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URBAN PLANNING AND ENVIRONMENTAL LAW
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An important component of Hong Kong's mega-development project, Disneyland, involves decontaminating the Cheoy Lee Shipyard. This process has provided stark evidence of the inadequacies of Hong Kong's laws for shifting clean-up costs to the party responsible for contaminating land. In this edition we consider aspects of this important topic.

The Editors

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DECONTAMINATING HONG KONG'S POLLUTED LAND: WHO BEARS THE COST?

Friends of the Earth (HK) (FoE) have provided yet another timely warning that our environmental protection laws are inadequate for dealing with the serious problem of using land contaminated by toxic wastes. In its publication Why Hong Kong Needs a Land Contamination Law: a Case Study of Hong Kong Disney Theme Park, FoE uses a current, high-profile land contamination project - the decontamination of the Cheoy Lee Shipyard (CLS) - to illustrate the deficiencies of our laws. These deficiencies can be summed up as a failure to apply the "polluter pays" principle in respect of land which has been rendered hazardous for use by careless or illegal contamination from toxic wastes.

Jurisdictions throughout the developed world accept "the polluter pays" principle as an essential element of the wider, environmentally responsible policy of sustainable development. However, as FoE points out, this is not the case in Hong Kong, despite the fact that the government publicly embraces sustainable development as the platform for its development policies.

Implementing a legal regime to deal adequately with all possible land contamination scenarios is an extensive topic. We therefore do not attempt to explore the issue in depth here, but shall consider certain aspects of our laws relating to use of contaminated land, with reference to the CLS project.

CLS decommissioning project

The CLS site occupies 19 hectares on the shores of Penny's Bay. The site (which has grown in size over the years) has been used as a ship building business since 1964. In 2001 the site was resumed by the government to enable construction of infrastructure associated with Disneyland, including a major access road.

After nearly forty years of use as a shipyard, it was expected that there would be a degree of contamination of the land which would necessitate some decontamination work. However, detailed environmental impact studies revealed the problem to be much more serious. Hence the cost of carrying out decontamination procedures has increased dramatically. Whereas initially a modest decontamination budget of HK$22,000,000 was allowed for, the present budget is some HK$350,000,000 (see Hong Kong Disneyland Update, this edition).

The initial budget assumed that the contaminants did not include dioxins, which are extremely toxic to the environment and are harmful to human beings. More detailed investigation has revealed an alarmingly high level of dioxins, along with other toxic wastes.

A formal environmental impact assessment report (EIA) of the CSL decommissioning project was carried out and published. This states that the site contains the following contaminants

Contaminant Type(s)	Estimated volume (m3)
Metals only	48,000
TPH/SVOCs	700
Metal and THP/SVOCs	8,300
Dioxins and Metals/THP/SVOCs	30,000
Total Estimated Volume	**87,000**

As indicated, the site contains at least 87, 000 m3 of toxic wastes including dioxins. By any measure, this reveals a severely contaminated piece of land.

Environmental impacts

Despite the extensive contamination, the EIA somewhat surprisingly concludes that after decontamination no significant environmental impacts are likely to arise from the existence of contaminants. It might be expected, for example, that ground water reservoirs beneath or in the vicinity of the site would be at risk, but the EIA states that: Risk assessment results indicated that the impact of land contamination on ground water is insignificant (AnnexB).

Decommissioning works

Decontamination of the land is part of the larger project to decommission the CLS. The stated primary objective of the decommissioning exercise is "to return the CLS site to a condition suitable for use by the community". In order to do this, it is stated that the decontamination process will remove "all potentially harmful contaminants" which will be treated or disposed of "in an environmentally acceptable manner".

The decommissioning project in fact involves two separate stages: the first is to remove and dispose of the waste disposal facility installed on the site; the second is to remove all other structures, as well as decontaminating all affected soil.

There are various decontamination methods proposed, including removing and transporting some contaminated soil to the Tsing Yi Chemical Waste Treatment Centre and having other soil treated at a thermal desorption plant to be built at To Kau Wan, which is not far from Penny's Bay.

Unspecified "best site practices" and "recommended mitigation measures" are stated in the EIA as being sufficient to ensure that water and air quality are not adversely impacted by the decommissioning works.

Who should bear the decontamination costs?

It is not relevant to this discussion to determine the cause of the accumulation of metals, dioxins and other toxic wastes in the soil at the CLS site to the extent that its badly contaminated.

Whoever is to blame is the polluter, who, under the polluter pays policy, should pay the decontamination costs.

Often and loudly we proclaim Hong Kong as a world city, particularly boasting of our achievements in the economic field. But when it comes to the question posed above, we rank way behind other developed countries because there is no clear, statutory law which imposes financial responsibility for land pollution on the party which has caused that pollution. Why this is so remains something of a mystery, although it is probably due (once again) to strong pressure from industry not to impose additional financial burdens or the risk of financial burdens on those doing business in Hong Kong.

As we reported in the March 2001 edition of the Quarterly (*Coming to grips with our contaminated land: the Superfund experience*), in the United States the Superfund legislation renders current and past occupiers of land liable for the cost of cleaning up the land, provided their activities may reasonably be said to have contributed to the contamination. Even a bank which lends money to enable a hazardous business to be established on the land may be made liable for decontamination costs. In that article we questioned why Hong Kong does not have legislation which imposed the same responsibility on land occupiers here. It was a question also asked in the Autumn 2000 edition of the HKELA newsletter in a article entitled in Contaminated land - the final frontier, and in the September, 2000 Quarterly (*Are Hong Kong's Contaminated Land Sites Safe?*) Regrettably, nothing has changed in terms of the government's gentle treatment of those who cause land contamination.

Canadian example

In February 2003 the Supreme Court of Canada in *Imperial Oil Ltd v Attorney General of Quebec 2003 SCC 58*, upheld the validity of a Quebec government order requiring the occupier of land to prepare decontamination studies under the applicable Quebec legislation, notwithstanding that decontamination works some years earlier had been carried out and authorised by the government. The facts before the Court also illustrate the seriousness of re-using contaminated land. In that case the contaminants were oil and ancillary products. Despite extensive decontamination, contaminants re-surfaced a number of years after the land had been converted to a housing estate, posing a serious health risk to residents. Similar experiences have occurred with disastrous effects in other parts of North America, the most famous perhaps being the Love Canal housing estate contamination scare which came to light in New York state in 1976, following which years and millions were spent in futile attempts to decontaminate the site.

