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(ACE Paper 8/98)
for advice

Implementation of Environmental Impact Assessment Ordinance

Background

This paper sets out the implementation arrangements and the procedures for consultation with the Advisory Council on the Environment (ACE) under the Environmental Impact Assessment (EIA) Ordinance. The EIA Subcommittee discussed and agreed with these arrangements at its meeting held on 9 February 1998.

An Overview of the Framework of the Environmental Impact Assessment Ordinance

2. The Environmental Impact Assessment Ordinance (the Ordinance) was enacted on 4 February 1997. The Technical Memorandum on EIA Process (the Technical Memorandum) was approved by the Legislative Council in June 1997. The Environmental Impact Assessment (Fees) Regulation and the Environmental Impact Assessment (Appeal Board) Regulation were also approved by the Provisional Legislative Council in November 1997. The statutory framework of the Ordinance has been established.

3. The Ordinance provides the framework for assessing environmental impacts of designated projects defined under the Ordinance and for making the prevention and mitigation measures enforceable through the environmental permit system. The Director of Environmental Protection (DEP), in consultation with other relevant authorities, is responsible for regulating and enforcing the EIA process under the Ordinance.

4. For designated projects under Schedule 2 of the Ordinance, environmental permits are required before construction works could commence. Before environmental permits could be obtained, proponents or their implementation agents are required to submit project profiles either:

- (a) to apply for EIA study briefs for conducting EIA studies, and then seek approval of the EIA reports under the Ordinance; or
- (b) to seek permissions to apply directly for environmental permits according to the provisions laid down in section 5(9) to 5(11).

5. Major engineering feasibility studies under Schedule 3 will also require EIA reports to be approved under the Ordinance to facilitate the subsequent issue of environmental permits for individual designated projects under Schedule 2.

6. The public and ACE will have the opportunities to be involved at an early stage of the statutory EIA process. There will be an opportunity for the public and ACE to comment on the project profile before an EIA study brief is issued by DEP, or before a permission is given to the applicant to apply directly for an environmental permit. There will also be an opportunity for the public and ACE to comment on the EIA report before it is approved. Details are as follows:

- (a) **Project Profile**: on the day following the lodging of the application with DEP, the applicant will be required under the Ordinance to advertise in two widely circulated newspapers (one in Chinese and the other in English) the availability of the project profile. The public and the ACE may comment on the project profile on environmental issues covered by the Technical Memorandum within 14 days of its being advertised; and
- (b) **EIA Report**: after the submission of an EIA report which meets the requirement of the EIA study brief, the applicant will be required to advertise the availability of the EIA report and make it available at specified locations for the public to comment for a period of 30 days. At the same time, the applicant will be advised on whether a submission to the ACE is required. The ACE may give its comments on the EIA report to DEP within a period of 60 days in parallel to the 30 days' public exhibition period.

7. Comments from the ACE and the public will be taken into account by DEP before issuing the EIA study brief, approving the EIA report or giving the permission to the applicant to apply directly for environmental permits. All decisions taken by the DEP will be placed on a Register set up under the Ordinance. The Register is open to the public for inspection.

Commencement and Implementation Arrangements

8. The Ordinance will come into operation on 1 April 1998 by notice in the gazette. The following implementation arrangements will apply to both the public and private sector projects which are at different stages of planning and implementation:

- (a) **Exempted Designated Projects:** section 9(2) and 9(3) of the Ordinance provide for the exemption of on-going and committed projects. These projects will be exempted under the Ordinance and do not require environmental permits. Any material changes to these exempted projects will, however, be covered by the Ordinance. The completed EIAs for these projects will be placed on the Register under section 15(1)(f) of the Ordinance to facilitate future consideration of material changes as defined in Schedule 1 of the Ordinance and section 6 of the Technical Memorandum on EIA Process;
- (b) **Designated Projects with completed EIA but not exempted under sections 9(2) and 9(3):** unexempted designated projects which fall under Schedule 2 of the Ordinance will require environmental permits for their construction and operation. Those EIA reports that have been endorsed before 1 April 1998 by the Environmental Study Management Group for cases where submissions to the ACE (formerly known as the Environmental Pollution Advisory Committee) were not required or by both the Environmental Study Management Group and the ACE for cases where submissions to the ACE were required, will be placed on the Register under section 15(1)(f) of the Ordinance. The proponents for these projects can apply for environmental permits by making reference to the reports in the Register. The permit conditions will include the measures recommended in the accepted EIA reports and any additional requirements imposed by the ACE or the Secretary for Planning, Environment and Lands at the time of endorsing the EIA reports;

- (c) **Designated Projects with EIA studies going on when the Ordinance commences:** the EIA study briefs for such EIA studies will be placed on the Register under section 15(1)(b) of the Ordinance. The proponents concerned should continue with their EIA studies in accordance with the study briefs and the Technical Memorandum on EIA Process. On completion, the EIA reports should be submitted to DEP for approval under section 6 of the Ordinance, and the public and ACE will be consulted on the reports according to the procedures in the Ordinance. Those Designated Projects falling under Schedule 2 of the Ordinance will need environmental permits before construction could commence;
- (d) **New Projects:** new projects that are designated projects under the Ordinance will be required to comply with the statutory EIA requirements from start.

