To reduce the administrative cost of measuring the effluent strength discharged at each premises, the 30 specified trades are each assigned a set of generic COD values determined in 1995 such that members of the same trade are subject to the same trade-specific TES rates. However, any individual operator who considers that his

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<sup>1</sup> The SC is charged on the basis of the volume of water supplied to the consumer's premises other than water supplied specifically for flushing purposes. It aims to recover the cost of the collection and treatment of wastewater at or below a typical pollution strength equivalent to domestic sewage.

<sup>2</sup> COD measures the amount of oxygen required to decompose organic matter chemically and is hence a measure of pollution load.

business is discharging effluents which is less polluting than the generic value assigned can seek reassessment for a lower TES rate.

### Recent review

3. To ensure the continuing operation of the TES scheme based on the polluter-pays principle, the Administration conducted a review on the generic COD values of all TES trades by carrying out trade-specific effluent surveys from 2005 to 2007, with a view to ascertaining the latest situation with regard to the strength of the effluents discharged. The survey was conducted in two phases by the Environmental Protection Department (EPD) and the Hong Kong Productivity Council (HKPC). In the first phase, the EPD surveyed the effluents of four trades involving the majority of the TES accounts. In the second phase, HKPC was commissioned as an independent consultant to survey the effluents of the remaining 26 trades. The entire exercise involved over 1 100 sampling events. The review was completed in late 2007.

### **The Amendment Regulation**

4. The Amendment Regulation updates the TES scheme according to the results of the survey. The main provisions of the Amendment Regulation seek to revise the COD values and TES rates in accordance with the results of the effluent survey with a view to achieving 100% operating cost recovery (excluding depreciation) for the TES trades by 2009-2010. Specifically, the Administration proposes to:

- (a) remove three trades (i.e. "bleaching and dyeing of garments", "textile stenciling and printing" and "laundries") from the TES scheme because their effluents are found to be comparable to or not stronger than domestic sewage; and
- (b) revise the generic COD values and the corresponding TES rates of the remaining 27 trades according to the result of the survey with a view to achieving 100% cost recovery (excluding depreciation) as follows:
  - the TES rates for 13 trades<sup>3</sup> will be reduced with effect from 1 August 2008;
  - the TES rate for one trade (i.e. "canning, preserving and processing of fish and crustaceans") will be increased on 1 August 2008, while the TES rates for the remaining 13 trades will be increased by two consecutive increments on 1 August 2008 and 1 August 2009 respectively.

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<sup>3</sup> According to the Administration, the TES rates for these trades, representing about 92% of all TES accounts, are to be adjusted downwards to reflect the fact that their effluents have become less polluting and the resultant cost of treating these effluents has reduced.

The Amendment Regulation was published in the Gazette on 9 May 2008 and tabled in the Legislative Council (LegCo) on 14 May 2008. The Amendment Regulation will come into force on 1 August 2008.

### **The Subcommittee**

5. At the House Committee meeting held on 16 May 2008, Members agreed to form a Subcommittee to study the Amendment Regulation. Under the chairmanship of Hon Audrey EU Yuet-mee, the Subcommittee has held seven meetings, including a meeting with deputations. The membership list of the Subcommittee is in **Appendix I**. The list of organizations that have met with or provided submissions to the Subcommittee is in **Appendix II**.

6. To allow sufficient time for the Subcommittee to scrutinize the Amendment Regulation, a resolution under section 34(4) of the Interpretation and General Clauses Ordinance (Cap. 1) was passed at the LegCo meeting on 4 June to extend the scrutiny period for the Amendment Regulation to 2 July 2008.

### **Deliberations of the Subcommittee**

7. The Subcommittee notes that the Amendment Regulation aims to revise the COD values and the TES rates in accordance with the results of the effluent survey with a view to achieving 100% operating cost recovery for TES by 2009-2010. While agreeing generally with the polluter-pays principle in the provision of sewage services in Hong Kong, members have expressed concern about the implementation of the charging scheme as the restaurant trade has been protesting against the TES rates since its introduction some 13 years ago. The deliberations of the Subcommittee are summarized below.

#### Assessment mechanism

8. The Subcommittee notes that the existing TES rate payable by the restaurant trade for establishments located in a water control zone is \$3.78<sup>4</sup> per cubic metre (m<sup>3</sup>) of water consumption. While the set of generic COD values assigned for the trade since 1995 are 3 600 grammes per cubic metre (g/m<sup>3</sup>) and 2 315 g/m<sup>3</sup> for COD<sub>total</sub><sup>5</sup> and COD<sub>settled</sub><sup>6</sup> respectively, the generic COD values of all TES trades are capped at 2 000 g/m<sup>3</sup> for the purpose of calculating TES rates. It is the effluent strength that most categories of operators may be licensed to discharge into the sewerage.

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<sup>4</sup> The rate for restaurant establishments located outside a water control zone is \$9.12.

<sup>5</sup> The value is a measurement of the COD of the whole sample of a trade effluent without allowing gravity separation of the sample, thus indicating the total organic load.

<sup>6</sup> The value is a measurement of the COD of the un-settleable portion of a sample of trade effluent after gravity separation and removal of the settleable portion by allowing the sample to sit still for 60 minutes. It indicates the organic load of the unsettled portion of the effluent.

9. Hon Tommy CHEUNG has expressed dissatisfaction about the assessment mechanism, as the set of generic COD values for the restaurant trade was worked out in 1995, using only 22 effluent samples taken from some 10 000 restaurants at that time. He considers such sampling method unscientific.

10. The Administration has explained that under the TES scheme, the extra operating cost in treating trade effluents which are more polluting than domestic sewage is apportioned among the 30 specified trades according to the generic COD values assigned for individual trades. The generic COD values for the 30 trades were determined in 1995 based on a mix of theoretical considerations, information on the nature of effluents discharged by the same trades elsewhere in the world and actual measured values. The Administration stresses that the assessment mechanism is a professionally sound and established practice based on scientific methodology and in accordance with polluter-pays principle.

