

FRED KAN & CO.

Solicitors & Notaries

URBAN PLANNING AND ENVIRONMENTAL LAW QUARTERLY

(Published since May 1992)

簡家驄律師行 . 城規環保簡訊

In a hopeful sign of Hong Kong's maturing attitude towards environmental conservation, the Hong Kong Sustainable Development Forum was established in September 1998 and continues as a significant participant in community discussions concerning the health of Hong Kong's environment. In this Quarterly we provide a brief overview of the HKSDF.

The Editors

CONTENTS

	Page
FEATURE: The Hong Kong Sustainable Development Forum	1
LEGISLATION DIGEST	3
HONG KONG BRIEFING	4
HONGKONG DISNEYLAND UPDATE	5
ADVISORY COUNCIL ON THE ENVIRONMENT (ACE)	6
TOWN PLANNING	8
REGIONAL & INTERNATIONAL	9
PROSECUTION STATISTICS...	12

THE HONG KONG SUSTAINABLE DEVE- LOPMENT FORUM

In September 1998 a well-known environmental law academic and commentator, Ms. Terri Mottershead, established the Hong Kong Sustainable Development Forum ("HKSDF") in collaboration with other people concerned by the severe degradation of Hong Kong's natural environment caused by urban and infrastructure development.

A focus of the HKSDF was and remains consensus building and encouraging extensive public consultation on and participation in all development projects, particularly those which threaten our environment and remnant ecological systems. As such, the objective of the HKSDF is to achieve environmental responsibility in the way we develop Hong Kong, as distinct from the (some would say, equally important) aesthetics or town planning aspects of our development. Sustainable development means different things to different people, but the most frequently used definition is

from the now famous *Brundtland Report* (1987):

"Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs."

The principle of sustainable development has the objective of improving the quality of life for all of the Earth's citizens without increasing the use of natural resources beyond the capacity of the environment to supply them indefinitely. It requires an understanding that inaction has consequences and that we must find innovative ways to change institutional structures and influence individual behaviour. It is about taking action and changing policy and practice at all levels, from the individual person to the international community.

Sustainable development is not a new idea. Many cultures over the course of human history have recognised the need for harmony between the environment, society and economy. What is new is an articulation of these ideas in the context of industrial and

information societies, such as Hong Kong.

Models for the HKSDF are found in many western countries, such as the United Kingdom and the United States. In the United States, the President's Council on Sustainable Development advises the President directly on man-generated development/ environmental issues. The British government's Panel on Sustainable Development performs the same role in the United Kingdom. The HKSDF has no official status, but the government has welcomed and encouraged its participation in discussions on important development proposals. This can be seen from the activities of the HKSDF to date, some of which are summarised in their most recent newsletter. These include:

- invited to a meeting with the then secretary for Planning, Environment and Lands Bureau to discuss various issues, in particular the introduction of consensus building into the government's decision-making process in all departments;
- presented to the government HKSDF's views on the South-East Kowloon development and, subsequently, the Visions for Victoria Harbor Review, focusing on HKSDF's concern that the process of consultation used and subsequent review of these proposals was not and is not consistent with the principles of consensus building and unlikely therefore to result in a sustainable development for Hong Kong;
- participated in working groups set up under the new *Environmental Policies for the 21st Century Policy* initiative in Hong Kong ;
- made representations at the invitation of the Planning Department on a number of planning public consultation exercises, such as the Stage II study on review of the *Metroplan* and related *Kowloon Density Study* review;
- submitted comments on the *HK BEAM Study* i.e. the study to review and comment on an environmental assessment scheme for residential buildings;
- invited to join the Earth Council which co-ordinates all countries' NGOs' sustainable development initiatives world-wide;
- at the request of the Agriculture & Fisheries Department, participated in Stage 1 of the public consultation programme for the Wetlands Compensation Study (which commenced in November 1998);
- hosted the first international conference in Hong Kong on *Developing A World Class City Together : a Powerful Process*, a conference on consensus building in Hong Kong in September 1999. The conference was sponsored

The stated mission of HKSDF is “to be instrumental in bringing about the implementation of sustainable development in Hong Kong through the process of consensus building”.

by Swire Properties, United States-Asia Environmental Partnership (US-AEP) and CLP Power and supported by the American Chamber of Commerce in Hong Kong, the Hong Kong Productivity Council, AT Kearney, the Hong Kong Business Coalition on the Environment (HKBCE) and the Hong Kong Tourist Association (HKTA). It involved local speakers from green groups, government and business. The consensus-training workshops were conducted by the American based and internationally renowned consultancy, the Plowshares Institute;

- hosted the first public lecture on the Earth Charter Global initiative in Hong Kong in January 2000;
- hosted the first international conference on *Sustainable Communities and a Local Agenda 21* in Hong Kong in February 2000. The conference was co-hosted by The British Council in Hong Kong and featured presentations by prominent local and international speakers in areas such as: sustainable development and the application of Agenda 21 in the UK; sustainability indicators; sustainable development and ISO 14000; sustainable development and the EIA process; building multi-stakeholder partnerships, and public participation in sustainable development initiatives;
- participated in trials of the CASET or computer based model from the SUSDEV21 Study. CASET is proposed for use as a tool for the government to assess the sustainability of policies and proposals under its consideration;
- launched the Roundtable Discussion Series, the first of which was held in September 2000, on Hong Kong's proposed Council on Sustainable Development. The outcomes/recommendations of this discussion were forwarded to the Chief Executive and were focussed particularly on the composition, function, constitution and likely impact of the CSD for Hong Kong;
- undertaken and co-hosted the first colloquium on *Environmental Mediation in Hong Kong* in October 2000;
- assisted in establishing a Sustainable Development Unit in Hong Kong in March 2001;
- participated in government study, *Sustainable Development for the 21st century*.

