

# FRED KAN & CO.

Solicitors & Notaries

## URBAN PLANNING AND ENVIRONMENTAL LAW QUARTERLY

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The parlous state of Hong Kong's air quality is perhaps our most high-profile--although by no means our only-- environmental issue. Recently published comments by the Chief Executive, describing Hong Kong as an "environmentally friendly place", indicate the government's worrying state of self-delusion concerning our environmental problems, particularly air pollution.

The Editors

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### A FOUL MIX: POLLUTION AND SELF-DELUSION

Just when we thought the government had at least begun to take seriously the problem of Hong Kong's atrocious air quality, the Chief Executive publicly declares that :

"At the end of the day, looking at what we have achieved for the health of our people, you can only come to one conclusion – we have the most environmentally friendly place for people, for executives, for Hong Kong people to live."

*(City a healthy place to live, says Tsang, SCMP, p.A3, 28/11/06)*

Mr. Tsang based this remarkable claim on Hong Kong's comparatively high life expectancy: 78.8 years for men (the world's longest average life span) and 84.4 years for women (the second longest average span, after Japan).

As several experts quoted in the same article pointed out, average life expectancy is not itself a measure of the state of health. Life expectancy for Hong Kong's residents will simply fall if the modern-day problem of poor air quality is not resolutely addressed by the government.

People far more expert than our Chief Executive have debunked his claim that we have, apparently, been imagining things, and Hong Kong's air is in fact "environmentally friendly". In this article we shall not add to the contrary arguments. Rather, we have referred to Mr. Tsang's reported comments because they illustrate, sadly, that the government's state of self-delusion in respect to air quality continues. Indeed, on virtually all environmental, and natural and heritage conservation issues, the government has, for years, substantially deluded itself both as to the environmental threats Hong Kong faces, the measures which are needed to put in place realistic environmental protection programmes.

A dictionary definition of self-delusion is: "the act of deluding one's self; or, the state of being thus deluded", which sums up the government's approach to environmental protection, particularly regarding our increasingly poor air quality.

All too frequently, officials react almost with anger to criticism of their performance regarding environmental

issues, especially air quality. Recently, Christine Loh (a long-time advocate for better policies on air quality and other environmental issues) wrote in her newspaper column that the Environmental Protection Department (EPD) officials had reacted with misplaced self-righteous outrage to her (scientifically correct) comments on our deteriorating air quality.

Reading of Ms. Loh's experience, and Mr. Tsang's self-congratulatory remarks, reminded us of our own exchange of ideas with the EPD ten years ago, when the then Assistant Director of the EPD complained that the *Quarterly* had expressed an entirely wrong view of Hong Kong's - and the EPD's - track record in reducing pollution. In view of Mr. Tsang's apparent satisfaction with Hong Kong's air quality (and all-round environmental performance, it seems) it is worthwhile revisiting our earlier articles in the *Quarterly* editions of June and Winter 1996:

#### "JUNE 1996

*1st July 1997 ushers in a new and uncertain era for Hong Kong. This is no less so in the context of Hong Kong's environmental protection laws – and how effectively they are likely to be enforced. The main article in this Quarterly Report considers that issue.*

The Editors

#### Are Hong Kong's Anti-Pollution Laws Effectively Enforced?

Beginning in the early 1980's, the Government of Hong Kong has enacted a comparatively sophisticated framework of anti-pollution laws. These are primarily *command/penalty* laws, in that they prescribe certain polluting activities, provide penalties for breach of the *command* provisions and allow, by licence, exemptions from the *command* provisions. Hong Kong has not yet legislated (at least not on a broad scale) anti-pollution laws based on the *incentive/inducement* format, whereby potential polluters are rewarded for opting for less polluting production methods. [The reaction the Government faced from the usual vested commercial interests when it attempted to phase out diesel fuel for motor vehicles is illustrative of the considerable difficulties it will continue to have in attempting to legislate for improvement of the environment].

Most of Hong Kong's anti-pollution laws authorize

the Environmental Protection Department (“EPD”) as the monitoring and enforcing agency. There is no provision for ordinary citizens to bring proceedings against a polluter, or against the EPD for failing in its job to enforce the laws. Regrettably, government agencies have a generally poor record world-wide in effectively enforcing environmental legislation. A noted American environmental lawyer summed-up the problem as follows:

*Although many countries have adopted environmental laws that are intended to protect the environment, those laws are meaningless in the absence of effective enforcement. As a rule, agency enforcement is inadequate. Regulatory agencies are chronically understaffed, subject to political pressure, and often have agendas quite different from legislative agendas. Consequently, despite strong environmental laws and the best legislative intentions, environmental pollution continues to threaten public health in virtually every part of the world. Only through fundamental changes in the methods by which we regulate environmentally destructive activities can we have any hope that our children will inherit a liveable planet.* (Professor Mike Axline, ASHAIL Conference, H.K.U., June 1992).

In America the Federal Government has greatly reduced the dangers of reliance on government agencies for enforcement of its environmental laws by specifically empowering citizens to prosecute offenders (as distinct from bringing proceedings for civil damages for personal loss or injury): e.g. *Clean Water Act 33 U.S.C.A. §1251 et seq.* A private citizen may also sue a government agency for failing to do its job: *Administrative Procedures Act §U.S.C. §706*. Indeed, since the earliest days (1969) of the now comprehensive American environmental legislation, a significant proportion (if not the majority) of America’s important pro-environment programmes is the result of private citizens’ litigation or representation rather than government agencies’ initiative.

Whilst, Hong Kong has no equivalent statutory *citizens’ suits rights*, we do have – and always have had – various *common law* rights of action against polluters. Those *rights*, or *causes*, of action include, private and public nuisance, trespass and negligence. To our knowledge, no *common law* action has ever been brought by citizens or the Attorney General against polluters, even in the most blatant documented instances of persistent polluting activity.

There is no doubt that the lack of statutory citizens’ suits rights will remain a weak point in the anti-pollution shield. Leaving aside that issue, what are the signs for effective agency enforcement of Hong Kong’s environmental laws in the future? Firstly, the level of pollution of our air, water and land (the latter by way of, particularly, the ever increasing demand for rubbish land-fill sites, exacerbated by EPD’s deliberate policy of refusing to implement recycling schemes until the landfill areas appear to be running out) has dramatically increased since the anti-pollution laws were enacted. That is, in reality, the bottom line.

Secondly, if you consider the prosecution (i.e. convictions) figures of, say, the last two years they reveal only a marginal increase in overall prosecutions. In absolute terms, they show a surprisingly low rate of “strikes” by the EPD, given the enormous scale of polluting activities, so well documented by the EPD (to its credit) in its yearly reports, *Environment Hong Kong*. This is no doubt a legacy of the EPD’s heavy emphasis on a policy of *educating*, rather than *penalizing*, offenders (or potential offenders) which for many years was its preferred approach. Of course, education of the general populace to take better care of its environment is a laudable aim; but it is not a substitute for enforcement, particularly where the majority of the populace apparently cares little for such ‘intangibles’ as a clean environment (if it were realized and appreciated that the cost of, say, cleaning up Hong Kong’s marine waters, would be many billions of dollars – as America and China, for example, have now discovered – perhaps the benefits of less polluting industries, sewage disposal etc would be recognized

as *tangible*, in economic terms). And it must also be acknowledged that over the years the EPD has been able to persuade many individuals to change their methods so as to come within statutory limits, without the need for prosecuting them.

Yet the EPD’s preferred approach of consultation, advising and warning – when breaches of the law have clearly occurred or are occurring – must be questioned in view of Hong Kong’s serious pollution problems, and the willingness of so many businesses to treat the moderate penalties imposed for environmental offences as simply another business cost.

Finally, effective enforcement depends not only on the EPD’s policies and performance. The attitude of Hong Kong’s judiciary to environmental offences is critical. The courts, principally the Magistrates Courts, impose the penalties. To date penalties have been, with the odd exception, very much at the lower end of the prescribed scale. The brief data published by the EPD each month (and included in the Quarterly Reports) bear witness to this. No doubt one of the reasons for this is that environmental offences are different to other criminal, or quasi-criminal offences. Magistrates have no tariff guidelines or similar offences to guide them in assessing penalties. Nevertheless, in terms of ordinary sentencing principles, there appears to be something radically wrong in most magistrates’ treatment of environmental offenders when the empirical data of penalties (which do not, admittedly, show the circumstances of the offences) indicate that repeat offenders often are fined only a nominal amount more for subsequent offences. More could be said on the broad subject of penalties, particularly with reference to the polluter-pays-principle, but space does not permit that in this Quarterly Report.

In conclusion, with all statutory-enforcement powers in the hands of the Government, no statutory citizens’ suits, rights, and, apparently little judicial or community interest in environmental issues, the chances of Hong Kong’s environmental laws actually protecting (and improving?) its environment are bleak – and that assessment leaves aside the change in sovereignty factor!

## WINTER 1996

*The feature article in our June 1996 issue concerning the alleged lack of effective enforcement of Hong Kong’s anti-pollution laws, drew an immediate response from Mr. M. Stokoe, Assistant Director of the Environment Protection Department. His letter (14th October, 1996) is reprinted here in full, together with the General Editor’s response.*

The Editors

Letter from Mr. M.J. Stokoe (EPD)

Mr. Fred Kan  
Fred Kan & Co.

Dear Mr. Kan,

You kindly continue to send us your quarterly publication on urban planning and environmental law. I am not sure of the extent to which you are involved in the editorial content of the publication, but as the editors apparently wish to remain anonymous, I have addressed to you this letter raising my concerns with the front-page article in the June 1996 issue, which incidentally we received only a few days ago.

The headline of the article is, “Are Hong Kong’s Anti-pollution Laws Effectively Enforced”, and its thesis is that they are not effectively enforced. The evidence used to support that thesis does not stand up to close examination, but the casual reader is bound to be left with a conclusion that Hong Kong’s environment is poorly fostered by the authority for enforcing environmental legislation, the Environmental Protection Department (EPD).