In Imperial Oil the Supreme Court re-affirmed the value of the polluter pays principle as an essential part of our wider responsibility for the protection of the environment. The Court noted that:
The Quebec legislation reflects the growing concern on the part of legislatures and of society about the safeguarding of the environment. That concern does not reflect only the collective desire to protect it in the interests of the people who live and work in it, and exploit its resources, today. It may also be evidence of an emerging sense of inter-generational solidarity and acknowledgment of an environmental debt to humanity and to the world tomorrow (114957 Canada Ltee (Spraytech, Cociete d'arrosage) v Hudson (Ville), [2001] 2 S.C.R. 241, 2001 SCC 40, at para.1 per L'Heureux-Debe J).

Hong Kong has no statutory parallel to the Quebec legislation (for example) in respect of land contamination. However, the Environmental Protection Department does have the power to clean-up and recover the costs, or to force the polluter to clean-up, in cases of marine waters pollution: Sections 13 and 13A Water Pollution Control Ordinance (Cap 358). If costs are incurred in cleaning-up Penny's Bay marine waters because of pollution from the CSL site, these cost could be recovered from the polluter under the WPCO. However, the powers of the EPD under sections 13 and 13A have rarely if ever been used, which unfortunately reflects the culture of weak enforcement of our environmental protection laws.

Do arguable causes of action exist to recover from the party who has contaminated the land?

Although we have no statutory provisions to allow the government to do so, possibly the costs of decontaminating land could be recovered from the polluter under common law principles or a combination of common law and regulatory provisions. The following is a

brief summary of examples of these potential causes of action.

(a) Public nuisance

Public nuisance includes an unlawful act or failure to discharge a legal duty to act in the public domain, the effect of which materially affects the convenience and comfort of a class of people or their health, lives or property.

An occupier of land who holds a licence to dispose of chemical or other wastes on land pursuant to section 16 of the Waste Disposal Ordinance (Cap 354) must dispose of the waste only in accordance with the terms of licence. If he does not, this amounts to a breach of the ordinance, as is the case if disposal of wastes occurs without a licence. "Waste" includes "trade waste" and "chemical waste", the definitions of which are wide: Section 2, WDO.

If there is a breach of the WDO, this is an unlawful act, If the contamination thereby resulting adversely affects the health, convenience etc. of a class of people in respect of their use of public land or water, then the breach and the result constitutes a public nuisance. In any event, simply carrying on an "offensive trade" which adversely affects a section of the community in the public domain is a public nuisance.

A public nuisance is actionable by the government ,usually the Attorney General, or in Hong Kong's case, the Secretary for Justice. A private person from the class of persons affected by the contamination may also bring an action in public nuisance if he/she can show special damage. One of the forms of relief in an action for nuisance is abatement of the nuisance. In the case of contaminated land, abatement would include decontamination of the land.

(b) Rylands v Fletcher

The traditional rule in Rylands and Fletcher is that the person who controls land is strictly liable for the natural consequences of the escape of any hazardous substance brought on to the land and used in a non-natural use of the land. Recently the courts have added the criterion that damage from the escape of the substance must be reasonably foreseeable also.

Today, courts tend to view a manufacturing process in a district where manufacturing is permitted to be a natural use of the land, thus excluding Rylands v Fletcher. However, if a potentially hazardous process is sanctioned under licence but the strictly liable for damage caused by the escape of contaminants, assuming foreseeability of damage (which is a safe assumption as otherwise would be unnecessary). "Escape" means that the effect of the contaminants is felt beyond the site of the polluter. Any quantity of toxins which escapes would be sufficient to bring an action for enforced clean-up of the whole site, if it could be shown that the site represented a greater potential danger, necessitating removal of the hazard.

(c) Private Nuisance

Occupiers of land adjoining land which has been used in such a way that it becomes contaminated and there is a risk - on the balance of probabilities - that contaminants could move from the polluter's site to the adjoining land, are entitled to bring an action in private nuisance to abate the nuisance represented by the contaminated site. It should not be difficult to show that toxic contaminants interfere with the quiet enjoyment of the claimant's own land, which is a necessary element of the cause of action in private nuisance.

(d) Trespass

Trespass to property is an unjustifiable direct and immediate interference with the possession of land. This possibly could be used by one land owner against another who misuses his land to the extent that he contaminates his own and the neighbour's land causing the claimant to relinquish possession of all or some of his land. However, this cause of action is generally unsuitable to land contamination case.

(e) Negligence

The land occupier potentially owes a duty of care to those he should have in his mind as being sufficiently proximate to be affected by the way he uses his land. The misuse of land may constitute a negligent act if it can be shown that this in turn has caused foreseeable injury to the claimant. Practically speaking, negligence is also generally unsuitable to land contamination cases, which by nature usually involve insidious processes rather than a traumatic action which causes personal injury or property damage.

(f) Breach of statutory duty

It is arguable that a person acting under a statutory licence to use and dispose of toxic materials owes a statutory duty to others in the community to exercise care, either as stipulated in the statute or as a matter of common sense, in carrying out activities pursuant to the licence. This is a statutory duty owed to the rest of the community by the licence holder. However, it is conceded that a statutory duty of care usually applies to a person holding power, rather than a licence, to affect others, namely public officials; and an essential ingredient is that the language of the statute indicates that it was intended that a statutory duty to the general public was intended to be created. Without pursuing the point, there is scope, nevertheless, for this cause of action to be considered in a contaminated land situation.

Whilst, potentially, common law causes of action always are available to a person injured by contamination of land caused by the fault of another, it is unsatisfactory that the community and government are left to such possible legal remedies where clearly land has been contaminated from to such an extent as to represent a significant environmental threat to the community at large. That is precisely why more advanced jurisdictions have enacted statutory remedies to ensure that the party to blame for such a situation is made to bear the financial burden of curing it. We can only hope that this world city of Hong Kong will in due course enact similar legislation.

LEGISLATION DIGEST

WASTE DISPOSAL (AMENDMENT) BILL 2003

The main purposes of the Waste Disposal (Amendment) Bill 2003 ("the Bill") are to amend the Waste Disposal Ordinance (Cap. 354) ("the Ordinance") to -

- extend the application of the Ordinance to clinical waste to enable regulatory control over the collection,transportation and disposal of clinical waste;
- give effect to the international ban on the export of hazardous waste from some developed countries ("The Basel Ban"), and to ensure that the import or export of certain kinds of waste will not be in breach of Hong Kong's obligations under The Basel Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal concluded at Basel in Switzerland on 22 March 1989 ("The BaselConvention"); and
- strengthen controls over the disposal of imported waste.

The major amendments are set out as follows:-

A. Control of clinical waste

1. Collection of waste

Section 9A: Collection of chemical waste or clinical waste in special circumstances

The Director of Environmental Protection as collection authority ("the Director") may provide services for the collection and removal of chemical waste or clinical waste in response to an accident or emergency, or in circumstances where it is impracticable to arrange for the chemical waste or clinical waste to be collected or removed by a licence

holder or an authorized person.

