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Soil Pollution Control Act Readied

A great deal of importance has recently been placed on groundwater and soil pollution problems. In response to these problems, the EPA recently drafted the *Soil Pollution Control Act* and discussed the draft with various environmental agencies on April 29, 1998.

The EPA noted that soil pollution originates from air, water, waste and toxic pollution sources, and as pollution prevention is already proscribed in current regulations, the draft *Soil Pollution Control Act* was defined as legislation to cleanup pollution.

The second feature of the draft is a strong information reporting system. The EPA's Bureau of Solid Waste Management noted that soil cleanup is particularly reliant on a reporting system due to the obscure, irreversible, and hazardous nature of soil pollution and the fact that it is difficult to ascertain the depth and breadth of contamination. It is therefore critical that emergency handling measures be adopted as soon as the pollution occurs to prevent the damage from spreading. For this reason, an effective reporting system is required to respond to soil pollution. The draft therefore authorizes the EPA to establish a soil pollution information system and stipulates that local governments must regularly monitor the situation at sites where there is soil pollution and report any abnormalities to the information center. Regarding parties responsible for the pollution (including the polluters and owners or users of the polluted land), the draft stipulates

that necessary measures must be taken to prevent the spread of pollution or damage, and a report be made immediately to the information center.

The third feature of the draft involves open access to information. The draft stipulates that the EPA must carry out an initial on-site assessment once relevant agencies are notified of or discover the pollution. Pollution suspected of being a threat to life, property or the environment must come under regulatory listing and be announced to keep the public informed of soil pollution matters. Sites that come under regulation must be investigated and evaluated further by the EPA and rated according to the scope of contamination and degree of danger. This information must also be provided to the public.

In terms of the polluted site, the environmental body must halt work and adopt emergency measures. Produce or seafood that is polluted or suspected of being polluted may either be restricted from being distributed or be destroyed. These emergency cleanup measures will initially be covered by the Soil Pollution Remediation Fund but ultimately must be born by the polluters.

To avoid difficulties during the process of treating polluted land that has come under regulation, the draft specifically authorizes environmental agencies to formally request local governments to prohibit the sale, rental or mortgage of such land, or other transfer of ownership or activity regarding such land.

Besides the parties responsible for pollution, the government may also carry out contamination site remediation. Contaminated land must be restored in principle to its original state according to pollution control standards. However, a case-by-case review scheme may be used by the Land-Use Review Agency and the EPA, if a larger-scale comprehensive development plan is carried out on the polluted land and neither human health nor the environment are harmed.

As soil pollution cleanup is an extremely expensive process, the draft calls for the EPA to install a Soil Pollution Remediation Fund modeled after the Superfund system in the US. The draft specifically adopts an approach that generates cleanup funds without increasing existing fee burdens. The following is a list of Remediation Fund sources:

1. Other environmental funds, closely related to soil pollution, shall contribute a specified proportion of their annual budget.
2. Fine payments from operations that pollute the soil.
3. A portion of income proceeds that result from the land use rezoning of polluted land.
4. Interest earned on the Fund.
5. Part or all of the fines levied according to this draft.
6. Budgets created by the competent authorities.

To best utilize cleanup funds and deter pollution activities, the draft stipulates that the responsible parties for the pollution (including the polluter, land owner and land user) must bear joint liability for damages and cleanup costs arising from the polluted land. Furthermore, as the polluter should in principle bear ultimate responsibility for the polluting activity, the draft allows the other responsible parties to seek compensation from the polluter. However, an owner or user of the polluted land that made considerable efforts toward damage prevention, even if damages were not avoided, shall be exempt from joint liability.

To avoid transfer of land ownership disputes arising from soil pollution, the draft stipulates that during transfer of ownership, the assignee must request that the assignor provide soil quality examination and soil pollution cleanup and removal documents for use as a reference in deciding whether or not to accept the transfer of ownership.

In terms of penalties, the draft clearly stipulates criminal disciplinary actions for deeds not in accordance with competent authority orders that cause death or severe harm, intentionally pollute soil or disobey instructions to suspend operations. The most severe penalty is imprisonment for up to seven years. Violation of competent authority emergency measures, violation of soil use controls, restrictions or prohibitions, and interference with competent authority inspections or pollution improvements are also penalized according to related administrative regulations in the draft.

