

FINAL REPORT of INSPECTION PANEL

on

**SAMUT PRAKARN WASTEWATER MANAGEMENT
PROJECT**

14 December 2001

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To: Mr. John Lockhart,
Chairman,
Board Inspection Committee

From: Inspection Panel,
Samut Prakarn Wastewater Management Project
Ms. Judy Henderson
Mr. Ping-Cheung Loh
Mr. Wiert Wiertsema

Date: 14 December 2001

Subject: **Final Report of the Inspection Panel**
Samut Prakarn Wastewater Management Project

As per your request, the Panel hereby submits the Final Report on the Inspection of the Samut Prakarn Wastewater Management Project.

About the Panel

The Panel for the Inspection of this Project consists of three members. They are Judy Isabel HENDERSON from Australia, Wiert Pauwel.WIERTSEMA from the Netherlands, and Ping-Cheung LOH from Taipei, China. Their respective brief curriculum vitae are stated below:

Judy Henderson is a qualified medical practitioner specialized in the area of pediatrics. From 1998-2000 she was a Commissioner on the World Commission on Dams and is currently a board member of the NSW Environment Protection Authority. She is the Chair of Australian Ethical Investment Ltd and the former Chair of Oxfam International.

Wiert Wiertsema is a social anthropologist who has extensive experience in cooperation with NGOs throughout Asia on issues of capacity building, information exchange, fund-raising and networking for ecologically sustainable and socially just development. He is co-founder and deputy-director of the Netherlands based NGO Both ENDS, and currently active as policy coordinator and senior manager of a programme on Capital Flows and Sustainability.

Ping-Cheung Loh, a lawyer trained at the National Taiwan University, Columbia Law School and Yale Law School, served in the Legal Department of the World Bank as an attorney and subsequently in various capacity in the operations departments in the World Bank. His experience in the World Bank covered Africa, Asia and Latin America. He retired from the position as a director of country operations in Latin America after thirty years of service in the World Bank.

From 1996 to 2001 he served as the first Secretary General of the International Cooperation and Development Fund in Taipei, China, a public agency for development assistance. After his retirement, he has resumed his law practice in Taipei.

Acknowledgements

The inspection of the Samut Prakarn Wastewater Management Project was the first inspection ever approved by the Board of Directors of the Asian Development Bank. In many ways it has been an effort of trial in which the Panel was very aware of the responsibility not to make errors that would set precedents undermining the effectiveness of the Bank's Inspection Policy in the future. For this the Panel very much appreciates the guidance of the members of the BIC, especially its chairman Mr. John Lockhart. The Panel would like to thank him for the invaluable support he has given throughout.

The Panel wishes to extend a specific word of appreciation and thanks to Mr. Tariq Banuri, who for personal reasons had to resign from the Panel. His initial contributions have been of essential value.

The Panel Members wish to especially thank Ms. Jill Drilon, Secretary to the BIC for all the services provided as a Secretary to the Panel. The difficulty of her tasks as an interface between the Bank by whom she is employed and the independent Panel cannot be underestimated. The Panel is also grateful to Mr. Philip Daltrop for the advice provided to the Panel on a number of Bank related legal issues. The Panel also wishes to thank Ms. Kathy Ella, Ms. Marie Stephanie Igaya and Ms. Joanh Betasolo for their various support services.

Finally, the Panel wishes to express a word of regret that it has not been able to establish direct access to the Requesters and to all other stakeholders to the Samut Prakarn Wastewater Management Project in Thailand.

Abbreviations and Acronyms

ADB	Asian Development Bank
Bank	Asian Development Bank
BIC	Board Inspection Committee
Board	Board of Directors
CTF	Centralized treatment facility
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
IEE	Initial Environmental Examination
ISA	Initial Social Assessment
Report	Final Report, December 2001, submitted to the BIC
Loan	Loan approved by the Board on 7 December 1995
Management	President and Vice-Presidents of the Bank
MOSTE	Ministry of Science, Technology and Environment
NGOs	Non-governmental organizations
Panel	Panel established by the Bank for the inspection of the Project
Project	Samut Prakarn Wastewater Management Project
OM	Operational Manual
OP	Operational Procedure
PCD	Pollution Control Department
PPTA	Project Preparation Technical Assistance
Request	Statement submitted for the request of inspection (5 April 2001)
Requesters	The requesters who submitted the request for the inspection
Response	Response from Management to the Request (24 May 2001)
SIA	Social Impact Assessment
RRP	Report and Recommendation of the President
Supplementary Loan	Loan approved by the Board, 7 December 1998
TOR	Terms of Reference for the Panel

Executive Summary

On 10 July 2001 the Board of Executive Directors of the Asian Development Bank (the Bank) approved the establishment of an Inspection Panel (the Panel) to inspect the Samut Prakarn Wastewater Management Project (the Project). The Panel began its work on 27 August 2001* and suspended its proceedings on 8 November 2001 for reasons stated in Section 1.5 herein. As per the request of the Board Inspection Committee (BIC), the Panel submitted its Interim Report to the BIC on 27 November 2001.

In the Terms of Reference (TOR) of the Panel dated 4 September 2001 issued by the BIC, the Panel is asked by the Bank:

‘to determine whether ADB has complied with its operational policies or procedures in processing or implementing the Samut Prakarn Wastewater Management Project in Thailand. If the Inspection Panel (the Panel) determines that ADB has not complied with its policies, it must further determine whether this noncompliance has had, or is likely to have, a direct and material adverse effect on the rights and interests of the group making the request (the Requesters).’

In accordance with the TOR, the Panel has made its findings. These findings are based on incomplete information due to Panel’s inability to have access to stakeholders and certain documents.

In this Report, the Panel has explained the methodology adopted for the inspection process, conducted an overview of the Bank’s management of the Project, reviewed the compliance of the Bank with its policies or procedures, and, in case of non-compliance, made an assessment of the direct and material adverse effect on the rights and interests of the Requesters.

Findings by the Panel

a) Compliance

The Panel has found that there has been noncompliance by the Bank with its policies and procedures in processing and implementing the Project. The noncompliance can be found in the provisions of the Operational Manual (OM) as follows:

- Supplementary Financing of Cost overruns on Bank-Financed Projects, OM 13, issued on 12 December 1995;
- Bank’s Operational Missions, OM 32, issued on 13 January 1997;
- Environmental Considerations in Bank Operations, OM 21, issued on 1 December 1992 and OM 20, issued on 7 January 1997;
- Involuntary Resettlement, OM 50, issued on 7 January 1997;
- Incorporation of Social Dimensions in Bank Operations, OM 47, issued on 7 January 1997;

* Mr Ping-Cheung Loh joined the Panel on 8 Oct 2001

- Good Governance, OM 54, issued on 13 January 1997.

The Panel has found that the provisions in the OM on the Benefit Monitoring and Evaluation Policy, OM 23, issued on 7 January have been partially complied.

The Panel has also found that the Bank has complied with the provisions in the policy on Economic Analysis of Projects, OM 44, issued 12 November 1997, and that subject to certain factual verification, the Bank has complied with its policies on Confidentiality and Disclosure, R134-94, approved 8 Sept 1994 and Internal Audit, OM 51, 16 October 1996.

In accordance with the TOR, the Panel has not reviewed certain issues raised by the Requesters. These include policies on anti-corruption, fisheries, urban development strategy and poverty reduction. The Panel, however, made certain observations on some of these issues.

b) Assessment of Direct and Material Harm

The Panel has been seriously disadvantaged in making a fair assessment of the direct and material harm on the rights and interests of the Requesters, due to the Panel's inability to have access to the Requesters, the Project site and the experts in Thailand who have experience in this area.

Despite these problems, the Panel has been able to ascertain the following:

- The rights and interests of the people with regard to consultation and participation have been adversely affected.
- The rights and interests of the people, whose livelihood depends upon the activities in the economic exclusion zone, have been adversely affected due to being excluded from engaging in their economic activities.
- The rights and interests of some of the people whose livelihood depends upon the activities in the vicinity of the economic exclusion zone **could** also be adversely affected due to the potential problems caused by the dilution of salinity, release of toxins or heavy metal.
- The rights and interests of people, who are in the vicinities of the treatment plant, **could** be adversely affected by the odor, lowering of property value and the potential problems caused by the existence of toxin and heavy metal in the sludge management.

c) Recommendations

Direct and Material Harm to the Klong Dan Community

In order to establish an environment of trust with the people of Klong Dan it would be important for the Bank to acknowledge the noncompliance with some of its policies. The restoration of confidence, between the community on the one hand and the Executing Agency and the Bank on the other, requires the mutual recognition that the process of consultation and participation needs to be improved.

It is imperative that negotiations in good faith be instituted as soon as possible with the Klong Dan community on:

- i) the degree and extent of actual and potential damages and appropriate and adequate compensation to those affected;
- ii) the remedial action programs for the immediate and longer term solutions;
- iii) the participation of the local community in the management and the operation of the treatment plant so as to minimize any future potential adverse effects on the community. Specifically, it would be useful to establish:
 - accurate baseline data for the social-economic parameters of the community so that impacts can be monitored through the commissioning and operation of the treatment plant;
 - mechanisms for meaningful community involvement in the risk assessment of future problems;
 - mechanisms for timely public notification of actual exceedances of limits for odor and effluent parameters so that appropriate action can be taken.

The Bank should be an **active participant** in the efforts mentioned above.

Request for the Suspension of the Loan Disbursement

Regarding the request for the immediate suspension of the Loan disbursement by the Bank for this Project, the Panel is of the view that at this stage of Project implementation, suspension should not be recommended. The Panel notes that the Requesters said that *'we have never challenged the importance of having an appropriate wastewater treatment facilities to help deal with the pollution problem in Samut Prakarn.'*

They challenged the location and the negative impacts associated with the new location. The Panel believes that with the remedial recommendations mentioned above fully implemented, and the adverse effects of the project mitigated in the manner satisfactory to the local community in Klong Dan, the disbursement under the Loan should not be suspended as requested.

1. Introduction

1.1 Background to Samut Prakarn Wastewater Management Project

1. The Samut Prakarn Wastewater Management Project is located in the Samut Prakarn province, the most heavily industrialized and rapidly urbanizing of the five provinces of the Bangkok Metropolitan Region. The genesis of the Project was a technical assistance grant in 1986 to the National Environment Board of Thailand for Samut Prakarn Industrial Pollution Control and Management. In 1993 the Government of Thailand requested assistance of the Bank in the development of a comprehensive wastewater management system for Samut Prakarn. The Project Preparatory Technical Assistance in 1995 involved a feasibility study, which included 13 strategy options for the wastewater management with an apparent preferred option subsequently incorporated into the Report and Recommendation of the President (RRP) for the loan submitted to the Board of the Bank. This loan for \$150 million was approved on 7 December 1995 and the loan agreement signed on 31 July 1996.

2. The original description of the Project (Appendix A) consisted of (i) a wastewater inception and collection system comprising of trunk sewers, secondary and tertiary sewers on the east bank and on the west bank of the Chao Phraya River; rehabilitation of existing combined and separate sewers; and associated works; (ii) two central wastewater treatment and disposal facilities, aerated lagoon systems one on the east bank with capacity of approximately 400,000 cmd and one on the west bank of approximately 125,000 cmd; (iii) equipment and instrumentation for wastewater and effluent monitoring systems; (iv) industrial pollution prevention and clean technology transfer program; (v) a capacity building training program for relevant government personnel.

3. At appraisal and at the time of submission of the Project for Board approval the total cost was estimated at \$507 million. Five procurement packages were envisaged including two turnkey contracts for the design, construction and operation for three years of the two treatment plants. The use of the turnkey packaging was selected for implementation of the Project. Contrary to the usual situation where the government would be responsible for the acquisition of land, in this instance, at the request of the Government, it became part of the responsibility of the contractor.

4. A two stage bidding process was instituted during which, following discussion with the bidders an addendum was issued by the Pollution Control Department (PCD) to allow bids for a single plant site. The initial fourteen bidders narrowed to two and finally to one. This final bid proposed to combine the two treatment facilities into a single treatment plant located at the Klong Dan site and a change in the treatment process was also proposed. Design changes were also required as a result of a government direction to use tunneling instead of open-trench technology to minimize impact on traffic congestion. As a result of all the design changes the Project cost had escalated to \$948 million at the time of signing of the turnkey contract on 20 August 1997.

5. In the meantime by mid-1997, the financial crisis had become evident with the Baht decreasing in value from B25 to B41 to the US dollar. At this stage the IMF imposed certain fiscal requirements on the Thai Government resulting in substantial cutbacks in the public sector investments. While the devalued Baht had the consequence of reducing the cost of the Project to \$687 million equivalent, the change in technology

resulted in a net increase of \$80 million in direct foreign exchange costs compared with the appraisal cost estimates. Initially it seemed that the Government planned to cover all the increased costs but the worsening of the crisis in 1997 eventually led to a proposal to the Bank for a supplementary loan.

6. The RRP for the supplementary loan contained a revised description of the Approved Project (Appendix B) which referred to only one central treatment facility. However the Loan Agreement itself only contained reference to the 'project described in Schedule 1 (as amended) to the 1996 Loan Agreement', indicating that there had been an amendment to the first loan with a revised project description. However there appears to have been no actual amendment. The Board approved the supplementary loan on 3 December 1998.

7. The implementation of the Project proceeded under the supervision of the PCD as the Executing Agency, including implementation of the pollution prevention and capacity building programs. In view of the large and complex nature of this Project in September 1998 the technical aspects were reviewed by a panel of international experts leading to recommendations for improvement in the technical design. A process was put in place by the contractors to develop an Environmental Management Plan (EMP) which required some background studies, in particular regarding aspects of the water quality and characteristics of the Gulf of Thailand in the region of the proposed outfall and the proposed Economic Exclusion Zone (EEZ). An Independent Review Team reviewed an initial draft of the EMP in March 2001. The final draft of the EMP was released in August 2001. The EMP has identified some mussel farmers who will be excluded from carrying on their activities in the EEZ and a compensation package is being devised by the PCD.

8. As a response to the mounting community concern the Bank instituted a small scale technical assistance (SSTA) for Community Awareness and Development in March 2001 to assist the PCD in community relations.

1.2 Background to the Request for Inspection

9. The first report the Panel could find of public concern regarding the Project was in the PCD Quarterly Report No 5 (April 1998), where community concern regarding potential odor from the treatment plant was mentioned. The Aide Memoire of the Special Review Mission (19-28 June 2000) states that *'in April 1999 the community of Klong Dan started to raise some concerns about the location and viability of the proposed wastewater management system'*. The Report continues *'Public meetings took place between March and June 1999 but were not very effective and culminated in a situation where PCD officials were restrained from leaving Klong Dan for some 8 hours.'* Further technical hearings were held in August and November 1999, the latter involving Thai and international professionals and community representatives. As the Panel has not been able to meet with the Klong Dan community and the Requesters of the Inspection, it has not been able to verify the nature of community participation in these events.

10. At the Bank's Annual General Meeting in Chiang Mai in May 2000, the protests became more directed towards the Bank. A petition was sent to the President of the Bank

and the Requesters met with several Executive Directors to explain their concerns. In June 2000, a Bank Mission visited the Klong Dan community. While the visit was regarded as 'beneficial' by Bank staff, the Requesters in a written response refuted this view and said that the Mission *'failed to develop a deeper understanding between the villagers and ADB'*.

11. On 27 November 2000 the President of the Bank received an initial letter of complaint (Appendix C) from Narong Khomklom, mayor of Klong Dan, and Chalao Timthong and Dawan Chanterahassadee, both Klong Dan villagers, writing on behalf of the communities of Klong Dan, Bang Bo district of Samut Prakarn province and Song Klong, Bang Pakong district, Chachoengsao province. The Requesters asked for a halt to disbursements to the Project and for their concerns to be investigated. The response from the President of 11 January 2001 contained a review of the allegations by the Interdepartmental Working Group set up to deal with the issue, which concluded that *'in general the applicable ADB policies and operational procedures have been complied with.'*

12. The response from Management failed to meet the concerns of the Requesters who then filed an official Request for Inspection with the Board Inspection Committee (BIC) on 5 April 2001 (Appendix D). On 23 April 2001, the BIC met to consider the Request and finding it neither 'clearly ineligible' nor 'clearly frivolous', asked for Management's Response which it received on 24 May 2001 (Appendix E). On 10 July 2001, the Board met to consider the report and recommendations from the BIC (Appendix F) and approved the recommendation to authorize an inspection.

1.3 Methodology

13. The TOR for the Inspection Panel dated 4 September 2001 specifies that the purpose of the Inspection is:

‘to determine whether ADB has complied with its operational policies or procedures in processing or implementing the Samut Prakarn Wastewater Management Project in Thailand. If the Inspection Panel (the Panel) determines that ADB has not complied with its policies, it must further determine whether this noncompliance has had, or is likely to have, a direct and material adverse effect on the rights and interests of the group making the request (the Requesters).’

14. In carrying out the above mentioned assignments, the Panel followed the generally accepted methodology in fact finding, in assessment of the facts and in rendering its considered opinions. Regarding the fact finding, the Panel had intended to review documents, conduct interviews and visit the Project areas.

a) Document Review

15. The documents reviewed by the Panel included those provided by, or obtained from, the parties involved in the Project. Some documents were obtained or found independently by the Panel. The sources of the documents include the Bank, the Requesters, the Executing Agency, the non-government organizations (NGOs) and experts and academics who have been actively involved in this project, the consultants who were engaged in different stages of this project.

b) Interviews

16. The process of fact finding also involved interviews with various individuals who were in the past or at present involved in the Project. The interview process, however, was seriously jeopardized as a result of the conditions imposed by the Government of Thailand, which made the visit to the Project site impossible, and as a result of the Requesters’ non- acceptance of the invitation to come to Manila for interview.

c) On-site Visit

17. The fact finding process was to include an on-site visit which, as explained above, was not carried out.

18. The fact-finding process for this Inspection, therefore, is not complete. It is clear that the incomplete information has made the assessment of facts extremely difficult, and in certain areas, impossible. This Report will identify, wherever appropriate, the problems so encountered.

19. In making an assessment of the compliance of the operational policies and procedures, the Panel has followed the rules stated below:

- The compliance is to be reviewed in the context of the then prevailing policies or procedures when an action or omission to act occurred.

- The Panel shall look into the objectives and rationale of the policies and procedures of the Bank, so as to avoid any unreasonable interpretation resulting from a strict legalistic interpretation of the language involved.
- The Panel shall be mindful that in interpreting the policies and procedures by various parties, consistency of such interpretation is important, so as to avoid any selective interpretation to suit any party's special interest.
- Where criteria are well established and accepted for the interpretation of Bank's policies and procedures, the Panel shall use such criteria as the basis for its interpretation of other policies and procedures, unless it can be established, to the satisfaction of the Panel, that the use of such criteria is not appropriate.

Professional Judgement of the Bank Staff

20. The Inspection Policy of the Bank requires that '*Due consideration should be given to the exercise of professional judgement by the Bank's Management, staff and consultants interpreting and applying the Bank's operational policies and procedures.*'

21. This requirement has been observed by the Panel. The Panel has, in some cases, pointed out that the exercise of such professional judgement could, however, have consequences affecting the rights and interests of the Requesters.

Assessment of Direct and Material Adverse Effects

22. The unanticipated developments during the course of this Inspection made the assessment of '*direct and material adverse effect on the rights and interest of the group making the request*' extremely difficult. The Panel has attempted to make certain assessments and to point out certain matters which the interested parties do not contest. It is regrettable that the process could not be carried through to help resolve the important issues affecting the people.

