

**ASSESSMENT OF DRAFT LAW ON
ENVIRONMENTAL PROTECTION FOR THE
SOCIALIST REPUBLIC OF VIET NAM**

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Mr. Thomas Redick

This memorandum and its attachments respond to the request from ABA-UNDP ILRC for an assessment of the draft Law on Environmental Protection for Viet Nam (“DLEP”).

I. Executive Summary

The Vietnamese economy is poised to enter the 21st Century by leap-frogging past the industrial stage of development. This will require environmental regulation that avoids the mistakes of the 20th Century, both in terms of environmental liabilities that could have been prevented, and inefficient forms of environmental regulation that discourage investment unnecessarily. The DLEP could be improved by developing self-implementing industry standards that are optimized to Viet Nam’s economic and environmental needs, and which tap into capacity for self-regulation that can apply regulatory resources to more productive measures

Sustainable development in Viet Nam may require a balance between “Command-Control” forms of environmental regulation and self-implementing industry standards, aided by public participation of citizens. Since Viet Nam’s economy is largely agricultural, and major exports include rice, marine products, textiles and garments, and other agricultural goods, I will offer specific ideas about its approach to regulating agricultural operations, including animal feeding operations and agricultural biotechnology. I also consider the present time to be one that offers opportunities in recycling equipment with hazardous residues; this is an area requiring specific implementing legislation to clarify the Based Contention on Hazardous Waste.

Viet Nam has included the basic tools for encouraging investment in those emerging technologies where its best suited to increase exports and build its economy. To ensure that it uses foreign investment to increase its economy and its level of environmental protection, Viet Nam should improve its enforcement tools, develop more specific industry standards (which the assistance of both industry and NGOs) and tap into international conventions for building its own capacity to regulate chemicals, energy production (oil & gas), biotechnology and other sectors.

II. Documents Reviewed and Additional Sources

To undertake this analysis, I reviewed: (1) the draft law, (2) the original 1994 Environmental Protection Law and the Decree Guiding Implementation, (3) the Grassroots Democracy Decree, (4) the Decree on Sanctions, (5) the Biodiversity Action Plan, (6) Instructions for addressing serious polluters, and (7) instructions for guiding environmental impact assessments.

To gain an understanding of specific areas of development that the Government of Vietnam has identified as “Especially Encouraged” I relied on the Grant Thornton firm’s online reference “Doing Business in Vietnam” which relied upon Decree No. 24 dated July 31, 2000 for areas that are “specially encouraged” in Viet Nam investment priorities. http://www.granthornton.com/downloads/DB_Vietnam_97355.pdf. The list of projects that are specially encouraged includes: (1) those exporting 80% of production, (2) agriculture, forestry (exc. Wood) and aquaculture using domestic resources with over

50% exported, (3) various kinds of breed of high quality, (4) cultivation of agriculture, forestry and aquaculture, (5) manufacturing, including biotech and new tech (e.g., telecommunications), (6) high tech (7) antibiotics (10) pollution control/treatment, (11) Build to Operate (BTO) and other construction contracts.

I also reviewed the paper posted online by Professor Alan Tan, at the National University of Singapore Law School, Preliminary Assessment of Viet Nam's Environmental Law, for general comments on the structure and scope of the law. While out of date, this analysis touched in a general manner upon the six thematic areas: Environmental standards, Poverty and Environmental nexus, Environmental planning, Hazardous waste management and waste reuse and recycling, Liability and compensation, and Socialization of environmental protection activities.

I reviewed MOSTE's National Action Plan on Biodiversity to determine how the move toward a market economy would change farmers traditional choices of crops. See, <http://law.nus.edu.sg/apcel/dbase/vietnam/other/vipbio.html#TopChanges>. As I expected, farmers will use new varieties, particularly those targeting exporting markets (including approved biotech crops) to increase yields and otherwise meet market demands. This leads to substitution of new crops for the traditional varieties – some of which harbor genes that make them (and other crops with those genes) more suitable for local climate and soils. They conserve valuable phenotypes for future market demands, Viet Nam's plan is to consolidate and establish genetic conservation centers to protect the precious and rare genetic resources with high economic values and supplying genetic materials for breeding.

APPENDIX 1 Environmental Standards

In general, the environmental standards in place for various industry sectors need more specificity. In creating more specificity, Viet Nam should encourage a “second generation” approach to environmental regulation that bypasses the more costly command-control methods, and substitutes optimized regulatory standards that deliver maximum environmental protection at minimal cost.

Remediation of 20th Century Chemical Legacies

Viet Nam’s baseline of environmental contamination from agricultural activities leaves little room for poorly managed use of herbicides and pesticides. During the Viet Nam war, the U.S. sprayed millions of gallons of Agent Orange until 1971, when TCDD was linked to cancer in rats. Viet Nam estimates more than a million of its people were exposed to the spraying, and more may be exposed to residuals that accumulated in the environment. The head of Viet Nam’s Red Cross has promoted research on human health effects and methods of cleanups, including communal medical centers and drugs to counter effects on the immune system, rehabilitation of those born with birth defects and improved infrastructure in sprayed areas. Environmental regulation can help to detect and remediate dioxin contamination across Viet Nam until it reaches internationally acceptable levels that eliminate human health effects.

As a result, Viet Nam cannot afford to adopt a chemical-intensive form of agricultural that has been promoted by certain developed countries. Where possible, it should use its environmental regulations to encourage the use of innovative approaches to pest and weed management in agriculture that are create less of a chemical burden on the environment and human health.

Public Participation in Significant Agricultural Activities

Under Article 17 of the Environmental Protection Law (as interpreted by Article 9, Chapter III, Decree 175/CP on the Implementation of Environmental Protection Law), the Ministry of Science, Technology and Environment (“MOSTE”), the regulation of a “Slaughter house for local food consumption” is subject to the short form category of environmental impact review. As agricultural production from feeding operations increases, Viet Nam may encounter problems similar to those found in other nations, as feedlot waste enters water supplies or poses health risks to residential areas. As local slaughter houses succeed in expanding their market share (and perhaps exports, as is “especially encouraged”), they may grow into the “medium” impact category, Viet Nam’s regulatory oversight of such activities should capture (and regulate) these economic impacts.

DLEP Article 6 provides citizens with a right to “denounce” operations that are in breach of legislation. While environmental protection is “the common cause of the entire population” and various organizations and individuals may exercise their obligation to “detect and denounce any act in breach of the environmental protection legislation”, economic efficiency would be better served by creating formal public participation processes within the regulatory permitting system. This could be achieved by decree within the Vietnamese legal system that opens to public comment the process of reviewing the environmental impact of significant expansion of feeding and slaughter

operations in residential areas. At present, the law does not appear to provide public comment, but leave the citizen to denounce operations after the fact.

A similar level of public comment might be required for other agricultural activities that pose a significant ecological impact, which might be better regulated through public commentary than simply relying on citizens to “denounce” the impact after the fact. Viet Nam has “especially encouraged” operations involving biotechnology, which would presumably include field trials of innovations in agricultural biotechnology (which have been promoted heavily in China to the North, and are causing no small amount of controversy in Thailand and Malaysia). Since Viet Nam is a member nation of the Cartagena Protocol on Biosafety and the Convention on Biological Diversity, its Law of Environmental Protection should include mechanisms for regulatory oversight of field trials of biotech crops (and such mechanisms could include the same level of “public comment” so as to minimize the costlier, less effective path of a citizen “denouncing” the environmental impacts after the fact.

While ensuring public participation, Viet Nam should also ensure that it protects operations meeting certain environmental standards (e.g., regulations on oil & gas production, specific regulations stating containment measures for incoming commodities, for field trials, or other operations using genetically modified organisms). Compliance with such regulations should be sufficient basis to avoid administrative penalties or a citizen’s denunciation, and industries should be encouraged to implement environmental management systems that allow them to proceed with a business plan or expansion of operations once all issues of risk are reviewed. Public participation should be limited to the approval stage, and not be permitted to shut down operations after significant investment and legal review has occurred.

Viet Nam has especially encouraged agriculture methods with export implications and innovation in biotechnology. The environmental release of biotech crops without regulatory oversight can lead to liability risks that threaten the development of domestic biotech innovation in Viet Nam. (The U.S. has seen at least one biotech seed company, Aventis Crop Sciences USA, Inc. lost to a failure of regulatory oversight for a problematic protein in Starlink corn). By providing regulatory oversight through public participation, Viet Nam can ensure a robust and healthy agriculture industry, which includes the valuable tool of agricultural biotechnology.

Vietnam, China and other nations that harbour valuable agricultural genetic resources (e.g., wild and indigenous soybean varieties) can cooperate to ensure that they maintain gene banks both in situ (in the field) and ex situ (in storage at research centers). Viet Nam’s lists of particular protected plants (see ___) tends to focus more on medicinal varieties of plants to the exclusion of its agricultural biodiversity (i.e., the wild and indigenous soybeans). China has taken steps to conduct an inventory of its rich agricultural biodiversity in soybean DNA, and Viet Nam’s environmental standards should ensure that it provides similar protection. Viet Nam has taken steps toward creating a national biodiversity database network to share information on biodiversity throughout the country, building capacity for protecting genetic resources. This database should include agricultural biodiversity and environmental regulation should provide protection for all forms of plant biodiversity.

Co-existence of non-biotech and biotech approaches to reduced-chemical agriculture

Developing nations such as the EU and developing nations (e.g., Thailand) have both fallen prey to activist-driven opposition to genetic engineering in crops. This has led to the creation of severe pressures on organic production models, as growers in the leading grain exporting nations (U.S., Australia, Canada, Brazil, Argentina, etc.) are being forced to comply with “Zero Tolerance” standards for traces of unapproved biotech crops found in commerce. At the same time, the biotech seed companies are finding their field trials barred from the marketplace by regulatory moratoria and activist activities of (Argentina, China).

