

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

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 35-57 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 provides 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, 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 fulfill 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 OM 21, 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 also 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 interest 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*.