Is the Polluter Paying?
Assessing the Application of the “Polluter Pays” Principle to Ship-Source Pollution in Hong Kong

Ling Zhu  PhD LLM LLB
Associate Professor
Department of Logistics and Maritime Studies
The Hong Kong Polytechnic University
Outline:

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  ❖ Ship-Source Pollution Concerns in Hong Kong
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Ship-source Pollution Concerns in HK

- HK’s narrow waters are faced with an ever-increasing growth in shipping traffic (local, regional and ocean-going vessels);

- HK suffers from the typical marine pollution problems associated with shipping activities;

- The high volume of vessel traffic creates a significant challenge in regard to the control of ship-source pollution and has a significant impact on the marine environment of HK.
Polluter-Pays Principle (PPP)

The Organisation for Economic Co-operation and Development (OECD) receives credit for the first formal articulation of the PPP in 1972:

- **1972, “Recommendation on Guiding Principles Concerning International Economic Aspects of Environmental Policies”:**
  - ‘The principle to be used for allocating costs of pollution prevention and control measures … is the so-called “Polluter-Pays Principle”.

- **1989, “The Application of the Polluter-Pays Principle to Accidental Pollution”:**
  - “The operator of a hazardous installation should bear the cost of reasonable measures to prevent and control accidental pollution from that installation” and “the cost of reasonable measures to control accidental pollution after an accident”.

  - PPP is now evolving in certain instruments towards encompassing all pollution-related expenditure.

In the following decades after its creation, the principle has been well developed in national laws of OECD Member Countries, especially the ones in European Union.
PPP: Meaning

- The precise meaning of the PPP remains open to interpretation, as it can vary according to different situations.

- However, it is generally accepted that the PPP implies that the polluter should bear the cost of any pollution.
PPP in Hong Kong

- **Introduced** in 1989:
  - “White Paper: Pollution in Hong Kong: A Time to Act” and its subsequent reviews;

- **Stressed** by several policy papers, e.g.:
  - The 2013 “Policy Address” of The Chief Executive of HK
  - Hong Kong Blueprint for Sustainable Use of Resources 2013 – 2022 by Hong Kong Environment Bureau

- **Implemented** in pieces of HK Legislations, e.g.:
  - Sewage services charging scheme, under the Sewage Services Ordinance (Cap. 463, Laws of Hong Kong)
  - Waste disposal charging scheme, under the Waste Disposal Ordinance (Cap. 354, Laws of Hong Kong)
Is the polluter paying for ship-source pollution?
Ship-source pollution & PPP

There is a need to have a legal and policy system under which:

a) The potential polluter is well aware of his possible liability if any pollution accident occurs;

b) He is motivated to take pollution abatement action; and

c) Once any pollution damage occurs, he does pay for the costs.
Does Hong Kong have such a legal and policy system for combating ship-source pollution?
PPP in ship-source pollution law

- PPP is now reflected in ship-sourced pollution law;
- The implementation of the PPP has evolved:
  “…first, as an economic principle for allocating to potential polluters and polluters the costs of pollution control by governments; second, to requiring polluters pay for emergency response and clean-up costs, and third, to having polluters pay compensation to victims of pollution.” (MacInnis, 2012).

Main Legal Framework for Ship-source Pollution: International Regime

- Prevention and Control
- MARPOL Convention
- CLC Convention and Fund Convention
- Liability and Compensation
- Bunker Convention
- HNS Convention (not in force)
## Main Legal Framework for Ship-source Pollution in Hong Kong

HK has implemented most of international conventions:

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<tr>
<th>Convention</th>
<th>Ordinance</th>
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<tr>
<td>MARPOL Convention</td>
<td>Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap 413, Laws of Hong Kong)</td>
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<tr>
<td>CLC Convention and Fund Convention</td>
<td>Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap 414, Laws of Hong Kong)</td>
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<tr>
<td>Bunker Convention</td>
<td>Bunker Oil Pollution (Liability and Compensation) Ordinance (Cap 605, Laws of Hong Kong)</td>
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Main Legal Framework in HK

- It seems that HK already has adequate laws in place to combat the challenges of ship-source pollution and require the polluter to pay; **however, this general perception is flawed.**

For example:

- Some new legal issues are not fully addressed;
- Some certain kinds of pollution may not fall within the realm of existing legal and policy system;
- It happens that some small and non-serious pollution incidents are not well addressed; and these accumulation of pollution damage from those small and non-serious pollution incidents, **if they are not appropriately addressed**, may eventually be of serious consequence to HK marine waters;
- …
Is the Polluter Paying? – Problems

For **prevention and control** of ship-source pollution, the issue of reception facilities is very outstanding:

1) Under the MARPOL Convention, the setting-up and operation of port reception facilities (PRFs) takes up a large proportion of the prevention investment. It is the Contracting States that should ensure adequate reception facilities at their ports or terminals.

