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URBAN PLANNING AND ENVIRONMENTAL LAW QUARTERLY

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We begin this edition's main article with a letter from the EPD commenting on the previous *Report's* article which dealt with the implementation of container-deposit laws in Hong Kong. As the EPD has responded mainly by reference to the Waste Reduction Framework Plan (WRFP), we shall consider some of the policies outlined in that document also.

The Editors

CONTENTS

Page

EPD RESPONDS ON WASTE DISPOSAL: FEATURES OF THE WRFP.	1
DIGEST OF LEGISLATION	3
HONG KONG BRIEFING	4
AIRPORT UPDATE	5
ADVISORY COUNCIL ON THE ENVIRONMENT (ACE)	5
PLANNING ISSUES	8
CASELAW UPDATE	8
REGIONAL & INTERNATIONAL	9
STATISTICS	12
ABBREVIATIONS	12

EPD RESPONDS ON WASTE DISPOSAL: FEATURES OF THE WRFP

Letter from EPD

Following our article *Recycling And Our Waste Disposal Crisis: Hong Kong Must Implement Beverage Container Deposits Legislation* (Quarterly, June 1999) Tom K. L. Lai, Acting Principal, Environmental Protection Office, wrote to the editors on 13th August 1999 as follows:

"I refer to the captioned article published in your quarterly report "Urban Planning and Environmental Law Quarterly (June 1999)".

"The information on overseas experience in dealing with beverage containers is useful. However, I would like to clarify that based on our information, the recovery rate of non-ferrous metals (which mainly consist of aluminum cans, copper and alloys) in Hong Kong is about 80%, not 50% as quoted in the article. This is comparable with the recovery rate of beverage containers in most states of the United States as shown in the article. Besides, according to our contact with the recycling trade, the price of an aluminum beverage can is currently

around HK\$0.08."

"I take this opportunity to introduce the Government's Waste Reduction Framework Plan launched in November 1998. The Plan aims to reverse the rising trend of our waste growth, and sets out various dynamic and environmentally responsible programmes to prolong the life of our landfills and to reduce the increasing costs of waste transportation, treatment and disposal. Please find enclosed one copy each of the Chinese and English versions of the Plan and a bilingual leaflet for your reference. You may also wish to browse the Plan and other waste reduction information at our website at <http://www.info.gov.hk/epd>."

"You may wish to know that we plan to set up a waste reduction task force for the packaging sector within this year one of the focuses of this task force will be the beverage containers. Like the waste reduction task forces already set up for the public housing, private housing, hotels, construction industry etc, the one for the packaging sector will also be formed under the Waste Reduction Committee which was set up earlier this year to spearhead waste reduction initiative within the community. Members of Committee comprise representatives from the commercial and industrial sectors,

universities, green groups and the government.”

Comment

We wish to thank Mr. Lai for his encouraging letter. Whilst we do not have space to respond to the various points raised by Mr. Lai, we point out that our article addressed *all* beverage containers, not just non-ferrous metal containers. Indeed, in Hong Kong disposal of plastic and glass containers is a far more pressing problem, in terms of the extent to which we do not recycle. The latest EPD figures indicate approximately 4,000 tonnes of glass containers are recovered per annum (in addition to recovery through manufacturers' bottle-deposit systems, where they exist) compared with 109,000 tonnes of non-ferrous containers: *Solid Waste Statistics 1998*, EPD, 2/7/99.

Unfortunately, Mr. Lai's letter does not directly deal with our proposition that Hong Kong needs to introduce container-deposit laws. Neither does the *WRFP*. We remain in the dark, therefore, as to EPD's attitude to the use of such legislation in the increasingly difficult task of environmentally responsible waste reduction and disposal. Our article also left an opportunity for EPD to suggest innovative ways of handling another major source of waste pollution, the ubiquitous plastic bag, but the letter and *WRFP* are silent on that specific problem.

The fact that Hong Kong does at least now have a public policy to reduce the volume of waste (domestic, industrial and commercial), in the form of the *WRFP* which was released on 5th November 1998, is welcome. The EPD and the government are to be congratulated for their formulation of the *WRFP*. It is, however, another level to be attained to have the generalised policies of the *WRFP* effectively implemented.

WRFP

Incentives to reduce waste

The major incentive for the government to bring about a reduction in waste is the fact that Hong Kong's landfills are likely to be full by the year 2015. When the programme was initiated in 1989, it was projected that the very expensive landfill sites (which cost \$6,000 million to construct, and occupy 270 hectares of land with a minimum undeveloped value of \$8,200 million) would last until 2020. However, the volume of waste requiring disposal has increased much faster than planners thought, reaching 16,000 tonnes per day by 1997. Therefore new landfills, requiring about 860 hectares of land, will have to be found unless we drastically reduce the amount of waste we generate.

Objectives of WRFP

Objectives of the *WRFP* may be summarised as:

- to extend the life of landfills
- to minimise waste requiring disposal
- to increase waste recycling
- to conserve non-renewable resources
- to encourage maximum efficiency in waste management

The government hopes to achieve a target of 40% reduction in the level of waste requiring disposal, and a 58% reduction in the volume of municipal waste by 2007. To achieve this, the *WRFP* proposes a number of guiding principles for future waste management, which include:

- more rigorously applying the “polluter pays principle”, whereby polluters are required to pay the cost of cleaning up pollution and disposing of waste
- using “market instruments”, such as imposing user pays fees
- restrained use of command/control legislation
- ensuring effective enforcement of laws prohibiting improper treatment or disposal of waste
- educating the community to leading a more environmentally responsible life style.

“The major incentive for the government to bring about a reduction in waste is the fact that Hong Kong's landfills are likely to be full by the year 2015.”

