

The Inspection Panel

Report and Recommendation On Request for Inspection

Philippines: Manila Second Sewerage Project (MSSP) (Loan No. 4019-PH)

1. On September 26, 2003, the Inspection Panel (the “Panel”) received a Request for Inspection (the “Request”), related to the Manila Second Sewerage Project (MSSP). On October 1, 2003, in accordance with the Resolution establishing the Inspection Panel (the “Resolution”),¹ the Panel notified the Executive Directors and the President of the International Bank for Reconstruction and Development (IBRD)² that it had received the Request, which constituted Registration of the Request under the Panel’s *Operating Procedures*.³ The Panel received Bank Management’s Response to the Request for Inspection on October 23, 2003 (the “Response”). As provided in paragraph 19 of the Resolution, the purpose of this report is to determine the eligibility of the Request and make a recommendation to the Executive Directors as to whether the matters alleged in the Request should be investigated.

A. THE PROJECT

2. The Request raises issues related to the project financed under the Bank’s Loan No. 4019-PH, (Manila Second Sewerage Project) (hereinafter referred to as the “Project”). The objectives of the Project are “to: (a) reduce the pollution of Metro Manila waterways and Manila Bay; (b) reduce the health hazards associated with human exposure to sewage in Metro Manila; and (c) establish a gradual low-cost

¹ International Bank for Reconstruction and Development (IBRD) Resolution 93-10, dated September 22, 1993.

² For the purposes of this Report, the IBRD is sometimes referred to as the “Bank”.

³ See The Inspection Panel, *Operating Procedures* (August 1994), at ¶ 17.

improvement of sewerage services in Metro Manila.”⁴ The Project included, *inter alia*, a septage⁵ management program which covered “*three aspects namely: (i) collection and hauling of septage from septic tanks, (ii) sea dumping of septage, and (iii) pilot septage treatment plant.*”⁶ For these purposes, three barge loading stations each with a capacity to transfer about 500 cubic meters per day (m³/d) of septage from collecting vehicles to barges were to be constructed at Napindan, Estero de Vistas and Parañaque.⁷

3. According to Management Response, “[u]nder the Project, barging of septage from Napindan and Estero de Vitas (two of the three septage barge loading stations), and sea disposal at a designated site, in accordance with the 1996 ECC [Environmental Compliance Certificate], was expected to operate from September 1998.” The Response adds that the Parañaque barge loading station (the third station) was never built.⁸
4. Management Response states that on August 31, 1999, “*the description of the project was amended to incorporate, among other things, the ‘carrying out of septage trials’ as ocean dumping was a new technology in the Philippines.*”⁹ It adds that when the Project was restructured, the expected date for the cessation of sea disposal was revised from the year 2003 to 2005.
5. The Panel notes, however, that under the original Project design sea dumping was expected to be a temporary solution while the other water treatment facilities were constructed or upgraded under the Project. The Staff Appraisal Report listed as one of the Project risks “*delays in building septage treatment plants and possible continuation of sea disposal beyond the stipulated period.*”¹⁰ Schedule 5 to the Loan Agreement (Implementation Program) provided that “*the Borrower shall take all actions necessary to enable it to adhere to a timetable for cessation of sea disposal or septage acceptable to the Bank.*”¹¹ Schedule 6 to the Amending Agreement provided “Performance Indicators” on the “Improvement of Environment” that called for reducing “Septage disposed at the ocean”: from 450 (m³/d) in 2001 to 300 in 2003 and ‘Nil’ (nothing) in 2006, for the West Service Area covered by MWSI

⁴ Agreement Amending Loan Agreement between Metropolitan Waterworks and Sewerage System and IBRD (hereinafter “1998 Amendment”), Loan No. 4019-PH, March 17, 1998, at p. 16, Schedule 2.

⁵ Management’s Response uses several terms regarding waste. The Response states “*‘septage’ is partially or fully degraded human wastes siphoned out of septic tanks; ‘sewage’ is composed of the raw wastes generated by domestic activities, mostly from toilets and kitchens; ‘liquid human wastes’ include all types of human wastes that are in liquid form or have liquefied, such as leachate from solid wastes. In preparation of the response, it is assumed that references in the Request to dumping of sewage or household liquid waste in fact refer to septage.*” The Response, at ¶ 11 Fn 2.

