

立法會
Legislative Council

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by the Administration)

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

**Minutes of third meeting on
Tuesday, 3 June 2008, at 10:45 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Dr Hon LUI Ming-wah, SBS, JP
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
Hon WONG Ting-kwong, BBS
- Public Officers attending** : 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 : Mr Kelvin LEE
Assistant Legal Adviser 1

Mr Justin TAM
Council Secretary (1)3

Action

I Meeting with deputations and the Administration

(LC Paper No. CB(1)1761/07-08(01) -- List of follow-up actions arising from the discussion on 2 June 2008 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)

Other relevant papers issued previously

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)

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

2. Regarding the table provided by the Administration listing the mean and median Chemical Oxygen Demand (COD) values for the 30 trades and the respective trade effluent surcharge (TES) rates payable by individual trades (LC Paper No. CB(1)1783/07-08(01)), the Administration was requested to provide by 6 June 2008 information and account for the following:

- (a) the basis/computation method in deriving the TES rates for the 30 trades based on the median COD values;
- (b) the reason(s) why a median COD value which was lower than the respective mean COD value would give rise to a higher TES rate, as in the case of "distilling, rectifying and blending spirits", "vegetable oil, peanut oil, peppermint oil and aniseed oil", and "restaurants";
- (c) the irregularities that for trades with median COD values lower than the mean values, the TES rates based on the median COD values were higher than that based on the mean COD values except for two trades (i.e. "dairy products" and "soy and other sauces"); and
- (d) the reason(s) for the average COD values for three trades (i.e. "spinning cotton", "paints, varnishes and lacquers" and "pulp, paper and paperboard") to be stated as "not applicable", and how the median COD values and the TES rates for respective COD values for each of the three trades had been worked out.

Date and purpose of next meeting

3. Members agreed to deal with the following matters at the next meeting to be held on 12 June 2008:

- (a) proceed to clause-by-clause examination of the Amendment Regulation;
- (b) consider the wordings of the proposed amendments to be prepared by Assistant Legal Adviser for the Administration to refund the reassessment cost to successful applicants, and to extend the validity of a reassessed COD value/TES rate from two years to three years; and
- (c) consider the Administration's response to concerns raised by the Subcommittee at the meetings on 2 and 3 June 2008.

II Any other business

4. There being no other business, the meeting ended at 12:45 pm.

**Proceedings of the third meeting of
the Subcommittee on Sewage Services (Trade Effluent Surcharge)
(Amendment) Regulation 2008
on Tuesday, 3 June 2008, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000301 – 000443	Chairman	Welcoming remarks by the Chairman	
000444 – 000811	Chairman Administration	Briefing by the Administration on the table listing the mean and median Chemical Oxygen Demand (COD) values and the respective TES rates for the 30 trades (LC Paper No. CB(1)1738/07-08(01)).	
000812 – 001633	Chairman Miss CHOY So-yuk Administration	<p>Miss CHOY So-yuk's view that the median COD value of 964 grammes per cubic metres (g/m^3) could reflect more closely the actual strength of effluents discharged by the restaurant trade. However, the corresponding unit treatment cost (i.e. Trade Effluent Surcharge (TES) rate) was increased from \$3.05 per cubic metre of water consumed to \$3.69, which, in her opinion, was incorrect.</p> <p>The Administration's explanation –</p> <p>(a) The policy goal of the TES scheme was to achieve full recovery of the attributable operating costs. That was why even if the median COD values for most trades were lower than the respective mean COD values, they had given rise to a higher TES rates. As such, the restaurant trade might not benefit from using the median COD values for computing the TES rates.</p> <p>(b) As the existing structure of the charging scheme relied on the average pollution loads of all TES trades for apportioning the relevant cost among the TES trades and the median COD value was not an appropriate indicator of the effluent strength, it was more appropriate to use the mean COD value to calculate the TES rate.</p>	
001634 – 002347	Chairman Mr Tommy CHEUNG Administration	<p>Mr Tommy CHEUNG's grave concern about the Administration's way in calculating the TES rates based on the median COD values and his enquiry about the TES rate if the mean COD value was 964 g/m^3.</p> <p>The Administration's response that in calculating the TES rates based on the mean COD values, reference needed to be made to the charging matrix which took into account the COD_{settled} and COD_{total-settled} values.</p>	

