

URBAN PLANNING AND  
ENVIRONMENTAL LAW  
QUARTERLY

簡 家 驄 律 師 行 · 城 規 環 保 簡 訊

**Fred Kan & Co. awards an annual prize to an outstanding environmental sciences student. The 1995 prize went to an MSC student at the University of Hong Kong, Arthur Lee. In this Report we briefly review Mr. Lee's dissertation.**

**The quarter's prosecution data indicate a continuation of the generally sympathetic approach of the Magistracies to environmental offenders: e.g. a defendant convicted of its 2nd, 3rd and 4th offences (over a 2 month period) for dark smoke emission, was fined the same amount, a nominal \$10,000, on each conviction [Tsuen Wan Magistracy, Nov.] The prescribed maximum fine is \$400,000 plus \$10,000 per day for each day the offence (i.e. discharge) continued.**

The Editors

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THE IMPORTANCE OF "EFFECTIVE MONITORING OF POLLUTANTS DISCHARGE" .....

The winner of the Fred Kan & Co. 1995 Prize for the best dissertation in the MSC course at the University of Hong Kong is Lee Hin-Man, Arthur. Mr. Lee's dissertation explores an extremely important function of environmental science (and scientists), namely the methods by which we might best monitor the efficiency and environmental impacts of individual sewage outfall points, such as those Hong Kong will have once its Master Sewage Plan is (partially or totally) in place (should the PRC ever agree the necessary funding). [An outfall "is an underwater pipe or tunnel that serves to discharge raw or treated effluent into the deeper part of a natural receiving water".]

In his well-written and reasoned dissertation, "Outfall Monitoring in Hong Kong" Mr. Lee considers many issues which arise from a government's decision to discharge

domestic waste (and industrial, but the dissertation concentrates on sewage) into coastal waters.

The point is made that many countries "have accepted that coastal waters can be used for sewage treatment and disposal *but*, the use of our natural resources, such as the marine environment, as a cheap waste disposal site can be justified *only* if the sewage and waste disposed of "are within the natural system's dilution and assimilatory system". [Regrettably, that has not been the criterion by which disposal of waste into Hong Kong's waters has been determined to date, which is now painfully apparent to the people of Hong Kong!]

Mr. Lee describes what is needed for Hong Kong to implement an *effective* Outfall Monitoring Program (OMP). He points out that Hong Kong has, or will have, 10 outfall points (to be established between 1993 and 1998) from the North West New Territory to Cheung Chau. Most importantly, he reinforces the fundamental need for the responsible monitoring agent - be it the EPD or some other designated authority - to assess environmental impacts of outfalls on a *cumulative* basis, not

simply on a single case basis as is usually the case in countries such as Hong Kong, which have no real experience or community interest in environmental protection. For example, in the North Western Water Control Zone there are "substantial and complicated cumulative impacts occurring at the receiving waterbody due to:

- a. the three outfalls are very close to one another;
- b. there are several highly polluting coastal discharges (e.g. Tuen Mun Nullah, Sham Tseng Nullah, etc.) nearby;
- c. the occurrence of "diffuse" pollution sources mainly due to mud dredging, reclamation, marine sand burrowing and contaminated and uncontaminated mud disposal. These activities are taking place around Sha Chau, Chep Lap Kok, Brothers and more than half of the northern coast line of Lantau Island."

The final responsibility for effective monitoring must always rest with the designated government agency, even when (or, especially when) a system of self-monitoring by industry is adopted. Mr. Lee emphasises that to meet that responsibility will require much better co-ordination between government agencies than is usually the case.

We congratulate Mr. Lee on his fine dissertation, which adds to the environmental debate a valuable practical perspective of the critical need for the government to implement effective monitoring measures in order to combat the serious degradation of Hong Kong's environment.

**Digest of LEGISLATION**

**Gas Safety (Gas Supply) (Amendment) Regulation 1995** (L.S.No.2 to GAZETTE No. 42/1995 dated 20th October 1995 / L.N.462 of 1995) - amends regulation 3 of the Gas Safety (Gas Supply) Regulations (Cap.51 sub. leg.) to put it beyond doubt that keeping cylinders containing liquefied petroleum gas and having an aggregate nominal water capacity exceeding 130 litres amounts to the erection of a *notifiable gas installation*; it also amends regulation 39 (6) to specify more particularly the circumstances in which a cylinder wagon shall be manned by not less than 2 competent persons.