11. Members note the grave concern expressed by the restaurant trade that the current generic COD values assigned for the trade are too high and have been pushed up by effluents discharged by a small number of restaurants with very high pollution loads. The restaurant trade is of the view that most restaurants have been overcharged, as evidenced by the fact that about 84% of applications for reassessment of TES rates from the trade operators in the past 12 years were successful. Moreover, during the period from March 2007 to February 2008, the COD value for the trade's reassessment cases ranged from 300 g/m<sup>3</sup> to 1 690 g/m<sup>3</sup>, with a mean value of 867 g/m<sup>3</sup> which is far lower than the current generic value of 3 600 g/m<sup>3</sup> or the applicable value of 2 000 g/m<sup>3</sup>. The current generic COD values and respective TES rates for the 30 specified trades are given in **Appendix III**.

12. The Administration has advised that the lower COD values for reassessment cases represent the performance of the top 2% restaurants with the best pollution control practices, and these reflect only those effluents which are better than the average quality. It is inappropriate to adopt the reassessed mean value as the generic COD value for the entire trade.

13. Hon Emily LAU has taken note of the trade's concern about the assessment mechanism of the TES scheme as expressed at the meeting of the Panel on Environmental Affairs (EA Panel) on 18 March 2008. She has referred the matter to the Business Facilitation Advisory Committee for consideration and follow-up.

#### Cost apportionment and rate of cost recovery

14. Hon Tommy CHEUNG has expressed concern that the Administration has all along overcharged the trades for TES due to an uneven apportionment of the sewage services cost between the costs in operating the Sewage Charge and TES schemes.

15. The Administration has advised that based on the estimated pollution load<sup>7</sup>, the sewage services cost has been apportioned to sewage charge and the TES under the Sewage Services Charging Scheme according to a ratio of about 78:22. As a result of the current proposal, the apportionment of sewage services cost between the two will change to a ratio of 85:15. The Administration has further advised that it has been very conscious of the need to control the operating costs of the sewage services and has adopted various measures to improve efficiency. Over the past five years, the total expenditure has been reduced by 4% and unit treatment cost by 10%, although the volume of sewage treated has increased by 6% and the number of sewage treatment works and pumping stations by 27%.

16. The Administration has provided further information at **Appendix IV** on the revenue, apportioned expenditure and cost recovery rate of the TES scheme since 1998-1999, after the Sewage Services Trading Fund was closed and the sewage service was reverted back to the Government on 31 March 1998. The Subcommittee has noted that the apportioned expenditure for the TES scheme has increased slightly in the past five years.

17. Hon Tommy CHEUNG has expressed concern whether the Administration would arrange reimbursement for the TES trades if the recovery rate of the TES scheme has exceeded 100% in a particular year. The Subcommittee has requested the Administration to give an undertaking when moving amendments at the Council meeting on 2 July 2008 that it would discuss with LegCo on ways to address the situation if the TES scheme has achieved a cost recovery rate higher than 100%. The Administration has agreed to consider the request.

#### Survey of effluent strength of the restaurant trade

##### *Survey methodology*

18. According to the Administration, the survey of effluents from the restaurant trade was carried out by EPD in August and September 2005. In order to ensure the final outcome would be representative of the average effluent strength of the entire trade, the establishments were divided into three groups according to the volume of water consumption before effluent samples were selected randomly from each group. A total of 384 samples were collected with COD values ranged from 32 g/m<sup>3</sup> to 77 500 g/m<sup>3</sup>. Of these, 10 samples with the highest COD values lying beyond two standard deviations from the mean were deleted to avoid distortion of the survey findings. The new COD values ranged from 32 g/m<sup>3</sup> to 14 900 g/m<sup>3</sup> and the mean COD value for the trade was 1 630 g/m<sup>3</sup>. Based on this value, the proposed TES rate for the restaurant trade would be \$3.05/m<sup>3</sup> of water consumption, representing a 19% reduction.

19. The Subcommittee has noted that the restaurant trade is disappointed at the

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<sup>7</sup> The total pollution load of the TES trades is the aggregate of the product of the volume of water consumption adjusted by applicable discharge factor and the respective generic COD value of each and every trade the effluent strength of which exceeds the strength of domestic sewage.

small reduction of the TES rate, as it could not reflect their efforts to control pollution and improve the quality of effluents over the years. One deputation considers that the TES rate should be reduced by 50%, as the COD value based on such a small sample size is not representative of the trade's generic value, and the mean COD value could have been pushed up by a small number of restaurants with high pollution loads. Members also note that among the 374 samples taken, the COD values of 263 samples are below the generic mean of 1 630 g/m<sup>3</sup>. Given this, members share the trade's view that it would be unfair to apply the same COD value to operators across the board, as operators with small discharge loads would be subsidizing those with high pollution loads.

20. The Administration has explained that the methodology of the survey is scientifically sound and reliable, and the average strength of the effluents is representative of the general quality of effluents discharged by the restaurant trade. The Administration considers the mean COD value of 1 630 g/m<sup>3</sup> a reasonable estimate free from distortion by outliers, and is an appropriate value for the entire trade.

*The use of median COD value as the generic value*

21. Members share the restaurant trade's view that it is more equitable to adopt the median COD value as the generic value so that at least half of the operators will not have to seek reassessment. According to the Administration, the median COD value as worked out from the 374 samples is 964 g/m<sup>3</sup>. Hon Tommy CHEUNG considers this a reasonable figure which should be used as the generic COD value for the restaurant trade.

22. The Administration has advised that the existing structure of the charging scheme is based on the average pollution loads of all TES trades for apportioning the relevant cost among the TES trades. The median COD value is not an appropriate indicator of the average strength of effluent and has no direct relationship to the pollution load of a trade. The use of the median COD value or any other statistical figure will necessitate a fundamental restructuring of the entire scheme, as the same measure will have to apply to all TES trades. A rough calculation on the hypothetical TES rates for all trades by using the median values as the generic COD values reveals that a number of trades will have to be removed from the TES scheme, as their median values will be lower than the generic value for domestic sewage.