The first charge laid against EPD is that “the level of pollution of our air, water and land has dramatically increased since the anti-pollution laws were enacted”.

That simply is not true. In overall terms the air is now much cleaner than before the sulphur in Fuel Regulation was made in 1990; noise from construction activities is far less intrusive than before the Noise Control Ordinance was enacted in 1988; the waters in and around Hong Kong are now considerably cleaner than they were before the first implementation of the Water Pollution Control Ordinance in 1988, particularly in Tolo Harbour, where the steady decline of water quality has been halted and turned around, and our rivers and streams, many of which now support fish where ten years ago they conveyed high-strength livestock waste into the sea. However, in some areas there is still much to be done (e.g. in tackling vehicle emissions), and in others we have not yet reaped the benefit of major environmental projects (e.g. the Strategic Sewage Disposal Scheme in cleaning up the harbour waters).

The second charge is that EPD has a policy of “educating rather than penalizing potential offenders”. Again, this is not correct. Our policy, which is explained carefully to all staff of the enforcement units, is that where a breach of the environmental legislation is suspected, appropriate evidence should be gathered and a case prepared for prosecution in the appropriate court. The anonymous authors/editors go on to allege that the number of convictions under environmental laws reveals only a marginal increase. This is not so; over the last four years, the aggregate number of convictions has steadily increased from 626 in 1993 to 705 for the first nine months of this year, 940 grossed up to twelve months. The aggregate value of the fines levied has increased during the same period from \$5.7 million in 1993 to \$11.9 million for the first nine months of this year, equivalent to \$15.8 million over twelve months. In other words, the average number of prosecutions is running at 50% more than four years ago and the total fines have almost trebled. This is hardly the “low rate of strikes” claimed in the article. On the contrary, I would claim that our enforcement record stands proud in comparison with environmental enforcement authorities world-wide.

A further charge in the article against the Hong Kong system of environmental protection legislation, is that it does not provide for private citizens’ litigation or representation, whereas in the USA citizens are able to prosecute both “offenders” (sic) and government agencies, both provisions apparently aimed at remedying deficiencies in the environmental enforcement agencies’ carrying out of their duties. On this issue, the authors, whilst seemingly familiar with American practice and procedures in environmental law, are less well briefed when it comes to the arrangements in Hong Kong. The prosecution of professional enforcement agencies is not a feature of the Hong Kong system. Instead, there is provision for individuals to forward a submission to the Commissioner for Administrative Complaints (COMAC) claiming maladministration. A few such claims had been made to COMAC concerning EPDs activities over the last few years, and the fact that some of the points have been upheld by COMAC, in itself demonstrates that the system has real effect.

The initiation of prosecutions under the environmental laws in force in Hong Kong, may sound attractive on the face of it, but it is not only the need to obtain the consent of the Attorney General that impedes the progress of such actions. Most environmental laws in Hong Kong are framed so that offences, whether resulting from a direct breach of regulation or of a licence condition, require the gathering of evidence. In most circumstances, this would require the entry onto private or Government land, and into private premises, in order to investigate, take samples, or to use scientific equipment. Clearly, the enforcement agency is far better placed than an ordinary citizen to carry out such investigations, because provisions in the legislation specifically permit the EPD to gain entry to premises, to investigate, to take samples, and generally to do what is needed to gather evidence for a prosecution. The EPD’s policy in relation to proposed prosecutions by private citizens is to encourage them to cooperate with EPD in an action, where the private citizen would be a witness.

Several references are made in the paper to inaction in the face of persistent pollution, e.g. “blatant documented instances of persistent polluting activity” and “EPD’s preferred approach of consultation, advising and warning – when breaches of the law have clearly occurred or are occurring”. None of these references is backed with a description or case history. I must conclude that they are no better than scurrilous attempts to damage EPD’s reputation. If your editor has evidence of such alleged maladministration I would welcome seeing it.

The article concludes that “the chances of Hong Kong’s environmental laws actually protecting (and improving?) its environment are bleak – and that assessment leaves aside the change in sovereignty factor!” Not a single piece of factual evidence is provided to support that assertion. We in the EPD are proud of our track record of developing environmental laws to suit Hong Kong’s conditions and problems (rather than simply importing ideas from elsewhere), and then enforcing them fairly, consistently, and without fear or favour. We are now on track to a much better environment for Hong Kong, and do not believe that the handover to the SARG will cause a deviation from that course. However, far greater potential damage to the future of Hong Kong could result from a perception that its environment is past praying for, and that its enforcement authorities are doing nothing to remedy the situation. This is precisely the view advanced in the article.

Finally, I find it especially frustrating that the authors and editors in your publication hide behind a cloak of anonymity. If the views advanced are genuinely held, then the authors/editors should have the courage to append their names to the article.

Yours sincerely,  
M J Stokoe  
Deputy Director  
for Director of Environmental Protection

#### General Editor’s Reply

Mr. M. J. Stokoe  
Deputy Director  
Environmental Protection Department

Dear Mr. Stokoe,

This refers to your letter to Mr. Fred Kan dated 14<sup>th</sup> October, 1996.

As the General Editor of our Urban Planning and Environmental Law Quarterly (“UPELQ”), and author of the article to which your letter relates, I shall respond to your criticism of that articles as briefly as possible.

It should be noted at the outset that other commentators have previously made the same point as the article. For example, a well known Hong Kong environmental lawyer, Terri Mottershead, wrote in the *Asia Pacific Forum Newsletter* (Winter 1994, pp. 11-12):

“The reluctance of the Hong Kong government to enact anti-pollution legislation, the consistent refusal by industry to self regulate and decrease its pollution output and the poor record of legislative enforcement, have been major factors in the escalating pollution problem in Hong Kong.”

And, at an international environmental law conference in Hawaii (June 1996) Ms. Mottershead observed:

“There is, therefore, a comprehensive body of anti-pollution legislation [in Hong Kong]; it is not, however, ever enforced with any predictable consistency or regularity, despite the numerous first and repeat offences which are committed daily.”

May I then dispose of your allegation (repeated a number of times) that I have chosen to hide behind “a cloak of anonymity”. As you are aware, I wrote to the EPD on 24<sup>th</sup> June, 1995 advising that I had been appointed General Editor of the UPELQ as from 1<sup>st</sup> January, 1995. Since that letter, I have received, each

month, correspondence from the EPD addressed to me (by name) as *General Editor* of the UPELQ. By letter of 19<sup>th</sup> November, 1996 my fellow Editor, Mr. Fred Kan, pointed this out to you. He also pointed out that prestigious publications such as *The Economist* do not name their authors or article writers. Mr. Kan then invited you to withdraw what is an offensive and unfair and, obviously, entirely baseless allegation. We regret that you have not seen fit to do so, for whatever reason.

As to your substantive criticisms:

#### The first ‘charge’:

Hong Kong’s anti-pollution laws date from 1980, *not* 1990, or some other, later year. You appear to have misread the article in that critical aspect (inter alia). However, even if we take a later date as the base-year, say 1990, I simply disagree that, for example, “...the air is now much cleaner...”. Frankly, it is difficult to believe you are serious in making that statement. You need only observe the now almost daily haze of smog, pollutants and dust particles (as so many people point out in frequent letters to our daily newspapers, including a recent excellent letter from well-known Hong Kong environmental expert, Edward Stokes: *Air Pollution – greatest long term menace*, SCMP, 8<sup>th</sup> January, 1997) to realize that air quality has declined sharply, even in the last several years. It is impossible to reconcile your claim with frequent announcements of record air-pollution levels. For example:

- *Respiratory disease soars with pollution:* “Respiratory disease killed nearly 1,000 more people last year than at the beginning of the 1990s as air pollutants soared. Thousands more people were forced into hospital. Department of Health figures showed that after falling in 1994 from levels reached in the previous two years, deaths rose by 469 in 1995 to 5,707. Between 1991 and last year, pollutants which the Environmental Protection Department has blamed for respiratory disease and deaths rose 14 per cent. Other toxic gases increased by 27 per cent. In the same period, respiratory diseases killed 22,192 people and sent almost half a million to hospital.” (emphasis added) (SCMP, 27<sup>th</sup> December, 1996)
- “Today’s air is likely to be the *unhealthiest on record* ....” (emphasis added) (SCMP, 10<sup>th</sup> November, 1995)
- *Cancer-causing fumes at ‘alarming’ level* “Hong Kong people are breathing in up to 10 times more cancer-causing pollutants than their counter parts in Japanese cities, tests show.” (SCMP, 26<sup>th</sup> October, 1996)
- In August 1996 a short item appeared in the SCMP nothing that “Hong Kong has registered its *highest pollution levels since records began more than 10 years ago*...” (emphasis added). The source quoted for that piece of information was the EPD!
- EPD’s annual report, *Environment Hong Kong*, is testimony to the serious and, compared to 1980 or 1990, worsening air pollution problems faced by Hong Kong today. In the 1995 report, the significant detrimental effects of vehicles’ emissions (admitted, impliedly, by you) are blamed for placing Hong Kong “...in danger of developing a Los Angeles type photochemical smog problem.” (p.32).
- The Assistant Director (Air) of the EPD, C.W. Tse, very recently described Hong Kong’s air quality as “poor” (letter to the SCMP, 2<sup>nd</sup> January, 1997).

*Water quality*, you say, has improved since 1988 (again, *not* the base year I used). I and many others would disagree. Once again, the frequent warnings in Hong Kong’s press of deteriorating marine water conditions are difficult to reconcile with your claims. For example, in the SCMP (25<sup>th</sup> May, 1996) it was reported:

“Water quality at beaches has worsened over the past five years despite tougher pollution controls and clean-up efforts, the 1995 beach water quality report shows.”

In ECCO (the Bulletin of the Environmental Campaign

Committee) (June 1992) you yourself were quoted as advising that “...any luckless Dragon Boat rower who falls into Victoria Harbour should seek medical examination immediately”.