1.4 Chronology of events

10 July 2001	ADB Board approved inspection of Samut Prakarn Wastewater Management Project
12 July 2001	Board Inspection Committee (BIC) requested 'no objection' from Government of Thailand to visit to project area in accordance with Clause 52 of Inspection Policy
21 Aug 2001	Follow-up letter from BIC to Government of Thailand regarding 'no objection' to project visit by Inspection Panel
27 Aug 2001	Tariq Banuri, Judy Henderson and Wiert Wiertsema officially appointed to Inspection Panel and Panel convened in Manila. Terms of Reference for Inspection finalized with BIC and workplan developed to begin with visit to Thailand to meet with Requesters of Inspection
31 Aug 2001	Further follow-up letter from BIC to Government of Thailand regarding project visit by Panel
6 Sept 2001	BIC received response from Government of Thailand containing several conditions regarding any proposed visit by Inspection Panel to Thailand, including requirement that ADB accept liability for any loss damages claimed by the contractor resulting from the Panel's visit.
12 Sept 2001	Panel reconvened and proceeded to review documentation and finalize internal procedures for Inspection
25 Sept 2001	Letter from BIC to Government of Thailand requesting a reconsideration of the conditions imposed on 6 Sept 2001
3 Oct 2001	Resignation of Tariq Banuri from the Inspection panel
8 Oct 2001	Appointment of Ping-Cheung Loh to Panel
10 Oct 2001	Response from Government of Thailand reaffirming conditions which prevented Panel from visiting Thailand
15 Oct 2001	BIC informed Requesters of response from Government of Thailand
18 Oct 2001	Panel invited Requesters to come to Manila
22 Oct 2001	Ping-Cheung Loh arrived in Manila to continue documentation review. Other members of Panel arrived on 26 and 27 Oct 2001.
24 Oct 2001	Response from Requesters declining invitation to come to Manila
2 Nov 2001	Interviews with ADB staff commenced pending visit of Chair of BIC to Bangkok to discuss conditions imposed on Panel's proposed visit
6 Nov 2001	Chair of BIC 's mission to Bangkok unsuccessful in persuading Government of Thailand to lift conditions on Panel's visit.
8 Nov 2001	Panel informed BIC of decision to suspend Inspection.
12 Nov 2001	BIC requested Panel to prepare an Interim Report by 30 Nov 2001
21 Nov 2001	Letter from BIC to Government of Thailand with suggested new framework for proposed visit by Panel
27 Nov 2001	Interim Report submitted to BIC
28 Nov 2001	Government of Thailand reaffirms previous conditions on Panel's visit
7 Dec 2001	BIC requested Panel to prepare Final Report and informed Requesters of decision not to disclose Interim Report
14 Dec 2001	Final Report submitted to BIC

1.5 Suspension of the Inspection and subsequent developments

23. The Panel and the BIC met on 28 August 2001 to discuss the draft TORs and the provisional work plan of the Panel. On 4 September 2001 the TORs were finalized. The initial work plan and timetable of the Panel were included in the TORs. The work plan indicated the Panel's plan to commence its activities with field visits to Thailand on 10 September.

24. Paragraph 4 of the TORs states that the Inspection Procedures in the Bank's Inspection Policy govern the overall performance and activities of the Panel. Paragraph 5 of the TORs reflects on the consent required from the concerned government and refers to Paragraph 52 of the Inspection Procedures where the following is stated:

'As part of an inspection, a Panel may also visit the project area and meet with the requester, other local communities, organizations and groups, project managers and government officials in the country where the project is located (or in an adjacent member country, if relevant to the inspection). However, before the Panel or any of its consultants undertakes such activities, the Committee must confirm with the Director representing the relevant country that the government of the country has no objection. If the government objects to any such activities, the Panel will modify its work plan accordingly and carry out its review on the basis of reports and other information available to the Panel and the Bank'.

25. In accordance with this, the BIC has sent on 12 July 2001 a letter to the Executive Director for Thailand seeking permission from the Government of Thailand for an Inspection Panel to visit the Samut Prakarn Wastewater Management Project area. Follow up letters were sent on 21 and 31 August 2001.

26. It was only on 6 September 2001 that the Government of Thailand responded in a letter indicating that permission could be given to a one-time visit of two days, provided that a number of conditions would be met. The conditions referred to possible law and order issues, and issues of financial liability for any costs as a result of the inspection visit. Without diminishing the concerns that may have given rise to these conditions, the Panel felt that some of the conditions, if accepted, also implied amendments on the already finalized and approved TORs.

27. In accordance with Paragraph 52 of the Inspection Procedures, the Panel revised its work plan. Instead of starting with a field visit, the Panel decided to commence its work with two weeks of review of documentation, pending permission from the Government of Thailand for a field visit.

28. In a letter dated 25 September 2001, the BIC did formally request the Government of Thailand to reconsider the conditions set out for a field visit. The more detailed work plan of the Panel was attached to this letter. The Government of Thailand was requested to respond within 14 days. In a letter dated 10 October 2001, a response was received from the Government of Thailand in which the previous position was maintained. The Panel again modified its work plan as required by Paragraph 52 of the Inspection Procedures. Since a field visit had become impossible, it was decided to send an invitation to the Requesters on 15 October 2001 to consider coming to Manila to meet

with the Panel and discuss their concerns. On 24 October 2001 the Panel was informed that the Requesters had declined the invitation. The Panel also learned that the PCD was willing to accommodate to the adjusted work plan by coming to Manila for interviews, if so required.

29. The Panel reconvened on 29 October 2001. Seriously concerned about the threats posed to the inspection process, the Panel once more looked for ways to overcome the obstacles to a field visit. It was happy to learn that the BIC Chairman considered a special mission to Thailand to explore possibilities for a breakthrough by discussing the conditions face-to-face with the relevant authorities. Such a mission, supported by the BIC, took place from 5-7 November 2001.

30. With this further effort to protect the inspection process underway, the Panel decided once again to modify its work plan and to begin with interviewing Bank managers and staff involved in the Project.

31. On 8 November 2001 the Panel was briefed by the BIC that the Government of Thailand maintained its original position on the conditions set out for a visit to the project area. In light of these developments and after serious consideration, the Panel made the decision to suspend the Inspection and no further formal interviews were conducted. The following reasons led to the decision to suspend:

32. The requirement of the Government of Thailand that the Bank should shoulder any financial liability derived from the inspection visit, makes this Inspection, and, if followed as a precedent, any future on-site inspection impossible to be carried out.

- The conditions imposed by the Government of Thailand fundamentally undermine the effectiveness and soundness of the inspection system. They run counter to the basic spirit and objective for the establishment of such a system. As a result, the international community will, no doubt, question the viability of the system. If the matter is not dealt with seriously, it will create cynicism and cause harm to the efforts made by the Bank to have greater openness and participation of the people who are affected by Bank financed activities.
- The conditions also undermine the impartiality of the Panel essential for conducting its work, which requires a fair access to all stakeholders related to the Inspection, as well as a fair access of all such stakeholders to the Panel. The fact that for more than 2 months no communication could be established with the Requesters of the Inspection is disturbing indeed.

33. Having noted the Panel's concern and decision to suspend the Inspection, the BIC requested the Panel on 12 November 2001 to prepare in accordance with Paragraph 55 of the Inspection Procedures *'an Interim Report by the end of November 2001 while waiting for further instructions from the Committee'*. The Panel was further informed that *'if the current situation changes, and the Panel is able to visit the Project area for consultations as envisaged in its original work plan, the Committee will request the Panel to resume the inspection at a convenient time. However, if the situation does not change within a reasonable time frame, the Committee will request the Panel to submit its final report, to be processed in accordance with paragraph 56 of the Inspection Procedures.'*

34. On 21 November 2001, the BIC wrote to the Government of Thailand with a further suggestion for circumstances under which a visit to Thailand might proceed. In the meantime the Interim Report was submitted by the Panel on 27 November 2001. The Memorandum to the BIC on the Interim Report is attached as Appendix I. On 28 November 2001 a response from the Government of Thailand reaffirmed the conditions for a visit of the Panel as previously outlined in its letter of 6 September 2001. The BIC requested the Panel on 7 December 2001 to prepare its Final Report and on the same day informed the Requesters of the BIC's decision that the Interim Report would not be disclosed to anyone, which was contrary to the recommendation made by the Panel. The Panel is disappointed that at no stage during this inspection, it has been able to communicate with the Requesters on matters of substance.

2. Overview of the Management of the Project by the Bank

35. In this section of the Report, the Panel reviews certain key events, including the actions or the omissions of action of the Bank, which have had impacts on the development of the Project, leading to the formal complaints filed by the Requesters. Detailed analysis of specific issues is done in different relevant sections of this Report.

36. In presenting this overall review, the Panel has reviewed the events in the following stages:

- Feasibility study conducted by the consultants
- Appraisal by the Bank of the 1995 Loan
- Review by the Board of the 1995 Loan
- Events which occurred before the 1995 Loan signing
- Project implementation stage
- Introduction by the Bank of various OMs since 1997
- Appraisal of the 1998 Supplementary Loan and the amendment to the 1995 Loan Agreement
- Review of the Supplementary Loan by the Board
- Subsequent Actions by the Bank

2.1 Observations on certain common perceptions

37. Before embarking on the review of the key events, it is worthwhile to note certain common perceptions shared by a number of the staff and managers of the Bank involved in the Project. These perceptions have a strong influence on the decisions made for this Project. Among others, the following are the most commonly shared:

a) Perception about the Project

38. Since the Project is intended to improve the environment of the Project area, the environmental impacts of the Project, therefore, can only be viewed as positive. Requirements of the Bank concerning environmental categorization, social and economic impacts on the community, and other policies of the Bank are viewed as easily met because “the Project is a good environmental project.” Time and again, it was mentioned in different contexts to the effect that if the Project were not done, the people in the Project area would be worse off.

b) Perception about the changes made in the Project

39. There has been a tendency to view that many important changes in the Project made subsequent to the Loan approval are only changes of technical nature. As a result, they are viewed in each individual case as a minor change. Over time and viewed cumulatively, these changes, which included Project costs, construction methods for sewer pipe laying, numbers, and the locations, of treatment sites, (which were explicitly stated in the Loan Agreement, a formal legal document between the Bank and its Borrower), and the numbers of turnkey contracts, etc., have become major changes.

c) Perception about the responsibility of the Staff

40. There are different understandings and perceptions about the responsibility of the staff for the implementation of policies of the Bank. Some stated that the Bank staff don't have to do the work themselves, their responsibility is to **ensure** that the work will be carried out by others. They believe that the Bank is merely a financing institution and it is the owner of the Project who should have the responsibility to do the required work. The view is firmly entrenched, notwithstanding the fact that the Bank expects the staff to complete certain required actions before the Bank agrees to the financing of a project. There are also other requirements expected of the Bank staff at the different stages of the project cycle.

d) Perception about the concept of participation

41. The concept of community participation is viewed as efforts connected with public relations and awareness programs. However under the various Bank policies participation should cover issues relating to community inputs in the formulation of project design, mitigation of negative impacts, and optimization of the overall project benefits. As some Bank staff have pointed out, community participation should be a continuous process and not a one time event.

e) Perception about the turnkey contract

42. In the implementation of this Project, the turnkey contract approach was adopted. This turnkey project has many unique features: eg:

- This contract was, and probably still is, the largest single turnkey contract in the history of the Bank;
- The bidding documents required the contractor, instead of the Government, to be responsible for the land acquisition (which might have impacts on the bidding process and the price of land);
- Certain functions, which would normally be carried out by an independent and reputable contractor, were to be carried out by a turnkey contractor, who might have potential conflict of interest in doing its work. For instance, if a turnkey contractor is asked to carry out a study of project impact on a community and under the contract he is responsible for the mitigation costs, the study could be biased for cost considerations. Comparing this with a study to be done by an independent consulting firm, the implication is quite clear. As mentioned by a senior staff, under these circumstances the least the Bank or the owner should do is to have an objective third party to review the output of the turnkey contractor.

43. In general, notwithstanding the unique nature of these arrangements, no special attention was given for the review of various changes made in the Project. The staff and managers have the perception that since the Project is implemented by a turnkey contract, all the Project implementation issues should be taken care of by the turnkey contractor.

f) Perception about the interpretation of Bank requirements

44. Another commonly observed perception is that whenever there is the need for interpreting a requirement, the strictest interpretation is to be followed. Even in situations where common sense approach is needed, the most restrictive interpretation was adopted. Examples can be found in different sections in this Report.

g) Perception about the Requesters

45. There has been a perception about the Requesters. Some believe that the Requesters are a small group of people organized by certain specific interest groups. The views of the small group of people do not represent the views of the majority in the Klong Dan community.

2.2 Review of certain events in the Project cycle

46. In this section, the Panel will point out the consequences of certain actions of the Bank for the Project.

a) Feasibility study conducted by the consultants

47. The feasibility report prepared for this Project served its purposes in providing information and analysis to justify the Project. The coverage was sufficiently broad to meet the general requirements for Project appraisal. The challenges made by the Requesters were not directed at the conclusions and recommendations referred to in the feasibility report. Subsequent developments resulting from the decisions by the Government and the Bank in certain areas have become subject matters for the Inspection.

b) Appraisal by the Bank of the 1995 Loan

48. The findings of the appraisal of the first loan were included in the document RRP: THA 26277 dated November 1995, which was submitted to the Board for its approval on 7 December 1995. The recommendations of the RRP were reflected in the draft Loan Agreement for the Project, which was also submitted to the Board for its approval. The Panel found that the work done by the staff of the Bank for both documents shows professional competency. Several specific points need to be highlighted for future reference:

- The RRP and the draft Loan Agreement, which was subsequently signed with the Government of Thailand, explicitly mentioned that there would be two treatment plants located on each side of the Chao Phraya River. (see paragraph 38 (ii) of the RRP and Schedule 1 to the Loan Agreement).

- It was envisaged that two turnkey contracts would be used for the procurement arrangement. (See paragraph 47 of the RRP and Schedule 4 to the Loan Agreement, which did not specifically mention two turnkey contracts but used the term “turnkey contracts”.)
- The matter of land acquisition was described in paragraphs 53 and 87, and in Schedule 6 to the Loan Agreement. As stated in these paragraphs, even though the contractors were asked to acquire the land, the final responsibility rested with the Government.
- The resettlement plan for displaced persons, in accordance with the Bank’s policy on involuntary resettlement, was to be prepared by the Government for the approval of the Bank.

c) Review by the Board of the 1995 Loan

49. The comments by the Executive Directors of the Board in their meeting held on 7 December 1995 were supportive of the Project. In the light of subsequent developments, the statement made by one of the Directors was of particular interest.

‘She noted that the Bank and the Government had included community participation in the planning of the Project. This was important for long-term sustainability because it developed a dialogue with the community for continued education in development of standards on health and sanitary conditions.....She hoped that the Bank would continue to work with the Government to ensure community participation and education....’

50. It should be noted that the community mentioned in the statement was not the community affected by the treatment plant. Because at that time, the site of the plants or plant had not yet been selected. One wonders if the words spoken at the Board meeting were followed in dealing with the community in Klong Dan, the situation would have been different.

d) Events which occurred before the 1995 Loan Signing

51. The Loan was approved by the Board on 7 December 1995 and the Loan Agreement was signed on 31 July 1996. During this period the Government of Thailand decided to change the construction method of laying the sewer pipes, resulting in substantial increase in the cost of the Project (from \$507 m. to \$948 m. see paragraph.28 of the RRP for the Supplementary Loan dated 3 December1998).

52. The substantial increase in the cost of the Project calculated at the time would be about 87% of the original estimate. It was not possible for the Panel to find out whether there was any review of the Project before the signing of the Loan Agreement and, if indeed there was a review, at what level such a review was carried out. The impression obtained by the Panel was that since the Government was willing to cover the cost increases, there was no need for the Management to be involved. (see paragraph 3, PAI No 5.1, issued June 1995)

53. This was the first important change in the Project in respect of cost and construction technology. While it can be argued that there was no change in the original objectives and the coverage of the Project, this change has set the pattern to be followed by other changes to come.

54. It is also pertinent to ask whether such drastic change could have been anticipated at the feasibility study and the appraisal stage.

e) Project Implementation Stage

55. The subsequent changes in the number and sites of the treatment plants and the number of turnkey contracts had evolved during the preparation of the bidding process for the turnkey contracts.

56. It appears that changes were made with respect to the number of contracts and the number of sites due mainly to the consideration of land availability. (The Panel has not been able to verify this point for certain.) Bidding documents were amended by the insertion of an addendum to permit alternative bids for a single plant site. The addendum was not approved by the Bank as required by the Bank procurement procedures. This prior approval procedure would give the Bank an opportunity to consider the implications of such changes. The Panel was told that the procedural defect was cured by the subsequent approval by the Bank of the turnkey contract as a whole.

57. Many of the complaints of the Requesters can be traced to the changes occurring during this period. As a result of these changes, which were approved by the staff of the Bank, the staff also was required to undertake certain responsibilities resulting from such changes, in particular, due to new policies and policy updates introduced since 1997.

58. It is not clear to the Panel by the review of the available documents and through the few interviews with the Bank staff and managers before the inspection process was suspended, whether these changes were reviewed by managers or the Management of the Bank, as is required by the procedures for major changes in a project. The Panel was told that these changes, embodied in the turnkey contract bidding documents, (the Panel was not able to have access to the bidding documents) were reviewed by the Procurement Committee, whose major concerns were, among others, the compliance of procurement requirements and the sufficiency of competition. (In this regard, the number of bidders dwindled from 14 to 2. Finally only one bidder submitted the price bid and was awarded the largest single turnkey contract ever financed by the Bank.)

59. The lack of clear evidence on the issue of sufficient attention by the senior level of the Bank managers including the Management, raised the important question if the necessary experience and policy guidance were made available to the staff whose focus would be understandably different from that of the senior officials of the Bank.

f) Introduction by the Bank of various OMs since 1997

60. Since 1997, a number of OMs have been issued or updated to deal with issues which by then became the common concerns of the development community. These included issues on environmental matters, social dimensions of development,

resettlement of displaced people, participation by the communities affected by the projects or programs financed by the Bank, greater openness and disclosure of information and good governance in terms of transparency, accountability, predictability and participation. Responsibilities and requirements are placed on the staff of the Bank under such policies.

61. The compliance with the policies and procedures issued by the Bank before the 1998 Supplementary Loan was approved by the Board became a most crucial issue in the context of the complaints raised by the Requesters. This will be reviewed below.

g) Appraisal of the 1998 Supplementary Loan and the Amendment to the 1995 Loan Agreement

- **1998 Supplementary Loan.** As a result of the Asian financial crisis, and the accompanying budgetary constraints of the Government, it was unable to finance the completion of the Project. A Supplementary Loan was appraised and later submitted to the Board for approval in December 1998. The appraisal of the Supplementary Loan covered the subject matters of cost overrun, different options for the Project, and the analysis of the economic and financial justifications for the revised Project. From the point of view of the Requesters, at issue was whether the Bank had met the requirements for the appraisal of the Supplementary Loan as stated in the relevant OMs. The Management adopted a narrow interpretation of the OM saying that the limited coverage of the appraisal was appropriate, because it had met the requirements set forth in the format stated in the Doc. Sec. M48-89, 12 September 1989.

