

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1841/07-08  
(These minutes have been seen  
by the Administration)

Ref : CB1/SS/10/07

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

**Minutes of first meeting on  
Monday, 26 May 2008, at 8:30 am  
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)  
Hon Mrs Selina CHOW LIANG Shuk-ye, 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
- Members absent** : Dr Hon LUI Ming-wah, SBS, JP  
Hon WONG Ting-kwong, BBS
- Public Officers attending** : Agenda item II  
  
Mr Albert LAM  
Deputy Director of Environmental Protection  
Environmental Protection Department  
  
Mr CHUI Wing-wah  
Assistant Director of Drainage Services (Sewage Services)  
Drainage Services Department  
  
Ms Grace LEUNG  
Senior Government Counsel  
Department of Justice

Mr Eric K LEE  
Senior Administrative Officer (Water Policy Division)  
Environmental Protection Department

**Clerk in attendance :** Ms Debbie YAU  
Senior Council Secretary (1)1

**Staff in attendance :** Mrs Constance LI  
Assistant Secretary General 1

Mr Kelvin LEE  
Assistant Legal Adviser 1

Mr Justin TAM  
Council Secretary (1)3

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Action

**I Election of Chairman**

Mr SIN Chung-kai, the member who had the highest precedence in the Council among all members of the Subcommittee present, presided over the election of the Chairman of the Subcommittee. He invited nominations for the chairmanship of the Subcommittee.

2. Ms Audrey EU was nominated by Ms Emily LAU and the nomination was seconded by Mr SIN Chung-kai. Ms EU accepted the nomination. As there was no other nomination, Ms Audrey EU was elected Chairman of the Subcommittee. Ms EU took over the chair.

**II Meeting with the Administration**

(L.N. 106 of 2008

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

Ref: EP(CR) 9/35/16

-- Legislative Council Brief issued by the Environmental Protection Department

LC Paper No. LS 84/07-08

-- Legal Service Division Report on Subsidiary Legislation tabled in the Legislative Council on 14 May 2008

- LC Paper No. CB(1)1608/07-08(01) -- Background brief prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1608/07-08(02) -- Marked-up copy of Sewage Services (Trade Effluent Surcharge) (Amendment) Regulation 2008 (L.N. 106 of 2008))

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

Follow-up actions to be taken by the Administration

4. To facilitate members' consideration of the proposed revision to the Trade Effluent Surcharge (TES) rates, the Administration was requested to provide the following information:

- (a) of the 384 samples collected in the survey of effluents from the restaurant trade in August and September 2005, the number of samples which had a chemical oxygen demand (COD) value below the mean of 1 630 grammes per cubic metre ( $\text{g/m}^3$ ) and the number which exceeded the prescribed cap of 2 000  $\text{g/m}^3$ ., and the follow-up actions (such as the number of prosecutions) taken against the restaurant operators in the latter category;
- (b) the numbers of restaurant operators who were required to pay TES rates at \$7,000 or below, and \$7,000 to \$15,000 per year in each of the past three years;
- (c) the estimated laboratory cost for conducting the reassessment, and the original and the revised TES rates payable by successful appellants in the past three years;
- (d) examples of legislative provisions allowing the Government to refund the cost of reassessment to successful appellants; and
- (e) the number of restaurant operators who had lodged further appeals against the TES rates with the Administrative Appeals Board and the results of such appeals.

5. To address members' concern about the existing mechanism in determining the TES rates, the Administration was requested to consider classifying the restaurant trade into two groups for the purpose of redesigning the TES rates. In calculating the TES rates, consideration should be given to the size and effectiveness of the grease traps installed by operators discharging effluents with strengths, say, above 5 000  $\text{g/m}^3$ .

*(Post-meeting note: The Administration's response to concerns raised at the meeting was circulated to members vide LC Paper No. CB(1)1707/07-08(03).)*

### Meeting with deputations

6. The Subcommittee agreed to meet with deputations on 2 June 2008. Members also agreed that the organizations which had given views to the Panel on Environmental Affairs on the matter should be invited to give submissions and attend the Subcommittee meeting on 2 June 2008. Members could suggest other relevant parties to be invited to give views.