Scientific experts now warn us to avoid Hong Kong’s shellfish (and fish generally) entirely (e.g.: *Lifting the lid on shellfish*, SCMP 24<sup>th</sup> September, 1995 and *Toxic shark fine claims*, SCMP, 22<sup>nd</sup> September, 1996) I suggest that in 1980, or even 1990, that was not their advice.

Your own yearly report, *Environment Hong Kong*, simply does not support your broad claim that Hong Kong’s water quality has improved. For example, the 1991 report, stated:

“The growing population around Victoria Harbour has caused its water quality to decline steadily since full records began in 1972”. (p.51, 3.13)

In the 1993 report the following comment on general water quality levels appeared:

“Tonnes of sewage and industrial waste water is generated each day in Hong Kong and discharged into the sea, so it is no surprise that *most of the territory’s waters are heavily polluted*.” (emphasis added). (p.14, 1.58)

The 1995 report made *exactly the same* comments, word for word!! (p.17, 1.76)

You point out, there have been some recent success as such as water quality improvement in Tolo Harbour. However, as *Environment Hong Kong 1995* records (p.155):

“A dramatic deterioration in water quality took place in the early 1980’s, coinciding with the first influx of population to the new towns. The deterioration continued throughout the 1980’s, as evidenced by the high levels of red tides and low dissolved oxygen levels.” (emphasis added)

I would argue that the Tolo Harbour water quality has improved since the late 1980’s, but *not* in comparison to 1980.

You mention that many rivers and streams *now* support fish. The assumption must be that they did *not* in 1980. [Ironically, you do not give specific details of these rejuvenated rivers, yet you criticize UPELQ for failing to give “case history” of EPD’s alleged failures to prosecute.] In *Environment Hong Kong 1995* one example of river water quality improvement documented is the River Indus (pp.86-87). However, no mention is made of fish returning to the river and the improvement claimed is only from “very bad” to “bad”, which illustrates the enormous task the EPD – indeed, the entire Hong Kong community – has in redressing the environmental damage to our rivers and streams.

As far as noise pollution is concerned, the EPD has certainly been active in trying to bring about substantial improvements. Nevertheless, with vastly increased levels of construction as compared to 1980 I doubt that we are exposed today to less noise than in 1980. This seems to be borne out by a dramatic increase in noise complaints to the EPD: 85% more complaints in 1995 compared to 1993. The Department of Planning, Environment and Lands describes Hong Kong as “... perhaps one of the noisiest cities in the world.”: *The Hong Kong Environment: A Green Challenge for the Community* (1993) (p.68, 6.64)

#### The second ‘charge’:

Again, I submit that your statements simply do not align with the facts. Most significantly, the *EPD Enforcement Manual* (as amended 1993) states (in part):

“Prosecution is a means, not an aim, and it will be a last resort. Other measures, such as persuasion, education, publicity, liaison with industrial associations, incentives and encouragement should be used to achieve the objectives of pollution abatement

were appropriate.” (emphasis added) (p.83)

At a seminar for Magistrates (May 1996) the EPD *confirmed* that its policy remains that prosecution of offenders is *the last resort*. (The seminar included senior EPD staff, including the Director).

You cite an increase of 50% in prosecutions over the last 4 years, with (then) projected fines of \$15.8 million for 1996 as evidence of efficient enforcement. Yes, that is an increase on 1980 (when there were no prosecutions). But, a total of \$15.8 million (the price of a very modest mid-levels flat) is hardly impressive. And how does it compare to the *billions* of dollars needed to clean up the environment?

I would accept that the low level of fines is in large part a result of the courts’ lamentably uninformed attitude to environmental offences. However, the EPD has never sought a review of any penalty (in the High Court, or Court of Appeal). Further, the EPD directs most prosecutions to the court of lowest penalty jurisdiction, namely, Special Magistrates (or, Lay Magistrates).

It must also be remembered that more water quality zones, for example, have been declared and environmental laws toughened generally (e.g. in the area of licensed discharges) in the 1990’s, which should lead to some increase in prosecutions in the ordinary course of events.

Further, the number of prosecutions is a drop in the ocean of public complaints about polluting activities. The 1995 *Environmental Hong Kong* cites a 36% increase in the number of complaints in 1994, compared to 1993, to a total of 10,505! (pp. 170-171)

You have also refrained from explaining why the EPD has *never* used its powers under Sec. 13 or 13A to recover pollution clean-up costs from offenders. The fact that those potentially effective legislative powers have not been availed of reflects concisely our submission that the EPD (and, the government at large) is unwilling to prosecute environmental offenders rigorously.

#### The third ‘charge’:

As a member of the Ombudsman’s Panel of Legal Advisers, and having advised the Office of the Ombudsman from time to time on its powers and obligations under the *Ombudsman Ordinance (O.O.)*, I believe that I am familiar with that legislation. I therefore can say that to compare the legislative scheme encompassed by the *O.O.* with the kind of US legislation referred to in the article is like comparing apples with pears. The provisions of the *O.O.* do not *give* citizens direct access to the courts for enforcement of environmental regulations. You have completely misunderstood the article on this point (inter alia). US legislation is effective because it *does* give citizens a *cause of action* against polluters (plus defaulting agencies). The Ombudsman may merely make recommendations to the government in respect of government agency maladministration. He has no jurisdiction at all in respect of private individuals or companies. However, I agree the Ombudsman does a fine job of exposing government agencies’ maladministration, and I know that his Office is more than willing to pursue complaints concerning environmental issues. But he *cannot* give a legally binding adjudication and remedy. That is the huge difference between Hong Kong and American law.

Your other comments as to the difficulties private prosecutors face in Hong Kong merely re-state the very point I was making. Certainly there are evidential problems, but that is an ancillary matter that could be dealt with in the unlikely event the government enacted US style private prosecution rights (e.g. by also enacting *meaningful* freedom of information legislation).

#### The ‘inaction charge’

Your conclusion (that the inaction by EPD charge is nothing more than a “scurrilous attempt to damage EPD’s reputation”) is incorrect. Much could be said on the topic of the EPD’s failures to prosecute. The following will suffice:

- Hong Kong’s floating and land-based docks are discharging tributyl tin (TBT) paint (or residues thereof) directly into Hong Kong’s marine waters (see, e.g., the last edition of the UPELQ, under “ACE”). TBT paint is so lethal that many countries have banned its use, and even banned ships which have used it from their waters. For example, the state of New South Wales, Australia, banned the use of TBT paints in 1988 “...following evidence that *even low concentrations* of TBT were affecting oysters, fish and crustaceans.” (emphasis added) (*Rock oysters return after toxic paint ban*, SCMP 1<sup>st</sup> January, 1997). In 1992 Hong Kong banned TBT use on vessels less than 25 metres long.

In the 1995 *Environment Hong Kong* your own senior water pollution officer, Dr. Malcolm Broom, says of TBT:

“Given its extreme toxicity to marine life, proper handling of TBT is critically important. *On no account can it be allowed to be dumped in the water.*” (emphasis added) (pp. 72-73)

And yet that is precisely what the EPD is allowing!

In case it should be suggested that the effects of TBT discharges are still an unknown (in Hong Kong) (which is the argument EPD is apparently trying to put to ACE) it should be noted that several research environmental scientists presented papers at the recent Asia Pacific Conference on Science and Management of Coastal Environment (University of Science and Technology, 25-28 June 1996) testifying to the highly toxic effects of TBT on marine ecosystems: e.g.

“Organotin [i.e. TBT base chemical] had a *major impact* on the reproductive capability of *N. awatschensis* [the indicator subject species]. The number of *juveniles decreased by 86% and 90%* when exposed to organotin at concentrations of 1 ppb [parts per billion] and 2 ppb respectively” (emphasis added): (*Life cycle bioassay for marine contamination due to organotin in anti-fouling paints*. Yau, Tian et al, *Institute of Oceanology, Acaemia Sincia, 286071, China, Paper S3*)

Despite Dr. Broom’s (and, I assume, EPD’s) stance on the undesirability of allowing TBT to be discharged into Hong Kong’s water, (which accords with the views of environmental authorities world-wide) at the ACE EIA Subcommittee meeting (9<sup>th</sup> September, 1996) (see December 1996 UPELQ) the EPD *endorsed* an EIA submitted by one of the floating dock operators, notwithstanding the EIA committed the operator to only a 70% removal of TBT from waste water residues dumped into Hong Kong’s marine waters. More significantly, the EPD continues to allow two or three companies operating floating dock yards, *plus* another approximately 19 land-based dock yards (refer December 1996 ACE minutes) to continue discharging these toxic wastes with impunity!!

- Many “blackspots” of illegal wastes discharge have occurred, and continue to exist, without prosecutions being instigated: e.g., see *One Earth*, Spring 1995, pp. 20 ff.)
- Even industry gurus complain of the lack of enforcement of our environmental laws: e.g., *Getting down to environmental business*. (SCMP 4<sup>th</sup> November, 1996)

The EPD regularly warns of environmental degradation but does not prosecute, because proof of the offence is said to be difficult (inter alia), or, in earlier days, that it had no statutory powers to prosecute. Yet common law powers have always existed and are easily applicable to, especially, flagrant acts of public nuisance or illegal activity: e.g. the Tuen Mun River was destroyed by 15 years of illegal dumping of wastes, despite the common law power of the Attorney General (EPD) to prosecute

and to obtain the necessary injunctions. Conclusive scientific evidence is *not* mandatory for successful prosecutions under our anti-pollution laws, especially as most offences are strict or quasi-strict liability offences.