9. A draft list of completed EIA reports to be placed on the Register under the Ordinance is at Annex A. This list will be updated prior to the commencement of the Ordinance.

Consultation with the Advisory Council on the Environment

10. The procedures for notifying and consulting the ACE, through the EIA Subcommittee, are described below. A flowchart is shown at Figure 1.

11. In addition to the Register and the advertisements on newspapers, members of the Sub-committee will be notified of various steps in the statutory EIA process through one of the following ways:

- (a) by fax direct in the case of advertisement notice or project profile;
- (b) by an EIAO monthly update notifying ACE members about various EIA study briefs or permits issued; and
- (c) a quarterly update on the list of on-going EIA studies, for members to select projects for submission to ACE;

Application for EIA Study Brief or Permission to Apply Directly for Environmental Permit

12. The members of the Sub-committee will be notified at the earliest possible stage of the receipt of the project profiles, and will be consulted on the environmental issues covered by the Technical Memorandum.

13. Within 2 working days of receiving the application request, the advertisement notice on the availability of the project profile will be sent by facsimile directly to members of the Sub-committee. Members could either download the project profile from the EPD Internet's EIAO Homepage or request EPD to send him a copy by facsimile or mail. The project profile will also be placed on the EIAO's Register for public inspection.

14. Members of the Sub-committee may send their comments to DEP on environmental issues covered by the Technical Memorandum on EIA Process, using the standard form to be worked out by EPD, by facsimile or post within 14 days of the project profile being advertised. Comments from the ACE and the public will be taken into account by DEP when drawing up the EIA study briefs or giving permissions to the applicants to apply directly for environmental permits. Members of the Sub-committee will be notified about the decisions through the EIAO monthly update.

Approval of Environmental Impact Assessment Report

15. DEP will maintain a list of new EIA study briefs issued under EIAO and submit it on a quarterly basis to the Sub-committee for members to select projects that require a submission to the ACE. Based on the advice from the Sub-committee, DEP will inform the applicant about the need for submission to ACE. When the EIA report is suitable for public exhibition, the Sub-committee will be notified through the EIAO monthly update.

16. If a submission to the ACE is required and when the EIA report is suitable for public inspection, DEP will advise the applicant the date, time and place of the Sub-committee meeting. The following procedures will apply:

- (a) the applicant will be required to submit, within one week of the issue of DEP's reply, to the Sub-committee's secretary 14 copies of the EIA report and 49 copies of the Executive Summary;

- (b) the Sub-committee's secretary will send the EIA report and the Executive Summary to the Sub-committee's members, within 3 working days of the receipt of the report and Summary;
- (c) EPD will prepare a brief paper highlighting the salient points about the EIA study. EPD's paper will be issued through the Sub-committee's secretary to the members of the Sub-committee normally two weeks before the scheduled meeting; and
- (d) the applicant will present the EIA report to the Sub-committee and answer any queries. The EIA report is deemed to have presented to the ACE if the Sub-committee, upon reviewing the report and EPD's paper, does not require such a presentation and opts to consider the report by circulation.

17. The Sub-committee meets monthly, usually on the first Monday of every month. Special meetings may be arranged on a need basis. Recommendations of the Sub-committee will be presented to the ACE for consideration. Where necessary, the applicant may be required to present the EIA report at the ACE. The ACE's advice on the EIA report should be forwarded to DEP within 60 days of the receipt of the report by the Sub-committee.

18. Any advice from the ACE, together with the public comments, will be taken into account by DEP when deciding on the approval of the report and the conditions to be imposed. For those cases where submissions to ACE are not required, DEP will respond to the applicants after the expiry of the public exhibition period. Members of the Sub-committee will be notified about the decisions on the EIA reports through the monthly EIAO update and the Register.

Application for Environmental Permit

19. Upon the receipt of application for environmental permit, DEP, in consultation with other relevant authorities, will advise the applicant the grant or refusal of the environmental permit, based on the recommendations of the EIA reports, conditions imposed during the approval of the EIA reports, or the conditions of approval to apply directly for environmental permit. Members of the Sub-committee will be notified about the permits issued through the EIAO monthly update.

Non-Statutory Environmental Assessment Studies

20. Under the list of studies previously submitted to the Sub-committee, there are environmental assessment studies that lie outside the EIA Ordinance, but on which the Sub-committee's members have requested submission. To maintain the existing practice, a list of non-statutory environmental assessment studies, which will not be covered by the EIA Ordinance, will be maintained and updated quarterly for the Sub-committee to select for submission to ACE. The existing procedures for consultation with the Sub-committee and ACE will continue to apply.

Advice Sought

21. Members are requested to advise on the commencement arrangements and procedures for consultation with ACE.

**Planning, Environment and Lands Bureau
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Figure 1 EIA Process Under EIA Ordinance

