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URBAN PLANNING AND ENVIRONMENTAL LAW QUARTERLY

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Whilst Hong Kong confidently enters the 21st century enjoying economic revival, the condition of its environment continues to deteriorate. In particular, air pollution levels are frequently critical in terms of world standards. This edition of the Quarterly proposes implementing the polluters-pay principle as the fundamental policy underlying our environmental legislation. Perhaps when polluters are charged a realistic amount for the clean-up of pollution or for the damage caused by their activities there will be the change in attitude of the community and, especially, manufacturers and business which is needed to encourage the government to implement more effective pollution controls.

The Editors

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HONG KONG'S WAR AGAINST POLLUTION: IS IT TIME FOR POLLUTERS TO PAY?

During the last several months, particularly, almost daily press reports remind us that Hong Kong's land, air and water pollution problems are worsening. No matter what the stated good intentions and budgetary fiscal policies of the government are, it is plain that collectively we have not been able to curb the many and various sources of pollution which have rendered Hong Kong's environment among the least desirable in the world. Ultimately, if not now, the poor general quality of our environment will significantly impact Hong Kong's economic competitiveness. Hong Kong will have difficulty in maintaining its position as an international and major regional financial centre if the air the citizens breathe is so polluted as to be dangerous according to world health standards. Yet this is in fact the state

to which air quality has deteriorated in Hong Kong.

The government says, with some justification, that a significant contributing cause to Hong Kong's pollution is industrial emissions blown from southern China into Hong Kong's air space. The governments of Guangdong and Hong Kong have established a working group to review and take steps to reduce sources of pollution which affect the environment of both regions. It remains to be seen what practical results come from such discussions and whether any improvement in the overall environmental health of the southern China region results.

Leaving aside outside influences, there are strong arguments for Hong Kong's government to implement more realistic and effective steps to prevent pollution. A major policy redirection needs to occur. The government should resolutely implement the *polluters-pay principle* as the fundamental policy underlying our environmental legislation.

Polluters - pay principle

As long ago as 1972 the Organisation for Economic Co-operation and Development (OECD) articulated the polluters-pay principle as follows:

It is a principle to be used for allocating costs of pollution prevention and control measures to encourage rational use of scarce and environmental resources and to avoid distortions in international trade and investment. The principle requires, therefore, that the polluter should bear the expense of carrying out measures to achieve this and to ensure that the environment remains in an acceptable state. Pollution controls generally should not be subsidised, as this causes significant distortions in international trade and investment.

The principle is not limited to passing on to polluters the cost of remedying the damage they cause. It goes beyond the clean-up or cure stage. If fully applied, the principle would require (a) prevention or, as second best, (b) minimisation, and/or restitution mechanisms to be incorporated into any potentially polluting process at the most practicably effective stage of the process. The cost of doing so is internalised as a legitimate cost of production. Therefore, inevitably a substantial proportion of the cost will in fact be passed on to consumers. This is not necessarily unfair, since they contribute to the polluting process.

In short, the principle requires that costs incurred by the community to avoid, remove and compensate damage caused by polluting activities should be allocated as far as practicable, to the party responsible. That is to say, the cost of anti-pollution (and other environmental protection measures) should be reflected in the cost of goods and services which cause the pollution via production and consumption processes.

Does the principle apply at all in Hong Kong?

There are two major ways in which the government is able to implement a polluters-pay principle in its administration of the territory. Firstly, it can be achieved by budgetary measures, and secondly, by legislation. A third way could be by educating manufacturers or other processors (for example) voluntarily to incorporate and pay for pollution prevention/control measures in their production process. However, given the historical attitude of the business community to environmental concerns, this seems a forlorn hope.

The current budget does not attempt to apply the principle across the board. Certainly in some aspects of everyday life the principle is applied: for example, car owners pay substantial

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registration and license fees. Whether the aggregate of these fees would cover the approximate costs to Hong Kong of pollution caused by motor vehicles is unknown, however, as no attempt is made by the government to draw the connection between the level of fees charged and the cost to the community resulting from this source of pollution.

Indeed, in one significant aspect the budget applies the reverse to the polluters-pay principle, in that it extends until the end of 2000 the long established diesel fuel subsidy of \$2.00 per litre. The use of diesel by Hong Kong's taxis, mini buses and trucks is consistently identified as a major cause of air pollution.

The current budget does not apply, for example, across the board, charges for industrial and domestic sewerage and waste disposal to cover recurrent and capital costs of dealing with those sources of pollution. A low level system of charges was initiated – on 1st April 1991- purportedly in compliance with the polluters-pay principle. Charges are levied under the *Sewerage Services Ordinance* (Cap. 463) on a substantial number of users on a 1995 cost basis, but in total these fall short of recovering disposal/treatment expenses, and they make no allowance for capital expenditure at all.

As with Hong Kong's budgetary measures, its legislation virtually ignores totally the common sense principle that polluters should pay any costs incurred by the community as a result of their polluting activities. Even where measures exist to force polluters to pay they are not enforced. For example, Sections 13 and 13A of the *Water Pollution Ordinance* (Cap.358) enable the Environmental Protection Department (EPD) to recover from a convicted polluter the cost of cleaning up the subject water-pollution. Although there may often be practical difficulties in making use of these legislative provisions, the fact is that as far as can be ascertained the EPD has never attempted to make use of them.

Far from embracing the principle, our legislation often supports polluters by giving them exemptions from otherwise applicable controls. An example appears in the *Digest of Legislation* in this edition of the *Quarterly*, which includes a recent regulation providing wide-ranging exemptions under the *Dumping at Sea Ordinance* (Cap 466). These allow in Hong Kong waters dumping of garbage, sewerage, ballast waters (which is incredible in the light of well-documented, serious environmental problems caused world-wide from importation of pests via ballast water e.g. the zebra mussel in North America) and other materials. The exemptions also make a mockery of the offence of marine littering: section 4D, *Summary Offences Ordinance* (Cap 228).

By and large, our environmental legislation is based on the somewhat outmoded command/control approach; that is, commanding certain quality levels and controlling by penal provisions. Such legislation is virtually useless unless it is rigorously enforced and courts impose penalties that are realistic deterrents, neither of which has been the case in Hong Kong to date.

Other jurisdictions

It is doubtful that any country objectively, realistically and comprehensively embraces the polluters-pay principle. However, many developed countries (and we must remember that Hong Kong *is* a developed economy) do go a lot further than Hong Kong in implementing the principle as the governing policy for environmental protection legislation, particularly anti-pollution laws.

For example, in the early 1970's Japan incorporated the principle in its legislation dealing with long-term accumulated soil pollution caused by various agents, including heavy metals. Two examples are the *Agricultural Land Soil Pollution Prevention Law* and the *Law Concerning Entrepreneurs Bearing the Cost of Public Pollution Control Works*. These laws were introduced in 1971. However, they were not resolutely enforced. Only 39 cases were recorded under the latter law in the 25 years to 1995. The government also contributed in individual instances to clean-up costs, on the basis of formulae which were worked out by the interested parties in respect of designated districts over the years.

