

LIMITS TO ENVIRONMENTAL POLICY IMPLEMENTATION. THE CASE OF USER CHARGE IMPLEMENTATION IN THAILAND

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ABSTRACT

Implementation research is an almost 'unknown quantity' Thailand. This research project explores the implementation of the user charge for waste water treatment in three cities with limited success. The bureaucratic complexity is mostly very high; it is reduced by a socio-economic local elite. The implementation often happens within a double structure of the State on the one hand the 'rational legitimate state', on the other, a configuration that resembles a 'traditional organic state authority'. Legal authority and responsibilities are unclear. There are no implementation guidelines or proper programs. The management and costing of the user charge is often arbitrary which leads to court cases. The deficiencies of the implementation might be 'compensated' by capacity building. However, in a broader context than the user charge, the authors argue that a triple paradigm shift - from (i) a traditional to modern polity, (ii) command and control to economic policy instruments, (iii) centralized to decentralized forms of government - lead to an overload of the policy arena and policy implementation failures. These are due to missing skills, knowledge and expertise on the part of central government actors and agencies, and to the 'unpreparedness' of the 'local actors' and the prevalence of tradition. This message is particularly relevant because almost all countries of the Region have engaged in public administration reforms.

INTRODUCTION

The current Thai government (year 2004) is introducing modern public sector management and continuing the process of decentralization that has been given new impetus with the Thai Constitution of 1997. Some policy areas are also experiencing shifts, i.e., liberalization and introducing market instruments – among them user charge for waste water treatment based on volume and pollution load; this should replace or enhance the existing 'end-of-pipe and command-and-control approach' based on volume of water consumption. These changes have profound impacts on local authorities. They are to introduce environmental management and user charges¹ and should improve the still deteriorating environmental conditions and make-up for the traditionally weak enforcement of environmental rules and regulations in Thailand (OEPP, 1998). With these changes, the country introduces paradigms of almost 'universal validity': good governance, privatization, participation and decentralization (for different development paradigms see also Reusse, 2001: 332) and introduces market instruments such as user charges in the area of environmental protection (World Bank, 1999: 58f).

Very little is known about policy implementation in Thailand.² This paper explores several issues:

- It analyzes the implementation process of the user charge in three cities in Thailand.
- It studies the limits of paradigm shifts. Currently, Thailand is in the process of three major paradigm shifts. 1) It is shifting from traditional state and bureaucracy to a modern participatory democracy as proposed in the new Thai Constitution of 1997, 2) Thailand is introducing new policy approaches, for example user charges and urban environmental management. Concomitant, 3) these policies are introduced within a process of decentralization. This paper explores the implications of the triple paradigm shift in the context of Thailand and argues that it ‘overloads’ the politico-administrative system.

The authors believe that the results are of relevance not only for Thailand but also for many other countries in the region such as Lao PDR, Cambodia, Vietnam and China. They are all in transition from a socialist to a market economy and from central command to decentralized governance; in other words, they are all involved in multiple policy paradigm shifts.

THE EXPLORATORY RESEARCH PROJECT

The present project is exploratory empirical research based on the theory of action (Barrett and Fudge, 1981; for an overview of the concept of implementation, see Box 1). It assumes that actors are complex; they play a mix of roles. Furthermore, the project analyses a policy sector (Levi-Faur, 2003: 4) and has adopted a de-centered analysis of governance that encourages the understanding of governance in terms of a political contest resting on competing ‘webs of belief’ and explains these beliefs with reference to traditions (Bevir and Rhodes, 2001: 24).

The action-related analysis of real, complex situations (Christensen and Hansen, 1987; Perry, 1998) is done in the form of three qualitative case studies, which is also considered as a research methodology (Adams and White, 1994; Parkhe, 1993; Tsoukas, 1989; Yin, 1993 and 1994).

Box 1: Implementation defined

Implementation is considered a process that includes:

- implementation as a structure focusing on the actors that participate and collaborate or not (Hjern and Hull, 1982; Hjern and Porter, 1981);
- implementation as policy management - the municipal policy to be re-constructed by empirical data collection (Sabatier and Mazmanian, 1979);
- implementation as an outcome focusing on the effects produced by policy management, the implementation process and the actors involved (Fudge and Barrett, 1981);
- implementation as an evolutionary process focusing on the process of the introduction of the user charge (Majone and Wildavsky, 1984).

This study aims at finding out how the user charge has been implemented in different political locations by focusing on the actors that are involved and what effects the implementation has on private companies. The independent variables are bureaucratic

complexity (number and levels of authority involved), the legal authority (authority based on clear legal provisions relevant for the implementation of the user charge) and the implementation process (explicit process and program). The dependent variable is the effect produced on private companies. The general hypothesis is that if bureaucratic complexity is low and if the legal authority is based on clear legal provisions, and if there is an explicit implementation process, then these factors will lead to the introduction of the user charge in the individual companies. These in turn have different means of 'reacting', either to continue producing as in the past and pay the charge, or to introduce measures at input, throughput, and output levels and pay a lower charge than without those measures.

Three qualitative case studies were carried out in the cities of Pattaya, Hat Yai and Pattani Province in which the user charge implementation process started in the late 1990s. The sampling approach is heterogeneous and according to convenience:

- Pattaya and Hat Yai have the status of municipalities (Population > 200,000 as of 2003). Pattani is a PAO (Provincial Administrative Organization, i.e., the provincial unit of local self government with a population exceeding 40,000 at present);
- Heterogeneity can also be found in the geographical location: Pattaya is a major holiday resort close to Bangkok; both Hat Yai and Pattani are more industry oriented and in the South of Thailand;
- The sectors to be regulated vary too: Mainly food industry in the case of Pattani, electronic and rubber industry in Hat Yai, and condominiums and hotels in Pattaya;
- Those in charge of implementing the user charge also differ. In Pattaya it is the local authority, in Hat Yai the industrial estate manager, and in Pattani the PAO.

The heterogeneous sampling has advantages: i) an array of problems and successes may emerge within the 'spectrum of heterogeneity' and, ii) hypotheses are exposed to a strong test.

Data collection is notoriously difficult in South East Asia. In the present case it was full of problems (in 2001 and 2002): In Pattaya the data collection in hotels was stopped due to a pending court case and due to 'undue propositions' of a key actor towards the researcher. However, 11 in-depth interviews with authorities were carried out. In Pattani, the 10 in-depth interviews with key implementers and secondary data collection had to be made under police protection due to some bombing incidents while the fieldwork was executed. The effects of the implementation process upon the companies could be investigated in a few cases only. In Hat Yai 7 interviews with authorities and 2 companies could be carried out. Previous to the data collection directly related to the case studies, 11 interviews were done with a politically key figure and representatives of the national authorities.

This article is exploratory. It begins with:

- a short presentation of the implementation process in the three cases;

- then follows an analysis of the major factors that lead to or hinder a successful implementation of the user charge;
- the analysis of the triple paradigm shift;
- conclusions.

In this chapter the implementation of the user charge is presented, starting with Hat Yai. It is followed by the case study of Pattani. In both cases the user charge implementation concerned companies located in industrial estates. While it succeeded in Hat Yai, it failed in the Pattani estate. The City of Pattaya, the third case study, has a long tradition of central waste water treatment plants and of user charge. The research project looked at the extension of the charge to a new target group of users; currently (2003), a court case is pending and implementation has been stalled.

HAT YAI: IMPLEMENTATION WITHOUT GOVERNMENT

Overview

The user charge has been implemented in the new industrial estate called Southern Industrial Estate (SIE, established in 1995; see, key events, Box 2). Among the 29 industrial estates in 13 Thai provinces, SIE is the smallest one serving the agro-industry. SIE covers an area of 0.7 km². In 2002, three companies are operational.

Box 2: Key events in Hat Yai

| | |
|------|---|
| 1995 | Establishment of SIE |
| 1995 | IEAT: user charge approach |
| 2000 | User charge implementation |
| 2004 | Launch of 'Eco industrial estate and rubber city' with concerns on increasing wastewater volume |

SIE is part of the Industrial Estate Authority of Thailand (IEAT); SIE operates the industrial estate in Hat Yai. IEAT implements the government's industrial development policy based on an Act of 1979. This act is often seen as a milestone of user charge implementation and established IEAT's tradition of conceptualizing waste water treatment

