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DEVELOPING LAW ON ENVIRONMENT PROTECTION (AMENDED)

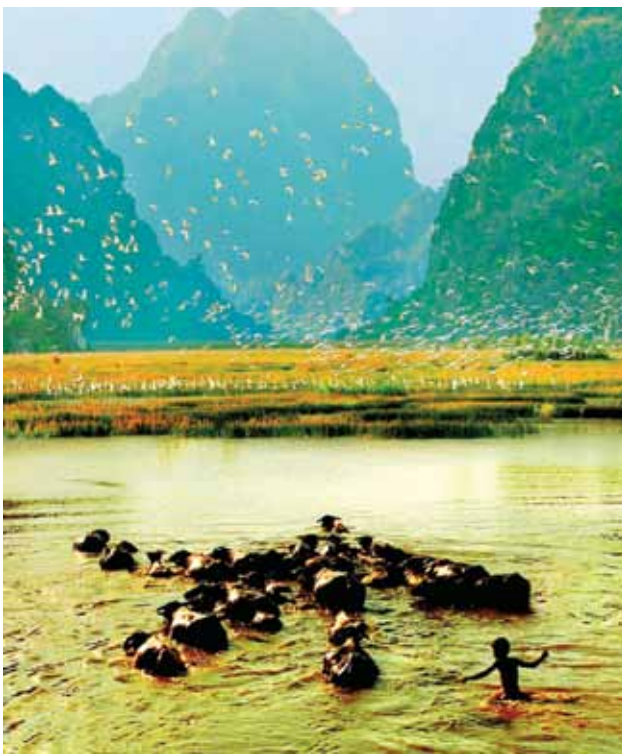


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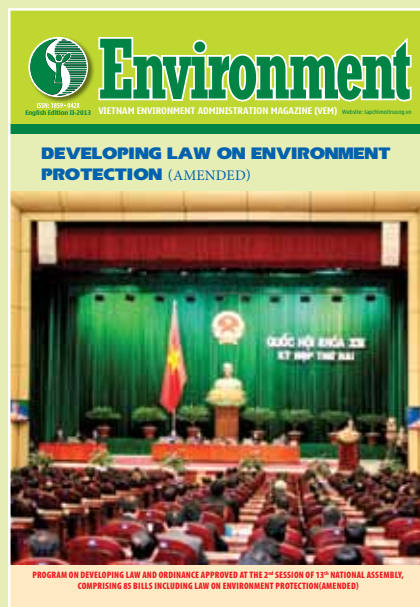
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**DEVELOPING LAW ON
ENVIRONMENT PROTECTION**
(AMENDED)

Price: 30.000VND



SOME MAIN PRINCIPLES FOR DRAFTING Law on Environmental Protection (amended)



Ass. Prof. Dr. BUI CACH TUYEN
*Vice Minister cum Director General
Vietnam Environment Administration*

RATIONALE FOR AMENDING LAW ON ENVIRONMENTAL PROTECTION 2005

Law on Environmental Protection (LEP) 2005 was approved at the 8th session of the 11th National Assembly on 29 November 2005 and took effect on 1st July 2006. After eight years of implementation of the LEP 2005, environmental protection in Vietnam has made considerable progress. Environmental policies, regulations and organizational structure have been established and improved. Financial and supportive resources have been increased to meet practical demand. Science and technology and international cooperation have made important contributions to environmental protection. Environmental awareness of the Party, Government, mass organizations and citizens has made positive progress. Understanding of the need for environmental protection has been established. Pollution prevention and control have been strengthened to contribute to reducing pollution. Environmental remediation and improvement have been gradually enhanced, contributing to the clean up of contaminated sites. Conservation efforts have curbed biodiversity losses. Environmental and biodiversity surveys, monitoring and assessment have been implemented. Automated environmental monitoring stations

have been built. Environmental information systems have been developed and attracted due attention in environmental management.

However, a review of eight years of implementation of LEP 2005 also shows that amendment of the law is necessary to meet the requirements of new conditions. Some environmental regulations are outdated and failing to meet current social requirements and the demand for international integration. In addition, overlaps and inconsistencies have arisen between environmental regulations and other regulations. Renewals of environmental policies have been slow and incompatible with a market-oriented economy. Decentralized environmental management remains fragmented, with overlapping and unclear divisions of responsibility, which does not serve to strengthen capacity. Many ministries are assigned tasks to implement state environmental management; however, principles to address inter-regional and inter-sectoral issues have not been clearly established. This has led to unsatisfactory cooperation among the agencies, and hampered the leading role of the Ministry of Natural Resources and Environment (MONRE) in



assisting the Government to perform state management tasks. Environmental regulations have not created suitable mechanisms for promoting effective participation of the business sector and members of the public in environmental protection.

These shortcomings need to be addressed quickly. In addition, the Party's new view points, orientations and policies relating to environment have been issued recently. In particular, at the 7th Congress of the 11th Party Committee, Resolution 24-NQ/TW on proactively responding to climate change, enhancing natural resource management and environmental protection was issued on 3 June 2013. In the meantime, emerging issues such as climate change, environmental security and ecological security require regulations to be updated in order to provide comprehensive and strong measures and solutions to the problems. The above-mentioned issues also trigger the need for amending LEP to meet new practical requirements.

SOME VIEW POINTS AND ORIENTATIONS FOR AMENDING LAW ON ENVIRONMENTAL PROTECTION

Drafting a new version of the LEP is aimed at addressing the shortcomings of its implementation over the last eight years and moving towards a comprehensive legal system to strengthen the effectiveness of state environmental management. In the meantime, the amended LEP needs to update and realize the new view points, orientations and policies of the Party as highlighted in Resolution 24-NQ/TW dated 03 June 2013 on proactively responding to climate change, enhancing natural resource management and environmental protection. It needs to meet new requirements of transition to environmentally friendly growth models, restructuring the economy and promoting green growth and sustainable development in Vietnam. The Government has set view points and orientations for the amended LEP as follows:

Firstly, the environment is a global issue. Environmental protection must be considered as an objective as well as a component of sustainable development. Enhancing environmental protection must follow the principle of harmonizing with nature, following the law of nature, and making prevention the main measure; incorporating pollution control, pollution remedy, environmental rehabilitation, biodiversity and nature conservation, considering the protection of human health as a primary objective; and decisively eliminating polluting projects. Investment in environmental protection is investment for sustainable development.

Secondly, we must continue understanding and realizing that environmental protection is a common concern for the whole Party, all people and armed forces; mobilizing the effective participation



of the whole of society and taking advantage of international community support for environmental protection in Vietnam; addressing the shortcomings of the division of responsibility in environmental management in a timely manner to ensure the capacity of each sector and level; and to continue to enhance the socialization of environmental communication and environmental service provision.

Thirdly, the pursuit of economic objectives without proper consideration of environmental consequences should change. Integration of environmental protection requirements into development strategies, planning and investment should be enhanced. Environmental targets should be used to assess the quality, effectiveness and sustainability of socioeconomic development in each country, sector and locality.

Fourth, amendment of LEP must comply with the constitution and the Party's policies on environmental protection, while inheriting the advantages of the LEP 2005, selectively using international experience in developing laws, and suitably fitting with current socio-economic conditions of Vietnam. Regulations must be transparent, realistic and detailed so that the need for secondary legislation is minimized.

Fifth, the consistency of environmental regulations and other regulations must be ensured to maintain the rule of law and law enforcement. Environmental management must be consistent between central and local levels. Responsibilities of organizations and individuals must be highlighted.

Recognizing the importance of developing a amended LEP to guide the sustainable development of the country, under the close direction of the government, MONRE has been actively cooperating with other ministries, localities, international organizations, and experts to review, revise and develop a new draft LEP.



MAIN AMENDMENTS OF THE NEW DRAFT LEP

The draft has 19 chapters and 160 articles. The main amendments include:

Regarding the number of chapters and articles: the new draft has an additional 4 chapters and 24 articles compared with the LEP 2005. It has a new order of chapters based on the priority level of the issues. The new chapters are about water, air and soil environments, the rights and obligations of the Vietnamese Fatherland Front, mass organizations, civil society and the community.

Regarding environmental impact assessments: the bill specifies three groups of projects that will be subject to environmental impact assessment(EIA). It is more comprehensive as it covers all projects that need to make EIA. It also has a new regulation that large-scale projects that will potentially have a significant impact on the environment shall be subject to a two-tier EIA: preliminary and detailed assessment. This will minimize

the number of projects that make detailed EIAs that don't get approved.

Regarding air and soil environment protection: The bill has additional regulations on the principles of protection of soil environments, soil environmental quality, and pollution control. According to these regulations, the protection of soil environments is the protection of land resources; all organizations and individuals who use land are responsible for protecting the soil environment; and polluters are accountable for clean up and recovery. These regulations hold organizations and individuals responsible for soil environment protection, and provide the legal framework to expand soil environment regulations. The bill regulates that all emissions shall be controlled, and polluters shall be responsible for their own emission control.

Environmental protection plans: While the environmental impact assessment is an effective tool for new projects, we are lacking a tool that can manage



▲ Photo: Lai Dien Dam

existing facilities. Environmental protection plans are proposed to fill this gap. Owners of existing facilities are responsible for making environmental protection plans which specify pollution prevention and control, waste management, environmental accident responses and biodiversity conservation activities through out their operation as stipulated by law.

Waste management: A waste management principle has been added to regulate all waste management activities. According to this principle, waste shall be managed from its source, reduced, segregated, collected, stored, transported, reused, recycled and treated. Organizations and individuals who have waste reduction, reuse, and recycling strategies shall receive preference from the state. It also adds new regulations to promote waste reuse and saving natural resources, regulations on responsibilities of consumers and state management authorities in addition to responsibilities of producers in collecting and disposing of expired and discarded products, and regulations on responsibilities of investors in industrial zones and export processing zones in waste

management. To address obstacle in hazardous waste management, the bill proposes six principles in managing hazardous waste, and adds conditions for operating businesses that produce hazardous waste.

Regarding environmental monitoring: The bill adds regulations on environmental monitoring responsibilities and data management. It specifies responsibilities of MONRE, Provincial People's Committee, management boards of industrial zones, export processing zones and industrial clusters, and owners of production, trade and service facilities in environmental monitoring, to ensure the quality of environmental monitoring, and data management and usage.

Regarding environmental information and reporting: The bill adds regulations on responsibilities for the collection, storage and provision of environmental information, with the aim of developing a comprehensive and concrete environmental information system for environmental management and socioeconomic development strategies and planning. It adds regulations on the reporting responsibilities of

government authorities, content of the state of the environment reports, and environmental protection performance in the implementation of socioeconomic plans from provincial to commune levels.

Regarding the rights and responsibilities of the Vietnamese Fatherland Front, mass organizations, civil society and the community: The regulations on the rights and responsibilities of the Vietnamese Fatherland Front, mass organizations, civil society and the community are specified in a separate chapter with more detailed regulations on the rights and responsibilities of these organizations in reporting, participating in dialogues, participating in supervision, and participating in environmental protection to enhance its socialization.

In addition, to ensure the comprehensiveness of environmental management, the bill adds some regulations on the application of science and technology in environmental protection. It also provides more detail on priorities for research, transfer, and development of science and technology in environmental protection, and the responsibilities of the Ministry of Science and Technology, Ministry of Finance, and MONRE in this area. It adds and specifies the responsibilities of households and production, trade and service facilities in industrial villages, and the responsibilities of communal, district and provincial People's Committees in environmental protection in industrial villages. It also adds regulations on environmental protection at research centers and laboratories. Research centers and laboratories generating waste are responsible for collecting, segregating and treating the waste and having plans for environmental accident prevention and response.

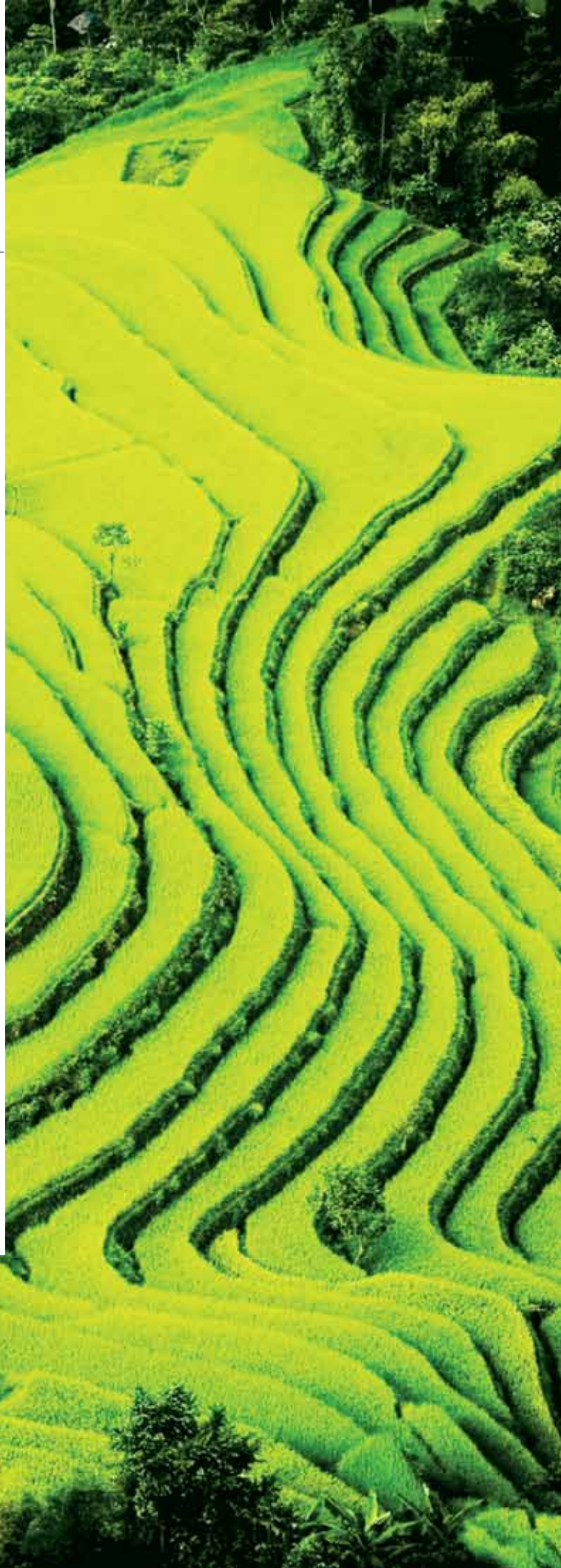


SOME POINTS TO BE DISCUSSED

The bill has been reviewed by the National Assembly's Science, Technology and Environment Committee. The drafting committee will continue to finalize the bill to submit to the National Assembly for final approval. The points still requiring more work are:

- Continue to clarify and specify some points such as regulations on strategic environmental assessment, environmental impact assessment, environmental protection commitment, and verification of completion of environmental protection works.
- Complementary regulations to provide a legal basis for clarifying responsibilities of organizations and individuals in environmental violations.
- Climate change: the bill has one article providing principles for integrating environmental protection into climate change mitigation and adaptation strategies, regulations on greenhouse gas mitigation, green growth, environmentally friendly products, clean energy development, pollution control, biodiversity conservation, and integrating climate change responses into natural resource exploitation. The drafting committee will continue to study, revise and add further detail to these regulations.

The draft of amended LEP will be finalized and submitted to the National Assembly at the 6th session, and will be reviewed for approval at the 7th session. Once approved, the bill will make a significant contribution to strengthening environmental management, and contributing to the achievement of environmental objectives set out in the 11th Party congress■



Some input for improvement of the Law on Environment Protection (amended)



Dr. VÕ TUẤN NHÂN
*Deputy Chair - National
Assembly Committee for Science,
Technology and Environment*

The draft law submitted by the Government to the National Assembly has been carefully prepared and in principle is in line with the Law on Issuance of Legal Documents. The drafting committee has taken stock of the 8 years of implementation of the 2005 Law on Environment Protection (LEP) with reference to other countries' legislation and policies on environmental protection, and evaluation of the impacts of the draft law and its attached guiding decrees once adopted.

From a close study of the documents, I would like to make some input to the draft LEP (amended) as follows:

1. Environment protection in exploitation and utilization of natural resources and adaptation to climate change (Chapter III)

The combination of the two questions of "environment protection during the exploitation and

The Government has tasked the Ministry of Natural Resources and Environment to draft the Law on Environment Protection (amended). To date, the Government has submitted its Report No. 315/TTr-CP dated August 30, 2013 attached with the draft law to the National Assembly, and National Assembly delegates will debate this draft at the 6th Session of the 13th National Assembly.

utilization of natural resources" and "adaptation to climate change" is inappropriate. Moreover, the question of response to climate change in the draft LEP (Amended) is vague and shown in just one article, i.e. Article 26. Yet it is able to institutionalize the key policies, tasks and measures to respond to climate change, as identified in Resolution No. 24-NQ/TW of the 7th Plenary of the 11th CPV Central Committee on "Proactive response to climate change, enhanced natural resources management and environment protection". Response to climate change is a task of special importance for our country today and pending an independent law on this issue, it is necessary to develop a separate chapter on the response to climate change that stipulates the principles for State management; on the rights, obligations and responsibilities of organizations and individuals in responding to climate change in the draft law, to manifest the spirit of a "proactive response to climate change".

2. Responsibilities of State management agencies on environment protection (Chapter XIII)

The draft Law has already reserved a whole chapter to detail the responsibilities of the Government (Article 126), the Ministry of Natural Resources and Environment (Article 127), the Ministers and

Heads of Ministerial-level agencies and other bodies of the Government (Article 128), as well as the responsibilities of the People's Committees at all levels (Article 129). However, this chapter is far from covering the entire range of issues relating to State management of environment protection. It is yet to provide full and systematic responsibilities of the Ministries and agencies. Legal provisions for the Ministries and agencies are only found scattered in different articles, hence the possible overlapping or negligence of these bodies' responsibilities.

As such, it is necessary to check and systematize the responsibilities of the Ministries, agencies and People's Committees at all levels to provide for clear and full responsibilities of these bodies on State management of environment protection.

3. Adjusting and amending the provisions on strategic environment assessment, environment impact assessment, and environment protection plan.

On strategic environment assessment as stipulated in Part 1 of Chapter II: Article 8 of the draft Law requests the strategic environment assessment (SEA) for various objects. In comparison to the 2005 LEP, the draft Law has added new categories of objects for the strategic and planning groups whose strategic en-



▲ *Workshop on Commenting on amendment the Law on Environmental Protection 2005*

vironment assessment is required, and removed this requirement for the plans. The categorization of the objects for SEA is necessary, but the drafting committee should check and supplement the right and complete types of strategies and master-plans requiring this SEA. It should also remove the provision on SEA for plans, since these plans might have adverse impacts on the environment.

On the environmental impact assessment (EIA) stipulated in Part 2 of Chapter II: the draft supplements a provision requiring projects whose investment is decided by the National Assembly and the Prime Minister, and other projects falling in the list of the Government, for compulsory submission of the preliminary EIA and EIA. In practice, a number of projects to date have found that their environment impact assessments reveal adverse environmental impacts when preparing the investment reports and seeking investment guidelines, hence their suspension and the subsequent waste to in-

vestors and society. Therefore, the provision on the two-stage EIA for major projects which might have adverse impacts on the environment as stipulated by the Government is necessary. However, this regulation might induce complicated and burdensome administrative procedures. The preliminary assessment might also cause waste and loss for investors and society, and create conflict with other legal provisions in other laws (such as the Law on Investment...). At the same, Paragraph C of Item 2 in Article 14 of the draft Law also stipulates that "Preliminary assessment must have the written reference of the MONRE". As such, it is necessary to study and review this provision to ensure that no further administrative procedures are created, and to avoid wastefulness for investors and society.

On the environment protection plan: the draft law says that the environment protection plan will replace the environment protection commitment. Owners of production, business and service

undertakings will have the right to decide their own environment protection measures within the environment protection plan.

The environment protection commitment is a legal provision that has been applied for many years, and if now removed, a tool to screen environmental issues for small projects will be lost. Moreover, the environment protection commitment and environment protection plan are two different concepts. The environment protection commitment is in fact a simple form of EIA used as a foundation to decide a project or make an investment proposal in the initial phase; while the environment protection plan is the outcome of real calculations on environment protection for a production, business or service undertaking in its operation phase and therefore, cannot be replaced.

As such, it might be good to consider keeping the environment protection commitment provision, while at the same time making a clear provision for the objects



eligible for appropriate environment protection commitment.

On consultation during the implementation of the EIA and methods (Articles 15 and 16): In practice, the consultation with the administration and Fatherland Front at all levels, as well as the related communities of the project during its construction, and the evaluation of the EIA, have proved to have good effects. However, as per the provisions of Articles 15 and 16 of the draft Law (amended), the scope of objects for consultation for the EIA remain small, and the method for consultation is not specific and scientific, hence the limited effects of consultation. It is therefore necessary to redefine these provisions in order to broaden the scope of objects eligible for consultation, and provide for a more scientific and concrete method of consultation with the communities related to the project in the course of making the EIA.

4. Initiation of lawsuit on environment (Article 153) and compensation for environmental damages (Chapter XVIII)

Damages caused by environmental pollution could be either detected within a short time from the date of violation, or years after. However, the Civil Code has general provisions for the prescription time for any lawsuit claiming compensation of two years from the date of the legitimate rights and interest of the organizations or individuals. In practice, in many cases the prescription time has expired by the time damages caused by environmental pollution are detected. As such, the draft Law should have stipulations on the prescription time and claim for environmental damages for two years from the date that

organizations or individuals detect violations to their legitimate rights and interests.

5. Environment protection in scrap importation (Article 52)

Paragraph 15 of Article 3 of the draft Law defines “scrap”. However, by nature, scrap always contains a certain quantity of waste including harmful substances, and the provisions on scrap management (Chapter III) of the draft Law do not mention the management of waste in scrap importation.

In the mean time, Article 52 on environment protection in scrap importation is not specific, remains in general terms, and is unclear. In the system of environmental standards (Chapter X), there is no provision on environmental standards for imported scrap.

From the above-said discrepancies, there arises the need to study and make clear provisions in the draft Law on the groups of scrap eligible for import, as well as provisions requiring the Government to release a list of scrap permitted for import from foreign countries, enterprises in the export processing zones, and enterprises in the non-tariff zones into the domestic market. It is also necessary to supplement environment standards for scrap eligible for import, and prohibition on imported scrap trade. At the same time, the Drafting Committee should also study and supplement Article 128 of the draft Law on the responsibilities of the Ministries of Public Security, Science and Technology, and Finance, in the management, supervision and control of the importation and utilization of scrap, as well as the stockpiling, re-export and obliteration of

scrap imported against regulations.

6. Some other matters

On environment monitoring (Chapter XI): In practice, there have been production, business and service undertakings operating with very small scale emissions, but the provisions in Paragraph 3 of Article 109 of the draft Law requires them to apply an emission monitoring program. This provision is not appropriate, and should be based on the scale and nature of the emission source to apply suitable emission monitoring programs.

On prohibited acts: The draft Law should retain the provisions prohibiting the production, transportation, stockpiling, trade and use of firecrackers, as stipulated in Paragraph 4 of Article 85 of the 2005 LEP, and continue to prohibit “All forms of dumping waste in the waters of the Socialist Republic of Vietnam”.

The amendment of the 2005 LEP aims to improve and repair the discrepancies of the legislation on environment protection; further institutionalize the Party’s and State’s policies and guidelines on environment protection in the new context, particularly after the adoption of Resolution 24-NQ/TW of the 7th Plenary of the 11th CPV Central Committee on Proactive response to climate change; and enhance natural resources management and environment protection. It also aims to meet the needs of industrialization, modernization, and the transition of the economic growth model from horizontal to vertical, to ensure national sustainable development and serve international integration. As such, the adjustments and amendments are necessary■



Dr. NGHIÊM VŨ KHÀI
*Deputy Minister of Science
and Technology*

Scientific and technological activities in service of environmental protection

Implementing the 2005 Law on Environmental Protection (Article 108), Resolution 41-NQ/TW on November 15, 2004 and the Instruction 36-CT/TW of the Political Bureau on intensification of environmental protection in the national industrialization and modernization, since 2005, the orientation of the scientific and technological researches on environmental protection has been determined by the Ministry of Science and Technology as an important task.

1. Scientific and technological research in service of making policies on environmental protection

To supply the scientific argument for building the planning of environmental protection, all the State-level independent scientific and technological research subjects and the Ministerial-level research subjects have focused on settling the environment issues of macro character such as the planning of environment in the key areas (the Red River delta, the Cửu Long River delta, the Central key economic zone); researches in integrating environment issues with the use of resources, economic and social development to build up scientific basis for sustainable development for territorial areas (the Central Highlands, Quảng Bình-Quảng Trị special ecological zone, the Southern key economic zone), the river basin areas (the Đà River, the Ba River, the Côn River, the Lô River and the Chảy River).

In rural areas, in craft villages and farming environment, it has already been studied in compliance with the ecological areas and terrain so as to give a panoramic picture of rural environment, Vietnam craft village and farming environment in multi-

dimensional relationship in a systematic way. The subject have discovered current specific and pressing environmental issues in accordance with specific ecological zones, with the kinds of craft villages and forecast the tendency of development in the stage to come; another important result is that these subjects have evaluated the impact of a number of policies on the economic and social development on resources and environment. On this basis, a group of policies and concrete solutions for sustainable environmental management has been suggested.

On the environmental economic area, the results of the research of the subjects have made a contribution to throwing light on the things which are still unclear about the nature of environmental economy - a novelty in the scientific area in Vietnam; evaluated the economic importance of the degradation of resources and environment; pointed out the deep economic causes of the environmental degradation, the relation between economic activities in development process; settled step by step the contradictions between economic growth and environmental quality and reasonable use of resources and environmental pro-

tection. On that basis, general managerial measures for environmental protection have been suggested and for sustainable development of the areas under study. All subjects of the Program have been studied in integrating environmental protection issue and reasonable use of resources with economic and social development in sustainable direction. These are general research areas of high inter-sectoral character with attention being paid in the programs in this stage.

2. Applying and developing environmental technologies

Since 2005, the Ministry of Science and Technology has considered over 40 projects proposals concerning investment in treating waste water and garbage proposed by relating departments, sectors or provincial People's Committee and cities, in which a lot of technological solutions have been proposed such as burial, production of microbiological fertilizer, waste recycling technology, brick producing technology or burning technologies.

There are a lot of technological solutions. But it is not so simple to select the treatment technology, because there are both advantages



and disadvantages in each treatment method. On the other hand, each locality has a specific situation of its own, so it is impossible to apply en masse only one treatment technology. Selecting a treatment technology should be based on criteria of technological evaluation in techniques and economy; should be suitable to specific conditions of each locality so as to be able to deploy the implementation of the project; to the costs of technology; social efficiency; to safety and friendliness with environment, the suitability with planning and promulgated criteria and standards concerning environmental treatment. On that basis, it is recommended to apply burial technology, production of organic fertilizer, technology of burning, pressing and packaging, processing garbage into thermal energy and electricity.

3. Orientation of scientific and technological activities in service of environmental protection in the coming stage

To boost the environmental protection work in the coming stage, on March 18, 2013, the Government issued Resolution 35/NQ-CP “on a number of urgent issues in the envi-

ronmental protection area”, in which the solution to raise effectiveness of the State management of environmental protection, one of the 7 pressing solutions, has been determined. On the basis of assigned functions and tasks, ministries, sectors and localities should have close, effective and practical combination in coordinating the implementation of the mapped out solutions, in which it is proposed to coordinate with the Ministry of Science and Technology to carry out 2 following tasks:

- To review and add the list of technologies that limits the transfer and the list of technologies that bans the transfer, in order to stop the transfer of outdated technologies, facilities and equipment that could cause environmental pollution in Vietnam; to study and add the stipulations on environmental protection towards technologies which are under consideration for license granting.