The stated mission of HKSDF is “to be instrumental in bringing about the implementation of sustainable development in Hong Kong through the process of consensus building”. Its more general goals include the inarguably

correct objective of ensuring that all Hong Kong citizens are afforded justice and have the opportunity to achieve economic, environmental and social well-being and that we all enjoy the benefits of clean air, clean water and a healthy environment.

However, it is debatable in these modern times that the principle of “sustainable development” is sufficient to ensure that such goals realistically will be achieved. There is no problem with “sustainable”, but there is with “development” as this assumes an anthropocentric priority.

The principle, generally viewed as enlightened, in reality “promulgates the utilitarian value of nature for ensuring the survival of mankind.” (Braidotti et al, 1994).

As a criterion for environmental responsibility, sustainable development now comes under serious criticism in those countries which accord reversal and prevention of environmental degradation a high priority. There are environmental philosophies (often referred to as “ecosophies”) which might more appropriately drive Hong Kong’s approach to its long term management of the dilemma of accommodating an increasing population with a small natural resource base (which is a topic we shall consider in a subsequent *Quarterly*).

The aims and work of KKSDF are most creditable. The organisation’s founders and its members are to be commended for adding another voice of caution and concern in a development debate which, to date, has been dominated by the “development” side of the equation.

[Membership of HKSDF is free: go to www.hksdf.org.hk]

LEGISLATION DIGEST

AIR POLLUTION CONTROL (VEHICLE DESIGN STANDARDS) (EMISSION) (AMENDMENT) REGULATION 2001

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

(L.N.101 of 2001/L.S. No.2 to Gazette No.22 of 2001)

[This Regulation shall come into operation on 1 August 2001.]

Under this Regulation, every taxi registered on or after 1 August 2001 shall be equipped with a positive-ignition engine and shall be constructed to operate on (a) unleaded petrol only or (b) liquefied petroleum gas only.

The new emission standards for taxis registered on or after 1 August 2001 and constructed to operate on liquefied petroleum gas only are introduced under Schedule 10A.

Under a new paragraph (ba) of Schedule 11, any taxi which is constructed to operate on liquefied petroleum gas only is not required to install an on-board diagnostic system.

AIR POLLUTION CONTROL (VEHICLE DESIGN STANDARDS) (EMISSION) (AMENDMENT) (NO.2) REGULATION 2001

(Made under section 43 of the Air Pollution Control Ordinance (Cap.311) after consultation with the Advisory Council on the Environment) (L.N.102 of 2001/L.S. No.2 to Gazette No.22 of 2001)

[Sections 2(h), (i) and (j), 4, 5 and 6 shall come into operation on 1 October 2001. Sections 2(a), (b), (c), (d), (e), (f) and (g), 3, 7, and 8 shall come into operation on 1 January 2002]

Under this Regulation, stricter vehicle design standards for emission of any air pollutants are imposed on every goods vehicle, light bus or bus (a) which has a design weight (i.e. in relation to a particular motor vehicle, the maximum design loaded vehicle weight recommended by the manufacturer for motor vehicles of the same class or description as the particular vehicle) of more than 3.5 tonnes and (b) which is registered on or after 1 October 2001. However, these stricter standards are not imposed on a light bus (a) which is equipped with a compression-ignition engine (i.e. an engine in which the fuel is injected into the cylinders or

combustion space of the engine and is there ignited during normal running solely by the heat of compression of the cylinder charge) and (b) which has a design weight of more than 3.5 tonnes but less than 4 tonnes.

This Regulation also imposes stricter design standards for emission of any air pollutants on every private car, tax goods vehicle or light bus (a) which has a design weight of not more than 3.5 tonnes and (b) which is registered on or after 1 January 2002.

The Regulation also requires every motor vehicle equipped with a positive ignition engine (i.e. an engine operating on the Otto cycle in which a mixture of fuel and air is drawn into cylinders and ignited after compression by means of an electric spark applied at a known and pre-determined moment of the cycle) and registered on or after 1 January 200 to be equipped with an on-board diagnostic system.

AIR POLLUTION CONTROL (DRY-CLEANING MACHINES) (VAPOUR RECOVERY) REGULATION

(Made under section 43 of the Air Pollution Control Ordinance (Cap.311) after consultation with the Advisory Council on the Environment) (L.N.103 of 2001/L.S. No.2 to Gazette No.22 of 2001)

[This Regulation shall come into operation on 1 November 2001]

The purpose of this Regulation is to reduce the quantity of perchloroethylene-laden vapours exhausted from dry-cleaning machines by establishing various requirements for such dry-cleaning machines.

Terms “dry-cleaning machine”, “existing machine”, “non-vented type”, “specified period”, “vented type” etc. are defined in section 2. The Regulation applies to every dry-cleaning machine.

The air pollution control authority (“Authority”) shall approve any model of non-vented type dry-cleaning machine if it satisfies the prescribed requirements section 4.

The Authority shall cause a register of each model of an approved machine to be kept and such register shall be open to the public for inspection : sections 5 and 6.

Sale or lease of a dry-cleaning machine is prohibited unless such machine satisfies the prescribed requirements: section 7.

The owner of a dry-cleaning machine shall not use or permit other persons to use a dry-cleaning machine installed in a laundry unless the machine is (a) an approved machine or (b) an existing machine (i) the specified period of which has not expired or (ii) if the specified period has expired, meets certain prescribed requirements. A dry-cleaning machine which cannot be used must be rendered permanently inoperable or removal from the laundry : section 8.