Soil pollution usually involves land use rezoning issues. To prevent land owners from using land pollution as an excuse to rezone the land for their own benefit, the draft also stipulates that land cannot be rezoned before cleanup work is finished. To encourage companies to carry out the cleanup work, the draft adds a proviso that the cleanup and development work can be conducted simultaneously if the company integrates the soil pollution cleanup plan into a large-scale, comprehensive development plan and is able to complete the soil pollution cleanup work on its own. However, such operations should pay a certain amount of money into the Soil Pollution Remediation Fund, as one of the sources of the Fund.

To address the problem of existing soil pollution, the draft stipulates that sites which have already been polluted or have engaged in cleanup work shall be retroactively subject to all provisions in the draft.

The Bureau of Solid Waste Management said they would continue to hold public hearings and have discussions with relevant institutions and agencies. They estimate that the draft will be submitted to the Executive Yuan by the end of June, 1998, for approval.

Amendments to the Public Dispute Settlement Act Passed

Amendments to the *Public Dispute Settlement Act* were passed by the Legislative Yuan on May 15, 1998.

In the past, the *Public Dispute Settlement Act* required that businesses sign a Public Dispute Control Agreement with residents of the given area but companies were typically unwilling to sign such agreements due to the ambiguous definition of "residents." The new Act stipulates that either residents of the area or the respective local government may sign the agreement. To encourage businesses to proactively carry out environmental protection work, the name "Public Dispute Control Agreement" has been changed to "Environmental Protection Agreement."

Item 2 of the Act increases the maximum number of members on the local government public dispute settlement committee to 21. To ensure the effectiveness of the settlement process and instill public confidence in the committee, the proportion of academics, experts and impartial public figures may not fall below two thirds of the total number of committee members.

Item 3 of the Act adopts proactive settlement mechanisms. In the past, local government would often respond to public disputes by either fanning the flames or

watching from the sidelines mainly due to re-election interests. To rectify the situation and at the same time further the spirit of self-governance at the local level, the new Act stipulates that local governments must establish public dispute emergency settlement task forces to efficiently handle public dispute outbreaks and emergencies. The settlement task forces will be convened by local government heads or individuals designated by them.

Item 4 of the Act streamlines the settlement and findings process and includes the following items:

1. Streamlining of regulations related to follow up work after an agreement is reached between both parties as part of the findings process.
2. Addition of regulations related to the securing of settlement payments; extending from 14 to 20 the number of days a plaintiff has, in the case of early settlement, to withdraw a suit from the courts.
3. Addition of regulations that automatically withdraw a case from the courts should an agreement be reached.

The Bureau of Performance Evaluation and Dispute Settlement expects the number of Environmental Protection Agreements to increase steadily in the future. The EPA will cooperate with the Chinese National Federation of Industries and the General Chamber of Commerce, as well as other business groups, to promote and publicize the signing of these Agreements.

Motor Vehicle Recall and Repair Guidelines to be Announced

Article 25 of the *Air Pollution Control Act* stipulates that motor vehicles in use that do not meet emission standards due to flawed design or installation must be recalled and repaired by the manufacturer or importer within a specified period of time. To clearly outline this process, the EPA drafted the *Guidelines Concerning the Recall and Repair of Motor Vehicles In Use* and discussed the draft with businesses on May 15, 1998.

The draft stipulates that the recall and repair guidelines must be applied to gasoline powered cars and motorcycles during the effective life of the vehicle's emission control system. The EPA's Bureau of Air Quality Protection and Noise Control said regulations for diesel powered vehicles will be set separately because diesel and gasoline powered vehicles are sold through different channels. The draft stipulates that the following elements be used in the testing of in-use vehicles:

1. Remote emissions monitoring results.
2. Quality control test results obtained during mass production.
3. Periodic or random test results of models with a high rate of non-compliance.
4. Reports indicating that vehicle pollution control components are deficient.
5. Motor vehicle examination and testing application information that meets standards.
6. Vehicle sales volume.
7. Other items.

After a vehicle is selected, and before it is tested according to regulations, a certain level of maintenance is allowed. Initially, five vehicles will be tested and if the average value of the five or more than three of the tested vehicles do not meet the emission standards, an investigation including another test shall be carried out. In the

investigation, ten vehicles will be tested and if the average value still does not meet the standards, the vehicle will be considered flawed in design or installation and must be recalled and repaired by the company in question.

