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Solicitors & Notaries

**URBAN PLANNING AND
ENVIRONMENTAL LAW
QUARTERLY**

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During the latter part of the 1990s public comments by government agencies' spokesmen, particularly EPD executives, suggest that the authorities are coming to realise that disposing of Hong Kong's hard waste (which is generated in enormous volumes by our excessive use of consumer packaging) is an environmental issue deserving of much greater priority than it has been given in the past. Encouraging voluntary recycling of beverage containers by imposing refundable deposits is a tried and proven method of reducing both waste and public litter. This edition of the *Report* considers aspects of beverage container deposit laws which have been in place in the USA and Australia (for example) for nearly 30 years.

The Editors

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RECYCLING AND OUR WASTE DISPOSAL CRISIS: HONG KONG MUST IMPLEMENT BEVERAGE CONTAINER DEPOSITS LEGISLATION

In recent times the government appears to have realised that Hong Kong's capacity to absorb its consumer generated hard waste is finite. It was, after all, only a couple of years ago that a Deputy-Director of the Environmental Protection Department (EPD) publicly stated that a government sponsored waste-recycling program was unnecessary unless and until landfill areas could no longer be provided.

However, public statements by EPD Director Robert Law and other senior EPD officers more recently indicate that the EPD - and, presumably, the government - is re-thinking the whole issue of how Hong Kong should be disposing of its hard rubbish without further degrading its environment. Recycling on a grand scale is therefore again on the

environment/waste disposal agenda. Public utterances by EPD and debate have also been stimulated by the recent closure of at least one large paper recycling company. There now exists a general concern on the part of commercial recyclers that their industry is not given sufficient assistance or encouragement by the government. [See, for example, report on ACE meeting on 14th December, 1998 in this edition.]

No doubt there are significant obstacles to implementing a Territory-wide domestic and/or industrial hard waste recycling scheme of the kind adopted by many local councils in Australia and the United States, for example. These include limited land for collection and storage facilities, and the associated problem of land use zoning restrictions, both of which add to the practical difficulties of providing an efficient collection/transfer station/storage system. Nevertheless, there is a clear and urgent requirement for the govern-

ment to give higher priority to the introduction of a public recycling network if Hong Kong is to begin to deal more responsibly with its huge consumer and industrial waste disposal requirements. One measure to encourage consumers to be more responsible in the use and disposal of packaging is to charge them for the use of consumer goods containers by means of container-deposits regulations.

Even without a government sponsored recycling system, voluntary recycling could be greatly encouraged by imposing a modest deposit fee on consumables containers, particularly beverage containers (and plastic bags). For reasons not readily apparent, the EPD/government has not publicly examined the feasibility of introducing "bottle-deposit" legislation. Yet other developed countries have had these laws for many years to the considerable benefit of the environment in every case.

Whilst it is claimed by EPD that approximately 50% of drink cans are recycled anyway, with collectors receiving approximately HK\$0.15 per can, the recovery rate would be very much higher if the salvage value of the can (and plastic and glass containers) were increased artificially by the imposition of a deposit. This is substantiated by figures for several of the US states which have adopted a bottle deposit law:

State	Deposit Levy	Recovery Rate
Missouri	5c	85%
Connecticut	5c plus	88% (70-90% - plastic)
New York	5c	76%
Oregon	5c	90%
Vermont	5c (soft drink/beer) 15c (liquor)	90-97%
California	2-5c	67% (glass) 80% (aluminum)

[10 US states and 1 city - Columbia, Mo, - have introduced beverage container deposit legislation]

Oregon, USA, and the Australian state of South Australia pioneered bottle deposit laws as an environmental protection measure in the early 1970s. Oregon's Department of Environmental Quality describes the more than 25 years experience of its Beverage Container Act 1971 as a 'quarter century success story' and as 'one of the most popular pieces of legislation ever passed in the state': Oregon's *DEQ Information Bulletin*, 22/6/99.

Oregon's law compels beverage retailers to accept

bottle/cans returns, and to refund deposits (with a limit of 144 containers per person per day).

Within two years from introduction of the Act, Oregon's beverage container litter decreased by 83%, a statistic any enlightened Hong Kong administrator should think deeply about as she/he surveys any of our streets, country parks (particularly after Sunday BBQs) and other public areas.

Since the Oregon Act was enacted, several important amendments have broadened its environmental protecting measures, including:

- no beverages to be sold in containers with "pull tab" openers
- plastic six-pack must be designed to decompose within 120 days of disposal (which was an amendment introduced in 1977, and yet Hong Kong, which prides itself on its technical sophistication, is unable it seems to adopt such clear-cut minimal standards).
- refillable containers are encouraged by a reduction in the deposit levy for these containers (as is now the case in most of the US states which have bottle deposit legislation).

South Australia's *Beverage Container Act* 1975 is slightly younger than, and in broad terms, mirrors the success of Oregon's bottle deposit law. This Act and subsidiary regulations impose a scale of deposits on different categories of containers. The most commonly used containers (soft drink and beer cans/bottles) require a A\$0.05 - 0.10 deposit. Various containers are exempted from the deposit laws, but the exempt categories are very limited, e.g. refillable soft drink or water containers. (see *Environment Protection (Beverage Container Regulations)* 1995).

