

Prompt and Appropriate Settlement of Environmental Disputes

Definition of Environmental Pollution

The Environment Basic Act defines “environmental pollution” (“Kogai” in Japanese) as damage to human health or the living environment caused by (i) air pollution, (ii) water contamination, (iii) soil contamination, (iv) noise, (v) vibrations, (vi) land subsidence, or (vii) offensive odors, which are generated due to business or other human activities and spread throughout a considerable area. These seven types from (i) to (vii) are called the Seven Major Types of Pollution.

Disputes on these types of environmental pollution are covered by the Environmental Dispute Settlement System. A dispute over low-frequency sound, for example, may be processed under this system if it is considered to be related to noise or vibration issues.

Regarding the term "throughout a considerable area," a case covering a certain range of area may be subject to this system even if there is only one person who sustains damage, while an issue merely among neighbors may be excluded.

Seven Major Types of Pollution

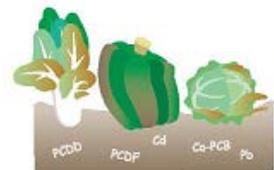
(i) Air pollution



(ii) Water contamination



(iii) Soil contamination



(iv) Noise



(v) Vibration



(vi) Land subsidence



(vii) Offensive odor



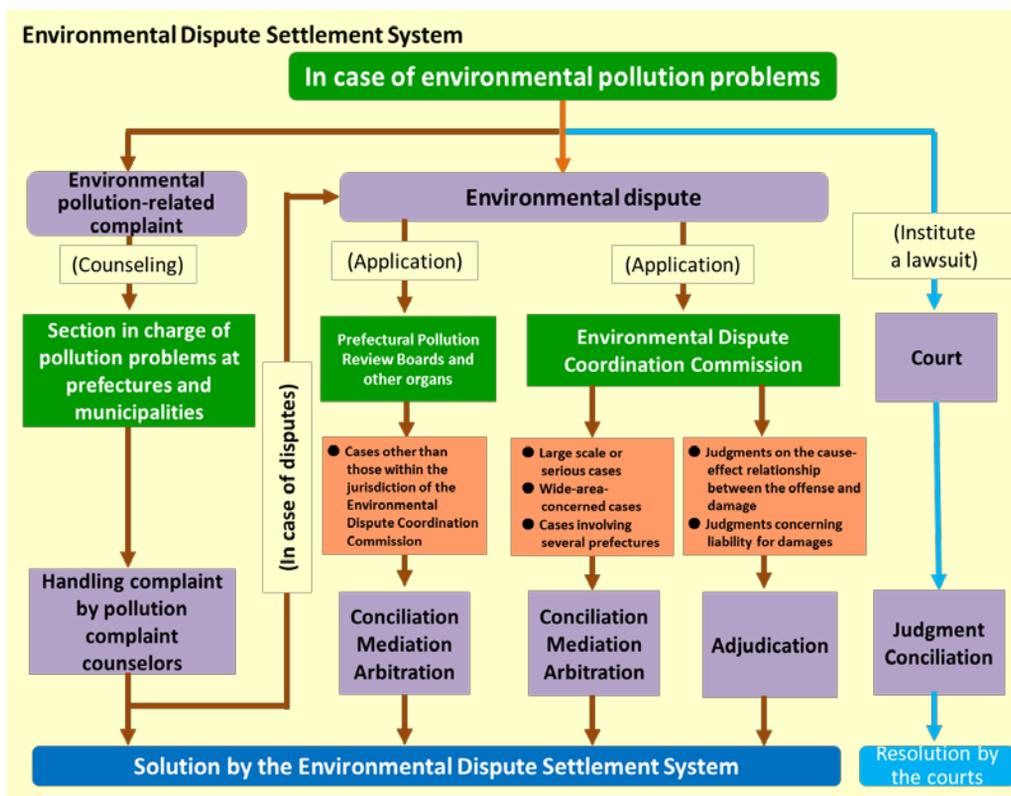
Structure of the Environmental Dispute Settlement System

To provide prompt and appropriate settlement of environmental disputes, the Environmental Dispute Settlement System was established, apart from judicial procedures, under the Act on the Settlement of Environmental Pollution Disputes. As organs in charge of settling environmental disputes, Prefectural Pollution Review Boards and the national organ, the Environmental Dispute Coordination Commission, are established.