These principles read well enough. However, in the light of Hong Kong's experience in failing to make the hard decisions needed to force polluters and waste generators to pay for their environmental crimes, and in pouring tens of millions of dollars into superficial public education campaigns to reduce public littering (for example) with little apparent results, it is doubtful that the *WRFP* will achieve its objectives. As the *Quarterly* has observed before, were the government and judiciary seriously and robustly to follow through on the above enforcement principle, the general public and captains of industry would become environmentally educated very much more quickly. A sea-change in attitude of Hong Kong people to the damage we cause our environment through waste generation and disposal (amongst other human activities) is required if the *WRFP* is to have any real chance of succeeding.

In that context, we repeat that other countries have tried and proved the beneficial role of container deposit legislation in changing people's attitudes to disposal of at least that form of waste. So why is this option not even discussed in the *WRFP*? Hong Kong is always ready to adapt and adopt money-making techniques of the West, but not so when it comes to more fundamental issues of protecting our environment.

Tools for Waste Management

In Chapter 4 of the WRFP various "tools" for better managing waste creation/disposal are outlined. Container deposit legislation is not one of them. These "tools" include:

- "bring systems" - i.e. encouraging the public to bring recyclable waste to a central collection point (which is precisely what the South Australian deposit law very efficiently achieves) composting organic waste in government financed composting plants (organic waste - food, sewage sludge, mixed waste paper - constitutes approximately 25% of landfill waste)
- education aimed at changing wasteful habits
- environmentally responsible purchasing
- assisting in making resources available to recycling businesses
- market instruments (the polluter-pays-fees policy)
- encouraging material recovery facilities, producer responsibility schemes and waste-source separation systems
- taxation and fiscal measures
- waste-to-energy incineration (which the government appears to be prepared to act on in the near future).

All of these "tools", and others discussed in the WRFP, are steps in the right environmental direction. That is, perhaps, why it is so puzzling that container deposits legislation is not included amongst them, even for discussion, particularly as "market forces" are an integral element of both the policy guidelines and the application "tools" set out in the WRFP.

Perhaps the answer is to be found in the transcript of a (disappointingly) short, recent interview of EPD's Director (Mr. Rob Law) on the broad issue of waste management. He is reported as saying (in part) that "In the local context, direct subsidies or intervention in the free market is considered a shortsighted option" (emphasis added): *Hong Kong Government/EPD Information Web Page*, 22/9/99.

Apparently the EPD considers bottle deposit legislation an interference with

the free market. If that is the position of the EPD/government, it represents yet another instance of our failure to observe closely and learn from the experience of jurisdictions using more advanced "tools" of environmental protection than we are employing.

Conclusion

Publication of the WRFP is to be applauded. If at least some of the objectives are met the result will be an improvement in Hong Kong's ability to conserve its natural environment.

However, there is no apparent reason, and none given by the EPD, that deposit container legislation could not work here. At the very least the government should consider a serious study of such legislation in operation overseas to assess whether a container deposit scheme could usefully be added to Hong Kong's proposed waste reduction tools.

Digest of LEGISLATION

Merchant Shipping (Prevention and Control of Pollution)(Amendment) Ordinance 1999 (L.S. No. 1 to Gazette P.A386-A391, Ord. No. 16 of 1999)

1. Section 2 of the Merchant Shipping (Prevention and Control of Pollution)(Amendment) Ordinance (Cap. 413) is amended by repealing the definition of "oil" and substituting - "oil" means - (a) petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products (other than petrochemicals which are subject to the provisions of Annex II of the Convention as defined in section 3(1)); and (b) the substances listed in appendix I to Annex I of the Convention;"

2. Section 3 is amended -
(a) in subsection (2), by repealing "Governor in Council" and substituting "Secretary for Economic Services";
(b) by adding - "(2A) The Chief Executive in Council may make regulations for the payment of fees (whether prescribed under this Ordinance, the Merchant Shipping ordinance (Cap. 281) or otherwise) in respect of any survey, inspection,

certificate, service or other matter provided for by regulations made under this Ordinance.";

(c) in subsection (5) -

- (i) by repealing "subsection (2)" and substituting "subsections (2) and (2A)";
- (ii) by adding - "(ba) for the boarding of any ships within the waters of Hong Kong to carry out inspections for the purposes of the regulations;"
- (iii) by repealing paragraph (f);
- (iv) in paragraph (vii), by repealing "Governor in Council" and substituting "Secretary for Economic Services or Chief Executive in Council (as the case may be)".

3. The following is added -

"3A Supplementary regulation-making power in relation to international agreements applicable to Hong Kong.

For the purpose of giving effect (whether in whole or in part) to any provisions of any international agreements applicable to Hong Kong (including the Convention and the Protocol as defined in section 3(1): -

- (a) as in force from time to time; and
- (b) so far as the agreement relates to any matter for or in relation to which provision may be made by regulations made under this Ordinance,

Any such regulations may: -

- (i) set out or refer to those provisions (whether in a schedule or otherwise); and
- (ii) specify (whether in a schedule or otherwise) amendments, modifications or adaptations subject to which those provisions shall have effect."

4. Section 5(2) is amended by repealing "Governor" and substituting "Director".

5. Section 8(2)(a) is amended by repealing "Governor" and substituting "Director".

6. Section 9 is amended by repealing "Governor" where it twice appears and substituting "Director".

7. Section 12(1)(b) is amended by repealing "Governor" and substituting "Secretary for Economic Services".

Air Pollution Control (Vehicle Design Standards)(Emission)(Amendment) Regulation 1999 (L.S. No.2 to Gazette

No. 19/1999, L.N. 121 of 1999 p.B1035-B1075)

This Regulation amends the Air Pollution Control (Vehicle Design Standards) (Emission) Regulations (Cap. 311 sub. leg.) by:-

(a) imposing more stringent vehicle design standards for emission of air pollutants applicable to certain private cars, taxis, goods vehicles, light buses and buses first registered on or after 1 July 1999;

(b) introducing a set of vehicle design standards for emission of air pollutants for motor cycles and motor tricycles first registered on or after 1 October 1999.