Some years ago the right to return containers to the retailer was abolished and a system of licensed dealers established. Containers now have to be returned to these dealers. However, the dealers are thinly spread, which mitigates against optimum container recovery rates. In that regard, the Oregon collection system is more effective.

The South Australian container deposit laws are well accepted by the general public and, although it was not always the case, by industry and commercial retailers. The law has significantly helped to make the state virtually litter free (which is particularly noticeable to visiting Hong Kong residents).

Perhaps Hong Kong's government has yielded to pressure from drink manufacturers and retailers not to introduce deposit laws. The majority of US and Australian states, for

Whilst it is claimed by EPD that approximately 50% of drink cans are recycled anyway, with collectors receiving approximately HK\$0.15 per can, the recovery rate would be very much higher if the salvage value of the can (and plastic and glass containers) were increased artificially by the imposition of a deposit.

example, have not adopted deposit laws, mainly because of industry opposition. The well-worn, and discredited, grounds of that opposition include the following assertions:

- Loss of jobs through decreased sales
- Higher retail prices of drinks and other consumables
- The deposit is yet another tax
- The scheme costs individual retailers or government collection centres too much to administer

These arguments have been disproved by the experience of American bottle deposit states and South Australia. The Bottle Deposit Information Unit of the University of Michigan, for example, records that:

- In all US states to have adopted deposit laws, sales of beverages increased after deposit laws were introduced: e.g. 29% and 14% increase in soft drink sales in the first and second years respectively after Iowa's introduction of the law; no evidence of loss of jobs, therefore.
- Absolutely no evidence of generally higher beverage prices; this argument is a complete myth (as are the others).
- The "tax argument" is a nonsense, as deposits are refundable.
- Responsible governments have seen the value, environmentally, in budgeting for the modest costs of requiring deposits/returns.
- The unrefunded deposits pool can also be used to supplement collection costs: e.g. in several states part of all deposits is withheld by the retailer or government collection agency as a 'handling fee, and other states allow government collection agencies or retailers to retain unrefunded (i.e. unclaimed) deposits to cover costs. (*Bottle Deposit Survey*, May 1999)

In South Australia, licensed collection centres cover costs from on-selling the containers, whilst unclaimed deposits

go to the state's general revenue.

Beverage deposit laws are a logical, civilised and commercially practical way of significantly helping to control hard waste pollution. Given the enormity of that problem here, it is surprising that Hong Kong is not, apparently, exploring the benefits of introducing such laws.

Digest of LEGISLATION

Air Pollution Control (Motor Vehicle Fuel) (Amendment) Regulation 1999 (L.S. No.2 to Gazette No.5/1999 p.B145)

1. Section 2 of the Air Pollution Control (Motor Vehicle Fuel) Regulation (Cap.311 sub. leg) is amended by adding -

"fuel additive" means any substance, other than fuel, which is designed to be added to the fuel tank, the fuel supply system, or the combustion space of the engine of a motor vehicle;"

2. Sections 3 and 4 are repealed and the following substituted -

"1. Commencement

This Regulation shall come into operation on 1 April 1999.

2. Interpretation

Section 2 of the Air Pollution Control (Motor Vehicle Fuel) Regulation (Cap.311 sub. leg.) is amended by adding -

"fuel additive" means any substance, other than fuel, which is designed to be added to the fuel tank, the fuel supply system, or the combustion space of the engine of a motor vehicle;"

3. Section substituted

Sections 3 and 4 are repealed and the following substituted-

"3. Supplying or selling leaded petrol

(1) Any petrol supplier who knowingly supplies or distributes leaded petrol commits an offence and is liable to a fine at level 5.

(2) Any petrol retailer who knowingly sells or offers for sale leaded petrol commits an offence and is liable to a fine at level 5.

(3) For the purposes of any proceedings under subsection (1), the petrol supplier charged shall, until the contrary is proved, be presumed to have known that the petrol he supplied or distributed was leaded petrol.

(4) For the purposes of any proceedings under subsection (2), the petrol retailer charged shall, until the contrary is proved, be presumed to have known that the petrol he sold or offered for sale was leaded petrol.

(5) A petrol retailer does not commit an offence under subsection (2) if he proves that-
(a) he purchased, or otherwise obtained, the petrol with a warranty or other written evidence from a petrol supplier that the petrol was unleaded petrol; and

(b) at the time of the alleged offence, the petrol was in the same state that it was in at the time of delivery to him."

4. Dimension of petrol pump dispensing nozzle spout Section 5 is amended -

(a) in subsection (1), by repealing everything after "which" and substituting "has an outside diameter of not more than 21.3 mm.";

(b) in subsection (2), (i) by repealing "(1)(a) or (b)" and substituting "(1)"; (ii) by repealing "of \$50,000" and substituting "at level 5".

5. Dispensing of petrol Section 6 is repealed.

6. Supplying or selling motor vehicle diesel Section 7 is amended -

(a) in subsections (1) and (2), by repealing "of \$50,000" and substituting "at level 5";

(b) in subsection (3), by repealing "No motor vehicle diesel retailer shall" and substituting "A motor vehicle diesel retailer does not".

7. Part added

The following is added -
"PART IV

FUEL ADDITIVES

8. Supplying or selling fuel additives containing lead

(1) Any person who knowingly supplies or distributes any fuel additive containing any amount of lead whatsoever commits an offence and is liable to a fine at level 5.

