

Dear Members of EA Panel,

As the EA Panel will be looking into the Disney project again next Monday, Friends of the Earth would like to inform the Panel that we will be sending our complaint letter to Audit Commission requesting a thorough investigation about the misuse of public money in Disney project.

Our complaints are:

1. **The Director of Environmental Protection Department has irresponsibly taken the risk to endorse an incomplete environmental impact assessment report, exposing the public to an unknown liability of land decontamination and therefore resulting in mis-use of public money.**
2. **The Absence of Land Contamination Law has resulted in mis-use of public money. According to information provided by EPD in response to FoE ' s enquiries, dated 9 April 2002, there are more than 1700 industrial establishments that may cause land contamination (Pls refer to Table 1 of the attachment).**

For more details of our complaint, please kindly refer to the attached document.

Thank you very much for your kind attention.

**All the best,**

**Daphne Mah**

Campaigns Coordinator

Friends of the Earth (Hong Kong)

Website: <http://www.foe.org.hk>

23 June 2003

Mr D Y T Chan, JP  
Director of Audit,  
Audit Commission  
25 and 26/F, Immigration Tower,  
7 Gloucester Road,  
Wan Chai, HK

(By fax: 2824 2087 and email: dominic\_yt\_chan@aud.gov.hk)

Dear Mr Chan

**Complaint about the misuse of public money on the decommissioning of  
Cheoy Lee Shipyard in Penny's Bay**

Friends of the Earth (Hong Kong) hereby lodges a complaint against the director of Environmental Protection Department for the mis-use of public money on the decommissioning of Cheoy Lee Shipyard.

**Background of the Decommissioning Project**

The Cheoy Lee Shipyard (CLS) was located in Penny's Bay, northeast Lantau. CLS had been in operation for boat manufacture, repair and maintenance from 1964 to April 2001, when the site was finally returned to the Government on voluntary surrender for the construction of the Hong Kong Disneyland.

The Environmental Impact Assessment (EIA) report of the decommissioning project was published in February 2002. The report found that the shipyard was containing 80,000m<sup>3</sup> of contaminated soil, of which 30,000m<sup>3</sup> was contaminated by dioxin. As a result, the decontamination cost surged from \$22 million, as quoted in November 1999 when it was estimated there would be no dioxin contamination, to \$450 million.

Despite the Finance Committee of the Legislative Council approved the budget of this decommissioning project in last spring, the liability of the decontamination cost was an unknown.

In the LegCo Paper of Public Works Subcommittee (LC Paper No. PWSC109/01-02) dated 8 May 2002, it is said that *“Given that the extent of contamination at the CLS site is much higher than expected, doubt has been cast on whether CLS had been operating under approved conditions. Questions have therefore been raised on whether CLS should be held responsible for the decontamination cost under the polluter-pays principle,”* and *“Government lawyers are still considering the possible avenues which might be pursued in relation to the contamination of the site”*.

A year has elapsed, but to date the government has still failed to disclose the details of the liability, i.e. whether the government can undertake litigation against CLS to claim back the decontamination cost.

We are of the view that it is unjustifiable that the legal advice will take more than a year to clarify the liability of the decontamination.

In fact, it is a very slim chance that the Government can make the Cheoy Lee liable. FoE is legitimate to challenge that “seeking legal advice” is simply a tactic to deny responsibility of the fiasco of the liability issue and to cover up its negligence based on the following reasons:

- a) Hong Kong Government is well aware that there is no land contamination law that enables the authority to actively prosecute land contamination action.
- b) Even referring to the US standard that allow 5-20 ppb of dioxin contamination in industrial land, the 9 ppb average dioxin contamination level found in the CLS as an industrial land is still well within acceptable range.

FoE is disappointed that the Government has been hiding behind inaction, whilst taking no proactive measures to explore legislative and administrative processes to prevent future risks of similar nature.

### **Our Complaints**

**1. The Director of Environmental Protection Department has irresponsibly taken the risk to endorse an incomplete environmental impact assessment report, exposing the public to an unknown liability of land decontamination and therefore resulting in mis-use of public money.**

The Director of the Environmental Protection Department irresponsible endorsed the environmental impact assessment (EIA) report of the Disney project, namely the “Construction of an International Theme Park in Penny’s Bay of North Lantau together with its Essential

Associated Infrastructures”<sup>1</sup> in April 2000, even though EPD was well aware of the two fundamentally flaws of this EIA report as follows:

a) the EIA report failed to cover an assessment of the decommissioning of CLS.