Section 10: Licensing of collection and scavenging services

The Director is empowered to administer a licence scheme for any person who provides services for collection or removal of chemical waste or clinical waste.

Section 11: Prohibition of collection of waste unless licensed or authorized

Any person who provides collection or removal services of chemical waste or clinical waste without a licence or being authorized for that purpose pursuant to any regulation made under section 33(1)(ca) shall be guilty of an offence and is liable to a fine at level 6 (i.e. HK$100,000).

2. Disposal of waste

Section 16: Prohibition of unauthorized disposal of waste

Subsection (1) prohibits any person using, or permitting to be used, any land or premises for the disposal of waste.
Subsection (2) provides that the prohibition does not apply to the use of any land or premises for the disposal of chemical waste or clinical waste by an authorized person.

Subsection (4) is amended to exclude clinical waste from the exemption given to disposal of waste on unleased land, as defined in the Land (Miscellaneous Provisions) Ordinance (Cap 28), pursuant to a licence issued under section 5 of that Ordinance.

Section 19 : Information as to waste delivered for disposal

Any person: (i) who makes any statement or gives any information which he knows to be incorrect in a material particular; or (ii) who recklessly makes a statement or gives information which is incorrect in a material particular; or (iii) knowingly omits any material particular in complying with the request of the Director for such information commits an offence. The fine is increased from HK$5,000 to level 6 (i.e. HK$100,000).

B. The Basel Ban

Section 20A: Permit required for the import of waste into Hong Kong

Currently a permit issued by the Director is required for importing: (i) any waste of a kind specified in the Sixth Schedule (unless the waste is uncontaminated and is imported for the purpose of a reprocessing, recycling or recovery operation or reuse); or (ii) any waste of a kind specified in the Seventh Schedule, or not specified in the Sixth Schedule.

The Bill adds the following provisions to give effect to The Basel Convention:-
Section 20A(4)(e) provides that a permit shall not be issued unless the Director is satisfied that in the case of waste of a kind specified in the Seventh Schedule, that the waste is not exported from any of the 31 countries listed in the Schedule 9.

Section 20A(4)(f) ensures that the issue of an import permit would not be in breach of Hong Kong's obligation under The Basel Convention.

Section 20B: Permit required for the export of waste from Hong Kong

Section 20B(4) is also amended to ensure that the issue of an export permit is not in breach of Hong Kong's obligations under The Basel Convention.

C. Control of disposal of imported waste

The Bill introduces a new section to regulate the disposal of imported waste which is outside the scope of section 20A of the Ordinance. Detailed provisions are as follows:-

Section 20DA: Authorization for disposal of certain imported waste

(1) This section applies only to waste the import of which does not require a permit under section 20A, and "imported waste" in this section is a reference to waste of this category which has been imported into Hong Kong.

(2) The disposal of any imported waste at a designated waste disposal facility requires an authorization granted by the waste disposalauthority under this section.

(3) An application for the authorization shall be made in writing in such form as the waste disposal may specify.

(4) On receipt of an application made by any person ("the applicant") for the authorization, the waste disposal authority may, subject to subsection -
(a) grant the authorization, with or without conditions; or
(b) refuse to grant the authorization.

(5) The waste disposal authority shall not grant an authorization under subsection (4) (a) unless the applicant has proved to the satisfaction of the authority that -
(a) the import of the waste concerned into Hong Kong did not require a permit under section 20A;
(b)it is not practicable to make alternative arrangements for the imported waste to be used (whether in Hong Kong or elsewhere) for the purpose of a reprocessing, recycling or recovery operation or for reuse ("the specified purpose"), in a manner acceptable to the authority; and
(c) it is not practicable for the applicant to return, or cause the importer of the imported waste to return, the imported waste to the exporting state; in determining thepracticability of the matters specified in paragraphs (b) and (c), he lack of financial means to carry out an alternative arrangement or return the imported waste to the state of export (as the case may be) shall not be a relevant consideration.
(6) Without prejudice to the generality of subsection (4)(a), a condition attached to an authorization may-
(a) require the applicant to pay such charge as the waste disposal authority may determine for recovery of the cost of disposal of the imported waste;
(b) specify the manner, place and time of the disposal;
(c) specify arrangements to be made and procedures to be observed in relation to the disposal.

(7) The waste disposal authority may require an applicant to furnish him with such information as he considers necessary for determining whether or not to grant the authorization, and such information may relate, in particular, to-
(a) the details of the original arrangement made for applying the imported waste to the specified purpose after the import;
(b) the reasons why such arrangement cannot be carried out;
(c) proof of any attempt made in making alternative arrangements for the imported waste-
(i) to be used (whether in Hong Kong or elsewhere) for the specified purpose;
(ii) to be returned to the exporting state.

(8) The provisions in this section shall be in addition to and shall not derogate from any other provisions of this Ordinance."

Section 20E: Offences under this Part

Section 20E introduces offences for breaches of the new section 20DA which makes it illegal to cause or permit anything to be done without a permit where a permit is required, or to provide false information knowingly and recklessly to procure the issue of a permit or the grant of an authorization.

Section 20F: Seizure and disposal of waste following conviction

Where a person is convicted of an offence under section 20E, the Director may-
(a) seize and dispose of the waste; or
(b) by written notice require that person to (i) return the waste to the exporter, or to dispose of the waste in Hong Kong to his satisfaction in the case of imported waste; or (ii) to take back the waste into Hong Kong, or, if that is not reasonably practicable, to dispose of the

waste in an environmentally sound manner in the case of exported waste.

A person who fails to comply with a notice of the Director commits an offence and is liable to a fine of $200,000 and to imprisonment for 6 months. In such case, the Director may, without further notice, seize and dispose of the waste. The cost in connection with the seizure and disposal of waste shall be recoverable from that person by the Director as civil debt.

D. Licence

A person who wishes to apply for a licence for waste collection or waste disposal shall apply to the Director pursuant to sections 21 (1) and (2). The newly added section 21(8) criminalizes providing false or misleading information in relation to the application for a permit for collection or disposal.

E. Regulations

Section 33 has been amended to expand the regulation making power under the Ordinance. The purpose of the amendments is to enable the authority to introduce regulations to set out detailed requirements for the disposal of clinical waste.

HONG KONG BRIEFING

Victoria Harbour: the fourth dirtiest waterway in the world

The Pollution Control Unit of the Marine Department reported that 11,868 tonnes of rubbish were removed from the harbour last year. This figure represented an increase of one tonne over the previous year.

The Assistant Director of Environmental Protection (Waste and Water Division) said that with many businesses relocating to China, there had been a significant decrease in industrial pollution and sewage. On the other hand, Hong Kong's citizens should be criticised for not caring about the pollution of the harbour. A major effort is underway to improve the water quality. However, greater community awareness of the necessity for harbour protection is required.