1. This Regulation, other than section 3(m), shall come into operation on 1 July 1999. Section 3(m) shall come into operation on 1 October 1999.

2. Regulation 2 of Air Pollutant Control (Vehicle Design Standards)(Emission) Regulations (Cap. 311 sub. leg.) is amended by adding -
 ""evaporative emission" means hydrocarbons emitted by evaporation from the fuel system of a motor vehicle which is equipped with a positive-ignition engine;"

3. Regulation 7(1) is amended by -

- (a) in paragraph (a) -
 - (i) in subparagraph (ii), by repealing "on or after 1 October 1998" and substituting "between 1 October 1998 and 30 June 1999 (both dates inclusive)";
 - (ii) by adding -
 - "(iii) if it is registered on or after 1 July 1999, to the standards specified in Part I(a), (b) or (c) of Schedule 7;"
 - (b) in paragraph (b)(i), by repealing "Part II(a), (b) or (c) of Schedule 2" and substituting "paragraph (a), (b) or (c) of Schedule 2A";
 - (c) in paragraph (c) -
 - (i) in subparagraph (ii), by repealing "on or after 1 October 1998" and substituting "between 1 October 1998 and 30 June 1999 (both dates inclusive)";
 - (ii) by adding -
 - "(iii) if it is registered on or after 1 July 1999, to the standards specified in Part II(a), (b) or (c) of Schedule 7;"
 - (d) in paragraph (d) -
 - (i) in subparagraph (ii), by repealing "on or after 1 October 1998" and substituting

"between 1 October 1998 and 30 June 1999 (both dates inclusive)";

(ii) by adding -

"(iii) if it is registered on or after 1 July 1999, to the standards specified in Part III(a), (b) or (c) of Schedule 7;"

(e) in paragraph (e) -

(i) in subparagraph (ii), by repealing "on or after 1 October 1998" and substituting "between 1 October 1998 and 30 June 1999 (both dates inclusive)";

(ii) by adding -

"(iii) if it is registered on or after 1 July 1999, to the standards specified in Part IV(a), (b) or (c) of Schedule 7;"

(f) in paragraph (f) -

(i) in subparagraph (ii), by repealing "on or after 1 October 1998" and substituting "between 1 October 1998 and 30 June 1999 (both dates inclusive)";

(ii) by adding -

"(iii) if it is registered on or after 1 July 1999, to the standards specified in Part V(a), (b) or (c) of Schedule 7;"

(g) in paragraph (g) -

(i) in subparagraph (ii), by repealing "on or after 1 October 1998" and substituting "between 1 October 1998 and 30 June 1999 (both dates inclusive)";

(ii) by adding -

"(iii) if it is registered on or after 1 July 1999, to the standards specified in Part VI(a), (b) or (c) of Schedule 7;"

(h) in paragraph (h) -

(i) in subparagraph (ii), by repealing "on or after 1 October 1998" and substituting "between 1 October 1998 and 30 June 1999 (both dates inclusive)";

(ii) by adding -

"(iii) if it is registered on or after 1 July 1999, to the standards specified in Part VII(a), (b) or (c) of Schedule 7;"

(i) in paragraph (i) -

(i) in subparagraph (ii), by repealing "on or after 1 October 1998" and substituting "between 1 October 1998 and 30 June 1999 (both dates inclusive)";

(ii) by adding -

"(iii) if it is registered on or after 1 July 1999, to the standards specified in Part VIII(a), (b) or (c) of Schedule 7;"

(j) in paragraph (j) -

(i) in subparagraph (ii), by repealing "on or after 1 October 1998" and substituting "between 1 October 1998 and 30 June 1999 (both dates inclusive)";

(ii) by adding -

"(iii) if it is registered on or after 1 July 1999, to the standards specified in Part IX(a), (b) or (c) of Schedule 7;"

(k) in paragraph (k)(ii), by repealing "Part X(a) or (b) of Schedule 5" and substituting "paragraph (a) or (b) of Schedule 6";

(l) in paragraph (l)(ii), by repealing "Part X(a) or (b) of Schedule 5" and substituting "paragraph (a) or (b) of Schedule 6";

(m) by adding -

"(m) every motor cycle registered on or after 1 October 1999 shall be so constructed that the emission from that motor cycle conforms to the standards specified in paragraph (a), (b) or (c) of Schedule 8;

(n) every motor tricycle registered on or after 1 October 1999 shall be so constructed that the emission from that motor tricycle conforms to the standards specified in Schedule 9."

4. Regulation 9(a) is repealed.

5. There are also amendments to Schedule 2, 3, 4 & 5 and additions to Schedule 2A, 6, 7, 8 & 9.

HONG KONG BRIEFING

1. The Government is planning to develop two Waste-to-Energy Incineration Facilities (WEIF) with a total daily throughput capacity of 6,000 tonnes to handle its municipal solid waste disposal problem. The Government's proposal is in response to the imminent landfill shortage problem and is expected to become part of Hong Kong waste management strategy in addition to waste avoidance, reduction, reuse and recovery. "Modern incineration can reduce the volume of non-recyclable waste before land filling by some 85%, render the refuse inert and allow recovery of energy from refuse for community consumption." A spokesman for the Planning, Environment and Lands Bureau said.

A feasibility study is being carried out on the development of WEIF. It is expected to be completed later this year. As the plan is only at a preliminary stage, the sites for WEIF and charges for incineration are not yet decided but the estimated costs of building the two incinerators is about HK\$10 billion.