⁶ The World Bank, Staff Appraisal Report, Report # 15346-PH, Republic of Philippines, Manila Second Sewerage Project (hereinafter “Staff Appraisal Report”), April 12, 1996, Annex 2, ¶ 6.

⁷ 1998 Amendment, at p. 16, Schedule 2.

⁸ The Response, at ¶ 31.

⁹ *Id.*, at ¶ 19.

¹⁰ Staff Appraisal Report, p. 28, ¶ 6.22.

¹¹ Loan Agreement between Metropolitan Waterworks and Sewerage System and IBRD, Loan No. 4019-PH, June 19, 1996, Schedule 5, ¶ 4.

and from 350 (m³/d) in 2001 to 300 in 2003 and ‘Nil’ (nothing) in 2006, for the East Service Area covered by MWCI.¹²

6. The Project also included the upgrading of both Manila central sewerage system and Ayala sewerage system, as well as the strengthening of the technical capabilities to operate and maintain sewerage systems, to construct, supervise, and, develop septage treatment experiments. It also included the strengthening of the technical capabilities for the environmental monitoring and preparation of follow-up sewerage projects. Additionally, the Project provided for the strengthening of laboratories, through the provision of specialized instruments, equipment, furniture and materials.¹³
7. Management Response states that “[o]n November 12, 2002, the description of the Project was amended to incorporate, among others, the new small sewage treatment plants (maximum 23 facilities), and the rehabilitation of the Dagat-Dagatan Sewage Treatment Plant, which had not been meeting national standards for its operations prior to the Project. These investments were intended to enable the new systems to reduce biochemical oxygen demand (BOD)¹⁴ loading in the long-term in MM [Metropolitan Manila] waterways and Manila Bay.”¹⁵

B. FINANCING

8. On June 19, 1996, the Bank entered into a loan agreement with the Metropolitan Waterworks and Sewerage System (MWSS), a Government corporation established in 1971, (the “Borrower”) providing for a US\$57.0 million equivalent to finance about 75% of the total Project cost (the “Loan Agreement”). Subsequently, the Borrower entered into concession agreements with the Manila Water Company, Inc. (MWCI) and Manilad Water Services, Inc. (MWSI) whereby MWCI and MWSI will operate the Borrower’s system of waterworks and sewerage services within their respective concession areas.
9. As a result of the concession agreements, the Borrower requested the Bank to amend the Loan agreement to permit MWCI and MWSI to carry out the portion of the Project within their respective concession areas.
10. As a result, the Board approved on November 30, 1997, an amendment to the Project description setting forth the parts of the Project to be carried out by each of the concessionaires. On May 17, 1998, the Borrower and the Bank entered into an Agreement Amending the Loan Agreement reflecting this new arrangement. In addition, the Loan’s closing date was extended from December 31, 2001 to June 30, 2003. On June 19, 2003, the closing date was again extended to December 31,

¹² 1998 Amendment, at Schedule 6.

¹³ 1998 Amendment, at Schedule 2.

¹⁴ Biochemical Oxygen Demand is a commonly used measure of organic pollution.

¹⁵ The Response, at ¶ 9.

2004. At the request of the Borrower, on April 7, 1998, the Bank canceled US\$9 million equivalent from the Loan, and on January 21, 2003, the Bank canceled an additional amount of US\$11.9 million equivalent. As a consequence, the outstanding loan amount was reduced to US\$36.1 million equivalent.