In this particular incidence, the Panel is of the view that the Management had taken a position which is unnecessarily narrow. With the issuance of the new OMs and the cumulative changes occurred in the Project since 1995, it is imperative for the Bank staff and Management to review all important issues. The judgement to ignore other important issues in the appraisal was not a sound judgement expected from a respected professional organization such as the Bank.

- **Amendment to the 1995 Loan Agreement.** The original Project Description of the Project was set forth in the Schedule 1 to the 1995 Loan Agreement. In the submission to the Board for the review of the Supplementary Loan, it was indicated in the Preamble section of the draft Loan Agreement that the original Project Description was amended.

The Panel, however, was told by the Bank staff that there was no such amendment. This raised the question whether the Board was misled, or indeed, there was a problem of decision-making process in the Bank; neither of which is a desirable development for the Bank.

h) Review of the Supplementary Loan by the Board

62. During the Board discussion, certain Directors of the Board raised questions concerning the procurement process and the issues regarding the changes in the Project

and how such changes should be reviewed by the Bank staff and by the Board. The then Director of PWD, a manager of the Bank concurred with the views of a certain Executive Director, who raised the issue, by saying *'that a change in a project that has such major cost implications should not be treated as matter of administration. This really needs a detailed assessment to determine whether the Project, in its revised shape, is still viable and can be supported by the Bank.'*

63. The Panel shares and agrees with this view.

i) Subsequent Actions by the Bank

64. The community at Klong Dan raised the issues concerning the siting of the treatment plant and the impacts of such a plant on the community. The expression of such concerns has become more vocal and direct. Since then, the Bank has taken a more proactive role and has initiated a series of actions in order to have productive dialogues with the community people and to address their concerns.

65. The Panel found, in the absence of evidence to the contrary, that the staff of the Bank began to have such dialogue with the local community since 2000. Before such time, the staff was relying on the Project executing agency to deal directly with the people in the community. This reflected the perception of the staff that such activities were the responsibility of the agency and the interference of the Bank staff would cause problems for the agency. In the view of the Panel, the staff were required by the policies and procedures of the Bank to have undertaken a more proactive approach in dealing with the community and resolve certain issues earlier. The Panel is in agreement with the Bank, which indicated that the consultation process with the community could have been better.

2.3 Concluding Remarks on the Management of the Project by the Bank

66. There have been several key events of the Bank's action or in-action which determine the course of development of this Project. The Panel believes that the staff and the managers have acted in good faith in carrying out their responsibilities. The important thing, however, is that such developments have affected the people who filed the complaint.

- The first key event is that both the feasibility report and the subsequent Bank report on the outcome of appraisal contained several uncertainties which resulted in the incompleteness of meeting the requirements of the Bank's policies. Examples can be found in the postponement of the site decision to the bidding stage. Meeting the requirements relating to environmental, social, resettlement considerations was, therefore, postponed to a later stage. Unfortunately, the necessary follow up actions were not carried out. If the site had been determined earlier at the feasibility or appraisal stage, the applicable EIA, SIA and resettlement plans probably would have been done in accordance with the Bank's policy requirements. The postponed decision on the site, however, does not relieve the Bank from carrying out its required responsibilities.

- The second important event is the acceptance of an 87% cost increase before the Loan signing and other important changes as matters of routine under the administration of the Loan. This attitude continued throughout the Project implementation. Be it the change in the number of turkey contracts, the number of treatment plants, the site of the plant, etc., these cumulative changes did have impacts on the people who have been affected by these decisions. Even if all the decisions were the right decisions, the Bank should have carried out its responsibilities resulting from such changes. Examples can be found in other sections of this Report.
- The third key event is the in-action on the part of the Bank when the opportunity presented itself for the Bank to take a comprehensive review of the Project at the stage of the Supplementary Loan appraisal. The narrowly focused appraisal did not cover the pertinent issues raised by the Requesters later. This was a missed opportunity indeed.
- The fourth event of in-action permeating throughout the Project cycle is the lack of proper understanding of community participation. The concept of participation, which became the key underlining factor of the complaint, covers all areas of their concern. eg. environmental impact, social impact, resettlement considerations, and later, mitigation and compensation package formulations.

67. It is not the intention of the Panel to question, ex-post facto, the justification of the decisions made by the Bank over time. They could be justified, as indeed the Bank has tried to justify them in the Management Response. The fact remains that in making those decisions the Bank needs to follow up with the requisite actions specified in its operational policies and procedures.

3. Report of compliance in specific areas

68. In this section of the Report, the Panel will review the specific issues raised by the Requesters. The Panel has examined the statements put forward by both the Requesters and the Bank, checked such statements against the relevant policies and procedures of the Bank, taken into account other sources of information and come to a considered opinion on each of the issues raised.

69. As indicated before, certain findings of the Panel are subject to changes, pending the availability of more relevant information.

3.1 Supplementary Financing of Cost Overruns

70. The request for inspection (5 April 2001) alleges violation by the Bank of the policy on Supplementary Financing of Cost Overruns (OM 13 BP/OP, issued 12 December 1995) by the *'failure to effectively reappraise at the time of refinancing and the decision to instead rely on outdated information'*.

71. In the Response to the Request (24 May 2001, paragraphs 25-26), Management argues that OM Section 13 BP/OP *'should be read in the context of the policy papers on which it was based'* and refers to Doc. R115-83, Revision 1, Final, Review of the Bank's Policy on Supplementary Financing of Cost Overruns of Bank-Financed Projects, 29 November 1983 and Doc. Sec. M49-89, Simplification of Board Documentation for Supplementary Loans, 12 September 1989. Management quotes from these documents to support its claim that *'the reappraisal is very much focussed on the financial aspects and the Project scope and design are reviewed only to confirm that the Project is still viable and that the cost overrun cannot be avoided by changes in scope or design.'* Management thus takes a very narrow view of the purpose of the reappraisal referring to an indicative format for the RRP for supplementary loan proposals attached to the 1989 document.

72. It was noted by the Panel that some staff during interview also held the view that a 'cost overrun' only referred to the increase in the Bank's financing of the Project and that if the government would finance the increase in costs this would not be interpreted as a 'cost overrun.' This view was not supported by all staff and runs counter to the definition of 'cost overrun' in OM 13, 12 December 1995 which states (paragraph 2) that a *'cost overrun refers to the excess of the foreign exchange and/or local currency expenditures actually incurred or expected to be incurred by the borrower over the corresponding project cost estimated at appraisal.'*

73. In respect to the need and scope of a reappraisal for a supplementary loan, OM 13 BP, 12 December 1995 states (paragraph 1) – *'Financing of cost overruns will require reappraisal of the project concerned'*. This is supplemented by the OP of this section which states *'The procedure for processing a supplementary loan, whether by additional financing or by reallocating funds from other Bank-financed projects, is similar to that for new loans, and includes reappraisal of the entire project.'*

74. In the view of the Panel, OM 13/BP/OP clearly supercedes the 1983 and 1989 documents. Elaboration of a reappraisal of the 'entire project' is found in Bank

Operational Missions OM 32/OP 12 December 1995 (paragraph 28) where it states that *'as in the case of an appraisal mission, the reappraisal mission is required to obtain all the necessary information to analyze the technical, economic, financial, legal, institutional, social, environmental and other aspects of the revised project.'* This interpretation of the need for a reappraisal of the entire project at the time of a proposal for a supplementary loan was confirmed by relevant staff of the Bank during interview.

75. Thus the Panel is of the view that in not carrying out a reappraisal of the entire project for the supplementary loan proposal there was non-compliance by the Bank of OM 13/BP/OP, 12 December 1995. This omission became a crucial factor from which other consequences followed.

3.2 Bank's Operational Missions

76. The Requesters claim that *'neither the 1998 RRP nor the supplementary loan documentation contain any significant analysis of the technical, economic, social or environmental issues that are relevant to the supplementary loan agreement'* and that this is in violation of Bank's Operational Missions OM 32 BP/OP, 13 January 1997. This has a similar genesis to the claim of violation of the policy on Supplementary Financing as in the previous section in that it refers principally to the lack of reappraisal.

77. In its Response (paragraph 27), Management agrees that *'the focus of a reappraisal in the case of a major change in project scope [] is wider than for a reappraisal in the case of a cost overrun'* but that as there was no major change in project scope a full reappraisal was not necessary.

78. Paragraph 29 of OM 32 BP/OP, 13 January 1997, states that *'a reappraisal mission is sent when substantial or basic changes have become necessary in the scope or implementation arrangements of an approved project or where the cost overruns are incurred in its implementation'* and as indicated in 3.1 it goes on to outline the scope of the reappraisal which would include the broader parameters.

79. Thus for the same reasons the Panel finds that the Bank did not comply with the policy on Bank's Operational Missions OM 32 BP/OP, 13 January 1997.

80. The Response by Management also highlights an issue of judgement by the Bank, which had continuing ramifications for the way in which this project was managed throughout this period of the supplementary loan proposal. As is pointed out in the Overview, the growing number of changes in the project – the number and location of the plants, the number of turnkey contracts, the construction technology for the pipes, the treatment technology at the plant, the significant cost overrun – were all considered technical changes and not a major change in scope of the Project. It can be argued, however, that the cumulative nature of the changes did in fact constitute a major change in the Project; in other words that the whole was greater than sum of the individual parts.

81. While this point may be a matter of contention, what is clear is that according to Project Administration Instructions PAI 5.05, issued June 1995, (paragraph 4) on Changes in Project Scope or Implementation Arrangements *"a major change is one that substantially affects the projects objectives, components, costs, benefits, procurement or*

other implementation arrangements'. In the table attached to the paragraph *'a major change is defined as any change in Project cost exceeding 10 per cent.'*

82. The lack of recognition that even by this narrow definition, a major change in the Project had occurred also contributed, in the Panel's view, to a non-compliance of OM 32 BP/OP.

3.3 Environmental Considerations in Bank Operations

83. In the request for inspection, there are a number of assertions of violation of the Bank's environmental policies. In summary these relate to the:

- incorrect categorization of the Project
- failure to carry out an environmental impact assessment (EIA)
- failure to consult local people at the Klong Dan site
- failure to circulate the SIEE/SEIA* to the Board 120 days prior to consideration

84. In their Response, Management argued that in view of the *'environmental degradation of the general area of Samut Prakarn due to the industrialization and extensive shrimp farm development along the coastal area, together with the consequent destruction of the mangrove area [the] Project was not classified as environmentally sensitive. Accordingly an EIA was not required.'*

85. In the Panel's view the key to all the allegations of violations of environmental policies lies in the Bank's initial categorization of the Project. Environment Consideration in Bank Operations OM 21, 21 December 1992 (paragraph 5) outlines the process of categorization of projects. *"Projects are screened for their expected environmental impact and assigned to one of the following categories:*

Category A: EIA is required

Category B: Although an EIA may not be required, an Initial Environmental Examination (IEE) is required

Category C: No EIA or IEE is normally required

86. Projects under environment Category A and selected projects** in Category B are normally referred to as Environmentally Sensitive projects.

87. As a consequence of this categorization a number of specific actions follow.

- *'SEIA or SIEE should be submitted by the projects Department concerned in consultation with the OENV and with approval of Management, to the Board 120 days before the Board's consideration of the project'* (paragraph 22);
- *'The Bank requires the borrower to take the views of affected groups and local non-governmental organizations into account in the preparation of environmental assessment reports'* (paragraph 22); and

* Summary Initial Environmental Examination/Summary Environmental Impact

** Such as those involving deforestation, loss of biodiversity, settlement/resettlement issues or the processing or handling of toxic and hazardous substances or their disposal.

- *'As early as possible the project staff should request the borrower's permission for the Bank to release the SEIA/EIA or SIEE/IEE to the Board, NGOs and the public.'*

88. OM 20/OP, 7 January 1997 came into effect during the implementation of this Project and thus would have been applicable at the time of the supplementary loan. This OM confirmed the requirements of the 1992 policy.

89. Wastewater treatment systems are widely recognised as having dual environmental implications. As wastewater disposal systems, they have undisputed environmental benefits. However, they also are identified, as evidenced by the need for strict pollution licenses in most jurisdictions, as an activity with a significant potential to harm the environment through the disposal of the effluent and management of sludge and odor.

90. At the time of suspension of the inspection process, the Panel had been unable to verify the Bank's assessment that this is a "good environmental project" but acknowledges that, given the reports on the present state of the environment of Samut Prakarn province, at a conceptual level there is prima facie evidence to support this contention. None-the-less, the Samut Prakarn Project is a very large wastewater treatment facility by any standards. The fact that it is situated in an already significantly environmentally degraded area with an undisputed need for an appropriate wastewater facility, cannot detract from the reality that large structures of this nature do have other impacts.

91. At informal interview Bank staff indicated that, if this project were being assessed today, it would be categorized as Environmentally Sensitive (ES), either as Category A or B1. However it was said that because in 1995 there were only very few staff in the environment section of the Bank the Project was categorized as B. It is not the Panel's intention to apply 2001 standards to the situation in 1995. However, the Panel is of the view that even at the time of appraisal, this Project should have been categorized as ES. In that event, a number of requirements, including an EIA for the specified project including consultation with the local community, would have logically followed.

92. As it happened, the original feasibility study did contain an IEE on the 13 options for the Project. This IEE concluded that *'a more detailed EIA for any selected strategy option is recommended'* and in fact an EIA, albeit rather superficial, was carried out on the preferred option as reported in the RRP for the 1995 Loan. Subsequently, when as a result of the bidding process an entirely different location for the treatment plant emerged, no new EIA was done. Despite the IEE recommendation for a more detailed assessment, staff pointed out that this was only a feasibility study and that in their judgement, an EIA was not necessary because the Project was not categorized as ES.

93. A further complicating factor was that this was a turnkey contract and in the Bank's view the EIA was the responsibility of the contractor. The EIA appears to be interpreted as a continuing process rather than as a single event early in the project cycle which can influence the project design. The Panel could find no evidence that the EIA was ever done but instead an EMP has emerged late in the cycle seriously limiting the potential to have any positive impact on the design of the Project.

94. Thus the Panel concludes that the original categorization of the Project lead to a number of subsequent decisions which have resulted in non-compliance with the Bank's policy on Environmental Considerations in Bank Operations OM Section 21, 21 December 1992 and the succeeding OM 20/OP, 7 January 1997.

3.4 Involuntary Resettlement

95. The Requesters claim that the Bank has violated *'both the World Bank Involuntary Resettlement Policy and the ADB Involuntary Resettlement Policy'**. This results in a range of complaints, e.g.: *'The Bank has failed to honor its obligations regarding resettlement because no social impact analysis report [] was done before construction of the project commenced. There was no resettlement plan, despite this being required by Bank policy as a condition of appraisal. Neither was there any consultation or discussion with the community on the matter. There were no socio-economic surveys done of the population affected by the project in Klong Dan, despite requirements that such surveys "be conducted as early as possible." Nor have the full livelihood impacts been identified and included in the total cost of the project.'*

96. In the Response to the Request (paragraph 34), Management argues regarding the first loan that *'the World Bank's Operational Directive on Involuntary Resettlement is not, and has never been, one of ADB's operational policies and procedures and is hence not relevant in the context of an inspection.'* Management explains that rather the Bank staff instructions on involuntary resettlement (issued 15 February 1994) are relevant. These *'require the preparation of a detailed resettlement plan in case "large-scale population displacement is unavoidable"'. This was not the case here.'* It points out that nevertheless *'the need to minimise physical displacement of people had been a vital factor in identifying suitable general locations. This consideration also played a major role when the Klong Dan area was ultimately selected.'*

97. The Panel accepts the assertion of Management that the World Bank policy on Involuntary Resettlement has not been part of the Bank's operational policies and procedures. The Panel did not investigate the legal grounds for this assertion, since it would not affect the substance of the issue raised here. The Panel further observes that Management is correct in pointing out that the feasibility study of the Project (PPTA No. 2014-THA) did include a social impact assessment (Volume 2, chapter 35). In section 35.6 of the report potentially adverse impacts of the Project have been addressed, including the need for minimising relocation of people or pollution impacts of the centralised treatment facility (CTF). Out of the 13 options that were compared in the feasibility study, *'the Centralised option (with two CTFs) is the preferred option in terms of cost effectiveness and social impacts'* (volume 2, section 35.6.1). This is in compliance with paragraph 6 of the staff instructions on involuntary resettlement (issued 15 February

* The Requesters explain: *'At the time the first loan was approved, the ADB was adhering to the World Bank's OD 4.30 on Involuntary Resettlement. (The ADB policy was effective for projects approved after December 30, 1995; see para. 31 of R179-95, referring to staff instructions issued by the President in 1994 regarding WB policy). At the time the second loan was approved the ADB had adopted OM Section 50, issued on 7 January 1997. Both policies emphasize the importance of avoiding resettlement impacts as much as possible'*.

1994) that states that *'the mission leader [of the PPTA] should consider that resettlement be avoided or minimised.'*

98. The Panel questions the interpretation of Management of paragraph 4 of the staff instructions where the need for a detailed resettlement plan is linked to those situations that large-scale displacement is unavoidable. The Panel did not receive evidence indeed that the Project would result in large-scale displacement, but the loan agreement for the first loan does contain a clause (Schedule 6, art. 4) which states that *'if the acquisition of land for the purpose of the Project displaces any land owners or occupiers, the Borrower shall ensure that PCD prepares a resettlement plan in respect of such displaced persons, in accordance with Bank's policy on involuntary resettlement, for the approval of the Bank.'* Thus any, not just large-scale displacement, would in this case require a resettlement plan.

99. This raises the issue of how the Bank ensured itself that no people were displaced for the purpose of the Project. The Klong Dan site was not included in the 13 options that were compared in the feasibility study, nor was it included in the Social Impact Assessment (SIA) of the PPTA. It appears that the choice of the Klong Dan location for the CTF was largely defined by the availability of land under the turnkey contract that emerged from the bidding process. The Panel has no evidence that supports the assertion of Management that the need for minimisation of displacement of people also was a factor in the selection of the Klong Dan area. In the end, the Bank approved the turnkey contract, including the choice of Klong Dan as the site for the CTF, without conducting an Initial Social Assessment (ISA).

100. In its Response to the Request, Management further acknowledges (paragraph 35) that the Bank's Involuntary Resettlement Policy took effect as of 1 January 1996, and thus did apply at the time of approval of the supplementary loan. However, *the reappraisal for the supplementary loan focussed only on the financial aspects and design aspects as they related to the cost overrun.'* It is reiterated (paragraph 36) that *'a social impact assessment was carried out as part of the PPTA in 1994-1995.'* Management notes (paragraph 38) that the community liaison was the responsibility of the contractor, and *'both PCD and ADB acknowledge that this arrangement has not been effective'*. Further it is indicated (paragraph 39) that *'a suitable compensation plan'* will be considered by the PCD in relation to the economic exclusion zone *'in consultation with the affected fisherfolk'*.

101. The Panel notes that the Bank's policy on Involuntary Resettlement was *'applicable to all projects approved after 31 December 1995'* (R179-95, paragraph 45). This policy had been elaborated in OM Section 50, issued on 7 January 1997, well before the approval of the turnkey contract. The OM clearly states that *'an ISA is required for every development project in order to identify the people who may be beneficially or adversely affected by the project'* (OM Section 50/OP, paragraph 1). In the OM the scope of resettlement issues was broadened beyond the issue of displacement of people only. The OM states that resettlement needs to be part of project design *'if individuals or a community must lose their land, means of livelihood, social support systems, or way of life in order that a project might proceed,...'* (OM Section 50/BP, paragraph 2.iii). However, since the loan for the turnkey contract was approved before 31 December 1995, this OM was not yet applicable for this case.