- To build scientific and technological research program in service of environmental protection in the list of the State-level key scientific and technological programs. There are now 3 scientific and technological areas relating to reasonable use

of natural resources, environmental protection and prevention of natural disasters which are being implemented within the framework of the State-level key scientific and technological program KC-08.

4. Proposing content of scientific and technological activities in the Law on Environmental Protection (amended)

The draft Law on Environmental Protection (amended); Article 142 provides scientific and technological development and application in environmental protection. This only raises viewpoint, so it is difficult to be feasible to be applied in realities. That is why, it is necessary to provide responsibilities, rights and obligations of organizations and individuals relating to this task, in which it is necessary to make references and concretize the provisions of the Law on Science and Technology approved by the National Assembly on June 18, 2013. Specifically, all investment projects and economic and social development programs that use the State budget have to make the list of expenditures for building of scientific basis, evaluation of scientific basis, technological level and the settlement of the scientific and technological issues arisen in the process of building, evaluating, approving and implementing the projects. The requirement of environmental impact assessment, strategic environment assessment and the sustainable development should be considered as the prioritized requirement in the process of building scientific basis and technological evaluation. The funding to carry out the tasks should be sourced from the funding of the investment project and from the economic and social development program, not from the currently tight environmental budget■



▲ *State encourages economy sectors investing in waste treatment and environmentally friendly technology*



Needs issuing specific provision on restoration and recovery of the environment in conducting exploitation activities



Mr. HOÀNG NGỌC ĐƯỜNG -
*Chairman of the People's Committee of
Bắc Kạn Province*

★Can you please review on the implementation of the environmental protection policy in Bắc Kạn Province recently?

Mr. Hoàng Ngọc Đường:

Since its establishment and after the enforcement of the Law on Environmental Protection (LEP) in 2005, apart from paying attention to socio-economic development and security-defence safeguarding, Bắc Kạn also attaches importance to environmental protection, maintaining the ecosystem and obtaining the sustainable development goal.

The allocation of personnel and organization of system in the field of environment has been consolidated and developed over recent years. In 2008, Bắc Kạn established the

The draft Law hardly mentions the provision on restoration and recovery of the environment after conducting exploitation activities. To harmonize with the regulation on mine closure according to the Law on Mineral Resources, this provision should be added to Chapter II, under Article 4 on restoration and recovery environment for exploitation of mineral resources - Mr. Hoàng Ngọc Đường - Chairman of the People's Committee of Bắc Kạn province, in an interview with the Environment Magazine reporter.

Environmental Protection Branch under the Department of Natural Resources and Environment. In 2010, Centre for Environmental Monitoring was established and 2013 saw the establishment of the Environmental Protection Fund and Office of Environmental Force. At the communal level, 100% of Chambers on Natural Resources and Environment have recruited and allocated specialists on environmental management. Complying with the LEP and The Guiding Decrees and Circulars by the Government, relevant ministries and agencies, our Province has developed and implemented the Plan for Environmental Protection in Bắc Kạn to 2015 with orientation to 2020, Solid Waste Management Plan until 2020 and vision to 2030, Plan for Exploitation and Use of Water Resources until 2020 and vision to 2030.

The monitoring and evaluation of current environmental status is conducted on a frequent basis to evaluate and track changes in the environment to identify pollution, implement plans and conduct

activities to repair environmental pollution.

The task of checking, inspecting, supervising and handling complaints and denunciations in the field of environment has been strengthened. Each year, The People's Committee assigns competent agencies to develop plans for the inspection of environmental protection in production facilities and businesses in the Province, punish the breach of regulation on LEP. Facilities who produced seriously high level of pollution according to Decision No.64/2003/QĐ-TTg issued on 22 April 2003 by the Prime Minister have been addressed since 2011, namely Pa Danh Brick Factory, base paper production line - Bắc Kạn Forest Ltd., Provincial General Hospital, and Bắc Kạn rubbish dump.

Every year, the province allocates 1% of its budget to environmental expenses for works and projects in the field of environmental protection. In particular, since 2012, we are in the progress to develop a household solid waste disposal model in Cẩm Giàng



commune, Bạch Thông district, control pollution in Chợ Mới and Ba Bể rubbish dumps. In 2013. The Province is equipped with 2 household waste treatment plants and a waste disposal model has been implemented in Phương Viên commune, Chợ Đồn district.

★Conducting Basin Environmental Protection is an urgent task, the top priority of all provinces and cities built on the bank of any river. Cầu River starts from Bắc Kạn. Do you have any further comments on River environmental protection section in the draft LEP (amended)? To enhance the efficiency of state management over Basin Environmental Protection, the MONRE has proposed to establish a Basin Environmental Protection Branch. Can you please comment on this?

Mr. Hoàng Ngọc Đường: On water resource protection, The draft Law on Environmental Protection (amended) has developed from the 2005 Law with clearer set of regulations on the monitoring and evaluation of water and sediment quality of basins, identification of the flow capacity of river basins, information disclosure on the

river parts with no capacity, and responsibility of relevant agencies in intra-provincial, inter-provincial and trans-border Basin Environmental protection. The draft Law also provides additional regulations on the Prime Minister's responsibility in instructing Basin Environmental Protection, the MONRE's responsibility in promulgating and giving guidance on quality standards of water resources and sediments in river basins, and in monitoring and evaluating the environment of inter-provincial basins, the provincial committee's responsibility over intra-provincial basin environmental protection. These are essential and concrete regulations for addressing problems and limitations of the 2005 LEP. From my viewpoint, I completely agree with the amended and additional regulations aforementioned.

As the starting province of Cầu River, we clearly understand the important role of the river to the people's living and production. Amid the current unpredictable development of climate change, environmental pollution and water pollution, the establishment of the

Basin Environmental Protection Branch is a vital and urgent task, which requires a competent agency specialized in this area. And I give my total support for the establishment of this branch.

★As leader of a resource-rich mountainous province, do you have any proposal for the mineral resource exploitation activities put forward in the draft LEP (amended)?

Mr. Hoàng Ngọc Đường: The exploitation and processing of mineral resources have greatly impacted the environment, ecosystem and health of the community. Therefore, environmental protection on mineral resource exploitation activities is given numerous attention by and instruction from the province. In general, law and regulations on mineral resources have focused on the requirements of environmental protection while conducting exploitation activities. Nonetheless, practical implementation has proven the insufficiency of the existing regulations to commensurate with these requirements. In particular, the draft Law hardly mentions the provision on restoration and recovery of the environment after conducting exploitation activities. To harmonize with the regulation on mine closure according to the Law on Mineral Resources, this provision should be added to Chapter II, under Article 4 on restoration and recovery environment for exploitation of mineral resources. Besides completing the draft LEP (amended), we should promptly promulgate decree and circular for timely and user-friendly instruction for localities to quickly adopt and meet the new requirements■



▲ Multi mineral ore processing factory, Nari Hamico Mineral Company, Bắc Kạn



Awareness of and responsibility for environment protection in river basins needed

“Inheriting and promoting the obtained results in its first term, the Committee of Environmental Protection of the Nhuệ - Đáy River Basin continues to coordinate with the ministries, sectors and localities in the basin to have created a tremendous change in awareness and action, making a contribution to raising the awareness and responsibilities of the levels, sectors and organizations in society concerning the task of protecting environment in the Nhuệ - Đáy River Basin in particular and the task of participating in the environmental protection work in general” - said Mr. Mai Tiến Dũng - Chairman of the People’s Committee of Hà Nam province; Chairman of the Committee of Environmental Protection of the Nhuệ - Đáy River Basin in an interview with the Environment Magazine reporter.

★*The draft Law on Environmental Protection (LEP amended) deals with the responsibility of the provincial-level People’s Committee to environmental protection in the river basins. As the Chairman of the province and the Chairman of the Committee of Environmental Protection of the river basins, what is your opinion about this?*

Mr. Mai Tiến Dũng:

According to Article 33, there is no change in the stipulations for the responsibilities of the People’s Committees of provinces and cities in the draft LEP (amended) for water environmental protection in the river basin as compared to the 2005 LEP. However, as for the river basin, environmental pollution usually has the inter-regional character. So, when pollution happens, it is difficult to determine the degree of pollution to see if this is the responsibility of the waster water from the upstream current or from the downstream current. It is often very difficult and inadequate in the investigation, discovery and determination of the river water pollution and the application of treatment measures. In this Article, the LEP should stipulate clearly which province has the rights and responsibilities to conduct investigation, evaluation



Mr. MAI TIẾN DŨNG - Chairman of the People’s Committee of Hà Nam Province; Chairman of the Committee of Environmental Protection of the Nhuệ River - Đáy River Basin

and determination of the degree of pollution and the degree of losses when pollution happens and request the objects which cause the losses to make compensations.

Especially, for the Hà Nam Province, each year, it has to bear from 6 to 12 times of serious environmental pollution in the Nhuệ - Đáy River system and the Duy Tiên River; waste water flows from the upstream of the Nhuệ river through to the Thanh Liệt sluice system into Hà Nam. In recent years, drought has happened time and again, leading to an ever increasing frequencies of river water pollution,

and it has sometimes prolonged for a month. Through the river water samples, it shows that such criteria as COD, NH_4^+ , have gone from ten to a hundred times beyond the allowed standards. Pollutions have caused no small consequences to the people living and aqua culturing in the area.

For this reason, it is very difficult to the Provincial People’s Committee in the location where there is pollution to determine the root of pollution, the degree of losses and the responsibility for compensation of the related units. In the draft Law (amended), it is necessary to stipulate clearly which agencies are



responsible for the pollution.

★Can you say something about the implementation of the LEP in Hà Nam Province in recent time. After 8 years of implementing the 2005 LEP, are there any difficulties or impediments that need an amendment?

Mr. Mai Tiến Dũng:

Implementing Resolution 41-NQ/TW of the Political Bureau “On environmental protection in the period of enhancing the national industrialization and modernization”, the Party Committee of Hà Nam Province also issued the Directive 25-CT/TU on environmental protection in the period of enhancing the national industrialization and modernization and the action plan No. 453/KH-UBND on May 31, 2005 of the provincial People’s Committee. After the 2005 LEP was promulgated, the Provincial Party Committee and the People’s Committee have given guidance to the departments, branches and organizations in the province to enhance the propaganda and training to contribute to raising the awareness of and the sense of responsibility to the tasks of environmental protection and then it is possible to change the awareness and behavior of each individual and community concerning environmental protection in localities. As a result, there are a lot of positive changes in implementing the LEP of organizations and individuals in the province.

The State management of environmental protection in the Province has been paid attention to and guided closely. The provincial People’s Committee issued a lot of important decisions and plans. On the other hand, the Province asked the Department of Resources and Environment to coordinate with the other departments, sectors, mass

organizations and the political-social organizations in the province to regularly organize the training courses for the officials of resources and environment in districts and cities and the people in the communities on environmental protection. On the other hand, the approval of investment projects in the province has always been closely associated with the task of environmental protection and this is a decisive factor.

After 8 years of implementing the 2005 LEP, we have found a number of the following difficulties and impediments that need being clearer in the LEP (amended):

Firstly, the distribution of responsibilities for the State management of environmental protection should be provided in a reasonable and clear manner and avoid the overlapping in such areas as the waste management (garbage, waste water in urban and rural areas and the industrial parks and zones), the management of craft village environment (villages specialized in stock breeding, in aqua culture and other craft village). This has also caused difficulties to the distribution of responsibilities of the State management of environmental protection in different fields of the departments and branches in the Province; there are still a lot of gaps without having any unit to take charge of.

Secondly, there are a number of legal documents giving guidance to the evaluation, approval and confirmation of reports on evaluation of environmental impacts for projects in industrial parks which are still in the overlapping and inadequate state, causing difficulties to the environmental management and protection: Resolution 29/2008/ND-CP stipulates that the industrial parks, the export processing zones

and the economic zone are in the charge of the Board of Management of the Industrial Parks which takes charge of evaluating and approving the report on evaluating the environmental impacts, whereas the Circular 48/2011/TT-BTNMT of the Ministry of Natural Resources and Environment on amendment of and addition to a number of articles of Circular 08/2009/TT-BTNMT stipulating that the management and environmental protection in the economic zones, the high tech zones, the industrial parks “the Management Boards of the industrial parks send their representatives to take part in the council to evaluate the report on evaluation of the environmental impact of investment projects in the economic zones, the high tech zones and the industrial parks”

Thirdly, the LEP (amended) should have the concrete stipulations on the right to sue and the responsibility to make compensations of the damage caused by environmental pollution. Especially, as for the inter-regional, inter-provincial pollution, it is necessary to stipulate clearly which unit has the rights and obligations to determine the damage to the natural environment so as to be able to have the basis to determine the losses in human lives and health and assets.

Finally, it is very necessary to include the environmental planning in the new content of the draft LEP (amended). However, it is also necessary to make clear in the draft Law the objects that implement the Planning of environmental protection and the objects that evaluate the strategic environment as a base for the People’s Committee of provinces and cities to carry it out easily.

Thank you.

By PHẠM ĐÌNH TUYỀN



Amendment to Law on Environment Protection



MR. VÕ VĂN CHÁNH -
*Vice Chairman of the People's
Committee of Đồng Nai Province*

The amendment of the LEP is conducted in the midst of economic struggles, with businesses either maintaining bare minimum operations or faced with bankruptcy. Lawmakers must develop a proper perception of this reality to then form a groundbreaking solution for the environment protection law amendment. The issue is to form regulations that are straightforward and business-friendly but also meet the goal of environment protection and sustainable development.

The draft LEP (amended) shows great developments in resolving some of the limitations of the 2005 Law. Based on actual demands, some new issues have been addressed, including environmental planning, an environment protection Plan, climate change response, green

8 years since its promulgation, the 2005 Law on Environment Protection (LEP) has acquired remarkable achievements in the national environment protection effort. Nonetheless, the implementation of this law also displays certain limitations, for some of its elements are no longer appropriate in the current socioeconomic situation.

development, environmental friendly production and consumption, etc. However, other issues need to be further discussed to complete this law proposal.

First, on the management body and environmental protection responsibilities

Currently, the environmental control authority of many provinces and cities are “overloaded”. Hence, it is necessary to consider criteria to form a Department on the environment in key economic provinces. This LEP (amended) must also identify an agency specialized in environment protection control at both central and local levels and reconcile state management authority in such areas as waste management, bio-diversity maintenance, river basin management, etc. in which disconnection and overlaps still remain between ministries and agencies in the processes of planning, plan implementation, inspection, etc.

Second, on environmental protection inspection

Due the abovementioned situation management system and functions, there have been overlaps and inadequacy in the environment protection inspection and control process,

troubling both local and foreign businesses. Besides, the fine for pollution and environmental damage has yet to be clearly defined.

Third, on the planning of environmental protection

The next issue to be discussed pertains to new regulations on environmental protection planning. Though the current LEP does not have specific provisions on environment protection planning, some provinces and cities have conducted this process to meet local socioeconomic development needs. Hence, this draft amendment should include provisions on environmental protection planning, planning authority and the relations between planning in environmental protection and in other socioeconomic areas, with the focus on settling conflicts among such.

In terms of new regulations environmental protection planning, further consideration is needed to balance the goal of simplifying administrative procedures (through replacing current regulations on the submission of environmental protection commitment form) with the ensuring the effectiveness of this tool, since allowing



▲ *Automatic water monitoring is an effective tool for supervising water regulations*

owners of production sites to create and take this responsibility for planning on their own without supervision from government authority, the community, and legal regulations governing cases in which the environmental protection plan of business does not meet environmental standard and regulations, especially before the project officially starts.

Fourth, on environmental impact assessment (EIA)

EIA has become an effective tool, which helps prevent pollution in investment projects. Yet in fact, transfer, buy and sale, capacity improvement, and project adjustment occur fairly frequently. Hence, the draft

amendment to the LEP must include provisions on administrative procedure to increase the effectiveness, flexibility and practicality of the EIA process.

Fifth, on environmental standards and automated environmental monitoring

Automated environmental monitoring (AEM) is considered an effective tool to monitor compliance to environmental standards. Recently, many provinces and cities have invested heavily into the construction of automated environmental monitoring stations of surface water, wastewater, and the air as well as AEM standardization and quality control devices. However, there are insufficient

legal regulations on recognizing and approving the use of AEM data as well as regulations on standardization and quality control of AEM activities to assist state governance of environmental protection. Thus, this issue must be addressed in the current amendment to the LEP.

Overall, new provisions have been included in the draft amendment to the LEP, thus facilitating future environment protection effort. I hope the above discussion will enhance the current draft law to complete legal regulations on environment protection, hence promoting sustainable socioeconomic development■



The Law on Environment Protection (amended) must expand its jurisdiction

The Law on Environment Protection (LEP-amended) must expand its jurisdiction beyond the territory to the “continental shelf and special economic zone” of the Socialist Republic of Viet Nam. Therefore, amendment must be made in accordance with the general Vietnamese legal system, especially the Law of the Sea. Such is shared with the *Environmen Magazine* by Mr. Nguyen Dieu, Head of Da Nang Department of Natural Resources and Environment (DONRE) during the interview on the Draft LEP (amended).



Mr. NGUYỄN ĐIỀU,
*Head of Đà Nẵng Department
of Natural Resources and
Environment*

★How has Da Nang city implemented the 2005 LEP?

Mr. Nguyen Dieu: The 2005 LEP was largely improved in terms of subjects, provisions on environment protection activities, policies, environment protection measures and resources, state management responsibility of People's Committees at different levels and environment agencies. It has also improved local authorities and environmental protection, assigned specific functions and authority on environmental protection to the People's Committee at the commune and district level (i.e. registering and supervising compliance to environment protection pledge), promoted legal education on environmental protection to the community and motivated people to sign environment protection pledges. However, the implementation of such Law also shows the following limitations:

This Law does not specify the responsibility of advisory agencies of provincial People's Committees, thus hindering the advisory and implementation process of environment protection duties.

For instance, environmental impact assessment reports (EIA) were sometimes submitted by industrial complexes for evaluation by the DONRE and approval by the City People's Committee and some other times it was evaluated and approved by the Management

Board of Industrial Zones (IZ) and Export Processing Zone (EPZ). The confirmation of environment protection pledges is done by either commune and district People's Committees or the Management Board of IZ and EPZ. Therefore, there remain overlaps and inconsistency in the environment management effort at IZ. Besides, the projects of ministries and sectors in many levels are evaluated and approved by that ministry or sectors, hence the lack of post-approval supervision with EIA as local environmental management agencies lack authorities.

Most investors see the EIA as a procedure to legitimize the evaluation and approval of investment projects. Thus, most elements of EIA are not practical for the implementation of projects. Moreover, investors do not clearly understand their environment protection responsibilities, thus failing to fully comply with environment protection measures stated in the EIA.

The identification of projects' scale to create appropriate EIA and environment protection pledges is still inadequate, leaving such loophole as intentional reduction of project scale. There are yet requirements on the qualifications of EIA advisory agency or individual, hence inadequate analysis, environmental impact forecast and environmental protection measures.



Article 43 of the 2005 LEP specifies only qualitative, and no quantitative, environmental protection requirements for scrap, thus complicating the import of scrap products. The LEP has not specified the responsibility of waste dumpers as well as ways to deal with pollution or suspend contaminating production in residential areas. Despite initial achievements, the implementation of the 2005 LEP still faces difficulties due to insufficient and inconsistent guiding documents, problems in waste sorting at the source, and businesses' inadequate waste management, especially toxic waste.

★Based on your actual experience of local management, what are your opinions regarding the draft LEP (amended) to meet the future need of state management on environmental protection?

Mr. Nguyen Dieu: The draft LEP (amended) was created based on the 8-years implementation of the 2005 LEP along with some new elements to keep in line with the reality of environmental protection, thus increasing state *management* on environmental protection and control pollution across the country. By and large, the provisions of this Law ensure practicality. Its promulgation will meet the requirements of industrialization, modernization, and transformation of lateral toward vertical growth model for sustainable development with a completed legal system.

The draft LEP (amended) focuses on clarifying the responsibility of state management agencies on environmental protection following the principle

of consistent State governance. It also specifies the rights and responsibilities of political and social organization, NGOs, and the community on environment protection. Financial resource for environmental protection and such tasks that could be paid for from administrative budget for the environment are clearly defined. The amendment also adds new provisions on climate change and environmental protection, thus combining natural resource and environment protection with climate change. It stresses green growth by encouraging ecological industrial and urban development and environmental-friendly production and consumption.

However, the draft LEP (amended) must address these following issues:

Environmental lawsuit: Environmental damages can be unveiled either shortly or years after the violation. According to the Civil Law Code, the statute of limitations for compensation claim is 2 years from the date the rights and interests of the claimant are violated. In many cases, environmental damages are revealed only after the statute of limitations has run. Therefore, I suggest the statute of limitations be extended.

This Law must expand its jurisdiction beyond the territory to the “continental shelf and special economic zone” of the Socialist Republic of Viet Nam. Therefore, amendment must be made in accordance with the general Vietnamese legal system, especially the Law of the Sea.

GIANG HƯƠNG (Reported)



▲ Da Nang aiming for environmentally sustainable city by 2020



A penalty strong enough to limit violations of environment in industrial parks

This is the opinions of Mr. Nguyễn Văn Lộc, Director of the Department of Natural Resources and Environment of Vinh Phuc province, in an interview with the Environment Magazine on solutions to create the positive changes in environmental protection in the industrial parks in the province in the future.



Mr. NGUYỄN VĂN LỘC, Director of the DONRE Vĩnh Phúc Province

★The situation of environmental pollution in recent years has got a lot of causes, including the inadequacies in mechanism, policy and law on environmental protection, so have you had any opinion on the 2005 Law on Environmental Protection (LEP-amended) in order to bring into full play the effectiveness of the state management of environment?

Mr. Nguyễn Văn Lộc: In the process of collecting opinions of the amendment of the 2005 LEP, the Department of Natural Resources and Environment (DONRE) of Vinh Phuc province had sent some contributed opinions to the Ministry of Natural Resources and Environment (MONRE). However, in my opinion, I propose that the draft LEP (amended) as well as other laws should guarantee its long-term stability, consistency and conformity with the economic development stage in the present as well as in

the future. That is why, I have 3 proposals:

Firstly, on the institution and penalty, it is necessary to stipulate clearly the responsibility of each level and each sector and on that basis, to have the mechanism of closely coordinating in the management, supervision, inspection and treatment of violations. At the same time, the penalty should be deterrent enough to stop all behaviors and violations and enhance the decentralization for the natural resources and environment sector in granting licenses, treating, approving and evaluating the impacts of environment;

Secondly, on the organization of the State managerial apparatus, it is advisable to stipulate concretely the organizational structure, function, tasks and rights of the State environmental management agencies in different levels; to create the legal corridor in the

direction of enhancing the rights and creating proactiveness of the professional agencies concerning the State management of environment (the DONRE, the branch of environmental protection, the resources and environment bureau at district level). It is possible to study and apply the model of management at the vertical branch in order to avoid the overlapping and to be easier in operation, reduce the staff in management and increase independency and proactiveness to raise the efficiency in management;

Thirdly, on the investment structure for environmental protection, it is to consider to increase the expenditures in environment in order to settle the urgent environmental issues; to concretize the items of expenditures and the content of expenditures and to add the items of spending from the environmental funding source; to build the standards and unit



prices and streamline the procedures so as to be able to avoid the influence on the speed and quality of the work, creating the proactiveness for the applying unit; to add the stipulations on rights and responsibilities of the DONRE in making and allocating the estimate of expenditures for environment, in management of expenditures of environment in the localities.

★To help the development planning in the industrial parks and zones in the Province to be able to meet the criteria of environment, what are the conditions?

Mr. Nguyễn Văn Lộc: First of all, when putting an industrial park into operation to meet the criteria of environment, it is necessary to carry out well the quality of infrastructure planning in the industrial park; to limit the adjustment and at the same time, before accepting the secondary projects, investors should build and perfect the infrastructure, especially the infrastructure of environmental protection in the industrial parks and zones; to limit the patchy construction.

It is to seriously carry out the building plans of the approved industrial parks on the basis of implementing synchronously the planning of relevant branches and areas, guarantee the supply of technical infrastructure outside the fence at present and in the future;

In the process of consideration and granting of investment licenses, the planning and allocation of location for the projects, it is necessary to pay attention to the environmental elements; priority is given to selecting the projects with state-of-the-arts technologies and friendly environment or the projects with less wastes;

The companies making investment in building infrastructure in the industrial parks are compelled

to make their investment in building the automatic environmental measurement system, at the same the managerial agency of resources and environment should be equipped with the environmental measurement system so as to be able to observe and follow the activities of environmental protection in the province, particularly in the urban and industrial park areas. At the same time, to limit the violations in environmental protection of enterprises operating in the industrial parks, it is necessary to have the concrete penalty. On the other hand, it is necessary to have rewards for those who work as inspectors in the environmental area so as to limit negativity in the process of handling violations.

★The craft villages have developed in quantity and are diverse in forms. To settle the environmental pollution in these craft villages, has the province promulgated any policy to support the development of crafts and the craft villages?

Mr. Nguyễn Văn Lộc: Vinh Phuc has now had 22 traditional and small craft villages recognized by the Provincial People's Committee as having achieved the craft village standards. The craft villages have developed well in different aspects; the number of households has increased and enterprises in these craft villages have been set up with investments in machines, equipment and application of new technology. However, the development of craft villages has brought along environmental pollution such as dust and noise pollution in the carpentry, stone and metal working villages; pollution in waste water caused by the craft villages in food processing. And there is an increasing tendency of environmental pollution. The provincial People's Committee has issued Resolution 27/NQ-HDND

on environmental protection in rural areas with the policy on investment to minimize pollution in craft villages; Resolution No.3 of the Provincial Party Committee on the agricultural and rural development and on improvement of the people's life with the program of developing the craft villages and the economic and social groups. On the other hand, the People's Committee of the province has given guidance to the branches and levels to deploy the implementation of the policy to support the rural areas (especially the craft villages). To this end, the DONRE has deployed 3 key models on environmental protection in rural areas, in which one model in the carpentry village (Thanh Lang district town); at the same time the Plan to support environmental protection of Vinh Phuc province in the 2012 - 2020 stage approved by the provincial People's Committee. The Department has been building the projects in support of the treatment of waste water and dust in the rural areas and craft villages, in which a waste water treatment system is to be built in the village producing rice noodle, Lung Hoa commune.

On the other hand, in 2013, the Department is building the plan on environmental protection in craft villages in accordance with the Circular 46/2011/TT-BTNMT of the MONRE with a view to enhancing tremendously environmental protection in the management and development of craft villages in the province; to step by step overcoming and improving the state of environmental pollution in the craft villages; to stopping any new cases of environmental pollution; to protecting the health and improving the local people's living conditions, making a contribution to the sustainable economic and social development in the rural areas■



Effectively strengthen the protection of environment at local craft village

In many workshops that give suggestion to the draft Law on Environmental Protection (LEP - amended), the issue of environmental protection in craft village and monitoring of villages causing seriously high level of environmental pollution (SHLEP) has been interested and given comments by the participants. Being a province with many craft villages on the list of facilities causing SHLEP according to Decision No.64/2003/QĐ-TTg issued on 22 April 2003 by the Prime Minister, Bac Giang has implemented measures to improve the environment and brought tangible benefits to the people. To understand this issue, the Environment Magazine has an interview with Mr. Lê Hồng Sơn - Director of the Department of Natural Resources and Environment of Bac Giang.



