

# FRED KAN & CO.

Solicitors & Notaries

## URBAN PLANNING AND ENVIRONMENTAL LAW

# QUARTERLY

(Published since May 1992)

### 簡家驄律師行 . 城規環保簡訊

*The Quarterly has regularly raised the problem of the lack of effective enforcement of laws designed to protect the environment. Probably the single greatest weakness of the world's collective system of environmental protection legislation is inadequate enforcement by government agencies. In this edition we consider another example of this, in reviewing key points made in a recent World Bank study of enforcement of environmental laws in Zhenjiang, China.*

#### The Editors

## CONTENTS

	Page
<b>FEATURE: KEY FACTORS AFFECTING ENFORCEMENT OF ENVIRONMENTAL LAWS IN CHINA .....</b>	<b>1</b>
<b>LEGISLATION DIGEST .....</b>	<b>3</b>
<b>HONG KONG BRIEFING .....</b>	<b>4</b>
<b>HONGKONG DISNEYLAND UPDATE .....</b>	<b>5</b>
<b>ADVISORY COUNCIL ON THE ENVIRONMENT (ACE) .....</b>	<b>7</b>
<b>TOWN PLANNING .....</b>	<b>7</b>
<b>REGIONAL &amp; INTERNATIONAL .....</b>	<b>9</b>
<b>PROSECUTION STATISTICS ..</b>	<b>12</b>

### KEY FACTORS AFFECTING ENFORCEMENT OF ENVIRONMENTAL LAWS IN CHINA

In the early 1970s the USA began legislating to provide what ultimately has become a comprehensive and sophisticated regime of laws designed to protect their natural environment. In world terms, environmental protection legislation can probably be traced to enactment of the USA's *National Environmental Policy Act* (42 U.S.C.A. ss.4321 et seq.) by federal Congress in 1970. Since then, most nations have embraced the concept that publicly administered protection laws are required for there to be any chance of conserving the natural environment. Hong Kong and China have been among these, albeit later in time than western countries.

As a broad generalisation, it is fair to say that in terms of achieving a realistic and meaningful level of protection of the environment, lack of appropriate legislation is not the problem in most countries. What has always been and remains the greatest problem is the absence of resolute and effective implementation of the legislation. There are many different factors

influencing the way in which agencies - in whatever country - approach their task of enforcing environmental protection laws. Whatever they may be, the end result almost invariably is that the laws in question are not, in the objective sense, enforced vigorously and effectively.

Why this is so has been the topic of many studies in developed countries, but remains somewhat obscure in the case of developing countries (other than in the context of research dealing with the debilitating effects of corruption in such countries, eg. Indonesia, Thailand, Cambodia etc). This fact adds to the importance of a study published in August 2001 by the World Bank: *Incomplete Enforcement of Pollution Regulation: Bargaining Power of Chinese Factories* (Hua Wang *et al*).

The report and the study on which it was based examine the determinants of monitoring and enforcing environmental regulations in Zhenjiang, an industrial city of approximately 3 million people in Jiangsu Province, China. Authors restricted their research to the enforcement of China's national

pollution levy system by the Zhenjiang Environmental Protection Bureau (ZEPB), which is the agency authorised by Beijing to enforce all national environmental regulations and standards in Zhenjiang. What follows is a brief summary (with some comments) of the key findings of the researchers as set out in their report.

**China's Pollution Levy System**

In 1982 China's State Council implemented a national system of "pollution levies". The system requires polluters to pay, in effect, fines for illegally discharging banned substances into the land, air and water. Illegality of discharges is measured against regulatory standards. Should a polluter be assessed as discharging illegally, he/it is liable to pay a levy to the government. Where a number of different pollutants are discharged, the levy is paid in respect of only the pollutant which violates applicable standards by the greatest degree.

These levies are used by the government to finance aspects of environmental protection, such as subsidising the installation of pollution control facilities in factories.

China's levy system equates with other countries' licensing regimes, whereby polluters are in fact permitted, by licence, to continue to discharge pollutants notwithstanding the objective of the relevant law is to prevent the discharge of such pollutants. This inherent weakness is common to many countries' anti-pollution legislation, including Hong Kong's.

So the levy system does not by itself necessarily prevent or reduce polluting discharges. What it is aimed at doing is making the polluters pay and then applying the proceeds to government-sponsored environmental improvements.

An interesting and logical feature of the pollution levy system is that subsidies are offered to polluters who voluntarily install mitigation or prevention measures. The subsidy is paid by way of significantly refunding levies paid by the factory or business in question, with a maximum of 80% of the levy being returned to the polluter.

**Enforcement of National Standards**

Enforcement of environmental laws is delegated to local government authorities. However, these local enforcement agencies have limited resources and power fully to enforce the national environmental standards and policies, according to the authors of the report. [The authors do not explain exactly what the limitations are]. This means that polluters often avoid having to pay levies, even though they have been detected breaching environmental regulations.

Therefore, a culture of bargained penalties has evolved, in which the enforcement agency bargains with polluters to agree the level of levies to be imposed. Unfortunately, the report gives no detail of the range of levies that could be imposed, and therefore we cannot compare the penalties-paid performance of China's agencies with, say, penalties imposed by courts in Hong Kong. The authors do note, however, that in 1996 (by which time the levy system had been implemented in almost all counties and cities in China), 4 billion yuan was paid by approximately 500,000 companies as levies for environmental offences. The yearly levy collection figure has been rising each year since then.