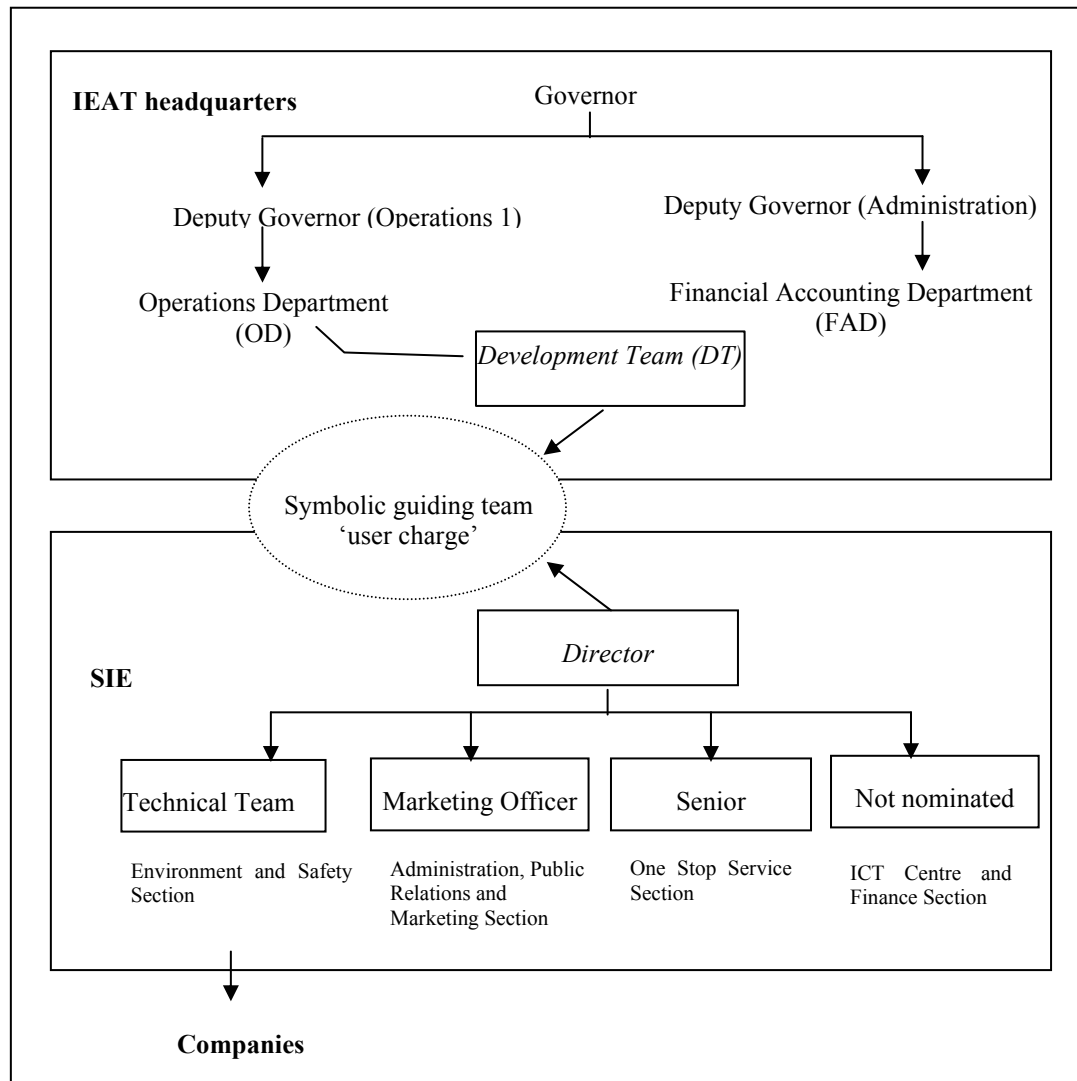
plants and applying the Polluter-Pays-Principle (PPP). IEAT is considered to have a high political reputation and has been involved in development processes of the region as well as of SIE. PPP can have many forms, like flat rates for waste water treatment or the user charge. The latter became a major policy approach of the new Governor of IEAT in 1995. IEAT announced the implementation of user charge in SIE Hat Yai in an official Notification in February 2000.

Several factors explain the successful implementation. SIE is new and small in terms of numbers of companies; it is responsible for the user charge implementation. One strong actor, IEAT, is in favor of the charge against strong actors favoring the traditional end-of-pipe approach; furthermore, the companies have to sign a contract binding them to pay the charge. Since the volume of wastewater in future will increase substantially with the operational launch of the Rubber City (i.e. Eco Industrial Estate) in 2004, the wastewater treatment service and user charge management will play a major role in protecting the environment.

Bureaucratic Complexity

The organizational structure that was set up for the implementation of the user charge can be characterized as a ‘governmental structure without government’. While IEAT is in charge of implementing and supervision of Industrial Estates, SIE has - among many tasks - to implement the user charge. IEAT headquarters and SIE have introduced a ‘soft hierarchy’ that has the characteristics of a network that implements the user charge (see Figure 1).

Figure 1: User Charge Administrative System in SIE (2002)



Source: Authors' survey, 2002.

Within IEAT, the Operations Department (OD) is in charge of implementing and supervising the operating of Industrial Estates. Among the twelve officials of IEAT are three who were given environmentally relevant training and subsequently formed the development team (DT) responsible for assisting user charge implementation in SIE.

Within SIE, three sections are assigned to execute the user charge implementation:

- The technical team from the Environmental and Safety Section.

- A marketing officer is to provide information to factories.
- The senior engineer from the One Stop Service Section has assumed the role, only at the very beginning of implementation, to represent SIE and work with IEAT in designing the user charge.

IEAT and SIE are linked by what has been dubbed by interview partners as ‘Symbolic Guiding Team’. It is composed of the IEAT Deputy Governor and the Director of SIE. This coalition never went beyond some planning of the user charge and due to one meeting only, would not have been able to develop a user charge culture and implementation program. However, it was politically important by clearly leading towards user charge implementation.

Given this configuration one may conclude that the bureaucratic complexity is low: One actor – IEAT – from the national level and one in situ – SIE – are involved and succeed in implementing the user charge.

However, IEAT’s PPP approach in form of user charge might have been diverted due to the fact that SIE had four directors in four years and that SIE’s person in charge of the implementation was rotated to another position. Furthermore, SIE’s contacts with the factories were minimal and unsystematic. Hence the question is why the charge succeeded. The answer lies in a network of personal relations. IEAT’s Governor had one highly qualified employee from DT who was also member of the ‘Symbolic Guiding Team’ and who had good, on-going personal relations with SIE. He is the ‘de facto authority’ backed up by IEAT’s long tradition of PPP and by its Governor (in 2000) taking the lead in pushing through the charge. This was done on the basis of one crucial legal provision.

Legal Authority

The analysis reveals that the environmentally relevant legal provisions are many. 11 notifications from national agencies are technical and 2 are more managerial oriented:

- The regulation notifications are very general regarding the user charge, making no references to costing and providing little information on how to implement the charge. There are no other provisions or guidelines available that would help authorities, Estate managers and companies understand the charge and its strengths and weaknesses and approach to implementation.
- The provisions are such that in the end, not the local actor (SIE) but IEAT is in the strong position to deal with user charges. IEAT makes the companies sign a contract that commits them to pay a user charge.
- The relations between IEAT and Ministry of Industry (MOI) determine what ‘interpretation of legal provisions’ and course of action is to be taken: the construction and management of a central waste water treatment plant (CWWTP) coupled with a user charge. At first hand this is not quite obvious.

IEAT has the authority to act independently by taking into consideration the Ministry of Industry, SIE and the factories. This ‘troika’ contests the user charge; according to them the existing legal references to the user charge are very general only and the Notifications refer to the traditional end-of-pipe approach based on water consumption.

The factories use the regulatory vagueness and interpret it in their own way by arguing that the user charge is not necessary and the traditional approach is appropriate. SIE as an organization is indeterminate. Thus, the question: Why did IEAT, having so far applied the PPP but not the user charge in SIE, introduce the charge in SIE Hat Yai though there was considerable legal uncertainty and opposition? Two major factors contributed to the successful implementation. On the one hand there was the contract between factories and IEAT to pay the charge. On the other hand, the operation of CWWTP of SIE had started. Its operation and maintenance cost were revealed to be expensive. It needed financial means. Since SIE could charge IEAT for these financial shortcomings, IEAT notified SIE and the companies in 2000 that it would levy the charge through SIE.

User charge management and effects

Thus, the general conditions for implementing the user charge were not very favorable. There was hardly any communication between IEAT, SIE and the factories regarding the user charge. SIE had manifold implementation strategies for it had not clearly defined priorities and distributed responsibilities, tasks and resources. Since there was also lack of clear leadership in SIE, no implementation program existed and contacts with factories remained unsystematic. There was no formula developed on how to calculate the charge of an individual factory and relate it to the costs for operation and maintenance of the CWWTP. IEAT did the budgeting for 'running CWWTP' independently of SIE; user charge revenue went to IEAT who then transferred money back to SIE for running the CWWTP. In case of a possible budgetary surplus stemming from user charge revenue, it was not clear to SIE, what the surplus should be used for; similarly, there were no criteria for SIE on how deficits should be compensated for. This indeterminate management has the effect that individual members of SIE deal with individual companies independently of any common approach or strategy, leaving among companies the impression that user charge costing and levying are arbitrary.

The opinions of the two factories about the implementation process are fairly negative: No specific efforts had been made to share information and jointly create a basis of information and understanding of the user charge, or, how SIE would strengthen the companies' commitment for the user charge program. There were too few workshops and too few meetings with representatives from central government, municipality, IEAT and SIE staffs. Users remained in a 'situation' of unclear rules and regulations, of charge calculation, of testing results and who is 'in charge', leaving them with the uneasy impression of arbitrariness.

In the two companies, many believe that the user charge does not really reduce environmental pollution and is not very effective. The changes in enterprises are said to be slow, depending more on the type of factory: One company is large in terms of high loads of wastewater (and higher average user charge per month) and differentiated in its structure and functions with a clear written environmental policy. It introduced changes in the production process and management of the company. However, company management believed that these changes had been triggered by its headquarters and respective company culture in Bangkok and not by the user charge implementation in SIE. The small company has not introduced any changes.

In conclusion, IEAT and the management of the Southern Industrial Estate introduced the user charge. Bureaucratic and legal authority complexities were low, and policy implementation was clearly outcome-oriented which seems to have some positive effects.

PATTANI INDUSTRIAL ZONE: END-OF-PIPE SUCCEEDS

Overview

The then Prime Minister, General Prem Tinsulanonda, planned to bring together the factories that are scattered along Pattani Bay (375 km²) and to develop an industrial zone in the early 1980s (see key events in Box 3). Subsequently, the 5th National Economic and Social Development Plan 1982 – 1986 (NESDP) promoted the development of Pattani Industrial Zone (PIZ) for attracting the seafood and Halal food industry ('lawful' food for Muslim consumption). Industrial Estate Authority of Thailand (IEAT) is asked to prepare a master plan with a Central Waste Water Treatment Plant (CWWTP) on

Box 3: Key events in Pattani

| | |
|-----------|---|
| 1980 | Developing an industrial zone |
| 1982-1986 | Establishment of PIZ in the 5 th NESDP |
| 1992 | IMT-GT: PIZ becomes the industrial satellite town |
| 1995-2000 | PIZEI leads to CWWTP construction |
| 2002 | Debates on seawater pollution continue |

its agenda. Provincial Administrative Organization (PAO) is designated with responsibility for PIZ project implementation. In 1992 another project takes shape: The Indonesia-Malaysia-Thailand Growth Triangle (IMT-GT) economic zone is created to further the development of the area by also implementing cleaner industry. The Pattani Industrial Zone Environmental Improvement Plan (PIZEI) is developed and PAO starts building the CWWTP in 1995. Due to budget constraints, the construction is not finished until 2002; the factories are not connected to CWWTP. The user charge is not implemented in PIZ; there will be an end-of-pipe approach based on water consumption once CWWTP starts operating. This approach succeeded despite the fact that IEAT was involved in planning and implementing PIZ – IEAT has been successful in implementing the charge in the industrial estate of the neighboring city of Hat Yai (see the case study above).