Mr. LÊ HỒNG SƠN - Director of the Department of Natural Resources and Environment of Bắc Giang

★Sir, what are the implications of the LEP 2005, on the enforcement of environmental protection policies in Bac Giang province over the last years?

Mr. Lê Hồng Sơn: After 8 years of implementing LEP 2005 and issuing guidelines for implementation, the environmental protection in the province of Bắc Giang has achieved some important results.

The system of documents on policy guidance and laws on environmental protection in the

province is basically completed, State management apparatus was consolidated, 10/10 districts and cities have established chamber of natural resources and environment, 120/130 communes, wards and towns have arranged staff to consult and undertake state management of environmental protection.

Communication and raising awareness about the environment has been carried out extensively and effectively. Training classes are organized on an annual basis. The implementation of LEP is communicated to all levels, sectors, organizations, unions, businesses and masses using various practical methods.

The task on pollution control, and environmental restoration and rehabilitation is enhanced: Since 2008, we have maintained a network of environmental monitoring in the province, implemented 11 projects to renovate and rehabilitate the environment (including 5 hospitals, 3 rubbish dumps, 2 craft villages, and 1 warehouse of plant protection products); reviewed and approved 168 reports on environmental impact assessment (EIA), 95 projects on environmental protection, 13 projects on environmental restoration and rehabilitation for mineral exploitation; issued

licences to 315 facilities producing hazardous waste; assigned districts to confirm 3000 declarations and projects on environmental protection, and had 7/11 facilities reached their objectives on treatment of environmental pollution according to Decision No.64/2003/QĐ-TTg by the Prime Minister.

The conservation of biodiversity, landscapes and environmental protection of river basins is given large amount of attention and guidance. The Chairman of the Provincial People's Committee has approved an action plan to protect biodiversity and manage biosafety in the area, establish the Committee of Environmental Protection of Cau river basin and other river, actively implement the project on environmental protection in Cau river.

Inspection, testing has been enhanced to check, detect and handle the sources of environmental pollution in the area. From 2006 to date, administrative sanctions amount to 5 billion VND, of which sanctions proposed by the Department of Natural Resources and Environment to the Provincial Chairman in 2012 was over 1.5 billion VND, along with the requests for violated facilities to put in place remedies.



★At present, how is the implementation of measures to address environmental pollution in the craft village causing SHLEP and how effective is it?

Mr. Lê Hồng Sơn: According to Decision No.64/2003/QĐ-TTg, there remain 2 craft villages in Bac Giang who have not treated pollution thoroughly, namely Van Ha - traditional wine village and Phuc Lam - slaughter village.

To minimize environmental pollution in craft villages over the years, Bac Giang has built a fresh water supply station and an organic waste treatment plant tailored to Vân Hà village with an area of 200 m². The construction of 37 biogas plants for households in Van Ha commune and 12 plants in Hoang Ninh commune (Viet Yen district) has helped collect and dispose a large amount of waste generated from these 2 villages, thus reducing pollution levels.

Until now, the awareness on environmental protection among people of these two villages has been improved. We have organized sanitation teams for collection and transportation of garbages to concentrated disposal areas. Most farms in Van Ha village have built septic tanks to collect and dispose animal waste. Some slaughtering households in Phuc Lam village has collected excess waste generated during the slaughter operations and avoided direct disposal of waste into the village ponds. However, because wastes and pollution have been accumulated over many years, it's very hard to handle and solve completely.

In order to gradually reduce pollution in craft villages, the provincial committee has approved a project on treating pollutions and improving the environment in Vân Hà wine village and Phuc Lam slaughtering village with a total funds of more than 2 billion VND.



▲ To improve the environment in craft villages, Bac Giang plans for periodical environmental protection supervision

★The draft LEP (amended) are adjusted from the local perspective, do you have any comments on the draft law in general and on regulations on environmental protection in craft village in particular?

Mr. Lê Hồng Sơn: In the process of promoting national industrialization and modernization, the draft LEP (amended) should assign a contacting point responsible for state management in the field of environmental protection. It should also specify the responsibilities of agencies, organizations and individuals involved in the field of environmental protection. The current overlapping responsibility of different agencies for state management on environmental protection has led to a laxation of management and ineffective organisation of inspection teams that might trouble businesses.

By inheriting the strong points of the environmental protection Act 1993, Environmental Protection Act 2005, the draft LEP (amended) should clearly stipulate the management of industrial and responsibilities of competent agencies regarding the disposal and transportation

of post-production wastes. It should also specify approval conditions for the investment in projects and production facilities in adjacent provincial and city areas, in particular, the case where the investment area is located in 1 province but its neighbouring province is directed affected by the waste disposal. At the same time, the LEP (amended) should refer to the provisions of relevant laws such as the Civil Code, Laws on Investment, Business, Construction, Land etc.

Regulations on production, trading and service activities shall be written as a roadmap for business to implement. Businesses, production facilities, households and individuals shall be responsible in respecting regulations on environmental protection (in addition to regulations on sanctions of administrative violations in environmental protection). Commitments on environmental protection by families, individuals, small-scaled organizations and businesses should be legalised. Disposal of waste by dilution methods, pumping into underground water tunnel or illegal landfill shall be prohibited. It is necessary to harmonize state regulations on environmental



protection, and avoid complication of management terminology during the application process such as the differences between hazardous, dangerous and toxic waste or environmental protection plan vs. detailed environmental protection plan vs. simple environmental protection plan etc.

On the other hand, the ununiform in the competency of district officials and lack of staff with environmental expertise have led to limitation during job execution. Therefore, district authorities should not be assigned to review and monitor environmental protection. The Environmental Protection Branch should be the one responsible and authorized for such functions. Families and individuals conducting small-scaled business operations shall only subject to specific regulations on environmental protection that are detailed, brief and public under the monitoring of provincial authorities and communities.

On environmental protection regulations for craft village, the draft Law has stipulated provisions on the responsibilities of household, production and service facilities in the village and the responsibilities of the communal, district and provincial committees in accordance with the prevailing situation. Households conducting business activities should be aware of environmental protection responsibilities in the operation of their business, have proper environment protection plan, implement waste control and treatment measures, make donations for the construction, management and operation of projects aimed at protecting the environment in craft villages and pay environmental protection fees. The draft Law also includes detailed regulations and conditions of the villages, and responsibilities of local

committees at all level to coordinate with the competent agencies in giving guidance and performing responsible management of environmental protection in villages. It is also necessary to increase investment in the waste collection and disposal system, waste disposal, village planning or centralized waste treatment measures, have proper planning for the centralization or waste treatment and environmental protection measures compatible with the production activities and living in the village, encourage the application, improvement and adjustment of production-auxiliary processes and technology appropriate for the new situation.

However, for an effective management, we should have a contacting agency who is responsible for the management of the village environment. Responsibilities for coordination between different state management departments and agencies shall be specified to avoid overlapping and ambiguity. Committees at district level shall be assigned responsibility for the overall management, agencies and departments in natural resources and environment sector shall be responsible for organizing and managing the task of environmental protection in village in coordination

with the ministries of agriculture and rural development, industry and trade, finance, and science and technology.

The draft LEP (amended) should specify the establishment of Departments/Chamber/Managing team on Environmental protection in villages under the authority of the communal committees. Provinces and cities with a distribution of villages over a minimum of 2 districts must form a Chamber of Village Environmental Protection under the Environmental Protection Branch to monitor and advise provincial authorities, thus enhancing the effectiveness of village environmental protection.

Villages must allocate a proportion of budget for environmental protection. Each year, the Department of Natural Resources and Environment shall organize and coordinate with the Department of Finance, Department of Planning and Investment and the district People's Committee to advise, plan and submit the overall budget as well as budgeted spending on village environmental protection, and conduct periodic inspection on the implementation of village environmental protection.

★Thank you for this interview!

CHÂU LOAN (Reported)





The Government Needs to Issue Specific Policies to Support the Vietnamese Fatherland Front on the Execution of Tasks for Environmental Protection

Environmental protection is the biggest challenge globally, for each country and each region in the 21st century. Community participation plays a very important role in environmental protection, and has been institutionalized and committed at an international and national level. Hence, the efforts undertaken by officers in the Vietnamese Fatherland Front (VFF) and collective organizations in residential areas are encouraging local people to participate in environmental protection. As a result of the efforts and active participation of VFF officers, many experiences and typical models for environmental protection have been recognized and replicated. The Vietnam Environment Magazine (VEM) interviewed Mr. Lê Bá Trình, the VFF Vice President and Head of the “All People Participate in Environmental Protection” program, on the lessons learned in implementing this action on a national scale.



MR. LÊ BÁ TRÌNH
Vice President of the Vietnamese Fatherland Front

★Sir, the draft Law on Environmental Protection (Amended) includes a chapter that refers to the rights and obligations of the Vietnamese Fatherland Front (VFF), social organizations and local communities on environmental protection. What are some of the comments and proposals that were made by VFF in order to finalize the draft Law on Environmental Protection (LEP) (amended)?

Mr. Lê Bá Trình: The draft LEP (amended) stipulates more comprehensive and specific rights, obligations and responsibilities of the VFF, its member organizations and local communities on environmental protection. However, in my opinion, the Law needs to clarify the roles, functions and duties assigned to the VFF

and its member organizations even further, to enable VFF to accomplish its tasks. In particular, in Article 138 of Chapter XI, it needs to be clearly stated that: “The Vietnamese Fatherland Front and its member organizations, within the scope of their duties and powers, are responsible for raising awareness and mobilizing member organizations and local people in the participation on environmental protection; implementation (in the Draft, it is written as participation), monitoring, and social criticism (it is not mentioned in this Draft) on the implementation of environmental protection laws.

State management agencies at all levels are responsible for ensuring the conditions (in the Draft, it is written as creating conditions)

to enable the VFF and its member organizations to participate in raising awareness, mobilization and supervision, and social criticism (in the Draft, these tasks are not clearly specified) of environmental protection”.

★In recent years, the implementation of Resolutions between the MONRE and mass organizations in environmental protection actions at the central and local levels have made positive change. Could you please tell us some of the results from the implementation of the joint resolutions between the MONRE and the Standing Committee under the VFF in recent years?

Mr. Lê Bá Trình: The implementation of the Joint Resolution No.1 on the collaboration between the Standing Committee under the Vietnamese Fatherland Front and the Ministry of Natural Resources and Environment in recent years has



basically achieved the set objectives, which are: Making a strong shift in the awareness and actions of local people and social communities, and contributing to raising the awareness and sense of responsibility of each individual, department, authority and social organization at all levels in participating in environmental protection. This has led to behavior change in environmental protection actions of individuals and communities in local residential areas.

The development of typical models for environmental protection in local residential areas has been specified in communication, mobilization and monitoring actions by the VFF at all levels in order to promote ownership, to enhance positive and proactive actions by local people in participating in the development and implementation of the Party's and Government's guidelines, policies and laws, as well as developing rules and local conventions of the communities in the field of environmental protection; building up a sense of responsibility, having self-awareness of environmental protection, and living in har-

mony with the environment, using natural resources efficiently and sustainably in compliance with the local customs, practices, beliefs and religions of each community.

Strengthening the coordination and unity of actions among the member organizations of the Vietnamese Fatherland Front to mobilize all the people to participate in environmental protection is also the basis for the implementation of VFF's program "All people participate in environmental protection."

The results of the implementation of the Joint Resolution No.1 have been to create increasingly close relations, commitments, collaboration, and sharing responsibilities between the Natural Resources and Environment sector and the Vietnamese Fatherland Front Committees at all levels in the task of mobilizing all people to participate in environmental protection of our country.

However, there are also many shortcomings and difficulties in the implementation of the Joint Resolution No.1, such as: The Standing Committee under the Vietnamese Fatherland Front and the Ministry

of Natural Resources and Environment (MONRE) have not yet given timely directions on guiding and inspecting the collaborative implementation between local departments under MONRE and VFF, so there are still some localities which have not signed up or made plans for specific coordination programs. Some localities have signed documents, but the coordination for implementation has been weak or facing some confusion regarding the content and conditions for performing their tasks in compliance with the Party guidelines and the provisions as stipulated in the Laws. The differences in coordination of actions in some localities have led to the fact that the implementation of tasks has not been uniform, and lacking mutual support from each other.

Coordinated actions to provide new information and legal documents on environmental protection or cooperation between the Standing Committee under the VFF with the MONRE to organize meetings, scientific conferences, and professional training is still limited. The Ministry has not provided VFF officers with books, reference materials, newspapers and magazines with environmental protection content to give technical support for communication activities and mobilizing local people and to enhance environmental knowledge on a regular basis.

In operations to develop a typical model, the local Vietnamese Fatherland Front Committees have not yet made full use of the professional expertise available in local Departments of Natural Resources and Environment, so, coordinating actions have been limited and simplistic, and not yet achieved the specialized level of the sector. Cooperation in col-



▲ The population group No.56 in Hoa Minh ward, Lien Chieu District, Da Nang city, starting an environmental cleaning job



lecting local people's opinions to make contributions and comments to guidelines, policies and laws on environmental protection has not been organized on a regular basis in some provinces, therefore, opinions from the majority of local people have not been collected on monitoring, social criticism related to implementing social economic development projects, and local environmental protection plans.

The content and tasks stipulated in Joint Resolution No.1 have been coordinated and implemented only in the general field of environmental protection, while at present, although tasks have been developed in further fields, they have not been added and specified accordingly.

★The movement of “All people participate in environmental protection” has contributed to a change in raising awareness, attitudes and behaviors on environmental protection tasks in local communities. Could you tell us the lessons learned when implementing the “All people participate in environmental protection” program on a national scale?

Mr. Lê Bá Trình: In my opinion, it is necessary to step up communications and awareness so that local communities can gain a clear understanding of the importance, the necessity and the strategy for environmental protection. Firstly, we need to ensure the conditions to exist and develop ourselves, and secondly the social community where we live, in a deeper and larger meaning, to ensure the existence and sustainable development of the whole country and the people. To achieve this, we need to raise people's literacy levels and sense of responsibility of the need to build a civilized life in local communities.

As people's awareness increases, environmental protection becomes a more practical responsibility benefitting local people, and it is necessary to issue specific guidelines in order to mobilize local people to change their behavior in manufacturing, farming, doing business, etc., and to organize their lives in a positive direction so as not to cause negative impacts on the environment. The Vietnamese Fatherland Front Committees at all levels collaborated with the Natural Resources and Environment sector to develop pilot residential models on environmental protection (from 2006 to date, the Vietnamese Fatherland Front Committees at all levels have developed three types of local pilot models: Integrating environmental protection tasks in the campaigns “All people unite to develop cultural life in residential areas”; self-managed environmental protection in residential areas; and residential areas where both poverty reduction and environmental protection are harmoniously implemented). Based on the success of these pilot models, localities have expanded them to thousands of other neighboring residential areas in order to develop content and tasks for the program “All people participating in environmental protection.”

In my opinion, to make the program more successful, it must be synchronized with the leadership and directions of the Party Committees, the close collaboration of functional authorities and departments, and the member organizations of the VFF at all levels, in particular, at the local level and in residential areas.

★Should the VFF and its member organizations make proposals to Government authorities on hav-

ing policies to support the above activities, Sir?

Mr. Lê Bá Trình: The Government should create more specific mechanisms and policies so that the VFF and its member organizations can secure essential conditions to execute environmental protection tasks. At present, the LEP and the National Environmental Protection Strategy contain defined roles and responsibilities for the Front and its member organizations; but in terms of mechanisms and conditions for implementation, they are still limited. For example, in many residential areas, self-managed committees have been set up in order to monitor and remind local people on dumping domestic waste at designated places, to organize the collection and transportation of domestic waste, etc. However, they handle the behavior of littering in a disorderly way, causing environmental pollution, and a specific sanctioning mechanism has not yet been set up. There are still issues with smuggled goods, counterfeit goods and trade in fraudulent products, unhygienic and unsafe food in many places, etc.; so just trying to convince local people not to use particular kinds of chemicals and stimulants in agriculture, farming, and fishing is clearly insufficient. These are just a few typical examples showing the difficulties and shortcomings in implementing environmental protection actions that the Vietnamese Fatherland Front Committees at all levels are facing.

Although having faced such difficult situations, we are still making our best efforts to implement change in an active and creative way in order to complete our assigned tasks.

★ Thank you very much, Sir.

P. ĐÌNH (reporter)



Gender should be integrated into the amendments of the Law on Environmental Protection

NGUYỄN THỊ KIM DUNG

Vietnam Women's Union Central Committee

Environmental protection is one of the many important factors for sustainable development. In Viet Nam, the Law on Environmental Protection (LEP) was passed by the National Assembly on November 29, 2005 at the 8th meeting of the 11th tenure. The Law is an important legal corridor for the environmental protection work. The Law regulates responsibilities of the Vietnam Fatherland Front and its members to “mobilise and encourage the population, including their members to take actions to protect the environment and to monitor the Law implementation”.

On January 7, 2005, the Vietnam Women's Union and the Ministry of Natural Resources and Environment signed an Inter-Ministerial Resolution No. 01/2005/NQQLT-HLHPHVN-BTNMT on their co-ordination to work together in their environmental protection activities toward sustainable development. The Vietnam Women's Union's Presidium has issued many documents guiding the Women's Union Chapters from cities and provinces nation-wide how

to organize activities that are listed in the Inter-Ministerial Resolution, including courses for training of trainers (TOT) and communicators on environmental protection activities; developing training materials, pamphlets, posters, short stories for newspapers or TV documentaries; organizing workshops to share lessons learnt on women's participation in environmental protection activities; holding talks on environmental protection.

In addition, we have also launched the campaign on building role model families based on the “5 No and 3 Clean” criteria, inside the house, the kitchen and outside the alley. Parallel with that campaign we also launched the campaign “Women's participation in building the new rural area”. The Women's Unions in many provinces and cities

have been pro-active in initiating quite a few activities to promote environmental protection. As a result, many successful models were adopted, including the women groups collecting waste, taking care of trees; or the models of “green gardens and tidy house”, “green-clean and civilized campaign” and others. I should say the communication campaign launched by the Vietnam Women's Union has actively contributed to raising the environmental protection awareness of the general public, particularly the women.

However, in the Law enforcement process, there remain some constraints and challenges, including the rights and obligations of stakeholders involving in environmental protection activities as well as mechanisms encouraging



▲ The Women Union in Trung Hoa ward, Cau Giay province, Ha Noi launched the movement to use plastic carrier, instead of nylon bags to protect the environment



the whole society to participate in the environmental protection. So is the work of supervision and inspection as well as the sanctioning mechanisms.

Climate change impacts, environmental and eco-security all require the environmental law to be regularly amended and supplemented with synchronous and effective measures. To contribute to the building of a sound environmental protection along the line of sustainable development, the Vietnam Women's Union would like to make some proposals to the amendments to the current LEP.

First, the integration of gender equality in the Law

The amended law should pay attention to the gender issue in a number of policies. Meanwhile, the Government should give special treatments to policies on taxes, land, finance for environmental activities, business and enterprises - particularly those whose owners are women and products have got the environment certificates (as written in Article 5, Provision 7 of the proposed draft amendment of LEP).

In addition, the Article 5, Provision 7 should highlight the imperative need to the training of human resources in the field of environmental protection, particularly women. Regarding the proposal to encourage the construction of more production units as written in Article 6, provision 9 of the draft Law, the Vietnam Women's Union wants to see more emphasis on the production units headed or owned by women.

Second, regulation on environmental protection principles

Information access is a basic

right of the human being and it has a very important significance in the state management as well as other basic rights, including the political, civil, economic, cultural and societal rights. Though, the draft Law has come up with 6 principles which are rather comprehensive and cover quite a lot of factors ensuring the final achievements of a sustainable development and enhancing the integrated strength of the whole society in the work of environmental protection, the Vietnam Women's Union wants the amended LEP to add two more principles such as the citizen's right to access environmental information and the right to access to justice in environmental matters

Third, the inclusion of environmental protection matters in schools, kindergartens and day care centres

All human being have the rights to live in a wellness environments. Article 61 of the 1992 Constitution says "the citizen is entitled to a regime of health protection". And in the amended LEP has already included issues relating to natural resources extraction and their usage in the context of environmental protection and climate change mitigation; environmental protection in the sea and islands; the protection of various environmental factors; environmental protection in production activities and business as well as activities of daily living. However, the issue of environmental health of the people relates to food hygiene, beverage and alcohol, water hygiene in drinking, cooking and other daily activities as well as hygiene in livestock production...

And particularly the issue of hygiene in schools and day care centres. To give the highest protection to children, the draft law should include the issue of environmental protection for them in Chapter 7th.

And finally, it is imperative to have specific regulations governing the participation of the Vietnam Fatherland Front and its members to participate in environmental protection activities

Article 131 of the draft LEP (the amended version) has inherited Article 124 of the 2005 Law in the perspectives of both "responsibility" and "rights". Under the lence of "rights", the amended Law should be more specific to enable the Vietnam Fatherland Front and its members to participate in environmental protection activities and supervise the law enforcement through specific activities as follows: the rights to provide and to receive information on environment protection at requests; to participate in supervision activities on environmental protection which relate to the women's benefits (it can be expressed as what is written in the Provision 1, Article 132 of the draft Law).

It is right to say that the proposed changes to the 2005 LEP are very important in order to further complete the Law and to respond to the real situation. And at the same time, it has enhanced the responsibility of agencies, organisations and individuals, including the roles of the women and the Vietnam Women's Union, to make the cause of environmental protection sustainable on the path of national industrialisation and modernisation■



About the amendment of Law on Environmental Protection 2005

Dr. NGUYỄN NGỌC SINH

Viet Nam Association for Conservation of Nature and Environment

According to several members in the Viet Nam Association for Conservation of Nature and Environment, this amendment has been thoroughly conducted with wide ranging consultations. Therefore, hopefully, the amended law will be more complete, providing legal foundation for environmental protection which is becoming more and more important in Viet Nam.



▲ VACNE Workshop on commenting on amendment the Law on Environmental Protection 2005, Hanoi 2012

Law on Environmental Protection was first revised in 2005 and then took effect in 2006 (hereinafter referred to as LEP 2005). After eight years of implementation, now it is being amended again. Compared to the first amendment, the period of the second amendment is shorter (eight years after enactment for the second amendment and 12 years after enactment for the first amendment). However, this could be considered suitable in the current situation.

According to several members in the Viet Nam Association for Conservation of Nature and Environment (VACNE), this

amendment has been thoroughly conducted with wide ranging consultations. Therefore, hopefully, the amended Law will be more complete, providing legal foundation for environmental protection which is becoming more and more important in Viet Nam.

As one year before the amended LEP was passed by the National Assembly, the following comments by VACNE could further provide input into the amendment process.

Firstly, we would like to propose the inclusion of relatively new contents: community participation in environmental protection and environmental planning. Going through a number of reviews and

amendment, the most updated version has a separate chapter on environmental protection by community. Although the chapter has only three articles, its inclusion is a notable progress. This chapter has mentioned environmental protection mandates, rights and benefits of communities, although the inclusion has not been quite sufficient. The weakest point is that the law has not specified capacity building for community to be able to protect the environment. More specifically, a section on state budget for environmental protection has no article on budget for community participation. VACNE believes that it is necessary to specify in the law



that the government shall issue a decree on this issue or at least in a decree on providing guidance on implementation of the amended law, there should be a separate chapter providing detail on community participation.

The next content we propose is environmental planning. In LEP 2005, there are up to six articles related to environmental planning. However, they are scattered in different chapters. At present, environmental planning becomes such an important issue that some localities have developed their own planning. Therefore, it is necessary to include all related environmental planning articles into one section and include some relevant articles. Two issues need agreement: environmental planning or environmental protection planning, and whether there should be planning at three levels, including a socioeconomic regional level. Both environmental planning and environmental protection planning are important and necessary. However, most VACNE members prefer environmental protection planning as it would be more suitable and more practical. Similarly, we propose not having environmental protection planning at a regional socioeconomic level.

LEP 2005 has failed to include some articles of the LEP 1993. After eight of implementation of LEP 2005, it has shown that these articles need to be included again in the law. Due to typical features of environmental pollution, development of science and technology, management capacity and public awareness, environmental violations are not always identified. In addition, environmental violators should bear responsibilities for their consequences. This

will increase prevention and deterrence effects of law. Therefore, it is necessary to include ex-post elements as regulated in Article 53, Chapter VII of LEP 1993.

Decentralization of appraisal of environmental impact assessment reports regulated in LEP 2005 has caused difficulties in implementation and unexpected results. Therefore, many VACNE members propose reconsideration of this issue for each type of projects. While the appraisal cannot be conducted as stipulated in LEP 1993, the government should limit lists of reports that could be appraised by line ministries and localities and consider imposing preliminary environmental impact assessment report for some projects before issuing investment licenses. It is not easy to address these issues. However, recent discussions show that National Assembly can identify the most suitable solution.

VACNE maintains that waste shall not be imported in any forms. However, LEP 2005 allows import of “by products” with some conditions. According to LEP 2005, these “by products” are indeed waste. The only difference is that the waste is used as raw materials for production. Therefore, the permission of import of “by products” means that waste could be imported because at the end, no waste is useless. In the revision process, some people believe that regulations of import of by products are unclear. Chapter for waste management having 20 articles does not mention by products. The regulations in a section about by product import have not reflected practical experience in dealing with by product import. It should not be forgotten that some information reveals that thou-

sands of containers of unclaimed “by products” are at sea ports. It is necessary to have more efforts in improving regulations on “by products” if the import of the by products is maintained, to avoid the risk of turning our country into the world landfill as indicated by previous warnings.

Finally, handling environmental disputes should be addressed. In a recent workshop, it was pointed out that the number of environmental dispute cases are numerous, just after the number of land dispute cases. It should be added that the number of land dispute cases can reduce while the number of environmental disputes will continue to increase. Environmental disputes are complex and typical. Many countries have acts on environmental disputes such as Japan, China, EU and Australia. On the other hand, like LEP 2005, its amended version only has one article on environmental disputes (Article 152). Such a regulation is too simple and cannot address this urgent issue. This comment has been made in many consultation rounds.

It is necessary to detail regulations so that the handling of environmental disputes is feasible. For example, some experts believe that the establishment of a third party organization to deal with environmental dispute should be legalized, in addition to courts. International experience shows that it is not too early to have studies on the establishment of environmental courts.

These are some issues that need further consideration to improve amended version of LEP 2005, contributing to environmental protection and sustainable development■



LAW ON ENVIRONMENTAL PROTECTION (AMENDED): Needs to ensure that development is in harmony with humans and nature



Prof. Dr. ĐẶNG HUY HUỠNH
*Institute of Ecology and Biological
Resources*

Environmental protection is the responsibility, obligation and right of all 54 ethnic groups of Viet Nam. From the very beginning, Viet Nam people from the deltas to the mountains and remote island areas have promulgated unwritten laws, norms, and customary regulations on the protection of human lives and protection of natural resources (land, water, forest, flora, fauna...). Many lessons have been learnt on the need to protect sacred forests, watershed resources, old trees such as banyan trees, water wells and community house yards. As a result, nature is the anchor, protecting the lives and development of many communities that depend on natural resources for their livelihoods. However, the dependence on natural resources needs to be reconsidered and altered as they are limited. On the other hand, environmental pollution affects human lives.