- The ‘cancer-causing fumes’ discharged by hospital incinerators (see above) were reported by the SCMP as ‘probably breaking strict regulations’ in the eyes of according to the EPD. Prosecution did not occur because the EPD considered it did not have the necessary equipment to measure the discharge (notwithstanding that black smoke emission per se is an offence).
- The Green Lantau Association has reported that:
  - (i) the Architectural Services Department (ASD) has allowed contractors on the Tai Che Tung microwave Ling Relay Station project to engage in “...illegal and environmentally damaging activities,” (by way of inter alia, dumping rubbish);
  - (ii) Sunshine Island was used illegally for incinerating confiscated Vietnamese boats by the Marine Department, yet the EPD declined to prosecute, despite complaints by Lantau residents. (1995 Autumn Newsletter, No.17, Green Lantau Association)
- The pollution complaints statistics (*Environment Hong Kong* (1995) (pp. 170 ff)) show a significant number of complaints with few prosecutions resulting: e.g. in 1994, 143 complaints of livestock waste were received, resulting in the prosecution and conviction of 5 offenders, who were fined a *total of \$7,600!* Yet live stock waste disposal is consistently cited by the EPD as a major water polluting activity! (e.g. The Hong Kong Environment, above, pp. 56-58)

Your concluding paragraphs are at odds with both the record and EPD’s own statements on the state of health of Hong Kong’s environment made from time to time. If the EPD is proud of its record, then it is, with respect, perhaps too easily satisfied. As to statements of intention concerning future action, at the same Magistrates’ seminar (referred to above) the EPD declared that the best it could do was to hold pollution at the current levels! I accept that is probably an accurate forecast, particularly given Hong Kong’s shameful apathy towards environmental issues.

Finally, your accusation that we are doing a disservice to the environment by our article is, at best, bizarre. We do not, and did not, say that Hong Kong’s environment is “past praying for”. Quite the reverse, we have gone to the time and trouble of raising these issues for serious discussion simply because we believe that Hong Kong’s environment could and should be “saved”, or at the very least, its present rate of degradation should be halted. I recognize that there are many committed, professional people in the EPD who are working to that end, and without whose efforts Hong Kong’s environment could well be in an even more deplorable state. But you do not help them, the public or the environment by perpetuating the myth that Hong Kong is winning its battle against environmental degradation.

Yours sincerely,  
Brian G. Baillie”

Today, more than ten years later, we leave it to readers to assess which of the opposing views outlined in the above articles and letters has proved to be the more accurate.

It is bad enough that Hong Kong’s air is severally polluted. It is worse that some – certainly not all-- of the causes of pollution are beyond the government’s direct control. But is an outright tragedy when the government, which is responsible for monitoring and preventing pollution, talks itself into believing the problem(s) does not really exist.

## LEGISLATION DIGEST

### Air pollution control (vehicle design standards) (emission) (amendment) regulation 2006

[Legal Supplement No.2 to Gazette No.20/2006]

#### Summary:

This Regulation amends the Air Pollution Control (Vehicle Design Standards) (Emission) Regulations (Cap.311 sub. leg. J). The purpose is to impose more stringent vehicle design standards on certain motor vehicles in order to reduce the emission of air pollutants.

The following regulations are added or amended:-

#### Regulation 7C

The new regulation 7C specifies the enhanced design standards for certain goods, vehicles, light buses and buses with a design weight of more than 3.5 tonnes which are first registered on or after 1<sup>st</sup> October 2006. Regulation 7(1) is amended so that the existing standards will not apply to the same types of vehicles which are registered after 30<sup>th</sup> September 2006.

#### Regulation 7D

The new regulation 7D specifies the enhanced standards for every motor cycle or motor tricycle which is first registered on or after 1<sup>st</sup> January 2007. Regulation 7(1)(m) and (n) is amended so that the existing standards will not apply to such motor cycles and tricycles which are registered after 31<sup>st</sup> December 2006.

#### Regulation 7B

Regulation 7B which deals with design standards for certain motor vehicles registered on or after 1<sup>st</sup> January 2006 is amended in order to apply the same design standards to goods vehicles and light buses with a design weight of 1.7 tonnes or less and those with a design weight of more than 1.7 tonnes but not more than 3.5 tonnes.

#### Regulation 14

Regulation 14 is amended in order to require certain motor vehicles equipped with a compression ignition engine which have a design weight of more than 3.5 tonnes and were first registered on or after 1<sup>st</sup> October 2006 to be fitted with an on-board diagnostic system which conforms to certain specified requirements.

### Air pollution control (emission reduction devices for vehicles) (amendment) regulation 2006

[Legal Supplement No.2 to Gazette No.49/2006]

#### Summary:

This new Regulation amends the Air Pollution Control (Emission Reduction devices for Vehicles) Regulation (Cap.311 sub. leg. U) ("the original Regulation").

The original Regulation requires the diesel vehicles which are first registered before European Union emission standards were imposed to be installed with approved emission reduction devices in order to reduce their emission of air pollutants. The original Regulation does not apply to heavy diesel vehicles which have any of the following types of body:-

- aerial platform;
- concrete mixer;
- gully emptier;
- lorry crane;
- mobile crane;
- mobile concrete pump;
- pressure tanker.

The new Regulation expands the original Regulation in order to cover the heavy diesel vehicle which belongs to any of the following types of body unless a cross boundary road permit issued in respect of the vehicle is in force or a cross boundary road permit issued in respect of the vehicle expired in the last three months

which includes: concrete mixer; gully emptier; lorry crane or pressure tanker.

## TOWN PLANNING

### Rural landowners win compensation

The Court of Final Appeal (CFA) has ruled that the owners of agricultural land compulsorily acquired by the government are entitled to be paid compensation assessed on the basis of the value of the use to which they potentially could have put their land. The CFA made the ruling after hearing arguments in a dispute between the Secretary for Transport and Delight World International Limited (Delight) over how much compensation the company should receive for land resumed in 2000.

The issue was whether or not the government, in calculating compensation, needed to take into consideration proposed, potential uses of land which would not in fact have occurred unless planning permission were granted. The issue dates back to restrictions imposed in 1991 on the use of land where building is not allowed. The restrictions under section 16 of the Town Planning Ordinance were a reaction to the proliferation in the New Territories of vacant land being used as open storage facilities for unused shipping containers and building materials. Such uses were referred to as "Melhado use", after the 1983 case in which the court overturned the licensing system for open storage operations previously in place. The ruling created a loophole, allowing non-agricultural uses that did not involve building.

In September 2000, the Secretary for Transport resumed part of the subject land to build the Kam Tin bypass. Delight did not accept the compensation offered and the matter was referred to the Lands Tribunal, which in June 2003 awarded the company HK\$15.9 million. The Tribunal considered that Melhado use could be taken into account when determining an award, but that there was no justification for such an approach in this case. Delight requested a review and the Tribunal then awarded HK\$52.5 million on the basis that Melhado use could be taken into account regardless of the need for approval under section 16 of the ordinance. The appeal to the Court of Appeal was dismissed and the government appealed to the CFA.

In a unanimous decision, the court found that section 16 was not intended to be considered when calculating compensation. In the judgment, Mr. Justice Kemal Bokhary said that halting despoliation does not require that landowners receive less resumption compensation than they would have received if their freedom of land use had not been curbed by the introduction of the Town Planning Ordinance permission scheme.

[SCMP, 06/12/06]

### Reclamation plan for an artificial beach

Although the mandatory environmental impact assessment is still under way, members of the Town Planning Board will be asked to comment on a plan to reclaim nearly two hectares of land near the Plover Cove reservoir for an artificial beach. Environmentalists have questioned the need for the project because the impact on the corner of Tolo Harbour, where the beach would be situated, is still unknown.

The project is proposed by the Civil Engineering and Development Department which wants to build a 200-metres long artificial beach at Lung Mei, Ting Kok. The project originally envisaged reclamation of 1.02 hectares and now requires 1.9 hectares because the department wants to widen the coastal road from Tai Po to Sha Tau Kok, and the plan also calls for parking spaces for 100 cars and coaches.

The Planning Department intends to begin construction in November 2008 and to open the beach in April 2011.

The department considers the plan acceptable in regards to traffic and public safety, but conservationists warn that the reclamation will take place just 500 metres east of a 37.5 hectare area with special scientific interest, and 500 metres west of a nature reserve which is well known for its mangrove forest.

Conservancy Association chairwoman, Betty Ho Siu-fong, asked why the government should create a beach when in the natural environment it is not a beach. She said that there are great beaches in Sai Kung for people to use. She commented that the government should wait for the impact assessment report before the Board considered the application further.

[SCMP, 24/11/06]

### An artistic vision should be a start

The unveiling of plans for an innovative arts complex in Shek Kip Mei proves that the government has the ability to redevelop rundown parts of Hong Kong instead of "build for the sake of building". The disused factory has the potential to become an artists' community, and the idea has more meaning to Hong Kong creative people than the billions of dollars of "nice commercial" buildings envisaged for the West Kowloon arts district.

The Kowloon side of the harbour has no such facility, and the artistic energy that will emanate from the complex will spill across the district into other disused buildings in other areas. Supporters of the project hope that Hong Kong will have a vibrant, tourist-drawing, artists' colony like those in Taiwan, South Korea, Germany, the United States of America and other art-appreciative societies.

Hong Kong has numerous small private galleries but has only five publicly-funded art museums, even though government spending on the arts is amongst the highest per capita in the world. Hong Kong is one of the world's major financial centres and the government's main focus is to maintain and encourage the business and commercial environment. However, the plans for the Creative Arts Centre buck that trend, with most space has been dedicated to a theatre, gallery space, artists' studios rather than shops and offices.

The project has another wider meaning for Hong Kong, because it is revitalising a neglected part of the city, Shek Kip Mei, which has been home to some of our poorest citizens. The arts centre offers a blueprint for other urban areas, such as Kwun Tong, Tuen Mun and elsewhere, where industrial complexes and factories lie disused and derelict because of the better economic opportunities offered in Guangdong. As a result, more than 1.27 million sq ft of space is vacant.