102. In section 3.1 on the supplementary financing of cost overruns, the Panel expresses its view that the reappraisal for the supplementary loan for the Project should have covered all aspects of the Project. Such a reappraisal was to include a SIA in line with the Bank's policy on Involuntary Resettlement as well. The failure to comply with the Bank's policy on supplementary financing of cost overruns at the time of reappraisal for the supplementary loan therefore also led to a non-compliance with the Bank's policy on involuntary resettlement.

103. Referring to the requirements formulated in OM section 50, it is the finding of the Panel that the Bank failed to do an ISA and failed to do a resettlement plan that covered potential impacts of the Project on the livelihood of the local community. As a consequence, affected persons entitled to compensation and rehabilitation (OM section 50/OP, paragraph 6) were not identified and recorded as early as possible. Only in a very late stage of implementation of the Project, and after significant protests from the community, an awareness of the need for compensation for eventual negative impacts seems to have emerged.

3.5 Good Governance

104. The Requesters complain that they *'have not witnessed any element of good governance for the Project. Instead, the government and the Bank are trying to deliver an entirely different project, with a completely different location and design, than what was originally approved by the ADB Board and the Thai Cabinet.'*

105. In its Response to the complaint (paragraph 47), Management maintains that *'the combination of the wastewater treatment facilities from two into one did not fundamentally change the Project.'* However Management acknowledges that *'in retrospect, it would have been advisable to undertake the consultation process at an earlier stage. In this regard, ADB is supporting PCD to engage the community in a participatory process.'*

106. It appears to the Panel that Management is applying a rather narrow and legalistic concept of governance. The introduction to the Bank Policy on Governance reads *'from the Bank's point of view, governance is concerned directly with the management of the development process'* (OM section 54/BP, paragraph 1; issued 13 January 1997). On the definition of governance, it reads *'In essence, it concerns norms of behaviour that help ensure that governments actually deliver to their citizens what they say they will deliver'* (OM section 54/BP, paragraph 3). Then it is asserted that *'the bank has identified four basic elements of good governance: (i) accountability, (ii) participation, (iii) predictability, and (iv) transparency. These elements of good governance are closely linked and mutually reinforcing.'* (OM section 54/BP, paragraph 4).

107. From the interviews with Bank staff as well as the Management Response it is very clear that the Bank has the opinion that the scope and objective of the Project did not fundamentally change. Right from the outset until the present, the essence of the Project has been to deliver a centralized wastewater treatment facility. As stated in the introduction section of the request for Inspection, the Requesters' argument is not to challenge *'the importance of having [] appropriate wastewater treatment facilities'*, but

'that the ADB and the Government of Thailand have failed to abide by the policy framework, a framework that was developed in order to try to protect community interests and the environment, and a framework that was supposed to ensure sound development decision-making.'

108. The Panel understands the complaint essentially to point out that the villagers of Klong Dan are confronted with the establishment of a CTF in their immediate vicinity, while both the type of plant and the location thereof were different at the time of original loan approval. The issue of contention is not so much whether a fundamental change occurred in the Project, but rather the way in which Project changes were handled, in short the governance process.

109. In this respect the Bank clearly acknowledges that consultation processes did start too late. The governance policy of the Bank however does not speak of consultation, but rather of participation as a basic element. *'Participation implies that government structures are flexible enough to offer beneficiaries, and others affected, the opportunity to improve the design and implementation of public policies, programs, and projects'* (OM Section 54/BP, paragraph 7). The Panel did not obtain evidence that the Requesters and the community of Klong Dan were given such an opportunity. The current efforts for community consultation are too late in the sense that implementation of the Project is in a rather advanced stage. The Panel therefore concludes that the Bank failed to ensure that the basic element of participation was properly taken care of. As quoted above, the OM states that the four elements of good governance are closely linked and mutually reinforcing. This leads the Panel to conclude that the Bank failed to comply with its policy on Governance.

3.6 Incorporation of Social Dimensions

110. In the request for inspection it is alleged that the Bank has been violating its policy on the incorporation of social dimensions in Bank operations in a number of ways. *'The Bank has failed to adequately assess the social impacts of the project in Klong Dan, and has failed to undertake an initial social assessment (ISA) of the project area as required by the Bank's policy. [] The policy also states that there should be reviews of the social impacts during the early years of project implementation, .. [] The policy further notes that the identification of both beneficiaries and those who will be adversely affected must continue throughout the project, ... [] The violations of this policy have led to poor project planning and design, and have deprived the affected village people of their right to participate and have their concerns addressed.'*

111. Management reiterates in its response (paragraph 44) that a Social Impact Assessment (SIA) was carried out under the feasibility PPTA, and that *'the project preparation was based on the findings of this assessment. [] After selection of the final site, the detailed design of the plant was carried out. In the course of the detailed design, adjustments were incorporated to address concerns that had been raised by the community and at the independent reviews in 1998 and 1999. Now that the detailed design of the treatment plant is substantially complete (90 percent), a comprehensive assessment of the environmental impacts and related social impacts, based on earlier*

work, can be completed. The ongoing SSTA for Community Awareness and Development also aims at assessing and mitigating social impacts.'

112. The Panel observes that the Bank's policy on the incorporation of social dimensions in Bank operations (OM Section 47, issued 7 January 1997) does have some overlap with its policy on involuntary resettlement. Both policies require an ISA for every development project (cf. OM Section 47/OP, paragraph 6).

113. The Policy on incorporation of social dimensions not only requires an identification of potential beneficiaries and people likely to be adversely affected right at the stage of project identification, but requires this to '*continue with more and more refinement in the succeeding stages of project processing*' (OM Section 47/OP, paragraph 5). Annex 5 of the Management Response indicates that consultations by the executing agency and Klong Dan residents happened for the first time in March 1999.

114. The Mid-Term Review of the Project reflects the concerns of Bank staff on this issue at that time. '*In response to recent attention to the Project by the local community in Samut Prakarn, the Minister has also requested that an independent monitoring committee, referred to as the MOSTE Advisory Committee (MAC), be established to provide another independent review of the Project. [] Once again, the Mission noted the potential for further delays while the MAC conducts its investigations, possibly leading to contractual concerns.*' (Aide Memoire of Mid-term Review Mission, 7-18 June 1999, paragraph 32).

115. The same document also reports on the intention to strengthen the Public Relations Sub-unit within the Project, '*to respond to recent community protests from the residents of Khlong Daan, adjacent to the treatment plant site, and from unlicensed aquaculture farmers who use the coastal area at the site of the proposed outfall. [] A number of other ongoing PCD investigations will help address and allay the concerns of the local community*' (Aide Memoire of MRM, paragraph 56). It is regrettable that the Panel could not verify the role of '*five representatives from the local community*' in the MAC.

116. At its Annual General Meeting in May 2000 in Chiang Mai, community concerns were directly addressed to the Bank. Only after that (22 June 2000) a special loan review mission met with the Klong Dan community, which raised awareness in the Bank of the importance of a presence at the community-PCD relations. Unfortunately the communication between these three stakeholders did not prove very fruitful. Only in the end of the year 2000 the Bank reacted to the rising tensions by commissioning the SSTA (TA-3517) on community assessment and development for the Project, to which the Management Response refers. This TA has not been concluded yet.

117. It is unfortunate that the Panel did not have the opportunity to investigate the issue of community consultation in greater detail by talking to the Requesters and the PCD. A major concern of the Requesters appears to be that the Bank persists in its failure to take community concerns into account. Considering the overall process of the incorporation of social dimensions in bank operations in the Samut Prakarn Wastewater Management Project, the Panel observes that the Bank has been rather reactive in this field. While the OM is clear that it commands an initial social assessment from the start of a Project, the Bank failed to do so. The omission of an ISA may have well contributed to a lack of

focus in the following rather unsuccessful efforts to include social dimensions in the implementation of the Project.

118. In section 3.4 of this report, the Panel explained how the failure to comply with Bank's policy on supplementary financing of cost overruns at the time of the reappraisal for the supplementary loan resulted in noncompliance with the Bank's policy on involuntary resettlement. For the same reason the Panel concludes that the Bank did not comply with its policy on the incorporation of social dimensions (OM Section 47, issued 7 January 1997) in Bank operations.

3.7 Benefit Monitoring and Evaluation

119. The Requesters claim that the Bank has violated the Benefit Monitoring and Evaluation Policy OM 22, 7 January 1997 by *'failing to evaluate the socio-economic status of the affected community, and by insisting, without proof that their livelihoods will not be adversely affected by the discharge of up to 1,800,000 cubic meters of wastewater per day'*.

120. In their Response, Management states that *'a benefit monitoring and evaluation program is built into the Project. As stated in the RRP for the original Loan 1410-THA (paragraph 59) in 1995, the baseline conditions will be established at the time of commissioning of the treatment facilities. To the extent possible much data has already been collected on the social and environmental profile of the Samut Prakarn province. On the social side detailed information on the population and health profiles are available.'*

121. The OM policy referred to by the Requesters states *'Benchmark information comprises quantitative and qualitative information about important social and economic characteristics of individuals and groups affected by the proposed project [] Benefit monitoring makes available information that will help in assessing [] whether adverse effects of the Bank intervention have been adequately mitigated'* (paragraph 3).

122. The OP states *'where possible STPs [socio-technical profiles] are prepared either during project formulation or prior to the approval of the loan by the Bank. In projects where it is not possible to prepare an STP before the approval of the loan, the STP would be prepared during the early stages of project implementation prior to the preparation of the detailed engineering design'* (paragraph 4).

123. The Requesters' opinion that the 'monitoring' process also refers to those negatively impacted by a project as well as the beneficiaries is also the view of the Panel. The fact that, with the decision to locate the treatment plant in the Klong Dan area, there exists another group of legitimate stakeholders who potentially could be adversely affected by downstream impacts of the Project, appears to have escaped attention until very late in the process, indeed not until the affected community started voicing their concerns.

124. In terms of the Management's view of the benefit monitoring, there is prima facie evidence to support the claims made in the RRP for the supplementary loan that the Project *'will directly benefit about one million residents, as well as businesses, industries,*

and institutions who will gain from better health and welfare arising from improvements in water quality and resource cost savings' (paragraph 26). This is not under dispute and the 'baseline conditions' to be established at commissioning referred to by Management in the first loan agreement (paragraph 59) relates to these upstream beneficiaries in the collection area of the Project.

125. The EMP released in August 2001 does contain benchmarks for monitoring the environmental and public health impacts of the Project. The OP states that '*Benchmark information should be prepared to the level of detail needed to appraise a project and to monitor it effectively*' (paragraph 5). The EMP only contains a brief overview of the socio-economic situation of the Klong Dan area and there is little evidence in the monitoring schedule of any intent for on-going monitoring of the socio-economic parameters of a community whose livelihood may potentially be impacted. As indicated in paragraph 3, the socio-economic profiles of an affected community need to be established at an early stage in the project cycle. Once the precise location of the treatment plant had been established, baseline data should have been obtained as soon as possible to set down reliable benchmarks as once a proposed facility starts to become a reality, the baseline data can start to shift quite dramatically.

126. While the Panel recognizes that efforts have been made at a late stage to establish reliable benchmarks for a monitoring program, it has to conclude that this is not fully in compliance with the spirit of the policy as laid down in OM 22, 7 January 1997.

3.8 Economic Analysis

127. The Requesters stated in the request dated 5 April 2001 that due to the significant cost increases, before the supplementary loan was submitted for the approval of the Board, '*It was necessary in this case to conduct an accurate economic analysis prior to the issuance of the new loan, and this was not done, in violation of OM Section 36, issued on 12 November 1997.*' The Request also mentioned that certain intended users would not be willing to pay the treatment charges. It also cited the views of several academics raising questions about the capital and operational costs of the Project and mentioned that cheaper alternative projects should be considered. In summary, the Requesters questioned the Project can be economically justified.

128. The Response of the Management dated 24 May 2001 stated that the Bank had used the same 1995 criteria in assessing the economic justification of the Project in 1998, and the cost increases had been taken into account in the economic analysis of the supplementary loan. The Response mentioned that even though the costs had increased, due mainly to the change in the installation of the sewer pipes from above to underground method and the change in the specification of pipe coating, the assumed benefits to the Project remained unchanged. The staff used 1998 prices to analyze both the revised costs and the estimates of the benefits.

129. The Panel found that in reviewing the economic justification of the Project, the staff had complied with the requirements of the Bank's policies and procedures. The assertions referred to by the Requesters based on the statements of certain intended users

and academics would not basically alter the conclusions reached for the economic justification of the Project.

130. In fact, it could have been argued that at the time of the reappraisal of the Project the costs already spent on the Project should be treated as sunk cost for the purpose of economic evaluation. This could result in a higher Economic Internal Rate of Return. In this case the staff did perform the required tasks and the conclusion reached was a professional judgement of the staff. In the absence of any alternative study to refute the work of the staff, the Panel is not in a position to dispute the professional judgement of the Bank.

3.9 Confidentiality and Disclosure

131. The Requesters claim that *'local people have never received from the ADB or Government of Thailand detailed information about it [the project]'*. They claim that the Bank did not pay attention to its Policy on Confidentiality and Disclosure. *'Despite the need for the village people to be adequately informed of the project, the exclusion of local people from participating in the project and the failure to provide local people with information about the project shows that the Bank's staff did not heed this policy'*.

132. The Management response states that *'the disclosure policy categorizes what documents can or cannot be disclosed to interested parties upon their request'* (paragraph 46). The Bank maintains that it has made documents available upon request and that it has explained the reasons in case of nondisclosure. *'The inspection request fails to specify instances where ADB supposedly withheld information that should have been provided under the disclosure policy'*.

133. It appears to the Panel that the Bank's position on this is not unreasonable. The Panel has not been able to follow up with the Requesters on the issue of specification of instances that the Bank supposedly withheld information. Subject to verification of such issues, the Bank did comply with its confidentiality and disclosure policy (R134-94, 18 August 1994).

3.10 Internal Audit Policy

134. The Requesters claim that *'the ADB should have conducted a more careful internal audit of the "reliability and integrity of information" about the Samut Prakarn project'*. In this context they state that the Bank's Policy on Internal Audit *'was not adequately complied with by Bank staff'*. More specifically, the Requesters refer to paragraph 3 and 4 in the Policy. *'The Bank will utilize an internal audit function through the Office of the General Auditor (OGA) to assess the reliability and integrity of information about a project; to verify compliance with Bank policies, procedures, guidelines, agreements, laws and regulations; and to recommend improvements in the policy. (BP paragraph. 3). The OGA is also tasked with ascertaining "compliance by borrowers/executing agencies with the Bank's loan and TA agreements as well as other regulations and procedures." (BP paragraph 4).'*

Management responds by confirming that *'the Office of the General Auditor may select any project for purposes of an audit'*. It further notes that *'ADB has also established a formal channel through which local communities can request an independent review or inspection of ADB's role in a project, such as this one, irrespective whether such audit has been conducted. It should be noted that complainants did not raise any specific issue with respect to ADB's Internal Audit Policy.'* (paragraph 53).

135. The Bank's policy on internal audit is found in OM Section 51, issued 16 October 1996. The Panel observes that the policy is clear that recommendations of the OGA will concern *'improvements relating to efficiency, economy, and effectiveness in the use of Bank resources'* (OM Section 51/BP, paragraph 3). In that way the scope of responsibility of the OGA is more narrow than the Requesters suggest. The Panel agrees with Management that other channels are available to address the concerns raised by the Requesters. The Panel refers to the role of the Operations Evaluation Department (OED) within the Bank.

136. In general, the Panel assessed that loan review missions systematically reported on the compliance with the covenants of the loan agreement. It is common knowledge that the OGA did conduct an internal investigation on the allegations of corruption in the Project. However, issues relating to the anticorruption policy of the Bank are outside the scope of the TORs of the Panel. Since a report on the internal investigations has not yet been published, the Panel decided not to comment on corruption investigations.

137. Subject to verification, the Panel therefore concludes that Bank staff did comply with the Bank's Internal Audit Policy (OM Section 51, 16 October 1996).

3.11 Other Issues

138. In the TORs of the Panel a number of Laws of Thailand have been listed that the Panel might wish to have a look at to the extent directly relevant to the Bank's compliance with its operational policies and procedures. The Requesters had raised this issue in their request for inspection. Once the Panel did establish that there has been noncompliance with a number of the Bank's operational policies and procedures, the Panel observed that there was no need to pursue the same issues under any of the Laws of Thailand.

139. Furthermore, a number of the Bank's policies cited in the request for inspection have been declared outside the scope of any inspection of the Project.

Urban Sector Strategy

140. The Urban Sector Strategy dates from July 1999, which is after the approval of the original and the supplementary loan. It is not a policy that has been approved by the Board of Directors, nor is it in the OM of the Bank. The Panel therefore did not look into this issue.

Policy on Fisheries

141. The Bank's Policy on Fisheries R 195-97 was approved by the Board on 25 September 1997, which is well before the approval of the supplementary loan. It has not been incorporated into the OM and thus it had been deemed outside the scope of the Inspection. However, during interviews with Bank staff it was clear that once approved, it is common practice for staff to implement those policies. Thus the Panel has considered it appropriate to make some comments on the issue as raised by the Requesters.

142. The Requesters claim that *'the change of location was done without regard to the concerns of the coastal communities and with insufficient analysis of the impacts on coastal marine resources and fisheries.'* Thus they claim that the Project contravenes the objectives of the Bank's policy on Fisheries.

143. The Response from Management argues that earlier studies have already indicated the diminishing productive capacity of the upper Gulf of Thailand due to past over-fishing, habitat destruction and water pollution. Thus *'contrary to the assertion in the inspection request, the Project will result in a significant improvement in the water and sediment quality in the upper Gulf of Thailand [] This will enable an increase in fisheries production throughout the upper Gulf due to improved water quality.'*

144. The policy states (paragraph 117) that *'The Bank finances many projects that impinge on water resources in the irrigation, drainage, hydropower and other sectors. It is important that, in formulating such projects, their effects on fisheries resources be thoroughly assessed, and that any potential negative impacts on these resources be identified, investigated and eliminated or mitigated [] in the future the Bank's Fisheries Specialists will be asked to review and comment on projects that are considered to have potential impacts on fisheries resources.'*

145. The prima facie evidence would support the contention that the Project has the potential to have an overall beneficial effect on the water quality of the upper Gulf of Thailand by reducing the diffuse source pollution. The fact remains that the marine outfall will in itself be a site of point source pollution with resultant effects on the aquatic biota in its vicinity and the potential for impact would have been apparent at the time of finalization of the Project design in August 1997.

146. There is no evidence that the Bank's Fisheries Specialists were consulted on this Project. The first indication of consideration of this issue is the commissioning of the Kasetsart University to conduct tests on the impact of reduction of salinity on mussels in March 1999, followed by the detailed EMP which was commissioned by PCD in June 1999 and included studies on the marine outfall. The EMP has only been finalized in August 2001.

Anticorruption Policy

147. The Requesters claim that the Project violates the Anticorruption Policy of the Bank in OM Section 55, issued on 20 July 2000. This OM Section has been based on the Anticorruption Policy (R89-98) that was approved by the Board of Directors on 2 July 1998, which is again before the approval of the supplementary loan for the Project. As in

the case of the Policy on Fisheries, the common practice in the Bank would have it that the Anticorruption Policy might also have been applied to the supplementary loan.