A competent examiner shall sign a certificate if an existing machine complies with the requirements prescribed in section 8: section 9.

The Authority shall register a certificate submitted by the competent examiner: section 10.

Contravention of section 7 or 8 constitutes an offence and certain penalties are imposed for such offences : section 11.

The Schedule to the Regulation prescribes testing procedures for perchloroethylene concentration in the drum of non-vented type dry-cleaning machine, as well as particular duties of an Accredited Laboratory and testing conditions and methods.

HONG KONG BRIEFING

End of road for Route 7 to Aberdeen

The controversial \$8.7 billion Route 7 highway between Kennedy Town and Aberdeen has been scrapped. A revised plan will be put to legislators on 9 July 2001. The revised plan replaces the original concept of a six-lane highway, with a four-lane one between Kennedy Town and Pok Fu Lam. The new road will be built by 2010, while the follow-on section between Pok Fu Lam and

Aberdeen may never get off the drawing board.

According to a government spokesman, the further extension from Pok Fu Lam to Aberdeen is contingent on development in the southern district. However, future growth in the Aberdeen area is likely to be limited as there is little scope for expansion and the government is keen for it to remain a semi-rural region. Even the Route 7 name has been dropped, with the new highway tentatively known as the Pok Fu Lam - Kennedy Town link road.

Opponents of the original eight-kilometre road were still not happy with the revised plan. Former legislator Christine Loh Kung-wai, who heads the Save Our Shorelines Society, insists that a railway would be better than a highway in terms of environmental protection. Fellow society member, Lisa Hopkinson agreed that no matter if it is two-lane or three-lane, the highway still destroys the shoreline.

The government said it had switched its plans following a review which forecast lower-than-estimated traffic projections. Its change of stance had nothing to do with alternative proposals to build a rail link from Kennedy Town to Aberdeen. The government spokesman said that the new route is a local road which has no impact on the southern rail line, which is still a long-term project.

Consultants will be invited to bid next year to carry out a feasibility study. The successful firm will review existing documents and assess options for a tunnel under Mount Davis between Kennedy Town and Sandy Bay and a tunnel or buried road between Sandy Bay and Telegraph Bay, near Cyberport. The government spokesman said it is more or less a new project, so the government will be commissioning a new study. Planning and engineering are likely to take up to two years to complete, with construction due to start in 2005-2006.

[*Hong Kong iMail*, 5 July 2001]

Long Valley hearing reaches end of line

The Long Valley was not pristine and the features that have benefited wildlife in the area were actually man-made, the

Appeals Board hearing an appeal over a blocked rail project was told on the last day of the Kowloon-Canton Railway Corporation's (KCRC) appeal against the department's decision to block construction of the Sheung Shui-Lok Ma Chau line.

The Department of Environmental Protection's "residual anxiety" about the ecological impact of the KCRC's spur line through the valley was ill-founded, the company's senior counsel, Keith Lindblom, told the Board. He said that it is fair to say the valley's value to wildlife largely depends on the farms. In a sense, it is fair to say the ecological value is man-made. Mr. Lindblom argued that avoiding the valley because of the mere possibility that man-made developments would harm the area was "not a realistic approach". Developing an alternative route was equally unworkable.

Speaking after hearing evidence for 27 days, chairman Justice Barry Mortimer said the tribunal would hand down its judgment "as soon as is reasonably possible". Whilst the spur line was part of the 1994 Railway Development Strategy and therefore government policy, Mr. Justice Mortimer said the government is also bound to abide by the Environmental Impact Assessment Ordinance.

KCRC chairman and chief executive Yeung Kai-yin declined to predict the future of the \$8 billion spur line, which is designed to take the pressure off the Lo Wu border crossing. He said he had attended the final day's hearing in order to listen to the company's barrister sum up its case.

Director of Environmental Protection Robert Law rejected the KCRC's environmental-impact report on what he termed one of Hong Kong's most ecologically precious wetlands. He made the decision in October last year after receiving 225 letters of objection - the most for any project. It was the first time the department had turned down an application for a permit after public consultation. If the board decides in favour of the spur line, the KCRC hopes the line will carry 50,000 to 80,000 people a day, reducing the 200,000-strong crowds that cross the border daily at Lo Wu.

The government's senior counsel,

Benjamin Yu contends the KCRC failed to consider alternatives, including expanding the Lo Wu border crossing, before proposing the line. Other options suggested by the government include a tunnel underneath the valley and the northern and Beas River routes.

[*Hong Kong iMail*, 26 June 2001]

Sewage water may be fit to drink in 20 years

Hong Kong residents could be drinking waste water in 20 years.

Water and drainage officials are looking into the feasibility of recycling sewage into potable water as part of a \$1.5-million study on Hong Kong's water resources for 20 years and beyond. However, officials admit that even if it is found to be a viable option, it will be expensive and take a lot of public persuasion before recycled sewage can be marketed as drinking water. Deputy Director of Water Supplies, Chan Pui-wah, said they understand there is still a psychological barrier to overcome.

Still, officials have included the objective of drinking water from waste water as part of the six-month study, which will also investigate the use of waste water for flushing toilets and watering golf courses and gardens.

The study has come as a surprise to Director of the Environment Protection Department, Robert Law, who maintains recycling sewage into drinking water is too costly. He maintains that to treat the sewage so it was safe for drinking would require an intensive and costly purification process to remove nutrients and filter and disinfect the waste. He also believes that it is not practical.