*(Post-meeting note: Invitation letters were sent to relevant organizations on 26 May 2008.)*

### Schedule of further meetings

7. Members agreed to schedule the following meetings:

- (a) Monday, 2 June 2008, at 10:45 am
- (b) Tuesday, 3 June 2008, at 10:45 am; and
- (c) Thursday, 12 June 2008, at 10:45 am.

### Extension of scrutiny period and reporting to the House Committee

8. Members agreed that the Chairman should move a motion at the Council meeting on 4 June 2008 to extend the scrutiny period of the Amendment Regulation to 2 July 2008. Members noted the following legislative timetable for the Amendment Regulation:

Date of reporting to the House Committee	Deadline for giving notice of motion to amend the Regulation	Deadline for moving amendment to the Amendment Regulation at Council meeting
20 June 2008 (Friday)	24 June 2008 (Tuesday)	2 July 2008 (Wednesday)

### **III Any other business**

9. There being no other business, the meeting ended at 9:30 am.

**Proceedings of the first meeting of  
the Subcommittee on Sewage Services (Trade Effluent Surcharge)  
(Amendment) Regulation 2008  
on Monday, 26 May 2008, at 8:30 am  
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000333 – 000505	Ms Audrey EU	Election of Chairman	
000506 – 001550	Chairman Administration Ms Emily LAU	Extension of scrutiny period and legislative timetable  Invitation of views  Dates of further meetings  Briefing by the Administration on the Sewage Services (Trade Effluent Surcharge) (Amendment) Regulation 2008 (the Amendment Regulation)	
001551 – 002028	Chairman Mr SIN Chung-kai Administration Mr Tommy CHEUNG	The dates when the Amendment Regulation was ordered to be made by the Chief Executive in Council and published in the Gazette.  Mr Tommy CHEUNG's concern and enquiry –  (a) The Administration had failed to address the concern of the restaurant trade expressed at the meeting of the Panel on Environmental Affairs (EA Panel) on 18 March 2008. Trade operators were disappointed at the small reduction of trade effluent surcharge (TES) rates proposed by the Administration as the rates could not reflect the latest situation of the trade, including the actual level of the Chemical Oxygen Demand (COD) value in the effluents discharged, and the rates should be further adjusted downward.  (b) His support for a Panel member's suggestion for the Administration to refund the cost of appeal to the successful appellants. He asked whether he could move an amendment for this purpose.  (c) The Administration's response that subsequent to the EA Panel meeting, it had provided an information paper (LC Paper No. CB(1)1046/07-08(04)) to address the concerns expressed by members and deputations.	

Time marker	Speaker	Subject(s)	Action required
002029 – 002336	Chairman Mr Tommy CHEUNG Assistant Legal Adviser (ALA)	<p>Mr Tommy CHEUNG's grave concern that despite strong calls from the restaurant trade, the Administration still refused to take on board the following views –</p> <p>(a) Given that the present mean COD value for the trade was pushed up by the high COD value in the effluents discharged by a small number of restaurants with very high pollution loads, the Administration should apply the median, rather than the mean, COD value for computing the TES rates.</p> <p>(b) Since most restaurant operators were overcharged under the TES scheme, if the cost of appeal would be refunded to the successful appellants, many of them, in particular those small operators who were reluctant to lodge appeals on grounds of cost, would apply for appeals. This would help to bring down the TES rates to more reasonable levels. He indicated intention to move an amendment requiring the Administration to refund the cost of appeals to the successful appellants.</p> <p>ALA's explanation –</p> <p>(a) If an individual operator who considered that his business was discharging effluents which was less polluting than the generic values assigned, he could, pursuant to the Sewage Services (Trade Effluent Surcharge) Regulation (the TES Regulation), seek reassessment of the TES rate. However, the individual operator had to arrange tests of the strength of his trade effluents by an approved laboratory at his own cost and submit the results to the Drainage Authority (DA) for a determination. Any amendment requiring the Administration to refund the cost of the tests to the individual operator, who successfully had its TES rate be reduced, might have a charging effect on revenue. A ruling by the President of the Legislative Council might require.</p> <p>(b) The Decision of DA under the TES Regulation fell under the jurisdiction of the Administrative Appeals Board (AAB). Trade operators could lodge appeal against the decision of DA if they were not satisfied with the outcome of the reassessment of the TES rates.</p>	