Prefectural Boards and the Commission settle disputes independently in accordance with their respective jurisdictions, but also coordinate with one another by sharing information to ensure the smooth implementation of the system.

Separately from these organs, each prefecture and municipality has sections in charge of pollution problems to settle environmental pollution-related complaints promptly and appropriately.

Jurisdiction Concerning Environmental Dispute Cases	
Prefectural Pollution Review Boards [Conciliation, mediation, arbitration]	Environmental Dispute Coordination Commission [Conciliation, mediation, arbitration]
All cases other than those within the jurisdiction of the Environmental Dispute Coordination Commission (large scale or serious cases, wide-area-concerned cases, and cases involving several prefectures)	Large scale or serious cases The following cases wherein serious damage has been caused due to air pollution or water contamination and a considerable number of people have been affected or are likely to be affected by said damage 1) Cases that cause significant damage to people's life and body 2) Cases that cause a total financial damage exceeding 500 million yen
	Wide-area-concerned cases Noise problems caused by aircraft or Shinkansen bullet trains
	Cases involving several prefectures Cases wherein damage covers multiple prefectures
	[Adjudication] All cases
* Prefectural Boards do not make adjudications.	



Types of the Environmental Dispute Settlement Procedures

Most of the environmental dispute cases are settled through conciliation or adjudication procedures. Both procedures are basically commenced based on applications filed by the interested parties.

○ Conciliation

Procedures wherein an environmental dispute settlement organ intervenes and actively leads negotiations between the parties to have them reach an agreement based on their mutual concession.

○ Adjudication

There are two types of adjudication, i.e., “adjudication of liability for damages” and “adjudication of the cause of damage”

➤ **Adjudication of liability for damages**

Procedures for resolving environmental disputes by handing down legal judgments concerning the existence or non-existence of liability for damages

➤ **Adjudication of the cause of damage**

Procedures for resolving environmental disputes by handing down legal judgments concerning the cause-effect relationship between offending actions and damage



Hearing for adjudication (example)

There are also mediation and arbitration procedures.

○ Mediation: Procedures wherein an environmental dispute settlement organ, on its own authority or otherwise, intervenes to encourage voluntary settlement of a dispute among the parties

○ Arbitration: Procedures wherein the parties entrust dispute settlement to an environmental dispute settlement organ based on an agreement to follow the judgment made thereby