According to a recent global study cited by the Marine Department, Hong Kong's harbour is rated the fourth dirtiest waterway in the world.

The government admitted that it is not easy to apprehend offenders who pollute the harbour. Officers of the Marine Department usually work on vessels, and it takes a long time for them to get to the shore if they see someone throwing rubbish into the harbour. The government is of the view that in the long run education is the most efficient way to solve the problem.

To tackle the problem, the government will release options for the remaining stages of the Harbour Area Treatment Scheme for comment early next year.
[*SCMP, 21* July 2003]

Three million moon cake tins dumped every year

The green group, Friends of the Earth (FOE), estimates that more than 3 million moon cake tins weighing more than 750 tonnes, were dumped in landfills in Hong Kong every year. Mei Ng, the group's director, said that this means the taxpayers have to spend about HK$620,000 to dispose of them. However, if these wasted tins were recycled, it would have earned HK$150,000 and avoided the metal waste being added to our landfills.

The group launched a "Moon-kick Action" to urge moon cake manufacturers to take up their recycling and waste-reduction responsibilities. This would not only help to reduce waste but also boost their corporate integrity. However, five of the largest moon cake manufacturers told FOE that they had no plan to recycle the tins.

According to a survey conducted by the Chinese University of Hong Kong, 66.1 per cent of the interviewees said that they would return their empty moon cake tins if the manufacturers were willing to recycle them. Half of the interviewees said they thought the manufacturers had primary responsibility to recycle used tins.

FOE suggested that moon cake producers should issue a cash coupon for every returned tins to encourage consumers to recycle.
[*SCMP,* 28 July 2003]

Green group protested over end of plastic recycling scheme

An environmental coalition called Green Collar Coalition protested in the forecourt of the Central Government Offices on 27 July 2003 against the sudden termination of a government subsidised recycling scheme. The coalition was formed by 12 non-government organisations, including Green Peace and the Federation of Trade Unions.

In fact, the recycling scheme was designed to create more jobs, and the government subsidised big recycling companies to buy and recycle unprocessed plastic bottles. However, many recyclers abandoned the scheme because they were losing money despite the government subsidy. The high handling costs had eaten up the subsidy. Therefore, the government abandoned the scheme in May, which was six months earlier than planned.

The coalition demanded that the scheme be revised and reinstated. The recycling companies' handling costs could be cut by getting workers to compress plastic bottles and sort them into different categories before reselling. By reselling the processed bottles, workers can earn a living. However, the government had failed to co-ordinate the scheme well.
[*SCMP,* 28 July 2003]

Recycling revolution emerges from rubble

Hong Kong Polytechnic University has recently developed a technology to produce paving bricks and blocks by recycling the construction waste discarded in the construction sites. The university would sign its first licensing agreement with a local manufacturer in due course.

These environmentally friendly building blocks have been patented in the United Kingdom. The research team leader, Professor Chi-sun Poon said that the bricks had the potential to remove a large percentage of granular construction waste that would otherwise end up in landfill sites.

According to the statistics of the Environmental Protection Department, more than 10,000 tonnes of construction and demolition waste was dumped in landfill sites every day last year, with a further 35,000 tonnes diverted for use in reclamation and site formation projects.

The technology to turn waste into bricks was developed last year and road-tested as paving stones over the past 12 months in a number of high-traffic pedestrian areas, including Oi Man Estate in Homantin, Cheung Sha Wan Road, West Rail's Kam Tin Station and a primary school in Yuen Long.

Professor Poon said that the recycled bricks were comparable to normal bricks in terms of their performance and costs.
(SCMP, 29 July 2003)

HONG KONG DISNEYLAND UPDATE

Decontamination costs

The decontamination costs of decommissioning Cheoy Lee, located in Penny's Bay, on the northeast of Lantau where Hong Kong's Disney Theme Park is to be built, have blown out to HK$450 million from the original budget of HK$22 million (which was based on an assumed zero dioxin level) It

remains to be seen whether the government will try to recover these significant costs from the operator of the shipyard.

The Environmental Affairs Panel met in June to discuss the liability issue. However, the government is still vague as to whether legal action will be taken to claim back the money from the polluter. Possibly there is good reason to be vague about this, because arguably there is no law in Hong Kong to enable land contamination claims to be pursued.

Friends of the Earth, Hong Kong ("FoE") voiced its concern last year regarding the Environmental Impact Assessment (EIA) report concerning the decommissioning project published in February 2002. The report found that the shipyard contained 80,000 m3 of contaminated soil, of which 30,000 m3 was contaminated by dioxin, which is lethal to ecosystems and human beings.

FoE says the crux of the problem was the hasty endorsement of the EIA by Director of the Environmental Protection Department ("EDP") back in 2000. The EIA was prepared on a short time frame which allowed no comprehensive evaluation of the environmental impacts.

Added to this blunder was the failure of relevant government departments to thoroughly examine the shipyard before the site was surrendered. The negligence was due largely to the fact that there is no land contamination law or culture of addressing contamination problems in Hong Kong.

Hong Kong has a few Ordinances (for example, the Waste Disposal Ordinance and Air Pollution Control Ordinance) which regulate the use and disposal of potentially contaminating materials; but these statutes were not drafted with land contamination in mind, and therefore could provide, at most, indirect protection of land.

Moreover, there are two major limitations land contamination. Firstly, prosecution is virtually impossible because of the lack of proactive monitoring power and/or resources of the EPD. EPD's inspectors may enter a potentially contaminated site and conduct inspections only in exceptional circumstances, such as where there is clear evidence of contamination. Secondly, the penalties imposed by the legislation have minimal deterrent effect. According to EPD statistics, the average penalties imposed on offenders under the Waste Disposal Ordinance in 2001 was only $5,800.00 - 2. 9% of the maximum penalties stated in the Ordinance, while the highest fine imposed in the period was only $30,000.00[1].

Alarmingly, according to the information provided by EPD in response to FoE's enquiries (9 April 2002), there are more than 1,700 industrial establishments which have potential to cause land contamination. These are virtually contamination time-bombs!

Compensating Cheoy Lee (for resumption of the site) has set an extremely poor example. After three years, during which the government has been indecisive about this whole issue, FoE and its supporters maintain their demand for justice for the environment and, therefore, the people of Hong Kong. FoE has written to the Audit Commission in a bid to urge the Government to take responsible measures to avoid yet another recurrence of taxpayers having to pay for the damage caused by polluters. FoE also urges the government to introduce comprehensive land contamination laws, as exist in all western countries.