2) It is usual that the government is the funding source for the establishment of port reception facilities. The government will charge both users and polluters with fees for the service rendered, which is called a **cost recovery mechanism**.

3) Although the recovery rate of variable operating cost (VOC) for MARPOL waste handled by the Chemical Waste Treatment Centre (CWTC) has been increasing, it remains unsatisfactory – which means the operating costs of the CWTC for MARPOL waste are not fully internalized to polluters.

<table>
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<th>Recovery rate of VOC for MARPOL waste handled by CWTC in HK</th>
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<td><strong>VOC recovery %</strong></td>
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(Sources: HK Environmental Protection Department)
Is the Polluter Paying? – Problems

For **liability and compensation** for ship-source pollution, there are three main problems:

- **Who is the polluter?**
  - With the exception of bunker oil pollution incidents, the liability for pollution damage is narrowly channeled through a long list to the registered owner of the ship.

- **What should the polluter pay?**
  - The shipowner’s liability is subject to the application of the rule of limitation of liability based on CLC/Fund Convention or Limitation Liability Convention.

- **What is pollution?**
  - The defining scope of pollution damage is limited; and ecological damage of the marine environment is not covered fully in the conventions.
Is the Polluter Paying? – The Survey

A questionnaire survey was also conducted in order to have a full understanding of the industry’s concern about ship-source pollution and the PPP.

In total, 127 participants were invited, including: 98 shipowners, ship managers or ship operators, based upon the membership directory of the Hong Kong Shipowner Association; 10 cargo owners/charterers; and 19 general marine insurance underwriters or P&I clubs, especially those most likely involved in the business of shipowner’s pollution liability. In total, 39 companies participated in the survey.
The result of participants’ views on the effectiveness of pollution prevention and control

- **Neutral**: 51.4%
- **Effective**: 0%
- **Very Effective**: 10.8%
- **Not very effective**: 10.8%
- **Very Ineffective**: 27%
The result of participants’ views on the adequacy of pollution liability and compensation

- 47.4% Neutral
- 31.6% Adequate
- 15.8% Not Very Adequate
- 2.6% Very Adequate
- 2.6% Very Inadequate
The result of participants’ understanding of PPP

- 25 participants understand PPP as an economic principle.
- 25 participants understand PPP as a principle to internalize pollution response and cleanup.
- 19 participants understand PPP as a principle to internalize compensation to victims.

The understanding of PPP in Hong Kong Shipping Industry.
In the survey, among other questions, there were three proposed policies to which PPP were suggested to be applied to its fullest measure. They are:

1) Increasing the waste disposal charge (WDC);
2) Increasing the port due and fees (PDF); and
3) Raising the requirement for entering vessels (REQ).

The participants were invited to evaluate the above suggested policies and the possible effects if they were carried out.
The result of participants’ evaluation to the suggested policies:

- **REQ**
  - Disagree or Strongly Disagree
  - Neutral
  - Strongly Agree or Agree

- **WDC**
  - Disagree or Strongly Disagree
  - Neutral
  - Strongly Agree or Agree

- **PDF**
  - Disagree or Strongly Disagree
  - Neutral
  - Strongly Agree or Agree
The potential effects of suggested policies:
There are two proposed answers: For a positive one, the prevention and controlling of ship-source pollution will be strengthened; for a negative one, vessels may be prevented from calling to HK or passing through HK waters in order to avoid the policies.
Policy Recommendations

- Being a port state, HK has the jurisdiction power to establish and enforce particular rules and standards for vessels’ entry and stay in its waters in order to prevent pollution to marine environment;
- The survey shows the support from the industry to implement PPP further to preventing and controlling ship-source pollution. Therefore, there is a feasibility to propose to HK government to consider adopting the relevant policy based upon PPP, e.g., increasing the waste disposal charge to recover all the operating costs for reception facilities, and raising the requirements for vessels entering HK waters.
Acknowledgements

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Publications


Thank you!

ling.zhu@polyu.edu.hk