Germany, which has a reputation as being among the most advanced jurisdictions in terms of environmental legislation, has long embraced the polluters-pay principle. For example, the treaty which reunified East and West Germany expressly required the nation to base its future union and economy on the need for environmental protection. Legislation was required to be designed so as to ensure "environmental order", including the unqualified implementation of the polluters-pay principle. [Accepting

environmental protection ("environmental order") as a major plank of social and economic planning is often described in Germany as the "ecological nuancing" of law. In view of Hong Kong's continuing and compounding environmental problems, the SAR government needs urgently and seriously to consider what has to be done to bring about an ecological nuancing of Hong Kong's laws.]

An example of the polluters-pay principle in German law is the *Closed Substance Cycle and Waste Management Act (1996)*. The aim of this Act is to promote an economy based on Closed-Substance Cycles, thereby conserving resources and guaranteeing environmentally sound disposal of waste. In short, the Act requires that in respect of any process where waste cannot be avoided, recovered or used to produce energy (another avenue which Hong Kong should more vigorously pursue) it must be removed from the cycle and disposed of at the cost of the producer in such a way as to ensure no significant harm to the environment.

A high profile example of a modern economy implementing the principle is the American Superfund legislation (*Comprehensive Environmental Response, Compensation and Liability Act (1980)*) pursuant to which not only identified polluters but subsequent occupiers, owners and even lenders may be compelled to cover the cost of cleaning up contaminated land. [A subsequent edition of the *Quarterly* we will consider aspects of Superfund and difficulties the US authorities are having in meeting its clean-up objectives].

More recently the state of New South Wales and the Australian Capital Territory in Australia have announced their intentions to adopt the polluters-pay principle as the fundamental policy underlying their environmental legislation. The ACT proposes two major changes to its Environment Protection Act: firstly, pollutant loading fees will be set so that activities like sewerage treatment will be charged for according to volume or weight of pollutants released into the environment (as a consequence of the

activity); and secondly, the number of potentially polluting activities requiring "authorisations" to emit pollutants, and authorisation fees, will be increased to reflect the cost of administering the scheme.

As the government of the ACT pointed out in a press release (4/5/99) the aim of the changes to its legislation are not just to recover the cost of damage to the environment, but also to make people realise that if they are to carry out polluting activities it will cost them directly more money. It is anticipated that this will lead to a reduction of pollution by voluntary changes to production and other activities methods. Touching the raw economic nerve of Hong Kong is also likely to be the most effective and expedient way to educate business and the community at large to change their ways so as to cause less pollution.

Will Hong Kong's residents accept the principle?

Recent individual instances suggest that there would be strong opposition to a wholesale policy change to base Hong Kong's environmental legislation on the polluters-pay principle. The strong lobbying from the transport industry against the government's plan to introduce LPG fuel is but one example (although replacing diesel with LPG is not strictly an example of the polluters-pay principle in that LPG is merely a cheaper, less polluting substitute). We have today a situation where air pollution is at critically extreme levels and yet a major source of that pollution continues unabated because the government and Legco bow to economic interests. If that example were a true reflection of the community's appreciation of the pollution problem, then it would seem most difficult for the government to countenance implementing the principle. However, there are signs elsewhere that the community's view of environmental pollution is gradually changing and perhaps the change will be hastened by the constantly high air pollution readings of recent times.

In 1995, for example, the Conservancy Association released a report,

Polluters-Pay Principle Survey Report (Gordon Ng and Betty Ho), which concluded that a majority of people would support implementation of the principle as a fundamental element of Hong Kong's environmental controls, and would support higher taxation to bring that about if that were necessary. Admittedly there are subsequent surveys indicating that the vast majority of the community still rate environmental issues as low on the scale of priorities. However, the time must surely have come where the level of our pollution is so high that most people would recognise that it is both unhealthy and is now also harming the economic well-being of Hong Kong.

The OECD said, as long ago as the 14th November 1974: "the Polluter-Pays Principle constitutes.... a fundamental principle of allocating costs of pollution prevention and control measures introduced by the public authorities" (emphasis added). Surely it is time Hong Kong accepted and acted on this principle.

[In view of the increasing seriousness of Hong Kong's air pollution the next edition of the *Quarterly* will consider that problem and a number of public proposals for improving our pollution controls and thereby the quality of our air].

Digest of LEGISLATION

DUMPING AT SEA (EXEMPTION) ORDER

(Made under section 11(1) of the Dumping at Sea Ordinance (Cap. 466)) (L.N.64 of 2000/ L.S. NO.2 TO GAZETTE NO.10 of 2000)

Commencement

This Order shall come into operation on a day to be appointed by the Secretary for the Environment and Food by notice in the Gazette.

Interpretation

In this Order, unless the context otherwise requires-

"exempt" means exempt from the requirement for a permit under section 8 of the Ordinance;

"reclamation area" means an area affected by a relevant reclamation;

"relevant reclamation" means a reclamation:

- (a) authorized under:
 - (i) the Foreshore and Sea-bed (Reclamations) Ordinance (Cap.127); or
 - (ii) the repealed Public Reclamation and Works Ordinance (Cap.113, 1984 Ed.);
- (b) ordered under the Roads (Works, Use and Compensation) Ordinance (Cap.370); or
- (c) which was the purpose of a Government lease granted under the repealed Foreshores and Sea Bed Ordinance (Cap.127, 1984 Ed.).

General exemptions

The operations specified in Schedule 1 are exempt.

Other exemptions

- (1) Subject to subsection (2), a relevant reclamation is exempt.
- (2) The following operations are not exempt:
 - (a) an operation for dumping of substances or articles (other than the deposit of any waste or other matter directly arising from, or related to the exploration, exploitation and associated off-shore processing of sea-bed materials) in a reclamation area, the location and description of which is referred to in Schedule 2;
 - (b) scuttling a vessel, aircraft or marine structure in a reclamation area;
 - (c) loading an aircraft, vessel, marine structure or floating container in a reclamation area

with substances or articles for dumping anywhere in the sea or under the sea-bed other than within that reclamation area; and

- (d) loading a vehicle in a reclamation area with substances or articles for dumping from the vehicle anywhere in the waters of Hong Kong other than within that reclamation area.

Conflicts

In the event of a conflict between sections 3 and 4, section 3 shall prevail.

SCHEDULE 1

OPERATIONS NOT REQUIRING A PERMIT

1. Disposal from an aircraft, vehicle, vessel or marine structure of sewage originating on the aircraft, vehicle, vessel or marine structure.
2. Disposal from, or incineration on, an aircraft, vehicle, vessel or marine structure of garbage originating in or on the aircraft, vehicle, vessel or marine structure; and for this purpose "garbage" means any kind of victual or domestic waste, but does not include bulky or industrial waste.
3. Disposal from a vessel of cooling water and of ballast water, tank washings or other residues resulting from tank cleaning or tank ballasting after carriage of a substance other than a substance deposited or incinerated under a permit.
4. Deposit of cable, pipe, watermain, outfall or utility and associated equipment (other than to dispose of it) in the course of laying or maintenance.
5. Deposit of a substance from a vessel, vehicle, aircraft or marine structure in fighting a fire or preventing the spread of a fire.
6. Disposal (by way of return to the sea) of fish or shellfish or parts of

