

b. Administrative Law

Environmental Impact Assessment law

[Background of legislation]

Noise and exhaust discharged from airplanes or automobiles, and massive pollutants yielded by industrial operations have burdened us with unprecedented physical and mental pain. We, the people, taking a critical attitude toward public administration, have cynically called our own state an advanced one in view of pollution.

Industrial locations have caused the serious destruction of rich nature. They have attributed the pollution and destruction of environment to the failure of industrial location, as well as industrial discharge.

Serious pollution has forced the government to recognize that it should never permit industrial construction without consideration for the effect, or without trying to take measures to minimize the effect of operations on the environment. The government began to undertake environmental legislation in '70s, but it took over 20 years. (The Environmental Impact Assessment Bill was laid before the Diet and abolished in 1981.) The prime cause of this legislative delay may be traced to the objections of the industrial sector.

The voice of the nation demanding the introduction of an environmental impact assessment system became stronger and stronger. Before the legislation was enacted, the national demand for the foundation of an assessment system encouraged alternative measures of assessing the environmental impact in accordance with other laws or administrative guidance (*Gyosei Shido*). The Environmental Impact Assessment Law is based on such previous achievements.

[Features of The Legislation]

① Before undertaking a large-scale project which has the possibility of having a serious impact on the environment, the enterprise planning the project in question should investigate, predict, and measure the impact the project may have.

② Data and results of the assessment must be published. Gover-

nors, mayors of affected localities, and others who have opinions from the standpoint of environmental conservation may present their own views.

③ The enterprise planning the project, following ② above, must take suitable steps. Moreover, the enterprise must make an assessment report reflecting the results, submit it to the Administrator of the Environmental Agency as well as administrative agencies with the power to authorize the project.

④ After receiving the report, the Administrator of the Environmental Agency and concerned administrative agencies can make suggestions with respect to environmental conservation. After considering the suggestions, the enterprise proposing the project should examine and revise the report and make it public again.

⑤ The enterprise cannot launch the project until the procedure of publicity is completed.

⑥ Based on the assessment report or comments received, the public agencies able to authorize the project should examine whether the project plan sufficiently takes in account environmental conservation. After due consideration, public agencies can authorize the project. When public agencies regard the project as inadequate to receive authorization, they can refuse to authorize it, or impose conditions for approval.

[Comments]

Today, as a matter of course the impact of any project affecting environment is to be assessed in the decision-making process. Measuring the impact is a major premise of environmental conservation. Generally speaking, one of the main objectives of the Environmental Impact Assessment Law is to make clear to the public how consideration for environment is ensured by the project plan. The enterprise planning a project capable of having a great impact on the environment is obligated to present how concern for the environment is reflected in the early process of decision-making. That is why environmental impact assessment is an essential process through which concern for the environment is presented to the public.

What concerns should be taken into consideration? Faced with the

fundamental question, we can make reference to the ideas included in the Basic Environmental Law. One of main concepts of the law is to construct a society capable of sustainable development. Based on such a point of view, actions of human beings must be controlled to keep the equilibrium of the environment. Sustainable development demands control of human actions and publicity concerning consideration for the environment in the planning process. As a result of the assessment, drastic revision or cancellation of the project may be inevitable.

How should we assess the law with respect to transparency of the decision-making process? We can assess it in some respects by comparing it with the former assessment system.

First, legislation requiring assessment unifies the procedure. The former assessment system based on ordinances and administrative guidance gives way to a nationally-unified procedure. The unified procedure binds enterprises uniformly. Whether the project is granted a license or not depends upon the results of the assessment.

Second, every project that the Government operates or grants a license is, without exception, the object of assessment, whether it is public or private. Power plants, large-scale roadways through forests, old railroad lines, and so on are assessed in the newly initiated assessment system.

Third, the Administrator of the Environmental Agency can express his/her opinion about every assessment. Under the former system, the Administrator could present his or her own opinion only when required by competent authority.

Fourth, the legislation has made a great contribution with respect to participation of the inhabitants in the assessment procedure. The Environmental Impact Assessment Law does not limit the scope of those who can present their own opinions concerning environmental conservation.

**Prof. SHIGEYUKI SUDO
TAKATOSHI MUNENO**