(Press release on 13 August 1999 from the Planning, Environment and Lands Bureau)

2. Under the Noise Control Ordinance (cap. 400) companies convicted of a noise pollution offence are liable to a HK\$100,000.00 fine for a first offence and \$200,000.00 for subsequent offences. To date, these possible maximum fines seem to have had no real deterrent effect. For example, construction companies such as Paul Y-ITC General Contractors, Chiu Hing Construction & Transportation Company and China State Construction Engineering Corporation have committed multiple noise pollution offences, receiving fines of up to \$100,000.00.

(To strengthen Hong Kong's noise pollution laws, it is proposed to impose personal liability on offending company officers. This would allow prosecution of executives of companies under the Ordinance. The proposal will be submitted to the Bills Committee for a Legco slot in the coming session.

The Environmental Protection Department is also holding seminars with senior management and site staff of various companies to make them more conscious of the environment.

(SCMP, 18/8/1999)

3. The Government has put on hold its plan to remove radioactive waste stored in a tunnel under a Wan Chai School because it was too costly. In 1995, the Government decided to remove the waste to a deserted island south of Lantau, after finding that the tunnel currently used for storage was deteriorating.

The radioactive waste, generated from the manufacture of luminous watch dials and smoke detectors, and other low-level radioactive materials from hospitals, was contained in metal drums. Before the handover, a \$60 million purpose-built store was considered as a replacement for the World War II shelters which are filled with about 60 cubic metres of waste. The cost of the whole project has been estimated to be about \$100 million.

The Government's decision not to proceed with its plan to remove the waste has angered the Wanchai Provisional

District Board. The Government has been accused by several members of the Board of ignoring the safety of people in the areas. The site was identified in 1992 by the Civil Engineering Department as unsafe, and after 7 years no action has been taken to remove the waste.

(SCMP, 24/8/1999)

Airport Update

Airport Project - "One of top 10 Construction Achievements of the 20th Century"

As mentioned in our last edition, the Airport Core Programme (ACP) has been named one of top 10 construction achievements of the 20th Century. On 24 March 1999, the Chairman of Airport Authority Mr. Wong Po-yan accepted the honour at CONEXPO-CON/AGG' 99 in Las Vegas, USA.

The other nine projects are (in no particular order): Panama Panel, Aswan High Dam, Anglo-French Channel Tunnel, Dwight D Eisenhower System of Interstate and Defence Highways, Empire State Building, Golden Gate Bridge, the Hoover Dam, Sydney Opera House, and New York's World Trade Centre.

It should be noted that the Airport is only part of the ACP. The ACP projects include the new airport, Tung Chung New Town, North Lantau Expressway, Airport Railway, Lantau Link, West Kowloon Expressway, parts of Route 3, West Kowloon reclamation, the Western Harbour Crossing and the Central Reclamation. The ACP has been described as the equivalent of constructing Charles de Gaulle Airport, Phase 2 of Singapore's Mass Rail Transit, the Golden Gate Bridge, Shanghai Nan Pu Bridge, the Kennedy Expressway in Chicago, two Boston Harbour Tunnels, housing for the 20,000 residents of Bend, Oregon and reclaiming land for 16 Disneylands all at the same time.

The Airport Landslide Patrol

Although there are no permanent hazards or obstacles to cause congestion or problems along the 34 kilometres of roads to the Airport, there may be

occasions when disruptions and mishaps occur. That is when Airport Authority Road Patrol (AARP) appears and renders the necessary assistance.

The AARP was formed to monitor the Airport's public road network, and also to help anyone in difficulties within the airport control area. Its control room has elaborate surveillance equipment and is manned 24 hours a day. The AARP currently has seven vehicles to cruise the airport in all weather and render assistance to all kinds of vehicles such as private cars, public buses and commercial vehicles. All these AARP vehicles are equipped to deal with most contingencies, and are manned by highly trained crews.

The AARP works within the airport's perimeter and there are signs which indicate where patrolled areas start and finish. Its vehicles can be easily identified by their distinctive livery : white paintwork, reflective blue, white chequer board and yellow probe lights. Although AARP is not the part of Hong Kong Police, it has certain policing powers under the Airport Authority By-laws and works closely with the Police.

(Airport Authority Newsletter, Issue XXI, 1999)

ADVISORY COUNCIL ON THE ENVIRONMENT (ACE)

Paper No.16/99 discussed by ACE in April 1999 : Proposed Air Pollution Control (Vehicle Design Standards) (Emission) (Amendment) Regulation 1999 (Cap.311, sub. leg. J) ("The Regulation")

This ACE paper considered the above Regulation which aims : -

(a) to tighten the emission standards for certain newly registered motor vehicles below 3.5 tonnes, to match the latest requirements of the European Union and Japan, and a minor updating to an emission standard for newly registered petrol vehicles more than 3.5 tonnes;

(b) to add an emission standard for newly registered petrol vehicles to

control their emissions from their fuel tanks resulting from evaporative loss;

(c) to introduce a set of emission standards for newly registered motor cycles and motor tricycles.

The Air Pollution Control (Vehicle Design Standards) (Emission) Regulations (Cap.311) lay down the requirement that every motor vehicle seeking first registration has to comply with stipulated emission standards. It is proposed from 1 July 1999 to further tighten emission standards for light duty vehicles below 3.5 tonnes equipped with a positive-ignition engine. In addition, a set of emission standards governing evaporative loss from a fuel tank is proposed to be added to the requirements for petrol vehicles.

Under the Regulations, it is also proposed to require every motor cycle and motor tricycle first-registered on or after 1 October 1999 to comply with a set of emission standards of the stringency equivalent to the standards of Japan, European Union and USA.