- fish or shellfish in the course of fishing operations or fish processing at sea.
7. Disposal (by way of return to the sea) by a fishing vessel of an article (other than a fish or shellfish) taken from the sea by the vessel in the course of normal fishing operations.
 8. Disposal (by way of return to the sea) of a substance or article dredged from the sea-bed in the propagation or cultivation of shellfish.
 9. Deposit of a substance or article (other than to dispose of it) in the course of salvage operations.
 10. Deposit of an article to provide moorings or aids to navigation-
 - (a) by a harbour authority or lighthouse authority; or
 - (b) by any other person with the consent of a harbour authority or lighthouse authority.
 11. Deposit of a substance or article in constructing or maintaining bridges, harbour, coast protection (other than beach replenishment), submerged tunnels, drainage or flood control works, if made on the site of the works.
 12. Deposit to treat oil on the surface of the sea of a substance produced for that purpose subject to the conditions-
 - (a) that the Authority has approved the use of the substance; and
 - (b) that the substance is used in accordance with the conditions to which the approval was subject.
 13. Deposit of equipment to control, contain or recover oil, mixtures containing oil, flotsam or algal blooms on or near to the surface of the sea.
 14. Deposit of an instrument, article, material or associated equipment (other than to dispose of it) for
 - scientific experiment or survey, habitat or marine life management.
 15. Launching or undocking of vessels or marine structures.
 16. Deposit under the sea-bed of a substance or article (other than to disposal of it) to construct or operate a bored tunnel subject to the conditions-
 - (a) that notice of intention to construct the tunnel is first given to the Authority; and
 - (b) that the approval of the Authority is first obtained to carry out anything which might disturb the marine environment or the living resources which it supports.
5. The foreshore and sea-bed situated in an area to the south of Cheung Chau as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered ISM 783 (as mentioned in G.N. 1880 of 1988).
6. The foreshore and sea-bed situated in an area at the South Tathong Channel as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered SKM 3299 (as mentioned in G.N. 311 of 1990).
7. The foreshore and sea-bed situated in an area to the west of Green Island as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered ISM 844 (as mentioned in G.N. 1688 of 1990).
8. The foreshore and sea-bed situated in an area at North Tathong Channel as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered SKM 3363A (as mentioned in G.N. 1948 of 1990).
9. The foreshore and sea-bed situated in an area at Mid Tathony Channel as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered SKM 3364A (as mentioned in G.N. 1949 of 1990).
10. The foreshore and sea-bed situated in an area to the east to Tung Lung Chau as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered SKM 3468A (as mentioned in G.N. 4295 of 1990).
11. The foreshore and sea-bed situated in an area at Soko Islands as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered ISM 866 (as mentioned in G.N. 1329 of 1991).
12. The foreshore and sea-bed situated in an area to the south of Ma Wan as delineated and shown edged black on a plan deposited in the

SCHEDULE 2

RECLAMATION AREAS SPECIFIED FOR THE PURPOSES OF SECTION 4(2)(a)

1. The foreshore and sea-bed situated in an area at Mirs Bay as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered P 11894A (as mentioned in G.N. 3337 of 1979).
2. The foreshore and sea-bed situated in an area to the south of Cheung Chau as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered P 12181 (as mentioned in G.N. 339 of 1981).
3. The foreshore and sea-bed situated in an area to the east of Ninepin Group as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered P 12180B (as mentioned in G.N. 340 of 1981).
4. The foreshore and sea-bed situated in two areas to the north of Lantau Island and to the south of Tsing Yi Island as delineated and shown edged red on a plans deposited in the Urban Land Registry and numbered KTM 9 and KTM 8 respectively (as mentioned in G.N. 3798 of 1987).

- Urban Land Registry and numbered NANTM 4 (as mentioned in G.N. 1404 of 1991).
13. The foreshore and sea-bed situated in an area at Kap Shui Mun as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered TWM 2406 (as mentioned in G.N. 1680 of 1991).
 14. The foreshore and sea-bed situated in an area at Urmston Road as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered TMM 1275 (as mentioned in G.N. 1846 of 1991).
 15. The foreshore and sea-bed situated in an area at the Brothers as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered TMM 1273 (as mentioned in G.N. 1939 of 1991).
 16. The foreshore and sea-bed situated in two areas to the north of Lantau as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered KTM 137A (as mentioned in G.N. 2483 of 1991).
 17. The foreshore and sea-bed situated in an area at Outer Deep Bay as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered TMM 1299 (as mentioned in G.N. 2853 of 1991).
 18. The foreshore and sea-bed situated in an area to the east of Sha Chau as delineated and shown edged black on a plan deposited in the Urban Land Registry and numbered NANTM 30 (as mentioned in G.N. 462 of 1992).
 19. The foreshore and sea-bed situated in an area to the west of Tsing Yi as delineated and shown edged red on a plan deposited in the Urban Land Registry and numbered KTM 151 (as mentioned in G.N. 892 of 1992).
 20. The foreshore and sea-bed situated in an area to the east of the Soko Islands and south of Cheung Chau Island as delineated and shown edged black on a plan deposited in the Urban Land Registry and numbered ISM 869 (as mentioned in G.N. 1382 of 1992).
 21. The foreshore and sea-bed situated in an area at Po Toi West as delineated and shown edged black on a plan deposited in the Urban Land Registry and numbered NANTM 47 (as mentioned in G.N. 1810 of 1992).
 22. The foreshore and sea-bed situated in an area at Po Toi East as delineated and shown edged black on a plan deposited in the Urban Land Registry and numbered ISM 875 (as mentioned in G.N. 2363 of 1992).
 23. The foreshore and sea-bed situated in an area at East Lamma Channel as delineated and shown edged black on a plan deposited in the Urban Land Registry and numbered MH 4979 (as mentioned in G.N. 2899 of 1993).
 24. The foreshore and sea-bed situated in an area to the west of Sulphur Channel as delineated and shown edged black on a plan deposited in the Urban Land Registry and numbered ISM 928 (as mentioned in G.N. 4297 of 1993).

HONG KONG Briefing

Gobi pollutants detected in Tung Chung

Samples containing desert pollutants were collected from Tung Chung and Sai Kung in a two-year study which has just been completed by the Institute of Environment and Sustainable Development of the Hong Kong University of Science and Technology. Institute director, Dr. Fang Ming, said the particles were believed to have been carried by the jet stream in the upper atmosphere above Hangzhou and Taipei.

The institute is now collecting data in Yuen Long and Tung Chung to determine the extent of pollutants from Shenzhen. Tung Chung set a record of 161 on the air pollution index last year. The Environmental Protection Department said Tung Chung was affected by pollutants from the Pearl River Delta.

(SCMP, 24 January, 2000)

Make changes for a better and world class environment

Speaking on the topic "Working for a World Class Environment" at a seminar on 22 February, 2000 organised by the Hong Kong Institute of Surveyors, Mr. Salkeld, the Deputy Secretary for the Environment and Food, said that just a few little changes in habit by a lot of people and businesses will rapidly add up to a great reduction of pressure on the environment.

"If each person in Hong Kong were to reduce the waste they produce each day by an average just 2000 grammes (half the dry weight of an average newspaper), half a million tonnes of waste would be saved every year," he continued.

On energy use, Mr. Salkeld pointed out that in the latest reference year (1994), each person in Hong Kong used energy equivalent to that produced from 2.2 tonnes of oil. That was 55 per cent above the world average, but less than in the USA, Canada, Australia and Japan.