Since the beginning of its development PIZ has been associated with seawater pollution and it is still a large emitter of lead and organic matter into the Pattani River and Pattani Bay. In 2002, there are 32 factories in PIZ: 8 are in the process of signing a contract with PIZ to start their operation, 3 have been closed while 22 are very small scale investment projects only. This does not quite match with the expectations of the different plans and projects and pollution continues.

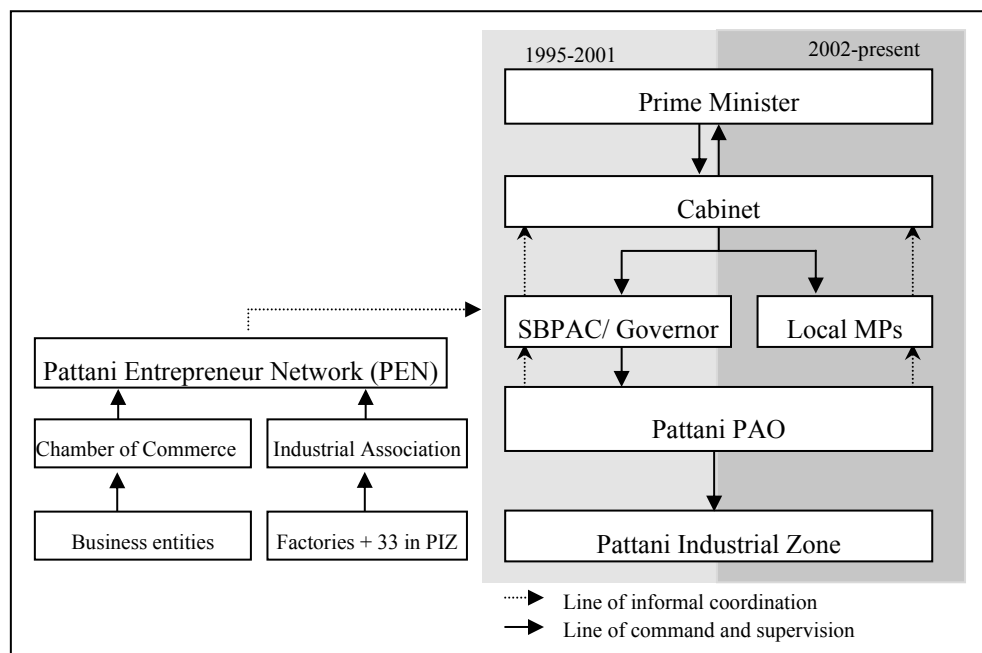
Bureaucratic complexity

For planning and implementing CWWTP bureaucratic complexity is high. This is particularly true when PIZ was identified as an industrial satellite town to Hat Yai in 1992. At that time the government called on the Southern Border Provinces

Administrative Center (SBPAC) to intervene in PAO Pattani Province and reduce PIZ's environmental and sea pollution. SBPAC (in the period of 1981-2001) was an inter-government agency under the Ministry of Interior (MoInt) composed of representatives from different ministries that advises southern provinces on matters of economic, social and administrative affairs and promotes IMT-GT. SBPAC is also the decision center of the different development projects. The Governor of Pattani Province is a member of SBPAC (1992-1996), he then becomes the SBPAC Director General (1999 - 2000) and is later promoted to Deputy Permanent Secretary of the Ministry of Interior (2001).

While working in Pattani, the Governor had a double function: as Governor of the Province he headed the executive branch of PAO and was Director of SBPAC. He worked with a comprehensive 'professional' network consisting of Macro Consultants Co., Ltd, with members from the Prince of Songkhla University (PSU) and with the Ministry of Interior. This policy arena was mainly interested and motivated in developing the physical infrastructure that serves the growth of the IMT-GT economic zone. Work focused on the physical planning of CWWTP by Macro Consultants supervised by MoInt. They all favored MoInt's end-of-pipe approach based on water consumption.

Figure 2: Organizational Implementation Structure of PIZEI



Source: Authors' survey, 2002.

As in the case of SIE in Hat Yai, IEAT is also involved in Pattani. It had originally taken over the responsibility of PIZ's design (in the beginning of 1980s) and was in favor of applying the polluter-pays-principle. When the new Governor of IEAT assumed responsibility in 1995, he was advocating the user charge and succeeded in implementing it in Hat Yai. Thus, one would assume that IEAT should have been the key policy stakeholder for the development and implementation of PIZEI starting in 1995. IEAT did not succeed, for the Provincial Governor was able to twice mobilize financial support from Central Government and get the end-of-pipe approach through:

1. The Provincial Governor uses SBPAC and its links to MoInt, the Cabinet and Prime Minister (see Figure 2 above) to mobilize a national government allocation (USD 15 million approximately) that flows to PAO and is used to finance the construction of CWWTP.
2. The construction of CWWTP has not been finished in 2002 and the budget has been spent. In 2003 the PAO succeeds in getting further financial resources by mobilizing local members of the National Parliament (MPs) and their links to Cabinet and the Prime Minister.

In both cases IEAT did not succeed in linking this funding with the user charge. IEAT acts as an advisor of industrial estate development and to PIZ. As far as the revenue generation for waste water treatment is concerned, the user charge did not play any role. It did not appear in PAO's mission statement. This was an important argument for fending off any claim that it should be introduced. Furthermore, PAO captures the issue supported by the local MPs as well as by Pattani Entrepreneur Network (PEN) consisting of business organizations and factories. The consensus in this small local political economic policy arena was for pre-treatment of waste water at factory level. PAO, lead by the Governor can act alone for it is very powerful in terms of financial resources.

The financial support from Central Government 'flew' into PAO's budget and it is empowered to:

- construct and operate PIZ including CWWTP;
- impose fines for misbehavior of factories, for example in cases of pollution;
- do contracting (e.g. the wastewater plant construction);
- engage in land leasing.

However, this small policy arena has not been very effective, a fact that has also been confirmed in several interviews. Construction of CWWTP started in 1995 and was not finished by 2002. Connections of factories by pipelines only began in 2002 (see Table 1). For the time being, none of the factories is connected to CWWTP and they discharge their pretreated waste water into the sea. Yet, completion of pipelines, the operation of CWWTP and the revenue generation are uncertain, for there is a legal problem with the land on which the CWWTP has been built.

Table 1: PIZEI Work on Waste Water Treatment of PAO

| Starting Year | Project | Approximate budget(s) in MLN Baht | Status in 2002 | CWWTP involvement |
|---------------|--|-----------------------------------|----------------|-------------------|
| 1995 | 1 st phase of CWWTP construction | 40 | Completed | IEAT/ PAO |
| 1999 | 2 nd phase of CWWTP construction | 22 | Completed | IEAT/ PAO |
| 2002 | Start the construction of pipeline connections from factories to CWWTP | 3 | On-going | PAO |
| 2003 | CWWTP maintenance (cost per year) | 10 | On-going | PAO |

Note: 1 million Thai Baht (THB) equal to 23,810 USD/ 2004.
Source: Authors' survey and interviews, 2002.

Implementation based on legal ambiguity

The legislative environment of PIZ is complex, since CWWTP has been built on a contested piece of land, and due to the ambiguity of the rules and regulations that are to be applied. This has consequences not only for the ownership of the land but also for the management of CWWTP. Furthermore, an eventual implementation of a user charge is tied by three existing legal acts (See Table 2 below) which are all contested.

Table 2: PIZ Legislative Environment

| Act | Agency in charge | Legal challenge |
|----------------------------------|--|--|
| Ratchaphatsadu Land Act of 1975 | The Treasury Department (TRD, Ministry of Finance) | The ownership of PIZ land belongs to TRD which is responsible for formulating policies, guidelines, and procedures for managing, maintaining, and utilizing state property and obtaining benefits from the land through leasing. |
| Ministry of Interior Act of 1979 | Ministry of Interior | PAO is assigned to handle the management of Pattani Industrial Zone (PIZ). The PAO has executive power to collect the rental fee from residential areas, harbor services and from PIZ. |
| PAO Act of 1955 | PAO, Pattani | PAO is enabled to assume the environmental responsibility referred to by the PAO Act of 1955. |

Source: Authors' survey, 2002.

The following comments illustrate the legal ambiguities:

- The Ratchaphatsadu Land Act 1975 does not refer to industrial zones and the property rights remain with Treasury Department (TRD). It considers PAO as a simple advisory group that has no legitimate power to represent and act on behalf of TRD and it has not yet (2002) made any firm decision about the scope of the environmental management, i.e., whether a wastewater charge is to be collected or not.
- Ministry of Interior Act of 1979 does not clearly mention that the PAO is entitled to collect a user charge; it only speaks of rental fees.
- The PAO Act of 1955 summarizes the environmental responsibility of local organizations which enable PAO to improve the natural resources and care for the environment. This Act was revised in 1997 and it now encourages the private sector to participate in management and environmental problem solving, and targets the increase of local revenues by providing environmental services. However, it is applicable only if the local government has the

personnel that have the knowledge and capability of environmental management.