However, there is a significant problem in many areas, namely to get approval for cultural centres through Hong Kong's archaic zoning regulations. The Shek Kip Mei complex did not fall foul of these rules, which is the reason that it has gone ahead so smoothly. The reason was that the area was located on a street that was formerly part of the housing estate and the site is zoned residential A which means it can be used as a "place of recreation, sport or culture". Therefore there was no need for the government, Jockey Club or any of their partners to submit a rezoning application to the Town Planning Board.

Kwun Tong remains grey and unvisited but is centrally located and easily accessible. The old factories there could bring new life to the area if converted into speciality shops, guest houses and jewellery showrooms. However, these are just not attractive to developers. Instead, they take advantage of the inadequate zoning laws in our rural areas to build new complexes or to construct shopping malls on reclaimed land, such as what is happening with the old Star Ferry pier in Central. By changing or relaxing the stringent rules, the government will give the urban districts to a new lease of life and leave more valuable green spaces untouched.

[SCMP, 22/11/06]

### Oil Street auction

The developers will have to wait until next year before they can try to auction one of the most coveted sites on the government's application list, the former Government Supplies Depot at North Point. The Metro Planning Committee of the Town Planning Board decided to proceed with a public consultation after adopting one of the three options, with three plans with different plot ratios prepared by the Planning Department for the Oil Street site. A total plot ratio of 10.6 applies in option one, and options two and three had ratios of 9.3 and 8.6 respectively.

The chief town planner said that the Board chose option three after the board considered public fears over development on the harbour front, traffic volumes resulting from high density development, town planning principles and maintenance of views of the ridgeline of North Point's hills.

In option three, the total allowable gross floor area will be 755,633 square feet which is down 43 percent compared with option one, and 19.7 percent compared with option two. The residential area will be a total of 530,109 sq ft, while the commercial part will be 225,614 sq ft. The maximum residential building height is 120 mPD compared with 165 mPD in option one.

The commercial buildings are restricted to a height of 100 mPD and the gross floor area allowed is enough for two blocks each of residential and commercial uses. The public open space for option three is more than double that in option one at 68,890 sq ft. The drawings by the Planning Department show two twenty-three storey office or hotel buildings in front facing the harbour with another thirty-eight storey residential blocks behind them.

The harbour activist group, Designing Hong Kong Harbour District, tried to rezone the site in order to include more open space but this was rejected by the Board in October 2005. However, it prompted the Board to rethink its plans for the site, since the site is the only plot of land along the harbour front in the current application list.

Midland Surveyors director Alvin Lam Tze-pun said that it is still a high-density development and that the site's location on the waterfront was its selling point. He also said its large size will allow flexibility for developers to position buildings.

Developer giants Cheung Kong (Holdings) and Henderson Land have two sites adjacent to the government site at King Wah Street. Cheung Kong is erecting columns at ground level for its planned hotel, while Henderson's site is home to a temporary carpark. However, the Board rejected Henderson's application to build an office up to the maximum allowed height of 165mPD in response to public concerns over high-density development and traffic volumes.

The Oil Street site is an expensive piece of land at HK\$10.63 billion, which translates into an accommodation cost of HK\$8,000 psf. As the site is regarded as a prime site, the government might yet keep it on its books longer.

[The Standard, 24/11/06]

## WEST KOWLOON CULTURAL DISTRICT (WKCD)

### Lawmaker warns of West Kowloon arts venue glut

Albert Chan Wai-yip, a pro-democracy legislator, has warned that the government might make the mistake of allocating too many venues for arts performances at the future West Kowloon Cultural District to secure the backing of arts and cultural groups for the project.

The performing arts sub-group under the WKCD consultation committee has proposed building extra performance venues, including: a 1,400-seat Cantonese opera theatre; a 2,000-seat concert hall; two 2,000-seat great theatres; four medium-sized theatres with 800 seats each; and four black box theatres with 250 seats each. This could increase the number of seats in local arts performance venues by 37 percent.

As no new proposals or ideas have been included in the government's latest documents on the project, Chan is concerned that the government's failure to state which arts, cultural or music groups could perform at these facilities will result in a low utilisation rate at the venues, with consequential revenue losses.

In response to Chan's remarks, Deputy Secretary for Home Affairs, Esther Leung, said the government would always adhere to its basic principles, i.e. promoting arts groups to allow them to freely present their creations, ensuring public participation and producing a balanced development. She said the government will initiate interaction and will exchange opinions with cultural groups so as to ensure that WKCD's resources can be appropriately allocated.

Three advisory groups affiliated to the WKCD consultative committee will hand in their proposals to the committee by the end of this year. Leung expects the committee to submit its recommendations to Chief Executive Donald Tsang Yam-kuen early next year. In future, Leung said the government would increase participation by the private sector, particularly arts and cultural groups, in venue management.

[The Standard, 05/10/06]

### Visual arts centre plan for West Kowloon

WKCD's museum advisory group announced their recommendations for the cultural hub's consultative committee on the core arts and cultural facilities.

The group has proposed replacing the initial proposal for four museums with a new cultural institution focusing on visual culture, to be known as "M+" (Museum Plus). M+ will have various functions, including: establishing and preserving a collection; holding art exhibitions; conducting cultural education and research; and running a publishing arm.

If constructed, M+ would occupy 125,000 square metres, and feature an exhibition centre taking up about 10,000 square metres in a building of a maximum of two storeys.

The initial proposals were for a cluster of four museums with different themes, such as a museum of ink art, whereas M+ would focus on 20th and 21st century visual culture in four categories: design; moving image; popular culture; and visual arts, including ink art.

Victor Lo, the advisory group's chairman, said that visual art will cover the development of art and ink art as an important characteristic of traditional Chinese art. Fellow member, Nansun Shi, explained that having the moving image as one of the themes was a natural fit for Hong Kong because the city has a long history of film-making. She said that apart from film, Hong Kong also

has a strong heritage of TV production, music video and advertising.

Mr. Lo said that to make M+ a "must-go" spot in West Kowloon, the architecture of the institution would be crucial. The group hopes the design will be innovative and it is proposing an international competition for the design of M+.

[SCMP, 24/11/06]

### Single super museum urged for West Kowloon

After submitting a report to the consultative committee on the core arts and cultural facilities in the WKCD, Victor Lo, the chairman of the project's museum advisory group, said M+ could become a must-visit attraction for art lovers around the world.

The group suggested M+ be managed by a statutory body with an independent board of trustees and an advisory committee should be set up to offer recommendations on the museum's promotion plans, implementation, collection strategy and public education.

Lo said the government should identify an interim venue for M+ to help gather momentum for the project and to provide a platform for training professional staff and nurturing patrons for the institution. They should also start acquiring works for the collections to be displayed as soon as practicable.

However, Mr. Lo dodged the question of financing, saying his advisory group was responsible only for making conceptual recommendations and is not in a position to comment on financial arrangements. He said the financial matters should be left to the Finance Committee and architectural and museum management professionals.

But he hinted that regular funding by the government would be likely as very few established and successful institutions overseas, whose visitor numbers reach 3 to 5 million a year, are self-sustaining, and most need the support of their respective government administrations. It is expected that Hong Kong's facilities will be unable to achieve self-sustaining visitor numbers in the short term.

[The Standard, 24/11/06]

## HONG KONG BRIEFING

### Smog walls in the city

Speaking at a green symposium last week, Hong Kong Observatory director Lam Chiu-ying called on professionals to re-think the design of urban buildings. As more and more high-rises have sprung up across the city, a government study has concluded that wind speed has been reduced by building mass by almost 50% over the past 30 years.

Between 1968 and 1995, wind speed measured at King's Park in Ho Man Tin declined steadily at a rate of 0.6 metres per second every decade. The measuring station was moved to a windier spot in the park in 1996, but the wind speed continued to decrease by 0.57 metres per second in the past decade.

Lam blamed the slow-down on the increasing number of buildings, because wind speed recorded on Waglan Island had shown no significant change over the same period. He said that urbanisation in the broad vicinity of King's Park has brought down the wind speed around the station, causing the urban area less well ventilated than before.

The reduction in wind speed has correspondingly reduced air ventilation, allowing the accumulation of dust and harmful particles. Pollution has further intensified due to the rise in temperature and lower

evaporation rates, which is conducive to the growth of germs.

The Hong Kong Institute of Architects has pointed out that residential projects in the 1980s tended to be 30 storeys high, with the average height slowly climbing to 40 storeys in the 1990s and 50 storeys today.

Lam said architects and engineers should take the lead in modifying urban planning. Tall buildings are causing the city's climate to become unfavourable to healthy living.

Green Sense chairman Roy Tam said the government should consider imposing restrictions on building heights and mandate minimum spacing between blocks. The green group said that air in Tseung Kwan O and Tung Chung has become stuffier due to new property projects in recent years. The group will in due course release its findings concerning the 10 districts suffering most from the wall effect.

[SCMP, 05/12/06]

### Smoking ban in Victoria Park

When new curbs on smoking take effect, Victoria Park in Causeway Bay will go completely smoke-free from January 1. The revised law allows smoking zones in big parks, but limits them to 1 per cent of a park's area.

The Leisure and Cultural Services Department had proposed designating three smoking areas - at open-air pavilions at the northern and southern ends, and at an open space bordering on Victoria Park Road. The three areas listed in the department's proposal for the 186,860-square-metre Victoria Park cover just 676 square metres, or 0.36 per cent, of the park's area. But Eastern District Council has rejected the proposal, making the district the first to commit itself to a ban on smoking in all parks and gardens.

Hong Kong Park and Chater Garden in Central, and Kowloon Park in Tsim Sha Tsui are also expected to become smoke-free when the district councils that run them meet this month to discuss smoking bans.

Stephen Chan, chairman of Central and Western District Council's culture, leisure and social affairs committee, said that there are most likely children playing in the parks under consideration, and therefore they want the air to be cleaner.

While major parks will be smoke-free when the law takes effect, smoking may still be allowed in most others. In Wan Chai, only 32 of 83 parks will be smoke-free, and in Kwun Tong just 11 of 100. At Southern Playground in Wan Chai, 88 square metres, or exactly 1 per cent of the 8,800-square-metre park, will be set aside for smokers.