[*Newsletter of the Friends of the Earth* (Hong Kong) - July 2003]

[1] *"Why Hong Kong Needs A Land Contamination Law: A Caase Study of Hong Kong Disney Theme Park" submitted to Advisory Council on the Environment by Friends of the Earth (HK), 12 July 2003.*

ADVISORY COUNCIL ON THE ENVIRONMENT (ACE)

Progress on the decommissioning of former Cheoy Lee Shipyard at Penny's Bay (ACE Paper 22/2003)

Decontamination of the site

At its 107th meeting held on 14th July 2003, the Advisory Council on the Environment ("ACE") was briefed by the Civil Engineering Department ("CED") the continuing decontamination of the Penny's Bay site which is being carried out to allow construction of Hong Kong Disneyland. The monitoring mechanism and what precautionary measures will be taken to continue with CED's vigilance and to cater for contingencies in the remaining part of the decommissioning works were explained to ACE. The site of the former Cheoy Lee Shipyard ("the Shipyard") is within the area designated for the construction of roads leading to the theme park.

With the issue of an Environmental Permit, the decommissioning project commenced in October 2002. Under the Permit conditions, the decommissioning project is subject to vigorous monitoring. Firstly, an Environmental Monitoring and Audit ("EMA") programme has been implemented to ensure full compliance with all applicable environmental standards and speedy rectification of any malpractices. Accordingly, the contractor has set up a dedicated environmental team to carry out environmental monitoring work, site inspections and any necessary remedial works which might be needed as work progresses. This team also provides environmental advice as necessary. An independent environmental inspector has also been appointed and given the job of auditing the work of the environmental team and to advise on related environmental issues.

Separately, CED has established an Environmental Project Office on site to monitor and deal with the cumulative environmental effects of all construction works being carried out under different contracts in the area. ACE's own project consultant has also arranged a team of experienced staff to remain full-time on site to provide additional supervision to help ensure that all environmental requirements are fulfilled.

The project has also been independently monitored by the Environmental Protection Department ("EPD"), which is the regulatory body under Environmental Impact Assessment Ordinance and various pollution control ordinances. EPD's enforcement teams visit the site from time to time to conduct surprise inspections. The objective is to ensure that any potential issues of concern will be addressed promptly in accordance with the Permit conditions and relevant pollution control legislation. Additional inspections are conducted when necessary, having regard to the monthly EMA reports. A total of 20 inspections were made during the period from November 2002 to June 2003. Inspectors also have had meetings with the contractor, the Environmental Team, the independent environmental inspector, the project office and the project consultant to discuss issues of concern, including those revealed in the monthly EMA reports. Members of the public have access to the monthly EMA reports through the project website of the CED.

Inspections carried out by the EPD so far have not revealed any significant violation of the Environmental Permit conditions or requirements under the relevant pollution control legislation. The CED reported that vigilant monitoring and site supervision have served their purposes to date.
The decommissioning project has progressed

to the thermal desorption stage. This process was started in mid-July 2003 and should be completed in early 2005. Dioxin residues will be separated out in the thermal desorption process. The residues are non-volatile, insoluble in water and not inflammable. During the desorption period, they will be transported in batches to the Chemical Waste Treatment Centre ("CWTC") at Tsing Yi.

Although there is a low inherent environmental risk associated with the thermal desorption process and the transportation of the dioxin residues to CWTC, there will be a full implementation of the precautionary measures required under the Environmental Permit. The CED would also implement precautionary measures to cater for unforeseen events.

The decommissioning project will also continue to be conducted with public transparency. All environmental data collected under the EMA programme, including the monthly EMA reports prepared by the Environmental Team and verified by the independent environmental inspector, can be downloaded from the internet for public inspection. A webcam system will continue in operation at To Kau Wan for round-the-clock, real-time monitoring of the thermal desorption process.
(http://www.info.gov.hk/etwb), July 2003

Report on the 80th Environmental Impact Assessment Subcommittee meeting

Public transport Interchange at Lok Ma Chau Terminus of the Sheung Shui to Lok Ma Chau spur line (ACE Paper 25/2003)

The Environmental Impact Assessment Subcommittee ("the Subcommittee") expressed their views concerning this project at its meeting held on 10th September 2003.

In consideration of the government's funding request for designated Essential Public Infrastructure Works, the Legislative Council Panel ("the Panel") and Transport Subcommittee on Matters Relating to Railways strongly urged that there should be adequate provision of facilities at the Lok Ma Chau Terminus for the operation of road-based public transport in order to give commuters a choice and to provide business opportunities for the transport trades concerned. After careful consideration of the land, traffic, environmental and security issues, it was decided that a Public Transportation Interchange ("PTI") should be built adjacent to the Lok Ma Chau Terminal Building, using an area reserved for the future expansion of the Terminus. As a result, the access road to the Lok Ma Chau Terminus has to be upgraded to a 7.3m width. The main part of the proposed PTI will fall within the footprint of the Lok Ma Chau Terminus. However, 0.35 hectare of the adjourning 5ha reedbed area, which provides a wastewater-decontamination function, will be required.

The Subcommittee focused on the following issues:-

Less environmentally -friendly transport modes

Concern was expressed that the concept of the spur line in using a viaduct at Lok Ma Chau area was to elevate human activities from ground level so as to minimize the impact of the railway on ecologically sensitive areas. The of that design concept.

The project proponent explained that the spur line would remain the key carrier of commuters to Lok Ma Chau Terminus, and road-based transport would play a supplementary role only.

Fragmentation of environmentally sensitive areas

On the impact of fragmentation created by the widening of the access road, and the adequacy of ecological mitigation works, the project proponent advised that fragmentation would be unavoidable if the access road was to be upgraded. The proposed low guide barriers and the underpass beneath the access road, however, would be sufficient to deal with the problem, having regard to the size of the area and the length of the access road.

The loss of 0.35 ha of reedbeds

In answer to a members'criticism of the loss of 0.35 ha reedbeds, the project proponent clarified that 2.8 ha of reedbeds would be required to provide a natural, decontamination capability for the treated effluent discharge. As there were presently 5 ha of reedbeds, this area was larger than required. The project team agreed to provide more information on wastewater treatment facility and the eventual projected loading of the reedbeds, once the information was available.

Air quality of the PTI

The question of air quality impact of phase 2 of the Lok Ma Chau Terminus, which would partly cover the PTI, was raised by a member. The project proponent explained that the PTI would not become an enclosed compartment -although it would be partly covered -as it would be open on two sides, with headroom of about 10 metres.

Traffic volume and air quality

On the impact of increased traffic volumes on air quality, the project proponent explained that three kinds of vehicles would probably be the main uses of PTI: franchised buses, public light buses and taxis. The traffic volume would be controlled, as the road would still be in a restricted area, and due to the small size of the PTI the number of vehicles using it would not be great. Whilst assumptions on traffic volumes were adopted in assessing likely environmental impacts of the project, it was considered that the traffic volume would not reach these assumed levels. In addition, it was possible that vehicles using the PTI would be required to use liquefied petroleum gas, which would reduce the impact on air quality. Furthermore, although the government has yet to decide on the kinds of vehicles which would use the PTI, KCRC had assessed air quality impacts based on a worst-case scenario. The finding was that the Air Quality Objectives could still be complied with.