**ZEPB's enforcement methods**

ZEPB is "at the apex of decision-making and interagency

***“The degree to which national pollution standards, such as the national pollution levy system, are enforced in China is a function of local government agencies”.***

coordination on environmental policies in Zhenjiang”. Essentially, environmental regulatory standards are enforced by three main mechanisms: monitoring by inspection, site or cause-specific inspections, and the levying (and collection of) pollution levies and non-compliance fees. The report describes the first two enforcement procedures as follows:-

*The monitoring and inspection of industrial facilities in Zhenjiang (and in all other EPBs in China) follow a precise procedure. Apart from regular inspection activities, complaints made by citizens*

*regarding environmental incidents may give rise to field inspections. If the polluter is found at fault, various administrative penalties or warnings may then be imposed. These may also include the need for the polluter to install treatment facilities. In extreme cases, the plant may be ordered to cease and relocate its operations.*

Empirical research for preparation of the report involved correlating ZEPB's enforcement activities in respect to 640 enterprises in 1997. There were 5,287 inspections of these enterprises and investigation of 78 complaints concerning water quality and 163 complaints related to air quality.

The report states :

*The degree to which national pollution standards, such as the national pollution levy system, are enforced in China is a function of local government agencies*

The authors point out that this is a significant defect of China's pollution prevention management scheme, because the local agency may want to adjust the national policy to reflect local socio-economic and environmental conditions. Thus, endogenous variables determine the level of effectiveness of enforcement.

***Influential factors determining ZEPB's enforcement of national pollution standards***

Empirical research revealed the following factors as significant considerations for ZEPB's enforcement procedures, particularly in negotiating appropriate pollution levies:

- Privately-owned enterprises were found to have less bargaining power than state enterprises, collectives and joint ventures on the question of the amount of the pollution levy (which was a surprising result for the authors).
- Enterprises which have made genuine efforts to abate their polluting activities enjoyed lower levy payments, indicating that the more a company spends on pollution abatement (which the authors noted could be an indication of goodwill as much as an indication of a greater awareness of environmental and pollution problems) the more likely it would be to have levies reduced or waived. The authors quantified these factors as: a 1% increase in pollution control resulted in approximately a 0.01% decrease in the levy payment ratio.
- A company which had experienced publicised environmental accidents, conflicts with local residents on environmental issues or had been the subject of a citizens' complaint would be more likely to pay higher pollution levies.
- Poor performance in reducing polluting discharges would increase subsequent levies. A 1% increase in discharge of chemical oxygen demand (measured against the regulatory standards) gave rise to an average 0.04% increase in the levy payment ratio.
- A high number of inspections of a business (one company was inspected 61 times in 1997) would increase levies imposed.
- The more serious the impact of a company's pollution emissions on local society, the less was the company's bargaining power with

ZEPB in reaching an agreement on the pollution levy to be paid.

- More profitable companies usually paid higher levies, although profitability was not a significant factor.
- A track record of using previous refunds of levies to install pollution control facilities usually ensured a company would again be granted levy refunds in the following year.
- The more workers employed by a company the greater is its bargaining power with ZEPB.

***Conclusion***

We have only briefly summarized this interesting and important World Bank report. Regrettably, the report does not engender confidence that China's anti-pollution regulations will be more vigorously enforced in the future. The authors of the report criticise China's system of local government enforcement of nationally prescribed pollution standards for being both endogenous and incomplete. They note in concluding that "with a stronger bargaining power in the hands of the industrial sector, we expect the degree of enforcement [in the future] to be lower". This can only mean a further deterioration of the quality of the region's environment.

**LEGISLATION DIGEST**

**AIR POLLUTION CONTROL (MOTOR VEHICLE FUEL) (AMENDMENT) REGULATION 2002**

**(Made under section 43 of the Air Pollution Control Ordinance (Cap.311) after consultation with the Advisory Council on the Environment)**

**(L.N.15 of 2002/L.S. No.2 to Gazette No.5 of 2002)**

[This Regulation came into operation on 1 April 2002.]

Sections 7 and 43 of the Air Pollution Control Ordinance (Cap.311) empower the Secretary for the Environment and Food ("Secretary") to establish quality objectives and allow the Secretary to make regulations FOR air pollution control. By virtue of these sections, the Air Pollution Control (Motor Vehicle Fuel) Regulation (Cap.311 sub. leg. L) ("Regulation") was made. The above Regulation amends Schedule 1 to the Regulation in order to provide more stringent standards of specifications to be complied with by motor vehicle diesel:-

***Specifications of Motor Vehicle Diesel***

Any motor vehicle diesel shall –

- (a) contain not more than 0.005% by weight of sulphur as determined by ISO 14596;
- (b) have a cetane number of not lower than 51.0 as determined by ISO 5165;
- (c) have a viscosity at 40 °C of not lower than 2.00mm<sup>2</sup>/s and not higher than 4.50mm<sup>2</sup>/s as determined by ISO 3104;
- (d) contain not more than 11% by mass of polycyclic aromatic hydrocarbons as determined by IP 391;
- (e) have a 95% distillation temperature of not higher than 345 °C as determined by ISO 3405;
- (f) have a distillation percentage recovered at 250 °C of not higher than 65% by volume as determined by ISO 3405; and
- (g) have a density at 15 °C of not higher than 0.835kg/L as determined by ISO 3675.

**Note:-**

"IP" followed by a numerical symbol ("IP number") means the test procedures of the Institute of Petroleum commonly known by that IP number;

"ISO" followed by a numerical symbol ("ISO number") means the test

procedures of the International Organization for Standardization commonly known by that ISO number;

“viscosity” means the viscosity of diesel as determined by ISO 3104.