Outline of Conciliation Procedures

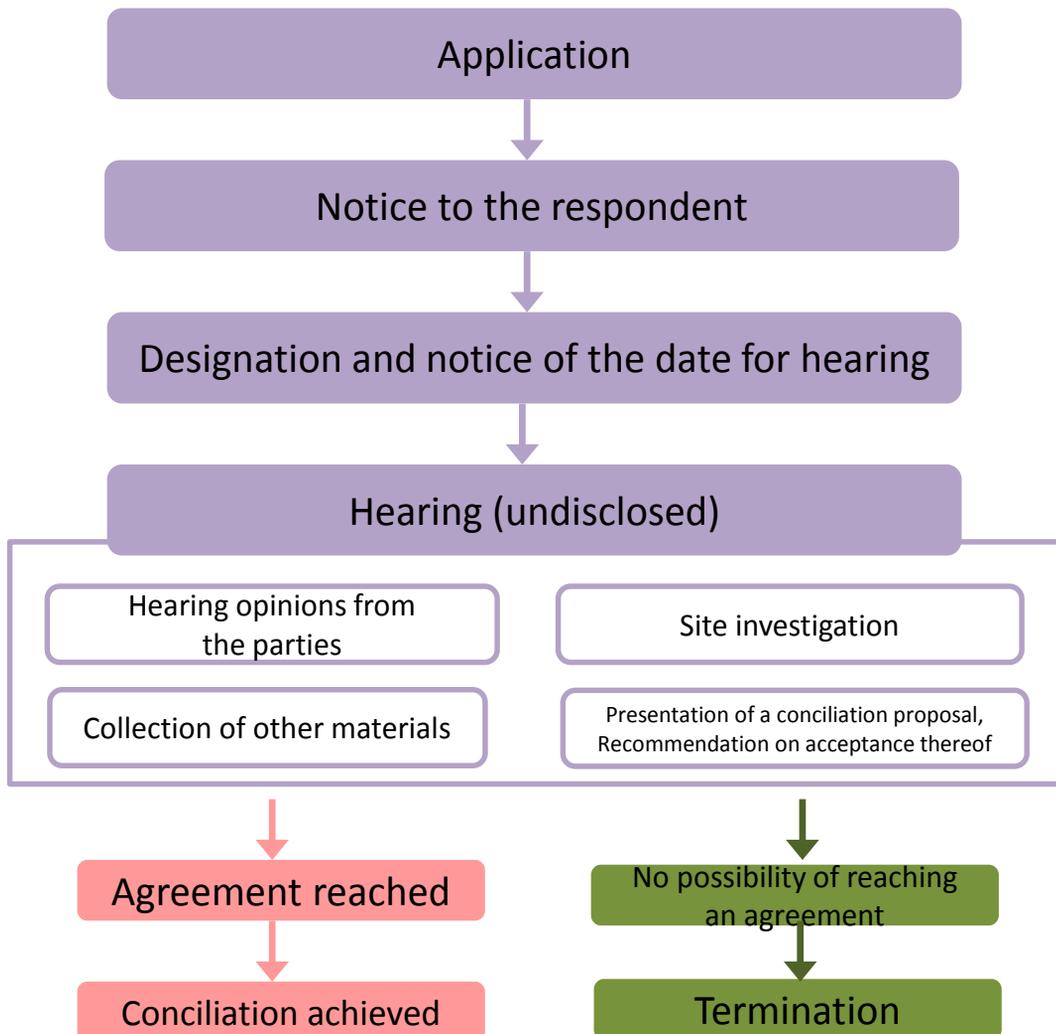
Conciliation refers to procedures wherein the Conciliation Committee consisting of three Commissioners of the Environmental Dispute Coordination Commission intervenes and actively leads negotiations between the parties to have them reach an agreement based on mutual concession. Procedures are commenced upon an application filed by a party.

Conciliation procedures are not disclosed for the purpose of clarifying the actual status of the dispute and facilitating mutual concession among the parties. This enables all the parties to frankly state their opinions.

The Conciliation Committee coordinates opinions based on the facts and the parties' allegations, prepares and presents an appropriate and reasonable conciliation proposal, or otherwise endeavors to achieve an agreement. The Committee sometimes recommends the parties to accept its conciliation proposal.

When the parties reach an agreement through such conciliation procedures, the case is settled. The agreement thus reached among the parties has the same effect as a composition contract under the Civil Code.

Conciliation Procedures



Outline of Adjudication Procedures

Adjudication refers to procedures wherein the Adjudication Committee consisting of three or five Commissioners of the Environmental Dispute Coordination Commission intends to settle a dispute by handing down legal judgments concerning liabilities for damages or the cause-effect relationship as requirements for the former.

■ Types of adjudication

The Environmental Dispute Coordination Commission makes the following two types of adjudication:

(1) Adjudication of liability for damages

Procedures to hand down legal judgments concerning the existence or non-existence of liability for damages and the amount of compensation

(2) Adjudication of the cause of damage

Procedures to hand down legal judgments concerning the cause-effect relationship between offending actions and damage

■ Adjudication procedures

Based on an application, the Adjudication Committee holds a disclosed hearing to have the parties state their allegations, examines evidence, conducts fact-finding investigations, and makes an adjudication based on the facts it found.

These procedures are equivalent to those for civil actions and are characterized by the authority given to the Committee to examine evidence and conduct fact-finding investigations.

■ Effect of adjudication

When no action is filed concerning damages related to an adjudication of liability within 30 days of the service of the original written adjudication to the parties, it is deemed that an agreement on damages to the same effect as the adjudication of liability has been reached between the parties.