*Enforcement against operators with high pollution loads*

23. Members have asked the Administration to account for the great variation in the strength of effluents discharged by the restaurant trade. They also seek information on the actions taken by the Administration against those restaurant operators who are discharging trade effluents with COD values exceeding the prescribed cap of 2 000 g/m<sup>3</sup>.

24. The Administration has explained that cooking methods and effectiveness of the central grease traps in terms of design, size, detention time, degree of maintenance and frequency of cleansing account for the great variation in effluent strength. For restaurants with high pollution loads, the Administration will conduct site visits and advise the operators concerned on the pollution control measures that could be taken. Since the survey samples were collected in confidence and were not for the purpose of enforcement under the Water Pollution Control Ordinance (Cap. 358) (WPCO), the samples per se could not form a basis for prosecution. Nevertheless, EPD will make reference to the survey results, the traders' past performance, the nature, quantity and characteristics of effluents discharged, and assess their corresponding environmental impacts for conducting further inspections. If non-compliance is detected during inspection, EPD may collect samples and take appropriate enforcement action. In the past three years, the numbers of conviction under WPCO procedures in respect of the restaurant trade have decreased from 14 to 9 and 7 respectively, reflecting the trade's efforts in improving effluent quality.

#### Survey of effluent strength of other trades

25. Members note that under the Amendment Regulation, the new TES rates for 14 trades (the affected trades) will be higher than their existing rates. Hon Tommy CHEUNG has questioned why the TES rates for some of the affected trades will be increased, while their COD values as reflected in the effluent survey are actually less than the currently prescribed values. The Administration has explained that the policy goal for the TES scheme also aims to achieve full recovery of the attributable operating costs. The adjustments in TES rates are necessary to ensure a fair and equitable sharing of the operating cost of providing sewage services amongst different parties according to the polluter-pays principle. After the adjustments, the TES recovery rate will be increased from about 84% in 2007-2008 to 100% in 2009-2010. The Administration has further advised that about 92% of the accounts will enjoy a reduction in TES ranging from about 6% to 80% as a result of the current proposal. Only 8% of the TES accounts will face an increase in TES rate, and the increment for the vast majority of these accounts would be less than \$200 per month.

26. Hon Tommy CHEUNG is concerned whether the Administration has adequately consulted the affected trades on the proposed increase to the existing TES rates. Hon Emily LAU considers that the Administration should inform those trades for which the TES rates will be adjusted upward. According to some of the affected trades which have met with Hon Tommy CHEUNG, they are not aware of the proposed increase in TES rates. The trade of "bakery products" has subsequently sent in submissions protesting against the existing TES rate prescribed for the trade.

27. The Administration has advised that before the effluent survey, EPD and HKPC have approached those trades which are represented by trade associations. EPD has informed the restaurant trade associations about the survey on restaurants'

effluents beforehand. HKPC has sent letters to 88 trade associations explaining the survey objective, collect feedback and views, and seek agreement on the sampling methodology. HKPC has also met five trade associations and contacted all active traders within the 26 trades before the actual sampling works. According to the Administration, it began preparation work for putting forward legislative amendments to the TES Regulation immediately after the completion of survey in end 2007, in order to adjust the stipulated COD values and TES rates as soon as practicable. It did not consult the TES trades again specifically on the revisions to the TES rates. Nevertheless, the Administration has set out the proposal to adjust the TES rates in the paper submitted to the EA Panel for the meeting on 18 March 2008. The Subcommittee notes that the EA Panel has announced invitation for public views on the TES scheme on the LegCo Website and met with deputations on the TES scheme at that meeting.

28. The Subcommittee notes that Hon Tommy CHEUNG would propose to amend the new generic TES rates for the 27 trades as set out in Schedule 1 under the Amendment Regulation.

#### Reassessment of TES rates

##### *Application to the Drainage Authority for reassessment*

29. The Subcommittee notes that if an operator considers his business is discharging effluents with COD value lower than the generic values assigned, he could, pursuant to section 4 of the TES Regulation, seek reassessment of the TES rate. The individual operator has to arrange for the collection and testing of his trade effluents by an approved laboratory at his own cost and submit the results to the Drainage Authority (DA) for a determination. Where the DA is satisfied that the COD value of the trade effluent is less than the assigned generic value, the TES rate will be reduced accordingly. The period for which a reassessed COD value/TES rate remains valid has been extended from one year to two years pursuant to the Sewage Services (Trade Effluent Surcharge) (Amendment) Regulation 2007.

30. The Subcommittee notes that among some 14 000 establishments of different sizes in the restaurant trade, there have been on average 460 applications for reassessment each year since the introduction of the TES scheme in 1995, and about 84% of these applications were successful. In this connection, the restaurant trade has expressed concern about the high cost of conducting reassessment. Apart from the cost of engaging an approved laboratory at about \$5,000 per sampling day, the operator seeking reassessment has to shoulder indirect cost involved in the submission of a number of documents and provision of manpower to assist in the sampling which usually takes two to six days assigned during a period of no more than eight weeks. As such, only operators of large establishments could afford going through the cumbersome and costly procedures. The restaurant trade has urged the Administration to streamline the reassessment procedures, and to extend the validity of a reassessed COD value/TES rate from

two years to three years as most of the lease agreements are for a period of three years or more.

31. Members note that about 77% of the restaurant accounts are paying TES at an annual rate of \$15,000 or below. These operators may be reluctant to improve the effluent quality and apply for reassessment since the cost of the reassessment requiring three sampling days is about \$15,000 which is higher than the TES they have to pay. This probably accounts for the small number of restaurant operators applying for reassessment. The trade has reflected to the Subcommittee that since most restaurant operators are overcharged under the TES scheme, if the Administration agrees to refund the reassessment cost to the successful applicants, many operators, in particular those who are reluctant to seek reassessment on grounds of costs, will apply for reassessment. Members support the request of the trade as the refund measure will also provide incentives for the operators to improve effluent quality.