Regulations require companies to submit a recall and repair plan to the EPA within 90 days of commencing the recall and repair process. After the plan is approved, the business must carry out the process according to the plan and keep detailed records. The EPA must, 150 days after approving the plan, and within a 30 day period, randomly test the vehicles to ensure that the recall and repair process was effective. If the test results are still substandard, the EPA can penalize the business according to the *Air Pollution Control Act*.

Articles 25 and 44 of the *Air Pollution Control Act* stipulate that the EPA can order manufacturers and importers that violate the recall and repair guidelines to cease production, import and sale activities and pay a fine of NT\$20,000 per vehicle.

The Bureau of Air Quality Protection and Noise Control estimates that the guidelines will be formally announced by the end of the year.

Public Hearing Held on Toxics Detection and Warning Guidelines

Article 17 of the *Toxic Chemical Substances Control Act* stipulates that toxic substance transshipment sites must install detection and warning equipment that is in-line with EPA regulations. The EPA recently drafted the *Toxic Chemical Substances Detection and Warning Equipment and Installation Guidelines* and held a public hearing on May 14, 1998. The EPA expects formal announcement of the Guidelines to be made in the near future.

The draft stipulates that sites using Category 1, 2 and 3 toxic substances which meet the following conditions must install detection and warning equipment:

1. The manufacture, use and storage of gaseous substances at normal atmospheric temperature and pressure where the quantity used exceeds the EPA announced volume.
2. Substances that are in a liquid state at normal atmospheric temperature and pressure but are in a gaseous state during manufacture, use and storage where the quantity used exceeds the EPA announced volume.
3. Substances that are in a liquid state at normal atmospheric temperature and pressure and which remain in such a state during manufacture, use and storage. The manufacture, use and storage at any site of a single substance exceeds 10 tons at any time or a total of 300 tons annually.

The draft stipulates that after the EPA lists substances as toxic, businesses that meet the aforesaid conditions must install detection and warning equipment. Users must, within a specified period, submit documentation related to the detection and warning equipment to the local environmental body for future record at which time the user may apply for a permit or register for possible inspection.

The draft further stipulates that unless the EPA rules otherwise, detection and warning values should in principle not exceed 10 times the hazardous substance concentration standards for air in the work environment. Users of toxic substances for which there is

no detection and warning equipment available can, with EPA approval, use alternative equipment or be exempt from such requirements.

The accuracy of detection equipment must be within 30% of the set warning value set. Warning lights must be located where relevant personnel are continuously stationed. The draft also stipulates that the detection and warning equipment must have a separate power source as a backup against power outage.

According to the EPA's Bureau of Environmental Sanitation and Toxic Chemicals Control, detection instruments must be installed in suitable locations around the area of use with consideration given to wind direction, topography, risk distribution and other unique factors that pertain to a substance. Installation of detection equipment does not have to be repeated where such equipment has already been installed in accordance with worker safety and sanitation orders or the *Air Pollution Control Act*.

To best utilize the features of such equipment, the draft stipulates that detection and warning equipment must be serviced, tested and maintained at least once a month and that records be kept. The detection equipment must also be calibrated using a standard or substitute gas at least once a month. Should the detection and monitoring equipment break down, the user or responsible person must record the situation immediately and make repairs in the shortest possible time. If repairs cannot be completed within seven days, an application to extend the repair period including a written explanation of the circumstances of the breakdown and all precautionary measures taken must be submitted to the local environmental agency.

Government Purchasing Act to Add Article on Green Consumerism

According to Article 96 of the Government Purchasing Act passed by the Legislative Yuan on May 1, government agencies must stipulate in their bid invitations that preference be given to products displaying the government-recognized Green Mark eco-labelling scheme where the performance of such products is either the same or similar and with a price gap of less than 10%. The same preference will also be given to products or raw materials that are manufactured, used and their waste treated according to methods that utilize recycled materials and create recyclable, low pollution or energy conserving products or raw materials.

Item 2 of Article 96 stipulates that the category, scope and implementation regulations of companies suitable for the article will be set by the Public Construction Commission in conjunction with the EPA and relevant competent authorities.