However, Mr Chan said Hong Kong had to examine all options for the next two decades. Although its resources, which include rainwater and supplies from Guangdong, were sufficient at the moment, that could change in 20 years as the population - and pollution - increases. He said that it's difficult to say if our freshwater resources will still be able to provide us with quality drinking water then.

Suggestions for the study include: desalination of seawater, expanding

reservoirs for fresh water, increasing water supplies from Guangdong and recycling waste water. Officials will examine the costs associated with recycling waste water as well as rapidly expanding recycling technology, which includes a membrane filtration system currently being used to make "new water" for watering golf courses in Singapore. Mr. Chan said they do not want to discard any possibility without careful study, as each of these options looks promising.

Director of Drainage Services, John Collier, said the waste water would probably be used for flushing first and then perhaps irrigation. Most Hong Kong toilets use seawater for flushing, posing a higher cost and greater risk of pipe corrosion.

Mr. Collier admitted the plan to augment drinking water with waste water was not progressing very rapidly around the world, mainly because of the public's distaste for such a move. Technical Secretary for Drainage Services, Robin Lee Kui-biu, said it would be even more difficult to sell the idea if there was fresh water and rainwater still available.

[*Hong Kong iMail*, 17 April 2001]

HONG KONG DISNEYLAND UPDATE

Sewerage works at Penny's Bay and Yam O

The Chief Executive has authorized the sewerage works at Penny's Bay and Yam O as part of infrastructure for the development of Penny's Bay. The works involve construction of sewerage facilities in Penny's Bay and Yam O, which will serve development in Penny's Bay, including the Hong Kong Disneyland.

The facilities comprise a sewerage network linking Penny's Bay to a sewage pumping station at Yam O which will eventually be connected to the existing sewage treatment works at Siu Ho Wan.

Construction will start at the end of this year and completion is expected at the

same time as the opening of the theme park.

[Government Press Release, 20 April 2001]

Food Waste Treatment Technologies

Due to the absence of a food waste recycling industry in Hong Kong, the large quantity of food waste that will be generated by Hong Kong Disneyland will not be recycled as fertilizers or animal feed.

According to the Environment Impact Assessment Report for the construction of Hong Kong Disneyland, the amount of food waste to be generated by the theme park after its opening in 2005 will be about 10 to 15 tonnes per day. Hongkong International Theme Parks Limited (HKITP) is responsible for the operation of Disneyland. It will develop and implement a waste management plan. The Environmental Protection Department (EPD) will maintain a close relationship with HKITP to provide advice and assistance regarding the management of food waste.

EPD is now experimenting with the application of food waste treatment technologies in Hong Kong, which include converting food waste into fertilizers. EPD also plans to develop a site in Yuen Long as a pilot composting plant for treating organic waste. It is believed that if there are suitable technologies and markets, the business sector will be interested in exploring opportunities for developing a food waste recycling industry.

[<http://www.info.gov.hk/gia/general>, 23 May 2001]

Disneyland threat as dredging halted

Reclamation work for the Disneyland project could be delayed after the government suspended sand extraction from Po Toi for environmental reasons.

The contractor and the administration are both anxious to speed-up the work, which under an agreement with Disney Corporation has to be completed by January 2003. But with 20 months left

and after six months of work, only 17 hectares, or 8.5 per cent, of the 200 hectares of land have been reclaimed. Despite the slow progress, the government said the target completion date of reclamation remained unchanged. It is not known if the current delay will affect the opening of the theme park, scheduled for 2005.

A spokesman for the Civil Engineering Department said trial dredging was halted on June 8 after sedimentation was found at a coral site northeast of Po Toi during a weekly survey. The sedimentation could affect the ecological balance of the site. Sand extraction work will be suspended until an investigation into the cause is completed. The department allowed the SAR-Netherlands joint venture contractor HAM-Hong Kong Construction to dredge sand on a trial basis from west Po Toi.

The trial began on May 28 and 310,000 cubic metres of sand have been extracted. Work on the trial has now stopped. The government is faced with a dilemma as it is trying to secure sand for the reclamation from the mainland but has been unable to do so because of red tape and a dispute over price. A source for the contractor has called on the government to help.

A total of 66 million cubic metres of sand fill material is required for the Disneyland project. Of that, more than half is expected to be obtained from the mainland, with the remainder from the East Lamma Channel and west Po Toi.

It is understood that the contractor and the government might be penalised if they cannot honour their contract with Disney on completing the reclamation work by 2003. HAM-Hong Kong Construction declined to comment.

[SCMP, 15 June 2001]

Delay in supply of sand-fill material

There will be a delay in supplying 66 million cubic metres of sand materials to be used as filling at the 200-hectare Disneyland site at Penny's Bay. The filling work should have been completed by May 2002. Thereafter, a period of seven months is required to allow for subsequent subsidence.

The Disneyland project contractor applied in February 2001 to mainland authorities to dredge sand from Zhuhai waters. However, no progress has been made since then.

According to a source for the project contractor, the contractor tried to acquire from a Zhuhai company sand supplies which were then taken over and monopolized by another joint venture company. This joint venture company holds the relevant mainland permits for sand supplies.

In May, the Civil Engineering Department arranged a meeting with the project contractor and the mainland sand supplier to deal with the delay. No agreement was made in the meeting. However, the project contractor understands that it may have to agree to the mainland company's demand for an extra \$300 million for the required sand.

[SCMP, 29/6/2001]

ADVISORY COUNCIL ON THE ENVIRONMENT (ACE)

Air Pollution Control Regulations ACE Paper 19/2001

The current Air Pollution Control (Vehicle Design Standards) (Emission) Regulations ("the Regulations") do not allow registration of LPG taxis. Exemption from the Regulations is being granted to LPG taxis by the Environmental Protection Department (EPD) as a temporary administrative arrangement so that they could be registered by the Transport Department (TD).