Adjudication of the cause of damage only shows the Committee's judgement concerning the cause-effect relationship and does not define rights and obligations of the parties.

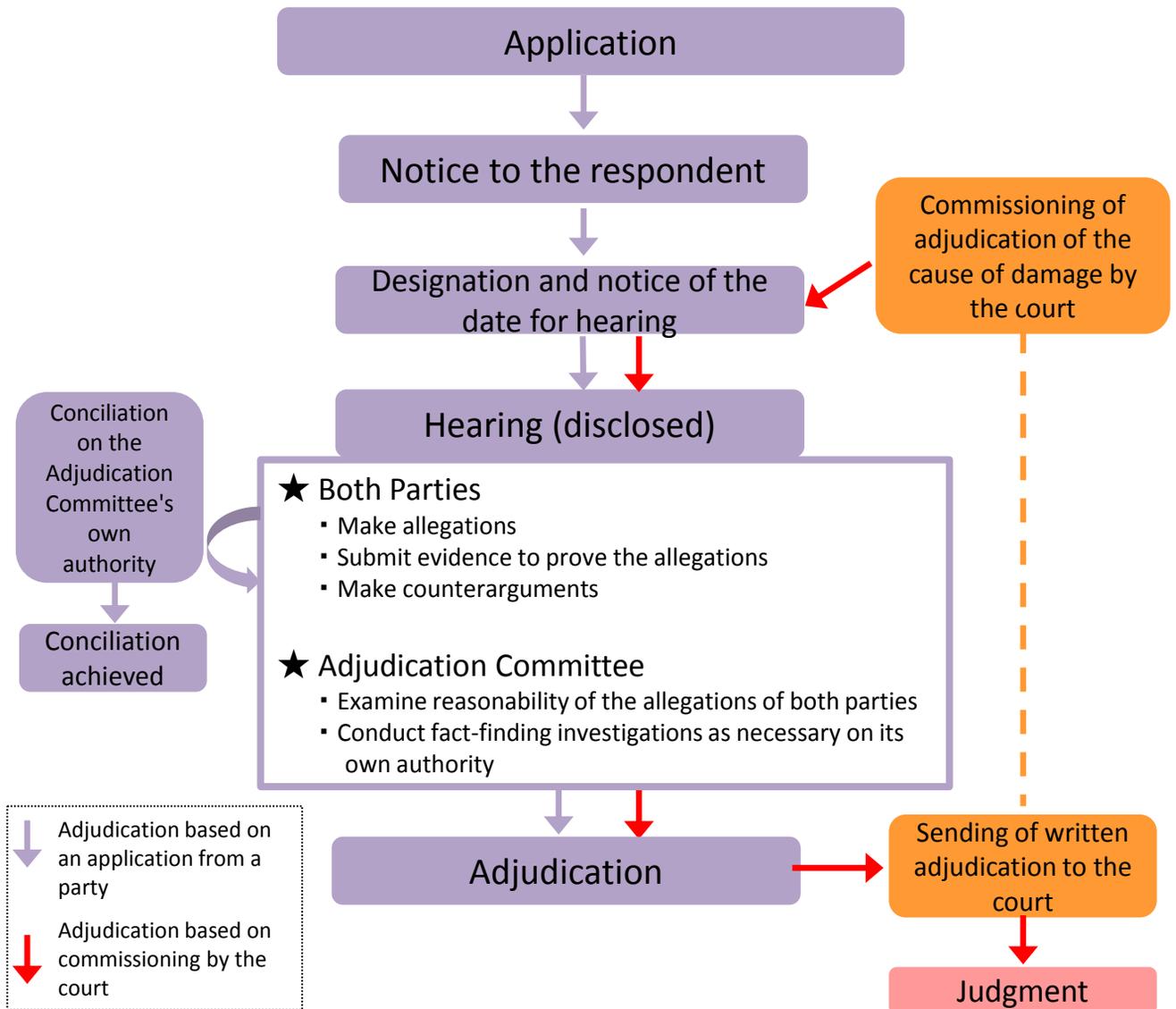
■ Conciliation on the Adjudication Committee's own authority

When the parties are highly likely to reach an agreement in the process of adjudication procedures or the Adjudication Committee otherwise finds it appropriate, the Committee may transfer the case to conciliation procedures on its own authority.