(2) Any person who knowingly sells or offers for sale any fuel additive containing any amount of lead whatsoever commits an offence and is liable to a fine at level 5.

(3) For the purposes of any proceedings under subsection (1), the person charged shall, until the contrary is proved, be presumed to have known that the fuel additive he supplied or distributed contained lead.

(4) For the purposes of any proceedings under subsection (2), the person charged shall, until the contrary is proved, be presumed to have known that the fuel additive he sold or offered for sale contained lead.

(5) A person does not commit an offence under subsection (2) if he proves that-

- (a) he purchased, or otherwise obtained, the fuel additive with a warranty or other written evidence from the person who supplied the fuel additive that the fuel additive did not contain any lead; and
- (b) at the time of the alleged offence, the fuel additive was in the same state that it was in at the time of delivery to him.

9. Dispensing of fuel additives containing lead

(1) Any person who knowingly pours, places, discharges or adds any fuel additive containing any amount of lead whatsoever into the fuel tank, the fuel supply system, or the combustion space of the engine of a motor vehicle commits an offence and is liable to a fine at

level 5.

(2) For the purposes of any proceedings under subsection (1), the person charged shall, until the contrary is proved, be presumed to have known that the fuel additive he poured, placed, discharged or added into the fuel tank, the fuel supply system, or the combustion space of the engine of the motor vehicle contained lead.

(3) A person does not commit an offence under subsection (1) if he proves that-

- (a) he purchased, or otherwise obtained, the fuel additive with a warranty or other written evidence from the person who supplied the fuel additive that the fuel additive did not contain any lead; and
- (b) at the time of the alleged offence, the fuel additive was in the same state that it was in at the time of delivery to him."

Explanatory note: This Regulation prohibits the supply or sale of leaded petrol and the supply or sale or dispensing of fuel additives containing lead.

Animals and Plants (Protection of Endangered Species) (Exemption) (Amendment) Order 1999 (L.S. No.2 to Gazette No.5/1999, L.N.38 of 1999 p.B171-B173)

This Order amends the animals and Plants (Protection of Endangered Species (Exemption) Order (Cap.187 sub. Leg.) to exempt certain species from the restriction imposed by the Animals and Plants (Protection of Endangered Species) Ordinance (Cap.187) on the possession or control of scheduled species.

Animals and Plants (Protection of Endangered Species) Ordinance (Amendment of Schedules) Notice 1999 (L.S. No.2 to Gazette No.5/1999, L.N.38 of 1999 p.B175-B229)

This Notice amends the Schedules to the Animals and Plants (Protection of Endangered Species) Ordinance (Cap.187) to give effect to the changes

made in June 1997 to the listings of endangered species in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

HONG KONG BRIEFING

1. The Advisory Committee on the Environment (ACE) recently stated that as pollution at Deep Bay deteriorated sharply the pollution levels came up to 32 times the maximum recommended limit. The pollution was partly due to livestock waste from pig farms, pig farming which the government could ban altogether. The committed chairman, Mr. Peter Wong Hong-Chuen, said that pig farming may have to be prohibited in the area as the pollution-prevention standards of the farms are not sufficient to reduce pollution. The farmers' representatives asked for alternative farms if they were removed from the area. However, Fok Wui-ko, secretary of the Federation of Pig Raising Co-operative Societies, Hong Kong, Kowloon and New Territories Ltd. said that it would not be easy for pig farmers to find alternative farms and the pig farmers have to invest \$1 million to provide facilities to reduce pollution for every 3,000 pigs after the implementation of pollution control measures in last year. (SCMP 15/12/98)

2. A senior environment official has stated that the user-pays and polluter-pays principles would encourage people to produce less waste. Choy So-yuk of the Hong Kong Progressive Alliance sponsored a motion urging the Government to review its waste management policy and to consider the alternative of collecting a recovery deposit from waste producers to establish a recycling fund. However, Acting Secretary for Planning, Environment and Lands, Patrick Lau Lai-chiu, opposed government direct subsidies to assist the ailing recycling industry because people have to know that if

they continue to produce waste, it will increase the burden on taxpayers and rate-payers. He said that the government would release a proposal on the introduction of landfill charges.

(SCMP, 7/1/99)

3. People should not swim in Tsuen Wan water because it may be the most polluted in Hong Kong, an environmental campaigner warned. Plato Yip Kwong-po, assistant director of Friends of the Earth, said pollution in the district comes from different sources. These include the poor sewerage system, dirty water from Shenzhen, waste from farms in Yuen Long and pollutants from vessels at Tsing Yi. Three beaches, Ting Kau, Approach and Anglers, of eight beaches in Tsuen Wan, have remained closed since 1996 because of their poor water quality. Gemini beach has been temporarily closed since October 1998 for construction and renovation work. Casam and Ma Wan are classified as poor water quality beaches by the Environmental Protection Department. Only Ho Mei Wan and Lido were considered to be of fair quality. The environmentalist warned that dirty water could cause skin irritations and other infections to swimmers especially if they have open wounds. People should only choose beaches with good water quality, such as Deep Water Bay and Repulse Bay on Hong Kong island, he said.