## HONG KONG BRIEFING

### *Green go-ahead for KCRC spur line*

The controversial Lok Ma Chau spur line overcame its final hurdle on 11 March 2002 after the government approved an environmental impact assessment report based on a KCRC redesign. The plan involves building parts of the 7.3km line underground and other remedial measures to minimise disruption to Long Valley, a bird haven and wetland just outside the Mai Po Nature Reserve.

The Kowloon-Canton Railway Corporation welcomed the decision by Rob Law, the Director of Environmental Protection. The KCRC is expected to present the project to the Executive Council for approval in June and construction could start before the end of this year.

But some green groups warned areas surrounding Mai Po could still be compromised. Hong Kong Bird-watching Society spokeswoman, Carrie Ma Ka-wai, said that the rail project is now a virtual certainty and she said it will set a bad precedent for future infrastructure by allowing construction in wetlands directly bordering Mai Po protection areas.

Approval for the \$10 billion rail link, which will run between Sheung Shui and the Lok Ma Chau border crossing, comes with tough pre-conditions.

According to the spokesman for the Environmental Protection Department, the project proponent, the KCRC, has to implement fully all the recommendations of the Environmental Impact Assessment report. The project will be subject to a stringent environmental monitoring and audit programme.

Under these conditions, KCRC must set up an environmental committee with

members drawn from a cross-section of interests and subject to the Advisory Council's approval. The committee will monitor the effectiveness of environmental protection measures and submit regular reports to the Council. If natural habitats at Long Valley and near Mai Po are adversely affected, the KCRC will be held responsible for any extra corrective measures and their cost. The KCRC has said it would comply with all the conditions.

Dr Ng Cho-nam, director of the Conservancy Association, said the KCRC could get away with undermining nine hectares of wetlands off Mai Po, because as a railway project, it was not subject to wetland restrictions for private development projects. Friends of the Earth said the Government's decision was unacceptable and warned that environmental problems could result.

Friends of the Earth's research co-ordinator, Alex Chung Po-lun said protection measures always sound great but the difficulty is in their effective implementation and whether they are subject to comprehensive and meaningful monitoring.

The government rejected plans in October 2000 to build the spur line entirely on a viaduct amid fears it would damage Long Valley as a habitat for rare bird species. The KCRC put forward its plan for a tunnel after it lost an appeal against that decision last year.

[SCMP, 12 March 2002]

### *Smog link to cancer casts pall over SAR*

Hong Kong could have trouble luring top overseas talent to the SAR following an American study that has established a link between lung cancer and long-term exposure to polluted air. In another blow to Hong Kong's popularity, the SAR was ranked a dismal 69th in a recent survey of quality of life in the world's leading cities, partly as a result of its serious smog problem.

The recently released American air pollution study, involving major United States cities, substantiates evidence reported in a similar report conducted in

Hong Kong last year. Some business officials say the results could make it difficult to attract senior executives who fear for their health living under a canopy of toxic smog.

Researchers involved in the US-based study found that exposure to fine particles from power plants and diesel vehicles greatly increases a person's risk of contracting lung cancer and other life-threatening illnesses.

Published in the *Journal of American Medication Association*, the study concluded that people living in heavily polluted metropolitan areas were 16 per cent more at risk of dying of lung cancer than people in less polluted areas.

The results were culled over a 16-year period from air pollution data and personal health records of 500,000 Americans living in 100 cities. According to the study, exposure to tiny particles of industrial emissions and sulphate pollutants is comparable to inhaling second-hand cigarette smoke.

Professor Anthony Hedley, of Hong Kong University, said the findings were similar to those reported in a study last year which “demonstrated there was a significant risk of dying due to the high pollution level in Hong Kong on a daily basis”. He said Hong Kong's annual average level of particulates, which is about 50 micrograms, is twice the level of London's, and significantly higher than a lot of international cities. There is nothing the public can do except perhaps avoid Causeway Bay or Mong Kok on heavy pollution days, he said.

Hong Kong was ranked among the top quarter of the world's worst cities for air pollution last year, which influenced its poor quality of life results in the survey prepared by consultancy William Mercer. Vancouver, on the other hand, which topped the list last year as having the best air, was also named the world's best city in which to live. It dropped to a second-place tie with Vienna in this year's survey.

Although there is no conclusive evidence that the thick pollution smothering the SAR is chasing foreign executives away, anecdotal evidence suggests this is so.

Before the British were preparing to hand the territory back to China in 1997, pollutants were exceptionally high, prompting business leaders to lobby the government for cleaner air. Barrie Cook, convenor of the Coalition on the Environment, said in 1999 that people would find Hong Kong less attractive to come here, not only for their own health but that of their children. Internal surveys at the British and American chambers of commerce backed up this belief, he said. The chambers believed that Hong Kong, which was going to pursue high technology, would have trouble attracting people who came from the Silicon Valley "if its pollution remained pretty horrible."

Although Hong Kong's air pollution has appeared to be improving, January 1, 2002, was the worst day on record since the mid-90s. Mr. Cook said although the government was moving towards a rail-based transport system and was taking steps in the right direction, it still had a lot of work to do, especially with cross-border traffic such as heavy goods vehicles, which continue to run on diesel.

But Professor Hedley believes that Hong Kong could not blame the mainland for all its pollution and that we are ourselves also creating a lot of pollution which affects China.

*[Hong Kong iMail, 14 March 2002]*

### ***Environmental Protection Department launched a Cyber Help Bench***

The Environmental Protection Department (EPD) launched a Cyber Help Bench (CHB) at <http://www.info.gov.hk/epd/eia/hb> to provide the general public with a comprehensive one-stop source of information on the procedures taken out in the Environmental Impact Assessment (EIA) process as well as information on the Environmental Impact Assessment Ordinance (EIAO).