Under the bill passed by the Legislative Council on 19<sup>th</sup> October 2006, the Leisure and Cultural Services Department director can, in consultation with councils, designate parks where smoking is allowed.

The law bans smoking in parks and gardens with "active facilities", such as sporting or children's play areas and with an area smaller than 2,000 square metres. But the department can recommend that smaller parks without such "active facilities" be exempt from the ban.

[SCMP, 03/12/06]

### Chinese University plans to cut 100 trees to make way for colleges

The Chinese University admitted yesterday it planned to cut down at least 100 trees to build two new small residential colleges.

In order to cope with a new four-year degree structure, which will start in six years, two new colleges will be built side by side on 13,200 square metres at the north of University Avenue in the campus. Pro-vice-

chancellor Ching Pak-chun said the university had to find the space on campus as the government would not allocate extra land for the colleges.

The trees will be cut down to build four residential blocks of four to 10 storeys, but Professor Ching said that double that number of new trees would be planted and the university would alter the design of buildings if necessary to preserve rare or special trees. As well, environmentally friendly building materials would be used, together with solar panels to generate backup power.

No timetable and designs were confirmed for the construction, but Professor Ching hoped the colleges would be ready before 2012.

Student union external vice-president Li Yiu-kee said the university never consulted students and the union on the plan. He criticised its move to cut down trees for the construction and said that the university could not compensate by planting more trees.

[SCMP, 01/12/06]

### Supermarkets cut 80m bags since April

In the Legislative Council yesterday, the environment chief Sarah Liao Sau-tung announced that the voluntary agreement between the government and 10 supermarket chains has reduced the number of distributed plastic bags by 80 million since April.

Though the figure is less than 1 per cent when compared with the 8.4 billion plastic bags (or about 23 million a day) dumped annually in the city's landfills, it puts the government and the supermarkets comfortably ahead of their annual target of reducing plastic bags use by 120 million bags.

Dr Liao said that with only six months gone, the respective reductions achieved by the three major supermarket chains range from 24 per cent to 29 per cent, which exceed their respective targets of 15 per cent.

Friends of the Earth environment affairs officer Michelle Au welcomed the news, saying the improvements were down to the efforts of supermarket staff. They noted that frontline staff now almost always asks the customers first if they really need the bag.

Dr Liao said a consulting firm had been commissioned to study the impact of a levy on plastic shopping bags, which is expected to be ready by the end of the year. A government source had previously said that 50 HK cents per bag would be collected from every customer under a law likely to be tabled next year.

Last year, 362,080 tonnes of plastic-bag waste was disposed of, an improvement on 368,158 tonnes in 2004, and 372,000 tonnes in 2003. HK\$125 per tonne is required to dispose of the waste, meaning HK\$45.2 million was spent last year.

[SCMP, 30/11/06]

### Pollution ideas get airing

Chief Executive Donald Tsang Yam-kuen told the "Business for Clean Air" joint conference that the Council for Sustainable Development will soon consult the public in order to forge some consensus on measures to be adopted in Hong Kong on days when the air pollution index is high.

Mr. Tsang said businesses may be asked to adopt measures to cut pollution on bad air days. This may involve special arrangements for working from home to avoid traveling, cutting air conditioning and lighting by half, encouraging car pooling, using only public transport, adopting flexible working hours to smooth out peak traffic and reducing the total number of vehicles on the streets. Mr. Tsang said support from the business sector will be vital to the exercise.

David Eldon, chairman of the Hong Kong General Chamber of Commerce, slammed the Hong Kong business community for making only "lethargic efforts" in the drive for clean air. He said it will require "a lot more" companies to join the Clean Air Charter campaign for it to have any weight.

Hong Kong currently has more than 300,000 registered business organisations, but only 500 parties have ratified the Clean Air Charter since its introduction a year ago. Eldon said a lot more than 500 signatories are needed. He said this is a business issue and taxpayers' money should not be used to clean up pollution caused by companies that have profited from it.

Eldon said 80 per cent of those who have signed so far have no discernible manufacturing operations. He wants business to take the lead in reducing pollution not only in Hong Kong, but in the Pearl River Delta. At present, there are 70,000 Hong Kong-owned factories operating in the delta region, with energy consumption growth outstripping increases in the gross domestic product annually.

Leading chambers of commerce said their members have been affected by pollution and Ronald Arculli, a member of the Executive Council, last week became the first official publicly to accept there was an urgent problem.

[The Standard, 28/11/06]

### Hong Kong recovers 28 tonnes of rechargeable batteries in 19 months

The government says that more than 28 tonnes of rechargeable batteries have been collected in Hong Kong in the past 19 months, effectively reducing pollution risks.

Lawrence Wong, an official with the Environmental Protection Department, said about 13 tonnes of rechargeable batteries were collected in the first year starting in March 2005 when Hong Kong launched a programme to recover the batteries. The batteries were sent to a treatment facility in the Republic of Korea for recycling in April this year.

Hong Kong produces about 250 tonnes of rechargeable batteries yearly and most of the batteries end up in landfills. The batteries contain valuable materials that can be reused as stainless steel and magnetic alloy. Wong said the programme demonstrated that recovery of batteries is feasible in Hong Kong.

At present, some 650 public collection points have been set up across Hong Kong in such places as railway stations, restaurants, electronic equipment shops, oil stations and convenience stores. In addition, more than 840 housing estates, 200 commercial/industrial buildings and 170 schools provide collection services to their occupants.

The recovery programme is funded by 36 manufacturers and importers of rechargeable batteries and electronic equipment. The Environmental Protection Department acts as the convener to help the industry implement the programme under a voluntary producer responsibility scheme.

Wong said that major waste producers, including the Customs and Excise Department, China Light Power Limited, Kowloon-Canton Railway Corporation and Mass Transit Railway Corporation have already joined the programme. He said the government will continue to appeal to companies, including security companies and second hand mobile phone trading companies which use or keep a large number of rechargeable batteries, to adopt the good practice.

[Xinhua General News Service, 24/11/06]

### Smoke-ban exemptions

Businesses had until mid-December to apply for an

exemption from the ban on smoking in public places which takes effect in January. Tony Ng, medical and health officer with the department's Tobacco Control Office, said that they have had fewer than 10 applications so far. The department expects a rush of applications as the deadline nears, and will then publish a list of exempt venues.

The new amended *Smoking (Public Health) Ordinance* passed by the Legislative Council last month bans smoking in all indoor workplaces, including restaurants, billiard rooms and karaoke establishments, from 1<sup>st</sup> January 2007.

Bars that do not admit anyone under 18, mahjong clubs and parlours, commercial bath houses, massage establishments and nightclubs are the six types of venues that can apply to be exempt from the ban until 1<sup>st</sup> July 2009.

Deputy Director of Health Leung Ting-hung warned that exempt venues might lose their exemption if they broke the law, for example, by admitting people under 18 or not displaying a notice that only persons over 18 may be served and that smoking there is only permitted until 30 June 2009. But they would be allowed to reapply for an exemption if the department was satisfied they had taken the necessary steps to comply with the law.

The Tobacco Control Office has 60 inspectors. Dr Leung said that number may rise to between 80 and 100 to monitor compliance with the new law.

It is estimated there are 70 mahjong parlours, 100 commercial bathhouses, 300 nightclubs and 300 mahjong clubs in Hong Kong. There are nearly 10,000 restaurants, bars, karaoke lounges and billiard rooms.

[SCMP, 10/11/06]

### Green facelift planned for run-down areas

Over the years, the Urban Renewal Authority (URA) has worked closely with developers to upgrade the territory's run-down districts. The authority has announced some 30 projects that will integrate green concepts.

Big projects with a heavily green aspect are scheduled for Tai Kok Tsui, Wan Chai and Sham Shui Po. About 2,580 households will be affected by the renewal programme and the total compensation for families is estimated at HK\$5 billion.

Stephen Lam, district development director for the URA, said that environmental protection is one of the provisions in their joint venture agreements with private developers. But they do not have a standard policy on how it should be achieved because the size of each project varies. It is up to developers to appoint landscape consultants to go into design details, such as what types of plants best suit certain places.

In Tai Kok Tsui a "green oasis" concept is being deployed for Fuk Tsun Street and Pine Street. Footpaths will be repaved and potted plants introduced at building sites. The concept will include some of the standard design features, like street furniture, a sky garden for visual impact and free air flow.

The Authority's most ambitious environmental commitment will be the Kwun Tong town centre, which will feature a high proportion of greenery and open space. The design and layout of the new buildings will allow for free air movement, which will bring in the breeze and help eliminate air pollutants. Residential buildings with podiums will be set back from main roads to reduce the impact of traffic noise and vehicle emissions. It is believed that more open space and fewer buildings will enhance the district's air quality.

All the design concepts for the new town centre factor in measures to reduce noise pollution. For example, hotel and office buildings between the existing Yue Man Square and Kwun Tong Road will serve as a sound barrier for the centre, obstructing noise from

Kwun Tong Road traffic and the MTR.

[SCMP, 20/10/06]

### Solid waste charging scheme to be launched in HK

The government will experiment with a three-month solid waste charging scheme next month, according to the Environmental Protection Department (EPD).

The EPD said the scheme for Municipal Solid Waste (MSW) Charging is aiming at examining logistical arrangements for waste recovery and disposal in different housing settings for reference in the feasibility study for introducing a variable-- rate charging scheme.

To introduce a charging scheme for solid waste disposal is one way to make people realise their responsibility in environment protection. During the trial period, participating residents will be given "designated bags" for disposal of different kinds of domestic waste. The department will collect relevant data and conduct a questionnaire survey to collect views and opinions from residents participating in the scheme. There will not be any charge during the trial period.

[Financial Times (Business Daily Update), 12/10/06]

### Hydraulic crusher cuts noise, waste from building site

Demolition work at a building project in Sham Shui Po is creating less noise and non-recyclable waste than traditional methods.