"We produced 5.1 tonnes of carbon dioxide (CO₂) per person, 25 per cent above the world average but less than all other advanced economies except Sweden."

Referring to waste creation, the Deputy Secretary pointed out that we each produced 500 kilogrammes of waste a year, less than those in Canada, the States and Australia. He also noted that HK managed to recover about 53 per cent of paper and cardboard for re-use, about the same as Japan and Sweden.

To help in the protection of natural ecology, Mr. Salkeld said that 37 per cent of Hong Kong's land was protected as country parks, comparing with the average of 12.5 per cent for other developed countries.

Apart from legislation to achieve waste reduction, Mr. Salked stressed the importance of setting community standards. The way to encourage that was through economic incentives, that is, measures that put value on the "common goods" of a clean, unpolluted and pleasing environment, as well as measures that encourage and sustain investment in environmental infrastructure such as sewerage and waste management facilities.

Substantial improvements had been made in the last decade on various aspects of improved waste managements including the reduction of roadside sulphur dioxide levels, increased level of treatment of sewage collected, recovery and re-use of construction and demolition material, and greatly improved chemical waste management.

Investments and programmes already committed would bring further improvements in the next few years. These include:

- the volume of untreated sewage flowing into the central harbour will be reduced by about 60 per cent by the middle of next year;
- a dozen old landfill sites are being restored for recreational and other uses;
- contaminated land at Kai Tak is being treated so that quarter of a million people can live there; and
- substantial progress in vehicle RSP emissions will be made by the end of this year following the establishment of LPG filling stations.

Mr. Salkeld makes an obvious point. Unless the majority of people and businesses in Hong Kong join in the work, the targets for improving environmental efficiency will not be met.

22 February, 2000
<http://www.info.gov.hk/efb/press/index.html>

The Hong Kong eco-business awards

The Environmental Campaign Committee, in collaboration with the Hong Kong Productivity Council, the Hong Kong General Chamber of Commerce and the Environmental Protection Departments, organised a 1999 Hong Kong Eco-Business Awards Scheme with financial support from the Environment Conservation Fund. The scheme launches two awards: the Green Office Award and Green Retail Award.

Both awards are designed to honour service-oriented businesses in Hong Kong that have demonstrated exceptional commitment to environmentally responsible management practices. The aims of each "green" award are both to educate companies about the importance and benefits of environmental conservation practices and to recognise voluntary activities organised by companies which result in cleaner air, water, conservation of energy and natural resources and reduced use of hazardous materials.

Cathay Pacific Airways Ltd. was the winner of the Green Office Grand Award and the Hotel Nikko Hongkong was the winner of the Green Retail Grand Award. The awards were presented on 4 January, 2000.

ECCO Monthly Bulletin, January 2000 Issue
<http://www.ecc.org.hk/>

Clean-up makes money sense

In extracts from the Citizens Party shadow Budget, Christine Loh looks at ways of funding much-needed environmental projects. She expresses the view that without a workable "polluter pays" scheme, we will continue to need money from the general revenue purse to fund clean-ups. The Citizens Party has promoted a package of green taxes for discussion including fuel duties, air pollutant taxes, water pollutant taxes and landfill charges, amongst others. Miss Loh said that in many cases, taxation will meet environmental goals more efficiently than alternatives, such as

imposing penalties, and that ample evidence from around the world has demonstrated clearly that high environmental standards can and do induce higher levels of economic growth, greater employment, and add value to the economy.

(Hong Kong Standard, 4 March, 2000)

Regional pollution is top concern

According to the Director for Environmental Protection, Mr. Robert LAW, "The nature of Hong Kong's pollution has changed over the past decade, as industrial pollution has become less of a concern and sewage and waste disposal, vehicle pollution and regional pollution have become the big challenges."

"Air pollution is being tackled by phasing out some diesel vehicles and improving the emissions of others, which will take 5 to 10 years to achieve," he said. "But regional pollution from various sources around the Pearl River Delta will continue to affect Hong Kong. Guangdong's rapid economic growth over the past decade has outpaced environmental infrastructure, much like Hong Kong 20 or 30 years. There are ever-greater flows of industrial effluent and sewage and a rapidly increasing number of vehicles and chimneys."

"Pollution from Guangdong has combined with that of Hong Kong to create a smog problem in the Pearl River Delta, affecting visibility and health. Water quality is also being affected with impacts on marine ecology," he said. "The overall issue to address here is sustainability and whether the Pearl River Delta can continue to enjoy economic growth without ruining it as a place to live in."

This means considering everything from how people move about, to the types of fuel and sewage treatment used, to packaging and disposal of waste. The leadership in Hong Kong, Guangdong and China have acknowledged the importance of sustainability and are starting to work towards it," Mr. Law said. "Until we get the community to realise that

sustainable development is in its long-term interests, we aren't going to achieve much," he added.

ECCO Monthly Bulletin, February 2000 Issue
(<http://www.ecc.org.hk/>)

SAR chokes as pollution levels soar

Smog blanketed Hong Kong for a second day yesterday as trapped vehicle emissions and sunshine triggered the worst street-level air pollution in 18 months. The Air Pollution Index peaked at 162 on the streets of Central late yesterday - just five points off the highest reading of 167 in September 1998.

All over the city pollution hovered above the dangerous 100 mark for a second day. Local vehicle emissions account for 75 per cent of air pollution and have been rising for 10 years - even as the SAR's worst industrial polluters moved to Guangdong.

Mr. Kim Salkeld, the Deputy Secretary at the Food and Environment Bureau has said, "There were only two days when roadside pollution on the index was under 50 in the past year."

A mixture of low wind, vehicle exhaust and sunshine produced yesterday's pollution. There was just enough wind for Guangdong's smog to drift over, but not enough to disperse it.

Mr. Tung Chee-hwa, the Chief Executive, in his Policy Address, outlined a plan to reduce particulate emissions by 80 per cent by 2005 and decrease nitrogen oxide levels by 30 per cent. He earmarked \$1.4 billion to give taxi drivers incentives to switch to liquefied petroleum gas and to install it on existing vehicles. But while vehicle checks have increased, Legco has yet to release any of the funds for taxi grants because of pressure from transport industry lobby groups.

Mr. Tung outlined six co-operative measures which focused on exchanging technicians and scholars to study the sources of pollution in the Pearl River Delta. However, Professor Carlos Lo Wing-hung of the Hong Kong

Polytechnic University's management department said a major problem is that the SAR negotiates with Guangdong authorities, while decisions about pollution control are made on a local level in the Pearl River Delta.

(SCMP, 29 March, 2000)

**HONG KONG
DISNEYLAND UPDATE**

EIA studies

Two Environmental Impact Assessment (EIA) studies of the Disneyland Project and associated developments on Northeast Lantau have confirmed the environmental feasibility of the project. The EIA reports released on 13 March, 2000 concluded that construction and operation of the project will comply with all environmental standards and legislation if the proposed mitigation measures are implemented.

The EIA studies, commissioned by the Civil Engineering Department, provide a comprehensive assessment of the likely environmental impacts of the Northshore Lantau Development, the Chok Ko Wan Link Road, and the Disneyland site itself together with its associated essential infrastructure. The studies covered such areas as noise, air quality, water quality, solid waste, ecology, cultural heritage, landscape and visual impact, fisheries impact, hazard assessment, land contamination as well as territory-wide environmental implications.