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002348 – 002652	Chairman Dr LUI Ming-wah Administration	<p>Dr LUI Ming-wah's concern that products within certain categories of trade, business or manufacture such as "soap and cleaning preparations, perfumes, cosmetics", "distilling, rectifying and blending spirits" and "dairy products" might discharge effluents with different strengths, it was not appropriate to classify these products under the same category.</p> <p>The Administration's advice that the composition of 30 TES trades was provided in the Sewage Services (Trade Effluent Surcharge) Regulation (the TES Regulation).</p>	
002653 – 003404	Chairman Mr WONG Ting-kwong Administration	<p>Mr WONG Ting-kwong's query why the mean COD values for "spinning cotton", "paints, varnishes and lacquers" and "pulp, paper and paperboard" were stated as "not applicable" and in this case, the trade operators concerned should not be required to pay any TES.</p> <p>The Administration's explanation that it was not able to collect samples which were representative of the aforesaid three trades because the surveyed operators were found to be not operating the typical production process. As such, it was proposed to use the existing generic mean COD values as the median values for the trades.</p>	
003405 – 003546	Chairman Mr SIN Chung-kai	<p>Mr SIN Chung-kai's concern –</p> <p>(a) Restructuring the TES scheme by using the median COD values would involve very complicated matters and require comprehensive study.</p> <p>(b) Concern why the Administration could not introduce the Amendment Regulation earlier.</p>	
003547 – 004055	Chairman Ms Emily LAU Administration	<p>Ms Emily LAU's views/suggestion –</p> <p>(a) The median COD value worked out for the restaurant trade, i.e. 964 g/m³, was closer to the trade's proposed mean COD value of 867 g/m³.</p> <p>(b) To avoid other trades being unduly affected, the Administration should only revise the mean COD value for the restaurant trade for the purpose of calculating the TES rate. She enquired whether such an amendment would have a charging effect on the revenue.</p> <p>The Administration's advice that 867 g/m³ was the mean COD value for reassessment cases conducted for the restaurant trade between March 2007 and</p>	

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		February 2008. These figures represented the top two percent of all operators with better pollution control practices in the trade and thus could not be used to represent the entire trade. As any change to the COD value would affect the TES rates and bring about a charging effect on government revenue, the proposed amendment would require justification.	
004056 – 004741	Chairman Miss CHOY So-yuk Administration	Miss CHOY So-yuk's reiteration that the Administration's way of computing TES rates based on median COD values was incorrect and unfair. The Administration's response that the existing structure of the charging scheme relied on the average pollution loads of all TES trades for apportioning the relevant cost among them.	The Administration to provide information as requested in paragraph 2(c) of the minutes.
004742 – 005331	Chairman Mr Tommy CHEUNG Administration	Mr Tommy CHEUNG's concerns – (a) The assessment mechanism of the TES scheme was unfair as the existing COD value/TES rate for the restaurant trade had been worked out in 1995 based on 22 samples taken from some 10 000 establishments at that time. (b) A COD value of 964 g/m ³ could reflect more closely the average effluent strength of the restaurant trade and should be taken as the mean COD value for the trade. (c) His view that most restaurants were overcharged for TES and the Administration should refund the cost of reassessment to the successful applicants. The Administration's response that the TES scheme provided financial incentives for TES trades to improve the quality of effluents they discharged so that they could have their TES reduced through reassessment.	
005332 – 010551	Chairman Mr WONG Ting-kwong Administration	Discussion on the reason(s) why the mean COD values for "spinning cotton", "paints, varnishes and lacquers" and "pulp, paper and paperboard" were stated as "not applicable".	The Administration to provide information as requested in paragraph 2(d) of the minutes
010552 – 012125	Chairman Miss CHOY So-yuk Administration Assistant Legal Adviser (ALA)	Miss CHOY So-yuk's query and request – (a) Query on the basis in deriving the TES rates for the 30 trades based on median COD values, as a lower COD value should give rise to a lower unit cost of treatment. Nevertheless, the COD value for the restaurant trade should be lowered.	The Administration to provide information as requested in paragraph 2(a) and 2(b) of the minutes

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		<p>(b) Request for the Administration to work with the restaurant trade to devise a scientific and fair mechanism for computing TES rates and revert to the Panel on Environmental Affairs in six months' time. Meanwhile, the Administration should refund the reassessment cost to successful applicants.</p> <p>(c) The Administration should further extend the validity of a reassessed COD value/TES rate from two to three years. Concern whether such an amendment would have a charging effect.</p> <p>The Administration's response –</p> <p>(a) The existing assessment mechanism had been acknowledged by consultants twice in 1994 and 1996. Restructuring the TES charging scheme might take longer than six months.</p> <p>(b) As there was no legislative provisions requiring the Government to refund to a successful applicant the cost incurred by the applicant pertinent to conducting a reassessment of certain fees and charges, it was thus not appropriate for the Administration to do so in this case.</p> <p>(c) The Administration was discussing with the trades on measures to streamline the reassessment procedures, including extending the validity period of a reassessed COD value/TES rate from two years to three years, bearing in mind the need to ensure that the quality of effluents discharged throughout the three-year period would be maintained at the same level.</p> <p>ALA's advice that whether the proposed amendment would have a charging effect would be subject to the ruling of the President of the Legislative Council, who would take into account the Administration's comment on the possible impact of the amendment on government revenue.</p>	
012126 – 012704	Chairman Mr Tommy CHEUNG Administration	<p>Mr Tommy CHEUNG's request for information on the number of applications for reassessment of TES rates received from the restaurant trade since the reduction in the sampling period from three days to two days took effect.</p> <p>The Administration's advice that according to its preliminary information, the number of all</p>	