32. The Administration has explained that the cost incurred by the applicant in the reassessment is for appointment of an approved laboratory to prepare sampling proposal, collect effluent samples and analyze the effluent strengths discharged. The laboratory cost is directly related to the number of sampling days required, which in turn depends on the total pollution loading of the effluent. According to laboratories experienced in conducting reassessment, the laboratory cost per sampling day ranges from \$3,000 to \$3,500. The Administration stresses that the laboratory cost should not be confused with the costs of engaging consultants on measures to improve effluent quality and installing pollution control facilities. Nevertheless, to help contain the cost of reassessment, the Administration has extended the validity of a reassessed COD value/TES rate from one year to two years thereby halving the cost of a reassessment, and reduced the number of sampling days for operators with small COD discharge loads from three days to two days.

33. On the proposal for the Administration to refund the reassessment cost to the successful applicants, the Administration has indicated that it is not aware of examples of legislative provisions by which the Government is obliged to refund to a successful applicant pertinent to conducting a reassessment of certain fees and charges. The Administration has further advised that an amendment to the effect that the costs of an application to vary the TES rates will be borne by the Government will carry a charging effect. Nevertheless, the Subcommittee has agreed to move an amendment to the effect that the costs of a successful applicant to vary the TES rates would be borne by the Government.

34. As regards the restaurant trade's request for the Administration to further extend the validity period of a reassessed COD value/TES rate from two years to three years, the Administration has carefully considered the suggestion. It has advised that there is a need to ensure that the operators will sustain the efforts to implement good pollution control practices, while minimizing the cost of reassessment without compromising the principles of polluter-pays and full cost

recovery. On balance and having regard to the views of members, the Administration will move a motion to further extend the validity period from 2 years to 3 years. TES accounts whose reassessed TES rates remain valid before the effective date of the Amendment Regulation, i.e. 1 August 2008, will be extended for another year automatically. The Administration would keep the new arrangement under review, closely monitor the situation and take appropriate action as and when necessary.

35. The Subcommittee notes that the TES rate matrices<sup>8</sup>, which are used for determining a TES rate of a consumer or agent as a result of an application for reassessment under the TES Regulation, have also been revised. In order to reflect the need to recover 100% operating costs, the rates under the same COD levels in the first new matrix<sup>9</sup>, which is for 2008-09, are 9.2% higher than the rates in the existing matrix. In the second new matrix<sup>10</sup>, which is for 2009-2010 onwards, are 9.2% higher than the rates in the first new matrix, giving a total of 19.2% higher than the rates in the existing matrix. The Administration has emphasized that for existing accounts that are paying TES based on the reassessed rates in the existing matrices, their currently reassessed TES rates will continue to apply until the expiry of the validity period. Nonetheless, in view of members' concern on the need to allow more time for the TES trades to adjust to the proposed increase, the Administration has indicated that it will move an amendment to defer the effective dates of the matrices for a year, i.e. the first and second new matrices would take effect from 1 August 2009 and 1 August 2010 respectively.

36. The Subcommittee notes that Hon Tommy CHEUNG would propose an amendment to retain the existing matrix in Part I of Schedule 4 to the TES Regulation.

#### *Appeals against the decision of the Drainage Authority*

37. The Subcommittee notes that the decision of DA under the TES Regulation falls under the jurisdiction of the Administrative Appeals Board (AAB). Trade operators can lodge appeals against the decision of DA if they are not satisfied with the outcome of the reassessment of the TES rates. Hon Tommy CHEUNG is concerned whether an operator can appeal directly with AAB so that it may award the cost of reassessment to the successful appellant.

38. According to the legal adviser to the Subcommittee, an operator whose application for reassessment of TES rate by DA was unsuccessful can lodge appeal with AAB which may, pursuant to section 21(1)(k) of the AAB Ordinance (Cap. 442), make an award to the operator the costs relating to the appeal. However, whether the costs will include the reassessment cost will be subject to the discretion of AAB. The legal adviser has further advised that it may not be feasible for an operator to lodge an appeal against TES rate directly with AAB

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<sup>8</sup> At Schedule 4 to the TES Regulation.

<sup>9</sup> The proposed Part I to Schedule 4.

<sup>10</sup> The proposed Part II to Schedule 4.

without a reassessment by DA, since AAB only has jurisdiction over a decision of DA and TES rate determined in accordance with the TES Regulation does not involve any decision of DA. According to the Administration, there was no appeal to the AAB between 2005 and 2007 against the TES rates. During the period, an appeal was made in February 2006 regarding TES trade classification of the appellant.

#### Implementation of the new TES rates

39. The Subcommittee notes that the Amendment Regulation will come into force on 1 August 2008. Under clause 3 of the Amendment Regulation, an operator liable to pay a TES would be charged at the existing or new rate subject to the first day of the billing period. In other words, if the billing period of a particular TES account commences on or before 31 July 2008, the existing TES rate will be used or vice versa. The length of a billing period is subject to the volume of water consumption and may be on either one-month or four-month basis.

40. Hon Tommy CHEUNG considers the proposed transitional arrangement unfair to those trades (such as the restaurant trade) for which the TES rates will be reduced with effect from 1 August 2008. He has requested the Administration to set 31 July 2008 as the cut-off date for applying the existing and new TES rates. To ensure fairness in applying the existing and new TES rates to the TES accounts during the transitional period, the Subcommittee considers that as an alternative, 31 July 2008 could be used as the cut-off date for apportioning the TES on a pro-rata basis.

41. The Administration has advised that the proposed transitional arrangement applies to all trades, irrespective of whether their TES rates will be increased or reduced, and the billing of TES is processed by the Water Supplies Department. Nevertheless, after careful consideration, the Administration has taken on board members' suggestion to apportion TES on a pro-rata basis using 31 July 2008 as the cut-off date so that the existing and new generic TES rates could be applied to the first part ending 31 July 2008 and the second part after that date respectively. The Administration will move a motion to effect the proposed amendment accordingly.