Thus, the legal authority of PAO is questionable: PIZ land is TRD land. PAO became authoritative in decision-making despite having supported the construction of CWWTP without a clear legal basis for the land title and without having a clear mandate for any type of rate for water consumption or user charge as advocated by IEAT. For taking these decisions, PAO relied mostly on the Governor of Pattani Province and also on PEN. It captured the issue and solved it in its own way.

The user charge has not been taken into consideration since the beginning of PIZEI construction, and has not been implemented also due to the argument from PAO and, PEN that the opportunities for foreign investment and the growth of the IMT-GT project should not be hampered by charges. Finally, PAO was assumed by the MoInt Act of 1979 to be the center for contracting, and to be the provider of facilities and the user charge collector, all tasks in which they had little (administrative) experience. PAO officials also did not have a professional business background. Their situation was even more difficult because there was further pressure from society and business alleging corruption related to CWWTP construction.

The user charge from the point of view of the companies

Results of the study indicate that the implementation of PIZEI did have the effect that the companies have their own on-site wastewater treatment. However, some do not have enough capacity and still discharge waste water directly into Pattani River or Bay.

From the viewpoint of the factories, PAO alone dealt with the implementation of waste water treatment. Though the planning and construction process of CWWTP lasted for almost a decade, the user charge was never discussed and is considered too new an idea by the managers of factories. Several interview partners consider that it is impossible to find a consensus among the stakeholders and set up a mechanism for introducing and operating the user charge. The interview partners believe that the major part of PAO's budget was allocated for CWWTP only, a construction that the local government could not afford to operate and consequently ran into deficits, particularly due to the high electricity costs. Several representatives of factories believe that the cause of the failure of the wastewater management system is PAO: it seems to know little about environmental management and also lacks the knowledge about the realities of user charge and other business matters. From the factories' viewpoint, unclear rules and regulations appeared to be the major constraints in applying the user charge. They also believe that the user charge would be too high and that the IEAT user charge formula does not seem to suit agro-food production that uses water intensively.

In conclusion, the user charge issue is captured by a small local political economic arena that manages policy implementation by going for pre-treatment and end-of-pipe approaches. Bureaucratic complexity is low while legal complexity is high, due to uncertainty whether any rate or user charge can be levied. The implementation was outcome oriented by avoiding the user charge. Its effects are uncertain.

CITY OF PATTAYA: HIGH COMPLEXITY LEADS TO SOCIO-POLITICAL ACTION

Context

The City of Pattaya (CoP) has had the privilege of early decentralization. Apart from Bangkok it is the only city that has a special form of local self-government with greater independence and administrative flexibility sealed in the City of Pattaya Act of 1978.

| Box 4: Key events in Pattaya | |
|------------------------------|--|
| 1978 | The City of Pattaya Act: early decentralization |
| 1980-1988 | Eastern Seaboard project & configuration of small policy arena |
| 1991 | User charge implementation |
| 1992 | NEQA & configuration of large policy arena |
| 1999 | User charge extension begins |
| 2004 | Hotel owners file court case |

The tremendous development and economic growth of the Eastern Seaboard in 1980s (Box 4) and of Pattaya have also their price in form of environmental degradation, primarily wastewater and seawater pollution, solid waste disposal and flooding problems. One could not claim that CoP did not work on its environmental problems. It constructed Central Waste Water Treatment Plants (CWWTPs, see

Figure 3 below) and introduced a user charge in major parts of the city in 1991. The users are hotels and condominiums³ within the geographical service areas of CWWTP 1, 2, 3 in Southern Pattaya, Jomtien, Northern and Central Pattaya. A small policy arena is the foundation of the success of user charge implementation.

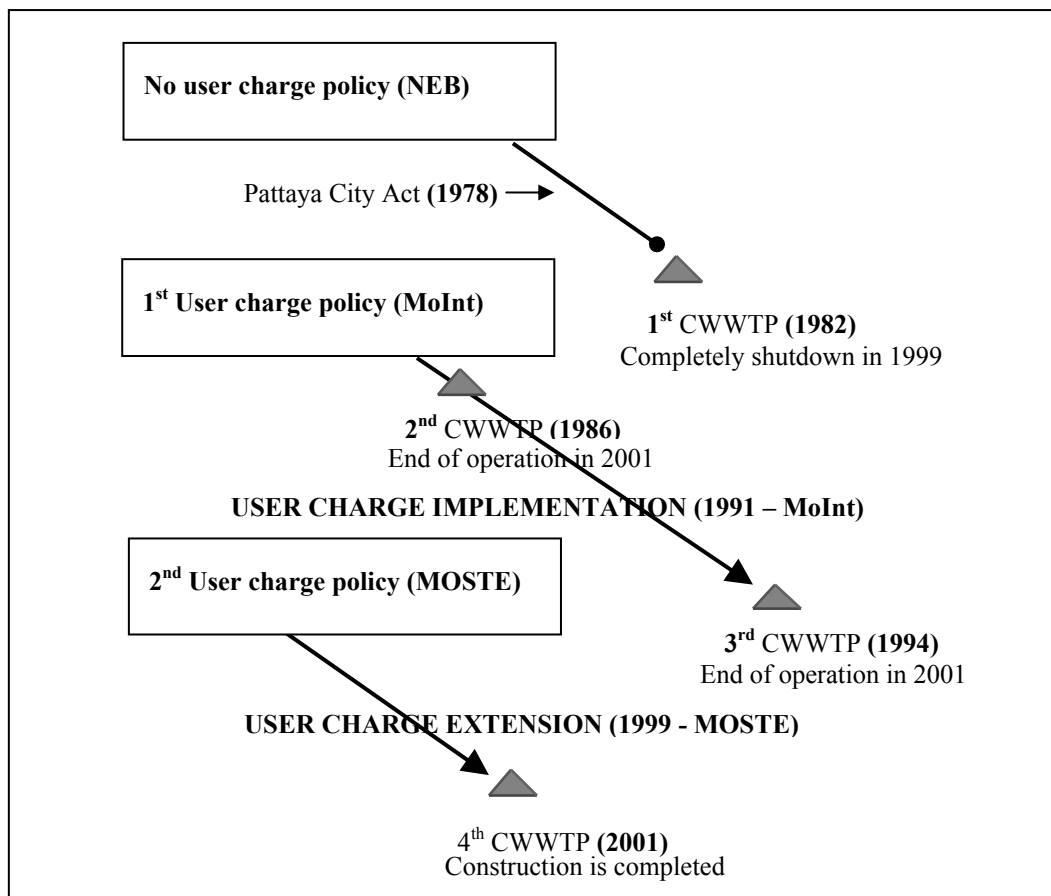
Under the prescription of new National Environmental Quality Act (NEQA 1992) the extension of the user charge should have started in 1999 and cover all CWWTPs and users and for the first time polluters in whole area of CoP should have been included in the policy formulation. That has led to the formation of large policy arena. However, a small policy arena ‘captures the issues’ and constructs a new CWWTP (number 4) under dubious circumstances that has retarding effects on the extension of the user charge and leads to a court case in 2004. The present case study analyses the extension of the user charge.

Bureaucratic Complexity

The following three actors have dominated the Waste Water Treatment arena in the CoP in the past three decades and they have been relevant for the extension of the user charge in 1999 (see Figure 3 below):

- The National Environmental Board (NEB), 1977-1983
- The Ministry of Interior (MoInt), 1983 – 2001
- The Ministry of Science, Technology and Environment (MOSTE), 1992 – present

Figure 3: Major Actors, Policy Formulation & Milestones

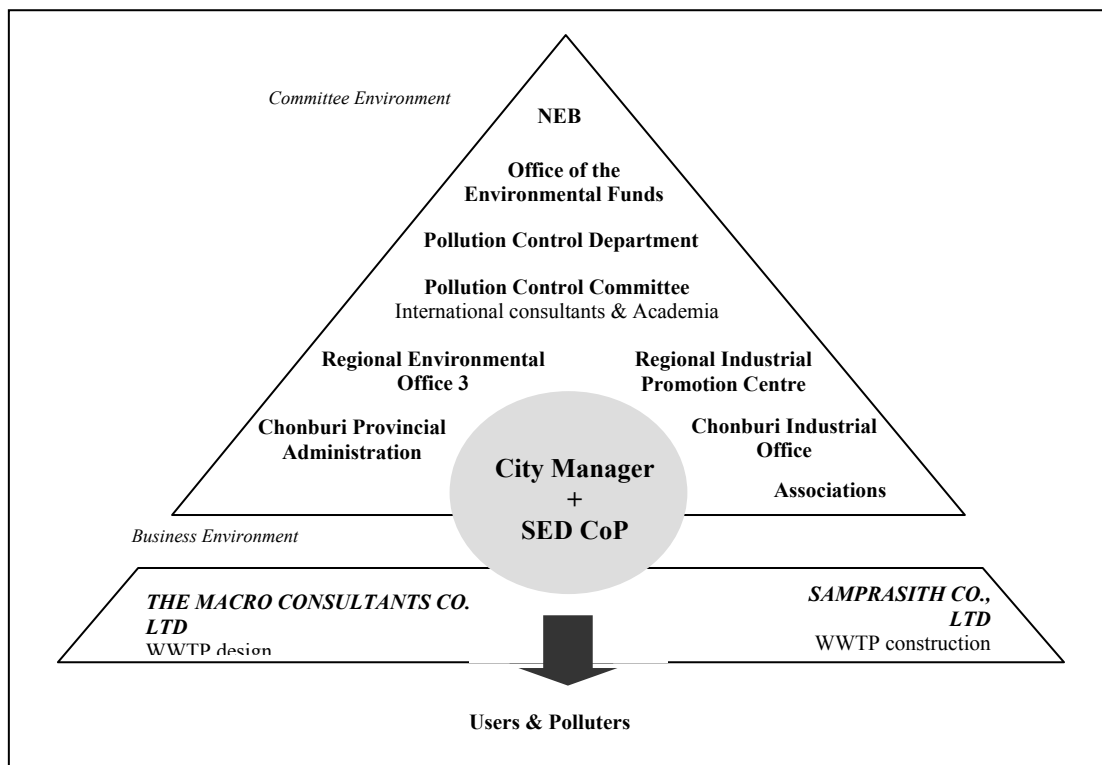


Source: Authors' survey, 2002.