The CHB contains more than a dozen sets of guidance notes and assessment guidelines on EIA. It also provides links to more than 100 project profiles and 47 approved EIA reports. The public can access various environmental monitoring

and audit (EM&A) data through the CHB and project proponents can use it as a channel to demonstrate their efforts to mitigate environmental pollution.

One of the main features offered by the CHB is the eight sets of guidance notes on areas such as basic EIA principles, mitigation measures, ecological assessment, ecological baseline survey, and landscape & visual assessment. These guidance notes are jointly formulated by various EIAO user groups from government departments, bureaux, contractors and utility companies.

In addition, assessment guidelines are also available at the CHB to provide professional in-depth information for conducting EM&A and EIA studies in areas such as the design of noise barriers, air quality assessment, sites of cultural heritage, and contaminated land assessment and remediation.

Other than those guidance notes, the CHB also contains effective measures on how to carry out recommendations made in the EIAs. By putting all the guidelines and notes on the web, it is believed that they will serve as useful practice notes for contractors and consultants of the related fields.

The CHB is actually a step to implement what was laid down in the Continuous Improvement Strategy during the Review of the Operation of the EIAO in 1999. The EPD hopes this service can enhance the transparency and user-friendliness of the EIA process as well as providing the most up-to-date EM&A data of major projects.

*[Press release of the Environmental Protection Department, 24 January 2002]*

### ***Measures to control noise pollution***

A survey will be carried out on people's attitudes towards noise pollution to help officials design ways to control the problem. The study will require thousands of households to answer a set of questions so as to assess the health impact of noise on them. It will mainly be conducted in areas which are particularly prone to traffic noise as well as some outlying islands.

Principal environmental protection officer, Chan Kam-sang, said the survey would focus on how people respond to the present background noise levels and the health impact of noise pollution, such as how it affects sleep and stress levels. But the survey would probably not go so far as to review the 15-year-old noise standards. Mr. Chan said that while they would keep looking at the standards constantly, the present standards were still applicable.

It is estimated that about one million people across the territory are affected by traffic noise levels over the acceptable health limit of 70 decibels. Last year, the Environmental Protection Department received 348 complaints of excessive traffic noise, almost double the number in 1997.

Other than the survey, which will be carried out later this year, the Government is also in the process of spending more than \$2.3 billion to build noise-reduction barriers on 30 stretches of road in a 10-year programme. It is hoped that the barriers will reduce the noise level by up to 20 decibels. There is also a project to resurface 72 sections of roads to cut excessive noise, which will cost an additional \$76 million.

Professor Wong Tze-wai, of the Chinese University's Department of Community and Family Medicine, also expressed concern about the possible impact of noise pollution. Mr. Wong said it might trigger stress and affect mental health, adding Hong Kong's noise level was quite serious and the problem was getting worse because of rising pollution and traffic flow. He was therefore of the opinion that the noise standards should be tightened.

*[SCMP, 4 March 2002]*

## **HONG KONG DISNEYLAND UPDATE**

Recently both the budget for and progress of construction of the Disney theme park seem to be facing hurdles. Contractors have now discovered 30,000 cubic meters of soil contaminated with

cancer-causing dioxin in the southern area of the 19-hectare Cheoy Lee Shipyard, which is to be decommissioned and demolished to allow Disneyland to be constructed.

The dioxin contamination of the shipyard area was discovered in a recent Environmental Impact Assessment (EIA) report. Dioxin is a cancer-causing chemical produced by burning plastic or polyvinyl-chloride (PVC) materials. Once dioxin gets into the food chain it can be catastrophic for human beings.

Some legislators query whether the site's 87,000 cubic metres of contaminated soil, including the 30,000 cubic meters contaminated with dioxin, could be left in situ without posing harm to the public as the toxic soil is so deeply buried. However, according to Matthew Ko, an environmental consultant advising the Government, the risk-assessment is that 270 out of 10,000 people would develop cancer if they had direct contact with the contaminated soil for 30 years. Therefore, it would be irresponsible for the polluted site to be used for any part of Disneyland without first taking all necessary steps to remove the dioxin.

Experts were called to attend a meeting of Legco's Environmental Affairs Panel on 19 March 2002 to discuss clean-up plans for the affected part of the site. It was proposed that the soil would be excavated and then transported to To Kau Wan in northern Lantau, where a temporary decontamination plant would be in operation by the end of 2002. The soil would go through a thermal desorption process – a form of heat treatment to concentrate the pollutants – at the decontamination plant, before being transferred to the Chemical Waste Treatment Centre in Tsing Yi for incineration.

It is anticipated that the demolition and excavation of the shipyard will begin in July 2002. The whole project could take about a year to complete but would not delay the opening of the theme park.

There are still various voices doubting the decontamination methods planned to be used. Greenpeace is concerned that incineration will release more pollutants

into the air. Some legislators also question the safety of transporting the toxic waste between the shipyard and the treatment plants. Other experts query whether there are better alternative methods available.

Other than the queries on the safety and effectiveness of the plan itself, the budget is also an issue. It is anticipated that the bill for cleaning up the disused shipyard to make way for the Disneyland theme park will rise from HK\$30 million to HK\$450 million. Such an unexpected jump in the bill is likely to concern most taxpayers. Various legislators complained that they were being misled when the government told them that the budget would only be HK\$30 million. Government officials are also being criticised for failing accurately to estimate the clean-up cost. Friends of the Earth has considered lodging a complaint that officials have failed to disclose the potential risk and costs of Disneyland related projects before they were endorsed. Furthermore, the Ombudsman may be asked to renew an inquiry into whether officials misled the public, after clean-up costs for the shipyard turned out to be more than 11 times greater than projected.