148. However in this case the Panel decided not to look into this aspect of the complaint, nor to make any comments on the issue. Since the Panel was aware of the concurrent internal investigation of the Office of the General Auditor, it has been the consideration of the Panel that two investigations of the same issue might be mutually counterproductive.

Poverty Reduction Mandate

149. The request for inspection claimed that the *'project will reduce income for tens of thousands of people and thus increase poverty, [] contrary to the Bank's poverty reduction mandate.'* With the BIC, the Panel assumed that reference was made to the Poverty Reduction Strategy (R179-99) which was approved by the Board of Directors on 9 November 1999, well after the approval of the supplementary loan. For this reason the Panel has not looked into the issue.

4. Assessment of Direct and Material Harm

150. In the request for inspection, the Requestors claim that *'as a result of the violations of the ADB policies [] a project is being developed that will have significant adverse impacts on local communities and the environment.'* In the testimonies from four local village people the consistent concerns are the threat to the fish production from increased salinity, from the effluent and from the potential for heavy metal contamination. One of the villagers also mentioned the potential for toxic odors.

151. The Panel has been seriously disadvantaged in making a fair assessment of the direct and material harm on the rights and interests of the Requesters, due to the Panel's inability to have access to the Requesters, the Project site and the experts in Thailand who have experience in this area.

152. The Panel notes that in the view of the Bank the benefits to the Samut Prakarn province from the Project are so significant that any negative impacts can be justified and that in any case, the Environmental Management Plan (EMP) prepared by the PCD contains all the necessary mitigation measures. However the EMP has only appeared very late in the process and it appears that consultation has not occurred with the local community either in the development of the EMP or with the review by the Independent Review Team (IRT). In the view of the Panel the local knowledge and experience of the community cannot be replaced by laboratory modeling.

153. The Panel is of the opinion that the early recognition and early involvement in project planning of those people who may be negatively affected is crucial for the avoidance, minimization and mitigation of potential impacts. The lack of opportunity for the Klong Dan community to participate in decision-making on matters which affect their lives and livelihoods has clearly resulted in anxiety and fear for their future and the future of their children. As one fisherman said in his testimony *'I am worried that our children will have nothing to live on'*. The Panel thus concludes that the Bank's inaction by not ensuring early community participation has resulted in direct harm to the community.

154. The Panel also is of the view that there are other direct and material adverse effects which have been or may be a consequence of the non-compliance with Bank's policies and operational procedures outlined in the previous section. These effects are on those fish farmers operating within and in the vicinity of the Economic Exclusion Zone (EEZ) and those people who live in the vicinity of the treatment plant.

a) Effect on fish farmers within the EEZ

By the establishment of the EEZ certain mussel farmers will be excluded from their usual fishing grounds and thus the existence of material harm to those people has already been acknowledged by the PCD. It is unclear how many are affected and it appears that the EEZ has been established without local consultation. The Panel was informed that reparation for some of these farmers had already occurred but has no evidence that the community has been involved in the negotiation process over the issue of compensation.

b) Effect on fish farmers in the vicinity of the EEZ

In terms of direct harm to the fish farmers in the vicinity of the EEZ, the potential impacts are from changes in salinity, or by contamination with pathogens or heavy

metals. While the EMP assumes as a result of modeling that there will be no impact beyond the boundaries of the EEZ, questions have been raised by the local community and by some technical experts. The Panel notes that the monitoring of contaminants will only be carried out by 3-monthly testing at stations within and at the edge of the EEZ with semi-annual reports to the appropriate authorities. The Panel could find no indication of any rapid response plan in the event of levels exceeding acceptable standards especially in terms of notification of local fish farmers. The risk of failure from anywhere within the system resulting in contamination extending outside the EEZ provides a further potential for material harm.

c) **Effect on local community near the treatment plant**

Odor: Odor from industrial activities can cause significant distress in communities and be a source of many complaints. The potential for odor impact from this Project has been acknowledged by the PCD with the provision for covers of the pre-treatment ponds. Even with covers it is acknowledged that odorous events could still occur. Thus the potential for direct harm to the community from impact of odor is already recognized as real.

Sludge Management: The process to be used for disposal of the sludge, which potentially contains heavy metals and other toxic substances, remains unresolved. This has been an on-going issue of concern in many of the Project reports. The EMP states that a master plan needs to be developed for a long-term sustainable solution but the TORs for such a study have only just been released. While it is said that the plant has a storage facility for 5 years there would appear to be some urgency to resolve this matter if an appropriate disposal method is to be in place within that time. The potential for an inadequate sludge management plan to impact on the local community is not insignificant.

Value of property: In the vicinity of the treatment plant, the value of property is likely to be adversely affected. The Panel has no means of assessing the impact on property values in the Klong Dan area but considers it as an area of potential material harm to the local community.

155. Thus the Panel concludes that the actual or potential for direct and material harm on the community of Klong Dan from the Project could have been minimized and even avoided if compliance with Bank's policies and procedures had been carried out at an early stage of the Project cycle with adequate assessment of social and environmental factors and appropriate participation by the community.

5. Conclusions and Recommendations

156. The Panel has not been able to complete the inspection process for the Project. A review of the inspection process is presented in a separate report, where the Panel formulates recommendations for consideration by the Bank that may be helpful for future inspections. Not being able to fulfil the expectations of all stakeholders at this stage is not conducive for the integrity of the Bank's Inspection Policy.

157. The Panel is aware of the severe limitations to the inspection process and that it does not have the full picture. Based on the limited information gathered and analyses done, the Panel has reached certain conclusions regarding the complaints submitted by the Requesters.

Findings on compliance

158. The Panel has found that there have been six cases of non-compliance by the Bank with its policies and procedures in processing and implementing the Project:

- Supplementary Financing of Cost Overruns
- Bank's Operational Missions
- Environmental Considerations in Bank Operations
- Involuntary Resettlement
- Incorporation of Social Dimensions in Bank Operations
- Governance

159. The Panel has found that there has been partial compliance with the Bank's policy on:

- Benefit Monitoring and Evaluation

160. The Panel also found that the Bank did comply with its policies and procedures on:

- Economic Analysis of Projects

161. Subject to further factual verification, the Panel finally found that the Bank complied with its policies and procedures on:

- Confidentiality and Disclosure of Information
- Internal Audit

162. In accordance with the TOR the Panel did not review certain other issues raised by the Requesters. These include the urban sector development strategy, the fisheries policy, the anti-corruption policy and the poverty reduction mandate of the Bank.

Findings on Direct and Material Adverse Effects

163. The Panel has been seriously disadvantaged in making a fair assessment of the direct and material adverse effects on the rights and interests of the Requesters, due to the

Panel's inability to have access to the Requesters, the Project site and the experts in Thailand who have done work in this area.

164. Despite these problems, the Panel has been able to ascertain the following:
- a) The rights and interest of the people with regard to consultation and participation have been adversely affected;
 - b) The rights and interests of the people whose livelihood depends upon the activities in the EEZ have been adversely affected due to being excluded from engaging in their economic activities;
 - c) The rights and interests of some of the people whose livelihood depends upon the activities in the vicinity outside the EEZ could also be adversely affected due to the potential problems caused by the dilution of salinity, release of heavy metals or other toxic materials;
 - d) The rights and interests of people who are in the vicinities of the treatment plant could be adversely affected by the odour, lowering property value and the potential problems caused by the existence of heavy metals, toxic materials and the management of sludge.

Recommendations

165. In order to establish an environment of trust with the people of Klong Dan it would be important for the Bank to acknowledge the noncompliance with some of its policies. The restoration of confidence, between the community on the one hand and the Executing Agency and the Bank on the other, requires mutual recognition that the process of consultation and participation needs to be improved.

166. It is imperative that negotiations in good faith be instituted as soon as possible with the Klong Dan community on:

- i) the degree and extent of actual and potential damages and appropriate and adequate compensation to those affected;
- ii) the remedial action programs for the immediate and longer term solutions;
- iii) the participation of the local community in the management and the operation of the treatment plant so as to minimize any future potential adverse effects on the community. Specifically, it would be useful to establish:
 - accurate baseline data for the social-economic parameters of the community so that impacts can be monitored through the commissioning and operation of the treatment plant;
 - mechanisms for meaningful community involvement in the risk assessment of future problems;
 - mechanisms for timely public notification of actual exceedances of limits for odor and effluent parameters so that appropriate action can be taken.

The Bank should be an **active participant** in the efforts mentioned above.

Request for the Suspension of the Loan Disbursement

167. Regarding the request for the immediate suspension of the Loan disbursement by the Bank for this Project, the Panel is of the view that at this stage of Project implementation, suspension should not be recommended. The Panel notes that the Requesters said that *'we have never challenged the importance of having an appropriate wastewater treatment facilities to help deal with the pollution problem in Samut Prakarn.'*

168. They challenged the location and the negative impacts associated with the new location. The Panel believes that with the remedial recommendations mentioned above fully implemented, and the adverse effects of the project mitigated in the manner satisfactory to the local community in Klong Dan, the disbursement under the Loan should not be suspended as requested.

Schedule 1 to 1996 Loan Agreement
Description of the Project

1. The objective of the Project is to improve the environmental quality and public health and welfare in Samut Prakarn Province through the provision of modern, reliable and cost-effective wastewater collection and treatment facilities, coupled with a program to provide improved environmental monitoring and enforcement and a program on industrial pollution prevention and clean technology transfer.
2. The Project consists of the following components.

Part A Wastewater Interception and Collection System

- i) approximately 90 km of trunk sewers and approximately 200 km of secondary sewers in total on the east and west banks of the Chao Phraya River;
- ii) connections to approximately 60,000 houses including replumbing of existing houses;
- iii) rehabilitation of approximately 25 km of existing combined and separate sewers;
- iv) approximately 150 lift and pumping stations for wastewater conveyance within urban districts;
- v) approximately 10 km of pumping mains for wastewater conveyance from sub-catchments within urban districts;
- vi) terminal pumping stations for wastewater transfer to central treatment facilities on each of the east and west banks of the Chao Phraya River
- vii) force mains for wastewater transfer to central treatment facilities; and
- viii) oxygen injection facilities at terminal pumping stations and key lift stations or other suitable corrosion protection

Part B Wastewater Treatment and Disposal Facilities

Construction of central wastewater treatment and disposal facilities on each of the east and west banks of the Chao Phraya River consisting of:

- i) in respect of the central wastewater treatment facility on the east bank of the Chao Phraya River, force mains for effluent transfer, an aerated lagoon system with a capacity of approximately 400,000 cubic meters per day (cmd) effluent to multiple shoreline outlets; and
- ii) in respect of the central wastewater treatment facility on the west bank of the Chao Phraya River, force mains for effluent transfer and an aerated lagoon system with the capacity of approximately 125,000 cmd

Part C Wastewater and Effluent Monitoring

Provision of equipment, materials and instrumentation and controls for wastewater and effluent monitoring (Including both permanent and mobile sampling and testing facilities)

Part D Industrial Pollution Prevention and Clean Technology Transfer

Provision of equipment and consulting services for the establishment of a unit within the PCD for the promotion of industrial pollution prevention and clean technology transfer, and the initiation and demonstration of industrial pollution prevention measures in selected industries

Part E Local and Overseas Training

Local and overseas training for selected personnel of PCD and other relevant agencies of the Borrower, and equipment and materials for the establishment of a training center within PCD.

Approved Project in 1998 Supplementary Loan RRP

Objectives and Scope

The main objectives of the Approved Project are to improve environmental quality, and public health and welfare in Samut Prakarn Province by providing modern, reliable and cost-effective wastewater collection and treatment facilities for the most developed urban and industrial districts in the province. To complement these facilities, programs are to be implemented to improve environmental monitoring and enforcement, as well as industrial pollution prevention and clean technology transfer.

The Approved Project consists of the following components:

- i) A wastewater interception and collection system comprising trunk sewers (about 90kms, and secondary and tertiary sewers (about 120km) on both banks of the Chao Phraya River; rehabilitation of existing combined and separate sewers (about 25km; and associated works;
- ii) Central wastewater treatment and disposal facilities with 525,000 cubic meters per day (m³/d) capacity;
- iii) Equipment and instrumentation for wastewater and effluent monitoring systems for both permanent and mobile sampling and testing facilities;
- iv) An industrial pollution prevention program;
- v) A capacity-building program for managers and senior technical and financial personnel, and training for technicians involved in wastewater collection and treatment operations supported by the establishment of an on-site training center

**Response to Request for Inspection
Samut Prakarn Wastewater Management Project
24 May 2001**

I. Introduction

1. This is in response to the letter dated 5 April 2001 from the Mayor of Klong Dan and two other Klong Dan residents to the Board Inspection Committee requesting an inspection of the above mentioned Project. For the information of the Inspection Committee, we attach a copy of our letters dated 21 December 2000 and 11 January 2001 (Annexes 1 and 2) responding to the complaints dated 27 November 2000 and 18 December 2000. For ease of reference, we have numbered the paragraphs of the inspection request; the paragraph numbers in the headings in Section III below refer to the paragraph numbers of the inspection request (Annex 3).

II. Project Description

2. The Samut Prakarn Wastewater Management Project (Project) is designed to improve wastewater management facilities in Samut Prakarn Province, Thailand, where water pollution poses serious environmental and health risks. The Project comprises

- Wastewater collection systems
- A central wastewater treatment plant, wastewater and effluent monitoring systems,
- A program for cleaner production for industrial efficiency; and
- Capacity building of government agencies responsible for managing wastewater.

3. The Project seeks to improve the quality of the province's environmental and public health profiles by providing modern, reliable, and cost-effective wastewater collection and treatment facilities. Complementary programs are being implemented to improve environmental monitoring and enforcement, as well as to promote cleaner production for industry. The specific benefits are:

- **Improved health and quality of life:** The Project will directly benefit 600,000 residents in the Project affected area (particularly the poor) by providing a cleaner environment and improved water quality.
- **Cleaner Environment:** The Project will remove about 72,000 tons of pollutants and about 90 tons of heavy metals from wastewater entering the Gulf of Thailand per year
- **Cost Recovery:** The polluter-pays principle will be implemented where industry, which causes 80 percent of the pollution will pay 80 percent of the clean-up costs.
- **Cost Saving:** It will be cheaper for industrial establishments to use centralized wastewater treatment systems.

4. Currently, the Project progress is over 70 percent and it is expected to be partially commissioned in June 2002. Annex 4 provides the key milestone events related to the Project.

III. Specific Response to the Inspection Request

A. Eligibility of the Requestors (Para. 1)

5. We note that the complainants are residents of Klong Dan municipality and tambon (subdistrict). However, the authority of the complainants to represent the Song Klong community, in adjacent Chachaengsao province, is not clear.

B. Analysis of Project Impact on Communities (Para. 2)

6. We should make clear that in preparing and implementing a project, ADB works in partnership with the governments of its developing member countries (DMCs). In this context, ADB has consistently sought to assist the Executing Agency, the Pollution Control Department (PCD) of the Government of Thailand, to identify and evaluate the environmental and social impacts of the Project on the communities concerned. Social and environmental studies were conducted as part of the project preparation for the general area, and further and more detailed studies have been carried out as the project design evolved, or whenever weaknesses were identified. Since the identification of the land at Klong Dan as the most appropriate location for the treatment plant site, PCD has arranged for the conduct of a number of environmental and social studies in the Klong Dan area, as well as other areas of the Project. The findings of these studies are incorporated into a draft environmental management plan (EMP). ADB has comprehensively and critically reviewed the draft EMP, and has assisted in arranging for a group of Thai academics to undertake a detailed review of the EMP in March - May 2001.

7. The complainants also allege that “ADB has failed to consult with us or build our knowledge into the project decision-making..”. Although initial consultations with the community were not extensive, since mid-1999, PCD, with ADB support, has been making serious efforts to consult with the Klong Dan community. Unfortunately, the initiatives have not been well received by the complainants. In July 1999, PCD attempted to consult with the Klong Dan community, but some members of the community became hostile and restrained both the Director General of the PCD, Project Director, and Project Manager from leaving for a period of over seven hours. This incident raised serious concern for the safety of PCD staff. In June 2000, one of the complainants (Mr. Chalao Thimthong) sought assistance from the Assembly of NGOs for the Protection and Conservation of the Environment and Natural Resources (PCENR). The president of PCENR subsequently contacted PCD and the ADB to discuss the issue. As a result, and with the agreement of the complainants, an ADB Mission, accompanied by the President of PCENR, visited Klong Dan in the same month to try and engage in a constructive dialogue to re-energize the consultation process. PCD did not join the site visit, but gave its consent for the Mission to proceed. Unfortunately, the Mission was unable to engage in constructive dialogue with the Klong Dan community because of the hostile atmosphere. However, the Mission took the opportunity to listen to the community’s concerns, which were conveyed back to the ADB. A further attempt was made to establish a consultation process in early August 2000, when the PCENR arranged a meeting in Bangkok between an ADB Mission, two of the complainants (Mr. Chalao Thimthong and Ms. Dawan Chantarahassadee), and members of NGO Coordinating Committee on Development (NGO COD). At this meeting, the complainants first stated that there was nothing further to discuss, as they had made their position clear – relocate the treatment plant. They further stated that they wanted the Prime Minister’s Office to arbitrate on the matter, addressing the key issues that they had brought to the attention of the Prime Minister. It was agreed however, that a continuing dialogue would be beneficial, and that PCENR would facilitate further discussion between the two parties. To defuse the highly charged situation, it was agreed that PCENR would meet with PCD and the community separately before bringing the two parties together. According to PCD, separate meetings were subsequently held, but the consultation process broke down due to two reported reasons. First, the complainants claimed that they could not trust PCENR. Second, the complainants saw no need for further dialogue, until the Prime Minister’s Office addressed their grievances.

8. In a further attempt to assist PCD in engaging the community in a dialogue, ADB approved a small-scale technical assistance (SSTA) for Community Awareness and Development in October 2000. The objectives of the SSTA are to: (i) establish an environment in which effective dialogue can take place; (ii) conduct a systematic analysis of social, economic, and cultural impacts of the Project; (iii) assist the PCD in setting up the framework for community participation in the Project implementation, and monitoring and evaluation; and (iv) set out strategies to mitigate adverse effects and maintain the living standards of those affected by the establishment of a buffer zone around the effluent diffuser of the proposed marine outfall. Three social development specialists were engaged to carry out the SSTA, and were mobilized in March 2001. Following some preparatory work, the SSTA team attempted to work in the Klong Dan community in March 2001. However, on 30 March 2001, one of the complainants (Ms. Dawan Chantarahassadee) told them to leave and not to return until after May 2001. This was followed up with a telephone call on the same day to the team leader of the SSTA by one of the other complainants (Mayor Narong Khomklom) who advised the team to comply with this request as he feared for their safety. This happened despite other members of the Klong Dan community expressing a willingness to work with the team.

9. A record of PCD's consultation with all communities within the project area, including the Klong Dan community, is attached as Annex 5. It should be noted that PCD has been sensitive to community concerns. To illustrate, three significant community concerns have been specifically factored into the Project's design. First, the original treatment plant layout was reconfigured so that the pretreatment ponds, potentially the most odorous component, have been located at the far south end of the site (the coastline) to minimize the risks for odor impacts on the Klong Dan community. Then, to further allay community concerns about odor, support columns have been added to the pretreatment ponds so that, if found necessary, covers could easily be installed in the future. Second, the plant design was modified so as not to divert the Klong Don (a canal which traverses the treatment plant site) which is used as a traditional access route to the sea by Klong Dan residents. Third, the construction method of the effluent outfall was changed from open-cut to tunneling in order to reduce disturbance of the seabed. In summary, it is not correct to say that "ADB has failed to consult with us or build our knowledge into the project decision-making.."