**Marine Fish Culture (Amendment) Regulation 1995** (L.S.No.2 to GAZETTE No.42/1995 dated 20th October 1995 / L.N.467 of 1995) - increases the fee for marine fish culture licences to HK\$8.80.

**PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE (Cap. 132)** (PUBLIC PLEASURE GROUNDS) (AMENDMENT OF FOURTH SCHEDULE) No.7) ORDER 1995 (L.S. No.2 to GAZETTE No.47/1995 dated 24th November 1995 / L.N. 535 of 1995)

- 1. This Order sets aside as public pleasure grounds in the Urban Council Wong Wai Chung Complex Indoor Games Hall on the Island of Hong Kong and Po Kong Village Road Indoor Games Hall in Kowloon and New Kowloon specified in schedule 1 to the Order.
- 2. The effect of such setting aside is to vest the management and control of the public pleasure grounds in the Urban Council and which may make bylaws for the management of these grounds.
- 3. The Order also provides that the places specified in Schedule 2 to the Order shall cease to be designated public pleasure grounds.

**PUBLIC SWIMMING POOLS (DESIGNATION) ORDER 1995 under PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE (Cap.132)** (L.S. No.2 to GAZETTE No.47/1995 dated 24th November 1995 / L.N. 536 of 1995)

- 1. This Order designates the Hammer Hill Road Leisure Pool and the Jordan Valley Leisure Pool as public swimming pools.
- 2. The effect of such designation is to vest the management and control of these pools in the Urban Council and the pools become subject to bylaws made by the Urban Council.

*“ The final responsibility for effective monitoring must always rest with the designated government agency ..... ”*

**CIVIL AVIATION (AIRCRAFT NOISE) ORDINANCE (Cap.312) (AMENDMENT OF SCHEDULE) NOTICE 1995** (L.S. No.2 to GAZETTE EXT No.30/1995 dated 30th November 1995 / L.N.539 of 1995) - amends the Schedule to the Ordinance with effect from 30th November 1995 so as to extend noise standards specified under Chapter 3 of Annex 16 to the Convention on International Civil

Aviation signed on 7th December 1944 in Chicago, U.S.A., to all subsonic narrow-bodied jet aircraft, including foreign registered aircraft.

**HONG KONG AIRPORT (RESTRICTED AREAS AND TENANT RESTRICTED AREAS) ORDER** (L.S. No.2 to GAZETTE No.49/1995 dated 8th December 1995 / L.N. 563 of 1995) - The Hong Kong Airport (Restricted Areas) Regulations (Cap.292 sub. leg.) restrict entry into certain areas of the airport. The boundaries of these areas were last declared by an Order made in 1994. This Order, which replaces the 1994 Order, revises the boundaries of those areas. The plans referred to in this Order are available for public viewing in the Airport Management Duty Office of the Civil Aviation Department at Room D88, Departure Level, Passenger Terminal Building, Hong Kong International Airport.

**MERCHANT SHIPPING (PREVENTION OF POLLUTION BY GARBAGE) REGULATION** (L.S. No.2 to GAZETTE No. 51/1995 / L.N. 574 of 1995)

- 1. This Regulation gives effect to regulations 1 to 6 of

Annex V to the International Convention for the Prevention of Pollution from Ships 1973 as amended by the Protocol of 1978.

2. The Regulation applies to Hong Kong ships, wherever they may be, and to other ships while they are within the waters of Hong Kong and imposes controls on the disposal of garbage from ships into the sea.

## HONG KONG Briefing

### ENVIRONMENT AND PUBLIC HEALTH

**Doctors and environmental experts** have criticised the Environment Protection Department for creating "unnecessary public fear about pollution".

Air quality in Hong Kong has become a major concern since the establishment of the Department's Air Pollution Index (API).