On the other hand, the government is now seeking legal advice on recovering compensation from Cheoy Lee, which was paid HK \$1.5 billion last April for returning the site to the government.

[SCMP, 22/02/2002, SCMP, 23/02/2002  
SCMP, 20/03/2002, SCMP, 21-03-2002]

### ***Magnetic Train Line Proposed***

An express magnetic-levitation train line running between Guangzhou and the Disney theme park on Lantau was proposed on 14<sup>th</sup> March 2002.

The idea would be put to Chief Executive Tung Chee-hwa to help strengthen links between the two cities. It would be ideal to have the terminus at the Disney park so that commuters could visit the attraction when it opened in 2005.

Provided the express line is non-stop, it would take just 30 minutes from

Guangzhou to the Disney theme park. The line could bring about two million mainland tourists to the SAR each year. An alternative proposal is to increase the speed of KCRC trains between Kowloon and Shenzhen to up to 200 Km/h and it has been submitted to the Hong Kong / Guangdong Co-operation Joint Conference on 15<sup>th</sup> March 2002.

Meanwhile, the head of the Highways Department's railway development office, John Chai Sung-veng, warned yesterday that a magnetic-levitation rail system could pose problems. He said because of the high speed of the system – called Maglev-- a strong air current would be generated which could shake nearby buildings.

[15<sup>th</sup> March 2002 SCMP, Antoine So]

### ***Decommissioning of Cheoy Lee Shipyard at Penny's Bay***

#### Introduction

The former Cheoy Lee Shipyard (CLS) is located on the north and eastern shores of Penny's Bay with a site area of about 19 hectares. CLS had been in operation since 1964. The site reverted to the government in April 2001 and is required for the construction of the infrastructure required to support the Hong Kong Disneyland.

The decommissioning of CLS involves two designated projects, one for the decommissioning of the shipyard and the other for the waste disposal facility. An Environmental Impact Assessment (EIA) has been carried out by the Civil Engineering Department. The study revealed the existence of hazardous substances in the soil at the site and recommended a comprehensive remediation and clean up plan which is in line with international practice.

#### Project Description

The decommissioning project comprises mainly demolition and removal of all buildings and structures, remediation of the site area, excavation and treatment of contaminated soil and implementation of appropriate mitigation measures to avoid or minimise any adverse environmental impacts arising from the decommissioning works.

The EIA Report has fully analysed the conditions of the CLS site and examined all possible environmental impacts. The Report has recommended a remediation and clean up plan for the site which is in line with international practice and should be comprehensive and effective.

#### Remediation Plan

Soil contaminated with metals only will be excavated and solidified on-site by adding cement to the contaminated soil to immobilise its metal constituents..

Soil contaminated with total petroleum hydrocarbons and semi-volatile organic compounds will be excavated and treated off-site at To Kau Wan by biopiling. If the soil is also contaminated with metals, cement solidification will be carried out after biopiling.

A thermal desorption plant will be set up at To Kau Wan. Thermal desorption is a separation process in which heat is used to evaporate the contaminants from the soil to gaseous phase, which are subsequently condensed and collected for disposal.

#### Conclusion

The primary objective of the decommissioning exercise is to return the CLS site to a condition suitable for use by the community. All potentially harmful contaminants at CLS will be thoroughly removed, treated and disposed of in an environmentally acceptable manner. After treatment, the soil will be suitable for use as public fill. With the implementation of the precautionary and mitigation measures recommended in the EIA report, the decommissioning project will comply with all environmental standards and legislation.

[<http://www.info.gov.hk/ced/eng/projects/hemepark/factsheet.htm> 18th March 2002]

## ADVISORY COUNCIL ON THE

## ENVIRONMENT (ACE)

### ACE endorses Spur Line EIA Report

ACE endorsed the Environment Impact Assessment (EIA) Report on the Sheung Shui to Lok Machau Spur Line-Tunnel/Viaduct Option at its meeting on 26<sup>th</sup> February 2002.

Mr. Peter Wong, Chairman of ACE, said "in endorsing the EIA Report, the Council also requests the Director of environmental Protection (DEP) to consider imposing suitable conditions in the Environmental Permit for the project to address the concerns of ACE related to the proposed management measures for the fishponds at Lok Ma Chau."

ACE's concerns are:

1. The project proponent should set up an Environmental Committee before the commencement of the works to advise on and monitor the environmental work of the project. The Committee should have wide representation and be proactive in monitoring the effectiveness of the proposed management measures to ensure that the overall project will result in no net loss in the ecological functions of the habitats concerned.
2. The project proponent should consult ACE on the Environmental Monitoring and Audit manual to be compiled, and report regularly to ACE on the progress of the monitoring work and the findings. The monitoring plan should be based on baseline data that should be relevant to the project area and updated in line with best practice.
3. The project proponent should be required to implement further measures to compensate for any net loss of ecological functions resulting from the loss of the fishponds at Lok Ma Chau if the proposed management measures fail to deliver the specified results.
4. There should be a high degree of transparency regarding the

monitoring data and results in view of public concern about the project.

The views of ACE were submitted to DEP on 5<sup>th</sup> March 2002.

## TOWN PLANNING

### Urgent task to improve town planning system

The government plans to amend the Town Planning Ordinance in stages. The first urgent task is to improve the efficiency in the town planning system, the Secretary for Planning and Lands, Mr John C Tsang, said on 18<sup>th</sup> February 2002.

Mr Tsang explained that after the dissolution of Legco's Bills Committee on the Town Planning Bill in May 2000, a review of the Committee's concerns and public comments received showed that views on certain issues remained so diverse that they do not appear to be capable of converging.