To prevent the situation, the only way forward is institutionalization. Countries around the world have enacted legislation to ensure development is in harmony with human and nature. Viet Nam is recognized as one of most bio-diverse countries, with 49,200 identified species, including: 7,500 microorganisms, 20,000 terrestrial and aquatic plants, 10,500 terrestrial animals, 11,000 marine species and 2,000 invertebrates living in freshwater and marine areas. These species are important natural capital for Viet Nam's socio-economic development strategy. However, Viet Nam has a complicated history, suffering impacts from the war, and unsustainable exploitation of natural resources has led to environmental pollution in urban and rural areas, which is increasingly severe and alarming. Hence, Resolution No. 41/NQ-TW by the Politburo on environmental protection during the industrialization and modernization of the country demonstrated the Party and the Government's priority on environmental protection. Since then, the legal system on environmental protection has been gradually completed in line with Agenda 21 and sustainable development objectives. In the legal system of Viet Nam, the Law on Environmental Protection (LEP) was first enacted in 1993 and revised in 2005, and is an important law to promote socio-economic development towards modernization.

After eight years, LEP 2005 has resulted in considerable impacts in socio-economic development and environmental protection, forest

protection, protection of ecosystems and biodiversity. However, it is also accompanied by shortcomings and challenges, and needs to be revised. On the other hand, all legislation has its scope and implementation impacts in each development period. Therefore, the viewpoint of the Party, Government, and National Assembly is to promptly finalize the Law on Environmental Protection in line with international integration trends.

The Ministry of Natural Resources and Environment (MONRE) was assigned by the Government to study and formulate the LEP (amended). With prompt and serious efforts, MONRE has finished the draft LEP (amended) consisting of 160 articles in 19 chapters. This document of the Socialist Republic of Viet Nam completes the legal system for environmental protection of the country. All articles of the LEP are scientific, practical, topical and appropriate for the socio-economic development of the country, while at the same time harmonious with international cooperation and trends. More importantly, it has gained great consensus from both management communities and civil communities.

MONRE is aware of the importance of the LEP (amended) to the sustainable development strategy of the country, and has sought comments and contributions from other ministries, sectors and provinces on the draft LEP, which are taken seriously to finalize the draft LEP (amended). Articles and provisions in the draft LEP (amended) illustrate the scientific comprehension and institutionalization of policies and orientations of the Party and the



State on environmental protection and sustainable development. In particular, all national and sectorial socio-economic development projects, master plans and sector plans are regulated to conduct Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA); and the Law also clearly regulates the assignment, responsibility and decentralization on environmental protection towards enhancing the responsibilities of ministries, sectors and local districts.

In addition, articles and provisions in the draft LEP (amended) have illustrated legal and topical situations to be appropriate with the current situation of Viet Nam, which is the “red tape” to support sectors and districts in environmental management and protection. However, the draft LEP (amended) needs to clarify the conflict with some articles and provisions in other relevant legislation such as the Law on Forest Protection and Development (2004), and the Law on Biodiversity (2008), namely:

- Between the Law on Biodiversity and the draft LEP (amended): Provision 7, Article 9 of the Law on Biodiversity requests to implement SEA for the national biodiversity conservation master plan. It is necessary to clarify the category of the national biodiversity conservation master plan among the master plan types mentioned at Article 14, Part 2 (EIA) of the draft LEP (amended): “Project owner is responsible for implementing EIA or hiring the Consultant to implement”.

- Regarding inter-provincial and inter-regional forest protection and development planning in Article 14, LEP 2005, is there also inter-provincial and inter-regional biodiversity conservation planning, because biodiversity has immense impacts for these areas.

- LEP 2005 regulates on nature



▲ *Van Long - The largest protected wetland area in the northern delta region*

conservation planning, hence what is the difference between nature conservation planning and biodiversity conservation planning? (Law on Biodiversity)

- To solve the conflicts in master plans, the draft LEP (amended) proposes to merge all master plans that have similar objectives on protection of natural resources and biodiversity. The draft LEP (amended) proposes to develop one natural resource use and exploitation master plan and strategy with the scope of more than two provinces. If these master plans are still obliged to the Law on Forest Protection and Development, Law on Biodiversity, or the Law on Fisheries; then the LEP should clearly regulate the relationship between the legislation with one principle: the sequence of approved master plans, using previous master plans as input for new master plans. On the other hand, the draft LEP (amended) needs to clarify

the relationships between enacted legislation.

- Article 15, Point 2 in the draft LEP (amended) on EIA, consultations should also be conducted with the communal Viet Nam Fatherland Front. Regarding the protection of environmental components stated in Chapter V, the environmental component of biodiversity should be added.

As a considerably comprehensive legislation, the draft LEP (amended) is scientific and comprehensive, meeting practical requirements and institutionalizing policies and viewpoints of the Party and the State on environmental protection and sustainable development. With serious and prompt efforts by MONRE, the draft LEP (amended) will be submitted to the National Assembly tenure XIII for consideration, and the legislation is expected to be approved as soon as possible for its effect and implementation■



Some issues on climate change mitigation and adaption in Viet Nam



Prof Dr. TRẦN THỤC - *Director
Institute of Meteorology, Hydrology
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1. IMPACT OF CLIMATE CHANGE IN VIET NAM

Climate change has created serious impact on production, livelihood and the environment in the world. It has lead to profound changes in global development and security issues such as food, water, energy, social security, culture, diplomacy and trade.

Viet Nam is assessed as one of the most vulnerable countries to climate change, in particular, Mekong Delta is one of the most three deltas in the world vulnerable to sea level rise.

Over the past years, due to climate change, natural disasters have increased in terms of both frequency and intensity, causing enormous damage to health,

property, infrastructure and the environment. Climate change impact in Viet Nam is a serious and threatening factor of achieving poverty reduction objectives, millennium objectives and sustainable development of the country. At present, development patterns in developing countries mainly rely on exploitation of natural resources, cheap labor and polluting the environment. Climate change triggers the change in development mindsets and creation of a new development mindset which provides sustainable and low carbon development.

Viet Nam is a middle income country. International funding sources for development has been reducing and changed to a mutual benefit mode. Climate change opens opportunities for boosting global, multilateral and bilateral co operations through which developing countries including Viet Nam can access to financial support and technology transfer from developed countries.

Boosting international cooperation and integration in implementing the United Nations Framework on Climate Change Convention and other international agreements will enhance Viet Nam's role and status in the region as well as in the world.

2. VIET NAM'S RESPONSES TO CLIMATE CHANGE

Recognizing serious impact of climate change on sustainable

development of the country, the Government of Viet Nam has joined and ratified the United Nations Framework on Climate Change Convention and Kyoto Protocol at an early stage. In the meantime, it has improved its regulatory systems to provide a legal framework for disaster prevention and mitigation and climate change responses. A national target program on responding to climate change, a national strategy on climate change and a national action plan on climate change have been endorsed. On 3th June 2013, at the 7th Congress of the 11th Committee of Communist Party, Resolution 24-NQ/TW on proactively responding to climate change and enhancing natural resource management and environmental protection was issued. These are important efforts by Viet Nam in responding to climate change. Being attached due attention by the Party and the Government, climate change responses in Viet Nam have made some important achievements.

To realize the national target program on responding to climate change, the Ministry of Natural Resources and Environment in cooperation with other line ministries have implemented tasks such as developing institutions and policies on climate change; developing climate change and sea level rise scenarios; assessing climate change impact on sectors and areas; developing action plans for responding to climate change,



▲ *Investment in climate resilience infrastructure will reduce potential costs in the future*

and developing a national science and technology program on climate change.

Negotiations and calling for support from international donors in climate change responses have been improved and made positive progress. Support programs by Denmark, Japan, France, Norway, Netherlands, Canada, UNDP, World Bank and Asian Development Bank have been implemented. Some other programs and projects are in negotiation processes.

3. PROPOSING CLIMATE CHANGE CONTENTS IN AMENDED LAW ON ENVIRONMENTAL PROTECTION(LEP)

Policy, key tasks and solutions to climate change and natural resource and environmental protection have been approved by the 7th Congress of the 11th Party Committee. This indicates the interests by the Party and the government in environmental protection and climate change. A draft of amended LEP has a section regulating that climate

change responses shall be integrated in strategies, planning, and socioeconomic development based on sustainable development principles in systematic, comprehensive and inter-sectoral and inter-regional manners. Following this, the author proposes some following points in the amended law.

Developing clean energy, environmentally friendly renewable energy

With an aim to become a modern oriented industrialized country by 2020, energy production and consumption will increase considerably, in particular in the area of industry, transport and urban development. As a result, green house gas emission in Viet Nam will increase significantly. This poses a challenge to the requirement for each country, regardless of developing or developed one, to reduce green house gas emission to protect the earth climate. While renewable energy and new energy have low emission, they require big investment and high costs.

LEP 2005 encourages clean and renewable energy development and environmentally friendly products by offering preferential taxes, capital and land for operation. The law also stipulates that the government develops strategy on clean energy, renewable energy to achieve objectives of energy securities, natural resource saving and reducing green house emission. To implement the regulations, many energy saving projects and mitigation activities have been effectively implemented in the country.

However, community awareness on climate change remains limited. Attention has been paid only to negative impact of climate change but not to changes in living, production and consumption patterns towards low carbon and green growth. These challenges require more effort in issuing policies and measures to increase awareness to capacity to respond to climate change, together with economic development.

Climate change adaptation

The foremost important issue in responding to climate change is adaptation. In other words, adaptation needs priority. Adaptation to climate change needs to be integrated into socioeconomic planning at all scales. Adaptation is a consecutive process over many decades with different but related requirements for each short term period. Adaptation measures are considered as priorities at local levels.

Investment in adaptation measures, in particular for infrastructure in coastal zones, transport, energy and agriculture to improve resilience will reduce costs significantly in the future. This is very important for assessing plans for city expansion, new industrial



zones, environmental services (in particular for waste and wastewater treatment), and zoning for ports, roads, railways, water supply and drainage and other infrastructure in the future.

Green house gas mitigation

Carbon reduction per GDP unit is Viet Nam's approach. Some countries have set reduction objectives. For example, China has set the target of 40-50% reduction for each GDP unit in the 12th five year plan. India has the target of reduction of 20-25% per GDP unit by 2020, compared against 2005.

Viet Nam needs to set a target for green house gas reduction to secure energy and meet energy demand. A strategy for low carbon development needs to be developed to set up priorities and systems for monitoring and reporting.

According to data recorded in 2000, energy accounted for more than 1/3 of the total emission. In particular, electricity sector is forecasted to increase its emission rapidly. Viet Nam should review its energy policy because at present, coal is considered as the main energy source and coal will need to be imported in the future.

Nationally appropriate mitigation actions will play an important role to attract international financial and technological support such as effective energy, renewable energy and waste management [8].

Climate change financing

Viet Nam needs a strategy

for investment in climate change mitigation and adaptation, encouraging finance policy renovation to ensure competitiveness and big scale investment.

Adaptation is mainly based on public investment. Public investment needs to be prioritized on temporal, spatial and sectoral bases in parallel with planning renovation and international support.

Mitigation is mainly based on business investment. It is necessary to revise financial policies (in particular energy subsidy and taxes) and to make sound decisions to respond to climate change as well as creating jobs and economic growth.

Developing climate change business

The world is facing global economy recession. However, investment in renewable energy has increased significantly in recent years, providing opportunities for low carbon business. In particular, in Viet Nam, one of the largest solar battery manufacturing factories will be built, providing added values and opportunities and increasing competitiveness for Vietnamese business and sustainable macro economy.

Green house gas mitigation for business can be achieved by research and development activities (with both public and private support), preferential financing, voluntary negotiation, information, renewable energy incentives, increased energy efficiency

standards for equipment, expanding training for engineers and technicians (tertiary and vocational levels) and better urban planning to increase resilience and low carbon development.

Some low carbon industries require emission and energy consumption measurement at local levels, energy reduction and energy audits in major facilities, developing reporting procedures for energy use and emission at local levels.

Responding to climate change in Viet Nam requires changes in mindsets, strategies and viewpoints on climate change to develop a foundation for changes in socioeconomic, environmental, climatic and natural resource systems. Therefore, research and forecasting are very important in the next periods. It will not only provide information for timely prevention of disasters but also provide scientific bases for long term national policymaking as well as international cooperation to adapt to climate change reduce green house gas emission and join international effort in protecting global climate systems.

4. CONCLUSION

With serious impact of global warming and sea level rise, a foremost important task of responding to climate change in Viet Nam is adaptation. In other words, adaptation needs to be a focus of efforts. Green house gas mitigation should be considered as opportunities for socioeconomic development and environment■

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Proposal for Inclusion of Sustainable Development and Green Growth in the Law on Environmental Protection (Amended)

1. IMPLEMENTATION OF LAW ON ENVIRONMENTAL PROTECTION 2005 IN THE PLANNING PROCESS

The Ministry of Planning and Investment (MPI) is assigned by the Government to study and implement regulations of the Law on Environmental Protection (LEP) 2005 and its guiding Decrees and Circulars. MPI has integrated environmental regulations into socio-economic development strategies, master plans and sector plans, namely: the development and integration of sustainable development and environmental protection indicators into the five-year Socio-Economic Development Plan (2006-2010); integration of environmental investment activities and components into socio-economic development programs and projects; and submission to the Government for approval of decrees and decisions such as Decree No. 140/2006/ND-CP by the Government regulating environmental protection in preparation, appraisal, approval and implementation of development strategies, master plans, sector plans and projects ...

In addition, the Ministry also formulates the Sustainable Development Strategy and National Strategy on Green Growth, and submits them to the Government for approval with the following content: Coordination with other ministries, sectors and localities in developing and approving legal documents and integration of the en-

vironment in the preparation, appraisal and investment approval processes.

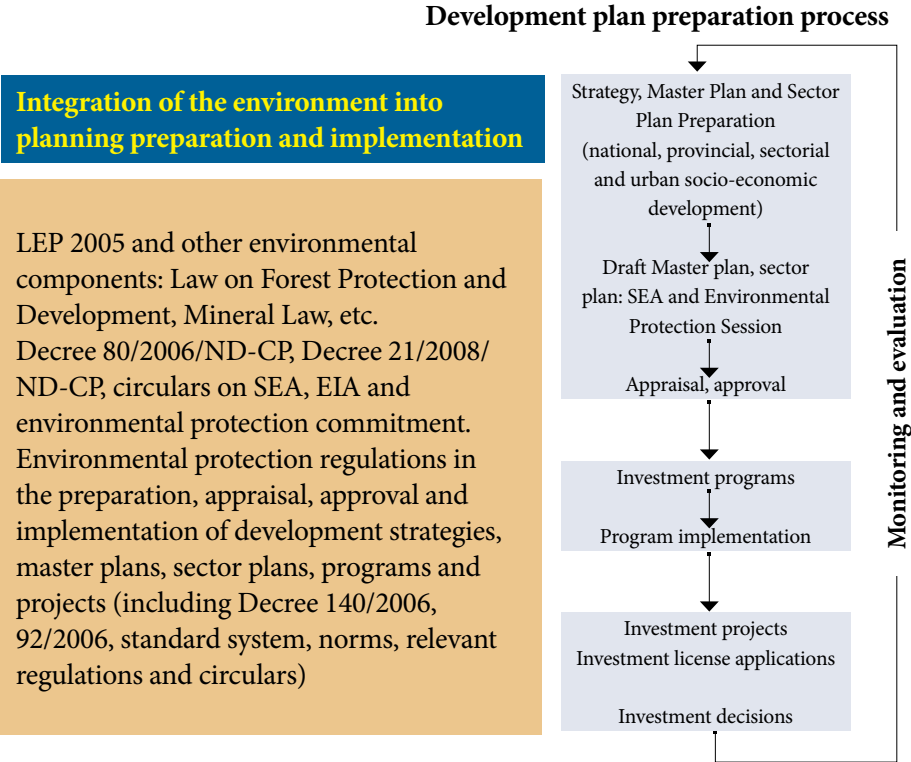
However, during implementation, some limitations face environmental protection procedures and processes relating to planning and investment, such as:

The effectiveness of the preparation, appraisal and approval of Strategic Environmental Assessment (SEA), Environmental Impact Assessment (EIA) and environmental protection commitment is minimal; SEA is normally general and lacks recommendations and selection of scenarios that cause less nega-



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tive impacts on natural resources, environment, society and biodiversity,...; guidance on detailed procedures of SEA for socio-economic development strategies, master plans and sector plans is not avail-



▲ Flowchart of integration of the environment into the planning process



able; appraisal criteria is not available to identify SEAs that do or do not meet requirements; stakeholders that are wasting natural resources and increasing environmental pollution are inadequately addressed in the new SEA; the monitoring and supervision of EIA and SEA is irregular and only conducted if problems occur...

While sustainable development is an objective of Vietnam, there is a separation of social and environmental issues during the preparation and implementation of EIA and SEA report; hence, many ODA-related programs and projects have to be revised or they cannot be implemented, some issues require public consultation but the implementation is inefficient, and effective pollution reduction methods are often absent, which leads to later damage.

Many important topics such as sustainable development, climate change and green growth during the implementation of the LEP since 2005 up to know and some guiding legislation only adopts the old-fashioned approach of focusing on the environment, with the absence of climate change. Although some of these documents have been promulgated recently, they are not comprehensive, and implementation is limited as a result. SEAs and EIAs also often focus on the impact of development on the environment, without indicating adverse environmental impacts and climate change on the effectiveness and sustainability of the project.

Inter-regional and trans-boundary environmental issues have not been addressed and proactively implemented. For example, in recent years, Vietnam has implemented an integrated river basin management strategy, but its efficiency is insignificant. Vietnam is currently confronting the issue that neighboring countries sharing the same river basin are develop-

ing hydro-power which affects downstream socio-economic development (for example, the Mekong River Delta region), but the mechanism for negotiation, discussion and consultation is lacking.

In addition, limited resources have been mobilized for environmental protection, and investments are difficult to attract due to unclear mechanisms. Furthermore, the environment is only financed from the state budget, which also restricts investment.

On the other hand, the private sector has not been encouraged to invest in environmental protection and pollution treatment. Currently, many private companies have researched and successfully tested new pollution treatments, but policy mechanisms relating to incentives and property right protection are not available. Therefore, the participation of different stakeholders and private sector investment in these new fields is negligible.

2. SOME SUSTAINABLE DEVELOPMENT AND GREEN GROWTH PROPOSALS FOR INCLUSION INTO THE DRAFT LEP (AMENDED)

Chapter III of the draft LEP (Amended) only refers to an "effective response to climate change", and moving "towards sustainable development". However, the draft Law should integrate sustainable development and green growth issues as follows:

Basic requirements and aspects of environmental protection should be more clearly explained, including sustainable development, climate change response, and green growth; the legal environment created should promote the sustainable use of natural resources, to change the growth pattern and strengthen the competitiveness of the economy; and the objectives and scope of the Law should be expanded to interlink environmental protec-

tion, sustainable development, climate change response and green growth, in order to meet short-term goals and long-term development visions of the country.

The procedures for appraisal and approval of SEAs and EIAs should be improved in line with international standards to attract foreign investment; Reporting, monitoring and supervision tools need to be improved for SEAs, EIAs, and disclosure and dissemination of information; Better coordination with ministries and sectors is needed to timely promulgate guidelines on sectoral SEAs and EIAs. At the same time, it is necessary to expand the scope of SEA to be an efficient tool to integrate objectives of sustainable development, climate change, and green growth into the decision-making process for macro or strategic policies; and it is necessary to conduct advanced SEA (SEA +) or assessment of the sustainability. SEA is not an independent activity by a group of consultants that is conducted simultaneously or after the development of strategies, master plans and sector plans; it is a task of those who develop strategies, master plans and sector plans, including environmental experts. Objectives for environmental protection, sustainable development, and green growth should be integrated from the beginning with socio-economic objectives, through the identification of standards for each specific field and standards for general sustainability.

In addition, the monitoring of the implementation of SEA, EIA and environmental protection commitment should be clearly decentralized, with clear responsibilities for localities and civil society organizations and the participation of relevant stakeholders.

It is necessary to promote the development of investment programs and projects on natural capital; to at-



tract private investment channels for environmental protection and pollution treatment; to encourage the transfer and application of advanced and environmentally friendly technologies; and to enhance the mobilization of resources for environmental protection.

Flowchart of implementation of advanced SEA (SEA+) can be summarized as follows:

In the above flowchart, to enhance the integration of sustainable development and green growth, in steps 1 and 2 we need to: assess and describe past changes and forecast future trends of key environmental issues, with impacts of key socio-economic sectors of territories to be built strategies and master plans in the context that these strategies and master plans are not implemented, from which to understand the sustainability of current programs and projects; assess and describe fac-

tors causing changes and downward trends in environmental components, with particular consideration for consequences in the context of climate change, and recommendations for the preparation of new strategies, master plans and sector plans.

With step 3, in proposing development objectives, priorities and activities: with SEA+, some scenarios and options using different combinations of economic, social, and environmental variables will lead to the answer is that which of scenarios Viet Nam should select and it is not necessary to implement SEA as now.

To assess the scenarios, in addition to current standards, we can use economic-social-environmental, economic-social, and economic-environmental criteria to decide.

For example, with economic-social-environmental criteria: Green GDP (GDP minus damages caused by natural resource losses and envi-

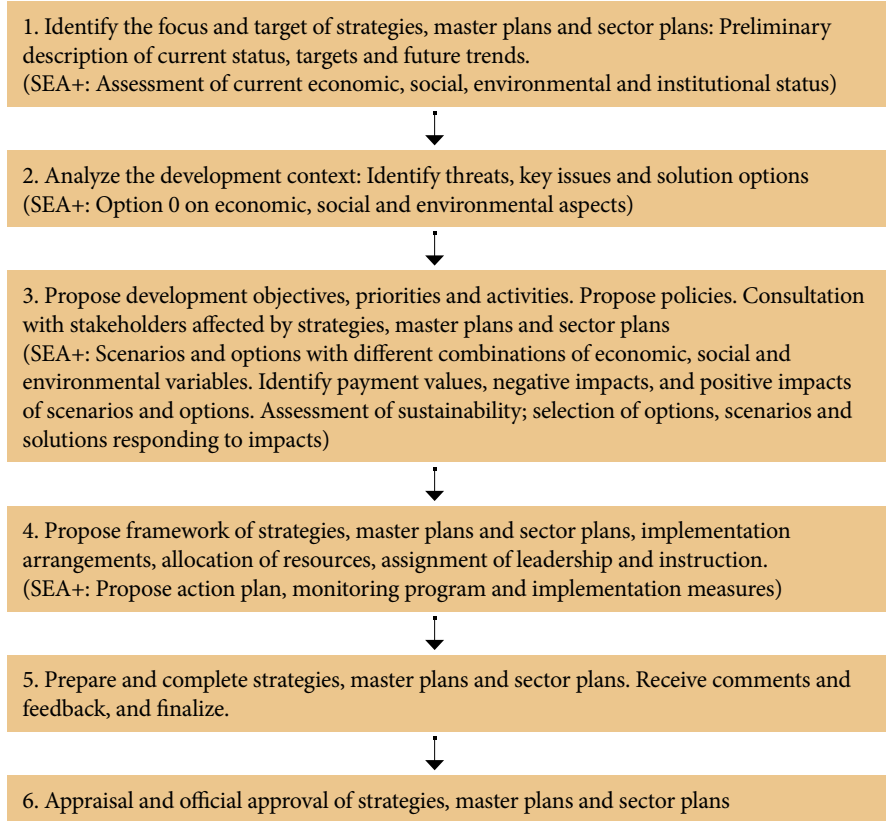
ronmental pollution); total damage values of society due to natural disasters and climate change (includes direct damage values and values of properties and efforts spent on the prevention of natural disasters); contribution to economic re-structuring and enhancement of competitiveness.

With economic-social criteria: Social labor productivity (million ong GDP/laborer); income of laborers in economic growth (income in millions (salaries, wages and other incomes)/laborer/year); difference in each laborer/year); difference in living conditions (GINI index or income of 10% highest income group compared to 10% lowest income group).

With economic-environmental criteria: Energy loss for producing each GDP unit (kwh or TEU/billion Dong GDP); Water loss for producing each GDP unit (m3 or tonnes of water/billion Dong GDP); Agriculture land loss for growth (ha of agriculture land loss per billion Dong increase in GDP); forest loss for growth (ha of forest increased or decreased per billion Dong increase in GDP); Volume of solid waste per GDP unit (tonnes/billion Dong GDP); proportion of manufacturing industries (or high technology) and proportion of cleaner technology products as a percentage of GDP and total exports.

It will be a significant challenge for the planning and investment agency, as well as the state management agency for natural resources and environment, to implement these changes. However, it is crucial to apply the criteria (economic-social-environmental, economic-social, and economic-environmental) to decide the advanced SEA option, through which to integrate sustainable development and green growth into the draft LEP (Amended)■

SEA in the formulation of development strategies, master plans and sector plans





A new policy tool is needed - integrating climate change into development strategies and master plans through strategic environment assessment



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Climate change together with natural resource degradation and environmental pollution which are the biggest threats to humankind in the 21st century have been comprehensively and significantly changing natural ecosystems, socio-economic activities and development processes and seriously threatening environment, energy, water sources and food security at the global scale. Sustainable development is the target of all countries in the world. Scientists and environmental managers have constantly taken effective solutions to prevent and overcome environmental pollution and degradation. Vietnam stretches along the coast which is vulnerable to climate change impacts; the natural resources are limited while the demand for exploitation and use

increases rapidly; the environment suffers great pressures from the socio-economic development, modernization and urbanization processes. To develop sustainably and to mitigate the impacts of climate change, Vietnam is gradually completing the legislations and legal documents on environmental management and protection and on responding to climate change. However, current environmental protection legislations and legal documents have not addressed issues from the requirements of current climate change responses; climate change issues have not been internalized into national, regional and provincial socio-economic development strategies and master plans. Therefore, Vietnam should learn lessons and experience from other countries, inherit and develop solutions to be appropriate with the development process in general and with the environmental protection decision making process in specific, particularly during the development of the Law on Environmental Protection (LEP - amended).

In the world, in addition to integrating of environmental protection into development policies, climate change response policies are being studied to be integrated. However, the integrating of climate policies into other policies at governmental, sectoral and local levels or the integrating of other policies into the climate change adaptation and mitigation process face a variety of constraints. A specific

policy is integrated into a general policy when the outcomes of the specific policy are assessed based on the impacts of the specific policy and when there is a linkage between specific and general policies.

European countries are leading in formulating guidelines on integrating of climate change issues. The guidance on integrating of climate change is a useful reference by Ministries, Development cooperation and Environment agencies to support and enhance national capacities in responding to climate change. However, it is necessary to well combine the implementation of adaptation with the integration of long-term climate risks into the development of national master plans as well as sectoral and local policies and development projects. The guidance on integrating climate change is considered as an analysis tool to assess development strategies and master plans during the formulation process as well as to review these documents. Considered issues consist of the analysis of the vulnerability of contents confronted with climate change risks, or the consideration of risks right from the policy formulation process, the forecast of consequent outcomes caused by policies leading to the increase in vulnerability in order to propose modification measures.

In Vietnam, the integration of climate change into development policies, master plans and plans has been applied recently; hence, few studies have been carried out on



this issue. Some studies showed that the integration needs to be carried out comprehensively in terms of institutional, organizational and implementing aspects, as a result to identify gaps and demands of current programs and policies relating to human and socio-economic issues for revision and modification. However, Vietnam has not promulgated a comprehensive and official policy for the integration. Based on the analysis of the integration guidance of international organizations, some studies introduce a short procedure consisting of five steps to integrate climate change into development strategies and master plans.