C. THE REQUEST

11. **Timpuyog Zambales Inc.**, a local non-governmental (NGO) based in San Narciso, Zambales, and in Metro Manila submitted the Request for Inspection (Annex 1), acting on its own behalf and on behalf of over 1,350 residents of the province of Zambales in the Philippines (the “Requesters”).¹⁶ The Panel, however, noted that a number of the signatures were included under captions which do not relate directly to the Request for Inspection, or that belonged to people living out of the country. The Panel has, thus, disregarded about 50 of these signatures for purpose of registration of the Request and noted them as supporting the Request.¹⁷
12. The Requesters claim that the residents of the provinces of Bataan and Zambales are being adversely affected by a component of the Manila Second Sewerage Project. According to the Request, the Project component involves sea dumping of liquid wastes from Metro Manila to the South China Sea, 69 km from the Corregidor Island, near the provinces of Bataan and Zambales. The Requesters claim that a waiting barge at the port area in Manila Bay, filled with the equivalent of eight tanker trucks carrying a minimum of 400m³ of liquid waste each, would travel three days to a designated spot where the barge would then pump out its load within a ten kilometer radius using a seven meter pipe lowered into the sea at a depth of around 2,300m. This procedure would be carried out for five years, from 2002 to 2007, nine months a year, ceasing operations during the rainy season from July to September, when the sea current moves inward.
13. The Requesters also allege “*key questions surfaced by various sectors that would be potentially affected by the project have not been adequately addressed.*”¹⁸ These concerns include, first of all, the risk of negative impact of sea dumping on people’s health, but also, the adverse environmental impact of possible ‘red tide’ or ‘fish kill’ phenomena, affecting the fishing industry and the economy of the coastal areas near the dumping site in general, and finally, the possible destruction of precious tourist coastal destinations, thus damaging the tourist industry to these local areas.
14. In support of their claims, the Requesters reference the concerns expressed by the Department of Agriculture’s Bureau of Fisheries and Aquatic Resources (BFAR), which has declared that the dumping site is a rich fishing ground and warned that the dumping activity would compromise the lives of the rich variety of marine

¹⁶ Request, Letter to the Inspection Panel Chair dated September 8, 2003.

¹⁷ During its field visit to the Project areas, the Panel received supplemental documents from the Requesters in support of their claims.

¹⁸ Request, A Brief Background of the Project, at p. 1.

creatures as well as the livelihood of fishing communities nearest the site. According to the Requesters, the BFAR also said cases of algal bloom ('harmful algal bloom') and 'fish kill', were potential effects of the dumping activity.

15. The Requesters deny the validity of MWSS' justifications for the safety of its dumping procedure, namely that i) bacteria accompanying the liquid waste will perish within 15 minutes upon contact with salt water; ii) liquid waste will dissipate long before it reaches the municipal waters; and, iii) the same technology has been used in many European countries and Japan from the 1970s up to the early 90s. The Requesters argue that MWSS has failed to prove that sea dumping will not adversely impact people's health and the rich marine life, and they claim that the procedure used by MWSS "*is already banned in many countries.*"¹⁹
16. Furthermore, the Requesters allege that the concerned local governments and populations did not receive proper information and were not consulted regarding the dumping. The Requesters state that the provincial board of Zambales passed several resolutions disapproving the Project component, one of which demanded the cancellation of the Project's Environmental Compliance Certificate, issued by the Department of Environment and Natural Resources, "*because of the violation regarding the lack of proper information to and consultation with the concerned local governments and their constituents.*"²⁰
17. In addition, the Requesters question the economic evaluation of the Project claiming that while the Borrower argues that this is a less costly method of managing urban sewage system, there are other effective land-based, environmentally friendly and even less costly methods of doing so. The Requesters argue, "*investing in ecologically sound approaches turn out to be more cost-efficient in the long-term.*"²¹
18. Finally, the Requesters claim that MWSS conducted 'dumping testing' between October 2001 and March 2002 and did not release the testing findings. MWSS also failed to report to the Project stakeholders, such as local governments and organized groups in affected areas, about the results of its monitoring activities, which raised doubts about the Bank's effective supervision of the Project.
19. The Requesters' submission includes 7 Annexes. The Annexes consist of: i) a letter from the Philippine Coast Guard to the Administrator of MWSS regarding the non-issuance of a dumping permit, ii) an objection of the Bureau of Fisheries and Aquatic Resources (BFAR) on the Project's implementation, iii) a memorandum from BFAR to the Secretary of the Department of Agriculture recommending suspension of the dumping by the MWCI, iv) a memorandum from the Director of the Department of Agriculture to the Secretary of the Department of Environment and Natural Resources (DENR), v) Sangguniang Panlalawigan of Zambales

¹⁹ Id., at p. 2.