Like China, the government of Viet Nam is uniquely positioned to build its own industries around agricultural biotechnology, as well as organic production methods. The regulatory models adopted by Viet Nam can attract investment in various forms of specialty agriculture. Viet Nam should explore how specific legal protections for co-existence of biotech and non-biotech crops can promote economic development and enhance the export income earned by smaller farmers and cooperatives.

Since Viet Nam has adopted a strategy of bypassing 20th Century industrial models, it is a good candidate for adopting a 21st Century approach to production of grain, rice and oilseeds. This approach should include policies that discourage chemical-based approaches to agriculture in favor of either organic or biotech assisted approaches. Either of these approaches to agriculture can be supported by

APPENDIX 2

Nexus Between Poverty and Environmental Regulation.

Viet Nam's series of Five Year Plans have tried to strike a balance between collectivization and private industry in the agricultural setting, and industry has arisen with environmental standards that may not fit Viet Nam's needs. See Tan, §5.6 (some regulations too strict, others not enforced etc.). Viet Nam's law of environmental protection should promote development without giving up environmental protection. Viet Nam has specifically invoked a strategy of "bypassing the capitalist industrialization stage" that Marx saw as the first stage before communism (See "Economic Roles of Party and Government" <http://countrystudies.us/vietnam/48.htm>). This could allow Viet Nam to develop an economic model that is tailored to its own vision of 21st Century, ecologically conscious industry.

Environmental regulation is a limit on production, since it imposes costs and limits activities in order to protect particular public goods — clean air, water, etc. It can also provide a fair and protective environment for businesses over the long term, allowing them to sustain economic growth without having large environmental liabilities or resource limitations bring their business to a sudden and devastating end. To the extent that Viet Nam will build its economy using foreign investment, those investors are required to comply with environmental standards. They may also be voluntarily subject to industry environmental managements standards, which are common in the high tech (e.g., semiconductor) and agricultural biotechnology industry sectors. As a result, the lack of regulatory capacity to regulate certain industry sectors could be solved by requiring adherence to global industry standards, which would require compliance to standards tailored to Viet Nam's environmental needs. Since these needs require specific testing and oversight to determine, Viet Nam will need to pair voluntary industry environmental management with detailed environmental rule-making for specific industries.

Environmental regulation is essential to those investments that Viet Nam seeks especially to encourage. Well-tailored regulations can provide a safety net for businesses to protect them from self-destruction through environmental liabilities. In controlling the worst excesses of industry, the environmental law of Viet Nam will allow it to industrialize and expand its agriculture sector without repeating the mistakes of 20th Century industry and agriculture.

The protective aspect of environmental law for ensuring sustainable business growth applies with even more force in the setting of smaller businesses or grower cooperatives, who cannot afford to spend their earnings paying for major environmental liabilities (and who may go out of business altogether if they cause one major environmental problem — this occurs on a regular basis in the capitalist Western world). Smaller businesses may also lack an adequate managerial understanding of the importance of avoiding environmental liabilities, and may take advantage of loopholes in the law or lack of regulatory oversight (but eventually be caught by a serious environmental problem). To discourage such self-destructive behaviour, environmental regulation requires all operations with similar impacts to control those impacts, and ensures that competition between similar operations is fair, with the same costs of regulation applying to all.

APPENDIX 3 **Environmental Planning**

Tan has noted at §5.1 that clear rules and procedures should be created in the framework DLEP or in other laws, so that respective ministries know to coordinate with other ministries when their jurisdictions overlap. This would ensure that industry-specific laws and regulations remain consistent with the DLEP and with the regulations issued under the DLEP. Tan suggests that a comprehensive planning and zoning program could incorporate planning laws and enforcement procedures. The DLEP includes permit-based approach to environmental impacts with public comment and consultation between ministries. Environmental protection could improve through inter-ministry coordination (as well as public participation noted in Appendix 1 above).

While Tan has suggested creation of a separate Ministry devoted solely to the Environment, there is a benefit to having combined oversight for Science, Technology and Environment. If properly funded and staffed, Viet Nam's Ministry of Science, Technology and Environment can provide guidance for implementing environmental laws (like the Environmental Impact Assessment law) so that technologies are given appropriate levels of regulation, using science-based regulatory standards. In the establishing developing country environmental standards, combining scientific expertise and environmental oversight could be the most efficient and effective method of regulation. Tan's analysis asserts that MOSTE lacks adequate guidelines for specific development projects. See, Tan at §5.1 ("The provisions of the LEP, Decree 175/CP, Instruction 490/1998/TT-BKHCNMT, Decree 26/CP and other subsidiary regulations are far too general to afford guidance for specific developmental projects"). This may be due to the relative lack of development projects, which would lead to creation of guideline documents. Fortunately, Viet Nam is well-positioned to undertake innovative projects in the agriculture and high tech fields, and it would be wise to develop specific guidance for projects in areas where Viet Nam "especially encourages" investment (including agricultural innovation of all kinds, biotechnology and organic).

To build its own capacity to regulate, Viet Nam can use various international conventions to which it is a party, drawing support for efforts internal to Viet Nam. For example, Viet Nam's membership in the Convention on Biological Diversity has led to measures to protect agricultural biodiversity, including "farming conservation" that conserves traditional varieties that are adapted to the local environment (useful reservoirs of genetic material for innovation in plant breeding). Viet Nam could provide a model for sound management of its genetic resources for use in biotechnology innovation as well as traditional plant breeding that is assisted by genome mapping of wild soybean DNA. Agricultural innovation can use DNA maps in "organic" and "non-GM" specialty agriculture.

Foreign investors are required by the Law on Foreign Investment (1987) to protect the environment (Tan, §3), so foreign-owned joint ventures can establish industry standards that seek "eco-efficient" voluntary regulation. In the agricultural biotechnology industry, self-regulated systems (using grower contracts) manage the development of insect or weed resistance (for insect or herbicide resistant crops).

APPENDIX 4

Hazardous Waste Management and Waste Reuse and Recycling

As is noted above, Viet Nam is approaching agricultural and industry to bypass the industrial stage and follow a 21st Century model that is less reliant on heavy industry and taps into Viet Nam's strengths. This can include, in the high technology setting, a role in the reuse and recycling of high tech equipment, which is currently entering a phase of industrial production where older equipment is increasingly common (and a source of valuable resources for reuse). As a member of the Basel Convention on transport of hazardous waste, which limits (in an economically inefficient way) exports of recyclable equipment to Viet Nam, bi-laterals or multilateral trading agreements with trading partners of Viet Nam can lead to trade arrangements that allow it to recycle and reuse waste equipment in an environmentally sound manner.

Japan is leading the charge to "Reduce barriers to the international flow of goods and materials for recycling and remanufacturing, recycled and remanufactured products"(See, e.g., [http://www.basel.int/upcoming conference in April 2005 on reduce, reuse, recycle](http://www.basel.int/upcoming%20conference%20in%20April%202005%20on%20reduce,%20reuse,%20recycle)). This creates the opportunity for Viet Nam to join other developing countries in developing programs for recycling that use their nation's particular labor advantage (lower price skilled labor). As I note in Appendix 4, Fortunately, Viet Nam is well-positioned to undertake innovative projects in the high tech industry (servicing the expanding semiconductor industry in China, even if Viet Nam is not home to significant semiconductor manufacturing). As a result, Viet Nam should develop specific guidance for projects in areas where Viet Nam "especially encourages" investment.

APPENDIX 5
Liability and Compensation

Viet Nam's implementation of the "Polluter Pays" Principle could give rise to environmental liability via (1) administrative penalty, (2) Liability under the Civil Code for any environmental damage and (3) a Criminal Code violation. Laws regulating specific sectors penalize environmental damage. See, Tan at §5.5 (citing 1987 Law on Foreign Investment, 1990 Maritime Code, 1993 Law on Land and 1993 Law on Petroleum).

The Decree on Sanctions (Decree 26/CP) are in the range of US \$6.53 to US\$37 (at current exchange), foreign investors and the more successful operations may find these fines (from 100,000 VND to 400,000 VND) too small to merit much attention. The use of fines within Asian nations is proving inadequate in other setting (e.g., China's system for fining air polluters has led to mercury emissions in the United States and Canada, because China has overly relied upon fines to regulate air emissions). Vietnam's enforcement tools (in 26/CP) include revocation of a company's environmental permission to operate for up to six months, forcible cessation of the violation (i.e., shutting down the operation), and forcible application of measures to overcome the adverse consequences. The LEP should be more specific in stating the grounds for use of 26/CP in specific settings, so that fast action to shut down polluters is not slowed by uncertainty over the application of 26/CP. Such specificity can include a "Catch-All" category so that the listing of specific activities does not imply that others are permitted to pollute without fear of enforcement.

Viet Nam should consider using fines for smaller enterprises while maintaining adequate power to enjoin operations for violation of environmental law. These amounts may appear to be considerable for the average Vietnamese business, but they are too small to deter the large foreign enterprises. For instance, the US \$5,000 maximum fine for oil spills is greatly inadequate to deter oil spills, which can devastate agriculture and other marine-based business. Since administrative fines will act as effective deterrents against environmental violations.

While Viet Nam became a member of the Basel Convention in 1995, it has not ratified the supplemental Basel Protocol on Liability and Compensation. This draft law on hazardous waste could discourage foreign investment in recycling and refurbishing of high tech equipment, and it should be viewed with suspicion by Viet Nam.

APPENDIX 6

Socialization of Environmental Protection Activities.

Viet Nam's lack of resources necessary to vigorous enforcement of environment violations is not unusual among developing countries. To improve upon past history, and socialize its citizens to a common code of environmentally conscious business conduct, Viet Nam would be well advised to create more specific industry guidelines for environmental protection, particularly in those areas of investment that Viet Nam would like to "especially encourage." (See Document Reviewed, above).

If competing enterprises are required to report on their environmental performance, and the marketing of their products requires disclosure of environmental performance, the consumers of their products can be socialized to prefer the environmentally acceptable products. In this manner, businesses become greener through the force of the marketplace, and the role of government oversight can be minimized (particularly where the capacity to conduct inspections is limited). Viet Nam's export markets may be more responsive to such "green marketing" than its domestic markets.