The Director of Environmental Protection will consider all comments submitted to him during the public inspection period and the views of the Advisory Council on the Environment (ACE) before making a final decision on whether to issue an environmental permit.

The EIA studies of the Disneyland Project and associated developments on Northeast Lantau have confirmed the environmental feasibility of the project. The reports concluded that construction and operation of the project will comply with all environmental standards and legislation if the

proposed mitigation measures are implemented. On March 11, the Director of Environmental Protection (DEP) decided that the two EIA reports had met the requirements of their respective Study Briefs and the Technical Memorandum of the EIA Ordinance. Following this, the reports have been made available for public inspection since March 13 for a period of 30 days.

On the environment, the spokesman said they have scrupulously followed the law and will continue to do so.

The two EIA reports were scheduled to be presented to the EIA Subcommittee of the Advisory Council on the Environment (ACE) in early April 2000 and the ACE full Council in mid April 2000. After receiving the comments of the public and the ACE, DEP will decide whether the EIA reports should be approved and Environmental Permits (EPs) should be issued. The reclamation contract for Penny's Bay will only be awarded after the EPs have been issued.

As regards Cheoy Lee Shipyard, a separate subsequent EIA Study will be completed prior to the decommissioning of the shipyard to satisfy all the environmental regulatory requirements.

(From the website of the government of HKSAR at
<http://www.info.gov.hk/gia/general/200003/23/0323240.htm>)

Complaint to Ombudsman

The Ombudsman is to be asked to investigate an alleged conflict of interest involving tourism commissioner Mike Rowse. Two green groups say Mr. Rowse should not have promoted the Disneyland project publicly without first clearly declaring his role as a director of the theme park's joint-venture company, Hongkong International Theme Parks.

Assistant Director of Friends of the Earth, Plato Yip Kwong-to, said the public, which is being consulted on the two EIA reports on Disneyland and related projects, could be misled. He said confusion over the two roles

suggested the government was doing things in favour of Walt Disney and this was unfair to other companies.

Greenpeace executive director Ho Wai-chi said: 'It's an obvious conflict of interest.' Mr. Yip said Mr. Rowse should have declared his interest as had the Advisory Council on the Environment chairman, Peter Wong Hong-yuen, who will not attend meetings to discuss Disneyland because his accountancy firm works for the company.

Mr. Rowse dismissed the criticisms as 'complete gibberish'. 'We are directors to look after the government investment [\$3.25 billion] on behalf of the Hong Kong community,' he said. He is among the five government officials appointed to the joint venture's board, which includes three Disney representatives and two independent representatives.

The government did not announce the names of the officials until yesterday when Mr. Rowse responded to Post questions. Mr. Rowse's role was revealed when the Post conducted a company search early last month and found the tourism chief, Financial Secretary Donald Tsang Yam-kuen and Secretary for Treasury Denise Yue Chung-ye are listed as directors.

Mr. Rowse insisted the arrangement of having five officials as directors had been made public.

In response to enquiries from the press, a government spokesman said on 23 March, 2000 that they understand a complaint had been lodged with the Ombudsman, but they have not yet been contacted by the Ombudsman's Office.

"We can give a categorical assurance that there is no conflict of interest, the government disclosed all material information before seeking Executive Council and Legislative Council approval for the project to go ahead," the spokesman said.

(SCMP, 15 March, 2000)

Concealed environmental risks?

The Ombudsman has been asked to investigate if officials misled the public and legislators into supporting the Disneyland project by concealing environmental risks posed by a nearby shipyard.

The assistant director of Friends of the Earth, Plato Yip Kwong-to, said: 'We are not complaining against the theme park but the unknown liabilities involved.' The group said an estimate of clean-up costs of the shipyard next to the theme park had not been included in the cost-benefit study presented to legislators before they endorsed the funding. Legislators were only told the project could generate a net economic benefit of \$148 billion over 40 years.

Mr. Yip said experience showed the cost of cleaning up a shipyard could be astronomical. He cited the example of Puget Sound naval shipyard in the United States that cost US\$55.8 million (HK\$431 million) to decontaminate.

While the project has been given a positive environmental report, officials have admitted they cannot enter the shipyard to conduct tests because compensation negotiations for land resumption are still underway with its operator.

'How can the government justify the financial risks to public funds from the location of the Disneyland project to a potentially contaminated shipyard, upon which no detailed studies have been done?' Mr. Yip asked.

'Friends of the Earth urges the Ombudsman to investigate whether the government misled the Legislative Council to approve the \$26.4 billion funding - and to make it an urgent project,' the group said in a letter.

Friends of the Earth urged the Ombudsman to probe how much administrative resources were used to favour the interests of the Disneyland joint venture as evidence suggested the government had fast-tracked the related procedures.

(SCMP, 24 March, 2000)

The EIA report for Disneyland was yesterday branded misleading and inaccurate by Citizens Party legislator Christine Loh Kung-wai, who also hit out at what she said were extraordinary concessions given to Disney.

'The government is trying to ram through a large infrastructure project without due regard to its environmental impact,' she said, 'The government claims to have a policy on sustainable development but appears to be unwilling to put this into practice.' She singled out the reclamation of Penny's Bay as an example of the environmental havoc the government would wreak by trying to speed up the project.

The report said instead of using the slower and more environmentally friendly option of draining reclamation, the first phase would be fully dredged. The dredging would generate 110,000 cubic metres of contaminated mud that would need disposal, said Ms. Loh.

Director of Civil Engineering Lo Yiu-ching said reclamation work would only affect areas of low ecological value.

(SCMP, 28 March, 2000)

ADVISORY COUNCIL ON THE ENVIRONMENT (ACE)

Report of the 51st Environmental Impact Assessment (EIA) Subcommittee (Meeting on 13th December, 1999)

Village Flood Protection Yuen Long, Kam Tin and Ngau Tam Mei, NWNT – Stage II (ACE EIA Paper 1/2000)

The project involves improving existing drainage, providing new drainage and/or providing flood storage ponds to alleviate the persistent flooding of 19 villages in the Yuen Long, Kam Tin and Ngau Tam Mei catchments. A Preliminary Project

Feasibility Study was conducted in 1995 and concluded that 12 of the villages required an environmental impact study. Subsequently, the Main Drainage Channel (MDC) for Ngau Tam Mei, Yuen Long and Kam Tin EIA and the Rural Drainage Rehabilitation Scheme (RDRS) EIA assessed environmental implications of 4 out of the 12 villages, namely Mai Po San Tsuen, Mai Po Wai, Shui Tsui Lo Wan and Nam Hang. The MDC and RDRS were endorsed by the Council of ACE in July and January, 1997 respectively. Subsequent to the commissioning of these EIAs, flood mitigation works for one of the remaining villages, Shan Pui Chung Hau Tsuen, was superseded by drainage works forming part of the adjacent Kau Hui Development. The environmental impacts associated with the flood protection works for Shan Pui Chung Hau Tsuen will be addressed in the Kau Hui proposals.

The interdepartmental Environmental Study Management Group considered that the Report met the established environmental criteria and guidelines as set out in the Hong Kong Planning Standards and Guidelines.