EPA Administrator Hsung-hsiung Tsai expressed optimism over the incorporation of "green consumerism" principles into the *Government Purchasing Act*. He also indicated that the EPA will coordinate with other agencies to put on courses to educate the purchasing-related departments of government agencies on the importance of and ways to practice green consumerism. Another approach that might be used in the future is an objective evaluation system utilizing a committee of experts and academics to determine environmental performance of products and materials. This committee's findings would thereby serve as the basis for the EPA and Public Construction Commission in setting the scope of preferred products.

Amendments to Air Pollution Fee Regulations Announced

According to a draft amendment to the *Regulations Governing the Collection of Air Pollution Control Fees* announced by the EPA on May 13, 1998, air pollution control fees (hereinafter referred to as “the fees”) will be levied on stationary pollution sources according to actual nitrogen oxide (NO_x) and sulfur oxide (SO_x) emission quantities.

Currently, the fees are calculated and collected according to related information provided when businesses import or purchase fuel. The draft stipulates that on a quarterly basis, the fees will be paid to a designated financial institution according to the type of emission substance, quantity of emissions and record of operation from the previous quarter. A declaration must then be made to the EPA. During its examination of the declaration, the EPA will request additional payment for an underpayment and settle an overpayment in the next quarter.

The draft amendments stipulate fees to be calculated using the following methods:

1. Data gathered through continuous emissions monitoring (CEM) of stationary sources that comply with EPA regulations.
2. Inspection results obtained through methods formally announced by the EPA.
3. Emission factors designated and officially announced by the EPA.
4. Other emission quantity calculation methods approved by the EPA.

Stationary pollution sources required to install CEM equipment must use CEM data in their fee calculations. Sources required by the Air Pollution Control Act to periodically conduct tests must use such data to calculate fees. Other sources can calculate fees based on formally announced emission factors or testing methods.

To ensure that testing information represents actual emissions, the draft stipulates that the first declared emission values must be calculated on data taken within six months prior to the declaration date. Following emission values must be calculated on data taken within one year prior to the declaration date. However, special requirements will apply under the following circumstances:

1. Pollution sources officially announced as having to conduct tests on a periodic basis must calculate according to the most recent periodic test.
2. Due to changes in manufacturing process or operating conditions, pollution sources suspected of increasing emission quantity must conduct new tests according to new test value calculations.

If deemed necessary, the competent authority may request stationary pollution sources to submit data based on testing of actual operations as a substitute for originally declared data.

In terms of allocating proceeds of the fees from stationary pollution sources, 60% of the fees received by the EPA must be remitted on a periodic basis to county (city) governments where the pollution took place. The amount of funds remitted to local governments can be reduced at the discretion of the EPA if air quality maintenance or improvement work results are poor.

Initial Structure of Publicly Operated Recycling Fund Confirmed

The EPA drafted the *Regulations Governing the Collection, Safekeeping and Use of the Resource Recycling Management Fund* (hereinafter referred to as the “Recycling

Fund”) and designed the organization chart for the Recycling Fund Management Committee.

The draft stipulates that, in the future, the Resource Recycling Management Fund will be comprised of a trust fund and a non-profit revolving fund. The former will be used to pay for recycling removal and processing expenses. The latter, a fund whose surplus will be rolled over into the following year’s budget, will be used to pay for subsidies, auditing and certification activities, publicizing and other administrative expenses. According to a draft of the Recycling Fund budget for 1999, trust and non-profit revolving funds will account for 60% and 40%, respectively, of the NT\$5 billion Recycling Fund.

After the first year, non-profit revolving funds will account for 30% of total recycling funds. EPA Bureau of Solid Waste Management officials indicated that if recycling is effective, related administrative expenditures would fall, thereby further reducing the proportion of non-profit revolving funds.

The draft also stipulates that the non-profit revolving fund can make up for a temporary shortage in the trust fund but the trust fund cannot be used for non-profit revolving fund purposes. Bureau officials said that, in line with the principle of reducing administrative expenditures, this design should increase the total amount of the trust fund.

In terms of the organizational structure of the Recycling Fund Management Committee, the EPA Administrator will serve concurrently as Chairman while the Director General of the Bureau of Solid Waste Management will serve as Executive Secretary. The number of committee members will be increased from 15 to 21 (including business representatives) who will be appointed by the EPA Administrator and will serve a two year term. To allow businesses the opportunity to express their views, the EPA will establish a technical advisory committee in the future. The majority of members currently on various fund management committees will be included in the advisory committee and submit suggestions to the Recycling Fund Management Committee on a regular basis.