■ Commissioning of adjudication of the cause of damage by the court

Based on the commission by the court with which a civil action on environmental pollution damage has been filed, the Environmental Dispute Coordination Commission may make an adjudication of the cause of damage.

Adjudication Procedures



■ Utilization of adjudication in conciliation procedures

In the process of conciliation procedures undertaken by a Prefectural Pollution Review Board, etc., if the major issue is the cause-effect relationship between the relevant offending action and damage and it is difficult to clarify such relationship, the parties may file an application and seek an adjudication of the cause of damage by the Environmental Dispute Coordination Commission.

Additionally, after conciliation procedures undertaken by a Prefectural Pollution Review Board, etc. are terminated, the parties may seek an adjudication of liability for damages or an adjudication of the cause of damage by the Environmental Dispute Coordination Commission.

Characteristics of the Environmental Dispute Settlement System

Formerly, settling environmental disputes through civil procedures required time and cost and the relief of the victims was not necessarily sufficient. The Environmental Dispute Settlement System was established to eliminate such disadvantage on the part of the victims. Therefore, the system has various characteristics, in comparison with civil procedures, such as that environmental dispute settlement organs can conduct investigations by themselves, and the procedures are more flexible and less expensive.

1. Utilization of expert knowledge

Expert knowledge held by Commissioners and members of environmental dispute settlement organs is fully utilized to facilitate prompt and appropriate settlement. Depending on cases, academics, etc. with specialized knowledge or technological knowledge are appointed as expert advisors.

2. Flexible action by environmental dispute settlement organs to collect materials and conduct investigations

Environmental dispute settlement organs may collect materials and conduct investigations by themselves as necessary for finding out the cause-effect relationship.

3. Prompt settlement

The Environmental Dispute Coordination Commission sets a standard period of time for adjudication procedures and endeavors to achieve prompt proceedings.

4. Low costs

Application fees are relatively low compared with legal costs (fees for applying for conciliation are approximately one-quarter of those for civil conciliation by the court). Additionally, material collection and investigations are conducted at the expense of the administration as necessary, thereby mitigating the financial burden of the parties.

5. Settlement through flexible procedures

The Environmental Dispute Coordination Commission endeavors to hold hearings at locations of damage in order to reduce the burden of the parties who live away from Tokyo. When the Adjudication Committee permits, certain documents may be submitted by e-mail.

6. Reflection of the Commission's experience on anti-pollution policies

The Environmental Dispute Coordination Commission and Prefectural Pollution Review Boards present opinions based on specific experience of settling disputes to the heads of the relevant administrative agencies and relevant Prefectural Governors, respectively, with the aim of having them reflect such experience on their anti-pollution policies for further improvements.

7. Follow-up activities

When legal obligations imposed through conciliation, mediation, or adjudication of liability are not properly performed, environmental dispute settlement organs may make recommendation to demand the performance of said obligations based on a claim made by a right holder. Environmental dispute settlement organs may also request reports on the performance of said obligations from the relevant party or conduct investigations.

Trends in Environmental Dispute Cases

Under the Environmental Dispute Settlement System, a large number of dispute cases have been settled. Since the inauguration of the system in 1970 up to March 31, 2017, the Environmental Dispute Coordination Commission has handled a total of 1,005 cases, out of which 984 cases were settled, while Prefectural Pollution Review Boards have handled a total of 1,525 cases and have settled 1,486 cases out of them.

Immediately after the inauguration, industrial pollution cases, such as those related to the Minamata Diseases, which caused serious damage to people's health and property, were often brought in.

In recent years, progressing urbanization and increase in environmental awareness have diversified environmental dispute cases and have increased, in addition to the abovementioned types of disputes, other urban-type or life-related disputes over neighborhood noise or cases relating to waste treatment facilities for seeking protection of favorable living environment.