The integration of climate change issues into development strategies and master plans is considered to be a suitable approach in order to achieve sustainable development targets and develop measures to respond to climate change effectively. The integration of policies and response measures to climate change into socio-economic development strategies and master plans supports to ensure the investment stability and to reduce the vulnerability of sectors due to the impacts of climate change. Of which, climate change adaptation and mitigation measures are considered as an integral part of development policies. Adaptation and mitigation

measures only take effective if they are integrated into development policies and strategies. This is an important principle to design an effective policy to achieve economic and environmental benefits and climate change responses. If climate change issues are not integrated, policies are not likely to change in the future to timely adapt to climate change. On the contrary, if adaptation and mitigation measures are integrated and quickly implemented, losses, particularly those relating to physical infrastructure works can be mitigated.

Strategic environment assessment (SEA) is a series of analytical and participatory solutions to integrate environmental issues into policies, plans, programs and to assess the interactive relationship with economic and social issues. Law on environmental protection 2005 has regulated that SEA is the analysis and forecast of environmental impacts by development strategies, master plans and plans prior approval to ensure to achieve sustainable development targets. The main objective of SEA is to integrate environmental issues during the development of socio-economic planning, at the same time to support the transparent and participatory decision-making process. In the last few years, SEA has become an important tool in

integrating environmental issues into the development of socio-economic development master plans, sectoral development policies and master plans in Vietnam.

According to the experience of many countries and international organizations, SEA is an efficient tool to integrate climate change issues into the development of development master plans. SEA supports to analyze and assess the impacts of climate change on development master plans and the impacts of development master plans on climate change; as a result to propose solutions for adaptation and mitigation measures to be integrated into development master plans. The promotion of the application of SEA for integrating climate change issues into the formulation of development strategies and master plans in Vietnam plays a very important role in supporting to achieve the National Strategy on Climate Change, National Strategy on Green Growth towards sustainable development. The integration of climate change into development strategies and master plans through SEA should take into consideration of some following issues:

Firstly, it is necessary to identify the list of development strategies and master plans that need to conduct SEA and to identify the list of climate change issues to be integrated into different sections of SEA. It is necessary to identify whether to apply the climate prism to get detailed information to decide whether to conduct the analysis on climate change. In addition, strategies and master plans which are possible to cause considerable impacts and are potential to adapt to climate change in the future or climate change impacts on strategies and master plans should be identified. As a result, the scope of strategies and master plans should be revised to consider the risks and the vulnerability against climate change.



▲ *Integrating climate change into development strategies and planning is considered wise approach in achieving sustainable development goals*



Those strategies and master plans that need to conduct SEA should identify the assessment details. As a result, environmental issues and the elaboration level required in the environmental statement are regulated by authorities with prospective requirement of consultation with communities and non-governmental organizations. The statement must ensure that all climate change impacts affecting strategies and master plans are addressed.

Those strategies and master plans that need to integrate climate change issues through SEA are required to set targets responding to climate change and enforced relevant indicators to climate change; to identify key issues and conflicts due to climate change in the future; to propose response solutions to climate-driven issues to integrate mitigation and adaptation measures into strategies and master plans; to assess impacts of master plans on greenhouse gas emission and the vulnerability against climate change.

Active responding to climate change and promoting natural resources management and environmental protection play important roles to the sustainable development of the country. This is the bases for the formulation of the socio-economic development policies and outlines, national defense, social security and welfare. Therefore, in addition to the development, update and implementation of Climate change and Sea level rise Scenarios, Climate change Action Plan and Strategy, the completion of environmental protection legislations, policies and legal documents, particularly the revision of the LEP 2005, with the integration of climate change through SEA tool is very essential in the context of ensuring sustainable development targets■

RESOURCES FOR ENVIRONMENTAL PROTECTION



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Resources for environmental protection are a fundamental part of the Law on Environmental Protection (LEP) 2005, and regulated by 12 articles under Chapter XI. Accordingly, the resources that are mobilized for environmental protection are financial, human and technological resources, which are accompanied by government policies on resource mobilization and use. In Chapter XV of the draft LEP (amended), regulations on resources for environmental protection are generally similar to those in the LEP 2005; however, they have been proposed in more detail and comprehension.

With the expectation of contributing to the draft Law, the author would like to provide some comments on Chapter XV focusing on resources for environmental protection, with particular emphasis on financial resources for environmental

protection in order to attain great achievements in environmental protection over the next few years.

1. RESOURCES FOR ENVIRONMENTAL PROTECTION

Firstly, the definition of resources should be clarified. In a narrow sense, resources (to achieve a specific development target) are understood as human resources (human strength and intellect), and material resources (including financial capital, natural resources, and physical resources such as warehouses, equipment, machinery, etc.) to achieve the objectives. In a broader sense, resources consist of all material and non-material advantages and potential to work towards a specific development target. With this broad definition, resources do not only consist of human and material resources, but also knowledge (technological processes, manufacturing processes, management capacity, etc.) and tools to spread knowledge (information). Resources can be divided into internal (domestic) and external (international) resources.

One issue to be discussed is which measure is needed to mobilize resources for the target? In other words, how can we identify available resources and utilize them to achieve the target? The concept of resources is understood, but if there are no proper measures to activate or strengthen them, then resources can be or will be eliminated, neglected, or used for purposes other than development targets.

What are the resources for environmental protection? In a narrow sense, they are human and material resources to implement



▲ *Vietnam Environmental Protection Fund supports people in Bat Trang craft village to invest in pollution abatement technology*

environmental protection and achieve the proposed environmental protection objectives. In a broader sense, resources for environmental protection not only consist of human and material resources, but also knowledge (technology, processes and management capacity) and information for environmental protection. Financial resources are an integral part of environmental protection resources, and can be understood as all budgets that are spent on environmental protection.

Therefore, in Chapter XI of LEP 2005, as well as Chapter XV of the draft LEP (amended), the concept of resources in a broad sense has been applied. At the same time, it focuses on the identification of measures to “drum up” or promote resources for environmental protection. In addition, issues relating to resources for environmental protection are also addressed in other chapters of the draft Law.

2. NEW POINTS AND DISCUSSION ON RESOURCES FOR ENVIRONMENTAL PROTECTION IN THE DRAFT LEP (AMENDED)

Chapter XV titled “Resources for environmental protection” of the draft

LEP (amended) is generally similar to LEP 2005 with 12 Articles. No new articles have been added, but existing articles have been amended, altered, or the sequence has changed in comparison to the current LEP 2005. Major changes of Chapter XV can be summarized as the following:

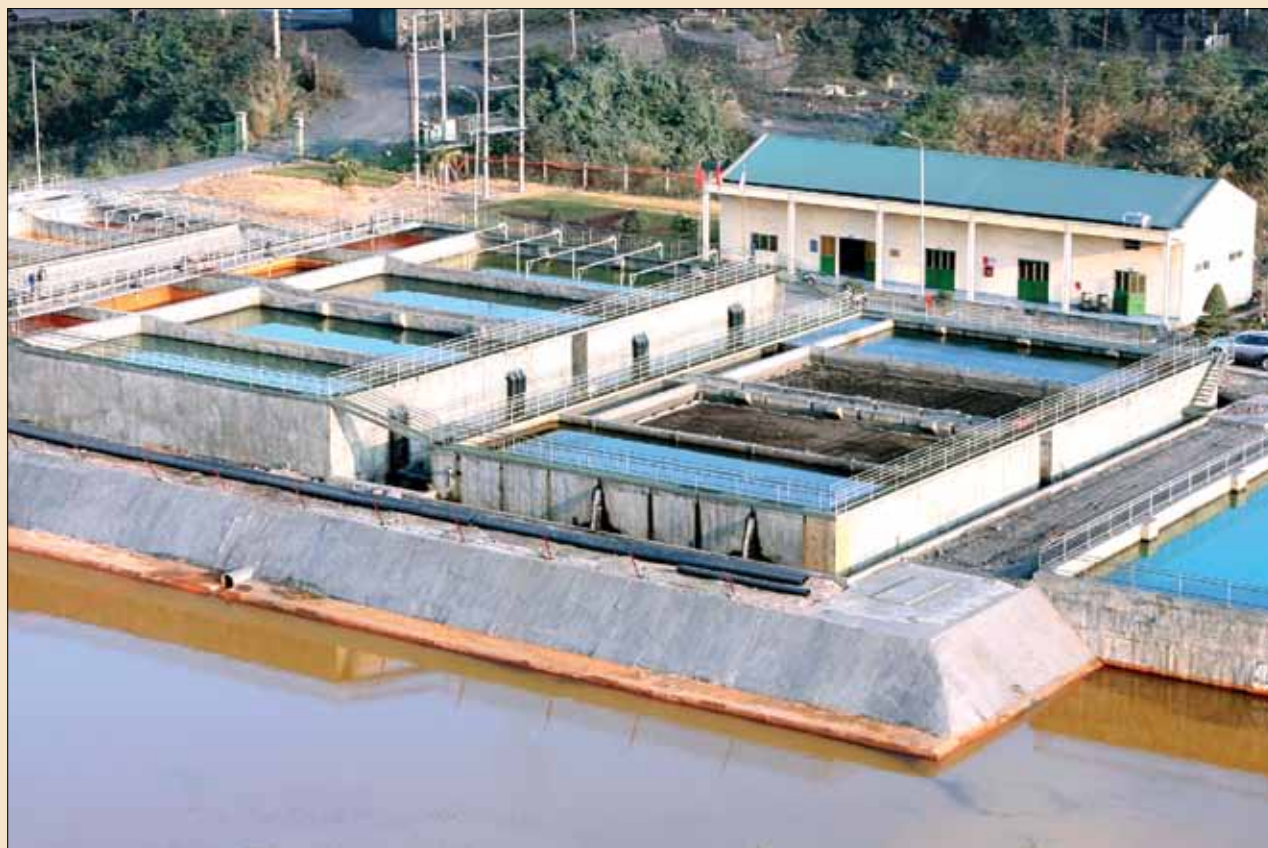
Changes of the Draft Law on financial resources for environmental protection

The regulation on financial resources for environmental protection has been moved to the first section of Chapter XV, rather than placing it after the articles regulating education and awareness of environmental protection and technology developments for environmental protection, as in LEP 2005 (Articles 106 -109). The change in sequencing shows that financial resources and their mobilization for environmental protection has become more focused and given “more” attention in the draft LEP (amended). This is appropriate, as awareness of environmental protection issues in Vietnamese society has improved since the first LEP in 1993 and the revised LEP in 2005.

Although financial resources mobilized for environmental protection have been increased and given more attention, they still do not meet requirements. Financial resources

for environmental protection come mostly from the state budget or related state budget (ODA), whereas other sources (private, funds from domestic and international investors, individual funds, etc.) are limited and have not been effectively stimulated for environmental protection. Section 1, Article 134 of the draft LEP (amended) regulates that financial resources for environmental protection will consist of: state budget, compensation, contributions, sponsorship, and capital from organizations and individuals, loans (soft loans or commercial loans), and other funds as regulated. Therefore, the diversification of financial resources for environmental protection has been incorporated into the draft Law with additional regulations for “other sources as regulated”.

An important revised point of the draft LEP compared to the current Law relates to the accounting and reporting on public financial resources for environmental protection. Section 2 of Article 135 of the draft Law stipulates that the “State Budget contains a separate spending category for environmental expenses, and a separate category for development investments for public environmental protection works, while the current Law only stipulates that the “State Budget contains a regular category for environment expenditure”. This change is necessary as it ensures that the state budget can be balanced in terms of investments and regular expenses for environmental protection. With current state budget estimates and reports only having a separate category for the environment; environmental protection has not been carried out comprehensively, expenditure has been unbalanced, and has not met the requirements of central and local agencies for effective distribution and utilization of state budget for envi-



▲ Wastewater plant of mining site no.6, Cam Pha, Quang Ninh by Viet Nam Coal and Mineral Informatics, Technology and Environment Company with an investment of about 90 billion VND

ronmental protection . If this regulation in the draft Law is passed, it can be expected that in the near future, state budgets on environmental protection will be better balanced, and investments in infrastructure for environmental protection will increase. This will help to meet the urgent requirements of localities in the context of rapid industrialization and urbanization, as they are currently unable to adequately mobilize funds to invest in public environmental protection infrastructure such as waste discharge, waste water treatment and waste treatment systems.

Compared to the current Law, Article 135 of the draft Law has sufficiently regulated state budget expenditure for environmental protection. In addition to maintaining the two main state budget expenditures for

environmental protection regulated in the current Law, “environment expenditure” and “development expenditure”, Section 1 of Article 135 has added other state budget expenditure which has not been mentioned previously, such as science expenditure, economy expenditure, and others. This change has enabled the draft Law to fully cover all state budget expenditure for environmental protection. This is expected to support state agencies in paying more attention to environmental protection activities and spending state budgets correspondingly on this sector. In addition, it will improve the accuracy of reporting and publication of state budgets for environmental protection, and provide a better reflection of this public expenditure in Vietnam.

Section 2 of Article 135 of the

draft Law clearly regulates the categories and provisions to be supported by state environment expenditure. Compared to the current Law, these categories and provisions have been reduced from 14 to 10, to pay more attention to issues relating to environmental protection.

In addition, Section 3 of Article 135 proposes new content regulating issues on for development investments in environmental protection works, including: construction, improvements in public waste treatment facilities, improvements in rivers, ponds, and channels, prevention of pollution and degradation, conservation of natural ecosystems, construction of monitoring stations, and planting trees, etc. If it is approved, this regulation will create new opportunities for investment in issues and



projects that were previously short on funds (such as pollution treatment and prevention systems, environmental monitoring systems, etc.), and other environmental protection activities that required support from the regular state budget. However, the draft Law's "fixed" regulation of issues for development investments from state budgets for environmental protection could cause difficulties during implementation, as some environmental protection issues may be important to sectors and localities, but not regulated by the Law. In particular, technologies and investment projects are always changing. Therefore, it would be more appropriate for the draft Law to have an "open" article to address this issue.

Section 4 of Article 135 of the draft Law is also new content, to clearly define "other expenditure" from the state budget for environmental protection. If Section 4 is understood to clarify Clause (c) of section 1 of Article 135, then it is not comprehensive, as it raises the question of what economy expenditures and science expenditures for environmental protection consist of. Furthermore, regulations at Clauses (a), (b), and (c) have not been reflected adequately. In reality, the state budget has spent a considerable proportion on scientific and technological research on environmental protection through scientific projects and schemes allocated to ministries, sectors, state agencies and organizations working on environmental protection.

Section 5 of Article 135 is also a new point in the draft Law. This section regulates the responsibilities of ministries, sectors and localities on state budgets for environmental protection. Accordingly, MONRE is responsible for synthesizing the demands and preparing

cost estimates for environment expenditure; the Ministry of Finance is responsible for allocation plans of the state budget for environmental protection; and the Ministry of Planning and Investment is responsible for allocating budgets on development investments for environmental protection. In principle, these regulations are appropriate for the current mandates of these Ministries. However, two issues should be considered. Firstly, Clause (b) only regulates that the Ministry of Finance submits the plan for allocation of environment expenditure budget to the Government, and not the overall budget allocation plan for environmental protection (including environment and investment expenditures for environmental protection), which is inappropriate. Secondly, a regulation specifying the roles and responsibilities of the Ministry of Science and Technology on budget allocations for science and technology expenditures for environmental protection might be necessary.

- Article 137 of the draft Law regulates environmental protection fees, with clauses and points to be revised according to practical conditions. However, at Section 4, the regulation on "investing revenue from environmental protection fees in environmental protection activities" is inappropriate. This is because the fee revenue is not only invested in environmental protection activities, but also used to maintain the local fee collection administration system. Therefore, "investment" should be deleted from this clause.

In general, the draft Law has revised some regulations on financial resources from the LEP 2005, which makes it more broad and complete.

Changes of the draft Law for

other resources, and policies for mobilization of resources for environmental protection

While many articles of the draft Law in Chapter XV on resources for environmental protection remain unchanged from the current Law, some have been revised, specifically:

At Section 1 of Article 140 on the development of environmental protection services, in addition to the current regulation of State encouragement for organizations and individuals in providing environmental protection services through procurement, the draft Law has added other participation methods such as public-private partnerships and other investment means. This change in the draft Law is very important, as it will create further opportunities for organizations and individuals to participate in providing environmental protection services, meeting the requirements of society.

Section 1 of Article 141 in the draft Law, on incentive policies to support environmental protection activities, has expanded from only land incentives, to stipulate that "the State supports and provides incentives for environmental protection activities...", and lists the fields that are supported and encouraged by the State. In particular, Article 141 also regulates that the Government prioritizes the use of ODA for key environmental protection programs and projects. This regulation will allow the mobilization of ODA for environmental protection activities, particularly in the context of changing donor funding methods as Vietnam has become a low-middle income country, but the priorities are still focused on environmental protection and climate change■



Policy mechanism to mobilize the participation of communities in Environmental Protection

Vietnamese people have had the tradition of passion for nature and environmental friendly lifestyles for many years. Many individuals, households and villages have the awareness on environmental protection. Many good initiatives and models on the community participation in environmental protection have been promoted nationwide with intensive dimension and implementation arrangements. The discovery, support and expansion of local initiatives, the support and appreciation of the society on the initiatives, and the formulation of policies and mechanisms to attract the participation of communities in environmental protection activities have positively established environmental protection campaigns.



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1. OVERVIEW OF ENVIRONMENTAL PROTECTION MODELS

Environmental service model: Environmental services attract the participation of many organizations and individuals in the community. The collection, transportation and disposal of domestic wastes in all localities nationwide are noticed of effective models and are being expanded. Water supply by the private sector attracts the participation of many individuals and organizations and achieves great success. Typical is the small-scale water supply model (about 100 households) in Tu Liem (Hanoi), Can Duoc town (Long An), Phan Rang town (Ninh Thuan), Thang town (Hiep Hoa, Bac Giang)... The collection, trading and recycling of refuges have been implemented for a long time in Vietnam and are considered as an effective economic activity that brings environmental significances, in a new socio-economic sector: refuge economy. Handicraft villages in Bac Ninh

have gained precious experiences in the refuge recycling in the last ten years. However, it is necessary to organize the refuge recycling to be an official sector and to effectively control negative impacts on the environment.

Youth campaigns on environmental protection: "Green summer", "Green volunteer program", "Green school" activities with environmental protection contents attract the participation of the youth. Youth in general and students and pupils in particular are more intellectual, motivated and dynamic in implementing environmental protection activities. "Green" movements by the youth in Ho Chi Minh City have been expanded to other areas nationwide.

Ecological agriculture farm model: Farming economy is developing increasingly in rural areas in Vietnam. VAC model (Garden - Pond - Pigsty), RVAC (Forest - Garden - Pond - Pigsty) are appropriate for household economy; however, they are not suitable

for large-scale agriculture farms. The introduction of agriculture production processing industry into agriculture farms is turning farms into rural industrial units. Rural environmental protection cannot be separated from the role of these goods production farms.

Local nature conservation model: Bird garden, stork hill, bat pagoda models... voluntarily managed by communities or farmers appear nationwide. The most outstanding models are stork gardens in Lap Thach - Vinh Phuc, Ngoc Nhi - Ha Tay, Army Zone 3, Kien An - Hai Phong, stork island in Chi Lang Nam - Hai Duong, bat pagoda in Soc Trang, bird garden in Ca Mau... These models are expanded in other areas, with the combination between nature protection tradition and nature mysteries - which is called "Where the land is good, the birds will perch".

Cleaner production model by industrial and handicraft units: In recent years, the participation of industrial and handicraft units in



the cleaner production process is voluntary and creates many good environmental protection models. Typical models in Ho Chi Minh City and Dong Nai are Xuan Duc Paper Company, Linh Xuan Paper Company, Phuoc Long Textile Company, Thuan Thien Dying and Textile Entity, Thien Huong food Company, Visan Factory, Nestlé Company, Chanshin Company...

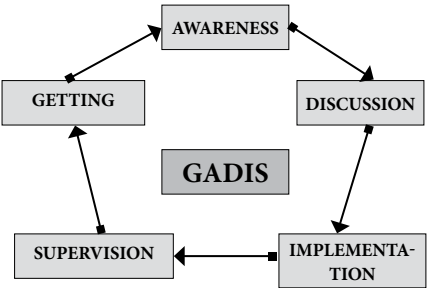
2. Expansion mechanism of environmental protection models

Communities have benefits: Enterprises, laborers and individuals who implement the models must be the beneficiaries. Initial benefit is the economic returns. Production models must be linked with sustainable livelihoods, income increase for organizations and laborers, contributing to poverty reduction. Followed is the social benefit such as creating new job opportunities, social fair and gender balance; in addition is the environmental benefit and finally is to enhance cultural values of enterprises or local culture.

Models are self- supported: Stable incomes are needed to cover model maintenance expenses (including equipment, tools, trainings, supervision, payment for

laborers, re-manufacturing...)

Community empowering:
Including Getting, Awareness,
Discussion, Implementation,
Supervision Rights
Of which:



Getting: means to mobilize the community in environmental protection, it is necessary to clarify benefits of communities; what are the gains? Material benefits (such as loans); spiritual benefits (village reputation); living environment quality benefit (clean water supply, managed wastes, disease reduction...).

Awareness: Awareness raising for communities through their participation on specific activities, projects and programs; what are the tasks? Why? Why needs their participation? How to participate? Where to implement? When? How

long? Who participates?

Discussion: Organize the meeting so the communities can discuss on solutions that they will implement so they are informed about their rights and responsibilities in programs/projects/tasks;

Implementation: Communities implement solutions and tasks;

Supervision: Communities or representatives can supervise the implementation and results of projects and benefits that they got. Models such as voluntary and self-managing groups... can be established.

Models must receive the guiding and instruction from localities: Local Party unit, authority, socio-political organizations need to instruct the participation of communities in environmental protection within the legal framework.

Initial support: Local authority or non-governmental organizations, international organizations... need to support in terms of financial, technical, scientific, organizational implementation arrangement aspects.... Although the support is not the essential requirement for models on changing community livelihoods but this initial support is needed.



▲ “Green volunteer program”, “Green School” campaigns attract the increased participation of the youth



3. POLICY AND MECHANISM ON SOCIAL CRITICS

Documents of the Vietnam Communist Party Congress X indicate instructing viewpoints on social critics: “development of the regulations on monitoring and social critics of the Fatherland Front, socio-political organizations and people on the decision-making process of important policies, roadmaps and decisions by the Party and the implementation arrangement, including the organizational structure and staff”; “Paying attention to the advisory and critical roles by scientific, technical, social, cultural and artful organizations to economic development, cultural and social projects”; “The Government promulgates the mechanism so the Fatherland Front and organizations and people implement well the role of monitoring and social critics”.

Social critics is the participation of individuals, political and social organizations in some issues, policies and viewpoints of the Government, development programs and projects so these policies, viewpoints, programs and projects are operationalized meeting the social demands and creating the consensus and services to national development and social welfare. Social critics is the combination of creativity and knowledge of communities, creating internal strength to address social issues; social critics illustrates the democracy of social lives, social agreement, encouragement and support of the society for rational viewpoints, policies, programs and projects.

Social critics is implemented in two scenarios:

First scenario, regarding draft viewpoints, policies, programs and development projects;

Second scenario, identifying incompleteness, even incorrect or inappropriate features of viewpoints, policies, programs and development projects which need to be revised or changed accordingly.

Social critics is one of features of democracy mechanism which only delivers meanings and values if it is a part of the centralized democracy mechanism. Social critics cannot be applied in all cases, contexts and situations. A government administers social activities daily in a very diverse domestic and international context and cannot apply the social critics for all decisions. If the social critics is applied extensively and inflexibly, it will affect the dynamic and timely characteristics of the social governing process. If the social critics is poorly managed, it will be taken advantage of which can paralyze the state governance. Therefore, social critics should be recognized in terms of “principle thinking’ as well as “dialectic’. This is very important when we discuss on social critics methods.

CONCLUSION

The community participation is the key driving force in environmental protection. Many successful experiences in the reality show that the socialization of environmental protection is an accurate policy. The participation of

communities is illustrated through four effects: innovation of new appropriate models and solutions and resulting in long-term environmental protection impacts; implementation of citizen rights on environmental protection and attraction of the community participation; self-education, self-awareness raising on environmental protection in the community; monitoring, supervision and fighting against environmental violations and invasions.

To finalize the policy and mechanism to attract the participation of communities in environmental protection, it is necessary to: continue to synthesize practical outcomes and to improve the policy and mechanism on the socialization of environmental protection activities, particularly the policies for social critics; enhance environmental capacities of socio-political organizations, civil organizations and citizens; enhance awareness, responsibilities through training programs and propaganda programs on environment; strengthen the organizational arrangement including training and promotion of qualified staff; enhance the budget for environmental protection activities.

The participation of communities in environmental protection, particularly in social critics is only successful if it is implemented in a legalized society of which “living and working according to Constitution and Legislations”, this is a real revolution in a socialist-orientated market economy, “the concept of people”■

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More stringent regulations on environmental protection responsibility of businesses needed

Raising the environmental protection responsibilities of businesses is one of new points in the Law on Environment Protection (LEP) amended. LLD, Lawyer Trần Thị Hương Trang, director of the Hanoi office of the Legal Associates law firm shared her opinions on this issue in the Environment Magazine



LLD. LAWYER TRẦN THỊ HƯƠNG TRANG
Director of Hanoi office of Legal Associates Law Firm

★ *What is the situation of implementation of the LEP at businesses now?*

Mrs. Trần Thị Hương

Trang: There are different ways of assessing the implementation of the environmental protection law by businesses. The most objective and official answer is reflected through environmental inspectors' data on the situation of violations.

According to the General Police Department for Crime Prevention and Suppression's five-year review report on the prevention and suppression of environmental crime, every year Vietnam has some 7,000-8,000 cases of forest destruction and more than 1,000 cases of trafficking and illegal transport of wild life, and some 70% of wastewater in industrial parks and clusters nationwide has not been treated before being discharged into the environment.

Yet, the number of discovered violations is just the tip of the iceberg. The actual situation of law implementation can be accurately assessed based on the current state of environmental pollution in our country. The current state of environmental pollution reflects the implementation of the LEP by businesses.

In my opinion, a majority of

businesses have neither properly implemented the environmental protection law nor paid due attention to environmental protection, they can run after short-term economic benefits at the expense of the environment.

★ *From the point of view of businesses, can you give some specific comments on the LEP(amended)?*

Mrs. Trần Thị Hương Trang: I would like to make some comments on the draft LEP(amended).

Firstly, the draft Law makes stricter provisions on environmental protection responsibilities of businesses. For instance, it requires all production and trading projects that are likely to cause environmental pollution to pay environmental renovation and rehabilitation deposits (Article 138). Compared to the current law, only mining projects have this responsibility. Owners of production, trading and business establishments must make and implement environmental

protection plans (Article 46). Businesses are also responsible for providing environmental protection information at the request of social organizations and local communities (Article 133).

Regarding environmental observation (Article 110), the draft Law assigns the Government to prescribe conditions and guide the grant of certificates of eligibility for carrying out environmental observation activities.

Secondly, the draft Law creates more opportunities and conditions for developing new business activities and jobs in the environmental field, such as provision of environmental incident response services (Article 91), education and training in environmental protection (Article 145), environmental damage assessment (Article 156), and environmental damage compensation liability insurance (Article 157). Under the draft Law, the State encourages the



development of environmental protection services and development and transfer of environment-friendly technologies (Article 140).

Particularly for law firms and bar associations, they can benefit from the application of Article 132 on the rights and obligations of social and professional organizations engaged in environmental protection.

Thirdly, the draft Law makes clear provisions on inspection, which help businesses better implement the Law. For example, Clause 4, Article 150, determines the frequency of examinations and inspections; and Clause 2, Article 151 provides the punishment of state officials who abuse their position and powers to hassle businesses and citizens or cover up violations.