However, as there was clear support in the legislative process in 2000 for improving efficiency in the town planning system, Mr. Tsang said the government intends to put forward an Amendment Bill to address the efficiency issues that are considered to be of great importance to the community. He explained:

"The main elements of the Amendment Bill will include streamlining the planning approval procedures, expediting the plan-making process, enhancing the openness and user-friendliness of the system and strengthening planning enforcement control

We wish to expedite *the development approval process* by exempting the need of planning permission from certain minor amendments to approved development schemes and by enabling further delegation of powers and functions of the Town Planning Board.

We wish to *promote greater public involvement and a more open planning process* by allowing applications for

amendments to statutory plans, and requiring that the landowner should be informed if a planning application affecting his land is submitted by another party.

On the *plan-making process*, we wish to achieve a *reasonable balance between public participation and efficiency* by simplifying the statutory procedures for resolving objections to a draft plan, and by substantially shortening the processing time.

We also wish to enhance *the efficiency and effectiveness in enforcement control* against unauthorized developments in the rural areas" (emphasis added).

Mr Tsang noted that there are still many issues that require deeper thought and major decisions by the government. These include third party appeal rights, provision for charging fees for planning applications, the organization and functions of the Town Planning Board and designation of Special Design Areas.

Rather than brushing these issues aside, the government needs more time to consider them comprehensively and to find common ground among the stakeholders because they are highly controversial, Mr. Tsang said. The government intends to deal with them in the following years in separate amendment bills.

[<http://www.plb.gov.hk/press>], February 18, 2002]

### **Measures to improve living environment**

The Chief Executive's 1999 Policy Address proclaimed, "A world class city must have a pleasant and safe living environment". In response to this the Secretary for Planning and Lands, Mr John C Tsang, in the Legislative Council on 30<sup>th</sup> January 2002 reported on measures taken by the government to improve the community's living environment. These include urban renewal, beautification of Victoria Harbour, enhancing the quality of buildings and planning for rural development in the New Territories.

#### *Major Initiatives*

On *urban renewal*, the government has put forward four significant measures:

- (a) to publish a White Bill on the establishment of the Urban Renewal Authority (URA) for public consultation before introducing the Bill into the Legislative Council;
- (b) to formulate the Urban Renewal Strategy (URS) as the blueprint for urban redevelopment for the next 20 years;
- (c) to incorporate the concept of heritage preservation into urban renewal projects; and
- (d) to put in place financial arrangements for the implementation of the urban renewal programme.

In order to protect Victoria Harbour and make it more beautiful, the government introduced three major planning related measures:

- (a) to scale back reclamation planned for the Harbour;
- (b) to initiate studies and reviews on the use of the land along the waterfront on both sides of the Harbour so as to provide additional pedestrian facilities along the waterfront and to provide venues for arts, cultural and recreational activities; and
- (c) to hold an open competition to create a new look for the Harbour.

In order to promote *building maintenance and environmentally friendly buildings*, the government has proposed three major measures:

- (a) to introduce a scheme on preventive maintenance of buildings for public consultation;
- (b) to step up clearance of high risk unauthorised rooftop structures; and
- (c) To promote energy efficiency in building design.

**NB What is the reference source for the above?? LINDA. please get trainee to add source**

### **Rural Development in the New Territories -- Village Layout Plan Scheme**

In New Territories villages, eligible indigenous villagers may apply for approval for the construction of small houses for their own use under the Small House Policy. Over the years, many small houses have been built in Village Zones in a sporadic manner. This has posed site constraints on the provision of facilities for improving the living environment in the villages.

To help improve the situation, the Lands Department has proposed drafting a Village Layout Plan Scheme for implementation in indigenous villages. The Heung Yee Kuk and the Rural Committees will be consulted on this proposal. Should the Scheme be accepted by the parties concerned, the Lands Department will work with the villagers in drawing up village layout plans. These plans will enable small house developments to proceed in a co-ordinated manner for proper planning of village facilities.

In addition, the government has improved planning and land use in the rural New Territories through a range of measures, including: the formulation of Outline Zoning Plans; taking enforcement action against unauthorised developments; clearance of illegal occupation on government land; and implementation of environmental improvement works. The Home Affairs Department also implements a Rural Public Works Programme of small to medium scale projects to upgrade the infrastructure in the rural districts. All these measures are aimed at improving the living environment of rural areas.

In the long run, they hope to achieve optimum utilisation of our valuable land resources and to meet the needs of the community through our current review of the Small House Policy. They are also planned to embark on a comprehensive review on land use in the New Territories with a view to identifying long-term solutions to problems associated with land use planning and management in the New Territories. In this connection, the Planning Department will shortly commission a

consultant to conduct a study on the subject.

The government has made good progress in implementing various measures on urban renewal, beautification of the Victoria Harbour, promotion of building maintenance and environmentally friendly buildings, and improving the living environment in the rural New Territories. But, new initiatives as appropriate should be carried out to meet changing circumstances for continuous improvement of our living environment.

[<http://www.plb.gov.hk/press>], January 30, 2002]

## REGIONAL & INTERNATIONAL

### JAPAN

#### *Japan to import Norwegian whale meat*

There has been no legal harvesting or trade in minke whale by all signatories to CITES (except Japan and Norway, who reserved their rights under this part of CITES) since 1986 when the Convention on the International Trade in Endangered Species (CITES) prohibited international trade in minke whale products.