To formalise the current situation, the Environment and Food Bureau proposed to amend the Regulations to stop importation of diesel taxis with effect from 1 August 2001 and to add to the Regulations the emission standards for LPG taxis so that LPG taxis can be registered by the TD without the need for exemption from EPD, and so that no diesel taxis may be imported to Hong Kong,

The proposed changes to the Regulations will not disrupt the operation of the taxi trade as effectively no diesel taxis have been imported to Hong Kong since March 2000. Moreover, the existing LPG taxi models already conform to the proposed emission standards. The proposed amendments only serve to formalize the current situation.

The taxi trade has been consulted and expressed no comment on the proposal or the timing of implementation. The general public should welcome the proposal as the air quality of Hong Kong will be improved by the replacement of diesel taxis with environmentally cleaner LPG taxis.

Environmental Protection Department: Keeping up with new development in environmental technology ACE Paper 15/2001

To keep up with new developments in environmental technology, the staff of Environmental Protection Department (EPD) use various channels, including environmental news bulletins, journals and the Internet. EPD currently subscribes to 183 local and overseas journals, newspapers and databases on environment-related subjects.

The 420 professional staff of the EPD are active members of more than 100 professional institutions in various environmental disciplines, through which they keep in touch with the latest developments and technology in their respective fields of expertise. For example, EPD is in close contact with the International Solid Waste Association and its Working Group on Thermal Treatment of Waste. As a member of the Steering Committee for the International Study of the Effectiveness of Environmental Assessment, EPD led an international review of best practices on environmental impact assessment monitoring in 1994-1996.

EPD has also established close contacts with overseas government environmental authorities, to stay in touch with the latest trends and developments in environmental policies, legislative requirements, and management methods. EPD also liaises

with international environmental organisations, such as the International Maritime Organisation and the Basel Secretariat.

EPD is also regularly in touch with universities, research institutes, consultants, equipment suppliers, both locally and overseas, to monitor latest developments in environmental technology. The staff of EPD visit overseas organisations where necessary to obtain first hand knowledge of the state of the art technology. EPD also receive overseas visitors, including research scientists, equipment suppliers and specialist consultants to learn about the latest technology.

The following are some examples of the application of information technology in EPD's work :

- introduction of electronic environmental monitoring and auditing and the web-based EIA in Hong Kong
- use of Global Positioning System for tracking barges for marine dumping control
- wider use of Personal Data Assistant for data collection in the field for enforcement work.

EPD will continue to pursue all available channels to maintain its knowledge of the latest environmental technology, and to apply it to tackle local environmental problems where appropriate.

Proposed Amendments to the Noise Control Ordinance, Cap. 400
ACE Paper 16/2001

The Noise Control (Amendment) Bill 2000 was introduced into the Legislative Council in February 2000 to make the management of a body corporate explicitly liable for an offence committed by the body corporate. The Bill lapsed with the end of the 1999/2000 legislative session and was re-introduced in the Legislative Council with a provision added to provide the basis for the issue of written warnings to the management of a body corporate.

The rationale behind the additional provision is that the proposal to make the

management of a body corporate explicitly liable for an offence committed by the body corporate under the Noise Control Ordinance, Cap. 400 (NCO) is aimed at changing the corporate philosophy with regard to environmental compliance so as to deter recurrent noise offences.

It was originally intended for the Director of Environmental Protection (DEP) to issue written warnings to the directors and officers of a body corporate to warn them of their personal liability under the NCO and remind them of their responsibilities when a noise offence has been committed by the body corporate. This is to enable the directors and officers concerned to take all reasonable preventive steps before they are prosecuted for noise offences.

DEP would prosecute directors and officers if the body corporate continued to violate the NCO despite the warning. The issue of written warnings will be added to the NCO to provide more certainty to the construction industry.

It was also proposed that DEP should give a written warning to directors and officers of a body corporate after the body corporate has been prosecuted for a noise offence committed at a particular site. If the body corporate is prosecuted again for any offence under the NCO at the same site after the issue of the written warning, the directors and officers concerned will be prosecuted without further warning.

Proposed Additional " Designated Areas" Under the Noise Control Ordinance
ACE Paper 12/2001

Under the Noise Control Ordinance, Cap. 400 (NCO), a construction company has to obtain a Construction Noise Permit (CNP) from the Noise Control Authority (NCA) in order to carry out general construction work using powered mechanical equipment between 7 pm and 7 am, or at any time on a general holiday. The NCA will apply more stringent criteria when assessing applications for CNPs where the applicant proposes to carry out "prescribed construction activities", i.e. noisy manual work, or use "specified powered mechanical equipment" within "designated areas". "Designated areas"

are densely populated areas and designated by the Secretary for the Environment and Food by way of notice in the Gazette.

New designated areas exclude locations where new residential blocks are not expected to start taking in residents for at least three years. These provisions should address the concerns of the construction industry and Mass Transit Railway Corporation (MTRC) without compromising the well-being of residents.

The Environment and Food Bureau proposed establishing a number of new designated areas with effect from 1 December 2001 which will give the construction industry a grace period. The need for establishing more designated areas will be reviewed every three years.

The legislative proposal will provide residents in new designated areas with the same protection as those in existing designated areas. It is estimated that more than 150,000 residents will benefit from implementation of the proposal.

The Hong Kong Construction Association indicated that it had no objection to the proposal provided the construction works already started in the new designated areas are not affected. The MTRC agreed with the need for an update to take account of new residential developments, but opposed establishing designated areas in locations where new residential blocks have not reached occupation stage.