At the corporate level, there is a trend toward "socially responsible investing" which has led many corporations who are publicly traded to adopt greener policies (see, e.g., Fuji/Xerox). This "green capitalism" is a model that can lead industries to "socialize" en masse to preserve their share of the market.

Viet Nam can target specific industries for creation of regulatory standards that incorporate mandates to foreign investors, specifying environmental management standards these foreign investors should follow as a condition precedent to doing business in Viet Nam.

Mr. Donald Stever

This memorandum contains my comments and suggestions pertaining to the Draft Law on Environmental Protection for Viet Nam. My comments are keyed to Chapter, Article and Paragraph numbers as they appear in the November 16, 2004 Draft No. 16, which was provided to me for my review.

Chapter 1.

Article 3. Definitions

Paragraph 6. – Environmental Pollution; Paragraph 12.-Waste Materials.

The definition of Environmental Pollution is limited to changes in the environment “caused by waste materials”. Paragraph 12 defines “Waste Materials” as “products and materials discarded from production or consumption processes but can be used as input materials for other productions.” These words could be read to exclude from the definition of “environmental pollution” waste produced by extractive (as opposed to production) activities such as mining, and human or animal waste or pesticide and herbicide pollution. In addition, it is not clear to me what is meant by the modifier to the definition of “Waste Materials”, “but can be used as input materials for other productions.” If the intention is to include industrial byproducts in addition to discarded waste, the definition needs to be rephrased. I suggest the following re-wording of Paragraph 12.

*12. **Waste Materials** means any and all products, by-products and materials that are discarded from or released to the environment from production or consumption processes, resource extraction, human habitations or human management of animals or other organisms.*

Paragraph 11 – Hazardous Waste

My concern is with the inclusion of the phrase “and other hazardous characteristics” without specifying that the term must be further defined by a ministry directive or by some other governmental order. Without further definition, the term is capable of abuse and regulated persons will not know whether their waste is hazardous or not. It would be preferable to have a more specific definition. My suggestion follows.

*11. **Hazardous Waste** means a waste containing substances or compounds that may have a directly hazardous or toxic characteristic (flammable, explosive, reactive, or corrosive, or is poisonous, infectious, or toxic to humans or other organisms if exposed to it), or may cause harm to humans or other organisms when it interacts with other substances in the environment.*

Article 5.State Management of Environmental Protection

Paragraph 2.

Although the relationship between the Ministry of Natural Resources and Environment and other ministries and ministry-level agencies is fairly clear, the role of the People's Committees in this scheme is unclear. Are People's Committees, which I understand to be regional entities, given standard-setting authority so that there could be different environmental standards governing the same conduct in different parts of Viet Nam? The law should strive for consistency across the country, with regional variations allowed only to deal with unique local conditions, and subject to approval by the Ministry of Natural Resources and Environment.

Chapter II

Article 12. Management of Development Projects and Existing Establishments by Level of their Environmental Impacts.

Paragraph 3.

It is not clear from the text whether this provision empowers the State management agencies to refuse to prevent a project that falls under category (c) from being undertaken at all and the extent to which they can force significant modification of the project to protect the environment. There is a current issue playing out in China under a similar provision in its law, with respect to a major dam project, and it is not clear in that case that the environmental authorities have the power to stop the project. I suggest the following alternative language for the final sub-paragraph under Paragraph 3 to make it clear that they have the requisite authority:

“Projects that fall in the category stipulated in item (c) of this Paragraph may be approved only following a complete and thorough review of all environmental facts and if, following such review, effective measures have been identified that will, upon implementation, prevent or significantly reduce the risks to the environment that were identified in the environmental impact assessment report, and undertaking the project is conditioned upon implementation of those measures.”

Article 28. Review and Approval of Environmental Impact Assessment Report

Paragraph 1.

Although I hesitate to comment on what appears to be an established political regime, I must say that having the “Government” (which I assume to be the Prime Minister) review “national and large scale” projects, which will more likely than not be Government sponsored projects, and having the Ministry of Policy and the Ministry of National Defense have approval authority over EISs pertaining to security and national defense secret projects are both cases of having the “fox guarding the hen house”. It would be preferable to place the burden of preparing these reports on these entities, but to give the Ministry of Natural Resources and Environment at least initial approval authority, subject to ultimate oversight by the National Assembly. This way, an at least quasi-independent, expert agency makes the initial call on the adequacy of the analysis and the

mitigation being proposed, but the National Assembly can always step in and overrule that entity in the case, for example, that a project of critical national importance is being held up on environmental grounds.

Chapter III. Waste Management

Section 2. **Management of Hazardous Waste**

This Section appears to me to be well thought-out and is similar to the EU model. The multi-tiered licensing requirement is important. I suggest that there be a specific requirement that the records that are required to be generated by Article 32, Paragraph 1 be maintained and available for inspection by the State management agencies for a minimum of five years.

Obviously, the extent to which the development of landfill standards is adequate will depend on how protective the specific criteria that are developed by the Ministry of Natural Resources and Environment are.

Section 3. **Management of General Waste**

Article 37. Management of General Solid Waste Materials

Paragraph 4.b). The regional officials should be required to develop plans based on uniform national standards prescribed by the Ministry. It would not be sound policy to allow the Provincial People's Committee in one region to build landfills without liners and leachate protection systems while others include those protections, at least without expert national level oversight.

Article 38. Management and Cleaning-up of Wastewater

Paragraph 1. The pre-treatment requirement is limited to removal of heavy metals and toxic chemicals. However, there may be some dischargers that contribute such high BOD or solid material into the sewer system that, while not toxic and not containing heavy metals, nevertheless overtaxes the capacity of the central treatment system (a brewery is a good example), and industries that discharge strong acids or alkaline wastes, which are neither "toxic" nor heavy metals, can wipe out a treatment system. It would be preferable to phrase this more generally:

"In the case of wastewater effluents discharged from industries and hospitals and treated by central treatment facilities, they shall be pre-treated to remove heavy metals and toxic chemicals, and to remove or reduce the concentration or mass of any other constituents that could interfere with the operation of the central treatment facilities or pass through the central treatment facilities without being able to be removed by such facilities."

Chapter IV. Environmental Rehabilitation of Polluted and Degraded areas, Response and Remedy of Environmental Incidents.

Section 1. Environmental Rehabilitation of Polluted and Degraded Areas

Article 41.

Paragraph 3.

This is an articulation of the polluter pays principle and it is important. The effectiveness of this depends entirely on the adequacy of the monetary sanctions provided in Section (2), Chapter IX, which is discussed later.

Chapter VI. Environmental Standards

Section 1.

Article 60.

Paragraph 5.

(a) It is not clear to me why the Ministry of Science and Technology, which has no other role in this law, must issue the national environmental standards based on a proposal from the Ministry of Natural Resources and Environment. It would seem this should be the other way around. The Ministry of Science and Technology should be consulted by the Ministry of Natural Resources and Environment with respect to the scientific adequacy and technological feasibility of proposed standards and the Ministry of Natural Resources and Environment should actually promulgate the standards.

(c) The concern with having the Provincial People's Committees issuing local environmental quality standards is that this creates the potential for competing or otherwise irrationally disparate standards between local areas, creating a compliance nightmare for regulated entities. Local standards should be subject to at least oversight by the Ministry.

Chapter VII. Resources for Environmental Protection

Section 1.

Article 75. **Environmental Fees.**

My comment is that environmental fees in many other countries whose laws I have evaluated have too often turned into "pay to pollute" schemes. The key issue is that the amount of the fees levied on wastewater, air emissions, solid waste generation, noise, etc. be sufficiently high that it is less expensive for the enterprise to install equipment and process changes to reduce or eliminate the polluting activity. Paragraph 3 implies that this is the intent of this article. A refinement could impose transitional fees that increase dramatically if the polluting activity is not stopped within a specified period of time.

Chapter IX. Disputes, Complaints, Compensation etc.

Section 1. Inspection and Settlement of Environmental Disputes, etc.

Article 92. Environmental Complaint, Denunciation and Lawsuit

Paragraphs 1, 2 and 3 clearly authorize citizen suits and denunciations against State agencies and officials. This can be an effective enforcement supplement insofar as the polluting entity is a State enterprise. However, although there may not be many (or any) currently operating private enterprises in Viet Nam, that may not always be the case, and Viet Nam is aggressively seeking foreign investment. Thus, I recommend that this article be broadened to allow complaints and suits to be brought against private organizations whose acts contradict the law on environmental protection, and intrude on the complainants rights and legitimate interests.

Article 93. Environmental Disputes

I am not sufficiently familiar with the law on the settlement of civil disputes in Viet Nam to comment on the effectiveness of the Environmental Disputes provision. In other such laws, there has been a debate between whether it is preferable to have such disputes settled by a general judicial or civil tribunal or by a specialized tribunal that only hears environmental disputes. Compare this with Article 96, which specifies the various means of adjudicating claims for environmental damage.

Section 2. Compensation for Damages to the Environment

Article 94, 95. Environmental Damages; Compensation for Environmental Damages

I note with interest that Article 95, Paragraph 1 (d) provides that for cases where the damage for which compensation is being sought was caused by multiple persons, the liability is “joint and reciprocal” and that the share of each will be determined “according to the level of damage caused by such person to the environment.” This is a fair system, certainly much fairer than the “joint and several” liability scheme employed for remediation costs in the U.S., but it is likely to present difficulty in allocation of liability in certain kinds of cases.

Professor Robert Lee

An Analysis of the Draft Law of the National Assembly of the Socialist Republic of Viet Nam on Environmental Protection

I have been requested to undertake an assessment of the draft Vietnamese Law on Environmental Protection by the International Resource Center of the ABA-UNDP. This report comments on the structure and scope of the draft Law by reference to six thematic areas that are considered below. There are a number of areas where the drafting is capable of improvement, but given that this may be an issue of translation, and because the brief seems to require an overview of the legislation, I have kept specific drafting points to a minimum. I do have some issues, however, in relation to the definitions in Article 3, and as some of these are central to the analysis that follows, it may assist to consider these first.