Vice Chairman of the Hong Kong Medical Association said that providing an index was no use in dealing with the problems. A spokesman of University of Science and Technology's Research Centre also said that the introduction of the API did not make any difference to the quality of air and more effective control and prevention of air pollution is necessary. Only by means of legislation can Hong Kong keep in check emissions of polluting gases. (Hong Kong Standard 12/11/1995)

**The Government** announced that it had drafted legislation to rectify the lack of noise pollution controls for cars and trucks on the roads.

The Executive Council also approved the controls which are set to come into force by the end of March 1996.

The controls will bring Hong Kong, which presently does not set limits on noise generated by vehicles, into line with noise pollution controls for cars in Europe and Japan. The standards will also apply to motorcycles.

The Government said the responsibility for ensuring vehicles comply with the standards will rest with importers. Under those standards, the noise level for a private car and a large truck during acceleration cannot exceed 77 decibels and 84 decibels respectively. The new rules will apply only to first registration of new cars, not to cars registered before 31st March 1996.

The legislation exempts some classes of vehicle, such as motor tricycles, village vehicles and vehicles which cannot travel faster than 50 kph. (Eastern Express 25/11/95)

**The Consumer Council** warns that next time you get clothing back from the dry cleaner, be sure to air it before wearing it or your health will be at risk.

Council spokesman said exposure to left-over gas from the chemical solvents used for dry cleaning can cause eye irritation and affect the liver, kidney and nervous system.

Perchloroethylene, commonly known as "Perc", is the most widely used solvent in the dry cleaning industry in Hong Kong. Perc is a controlled pollutant under the Air Pollution Control Ordinance.

However, the spokesman said about 90% of the 370 dry cleaning premises in Hong Kong used a "dry-to-dry" design which avoids leakages of harmful gas. (Hong Kong Standard 16/12/95)

### *Planning and Land Use*

**The Government** is investing in a \$12 million computer modelling system that will act like a "crystal ball" and help planning for the treatment and disposal of Hong Kong waste.

The computer will be loaded with tons of data on waste volume and transport to give the authority scenarios and cost analyses of different waste disposal and treatment methods.

The principal environment protection officer for the waste facility planning group said the computer would be designed to project waste planning up to the year 2011 as long as there was enough data available to run the computer model to that date. But nobody could be able to tell how accurate the waste scenario would be "because we are looking at a crystal ball". (Hong Kong Standard 14/11/1995)

**Tsing Yi islanders** have been promised free air conditioners or double glazing to shield them from traffic noise after the opening of a new bridge.

The Territory Development Department recommended the \$37 million sound protection project after studies found noise levels in the area already reached 70 decibels during rush hour.

The new bridge, due to be completed in the middle of 1998 and costing \$1.34 billion, is expected to handle more than 45,000 cars a day and will be able to cope with traffic flows over the next 25 years. (SCMP 30/12/95)

### **PADS UPDATE**

ABOUT 80 per cent of the Tsing Ma Bridge construction work had been completed. 56 out of 95 units of the Tsing Ma deck are already in place on the suspension bridge. It is expected that the bridge deck will be completed by August 1996 and the whole project by May 1997.

Tsing Ma Bridge comprises two levels with a covered carriageway on the lower level. The carriageway has two rail tracks and two single lane emergency vehicular roads. On a normal day, vehicles may use the upper deck which will have a speed limit of 100 km/h.

When Signal No.3 is hoisted, high vehicles such as double deckers will be diverted to the emergency access on the lower deck. All vehicles will go to the lower deck when Signal No.8 is hoisted. When a Signal higher than No.8 is hoisted, all

vehicles, except emergency vehicles, will be prohibited from using the Tsing Ma Bridge. As the speed limit of the lower deck is to be 50 km/h, with single direction traffic, the chance of accidents should be low. (Construction News 1995 Vol.6 No.7)

**HONG KONG'S BIGGEST** developers have been short listed in the race for the proposed giant real estate development above the new airport railway station in Kowloon.

The Mass Transit Railway Corporation (MTRC) sent out formal letters in early November to consortia which had expressed an interest in carrying out the development inviting tenders.