Proposed Amendment to Air Pollution Control (Vehicle Design Standards) (Emission) Regulations Euro III Emission Standards for Newly Registered Motor Vehicles
ACE Paper 13/2001

Emissions from motor vehicles are the major cause of street-level air pollution. To reduce emissions, one of the Administration's policies is to require newly registered vehicles to meet the most stringent emission standard where technologically practicable and available. Euro II emission standards were introduced in 1997 and emission standards for certain classes of vehicles below 3.5 tonnes were tightened to Euro

III in January 2001 in step with the European Union.

The European Union will apply Euro III emission standards to newly registered vehicles above 3.5 tonnes on 1 October 2001. It will apply the new standards to the remaining classes of motor vehicles below 3.5 tonnes on 1 January 2002. The government proposes that Hong Kong should follow suit, but exclude newly registered diesel light buses between 3.5 and 4 tonnes from the new requirement for the time being, pending a decision on the future of the proposal to replace existing diesel light buses with alternative-fuel vehicles.

The proposal is that the Air Pollution Control (Vehicle Design Standards) (Emission) Regulations be amended to -

(a) tighten the emission standards for newly registered vehicles above 3.5 tonnes to Euro III or equivalent standards adopted in the USA or Japan from 1 October 2001. Diesel light buses between 3.5 and 4 tonnes will be excluded and continue to be subject to Euro II emission standards;

(b) tighten the emission standards for certain classes of newly registered motor vehicles below 3.5 tonnes to Euro III or the equivalent standards adopted in the USA and Japan from 1 January 2002; and

(c) require the installation of on-board diagnostic systems on newly registered vehicles below 3.5 tonnes from 1 January 2002.

TOWN PLANNING

Government pledges action on for building safety

The government has announced implementation of its plan for a comprehensive strategy for building safety and timely maintenance.

“Buildings in disrepair are a threat: they pose risk to life and limb. Illegal structures are a liability: they breach the law and scar our city. We ignore building safety at our own peril,” Head of Task Force on building safety and preventive

maintenance, Mrs Helen Yu Lai Ching-ping, cautioned.

“The strategy combines firm action with practical assistance,” Mrs Yu said. “Property owners must take up the responsibility for maintaining and managing their own buildings. The government will help responsible owners and take action against the non-compliant. Our community must take action in partnership for a positive culture of building care.”

The task force, set up under the Planning and Lands Bureau in February 2000, put together proposals for public consultation. These comprised different solutions for different groups of private buildings, according to both their age and condition.

Hong Kong should be able within seven years: to improve the safety, condition and outlook of buildings 20 to 40 years old including removal of Unauthorised Building Works (UBWs); clear the illegal rooftop structures on all single-staircase buildings; and regulate and control all signboards.

With the revised enforcement policy, the Director of Building, Mr Leung Chin-man, predicted that these operations would remove 150,000 to 300,000 UBWs in five to seven years.

“Building control should be commensurate with the degree of risk to safety. The Buildings Department (BD) is drawing up a new category of ‘minor works’ for safety certification by professionals or contractors,” he said.

BD has been examining existing powers and penalties to make for more stringent enforcement and stronger deterrence. The Buildings Ordinance would be amended to empower BD effectively to prevent illegal erections on site immediately. Advisory letters to property owners would be upgraded to statutory warning notices registerable against title, and penalties for non-compliance would be updated. Mr. Leung said these measures were crucial to stopping the proliferation and persistence of UBWs.

On professional support, BD will designate building co-ordinators, each with responsibility for a pool of

buildings, to serve as district-based contacts and to provide ‘one-stop’ service for owners.

For the control of advertisement signboards, Mr. Leung said the government would introduce simple, self-financing registration in the coming legislative session. New and existing signboards would be registered, with requirements for structural and fire safety commensurate with their risk to public safety, including size.

A two-year grace period would be given to owners of existing signboards, after which unregistered signboards would be removed.

[<http://www.plb.gov.hk/pres> - June 2001]

Metroplan and more attractive harbour waterfront areas

The Land and Building Advisory Committee on 13 May 2001 discussed the Second Stage Public Consultation on the Study on Review of Metroplan and the Related Kowloon Density Study Review and noted the infrastructural constraints and development opportunities identified in the study.

On the Planning Study on the Harbour and its Waterfront Areas, the Committee noted the potential to make Victoria Harbour more attractive, vibrant and accessible to the community.

“The Planning Study has proposed landscaped promenades, entertainment facilities and a cruise terminal along the waterfront. These will bring about a new look to Victoria Harbour. The harbour will become the tourism node of the territory with good links with the hinterland,” Professor Yeung Yue-man, Chairman of the Land and Building Advisory Committee (LBAC) said.

Whilst noting government’s plan for tourism and recreational development in the Harbour, the Committee is also aware of the needs of some waterfront users, such as ferry piers and public cargo operators.

“In this respect, the government will face the challenge of allowing optimal waterfront uses along our shore line in a sensible way,” he added.

[<http://www.plb.gov.hk/pres> - June 2001]

West Kowloon Reclamation will take on a new look

The government is launching a concept plan competition for the development of an integrated arts, cultural and entertainment district for the West Kowloon Reclamation, which will shape the future design and development of this waterfront area as a unique attraction for both local people and visitors. The objective of the development is to enhance Hong Kong's position as one of Asia's leading centres for the arts and for cultural and entertainment activities, as well as to help create a new look for Victoria Harbour.

Announcing the launching of the competition, the Secretary for Planning and Lands, Mr Gordon Siu, said that the Scheme Area, a piece of newly reclaimed land of 40 hectares at the southern tip of the West Kowloon Reclamation, has potential for attractive waterfront development.