Definitions

The definition of *environment* refers to ‘factors’ surrounding human beings, but does not include human beings as such. Is this intentional? As harm to the environment is referred to in the body of this legislation harm impacting on the human population ought to be included. Also the word ‘factors’ here is less than specific and it may be better to refer to ‘organisms’ or indeed to ‘environmental components’, a term that is defined and indeed includes organisms. In the definition of ‘*environmental components*’ the reference to ‘famed beauty spots’ seems to demand some inquiry as to how well known a location is. It may be easier to refer to ‘sites of natural beauty’.

Definition 3.5 should read ‘*Environmental Standards*’ as it refers to norms and limits in the plural. It may be a mistranslation but it seems curious to define ‘*Environmental Incidents*’ by reference to risks, since these may never materialise. The reference to abnormal changes of nature will cover diffuse and gradual environmental change and is widely drafted, but this is presumably intended. The words ‘the quality of’ in the definition of ‘*Pollutants*’ is unnecessary.

In the definition of ‘*Waste Materials*’, most chemists state that there are only three forms of matter, so that ‘odour or other forms’ can be deleted. The phrase ‘daily life activities’ may be more simply phrased as ‘human activities’. There is a repetition of this definition in Art. 3.12, but here the definition makes an additional point that although materials can be used as raw materials for production, they may still constitute waste. It would seem wise to combine these definitions and to omit from 3.10 the statement that ‘waste materials are classified as hazardous and general waste’ since general waste is not defined. In the definition of ‘organisms’ there should be a reference to humans.

Environmental Standards

There is a difficulty in commenting on environmental standards since the Law is rarely specific in relation to the standards set. More usually it refers to a standard to be set. To

take a simple example, the standard for biological safety in accordance with Article 14 is set by reference to 'relevant measures'. Thus, this is an examination of a framework for standards rather than the standards themselves. No doubt, as with the 1993 Law on Environmental Protection a decree such as Decree 175 – CP will be required to set guidance on required standards. Provision is made for the promulgation of environmental quality standards in Article 60.

Article 8 sets out action to be strictly prohibited. Curiously, it has little to say on water pollution; this seems to be a major gap. Not everything in the list is strictly prohibited under later articles. Thus there is scope within the law for import, export and transit of waste materials. In Article 8.4 it is strictly prohibited to discharge into soil substances with toxicity exceeding permissible levels, and other waste materials. But non-toxic materials (such as organic matter) can cause harm (leachate or methane gas) in soil if it biodegrades. It may be more useful to speak of not undertaking discharges to soil except in accordance with environmental laws.

In Article 11, which sets out plans for environmental infrastructure, plans for air pollution targets receive no specific mention although other media are covered. Article 12 proposes management of hazards on a risk-weighted basis. It seems apparent from Decision no. 64/2003/qd- ttg of April 22, 2003 that work on this process has already begun. No powers are reserved and no approval is necessary for projects in the least polluting category. This may be appropriate depending on how the categorisation is handled and the capacity of the general law to regulate non-approved enterprises.

In relation to biological safety standards, obligations are placed upon organisations and individuals engaged in activities relating to genetically modified organisms. This term is not defined but it is likely that the centre of concern will be modification using recombinant DNA. As it is clear that measures will be brought forward, it may be that more precise definitions can be included at that point. As it stands the measure applies to any genetic modification even using traditional techniques, but given the importance of Vietnamese plant species and the threat to them of new varieties in agricultural production, this is entirely appropriate. In Article 15.1 the activities to be regulated here are described as those relating to 'nuclear'; this means very little. Nuclear science, though broad, might be better.

Article 17 lists the environmental protection requirements for units of service or production, but these do not include localised pollution such as noise, vibration or smell. Article 17.2 introduces the requirement for ISO14001 standards for units of 'high risk', which goes further than most legislation which at best promotes regulatory incentives to adopt specific environmental management systems but does not ordinarily mandate these.

According to Article 60.1 standards are to be set at a level at which 'there is no harm or damage caused to human beings and organisms'. This is highly ambitious since there are problems of diffuse pollution or longer-term capacity for harm even in well-regulated enterprises. It might be better to provide that alternatively the standard will minimise such harm. This raises a wider point. The standards in Article 59 leave little scope to

control processes except through limit values. Many legislatures now focus on the techniques adopted by enterprises in relation to pollution control to ensure that standards are met by recourse to those considered the 'best available'. The Law could go further in regulating the type of activity undertaken rather than simply its outputs.

Throughout distinctions are made between newly constructed facilities and those already in operation. This is acceptable in principle, since it is possible to ensure adequate operating standards prior to commencement of activity in such facilities. Care should be taken, however, to ensure even-handed approaches between new and existing facilities.

It was surprising to see relatively little in the Law on the conservation of natural resources – the subject of section 2 of Chapter II consisting of four articles. It is accepted that many conservation issues do concern limiting activities connected with economic production in the manner laid down in the draft Law. There remains, however, a need for wider measures such as buffer zones for protected areas, restrictions on methods of exploitation of resources etc. These can be achieved under the auspices of Article 23 on sustainable exploitation of natural resources, but it is important to stress that much more detailed decrees are needed here (unless this was in material that I did not receive).

Poverty and Environment

As referred to in the definition section, the Law is not always drafted as though humans were not a central part of the environment, which is seen as existing apart from the human population. Article 7, in relation to actions to be encouraged, refers to awareness raising and the protection of rights to enjoy a healthy environment. It might usefully refer also to the encouragement of participation in decision-making on the environment and to the promotion of environmental justice.

The material on environmental impact assessment is not strong on the effect of projects on localities that may be disproportionately affected by development. Little is said of human impacts such as displacement or localized nuisance. In the process of the assessment, there seems relatively little direct communication between developer and community, rather, according to the relevant Circular (1420) appraisal reports by Government Agencies are sent to the provincial or city People's Committees for consideration and decision.

Against this, there are strong components protective of persons likely to be adversely affected. Thus the standard for the land filling of hazardous waste is set at a standard of 'absolute safety' for human beings (Article 36) There is also some consideration in relation to water not merely of quality but of quantity of groundwater. Rehabilitation of degraded lands and water resources is given a strong emphasis. Article 55 places obligations on people to safeguard sanitation. How well that obligation can be fulfilled may depend on available resources for waste disposal and sanitation, but this Article goes some way to ensuring provision at busy public sites (such as bus stations – and see also article 57 in terms of duties to provide facilities).

Article 56 looks to guarantee clean water supply and sanitation for all people. Particular emphasis is given to improvement in rural and mountainous areas where these obligations are extended to issues such as good animal husbandry. More might be done to emphasise that where resources are utilized then these should be replenished where possible. Article 23 might make reference to this.

These are clearly welcome provisions. It is less than clear, however, what procedural rights citizens will have both to seek to secure the promises made, and also to participate in decisions made about the environment, or indeed to challenge them. This material is to be found in two Decrees on Grassroots Democracy (Decrees 29 and 79). Without a more detailed knowledge of the work of the People's Committees, it is difficult to assess the precise levels of citizens' participation. It is very difficult to assess the citizen's right to access information on the environment produced in accordance with Articles 66 and 67 from the Law alone. These Articles state that information must be provided, but do not give any particular route of access to information. This is to be found in the Decrees on Grassroots Democracy. The structures here consist of top down approaches of 'supplying information' (Article 5 of Decree 29) and it is unclear whether environmental information is available on request. This is considered further in the section on socialisation of environmental protection (below).

By according primacy to Treaty obligations, it may be that links between poverty and environmental justice can be addressed. However some care must be taken here. According to Article 2, international treaties prevail over domestic law. This may be fine for the most part, but one must be careful that intergovernmental agreements on (for example) major projects such as pipelines do not immediately displace (or in effect waive) domestic environmental laws.

Article 86 recognises the tensions between economic development and environmental protection, and Article 87 accepts the Republic's wider obligations both globally and regionally in respect of environmental pollution. On the other hand, the formal commitments to sustainable development are somewhat limited and it is unclear how models of economic, social and environmental sustainability will be pursued.

It is worth bearing in mind that the necessity to protect and replenish environmental resources will have a direct effect on the economic livelihood of people engaged in traditional practices such as gathering wood for fuel, or shifting cultivation that is becoming unsustainable under pressures of population growth. Much of this will need to be achieved by mechanisms that are not purely legal, such as education, awareness-raising and the spreading of sustainable practices.

Socialisation of environmental protection

Article 79 refers to community involvement in the environment through the establishment of 'self governed environmental organisations'. These appear to be organizations whose creation and operation is regulated by the People's Committee.

There is some formality here, at the expense of the ad hoc development of interest groups on the environment.

Information on environmental quality is to be available through dialogue with the People's Committees, though Article 81.2 places a responsibility on business to 'openly discuss...urgent environmental issues'. Quite what limitation the word 'urgent' implies here is unclear. Does this amount to emergency situations, or could it cover gradual degradation? Also the process seems operator led rather than stemming from a citizen concern for the environment.

Under Article 84 a wide-ranging role, including the direct engagement in projects of environmental protection, is envisaged for associations for environmental protection 'established according to the provisions of law.' Quite how effective this might prove depends, of course, on the recognition accorded to associations of people. Models of good practice are to be promoted and replicated while bad practice is the subject of 're-education' (Arts 83 and 82 respectively).

Bodies 'eligible' for the delivery of environmental services can be certified as such and permitted to charge a fee for such services based upon benefits generated by their delivery. Once again we see good examples of socialisation, but much will depend on how extensive participatory rights are in practice.

Waste

There is relatively little attention given to waste minimisation. For example, the standards on packaging in Article 18 could do more to promote minimisation of packaging, rather than focusing only on the capacity of packaging material for recycling. In terms of the general duties imposed by the legislation, a duty to minimise waste arising from operations is not prominent.