Consultation

Consultation has been carried out with a number of relevant organisations and trade associations. The taxi trade has been consulted on the proposed tightening of the emission standards for newly registered diesel taxis. Sixteen taxi associations responded. Eight indicated support of the proposal while three indicated objection. The remaining five indicated no comments. To dispel the concerns of some members of the taxi trade, ACE further explained to the trade that the proposal would only affect newly registered diesel taxis and that vehicles meeting these standards are now available in the local taxi market and are in fact being used by the trade. ACE also pointed out that the proposal to tighten the emission standards for new diesel taxis is only part of the overall exercise to update the standards of all new light duty diesel vehicles.

The Hong Kong Motorcycle Association supports the introduction of the new emission standards for newly registered motorcycles.

However, the Hong Kong Motorcycle Commerce Association most of whose members are importers of new and second-hand motorcycles, objects to the proposed implementation timetable and is concerned about a potential increase in their operating costs. Their first concern is connected with the import of second-hand motorcycles. The proposed implementation schedule matches that of Japan. This will make it difficult for them to source suitable second-hand motorcycles in the first few years of the introduction. They have requested the introduction of the emission requirements for motorcycles to be deferred to 2003. However, postponing the implementation of the proposal to 2003 will allow more motorcycles of inferior design to be imported, ACE noted.

The increase in operating costs is due to imported motorcycles lacking documents showing their emission performance. The motorcycles thus need to undergo an emission test to show their compliance with the proposed emission requirements. The test costs \$4,000 and currently has to be done in the place of export. Alternatively, an importer can seek emission certificates from the manufacturers of the motorcycles.

Motor tricycles [considered in the same category as motorcycles] are not common in Hong Kong. In 1998, no motor tricycle was licensed with the Transport Department.

Implementation

Subject to endorsement by ACE and approval by the Legislative Council, the proposal for tightening the emission standards for diesel taxis and certain motor vehicles below 3.5 tonnes, and introducing evaporative emission standard will commence on 1 July 1999, and the introduction of emission standards for motor cycles and motor tricycles will commence on 1 October 1999.

Public Reaction

The public in general is likely to welcome the proposal as it will help control Hong Kong's serious air pollution, which is significantly contributed to by vehicular emissions.

(ACE Paper 16/99, Planning, Environment and Lands Bureau)

Paper No.10/99 discussed by ACE in February 1999 : Amendment to the Waste Disposal Ordinance (WDO) (Cap 354) to :

- (a) control disposal of non-hazardous waste imported from outside Hong Kong;
- (b) give legislative effect to the "Basel Ban";
- (c) provide a legislative framework for the introduction of the Clinical Waste Control Scheme; and
- (d) introduce minor amendments to tidy-up the Ordinance.

ACE commented as follows:

The WDO was enacted in 1980 to provide for the control and regulation of production, storage, collection and disposal of waste (including treatment, repossessing and recycling). It covers licensing of places and persons, and protection and safety of the public in relation to any such activities. The WDO was later expanded to control livestock waste and chemical waste, and to give effect to the Basel Convention on the Control of *Trans-boundary Movements of Hazardous Wastes and Their Disposal* (Basel Convention) relating to the control of movement of waste into and out of Hong Kong.

Disposal of Imported Waste

In January 1998, Members of ACE were informed by the government of the background and Hong Kong's position on the control on import and export of waste. There is international concern about the potential adverse impacts of non-recyclable or hazardous wastes. This led to the conclusion of the Basel Convention. The main control mechanism introduced by the Basel Convention is a system of prior notification and consent by the authorities of affected states of import, export and transit prior to the commencement of shipments of hazardous or non-recyclable waste. The Basel Convention is given legislative effect in Hong Kong under the WDO. The import and export of non-hazardous

waste (waste as listed in the 6th Schedule and uncontaminated) for the purpose of recycling or re-use in Hong Kong or for re-export to other places (e.g. mainland China), is currently not restricted.

A number of problems have been experienced when non-hazardous waste was imported into Hong Kong with the intention to re-export for recycling elsewhere. In some cases, subsequent to importation, the commercial arrangement fell through. For example, where the waste is rejected by its intended destination the waste may be returned to, or stranded in, Hong Kong. The owner may then try to dispose of the waste at the local landfills if this is more convenient and cheaper than other options open to him.

Allowing local disposal of such wastes is inconsistent with waste management policy. The imported waste should be re-used, recycled or returned to the original state of export as far as practicable. Indiscriminate disposal of waste imported allegedly for the purpose of re-use, or recycling must be prevented. Under the existing system, it is often difficult to prosecute successfully. In respect of specific cases, legal advice was that at the time of export the waste owners did not have the mens rea (the guilty intent) to commit the offence of importing for the purpose of disposal and therefore prosecution could not be brought.

To close this loophole, it is proposed that importers or owners of any imported non-hazardous waste must obtain an authorization from the Director of Environmental Protection (DEP) before they can dispose of waste at any local waste disposal facilities. Authorization may be granted to the importer or owner if the importer or owner can prove that it is impractical to (a) return the waste to the country of export; and (b) that he has explored but has been unsuccessful in identifying other outlets to re-use, repossess or recycle the waste in a manner acceptable to DEP.

It must be stressed that this is a last resort situation, expected to occur only in extreme and unusual circumstances. Hong Kong will not be allowed to become an outlet for dumping international waste. Furthermore, the

importer or owner must pay a charge specified by DEP based on the full disposal cost.

Basel Ban

In 1995, the Third Conference of Parties of the Basel Convention agreed to ban the export of hazardous waste from States which are members of OECD, EC (and Liechtenstein) to other States. The objective is to reduce the environmental impact of the movement of hazardous waste from developed countries to developing countries. This is commonly known as the "Basel Ban". This ban has already been implemented administratively with effect from 28 December 1998. DEP, by referring to the power under s20A(3) of the WDO, will refuse pre-shipment approval to applications for transshipment or importation of hazardous waste from the countries in question. It is now intended to formalize the arrangement through legislative amendment.