The competition will provide participants with full flexibility in proposing the appropriate facilities for the Scheme Area, provided these are in line with the overall planning intention of developing it into an integrated arts, cultural and entertainment district. The facilities need to include a number of arts and cultural facilities, entertainment as well as other facilities, with strategies on how such facilities could complement each other and existing facilities to achieve integration.

Following the competition, the government plans to appoint a team to finalise a masterplan for the Scheme Area on the basis of the winning proposals.

[<http://www.plb.gov.hk/pres> - June 2001]

REGIONAL & INTERNATIONAL

Kenya

The Presbyterian Church (the second largest protestant church in Kenya) wants Kenyans to vote out the current government in the coming general election in 2002 for its failure to take

stronger action against pollution and the destruction of water catchment areas.

Church leaders say it is the responsibility of the government to ensure that garbage is collected and pollution levels brought under control. However, municipal councils, staggering under the weight of mismanagement and lack of funds, are unable to provide garbage collection services. Private refuse handling services are concentrated in the more affluent parts of the towns. People in the lower income areas have to contend with garbage and its attendant diseases, such as diarrhoea and typhoid.

Another problem for Kenya's environment is that the Environment Minister has proposed an excision of parts of protected forests to provide for resettlement of landless people. The forests targeted form the larger part of water catchment areas for major Kenyan rivers. Environmental experts warn that if removal of the targeted areas of forest is allowed, the country would soon start facing serious water shortages.

The intended forest excision has been suspended pending the outcome of a court case filed by environmental activists.

[*Environment News Service*, 17 May 2001]

Norway

Norway's Environmental Minister has announced that the government has appointed an expert working group to draw up a first ever national marine conservation plan. By 2004, the new marine expert working group will propose areas for inclusion in the maritime network and will put forward legislative options for and degrees of protection.

The Minister highlighted the concept of "ecosystem integrity" as a good starting point for policy decisions. Impacts on ecosystems from economic activities should be within acceptable limits, which vary according to the carrying capacity of different ecosystems. Precautionary principles should have an increasingly important role in future ecosystem management strategies, she said.

On the continuing issue of fish conservation and having declared a "cod crisis", as the number of cod in the North Sea fell drastically, Norway and the European Union have agreed to close off a large area of the North Sea to fishing operations. From 15 February to 30 April, the area was closed to all fishing except for deep water and sand-eel fishing.

[*Environment News Service*, 29 May 2001]

Brazil

Indigenous people held a series of meetings held in Brazil in May and June 2001. They were meeting to strengthen their common position in relation to the impact of large development projects – ranging from the construction of dams and hydroelectric power plants to waterways such as the Tocantins-Araguaia waterway – on indigenous areas in the region.

The official purpose of the Tocantins-Araguaia waterway is to facilitate river navigation in the eastern Amazon, connecting the central western region of Brazil with Atlantic ports in Brazil's northeast. Authorities said the project would promote agricultural development in Brazil's heartland and in the eastern Amazon by allowing access to markets for grains, fuel and fertilizers. However, the project would significantly modify the Mortes, Araguaia and Tocantins Rivers.

Indigenous people object to the proposals on the ground that the river modification would cause the death of fish and animals on which they depend for survival. Other problems arising from eco-tourism initiatives and extensive soybean plantations will directly or indirectly affect their communities.

The projects will impact 15 groups of indigenous people and 10 conservation units, including the Araguaia National Park, where the largest fluvial island in the world, Bananal Island, is also located.

These meetings are a continuation of a resistance movement against large projects launched by the indigenous people in November of 1999 when a

commission formed by 50 indigenous representatives and peasants affected by the Lafeado hydroelectric power station in Tocantins met in Brasilia to oppose the construction of the Tocantins-Araguaia waterway and the hydroelectric stations planned for the region.

[*Environmental News Services*, 30 May 2001]

Japan

Japan predicts it will be plagued by more heavy rains and floods this century due to expected temperature increases in urban areas, according to the Cabinet Office's annual white paper. This will lead to more landslides. Government steps will also be needed to protect the 4.75 million people living less than one metre (3ft. 3.37 in) above sea level, the paper on disaster preparedness said.

Average annual temperatures have been rising around the globe due to the emission of greenhouse gases and a shrinking green belt, leading to unusual weather patterns, such as unseasonal thunderstorms. At least 10 people died last September when the heaviest rainfall in more than a century hit the central city of Nagoya, flooding more than 37,800 houses.

The report also stated that central Japan and regions surrounding the capital, Tokyo, could be hit by a devastating earthquake some time this century.

[*Reuters News Service*, 18 June 2001]

Canada

Public Education and Outreach Hub, a climate change information centre, has opened in Alberta. It aims at providing Albertans interested in responding to climate change with easy access to information and training programmes. It will bring together partners from government, business, environmental organizations and communities in Alberta to increase climate change awareness and encourage action to reduce greenhouse gas emissions.

As a northern country, Canada is susceptible to and has already seen the signs of global warming. It is important for Canadians to increase their understanding of this issue. The Hub will

act as an information clearinghouse to organizations that offer climate change education and outreach in Alberta. It will also serve as a catalyst for new programmes and co-ordinate professional development for climate change educators.

This Hub is part of an 18-month pilot programme running in a number of provinces and territories. This initiative is funded through the \$150 million Climate Change Action Fund established by the Government of Canada in the 1998-99 federal budget and extended for a further three years in the 2000 federal budget.