10. There are no grounds for "a fundamental reassessment of the project design and the flawed decision making that led to the relocation of this Project in Klong Dan..." as requested by the complainants. The Project's design parameters were reviewed by world-renowned independent experts in 1998 and 1999 (detailed reports are available for reference), and the Project design was certified as being appropriate for its objectives (see paragraph 12 below). Further, there is no violation of ADB's social and environmental policies as there was no "relocation" of the Project (see paragraph 20 below). According to PCD, the current configuration of the Project (including the siting of the treatment plant in an area close to Klong Dan) was proposed by contract bidders in the first stage of the technical tender. It was reviewed and accepted by PCD in December 1996. It was subsequently approved by the Thai Government on 5 August 1997.

C. Alleged Violation of Inspection Policy (Para. 3)

11. We informed the complainants about their right to submit a request for inspection to the Board Inspection Committee. After sending their initial complaint, the complainants sent another letter dated 18 December 2000 seeking clarification on the linkages between the ongoing processes to investigate the Project. We responded to that letter on 21 December 2000 (refer Annex 1). In this response we clarified that a reply to the initial complaint would be sent within 45 days of receipt of the original letter and that the complainants, if they were not satisfied with our

reply, could send a request for inspection to the Board Inspection Committee. Further, ADB sent a Mission on 12 December 2000 to Thailand to explain how civil society can register any complaints with the ADB, including a detailed explanation of how the ADB's inspection policy works. The complainants attended these sessions, together with some NGOs. In addition, the ADB inspection policy has been translated into Thai, and sent to the Klong Dan community.

D. Alleged Failure to Consult the Community in Implementing the Independent Review (IR) (Para 4)

12. Throughout the implementation of the Project, and as the detailed design of the treatment plant was developing, PCD and ADB had independent experts review various aspects of the design to ensure its soundness. Such reviews were undertaken in 1998, 1999 and the last one (the IR) started in March 2001. The international design review of September 1998 that appraised overall Project design in order to optimize process and system operability concluded that the design was sound. This review included experts in treatment process, pipelines, marine outfalls, and sludge management. A technical hearing in August 1999 comprised 22 Thai academics and professionals from other government departments. This hearing, which reviewed the overall appropriateness of the Project, recommended a second hearing to evaluate the treatment process. Accordingly, a second hearing was held in October 1999 at which the list of participants included 31 Thai academics and professionals, as well as three international experts in the fields of design and operation. The experts included Professor Wesley Eckenfelder, a world-renowned specialist in treatment process design. The general consensus of the hearing was that the Project's design was appropriate to the situation in Samut Prakarn, and that the design's flexibility in accommodating a wide range of pollution loads was one of its strong points.

13. In preparing the IR, ADB, in coordination with the Government has made best efforts to ensure effective consultation with all stakeholders, including the Klong Dan community. The primary concerns of the stakeholders, namely, likely impacts of the Project on the environment, public health, and livelihood, have been communicated to ADB through direct contact, letters, and meetings with NGOs. An assessment of these concerns was incorporated in the terms of reference (TOR) for the IR. To solicit comments from all stakeholders, including the 600,000 people in the Project service area as well as other interested international parties, the draft TOR was posted on the ADB website in English and on the PCD website in Thai. For the Klong Dan community in particular, the draft TOR was translated into Thai and transmitted to the Mayor of Klong Dan on 9 January 2001 to seek serious feedback from the local residents. However, no specific comments on the draft TOR were received either from the Mayor or from the local residents. ADB also sent a fax to the Mayor on 22 March 2001 encouraging members of the Klong Dan community to contact the IR team with questions, comments, or suggestions on the IR. A similar encouragement to all stakeholders was posted on the web.

14. Unfortunately, efforts to consult with the Klong Dan community directly have not been well received. The complainants have consistently taken the position that unless disbursements are suspended and the Project is stopped immediately, there is nothing to talk about. The IR team sent a letter via registered mail to the Klong Dan community encouraging their participation in the IR process. No response was received. One member of the IR team, however, although initially warned off by one of the complainants (Ms. Dawan Chantarassadee), has been able to undertake fieldwork in Klong Dan to assess mussel farming activities. At a workshop held in Bangkok on 3 May 2001, the IR team made a plea to one of the complainants (Mr. Chalao Thimthong), to cooperate, and to work with the IR team in addressing the issues. The complainant did not respond to the plea.

E. Alleged Change of the Wastewater Treatment Plant Location (Paras. 6 – 9)

15. In 1993, the project preparatory technical assistance (PPTA - Wastewater Management and Pollution Control in Samut Prakarn) explored options for Samut Prakarn province to deal with its wastewater and pollution problems. These were conceptual configurations, which did not include any specific location. The PPTA report identified 13 strategic options which fell broadly into the following three categories: (i) a centralized wastewater system, comprising either one or two large central treatment systems, (ii) a part centralized/part localized wastewater system, and (iii) a localized wastewater system. The PPTA consultants carried out an initial environmental examination (IEE) as well as a social impact assessment (SIA) of all 13 strategic options. One of the key conclusions of the IEE was that

“no impact is considered so serious to exclude any wastewater strategy option based solely on environmental studies apart from extra effort in their engineering design work.”

16. The IEE ranked each of the 13 options on the basis of total scores ranging from 0 (no significant adverse impact) to 138 (major significant adverse impact). The lowest scores in terms of adverse environmental impact were given to four options which had centralized systems with two central treatment facilities (scores ranging from 21 to 24). The option with one central treatment facility on the east bank of the Chao Phraya River and effluent disposal in the Upper Gulf of Thailand scored 25, in other words, in the same range as the four best scoring options. The reason why the option with the one central treatment facility scored slightly worse than the other centralized options was the slightly greater risk of spills of untreated wastewater in the course of the transfer to the treatment facility. However, this risk was not considered significant, and has been mitigated by pumping stations with standby arrangements, an internationally accepted norm.

17. At the time of approval of the Project in 1995, a definite location for the treatment plan had not yet been selected. Only the general areas for the treatment plant sites (a total of 300 ha based on the two-plant concept) had been identified mainly on the basis of minimizing resettlement. This was in line with the implementation approach adopted for the Project in which the actual location would be separately identified during the bidding process.

18. In order to solicit interest from land owners, PCD made a public announcement in 1996 requesting the land owners to submit expressions of interest based on the following eligibility criteria (i) land must lie within the designated area (includes Klong Dan); (ii) letter of intent to sell must be provided; (iii) copy of the land title and the map should be provided; (iv) land price must remain constant for at least 12 months from the date of submission; and (v) other relevant information should be provided. As a result, PCD received three expressions of interest in 1996 for the west bank and six for the east bank. However, none of the submissions for the west bank met the eligibility criteria. For the east bank, two out of the six submissions qualified.

19. Due to the unavailability of the suitable/qualified land proposed for the west bank site, bidders proposed an alternative to the two-plant concept as described in the invitation documents. They proposed to combine the east and west bank systems into one treatment plant to be located off the east bank at Klong Dan. This location near the eastern edge of the ultimate service area, is suitable given that industrial growth and the urban sprawl of the province is eastwards. The location in Klong Dan will allow future collection system expansions to be easily and cost effectively connected to the treatment plant.

20. Adoption of the single treatment plant concept (as opposed to a two-plant concept) does not constitute a change in Project scope. The treatment facility is a component of the overall Project and the fact that the treatment would be undertaken in one instead of two places does not materially alter the Project. The risk of spillage, referred to in paragraph 16, has been mitigated by adopting internationally accepted measures. As far as the location of the treatment plant is concerned, since the definite location had not been determined at the time of approval of the Project, it is not correct to refer to a “relocation” of the Project. Consequently, the allegations based on the premise that there was a relocation of the Project are unfounded.

21. In suggesting that the wastewater treatment plant should be located in an industrialized area on the banks of the Chao Phraya River instead of in Klong Dan, the complainants disregard four issues. First, in the PPTA report the preferred location of the east bank plant was some 10 km to the east of the Chao Phraya River and so discharge to that river would not have been possible. Second, the availability and affordability of land severely restricted the option as discussed in the previous paragraphs. Third, while the areas closer to the river banks are more industrialized than Klong Dan, those areas are also much more heavily populated, which would result in significantly higher numbers of affected people than is the case now, including large numbers of people who would need to be physically relocated. Fourth, Klong Dan is not the pristine environment that it probably was some generations ago and that the complainants suggest it still is. The mangrove forests have almost disappeared as a result of shrimp farming, the urban area of Klong Dan is heavily polluted, and the area is slowly but surely becoming industrialized. Finally, while it is indeed still a fisheries zone, it is questionable how much longer the fish and shellfish from the area will remain fit for consumption unless action is taken in the very near future to treat the wastewater currently flowing into the Upper Gulf of Thailand. It should be kept in mind that this is the very purpose of the Project. It is not a matter of adding to the pollution of the Chao Phraya River, which the complainants suggest to be beyond hope anyway, but of cleaning up the pollution of the river and the surrounding waterways – including the Klong Dan itself – so that eventually the whole Upper Gulf of Thailand and Samut Prakarn province, including the people of Klong Dan, will benefit.

F. Concerns About Heavy Metals, Toxins, and Salinity (Paras. 10 and 11)

22. The complainants claim, “ Since the treatment plant is not designed to deal with heavy metals and other industrial toxins, the village people are being forced to bear the risk that these toxic substances will be discharged into the coastal area, threatening not only the fisheries, but also their health...”. The fact of the matter is that factories, including some of the biggest industries in the province currently discharge – often raw – wastewater directly to the coastal waters. At present, these wastewaters contain a very high level of heavy metals and toxins that impact adversely on the marine life off the coast of Klong Dan. The new collection system will intercept much of these wastewaters and convey them for treatment at the central treatment plant. Anaerobic pretreatment ponds will remove much of heavy metals and toxins in the waste stream that enter the plant. This process is proven technology used in other parts of the world. The IR team confirmed that the treatment system will remove 95 percent of the heavy metals from the wastewater at a minimum. In addition, PCD is developing regulations that will require industries to pretreat their wastewater to reduce the levels of heavy metals and toxins in accordance with prescribed standards.

23. For public health reasons, there will be a mixing zone in the vicinity of the marine outfall (the “economic exclusion zone”). In this zone, effluent from the treatment plant will disperse and assimilate into the surrounding seawater. The IR team confirmed PCD’s assessment that the

effluent discharge would have no impact on salinity beyond the boundaries of the economic exclusion zone. This zone is anticipated to affect some mussel farming licensees for whom PCD will provide compensation. The concern, therefore, that there will be huge economic losses is unfounded.

G. Alleged Policy Violations (Paras. 12 – 44)

(i) Policy on Supplementary Financing of Cost Overruns (paras. 12 – 15)

24. The Operations Manual (OM) Section 13/BP/OP, which indicates that in the case of a supplementary loan there should be a reappraisal of the Project, should be read in the context of the policy papers on which it is based. These are Doc. R115-83, Revision 1, Final, *Review of the Bank's Policy on Supplementary Financing of Cost Overruns of Bank-financed Projects*, 29 November 1983 and Doc. Sec. M48-89, *Simplification of Board Documentation for Supplementary Loans*, 12 September 1989.

25. The 1983 document, and in particular paragraph 20(ii) thereof, makes it clear that the purpose of the reappraisal is to analyze the causes of the cost overrun, whether the cost overrun can be avoided by reducing the project scope or changing the design standards, and possible remedial actions. In other words, a reappraisal in connection with a supplementary loan does not mean going back to the initial design stage as if it were a new project. The reappraisal is very much focussed on the financial aspects and the Project scope and design standards are reviewed only to confirm that the Project is still viable and the cost overrun cannot be avoided by changes in scope or design. The 1989 document underscores this interpretation. Paragraph 2 of this document states:

"Supplementary loan documents should moreover shift the emphasis given in the original RRP and AR, from justifying the project to justifying the provision of supplementary financing."

Paragraph 4 states:

"The focus would be on the analysis of the causes of the cost overrun, the impact on project implementation, remedial measures (including covenants) agreed upon or undertaken by the borrowing DMC, and the related policy issues."

26. Accordingly, an indicative format for the RRP for supplementary loan proposals is attached to the 1989 document, which again makes it evident that the purpose of the reappraisal is to examine reasons and remedial measures for the cost overrun, not to go back to the project preparatory phase, as suggested by the complainants. The RRP for the supplementary loan (Loan 1646-THA) closely follows this indicative format.

(ii) Bank's Operational Mission Policy (Paras. 16 – 19)

27. OM Section 32/BP/OP, paragraph 29, on reappraisal missions, which is quoted at the bottom of page 4 and top of page 5 of the inspection request, clubs reappraisal missions required in the event of "*substantial or basic changes [.....] in the scope or implementation arrangements of an approved project*" and reappraisal missions required "*when cost overruns are incurred in its implementation.*" The focus of a reappraisal in case of a major change in project scope or implementation arrangements (which, as stated in paragraph 20 above, is not the case here) is

wider than for a reappraisal in case of a cost overrun. OM Section 32/BP/OP, which is based on operational instructions issued by ADB Management, does not purport to change the Board-approved policy on Supplementary Financing of Cost Overruns. As mentioned above, this policy sets out that the reappraisal of projects in connection with cost overruns should focus on the causes and remedies for the cost overrun, which is what the reappraisal mission for the supplementary loan has done.

28. Contrary to what is argued in the inspection request, the 1998 RRP did make reference to the consolidation of two wastewater treatment plants into one. In relevant part, paragraph 42 of the 1998 RRP reads:

“Following loan approval, land prices on the west bank of the Chao Phraya River in Samut Prakarn increased considerably. Consequently, turnkey bids on the major civil works contract all proposed to consolidate the two treatment plants into one, to be located on the east bank. This enabled significant savings to be achieved, and resulted in this option becoming the least-cost option, both in financial and economic terms.”

(iii) Environmental Guidelines and Procedures (Paras.21 - 37)

29. As detailed in paragraphs 15 - 16, an IEE was carried out for 13 strategic options as part of the PPTA in 1993. The conclusion was that there were no environmental impacts of such significance as to exclude any option on environmental grounds, as any impact could be mitigated through prudent design. This takes into account the environmental degradation of the general area of Samut Prakarn due to industrialization and extensive shrimp farm development along the coastal area, together with the consequent destruction of the mangrove areas. Both the PCD and ADB agreed with this general assessment of the area, and on this basis, the Project was not classified as environmentally sensitive. Accordingly, an environmental impact assessment (EIA) was not required, and this is reflected in the fact that there was no EIA attached to the RRP. Consequently, there was no need to circulate a summary EIA to the Board 120 days before Board consideration. Although no EIA was required either by PCD or ADB, the PPTA consultants did carry out a preliminary EIA for the preferred option. This further confirmed the general findings of the IEE, which recommended further environmental studies as the designs evolved.

30. A process of continuous environmental study and assessment was adopted, in accordance with the approach recommended by the IEE. Accordingly, at the contract bidding stage, the bidders were requested to review the environmental factors and provide data to support their bids. Before giving final consideration to the preferred bid, which included the Klong Dan site, PCD requested further environmental studies be carried out in support of the bid. These studies were done and included in the contract documentation. At the stage of supplementary loan approval (1998), the Project had proceeded in accordance with the contract, with the inclusion of the additional environmental studies. It was considered that the findings and recommended procedures for assessing environmental effects detailed in the PPTA report were still valid for the location of the treatment plant site at Klong Dan.

31. As part of the continuous environmental study and assessment process, a program of data collection was initiated after the signing of the contract in August 1997, which was used in the formulation of models and mitigation measures. Although not required under ADB's environmental guidelines, this work has culminated in the preparation of the EMP, which will serve to ensure an environmentally sound operation of the Project, including the treatment plant. The EMP is undergoing a comprehensive review by both Thai academics and international experts, and was

discussed at 3 May 2001 at a workshop in Bangkok. The review has identified several areas where beneficial refinements to the mitigation measures can be made but, fundamentally, it confirms the findings of the IEE and the environmental studies carried out under the contract bidding process. In addition, it highlights the environmental degradation around Klong Dan itself, and the urgent need to remedy the situation. It also provides a comprehensive monitoring program to ensure that mitigation measures are effective during operation.

32. With respect to Thai regulations, the Office of Environmental Policy and Planning (OEPP) of the Ministry of Science Technology and the Environment (MOSTE) has confirmed (on three occasions, the last being in response to a Senate review, conducted recently) that no EIA is required according to Thai regulations.

33. The complainants refer to the inability of the plant to treat hazardous wastes (refer paragraphs. 28 – 30 of the letter). Contrary to the complainants' allegation, the treatment plant design will, in fact, remove a substantial amount of heavy metals and toxics. This issue has already been addressed in paragraph 22 above. The findings of the several investigations into hazardous wastes have been incorporated into the draft EMP. The complainants further refer to "... the ADB's plan to 'recycle' the wastewater for irrigation...". The investigation of the effluent reuse option has in fact been initiated by PCD, not ADB. The investigation is at the concept study stage, and no firm intention to pursue this option has been made by the PCD at this stage. Should the option be found viable, environmental and social studies would be carried out. In summary, ADB has not contravened its environmental guidelines.

(iv) Involuntary Resettlement Policy (Paras. 38 – 44)

34. The World Bank's Operational Directive on Involuntary Resettlement is not, and has never been, one of ADB's operational policies and procedures and is hence not relevant in the context of an inspection. A copy of the 1994 staff instructions on Involuntary Resettlement is attached as Annex 6. While paragraph 2 of these instructions refers to the World Bank policy as being an "appropriate proxy for Bank use", this policy has never been incorporated in the staff instructions. The staff instructions require the preparation of a detailed resettlement plan in case "*large-scale population displacement is unavoidable*". This was not the case here. As set out above, a definite location of the wastewater treatment facility component of the Project had not been selected yet at the time of approval of the Project, but the need to minimize physical displacement of people had been a vital factor in identifying suitable general locations. This consideration also played a major role when the Klong Dan area was ultimately selected.

35. The ADB Involuntary Resettlement Policy took effect as of 1 January 1996. Thus, the policy did not apply at the time of approval of the original loan for the Project (Loan 1410-THA), although it was in effect at the time of approval of the supplementary loan. However, as set out in paragraph 25 above, in accordance with the policy on supplementary loan financing, the reappraisal for the supplementary loan focussed only on the financial aspects and design aspects insofar as they related to the cost overrun. There was no change in design in connection with the proposal for supplementary financing. The combination of the two treatment plants into one did not cause the cost overrun (in fact, this change in design saved money), nor was it done to reduce the need for supplementary financing.

36. Although the Involuntary Resettlement Policy did not apply at the time of preparation of the Project, a social impact assessment was carried out as part of the PPTA in 1994 – 1995. The TA report identified as the major potential adverse social impact the loss of land for the treatment

facilities and disruption caused by construction of wastewater collection and transfer facilities. The assessment confirmed that a centralized option is preferred as it minimizes social impacts.

