

Righting the Waterway Wrongs

Published: 16 February 2014
Newspaper Section: Spectrum

Last week we began wading into the issue of water pollution in Bangkok by taking a look at the laws and government agencies that regulate the waterways. After defining the different factors that are tested for when determining the level of water pollution in a given area, we compared the statistics found by the Pollution Control Department to the standards set forth by the US EPA. This week we will try to trace that pollution back to its source and discover why the waterways are as filthy as they are, as well as look at a couple high profile cases in which citizens fighting back against the polluters that illegally dump toxins where fishermen fish and swimmers swim.

According to the Global Water Partnership, who released a National Consultation Report on Thailand, there are five principal sources of organic wastewater discharged into the Chao Phraya River and canals:

- Domestic sewage and wastewater which finds its way to the canals and eventually to the river
- Direct discharge by people living along the banks of the river (wastewater from houses/restaurants)
- Industries which discharge directly or indirectly into the river
- Solid wastes and other wastes thrown into rivers and canals
- Agricultural wastes

According to the Pollution Control Department's 2011 Report that we cited last week, the main cause of deteriorated water quality is untreated municipal wastewater being drained directly into public waterways. In fact, the PCD reports that 90% of all wastewater nationwide, including residential sewage and industrial discharge, flows directly into public waterways untreated. Commercial and industrial expansion, combined with exponential population growth and a rural migration to Bangkok, has resulted in an accumulation of water pollution to the point that nature can no longer cope. This is readily evident in the black sludge-like waters of the canals and their offensive odor all due to a lack of dissolved oxygen.

One notable case that took place in Bangkok in 2009 saw the owner of a fish farm and restaurant pitted against a vehicle spare parts manufacturing plant who was accused of dumping untreated wastewater into the public waterway and causing the deaths of all the farmer/restaurateur's fish. The owner of the manufacturing plant was found guilty and was ordered to pay compensation in the amount of 2,715,000 Baht with an annual interest rate of 7.5% starting from the date the case had been filed until the day in which the compensation is fully paid.

This case is interesting because there were four factories in the vicinity that could have been discharging toxic wastewater into the river, and according to the Thai Civil Procedure Code, the burden of proof was on the plaintiff to show that the factory against which he was bringing suit was indeed the cause of the pollution. So, the plaintiff put wastewater from each of the factories into four different buckets, and dropped a fish in each. The fish in the water from the defendant's factory (unlike the fish in the other 3 buckets) exhibited symptoms similar to those from the plaintiff's fish farm. This experiment, in combination with lab tests showing the toxicity of the defendant's wastewater, was enough for the court to shift the burden of proof to the defendant to show that the wastewater coming from the factory was not toxic. Unable to do so, the defendant was found guilty and ordered to pay compensation.

However, water pollution is not limited to Bangkok, and local residents are fighting back against both polluters and their own government in order to protect their access to clean water. Less than one month ago, a verdict was reached in a high-profile water pollution lawsuit levied against the Pollution Control Department (PCD) by a group of villagers in Kanchanaburi province who have suffered from lead-contamination in their water, soil, and aquatic animals for the last 10 years.

Although the civil suit against the polluting company is still pending in the Court of Justice, the Supreme Administrative Court ruled that under the Enhancement and Conservation of National Environmental Quality Act B.E. 2535 (1992), the PCD had the duty to draw up and undertake a plan to solve, in a timely manner, the environmental problem being caused by this factory. In June of 1998, a few months after the initial complaints had been filed, the PCD ordered the factory owner to clean up the lead-based pollution. Eventually the factory owner went bankrupt.

A certain level of the pollution was removed, however some remained and continued to contaminate the creek. The PCD decided to take the approach of 'letting nature restore itself' in regards to the remaining lead toxins. However, under Royal Decree on Restructuring the Organization of the Pollution Control Department, Ministry of Science, Technology, and Environment B.E. 2534 (1991) the PCD also had the duty to contain the lead contaminants from further polluting the waterway, which it failed to do for another 3 years after the clean-up was halted; effectively eliminating any possible use of the creek by the villagers in addition to continuing to poison them.

The Court found that through its inaction, the PCD infringed on the villagers' rights according to the Civil and Commercial Code in combination with Section 67 of the Constitution which states that it is *"the right of a person to participate with the State and communities in the conservation, preservation and exploitation of natural resources and biological diversities...for regular and continued livelihood in the environment which is not hazardous to his or her health and sanitary condition, welfare or quality of life."* This same section also grants the *"right of a community to bring a lawsuit against a Government agency which is a juristic person for the performance of duties under this provision."*

In the end, the Court ordered that the government pay each of the 22 plaintiffs 177,000 baht, or almost 4 million baht in total, to offset the loss of food and natural resources due to the government's negligence. Although it took almost a decade from the start of the trial for a decision to be reached, in the end justice was found for those who suffered as a result of the government's inability to address industrial water pollution in this case.

Angus Mitchell (angus.mitchell@dfdl.com)
Matthew Christensen (matthew.c@dfdl.com)
Kunal Sachdev (kunal@dfdl.com)
Ponpun Krataykhwan (Ponpun@dfdl.com)



Source: <http://www.bangkokpost.com/news/investigation/395246/righting-the-waterway-wrongs>