Cross boundary vehicles and the footprint of the PTI

The Subcommittee inquired whether the vehicles using the PTI would be able to cross the border. The project proponent confirmed that the road leading to the PTI would not be connected to the Shenzhen side and vehicles using the PTI could not cross the border. The project proponent had reservations concerning a proposal to integrate the PTI with the Lok Ma Chau Terminus, as it would delay the opening of the spur line, and the construction of an underground PTI had its own environmental impacts.

Wastewater treatment

In respect of the wastewater treatment facility of the Lok Ma Chau Terminus, the project proponent explained that the additional effluent was generated by the increased number of passengers and vehicles. Run-off would be increased when the project was completed. Petrol interceptors would be installed to prevent vehicle run-off from discharging into the reedbed and nearby waters directly. The project proponent further explained that the number of commuters would be limited by the maximum capacity of the Lok Ma Chau Terminus. The wastewater treatment facility would be designed to cope with that level.

Although the Subcommittee expressed its views and doubts concerning the proposed project, the ACE has no statutory role in the processing of applications for variations of Environmental Permits, which the project proponent was likely to apply for. The project proponent was requested to consider the Subcommittee's views when carrying out the proposed project.

(http://www.info.gov.hk/etwb), September 2003

TOWN PLANNING

Victoria Harbour appeal

The Town Planning Board has decided to appeal to the Court of Final Appeal the recent court ruling against the Wan Chai reclamation.

The Board's view is that the court's interpretation of the Protection of the Harbour Ordinance is too restrictive and would remove the opportunity for Hong Kong to have well-designed Harbour-front promenades. However, the Board does not want to send out the message that it is simply fighting for the right to make future harbour reclamations.

Responding to the Court of First Instance ruling, the Board decided to drop its original plan to build a three-hectare harbour park to which green groups objected. Nevertheless the Board decided to take the case to the Court of Final Appeal.

In July the court ruled that the purpose and extent of any proposed reclamation should be assessed by reference to three tests:(i) compelling, overriding and present need, (ii) lack of viable alternative, (iii) and minimum impairment.

The parties agreed to bypass the Court of Appeal and bring the case directly to the Court of Final Appeal. .

The chairman of the Society for the Protection of the Harbour, Winston Chu Ka Son, whose group brought the original challenge to the Wan Chai plan, estimated the appeal would take nine months to one year to process. He added that the Society has always supported reclamation for the bypass and the public promenade. What the Society opposes is the proposal to reclaim three hectares of land for the harbour park and an extra 10 hectares of land for sale for commercial purposes.
[*SCMP,* 22nd July 2003]

Harbour activists offer conditions to break deadlock with the government

The Hong Kong government must accept five demands before the Society for the Protection of the Harbour would reconsider taking it to court over its reclamation projects. The society's chairman gave the demands to the Secretary for Housing, Planning and Lands in a meeting on 8th October 2003.

The five demands are: (i) an immediate suspension of reclamation work; (ii) a review of all such works and projects; (iii) public consultation with full disclosure of information about the projects; (iv) the formation of a Harbour Authority to oversee these projects; (v)and restructuring of the Town Planning Board to include genuine public participation.

While the proposals were being considered by the government, the Society would not call for a mass rally for protection of the harbour, Mr Chu (Chairman of the Society) said. "As a demonstration of good faith, we will not be planning any march. It might not project a correct international image of Hong Kong." But Mr Chu said the Society would not give up its litigation plans until the government came up with a solution acceptable to the public, although litigation was a less desirable way of resolving the dispute.

A judicial review hearing on the legality of the Central reclamation work has been scheduled for 9th - 12th February 2004. The government's appeal against an August court ruling - to the effect that the Wan Chai reclamation Phase 2 violated the Harbour Protection Ordinance - will be heard on 9th December 2003.
[SCMP, 9th October 2003*]*

REGIONAL & INTERNATIONAL

South Africa

Pressure on abalone stocks

Attempts to stem the illegal trade in South Africa's endemic abalone species could benefit by regulating international trade in the species in terms of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), according to TRAFFIC, the wildlife trade monitoring network, and WWF South Africa.

While TRAFFIC and WWF South Africa support all attempts to address the illegal harvesting of abalone, it is disappointing that the South African government has so far failed to make use of controls by consumer states under CITES.

By listing the South African abalone species on Appendix III of CITES, South Africa would automatically enlist the assistance of consumer states in monitoring and regulating the trade in abalone. Such a listing would require all consignments of the South African abalone species to carry CITES documentation and would be beneficial to both the aquacultural and wild-harvesting industries in South Africa. Customs officials in countries of import would only permit consignments carrying CITES documentation to enter the country.

Over 95% of the abalone harvested in South Africa's coastal waters is destined for international markets, especially China. The lucrative nature of this trade indicates that even if the commercial fishery were to be closed completely, it would not prevent illegal harvesting for foreign markets from taking place and would not ensure the sustainability of the resource.

The abalone fishery is complex and difficult to manage sustainably and equitably, as it is extremely lucrative, involves numerous stakeholders, including coastal communities historically deprived of access to the resource, and in recent years has involved organised crime, corruption and violence. It is, therefore, crucial that any changes in the management of the fishery are carried out with adequate consultation among all legitimate stakeholders. TRAFFIC recognizes the importance of this resource to the livelihoods of many coastal communities, but also acknowledges the investment made by current quota holders, as well as the jobs created by the commercial fishery. Listing abalone on Appendix III of CITES would contribute to effective management of the fishery and hence help protect the livelihoods of the legitimate industry.

The abalone fishery has many similarities to the Patagonian toothfish fishery, with both being highly lucrative products on international markets, and both threatened by rampant illegal trade. The recent arrest of the toothfish longline vessel the Viarsa, through the collaborative efforts of Australian, South African and British authorities, has demonstrated the importance of international co-operation in addressing the illegal trade in marine resources destined for international trade. The tools offered by CITES will allow other counties to assist South Africa's anti-poaching efforts by ensuring the shipments they import are legal and accompanied by the appropriate documents.

A CITES listing would not only be cost effective, but would also be relatively simple to achieve. Unlike CITES Appendix I and II listings, which require approval at CITES meetings held only every two or three years, South Africa can unilaterally list a species on Appendix III at any time. A listing for abalone would not ban trade in the species and would benefit all stakeholders committed to a sustainable and legal fishery.