These three major actors from the Central Government have each built 'its CWWTP'. The analysis shows that each had its own strategic approach:

- When NEB built its CWWTP in the late 1970s and early 1980s, the user charge was not an issue in Thailand. It had a top down approach coupled with end-of-pipe technology.
- MoInt built and operated its CWWTP four years after the shutdown of the plant built by NEB. MoInt was helped by experts for planning and building CWWTP 2 and 3. It introduced the user charge in 1991 by creating for the first time a 'user charge culture' that could be a benchmark in Thailand and could also be applied by MOSTE in the case of its extension in Pattaya in 1999.
- MOSTE built its CWWTP (number 4 in the Figure above) in 1999 that covered all of Pattaya. It also wanted to create a user charge arena that was initially inclusive; it includes up to 55 actors from different levels of authorities as well as academic and private actors. They form the large policy arena (See Figure 4 below).

Figure 4: Large Policy Arena (simplified)



Source: Authors' survey, 2002.

MOSTE is the major actor from the national level providing for financial resources. It tries a new policy formulation and implementation approach by integrating many actors, in particular also those from the local level and business associations into which CoP and its Departments are embedded. The central actor within CoP is the Sanitary Engineering Division (SED). It was already crucially involved in the construction of CWWTP 1, 2 and 3. At that time MoInt had given SED the responsibility and accountability for contract negotiations for CWWTP 1, 2 and 3, for the inspection of waste water quality and for billing. According to SED's own definition, it considered itself as an independent technical team – also in the case of CWWTP 4 and user charge extension in 1999.

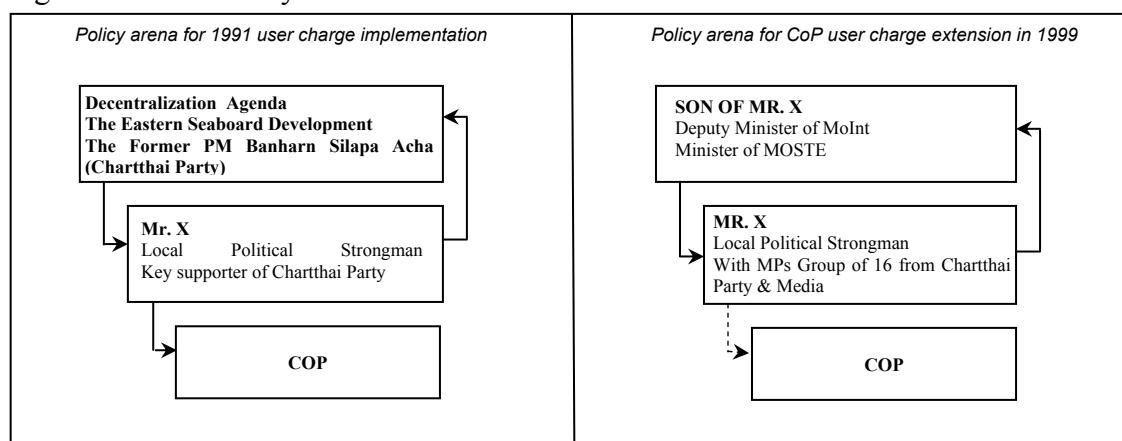
The Director of SED (an engineer) acts as the core coordinator of CWWTP 4 project. In order to fulfill its obligations and according to its 'self-definition' regarding CWWTP 4 SED carries out a broad spectrum activities such as:

- Serve as a local contact point for the wastewater management and user charge system.
- Prepare the strategic environmental planning independent from the central government.
- Monitoring of payment of waste water charges and the submission of reports to fiscal authorities.
- Arrange the environmental training to pursue the success of user charge implementation.

SED's approach can be defined as 'business-like-model' because at local level CoP/SED interact on a peer-to-peer basis rather than in the hierarchy mode; the model is open to local actors and individual users with information exchange and direct communication (see also below).

The policy arena is large and highly complex and one could expect that it would produce the well known implementation deficits in Thailand. This was not the case in Pattaya. A small policy arena captures the issue, brings the construction of CWWTP 4 to an end and prepared the extension of the user charge. This small arena is composed of political economic actors, mainly the local strongman of the Eastern Seaboard Project, Mr. X, with a 'godfather-like influence'. He has traditional personal links to the national level, he belongs to the same political party as the Prime Minister who established the Eastern Seaboard in the early times of decentralization in the 1980s and played a central role in the user charge implementation of 1991 (see Figure 5).

Figure 5: Small Policy Arenas



Source: Authors' survey, 2003.

In terms of formal politics, Mr. X is elected mayor (1989) of a small Saensook municipality near CoP. He has for two decades informally dominated political life throughout the Eastern Seaboard region including Pattaya; he also owns a large business and media empire. His links to the national level enable the construction of CWWTP 2 and 3; once they had difficulties in operation and management, further CWWTPs were necessary to save CoP from waste water policy failure, for Pattaya was declared an environmental protection zone in 1992. It was important to get the tourist resort out of a still lurking environmental crisis. At that time – 1999 - another political party provides the Prime Minister. However, Mr. X is able to switch to MoInt with his son as Deputy Minister, later to MOSTE with his son being its Minister; the latter Ministry becomes the major financier of CWWTP 4 (See Figure 5 above). Mr. X has the support of a prominent group of Members of Parliament known as the Group of 16. Mr. X and this group organize themselves and create a network and culture of their own design through his media power. This small political economic policy arena builds and operates CWWTP 4. Currently (2004), Mr. X has been jailed for 5 years and 4 months for corruption (*Bangkok Post*, 2004: 2). He and several of his colleagues managed to buy land on behalf of CoP in order to build a waste dump that would also serve CoP. He has also been jailed for 25 years for hiring killers who 'finished off' one of his rivals. The question remains, whether the user charge has been extended or not? Legal matters and management strategy prevented it so far.

Legal Authority

The 'business like model' is also adequate to define how legal authority is constituted. The 'usurpation of legal power' by the small policy arena and the reduction of the complexity of the large policy arena were possible due to legal uncertainty. The 55 actors and agencies that form the large policy arena all have their legal provisions, definitions and standards. This creates a large array of legal provisions that were neither streamlined nor harmonized, thus not establishing a clear legal hierarchy that would set up a responsible and accountable legal authority. A legal market is constituted, continuously evolving and at the time of CWWTP 4 and user charge extension clearly an over-regulated market. This is the key feature of user charge implementation in CoP in 1999.

Legal uncertainty in form of competing interpretations exists and leads to a 'politicization' of the matter: The small policy area establishes itself which allows CoP/SED to continue assuming responsibility, implementing and operating the user charge and its extension. CoP resides with the financially powerful MOSTE to deal with its environmental crisis. This configuration has low organizational and legal complexity (few actors, few rules). However, the business-like model was initially inclusive, it allowed private actors (e.g. hotel managers etc) to participate too. But, what exactly a user charge and its extension meant (e.g. costing approach, implementation and participation procedures) has not been dealt with in the legal acts, nor are clear cut interpretations offered. The target groups (hotels etc) have not been consulted and informed; no common 'user charge culture' has been created by means of workshops, in situ visits coupled with advice etc. In this sense the implementation of the extension of the user charge is not systematic. This leads to difficulties in the management of the user charge.

Management of user charge

The user charge is extended through negotiations on a case by case basis depending on personal relations, i.e., guided by the approach the respective representatives from CoP/SED have in mind. The charge is negotiable and the costing approaches differ from user to user. In this way the complexity is increased and opens up a market for negotiation which again corresponds to the business-like model. Currently, not only Mr. X is in prison but a court case is pending, filed by a user who feels being treated arbitrarily regarding the calculation of the user charge. It remains to be seen, how the court decides and how the extension will be handled and whether the environmental crises can be averted (no specific information available by beginning of 2004). It also remains to be seen how CoP can cover its O&M cost for CWWTP 4.

In conclusion, bureaucratic and legal complexity are initially high for the policy arena is inclusive and implementation is considered to be evolutionary. A local political economic arena reduces bureaucratic and legal complexity and uses a 'mechanistic' policy extension management approach to build and operate the CWWTP. The extension is uncertain due to a court case.

FACTORS FOR SUCCESS OR FAILURE AND EFFECTS OF USER CHARGE IMPLEMENTATION

Factor a: Bureaucratic complexity of implementation

Implementation complexity⁴ for the planning and construction of CWWTP and of the user charge varies considerably in the different case studies.

Complexity is low in the case of Hat Yai. The policy arena is a symbolic coalition guiding team which is a product of the IEAT bureaucratic system and its tradition of favoring PPP that includes economic instruments such as the user charge.

IEAT forms the guiding team with representatives from the two levels: from the national level, the IEAT Governor and representatives from its headquarters and from the local level, i.e. the Director of the Southern Industrial Estate (SIE). This team provides 'administrative support' for the implementation of the charge. There is a high rotation of the directors of SIE; no formal user charge program and structure are set up. Individual members from SIE deal with individual companies and determine the charge to be paid. There are only a few companies using this new estate; they have to sign a contract that commits them to pay a user charge. Thus, the bureaucratic as well as the thematic complexity (user charge approach only) are low. It is higher when it comes to the determination of the charge to be paid, depending on the individual members of SIE and their relations to the company.