²⁰ Id., at p. 3.

²¹ Id., at p. 1.

(Provincial Board) Resolution No. 2002-402 disapproving the request of MWSS to grant the Provincial Governor of Zambales authority to sign a Memorandum of Agreement on the creation of a multi-partite monitoring team for the Project, vi) Provincial Board's Resolution No. 2002-403 requesting that the DENR cancel the Environmental Compliance Certificate of the MSSP, and, vii) Provincial Board's Resolution No. 357-2002 protesting the plan to dump septage and sewerage waste into the sea waters surrounding Corregidor Island. The request also includes a map of septage dumping areas.

20. In its Notice of Registration, the Panel noted that the above claims may constitute violations by the Bank of various provisions of the following operational Policies and Procedures:

OD 4.01	Environmental Assessment
OP/BP 10.04	Economic Evaluation of Investment Operations
OD/OP/BP 13.05	Project Supervision
OP/BP 17.50	Disclosure of Information

D. MANAGEMENT RESPONSE

21. On October 23, 2003, the Panel received Management's Response to the Request for Inspection (the "Response," attached as Annex 2). The Response includes an Annex 1, which presents Management's detailed responses to the Request in a table format.²²
22. In the Summary section of the Response, Management states that it has agreed with the Borrower to undertake an action plan to address the Requesters' concerns and to stop ocean dumping under the Project. Management also planned to initiate a dialogue with the Requesters, and proposed to ask the Borrower to carry out several actions to deal with their concerns. According to the Response, these actions include that MWSS disclose the information the Requesters asked for, along with the monitoring reports, and, as part of the preparation for the proposed Manila Third Sewerage Project (MTSP), that MWSS conduct a further environmental review of the option of septage disposal in the lahar lava fields (resulting from the Mt. Pinatubo eruption) with the appropriate consultation and disclosure of the results. Management further committed to continue its review of, and support to, the Borrower's preparation of the proposed MTSP. According to Management, MTSP would involve construction of additional septage treatment plants and vacuum desludging tanker trucks to expand sewage and sanitation services in Metropolitan Manila.²³
23. On the issue of eligibility of the Request, Management's Response states that prior to September 2003, Bank's records did not contain any communications from the

²² The Response, at ¶ 2 and 47.

²³ Id., at ¶ 48.

Requesters.²⁴ According to the Response, the first contact between the Requesters and Management took place the first week of September 2003, when a caller phoned the Bank's Manila office.²⁵ Later during the same month, the Bank's team received three letters, of which two were copied to the Inspection Panel.²⁶ The Response further states that on September 17, 2003, the Bank's team forwarded the Requesters' letter to MWSS asking MWSS to meet with the Requesters and discuss their concerns.²⁷

24. The Response also states that Management was informed, after having received the Requester's letter, that on several occasions since June 2002 the Requesters asked for official confirmation and supplementary information from MWSS regarding newspaper and unofficial reports about non-implementation of septage disposal at sea.²⁸ According to the Response, in July 2002, MWSS provided the Requesters with the Loan Agreement, the Project Environmental Impact Assessment (EIA), and overview of the Project with information on sea dumping.²⁹ The Response further claims that "*the Bank was not aware of all these exchanges between MWSS and Timpuyog.*"³⁰
25. The Response also refers to paragraphs 1 and 5(e) of the Panel's Operating Procedures, August 19, 1994, which states that "*before submitting a Request steps must have already been taken (or efforts made) to bring the matter to the attention of Management with a result unsatisfactory to the Requester*"³¹ and that the Request should include "*a description of the steps taken by the affected party to resolve the violations with Bank staff, and explanation of why the Bank's response was inadequate*"³² and based on the argument stated above, concerning the receipt of the Request nearly simultaneously by Management and the Inspection Panel, that Management "*was not afforded the opportunity to address the Requestors' issues.*"³³
26. Concerning the EIA process, Management states that the Project was classified as Category A. MWSS prepared an EIA and an Environmental Management Plan (EMP), which, the Bank and DENR commented in September 1995, after Project appraisal. Subsequently, MWSS submitted a Supplementary EIA in December 1995 and a more elaborate EMP in November 1996.³⁴ Each concessionaire also submitted its own EMP, MWSI in April 2000 and MWCI in September 1998 and

²⁴ Id., at ¶ 43.