(Hong Kong Standard, 19/6/99)

4. The amount of rubbish accumulating in typhoon shelters across the Territory has increased dramatically since the mainland imposed a two-month ban on fishing in the South China Sea. According to environmental group Greenpower, the problem of sewage disposal has also worsened, posing a serious health hazard, due to the large number of fishing vessels anchored in the shelters. The Marine Department said it had stepped up garbage collection services at the 12 shelters in the past three weeks as more boats became idle. There are, at present, 2,600 fishing boats registered with the department. The number of vessels staying in the shelters has risen to 1,800 since the mainland authorities enforced the ban on 1 June, compared with only

about 800 under normal conditions. Of the 12 typhoon shelters, Aberdeen is the dirtiest, with the amount of garbage that has accumulated there increasing by more than 180 per cent in the first half of this month, compared with the first half of May. "We are deploying two more ships for rubbish collection in the Aberdeen shelter," said marine officer (pollution control) Eric Lau Wing-kin. Before the fishing ban, three motor sampans were used for daily surveying, and four were used to collect refuse. According to the Marine Department, 54 boat owners have been prosecuted so far this year for improper waste disposal, against eight prosecutions in the first five months of 1998. The maximum penalty is a fine of \$10,000 and six months in jail. But Mr Lau said the increase was not all related to more boats being moored in the shelters, but also the increase of patrolling by the department. Greenpower spokesman Man Chi-sum said sewage was a bigger problem in typhoon shelters because of the lack of toilets on the boats. He said boat dwellers usually threw waste into the sea for convenience. The other reason was that water currents in shelters were very slow.

(Hong Kong Standard, 23/6/99)

AIRPORT UPDATE

Satisfying survey

A recent survey shows that 92.6 per cent of airport users are satisfied with the services and facilities, with one in three giving the amenities top marks. The study, undertaken in December last year by Lingnan College, showed a marked increase in satisfaction over the first survey conducted in late August. The latest survey shows 92.6 per cent of respondents describing themselves as "satisfied" (scoring 6-10 on a 0-10 scale). This compares with 88.2 per cent in the previous survey. The Director of the Lingnan College Research and Survey Program said the survey indicates significant improvements have been achieved in airport services and facilities.

Significantly, the latest surveys show an even bigger rise in the number of "very

satisfied" customers, and a corresponding drop in "dissatisfied": some 33.8 per cent gave the airport the highest ratings of 9 or 10 (compared with 25.1 per cent in the first survey). Only 1.7 per cent were "dissatisfied" (levels 0-4) compared with 3.9 per cent in the previous survey.

The airport is also winning accolades from a wider international community. The January issue of the influential Travel & Leisure magazine featured its annual Critics' Choice Awards which saw Hong Kong International Airport (HKIA) take the best airport award. The critics panel consists of famous, frequent travellers.

The editor of the Canadian aviation journal Wings also praised the airport in a recent feature article, saying that it is truly an airport for the 21st century: "The billions of dollars used to build the airport was money well spent." Both the Asian and European editions of Wall Street Journal have recently printed complimentary articles, as has the San Francisco Examiner.

Aviation security at the airport was also recently praised by the United States Government's aviation safety regulatory body following a survey of US airlines using HKIA. The Federal Aviation Administration (FAA) commented that overall security was "excellent".

[Airport Authority Newsletter, Issue XX - Jan/Feb 1999]

Infrastructure exhibition

What do Hong Kong International Airport ("HKIA"), the Channel between Britain and France, Sydney's Opera House, San Francisco's Golden Gate Bridge and the World Trade Centre in New York have in common? All were recently voted among the Top 10 Construction Achievements of the 20th century. The sheer size of the airport core project, with HKIA as its centrepiece, broke all Hong Kong's

construction industry records.

The last major construction industry exhibition of the 20th century, CONEXPO-CON/AGG '99 Exhibition, was held 23-27 March, 1999 in Las Vegas, Nevada, USA. The organizers' selection of the ten engineering wonders of the modern age were unveiled late last year.

The top ten were chosen by a panel of well-known industry leaders and editors. To qualify as one of the "champion construction projects", and the only award-winning project in Asia, HKIA was judged according to a list of selection criteria. These included the impact on humanity; economic benefit to society; overall value to the community or region where it is located; professional recognition at local, regional, national and international levels; utilization of innovation and use of new technology; consideration of environmental sensitivity; and influences on future projects.

"As we look at the winning projects, it becomes apparent that many of them were things previous generations had only dreamed of doing, but did not yet have access to the necessary technologies or equipment," CONEXPO-CON/AGG '99 Co-chair said.

HKIA is part of one of the most largest infrastructure projects ever conceived. Completed in just seven years, it also sets a world construction industry record.

Other winning projects include Aswan High Dam, Egypt; the Dwight D. Eisenhower System of Interstate and Defense Highways, Empire State Building and Hoover/Boulder Dam in the United States; and the Panama Canal.

[Airport Authority Newsletter, Issue XX - Jan/Feb 1999]

Best airport award

The Airport Authority has won a new international award for communications

and marketing excellence. At the recent OAG Worldwide airline and airport awards, Hong Kong International Airport ("HKIA") was named the Journalists' Choice for Best Airport in Asia/Pacific.

The Journalists' Choice is a new category for the prestigious and coveted OAG awards. The organizers polled journalists in the region on the question of which airport provided the best corporate communications and easiest access for the media to obtain news and information. The two other winners worldwide were Frankfurt (Europe) and Phoenix (North America).