On the question of ecological impacts reviewed in the Report of the Village Flood Protection Yuen Long, Kam Tin and Ngau Tam Mei, NWNT-Stage II, the EIA Subcommittee decided that the existing wetland tables at Ko Po Tsuen and Sheung Che should be maintained as they are now and that the Drainage Services Department and Agriculture, Fish and Conservation Department should be responsible for the management and maintenance of the channel and plantings.

In respect of the visual impacts dealt with in the Report of the Village Flood Protection Yuen Long, Kam Tin and Ngau Tam Mei, NWNT-Stage II, the EIA Subcommittee recommended that concrete channels and tree planting would be adopted and implemented. Waste disposal arrangements were also considered in the Report, and suitable measures to ensure proper procedures for safe disposal of various kinds of waste materials and channel desilting were reviewed. The proponent was

confident that the project area would not involve any contaminated land. The Subcommittee agreed to recommend to ACE to endorse the Report without conditions.

Route 10 – North Lantau to Yuen Long Highways (Southern Section) (ACE EIA Paper 30/99)

The EIA Subcommittee confirmed that the proposed highway alignment and the toll plaza was the best practical option, due to various engineering technical constraints. The EIA Subcommittee will continue to explore the possibility of reducing the size of the toll plaza and the possibilities for relocating the toll plaza by adopting more automatic facilities.

Assessment of the traffic impact of this project on the existing transport network had already been taken into account. In case the traffic capacity of Route 10 was excessive in future, a separate environmental impact assessment will need to be carried out and alternative traffic arrangements considered.

The Subcommittee agreed to recommend to ACE the following:-

- construction of the Southern Section of Route 10 should not commence until the EIA report concerning the Northern section was completed and endorsed;
- when this EIA report had been submitted under the EIA Ordinance, the cumulative environmental impacts of both the Southern and Northern Sections of Route 10 and all relevant findings and recommendations in both EIA studies should be subject to review; and
- the findings of the design review study of the toll plaza should be submitted to the Subcommittee once finalized.

Use of Water Purchased from Guangdong Province (ACE Paper 02/2000)

Since the improvement measures referred to in the ACE Paper 18/98

were presented to the members on 27/4/1998, the Guangdong side has implemented further measures to help improve the quality of Dongjiang water as follows:-

1. Establishment of a Dongjiang Water Quality Protection Leading Group to promulgate and implement the "Protection of the Dongjiang Water Quality in Guangdong Province Ordinance, "Provision for the Protection of the Source and Quality of Drinking Water of the Dongjiang-Shenzhen Water Supply Project" and the "Trial Procedure of Water Quality Objective Management of the Cross-City River Boundary in the Guangdong Province".
2. Upstream Authorities must ensure that the water quality of the river under their jurisdiction is satisfactory. The Guangdong Provincial People's Congress has enacted "Guangdong Province Zhujiang Delta Water Quality Protection Ordinance," effective January 1999, to require this.
3. The Shenzhen and Dongguan municipal governments will focus on the following:-
 - (a) control of the sources of major industrial pollution;
 - (b) control of effluent from livestock;
 - (c) treatment of domestic sewage;
 - (d) disposal of rubbish in the twelve major towns enroute using the river.
4. On 14th September, 1999, Mr. LU Rui-hua, the Governor of Guangdong Province, signed with 21 mayors "The Protocol of Job Responsibility in Achieving Environmental Protection Objectives" for submission to the People's Congress for implementation by chief executives at various levels.
5. The Dongguan Municipal Government is to establish a responsibility system for water protection.
6. Strict controls on industrial pollution are being applied and

action is being taken to close down, stop and replace polluting industries and enterprises.

7. Moving the drinking-water intake point at Dongjiang to a better location (which occurred in 1998).
8. A large-scale bio-nitrification plant at Shenzhen Reservoir has been completed and put into service.
9. Dredging of the sludge at Shenzhen Reservoir is in progress.
10. A number of sewage treatment plants serving development areas along the Dongjiang-Shenzhen supply route are being constructed.
11. A closed aqueduct is to be constructed for completion by 2002 to replace the existing open channel aqueduct.
12. The Guangdong side has re-affirmed their responsibility to ensure water quality compiled with water quality standards stipulated in the Hong Kong Supply Agreement.
13. Water from Dongjiang or from rainwater collected in the local catchments must now go through stringent water treatment purification processes before the water is supplied to consumers, including Hong Kong.

Annual Review – Waste Reduction Framework Plan (WRFP) (ACE Paper 03/2000)

The Chairman of the Waste Reduction Committee (WRC) (established in February 1999) reported in its annual report to ACE that considerable progress has been made to address the pressing need for reduction of waste and to increase community awareness. WRC has promoted waste separation at housing estates and mounted comprehensive publicity and education campaigns. It has published the Waste Reduction Committee newsletter “Waster as Resources” and set up a website (<http://www.info.gov.hk/wrc>) to provide the public with easy access to information about waste reduction and implementation of the Waste Reduction Framework Plan (WRFP).

Other activities organised by WRC include adopting the Wastewise Scheme and “green-purchasing” administration policy, plus facilitating land allocation to assist the recycling industry. Amendment of the Building Regulations to encourage waste separation facilities in new buildings will be submitted to the Legislative Council in early 2000.

The report recommends that the Polluter Pays Principle needs to be applied by the Hong Kong government and that landfill charges should be increased. The problem of construction and demolition wastes needs to be overcome. This will require greater co-operation between government agencies on matters of waste generation, recycling and use of further land-fill areas.

The government’s land allocation policy for recovery and recycling should be reviewed. Emphasis should now be placed on policy and legislative measures to reduce generation of waste, the report says.

Review of the implementation of the water pollution Control (Sewerage) (Amendment) Regulation 1998

This regulation, effective on 17 July, 1998, enables the Director of Environmental Protection to close roads on a limited scale for carrying out sewerage works without having to go through the gazettal procedures. The powers of the Director may be delegated to other government departments. Since the enactment of the regulation, Drainage Services Department is the only department reported to have exercised the powers to close roads on a limited scale for carrying out work on seven capital sewerage projects and for 2160 cases of minor sewerage maintenance/connection works.

ACE concluded that the present arrangements for carrying out sewerage works which require road closure on a limited scale operated well. To ensure that the public is fully informed of and consulted on sewerage works requiring

minor closures, ACE proposed that the following measures should be taken:-

- (a) Before the commencement of capital sewerage works, project proponents be obliged to consult with the relevant Committees of District Councils, the Area Committees and Owners’ Corporation. Contractors should also inform affected shop operators by distributing notification leaflets,
- (b) During the execution of the sewerage works, the concerned works department should display notice boards on site to explain the reasons of the road closure, the proposed completion date and the contact telephone number for enquiries and complaints.

TOWN PLANNING

Height restrictions

The Planning Department (PD) has issued a paper for public discussion of Hong Kong urban planning guidelines. One of the paper’s suggestions is to formulate restrictions on the height of buildings in every district in order to try to ensure that views of the Victoria Harbour are not blocked by future development. The discussion period concluded on 25 March, 2000.