²⁵ Ibid.

²⁶ Id., at ¶ 44.

²⁷ Ibid.

²⁸ Id., at ¶ 45.

²⁹ Ibid.

³⁰ Ibid.

³¹ See The Inspection Panel, *Operating Procedures* (August 1994), at ¶ 1.

³² Id., at ¶ 5(e).

³³ Management Response, at ¶ 46.

³⁴ Id., at ¶ 20 and 21.

updated it in 2002 based on recommendations of Delft Hydraulics a firm hired by the Bank as an independent consultant.³⁵

27. The consultations and disclosure of information regarding the EIA/EMP process started in 1994, and the EIA documents were disclosed as of March 1, 1995 in Washington and June 22, 1995, in the Philippines.³⁶ Management also indicates that in 1995-1996, consultation and disclosure efforts focused in particular on sea dumping in the provinces of Bataan and Zambales. In 2000, MWSS, its concessionaires, and the Bank met the Governor and representatives of the Provincial Board in Zambales and discussed the Project, including sea dumping operations.³⁷ The Governors of Bataan and Zambales endorsed the Project in separate letters to the DENR respectively in January 12, 2000, and July 20, 2000.³⁸ Consultation efforts continued with stakeholders during Project preparation and implementation and included the septage management plan and the sea dumping operations. Management, however, indicates that while MWSS and MWCI reported meetings with Timpuyog on June 27, 2002 in Zambales and on July 5, 2002 at MWSS, where the Loan Agreement, Project EIA, and an overview of the Project with information on sea dumping were disclosed,³⁹ contacts with the population of Bataan do not appear to have occurred after sea dumping began.⁴⁰
28. Concerning the analysis of alternatives, Management states that the March 1995 EIA analyses five interim septage management options: disposal at sea; disposal on lahar sites; treatment in a plant; dewatering in combination with disposal in sanitary landfills; and incineration, as well as the no-project alternative. The sea disposal alternative was selected as the preferred interim solution until treatment capacity for Metropolitan Manila's septage was established with the completion of the septage treatment plant in 2005.⁴¹ The December 1995 Supplementary EIA also considered four additional septage disposal alternatives, which it did not recommend.⁴²
29. On the environmental impacts of sea disposal, Management indicated that the Project was expected to have relatively minor negative effects, as predicted in the EIA and the November 1996 EMP. These effects including: i) noise disturbance during construction; ii) noise and odor disturbance during septage collection and shipping and operation of the pilot treatment plant; and, iii) possible accidental or improper discharge of septage.⁴³ The 1996 EMP concluded that the great water depth in the identified sea disposal site, the turbulence in the area, the biodegradability of the septage and the spread disposal operation employed, long

³⁵ Id., at ¶ 22.

³⁶ Id., at ¶ 20, 23, and Annex 5, Chronology of Project Events and Summary of Consultations.

³⁷ Id., at ¶ 23.

³⁸ Id., at Annex 1, No. 6.

³⁹ Id., at ¶ 45 and at Annex 1, No. 10.

⁴⁰ Id., at ¶ 23.

⁴¹ Id., at ¶ 24 and at Annex 1, No. 1 and 2.

⁴² Id., at ¶ 24.

⁴³ Id., at ¶ 25.

term adverse impacts were not expected to occur.⁴⁴ Moreover, according to Management, no dumping was to be permitted during the months of July to September because the currents and prevailing winds could carry floating septage towards the shoreline.⁴⁵ According to the Response, a Bank-hired independent expert (Fenviron, December 1995), and a study prepared by Danish Hydraulic Institute (MSSP-Modeling of the Dispersion of Septage from Ocean Dumping, January 1997), concurred with the EIA/EMP that the environmental risk in the sea disposal of septage would be insignificant.⁴⁶