HKIA's marketing and communications is handled by the Airport Authority's Corporate Affairs Department. Last year, a corporate briefing kit produced by the Department won a marketing communications excellence award from the Asia/Pacific chapter of the Airports Council International (ACI).

[Airport Authority Newsletter, Issue XX - Jan/Feb 1999]

ADVISORY COUNCIL ON THE ENVIRONMENT (ACE)

Paper No.56/98 discussed by ACE on
14 December 1998: Waste Paper
Recycling

Following the closure of the Concordia waste paper mill, there has been growing concern about the viability of the waste paper recycling industry. The Administration represented by Mr. Steve Barclay of Planning, Environment and Lands Bureau and Mr. Benny Wong of the Environmental Protection Department met with the waste paper recycling trade representatives on 9 December 1998.

About 50 persons from the waste paper recycling industry, most of whom were members of the Hong Kong Wastepaper Trade Association or the Environmental Recyclers Association, attended the meeting. The representatives explained the difficulties the industry was facing and

listed their demands for various forms of assistance such as : -

- a) interest-free or low interest loans;
- b) stopping importation of waste paper;
- c) providing free/cheap land;
- d) waiving charges/fees at cargo-handling areas;
- e) introducing waste paper recovery schemes;
- f) lower fees for inspection of waste shipped to the mainland;
- g) direct subsidy of \$200 per tonne of waste paper collected/processed;
- h) policy support to help the recycling industry;
- i) reduction of diesel duty and vehicle licensing fees for vehicles used in the industry;
- j) tax and fiscal concessions;
- k) establishing a fund to support market prices of recycled paper;
- l) preference be given from the fund to support SMEs (Small and Medium Enterprises);
- m) providing more paper collection bins.

The Chairman of the meeting, Mr. Barclay : -

a) explained that it was Government's policy not to provide direct subsidies to the recycling industry, but that we would consider proposals for indirect assistance that were practical and fair to all sectors of the industry;

b) said many of the proposals for indirect assistance involved other bureaux or departments who would need to be consulted;

c) noted that some of the proposals affected other private companies and Government was very reluctant to intervene in the commercial relations between private businesses;

d) suggested that a further meeting be held at the end of the following week (i.e. 17/18 December 1998) to further consider details of indirect assistance.

The industry representatives expressed disappointment at the apparent lack of progress. On the

other hand, the Administration found the meeting to be very useful in that its representatives were able to meet the personalities involved face-to-face and get a much clearer picture of their demands and the priority they placed on them. The meeting ended with the Chairman repeating an invitation to meet again to discuss indirect assistance. (*ACE Paper 56/98, Planning, Environment and Lands Bureau, August 1998*)

Paper No.2/99 discussed by ACE on 26 January 1999: Proposed Amendments to Air Pollution Control (Motor Vehicle Fuel) Regulation 1999, Cap. 311, sub. leg.)

The Paper proposes amendments to prohibit the supply and sale of leaded petrol and fuel additives containing lead.

In many countries, leaded petrol remains a major source of the presence of lead in the environment. Chronic exposure to lead may cause illnesses such as anaemia, hypertension, irritability, and lethargy. The nervous system of children is particularly susceptible to damage by lead.

In Hong Kong, lead in the air has been kept at very low level, in compliance with the Air Quality Objectives; this is partly due to the high usage of unleaded petrol and partly due to the heavy reliance on diesel vehicles which do not emit lead. Nevertheless, in joining with the global effort in banning leaded petrol, the Paper proposes to ban the supply and sale of leaded petrol from 1 April 1999.

Unleaded petrol was introduced to Hong Kong in April 1991. Vehicles imported from 1992 onwards and installed with catalytic converters to reduce pollutant emissions are specifically designed to run only on unleaded petrol (leaded petrol can damage the converter). Most of the petrol vehicles in Hong Kong can run on unleaded petrol without any difficulty or loss in performance. In mid 1998, unleaded petrol sales accounted for over 90% of the market.

specifications for unleaded petrol. The said Paper proposes to prohibit the sale of leaded petrol by requiring all petrol supplied by a petrol supplier or sold by a petrol retailer to comply with the specifications for unleaded petrol. Violation of these requirements will be made an offence with a maximum penalty of a fine of \$50,000. However, a petrol retailer does not commit an offence if he can prove that his petrol is supplied by a petrol supplier as unleaded petrol. In practice, unless a petrol retailer obtains his petrol from a dubious source e.g. smugglers, the liability for supplying unleaded petrol for sale lies with the wholesale petrol supplier.

The Paper also proposes prohibiting the supply, sale and dispensing of lead-containing fuel additives. However, a person selling or dispensing a lead-containing fuel additive will not commit an offence if he can prove that he has obtained or purchased the additive with a warranty or other written evidence from the person who provided him the additive that it does not have lead.

For more effective enforcement, it is proposed that there shall be a rebuttable presumption that the person who is alleged to have committed the offence knows that the petrol is leaded petrol or that the fuel additive contains lead.

Oil companies and the Motor Traders Association support the proposal to ban the supply and sale of leaded petrol. The oil companies will supply lead-free fuel additives to help very old petrol vehicles to use unleaded petrol. The Hong Kong Automobile Association, fleet managers and utility companies, and those associations with interest in classic cars all support the proposal. Only some classic car clubs are doubtful about the efficacy of lead-free fuel additives. However, lead-free fuel additives have been used widely in different parts of the world with success. Subject to endorsement by ACE and approval by the Legislative Council, the proposal will be implemented on 1 April 1999.