37. While no definite location had been determined at the time of project preparation and appraisal, several suitable locations had been identified and were mentioned in the TA report. Klong Dan was also mentioned as a potential location. The reason why it was not further explored at that time was not because it was not suitable, but because the availability of the land located in Klong Dan was uncertain. Section 25.2.3 of the TA report reads in relevant part:

“Some government-owned sites have been identified along the southern coast in Tambon Bang Pu Mai and Khlong Dan. [...] The land site in Khlong Dan is now being utilized by other government departments and its future availability for wastewater facilities is uncertain.”

38. The contract provided for community liaison. Both PCD and ADB acknowledge that this arrangement has not been effective. However, PCD and ADB have undertaken serious efforts to improve consultation with the local community. Contrary to the statement in the inspection request, the local people have been contacted and consulted about the Project on numerous occasions (refer Annex 5). For more detailed information, please refer to paragraphs. 7 - 10 above.

39. It should be borne in mind that there was no relocation as a result of the Project. There are a number of fisherfolk who have a license, or sublicense, to fish in the area that PCD is proposing to establish as economic exclusion zone (the number of affected fisherfolk will be determined by PCD when it finalizes the proposal for the economic exclusion zone). PCD will consider a suitable compensation plan for this area in consultation with the affected fisherfolk. The exclusion zone represents less than 5 percent of the area used for mussel farming off the eastern coast of the Samut Prakarn province.

H. Economic Analysis (Paras. 45 – 49)

40. The financial and economic evaluations undertaken in the course of preparing the proposal for the supplementary loan in 1998 indeed assumed the same criteria as those adopted at the time of project appraisal in June-July 1995. This was a valid assumption. The Project had not changed “significantly” as has been contended. The service area covered by the collection system was the same as during the feasibility studies. At appraisal in June-July 1995, it had been assumed that the treatment of wastewater would be undertaken in two plants, one on each bank of the Chao Phraya River. However, based on the bids received from the contract bidders, the Government approved a configuration that incorporated a single, centralized treatment plant at a site near Klong Dan. The costs associated with this configuration were taken into account in the economic analysis undertaken in 1998.

41. It is not correct to state that costs had increased as a result of the change in location. The cost increase was mainly due to a change in the installation of the sewer from above- to underground method directed by the Government and a change in the specification of the pipe coating. Based on the fact that the scope of the Project as appraised in June-July 1995 had not changed at the time the supplementary loan proposal was prepared in 1998, it was correctly assumed that there would be no change in benefits. The principal benefits related to (i) improved public health, (ii) increased aquaculture production, (iii) cost savings to households, and (iv) costs saved as a consequence of avoiding industrial relocation. The economic benefits, as well as economic costs,

were revalued at 1998 prices and the economic internal rate of return (EIRR) estimated at 15.3 per cent. It should be noted that the EIRR was conservatively estimated since it did not take into account various significant benefits that were difficult to quantify (for details, see the economic analysis in Appendix 6, paragraph 2 to the RRP for the 1998 loan). Given that the economic opportunity cost of capital was assessed at 10 per cent, the EIRR of 15.3 per cent is indicative of a sound Project investment. In summary, no ADB policy was violated in undertaking an economic evaluation of the Project in 1998.

42. The inspection request discusses two cases of industries which reportedly “will not join the service from this Project”. One concerns the leather tanning industry (with membership of about 140 factories) and the other about 300 factories in the Bang Poo industrial estate. Compliance with publicly notified effluent discharge standards is a statutory requirement. Failure to meet these requirements can result in the authorities taking punitive action specified under the law including, if necessary, shutting down the industry. In other words, regardless of the sums that have reportedly been invested by the leather tanning industry or the factories in the Bang Poo industrial estate (or other industries), all industries have to comply with effluent discharge standards. In addition, PCD, together with agencies such as Harbor Department, municipalities, Industrial Works Department, and Provincial Administrative Organization, is in the process of drawing up regulations that will require factories to connect to central wastewater systems where they are available. According to that plan, factories that do not connect now will be allowed an interim period to make the transition.

43. We remain convinced that the Project design is sound. As stated earlier (refer paragraph 12 above), the Project’s design and technical parameters have been independently reviewed by world-class experts in 1998 and 1999 and endorsed as appropriate for the Project’s objectives.

I. Incorporation of Social Dimensions in Bank Operations (Paras. 50 – 56)

44. A social impact assessment was carried out for the whole project area under the PPTA in 1994 - 1995, but it was not component or site-specific. The project preparation was based on the findings of this assessment. With respect to the treatment plant and pumping stations, the final selection of the sites was driven by the need to find affordable land that was uninhabited; the most critical area being that for the treatment plant. In finding land for the treatment plant that did not require any resettlement, the major potential social impact highlighted in the TA report was avoided. After selection of the final site, the detailed design of the plant was carried out. In the course of the detailed design, adjustments were incorporated to address concerns that had been raised by the community and at the independent reviews in 1998 and 1999. Now that the detailed design of the treatment plant is substantially complete (90 percent), a comprehensive assessment of the environmental impacts and related social impacts, based on the earlier work, can be completed. The ongoing SSTA for Community Awareness and Development also aims at assessing and mitigating social impacts.

X. Benefit Monitoring and Evaluation (Paras. 56 – 58)

45. A benefit monitoring and evaluation (BME) program is built into the Project. As stated in the RRP for the original Loan 1410-THA (paragraph 59) in 1995, the baseline conditions will be established at the time of commissioning of the treatment facilities. To the extent possible, however, much data has already been collected on the social and environmental profile of the Samut Prakarn province. On the social side, detailed information on the population and health profiles are available. This includes information on environment-related disease, comparison of the birth/death/infant mortality rates, quality of life along waterways and in proximity to the factories

discharging wastewater, and situation analysis on the low income households that are seriously affected by the low lying nature of the Samut Prakarn province. The SSTA for Community Awareness and Development will also provide benchmark information. On the environment, the Project has already obtained information on existing conditions including hydrology/oceanography, geology/land subsidence, meteorology/ambient air quality, noise levels, water quality, coastal erosion, fishery resources and aquaculture, mangrove forest, wildlife, etc. The EMP (see paragraph 31) will be used to monitor and mitigate environmental concerns.

J. Policy on Confidentiality and Disclosure of Information (Paras. 59 – 60)

46. The disclosure policy categorizes what documents can or cannot be disclosed to interested parties upon their request. ADB has made documents available upon request. When certain documents or information could not be made available, for instance because they were not generated solely by ADB, the reason for nondisclosure was explained. The inspection request fails to specify instances where ADB supposedly withheld information that should have been provided under the disclosure policy.

K. Governance Policy (Paras. 61 – 62)

47. The combination of the wastewater treatment facilities from two into one did not fundamentally change the Project. In retrospect, it would have been advisable to undertake the consultation process at an earlier stage. In this regard, ADB is supporting PCD to engage the community in a participatory process. However, the complainants have made it known on various occasions that they will not be satisfied with anything less than relocating the plant to another area and that there is nothing else to discuss. This has made it very difficult to engage in a productive dialogue with the complainants.

L. Anticorruption Policy: (Paras. 63 – 67)

(i) Relocation of the Project site was dubious and paid excessive price for the land

48. As mentioned in the previous sections, there were no fixed locations that were suitable for situating the plants at the time of loan approval. Initially, the possibility of having two plants – one on either side of the Chao Phraya River – was considered, but this would have been more costly. In fact, the centralized treatment plant design was identified as the most cost-effective option. When compared to the two-plant alternative during the tendering phase, it was estimated to be approximately 800 million baht cheaper. This was confirmed when further assessment was made using actual contract prices.

49. After an extensive bidding process, the land proposed by the successful contract bidder was about 304 ha in the current location (refer paragraphs 17 – 19). As required under Thai law, the Land Department, Budget Bureau, and Ministry of Finance reviewed and approved the land acquisition process. At the instigation of the complainants however, the Government is investigating allegations of corruption in land acquisition through the National Counter Corruption Commission.

(ii) Treatment plant site is not suitable and amount of land acquired is less than amount paid for

50. Sound engineering, together with regular maintenance, will counter the erosive effects of the sea and the structural weakness of the coastal soils. The Netherlands is perhaps the best example in the world of how sound engineering can protect land from the effects of the sea. In a similar way, a large part of the province of Samut Prakarn is also protected from the seawaters of the Gulf of Thailand by a coastal flood protection embankment. Without this embankment, a large part of Samut Prakarn province would now be below sea level. With respect to the soil, the foundations for all treatment plant structures have been designed to accommodate the soft nature of the soils and the settlement that is known to occur in Samut Prakarn. Similarly, to address the corrosive effects of sulfur in the soil, the Government is using sulfate resistant cement for all concrete structures.

51. The complaint that the amount of land actually purchased does not match the amount contracted for appears to be based on a misinterpretation of the contract. According to the quote from the report of the PCD monitoring committee (see Annex II to the initial complaint letter of the Klong Dan residents dated 27 November 2000), if an independent geodetic survey shows any difference in the amount of land purchased as per the contract and the amount of land actually received, this difference will be compensated appropriately (this has already been done). This is not an uncommon provision in land transactions, since boundaries may become unclear and may shift over time. In fact, the provision ensures that the Government receives nothing less than the amount of land purchased.

(iii) ADB staff failed to respond appropriately to allegations of corruption

52. During the special review mission in June 2000, ADB staff listened to the concerns of the Klong Dan residents who made allegations of corruption in land acquisition. However, when asked to substantiate their claim or provide evidence of corruption, the Klong Dan residents were unable to do so. Therefore, the Mission reported in its Aide Memoire that it could find no evidence of irregularities in land acquisition. This statement does not mean that the Mission conducted its own investigation and concluded that there was no corruption. It was merely a statement that the Mission could not obtain and did not receive any evidence of corruption. Further, the Mission reported the allegations in its back-to-office-report upon return to headquarters. It should be noted that some 11 months after that mission, the complainants have still not produced any evidence of irregularities or other information supporting their allegation of corruption. The Mission has followed ADB's anticorruption policy by referring the allegation regarding possible corruption to the Office of the General Auditor of ADB. As part of the investigation, the Office of the General Auditor fielded a Mission in November 2000 to meet and discuss these issues with Klong Dan community members and various NGOs. As explained in paragraph 49 above, the National Counter Corruption Commission is investigating allegations of corruption in land acquisition.

M. Internal Audit Policy (Para. 68)

53. The inspection request has made reference to paragraphs 3 and 4 of ADB's Internal Audit Policy (OM Section 51). Although the Office of the General Auditor may select any project for purposes of an audit, ADB has also established a formal channel through which local communities can request an independent review or inspection of ADB's role in a project, such as this one, irrespective whether such audit has been conducted. It should be noted that complainants did not raise any specific issue with respect to ADB's Internal Audit Policy.

N. Fisheries (Paras. 69 – 72)

54. The Bank's Policy on Fisheries was approved in October 1997 after the loan was approved. Nevertheless, the key section of the policy relating to the Samut Prakarn Project is paragraph 117, Section C on Operational Implications of Bank Policy- No. 5 on Linkages with Other Sectors. This paragraph is quoted as follows:

The Bank finances many projects that impinge on water resources in the irrigation, drainage, hydropower, and other sectors. It is important that, in formulating such projects, their effects on fisheries resources are thoroughly assessed, and that any potential negative impacts on those resources are identified, investigated, and eliminated or mitigated. The Bank's environmental assessment requirements and review procedures require that every project be reviewed from an environmental point of view, and this process ensures that impacts on fisheries, among other resources, will be assessed....."

55. The original work undertaken in preparing the Project included a review of various studies on the upper gulf fisheries and ecology. A number of studies have been undertaken which document the reduced fisheries production per unit effort in the upper Gulf of Thailand primarily as a result of over-fishing and habitat destruction (in particular mangrove destruction) and secondly from water pollution. In the Klong Dan area, a review of aerial photos shows that the mangrove forest was fairly rich and extensive in the late 1960s to early 1970s but was subsequently destroyed in order to develop fish and shrimp ponds. This was a common practice all along the upper Gulf of Thailand and has virtually wiped out the biologically rich mangrove forests.

56. Contrary to the assertion in the inspection request, the Project will result in a significant improvement in the water and sediment quality in the upper Gulf of Thailand through the elimination of thousands of tonnes of organic waste per year and a significant reduction in the discharge of heavy metals and toxic waste. This will enable an increase in fisheries production throughout the upper Gulf due to improved water quality. In addition, at the local level, the Project will actually result in the increase in mangrove stand in the area - this should help improve the spawning and nursery habitat for some aquatic macroinvertebrate and fish species. The discharge of the effluent will have a very limited impact - the impact will be within the declared economic exclusion zone. Outside of this small area of around five square kilometers (subject to review based on the recommendations of the IR of the Project), there will be no significant change in water quality and thus no impact on aquatic productivity.

57. Finally, the IR team has recommended that the Klong Dan community participate in the Project by joining the wastewater collection system and having their waste treated in the wastewater treatment facility. It will significantly reduce the local discharge of organic waste to the near shore zone.

O. Poverty Reduction Mandate (Paras. 73 – 75)

58. Contrary to the assertion in the inspection request, for the reasons mentioned under the Fisheries Section, the Project should result in long-term improvements in the sustainability of the coastal aquaculture activities in Klong Dan. This will be possible because of the long-term benefits of improved environmental quality resulting from the Project. The only individuals to be adversely affected would be those who are currently operating within the proposed economic exclusion zone - those individuals who will no longer be able to fish in the economic exclusion zone - will be compensated by the Government.

59. On a larger scale, the Project will have significant beneficial impacts in reducing poverty in line with the ADB's poverty reduction strategy. It will improve public health conditions for 600,000 residents in the Project affected area. A number of these people typically, the unskilled laborers in factories and construction sites, suffer illnesses due to the degraded environmental quality and as a result are not able to attend work. Children are also not able to attend school. These vulnerable groups will gain the most from an improved environment.

60. Contrary to the assertion on the effect of the cost increase of the Project, the provision of one treatment plant has been shown to be more cost-effective than having two treatment plants. In addition, the cost increase, which was primarily due to use of tunneling and related technologies for sewer construction, resulted in minimizing the economic losses due to disruption of traffic during construction. As such, the approach has been shown to be the most economically viable approach to construction.

P. Urban Sector Strategy (Para. 76)

61. The Urban Sector Strategy (July 1999) highlights the operational objectives of (i) maximizing the economic efficiency of urban areas; (ii) reducing urban poverty; (iii) improving quality of life, and (iv) achieving more sustainable forms of urban development. Contrary to the inspection request which claims that "the Project will cause damage to the environment..", the Project represents a major step towards improving the environment in the Samut Prakarn province. Once it is commissioned, the Project will provide an affordable, technically sound solution to current water pollution problems in the province. The Project will directly benefit about 600,000 residents as well as businesses, industries, and institutions, that will benefit from the improvements in health and welfare arising from improvements in water quality and resource cost savings. Furthermore, improvements in the aquatic ecology and the reduction in public health risks will also benefit a broad cross section of people residing in the province. The Project will be of particular benefit to women and low-income families who often live close to factories and in low-lying waterways. Considering these benefits, it is clear that the Project contributes, significantly in implementing the Urban Sector Strategy.

IV. Conclusion

62. In summary, the applicable ADB policies and operational procedures have been complied with. We will continue to make best efforts to assist PCD in implementing the Project, particularly with respect to communication and awareness among the stakeholders.

REPORT

OF THE

INSPECTION COMMITTEE

TO THE

BOARD OF DIRECTORS
ASIAN DEVELOPMENT BANK

ON

SAMUT PRAKARN WASTEWATER MANAGEMENT PROJECT
SAMUT PRAKARN, THAILAND

(ADB Loan Nos. 1410-THA (7 December 1995) and 1646-THA (3 December 1998))

20 JUNE 2001

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I. INTRODUCTION

1. The Samut Prakarn Wastewater Management Project (the Project) was designed to improve the environment by collecting and treating residential, commercial and industrial wastewater from surrounding urban and industrial areas of Samut Prakarn, which is a heavily polluted province close to Bangkok, Thailand. The origins of the Project go back to 1986 with a technical assistance grant to the National Environment Board of Thailand for Samut Prakarn Industrial Pollution Control and Management. It is now a US\$750 million project, one third of which is funded by the Asian Development Bank (ADB) with the remainder being funded by the Government of Thailand and the Japan Bank for International Cooperation.¹

2. Recently, concern about the Project has been expressed by a number of local residents from the Klong Dan community, which is near the site of the wastewater treatment facility component of the Project, and three such residents, including the Mayor, have requested an inspection of the Project. Several Thai and international nongovernmental organizations have also raised concerns about the Project's environmental and social impacts on the local Klong Dan community. Such concerns were first brought to the attention of ADB, including its Board of Directors (the Board), at ADB's Annual Meeting in Chiang Mai, Thailand in May 2000.

II. REQUIREMENTS OF THE INSPECTION FUNCTION

3. In 1995 ADB established a policy and a mechanism, which is independent of ADB's Management (the Management), to review complaints concerning ADB's compliance with its operational policies and procedures in connection with proposed and ongoing ADB projects. See *Establishment of an Inspection Function*, R225-95 (10 November 1995) (the *Inspection Policy*). The *Inspection Policy* established the Board Inspection Committee (BIC), which approved the *Inspection Procedures* on 9 October 1996, which are based on the *Inspection Policy*.

4. Pursuant to the *Inspection Procedures*, if the BIC receives a request for an inspection of a project, pursuant to paragraphs 35-37 of the *Inspection Procedures*, the BIC will make a preliminary review of the request, ensure that the underlying complaint has been raised previously with Management, and determine whether, *prima facie*, the request is clearly frivolous or clearly ineligible. If the BIC determines that the request has been previously raised, and is neither clearly frivolous nor clearly ineligible, it will send a copy of the request to Management asking for a response to the BIC within 30 days of Management's receipt of the request from the BIC.

5. Broadly stated, once the BIC has received Management's response, its function is to determine whether, on the basis of information contained in the request and the response (including any additional information requested on the basis of these submissions), there is *prima facie* sufficient justification to warrant making a recommendation to the Board that the Board should authorize an inspection of the project in question. If the BIC recommends that the Board should authorize an inspection, the Board must decide whether to accept the BIC's recommendation and to authorize an inspection. If the Board authorizes an inspection, the BIC will select a panel

¹ Formerly the Overseas Economic Cooperation Fund of Japan

from its roster of independent experts to undertake an inspection, and provide the panel with terms of reference for the inspection.

6. The sole function of the panel is to review the facts involved in a particular matter and determine whether ADB has failed to comply with any of its “operational policies or procedures” in formulating, processing and implementing an ADB-financed project, and if the panel determines that such a failure has occurred, to determine further whether such failure has resulted or is likely to result in a direct and material adverse effect on the requester’s rights and interests.

7. After completion of its inspection, the panel, pursuant to paragraph 56 of the *Inspection Procedures*, must submit a report to the BIC identifying all the relevant facts, stating its findings as to whether ADB has complied with its operational policies and procedures in the inspected project, and if it has found failure to comply, then whether such failure has resulted or may result in direct and material harm to the requesters. Finally, if appropriate, the panel may recommend any remedial changes in the scope or implementation of the project. Thereafter, the BIC will send a copy of this report to the President with a request that Management provide a written response within 30 days thereafter. The BIC will then review the report and Management’s response, and forward these documents, together with its own recommendation, to the Board, which will consider this matter and take such action that it deems appropriate on the basis of the BIC’s recommendation.