#### **Proposed amendments**

42. The proposed amendment to be moved by the Subcommittee (paragraph 33) is in **Appendix V**.

43. The Subcommittee supports the amendments proposed by the Administration (paragraphs 34, 35 and 41). The draft Resolution for the proposed amendments to be moved by the Administration is in **Appendix VI**.

44. The Subcommittee has been briefed by Hon Tommy CHEUNG on his proposed amendments (paragraphs 28 and 36). Nevertheless, Hon CHEUNG has subsequently withdrawn his proposed resolution.

**Advice sought**

45. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 1  
Legislative Council Secretariat  
26 June 2008

**Subcommittee on Sewage Services (Trade Effluent Surcharge)  
(Amendment) Regulation 2008**

**Membership List**

**Chairman** Hon Audrey EU Yuet-mee, SC, JP

**Members** Dr Hon LUI Ming-wah, SBS, JP

Hon Mrs Selina CHOW LIANG Shuk-yea, GBS, JP

Hon SIN Chung-kai, SBS, JP

Hon Emily LAU Wai-hing, JP

Hon CHOY So-yuk, JP

Hon Tommy CHEUNG Yu-yan, SBS, JP

Hon WONG Ting-kwong, BBS

(Total : 8 Members)

**Clerk** Ms Debbie YAU

**Legal Adviser** Mr Kelvin LEE

**Subcommittee on Sewage Services (Trade Effluent Surcharge)  
(Amendment) Regulation 2008**

**List of organizations which have submitted views to the Subcommittee**

1. Association of Restaurant Managers
2. Chinese Cuisine Management Association
3. Factory Canteen Chamber of Commerce
4. Hong Kong and Kowloon Vermicelli & Noodle Manufacturing Industry  
Merchants' General Association
5. Hong Kong Catering Industry Association
6. Hong Kong Federation of Restaurants and Related Trades
7. Maxim's Caterers Limited
8. The Association for Hong Kong Catering Services Management Ltd

## Appendix III

### Rates of trade effluent surcharge and generic chemical oxygen demand values currently prescribed under the Sewage Services (Trade Effluent Surcharge) Regulation

	Trade, Business or Manufacture	TES rates		Generic COD values	
		HK\$ / cu m		grammes / cu m	
		Within a water control zone <sup>2</sup>	Outside a water control zone	COD <sub>total</sub>	COD <sub>settled</sub>
1	Yarn sizing	3.78	10.67	5,160	4,436
2	Washing new garments, excluding laundries	0.82	0.82	660	330
3	Bleaching and dyeing of garments	0.64	0.64	730	635
4	Bleaching & dyeing of knitted fabric	1.01	1.01	980	837
5	Bleaching & dyeing of woven fabric	1.73	1.73	1,290	1,090
6	Textile stencilling and printing	1.32	1.32	890	404
7	Knit outerwear	1.01	1.01	1,051	935
8	Wearing apparel other than knit outerwear	1.80	1.80	990	476
9	Spinning cotton	0.34	0.34	570	541
10	Laundries	0.60	0.60	725	425
11	Soap & cleaning preparations, perfumes, cosmetics	3.78	16.05	7,805	7,453
12	Medicines	3.78	4.98	2,910	2,482
13	Paints, varnishes and lacquers	1.16	1.16	1,000	619
14	Basic industrial chemicals	3.78	4.02	2,500	2,262
15	Tanneries & leather finishing	2.56	2.56	1,755	1,436
16	Pulp, paper and paperboard	4.09	4.09	1,870	947
17	Soft drinks & carbonated water industries	1.49	1.49	1,200	914
18	Breweries & manufacture of malt liquors	3.29	3.29	1,780	1,304
19	Distilling, rectifying & blending spirits	0.11	0.11	580	485
20	Cocoa, chocolate and sugar confectionery	3.78	4.26	2,500	2,214
21	Vermicelli, noodles & similar farinaceous products	3.29	5.16	2,500	1,548
22	Bakery products	3.29	5.16	2,500	1,548
23	Grain mill products	5.98	9.54	2,860	680
24	Vegetable oil, peanut oil, peppermint oil and aniseed oil	3.78	19.55	7,600	5,315
25	Canning & preserving and processing of fish & crustaceans	1.73	1.73	1,495	1,257
26	Canning & preserving fruit & vegetables	3.63	3.63	1,990	1,628
27	Dairy products	3.78	9.15	3,960	3,084
28	Slaughtering, preparing & preserving meat	3.78	9.01	3,870	2,823
29	Soy & other sauces	3.78	8.38	3,900	3,243
30	Restaurants	3.78	9.12	3,600	2,315

<sup>2</sup> For discharges in water control zones rates were calculated based on an assumed maximum COD value for effluents of 2,000 g / cu m, which would be the maximum strength of effluent most operators may be licensed to discharge into the sewerage under the licensing scheme of the Water Pollution Control Ordinance (Cap 358). At the time of promulgation of the scheme there were discharges outside water control zones and therefore not subject to the WPCO, hence the need for two sets of TES rates.