Bureaucratic complexity is initially higher in the case of Pattani. A considerable number of important actors from different levels of hierarchy were involved in getting the traditional end-of-pipe approach through. IEAT was also engaged. While it was successful in implementing the charge in Hat Yai, it 'failed' in Pattani, where it faced a strong coalition composed of actors that are from the national, provincial and local levels. Some agencies are private, others are public, (PAO, Cabinet, SBPAC, PM, MoInt etc), some are academic (Prince of Songkhla University) and, last but not least, several are politicians from the local and national assemblies. However, this complexity is reduced through the constitution of a small political-economic policy arena: The local PAO, supported by local politicians sitting in the national parliament have direct links to the national level, i.e., the Cabinet and PM, that enables this small arena to mobilize resources for CWWTP and push the end-of-pipe approach through.

A similar process of reduction of complexity takes place in the case of the City of Pattaya (CoP), where the user charge is extended into further areas of the city. Initially, actors representing different levels of hierarchy and interests form a large policy arena with up to 55 agencies, thus the policy arena is highly inclusive and complex. However, complexity is reduced to a small political economic policy arena consisting of a long-standing regional strongman ('godfather') with direct links to his son, the Deputy Minister of MoInt and who became the Minister of MOSTE, links to CoP and links to a group of 16 MPs from Chartthai party. These links enable the mobilization of central government resources for the construction of a new CWWTP that replaces the old ones that have broken down or where the scale of operation is insufficient. This small policy arena is a product of a regional strongman with business interests in the media, a major construction company and other businesses, and who is leading the consortium of local leaders. The large policy arena is superseded by the local-politics-model cum business-

model. The small policy arena makes use of its political economic status to extend the user charge in the case of Pattaya; this should reduce the financial problems of CoP and stop the environmental degradation that 'endangers' the economic thriving of this famous tourist resort. However, the regional strongman has been jailed for 5 years and 4 months for corruption (*Bangkok Post*, 2004: 2). He and several of his colleagues have managed to buy land on behalf of CoP in order to build a waste dump that would also serve CoP. He has also been jailed for 25 years for hiring a killer to do away with one of his competitors.

In conclusion, user charge implementation in the three case studies

- Succeeds, if bureaucratic complexity is very low with the IEAT leadership in favor of it (Hat Yai).
- Succeeds, if political economic actors reduce initially high complexity to a small network of low complexity; its power being based on traditional status and not on legal provisions (Pattaya). Traditional authority refers here to the fact that the object of obedience is the personal authority of the individual by virtue of traditional status; thus, obedience is not owed to enacted rules but to the person who occupies a position of authority by tradition (Weber, 1947: 341).
- Fails, if the reduction of complexity secedes to a small political economic arena, which implements a traditional end-of-pipe approach (Pattani).

As far as the validity of the present results is concerned, Mohanty (2001: 68) confirms the existence of high bureaucratic complexity. She assesses the impacts of the implementation of ISO 14001 certified industries in and around the central region of Thailand covering 4 major industrial districts and finds shortcomings in regulatory requirements, in non-coordinated efforts of different ministries towards the environmental problem solving activities, and a lack of knowledge and resources on behalf of the authorities.

Factor b: Unclear legal authority

The analysis shows that there is a considerable number of environmentally relevant legal provisions that de facto form a 'market' which enables the respective policy arena to choose and legitimize its approach. These provisions are neither harmonized nor hierarchically ordered. Thus, the legal authority is unclear, which leads to non-implementation of the charge (Pattani), or to conflicts and uncertainty when the charge will finally be extended (Pattaya), or to its full implementation (Hat Yai).

In Hat Yai, the relevant legal provisions are not very clear and are very general. There are no other provisions that would guide local authorities and other actors involved in user charge implementation. The factories use the vagueness to interpret it in their own way by saying that the user charge was not necessary and that they favored the condition of the traditional-end-of-pipe approach combined with the traditional fee of water consumption.

In Pattani, the legal complexity has consequences not only for the ownership of the land on which CWWTP is built, but also for the management of the utility. The

implementation of user charge continues to be tied by three existing legal acts which are contested. Since the authority to operate the industrial zone is seemingly beyond the scope of PAO regulations, the introduction of user charge failed.

The legal authority in Pattaya is also characterized by a large array of legal provisions. The 'usurpation of power' by the small policy arena leads to the application of the environmental law and the CWWTP plant being built and operated. But the user charge is currently (2004) contested by the association of Hotel owners and a court case has been filed claiming the arbitrariness of the user charge extension.

Factor c: Missing implementation structure and process

Implementation is a complex process. It deals with the identification of the policy, a set of outcomes and the relationship between these two (Lane, 2000: 108). The process itself needs to be strategically guided, planned, managed and controlled in order to involve changes of actors, responsibilities, roles, goals, functions and allocation of resources (among many Diamond, 1996; National Academy of Public Administration, 2000; Stapleton, Glover and Pettie, 2001).

In the three cases analyzed, implementation was rather conceived as 'evolution' in which formulation and implementation are mixed; it was conceived as 'ambiguity' in the sense that bureaucracy is not sufficiently autonomous from politics. Finally, it has been conceived also as a perspective in which different coalitions position themselves. Depending on the winning coalition, implementation may lead to user charges (Pattaya, Hat Yai) or to symbolic implementation only (Pattani and, according to *Bangkok Post* (2003: 3) many other municipalities).

The results from two of the case studies (Pattani, Pattaya) show, almost systematically, deficits in the implementation process: No actor with clear responsibility objectives and strategy is in charge of the implementation process, and no involvement of the target public (e.g. companies); No specific information activities (capacity building) such as target group oriented seminars and workshops for user groups (i.e., companies) as well as for technical experts that will help users to conceive technical innovations.

Other research has also pointed out implementation deficits. Chokchaitrakulpho (2002: 56) shows that for over a decade, the Thai government has been promoting cleaner production (CP), for example in Samut Prakarn Province (adjacent to Bangkok) which is one of the most industrialized and also one of the most polluting provinces in Thailand. Some of the CP implementing activities on a voluntary basis has been successful. However, according to the author there are still serious environmental, institutional, legal, policy and planning problems, as well as implementation deficits (structural, organizational, knowledge and skills). The theses from Tungkasmit (2003: 125f) and Mongkolnchaiarunya (2001: 206f) confirm these findings too.

Factor d: User Charge Management

Successful implementation depends not only on the implementation model that is chosen but, once the instrument is implemented, its success depends also on the management of the instrument. The management of the user charge itself differs from case to case.

In Pattani (PIZ), the charge has not been implemented. This case has to be considered as normal according to TEI (*Bangkok Post*, 2003: 3); only four municipalities have so far successfully implemented the charge. Two of them have been analyzed in this research study: Hat Yai and Pattaya.

In Hat Yai (SIE), the implementation process determined from the very beginning that the companies have to sign a contract that commits them to the user charge. No specific efforts had been made to share and jointly create a basis of information and common understanding of the user charge and its effects on the companies. Since there was a lack of clear leadership and no clear indicators, the staff had no direction of where to go and what to do. This indeterminate management has the effect that individual members of SIE deal with individual companies independently of any common approach or strategy, leaving among companies the impression that user charge costing and levying was arbitrary. One of the two companies surveyed reports environmentally friendly changes due to the user charge. However, its management believes that these changes had been triggered by its headquarters and respective environmental company culture in Bangkok and not by the user charge implementation in SIE. Thus, environmentally relevant effects due to the user charge depend more on the type of company than the implementation of user charge by SIE.

In Pattaya (CoP), the charge was negotiable between SED and the factories. The user charge is extended through negotiations on a case by case basis depending on what specific approach representatives from CoP/SED has in mind. A court case is pending (2004) from a user who feels being treated arbitrary regarding the calculation of the user charge. It also remains to be seen how CoP can cover its O&M costs for CWWTP 4.

Mohanty (2001: 66) and Tungkasmit (2003: 113) come to similar results regarding the effectiveness of administrative actions. Mohanty believes that the major driver for implementing ISO 14000 is not the administration but the company's management, in particular if it is an international company. Tungkasmit's research in the famous holiday Province of Phuket supports Mohanty's view and some of our research in the sense that implementation of regulations depends less on Thai government rules and regulations but very much on pressure from outside, i.e., on mainly tourists and/or company internal factors such as efficiency points of view.

Factor e: New instrument for environmental protection

The traditional environmental policy in Thailand has at its core the technical end-of-pipe approach within a structure of top-down command and control. Furthermore, environmental awareness is low, not only in society but also among civil servants and business – a fact also acknowledged by the Thai Government in 1997. As the case study of Pattaya has shown, the traditional approach coupled with low enforcement and low

awareness leads to serious environmental degradation and to the introduction of the economic instrument 'user charge'.

As far as 'environmental economics' is concerned, the 'costs' for firms have been based on cheap (drinking) water and on flat rates for waste water and externalization. The user charge approach builds on economic instruments, i.e., with the help of user charges companies should be lead to either pay according to their waste water volume and pollution, or introduce innovative changes in their input and production process so as to reduce the volume and polluting load that is discharged, in order to reduce the charge to be paid to those providing the service of waste water treatment. It is characteristic that no legal provisions mention the type of charge and costing approach that should be used for calculating the charge. Bird (1999a: 4f) argues that there are at least 3 types of user charges (service fees, benefit charges or public prices) and 7 approaches to pricing the charge⁵ and that from this point of view local authorities as well as well companies have been 'left in the dark'. However, there has been no 'urgency' to comply with rules and regulations including the implementation of the user charge, for Thailand has a low enforcement tradition.