Both Norway and Japan showed their opposition to the international ban on trade in whale products by recording reservations to the CITES decision in 1986, and so they are not technically bound by the prohibition. Japan is now planning to import whale meat from Norway for the first time in approximately 11 years. The imports of Norwegian minke whale meat could begin as early as May this year.

A Japanese newspaper, the "Asahi Shimbun" reported on 3 March 2002 that two tonnes of Norwegian whale meat have already arrived at Japanese ports, awaiting approval before distribution. The newspaper speculates that the Japanese government is attempting to stimulate domestic consumption of whale meat by importing Norwegian product, which is half the price of whale meat harvested by Japan.

Japanese government officials have also announced that Japan will expand its "scientific research" whaling program in the North Pacific to include several kinds of endangered whale species, such as the sei whales, as well as minke, Bryde's and sperm whales.

[Lycos, *Environmental New Service*, 6/3/02]

### BRAZIL

#### *Conservation of land reclaimed from Amazon Squatters*

The government of Brazil has cancelled thousands of false and undocumented land ownership claims in the Amazon Region and will be conserving those lands as parks and extractive reserves. As a result, more than 50 million acres of land - a little less than 10 percent of the entire Brazilian Amazon - will be protected.

Roughly half of the reclaimed lands have been proposed as areas of strict protection, such as national parks and ecological reserves. These strictly protected lands will be used to cater for implementation of the first phase of the Amazon Region Protected Areas project, which aims to create 28.5 million hectares of new protected areas within 10 years.

The other reclaimed areas will be protected as extraction reserves and national forests, where the sustainable use of the natural resources will be permitted.

[Lycos, *Environmental New Service*, 8/3/02]

### BANGKOK

#### *Children bear the heaviest burden of environmental disease*

In industrialised as well as developing countries, the development, health and well-being of children is threatened by unsafe foods and chemicals in household products and consumer goods. As children are still growing, their immune systems are not fully developed, and they are especially vulnerable to

chemical, physical and biological hazards in air, water and soil.

The International Conference on Environmental Threats to the Health of Children was hosted by the World Health Organisation (WHO) from 4 March 2002 to 7 March 2002 in Bangkok to address this issue, with special emphasis on environmental problems in Asia-Pacific countries.

New research results were presented at the Conference to increase awareness of different sectors about children environmental health. Conference delegates examined ways in which the environment, in places such as schools and workplaces, can be made safer for children.

The WHO Task Force for the Protection of Children's Environmental Health, which integrates and coordinates the complex area of children's environmental health within WHO, provides a global focal point for activities in the area. According to the task force, 1.3 million children under the age of five in developing countries died from diarrhoeal diseases caused by unsafe water supply, sanitation and hygiene in the year 2000.

Research suggests that over 40% of the global burden of disease due to environmental risk factors falls on children under five, even though they constitute only about 10% of the world's population. The Bangkok conference considered ways to reduce and mitigate children's exposure to lead, mercury, pesticides, persistent organic pollutants and other chemicals. The effect on children of environmental tobacco smoke, radiation, climate change, food quality was also reviewed.

[Lycos, *Environmental New Service*, 5/3/02]

### ANTARCTICA

#### *Global warming shatters giant Antarctic ice shelf*

The Antarctic Peninsula has warmed by 2.5 degrees Centigrade over the past half century, far faster than elsewhere on the ice-bound continent or the rest of the

world. *Larsen B* ice shelf, which is about the size of a small country, is one of five ice shelves that extend from the ice sheets covering the land. It has been steadily shrinking due to the effects of climate change.

Scientists at British Antarctic Survey (BAS), who are responsible for most British scientific research in Antarctica, recently announced that the *Larsen B* ice shelf has disintegrated from the impact of global warming. Although scientists at BAS predicted four years ago that the giant *Larsen B* ice shelf - 3,250 square kilometers (1,255 square miles) and 200 meters (655 feet) deep- would eventually disintegrate, they were shocked by the speed of the break-up.

Nonetheless, the break-up of the ice shelf will not raise sea levels as the ice was already floating, Sea levels would only be affected if the land ice behind it now began to slide more rapidly into the sea.

[Reuters, 20/3/02]

#### **ALEXANDRIA, EGYPT**

##### ***Desertification seen as ravaging farming and wildlife***

Desertification means the absence of water and nutrients in the soil needed to maintain a diversity of plant and animal life, thereby threatening earth's fragile ecosystem. Good land is being lost to desertification through wind and water erosion, salinity, urbanization, and unsuitable farming practices.

Intensive farming methods, such as over-grazing, are degrading soils at an alarming rate and cutting their capacity to hold water and affecting their productivity. About 40 percent of the world's agricultural land is severely degraded, with the result that the habitats of animal and plant life are destroyed.

Drought is one of the major stresses limiting productivity of field crops and keeping many communities trapped in poverty. It is estimated that about 1 billion people live in the world's dry areas such as central and west Asia and north Africa, where water shortage is a serious threat.

The global population is forecast to grow from some 6 billion to more than 8 billion by 2020. Biotechnology can be used to tune crops to their environment. Drought-resistant and salt-resistant genetically modified (GM) varieties would be more able to withstand the ravages of desertification than conventional crops. However, one scientist has expressed the view that governments should be careful in considering the use of new crops, such as GM strains, because they could lead to changes in land and water use that damage wildlife and promote intensification of agriculture and forestry.