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		<p>reassessment applications from July 2007 to January 2008 was 105, among them 29 cases required only two days of sampling. Its further explanation that after extension of the validity of a reassessed COD value/TES rate became operational on 1 July 2007, the Drainage Services Department had automatically extended by one year all cases of which the reassessed COD value was still valid on that date.</p>	
012705 – 013615	Mr Tommy CHEUNG Administration ALA	<p>Mr Tommy CHEUNG's concern and enquiry –</p> <p>(a) Concern that the additional 105 new reassessment cases for the seven months between July 2007 and January 2008 would project into 180 new reassessment cases per year, showing that more operators would apply for reassessment under the new measure.</p> <p>(b) Enquiry whether restaurant operators could lodge appeals against the TES rates directly with the Administrative Appeals Board (AAB) under the AAB Ordinance (Cap. 442), as under section 21(1)(k) of AAB Ordinance, AAB might make an award to any parties to the appeal the costs of and relating to the appeal.</p> <p>ALA's advice –</p> <p>(a) An operator whose application for reassessment of TES rate was unsuccessful could lodge appeal with AAB against the decision of the Drainage Authority (DA) and if the appeal was successful, AAB might make an award to the operator the costs relating to the appeal. However, whether the costs would include the reassessment cost would be subject to the discretion of AAB.</p> <p>(b) It might not be feasible for an operator to lodge appeal against TES rate directly with AAB since this was not part of AAB's jurisdiction as set out in the Schedule to the AAB Ordinance.</p>	
013616 – 014136	Chairman Mrs Selina CHOW Administration	<p>Mrs Selina CHOW's grave concern about the implementation of the TES charging scheme as it was obvious that there were many flaws in the scheme in respect of the assessment mechanism and reassessment procedures. The Administration should be more objective and take the opportunity to rectify the existing problems in the system and address the concerns expressed by the restaurant trade since it had borne about 90% of all TES.</p> <p>The Administration's response that it had followed the long established practices and adopted scientific</p>	

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		<p>methodology in the assessment of TES payable by individual trades. The restaurant trade was so far the only trade which had expressed concerns about the assessment of TES rate. They had suggested to using the mean COD value of successful reassessment cases for the trade. However, it should be noted that the figure only represented the performance of those establishments with the best pollution control practices and were bound to describe effluents which were better than average quality. Nevertheless, the Administration would continue to discuss with the restaurant trade on measures to streamline the reassessment procedures.</p>	
<p>014137 – 014726</p>	<p>Chairman Miss CHOY So-yuk Administration</p>	<p>Miss CHOY So-yuk's view that she could not agree with the Administration that the current assessment mechanism for TES was scientific and sound. The Administration should not refuse to consider the views of the restaurant trade simply because it had not put up an effective counter-proposal. She believed that the restaurant trade would accept to adopt the median COD value of 964 g/m³ as the mean COD value for the purpose of calculating the TES rate.</p> <p>The Administration's clarification that it had maintained dialogue with the restaurant trade with a view to improving the reassessment procedures and reducing the compliance cost.</p>	
<p>014727 – 015926</p>	<p>Chairman Ms Emily LAU Mr Tommy CHEUNG ALA Miss CHOY So-yuk</p>	<p>The Subcommittee agreed to deal with the following matters at the next meeting to be held on 12 June 2008:</p> <ul style="list-style-type: none"> (a) proceed to clause-by-clause examination of the Amendment Regulation; (b) consider the wordings of the proposed amendments to be prepared by ALA for the Administration to refund the reassessment cost to successful applicants, and to extend the validity of a reassessed COD value/TES rate from two years to three years. ALA's advice that it was necessary to amend section 4 of the TES Regulation; and (c) consider the Administration's response to concerns raised by the Subcommittee at the meetings on 2 and 3 June 2008. The Administration was requested to provide its written response by 6 June 2008. <p>Ms Emily LAU's request for the Administration to re-consider the views and concerns expressed by members and the restaurant trade.</p>	

Council Business Division 1
Legislative Council Secretariat
14 July 2008