30. According to Management the sea disposal site is one of eight waste disposal sites designated by the PCG in 1991, and the site fits the guidelines established by the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matters.⁴⁷ On May 8, 1995, MWSS submitted the Project EIA to the Philippines Environmental Management Bureau (EMB) for review and for issuance of the Environmental Compliance Certificate. The Certificate was issued on October 10, 1996, and contained conditions relating to operations sea disposal, creation of a Multipartite Monitoring Team (MMT), monthly and annual monitoring of the coastal waters and offshore of the concerned provinces, and, establishment of an Environmental Guarantee Fund.⁴⁸ Management raised concerns about the compliance of MWCI with the Environmental Compliance Certificate conditions regarding the submission of monitoring reports to EMB and regional offices, and regrets its failure to be more proactive in pressing for creation of the Environmental Guarantee Fund.⁴⁹
31. Management also states that sea dumping took place from April 27, 2001 to June 8, 2001 and resumed from October 3, 2001 to July 17, 2002, which Management characterized as sea dumping on a trial basis although a significant volume of septage was dumped during this period (25,396 cubic meters).⁵⁰ The trial dumping, for which a national permit had been issued, took place by barges loaded from the Estero de Vitas Station.⁵¹ The sea dumping did not resume because the PCG did not issue a new transport permit. However, Management asserts that the issuance of a transport permit became moot because of the emergence of lahar site dumping as a feasible alternative.⁵²
32. Concerning monitoring and supervision, Management states that MWSS and its concessionaires have been submitting joint reports on monitoring and compliance with the Environmental Compliance Certificate and the EMPs, but it does not indicate to whom the reports have been submitted. In late 2001, the Bank hired

⁴⁴ Id., at ¶ 21. See also Box 2 Deep Sea Septage Disposal.

⁴⁵ Id., Box 2 Deep Sea Septage Disposal.

⁴⁶ Id., at ¶ 27, and 28.

⁴⁷ Id., at ¶ 26.

⁴⁸ Id., at ¶ 29.

⁴⁹ Id., at ¶ 30.

⁵⁰ Id., at Annex 1, No. 9.

⁵¹ Id., at ¶ 31.

⁵² Id., at ¶ 33.

Delft Hydraulics to: i) supervise the Project's implementation according to the Environmental Compliance Certificate and EMP; ii) supervise the preparation of any Environmental Compliance Certificate and EMP required for construction of new sludge treatment facilities in Metropolitan Manila; and, iii) identify implementation gaps and recommend corrective actions. In October 2002, during its ninth supervision mission,⁵³ and based on one of the consultant's recommendations, the Bank requested from MWSS and its two concessionaires an Environmental Audit Report, which would cover the period of May 2001 to December 2002. The Reports are yet to be finalized.⁵⁴

33. Management states that as part of the 9th supervision mission, it encouraged MWCI, one of the two concessionaries, to continue testing septage disposal at lahar sites in Pampanga and Tarlac.⁵⁵ The Response also states that MWSS collected sugar cane and soil samples to be tested and adds that “[w]ater sampling was not undertaken because no wells were identified in the area.”⁵⁶ The Bank asserts that during the supervision mission it confirmed the absence of any human settlements in the lahar disposal area.⁵⁷ Management also discussed with MWSS and MWCI the components of the proposed Manila Third Sewerage Project, which included three new septage treatment plants.⁵⁸ During the 10th Supervision Mission from August 26 to September 9, 2003, MWSS and its two concessionaires (MWCI and MWSI) informed the Bank of their intentions not to undertake further septage sea dumping. MWSS also proposed not to construct the Parañaque Barging Loading Station to the agreement of Management. On September 30, 2003, and after the formal exchange of letters between MWSS and its concessionaires, MWSS formally proposed to the Bank the non-implementation of sea disposal. According to the Response, the Bank has agreed to this.⁵⁹
34. Finally, the Response states that the issues the Requesters raised are already being addressed. Management believes that it has made every effort to follow and apply the Bank's guidelines, policies and procedures applicable to the matters raised by the Request and to pursue concretely its mission statement in the context of the Project. Management concludes that, as a result, the Requesters' rights or interests have not been, nor will they be, directly and adversely affected by a failure of the Bank to implement its policies and procedures.⁶⁰

⁵³ Annex 7 lists Management's formal supervision missions.

⁵⁴ Id., at ¶ 34.

⁵⁵ Id., at ¶ 39.