[TRAFFIC, Cape Town, South Africa, *Press Release*, 9 September 2003]

The Balkans

Threat to wild plants

Stocks of many medicinal plant species in the Balkans have declined in the past decades, with some species becoming rare or endangered due to habitat loss, habitat modification and over-exploitation, and for other reasons. The German Federal Agency for Nature Conservation (BfN), WWF Germany and TRAFFIC Europe, have called for action to fix and implement measures to avert the further depletion of medicinal and aromatic plant populations in the Balkan countries, most of which are preparing for accession to the European Union.

Western Europe's herbal industry--specially in Germany, which is the largest European medicinal plant importer-- relies on medicinal plant supplies taken from the wild in the Balkans. In those countries which supply them, medicinal plants are a controversial issue. The livelihoods of many people in rural areas depend to a considerable extent on the collection of such plants, but over-harvesting has depleted wild populations of many medicinal plant species in areas where they were abundant only some 10 to 15 years ago.

A study released out by WWF Germany and TRAFFIC Europe looks into the current volumes of medicinal plant trade, the sourcing of medicinal plants from protected areas and the legal situation in five selected Balkan countries: Albania, Bosnia-Herzegovina, Bulgaria, Croatia, and Roumania. It also analyses several current projects aiming at a sustainable use of medicinal plants in protected areas in the region and evaluates the potential for using protected areas effectively to link nature and species conservation and the sustainable use of natural resources, thereby involving all stakeholders affected by the chain-of-custody of medicinal plants sourcing and trade.The study found that the medicinal and aromatic plant species collected in the largest quantities in the region have become threatened almost throughout their entire natural range in the Balkans.

Most medicinal plants in the Balkans are collected from the wild by the local population. As a rule, one or more intermediate traders and wholesalers are involved in the chain-of-supply; direct marketing by individual collectors and co-operatives is uncommon. As a consequence, the share of the export price being earned by individual collectors is usually low. All five countries have developed a comprehensive system of laws and other regulations related to environmental issues and the conservation of natural resources. With the exception of Bulgaria, however, the implementation and enforcement of legal instruments has been so far relatively ineffective.

Based on the results of the study and a seminar convened by BfN, WWF Germany and TRAFFIC Europe on the Isle of Vilm, Germany, in December 2002, action at several levels is urgently needed in most areas in the Balkans. Among other things, medicinal and aromatic plant populations and wild collection activities have to be assessed, and species-specific and local maximum levels for annual collections mandated.

Effective control and monitoring mechanisms must be established and a comprehensive management plan has to be developed for every protected area, which should guarantee that medicinal and aromatic plant sourcing does not exceed sustainable levels. Based on effective protected areas management, medicinal plant sourcing could subsequently contribute to nature conservation.

In addition, collectors must look to the long term and be guaranteed a certain income level. It might be possible to achieve higher market prices if the raw material is processed in the region or country and products are sold on the national and international markets. BfN and WWF Germany will continue their joint efforts to make use of natural resources-- such as medicinal and aromatic plants-in a way in which nature conservation, local farmers and collectors, traders and producers of herbal products and the consumers of these products will all have a long-term benefit.

Notes:

(1) TRAFFIC Europe is part of a wildlife trade monitoring network, which works to ensure that trade in wild plants and animals is not a threat to the conservation of nature. TRAFFIC is a joint programme of WWF and IUCN - The World Conservation Union.

(2) Most of the more than 2,000 different plant species which are used for producing medicine or other herbal products in Europe are collected from the wild. A surprisingly large share -- about 8%-- of the global medicinal plants trade originates in the Balkans.

[TRAFFIC, Vilm, Germany, *Press Release*, 12 September 2003]

HONG KONG

Victoria Harbour

In the recent High Court ruling against the Wan Chai reclamation project, the judge noted that as "the waters in the harbour are becoming precious, it is incumbent upon public officials and authorities to treasure what is now left". To understand why this judgment is important and necessary, the whole issue of harbour reclamation needs to be examined.

This is especially so in light of the fact that work on the Central reclamation project is continuing, even though the government and Town Planning Board's decisions on reclamation were judged to be "based upon a misinterpretation and misunderstanding of the law" and "flawed as a matter of law".

Victoria Harbour is one of the world's best deep-water harbours and the envy of many cities. It is our most valuable natural asset. It is nature's gift to Hong Kong people. Originally, it was about 6,500 hectares in size. By 1990, about 2,600 hectares had been reclaimed. Yet the government, with the support of the Board, proposed a scheme to reclaim a further 1,297 hectares. This would have reduced the harbour to only 40 per cent of its original size. It was in danger of becoming "Victoria River".

By the time this reclamation scheme came to the knowledge of the Society for the Protection of (Hong Kong) Harbour ("the Society") in 1995, a further 661 hectares had been reclaimed, reducing the harbour to half its original size. The Society has been trying to prevent the remaining 636 hectares being reclaimed, which would have led to the harbour width being reduced by half, from Lei Yue Mun Pass to West Kowloon and Sheung Wan.

When the scheme was proposed to the Board, the government said it was "to supply land for development". No consideration was given to the intrinsic values of the harbour as our natural heritage, a major tourist attraction, shipping centre and unique cityscape, for example. This approach was criticised by Madam Justice Chu in her judgment when she said that reclamation should no longer be regarded as a convenient and ready-at-hand option to obtain additional land.

Furthermore, the government has always relied on the sale of land reclaimed from the harbour as a source of revenue. Therefore, it has a fundamental conflict of interests. On the one hand, the administration has a duty to protect the environment. On the other, as the largest property dealer, it needs land to sell to developers.

The government's role as the largest land owner and producer is supported by many powerful entrenched private interests who

benefit from harbour reclamation. This coalition overwhelms public interests, which demand that the harbour be preserved for the benefit of the community.

The Society decided in 1996 that the only way to effectively protect the harbour was by law. Thus, the Protection of the Harbour Bill was presented to the Legislative Council as a private member's bill by the Society's deputy chair, Christine Loh Kung-wai, and was passed into law on June 27, 1997. This ordinance requires all public officers and public bodies to protect and preserve the harbour as a special public asset and a natural heritage of Hong Kong people.

It was hoped that the Board, as an independent statutory body established under the Town Planning Ordinance to look after the general welfare of the community, would comply. Yet it has approved and published draft plans for five reclamation projects. They would have proceeded if the Society had not made the strongest objections, including the threat of legal proceedings. The five schemes were:
(a) the Green Island project, to reclaim 190 hectares by blocking the Sulphur Channel to house 168,000 people;
(b) the Southeast Kowloon project, to reclaim 300 hectares by filling in the whole of Kowloon Bay to build a new town for 350, 000 people;
(c) the Central project, to reclaim 32 hectares by filling in the area between the outermost points of the New Convention Centre and the Central Reclamation area for commercial and office development, as well as to raise revenue for the government;
(d) the West District project, to reclaim 79 hectares by partially blocking the Sulphur Channel to house 70,000 people;
(e) the North Point Cruise Centre, to reclaim land for a large pier as a private investment by a leading developer.
All the draft plans were approved by the Board on the basis that there were public benefits to be gained. In fact, to achieve the benefits required only a small part of the proposed reclamations. Therefore, it was simply an excuse for the massive production of land through reclamation.

