

Environmental Law Conference 2012



Enforcement and Awareness

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1



環境保護署

Environmental Protection Department

The various pieces of legislation enforced by EPD

- Air Pollution Control Ord., Cap. 311
- Waste Disposal Ord., Cap. 354
- Water Pollution Control Ord., Cap. 358
- Noise Control Ord., Cap. 400
- Ozone Layer Protection Ord., Cap. 403



2



環境保護署

Environmental Protection Department

The various pieces of legislation enforced by EPD

- Dumping at Sea Ord., Cap. 466
- Environmental Impact Assessment Ord., Cap. 499
- Hazardous Chemicals Control Ord., Cap. 595
- Product Eco-Responsibility Ord., Cap. 603
- Motor Vehicle Idling (Fixed Penalty) Ord., Cap. 611

3



環境保護署

Environmental Protection Department

Other pieces of legislation to protect our Environment

- Forests and Countryside Ord., Cap. 96
- Buildings Ord., Cap. 123
- Town Planning Ord., Cap. 131
- Public Health & Municipal Services Ord., Cap. 132
- Oil Pollution (Land Use and Requisition) Ord., Cap. 247

4





環境保護署

Environmental Protection Department

Other pieces of legislation to protect our Environment

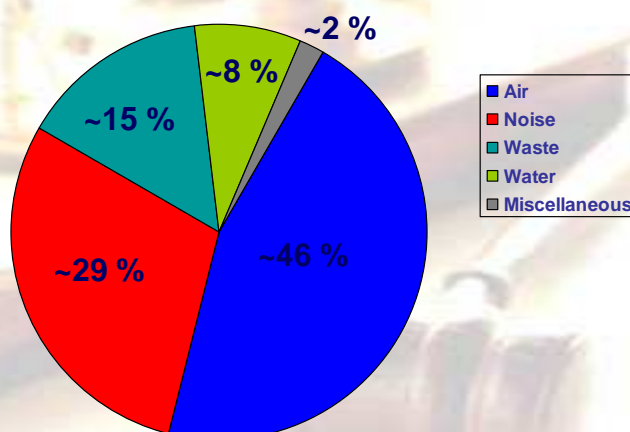
- Merchant Shipping (Prevention and Control of Pollution) Ord., Cap. 413
- Marine Parks Ord., Cap. 476
- Protection of the Harbour Ord., Cap. 531
- Buildings Energy Efficiency Ord., Cap. 610

5



Air & Noise

The majority of our Concerns



Complaints received in 2011

6

Nuisance



7

Hong Kong is a “迫” city!

- Scarcity of Land
- High Rise Buildings

“迫” in Cantonese is pronounced as “big” in English.

“Hong Kong is a “迫” city.” means Hong Kong is a congested city.

Is Hong Kong a “BIG” City?

Area of HK: ~1,108 sq km

but only ~20% is urban area

Population of HK: > 7,000,000 people

**Population Density of HK
is the 4th in the world**

9

S.10 of APCO

(1) Where ... an authorized officer is satisfied that the emission of air pollutants from a polluting process is causing or contributing to air pollution which exists or which is imminent, the Authority ... may give an **air pollution abatement notice** ... to the owner of the premises or to the person carrying out the activity requiring him-

- (a) to cease the emission of air pollutants ...;
- (b) to reduce the emission of air pollutants ...;
- (c) to take other steps to abate the emission of air pollutants from the premises or polluting process.

10

S.10 of APCO

(2) In determining whether the emission of air pollutants is causing or contributing to air pollution which exists an authorized officer may take into account ...

(h) any of the following effects which, in the opinion of the Authority or the authorized officer, is caused by or contributed to by the emission ...

(ii) an objectionable odour ...

11

Odour Assessment

Is subjective assessment by human nose acceptable?

R (on the application of United Kingdom Renderers Association Ltd)

v

Secretary of State for the environment, Transport and the Regions

(2002) Env LR 21 510

12

Odour Assessment

Is subjective assessment by human nose acceptable?

Ousely J : “it is not irrational for a court to be able to receive and rely on the evidence of an inspector that he smelt a smell and it smelled horrible. He may be untruthful, he may be unreliable, he may be unduly sensitive, but the courts are not unaccustomed to dealing with that sort of issue”

The judgment was adopted in the New World First Bus case Air Pollution Control Appeal No.3 of 2003

13

Noise Assessment

dB – Noise Meters

Does 2 noise sources, each of 60 dB(A), result in a total of **120** dB(A) ??



60dB



60dB

i.e. any additional 3 dB(A) means doubling the noise energy



60dB



120dB

14

Noise Nuisance

Neighbourhood Noise

(e.g. mahjong noise, TV noise, etc)

-Subjective Assessment

Construction Noise

(e.g. piling noise, breaker noise, etc)

-Regulated by Permit System

Miscellaneous Noise

(e.g. pub music, cooling tower noise, etc)

-Subjective Assessment & Noise Measurement



15

Noise v Quietness

Mr Justice Bokhary PJ :

“Objection can be taken on constitutional grounds to any law, regulation or administrative action that creates a state of uncertainty in which persons are inhibited from enjoying their fundamental rights and freedoms in full measure. But playing loud music is not a fundamental right or freedom. And the law does not accord it precedence over the peace and quiet that people can reasonably expect to enjoy.”

16

Noise Assessment Inaudibility

In the Court of Final Appeal case *Noise Control Authority & Another v Step In Limited* (FACV No. 11 of 2004), it was held that the best instrument to measure inaudibility is again the human ear.

17

Noise Assessment Inaudibility

Sir Gerard Brennan NPJ :

“... although there is some variation in human auditory capacity, the paper written by Professor Craik ... shows that the subjective assessment of audibility is much more uniform and practical than assessment with a sound level meter ...

Application of the “not audible” requirement does not produce a uniform quantifiable measurement but it does produce an objective standard or limit ... ”

18

Nuisance is a balancing of Rights

Environmental Protection \neq Zero Emission

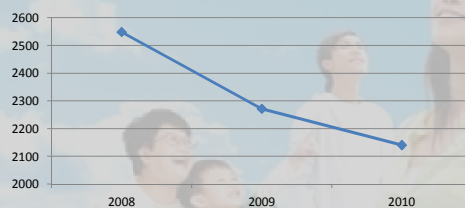
The art of living together in a congested city:

- Be considerate to others
- Better planning of activities
- Provision of the necessary mitigation measures

19

A better living place for the people of Hong Kong

Air Pollution Complaint (Malodour)



Noise Pollution Complaint
(received by EPD)