Surveyors and estate agents have expressed concerned about the height-restriction proposal. They suggest that such restrictions will reduce the flexibility of town planning and building design, and also will adversely affect business opportunities. Some surveyors revealed their opinions in a public forum held yesterday. In particular, Mr. Lau Tak from the Hong Kong Institute of Surveyors said that the number of restrictions should be kept to a minimum in order to provide more chance for development. It was generally agreed that surveyors on one hand should not construct buildings that are not sympathetic with the environment. On the other hand, factors like legal titles, design and development potential of a building need to be taken into account.

In respect of the contents of the public discussion papers, this is the first time the PD has suggested different levels of restriction on the heights of Kowloon buildings. PD is now seeking public opinion concerning the details and the binding effect of the proposed restrictions. It is not proposed that the restrictions should retrospectively affect to developments already approved (but not yet constructed).

(*Sing Tao Daily*, 19 March, 2000)

Land-use demand

The 59th meeting of The Land Construction Consultation Committee (LCCC) was held on the 20 March, 2000. In the meeting, representatives from the PD reported on land-use demand and supply in Hong Kong for the Committee's review and reconsideration. Such review is carried out regularly. The purpose is to find out the current estimates of long term land-use demand and supply in Hong Kong, ensuring that a balance can be achieved between demand and supply.

The chairman of LCCC, Professor Yeung Yu-man, said that the supply of land will be sufficient to accommodate principal land-use demands. It is the government's estimation that 3,872 hectares of land can be provided in the following 10 years to meet these demands. Some 40% of the 3,872 hectares has been leveled. The amount of land to be leveled was decided from time to time by regular meetings of the LCCC. The time of selling such land depends on the government's 5-year land selling and land developing programme, which itself depends on market demand. Any leveled land which is not sold immediately will be put in the government land reserve so as to contribute to a stabilised land supply in the future.

As might be expected, the New Territories will be the main source of land supply in the future. In particular, the northwest and the northeast areas of N.T. will be relied upon for land supply. For example, housing development will be carried out along the future northwest railway and the Ma On Shan railway. It is estimated

that approximately 100,000 and 57,000 residential units will be provided along the two railways respectively.

Other land-uses were also discussed in the meeting. Based on the government's statistics, the demand for office space will increase by about 68% from 1998 to 2011. On the other hand, the demand for industrial land-uses will reduce gradually. In fact, since 1997, 100 hectares of industrial land have been converted to other land-uses. The PD estimates that there are a further 90 hectares of developed land which could be changed to other land-uses in the future.

(<http://www.gov.info.hk>)

Land supply-Tseung Kwan O

On the 29 February, 2000, the government announced its proposed sale of land during the period from April 2000 to March 2001. A total of 90 hectares of land will be provided for the development of private residential properties, within which 32 hectares of land will be used for the Tseung Kwan O MTR development project. According to the Lands Department, the project will be divided into several stages. The residential units of such project will also be promoted in different periods. Therefore, the government forecasts that this project will not result in a surplus of residential units in the coming year.

Together with non-residential areas, the total area of the Cheung Kwan O development project is about 34.8 hectares. The whole project consists of 14 components, including the construction of 50 residential building with a total of 20,000 to 21,500 residential units. The project will be completed in different stages within 10 years.

(*Ming Pao*, 1 March, 2000)

Kowloon Station development

The MTR has formally invited various companies to submit their development proposal regarding five construction stages of the redevelopment of the Kowloon station. However, MTR did

not specify the timeframe for formal tenders.

The fifth stage of Kowloon station redevelopment includes construction of one 26-storeys residential building. Further, there will be a hotel with an area of 315,000 square feet and a huge shopping centre, with an area of 800,000 square feet, will be constructed above the Kowloon station. With the recent improvement in Hong Kong's retailing market, a geographical linkage with the airport and the attraction of the proposed seventh stage skyscraper, it is believed that there will be good trading prospects for the proposed shopping centre.

(*Hongkong Standard*, 23 March, 2000)

CASELAW UPDATE

Secretary for Justice v. Lain Fung Transportation Co Ltd & Others

(Court of First Instance)
(Magistracy Appeal No 756 of 1998)
(Pang J)

Town planning – unauthorised development – enforcement notice under s.23(1) – notice required that development be discontinued or permission for development be obtained by specified date – application for permission lodged before date – information laid under s.23(6) after date passed, but whilst review application still pending – statutory defence under s.23(9)(a) of taking all reasonable steps to comply with notice – steps not confined to discontinuation of unauthorised use – obtaining planning permission equally effective way of complying with notice – Town Planning Ordinance (Cap. 131) s.23(1), (6), (9)

Rs were owners and occupiers of certain land in the New Territories. Originally Rs were granted permission to use the land as a vehicle depot for a set period, but the site was subsequently designated as a recreation zone. When Rs continued to use the site as a vehicle depot after the permission had expired, an enforcement notice was served on them on 19 February 1997, pursuant to

s.23(1) of the Town Planning Ordinance (Cap. 131) (the Ordinance), which required that "...by 19 May 1997 (1) the development be discontinued; or (2) permission for the development shall be obtained ...". On 4 April 1997, Rs applied for planning permission to use the land as a temporary vehicle depot for a period of 12 months, under s.16 of the Ordinance. On 27 June 1997, Rs, who were still using the site as a vehicle depot, were informed that their application was rejected. On 9 July 1997, Rs applied for a review of the decision which was due to take place on 26 September 1997. Meanwhile, on 2 September 1997, the Director of Planning laid charges against Rs under s.23(6) of the Ordinance for non-compliance with the enforcement notices. At the review on 26 September 1997, the Town Planning Board (the Board) approved R's application. The summonses were heard in December 1997, where the Magistrate found that Rs had taken all reasonable steps in the circumstances to obtain planning permission, and accordingly ruled that the statutory defence under s.23(9) of the Ordinance had been made out. On appeal, the issue was whether Rs could avail themselves of the statutory defence in s.23(9)(a) when they had made no attempt to discontinue the unauthorised development.

Held, dismissing the appeal, that:

1. Under s.23(9)(a) of the Ordinance, the steps to be taken were not confined to discontinuation of the unauthorised user. Any steps taken in compliance with the notice, including application for planning permission, could also be relied upon as a defence. (See p.834H-I.)
2. Further, it was clear on the face of the notice that the word "or" must be taken to mean that obtaining permission was an equally effective way of complying with the notice because once planning permission was obtained, the development was no longer unauthorised. If A's interpretation was correct, then the recipient's right to apply for planning permission would have

been rendered completely worthless. (See pp.834I-835A.)

3. Although s.23(6) only referred to discontinuance of the development, and was silent about the obtaining of planning permission, this was because if a recipient elected not to discontinue the development, but instead elected to apply for planning permission, and if by that time planning permission had been obtained, the recipient must have complied with the notice and the need to prosecute did not arise. This was self-evident from the wording in the body of the notice. (See p.835B-D.)
4. Where a defendant had made an application under s.16 but there had been no determination by the Board by the date specified, it must be open to a defendant to invoke the defence in s.23(9). Whether the defence had been made out by the defendant on a balance of probabilities would then be a matter for the trial court. It was inconceivable that a defendant could be guilty of the offence if, despite the fact that he had done everything on his part to apply for permission, the delay was caused by the Board in their determination of the application. (See p.835D-F.)

cost A\$1 billion a year in road repair costs, loss of farmland, damage to buildings and sport grounds, rusting pipes, etc.