The proposed commercial, residential and hotel development will cover a gross floor area of about 11.7 million sq. ft., spilt into sever lots. The tender closing date for the first development package was 15th December 1995, with the development contract awarded to the winner in the first quarter of 1996. (Construction News 1995 Vol.6 No.7)

AT LEAST four consortia submitted bids on 15th December 1995 for the first phase development rights of Kowloon Airport Railway Station. The Mass Transit Railway Corporation (MTRC) will announce the tender result in the first quarter of 1996.

Phase I of the development package involves a 1.69-hectare site, including six residential towers with a total gross floor area of 147,562 square metres and a maximum of 1,776 units. Other features include 1,332 parking spaces, a public bus terminus and a neighbourhood community centre. MTRC earlier estimated total investment for the phase would amount to about HK\$8 billion, 11 per cent of the total investment cost of the station development.

The land will become available in March 1996. Construction will begin in late 1996 and is expected to be

completed within three to four years. (Hong Kong Standard 16/12/95)

**CONSTRUCTION** of the West Kowloon Expressway reached another important stage when the last of the 2,258 precast segments for the highway's elevated northern section was put in place.

The final section was erected in Tai Kok Tsui, marking completion of placement of all the precast segments within 15 months, four weeks ahead of schedule. With the last segment in place, the expressway's 2.7-km elevated northern section has taken shape. This section of the expressway is elevated so that the Airport Railway can run underneath it.

Meanwhile, other works on the 4-km dual three-lane highway are proceeding well. These include construction of the expressway's ground-level southern section, distributor road bridges, footbridges and retaining walls.

The expressway will run from the Western Harbour Crossing Toll Plaza in Yau Ma Tei to the south of Mei Foo Sun Chuen. It will be built on the West Kowloon Reclamation, as part of the road network which will connect the new airport at Chek Lap Kok and Tung Chung new town to the urban areas in Kwai Chung.

The expressway is scheduled for completion at the end of 1996. When opened, it will give much needed relief to traffic congestion in West Kowloon. (Construction News 1995 Vol.6 No.7)

**MASSIVE** redevelopment plans for the island of Ma Wan have received a positive response from villagers on the island.

About 600 residents face dramatic changes in the run-up to the next century, with plans to develop the island into a housing resort with a historical theme park. The Tsing ma Bridge will also bring change, carrying thousands of cars and trains across the island. Between 30 and 35 tower blocks housing 150,000 people

would be built on the south side of the island under the scheme proposed. (SCMP 22/1/96)

**GREEN** groups filed with the Legislative Council a complaint against bureaucrats limiting the boundaries of a proposed dolphin sanctuary and misusing funds in connection thereto.

The sanctuary is to be established in Sha Chau and Lung Kwu Chau for the endangered Chinese White dolphins in an attempt to minimise the impact of an airport fuel depot which is to be constructed in the area.

The Marine Department wants to revise the sanctuary's boundary in north Lung Kwu Chau, which is used by high-speed ferries. It said the boundaries would be difficult, but not impossible, to enforce.

But green groups said this would eliminate 40 per cent of the area where dolphins congregate. (HKS 23/1/96)

## CASELAW UPDATE

**The Filipino Club v. Building Appeal Tribunal & Building Authority**  
(High Court Miscellaneous Proceedings No.977 of 1995, 29th June 1995, 14th September 1995, Jerome Chan J.)

**Judicial Review - Building Appeal Tribunal - Building Authority - Whether plans for a structure already constructed could be approved retrospectively - Whether Building Authority refused to process plans on the ground that they related to illegal buildings - Whether Building Authority could approve plans to alter a building under a demolition order - Buildings Ordinance (Cap 123) ss 16, 24, 42 (5) - Application Dismissed**

The applicant had added a steel carparking platform in its club premises without first obtaining the consent of the Building Authority