⁵⁶ Id., at ¶ 41.

⁵⁷ Ibid.

⁵⁸ Id., at ¶ 40.

⁵⁹ Id., at ¶ 42.

⁶⁰ Id., at ¶ 49.

E. ELIGIBILITY

35. The Panel must determine whether the Request satisfies the eligibility criteria for an Inspection, as set forth in the 1993 Resolution establishing the Panel and the 1999 Clarifications, and recommend whether the matter alleged in the Request should be investigated.
36. The Panel has reviewed the Request and Management's Response. The Panel Chairperson visited the Philippines from October 25 through October 30, 2003.⁶¹ During her visit, the Chairperson met with officials in the Ministry of Finance, the Requesters, local authorities and affected people in the Project area,⁶² representatives of MWSS and their two concessionaires MWCI and MWSI, officials from the Coast Guard, Department of Environment and Natural Resources, and Bureau of Fisheries and Aquatic Resources, as well as with World Bank officials in Manila and Washington, D.C.⁶³
37. The Panel is satisfied that the Request meets the eligibility criteria provided in the 1993 Resolution and paragraph 9 of the 1999 Clarifications except for one procedural criterion, as noted below.⁶⁴
38. During the visit, the Panel confirmed that, Timpuyog, Zambales, Inc, and other signatories of the Request are legitimate parties under the Resolution to submit a Request for Inspection to the Inspection Panel. They have a common interest and common concerns and reside in the Borrower's territory, as required in Paragraph 9 (a).
39. The Panel is satisfied that the Request *"does assert in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to*

⁶¹ The Panel's Executive Secretary Mr. Eduardo Abbott assisted the Chairperson.

⁶² The Chairperson of the Inspection Panel visited Manila, Iba, and surrounding areas in Zambales.

⁶³ The Panel wishes to thank the office of the Mr. Amaury Bier, Executive Director representing the Philippines, for the assistance provided during the eligibility stage. It wishes to thank national and local Government officials, NGO representatives, local people and representatives of MWSS, MWCI and MWSI who took time to meet with the Panel's team. Finally, it would like to thank Bank staff in the Philippines and in Washington for their logistical support.

⁶⁴ Paragraph 9 of the 1999 Clarifications mentions certain "technical eligibility criteria" that must be met by a Request for Inspection:

- (a) The affected party consists of two or more persons with common interests or concerns and who are in the borrower's territory.
- (b) The Request does assert in substance that a serious violation by the Bank and IDA of their operational policies and procedures has or is likely to have a material adverse effect on the Requesters.
- (c) The Request does assert that its subject matter has been brought to Management's attention and that, in the Requesters' view, Management has failed to respond adequately to it, thus demonstrating that it has followed or is taking steps to follow the Bank's policies and procedures.
- (d) The matter is not related to procurement.
- (e) The related Loans have not been closed or substantially disbursed.
- (f) The Panel has not previously made a recommendation on the subject matter.

have material adverse effect upon the requester.” The Requesters have alleged serious harm from the sea disposal of sewage, Bank’s support for which may allegedly constitute a serious violation of Bank policies and procedures, as required in paragraph 9 (b).