[*The Green Lane*, 14 June 2001]

UK

A new report by Britain's Royal Society says too little is known about the extent which farmlands and forests (so-called "carbon sinks") can absorb carbon dioxide (CO₂) from the atmosphere. "Carbon sinks are of rather limited size and also will only work for a relatively short duration – a few decades. They cannot make a major contribution to reducing carbon emissions and solving the global warming problem," said Professor John Shepherd, one of the authors of the report.

USA, Japan, Canada and Australia want more emphasis on carbon sinks in achieving the CO₂ emission cuts set in the 1997 Kyoto Protocol on global warming. The pact commits developed nations to cutting emissions of CO₂ by an average of just over five percent from 1990 levels by 2012.

According to the report, carbon sinks and soil absorb about 40% of CO₂ emissions and could soak up as much as 45%. But the maximum that could be absorbed would only be equivalent to a quarter of that needed by 2050 to prevent major rises in global temperature. The scientists warned that in the future carbon sinks would become a source of CO₂. They could release greenhouse gases, such as methane.

Carbon sinks provide a primary benefit as they can be effective immediately and provide a financial incentive for the preservation and sustainable use of forests and agriculture land. However, the long-term solution must be cuts in

CO₂ emissions through energy saving and replacing fossil fuels with renewable energy.

[*Reuters News Service*, June 2001]

USA

Following the worst USA wildfire season in 50 years last year, the bone-dry conditions and thick underbrush this year will make for another potential record-breaking fire season, officials at the National Interagency Fire Center in Boise, Idaho said. Last season's firestorms scorched some 7.5 million acres (3 million hectares) and cost some \$1.7 billion to fight. This year is very similar to last year and some areas are even drier. But one encouraging sign is that fires have been confined to the West this year. The problem last year was that blazes burned out of control through most of the country all summer, stretching resources dangerously thin.

The fire center – comprised of seven government agencies with 500 employees – plays a crucial role in preventing and fighting wildfires on close to 700 million acres (283 million hectares) of public land. It was established in 1963 to coordinate firefighting efforts among different entities such as the US Forest Service and the Bureau of Land Management. Interagency cooperation is vital during peak fire season, when officials scramble to spread limited firefighting resources across a huge territory under the jurisdiction of different agencies.

Officials also hope to cut this year's fire risk by carrying out a "prescribed burn" program on 3.2 million acres (1.2 million hectares) of federal land to clear the dead trees and underbrush that make wildfires burn more quickly. This represents a significant shift from traditional government firefighting policy, which over the last decade has concentrated on stamping out blazes as soon as they started.

However, the policy has been criticised in that it actually interrupts the natural role wildfires play in reducing overgrown fuels in the forest and putting the ecosystem back in balance.

[*Reuters News Service*, June 2001]

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

Hong Kong

FRED KAN & CO.

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

Paris, France

THOMAS HERBECQ & ASSOCIÉS

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

Macau

THE LAW OFFICE OF JOÃO MIGUEL BARROS

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

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

An Association of Asian Commercial Law Firms

Adelaide, Australia

NORMAN WATERHOUSE

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

Melbourne, Australia

MADDOCK LONIE & CHISHOLM

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

Sydney, Australia

COLIN BIGGERS & PAISLEY

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

Perth, Australia

KOTT GUNNING

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

Brisbane, Australia

BIGGS & BIGGS

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

Kuala Lumpur, Malaysia

CHEANG & ARIFF

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

Singapore

MADHAVAN PARTNERSHIP

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

New Delhi, India

O.P. KHAITAN & CO.

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

Colombo, Sri Lanka

D.N. THURAIRAJAH & CO.

2nd Floor, Don Carolis Building, Post
Box.1464, No. 64, Keyzer Street, Colombo-
11, Sri Lanka
Tel: (94)(1) 439-798
Fax: (94)(1) 448002

Jakarta, Indonesia

MAKES & PARTNERS

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

Manila, Philippines

HERRERA TEEHANKEE & FAYLONA

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

Dubai, United Arab Emirates

LUTFI AL BAHAR & CO.

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

Convictions under environmental legislation: April – June 2001

The EPD's summary of conviction recorded and fines imposed during the period April to June 2001 is as follows:

April 2001

A total of 101 convictions were recorded in April 2001 for breaching anti-pollution legislation enforced by the Environmental Protection Department.

Among them, 37 were convictions made under the Air Pollution Control Ordinance, 32 under the Noise Control Ordinance, 15 under the Waste Disposal Ordinance, 15 under the Water Pollution Control Ordinance and two under the Ozone Layer Protection Ordinance.

The heaviest fine was HK\$75,000.

A company was fined HK\$75,000 for using powered mechanical equipment without a valid construction noise permit.

May 2001

A total of 100 convictions were recorded in May 2001 for breaching anti-pollution legislation enforced by the Environmental Protection Department.

Among them, 34 convictions were made under the Noise Control Ordinance, 32 under the Air Pollution Control Ordinance, 22 under the Waste Disposal Ordinance and 12 under the Water Pollution Control Ordinance.

The heaviest fine in May was HK\$100,000.

A company was fined \$100,000 for using powered mechanical equipment without a valid construction noise permit.

June 2001

A total of 78 convictions were recorded in June 2001 for breaching anti-pollution legislation enforced by the Environmental Protection Department.

Among them, 24 were convictions made under the Air Pollution Control Ordinance, 22 under the Noise Control Ordinance, 19 under the Water Pollution Control Ordinance and 13 under the Waste Disposal Ordinance.

The heaviest fine in June was HK\$100,000.

A company was fined HK\$100,000 for using powered mechanical equipment without a valid construction noise permit.

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

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

Printed Matter