Enforcement of the proposal will be the same as currently for petrol. Samples

of petrol and fuel additives will be collected from service stations regularly to check their compliance with the statutory specifications for unleaded petrol. The additional administrative workload is expected to be minimal. The public in general will welcome the ban on leaded petrol because it will improve the environment and maintain the international image of Hong Kong as a responsible city. (*ACE Paper 2/99, Planning, Environment and Lands Bureau, January 1999*)

PLANNING ISSUES

Two town planning consultancy projects have been commissioned to update development strategies for urban areas as well as the southeastern New Territories up to 2016 and beyond. Recommendations for urban areas, which include Hong Kong Island, Kowloon, Tsuen Wan and Kwai Tsing districts, will be available by early 2000 and those for the southeastern New Territories by late 1999. The consultancy for urban development is the second of its kind following two earlier planning documents published in early 1991 and 1993. The two earlier reviews documented data on land use, transport, environmental planning frameworks as well as a framework for development and density restrictions in various urban areas. A spokesman for the Planning Department said that the present development consultancy was necessary because many of the input data, demographic and socio-economic assumptions of both documents were "outdated".

The study, which will cost \$9.3 million, began on 1 March 1999. It is due for completion by the middle of 2000. The study of the southeastern New Territories development is aimed at formulating a robust tourism and recreation planning framework in order to capture the potential of the study area. The study will also update data from two previous reviews of the region

Regulations have laid down

carried out in 1986 and 1989. In parallel, a conservation and landscape framework will also be prepared to preserve the natural landscape in the area.

[*Hong Kong Standard*, 23/02/99]

Hong Kong district planning officer, Ling Kar-kan, said the Government was considering allowing more apartments to be built in Pokfulam in view of improvements to transport facilities in the past 20 years. The Government imposed a moratorium in the 1970s to ensure population growth would not surpass transport development. It restricted release of government sites and disallowed private developers from increasing plot ratios on projects. Mr. Ling said that a study began last year into the growth potential in Pokfulam and phase one was expected to be finalised this year.

According to the study, the Government will be able to release 21 plots of land, covering 49.72 hectares. The study suggests about 32 private sites covering 6.73 hectares have potential for redevelopment. This space, together with the 3,000 units residential component in the proposed \$13 billion Cyberport project at Telegraph Bay, could mean up to 5,780 new units in the area. The Cyberport, for electronic commerce, is to be built on a 26-hectares site, of which two-thirds will be for offices and facilities and the rest for low-density residential development - reported to involve 4.39 million square feet of floor space. Mr. Ling said that the population in Pokfulam was expected to increase from below 80,000 now to 110,000 if the moratorium was lifted.

Mr. Ling said that many buildings in Pokfulam had three to six floors, with a plot ratio of less than one. The Pokfulam outline zoning plan released in 1998 allows a plot ratio of three to five times. He further said that lifting the moratorium would allow new development to proceed in line with the applicable outlying zoning plan proposal.

[*SCMP*, 24/03/99]

On 9 April 1999, the Town Planning Board (TPB) endorsed the revised

Town Planning Board Guidelines for Application for Developments Within Deep Bay Area under Section 16 of the Town Planning Ordinance. Under the revised guidelines, a new approach to development is adopted in order to protect the ecological value of fish ponds without precluding provision of essential public infrastructure projects or traditional development needs in the Deep Bay Area. The revision was made in recognition of the need to strike a balance between conservation and other planning considerations. The TPB has taken into account recommendations of the Study on the Ecological Value of Fish Ponds in Deep Bay Area. A spokesman for the Board explained that the fundamental land use planning concept for the area is to avoid loss of fish ponds and habitat fragmentation, and to negative impact from undesirable land uses and human disturbance.

Within the Wetlands Conservation Area it is recommended that no development involving the filling of fish ponds should be permitted, except for essential public infrastructure projects or uses related to wetland conservation or environmental education. Any such uses, however, will need to be supported by ecological impact assessments and wetland compensatory measures will be required.

Regarding the Wetlands Buffer Area, all future new development proposals, except for temporary and some exempted uses, should be supported by ecological impact assessments to demonstrate the absence of negative impacts on the ecological value of the surrounding fish ponds. The Wetlands Buffer Area generally comprises the strip of land of about 500 metres wide along the landward side of the Wetland Conservation Area.

Degraded areas within the Wetlands Buffer Area comprising mainly filled-in fish ponds with open storage uses are recommended for upgrading for residential or recreational developments. This provides an incentive for the removal of the existing open storage uses and restoration of some degraded wetland.

Fish ponds currently zoned or to be rezoned "Village Type Development" are not included in the Wetlands Conservation Area in view of the demand for village housing sites within these areas.

[*Press Release*, HKSAR Government, 09/04/99]

A set of guidelines has been published to enhance public understanding of the concept behind the zoning of Comprehensive Development Area (CDA). Issued by the Town Planning Board (TPB) with three other sets of guidelines on town planning matters, the publication reflects a more pro-active approach to facilitate CDA developments through frequent reviews of existing zones and new measures to streamline approval procedures and subsequent amendments to approved development schemes.