★What are your proposals on the LEP(amended)?

Mrs. Trần Thị Hương Trang:
Before giving my proposals on the draft Law, I want to share this view of businesses: The 2005 LEP should be amended to create the best conditions for the operation of businesses. Creating the best conditions should be understood as creating a solid and transparent legal framework for businesses to effectively implement the environmental protection law, clearly defining the rights and obligations of businesses as well as responsibilities of state agencies to best guarantee these rights and obligations inspections, and inspecting and handling violations in a just and strict manner. To achieve sustainable development, we need to balance economic development and environmental protection. Therefore, in order to create the best conditions for businesses, the LEP(amended) should neither “lower” environmental standards nor “relax” the inspection and handling of environmental violations in order

to help businesses maximize short-term economic benefits.

With the above view, I have the following proposals:

First, the state management of environmental protection should be assigned and decentralized more rationally and clearly to create conditions for enterprises to comply with requirements of competent state agencies on the one hand. On the other hand, this would also help identify the responsibility of these agencies in ensuring the rights and obligations of businesses. The draft Law fails to address the current overlapping responsibilities of state agencies in charge of environmental protection, which would greatly affect the businesses’ operation and implementation of the environmental protection law.

Article 127 of the draft Law states that the Ministry of Natural Resources and Environment takes responsibility before the Government for performing the state management of environmental protection. However, in other articles, the draft Law also assigns this responsibility in different fields to different ministries. This is irrational because the Ministry of Natural Resources and Environment is not responsible for implementing specific environmental protection activities in different fields while it takes responsibility before the Government. This also reflects the long-existing problem in state management activities, causing a difficulty in pointing out which agency would bear the final responsibility.

There is also always a conflict between economic development and environmental protection. The assignment of these two conflicting duties to a single ministry would inevitably cause difficulties and overlaps. For its main objective

and duty being developing the economic sector under its charge, a ministry would naturally prioritize development activities and not be able to maintain a necessary balance between environmental protection and economic development. This inadequacy in this assignment of state management responsibilities has been clearly demonstrated in reality. Many conflicts and overlaps have arisen while not a few “vacuum” areas still exist and it is unclear which ministries are in charge of these areas. This has greatly affected the effectiveness and quality of environmental protection activities.

To tackle these conflicts and overlaps, an effective mechanism of coordination among ministries, sectors and localities is also needed because there is always interaction between different fields and a clear-cut division of management responsibilities among ministries and sectors cannot be always achieved.

Secondly, the draft Law should contain clear and feasible provisions on the principles, procedure and order related to environmental impact assessment to facilitate businesses’ implementation. Article 15 fails to clarify the duty of commune-level People’s Committees to give opinions when being consulted in the process of environmental impact assessment and the right of local communities directly affected by projects. It should be noted that commune-level People’s Committees are not local communities and project implementation sites may be different from local communities directly affected by the projects.

It is necessary to re-consider the time limit of thirty working days for commune-level People’s Committees of the project implementation sites to give opinions, including



▲ *Amended
Law on
Environmental
Protection needs
more articles on
inspection, check
and violation
handling*

the time for holding dialogues between stakeholders? How should such dialogues be held if the local community directly affected by a project is not located within the commune where the project is implemented? What are responsibilities of the stakeholders? When the commune-level People's Committee Who will pay for holding such dialogues? and is it necessary to directly provide that such expenses are paid from the project's fund for environmental impact assessment activities?

Thirdly, a focal agency responsible for receiving reports on environmental incidents should be clearly defined. The provisions in Article 90, such as "promptly report to the local administration or the specialized environmental protection agency of the locality where the incident occurs", fails to specify whom the people should call when an incident occurs and which agency is responsible for receiving incident reports and deploying response activities. Another provision that "the head

of an establishment, a locality shall take responsibility for incidents occurring in such establishment, locality" is also unclear whether it is the responsibility of the establishment or locality or both, and in case it is the responsibility of the local administration, then which level of local administration, commune, district or province? Moreover, there is still now an overlap between the two definitions of "environmental incident" and "chemical incident". Whether it is the responsibility of the Ministry of Natural Resources and Environment or the Ministry of Industry and Trade when a chemical incident occurs remains a controversial issue.

Fourthly, there should be clear provisions on the settlement of disputes and claims for compensation for damage caused by environmental pollution acts. Which is the applicable law, the LEP or the Civil Code? Some provisions of these two laws remain unclear and difficult to apply, while the LEP 2005 and

the draft Law fail to take into account specific issues in the environmental field to which general provisions of the Civil Code cannot be applied. .

There should be separate provisions on the settlement of environmental disputes, such as the statutes of limitations for filing lawsuits for compensation for environmental damage should be longer; the plaintiff is not obliged to prove acts of violation and the fault of the polluter, while the defendant is obliged to give proof to deny the cause-and-effect relation between acts in violation of the environmental law and the damage incurred by the plaintiff.

Besides the three methods of settling claims for compensation for environmental damage, including negotiation, arbitration and court action, the draft Law should take into account other methods like mediation and collaborative process, a new alternative method for settling disputes■



The need for development and completion of the legislation and policy system on socialization of environmental services

VŨ VĂN TỰ

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▲ *Socialization of environmental protection is the mobilization at the highest level of the participation of the whole society*

Environmental services (ES) play an increasingly important role in the socio-economic development. The development of ES contributes to prevent and mitigate environmental pollution to enhance living conditions and to create a green-clean-beautiful environment for society. At the same time, they are one of conditions for sustainable economic development and healthy society.

ES are a sectoral component of the service economy sector including economic activities that do not belong to the agriculture and industry economy sector. On the other hand, ES are closely linked to the environment with the purpose

to protect, maintain and provide favorable environmental conditions for social activities. Hence, “ES are service activities to bring up environmental profits”. Therefore, ES have characters of public service. Currently, in Vietnam, the majority of ES in both urban and rural areas are mostly implemented by state economic sectors or cooperative economic groups in some provinces (ES cooperative). To explore and promote resources for ES development in Vietnam in the upcoming time, it is necessary to expand economic compositions and other forces to participate in towards promoting the socialization. Socialization of ES activities is being paid attention to by the Party

and the State. The socio-economic development strategy during 2011 - 2020 approved at the Party Congress XI has identified: “Promoting the socialization of environmental protection, development of ES, waste treatment”.

Recently, the term “socialization” in ES reforms is not only addressed in orientation documents regulated by the Party and the State but also receives considerable attention of researchers. Relating to state management, this term is used as a “solution” to the reform of the provision of public services linked with environmental protection... Accordingly, the role of service provision of stakeholders will change: from the monopoly of the State towards the expansion of the provision of these services to non-state-owned stakeholders to accumulate society resources to implement the objective of providing public services. Removal of monopoly and subsidy of the Government will, on the one hand, reduces burdens on authorities, on the other hand, mobilizes other society resources. Moreover, socialization of ES is also understood as the process that everybody equally enjoys healthy environment and has equal benefits from ES. However, socialization of ES should be adequately understood as follows:

Firstly, objective of the reform of ES should be clearly identified



which is to target at service quality but not the level of socialization. Socialization of this service is the only method to achieve the expected public service quality. In many developed countries, the trend to transfer the public service to the private sector is being applied in many different ways. The State is only responsible for service provision in those fields that the private sector could not or have not participated. Currently, in Vietnam the provision of ES remains to rely on the State as the private sector is not competent to sufficiently provide these services. Therefore, it is necessary to identify which fields need to be socialized and which levels of socialization result in the best achievements for local people, the service quality should not be neglecting because of the socialization criteria. To promote the socialization in provision of ES, the State has promulgated many legal documents on management; however, practical conditions have raised many issues on controlling of service quality. In general, enterprises in the private sector pay attention to profits; hence, they always have the trend to increase service prices, to freely modify service fees, to provide low service quality, and to maintain non-transparent financial mechanism. Currently, many private entities are spontaneously established; hence the quality is very difficult to control. Low service quality does not come from the socialization; however, the massive and uncontrolled socialization has apparently caused negative impacts on benefits of service beneficiaries.

Secondly, to ensure the quality of ES, at the same time to promote the transfer of service provision to the private sector, the State must have an appropriate mechanism. Firstly, the legal framework on state institution

Socialization of environmental protection is the mobilization at the highest level of the participation of society on environmental protection, the identification of incentive mechanisms, civil and criminal mechanisms and the participation in an equal and adequate manner of all State agencies and social forces in environmental protection activities

should be complete which empowers agencies of specific mandates to manage and provide ES.

The importance is to promulgate ES quality. Currently, we only provide ES in a passive way and at a basic and essential level compared to the people's demand and there is no standard system for comparison and orientation.

The conversion of public entities to self-financing, self-accounting and self-responsible entities should be clearly regulated in terms of function, task, self-responsible scope. Financial mechanism and surpass level should be identified so the State can interfere. These issues mostly relate to fees, price-support, and other service fees. It should be clearly regulated that the State will interfere only in the case of subjective changes such as changes in fees, service prices higher than the general level or when implementing the social welfare policy ...

The responsibility regulation must be implemented seriously and regularly. The responsibility of each individual and organization in service provision must be improved together with setting the quality standard system. Individual responsibility should be promoted and the appropriate accountability mechanism should be available. Therefore the control and

monitoring will be more effective.

Thirdly, with our current situation, the socialization of ES is only carried at an insignificant level. The main reason is due to the lack of effective state management mechanism; in addition, the private sector is not strong enough to provide the service in the best way. Therefore, the State still keep the key role in provision of ES. The issue is to promote the socialization of ES while to enhance the service quality of public entities.

In summary, socialization of environmental protection is the mobilization at the highest level of the participation of society on environmental protection, the identification of incentive mechanisms, civil and criminal mechanisms and the participation in an equal and adequate manner of all State agencies and social forces in environmental protection activities and promotion of ES including the army. However, currently the socialization level in Vietnam is limited. Majority of ES are invested in terms of infrastructures and implemented by State entities. The role of communities in monitoring legal viewpoints and policies is opaque. Therefore, to quickly promote the progress of socialization of ES, it is necessary to develop and complete the legislation and policy system on socialization of environmental protection, the policy to encourage the participation of communities on environmental protection; the regulation on rights and responsibilities, state management, social critics and monitoring of non-governmental organizations, civil organizations, and socio-political organizations. In particular, these organizations should be provided the floor to contribute comments on legal viewpoints and legislations of the State■



Proposal on environmental health in amended Law on Environmental Protection 2005

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BACKGROUND

According to World Health Organization (WHO), environmental health addresses all the physical, chemical, and biological factors external to a person, and all the related factors impacting behaviors. It encompasses the assessment and control of those environmental factors that can potentially affect health. It is targeted towards preventing disease and creating health-supportive environments. This definition excludes behavior not related to environment, as well as behavior related to the social and cultural environment, and genetics.

Environmental quality has impact on human health. On the other hand, environmental quality has also been influenced by human activities. Human health indeed is measurement of environmental quality. Health and diseases of a group of people can be used to assess the quality of the environment they live in. Therefore, protecting the environment is protecting human health.

The linkages between environment and health have become more and more obvious. It is estimated that 25 per cent of fatality is related to environmental issues. This figure is as high as 35 per cent in some desert areas in Africa. Every minute, five children in developing countries die of malaria or diarrhea. Every hour, 100 children die of long exposure to smoke from waste burning factories. In poor countries, most of factors that have impact on human health are environmental fac-

tors. Many deaths could have been avoided if the environment improves (WHO-UNEP, 2004).

Together with economic growth, Vietnam has been facing many environmental health issues. However, environmental health has not been officially addressed in law. Consequently, environmental health activities have not been done effectively. Therefore, it is necessary to legalize environmental health. Amending the current Law on Environmental Protection 2005 is a good opportunity to legalize environmental health.

INTERNATIONAL CONTEXT

World Health Organization (WHO) and some other international organizations have launched initiatives on environmental health issues. In East Asia and Southeast Asia, UNEP and WHO have coorganized a Regional Ministerial Environment-Health Forum. The main purpose of this forum is to build capacity and solutions to address environmental health issues in Southeast Asia. Specific objectives are to strengthen co-operations among environment and health ministries at both national and regional levels through sharing information and experience, renovating legal frameworks and policies and encouraging comprehensive environment health strategies and plans. Participating to the forum are 14 East Asian and Southeast Asian countries including Viet Nam. At the forum, a regional Environment Health Charter,

Bangkok declaration and Jeju declaration have been adopted. In general, member countries have made efforts in issuing and implementing environmental health policies. For example, Korea has issued Law on Environmental Health and established Environmental Health unit within Ministry of Environment. China has issued a national action plan on environmental health and assigned environmental health tasks to Science, Technology and Standard Department under Environmental Protection Ministry. Lao and Cambodia have adopted and implemented environmental health action plans.

DOMESTIC SITUATION

In Viet Nam, it can be said that environmental health has not adequately and systematically addressed in regulations. For example, in LEP 2005, articles only mention about pollution prevention and control and fail to emphasize linkages between pollution and human health. As a result, environmental health policy has not yet been properly implemented. Sectoral and local socioeconomic planning and strategies have yet considered environmental health.

Some activities on environmental health have been conducted by Ministry of Natural Resources and Environment and Ministry of Health. However, these activities have been separately carried out without synergies and hence their effectiveness remains limited. To address environmental health



▲ 25% of death in the World has environmental causes

issues requires epidemic and environmental time series data of a long period. However, these data are scattered. There is no link between health and environment data. Therefore, it is difficult to establish cause and effect relationships between environmental quality and human health. Cooperations among government agencies in environmental health have appeared weak. Therefore, it is necessary to improve regulation environmental health. Amending LEP 2005 provides a good opportunity for this work.

PROPOSED ENVIRONMENTAL HEALTH ARTICLES IN LEP 2005

Developing a national program/ action plan on environmental health

At the East Asia and Southeast Asia Ministerial Forums on Environment and Health, Viet Nam has signed Bangkok declaration in July 2007 and Jeju declaration in July 2010. Following these commitments, Viet

Nam is supposed to develop a national program or an action plan on environmental health.

In Korea, Environmental Health Act number 8946 dated 21 March 2008 regulated the development of a national action plan on environmental health. Some other countries have also issued such a plan, including China, Laos and Myanmar. These countries have similar socioeconomic conditions with Viet Nam. Therefore, the development of the plan in Viet Nam could refer to that of these countries.

INTEGRATING HEALTH IMPACT ASSESSMENT (HIA) INTO ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

Some countries such as Canada, Italia, Switzerland, New Zealand and Finland have integrated HIA into EIA. The integration has been regulated by law in Canada and Australia (EnHealth, 2001; Health Canada, 2004). In the US, some states have

been successfully applied HIA in EIA processes. According to National Environmental Policy Act 1969, Center for Disease Control shall provide input into environmental reports by US Environmental Protection Agency (CDC, 2008). In Korea, Article 13 of Environmental Health Act stipulates that projects shall carry out HIA and EIA to identify potential impact on human health and the environment before seeking approval from Ministry of Environment or local government authorities.

In Viet Nam, Law on Infectious Disease Prevention and Control 2007 stipulates that "Investment projects of developing industrial zones, residential areas, and infectious disease treatment facilities shall start construction only after having their HIA reports approved by health authorities. However, so far, environmental health has not been effectively implemented. Some EIA reports have mentioned potential occupational and community health



risks by air and water pollution, noise and radioactivity. However, most of the reports only mention about causes and level of pollution and fail to detail impact on human health. Some experts believe that without HIA, EIA reports fail to provide sufficient data for appraisals. The integration of HIA into EIA will address this issue.

Developing environmental health monitoring, inventory and clearing houses

Impact of pollution on public health has gained more attention. Environmental health information systems have been developed in some countries to minimize negative impact on human health by development activities. In the US, recognizing environmental disease burdens, the congress has issued Coordinated Environmental Public Health Network Act 2007 with aims of:

- Develop, ensure oversight of the operation of, and maintain a Coordinated Environmental Public Health Network and State Environmental Public Health Networks, and operate and maintain rapid response capabilities so that the Federal Government, States, local governments, territories, and Indian tribes can more effectively monitor, investigate, respond to, research, and prevent increases in the incidence and prevalence of certain chronic diseases and relevant environmental and other risk factors;

- Provide information collected through the Coordinated and State Environmental Public Health Networks to government agencies, public health practitioners and researchers, State and local policy makers, health officials, and the public;

- Expand and coordinate among existing surveillance and data collection systems and other infrastructure for chronic diseases and relevant environmental, and other risk factors, including those relevant to bioterrorism;

- Improve coordination between the areas of public health, environmental protection, and chemical, radiological and biological terrorism;

In 2006, the WHO developed DPSEEA model (Driving Force-Pressure-State-Exposure-Effect-Action) to identify potential risks to human health (Stefan Reis et al., 1012). This model has been widely applied to identify complex environmental health cause-effect relationships.

In addition, EBD-Environmental Burden Disease has been developed (Fewtrell L et al, 2003). This model outlines theory and methodology for assessing health impact of environmental hazards.

Another example of environmental health systems is EU's environment and health information system (ENHIS). This system provides input to environment and health policymaking in EU countries.

In brief, environment and health

information systems have been paid due attention by many countries. Such systems have not only increased co-operations among health and environment agencies but also promoted participation and responsibilities of concerned parties.

International experience shows that assigning environmental health management tasks to environmental agencies help improve effectiveness. For example, in Japan, in 2000, environmental health management was transferred from ministry of health to ministry of environment. Similarly, in Korea, Ministry of Environment is also in charge on environmental health. Therefore, in Viet Nam, environmental health management should be assigned to environmental management authorities. It is also necessary to issue regulations on cooperations between environment and health agencies as well as detailed responsibilities of related parties.

CONCLUSION

International experience and current situations in Viet Nam show that integrating environmental health issues into revised Law on Environmental Protection 2005 is necessary. Improved participation and cooperation between environment and health agencies are also needed. These will facilitate effective solutions to environmental health issues■

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Some recommendations to enhance the effectiveness on environmental dispute resolution in Vietnam

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AGREED DEFINITION ON “ENVIRONMENTAL DISPUTES”

During the study, there are several lawyers, environmental scientists offering different definitions on environmental disputes. As defined by Dr. Vu Thu Hanh in the Environmental Law curriculum of Hanoi Law University, “Environmental Dispute is the conflict among organizations, individuals and communities about the rights and interests relating to the prevention and remedying problems of environmental pollution, degradation, incidents; on rational exploitation and use of natural resources and the environment; the right to live in a healthy environment and the right to protection life, health and assets damaged by environmental pollution” . According to this definition, the entities on the environmental disputes include organizations, individuals and communities. However, in addition to the above entities, competent state authorities may also be included as the entities of environmental disputes. As stipulated in Article 3 of the Decree No. 113/2010/ND-CP by the Government dated December 3rd 2010 on identifying damage to the environment, a number of competent state agencies namely People’s Committees at commune, district and provincial levels and the

Ministry of Natural Resources and Environment shall be responsible for requiring organizations and individuals causing environmental pollution and degradation must give compensation for the damage to the environment. According to Article 14 of Decree No. 113/2010/ND-CP, the above state agencies shall have the right to choose one of three options for requesting compensation for environmental damage: Agreement with organizations, individuals that cause damages; Requirements of arbitration to settle; Initiate lawsuits in courts [3]. In these cases, the above state agencies are involved in the dispute as a party, as a result, the entities of the environmental dispute are not only organizations, individuals and communities, but also including a number of competent state agencies .

In the curriculum of the Environmental Law in Hanoi Open University, Dr. Nguyen Van Phuong defined “Environmental Dispute is conflicts, disagreements of the entities participated in legal environmental relations when they consider that their legitimate rights and interests have been violated” (31, p. 225). According to this definition, a prerequisite condition in arising environmental disputes is that an entity participates in legal relations on the environment considering that his/her legitimate rights and interests have been infringed upon.

However, in practice, environmental disputes might be arisen when the rights and interests of such entity are in danger of being infringed upon, not actually being infringed upon. This is often related to investment projects. Although investment projects have not been implemented, the legitimate rights and interests of local people have not been violated, but if there is a scientific or legal basis showing that such projects will cause environmental problems in implementation in practice, then local people still have the right to sue and requesting that the project owners must not proceed with the projects or having to apply appropriate environmental protection measures.

Therefore, to have a uniform understanding on environmental disputes, the Law on Environmental Protection amendment should be made to explain the term “Environmental disputes in Article 3 and can be explained “Environment Disputes are disagreements and conflicts among entities on the legal rights, benefits and obligations relating to the environment”. However, environmental disputes are only arisen when the conflicts, disagreements are reflected out through specific legal acts such as: Send a written request for compensation, remedying environmental incidents, sending a complaint...



▲ *Authorities responsible for requesting polluting organizations and individuals to pay for damages*

THE RULE ON REPRESENTATIVES INVOLVED IN SETTLING ENVIRONMENTAL DISPUTES

Starting from the specialities on environmental disputes that volume of entities are often very big. In fact, there are disputes where the number of entities are up to thousands of people as the case of Vedan Company. So, the question is whether these entities may appoint one or several representatives on behalf of themselves to participate in the dispute resolution process or not? The Vietnam current applicable legislation has not yet set up a rule on this, leading to the fact that organizations and individuals suffering from damages can not be filed in a same petition, but each organization or individual demanding for a sue, must file their own petition, each petition is a legal case. If the Court does not flexibly apply the provision stipulated in Article 38 of the 2004

Civil Procedure Code on integration, splitting legal cases, the Court will have to address each legal case in turn in accordance with law proceedings.

Following actual requirements, it is necessary that the law system should allow a collective petition through their representatives on environmental disputes requesting claims on damage to life, health or assets caused by environmental pollution, degradation and incidents. This will help reduce the burden on courts in the conduct of the proceedings and support in financial and time savings of environmental disputes. At the same time, the mechanism on collective petition also helps balance the position of the damaged party to the party causing damage in an environmental dispute, help stabilize local security situation in places where the dispute is happened. Collective petition can be done through a representative or by a group of representatives

on behalf of damaged entities by a written letter of authorization. To ensure the self-determination of the applicant in civil proceedings, the petition should be signed by all entities wishing to sue.

However, due to specialities on environmental disputes, the accurate identification of the entities involved in the dispute is very difficult. To facilitate the affected entities, the law may determine in the direction of the “potential applicants” like the laws of China. Thereby, when one or a few entities file lawsuits to claim damages in lives, health and assets caused by environmental pollution, degradation, incidents, the court will notify entities living and working in the same area who are jointly utilizing such environmental factors (those at risk of experiencing similar losses) on the petition and set a time limit for the potential applicants submitting/ signing in their petitions.

(Continued page 80)



JICA is in a position to support MONRE's initiative

Japan International Cooperation (JICA) has been implementing various activities in supporting the Ministry of Natural Resources and Environment (MONRE) on developing legislation and policies of environmental protection in general and in developing the Law on Environmental Protection (LEP) in particular. The Environment Magazine's reporter had an interview with Mr. TADASHI SUZUKI - Leader of Environment Unit, JICA Vietnam on related issues.

★Could you please briefly tell us about the support made by JICA to MONRE in developing the amended LEP?

Mr. TADASHI SUZUKI: JICA has been working with MONRE and providing concrete suggestions to MONRE mainly in terms of the appropriate structure or architecture of legal documents. The purpose of our advice on amendment of LEP is to make the amended LEP consistent both within itself and in relation to other related legal documents, thereby making it clearer to be understood by government agencies who will execute the LEP as well as by enterprises and individuals who will be regulated by it. This will make it easier for all stakeholders to conform to the amended LEP.

★Could you please share with us your opinions on the draft of the amended LEP?

Mr. TADASHI SUZUKI: Looking at the current draft amended version of LEP, we are glad to find that a lot of improvement and progress have been



Mr. TADASHI SUZUKI

made. Important issues, we still need to discuss further, would include (i) the responsibility and accountability of relevant state management authorities at both central and provincial levels, and their enforcement capacity development for effective implementation of the revised LEP, (ii) roles and responsibilities of the community and private sector in environmental management, (iii) the importance and effectiveness of the public participation/consultation process for strategy environment assessment (SEA) and environment impact assessment (EIA), (iv) the effectiveness of the environment information management system including reporting and its disclosure.



▲ JICA supports workshops on commenting on Law on Environmental Protection(amended)

★In your opinions, besides the amendment and promulgation of the LEP, what tasks will be undertaken in the next step?

Mr. TADASHI SUZUKI: It is necessary to review relevant decisions, decrees, and circulars so that the whole legal framework will be coherent. At the same time, enforcement capacity development for effective implementation of the amended LEP is definitely indispensable.

In order to become an industrialized country by 2020, a robust capacity in effective environmental management is essential for an intensification of the international competitiveness and sustainable development of Vietnam. We are glad to share Japanese experiences as to how Japan made its legal and institutional systems effective, consistent, and enforceable. Looking back at 1960-70, Japan enjoyed rapid economic growth which led to terrible environmental deterioration. Severe impacts on human health and the environment drew forth community awareness, which forced the Government authority to seek a solution.

We understand capacity development takes time. Discussions should be kept in the ISGE platform, which MONRE has revitalized, so that we can analyze and identify bottlenecks. JICA is in a position to support MONRE's initiative and leadership on this joint exercise. We are looking forward to MONRE's initiative and ownership of changing the situation.





Japan's Experience in Development of Laws and Policies on Environment



MR. TOMISAKA RYUJI

*Expert in the Consultation Program on the
Environmental Management by Japan International
Cooperation Agency (JICA)*

Japan is one of the countries with adequate legal framework on environment and a legal system which is clearly decentralized and enforced from the central to local levels. Accordingly, the law is enacted by the Parliament; the Government, the Ministry of Environment are enforcement agencies; local governments, police departments are responsible to investigate environmental violations. All violations related to the environment are judged by courts. The above are sharing opinions by Mr. Tomisaka Ryuji - Expert in the Consultation Program on the Environmental Management by Japan International Cooperation Agency (JICA) in the Japanese Ministry of Natural Resources and Environment.

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▲ *Collection of solid wastes in Japan*

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According to Mr. Tomisaka Ryuji, within the framework of bilateral cooperation with Vietnam, besides the transport, health, education sectors, Japan has supported Vietnam in environmental protection field through JICA. JICA is responsible for implementing projects using Japan's Official Development Assistance (ODA) in all 3 forms of cooperation: technical cooperation, non-refundable aids and ODA loans. In recent years, Japan has been supporting cooperation with Vietnam in implementing many research programs and projects on the environment in three key issues: natural resources management, environmental protection and adaptation to climate change.

In particular, Japan is supporting Vietnam in making amendments to the 2005 LEP. Having evaluated on the LEP 2005, he said that the Law lacks of consistency and uniformity in the stipulations on environmental protection with other related Laws.

The Law is not clearly defined rights and obligations to related entities in environmental protection; there are overlapping, dispersion and illogicality in task assignments and decentralization of power in environmental management. The Law has no consistency in policies and measures on environment as well as having no logical cohesion of environmental policies in economic - social development planning. Besides, it still lacks of guiding for implementation, specific guidelines in the implementation of the contents stipulated in Law; lack of rules and regulations, mechanisms to promote political social institutions participating in environmental protection.

Japan is a nation achieving a lot of success in controlling environmental pollution by building up a comprehensive and complete legal system. When being asked about his contributive comments on amending the Law, Mr. Ryuji Tomisaka said that the LEP (Amendment) should be adjusted in 5 areas: Complete and

strengthen the organization and apparatus of the State management on the environment; Improving and completing legislation and policies; enhancing social responsibilities; Training for manpower resources; Ensuring financial resources.