Source : Extract from the Administration's paper on "Review of the generic chemical oxygen demand and Trade Effluent Surcharge rates under the Trade Effluent Surcharge Scheme" (LC Paper No. CB(1)1046/07-08(04))

**Cost recovery rate of the Trade Effluent Surcharge scheme**

Year	<u>Trade Effluent Surcharge</u>		
	Revenue (\$M)	Apportioned expenditure* (\$M)	Recovery rate*
2007-08	222	266	83.7%
2006-07	210	253	83.1%
2005-06	209	251	83.3%
2004-05	209	253	82.7%
2003-04	173	250	69.1%
2002-03	170	254	66.8%
2001-02	227	228 <sup>#</sup>	99.3%
2000-01	240	209 <sup>#</sup>	114.6%
1999-00	235	215 <sup>#</sup>	109.4%
1998-99	241	191 <sup>#</sup>	126.4%
<p>* Capital cost and depreciation of the sewage facilities are not included in the expenditure and the calculation of the recovery rate.</p> <p># Expenditures in these years were lower than originally anticipated due to the delay in the full commissioning of the Harbour Area Treatment Scheme (HATS) Stage I. HATS Stage I, which was planned for commissioning in 1997, was commissioned fully in 2001.</p>			

Source : Extract from the Administration's paper on "Follow-up action arising from the discussions at the meeting on 19 June 2008" (LC Paper No. CB(1)1981/07-08(02))

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

**RESOLUTION**

(Under section 34(2) of the Interpretation and General Clauses  
Ordinance (Cap. 1))

Sewage Services (Trade Effluent Surcharge) (Amendment) Regulation 2008

Resolved that the Sewage Services (Trade Effluent Surcharge) (Amendment) Regulation 2008, published in the Gazette as Legal Notice 106 of 2008 and laid on the table of the Legislative Council on 14 May 2008, be amended by adding –

"3A. Variation of trade effluent surcharge rate

Section 4 is amended by adding –

"(2A) Where the Drainage Authority determines a new trade effluent surcharge rate under subsection (2), the Drainage Authority shall reimburse the expenses incurred by the consumer or agent under subsection (1) if the Drainage Authority is satisfied that such expenses are reasonably incurred.

(2B) For the purpose of subsection (2A), the Drainage Authority may require the consumer or agent to furnish proof of incurring the expenses and such other relevant information."."

INTERPRETATION AND GENERAL CLAUSES  
ORDINANCE

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**RESOLUTION**

SEWAGE SERVICES (TRADE EFFLUENT  
SURCHARGE) (AMENDMENT) REGULATION 2008

(Under section 34(2) of the Interpretation and General Clauses  
Ordinance (Cap. 1))

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RESOLVED that the Sewage Services (Trade Effluent Surcharge)  
(Amendment) Regulation 2008, published in the Gazette as Legal  
Notice No. 106 of 2008 and laid on the table of the Legislative  
Council on 14 May 2008, be amended –

(a) by repealing section 3 and substituting –

**“3. Trade effluent surcharge rates**

Section 3(1)(a) and (b) is repealed and the  
following substituted –

“(a) if the billing period for the surcharge  
begins on a date before 1 August 2008 and  
ends on a date between 1 August 2008 and  
31 July 2009 (both days inclusive), at the  
rate calculated in accordance with the  
formula specified in Part I of Schedule 5;

(b) if the billing period for the surcharge  
begins on a date between 1 August 2008

and 31 July 2009 (both days inclusive) and ends on a date before 1 August 2009, at the rate specified in column 3 of Schedule 1;

(c) if the billing period for the surcharge begins on a date between 1 August 2008 and 31 July 2009 (both days inclusive), and ends on or after 1 August 2009, at the rate calculated in accordance with the formula specified in Part II of Schedule 5; or

(d) if the billing period for the surcharge begins on or after 1 August 2009, at the rate specified in column 4 of Schedule 1,.”.”;

(b) by adding –

**“3A. Variation of trade effluent surcharge rate**

(1) Section 4(2) is amended by repealing “or II” and substituting “, II or III”.

(2) Section 4(3) is amended by repealing “2 years” where it twice appears and substituting “3 years”.

(3) Section 4(4) is amended by repealing “2 years” and substituting “3 years”.”;

(c) in section 4, by adding –

“(1A) Section 8(1) is repealed and the following substituted –

“(1) Where a new trade effluent surcharge rate –

(a) is determined under section 4(2) before 1 August 2008 during a billing period; and

(b) is applicable to the relevant consumer or agent on 1 August 2008,

the new rate shall be in effect for 3 years from the beginning of the billing period. On the expiry of those 3 years the rate provided for in section 3 shall apply subject to the consumer or agent having further tests done under section 4(1) and the Drainage Authority making another determination under section 4.”.”;

(d) in section 4(2), in the new section 8(4), by repealing “on or after 1 August 2009” and substituting “on a date between 1 August 2009 and 31 July 2010 (both days inclusive)”;

(e) in section 4(2), by adding –

“(5) Where a new trade effluent surcharge rate is determined under section 4(2) and the billing period during which the determination is made begins on or after 1 August 2010 –

(a) the reference to Schedule 2 in section 4(2) shall be read as a

reference to Schedule 2 as in force  
on 1 August 2008; and

- (b) the applicable matrix is the matrix  
in Part III of Schedule 4.”;
- (f) in section 5, in the new Schedule 1, within the square  
brackets, by adding “& Sch. 5” after “s. 3”;
- (g) in section 5, in the new Schedule 1, in the heading of  
column 3, by adding “and ending on a date before 1  
August 2009” after “inclusive”;
- (h) by repealing section 8 and substituting –

**“8. Schedule 4 substituted**

Schedule 4 is repealed and the following  
substituted –

## “SCHEDULE 4

[ss. 4 &amp; 8]

## PART I

TRADE EFFLUENT SURCHARGE RATE MATRIX FOR BILLING PERIOD BEGINNING ON A DATE  
BETWEEN 1 AUGUST 2008 AND 31 JULY 2009 (BOTH DAYS INCLUSIVE)