III. DESCRIPTION OF THE PROJECT

8. The Project was designed to improve the environment by developing wastewater collection, management and treatment facilities in Samut Prakarn Province in Thailand. It comprises four components: (a) wastewater collection systems; (b) a central wastewater treatment plant, wastewater and effluent monitoring systems; (c) a program for cleaner production for industrial efficiency; and (d) capacity building of government agencies responsible for managing wastewater. The concerns that have been expressed about the Project focus on the location of the central wastewater treatment plant.

9. The Project involves two ADB loans: ADB Loan No. 1410-THA approved on 7 December 1995 for US\$ 150 million, and ADB Loan No. 1646-THA approved on 3 December 1998 for US\$ 80 million as a supplementary loan. The supplementary loan was necessary because of an increase in the Project cost due mainly to changing the sewer system from above-ground to underground and changing the specifications for the pipe coating. As of the date of this Report, the Project is more than 70 percent complete and the total amount of ADB loan disbursement is US\$142 million, or 62 percent.

IV. INSPECTION REQUEST: CHRONOLOGY OF EVENTS

10. Due to concerns about the Project as described above, on 24 November 2000, ADB and the Government of Thailand commissioned an independent review (IR) of the Project by three international experts to assess the technical and social concerns related with the Project. The IR commenced on 19 March 2001, and the final report was submitted to ADB on 15 June 2001. The IR focused on the environmental, public health and economic impacts of the Project and is intended to serve as a quality assurance measure for the Government of Thailand and ADB. The IR is one of several different

evaluations that have been made of the Project; all of these evaluations are separate from, and independent of, the request for an inspection of the Project described below.

11. On 10 July 2000 ADB's anticorruption unit commenced an investigation in response to claims made by several residents of the Klong Dan community concerning alleged irregularities in the land acquisition for the site of the wastewater treatment plant component of the Project. This investigation is ongoing and is separate from, and independent of, the request for inspection.

12. On 29 November 2000 the President of ADB received a complaint signed and mailed by three residents of the Klong Dan community, including the Mayor, alleging that the Project violated certain policies of ADB (see Appendix 1). Based on this complaint, Management, as required under paragraph 26 of the *Inspection Procedures*, responded to the complaint by letter within 45 days of receipt of the complaint by the President (see Appendix 2).

13. On 5 April 2001 the same three residents of the Klong Dan community, (the Requesters) sent a written request for inspection (the Request) (see Appendix 3) to the BIC. The Requesters stated that they were not satisfied with Management's response and sought an inspection of the Project as members of the Klong Dan and Song Klong communities.

14. On 23 April 2001 the BIC met and considered the Request. It decided that *prima facie* the Request was neither clearly frivolous nor clearly ineligible and therefore sent a copy to the President requesting that Management provide a written response within 30 days after the BIC's request for a response (paragraph 37 of the *Inspection Procedures*).

15. Management provided its written response dated 24 May 2001 to the BIC (the Response) (see Appendix 4).

16. On 29 May 2001 the BIC met to consider this matter. It determined that the Request satisfied the requirements of the *Inspection Policy* and the *Inspection Procedures*, and confirmed its earlier finding that the Request was neither clearly frivolous nor clearly ineligible.²

17. Pursuant to paragraph 39 of the *Inspection Procedures*, the BIC decided to ask the Requesters whether they wished to provide the BIC with any additional information on the basis of the Response. On 31 May 2001 the BIC sent a letter to the Requesters inviting them to provide any additional information within 10 days from receipt of the BIC letter (see Appendix 5). The BIC received a written response from the Requesters on 6 June 2001 (see Appendix 6) and concluded that the Requesters did not wish to submit any additional information. Accordingly, the BIC determined that the 14-day period within which the BIC must make its recommendation to the Board commenced on 6 June 2001.

² The *Inspection Procedures* state that the documents mentioned in paragraph 33 thereof should be attached to the Request. Not all of these documents were attached to the Request but they were otherwise made available to the BIC. The BIC concluded that the omission of these documents was not material.

V. CONSIDERATION OF THE REQUEST FOR INSPECTION

18. The BIC met on 14 and 19 June 2001 to review the Request, the Response and other matters that it deemed relevant in order to decide what recommendation it should make to the Board in this matter, and to draft a recommendation to the Board. As required under paragraph 39 of the *Inspection Procedures*, the BIC considered (a) whether the Request satisfied the requirements of the *Inspection Policy* and the *Inspection Procedures* (paragraphs 23 and 31³); and (b) whether to recommend an inspection to the Board.

19. In determining whether the Request satisfied the necessary requirements, the BIC assessed whether the required information had been provided and was complete, namely: (a) the identification of the Project and of the Requesters; (b) the description or identification of the ADB operational policies and procedures alleged to have been violated; (c) the description of the alleged violations of such operational policies and procedures; (d) an explanation of how the Requesters have been or are likely to be directly and materially harmed by ADB's act or omission, and what rights or interests of the Requesters have been or are likely to be adversely affected; and (e) a description of the steps taken by the Requesters to bring their complaint to ADB's attention, ADB's response and a statement of why ADB's response was not adequate.

A. Identification of Project and Requesters

20. The Request clearly identifies the Project as well as the Requesters. The Requesters state in paragraph 1 of the Request that they are writing "on behalf of the communities in Klong Dan subdistrict, Bang Bo district in Samut Prakarn Province and Song Klong subdistrict, Bang Pakong district, Chachoengsao province in Thailand...". The BIC noted that the Requesters state that they are residents of Klong Dan (one of whom is the Mayor of Klong Dan), where the wastewater treatment plant component of the Project is to be located. The BIC concluded that the Requesters appeared to be entitled to make the Request both as members of the Klong Dan community and as representatives of that community, and that they accordingly fulfil this requirement.

21. The BIC also considered whether the Requesters are entitled under the *Inspection Policy* and the *Inspection Procedures* to make this request on behalf of the community in Song Klong. The BIC, in this regard, noted paragraph 5 of the Response, which states that "the authority of the complainants to represent the Song Klong

³ **Paragraph 23 states as follows:** "The Complaint should contain the following information: (a) a brief description or identification of the project (a map or diagram may also be provided, if relevant); (b) an identification of the sender (or the group the sender represents); (c) a brief description or identification of the Bank's operational policies and/or procedures that the sender believes have been violated; (d) a description of the act or omission by the Bank that the sender believes have led or may lead to this violation; (e) an explanation of how the sender (or the group the sender represents) has been or is likely to be directly and materially harmed by the Bank's act or omission, and what rights or interests of the group have been or are likely to be adversely affected; and (f) if some of this information cannot be provided, an explanation of why this is so."

Paragraph 31 states as follows: "The Request should contain the following information: (a) the information listed in paragraph 23 above (relating to initial Complaints); (b) a description of the steps taken by the requester (or the group the requester represents) to bring his/her grievance to the Bank's attention, the Bank's response and a statement of why the Bank's response was inadequate; and (c) if the Request relates to a matter previously raised with the Committee, a description of the new evidence or changed circumstances that justify revisiting the matter."

community ...is not clear.” The BIC observed that none of the Request’s signatories is from Song Klong subdistrict, but the Request on page 19 contains a statement purportedly from a resident of Song Klong, who expressed concern about the impact of the wastewater treatment plant component of the Project on his resource base and livelihood. The Requesters did not, however, provide any evidence or other documents to establish that they represent the community in Song Klong subdistrict. Accordingly, the BIC concluded that the Request has been properly made by the Klong Dan community but not by the Song Klong community.

B. Description of Alleged Failure to Comply with ADB’s Operational Policies and Procedures

22. With respect to the requirement in paragraph 23(c) and (d) of the *Inspection Procedures*, i.e., a description of ADB’s operational policies and procedures concerned and a description of ADB’s alleged failure to comply with these operational policies and procedures, the BIC, upon considered deliberation, determined which of such operational policies and procedures cited in the Request are eligible for review under the *Inspection Policy*, which are not so eligible and which may be eligible depending upon the facts that could be involved. In making this determination, the BIC considered whether each operational policy or procedure cited in the Request fell within the definition of what constitutes ADB’s “operational policies and procedures” as stated in paragraphs 4 and 17⁴ of the *Inspection Procedures*. This definition states that any such “operational policies and procedures” are those found in ADB’s *Operations Manual* (OM) and were in effect on the date the Project was approved.

1. Operational Policies and Procedures That are Outside the Scope of Any Inspection Review of the Project

23. The BIC determined that the following “operational policies and procedures” cited in the Request are clearly outside the scope of the Inspection Policy: the *Urban Sector Strategy*, *The Bank’s Policy on Fisheries* (the *Fisheries Policy*), the *Anticorruption Policy*, and the *Poverty Reduction Strategy*. The *Urban Sector Strategy* is dated July 1999, which is after the approval of both Project loans, it is not a policy that was approved by the Board, and is not in the OM. The *Fisheries Policy* was approved by the Board in 1997, but is not in the OM. The *Anticorruption Policy*, which was approved by the Board in August 1998, is in the OM (section 55) but this section was not issued until 20 July 2000. The *Poverty Reduction Strategy* was approved by the Board in November 1999, which is after Board approval of both of Project loans, and is also not in the OM.

24. The BIC has noticed that some operational policies have been approved by the Board but not incorporated into the OM, and therefore they do not fall within the definition of “operational policies and procedures” under the *Inspection Policy*. The passage of time since Board approval of such policies varies, but in some cases it is

⁴ **Paragraph 4 states as follows:** “For purposes of the Policy, “operational policies and procedures” are defined as the Bank Policies and Operational Procedures set forth in the Bank’s Operations Manual (the OM) and, to the extent applicable, corresponding sections in earlier editions of the OM (see para. 17 below). They also include Staff Instructions that relate to the formulation, processing or implementation of Bank projects (but that have not yet been incorporated in the OM).”

Paragraph 17 states as follows: “The operational policies and procedures that apply to a project for purposes of the Policy are those that were in effect on the date the project was approved (or, in the case of a proposed project, those that were in effect on the date the inspection request was submitted to the Committee).”

substantial. This may be due to a variety of circumstances. It is not the BIC's role to comment on this in this Report, but it is important that Management examine this issue as a matter of urgency.

2. Operational Policies and Procedures that are Partly Within the Scope of any Inspection Review of the Project

25. Certain of the operational policies and procedures cited in the Request were approved by the Board *after* the Board had earlier approved the first ADB Project loan 1410-THA on 7 December 1995 but *before* the Board approved the subsequent ADB Project supplementary loan 1646-THA on 3 December 1998. These particular operational policies and procedures would, pursuant to paragraph 17 of the *Inspection Procedures*, apply only to the subsequent supplementary loan.

26. These operational policies and procedures that would apply only to the subsequent supplementary loan are: *Supplementary Financing of Cost Overruns of Bank Financed Projects*, OM 13 dated 12 December 1995 (however, the predecessor OM 15, 22 May 1991 would apply to the 1995 loan); *Bank's Operational Missions*, OM 32 dated 13 January 1997; *Environmental Considerations in Bank Operations*, OM 20 dated 7 January 1997 (the BIC notes that OM21, a predecessor operational policy and procedure with the same name, dated 1 December 1992, would apply to the first ADB Project loan); *Involuntary Resettlement*, OM 50 dated 7 January 1997; *Economic Analysis*, OM 36, dated 12 November 1997 (however, the predecessor OM 44, dated 4 September 1992, would apply to the 1995 loan); *Incorporation of Social Dimensions in Bank Operations*, OM 47 dated 7 January 1997; *Benefit Monitoring and Evaluation*, OM 22 dated 7 January 1997 (however, the predecessor OM 23, dated 9 March 1992, would apply to the 1995 loan); *Governance*, OM 54, dated 13 January 1997; and *Internal Audit Policy*, OM 51, dated 16 October 1996. The BIC notes that, in any case, most of the alleged failures to comply with such operational policies and procedures cited in the Request refer to the processing of the 1998 supplementary Project loan.

3. Operational Policies and Procedures that May Apply to both ADB Loans Within the Scope of any Inspection Review of the Project

27. The *Policy on Confidentiality and Disclosure of Information* (the *Disclosure Policy*) is not in the OM. However, Staff Instructions on implementing the *Disclosure Policy* were issued by ADB's President on 22 November 1994, stating in paragraph 20 thereof that the policy would become effective on 1 January 1995. Accordingly, the BIC has concluded that the *Disclosure Policy*, as stated in the Staff Instructions, would apply to both ADB loans.

4. The Laws of Thailand

28. Finally, the Request alleges that ADB has failed to comply with four Thai laws: *Environmental Act*, 1992 and Ministerial Regulations to implement the Act, Section III, Part 4, Section 46; *Industrial Act*, 1992; *Factory Act*; and *Constitution, Articles 56 and 59*. With respect to the laws of a member country, paragraph 22 of the *Inspection Policy* states that "...an inspection will not include consideration of the laws, policies and regulations of any borrowing member country or executing agency (except to the extent directly relevant to the Bank's compliance with its operational policies and procedures)." The BIC thus concludes that whether or not a review of such laws is relevant will depend

upon the facts to be found in any inspection, should an inspection be authorized by the Board.

C. Allegations of the Actual or Likely Direct and Material Adverse Effect on the Requester's Rights and Interests

29. The BIC noted that the Request in numerous places refers to anticipated direct and material adverse effects to be suffered by the Requesters that may be caused by ADB's alleged failure to comply with its operational policies and procedures. These anticipated effects range from being deprived of the right to be consulted in decisions affecting the lives of the residents in the project area (page 2) to concerns about toxins in the treated water (page 3) and reduced salinization of the sea water (page 16). These statements are based on the testimonies of four residents in the Klong Dan community.

30. The Response in paragraphs 7 and 8 describes in detail the attempts made by the Government of Thailand and ADB since mid-1999 to consult with residents in the Samut Prakarn area, and how those attempts "have not been well received" by the residents. It also mentions measures that have been taken to mitigate negative impacts of the Project on residents (paragraph 9), and states (paragraphs 22 and 23) that the Project will help reduce the level of toxins in the water, and that it will not affect the salinity of the water beyond the economic exclusion zone.

31. On the basis of the information provided in the Request and the Response, the BIC concluded that the requirements of paragraphs 23(e) and 31(a) of the *Inspection Procedures*, relating to an explanation of how the Requesters will be directly and materially adversely affected and what rights or interests of the Requesters are likely to be directly and materially adversely affected, have been met.

D. Attempts to Raise Concerns with ADB

32. The Request on pages 18 and 19 explains in detail the efforts of the Requesters to bring their concerns to the attention of ADB. On the basis of the information provided, the BIC concluded that this requirement has been met.

VI. RECOMMENDATION

33. In deciding whether to recommend to the Board that the Board authorize an inspection of the Project, the BIC has given careful consideration to the Request and the Response thereto and to other relevant documents. On the basis of the documents presented to it, and after considering all of the matters that the BIC deems relevant to the Request, the BIC unanimously concluded that there is a sufficient basis for it to recommend to the Board that the Board authorize an inspection of the Project.

34. Accordingly, the BIC unanimously recommends that (i) an inspection of the Samut Prakarn Wastewater Management Project (Loans 1410-THA and 1646-THA) be authorized in order to determine whether or not ADB has failed to comply with certain identified operational policies and procedures as described below; (ii) the inspection be based upon those ADB operational policies and procedures that are considered within the scope of the *Inspection Policy* and are specifically identified in paragraphs 26 and 27 above, taking into full account any and all stated limitations on the scope of application of such operational policies and procedures; (iii) the laws of Thailand identified in

paragraph 28 above may be included within the inspection review but only to the extent specifically permitted in the *Inspection Policy* and the *Inspection Procedures* and in the terms of reference to be developed for any inspection panel appointed pursuant to this recommendation; and (iv) the inspection specifically exclude those ADB operational policies and procedures cited in paragraph 23 above, which are determined outside the scope of the inspection of the Project.

35. If the Board approves this recommendation, then, pursuant to the *Inspection Procedures*, the BIC will promptly select a panel of independent experts from the roster to undertake the inspection and develop terms of reference for the panel. Thereafter, this matter will proceed, under the jurisdiction and oversight of the BIC, pursuant to the *Inspection Policy* and the *Inspection Procedures*.

To: Mr. John Lockhart,
Chairman,
Board Inspection Committee

From: Inspection Panel,
Samut Prakarn Wastewater Management Project
Ms. Judy Henderson
Mr. Ping-Cheung Loh
Mr. Wiert Wiertsema

Date: 27 November 2001

Subject: **Interim Report of the Inspection Panel
Samut Prakarn Wastewater Project**

- a) Pursuant to the request dated 12 November 2001 from the Board Inspection Committee (BIC), the Panel hereby submits the attached Interim Report to the BIC.
- b) Since the inspection of this Project is the first inspection ever undertaken for the Asian Development Bank (the Bank), in the carrying out of its assigned tasks, the Panel has been mindful that the work of the Panel has an impact not only on this particular Project, but also on the Bank's inspection process itself in the future.
- c) In this connection, the Panel would like to express its disappointment that the inspection process for this Project cannot be completed at this stage so as to achieve the objectives underpinning the inspection policies of the Bank, and regrets that it is not able to fulfil the expectations of all stakeholders. This Report is by definition not complete. The Panel has not been able to obtain all the factual information and have a full understanding of the relevant issues concerned.
- d) The Panel informed the BIC on 8 November 2001 the reasons why the Panel had decided to suspend the inspection process. The Panel has been aware of the provisions set forth in the Bank's Inspection Policy on project site visit. After the conditions for the Panel's visit to Thailand were imposed and the Panel was not able to visit the Project site and to have access to the stakeholders, the Panel, in accordance with the said provisions, did revise its work program on several occasions including the invitation to the Requesters to come to Manila for information gathering, clarification, and verification. This was proven not possible.
- e) As explained earlier, the Panel has taken this action mainly because of the fact that the conditions imposed on the visit have had an adverse impact, not only on this inspection, but possibly on future inspections; that the inability for the Panel to have fair access to the stakeholders will make its fact finding and assessments, at best, incomplete; and that proceeding with the inspection process on a "business as usual" basis would merely create doubts and cynicism in the world community about the inspection process of the Bank. In addition, under these circumstances, the Panel would not like to be a party to a process which might undermine the many efforts made by the people of the Bank, past and present, to have greater openness and participation of the people who are affected by the operations of the Bank. It is

important that the work of the Panel is not only impartial in fact, but is seen as impartial by the public at large.

- f) We sincerely hope that steps can be taken, in addition to the efforts already made, to enable the Panel to complete the inspection process for this Project. The Panel would be willing to consider the resumption of the inspection on a future date, if and when the factors which have caused the suspension of the inspection process have been removed.
- g) As requested by the BIC, the Panel has prepared a brief report, based on the experience gained during this Inspection on issues concerning the Bank's Inspection Policy and Procedures in general. Throughout the process for this Inspection, thus far the Panel has been concerned and struggling with the following matters:
- **Access to Information**
Full access to all information necessary for the work of the Panel has been a serious problem.
 - **Impartiality and Fairness**
Each time the Panel was required to adjust its work plan the maintenance of its impartiality and fairness to all parties, both in fact and perception, was tested.
 - **Transparency**
The Panel lacked the means to adequately inform all stakeholders on its activities. As a result it is likely that the stakeholders, including staff and managers in the Bank, are not aware of the rationale of the Panel's decision to suspend the Inspection.

For the reasons stated above, we wish to recommend to the BIC that the Interim Report be made available to all stakeholders as soon as possible. For the same reasons a copy of this memo to the BIC has also been sent to the Requesters.