SOME JAPANESE EXPERIENCE ON DEVELOPMENT OF ENVIRONMENTAL LEGISLATION AND POLICIES

Discussing on the Japanese experience on development of environmental legislation and policies, Mr. Ryuji Tomisaka said that, in the period from 1950 - 1960, with the sharply rapid growth of industrial production sectors in Japan, it has increased the burden on the environment, leading to environmental degradation, affecting human health and the national development. Environmental pollution situation, in particular, air and water environment has been worsened, causing many diseases such as Asthma caused by air pollution from industrial fumes generated in industrial oil zones; The Minamata disease (patients had signals of hands and legs being paralyzed or trembled, deaf ears, blurred eyes) due to mercury poisoning from chemical plants... Therefore, the Japanese government had to carry out several measures on improving the legal system and set up the state management agency on environment with aim to simultaneously address three problems: Reduce pollution and implementing environmental protection; reduce the cost of pollution control and the cost on public health; reduce production costs and reduce energy costs. This is also the new way of thinking about production management,



i.e.: “Not only implementing waste treatment in the last stages of the product, but it must be calculated from the beginning to have the most affordable production with least emissions”.

In 1967, Japan enacted the Basic Law on Environmental Pollution Control. In 1971, the Japanese Ministry of Environment was established to promote the environmental pollution control and the conservation of natural resources of the country. The Japanese Ministry of Environment, the Government of Japan are responsible for planning, coordinating and promoting national environmental policies and plans, in coordination with local authorities to implement the national Laws in environmental pollution control on air, water and soil, noise control, odor control and the Laws on nature conservation. In 1972, the Nature Conservation Act was officially enacted with aim to prevent the destruction of the natural environment. The above Laws have been achieved certain success in solving environmental problems in Japan at that time and was considered as the basis for the Basic Law on Environment being enacted in 1993.

The Basic Law on Environment is the comprehensive and complete legal framework; the enforcement of the Law has been clearly decentralized from central to local levels. Accordingly, the Law was enacted by the Parliament; the Government, the Ministry of Environment are the enforcement agencies; local authorities, police departments are responsible to investigate environmental violations. All violations related to the environment are judged courts. The purpose of the Law is to make

a comprehensive communication on the environmental protection policies system in order to ensure health and cultural life for the present and the future generations of the country as well as to contribute to social welfare through setting up essential rules and principles, clarifying the responsibilities by the Government, local governments, businesses and citizens, and describing the basic policies on environmental protection.

In particular, the Basic Law on the Environment has launched the Environmental Pollution Control system. The Environmental Pollution Control system consists of policies and regulations on air pollution control, water pollution control, land pollution control, the national standards on controlling toxic substances; The norms and standards system on environmental quality; The strict monitoring and control measures of industrial manufacturing environment; The rules on responsibilities born by facilities causing pollution ... In addition, the Basic Law on the Environment expresses respect to educational policy, raising public awareness on environmental protection, to encourage businesses and organizations in making their efforts to prevent and control environmental pollution.

In Japan, unions, local governments will be the enforcement agencies of environmental protection policies and are the organizations having strong knowledge on environmental pollution problems in local provinces. Currently, the Japanese government has conducted consultation from communities (intellectuals, business, and unions) before issuing decisions related to

the environment. On building up laws related to the environment, the Government will undertake information analysis research, capturing the existing situations; detect existing problems, and giving solutions and undertaking the collection of information before issuing objectives and ways of implementation. Through these procedures, the Government will evaluate the necessity of the establishment of laws, the feasibilities of implementation, and the results of environmental improvements...

To ensure consistency between the Basic Law on the Environment, the Laws relating to environmental protection and other Laws, the Japanese Government has made several sociological surveys on the scope of responsibilities of the state administrative agencies law enforcement, the shortcomings in the legislation... In addition to the technical polls in legal policies, the polls on whether social economic activities have affected to people life or not also be made to ensure the purpose of the Law.

In summary, in order to enhance the independence from the central to local level on environmental protection fields, in Japan, the Government is focusing on investment on human resources and finance. The local authorities will receive feedbacks from local people to positively and effectively handle environmental issues. Besides, Japan is beginning to apply the provisions on penalty and compensation for damage caused by pollution in respect of behavior causing environmental pollution, and at the same time setting up the monitoring system on strictly implementing environmental regulations of businesses■



KOREA'S EXPERIENCE IN ENVIRONMENTAL POLICY AND LAW ESTABLISHMENT

Within these years, along with the social - economic development, Korea has achieved goals in environmental protection field and show great possibility in international cooperation in solving the environmental global & regional issues.

Environment Magazine had a discussion with Mr. Kim Gi Youn - Chief Representative of Korea Environment Corporation (KECO) - an expert having 30 years experience in establishing Korea environmental law and policy.



Mr. KIM GI YOUN
*Chief Representative of Korea
Environment Corporation*

★Can you tell us some results of environmental cooperation between Vietnam and Korea so far?

Mr. Kim Gi Youn: Vietnam - Korea diplomacy relationship was politically established since 1992 whereas the environmental cooperation between two countries as started by signing Memorandum of Understanding (MoU) in 2000 between Korea Ministry of Environment and Vietnam Ministry of Environment Technical and Science, since then, the Ministerial Meeting is held once for two years and annually from 2004. In June 2013, Ministerial Meeting was held in Seoul, Korea.

In 2006, thanks to the cooperation between the Vietnam Environment Administration and KECO, about 20 cooperation projects (ex "The enhancement of industrial waste water treatment ability in Vietnam") have been implemented. Moreover, currently, KECO is implementing project "Establish the E-manifest intergraded management system of hazardous waste in Vietnam" and consider the promotion of cooperation for the project of Nhue-Day river water quality management.

In the water supply sector in details, there are two non-commercial project receive ODA from KOICA (\$ 6.9 million total scale), 8 projects receive ODA from Economic Development Cooperation Fund (EDCF) (total scale \$21,200,000,000). In addition, two sides also promoted many cooperative projects in the areas of environmental waste treatment, climate change action plan...

Since 2006, through the program, "Vietnam Environment Management" includes training to improve staff capacity between the two countries; more than 100 officers working in environmental field in Vietnam have been invited to South Korea.

★Being the nation that early completed the environmental law and policy, can you provide more main points of environmental law and policy of Korea?

Mr. Kim Gi Youn:

Environment issues in Korea were considered since 1960s of 20th century due to the development of heavy industry such as chemical, automobile, shipping, oil & gas, textile... In order to control the environmental pollution caused by the rise of industrial zones and the urban population of economic development, the first environmental ordinance entitled "Pollution Prevention Law" was born in 1963, however, the content was still sketchy and didn't come to the effectiveness. Therefore, on 31st December, 1977, the Environmental Conservation Law was enacted. Many new aspects were included such as clarifying the regulation of environmental impact assessment, environmental monitoring regulations, and standards of allowable expose waste, installation of pollution control equipment

Since 1980, Environmental Rights was first time included as a category in the Constitution. Along with the progress of industrialization, followed by the expansion of economic



▲ The 9th Korea -Vietnam Environment Ministers Meeting, Hanoi 2012

structure, environmental issues became more serious beside the industrial pollution; consumption pollution issues such as automobile emissions, urban sewage, municipal waste, destruction of forests and ecosystems... also became prominent.

In 1990s, the global environmental problems, ecosystems destruction, the increase of the amount of waste, increased use of toxic chemicals, reduction of the supply of water resources, the fall of urban air quality... became major hazards threatening the quality of life. The community concern to the environmental problems and the serious environmental pollution increased resulted the amendment and supplement of many environmental policies (legislation, administrative...)

Along with the change in environmental policy, Law on Environmental Protection (LEP) was divided into 9 laws (Environmental Policy Framework; Air Environment Conservation

Law; Water Quality and Ecosystem System Conservation Law; Law of Noise - Concussion; Public In-house Air Quality Management Law; Nature Environment Conservation Law; Special Treatment Law for Environmental Criminals, Law Adjustment on Environment Conflict, Law of Fee For Environmental Improvement). LEP became the completed and united in Korea.

From the 90s onwards, the income level was increased, environmental awareness is enhanced, and leading to the increased need of natural environment, legislation was enacted to protect the ecosystem. Beside, many environmental policies were improved to solve the hole in management. Especially, 2000s can be seen as a key period of environmental management policies compared to prior. This is the foundation for the current law in Korea. Currently, the numbers of Law managed by Ministry of Environment (1990 - 2008) were 46 laws. Beside, the rules

supplemented more stringent changes such as the responsibility of the individual or company who cause the pollution, cooperative principles, and the principle of user pay fees...

★Currently, Vietnam is establishing the LEP (amended), would you please share some experiences of Korea in the process of Law on Environment establish and adjustment?

Mr. Kim Gi Youn: Most of the Korean laws relating to the environment clarify the responsibilities of the State, rights and obligations of the resident to preserve the environment, environmental laws are built with the aim of improving the quality of life and health of people.

Vietnam has economic development similarity to Korea and in the process of establishing and amending the Environment Protection Law; therefore, the precedent for the establishment of institutions of Korea Environmental will certainly be useful for Vietnam■



The financial sector can play a role in environmental protection

Environment Magazine had a discussion with Mr. Simon Andrews, IFC Regional Manager - Cambodia, Lao PDR, Thailand, Myanmar & Vietnam on the concept of Sustainable Banking - how the financial sector can contribute to the environmental protection agenda.



Mr. SIMON ANDREWS

★ Why do you think the financial sector can play a role in environmental protection?

Mr. Simon Andrews: As you can see, the effects of climate change, natural resource constraints, severe pollution, growing populations, and threats to food security are just some of the converging pressures affecting national economies. These challenges require a change in how the private sector plans and collaborates to develop solutions for the coming decades. As capital providers, Vietnam's financial institutions are ideally placed to help the private sector respond to sustainability risks sooner and more effectively.

When money is readily and cheaply available, it is harder for investors to influence how that money is used or to demand that companies integrate sustainability into their operations. But in an environment where banks have to choose carefully where to put their money, they have more scope - and a responsibility - to encourage reform and ensure that the businesses they support are sustainable.

★ Do you think it is the right time to focus on sustainability amid the current economic downturn and banking restructuring?

Mr. Simon Andrews: Following the financial crisis,

many banks in both developed and developing countries have been strengthening risk management, including assessing and addressing environmental and social risks. So instead of seeing environmental management as an additional cost to creating opportunities, they now perceive sustainable development as an advantage and an opportunity for banks' business growth and an integral part of their risk management framework.

For financial institutions, sustainability has two components: One is managing social and environmental risks in strategic decision-making and lending. Financial institutions can strengthen their portfolio by systematically evaluating these risks in the loan or investment appraisal process. In this way, they can focus investments on those companies and projects with high environmental, social, and financial performance. This can help the banks protect their asset portfolio by decreasing nonperforming loans, thereby increasing financial stability and protecting their reputation.

The second component is identifying opportunities for innovative product development in new areas related to sustainability. This entails creating financial services that support commercial

We hope the amendment of the LEP will incorporate international best practices on sustainable banking so that environmental issues will be effectively addressed through an effective legal framework.

development of products or activities with social and environmental benefits. A growing cluster of these opportunities has evolved, including renewable energy, energy efficiency, cleaner production processes and technologies.

We also hope the amendment of the LEP will incorporate international best practices on sustainable banking so that environmental issues will be effectively addressed through an effective legal framework.

★ How can the environmental authorities contribute to this agenda in your opinion?

Mr. Simon Andrews: We have seen a number of policy initiatives led by the partnership between the environmental authorities and the banking industry.

In 2009, the Brazilian Federation of Banks (Febraban) and the Ministry for Environment introduced the second Green Protocol, which establishes sustainability standards for



commercial financial institutions. The Ministry for Environment and Brazilian Central Bank also established a technical cooperation agreement to monitor social and environmental actions and practices in the financial system.

Closer to Vietnam, China's Green Credit policy - a product of the Ministry of Environmental Protection (MEP) and the China Banking Regulatory Commission (CBRC) - was launched in 2007 with an aim of directing commercial bank financing away from polluting and energy-intensive projects toward energy-efficient and emission-reducing projects. It also requires financial institutions to integrate environmental and social considerations into credit decision-making and management. MEP has been a key player in devising the Green Credit Guidelines as part of the agency's broader policy to achieve positive environmental impact while supporting economic benefits and outcomes. MEP has also been instrumental in contributing

best practices in managing environmental and social issues. The Green Credit policy is starting to show some real impact with the growing volume of green credit loans.

★So how is IFC supporting Vietnam in sustainable banking?

Mr. Simon Andrews: In Vietnam, at the policy level, we are partnering with the State Bank of Vietnam to promote sustainable banking through the development of environmental and social risk management policy guidance/tools. We also hope the amendment of the LEP will incorporate international best practices on sustainable banking so that environmental issues will be effectively addressed through an effective legal framework. IFC will be ready to support this process.

At the institutional level, IFC is advising Vietnam's banks to strengthen their risk management, increase their competitiveness, attract new clients, and support their cross-border expansion through international environmental

and social standards, such as the Equator Principles, a voluntary set of guidelines for environmental and social risk management in project finance currently adopted by more than 70 financial institutions worldwide.

During the past few years, IFC has facilitated local financial institutions to build sustainable-energy portfolios and tailored financing products. With IFC financing and technical advice, Techcombank and VietinBank have been able to build up a total committed energy efficiency portfolio of more than \$50 million.

Nowadays, financial strength alone is not enough to win business. More and more international corporations and financial institutions demand that their counterparts follow international environmental and social standards. Vietnam's leading banks will see this as an opportunity to enter new markets, expand their business, and be successful.

★Thank you very much.



▲ Enterprises receiving IFC support to invest in environmentally friendly technology



Some environmental protection policies undertaken by Chinese government

The China Environmental Law has been developed over 3 phases, starting with the establishment of the People's Republic of China in 1949. In the 1950s and during the "Cultural Revolution" (1966-1976), these laws hardly gained any progress. Only some environmental benefits were paid attention to such as stipulations on mineral resources and production safety, including stipulations on the prevention of water and waste pollution. At that time, environmental protection was not included in the national agenda since Mao President's policy was "Great Leap Forward", with aim to recover the economy and there appeared a viewpoint indicating that nature would be defeated by man.

After several severe floods and droughts occurred in 1972, China signed the Stockholm Declaration on the Human Environment by the United Nations. This decision motivated the environmental legislation during the next phase when open policies and economic reform in China were adopted by Deng Xiaoping. In this phase, awareness of environmental issues has been started developing in parallel with China's growth of economy and improved living standards of the people. The Environmental Law has been in effect since 1978, in which the State responsibilities on Environmental Protection was supplemented in laws. This was the first time China issued an Law on Environmental Protection (LEP) in the framework of national legislation and environmental protection work was considered a State obligation and responsibility. This milestone paved the way for other legal documents on environmental protection. A milestone

on environmental legislation was recognized in 1979 with the enactment of the (LEP) - one of the seven laws passed by the National Assembly and the National Assembly Standing Committee after the legal system was completely changed during the Cultural Revolution. The Law on Environment Protection covers regulations, civil law and criminal law closely related to environmental protection issues.

Since the early 1980s, a series of laws on environment were enacted, firstly the Law on Protection of Seas (in 1982), the Law on Prevention and Control of Water Pollution, the Forest Law (in 1984), the Grassland Law (in 1985) and the Law on Prevention and Control of Air Pollution (in 1987). In the 1990s, China has made new efforts on strengthening environmental laws and enhancing the stricter compliance of the principle of sustainability after the conference on Environment and Development organized by the United Nations in 1992.

1. ENVIRONMENTAL PROTECTION POLICY

China has been increasingly paying attention to the country's environmental problems. In March 1998, the State Environmental Protection Administration (SEPA) was officially upgraded to a ministerial-level agency and was called the State Environmental Protection General Administration, reflecting the importance of environmental protection. In these years, China has strengthened the legal stipulations on environment and achieved some initial progresses in the prevention of environmental degradation. In 1999, China had invested more than 1% of GDP in the environment protection field.

However, China rapid economic development was associated with the dependence on using fossil fuels. This led to heavy pollution and affected people's health. Burning coal generated 90% of SO₂, 70 % of dust, NO and CO₂ gases emissions within the country on a yearly basis. As a result, more than half of Chinese cities have been not met safety standards on air and 1/3 of the cities suffered acid rain. Environmental pollution has led to 51,000 lawsuits (only in 2005) which was 140 cases/day. Within the first 6 months of 2006, there were 49 environmental accidents. Environment, therefore, was considered as one of the main reasons, besides widespread corruption, inequality and vulnerable financial system, causing extensive social unrest in China.

Recognizing the importance of environmental protection, Chinese leaders have changed their attitudes towards environmental issues, proposed setting up the development of a "harmonious society" based on "scientific development. China has piloted the purchase of SO₂ limit emissions in large cities since 2002 and began piloting the purchase of waster water limits in coastal cities. The plan for national economic development is not only set growth targets but also the conditions for growth, including limits on input factors. For example, the 5-year plan (2006 - 2010) has set targets on reducing 20% energy consumption per unit of GDP. The plan also required on reducing SO₂ emissions of the country by 10% in 2010 against 2005.

Besides, China encouraged local authorities being more responsible in making their decisions on environment issues. So far, local



▲ *Nanning is one of the green cities in China*

authorities have only focused on economic growth, but ignored environmental issues, because local development achievements have been assessed through GDP growth. To overcome these problems, the Chinese Government has run a model of the “Environmental City program” and awarded it to cities achieved 28 government’s environment protection standards. Until now, 50/660 Chinese cities have been awarded this title. On the contrary, SEPA has published a “black list” of the 10 most polluted cities so that these cities would be more responsible to the environment. This solution was very effective because no local authority wanted being included in this list.

Along with the above environmental policies, management agencies on environmental protection have been strengthened. In March 2008, the China’s Ministry of Environmental Protection (MEP) was officially established by the China National Congress based on the State General Environmental Protection aiming to restructure and strengthen the country’s environmental protection. MEP has been strengthened on execution capacity

and ensuring enforcement of laws and policies on environmental protection.

2. STRATEGY ON ENVIRONMENTAL PROTECTION AND IMPROVING LIFE QUALITY

Most of China’s rivers are polluted, making hundreds of millions of people having no access to clean water. That forced Chinese leaders paying more attention to the national environmental problems. The Chinese Government has executed a strategy on giving priority to environmental protection and quality of life in 5 years economic development plan of the country. In 2005, China has set targets on development in the 11th 5-years plan (2006-2010), which focused on environmental pollution control and improved the quality of life for the people.

MEP in co-ordination with the National Development and Reform Commission and Ministries (Monitoring, Finance and Urban and Rural Development - Water Resources) made surveys in 22 provinces, cities and autonomous regions across the country to check the implementation of the 11th 5-years

plan on prevention and control of water pollution in key areas, including rivers : The Huaihe, Haihe, Liaohe, Songhua, Yellow rivers, the Taihu lake, Chaohu, Dianchi and Tam Hiep dam. Survey results showed that, in 2009, 80 % of quality of water in tested rivers have been met environmental standards, 60% of water pollution treatment projects were completed and achieved some initial results. In particular, 125/159 polluted sections of rivers included in the list of seriously polluted places set out by the 5-years plan, now reached the water quality standards. Specifically, water in some sections in the Huaihe River basin reached 80% - 95 % of the permissible environmental indexes. Most of rivers sections in Tam Hiep dam or sections from the middle to the upper area in the Yellow River where previously heavily contaminated, and now the situation was significantly improved. Besides, water in Haihe River also reached approximately 90 %, the Liaohe River approximately 87%, the quality of water in the Tairu, Chaohu lakes reached 90% of the indexes.

To achieve set targets, the Chinese Government, central and local authorities, ministries, agencies have focused on the following solutions: To accelerate progresses of projects on planning; Building up and monitoring wastewater treatment facilities; construction of pipelines, sludge treatment works in treatment plants at river sections flowing through cities; Enhancing monitoring activities of wastewater treatment plants, strengthening operation capacity of plants. Besides, urgently developing policies to support the implementation of measures on collection of wastewater treatment fees in urban areas and the use of recycled water. In addition, prevention and control of water pollution in key areas to be undertaken.

NGUYỄN HẰNG



Experience in developing and law enforcement in the United States of America in the field of environmental protection

HOÀNG MINH SƠN

Vietnam Environment Administration

Vietnam is undergoing the process of international integration, learning experience of the world in general and of the United States in particular in environmental management is very important. The United States is a country with a lot of experience in environmental management, several policies on environmental management of the United States that Vietnam could refer to and study during the process of improving our environmental law system; particularly for research, amendment and improvement the current Law on Environmental Protection 2005.

The environmental management system in the United States has many differences with Vietnam. The Federal Environmental Protection Agency (USEPA) is responsible for overall management of the federal environment, except for the field of biodiversity which is under the function of the Ministry of Internal Affairs. USEPA has representatives in different states in the US Federal states, is responsible for promulgating environmental laws, rules, regulations, framework standards to apply over the US Federal States. In addition, each State under the Federation has its own environmental management system; however, functions, missions, organizational structures as well as the name of environmental management agency in each state can vary widely, depending on the characteristics of each state. For example, the Maryland



has the Department of Environment, the State of New York set up the Department of Conservation of Environment, the state of Washington set up the Department of Ecology...

System of policies and laws on environmental protection

In addition to the Federal law system on environmental protection generally stipulate rules, principles and regulations in the field of environmental protection, each state depending on the specific conditions of environmental protection, has set up its own laws. Basic characteristics in the process of developing the environmental protection law in each state in the United State are summarized as follows:

Make sure in comply with the general rules of the Federal Law; the state's Act stipulated in specific areas (e.g., air control, radioactive control, management of contaminated soil

and water ...) and must be stricter, more specific than provisions under the Federal Law on Environmental Protection in the same field; the states developed their own laws coming directly from the needs of environmental management activities in each specific area; Every year, the states could issue a number of draft laws following the Federal law, such draft laws were compile by Senators (e.g.: In Maryland state, ever year, hundreds of draft laws are compiled). However, not many draft laws have been approved, because in addition to the opponency criticism in the form of direct voting in the Parliament (the Senate and the House of Representatives), draft law was under close control and opponency by professional organizations and of social organizations, members of the Democratic Party and the Republican Party; Each year the Senate and House



of Representatives in the U.S. State only organize meetings in 90 days to consider the adoption of Laws. As result, normally, draft laws under consideration for approval must be essential issues to environmental protection, there are a lot of draft laws under several years of proposing, developing but still not yet have been approved. It can be seen that the development of environmental protection laws in the U.S. (mainly issued by the states), to solve very specific problems, derived from practical requirements of each state, so that the Laws in enacting are very feasible and practical. As enforcement is guaranteed under the strict control of the state agencies and community supervision.

Actions on handling violations of environmental protection laws under several states are not the same, so, organizational structure and operating mechanism of inspection agencies and handling environmental violations and crimes are also different

The mechanism of environmental management, pollution control

The basic principles of environmental management, pollution control in the US in general and in each state in particular is who causing pollution, such person must pay to remedy pollution. However, in specific cases due to objective reasons or force majeure (e.g., soil is contaminated due to natural cause, environmental pollution caused by natural disasters...) the government will have specific policies to support organizations and individuals directly improving pollution such as tax exemption and reduction, supporting in treatment technologies ...

In some states, the control and management of the environment in projects and Works is based on a tool of environmental impact assessment (EIA) and issuing permits. However, this activity in each state is different

Actions on handling violations of environmental protection laws under several states are not the same, so, organizational structure and operating mechanism of inspection agencies and handling environmental violations and crimes are also different

and very flexible, can be defined “hard” for projects or activities that have high stability, but can also be modified to apply accordingly, in order to effectively manage the environmental factors for some particular cases.

The organizational structure of inspectorates, environmental police and enforcement mechanisms, applicable law for violations of environmental protection laws

Actions on handling violations of environmental protection laws under several states are not the same, so, organizational structure and operating mechanism of inspection agencies and handling environmental violations and crimes are also different. For example, in the State of Maryland is the Environmental Inspection Agency under the Department of Environment; In the state of Washington, is the Environmental Inspection Agency under the Department of Ecology ... The agency is executing checking, inspecting functions and handling administrative violations such as collecting fines, revoking license, enforcing remedial actions... ; for serious violations, the agency may set up files to request judicial agencies for prosecution for court trials. In these two States, there are no environmental police organizations, while in New York State; Environmental police force is set up with powers as security agencies: investigation, search, arresting, prosecutions, and establishment of

specialized cases related violations of environmental laws...

Mobilization of resources on environmental protection

The financial resources for environmental protection in the states under the U.S. are very diverse. Partly is made by the Government budget allocations from the Federal or the State, partly by other organizations, businesses and individuals to contribute or directly participate or invest, executing...

Information, communication in the field of environmental protection management

Information and communication systems in general and in particular on the U.S. Environmental Protection have been developing at a high level with the application of the latest achievements of information technology, which are regularly updated. The provision of environmental information must comply with strict procedures. Background information about the environment is widely disseminated on the Internet and other mass media. But for in-depth information, the person needs information having to pay a certain amount as prescribed by law and having to comply with the provisions on the information provided.

To serve the task of developing the LEP (Amended), it is necessary to organize study tours to gain experience on developing and enforcement of environmental protection law in the advanced countries in general and in the U.S in particular, to continue to improve the system of environmental protection laws in our country. At the same time, to further study of the environmental law system of the United States and in developing countries, as well as environmental management experience of developing countries with similar conditions as in Vietnam■



Legislation and initiatives by the European Union in the implementation of environmental citizenship

1. DEFINITION OF ENVIRONMENTAL CITIZENSHIP

In 1992, representatives from over 170 countries participated in the Earth Summit in Rio de Janeiro made the Rio Declaration on Environment and Development, in which the Principle 10 clearly stated the importance of the right of citizens to access to environmental information, participation in environmental decisions and access to justice. In 2002, countries over the world had reconfirmed their commitment to this principle at the World Summit on Sustainable Development in Johannesburg.

In 1998, at the Fourth Ministerial Conference of the “Environment for Europe” held in Aarhus city, the Convention on access to information, public participation in decision making and access to justice on environmental issues (the Aarhus Convention) was signed with the participation of 39 countries and the European Commission with the aim to contributing to protecting the rights of the people of the current and future generations to be entitled to live in an environment suitable for their health and welfare. Basically, environmental citizenship includes three rights: Access to information, participation of the people in the issuance of decisions on environmental issues; Access to justice related to the environment. These rights are called procedural rights.

The Aarhus Convention provides: Member countries shall ensure that the relevant communities will be publicly notified, or be notified each individual in an appropriate manner in the decision-making process on environmental issues with adequate, timely and effective information (Article 6); the community participation in plans, programs and policies relating to the environment (Article 7), the participation of communities in the process of preparation for amendments of laws or legal documents with legal binding which could be broadly applied (Article 8).

Reality shows that access to information, public participation and access to justice have made huge impact to the realization of environmental rights. These rights help citizens play a more pro-active and subjective role in decisions and policies promulgated by the Government related to environment; execution of democratization in making decisions and policies on environment, bringing individuals and private groups who have been often influenced and affected by environmental pollution participate in the development and monitoring of policies, thereby minimizing mistakes before issuing policies; to ensure a balance between the benefits related to the environment - sustainable development with needs of economic growth. Therefore, the implementation of procedural rights are important to get good policies



▲ Copenhagen (Denmark) -
The greenest capital in the world

on environment, which will create an environment ensuring health, protect the interests of the majority, the community benefits and protect the vulnerable in society such as children, women, the poor, ethnic minorities ...