The EIA report was endorsed by EPD in April 2000, but at that time the report had a big missing piece - the assessment of the decommissioning of the CLS as CLS was still occupied by the tenant whom refused to allow site investigation for the EIA. The issue of unknown risk of the decommissioning project was left behind and the reclamation work of the Penny’s Bay commenced in summer 2001, shortly after the EIA report was endorsed. It was only until April 2001, when the government resumed the land that the project proponent, i.e. the Civil Engineering Department, was able to gain access to the site and finally undertook the EIA of the decommissioning project. The EIA report of Cheoy Lee Shipyard, published in February 2002, revealed that 30,000m<sup>3</sup> dioxin-contaminated soil needed to be cleaned up.

b) The Disney EIA report was a fast-tracked report that had only taken four months from gathering baseline information to submitting the final report to EPD, in stark contrast to the usual practice of having a year-round baseline data. As a result, the report failed to provide comprehensive assessment.

It should be emphasized that **Friends of the Earth had sent out early warning about the potential risk of the decommissioning of CLS prior to the endorsement of the EIA report of the Disney project in various occasions** including:

a) In FoE’s complaint letter to the Ombudsman dated **23 March 2000**, FoE had alerted the HKSAR Government that *“we have legitimate reason to challenge that the basis of Government’s decision making was based on incomplete information and in effect risking the tax payers money. Particularly, without a proper environmental impact assessment conducted to address the level of contamination of the shipyard, on what basis could the government judge if the land will be ready for construction and to pressure all relevant departments to rush through the needed process? No comprehensive environmental assessment has been conducted at the time when the site has been chosen and yet it could carry infinite environmental liabilities over time.”*

b) In FoE’s letter submitted to the EIA Subcommittee of the Advisory Council on the Environment **dated 5 April 2000**, FoE questioned that the Administration had overlooked the potential risk of the decommissioning project (please refer to Question 19 to Question 31 of Attachment 1)

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<sup>1</sup> The EIA report of “Construction of an International Theme Park in Penny’s Bay of North Lantau together with its Essential Associated Infrastructures” was approved by the Director of Environmental Protection Department in April 2000.

Friends of the Earth holds the view that **the Director of Environmental Protection Department wrongly, and irresponsible ignored warning from the community, and “gambled” on an unknown liability with public money** when it endorsed the incomplete EIA report of the Disney project in 2000.

The unprofessional judgment of the Director of the Environmental Protection Department has now turned the HKSAR government, and therefore the taxpayers, into the loser of this gambling game.

## **2. The Absence of Land Contamination Law has resulted in mis-use of public money.**

The polluter of the CLS, instead of the public, should have held responsible for the decontamination cost. The incapacity of the authority to carry out proactive investigation in CLS before the surrender of the site has demonstrated that a land contamination law is needed to avoid reoccurrence of such fiasco.

Existing legislations are inadequate. For example, the Waste Disposal Ordinance allows no proactive monitoring of sites with potential land contamination. On the other hand, the Environmental Impact Assessment Ordinance only covers designated EIA projects – only part of the projects with potential of land contamination.

According to information provided by EPD in response to FoE’s enquiries, dated 9 April 2002, there are more than 1700 industrial establishments that may cause land contamination.

**Table 1: Existing Industrial Establishments with Potential of Land Contamination**

<b>Industrial Establishments</b>	<b>No.</b>
1. Oil Installations	6 oil depots and about 190 petrol filling stations
2. Gas Works	2
3. Power Plants	4
4. Shipyards/Boatyards	2 major ones plus a number of small ones
5. Chemical Manufacturing/Processing Plants	2 major ones
6. Steel Mills/Metal Workshops	1 major steel mill and over 50 metal workshops with record of producing chemical waste
7. Car Repairing/Dismantling Workshops	Over 1500
	<b><i>Total: over 1757</i></b>

### **Best timing for an audit**

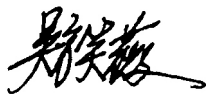
The Disney Theme Park project EIA from the start is a speedy project that allows no comprehensive evaluation of the environmental impacts at the early planning stage.

The fact that 30,000m<sup>3</sup> dioxin-contaminated soil is found in CLS, a site that was once firmly believed as an area free of dioxin, has been unveiled for more than a year. We consider now is the best timing to urge the Audit Commission to carry out a thorough investigation about the mis-use of public money involved in the decommissioning of CLS. We hope that your investigation will help the Government enhance public sector accountability that is in line with the mission of the Audit Commission.

Equally importantly, we hope that your investigation will prevent reoccurrence of having the public to bear the decontamination costs for polluters. Those more than 1700 industrial establishments are virtually "time-bombs" of land contamination. We hope that your findings will urge the Government to stipulate a land contamination law.

Thank you very much for your kind attention. We look forward to your investigation that will bring us a more accountable government and a better environment.

Sincerely yours,

A handwritten signature in black ink, appearing to be the name 'Mei Ng' in a stylized, cursive script.

Mei Ng  
Director