("the Authority"). The illegal structure was discovered by the Authority which issued a demolition order dated 4th March 1994 pursuant to S.24(1) of the Buildings Ordinance ("Ordinance") requiring the applicant to remove the illegal structure and to undertake remedial works under the supervision of an authorised person and a registered structural engineer. However, instead of supervising the demolition of the illegal structure and remedial works, the authorised person purportedly submitted plans for altering and normalising the illegal structure under S.24 (1)(c) of the Buildings Ordinance on 23rd May 1994. On 20th July 1994, the Authority refused to process the plans on the ground that it had no power to give retrospective approval or consent in respect of building works that have already been completed. The applicant appealed unsuccessfully to the Building Appeal Tribunal ("the Tribunal"). The applicant then applied to the High Court seeking judicial review on the grounds that the Authority and the Tribunal had power to process and approve plans retrospectively and that the Authority had wrongly taken into consideration the fact that the plans related to illegal structures. The Application was dismissed on the grounds, inter alia, that:

1. Under S.42(5) of the Ordinance, the requirement of approval of plans and consent to commencement of work under the Ordinance cannot be waived by the Authority. It was clear that no powers are available to the Authority to give retrospective approval or consent in respect of building works which have already been completed.
2. The ground of the Authority's decision was that the building for which the plans were submitted had already been completed. The application for consent should and must be made prior to the construction of the structure. The Authority thus did not refuse to process the plans because they related to illegal structures.
3. The Authority was entitled to reject the application for consent for works commenced or structures completed under both S.16 (1)(a) and

(c) of the Ordinance.

4. Any application for approval of works carried out to remedy a structure under a demolition order could be validly rejected by the Authority under S.16 (1)(d).

## REGIONAL AND INTERNATIONAL

In "*Problems and Prospects in Guangzhou*", [Asian Law Journal, June 1995] Professor Carlos Wing-Hung Lo of the Department of Management, Hong Kong Polytechnic University, provides an interesting overview of environmental legislation applicable to the municipality of Guangzhou.

Professor Carlos briefly summarises the progress made by the Municipal Government of Guangzhou (which enjoys a significant degree of autonomy and legislative power) since it introduced its first environmental legislation in 1979. This was also the year of the first national, environmental legislation passed by the National People's Congress of the People's Republic.

Since 1979 approximately 16 individual schemes of anti-pollution regulation have been legislated by the Municipality. These are in addition to national environmental laws or policies which may apply e.g. environmental policy contained in the 1982 Construction of the People's Republic of China. The overwhelming focus of Guangzhou's environmental laws concerns pollution, in all its forms. There are also various environmental impact assessment provisions which apply to development projects.

Whilst Professor Carlos' article indicates that Guangzhou has made some effort to combat the environmental degradation associated with economic exploitation and growth (an approach not reflected generally by the authorities in much of China), there remain two significant areas of environmental responsibility in which, it would seem, no real progress has been made:

i) laws aimed at conserving the natural environment (i.e. ensuring diverse ecological systems, viable habitat for indigenous species etc.) enjoy "the least priority in Guangzhou's environmental governance" (and, indeed, none is mentioned specifically by the author), and

ii) Guangzhou has yet to establish a workable legal system to ensure "strict and effective enforcement" of its environmental laws.

In addition, Professor Carlos comments that officials have been only too ready "to subordinate environmental control to economic growth", which is a familiar pattern for environmental disaster in the developed countries of the world. Regrettably, it is clear that China has not yet learnt from the environmental mistakes of such countries.

### Letter to Editors

Dear Sirs,

*I have just received a copy of the September edition of your Urban Planning and Environmental Law Quarterly and should like to clarify a point you make in column 2 of page 3. Hong Kong developers are not supporters of the current plans to reclaim large areas of Victoria Harbour. In fact The Real Estate Developers Association of Hong Kong (R.E.D.A.) has on numerous occasions, through both official and unofficial channels, questioned the Government's pre-mature decision to further reclaim the Harbour without adequately pursuing other options such as opening up the vast amount of agricultural and scientific research land in the New Territories, without consulting the people of Hong Kong and without conducting the necessary environmental impact assessments. R.E.D.A. also wrote to the Government on 8 December 1995 formally objecting to the reclamation in the Sulphur Channel between Green Island and Kennedy Town.*

