



the Recovery Claim of the Fund



Newly Amendment of ‘Soil and Groundwater Pollution Remediation Act’

Since the ‘Soil and Groundwater Pollution Remediation Act’ was promulgated on Feb. 2, 2000, the ‘Polluter Pays Principle’ has been established as the ultimate purpose of this act. In order to respond to the diversity of practical cases and to complete the ability of the Act in reacting to relevant cases, the Environmental Protection Administration, through its Soil and Groundwater Pollution Remediation Fund Management Board, pushed forward the amendment of the Act, which was finally realized by the promulgation of amended Act by the President on Feb. 3, 2010. The amendment added a new liability group, i.e. ‘Persons Potentially Responsible for Pollution’, who shall have joint liability with the polluters. Thus, the amended act has reached further to the “User Pays Principle” prevailing in the advanced countries, such as the United States and some European countries. Meanwhile, the amendment further introduces the American corporate law concept - Piercing the Corporate Veil, which would force the statutory responsible person, the controlling company or shareholder controlling the decision-making of corporate polluters to take the responsibility of remediation. It is truly a breakthrough for compensation claim mechanism.



The Recovery Claims and Fruitful Results

The most important part of the claim procedure is to identify the polluter. However, it is also the hardest one.

The reason is that soil and groundwater pollution can not be easily detected from the outside, and generally has been accumulated for a long time until it is found. But usually, at that time, the owner, user or manager of contaminated land may not be anymore the original person who polluted the land. Furthermore, in some cases the contaminated land has been sold several times, thus increasing more difficulties for pursuing the claim. For this reason, since the ‘Soil and Groundwater Pollution Remediation Act’ took effect on Feb. 2, 2000, there are a series of publications which have been edited through the effort of the Soil and Groundwater Pollution Remediation Fund Management Board, such as “Q & A on Soil and Groundwater Pollution Remediation Act Legal Practice”, “Handbook for Standard Operation Procedure concerning the recovery of remediation costs prepaid by the Soil and Groundwater Pollution Remediation Fund” etc. The local environmental agencies may understand the relevant legal issues and procedures much better.

Through the long and persistent effort of the competent authorities, the recovery claim for remediation costs has obtained fruitful results, such as the claim against CPDC (China Petrochemical Development Corporation) on the well-known An-Shun Site in Tainan City, the Supreme Administrative Court rendered a final judgment in Nov., 2007, and had recognized CPDC as the polluter on An-Shun Site. Because the Court has confirmed at that case that CPDC should be held responsible for the pollution, the Tainan City government accordingly may force CPDC to pay not only the assessed expenditures to the Fund, but also the estimated expenditures of the future remediation which might be billions of NT dollars. Therefore, billions of dollars of fund expenses will be assured by the judgment. Until March, 2010, CPDC has already paid 108 million NTD to the Fund for the expenditures of remediation.



The Future Prospects

In order to speed up the recovery claim, ensure timely searches and identification of the polluters, and reach the goal of “Polluter Pays Principle”, the Law Suit Executive Division of the Soil and Groundwater Pollution Remediation Fund Management Board is now drafting the SOP to perform Polluter Searches and building the Database of Polluters by considering the pollution situation in Taiwan and referring to CERCLA (U.S.), Environmental Act PART II A (U.K.), Soil Contamination Countermeasures Law (Japan) and other foreign related regulations. EPA not only focuses on the remediation operations, but also takes ‘Brownfields Revitalization’ into consideration as well. To lower the cost of remediation, incent reuse of the contaminated lands and further promote the sustainability of land uses, the newly amended Soil and Groundwater Remediation Act allows that the goal of remediation on some contaminated lands can be adjusted according to the health risk assessment.