The Law seems to accept limitations of waste disposal presently, accepting that on occasion no route of disposal will be available, or at least will not be immediately open to the waste producer. In Article 33.1 it is allowed that where no treatment facility is available for hazardous waste, then that material may be stored – though this must be done safely. It may be difficult to ensure the safe storage of certain hazardous wastes, which may be carcinogenic or highly flammable. It may be better to carefully regulate activities that give rise to wastes for which there is no obvious route of disposal. Equally, notwithstanding elements of the law that promote ideas of recycling (less so reuse), there does seem to be a broad acceptance of landfill as a major route of disposal. Reuse and recycling might be better promoted if targets for the amount of waste passing to such activities were set, or landfilling of waste is restricted.

The situation regarding the import and export of waste is unclear. In more than one place it states that all wastes cannot be subject to import and export (see Article 20.2). However, it does seem that importation of sorted waste materials can be permitted (see Article 20.3). At the least, more careful guidance is needed here.

The controls on hazardous wastes could be tighter. As it stands, the law demands that licensed operators can treat wastes and an obligation is placed upon the waste generator to ensure adequate treatment. Many jurisdictions would go further than this and seek to authorize particular movements of hazardous waste, or at least to demand regular data on waste generation and disposal. A more precise classification of hazardous waste is clearly required but it does seem that this is envisaged (see Article 37.2.b).

Environmental Planning

This comment may be pursued more generally in relation to environmental planning. Even accepting the Law as a framework only, there seems to be room for much greater use of goal-setting for environmental improvement. There are many good examples of aspirations to (e.g.) tackle environmental degradation or improve sanitation, but these ought to be backed by more specific targets.

There is some good evidence of infrastructure planning through pre-authorisation of new facilities and the use of environmental impact assessment tools. It is not clear from reading the Law itself to what extent more careful land use planning (by restricting types of activity in specific locations). This is referred to in Article 4 in very general terms, and to some degree in Article 53, but it is not a strong feature of the regulation. It becomes clearer in the Decrees on Grassroots Democracy since land use forms a part of ‘work to be informed to the people’ (Article 4 of Decree 29). The extent to which such procedures can act as a barrier on developments that threaten biodiversity is by no means certain.

In terms of resource plans, Chapter VII reviews available investment capital for environmental improvement. Although according to Article 70.1 money deployed on environmental protection should be internalised into the cost of the product marketed. There are examples, however, of support for environmental protection measures (e.g. for baseline studies or for monitoring programmes – Article 69) that might properly be passed on to regulated producers.

Provision is made for environmental taxation, but this is described as a ‘source of revenue to the State budget. It is unclear whether all funds raised from environmental taxation will be hypothecated for environmental protection measures. Similarly it is not certain whether environmental fees can be levied to cover regulatory measures such as monitoring and inspection rather than simply levied on activities having adverse impact upon or otherwise utilizing the environment.

Liability and Compensation

On the whole this measure can be better depicted as facilitative than coercive. Having said that, the punitive measures underlying the 1993 Law are set out in a Decree on Sanctions against Administrative Violations in Environmental Protection (Decree 26-CP; April 1996). This decree envisages fines as the major enforcement tool with the highest level of fine set at about \$730 US for persistent grave offenders, but there is also

provision to suspend and revoke licences. It is unclear under this Decree when administrative sanctions cease to be appropriate and criminal sanctions apply (see Article .1 of the decree) but this may be clear in domestic criminal law.

The decree also seems to allow a level of accidental pollution ('emergency cases' and 'unexpected developments' in Article 1.6 of the decree) where administrative sanctions are inappropriate. In many jurisdictions these would be strict liability offences. Noting the time gap of over two years between the passage of the 1993 measure and the subsequent Decree, will this Decree continue to apply under the new draft law pending any revision?

Turning to the Law itself, in Article 5 enforcement is merely one of 12 roles allocated to the State. Some of the legislation is so general in tone that as it stands it might be difficult to decide when an obligation has been met. Take as an example Article 19 and the requirement of operators to develop and implement plans for low efficiency production and replacement with environmentally friendly production lines. Interestingly, the enforcement mechanism here is tax and fee relief rather than sanction.

There are broad restorative measures required of polluters. In relation to water (but not apparently to land) those with water rights can sue for the degradation of water resources including restoration and compensation costs. There is a right (Article 44.3) to sue for health impacts of air pollution on human health. But most air pollution is not single source and even where it is most legal systems face grave problems of causation. There is little recognition of this in the legislation.

Greater detail will be needed on much of the law on restoration of polluted areas. For example in Article 46 on rehabilitation of degraded eco-systems, there is an assumption that regeneration is always possible. It is unclear how (or if) the provisions apply where this is not the case. There seems to be a lack of clarity in the drafting (or translation) in Articles 48 and 49. Article 48.3 seems to suggest that the State will meet restoration costs, while Article 49.2 then states that these costs will fall upon responsible organizations or individuals. It may be that the conduct of clean-up falls to the State, which can then recover from responsible parties – but this could not be discerned from present drafting.

Throughout, the legislation tends to refer to the liability of organizations and individuals. This is vital as the depletion of resources can stem from local activity conducted by individuals within the community (chopping wood for fuel, fishing etc). But this leaves open the liability of individuals within organizations. At what point may such a person be held personally liable? There is clear provision for individuals to be (criminally) liable for causing harm and (or?) pollution to the environment (Article 82.2) but the responsibility of that individual when acting on behalf of an organization is unclear. So to is the issue of when an individual within an organization may be liable to meet a restoration or compensation cost.

In relation to enforcement, the precise allocation of responsibilities is difficult to discern from the draft Law, though this becomes clearer in the 1996 Decree. In Article 5, State responsibility for the management and implementation of environmental protection is set out. This is multi-layered involving the Government, Ministries, ministerial agencies and the People's Committees at all levels. In Article 91 on inspection duties, it is accepted that inspection is a 'specialised' task, but this is said to fall to State management agencies for environmental protection. The notion of an 'environmental protection inspectorate' is then introduced. This body will be regulated by Government, but it is impossible to know from the draft law anything more about (e.g.) whether this inspectorate is locally or centrally based, or about its status and independence.

This is an important point because the technical capacity and regulatory sophistication of enforcement agencies will need to be raised if environmental issues in Viet Nam are to be successfully addressed. Careful thought needs to be given to regulatory structures. There is a danger that devolvement of responsibility too far into communities will dilute expertise.

Article 92 allows complaint or 'denunciation' of agencies or officials responsible for environmental pollution or 'intrusion upon rights'. This is a welcome provision, though it is not clear in the Law how far it would extend to inaction by the agencies, as opposed to actions causing pollution, it seems perfectly clear from the 1996 Decree on Sanctions that this is envisaged (Article 27 of the Decree). Also it appears that the agency itself is 'responsible for [the] examination and resolution' of such complaints. It is unclear what wider remedies are available to citizens in the face of inaction by the agencies, though this may be a matter for the general domestic law and for denunciation procedures (see also Article 11 of Decree 29 (Article 12 of Decree 79) on Grassroots Democracy).

The provisions for the valuation of damages by way of compensation are elaborate. Licensed valuation services may be created and these will produce a valuation at the cost of the persons requesting the valuation – presumably those seeking compensation. Disagreements then relating to this figure are then referred to a State Agency set up for this purpose. Although Article 95 lays down principles of compensation, these are sweeping including (for example) compensation for both 'direct and indirect damages to the environment'. The difference between direct and indirect is not explained, and the calculation of environmental damage is likely to prove problematic.

It may be, however, that leaving the work to accredited valuation bodies to resolve such problems is a realistic way to proceed. It is clear, on the other hand, that damages can take account of fault on the part of the polluter (Article 95.3.e) and leaving such assessments to valuation bodies (even allowing for appeal to a State agency) seems curious. This should also be read in the context, however, of compensation being the subject of mutual agreement between 'author and victim of the damage' (Article 2 of the Decree on Sanctions). Damages in excess of 1m dong (about \$63 US) are in any case the subject of civil law proceedings (Article 2 of the Sanctions Decree).

The draft Law allows that contracts may make provision for environmental compensation so that their assessment will be in accordance with the contract. This raises two issues. What if the contract figure is hopelessly inadequate? This does not matter in a regime backed by strong enforcement, as the person bearing the contract risk will be made to pay. Even here, however, anti-avoidance provisions are generally necessary. In situations of weak enforcement avoidance through contract devices becomes much more likely. The second issue concerns contracts between parties of unequal bargaining power. Respecting the contract here may mean enforcing an exclusion from liability for a polluter who ought to be paying compensation to an individual (say an employee) with whom the polluter has a contractual relationship.

In general procedures for claims of compensation are not laid down in the draft law and will follow. However, the standing to bring a claim is detailed in Article 95 and includes 'associations for the conservation of nature and environment'. Article 97 refers to State encouragement of insurance to cover compensation. Article 97.2 mandates insurance for environmental compensation for operators. At present this would be difficult and costly to obtain, and this may be too ambitious in the absence of a stronger insurance market. In the short term it may be that environmental protection funds as envisaged in Article 73 might provide a better solution if the investment obligations for production units (Article 70) were extended.

Conclusion

One difficulty in producing a desk-top study of a draft Law is that even the most lofty ambitions of legislation may fail because of background conditions in the jurisdiction concerned. Time and time again, well-drafted laws fail because of inadequacies in the justice and enforcement systems. The Law reads well but is of little utility in practice. A second difficulty is that given the complexity of modern environmental regulation, relatively little detail appears in the major statute and the detail is left to administrative orders made under the Law itself.

The Vietnamese draft Law on Environmental Protection is a statement of principles. As such it exhibits many admirable features. It has clearly reviewed regulatory provisions in other jurisdictions to produce a framework that constitutes a considerable advance on the earlier Law. Quite how well the law will function will depend on the many instances where processes, procedures, standards and values need to be mapped onto the framework. In particular it remains to be seen how well the law will engage with citizens to raise awareness of conservation and deliver environmental justice. In procedural terms, in this context, there is room for further development under the auspices of the draft Law to move towards sustainable development.

In technical terms (in its English translation at least) the law could be better drafted, made clearer and more consistent in its use of terms and concepts. In terms of its aspirations and ambitions, the draft Law is to be applauded.