Drinking Water Protection Zones to be Delineated in Two-Stages

An amendment to the *Drinking Water Management Statutes* implemented on May 21, 1997 stipulates that within one year local governments must develop the scope of drinking water source water quality protection zones (hereafter referred to as “protection zones”) to then be approved and formally announced by the EPA. To ensure that all parties are informed of the delineation work, the EPA recently announced progress made to date in counties and cities.

According to the EPA, regulations stipulate that protection zones must be delineated in a total of 19 local-level administrative districts. Of these, Taiwan Province, Taipei City, and the counties of Taipei, Taoyuan, Hsinchu, Miaoli, Taichung, Nantou, Chiayi, Tainan, Koahsiung, Pingtung, Taitung, Hualien, Yilan, Punghu, Lienjiang and Kinmen have already been approved by local government heads and submitted to the EPA. Keelung City has yet to complete the delineation work.

As the delineation of a protection zone and development of an area are interrelated, local governments will exercise caution in carrying out development activities. After numerous discussions, a first stage delineation plan was agreed upon that will include 96 protection zones and 51 areas surrounding water in-take points by a specified radius. Together these make up a total surface area of approximately 125 thousand hectares.

Apart from having confirmed the scope of the area that will be delineated as protection zones as stated above, delineation work on nine river basins including those of the Tamshui, Shuang, Fungshan, Touchien, Tachia, Wu, Pajang, Tsengwen and Kao-ping Rivers has yet to be completed. The EPA said that these regions occupy a total surface area of approximately 560 thousand hectares. The size of these basins and the complicated distribution of pollution sources within them necessitated a longer time-frame for survey completion. Estimation and delineation work was therefore listed as Stage Two of the overall delineation work. To ensure that delineation work is carried out in a reasonable and feasible manner, environmental load estimates will be used as a basis to control development activities.

The EPA noted the delineation of the protection zones is only one of many measures to protect drinking water sources. The EPA and Taiwan Provincial Government's Department of Environmental Protection also launched a complementary improvement plan. Within this plan, water quality protection implementation plans for five river basins including the Kao-ping, Tamshui, Touchien, Tachia, and Tsengwen Rivers have already been completed. The details are currently being discussed and revised with various relevant agencies. A water quality protection implementation plan for six river basins including the Shuang, Fungshan, Wu, Pachang, Lanyang and Choshui Rivers will proceed over the next year to ensure that solid measures to improve the drinking water sources of 11 river basins are completed.

Amendments to the Air Pollution Control Act Enforcement Rules Under Consideration

The first reading of an amendment to the *Air Pollution Control Act* was completed by the Domestic Affairs Committee of the Legislative Yuan at the end of last year. To coordinate the revision of the Act and to begin to study related regulations as early as possible, the EPA is studying ways to amend the *Air Pollution Control Act Enforcement Rules*.

The first major item in the draft lists PM_{2.5} as a pollutant. The EPA's Bureau of Air Quality Protection and Noise Control said overseas research indicates that particles with a diameter of less than 2.5 microns may severely affect the respiratory system. The substance was therefore listed as an air pollutant so that it could come under future controls.

The second major item in the draft stipulates that visual inspections are not necessary if continuous emissions monitoring is already used to test stationary pollution sources. Bureau officials said that the emissions from such sources can be determined through monitoring records and any suspect results can be re-tested.

Regulations governing the use of visual determination of smoke emissions at non-stationary pollution sources were also changed. The stipulation in the enforcement rules allowing visual judgment to be used as evidence of emission violation was

eliminated. However, visual judgment will be allowed as a tool to screen potential violators for the purpose of testing emission levels.

The third major item in the draft sets stipulations for fining stationary sources that commit emission violations and are asked to complete improvement plans by a designated date. If a stationary source that has reported completion of improvement plans but has not yet received approval from the competent authority is found to have again violated standards, it will be fined according to the number of violations detected. Sources whose improvements fail to win the approval of the competent authority will be fined on a retroactive-per-day basis, with the aforesaid per-violation incident fines deducted.