The Housing Society and the Urban Renewal Authority, in their first joint redevelopment project, are using a hydraulic crusher instead of a breaker to bring down buildings. A breaker uses a hammer to punch through walls, while a crusher has a hydraulic clamp that crushes the concrete and separates it from metal foundations.

Chum Hon-sun, the society's general manager for project management, said the breaker noise level was 120 decibels, while the crusher created about 85 decibels.

The project, launched in 2003, involves tearing down 40-year-old buildings in Wai Wai Road and putting up 348 flats by 2010.

Weekly checks found the noise level for nearby residents was 65 to 68 decibels when the crusher was used, while the breaker would record a level of 80 decibels. Busy traffic at a distance of 5 metres away creates 70 decibels. The crusher also allows debris to be handled separately, which significantly increases the amount of waste being recycled instead of being dumped in a landfill.

More than 85 per cent of waste created at the site can be recycled and used for reclamation, while 10 per cent goes to the landfill. The figure is better than the target of the society, which demanded contractors have no more than 50 per cent of the waste sent to the landfill.

The use of the crusher also minimises the fire hazard by decreasing the use of oxyacetylene, which is usual in operations with the breaker. However, while a breaker cost about HK\$100,000, a crusher cost HK\$300,000.

This is the first time the Housing Society has used the system, although it has been used on other developments in Hong Kong. Mr Chum said the technology would be used in six other redevelopment projects on which the society was co-operating with the Urban Renewal Authority.

[SCMP, 09/10/06]

## ADVISORY COUNCIL ON THE ENVIRONMENT (ACE)

### Progress of measures taken by Hong Kong and Guangdong to improve air quality (Submissions of HK government) (ACE Paper 21/2006)

#### Background

In April 2002, the HKSAR government reached an agreement with Guangdong's government to take steps to reduce emissions of four major air pollutants - sulphur dioxide, nitrogen oxides (NO<sub>x</sub>), respirable suspended particulates and volatile organic compounds (VOC)—by 40%, 20%, 55% and 55% respectively by 2010, using 1997 as the base year. Should the targets be achieved, the air quality of Hong Kong and the Pearl River Delta (PRD) will be greatly improved.

In order to meet these emission reduction targets, in December 2003 the two governments agreed to the PRD Regional Air Quality Management Plan (the Management Plan). The Hong Kong/Guangdong Joint Working Group on Sustainable Development and Environmental Protection also set up the PRD Air Quality Management and Monitoring Special Panel (the Special Panel) to implement the Management Plan.

#### Progress of measures

There have been some individual achievements during the past year. Both governments have cooperated in all aspects of implementation of various emissions-reduction measures set out in the Management Plan.

On 30<sup>th</sup> November 2005, the PRD Regional Air Quality Monitoring Network was commissioned, under which the public is now able to access the PRD Regional Air Quality Index. The Index comprises data which are objective indicators of air quality in the region. The Network also facilitates understanding of the effectiveness of the emissions—reduction measures and formulation of more effective strategies to adopt in the future.

Hong Kong has introduced a comprehensive package of measures to deal with vehicle emissions, emissions from power plants and VOC. As a result, roadside concentrations of particulates and NO<sub>x</sub> have reduced by 14% and 17% in 2005 in comparison with 1999. Emissions caps have been imposed on the two local power companies. The government is making some effort to encourage vehicle owners to acquire vehicles of lower emissions ratings, such as vehicles compliant with Euro IV emission standards. Recently, legislation has made the Euro IV standards compulsory for newly registered vehicles in 2006.

Guangdong has also made some progress, in reducing emissions of sulphur dioxide by swapping over to generating power from natural gas instead of coal. As well, large coal-fired power plants of about 6,300 MW have been installed with flue-gas desulphurisation systems, which will reduce sulphur dioxide emissions by an estimated 150,000 tonnes per year. Guangdong plans to complete the retrofitting of the systems at all coal-fired plants of 125 MW or above by 2008.

Bearing in mind the target to reduce emissions by over 400,000 tonnes each year by 2010, Guangdong introduced a policy in mid-2006 to give power plants with flue-gas desulphurisation systems an incentive of an extra payment of 1.5 cents per unit of electricity sold to the power grid.

Now, cleaner fuel is being used for electricity generating. Two power plants, Zhongshan Hengmen and Zhuhai Hongwan, have been using natural gas since early this year. In June 2006, Phase I of the Guangdong liquefied natural gas (LNG) project was completed. Another

four LNG power plants, which are located in Huizhou, Guangzhou and Shenzhen, are planned to be completed at different stages this year.

#### Way Forward

Encouraged by the achievements already made, at the Ninth Plenary Session of the Hong Kong/Guangdong Co-operation Joint Conference, which was held on 2<sup>nd</sup> August 2006, Hong Kong and Guangdong officials reconfirmed their determination to achieve the agreed emission reduction targets by 2010 and to improve air quality for their respective territories. Both sides reached a general consensus to continue their joint efforts to implement a series of specific measures aimed at achieving the targets.

The Ninth Plenary Session also recognised that the Special Panel set up by the governments had completed an implementation framework for an Emission Trading Pilot Scheme for Thermal Power Plants in the PRD Region, which will be presented to prospective participating power plants later this year. The purpose of the pilot scheme is to provide a platform for the power plants in the PRD Region to engage in emissions trading. The environmental agencies of both governments will monitor and ensure the progress of the pilot scheme.

In addition, Guangdong will take other measures, including:

- (1) shelving construction of new coal-fired or oil-fired power plants in the PRD region;
- (2) gradually introducing LNG for all power generation;
- (3) proceeding with retrofitting of flue-gas desulphurisation systems at existing power plants;
- (4) accelerating the introduction of National III motor vehicle emission standards, which are in accordance with Euro III standards, in Shenzhen;
- (5) continuing the ban on leaded petrol; and
- (6) implementing a pilot project in Shenzhen to further control emissions of VOC.

Hong Kong will also take measures to improve air quality, such as:

- (1) completing the drafting of a new regulation for controlling VOC emissions to be introduced into the Legislative Council soon;
- (2) maintaining the caps imposed on emissions by the local power companies, and introducing other measures in the post-2008 Scheme of Control;
- (3) using Euro IV motor vehicle emission standards for newly registered vehicles in 2006; and
- (4) increasing the use of natural gas to generate power and encouraging power companies voluntarily to implement measures to reduce emissions.

#### Green purchasing of general commodities by the HKSAR government (Submissions of the Government Logistics Department)

(ACE Paper 23/2006)

#### Introduction

“Greener” products are those with: enhanced recyclability; reduced packaging; greater durability; higher recycled content; lower water consumption (in production process); higher energy efficiency; lower emission of hazardous substances; improved protection of biodiversity (in production and disposal processes), and so on. Use of “greener” products helps to reduce the overall environmental footprint left by the production,

consumption and disposal stages of products.

Environmentally responsible purchasing is an effective way to encourage the development of production and use of “greener” products. The government should also make environmentally responsible purchasing a mandatory element of its procurement programmes by including appropriate directions in the Stores and Procurement Regulations (SPR) which are enacted by the Financial Secretary under the Public Finance Ordinance. SPR requires various governmental departments to include environmental considerations in drawing up their tender particulars. The Logistics Department (LD), the procuring arm of the government, has set goals for sensitivity to environmental impacts of purchasing decisions, and to ensure that legitimate environmental concerns are considered while continuing to achieve best value for money in purchasing goods and services.

#### Initiatives

To try to achieve their goals in the procurement process, LD has taken the following initiatives:

- (1) encouraging efficient use of supplies and materials;
- (2) using minimal or reusable packaging materials;
- (3) encouraging other government departments to include environmental considerations in their tender specifications;
- (4) maximising use of products of high recycled nature; and
- (5) promoting materials recovery and recycling.

#### Implementation

Key to any programme aiming at protecting environment or reducing waste is to reduce consumption of environmentally damaging products. On this, LD has taken specific action to reduce the use of paper by encouraging the use of electronic memory and interchange of data. LD's initiatives to date include: setting up an Electronic Tendering System to allow subscribers to download tender documents and submit tender offers through electronic means in a secure manner; uploading more than 50% of government forms under LD's control onto the Central Cyber Government Office's website; and encouraging and providing machines for printing and photocopying on double sides.

In addition to specifying the use of more environmentally friendly packaging materials, such as 100% recovered fibre, LD also has made efforts to mitigate any adverse environmental impact of government purchases. A list of green products, with reference to market availability, has been drawn up, and is regularly expanded by LD.

On waste reduction, LD has provided assistance to various departments to establish contracts for buying and selling recyclable and reusable products, including: paper waste; out-dated newspaper; periodicals and library books, and unserviceable water metres. LD also has awarded contracts for the supply of unleaded motor spirit, ultra low sulphur diesel and liquefied petroleum gas for government vehicles.

#### Environmental considerations in procurement process

Several policy measures have been adopted by LD in response to recognition that environmental factors must be considered in the government's procurement programme. These include:

- (1) avoiding one-use disposable items; purchasing products with greater energy efficiency; and utilising clean technology and/or clean fuels;
- (2) conducting regular reviews of product specifications for common-use items, such as allocated term contract items and standard unallocated stock items kept in the central store, to remove features

of adverse environmental effects and to replace such goods with alternative, environmentally-friendly products, if available; and

- (3) introducing environmental considerations into government tenders.

#### Way Forward

LD is committed to further improving the environmental friendliness of Hong Kong as a whole. As a demonstration of this, LD has adopted updated green specifications recommended by the Hong Kong Productivity Council for arranging new tenders for the supply of common-use items. In future, LD will continue to identify new opportunities to avoid unnecessary consumption of environmentally sensitive items, to minimise packaging and to promote the reuse and recycling of products.

## REGIONAL & INTERNATIONAL

### France

#### Deal sealed to build experimental reactor to harness nuclear fashion

After a decade of negotiations, a seven-member international consortium signed a treaty in Paris to build a multibillion-dollar experimental reactor to emulate the power of the sun and stars.

