

## Letterhead of City University of Hong Kong

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22 February 00

The Honourable Christine Loh

Chair, Legislative Council Panel on Environmental Affairs

Room 429, West Wing

Central Government Offices

Hong Kong

Dear Ms Loh:

I write on behalf of the Hong Kong Environmental Law Association. The purpose of this letter is to express support for recent amendments to the Noise Control Ordinance presently under consideration by the Legislative Council. The proposed changes will hold the management of a firm liable for noise control offences.

The changes are designed to redress inadequacies in the current legislation. The law now states that *any person* who commits a wrong shall be held liable for the offence. Compliance with this standard has been erratic at best. In the last three years, twelve companies have been convicted over ten times. Two firms have been convicted thirty-three and twenty-four times respectively. Clearly the ambiguous drafting makes it difficult to prosecute a claim.

The amendment proposes to narrow the definition of the responsible party by explicitly setting out a class of individuals. The application of the new language will hold directors of a body corporate responsible for the noise control offences committed by the body corporate. The threat of criminal fines, imprisonment and adverse publicity for corporate officers should deter socially unacceptable environmental behaviour.

Many corporations may claim that such an amendment unfairly target the construction business and will deter further investment. This seems hardly the case. The law provides for a statutory defence of due diligence which means that as long as management can prove that they are doing the best they can to comply with the law, they will be safe. The legislation itself will set out codes of practice that will clearly define standards of good behaviour.

Presently firms flaunt the noise control ordinances because the cost of the fines are less than the cost of compliance. Unfortunately this means that the firms who purchase relevant environmental technology to comply with the law will be at a competitive disadvantage in the bidding process. This amendment should mean that all firms will comply with the law. It should create a more even playing field and improve competitiveness.

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The establishment of a white collar crime is nothing new to Hong Kong's pollution control law. The air pollution control ordinance, waste disposal ordinance, water pollution control ordinance and environmental impact assessment ordinance already set out personal liability standards. One of the major problems with the enforcement of the law is that prosecutors have had very little experience in bringing these complex legal actions. To my knowledge the Department of Justice has only brought two such corporate liability actions. Issues such as attributing responsibility for policy-making in a corporate culture are not easy to prove. There are few, if any, government lawyers specializing in environmental issues. Whether this amendment will actually prove more effective in achieving sound environmental management practice, only time will tell.

Yours faithfully,

Bryan Bachner  
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Associate Professor of Law