The salt poisoning problem results when salt is brought to the surface by the rising water table. Native Australian trees, which require a lot of water, lower the water table and prevent salt from being brought to the surface. When wholesale removal of native trees occurs, the water tables rises.

Although the Australian government has implemented a "bushcare" programme which aims to protect and plant native trees, the programme has been criticised as useless because the planting cannot keep up with the rate of land clearing. It was suggested by the ACF that for every one tree planted under the programme, 10 were destroyed in land clearing.

It is reported that in Queensland, where native tree clearance is occurring at an alarming pace, the state government is planning to pass new land-clearing laws which would required Queensland farmers to leave at least 30% of their land under native vegetation.

(SCMP, 22 February, 2000)

China

Environmental ministers from Japan, China and South Korea met in Beijing to discuss greater co-operation between the three countries to cope with trans-border environment issues. The ministers agreed to fight lake and marsh pollution, promote education and exchanges of personnel for co-operation in trans-border environment protection, and to promote a model project to protect regional the ecosystem from desertification.

(SCMP, 28 February, 2000)

A Deputy of the Guangdong People's Congress has proposed that the Deputy Commissioner of the Guangdong Environmental Protection Bureau ("GEPB"), Mr. Wang Zi Kui, be dismissed. If the proposal is passed by the Congress, it will be the first time

REGIONAL & INTERNATIONAL

Australia

According to the Australian Conservation Foundation ("ACF"), Australia is destroying trees faster than any other developed nations with more than one million hectares of trees cleared in the last three years. Australia is now the fifth-biggest land clearing nation, ranking after Brazil, Indonesia, the Democratic Republic of Congo and Bolivia.

The ACF warned that at the current rate of land clearance, major environmental damage, such as rising salinity, or salt poisoning, will be more serious. Increasing soil salinity is estimated to

ever such dismissal power is exercised. The Deputy criticised Mr. Wang for his lack of sense of environmental protection and lack of legal knowledge.

Environmental protection is the focus of the third meeting of the Ninth Guangdong People's Congress. The dismissal proposal was triggered by a complaint of a Fu Shan People's Congress Deputy to the GEPB. It was reported that the GEPB gave its approval to the building of a number of factories, the main operations of which were electroplating, near the intersection of two main rivers, Bei Jiang and Si Jiang, well before an environment impact assessment was completed. As a result, pollutants from these factories were discharged into the Si Jiang and seriously polluted the drinking water sources of Fu Shan and its nearby region, including Guangzhou.

The Commissioner and Deputy Commissioner of GEPB, Mr. Wang Yin Kuan and Mr. Wang Zi Kui, were invited to appear before the Guangdong People's Congress to give an explanation. The Commissioner of GEPB promised that the factories in question will be closed down. However, on another occasion, the Deputy Commissioner denied that there has been any conclusion on the matter.

The Fu Shan Deputy was not satisfied with the Deputy Commissioner's stance and has already submitted his dismissal request for the Guangdong People's Congress' consideration.

(Apple Daily, 29 January, 2000)

England

The English supermarket group Sainsburys plans to turn part of Windward Islands in the Carribeans into an organic fruit island. Sainsburys has just completed a feasibility report on its plan and will soon begin to ask the local farmers to join its plan voluntarily.

According to the agreement reached between Sainsburys and the Windward Islands agricultural organisation, Sainsburys will purchase land on the

islands and invest capital. Sainsburys will also guarantee that it will purchase the organic products from the local farmers. As organic fruits are usually more expensive to buy than other commercially grown fruits, Sainsburys' organic fruit island plan is expected to bring substantial profit to the supermarket group.

(Apple Daily, 31 January, 2000)

France

The UN sponsored World Commission on Water for the 21st Century has prepared a report on world water resources. In its report, it has warned that the world will face a worsening crisis in the next 25 years if there is no better management of water resources. In the next two decades, human consumption of water is estimated to increase by 40 per cent, and 17 per cent more water will be required to grow food for the increasing world population.

The World Commission Report recommends that:-

- (i) annual investment in water supply infrastructure be raised from US\$80 billion to US\$180 billion, with focus on sustainable use, and that the private sector be allowed to take the lead in providing water supplies;
- (ii) subsidies that encourage waste be scrapped, and the principle of "polluter pays, user pays" be enforced; and
- (iii) institutional mechanisms for handling disputes about water rights and water use be overhauled.

(SCMP, 14 March, 2000)

Indonesia

Fires are raging again on the island of Sumatra in Indonesia. An official from Riau province on the east coast of Sumatra said that the number of forest fires had increased sharply. The forest fires are believed to be caused by the slash-and-burn land clearing methods used by traditional farmers and plantation owners.

It is reported that a thick haze covered Pekanbaru, an oil town in Sumatra, for days, with visibility limited to 250 metres in the mornings. Face-masks and medication are required to be distributed to the residents therein. Notwithstanding the forest fire, the air quality in the city state has not been seriously affected. Its air quality has remained within the "good" range.

(SCMP, 4 March, 2000)

Japan

The operations of a Japanese waste disposal company, Envirotech, are believed to threaten security arrangements between Japan and the USA. A US military official has accused Envirotech's waste facility, built near the Atsugi air station to the west of Tokyo, of discharging cancer-causing dioxins into the US Airforce's complex of offices, commissaries and housing.

US officials have said that the dioxins were produced by the burning of plastics at the waste-disposal plants and studies have shown that the rate of cancer is higher among people living close to dioxin-emitting waste facilities. In 1992 it was reported that 3,000 residents on the US base had suffered health problems as a result of the emissions. Washington lodged a complaint as early as 1992 but so far no remedial measures have been taken by Envirotech. This subject was also raised by US President Bill Clinton when he held talks with Japanese Prime Minister Keizo Obuchi in Washington recently. Envirotech had agreed to construct a separate facility for plastic waste and to install filters to cut down dioxin emission, but has so far failed to do so.

(SCMP, 23 February, 2000)

Philippines

A massive eruption from the Mayon volcano in the Philippines has blotted out the sun. Ashes from the eruption was shot into the top of the atmospheric layer and formed a layer all over the planet earth. This layer effectively helps insulating the heat from the sun.

A British scientist suggested that the Mayon eruption may result in lowering the average temperature of the earth

slightly in the next few months. It was suggested that the massive eruption from Mayon and another volcano eruption in nearby Indonesia in 1814

and 1815 resulted in the cold summer in Europe in 1816.
(*Ming Pao Daily News*, 7 March, 2000)

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:
Jan – Mar 2000

	Number	1st Offence	2 nd Offence	3rd + Offence	Highest Fine
APCO	39	19	6	14	\$20,000
	22	15	5	2	\$20,000
WPCO	32	13	6	13	\$30,000
	29	25	2	2	\$100,000
	27	18	4	5	\$60,000
	36	24	4	8	\$100,000
NCO	24	10	6	8	\$200,000
	23	9	4	10	\$70,000
	33	8	3	22	\$150,000
OLPO	1	1	-	-	\$5,000
	-	-	-	-	-
	-	-	-	-	-
DASO	-	-	-	-	-
	-	-	-	-	-
WDO	1	1	-	-	\$50,000
	31	22	7	2	\$25,000
	25	14	9	2	\$20,000
	54	40	11	3	\$20,000
Total	124	77	21	26	
	97	56	22	19	
	156	86	24	46	

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

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.

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