COD <sub>(s)</sub> (g/m <sup>3</sup> )	COD <sub>(s)</sub> (g/m <sup>3</sup> )																
	0	100	130	160	200	250	320	400	500	630	790	1000	1260	1580	2000		
2000	\$3.78															2000	
1580	\$2.82	\$2.82	\$2.82	\$2.86	\$3.06	\$3.30	\$3.63	\$4.02							1580		
1260	\$2.08	\$2.08	\$2.08	\$2.13	\$2.32	\$2.56	\$2.90	\$3.29	\$3.77	\$4.39					1260		
1000	\$1.49	\$1.49	\$1.49	\$1.54	\$1.73	\$1.97	\$2.31	\$2.69	\$3.17	\$3.80	\$4.57	\$5.58				1000	
790	\$1.01	\$1.01	\$1.01	\$1.06	\$1.25	\$1.49	\$1.83	\$2.21	\$2.69	\$3.32	\$4.09	\$5.10				790	
630	\$0.64	\$0.64	\$0.64	\$0.69	\$0.88	\$1.12	\$1.46	\$1.84	\$2.32	\$2.95	\$3.72	\$4.73	\$5.98			630	
500	\$0.34	\$0.34	\$0.34	\$0.39	\$0.58	\$0.82	\$1.16	\$1.55	\$2.03	\$2.65	\$3.42	\$4.43	\$5.68			500	
400	\$0.11	\$0.11	\$0.11	\$0.16	\$0.36	\$0.60	\$0.93	\$1.32	\$1.80	\$2.42	\$3.19	\$4.20	\$5.45	\$6.99			400
320	\$0.00	\$0.00	\$0.00	\$0.05	\$0.24	\$0.48	\$0.82	\$1.20	\$1.68	\$2.31	\$3.08	\$4.09	\$5.34	\$6.88			320
250	\$0.00	\$0.00	\$0.00	\$0.05	\$0.24	\$0.48	\$0.82	\$1.20	\$1.68	\$2.31	\$3.08	\$4.09	\$5.34	\$6.88			250
200	\$0.00	\$0.00	\$0.00	\$0.05	\$0.24	\$0.48	\$0.82	\$1.20	\$1.68	\$2.31	\$3.08	\$4.09	\$5.34	\$6.88			200
160	\$0.00	\$0.00	\$0.00	\$0.05	\$0.24	\$0.48	\$0.82	\$1.20	\$1.68	\$2.31	\$3.08	\$4.09	\$5.34	\$6.88			160

130	\$0.00	\$0.00	\$0.00	\$0.05	\$0.24	\$0.48	\$0.82	\$1.20	\$1.68	\$2.31	\$3.08	\$4.09	\$5.34	\$6.88	130	
100	\$0.00	\$0.00	\$0.00	\$0.05	\$0.24	\$0.48	\$0.82	\$1.20	\$1.68	\$2.31	\$3.08	\$4.09	\$5.34	\$6.88	100	
0	\$0.00	\$0.00	\$0.00	\$0.05	\$0.24	\$0.48	\$0.82	\$1.20	\$1.68	\$2.31	\$3.08	\$4.09	\$5.34	\$6.88	\$8.90	0
	0	100	130	160	200	250	320	400	500	630	790	1000	1260	1580	2000	
$\text{COD}_{(t-s)} \text{ (g/m}^3\text{)}$																

## PART II

TRADE EFFLUENT SURCHARGE RATE MATRIX FOR BILLING PERIOD BEGINNING ON A DATE  
BETWEEN 1 AUGUST 2009 AND 31 JULY 2010 (BOTH DAYS INCLUSIVE)

$\text{COD}_{(s)}$ (g/m <sup>3</sup> )	0	100	130	160	200	250	320	400	500	630	790	1000	1260	1580	2000		
	2000	\$4.13															2000
1580	\$3.08	\$3.08	\$3.08	\$3.12	\$3.34	\$3.60	\$3.96	\$4.39									1580
1260	\$2.27	\$2.27	\$2.27	\$2.33	\$2.53	\$2.80	\$3.17	\$3.59	\$4.12	\$4.79							1260
1000	\$1.63	\$1.63	\$1.63	\$1.68	\$1.89	\$2.15	\$2.52	\$2.94	\$3.46	\$4.15	\$4.99	\$6.09					1000
790	\$1.10	\$1.10	\$1.10	\$1.16	\$1.37	\$1.63	\$2.00	\$2.41	\$2.94	\$3.63	\$4.47	\$5.57					790
630	\$0.70	\$0.70	\$0.70	\$0.75	\$0.96	\$1.22	\$1.59	\$2.01	\$2.53	\$3.22	\$4.06	\$5.17	\$6.53				630
500	\$0.37	\$0.37	\$0.37	\$0.43	\$0.63	\$0.90	\$1.27	\$1.69	\$2.22	\$2.89	\$3.73	\$4.84	\$6.20				500

400	\$0.12	\$0.12	\$0.12	\$0.17	\$0.39	\$0.66	\$1.02	\$1.44	\$1.97	\$2.64	\$3.48	\$4.59	\$5.95	\$7.63	400	
320	\$0.00	\$0.00	\$0.00	\$0.05	\$0.26	\$0.52	\$0.90	\$1.31	\$1.83	\$2.52	\$3.36	\$4.47	\$5.83	\$7.51	320	
250	\$0.00	\$0.00	\$0.00	\$0.05	\$0.26	\$0.52	\$0.90	\$1.31	\$1.83	\$2.52	\$3.36	\$4.47	\$5.83	\$7.51	250	
200	\$0.00	\$0.00	\$0.00	\$0.05	\$0.26	\$0.52	\$0.90	\$1.31	\$1.83	\$2.52	\$3.36	\$4.47	\$5.83	\$7.51	200	
160	\$0.00	\$0.00	\$0.00	\$0.05	\$0.26	\$0.52	\$0.90	\$1.31	\$1.83	\$2.52	\$3.36	\$4.47	\$5.83	\$7.51	160	
130	\$0.00	\$0.00	\$0.00	\$0.05	\$0.26	\$0.52	\$0.90	\$1.31	\$1.83	\$2.52	\$3.36	\$4.47	\$5.83	\$7.51	130	
100	\$0.00	\$0.00	\$0.00	\$0.05	\$0.26	\$0.52	\$0.90	\$1.31	\$1.83	\$2.52	\$3.36	\$4.47	\$5.83	\$7.51	100	
0	\$0.00	\$0.00	\$0.00	\$0.05	\$0.26	\$0.52	\$0.90	\$1.31	\$1.83	\$2.52	\$3.36	\$4.47	\$5.83	\$7.51	\$9.72	0
	0	100	130	160	200	250	320	400	500	630	790	1000	1260	1580	2000	
$\text{COD}_{(t-s)} \text{ (g/m}^3\text{)}$																