A spokesman for the TPB explained that CDA zoning had been designated in the interest of the wider public, normally with the key objectives to enable land use restructuring, urban renewal and the phasing out of incompatible development and non-conforming uses. Each CDA site will be reviewed at the end of the third year after its first designation and thereafter on an annual basis. For sites with no progress of development, the TPB will consider reviewing the planning and development parameters, revising the zoning boundary, allowing phased development as well as rezoning the sites to other uses. Regarding sites with approved Master Layout Plans, the TPB will liaise with concerned parties to resolve any outstanding technical issues, particularly those related to compliance with approval conditions. The spokesman said the other guidelines concerned minor amendments to approved development proposals, compliance of approval conditions and the submission of Master Layout Plan.

Under the new guidelines, applications for minor amendments to previously approved scheme will

be approved by the Director of Planning or his District Planning Officer under the delegated authority within a shorter period of time without resorting to the TPB for a decision. As for compliance with approval conditions, it is required that only those conditions imposed with prescribed time limits and those related to the detailed design should be complied with before the approval of the building plans may be considered. [Press Release, HKSAR Government, 24/05/99]

CASELAW UPDATE

Wah Yick Enterprises Company Limited (as Appellant) vs. Building Authority (as Respondent) (Court of Final Appeal No. 12 of 1998 (Civil)) on appeal from Court of Appeal, No. CACV No. 210 of 1997)

Date of Hearing:: 3 and 4 February 1999

Date of Judgment: 1 March 1999

The appellant is the owner of land zoned for "Village Type Development" ("the V Zone") in the draft Yuen Long Outline Zoning Plan ("Yuen Long OZP") in the New Territories. In the Notes to the OZP, in the column headed "Uses always permitted" for the V Zone, the word "Houses" appears. On 29 January 1997, the appellant submitted to the Building Authority plans for erection of a 33-storey block of flats comprising a total of 99 flats on a portion of its land. The Building Authority, pursuant to s.16(1)(d) of the Building Ordinance, Cap. 123, refused to give approval to the plans on the grounds that the carrying out of the building works would contravene the OZP. The appellant challenged the Building Authority's Decision. Its application was dismissed. Its subsequent appeal to the Court of Appeal was also dismissed. The appellant now appeals to the Court of Final Appeal.

The appellant's argument is that the Yuen Long OZP, unlike other similar Outline Zoning Plans where "house" appears in column 1 "uses always

permitted" under village type development, contains no express restrictions as to the height of buildings to be built. This reinforces the point that no height restriction was intended in the Yuen Long OZP. Therefore, any domestic building falling within the general meaning of *house* is consistent with the Yuen Long OZP. The appellant then submits that a 33-storey block of flats qualify as *a house* and thus the Building Authority is bound to approve its plan.

Held (by unanimous judgment) that:

1. Little assistance can be derived from previous English cases on the meaning of the word *house*. The word has a fluid meaning and it takes its favour from the context in which it is used (*Annicola Investments Ltd. v. Minister of Housing* [1968] 1 QB 631 at 640). At the time when old English cases were decided and when the Town Planning Ordinance ("the Ordinance") was first passed (in 1939), a residential block of facts might well be referred to as a house, whatever its internal division. It does not follow that, in the ordinary use of language today, a 30-storey residential block can be referred to as a house. Most people would simply call it a block of flats.

2. Section 4(1)(h) of the Ordinance authorised the Town Planning Board ("TPB") to provide for zones suitable for "village type development, agriculture or other specified rural uses". This provision was included in the Ordinance by amendment in January 1991. The objective of the amendment is clear, that is, to enable the TPB to designate zones for rural development which would include the preservation and expansion of villages in the rural areas of the territory, and to ensure that such development is compatible with the objectives of the new legislation. That broad intention is also found in paragraph 8.8 of the Explanatory Statement to the Yuen Long OZP. Development in the Village Zones ("V Zone") must be viewed in a rural setting, the object of the designation being to preserve the character of existing villages and to allow for the expansion of such villages. In this context, a 33-storey

block of flats is wholly out of character.

3. In this case, although there are no remarks in the OZP or Notes to qualify the word *house*, the Building Authority must be satisfied that the proposed development shown in the plans is a village-type development, which means a low-rise, low-density development.

4. In considering whether to reject plans under s.16(1)(d) of the Ordinance, the Building Authority obviously must have regard to the broad planning aims of the Yuen Long OZP before it. A "town-house" development permissible in one "V" zone does not necessarily mean it would be appropriate in another "V" zone. But when there is a reasonable doubt, the developer must be given the benefit of the doubt (*Colonial Sugar Refining Co. Ltd. v. Melbourne Harbour Trust Commissioner* [1927] AC 843). As always, in the exercise of the discretion, the Building Authority should not be guided solely by the planning objectives in the OZP but also by commonsense.