Control of Clinical Waste

Proposals for a clinical waste control scheme (CWCS) and incineration of clinical waste in the Chemical Waste Treatment Centre was discussed on 20 February 1998. Members noted that clinical waste is potentially infectious and bio-hazardous and needs to be disposed of in an environmentally sound way. Even for clinical waste of relatively low risk, it may be aesthetically offensive by nature and require careful treatment as part of the overall waste management strategy. Clinical waste disposal needs to be subject to control, not only because of the potential health risk involved, but also because of legitimate public concerns, and the occupational safety of waste collectors and waste disposal staff.

The proposed control strategy is as follows :

- Control will be implemented in 2 phases. In the 1st phase, public and private hospital and government clinics will be subject to control. ACE recommends extending the control scheme to the remaining small clinical waste producers in the 2nd phase.

- Clinical waste collectors and transporters will be required to meet the

legislative requirements prescribed in subsidiary legislation. Clinical waste disposal operations will be controlled by licences.

- A Code of Practice for operating standards will be drafted to provide guidance to all clinical waste producers and collection and disposal contractors to ensure the entire disposal operation will not pose health hazards to the workers and the public.

Whilst the details will be set out in subsidiary legislation, suitable provisions need to be put into the principal Ordinance. These should include :

- (a) defining clinical waste;

- (b) providing for licensing control on the operation of clinical waste disposal facilities and specifying technical and training requirements for collectors and transporters of clinical waste;

- (c) providing for the Chief Executive in Council to make subsidiary regulations relating to the CWCS; and

- (d) empowering DEP to implement the CWCS by phases by bringing relevant sections into effect at various stages.

Miscellaneous Amendments

The opportunity is also being taken by the government to introduce other miscellaneous amendments to the WDO to strengthen the powers and to streamline the operations. These include :

- (a) enabling the Secretary for Planning, Environment and Lands to amend the Schedule in the *Waste Disposal (Designated Waste Disposal Facility) Regulation* (Cap.354, Sub. Leg.) by notice published in the Gazette. This will facilitate regular updating of the list of designated waste disposal facilities as a number of new waste disposal facilities will either come into operation or be decommissioned in the next few years;

- (b) enabling DEP to accept or reject any waste types at any waste disposal facilities designated in the Schedule.

This is necessary in order to maintain proper management of such facilities;

(c) repealing the requirement of dividing a legal sample of waste into three parts during law enforcement operations. The samples are currently kept by Government chemist (for analysis) and by Environmental Protection Department (EPD) and the party under investigation. The latter 2 parts are not subject to preservation measures and there is no means to prevent tampering with such samples. The analysis of these samples is often unreliable and should not be admissible in court; and

(d) repealing section 16(4) of WDO, under which disposal of waste, other than chemical waste, on unleased land is not subject to licensing control by DEP under s.16. This will ensure consistency in regulatory control on Government as well as private land.

Public consultation has included extensive consultation with the medical profession on the proposed CWCS.

(ACE Paper 10/99, Planning, Environment and Lands Bureau)

PLANNING ISSUES

Despite current talks with the Walt Disney Corporation to build Asia's second Disneyland in Hong Kong, the outcome will not interfere with the Government's similar plan, which is for a theme park to be built at Penny's Bay on northeast Lantau. Mr. Siu Kwing-chue, Secretary for Planning, Environment and Lands, said that the development of northeast Lantau was intended for tourism, recreation or other uses that are compatible with the theme park development.

Because of the theme park project, the Government has discarded plans for building container terminals 10 and 11 and a new prison on Lantau. These were originally planned in 1995. It is the Government's view that the growth of cargo trade has slowed. According to the Government's assessment, the two container terminals will not be required within the next 5 to 10 years. The plan to build a new prison is not compatible

with developing tourism in this part of Lantau Island.

This new tourism-oriented proposal was submitted to the Town Planning Board in late July. Meanwhile, talks with Disney Corporation have been continuing and are expected to continue for the foreseeable future.

The second Asian Disneyland would be built on several hectares at Penny's Bay, northern Lantau Island, where reclamation is needed. Secretary for Treasury, Denise Yue Chung-yee, said that the site had been chosen partly because of its potential for further development. Apart from Penny's Bay, Yam O on Lantau was also one of the 10 sites short-listed. However, it had been ruled out because it was too close to Chek Lap Lok airport. The problem is that Disneyland will have fireworks every evening which will affect flight safety in Chek Lap Lok.

Although Penny's Bay has been chosen as the location of Disneyland, it is not a perfect site either. There is a power-plant chimney near Penny's Bay which would be within sight of Disneyland visitors. As the Disney representatives want the park to be a piece of wonderland where visitors can feel they are in a different world, they do not want to have a nearby, visible chimney. However, this is a relatively minor issue and can be solved eventually. (SCMP 3/4/99)

CASELAW UPDATE

Kam To Sauna v. Town Planning Board (Town Planning Appeal No. 1 of 1998)

A) Facts

This is an appeal under section 17B of the Town Planning Ordinance (Cap.131) ("the Ordinance"), by Kam To Sauna against the decision of the Metro Planning Committee ("MPC") of the Town Planning Board ("TPB"), made on 25 July 1997 and subsequently confirmed by the TPB. The MPC disallowed the continuation of the Appellant's sauna business situated on the 3rd Floor of Hang Shing Building ("the Building"), 44 Kweilin Street, Sham Shui Po, Kowloon.

The Building is a 12 storey composite commercial/residential building. On 15 August 1997, the Appellant applied for a review of the MPC's decision. The review occurred on 14 November 1997 under section 17 of the Ordinance but the TPB upheld the MPC's decision.