Factor f: Low enforcement tradition in Thailand

Thailand has a long history with the low enforcement. In the case of the environment, the formal recognition of environmental problems began to take shape only after the 1997 economic crisis when Thailand's key policy maker⁶, OEPP from MOSTE, acknowledged in its state of the environment report Year 1997 (OEPP, 1998: 8) that lack of enforcement has made policies, rules and organizations ineffective. MOSTE argued their case further on the problem of unclear legal authority: 1) Thai laws assign substantial powers to the executives by allowing the issuance of Ministerial Regulations, Notifications and Announcements, thus, the executives have the power to lay or reset the rules; and if they cannot promulgate or modify legislation, they can still influence those overseeing the implementation of the regulations. Further, 2) overlapping legislation may sometimes prevent an authority from enforcing a given law for the fear of offending or overstepping the jurisdiction of another agency and causing conflict. As a result, influential local business people usually forge strong ties with politicians to use the latter's bureaucratic powers to nurture their own selfish interests without regard to the impact on the public good and the environment. Langkarpint's study (2003: 1709) confirmed that throughout the public sector in Thailand, there is evidence of corruption and corrupt officials or agents who render law enforcement and regulation almost an impossibility (Energy Information Administration, 2003; Delgado, Narrod, & Tiongco, 2003; Greenpeace Southeast Asia Foundation, 2004; Wildlife Fund Thailand, 2003)

BEYOND CAPACITY BUILDING: TRIPLE PARADIGM SHIFT

There is no doubt that capacity building is very important for public sector reforms and policy changes. However, the authors want to argue that it may reach limits if a triple paradigm shift is occurring at one and the same time, for the shift leads to the overload of the politico-administrative system. In a first part, the notions of paradigm and policy

shift are defined. In a further part, capacity building is presented and the double structure of the Thai state is introduced. This structure is the context within which the triple paradigm shift takes place.

Paradigms and policy shifts

Sabatier has introduced the concepts of advocacy coalition and policy change (Sabatier, 1998: 113; Sabatier, 1999: 130f). A major policy change is a change in the policy core whereas a minor change is a change in the secondary aspects (Sabatier, 1999: 147) of a policy only. Policies are carried by advocacy coalitions and are part of their belief system (idem):

- The deep core, i.e., normative and ontological, axioms and values that go across all policy systems which are very difficult to change;
- The policy core, i.e., fundamental policy positions regarding strategies for achieving the core values which are sub-system wide and difficult to change;

The secondary aspects, i.e., instrumental decisions and information to implement policy core are usually part of the sub-system and moderately easy to change. In the case of Thailand, the user charge introduction is a deep core and a policy core change caused by a change in the ruling local coalition. However, the change from one coalition to the other often needs a fundamental paradigm shift from a traditional to modern form of polity.

This concept of paradigm is now also used in the context of development (Mürle, 1997: 20) and public sector reform (Aucoin, 2000: 1). Paradigm refers to a specific pattern of thinking and deciding (adapted from Hall, 1993: 276):

- the values and axioms that lead to selection and definition of problems (deep core);
- the means to resolve the problems (policy core, secondary aspects);
- the framework within which decisions are taken (polity);
- the actors forming the elite (coalition of those holding power).

One might now argue that the notions of policy and policy change are adequate to describe and explain the results of user charge implementation or non-implementation in the three Thai cases, and that there is no need to introduce the concept of polity paradigm shift. However, with the notion of paradigm shift the authors want to lead away from an approach that focuses on the policy 'only' but argue that policy shifts are linked with polity shifts. What the authors mean is that a paradigm shift is a policy and polity shift that can set limits to capacity building.

Capacity building

There is considerable experience with capacity development and organizational change processes in many settings (agriculture, education, gender development, private sector, poverty alleviation, etc). The following key factors promote capacity development: An external environment that is conducive to change; leadership by top management; availability of institutional innovations and resources; as well as adequate management of the capacity development process (among many Horton, 2002: 8).

This type of capacity building is in line with the current shift of development policies. It is a change from 'project support' to the development of institutions, i.e., the establishment of structures and of decision-making mechanisms, which enable the target groups to access resources, information and participation, as well as enabling growth and welfare (quite similar Kochendörfer-Lucius and Van der Sand, 2000; Plummer, 2000). Hilderbrand and Grindle's (1997: 34f) conditions for public sector capacity are merit in recruitment and promotion, effective performance of agencies, and fair and well-established rules in relationships between the bureaucracy and other institutions.

Capacity building can specifically focus on managerial functions such as financial, human resources and strategic management and it can focus on organizational learning and on external relations (among many Eade, 1997; Horton, 2002; UNDP, 1998).

However, capacity building seems to have its limits too. New Zealand's State Service Commission argues, though vaguely, that the implementation of the Policy and Expenditure Management Systems failed and was not a suitable model for New Zealand, that ' (...) the system depended on too many new advances in government planning ...' (State Service Commission, 2000: 7) and similarly Mongkolkeha (2001: 210f) is concerned that the Thai local administrative system may be 'overloaded' by introducing urban environmental management within a process of decentralization.

The Research Institute for Asia and the Pacific does not take into account the overloading in its recent research on capacity in Philippines, Indonesia, Thailand and Vietnam (2001). The researchers 'measure' state capacity, the principal indicators are elite stability and public legitimacy; in the case of policy capacity, the main focus is on policy coherence and the ability to frame realistic, credible and consistent strategic goals; and in the case of administrative capacity, the factors highlighted are those that enhance or inhibit the effectiveness of the machinery of government and of administrative processes more generally for putting into effect these goals. While Malaysia is considered having good capacities for carrying out reforms, in other countries e.g., those of Thailand, Vietnam and Indonesia are estimated to be low. The very instructive research report does not provide answers to how, where and in what sequence the capacity building should be done and it also overlooks limits of capacity building. The major barrier – the authors of this paper believe – is the triple paradigm shift that should take place if, for example, the will of new Thai Constitution was followed.

THE TRIPLE PARADIGM SHIFT

In this section the article will assess the three paradigm shifts that should occur:

- from an autocratic organic polity to a modern, democratic polity;
- from command-and-control technology based, to economic instruments of intervention;
- from central to decentralized arrangement of central-local relations⁷.

First paradigm shift: From autocratic to democratic polity

The Thai bureaucratic system has the following distinctive features (Research Institute for Asia and the Pacific (RIAP), 2001: 71):

- Hierarchical status: to a considerable degree, the bureaucracy is organized and operated to reflect differential status considerations.
- Personalism: personal relationships and individual concerns remain the basis for bureaucratic behavior and thus protect system membership.
- Arrogance and disdain for those outside the system: there is a belief that one can define for others what is in their best interest.
- Paternalism: there is a real desire to care for one's subordinates.
- Security: well understood norms guide behavior and thus protect system membership, etc.

This characterization of Thai bureaucracy is adequate, but what is overlooked by the RIAP research study is its functioning within a very specific structure of the state⁸. Thailand has in principle all the ingredients that allow for a modern democratic state: It is pluralistic, has checks and balances and institutions like government, parliament, administration, courts and free media; furthermore a modern constitution and legal provisions for most policy areas. In this paradigm there are two important distinctions of spheres: That (i) between public and private spheres, i.e., the recognition that there is a domain where the public interest has to prevail and that this public interest has to be free from individual private interests' interference. This distinction also implies that the public domain has to be regulated by specific legal principles, and that the actors performing within this public sphere are subject to these principles. The second distinction (ii) between politics and administration: Politics is based on public confidence expressed in free political elections. Administration is based on the rule of law, the merit and professional capability of civil servants.

In a traditional state the distinctions between (i) public and private and between (ii) politics and administration are often blurred.

| Box 5: Case studies and double state | | |
|--------------------------------------|-------------|--------|
| Case/polity | Traditional | Modern |
| Hat Yai | | ✓ |
| Pattani | ✓ | ✓ |
| Pattaya | ✓ | ✓ |

Traditional authority overrules legitimate authority. In many South East Asian countries, so the hypothesis goes, policy shifts often take place within two embedded paradigms. On the one hand the paradigm of a traditional autocratic-paternalistic system of ruling, on the other the paradigm of legitimate authority (Western model of rule of law and governance). Governments have left '(...) the door open for abuses as large businesses with strong access conducted their own deals with the Government' (Wescott, 2001: 43). Decisions and behavior in this organic state and society are status oriented within society and within the bureaucratic system: in Box 5, the two case studies (Pattaya, Pattani) show that modern elements of legitimate authority are embedded within traditional authority. Economy and society are considered by traditional elites as integral and organic parts of the wider state (see also Cheung, 2001: 18). In Pattani and Pattaya planning, construction and operating central waste water treatment plants as well as the choice of the policy had been captured by the local political economic elite with no or limited public participation in decision making.

Second paradigm shift: From command-and-control to economic intervention

The deep core of the environmental policy in Thailand consists of an instrumental use of the environment. Nature and the environment have a low value⁹: Environmental awareness is low in society, among civil servants and business. Furthermore, Thailand has low enforcement tradition of legal provisions (OEPP, 1998: 8). The old environmental policy core is the technical end-of-pipe approach within a structure of top-down command and control; secondary aspects like technical and effluent standards and monitoring concepts exist. The new approach is using economic instruments which are new to all major actors, especially to local authorities.

The paradigm shift to economic instruments, i.e., valuing the environment, is difficult for all actors involved. In this case Thailand has to be given the benefit of belonging to the pioneers, for the EU has difficulties with these instruments (Jordan, Wurzel & Zito, 2000), often, the difficulties in applying economic instruments have given rise to voluntary programs (Daley, 2002; May, 2002; Thomas, 2002).

The user charge itself is not without difficulties either. Rationale and principles of design seem to be clear; it should be applied wherever possible Bird (1999a: 2). However, Bird (1994: 30) states that administratively such a system requires a clear set or 'framework' of laws, i.e., of instruments like local budgeting, financial reporting, taxation, contracting, dispute settlement, rules to be followed in designing user charges, as well as adequate institutional support for localities to operate in this environment. Bird (1999a: 10) warns that it is surprisingly difficult to implement well in practice. The case studies proved this, for the framework of laws and institutional support in form of knowledge and expertise in Thailand were missing. Last but not least, Bardach (1977: 180) is confirmed in the sense that it takes much longer than the program implementers thought to produce outcomes. It will take even more time if there is a triple shift of paradigm, one of them including a change coupled with a change in polity.