COMMENTS TO
THE UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP) CONCERNING
THE LEGISLATIVE ASSESSMENT OF THE DRAFT REVISED LAW ON
ENVIRONMENTAL PROTECTION, SOCIALIST REPUBLIC OF VIET NAM
(DRAFT NO. 16 – NOVEMBER 16, 2004)¹

Dated January 10, 2005

The ABA-UNDP International Legal Resource Center (ILRC) has requested comments on Draft No. 16 (November 16, 2004) of the proposed revised Law on Environmental Protection (LEP) for the Socialist Republic of Viet Nam. The purpose of these comments is to assist the Vietnamese Department of the Environment (DoE) and Ministry of Natural Resources and the Environment (MoNRE) in formulating a “final draft” revision of the LEP for consideration by the National Assembly of Viet Nam in late January 2005. ILRC has requested that comments submitted focus on six themes addressed by the draft LEP: Environmental Standards; Poverty and Environmental Nexus; Hazardous Waste Management, Waste Reuse and Recycling; Liability and Compensation; and Socialization of Environmental Protection Activities. ILRC also has asked for input on the overall structure and scope of the draft law. These comments address several of the substantive areas identified by the ILRC and, to a degree, organizational issues as well drawing on experiences with other environmental regulatory schemes. In some respects, aspects of environmental regulation covered by the draft LEP are unique to Vietnamese culture and society and may not be assessed appropriately by comparison with regulatory approaches adopted elsewhere.

I. GENERAL

The LEP has been proposed as a result of a mandate by the National Assembly of Viet Nam to review the 1993 law on environmental protection and incorporate decrees and implementation guidelines developed over the last ten years. The LEP as drafted makes important strides toward fulfilling that mandate. It covers a broad range of environmental, health and safety issues, and it incorporates important social components as part of a larger strategy of achieving success in fulfilling environmental goals. Its endorsement of responsibility at all levels (governmental, organizational and individual) for environmental protection goes beyond the approach taken in many countries and is to be commended.

There are a number of areas where further consideration may be warranted, either in the context of final drafts of the LEP or in subsequent legislative initiatives. These areas

¹ These comments have been prepared on behalf of the International Environmental Law Committee of the American Bar Association’s Natural Resources and Environmental Law Section, under the auspices of the Committee’s Chair, Vail Thorne of The Coca-Cola Company, and Richard “Tad” Ferris of the law firm Holland & Knight. Kevin Haroff of the law firm Squire, Sanders & Dempsey, was the principal draftsman of and contributor to these comments.

include: substantive scope of environmental regulation; definitional matters; and organizational matters.

Scope of Regulation. Consistent with the National Assembly's mandate, the LEP does a good job of combining in a single document previously adopted legislative and administrative requirements affecting the environment. Consideration might be given to expanding these existing requirements in light of regulatory models that have developed over the last decade in other countries.

For example, LEP Article 13, which deals with Chemical Safety, contains a number of appropriate requirements for safety in the management of hazardous chemicals, including general requirements to comply with chemical safety measures, restrictions in the use of chemical fertilizers and pesticides, requirements governing the use of toxic chemicals in mining-related activities, and prohibitions on the use of toxic building materials. This Article could be expanded to incorporate provisions governing the review and approval of existing and new chemicals in production facilities and other enterprises. Provisions in this area are being considered in the European Union under the auspices of the Registration, Evaluation, and Authorisation of Chemicals (REACH) proposal. China also has adopted a "new chemicals" regulation that went into effect in October 2003. The regulations draw on elements of both the United States Toxic Substances Control Act and REACH. Under the China rules, the government must prepare and maintain an inventory of existing chemicals manufactured or in use as of the effective date of the rules. New chemicals introduced after the effective date of the rules must be registered pursuant to a rigorous certification process that involves the submission of a standard notification and testing information regarding the chemical's characteristics and health and environmental information. The safe use of chemicals in Vietnamese enterprises might be enhanced by incorporation of similar chemicals regulation.

In addition, the United Nations and other groups have developed and are implementing a globally harmonized system (GHS) for the classification and labeling of chemicals. The objective is to assure that a common and consistent set of information regarding chemicals risks is available to governments and chemical users and that critical risk information can be conveyed easily through a standardized system of safety data sheets (SDSs) and labels. The systems developed to date are based largely on existing systems originating in the United State and Europe. As presently drafted, LEP Article 13 does not include explicit provisions regarding chemical hazard communication requirements, the use of SDSs, and labeling. In light of continuing efforts by the United Nations and others to implement GHS around the world before the end of the decade, consideration should be given to including a provision in Article 13 calling for the implementation of GHS-consistent chemical safety requirements.

Definitions. LEP Art. 3 provides a useful set of definitions of key legislative terms the meaning of which might not be clear from the legislation itself. The definitions should be reviewed carefully to ensure they are inclusive and consistent. The use of precise and consistent definitions also are important for ensuring that those who must comply with or enforce the law know exactly what is covered or intended to be

covered. Inconsistent or poorly written definitions can lead to disputes later or "loopholes" in the law that are not intended.

For example, "Environmental Pollution" (Definition 6) is defined in terms of changes to the environment caused by waste materials, when the better reference may be to "Pollutants" (Definition 9). In addition, "Waste Materials" are defined twice (Definitions 10 and 12), but the definitions are not strictly the same. (The better definition may be 12, since it incorporates the concept of a material that is discarded.) The LEP's definition of "Environmental Pollution" also reads in part: "direct or indirect changes in the properties of the environment;" while the LEP's definition of "environmental degradation" reads in part: "significant changes in the quality and quantity of environmental components." The different language used in the definitions (i.e., "properties of the environment" versus "environmental components") results in ambiguity for the reader and a guessing game as to what the drafters of the legislation mean in using the different phrases, when the term "environmental components" is defined in the LEP but the "properties of the environment" is not. Therefore, the drafters of the LEP may want to revisit the Definitions section in light of the above general comment and to ensure that the LEP does not create unintentional "loopholes" or ambiguities.

The defined terms "Environmental Pollution" and "Environmental Degradation" talk about "adverse [] affect[s]" or "harm" to "people and other living organisms." These are important definitions because they will govern the extent of future environmental standard setting under the LEP or liability and compensation under the LEP for environmental-related injuries. Most environmental legal regimes in the world, however, go farther than the above LEP definitions when talking about such matters and include both adverse affects or harm to human health and the environment in general (or in the LEP's case perhaps the individual "environmental components" like water, air, soil). Often, there is environmental harm, pollution, or degradation that should be addressed or compensated for, even though presently no human or animal health impacts may exist. In some cases, environmental pollution currently may not impact human or other biotic health, but may lead to significant long-term adverse affects on the same in the future. The drafters of the LEP may want to consider expanding the definitions of "Environmental Pollution" and "Environmental Degradation" to include this concept.

Organizational Structure. The LEP generally is organized according to various (prevention and limitation of adverse impacts, waste management, environmental rehabilitation of polluted and degraded areas, and so on) that are addressed in separate chapters of the legislation. While this format is understandable, a consequence of its use is that it can result in multiple requirements in different chapters concerning activities affecting the same environmental media (air, water, soils). For example, requirements on activities affecting air quality can be found in both Chapter III on Waste Management (Article 39. Management and Minimization of Dusts and Air Emissions) and in Chapter IV on Environmental Rehabilitation of Polluted and Degraded Area (Article 44. Treatment of Polluted Air Areas). Where practical and

appropriate, consideration should be given to consolidating requirements relating to a single environmental media to a single article or associated set of articles.

II. SUBSTANTIVE THEMES

a. Environmental Standards

Standards are primarily addressed in LEP Chapter VI, Section 1 (Environmental Standards). Standards are divided into two general categories: environmental quality standard and waste standards. Environmental quality standards generally describe acceptable levels of pollutants or changes in the ambient environment, such as air, water, and land, as well as other environmental parameter. Waste standards generally describe maximum levels of pollutants that may be allowed in different waste material, including wastewater, solid waste, and air emissions. Specific national standards are to be promulgated through a process conducted by the Ministry of Science and Technology and the MoNRE.

While the types of standards contemplated by the LEP is comprehensive, relatively little guidance is given to the promulgating authorities on criteria to be used in setting and evaluating selected standards. For example, quality standards must be “appropriate to the purposes of use of environmental components, and at which there is no harm or damage caused to human beings and organisms.” Implicit in this formulation is the appropriate recognition that different elements of the environment may warrant different standards, depending on how those elements are used and the potential risks from exposure to harmful pollutants. (For example, land used for residential purposes may create a greater risk of exposure to pollutants than land used for commercial or industrial purposes). Consideration should be given to ways in which promulgating authorities can be given greater guidance on how quality standards can be developed.

One approach used by many jurisdictions to provide guidance in this area is to define standards in terms of objectives, or environmental protection goals, and criteria established to achieve those objectives. Possible objectives for protecting lakes, rivers, and other non-saline surface water bodies, for example, could include the goals of protecting fish and wildlife, preserving sources of drinking water, and promoting aquaculture. Different narrative or numeric criteria could be established for pollutants affecting attainment of each of these goals, which may or may not be relevant to particular water bodies. Development of criteria would be based on a scientific assessment of the risks presented by pollutant loadings in the environment to achieving water quality objectives.

Greater legislative guidance on the development of waste standards should also be considered. In many jurisdictions, waste standards include both effluent and emission limitations developed to achieve environmental quality standards, as well as limitations based on relevant environmental control technologies and best practices. A rationale for including technology and practice-oriented standards is that it sometimes is difficult to associate compliance with quality standards to the activities of individual enterprises. It

is less difficult to determine the level of environmental benefit that can be achieved by enterprises through the application of commercially available technology or best practices. Typically, different technology-based standards are applied depending on facilities that are proposed for construction or already existing. Article 19 of the LEP already encourages adoption of environmentally friendly technologies by organizations and individuals. Consideration should be given to extending these provisions to the development and implementation of waste standards, including requirements to achieve standards based on the use of best available control technologies (BACT) for new production facilities.