Since 1995, Kam To Sauna operated its business in the Building, under a 2 years temporary permission granted on 22 September 1995. This temporary permission was based on TPB's guidelines at that time ("the old Guidelines"), which provided:-
"Where the proposed uses are located within the non-domestic part of a composite commercial/residential building, it is preferable that the access (entrance) to these establishments be separated from that to the domestic parts of the building by way of separate stairways and/or lifts/escalators exclusively serving the non-domestic parts of the building."

However, TPB's "Guidelines for Application for Commercial Bathhouse and Massage Establishment" ("the new Guidelines") were promulgated in November 1995 with additional conditions:-

"Where the proposed commercial bathhouse and massage establishment are located within the non-domestic portion of a composite commercial/residential building, access (entrance) to the application premises must be separated from that of the domestic portion of the building by way of separate stairways and/or lifts/escalators exclusively serving the non-domestic portion of the building so as to avoid causing nuisance to the occupants in the same building."

The views of local residents on the proposed commercial bathhouse and massage establishment will be taken into account in the consideration of the application.

The Fire Services Department and the Buildings Department should be satisfied with the proposals to comply with the fire safety requirements for the proposed commercial bathhouse and massage establishment in respect of the provision of fire service installations and means of escape, etc.

All other statutory or non-statutory requirements of relevant Government departments must be met"

In connection with the power of the TPB, both old and new Guidelines "are intended for general reference only. The decision to approve or reject an application rests entirely with the Town Planning Board and will be based on individual merits and other specific considerations of each case."

B) Reasons for TPB's Refusal

There were two main grounds for the TPB's refusal to continue temporary permission:-

1. The development is not in line with the Town Planning Board Guidelines for Application for Commercial Bathhouse and Massage Establishment as there is no separate entrance by way of stairway and/or lifts/escalators to serve exclusively the non-domestic part of the Building. This will cause inconvenience and disturbance to the residents in the domestic part of the Building; and

2. If the application is allowed, it will set an undesirable precedent for similar applications.

C) Grounds for Appeal

The Appellant advanced the following favourable factors:-

1. The application is supported by the Owners' Committee of the Building. The Appellant promised to improve security of the building at its own expense by employing a night shift watchman and installing a CCTV at the lobby. The sauna's operating hours were restricted from 1200 to 0130 hours.

2. Even if the residents are disturbed, this may not be caused by the Appellant alone. The Building is situated in a busy part of Sham Shui Po. A nearby building, called Golden Building, contains theatres and shops. Within the Building itself, there is a lovers' hotel and a mahjong club which operates 24 hours a day. There is also a karaoke establishment within the Building.

3. There have been no complaints about the fire safety requirements, nor any adverse comments from the police.

D) Decision of the Planning Appeal Board

Appeal allowed, and the renewal of temporary permission of 12 months for a sauna establishment was granted to the Appellant. The Board's reasons were:-

1. The guiding principle of the Ordinance is that Hong Kong citizens' lives and businesses should not be affected by any laws or regulations retrospectively. If this were an application to establish a new sauna, the appeal would be dismissed. New establishments will be caught by the new Guidelines. However, Kam To Sauna was already established; it would be unfair not to renew the temporary permission.

2. This will not become an undesirable precedent since it enjoys the support of the Incorporated Owners of the Building. There is no clear evidence showing the existence of actual inconvenience and disturbance to the residents, nor is there any objection from them. However, the operation of Kam To Sauna should be subject to the continued support of the residents.

[Planning Appeal Board, 30th July 1999]

Chan Yuen Ping v. Town Planning Board (Town Planning Appeal No.11 of 1998)

A) Facts

The Appellant applied for permission of the Town Planning Board ("TPB") to use Lots Nos.2581 and 2582 in D.D.102, Ngau Tam Mei, Yuen Long, for temporary open storage of construction materials and container vehicles. According to the draft Ngau Tam Mei Outline Zoning Plan Nos. /YL-IVTM/1, lots 2581 and 2582 fall within the "Green Belt" zone. Under paragraph (vi)(b) of the Notes to the Plan, temporary use for open storage for a period not exceeding 12 months can be granted. In fact, the TPB did grant 12 months permission to the Appellant on 26th June 1998. The Appellant was dissatisfied with the decision, despite the fact that the

maximum 12 month period was granted, and appealed to the Planning Appeal Board.

B) Ground Appeal

The Appellant claimed that the use for open storage of construction materials and container vehicles was an existing use within the meaning of Town Planning Ordinance (Cap 131) ("the Ordinance"). Section 1 of the Ordinance provides that:-

"existing use' in relation to a development permission area means a use of a building or land that was in existence immediately before the publication in the Gazette of notice of the draft plan of the development permission area."

Section 21 of the Ordinance provides:-
(1) *While a plan of a development permission area is effective, no person shall undertake or continue development in the development permission area unless:-*

- (a) *the development is an existing use;*
- (b) *the development is permitted under the plan of the development permission area; or*
- (c) *permission to do so has been granted under section 16."*

If the use is an existing use, the Appellant did not have to apply for temporary permission from the TPB.

C) Decision

Appeal dismissed. The Appellant had been given the maximum of 12 months and the Appeal Board has no jurisdiction to decide whether the use is an existing use. The Board's reasons were as follows:-

1. Under the Ordinance, the jurisdiction of the Appeal Board is limited. It may only review the grounds of permission granted by the TPB. If the grounds are not valid, the Appeal Board has the power to revoke the permission or to allow permission. Therefore, the Appellant may appeal if permission is not granted or if he is dissatisfied with the period of permission which is not a maximum period. The Appeal Board may grant permission or extend the

period up to the maximum of 12 months.