Time marker	Speaker	Subject(s)	Action required
002337 – 003144	Chairman Ms Emily LAU Administration	<p>Ms Emily LAU's advice and concerns –</p> <ul style="list-style-type: none"> <li>(a) The Business Facilitation Advisory Committee had agreed to follow up with the concern raised by the restaurant trade.</li> <li>(b) Concern about the assessment mechanism of the TES scheme given that about 84% of applications raised by the restaurant trade for reassessment of TES rates were successful.</li> <li>(c) Concern about the high cost of reassessment and her support for the Administration to refund the reassessment cost to successful applicants.</li> </ul> <p>The Administration's responses –</p> <ul style="list-style-type: none"> <li>(a) Restaurant operators whose TES rates were reduced after reassessment represented the top two percent of all operators with better pollution control practices in the trade.</li> <li>(b) The cost incurred by applicants in the reassessment was for appointment of an approved laboratory to prepare sampling proposal, collect effluent samples and analyse the effluent strengths discharged by the establishments. Operators should not confuse the cost of reassessment with the costs of installing pollution control facilities or commissioning consultant etc. In conducting the reassessment, the laboratory concerned would submit a written proposal describing the drainage layout, sampling arrangement and other details for the confirmation of the Drainage Services Department (DSD). While the laboratory would carry out the sampling and testing of the effluents, DSD might conduct surprise "re-grab" to verify whether the COD values submitted were sufficiently representative. The Government did not charge any fee in the reassessment.</li> <li>(c) According to the information provided by the trade and the laboratories, the laboratory cost was about \$3,000 to \$3,500 per sampling day. To help contain the cost, the Administration had extended the validity of a reassessed COD value from one to two years, and reduced the number of sampling days for operators with small COD discharge loads from three to two</li> </ul>	

