

IN THE COURT OF FINAL APPEAL OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
FINAL APPEAL NO. 28 OF 2005 (CIVIL)
(ON APPEAL FROM CACV NO. 350 OF 2003)

Between :

SHIU WING STEEL LIMITED	Appellant (Applicant)
and	
DIRECTOR OF ENVIRONMENTAL PROTECTION	Respondent (Respondent)
AIRPORT AUTHORITY OF HONG KONG	Interested Party (Interested Party)

Court: Mr Justice Bokhary PJ, Mr Justice Chan PJ, Mr Justice Ribeiro PJ, Mr Justice Mortimer NPJ and Sir Gerard Brennan NPJ

Dates of Hearing: 12 to 16 June 2006

Date of Judgment: 17 July 2006

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The requirements of the SB and the TM

31. SWS submits that the EIA report failed to meet the requirements of the SB and the TM because it did not contain a QRA in respect of all hazardous risk scenarios associated with the tank farm storage of aviation fuel which may cause fatalities and, in particular, the scenario of a catastrophic instantaneous 100% loss of fuel causing a surge of fuel to overtop the bund and flow into SWS mill with resulting loss of life and property. The scenario was referred to in the EIA report but the QRA contained in that report did not embrace that scenario. In para.20 of his judgment, Stock JA described a QRA as follows :

"As I understand it, and putting the matter broadly, a QRA involves, after the identification of the hazard, an analysis reduced to mathematical terms, of frequency of an occurrence and a modelling of the consequences of that occurrence. A qualitative analysis does not differ in its objective but its analysis and expression is more judgmental though it is not purely a judgmental matter."

32. As the argument on appeal developed, it appeared that there was a significant difference between the parties in their understanding of what was required to complete a QRA. To resolve that difference, it is necessary to examine a number of the clauses of both the TM and the SB.

33. Section 4.1.1 of the TM defines the general content to be contained in an EIA report :

"An EIA report shall comprise a document or series of documents providing a detailed assessment *in quantitative terms*, wherever possible, and in qualitative terms of the likely environmental impacts and environmental benefits of the project. The requirements for the EIA report shall be set out in accordance with this technical memorandum. The EIA report shall be produced in accordance with the EIA study brief issued by the Director to the applicant."

It is clear that the objectives and scope of an EIA report are to be specific to the project (s.4.2.1) adequately addressing all the issues set out in the SB (s.4.2.2). In s.4.3.1 the TM sets out the general principles which the Director must use in evaluating the assessment methodologies adopted in an EIA report.

34. Annexes 4 to 10 of the TM prescribe the criteria for evaluating the different categories of impact which a project might have on the environment: air quality, noise, water pollution, waste management, the ecology, fisheries, visual and landscape, cultural heritage and, relevant to the present case, hazard to human life. Section 4.3.1(c) provides :

"(c) Impact Evaluation: an evaluation of the anticipated changes and effects shall be made with respect to the criteria described in Annexes 4 to 10 inclusive, and in quantitative terms as far as possible ..."

Annex 4 is the annex dealing with hazard to life.

35. Section 12.1 of the TM identifies certain factors which are relevant to the need for a Hazard Assessment ("HA") and provides that the Director shall consider the need for a HA and its technical requirements. (The Director's duty is "subject to the advice of the authorities stated in Annex 22" but that annex specifies the Director himself to be the relevant authority.)

36. Section 12.1 directs that the Risk Guidelines to be applied in relation to hazard to life are set out in Annex 4 and Figure 1. Clause 2.1 of Annex 4 provides that "[t]he criterion for hazard to human life is to meet the Risk Guidelines, as shown in Figure 1".