2. The Appellant has to resort to the law courts (judicial review) for a determination of whether it is an existing use.

[Planning Appeal Board, 6th August 1999]

REGIONAL & INTERNATIONAL

Cambodia

Over-fishing and urban development are threatening Cambodia's great lakes. The Great Lake of Cambodia, the lifeline of the Khmer civilisation, which expands to 13,000 sq km in the rainy season, is being unsustainably fished. As well, irreversible damage to the lake has been caused by silting from rampant deforestation, pollution from irresponsible development, or dumping of wastes and the use of pesticides. If current evidence is to be believed, the Lake's degradation could bring about an environmental disaster of biblical proportions for Cambodia. Fish from the lake and its main source river, the Tonle Sap, provide crucial protein for about 60 per cent of Cambodia's 11 million people, not to mention millions of people being dependent on fish and agriculture from the Mekong River and its environs, Cambodia's other lifeline which is interconnected with the Tonle Sap.

The Tonle Sap and the Mekong rivers converge in Phnom Penh, creating what is the world's only river that flows in two directions. In the dry season, the force of the Mekong pushes water up the Tonle Sap river into the lake. At the end of rainy season, when the lake is full, it forces the water back down and into the Mekong. This process provides a natural fertiliser for agricultural land, enables farmers to trap water for future use and sustains a fragile ecosystem for countless species of birds and animals. A national plan to curb abuses of Cambodia's natural resources is urgently called for.

(The Weekend Australian, March 6-7, 1999)

Australia

The EPA (South Australia) has achieved its first successful prosecution for the offence of causing material environmental harm. Mobil Oil Ltd. pleaded guilty to allowing the escape of 200 ml of Ethyl Mercaptan from an injection system at its Lonsdale Refinery. An employee ignorant of the correct procedures, attempted to clear blockage in the system by opening the bleeder valve. This resulted in the escape of the strong smelling Mercaptan leading to the evacuation of workers at nearby factories. In determining the penalty, the Court considered:

- (1) the extent of harm caused or likely to the environment;
- (2) practical prevention measures that could have been taken;
- (3) the extent that Mobil could have foreseen the harm; and
- (4) the extent that Mobil had control over the causes of the offence.

The Court found that Mobil had comprehensive training systems and operation manuals aimed at safety. But the relevant employees had not been properly trained to prevent the environmental harm. Mobil had subsequently reimbursed and compensated nearby factory operators and employees. The Court convicted and fined Mobil A\$24,000.

This case shows the extent of the obligations placed on companies undertaking potentially polluting activities. Mobil's training systems and cooperation with EPA helped to reduce the penalty from the possible maximum of A\$120,000.

(*Planning & Environment Briefly*, Norman Waterhouse, Adelaide Issue No.18, June 1999)

Moscow, Russia

A cache of war-time chemical weapons on the floor of the Baltic Sea could soon rupture and leak, posing a major environmental threat, Russian experts warn. Most of more than 300,000 tonnes of chemicals confiscated from Nazi

Germany at the end of the World War II, was put in barrels and loaded aboard about 60 ships that were then sunk in the Baltic Sea after 1945. Retired admiral Dr. Tengiz Borisov, Russia's top expert on this issue, said about 270,000 tonnes sunk by the British and Americans now sat on the seabed between Norway, Sweden and Denmark, where the Baltic Sea meets the North Sea. The rest was sunk in the Baltic by the Soviet fleet off what is now Kaliningrad.

Half of the barrels contain mustard gas. The others are filled with more than a dozen other deadly poisons. Russian experts calculate the barrels' eight-millimeter walls will have rusted at a rate of about one millimeter every six years. They warn that massive leakage would put an end to the Baltic Sea, and parts of the North Sea, as sources of seafood. Moscow has ratified the international convention banning chemical weapons but has no money to implement it, and it is unlikely that it would have the money to tackle war-time chemical weapons rusting on the floor of the Baltic Sea.

(South China Morning Post, 18 March 1999)

Global

Leaders of the Group of Eight (G8) summit identified genetically modified (GM) foods (with Aids and the millennium bug,) as one of the greatest threats facing the planet. British Prime Minister Tony Blair and US President Bill Clinton, both supporters of the GM industry, were bounced into agreeing to a global inquiry into the safety of GM foods at a recent summit. Environmentalists welcomed the development as significant, but warned the public would not be duped by international committees interested in rubber-stamping products of biotechnology firms. They believe that potential risks to human health have not been properly evaluated, and are concerned that GM seeds can cross-pollinate with other vegetation, destroying wild habitats. Opposition to GM food is also beginning to grow in the US where 35 million hectares are now growing GM crops. Monsanto, the US company behind GM crops, said it hoped the

inquiry would speed up international approval of its controversial products. (South China Morning Post, June 21 1999)

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:

Apr - Jun 1999

	Number	1st Offence	2nd Offence	3rd + Offence	Highest Fine
APCO	37	25	9	3	\$15,000
	36	21	6	9	\$12,500
	70	25	13	32	\$20,000
WPCO	40	27	9	4	\$60,000
	28	21	3	4	\$50,000
	29	19	7	3	\$50,000
NCO	23	5	4	14	\$175,000
	23	5	3	15	\$100,000
	37	12	2	23	\$100,000
OLPO	-	-	-	-	-
	-	-	-	-	-
	-	-	-	-	-
DASO	-	-	-	-	-
	-	-	-	-	-
	1	1	-	-	\$40,000
WDO	32	20	6	6	\$10,000
	25	16	5	4	\$12,000
	47	27	9	11	\$30,000
Total	132	77	28	27	
	112	63	17	32	
	184	84	31	69	

April figures appear on the first line, May figures on the second, and June figures on the third of each item. Source: EPD, Anti-Pollution Prosecution Figures.

ABBREVIATIONS

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

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