Article 8 of the LEP addresses "prohibited actions." Specifically, that article prohibits "burying," "discharging," or "releasing" waste materials or other substances that do not meet "permissible levels" or "environmental standards." However, most of today's environmental legal regimes contain a two-pronged regulatory approach to ensuring that waste materials are not inappropriately disposed of in the environment. The LEP addresses the first prong, which is that any substance disposed of must meet certain standards. The second commonly used prong is not provided for in the LEP. That is, before anyone may dispose of waste materials on land or in water or the air, particularly those that may be hazardous or toxic, that disposer must obtain a permit, license or authorization from the appropriate government agency or office. We suggest adding this second concept to the prohibitions on improper waste disposal contained in Article 8. A permit requirement often acts to discourage illegal acts of dumping, provides the government with needed information regarding the occurrence of disposal activities, and also acts as another means to enforce environmental requirements and hold persons who improperly dispose of substances accountable for their actions. The drafters of the LEP also may want to consider mandating a permitting, licensing, or authorizations structure to Chapter III of the LEP on Waste Management for solid, liquid and gaseous wastes.

b. Nexus of Poverty and the Environment

Degraded environmental conditions are often associated with conditions of poverty in countries around the world. Areas of pollution and contamination produce degraded land values, poor housing, adverse health impacts, and limited opportunities for gainful work. By providing a comprehensive legislative framework for regulating pollution and taking actions to remediate contaminated land, water and air, the LEP makes important strides to improve the living conditions of all Vietnamese, including those suffering from impoverished economic conditions.

In addition to providing an overall framework for environmental regulations, the LEP places a high priority, particularly in Chapter V, on public sanitation, wastewater treatment, and the provision of clean drinking water. Those may be the three most important areas of environmental concern where improvement can have the most immediate impact on the health and welfare of the poorest in society. It will be important that government authorities and organizations at all levels ensure the availability of necessary funding to implement those priorities. Construction of environmental protection-related public works and implementation of clean drinking water supply and environmental sanitation programs is included in LEP Chapter VII, Article 69

(Investment in Environmental Protection by the State) as an area where State environmental budgets may be allocated. Consideration should be given to including an explicit statement clarifying the priority of fund allocation in this area and directing the MoNRE to implement that priority in synthesizing and planning the use of environmental administration funds.

c. Environmental Planning

Environmental planning occurs both generally at the national and local governmental levels, as well as at the level governing approval of individual development projects and existing establishments. The second level is addressed in the LEP by provisions contained in Chapter 2, Article 12 and Section 3 (Environmental Impact Assessment). These provisions incorporate concepts regarding environmental review that increasingly are being adopted in jurisdictions around the world, as reflected, for example, in China's 2003 Environmental Impact Assessment Law. Indeed, to the extent the LEP applies these requirements to both new development projects and existing establishments, they go beyond requirements that go beyond what has been adopted in certain other countries.

The focus of assessment requirements for development projects, which addresses future impacts during the operational phase of the project, is different from those relating to existing establishments, where the focus is on ongoing pollution generating activities. However, the overall approach to environmental assessment, as reflected in Article 27 (Contents of Environmental Impact Assessment Report), is essentially the same. Applying the same approach to new projects and existing establishments may not always be desirable, since existing facilities no longer have the ability to incorporate environmental mitigation measures into facility design. (Note: That may not be true where proposals are being made significantly to renovate or replace existing facilities.) Moreover, existing establishments should already be subject to regulation governing their operations, and additional environmental review may serve little purpose in some cases. It may be appropriate to consider whether the Article might be amended to reflect that a lesser degree of environmental assessment may be warranted for existing establishments not proposed for significant renovation, upgrade, expansion or enlargement.

Article 12 properly categorizes projects and establishments in terms of whether they have insignificant impacts, significant impacts that can be mitigated, and significant impacts that cannot be mitigated or otherwise will continue to present a high potential risk to the environment. It also provides that state management agencies are responsible for reviewing projects and establishments to determine to which category they belong. However, it does not provide any formal mechanism for reviewing agencies to make that determination. In some jurisdictions, reviewing agencies are required to perform a preliminary assessment (PA) to determine whether a project is likely to have significant impacts. If based on the PA the agency finds that the project will not have significant impacts (or otherwise significant impacts that can be fully mitigated by obvious means), then the agency may issue a finding of no significant impact (FONSI) or "negative declaration." Only if the PA indicates that significant environmental impacts are likely will a full environmental impact assessment be required. This two-step process can add

considerable efficiency to the environmental review process, and consideration should be given to incorporating similar concepts in the LEP.

In order to ensure the integrity of the environmental review process, some jurisdictions (like China) require that assessment reports must be prepared by qualified independent consultants, not by the project proponent itself. Many jurisdictions also include some level of public review of assessment report and deadlines for completing project reviews. (China's 2003 Environmental Impact Assessment Law generally allows a sixty-day period for review and approval of projects based on completed environmental assessments. Expedited review and approval is authorized for projects with "light" or "very small" environmental impacts.) Consideration should be given to incorporating both types of requirements in the LEP.

d. Hazardous Waste Management and Waste Reuse and Recycling

The LEP properly addresses the principal aspects of hazardous waste management, including waste generation, transportation, and treatment, in Chapter III, Section 2. It also properly includes record-keeping by hazardous waste generators regarding their waste management activities and transfer of responsibility for waste management to others. The LEP does not, however, require the use of manifests or similar documentation to provide a record of the management and disposition of hazardous wastes after generation.

The use of manifests is a standard technique used by many jurisdictions as an important part of their hazardous waste management programs. Manifests perform two important functions. First, and most importantly, they provide a means of assuring that important information regarding the characteristics of the waste are provided to organizations and individuals involved in waste management activities, including those involved in the post-generation transportation, storage, treatment and disposal of the wastes. The information provided in manifests allows those organizations and individuals to handle wastes in the most appropriate and environmentally sound fashion.

A second important function of manifests is to provide a means of tracking the chain of custody of wastes through each part of management process. It sometimes is difficult to determine which organization or individual is responsible for environmental incidents or contaminated lands caused by the improper treatment or disposal of hazardous wastes. Manifests provide a mechanism for identifying all parties involved in the management of wastes involved in the incident or contamination, making the determination of responsible parties much easier. For these reasons, consideration should be given to incorporate the use of hazardous waste manifests in the LEP Chapter II, Section 2.

Waste reuse and recycling is properly encouraged by the LEP, particularly in Articles 18 and 31. Article 31 provides that the Government shall specify incentives and preferential policies to promote waste reuse and recycling, but gives the Government broad latitude in determining what those policies and incentives might be. One type of policy that should be considered involves the use of what generally is known as "ecolabelling." Ecolabelling is a strategy that has been adopted by an increasing number of jurisdictions

in Europe, the Americas, and Asia (including Thailand, Singapore, the Philippines, Taiwan, and India.

As described by the Global Ecolabelling Network (GEN), “‘Ecolabelling’” is a voluntary method of environmental performance certification and labeling that is practiced around the world. An ‘ecolabel’ is a label which identifies overall environmental preference of a product or service within a specific product/service category based on life cycle considerations. In contrast to ‘green’ symbols or claim statements developed by manufacturers and service providers, an ecolabel is awarded by an impartial third-party in relation to certain products or services that are independently determined to meet environmental leadership criteria.” *Introduction to Ecolabelling* (July 2004).

Ecolabelling programs can be either voluntary or mandatory. Organizations and individual participating in programs typically receive a license authorizing the use of labels meeting certain standards applicable to a product category based on life cycle considerations (*e.g.*, restrictions on the amount of various chemicals and other materials used in manufacturing the product, energy use, ease of reuse and recycling, and product take-requirements).

e. Liability and Compensation

Provisions of the LEP concerning liability and compensation are found principally in Chapter IV (Environmental Rehabilitation of Polluted and Degraded Areas, Response and Remedy of Environmental Incidents). This Chapter properly places responsibility for remediating polluted and contaminated area on organizations and individuals that have caused the pollution or contamination the first place. It also includes provisions covering the three main environmental media (land, water, and air), along with more specialized provisions relating to mining and natural ecosystems). There are differences in aspects of the approaches taken to liability and compensation issues in these areas. Consideration should be given to better harmonizing those differences and provide a more cohesive approach to the issues.

For example, Article 43 gives a right to users of surface water bodies the right to sue for “the remedy of consequences and costs for the rehabilitation and revival of water resources, and compensation for damages.” Article 44 (Treatment of Polluted Air Areas) gives persons “whose health is seriously affected by air pollution caused by others” a right to “sue for compensation for damages or costs incurred in the recovery of their health.” Consideration should be given to combining these provisions and expanding them to include damages from exposure to pollution or contamination in soil and groundwater. Because of difficulties in proving harm in individual cases, as well as the potential for multiple suits being brought, consideration also should be given to allowing affected persons to bring representative actions on behalf of both themselves and others where numerous persons may have been harmed.

f. Socialization of Environmental Protection Activities

LEP Chapter VII, Section 2 (Socialization of Environmental Protection) addresses means for incorporating environmental awareness and responsibility throughout all levels of

society. A critical element for the success of any socialization effort is the availability of useful and comprehensive information about activities that have significant actual or potential environmental consequences. Both the Government and the People should have a right to know relevant information regarding conduct of organizations and individuals that could cause harm to human health or environmental conditions.

LEP Chapter VI, Section 3 (Management of Environmental Data and Information) does include provisions for generating, analyzing, and publishing environmental data. These provisions impose general obligations on the owners of for developing data on environmental impacts, discharge sources, and waste materials. They also require the provision of environmental information and data to government officials in a regular or *ad hoc* manner. Consideration should be given to expanding these provisions to require the periodic submission of reports summarizing information on the quantities of hazardous pollutants discharges into the air and water over the relevant period, the quantities of hazardous waste generated during the same period, the type and volume of hazardous chemicals used, as well as the manner and location of storage for those chemicals. Consideration should also be given to making environmental information and reports available for public review within the communities where production, trade and service units are located.