## PART III

TRADE EFFLUENT SURCHARGE RATE MATRIX FOR BILLING PERIOD BEGINNING ON OR AFTER  
1 AUGUST 2010

$\text{COD}_{(s)}$ ( $\text{g/m}^3$ )	0	100	130	160	200	250	320	400	500	630	790	1000	1260	1580	2000	
2000	\$4.51															2000
1580	\$3.36	\$3.36	\$3.36	\$3.41	\$3.65	\$3.94	\$4.33	\$4.79								1580
1260	\$2.48	\$2.48	\$2.48	\$2.54	\$2.77	\$3.05	\$3.46	\$3.92	\$4.50	\$5.23						1260

1000	\$1.78	\$1.78	\$1.78	\$1.84	\$2.06	\$2.35	\$2.75	\$3.21	\$3.78	\$4.53	\$5.45	\$6.65					1000
790	\$1.20	\$1.20	\$1.20	\$1.26	\$1.49	\$1.78	\$2.18	\$2.64	\$3.21	\$3.96	\$4.88	\$6.08					790
630	\$0.76	\$0.76	\$0.76	\$0.82	\$1.05	\$1.34	\$1.74	\$2.19	\$2.77	\$3.52	\$4.44	\$5.64	\$7.13				630
500	\$0.41	\$0.41	\$0.41	\$0.47	\$0.69	\$0.98	\$1.38	\$1.85	\$2.42	\$3.16	\$4.08	\$5.28	\$6.77				500
400	\$0.13	\$0.13	\$0.13	\$0.19	\$0.43	\$0.72	\$1.11	\$1.57	\$2.15	\$2.89	\$3.80	\$5.01	\$6.50	\$8.34			400
320	\$0.00	\$0.00	\$0.00	\$0.06	\$0.29	\$0.57	\$0.98	\$1.43	\$2.00	\$2.75	\$3.67	\$4.88	\$6.37	\$8.20			320
250	\$0.00	\$0.00	\$0.00	\$0.06	\$0.29	\$0.57	\$0.98	\$1.43	\$2.00	\$2.75	\$3.67	\$4.88	\$6.37	\$8.20			250
200	\$0.00	\$0.00	\$0.00	\$0.06	\$0.29	\$0.57	\$0.98	\$1.43	\$2.00	\$2.75	\$3.67	\$4.88	\$6.37	\$8.20			200
160	\$0.00	\$0.00	\$0.00	\$0.06	\$0.29	\$0.57	\$0.98	\$1.43	\$2.00	\$2.75	\$3.67	\$4.88	\$6.37	\$8.20			160
130	\$0.00	\$0.00	\$0.00	\$0.06	\$0.29	\$0.57	\$0.98	\$1.43	\$2.00	\$2.75	\$3.67	\$4.88	\$6.37	\$8.20			130
100	\$0.00	\$0.00	\$0.00	\$0.06	\$0.29	\$0.57	\$0.98	\$1.43	\$2.00	\$2.75	\$3.67	\$4.88	\$6.37	\$8.20			100
0	\$0.00	\$0.00	\$0.00	\$0.06	\$0.29	\$0.57	\$0.98	\$1.43	\$2.00	\$2.75	\$3.67	\$4.88	\$6.37	\$8.20	\$10.61		0
	0	100	130	160	200	250	320	400	500	630	790	1000	1260	1580	2000		

COD<sub>(t-s)</sub> (g/m<sup>3</sup>);

(i) by adding –

**“9. Schedule 5 added**

The following is added –

“SCHEDULE 5 [s. 3]

PART I

RATES OF SURCHARGE IN RESPECT  
OF BILLING PERIOD BEGINNING ON A  
DATE BEFORE 1 AUGUST 2008 AND  
ENDING ON A DATE BETWEEN 1  
AUGUST 2008 AND 31 JULY 2009  
(BOTH DAYS INCLUSIVE)

$$\frac{(N1 \times R1) + (N2 \times R2)}{(N1 + N2)}$$

(a) In this formula –

N1: number of days of the relevant  
billing period before 1 August  
2008;

R1: the rate that is specified in respect of the trade, business or manufacture concerned in column 3 or 4 (as may be appropriate) of Schedule 1 as in force immediately before the commencement of the Sewage Services (Trade Effluent Surcharge) (Amendment) Regulation 2008 (L.N. 106 of 2008);

N2: number of days of the relevant billing period after 31 July 2008;

R2: the rate that is specified in respect of the trade, business or manufacture concerned in column 3 of Schedule 1.

(b) In paragraph (a), “relevant billing period” (有關的發單收費期間) means the billing period that begins on a date before 1 August 2008 and ends on a date between 1 August 2008 and 31 July 2009 (both days inclusive).

## PART II

RATES OF SURCHARGE IN RESPECT OF BILLING PERIOD BEGINNING ON A DATE BETWEEN 1 AUGUST 2008 AND 31 JULY 2009 (BOTH DAYS INCLUSIVE),

AND ENDING ON OR AFTER 1 AUGUST  
2009

$$\frac{(N1 \times R1) + (N2 \times R2)}{(N1 + N2)}$$

- (a) In this formula –
- N1: number of days of the relevant billing period before 1 August 2009;
- R1: the rate that is specified in respect of the trade, business or manufacture concerned in column 3 of Schedule 1;
- N2: number of days of the relevant billing period after 31 July 2009;
- R2: the rate that is specified in respect of the trade, business or manufacture concerned in column 4 of Schedule 1.
- (b) In paragraph (a), “relevant billing period” (有關的發單收費期間) means the billing period that begins on a date between 1 August 2008 and 31 July 2009 (both days inclusive), and ends on or after 1 August 2009.””.