*In Hong Kong these days it has become fashionable to blame the property developers for many environmental problems and whilst we are not perfect we do attempt to keep our own houses in order to a certain extent.*

*Yours faithfully,*

*J.P. Dale*

*Technical Services Director*

*Swire Properties Management Ltd.*

**URBAN PLANNING AND ENVIRONMENTAL LAW QUARTERLY**

Comparative Table of Environmental Convictions:  
October - December 1995

	Number	1st Offence	2nd Offence	3rd + Offence	Highest Fine
APCO	11	4	2	5	\$ 20,000
	17	8	4	5	\$ 30,000
	10	8	-	2	\$ 20,000
WPCO	19	8	7	4	\$ 50,000
	15	8	2	5	\$ 60,000
	18	14	2	2	\$ 70,000
NCO	15	11	1	3	\$ 50,000
	17	9	3	5	\$ 75,000
	23	17	-	6	\$ 50,000
OLPO	-	-	-	-	-
	2	2	-	-	\$ 15,000
DASO	-	-	-	-	-
	4	4	-	-	\$ 15,000
WDO	13	13	-	-	\$ 20,000
	20	20	-	-	\$ 15,000
	10	8	1	1	\$ 15,000
Total	58	36	10	12	
	71	47	9	15	
	65	51	3	11	

October figures appear on the first line, November figures on the second, and December figures on the third of each item. Source: EPD, Anti-Pollution Prosecution Figures.

**ABBREVIATIONS**

<b>AFD</b>	Agriculture & Fisheries Department
<b>APCO</b>	Air Pollution Control Ordinance
<b>CFCs</b>	Chlorofluorocarbons
<b>DASO</b>	Dumping At Sea Ordinance
<b>EC</b>	European Community
<b>EE</b>	Eastern Express
<b>EPCOM</b>	Environmental Pollution Advisory Committee
<b>EPD</b>	Environmental Protection Department
<b>EXCO</b>	Executive Council
<b>FEER</b>	Far Eastern Economic Review
<b>HKS</b>	Hong Kong Standard
<b>HKU</b>	University of Hong Kong
<b>JLG</b>	Joint Liaise Group
<b>LDC</b>	Land Development Corporation
<b>LEGCO</b>	Legislative Council
<b>LS</b>	Legal Supplement
<b>NCO</b>	Noise Control Ordinance
<b>NT</b>	New Territories
<b>OLPO</b>	Ozone Layer Pollution Ordinance
<b>PAA</b>	Provisional Airport Authority
<b>PADS</b>	Port and Airport Development Strategy
<b>SCMP</b>	South China Morning Post
<b>SMP</b>	Sunday Morning Post
<b>WDO</b>	Waste Disposal Ordinance
<b>WPCO</b>	Water Pollution Control Ordinance

This report does not constitute advice of a legal nature. Whilst all effort has been made to ensure completeness and accuracy at the time of publication, no responsibility is accepted for errors or omissions. Further information, inquiries and advice in respect of this report should be directed to:

**HONG KONG**

**FRED KAN & CO.**  
*Solicitors & Notaries*

31/F., Central Plaza  
18 Harbour Road  
Hong Kong

Telephone: (852) 2598 1318  
Facsimile: (852) 2588 1318

**CANADA**

**Smith, Lyons, Torrance, Stevenson & Mayer**  
*Barristers & Solicitors*

Suite 6200, Scotia Plaza  
40 King Street West  
Toronto, Canada M5H 3Z7

Telephone: (416)369 7200  
Facsimile: (416) 369 7250

World Trade Centre  
Suite 550-999 Canada Place  
Vancouver, Canada V6C 3C8  
Telephone: (604) 662 8082  
Facsimile: (604) 685 8542

**UNITED KINGDOM**

**IRWIN MITCHELL**  
**SOLICITORS**

St. Peter's House  
Hartshead  
Sheffield S1 2 EL  
United Kingdom  
Telephone: (742) 767 777  
Facsimile: (742) 753 306

190 Corporation Street  
Birmingham B4 6QD  
Telephone: (21) 212 1828  
Facsimile: (21) 212 2265