III. CONCLUSION

The LEP represents an ambitious attempt at consolidating and reflecting in a single legislative document the progress of the Vietnamese people in promoting environmental protection over the last twelve years. A broad range of issues has been addressed in the document, some in great detail. Much work remains, however, for DoE and MoNRE in developing rigorous administrative regulations to implement the legislative guidance the LEP provides. The preparers of these comments hope that the comments are helpful to those involved in the preparation of the final draft of the LEP and look forward to future opportunities to assist in the evolution of environmental regulation in Viet Nam over time.

Biographies

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Mr. Redick represents technology-driven clients ranging in size from startup through Fortune 500 corporations, with an emphasis on high-technology, chemical and biotechnology applications. He has:

- Coordinated compliance with complex regulatory frameworks covering toxic substances and innovative technologies, preparing global regulatory roadmaps and product liability prevention plans for technology clients.
- Directed the medical causation defense in high profile, mass-media driven, mass tort litigation alleging harm from hazardous substances (hexavalent chromium, asbestos, solvents) and bioengineered food additives (l-tryptophan).
- Defended high-tech and biotech clients in employment and commercial litigation involving complex scientific issues, trade secrets, and regulatory whistleblowers.
- Defended developers and design professionals in complex claims arising from construction projects.
- Successfully pursued companies hiding assets, including proprietary technology from creditors.
- Served as national coordinating counsel for chemical, medical device and industrial laser manufacturers.

Mr. Redick is a frequent speaker and author on toxic torts, liability prevention, and legal issues affecting the future of innovation, including genetically modified organisms and the use of genomic evidence in toxic tort litigation. Since 1998, he has represented the American Soybean Association on liability prevention programs for agricultural biotechnology. He is a founding co-chair of the ABA's International Biotechnology Regulation Roundtable (summarized at http://www.cast-science.org/cast/src/cast_top.htm). Mr. Redick acted as *pro bono* counsel to the American Genetic Resources Alliance and has been honored several times for his *pro bono* work in political asylum appeals and guardianship petitions for abused and abandoned children.

Mr. Redick is admitted to practice before the Supreme Courts of Missouri, California, the High Court of American Samoa, the United States Court of Appeals for the Fifth and Ninth Circuits, and the U.S. District Courts for the Central and Southern Districts of California and the Eastern District of Missouri.

Professional Associations and Memberships:

The Missouri Bar
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Fifth, Eighth and Ninth Circuit Courts of Appeal
High Court of American Samoa
San Diego County Bar Association
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The University of Michigan Law School, Ann Arbor, MI, 1985
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Areas of Practice

Mr. Stever is an environmental lawyer with more than 30 years of civil and criminal environmental litigation and counseling experience. His practice includes air, water, solid and hazardous waste, CERCLA, noise, environmental impact assessment, natural resource damages, environmental torts and constitutional environmental litigation, oil spill counseling and litigation, and maritime environmental compliance counseling, primarily for industrial clients. He has also had considerable experience in transactional environmental law, having managed environmental due diligence and transactional negotiations for hundreds of merger & acquisition, project finance, and capital markets transactions.

Professional Background

Mr. Stever began his environmental law career in 1969, as New Hampshire's first environmental assistant attorney general. He litigated numerous air, water and waste cases in New England during the following decade, and assisted in the development of the principal environmental programs in the State during that time period. After a one-year visiting professorship at Dartmouth College, during which he wrote a book dealing with nuclear power plant licensing, he continued his career at the federal level, becoming a senior trial counsel and subsequently Section Chief in the United States Department of Justice in Washington, D.C. In his position, Mr. Stever was responsible for all pollution and hazardous waste litigation in which the United States was a plaintiff or a defendant. He was responsible for advocating the federal government's position in the leading environmental cases of the late 1970s and early 1980s.

Mr. Stever moved to New York in 1982 to help establish a new environmental law program at Pace University School of Law. While at Pace, and while practicing environmental law as special counsel to the Connecticut-based law firm of Day, Berry & Howard, he wrote a treatise, *Law of Chemical Regulation and Hazardous Waste*, which remains one of the leading sources on the topic.

In addition to his law practice, Mr. Stever has been a long-time member of the Washington, D.C.-based Environmental Law Institute's board of directors, serving on its executive committee in recent years, and serving as chairman of the board from 1995 until 2003.

Professional/Civic Activities

- Environmental Law Institute Executive Committee, Chairman (1995-1996; 1999-2003)
- Board of Directors (1989-1997; 1998-2004)
- Village of Sleepy Hollow, N.Y. Village Trustee (1997-2004)

- Friends of the Rockefeller State Park Preserve Inc. Board of Directors (1998-present)
- The Hudson Valley Writers' Center Inc. Board of Directors (1989-present)

Court Admissions

- United States Supreme Court
- United States Court of Appeals for various Circuits
- United States District Courts for various judicial districts.
- State Courts of New York, Connecticut, New Hampshire and the District of Columbia

Bar Admissions

- Bar of District of Columbia
- Bar of New Hampshire
- Bar of New York

Presentations

- "Superfund: The Clean Up Decision-Making Process," presented at *New York University Summer Institute in Environmental Law* (New York City, May 2001, -Present)
- "Innovative Legal Strategies for Land Use Change," presented at *Pace University School of Law/Albany Law School*, November 2002
- "Residual Injury to Groundwater," presented at *Dewey Ballantine seminar*, December 2000
- "Information Disclosure and Environmental Protection," *Environmental Law Seminar for Judges, Federal Judicial Center* (Washington, D.C., October 2000)
- "Privatization of Municipal Solid Waste Management Function - Legal Issues & Strategies," presented at the *United Nations' Chinese Mayors Seminar on Municipal Solid Waste Management & Landfill Methane Utilization* (Nanjing, China, March 1999)
- "Environmental Liability," article presented at the *International Conference on Civil Liability* (Blumenau, Santa Catarina, Brazil, October 1995)
- Consultancy with the Government of Romania (Sinaia, Romania, September 1994)
- Lectures on Environmental Crimes/Defenses and Strategies New York City, 1992
- Environmental Issues in the Development Process United Nations Meeting on Energy and Environment in the Development Process (Beijing, China, June 1991)
- Clean Air Act Amendments (Tokyo & Osaka, Japan, May 1991)
- Hazardous Substance Control (Tokyo & Osaka, Japan, November 1991)
- Environmental Law Consultation to governments of Czechoslovakia & Poland (October 1990)
- Environmental Law/Hazardous Waste (Tokyo, Japan, May 1990)
- National Wetlands Enforcement Workshop (Lecture and Expert Witness Demonstration concerning wetlands designation for audience of EPA/Corps of Engineers personnel, May 1989)

Education :

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RESEARCH INTERESTS

Environmental Regulation; Regulation of Biotechnology and Biomedicine; Risk, Precaution and Law; Environmental Economics and Sustainability.

RESEARCH PROJECTS

Bob is currently working on a range of BRASS supported projects, including Waste Regulation, The Regulation of Food Safety and Market Instruments for Regulation.

PUBLICATIONS

Recent publications:

Statutes on Public Law and Human Rights with Peter Wallington (Eds) (14th edition)
OUP/Blackstone (2004).

Compendium of Summaries of Judicial Decisions in Environment Related Cases (Editor) UNEP, Nairobi (2004).

Carnage by Computer: The Blackboard Economics of the 2001 Foot and Mouth Outbreak (with I D Campbell) (2003) 12 Social and Legal Studies 425-460.

Permitting Uncertainty: Owners, Occupiers and Responsibility for Remediation (with Daniel Lawrence), submitted to Modern Law Review 66 (2003) pp 261-276.

Statutes on Public Law and Human Rights with Peter Wallington (eds) OUP/Blackstone 2003.

Other key publications:

Human Fertilisation and Embryology: Regulating the Reproductive Revolution (with Derek Morgan) Blackstone Press (2001).

Economics, Ethics and the Environment with Julian Boswall (Eds) Cavendish (2002).

E.U. Proposals on Environmental Liability: From a Private to a Public Law framework Journal of Business Law March (2003) 180 –191.

Permitting Uncertainty: Owners, Occupiers and Responsibility for Remediation (with Daniel Lawrence) submitted to Modern Law Review 66 (2003) 261-276.

Power to panic: The Animal Health Act 2002 (2003) Public Law 382-396

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Kevin Haroff is a member of the Environmental and Natural Resources Practice Group at Squire, Sanders & Dempsey L.L.P., an international law firm with offices throughout the Americas, Europe and Asia. He helps coordinate the firm's international environmental law practice. Mr. Haroff, who has both law and graduate business degrees from Cornell University, has over 20 years of environmental and regulatory law experience both in the United States and abroad, with a particular emphasis on China, Japan, and the European Union. Mr. Haroff has spoken on international legal matters at conferences in both the United States and China, and he has been a featured source on international environmental and business law issues in such publications as San Francisco Daily Journal, San Jose Business Journal, Silicon Valley BizInk, CBS MarketWatch (Agence France Presse, AFX European Focus), and the Atlanta Journal-Constitution. He also has been interviewed on China business developments on the Bloomberg Financial News Network.

Mr. Haroff currently is a vice-chair of the International Environmental Law Committee of the American Bar Association's Environmental and Natural Resources Section and co-author of the Section's Year in Review International Environmental Law Report (reprinted in the Summer 2004 edition of The International Lawyer, a publication of the ABA's Section of International Law and Practice). Mr. Haroff has regularly been named by San Jose Magazine as one of the top environmental lawyers in Silicon Valley, and more recently was singled out by Law & Policy Magazine as a "Super Lawyer" among environmental practitioners in Northern California.

Before joining Squire Sanders, Mr. Haroff was a partner for eight years at the law firm of Morrison & Foerster, LLP, in San Francisco and Palo Alto. He also was an associate for three years at McCutchen, Doyle, Brown & Enersen (now Bingham McCutchen) in San Francisco, and a staff attorney for five years at Exxon Company U.S.A. (now ExxonMobil Corporation).

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