The right to access environmental information mentioned two aspects: In term of passive aspect, the competent authorities must meet the requirements on environmental information within a month (two months for special cases) since the request is made and they are not allowed to force persons raising request having to give explanations on the necessity such information. However, there are cases as stipulated in legal documents that such information may not be provided, for example, the required information is not available, the given request of information is too general, the information is protected by trade secret and intellectual property rights ... The competent authorities may require payment



on providing such information on a reasonable basis.

In term of subjective aspect, the competent authorities shall be responsible for collecting and updating information, in order to make such information transparent and accessible, and be proactive in dissemination of some type of information, for example, in publishing reports on existing situation of the environment, the time gap between such announcement should not exceed 4 years. In the event of any imminent threat to health or the environment (after a nuclear or chemistry incident, for example), the provision of information should be done immediately.

The right of public participation in the issuance of the environmental decisions: decisions related to the environment will directly affect the life, health of communities, firstly to those who are living around. Therefore, the participation and voice of the local people will make decisions and policies on environment prior to issuing

minimize errors and getting the support from the public. Achieving public consensus will make local people more comfortable in receiving and better implementation of policies.

The right to access to justice is an important procedure to help citizens to seek legal assistance when their access to justice is denied or in the cases where their rights and interests are infringed upon and in particular, there are damage and losses caused by environmental impact. The implementation of the right to access to justice of the people is very important because it helps the public being entitled to raise their voice in the process of handling violations or giving compensation on environmental damage.

2. LEGISLATION AND INITIATIVES BY THE EUROPEAN UNION IN THE IMPLEMENTATION OF CITIZEN'S ENVIRONMENTAL RIGHTS

The European Union (EU) is an associated economic union

which was early formed and are most effective in operation. In the threshold of the twenty-first century, with a GDP around 8,500 billion USD, a population of about 375 million people, occupied about 40-50% of the industrial output of developed capitalist countries, the EU is becoming a strong regional base in the world economy. To ensure the sustainable development, the EU has asked its member states having to operate within the framework of environmental regulations. Thus, Member States are obliged to comply with EU rules on environment and having to implement environmental instructions adopted at the EU level.

The Right to access to information

The European Parliament issued the Directive Ref.No.2003/4/EEC (Directive) on January 28, 2003 on free access to environmental information by community. Accordingly, the member states have to build up their law and legislation to implement the Directive of the Council. In particular, the Austrian government approved in 1993, Denmark in 1994, Germany in 1994, Greece in 1995, the United Kingdom in 1992, Spain in 1995 and Ireland in 1993.

Under the Directive, the States Member are required to implement a dual mission, that is to provide individuals with environmental information on-demand and voluntarily provide general information about environmental conditions. The Directive stipulated some conditions under which information can be made freely. To access information, the Directive requires countries to provide general information about the situations of the environment. The States Member shall ensure that information related to the environment has been always updated so that all people can access.



▲ In Romania, people made demonstrations on protesting the opening on exploitation of the Rosia Montana mine (the largest open-pit gold mine located in Europe in the ranges of the Carpathian Mountains under the country)

However, sometimes there are exceptions due to the peculiarities of the law and administration of each States Member, in particular in the United Kingdom, all environmental laws such as the Law on Pollution Control, the Law on Water Resources, the Law on Environmental Protection must have separate registration information. In Spain, all public authorities are required to have general information about the situations of the environment in the form of periodic reports. In Germany, the Federal Environment Agency put out an annual report for a number of industries.

However, costs are often one of the major obstacles to the implementation of the right to access environmental information. The Directive requires that States Member may charge a fee on providing information, but this fee does not exceed a reasonable

cost. The implementation of this Directive depends on the differences of policies among the States Member under the EU. For example, in Austria and Denmark, there is a rule stipulating that information is provided free of charge. However, there are two exceptions in Austria, the first case is that the required information is available in the publications with listed price, the inquiry must pay the listed price; the second is an extended case, in particular, the two persons who raise inquiry for information may pay a total amount which does not exceed a reasonable cost.

The right of public participation

The EU does not have a special directive for the community involvement in environmental issues. However, the Directive No. 85/337/EEC, was amended and supplemented by the Directive No. 97/11/EEC, on evaluation of the

impact of public and private projects on the environment had raised some provisions on public participation in environmental issues, particularly in the Environmental Impact Assessment (EIA).

Some European Union states member have developed rules on the participation of the community in determining the locations, allowing the implementation of the program and the Environmental Impact Assessment (EIA). In Austria, based on regulations, all people will be provided information about any given project and the EIA must be issued within 6 weeks. In addition, it is required that EIA results must be published and discussed at a public hearing. Holland allows the community to participate in the proceedings of the environment, especially in terms of emissions, permit on selecting industrial locations, energy production, installations of waste treatment



equipment. For Spain, the law allows the community to participate in the procedure related to the EIA.

Public participation in the EIA process aims at determining the location and allows the implementation of programs and projects. Communities have the right to participate in the process of building up legislation and rules in the EU states member. The Parliamentary Committee on environmental issues may invite representatives of community and of non-governmental organizations to express their opinions on a number of policies and laws which are being considered for approval by legislative agencies. On the other hand, the representatives of the community in a number of EU countries can also initiate the development of legislation or arrangement of a referendum. In Spain, the community can initiate legal initiatives at both national and regional level and in autonomous administrative areas, however, it requires the signatures of 500,000 Spanish citizens recorded in the population census form so that the National Assembly could discuss and review the proposed documents.

The right of public participation includes the right to participation in non-governmental organizations. Danish non-governmental organizations have regularly consulted opinions on policy planning and the plan on building up legislative law. At the local level, Danish non-governmental organizations have been involved in monitoring and have impact on the decision of the local councils through the Green Council. In Spain, the law on land set mandatory regulations on public participation in the procedure on planning of towns and allow affected individuals and non-governmental organizations

Public participation in the EIA process in order to determine the location and allows the implementation of programs and projects. Communities also have the right to participate in the process of building up legislation and the provisions in the EU states member.

being involved in the procedures. In Ireland, non-governmental organizations are members of the Advisory Board with aim to make recommendations to the environmental protection agencies of Ireland.

The right to access to justice

The right to access to justice in environmental matters have not been yet specified in any rules and directives of the EU. However, the 5th EU Programme "Towards Sustainability" has created motivation and recognized the right to access to justice in the EU states member, in noting states members paying attention to the quality of environmental habitat in which individuals and public interest groups should having empirical evidence so that Courts could ensure their legal interests, and at the same time, environmental protection measures are effectively implemented and violations be prevented.

Accordingly, constitutions of a number of EU states member have affirmed the right to access justice. For example, the Portugal's constitution stipulates that "everyone is entitled to freedom in some cases and in accordance with the law, in particular the right to promote actions on the prevention, containment and prosecution all the offense to public health, environment, quality of life and cultural heritage". Access to justice is a mechanism to promote the

development and enforcement of environmental laws in most countries under members of the EU.

In most EU states member, the administrative procedures are governed by the process on issuing licenses, EIA. In Germany, Belgium, Denmark, Finland, France, Ireland and the UK, there are specific administrative procedures in the field of water, nature protection and planning. In addition, all EU members agreed on the right on administrative claim of citizens. The right on administrative claims of citizen is the citizen's needs and abilities of citizens guaranteed by the State in response to administrative decisions, administrative acts issued or made during the implementation of legislative rights when citizens find that such decisions or acts infringing his/her legitimate rights and interests. For example, in the UK, the applicant may appeal to the Minister on granting a license to certain project; In Austria, Italy, the Netherlands, Sweden, Germany and Denmark, the applicant shall be admitted if he/she has been involved in the consultation or organizational procedures required before such decisions are made; In Ireland, individuals and non-governmental organizations have the right to appeal before an administrative court on issues related to applications of planning, air pollution ...

Payment on claims is one of the biggest challenges for the implementation of the right to access to justice. In Denmark, the Minister of Environment may decide that appealing costs should be paid in some cases, such as water problems, but generally the cost of the appeal will be refunded if the appeal applicant is won.

NAM VIỆT



Law on Environmental Protection, policies and model of effective environmental management in South Korea

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South Korea is located in East Asia, on the southern half of the Korean Peninsula. It is bound by North Korea to the north, by the Yellow Sea to the west, bordering the East Sea of Japan. South Korea has an area of 100,032 km², with a temperate climate and its terrain is mostly mountainous. South Korea has limited resources, the goal of the Government is directing towards a maximum economic growth in minimum timeline. The strong process of industrialization and urbanization has led to a long period when South Korea has been facing the environmental pollution. Therefore, in recent years, the Korean Government has been very interested and made investment

in environmental protection field, making early establishment of the Ministry of Environment, building up legislative frame, relevant laws and policies relating to environmental protection. In particular, South Korea is at the forefront of the green growth in addressing climate change and announcement of plans to reduce greenhouse gas emissions by 2020.

Introduction the history of establishment of the South Korean Ministry of Environment

The South Korean Ministry of Environment, founded from a pollution control department under the Ministry of Health and Social Affairs established in 1967, has been extended assignments in environmental management in 1973.

After the reform and expansion of environmental management, the Ministry of Health and Social Affairs established the Environmental Management Office in 1980. In 1990, the Office of Environmental Management was split and developed into the Ministry of Environment under the Office of the Prime Minister, to coordinate and handle the overall management of environmental issues. In December 1994, the Ministry of Environment was assigned greater authority to establish and implement their own policies. The mission of the Ministry of Environment is to protect the national territory from the threat of environmental pollution and improve the quality of life so that people enjoy



living in the environment with fresh atmosphere.

The mission of the Ministry of Environment includes issuance and revisions, supplementing additional laws and regulations on environment; building up environmental management policies; drafting and implementing medium and long-term solutions on environmental protection; setting up the environmental standards; giving administrative and financial support on environment management for local authorities and international cooperation on the environment.

Some key features of the system of environmental protection laws in South Korea

Currently, there is one framework Environmental Law and Policy and about 46 satellite Laws for each field related to the environment in South Korea.

Environmental Law in South Korea was set up fairly early. In 1963, the Environmental Pollution Prevention Act was promulgated. In 1977, this Act was replaced by the Law on Environmental Protection. In 1990, the Law on Environmental Protection was split into separate laws: the framework Law on Environmental Policy, the Law on preservation of air quality, the Law on preservation water quality, the Law on noise and vibration control.

Until now, with aim to specialize management targets, the South Korean Ministry of Environment has developed 46 rules on the fields of green growth, water quality and aquatic ecosystems, water supply and drainage - soil - groundwater, air and climate change, waste and recycling, health/chemicals; nature and national Parks; international cooperation ...

The framework Acts on Environmental Policy (FAEP) is the legal basis of environment in South Korea. FAEP includes 6 chapters and 44 articles and was enacted in 1990 and recently amended in 2008. In Article 1 of the Act, there is one provision stipulating the purposes of this Act " is to make all people be able to enjoy healthier and more comfortable lives, prevent environmental pollution and damage on environment and management, making reasonable and sustainable environmental protection through the determination of rights and obligations of citizens and of the government on environmental protection and identify fundamental issues for environmental policies." The content of this framework Act includes: Chapter 1: General issues, Chapter 2: Setting up environmental protection plans, Chapter 3: The legislative and financial tools, Chapter 4: Advisory Committee on Environmental Protection, Chapter 5:

The additional provisions, Chapter 6: Provisions on criminal penalties.

Some satellites laws were enacted and amended:

The Law on Conservation of Natural Environment includes 7 chapters, 66 articles and was issued in 1991; the latest recent amendment was made in 2008 with the goal of protection of natural environment, to help people use natural resources sustainably. In this Law, it incorporates a number of economic instruments such as taxes, fees, financial aid into relevant articles.

On January 15, 2009, the South Korean government promulgated the Law on Low Carbon and Green Growth. The goal was to institutionalize the goals of "low carbon" and "green growth" through the environmental friendly tax system as well as support for green production and business operations. The Law is also the solution to adapt to climate change.

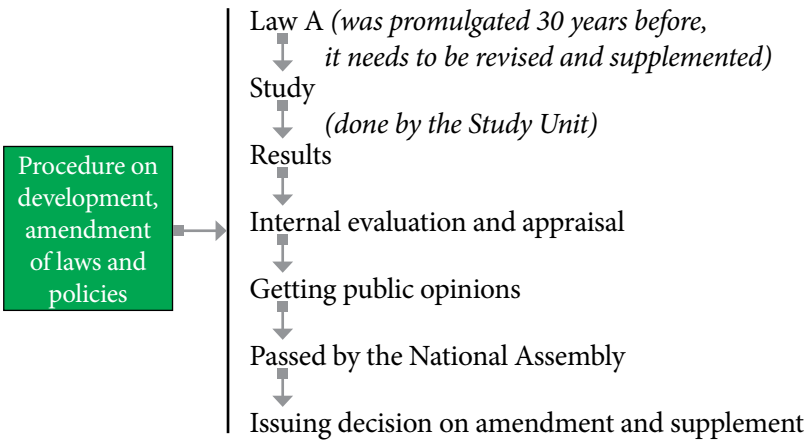
Firstly, the Ministry places orders to the research unit focusing in research and development, detailed contents, and then the result will be internally verified, followed by getting community opinions and the opinions of ministries and departments concerned, finally, submission to the National Assembly for appraisal. After being given approval by the National Assembly, decision on implementation is issued. It is this process making promulgated Laws reaching high feasibility.

A number of economic policies and instruments effectively applied in the environmental protection area

Currently, South Korea has been effectively applying a number of policies on management of environmental protection, of which the following policies must be mentioned:

Waste separation at sources (already implemented 10 years):

Experience in developing, amendments to Law and policies in South Korea:





▲ *The South Korea encouraged cities to minimize CO₂ gas such as saving electric energy, coal, and oil with aim to achieve environmental protection*

Help to recycle waste, save resources, generating new energy and useful products such as fertilizers and methane gas for electricity production.

Encouraging application of the measures of mitigation of CO₂ such as electricity energy saving, coal, oil or use technologies creating fewer emissions. Specifically: People, in using, buying products labeled low-carbon will be entitled to have scores accumulation in cards, by end of year, such scores will be converted into cash, such funds will be paid by the State (but money in cards are only used in buying the low carbon labeled products, with aim to stimulate consumption of environmentally friendly products).

+ Support and encourage businesses, communities participating in implementation of economic policies and instruments in environmental protection and management:

+ Public announcing information on fields of investment such as policies, incentives, planning, situations on environmental pollution in the area...

+ There are applicable policies on collection of garbage fees through the sale of garbage bags (it is stipulated that kinds of bags, materials of bags can be recycled based on rules promulgated by the government).

+ Encourage people to use garbage bags that can be recycled in accordance with the rules promulgated by the Government.

A number of economic instruments in environmental protection and management that are applying in South Korea as follows:

Fees on environmental protection of air: To be applied to objects such as large size cars, factories emission much industrial waste.

Fees on environmental protection of water: Local administrations must pay fees to the Government on

exploitation of local groundwater sources.

Fees on waste management: To be collected from the sale of plastic bags containing waste (the type of garbage bags as stipulated by the Government). This funding will be used for recycling and treatment of non-recyclable waste.

Some projects under the Clean Development Mechanism (CDM) have been implemented in South Korea. Certificates on emission reductions (CERs) from CDM projects were sold among private companies. In 2009, the South Korean set up the voluntary emissions trading unit and carbon trading market. Although the participants are not compulsorily required, companies will be certified as reducing the demand on using energy. The Government will encourage trading in greenhouse gas at moderate level through carbon tax. Since 2010, the South Korean government has



planned on the management method of the program on testing emissions market.

The above policies are clearly stated in the provisions of the Act. The rates of charges are specified in detail in the Circulars and are regulated by the Law on Environmental Finance.

Tasks assignment and allocation of responsibilities on environmental management in South Korea

The South Korean Ministry of Environment is responsible for enacting the Acts on the environment. The local governments also play important roles in the enforcement of these Acts.

Administrative, civil and criminal courts are responsible for enforcement of environmental laws through judicial processes at courts.

Local authorities are empowered to issue local environmental standards at the level of more detailed, stricter than national environmental standards.

Local governments are entitled to grant most of licenses or giving approval and enforcement of the ordinances. The administrative ordinances include suspension of business operations, revocation of licenses, closing facilities. The revocation of licenses is usually issued when the violation is continuously repeated and after prior notice is given. Many environmental laws prescribe types of penalties including imprisonment or fines for violations.

The environmental pollution management and monitoring is well implemented. Typically, it is the management and monitoring of wastewater pollution. Firstly, the evaluation on loading threshold in watershed, installation of monitoring equipment at outputs in plants, industrial parks in order to control industrial waste concentration and volume discharging into the area.

Accordingly, it could be timely to stop, timely sanction violations, forcing production facilities, industrial parks strictly implementing the application of thorough measures to achieve required standards before discharging into the environment in the area.

General Comments

Compared to Vietnam, the South Korea Ministry of Environment was independently established very early (in 1994). The management of the environment is assigned to the Ministry of Environment for management, although the environmental management is derived from the Environment Department under the Ministry of Health. And in Vietnam, in 1992, the Environmental Protection Agency was included under the Ministry of Science, Technology and Environment, and by 2002, the Ministry of Natural Resources and Environment (MONRE) was established. However, currently in Vietnam, the environment is just one of seven management areas of the MONRE. So, it could be seen that the state management on the environment has been received much attention by the South Korea Government and institutionalized in the form of centralized management functions into a Ministry.

The Law relating to the environment in South Korea is developed in the model of an Act, including one framework legislative Law and several laws related to environment. This Law in South Korea was developed and in effect since 1990. As in Vietnam, the LEP was only promulgated and in effective since January 10, 1994. So, we can say that the LEP in Vietnam has many opportunities to learn the experience from South Korea. In socio-economic situations in Vietnam at present, the development of a framework

law and policy on the environment following the South Korean model is not feasible, as to develop the Law under this direction, it needs to have professional legislative development system as well as the systems to ensure a complete and synchronized implementation of the law.

The policy, economic instruments are effectively applied in the environment protection, encouraging community participation and natural resources saving, pollution and waste reduction, such as sewage charges, emissions, solid waste (through the rule on type of garbage bags and collected charges are deducted from the sale of the bags to people); accumulative scores cards on mitigation of CO₂ through resources savings (to encourage people to use the product attached with low carbon label) and was paid in cash by the Government at the end of the year. The legality of policies, economic instruments is specified in the Law documents in South Korean.

South Korea is moving toward green growth in the current period and in the future. The main focus of research is made in green technology, green industry, and environmentally friendly products to reuse resources, turning waste into resources that can be used.

A Korean experience in developing a Law: Because the law is essentially effective in long-term, cannot be changed for a long time. As a result, a law should be promulgated only when it is thoroughly studied and developed, the result must be internally verified, and getting public opinion, opinion of the ministries and agencies concerned, passed by the National Assembly, then such Law will be issued. It is this process enacting the Law to be more feasibility■



Some recommendations...

>>> (From page 58)

Rules on duties showing proofs and evidence of handling environmental disputes in accordance with international practices

The rule on showing proofs and evidence is a barrier to environmental dispute resolution. As following the current applicable rules, the duty on giving proof and evidence will rest with the required entities. For disputes on claiming losses of life, health, assets and the environment, the involved entities claiming for compensation, in addition to having proved actual damages, they must also prove the consequent cause and effect relations between actions caused by environmental pollution and degradation, incidents with damages to environment and the consequent cause and effect relations between such environmental damages and their losses of life, health, property. The duty on giving proof is almost beyond the financial capacity and ability of the entities subject to damage. This rule helps entities causing damage be irresponsible and disregard for the law, not fearing lawsuits because these entities consider that the damaged entities will be difficult to come up with evidence for their requirements. Thus, the current regulations do partly help the entity causing damage gaining further advantage, to further push the unbalanced position of the disputing parties.

To overcome this limitation, Vietnam may refer to the experience from the Chinese legal legislation; it is the “swaps proof obligations” of the involved entities. Accordingly, the entities suffering damage will not have to prove for their claims, not having to showing the cause and effect relation between environmental pollution and degradation, incidents with occurred damages. Instead, the entity causing damage will be obliged to prove they are not responsible for such damage or their responsibilities can be mitigated in certain circumstances prescribed by law or to demonstrate no cause and effect relation between their actions and such damage.

If we apply this principle, it will ease the burden to affected entities in environmental disputes. Moreover, the entities causing damage could be able to better perform their obligation of proofs than the damaged entities. Because the entities causing environmental damage are often investors, business enterprises, trading businesses, businesses providing services those are potential in economic resources and be able to perform such obligations. Besides, the entities causing damage are persons who did such actions, therefore, the supply of evidence to prove that they are not responsible for such actions, or such actions take place in a situation of force majeure, or no cause and effect relation between the behavior and the damage is easier. The evidence for proving could be the certificates on reaching

norms and standards, designing the waste treatment system with the contents as shown in the approved report of environmental impact assessment or proof of force majeure circumstances leading to damage to the environment...

This rule makes all concerned entities who causing damages and afraid of being in courts are more willing to settle disputes by negotiations, reconciliation, help solve environmental disputes in a better effective and inexpensive way.

However, the rule on obligation of proofs entirely attached to all entities causing damage can also have some limitations such as in a number of cases where local people making claims exceeding the actual damage. Moreover, entities causing damage cannot gathered evidence related to manufacturing and business operations, income or health status of the affected entities, so, it is difficult to prove the extent of on claim requested by the entities suffering damage is reasonable or not.

Therefore, Vietnam should stipulate following the direction of “swaps on obligations of proof” like China. However, the entities causing damage only have to prove issues such as such liabilities are not under their obligations, no cause and effect relation between damage and behaviors ... and entities suffering damage have obligation to prove level of damages and compensation is commensurate with the damages they suffered■

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VIETNAM ENVIRONMENT ADMINISTRATION

CENTER FOR ENVIRONMENT MONITORING

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FUNCTIONS AND MANDATES

The Centre for Environmental Monitoring (CEM) is a subsidiary body under the Vietnam Environment Administration (VEA) which was established pursuant to the Decision No. 132/2008/QĐ-TTg of Prime Minister regulating the functions, mandates, responsibilities and organization of VEA. CEM is responsible to organize and implement the national environmental monitoring, to act as the coordinator for the national environmental monitoring network, to apply information technology in environmental monitoring, to manage and assess environmental monitoring data and to prepare state of the environment reports; to be a coordinator of national environmental monitoring network.

SUBSIDIARY DIVISIONS:

- Administration Office
- Division of Environmental Monitoring

- Calibration Laboratory for Environmental Monitoring Instrument
- Environmental Laboratory (including the Dioxin Laboratory)
- Division of Database and Information System

MAIN ACTIVITIES

ENVIRONMENTAL MONITORING

- To be a focal point in directing and providing guidance of environmental monitoring activities nationwide.
- Develop and conduct the national environmental monitoring programs of river basins, key economic regions, trans-boundary environment.
- Provide guidance and examine the local agencies, enterprises, industrial zones on conducting environmental monitoring programs, complying to the technical regulations, quality assurance and quality control (QA/QC); applying regulatory economic - technical norms and unit price in environmental monitoring.
- Maintain and improve the quality management system for environmental monitoring activities, testing at fields in accordance with ISO/IEC 17025:2005. The Division of Environmental Monitoring was recognized to conform with the requirements of ISO/IEC 17025:2005 for monitoring and testing 16 parameters of air and water at field.
- Operate the automatic and continuous monitoring stations of water and air.
- Appraise the qualifications of the agencies providing the environmental monitoring services.



- Research and develop technologies, methods of environmental monitoring.
- Provide the testing, consultancy, training services, technology transfer, etc in the field of environment.

ENVIRONMENTAL EXPERIMENT AND ANALYSIS

- Act as the national environmental reference laboratory. Providing guidelines and conducting the investigations on complying with the procedures, technical guidelines, QA/QC and regulatory norms on environmental analysis;
- The Environmental Laboratory is equipped with advanced equipment providing accurate analysis results. The laboratory officers are well trained and required to take periodic skills evaluation to ensure the high accuracy results for analyzing samples of water, soil and sediment, biota, etc. The quality management system was affirmed to conform the requirements of ISO/IEC 17025:2005, to be granted VILAS 430.
- Conduct annually environmental inter-laboratory tests in accordance with the technical procedures of ISO/IEC 17043:2010. To participate in assessing and recognizing the agencies qualifying for providing environmental analysis.
- Provide services of analysis, assessment, consultancy for develop quality management system; environmental technology; laboratory equipment, etc
- Participate in international cooperation of technology and sciences and training activities.





VIETNAM ENVIRONMENT ADMINISTRATION

CENTER FOR ENVIRONMENT MONITORING



DATA ANALYZING, PROCESSING AND ENVIRONMENTAL REPORTING

- Act as the national coordinator in consistently managing environmental monitoring data. To take main responsibility in developing, managing and exploiting databases as well as information systems on environmental monitoring;
- Develop, manage and exploit environmental information systems, Geographic Information System (GIS), and environmental databases. To take main responsibility for developing and providing technical guidelines on collecting, managing and exploiting national environmental indicators and statistics;
- Prepare and provide guidelines on preparing national/ministerial/sectoral/local State of the Environment Reports; thematic reports on various environmental issues.

ENVIRONMENTAL MONITORING EQUIPMENT CALIBRATION

● Implement, provide guidance and supervise the compliance to the regulations on testing and calibrating the environmental monitoring equipment; the certification procedures for the qualified equipment, environmental monitoring devices.

● Calibration Laboratory for Environmental Monitoring Instrument is equipped with advanced equipment with high accuracy to calibrate the automatic air monitoring stations for the parameters of SO_2 , CO, NO-NO₂, O₃, THC, BTEX, etc, the automatic water monitoring stations for the parameters of pH, DO, EC, TDS, ORP, etc and the semi-automatic equipment such as portable meter for air, portable meter for water, multi-

parameter water meter.

● The modern equipped mobile car specializing for equipment calibration is ready to serve at place upon request providing the best service of calibration, time ensuring and cost effective.

● Calibration Laboratory for Environmental Monitoring Instrument applies the quality management system in accordance with the requirements of ISO/IEC 17025:2005 and was granted VILAS 575 on the field of measurement-calibration for 10 accredited calibrations. Annually, the Laboratory continues to maintain and expand the VILAS accredited measurand/calibrated equipment.



INTERNATIONAL COOPERATION

To be the implementing agencies of the following projects:

- Disclosure of environmental information to the public (funded by World Bank): 2001 - 2002.
- Environmental Information and Reporting (funded by the Danish International Development Agency): 2004 - 2006.
- Project "Registration of contaminated sites in Vietnam"(Germany).
- Clean Air for Smaller Cities in Asean Region.

SERVICES, CONSULTANCY AND TRAINING SUPPLIER

- Supply consultancy and training services on environmental monitoring, environmental analysis, calibration of equipment; implement and apply IT in environmental monitoring and process environmental monitoring data;
- Provide services on environmental monitoring, calibration of environmental monitoring equipment, environmental analysis, establishment of environmental information systems, GIS, environmental databases.

INFORMATION TECHNOLOGY DEVELOPMENT AND APPLICATION

- Act as the coordinator of the National Environmental Monitoring network as regards data and information and be responsible for establishing IT infrastructure for the network;
- Develop databases and software for management and exploitation of environmental monitoring data;
- Apply remote sensing technology, telecommunication and information technology in environmental monitoring. Establish and develop Tele-monitoring system and software to be applied in environmental monitoring;

DIOXIN LABORATORY

● Project for Establishment of Dioxin Laboratory funded by The Bill and Melinda Gates and Atlantic Philanthropies Foundations.

● The project's objective is to improve the capacity to analyze polychlorinated dioxins and furans as well as other persistent organic pollutants (POPs) in Vietnam.