Construction of the 10 billion reaction will begin in 2008 in Cadarache, southern France. The project aims to research a clean and limitless alternative to dwindling fossil fuel reserves by testing new nuclear technologies. The objective is to harness nuclear fusion by fusing together atomic nuclei instead of splitting atoms.

The European Union, one of the members of the consortium, will bear half of the cost of building the reactor, with the rest shared equally by China, Japan, Russia, South Korea, India and the United States.

French President Jacques Chirac said the reactor was to help future generations and if it proved successful, mankind will be able to derive as much energy from a litre of seawater as from a litre of petrol or a kilo of coal.

[SCMP, 22/11/2006]

### China

#### China losing battle with pollution as growth soars

According to a report released by China's top environmental watchdog, the State Environmental Protection Administration, the environmental situation in China showed little signs of improvement during the first nine months of the year. The report pointed out that the surging economy has caused an increase in industrial pollution.

SEPA said China's overall environmental quality has hardly changed, with some areas suffering from more serious and rising industrial emissions which cause air pollution. In the years covered by the report, China's sulphur dioxide emissions totaled 25.5 million tonnes, the highest volume in the world. Violations of environmental standards are more rampant in projects supervised by lower levels of government (e.g. county-level) and in projects conducted in the more remote areas of the country.

Air quality for more than half of China's main cities is moderately or seriously polluted. In 11 cities monitored by the watchdog, more than 90 days out of 9 months were heavily polluted and approximately 15 million residents have been affected by the pollution physically and psychologically.

The report said the government would have to introduce new measures to prevent environmental issues from becoming a huge embarrassment during the Olympics in 2008.

[SCMP, 22/11/2006]

### Beijing smog hits worst level

Beijing's air pollution index soared to hazardous levels on 21 November 2006 as heavy fog hung over northern China from Liaoning to Shandong, leading to road closures and flight delays.

According to the China Environmental Monitoring Centre, Beijing's pollution index struck a high of 415. Readings of over 300 indicate air quality which is dangerous to health.

Experts said there was no direct relationship between the high density of fog and pollution. A meteorologist commented that the widespread, dense fog was mainly due to a drop in temperatures, while a weather forecaster said thick fog was common in winter, even back in the days when pollution was not so serious.

[SCMP, 22/11/2006]

### Waste water turns Yellow River red

Yellow River, China's second-largest river, turned red for more than an hour due to water containing red dye which was discharged by a heating station into the river in Lanzhou, a city of two million people and the capital of the western province of Gansu. This is the second time the river has turned red in a month.

The discharged water probably came from boilers in which hot water was dyed red to prevent people from diverting it for their own use. Environmental officials have found that the discharge was not toxic; however, it had caused the river to smell.

In late October, the Lanzhou Tanjianzi No2 Heat Providing Station was reportedly fined for discharging dyed water into the river.

Yellow River is the source of drinking water for dozens of cities and tens of millions of people. There are thousands of chemical factories along its banks.

[The Standard, 23/11/2006]

## United Kingdom

### Nations eye London vehicle congestion fees to tackle warming

London has imposed congestion charges on vehicles to reduce traffic, curb air pollution and fight global warming.

A spokesman for the office of Ken Livingstone, mayor of London, said that other European and some US cities, and "some cities in Asia", have sent delegates to London to study the scheme. Paris is also now considering introducing a similar charge.

When the levy was introduced in 2003, motorists paid 5 pounds (HK\$74) a day from Monday to Friday to drive in the City of London financial district and the West End. They now pay 8 pounds a day, and the scheme will be expanded westward in February.

Higher fees apply to gas-guzzling four-wheel-drive vehicles than are imposed on smaller cars, whilst exempting electric cars, will force consumers to make choices about the cars they buy, which in turn have a real effect on the market and push car companies themselves into manufacturing cars that pollute less generally, and specifically produce less carbon dioxide.

Scientists say carbon dioxide contributes to global warming by trapping heat inside the earth's atmosphere. The mayor's office said that, compared with 2002, traffic congestion is 22 percent lower, carbon emissions

have decreased 16 percent, nitrogen oxide pollution has declined 13 percent and particulate matter is down by 15 percent.

The charge was proved highly unpopular at first among drivers, but now Livingstone has won the admiration of ecologists. He has shown that unpopular measures can eventually be widely accepted.

[The Standard, 25/11/2006]

## Hong Kong

### Alan Leong sets tough pollution target

Mr. Alan Leong, a member of the Civic Party and potential candidate for the position of Hong Kong chief executive, has publicly stated that Hong Kong should adopt a stricter international standard for air quality in order to improve public health.

He commented that the government's air quality objectives are outdated and so endanger public health. Although the government says exposure to an air pollution index reading of 100 or less should pose no health threat, air pollution in Hong Kong on some days is 200 per cent above the recommended limits adopted by World Health.

Mr. Leong will unveil comprehensive proposals for combating air pollution. In his policy platform, he is expected to focus on how to cut public expenditure by reducing air pollution, as medical costs and lost productivity caused by pollution amount to HK\$21 billion a year.

The government has long been under pressure to combat air pollution. Critics say the Action Blue Skies campaign and a series of measures aimed at tacking air pollution advocated by Chief Executive Donald Tsang Yam-kuen have not achieved obvious results.

Mr. Albert Lai Kwong-tak, who helped draft Mr. Leong's platform on environmental protection, said the proposal would be broader and more in-depth than Mr. Tsang's policy. The plan will cover specific actions that the government can take to help clear Hong Kong's sky in the short, medium and long terms. It will also seek to tackle emission reduction targets for local power production plants and vehicle emissions, and will address the impact of climate change.

Mr. Lai said the proposal would be a comprehensive agenda which would focus on how to come up with effective policy tools and how to introduce a sustainable energy policy.

[SCMP, 25/11/2006]

## Brazil

### Brazil creates new protected areas in Amazon

Guayana Shield, a swathe of Amazon rain forest the size of Alabama in Rio de Janeiro, Brazil, has been declared a national park and placed under the provincial government's protection.

The 57,915 square-mile forest area, a region infamous for violent conflicts among loggers, ranchers and environmentalists, contains one fourth of the world's remaining tropical rain forests and the largest remaining unpolluted fresh water reserves in the American tropics. The region is said to have more undisturbed rain forest than anywhere else in the world.

The protected areas will include a vast preservation corridor, eventually stretching into neighbouring Guyana, Suriname and French Guiana.

Guiana Conservation International put up \$1 million to facilitate the expansion of the park, which preserves much of the jungle's largely untouched north. However, it is still far from clear how much the new reserves will do to preserve the southern part of the rain forest, where most deforestation is taking place. In the

Amazon region, 1.6 million square miles has already been destroyed by development, logging and farming. An area larger than South Carolina has been cut down over the last four years.

The new protected areas will help break the grip of the powerful ranchers, who often own plots of land the size of small European nations and rule them as their own personal fiefdoms. Two of the new protected areas, covering 22,239 square miles, will place the land completely off limits to the general public and will only be accessible to researchers.

The remaining areas have been declared sustainable use protected areas, allowing local communities to manage the natural resources and permitting limited logging under strict management.

[MSNBC.com, 04/12/2006]

## India

### Smog blamed for rice woes

Experts claim that air pollution caused by the burning of fossil fuels, like coal and diesel, has contributed to a worrisome slowdown in rice harvest yields in India during the past two decades. Research has shown that this type of pollution can cut rainfall and lower temperatures.

A reduction of the so-called atmospheric brown clouds - formed by soot and other tiny airborne particles belched into the air when fossil fuels are burned - would help improve rice harvests, which are vital for feeding India's more than one billion people.

This type of air pollution has combined with broader global warming effects from greenhouse gases such as carbon dioxide to adversely impact India's rice harvest. India is one of the world's major producers of rice. Broad agricultural improvements boosted India's rice harvests in the 1960s and 1970s, making it self-sufficient in rice, its staple food. Growth in production has fallen back since mid-1980s, prompting worry about potential food shortages in the densely populated and poor country. India's rice self-sufficiency could be threatened as some experts forecast that its population will top China's by the middle of the century.

There have been other explanations offered for the reduced rice harvests, including falling rice prices, deteriorating irrigation infrastructure, and soil degradation. But the combined effects of the atmospheric brown clouds and greenhouse gases on growing conditions are decidedly negative for rice production.

It has been suggested that the cooling effect of the brown clouds actually helped rice harvests by partially offsetting the warming effects of greenhouse gases; but this effect is not sufficient to offset the drying effect from these clouds, which hurts the harvests.

Some climate scientists have expressed concern that reducing brown clouds and their cooling effect could harm crops by intensifying the warming caused by greenhouse gases. However, the most recent studies have indicated that any negative impacts of intensified warming would be outweighed by the positive effects of higher rainfall.

[The Standard, 06/12/2006]

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**Convictions under environmental legislation: October to November 2006**

[Note: the EPD no longer classifies second (and subsequent) offences.]

The EPD's summary of convictions recorded and fines imposed during the above period is as follows:

*October 2006*

Thirty-four pollution convictions in October 2006

Thirteen of the convictions were under the Air Pollution Control Ordinance, twelve under the Noise Control Ordinance and nine under the Waste Disposal Ordinance.

The heaviest fine in October was \$75,000, assessed against a company that carried out asbestos works without appointing a registered contractor, or the contractor failed to discharged his duties.

*November 2006*

Forty-nine pollution convictions in November

Twenty-five of the convictions were under the Air Pollution Control Ordinance, fourteen under the Waste Disposal Ordinance, eight under the Noise Control Ordinance and two under the Water Pollution Control Ordinance.

The heaviest fine in November was \$50,000, assessed against a company that discharged waste/polluting matter into the water control zone.

Two men who exported controlled waste without permits and failed to engage the service of waste collectors were each sentenced to 320 hours community service.

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