The appeal is dismissed with costs : Court of Final Appeal

REGIONAL & INTERNATIONAL

CHINA

The Administration Centre of China's Agenda 21 Programme, the body responsible for the implementation of sustainable economic and social development in China, has introduced an eco-friendly programme. The programme includes using new technology to convert discharged waste into organic compounds. Compared to the traditional burning method, the new technology would reduce the time to dispose of the garbage by 70%, and would produce an environmentally friendly product. Another part of the

programme concerns the phasing out of the use of polystyrene food boxes within a year. It is estimated that 10 billion polystyrene food boxes are used each year in China. Officials would push for the use of alternative biodegradable materials, such as rice straw, to make "greener" food boxes. (SCMP, 15/12/98)

The Chairman of the Guangdong's Provisional People's Congress, Mr. Zhu Senlin, commented that businesses found dumping sewage along the Pearl River Delta should be shut down. Sewage is dumped into the Pearl River by some restaurants in Guangzhou, including some five-star hotels. Measures will also be taken to monitor factories which had been shut down for polluting rivers to prevent their "guerilla warfare" tactic of relocating.

Water pollution in Guangdong has become a hot issue, with environmentalists in Hong Kong warning that water supplied from the province might contaminate drinking water in the SAR. Guangdong is presently building an aqueduct to prevent pollutants contaminating water in the Dong-jiang - East River sector of the Pearl River system. (SCMP 20/1/99)

AUSTRALIA

The Great Barrier Reef is slowing dying due to threats from a variety of sources including chemical, fertilisers (used extensively in sugar cane growing, which is a major agricultural industry in coastal zones of central and Northern Queensland), industrial development, tourism, prawn trawling, etc. The Australian Federal Government has introduced a new plan to tackle problems caused by prawn trawling. A study shows that one prawn trawler could remove up to a quarter of the seabed life it passed over and such damage could take up to 20 years to recover. The new plan involves lifting fines by 10 times, and investigating and prosecuting up to 50 identified illegal trawlers. The executive director of the Australian Conservation Foundation, Don Henry, believes that a more comprehensive and vigorous plan is

required, however. He pointed out that such a plan has existed as federal government policy since 1994 but has never been acted upon. (SCMP, 14/1/99)

The Northern Territory government has pumped 40 tonnes of chlorine into the Cullen Bay Marina, Darwin, in a bid to obliterate the environmentally lethal foreign species, the Zebra mussel.

The Zebra mussels' presence in the Marina was discovered last week, it is believed to have been brought in unknowingly by a visiting overseas based yacht some months ago. (The Advertiser, 2/4/99)

FIJI

Campaigners for Fijian army and navy veterans have initiated court action in Fiji to claim compensation against the British Government. Between 1957 and 1960, about 350 Fijians were sent to assist British testing of 24 Hydrogen and atom bombs on the remote Pacific islands. They were only told they were there to help clear the area and build houses, but were not informed of the bomb testing. No medical tests were performed on the Fijians beforehand, and no special allowance was paid. The Fijians were not provided with protective clothing, and were simply told to turn their backs on the explosions.

Recorded health problems of the veterans include sudden death, high rates of asthma, skin disorders, blood cancers, mental confusion and reproductive problems. It is reported that these health problems are similar to those experienced by islanders (and others) who were exposed to French and US nuclear testing. Action has also been initiated to claim compensation against the British Government at the Court of Human Rights in Strasbourg. (THE AGE, 31/12/1998)

NEW ZEALAND

The New Zealand Government has sent air force planes to the Antarctica's Ross Sea to investigate illegal fishing of

Patagonian toothfish, after receiving information that several vessels which had been involved in uncontrolled fishing in Antarctic waters could move into the Ross Sea.

Fisheries activities are regulated by the Commissions for the Convention for the Conservation of Marine Living Resources which was signed by 23 countries. It is estimated that catches of toothfish through illegal fishing equal the catches through legal fishing. Additionally, every year between 50,000 and 89,000 seabirds are inadvertently killed from illegal fishing inside the Convention area.

About 80 per cent of the illegally fished stock landed in Mauritius with about 75 per cent of that going on to Japan, and the remainder sold to the United States. (THE AGE, 30/12/98)

CANADA

After many years of doing nothing in the face of overwhelming evidence of illegal hunting of the threatened species, such as the grizzly bear and big-horn sheep, Canada has announced that penalties for poaching its threatened and endangered Species and to be increased to C\$150,000 and imprisonment for up to 5 years. Poaching less vulnerable but protected species will be penalised by a fine of up to C\$50,000 and imprisonment for 6 months.

New laws aimed at preventing removal of rare plants and fossils from national parks have also been included in the proposed amendment to the federal *National Park Act* (SCMP, 19/3/99)

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:

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Comparative Table of Environmental Convictions:
January - March 1999

	Number	1st Offence	2nd Offence	3rd + Offence	Highest Fine
APCO	35	25	3	7	\$15,000
	40	27	6	7	\$60,000
	33	19	5	9	\$10,000
WPCO	24	16	4	4	\$55,000
	29	18	5	6	\$60,000
	49	32	10	7	\$50,000
NCO	23	8	6	9	\$100,000
	26	4	6	16	\$60,000
	28	7	6	15	\$100,000
OLPO	-	-	-	-	-
	-	-	-	-	-
	1	1	-	-	\$10,000
DASO	1	1	-	-	\$25,000
	-	-	-	-	-
	6	1	1	4	\$12,500
WDO	30	27	2	1	\$20,000
	11	9	1	1	\$50,000
	51	28	10	13	\$40,000
Total	113	77	15	21	
	106	58	18	30	
	168	88	32	48	

January figures appear on the first line, February figures on the second, and March figures on the third of each item. Source: EPD, Anti-Pollution Prosecution Figures.

ABBREVIATIONS

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

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