[Reuters, 19/3/02]

**This Quarterly Report does not constitute legal advice given on any particular matter. Whilst all effort has been made to ensure completeness and accuracy at the time of publication, no responsibility is accepted for errors and omissions. Further information and enquiries in respect of this quarterly should be directed to Fred Kan & Co. or any of our following associate firms:**

Hong Kong

**FRED KAN & CO.**

Suite 3104-07, Central Plaza  
18 Harbour Road, Hong Kong  
Tel: (852) 2598-1318  
Fax: (852) 2588-1318

Paris, France

**THOMAS HERBECQ & ASSOCIÉS**

3 Square Pétrarque  
75116 Paris, France  
Tel: (331) 4755-4400  
Fax: (331) 4704-5131

Macau

**THE LAW OFFICE OF JOÃO MIGUEL BARROS**

Av. Infante D. Henrique n° 46  
Edifício Kam Loi 2° Andar, Macau  
Tel: (853) 712770  
Fax: (853) 713855

In addition to Fred Kan & Co. the following are members of ADVOCASIA

An Association of Asian Commercial Law Firms

Adelaide, Australia

**NORMAN WATERHOUSE**

45 Pirie Street, Adelaide 5000  
South Australia  
Tel: (618) 8210-1200  
Fax: (618) 8210-1234

Melbourne, Australia

**MADDOCK LONIE & CHISHOLM**

140 William Street, Melbourne  
Victoria 3000, Australia  
Tel: (613) 9288-0555  
Fax: (613) 9288-0666

Sydney, Australia

**COLIN BIGGERS & PAISLEY**

140 Philip Street, Sydney  
NSW 2000, Australia  
Tel: (612) 221-2022  
Fax: (612) 223-1324

Perth, Australia

**KOTT GUNNING**

Level 11, Australia Place  
15 William Street, Perth  
WA 6000, Australia  
Tel: (618) 9321-3755  
Fax: (618) 9321-3465

Brisbane, Australia

**BIGGS & BIGGS**

Level 16, Commonwealth Bank Building  
240 Queen Street, Brisbane  
Queensland, Australia 4000  
Tel: (617) 3331-1950  
Fax: (617) 3221-0329

Kuala Lumpur, Malaysia

**CHEANG & ARIFF**

39 Court, 39 Jalan Yap Kwan Seng  
50450 Kuala Lumpur, Malaysia  
Tel: (603) 2161-0803  
Fax: (603) 2162-1533

Singapore

**MADHAVAN PARTNERSHIP**

No. 2 Finlayson Green #11.07  
Asia Insurance Building, Singapore 0104  
Tel: (65) 225-5111  
Fax: (65) 227-6761

New Delhi, India

**O.P. KHAITAN & CO.**

Khaitan House B-1,  
Defence Colony, New Delhi-110 024, India  
Tel: (91)(11) 464-6516  
Fax: (91)(11) 464-6958

Colombo, Sri Lanka

**D.N. THURAIRAJAH & CO.**

2nd Floor, Don Carolis Building  
Post Box.1464, No. 64, Keyzer Street  
Colombo-11, Sri Lanka  
Tel: (94)(1) 439-798  
Fax: (94)(1) 448-002

Jakarta, Indonesia

**MAKES & PARTNERS**

7th Floor, Menara Batavia, Jalan H.H.  
Mas Mansyur, Kav. 126, Jakarta 10220, Indonesia  
Tel: (6221) 574-7181  
Fax: (6221) 574-7180

Manila, Philippines

**HERRERA TEEHANKKEE & FAYLONA**

5/F., SGV II Building, 6758 Ayala Avenue  
Makati Metro Manila 1200, Philippines  
Tel: (632) 815-8846  
Fax: (632) 815-8828

Dubai, United Arab Emirates

**LUTFI AL BAHAR & CO.**

Suite 804 A City Tower 2  
PO Box 8812, Dubai, United Arab Emirates  
Tel: (97) 14-321117  
Fax: (97) 14-311455

URBAN PLANNING AND ENVIRONMENTAL LAW QUARTERLY

**Convictions under environmental legislation: January – March 2002**

The EPD's summary of conviction recorded and fines imposed during the period January to March 2002 is as follows:

***January 2002***

A total of 71 convictions were recorded in January for breaching anti-pollution legislation enforced by the Environmental Protection Department.

Among them, 30 were convictions made under the Waste Disposal Ordinance, 18 under the Noise Control Ordinance, 16 under the Air Pollution Control Ordinance and seven under the Water Pollution Control Ordinance.

The heaviest fine in January was \$100,000.

A company was fined \$100,000 each for using powered mechanical equipment without a valid construction noise permit and carrying out prescribed construction work without a valid construction noise permit.

***February 2002***

A total of 49 convictions were recorded in February for breaching anti-pollution legislation enforced by the Environmental Protection Department.

Among them, 15 were convictions made under the Air Pollution Control Ordinance, 14 under the Waste Disposal Ordinance, 11 under the Water Pollution Control Ordinance and nine under the Noise Control Ordinance.

The heaviest fine in February was \$140,000.

A company was fined \$140,000 for using powered mechanical equipment without a valid construction noise permit.

***March 2002***

A total of 63 convictions were recorded in March for breaching anti-pollution legislation enforced by the Environmental Protection Department.

Among them, 21 were convictions made under the Air Pollution Control Ordinance, 16 under the Noise Control Ordinance, 12 under the Water Pollution Control Ordinance, 12 under the Waste Disposal Ordinance, and two under the Ozone Layer Protection Ordinance.

The heaviest fine in March was \$80,000.

A company was fined \$80,000 for contravening the provisions of a discharge licence as the suspended solid content of its discharge had exceeded the limits set in the licence.

**Note: The above changed format reflects the EPD's new style of publishing environmental offences data. Details of all offences are available from EPD's Media Relations Unit.**

---

Fred Kan & Co.  
Suite 3104-07 Central Plaza  
18 Harbour Road, Wanchai, Hong Kong

Printed Matter