In the case of the Wan Chai reclamation project, only half the 26 hectares approved by the Board was really necessary: seven hectares for the Central-Wan Chai bypass and six hectares for a public promenade, both of which the Society has always supported.

Madam Justice Chu said in her judgment: "What the Board appears to have done is make use of the opportunity of reclaiming land for essential infrastructure to make zoning and planning provisions for developing the harbour."
The judge decided that mere "public benefit"' was not enough to justify reclamation. Instead, the following three tests must be satisfied: first, there must be a compelling, overriding and present need; second, there must be no viable alternative; and third, there must be minimum impairment to the harbour. The tests represent a reasonable balance between the need to preserve the harbour and the need to provide for Hong Kong's development.

The Society hopes that the Board and the government will respect this court decision, that the pretext of "public benefit" will not be used as an excuse to unnecessarily damage what is left of the harbour, and that the judgment will ensure the survival of Victoria Harbour for the enjoyment of present and future generations.

[Winston Chu Ka-sun, former chairman of the Society for the Protection of (HongKong) Harbour, 20 September 2003]

China/Hong Kong
Transboundary e-waste movements under effective control

In response to media enquiries, a spokesman for the Environmental Protection Department (EPD) said on August 15 that Hong Kong was committed to curbing illegal transboundary movements of electronic wastes (e-wastes). He pointed out that there might be a misconception that all e-wastes or second-hand electronic and electrical appliances were hazardous. Actually, only e-wastes containing or contaminated by hazardous components are considered hazardous under the Waste Disposal Ordinance (WDO).

Common hazardous e-wastes, such as discarded computer monitors and TV sets with cathode ray tube display, are listed under the Seventh Schedule of the WDO. Import and export of such wastes is subject to permit control. Under the WDO, export or import of hazardous wastes without a permit is an offence for which there is a prescribed maximum fine of $200,000 and six months imprisonment.

As for non-hazardous e-wastes, these are considered recyclable wastes under both the WDO and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. Some examples of such wastes include computer casings, wires, electronic components and similar materials. There is international consensus that their recycling should be promoted and that their movements should be facilitated through less stringent import and export control. The WDO control is in line with this concept. Second-hand or used electronic and electrical appliances are not waste and do not fall within the ambit of the WDO control. Their import or export does not require a permit under the WDO.

The EPD inspects shipments of e-wastes and used electronic and electrical goods on a regular basis to guard against hazardous shipments disguised as second-hand goods or non-hazardous e-wastes. There is also close vigilance through the enforcement network between the EPD and the Customs and Excise Department at various local control points and illegal e-waste export black spots.

Movements of hazardous e-wastes are under tight scrutiny in Hong Kong. Since the introduction of WDO control on import and export of wastes in 1996, there have been 41 prosecutions against illegal movements of hazardous e-wastes, resulting in 37 convictions. In the past 12 months, there were three similar convictions.

The EPD signed a Memorandum of Understanding with China's State Environmental Protection Administration (SEPA) in 2000 on the control of transboundary movements of hazardous wastes. Since then, movement of hazardous wastes between Hong Kong and the Mainland need to follow the prior notification and consent system provided for under the Basel Convention.

The Mainland officially banned the import of e-wastes in August last year. Following the ban, the Mainland and Hong Kong authorities agreed in March this year to step up enforcement against e-wastes smuggling activities. Hong Kong EPD would inform the Mainland authorities of dubious shipments with e-wastes or used electronic and electrical appliances from Hong Kong to the Mainland for follow-up investigation.

In addition, the EPD, the Customs and Excise Department, the SEPA and the Mainland customs authorities have been conducting joint operations against e-waste smuggling since June 2003. The Mainland authorities have intercepted and detained a number of shipments after being informed by Hong Kong EPD.

For electronic and electrical items, EPD has been collaborating with the recycling trade, green groups and district organisations to examine measures to foster reuse and recycling of such items. For example, the EPD has,

together with two voluntary organisations, launched a pilot recovery and recycling programme for computers and electrical appliances in January this year. The EPD will take into account the results and experience of the pilot programme in examining the feasibility of developing larger-scale recycling programmes in Hong Kong.

EPD has begun discussions with interested parties to explore the possibility of introducing relevant product responsibility schemes for e-wastes in Hong Kong. EPD has also injected $100 million into the Environment and Conservation Fund, mainly for district organisations and green groups to organise community waste recovery projects. Interested organisations may apply for the Fund to organise recycling programmes for electronic and electrical items.

Separately, EPD has been implementing measures to facilitate the development of the local recycling industry. For example, EPD has been providing land under short-term tenancy for recycling operations. EPD is also planning the establishment of a 20-hectare Recovery Park in Tuen Mun to provide a long-term site for recycling facilities.

[*Environment Protection Department Press Release*, 15 August 2003]

Convictions under environmental legislation: July - September 2003

The EPD's summary of conviction recorded and fines imposed during the period July to September 2003 is as follows:

July 2003

Fifty-three convictions were recorded in July for breaching anti-pollution legislation enforced by the Environmental Protection Department.

Among them, 21 were convictions made under the Air Pollution Control Ordinance, 13 under the Waste Disposal Ordinance, 11 under the Noise Control Ordinance, six under the Water Pollution Control Ordinance and two under Dumping At Sea Ordinance.

A company was hit with two fines of $50,000 -- the heaviest fine for July -- for using powered mechanical equipment without a valid construction noise permit and for carrying out prescribed construction works without a valid construction noise permit.

August 2003

Twenty-five convictions were recorded in August for breach of anti-pollution legislation enforced by the Environmental Protection Department.

Among them, 13 convictions were made under the Air Pollution Control Ordinance, six under the Noise Control Ordinance, three under the Waste Disposal Ordinance, two under the Dumping At Sea Ordinance and one under the Water Pollution Control Ordinance.

One company was hit with a fine of $25,000 -- the heaviest fine for August -- for carrying out prescribed construction works not in accordance with the conditions of a construction noise permit.

Another company was fined $25,000 for using powered mechanical equipment not in accordance with the conditions of a construction noise permit.

September 2003

Forty-five convictions were recorded in September for breach of anti-pollution legislation enforced by the Environmental Protection Department.

Among them, 17 were convictions made under the Air Pollution Control Ordinance, 16 under the Waste Disposal Ordinance,

The heaviest fine in September was $80,000, assessed against a company that used powered mechanical equipment not in accordance with the conditions of a construction noise permit

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