40. The Panel notes that the subject matter is not related to procurement, as required in paragraph 9 (d).
41. The expected closing date of the related loan is December 31, 2004. And only 25.60 per cent of the Loan had been disbursed as of the date the Request was filed. The Request therefore satisfies the requirement in paragraph 9 (e) that the related loan has not been closed or substantially disbursed.
42. Furthermore the Panel has not previously made a recommendation on the subject matter of the Request. Therefore, the Request satisfies paragraph 9 (f).
43. The Panel, however, finds that the Requesters have not fulfilled the procedural requirement that they bring the subject matter of the Request to the Bank’s attention for Management to address before filing a Request with the Panel.
44. The Requesters’ first contact with the Bank occurred when the president of Timpuyog Zambales, Inc. called the World Bank’s country office Manila and asked whether the office could send a document to the Inspection Panel via pouch. After being refused, the Requesters forwarded the Request to the Panel by mail. At the same time Timpuyog Zambales sent the World Bank office Manila a letter and the associated documents, which complained about the same issues.
45. Timpuyog Zambales has had previous contacts with MWSS in an effort to resolve the issue of sea dumping. In June-July 2002, February 2003, and on September 1, 2003, Timpuyog expressed to MWSS its desire for official confirmation of the newspaper reports and informal communication regarding non-implementation of septage disposal at sea, and requested supplementary information. At least some of the signatories also met with MWSS in an effort to resolve the problem, when MWSS made a public presentation on the Project in Zambales on June 27, 2002, and at MWSS on July 5, 2002. The Panel was unable to find any contact between Bank Management and staff and the Requesters during these meetings. Both the Requesters and the citizens interviewed and MWSS indicated that no one from the Bank had been present on these occasions.
46. The Panel notes that Management’s response indicates that on several occasions in early 2000 it went to Zambales to meet with the Governor and representatives of the Provincial Board and discussed with them sea dumping operations and that consultations in June and July 2002 with MMT members and Timpuyog included the septage management plan and the sea dumping operations. The Response specifically notes that *“interaction with the Zambales stakeholders (sic) was*

continued throughout” (after sea dumping began).⁶⁵ This would seem to suggest that Timpuyog, which has protested sea dumping from the beginning and the residents of Zambales may have already satisfied the requirement that they bring their problem to the Bank’s attention. However, in conversations with Timpuyog, the Vice Governor of Zambales and members of the Provincial Board, other concerned citizens of Zambales and the fishermen’s association and with MWSS, we could find no instance in which any World Bank staff had met with them.

47. The Panel notes that the refusal of the World Bank office in Manila to forward the Requesters correspondence to the Panel by pouch is not in compliance with BP 17.55, which requires the country office to forward all such documents unopened by pouch to the Panel upon request.⁶⁶
48. In reviewing Management’s Response, the Panel notes that the 1972 London Convention requires that a State party issue a permit for the site of dumping and that all parties to the Convention file annual reports to the International Maritime Organization (the secretariat for the Convention) listing the sites and noting wastes disposed of at the sites.
49. The Philippines listed the general site where the dumping occurred in its 1994 and 1995 Annual Report to the International Maritime Organization (IMO). What is noteworthy is that the 1995 report indicated the disposal of 900 tonnes of ‘sewage sludge’ at the site where the ‘test’ sea dumping of Manila Wastes took place in 2002 and 2003.⁶⁷ It puzzles the Panel that there is no mention of this fact in the Management Response.
50. The Philippines has filed no annual report since 1996 with the IMO, although the 1972 London Convention requires all State party to file an annual report. The Panel notes that this period covers the period of the Project supported by the Bank.
51. During the visit to the Philippines the Panel confirmed that the Requesters and the public generally have not had access to the monitoring data for the ‘test’ period of sea dumping of sewage wastes (septage). The Panel notes that MWSS represented to the Panel that it would provide this data to the Requesters if they were to again make their request by a formal letter to MWSS. The Requesters have been so informed.

⁶⁵ The Response, at ¶ 23.

⁶⁶ BP 17.55, August 1999, at ¶ 2 states that “*If a request for inspection is delivered to a Bank field office, the head of the office issues a receipt to the requester and forwards the request to the Panel in the next Pouch*”, and ¶ 3 adds “*If a communication addressed to the Panel is delivered to any Bank staff member, that staff member promptly forwards it, unopened to the Executive Secretary of the Panel and informs his/her department director.*”

⁶⁷ International Maritime Organization, London Convention, Compilation Report, 1994, table 2.2 and 1995, table 2.2.

F. CONCLUSIONS

52. Because the procedural criterion of paragraph 9 (c) that the Requesters have brought the *“subject matter (...) to Management’s attention and that, in the requester’s view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank’s policies and procedures”* has not been satisfied in this Request, the Panel concludes that the eligibility criteria have not been met.
53. The Request and Management Response contain conflicting assertions and interpretations about the issues, the facts, compliance with Bank policies and procedures, and harm. The Panel can only address these issues during the course of an investigation. However, because of the Requesters’ failure to satisfy the procedural criterion noted above, the Panel cannot make a recommendation on whether to investigate the subject matter of the Request for Inspection.