Results from Mongkolnchaiarunya (2001: 215) confirm our argumentation on the double paradigm shift. He concludes that the introduction of UEM and three alternative solid waste management projects based on economic returns was difficult despite the support from the Mayor and Deputy Mayor. There was no clear organizational structure to manage the projects. These were managed by specific persons without any formal structural support; the inertia of municipal bureaucratic system prevailed in the form of a 'free rider' attitude. The inertia was also enforced by the very strong tradition of status orientation. Social and professional roles were not adapted to the participatory approach. Finally, the projects were carried out within the new perspective of introducing urban environmental management at the local level. However, another shift of paradigm took place at the same time: that of decentralization. Hence, the success of the projects is moderate; two have been more or less cancelled.

Third paradigm shift: From Central to decentralized government

Present paradigms propagate development strategies such as (ADB, 1998; Bevir and Rhodes, 2001; Mürle, 1997; World Bank, 1992) good governance, participation and decentralization¹⁰. In this final paragraph the authors deal with an issue that was not part of their empirical research; the implementation of the user charge started well before the decentralization process. However, one can assume that decentralization will play a role

in the implementation of the user charge in those municipalities that have not yet implemented it. Furthermore, current research results from Thailand show that decentralization poses considerable problems (see below). Finally, most of the countries in South East Asia (Laos, Cambodia, Vietnam, Thailand, Philippines, Malaysia and Indonesia) as well as China are engaged in public sector reform and decentralization processes as well as reforming existing and introducing new policies (see for example Jones, Guthrie & Steane, 2001; Research Institute for Asia and the Pacific, 2003; Wescott, 2000 and 2001).

There is common consensus on the aims of decentralization: strengthening sub-national entities to increase effectiveness, efficiency, transparency, control of power of politicians and administration, increasing accountability as well as creating 'ownership' of program and projects. Further aims are the protection of minorities and allowing for more flexibility and profit from innovations (among many Steinich, 1997: 4). Decentralization means more than the delegation of political, fiscal and administrative power to lower levels of authorities, it includes the participation of the private sector and of civil society in the management of local matters. This is also what the Thai Constitution of 1997 and subsequent Thai Governments pledged to do.

Thailand has had a period of changes. Since 1932 it has had 15 constitutions and 17 military coups. In 1997 Parliament adopted a new constitution and subsequently the Decentralization Act in 1999 along with the formation of the National Decentralization Commission. The new Constitution is committed to local government (Chapter IX, Sections 282-290), to local self-government according to the will of the people in the cases of policy-making, administration, personnel administration, and finances (Sections 282):

- At the *structural level* the 3-tier system has been maintained. The upgrading to municipal level – our area of interest – results in having 1,131 Municipalities.
- At the *functional level*, formerly exclusive functions of the central government are delegated to the local authorities such as democracy and participation, infrastructure, planning, investment promotion, tourism and industrial development, management and conservation of natural resources and the environment.
- The *financial* decentralization includes revenue and expenditure decentralization and the local authorities are empowered to manage local financial resources (e.g. levy user charges).

The decentralization process is creating considerable problems for local authorities. They have to:

- Assume new tasks like planning, managing, revenue raising and controlling and new roles in form of managers, facilitators, entrepreneurs and mediators;
- Be responsible and accountable for their decisions; this is an arduous task, since decentralization inevitably leads to localization of political conflicts; in other words responsibility for conflict cannot be referred to the national level as before decentralization.

Current research shows that decentralization in Thailand is far from a clear cut process. Bowornwathana (2000: 393-408) is critical about the Governance reform in Thailand

and questions its assumptions and approaches; Nelson (2001a: 1) is in line with Bowornwathana when he disapproves of the lack of popular participation in Thailand. Nelson (2001b: 4) also analyses the ongoing decentralization process and stipulates that it is not clear what the term 'localities' mean in the Thai constitution, and points out that the new Government of Prime Minister Thaksin intervenes in the decentralization process initiated by his predecessor which leads to uncertainty and confusion. (Ibid: 6f; Wescott, 2001: 43) and project failure at municipality level. Mongkolnchaiarunya (2001: 216) shows that within the context of decentralization the introduction of three small waste management projects with a participatory component is very difficult in a Thai city that has already a long-standing excellent record of waste management. He concludes that local authorities have not been clear about their new tasks and responsibilities such as urban environmental management.

The authors of this paper believe that decentralization in Thailand is not simply a 'delegation' of tasks from central to local levels; it means a complex paradigm shift with multiple changes:

- Values and axioms that guide problem definition and decision modes: A shift from the traditional polity paradigm of an organic political-economic corporation to a new concept of polity that separates public and private spheres, and allows for public participation public too. This implies that those who have power in the form of an economic-political corporation have to give up political power in favor of citizens.
- The means to solve problems and conflicts: The policy core is no longer defined by strongmen (god-fathers) and their links to national levels by practicing what serves them in any given situation. Public authorities have to shift to a paradigm in which they mobilize values of self-administration, formulate and implement public instead of private policies, assume democratic responsibility and accountability instead of relying on traditional authority.
- Finally the change of secondary aspects: Local authorities are no longer executing agencies of central government, but are responsible for planning and managing administrative structures, strategies and standards themselves.

CONCLUSIONS

User charge implementation is difficult. In two of the three case studies the charge has been implemented, nevertheless, the results are incomplete due to pending court cases and legal uncertainty (See the summary of initial complexity in Box 6 below). Furthermore, in Thailand herself, the charge has so far only been implemented in four municipalities.

Box 6: Summary of initial complexity and implementation success

| | Hat Yai <i>User charge implemented</i> | Pattani <i>Implementation incomplete</i> | Pattaya <i>Extension pending</i> |
|---|--|--|--|
| <i>Initial bureaucratic complexity</i> | low | high | high |
| <i>Initial legal complexity</i> | medium | high | high |
| <i>Initial implementation complexity</i> | low | medium | high |

Bureaucratic and legal complexities are high in two of the three cases. They are reduced in two cases by local political economic arenas that have the characteristics of traditional authority as defined by Max Weber (see above). This polity co-exists with modern democratic structures and procedures. The respective local arena chooses the legal provisions and waste water costing approach that suits its purposes best.

One traditional arena (Pattaya) has started the extension of the user charge; the other (Pattani) has chosen the end-of-pipe approach based on a water consumption fee in which the degree of the pollution of the waste water plays no role. Hat Yai has a modern polity approach based on contractual law. Its policy implementation focuses on outcomes while Pattani and Pattaya opt for managing the chosen option through.

The management of the user charge is difficult in Pattaya and Hat Yai: This new instrument is not systematically introduced to the companies for there is no clear implementation program, and the costing depends on personal relations between civil servants and individual companies. It is not clear what effects the user charge produces, for the extension in Pattaya is stalled due to a pending court case; in Hat Yai one small company signals no effects while a large company attributes the changes in the production process to company headquarters culture rather than to the user charge. In the case of Pattani and its end-of-pipe approach, the companies are not yet connected to CWWTP. Some do pre-treatment, others do not have enough capacity and discharge their waste water untreated.

If one takes into account the implementation of other environmentally relevant projects carried out in Thailand, then there are factors other than bureaucratic and legal complexity and managerial problems that also account for implementation difficulties. There is the low law enforcement tradition and above all the triple paradigm shift that authorities have to perform: A shift in polity, i.e., from traditional to modern state authority; a shift in relations, i.e., from central to decentralized participatory public sector management; finally a shift from command-and-control intervention to the use of market instruments such as the user charge. All shifts carried out at one and the same time lead to an 'over-load' of the political-administrative system that cannot be 'compensated' by capacity building alone. In this configuration, power has to be given up by the political economic elites. Furthermore, the authors of this paper plead for sequential policy shifts: Decentralization itself is already a difficult task; the implementation of new policy instruments may follow later.

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ACKNOWLEDGEMENTS

The authors wish to express their thanks to the Professors at the Asian Institute of Technology, Thailand, Prof. Dr. John C. S. Tang and Dr. Edsel E. Sajor for their valuable insights and suggestions. We are also very grateful to Dr. Arthur G. D. Morse, the Special Advisor to the Permanent Secretary of the Ministry of Information and Communication Technology, Thailand who read an earlier draft and provided helpful suggestions for revision. The views expressed are those of the authors.

NOTES

¹ Bird (1999b: 7) defines user charges as service fees, benefit charges or public prices (the case of Thailand). They should be applied whenever possible at local level, though the implementation is difficult (1999a: 2).

² This is also true for other countries of the Region, which mostly have neither a policy tradition nor a tradition of policy research.

³ Hotels and condominiums account for more than 70 percent of the City's tax revenue.

⁴ Complexity designates the degree of differentiation of a system (network, organization) and the number of levels, the type and degree of interdependency as well as the degree and weight of outcomes of a 'decision-making' arrangement (based on Willke (1993: 24f).

⁵ Approaches to pricing the charge: Marginal costs, short-run or long-run marginal costs, average cost pricing, average incremental cost pricing, multi-part tariffs, variable block pricing (Bird, 1999a: 4f).

⁶ OEPP has renamed to the Office of the Natural Resources and Environmental Policy and Planning when the MOSTE became the Ministry of Natural Resources and Environment (MoNRE).

⁷ The authors follow this order of presentation for decentralization was not part of the empirical research.

⁸ The argument on Thai Governance in Thailand indicated that while transparency and accountability had long been pillars of public governance in the West, in Asia the webs of power and money remain largely hidden from public view. (Anand Panyarachun, former Prime Minister of Thailand, in ADB, 1999: cover page).

⁹ Environmental costs for firms have been in-existent or low, based on cheap (drinking) water consumption and on flat rates for waste water. Often waste water is simply discharged into rivers, lakes and the sea.

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