The *Air Pollution Control Act Enforcement Rules* currently stipulate that pollution sources in violation of standards due to “equipment breakdown” can avoid being penalized by making a report within one hour. In actual implementation of this stipulation, local agencies found that businesses often use this clause to avoid penalties. The draft, therefore, defines incorrect design and improper operation and maintenance as outside the scope of “equipment breakdown.”

The draft also lists the following activities as beneficial to the public and therefore exempt from penalization under the *Air Pollution Control Act*.

1. Fire fighting drills.
2. Military drills.
3. Emergency prevention of the spread of contagious diseases by incinerating disease vectors.
4. Other activities formally announced by the EPA.

The Bureau of Air Quality Protection and Noise Control indicated that the work of amending the Enforcement Rules will be completed shortly following passage by the Legislative Yuan.

News Briefs

1999 Air Pollution Fee Prevention Rates			
Fuel			
Type	Fee Rate		
Super (leaded) Gas	NT\$02./liter		
Super (leaded) Diesel	NT\$0.2/liter		
Petroleum Coke	NT\$1000/metric ton		
Stationary Pollution Source			
Type	Fee Rate NT\$/kg		Emission Volume
	Class II Prevention Area	Class I and III Prevention Area	
SO _x	10	12	SO _x Emitters (other than those specified below)
	7.5	9	Average emission concentration < 1/5 of standard or 100 ppm

	5	6	Average emission concentration < 1/10 of standard or 80 ppm
	2.5	3	Average emission concentration < 1/20 of standard or 50 ppm
	0	0	Use of natural gas or other EPA approved low pollution fuel
NO _x	8	10	NO _x Emitters (other than those specified below)s
	4	5	Average emission concentration < 75% of standard
	2	3	Average emission concentration < 50% of standard
	1	2	Average emission concentration < 30% of standard
	0.5	1	Average emission concentration < 10% of standard
	0	0	Use of natural gas or other EPA approved low pollution fuel

Stationary Air Pollution Fee Rates Formally Announced

On May 15, the EPA formally announced the air pollution fee rates for 1999. Of them, the rates levied according to fuel type remain unchanged whereas those for SO_x and NO_x at stationary pollution sources vary according to prevention area and emission concentration (see table).

Stationary Air Pollution Source Continuous Emission Monitoring Standards to be Revised

To make regulations more reasonable, the EPA decided to revise the *Air Emission Standards* used in automatic monitoring of stationary pollution sources. For pollution sources using CEM to monitor particulate matter opacity, visual smoke detection will be eliminated. The competent authority will proceed with auditing the aforesaid pollution sources. Surveyed values that exceed the standards nine times in a row shall serve as the basis for penalization.

Methane to be Eliminated from VOC Standards

As methane is not a precursor of ozone and related testing techniques are already mature, the EPA recently announced an amendment to the *Volatile Organic Compound (VOC) Air Pollution Control and Emission Standards* whereby methane would be eliminated from the scope of VOC controls.

R.O.C. and USA to Cooperate on Asia-Pacific Environmental Protection Efforts

As part of efforts to further international and bilateral cooperation, the R.O.C. EPA and US representative, during a recent review meeting of the *USA-ROC Bilateral Environmental Cooperation Agreement*, reached the following understandings: 1) future cooperation will be long-term in nature and will not be carried out in a single discussion activity format; 2) discussion topics including climate change in the US, risk reduction and clean manufacturing will be incorporated into the cooperative plan raised by Taiwan; 3) the USA-ROC cooperative model and related training and technology transfer activities will be extended to APEC member economies and other countries within the Asia-Pacific region.

Electric Powered Vehicle Subsidy to be Doubled

To stimulate purchases of electric powered vehicles, the EPA recently amended the electric vehicle allowance guidelines doubling the subsidy amount. The EPA allocated NT\$40 million in subsidy funds for 1999.

Dispute Settlement Investigation to Use Remote Monitoring Technology

On May 23, 1998, the EPA's Bureau of Performance Evaluation and Dispute Management showed the results of research that employed remote monitoring technology on public dispute decisions. The Bureau noted that the use of satellite remote monitoring and remote control aircraft is highly effective in investigating large surface area oil pollution. The Bureau further noted that in the next year, apart from continuing to deepen research, it will transfer this technology to local environmental bodies and large businesses in the hope of finding ways to more smoothly resolve public disputes.