Time marker	Speaker	Subject(s)	Action required
		days.	
003145 – 003805	Chairman Miss CHOY So-yuk Administration	<p>Miss CHOY So-yuk's concern about the great variation in the effluent strengths, (i.e. from as low as 32 grammes per cubic metre (g/m<sup>3</sup>) to as high as 77 500 g/m<sup>3</sup>), among the 384 samples taken from different restaurants. She enquired for the reasons of such variation and considered it unfair to those operators whose restaurants' pollution loads were far below the mean COD value of 1 630 g/m<sup>3</sup>, which was being pushed up because some restaurants were discharging effluents with exceptionally high pollution loads. She enquired whether the Administration had required the latter group of operators to reduce the pollution loads from effluents.</p> <p>The Administration's responses –</p> <p>(a) To avoid the distortion of the results by unusually high and low values, samples lying beyond two standard deviations from the mean were deleted and the results recalculated. The mean COD value worked out from the resultant values was 1 630 g/m<sup>3</sup>. The Administration considered this value a reasonable estimation given the existing structure of the charging scheme.</p> <p>(b) Cooking methods and effectiveness of the central grease traps in terms of design, size, detention time, degree of maintenance and frequency of cleansing accounted for the great variation in the strengths of the effluents discharged by the restaurant trade.</p>	The Administration to provide information as requested in paragraph 4(a) of the minutes.
003806 – 004340	Chairman Mr Tommy CHEUNG Administration	<p>Mr Tommy CHEUNG 's concerns –</p> <p>(a) The extension of the validity period of a reassessed COD value from one to two years might not serve any useful purpose to those restaurant operators whose lease agreement would be expiring in a year's time.</p> <p>(b) The Administration's estimated cost of assessment at around \$3,000 to \$3,500 per sampling day was much lower than the level reflected by the restaurant trade.</p> <p>(c) The crux of the problem was that the cost of reassessment was higher than the TES an applicant had to pay and thus a lot of restaurant operators were reluctant to seek reassessment on grounds of cost. He sought</p>	The Administration to provide information as requested in paragraph 4(b) and (c) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>information on the numbers of restaurant operators who were required to pay TES rates at \$7,000 or below and \$7,000 to \$15,000 per year in each of the past three years.</p>	
004341 – 004909	Chairman Mr SIN Chung-kai Administration	<p>Mr SIN Chung-kai's enquiry about examples of legislative provisions allowing the Government to refund the cost of reassessment to successful applicants.</p> <p>The Administration's advice that it was not aware of such examples in existing legislation.</p> <p>Chairman's advice that references might be drawn from the legislation relating to food safety, toy safety, and the energy efficiently labeling scheme. She further clarified that the reassessment cost in question was different from the cost of the appeal lodged against the decision of DA. Under the Administrative Appeals Board Ordinance (Cap. 442), AAB might make an award of the cost of appeal to any parties to the appeal.</p>	<p>The Administration to provide information as requested in paragraph 4(d) of the minutes.</p>
004910 – 005444	Chairman Miss CHOY So-yuk Administration	<p>Miss CHOY So-yuk's reiteration of her grave concern that it was unfair to apply the mean COD values to those restaurants discharging effluents with COD values which were far below the mean.</p> <p>The Administration's view that the mean COD value based on the average strength of the effluents was representative of the general quality of effluents discharged by the restaurant trade, and it was fair under the polluter-pays principle for the entire trade to adopt the same COD value and shoulder the cost of treating the wastewater discharged.</p> <p>Miss CHOY So-yuk's request for the Administration to explore alternative mechanism for determining the TES rates so as to ensure a fair and equitable share of the operating costs in treating the effluents among different parties according to the polluter-pays principle. Instead of using the mean COD value, the restaurant trade could be classified into two groups for the purpose of redesigning the TES rates. In calculating the TES rates, consideration should be given to the size and effectiveness of the grease traps installed by operators discharging effluents with strengths, say, above 5 000 g/m<sup>3</sup>.</p>	<p>The Administration to provide information as requested in paragraph 5 of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
005445 – 010200	Chairman Ms Emily LAU Administration	<p>Ms Emily LAU's protest against the Government's practice of introducing bills and subsidiary legislation, which were quite controversial, into LegCo just a few weeks before the end of the legislative term.</p> <p>Ms Emily LAU's request for the Administration to provide further information –</p> <p>(a) The estimated laboratory cost for conducting the reassessment, and the original and the new TES rates payable by successful applicants.</p> <p>(b) The number of effluent samples taken from the restaurant trade which had COD values exceeding the prescribed cap of 2 000 g/m<sup>3</sup>, and the follow-up actions (such as the number of prosecutions) taken against the operators concerned.</p> <p>(c) The number of restaurant operators who had lodged further appeals against the TES rates with the AAB in the past three years and the result of the appeals.</p> <p>The Administration's responses –</p> <p>(a) The Administration would conduct site visits to restaurants and advise the operators concerned on the pollution control measures that could be taken. If the strength of the effluents taken in subsequent sampling still exceeded the prescribed cap, the Administration would take action against the operators.</p> <p>(b) The Administration understood that most appeals made to the AAB were related to the classification of the trade for the operators rather than the TES rates.</p> <p>(c) The survey of effluents from the restaurant trade was carried out in August and September 2005 and from other trades in 2006 and 2007.</p>	<p>The Administration to provide information as requested in paragraphs 4(a), (c) and (e) of the minutes.</p>
010201 – 010251	Chairman	<p>The Administration was requested to provide the required information for members' consideration before the next meeting to be held on 2 June 2008.</p>	