Major Cases Handled by the Environmental Dispute Coordination Commission

- Compensation for Minamata Diseases suffered by residents in areas on the coast of the Shiranui Sea (Conciliation)
- Compensation for damage to agricultural products caused by the mining pollution along Watarasegawa River (Conciliation)
- Noise from Osaka International Airport (Conciliation)
- Road dust generated by traffic using spike tires (Conciliation)
- Damage of agrochemicals to be used at a golf course planned in Yamanashi and Shizuoka Prefectures (Conciliation)
- Noise pollution caused by the Odakyu Railway (Adjudication of liability for damages)
- Water pollution damage caused by industrial waste in Teshima (Conciliation)
- Damage caused by air pollution in Amagasaki City (Mediation)
- Fishery damage due to the sand washout from the Dashidaira Dam in the marine area at the mouth of the Kurobe River, Toyama Prefecture (Adjudication of the cause of damage)
- Health hazards from arsenic in Kamisu City (Adjudication of the liability for damages)
- Damage by water contamination caused by soil disposal in Otsu City (Conciliation)

Major Cases Handled by Prefectural Pollution Review Boards

- Cases related to pollution and damage due to noise, vibration, offensive odor and/or dust from industrial activities
- Cases related to noise pollution in the vicinity of karaoke bars, overnight shops and/or outdoor equipment of apartments
- Cases concerning the prevention of noise on roads
- Cases related to water contamination at waste disposal site

Case upon application for conciliation regarding water pollution damage caused by industrial waste in Teshima

In November 1993, 438 residents in Teshima, Tonosho-cho, Shodo-gun, Kagawa Prefecture, filed an application with Kagawa Prefectural Governor for conciliation to seek removal of industrial waste, designating Kagawa Prefecture, the waste disposal company and waste generating companies, among others, as the other parties (respondents). As the site of the incident covered areas of multiple prefectures, this case was transferred to the Environmental Dispute Coordination Commission.

Through 14 sessions of conciliation proceedings, in July 1997, an interim agreement was reached that Kagawa Prefecture would carry out the intermediate treatment of the waste that remained on the disposal site. At the 37th session of conciliation proceedings in June 2000, conciliation was concluded between the applicants and Kagawa Prefecture.

As it may take a long time to complete the implementation of the agreement, the Commission has taken part in the Teshima Waste Disposal Council to ensure that the Council will perform its function smoothly and appropriately.



Present condition of the Teshima Disposal Site (as of December 1, 2016)
(photo by Kagawa Prefecture)

Case upon commission of adjudication of the cause of damage related to the fishery damage due to the sand washout from the Dashidaira Dam in the marine area at the mouth of the Kurobe River, Toyama Prefecture

In August 2004, the Toyama District Court commissioned the Environmental Dispute Coordination Commission to adjudicate on the causal relationship between the sand washout from the Dashidaira Dam in the marine area at the mouth of Kurobe River and the fishery damage identified at that area. Through the investigation by experts and 14 sessions of hearings, in March 2007, the Commission rendered an adjudication to partially recognize the alleged causal relationship, finding that the poor harvest of cultivated seaweed was attributed to the sand washout.

Case upon application for an adjudication of the liability for health hazards from arsenic in Kamisu City

In July 2006, 34 residents in Kamisu City, Ibaraki Prefecture, and other municipalities, filed an application with the Environmental Dispute Coordination Commission for an adjudication of the liability for damage to their health from arsenic, designating the State (represented by the Prime Minister) and Ibaraki Prefecture as the other parties (respondents) (another five residents claiming damages resulting from the same cause participated in the proceedings of the case in November 2008).

Through the investigation by experts and 17 sessions of hearings, in May 2012, the Commission rendered an adjudication to order Ibaraki Prefecture to pay a total of 28,260,000 yen as solatium for the applicants.

Processing of Environmental Pollution-related Complaints

Environmental pollution is an issue that is closely related to local residents in the affected areas. It is critically important to solve this issue promptly and appropriately in the course of creating a better living environment. From this viewpoint, as part of the system for settling environmental pollution disputes, prefectural and municipal governments have consultation desks to handle complaints about environmental pollution.

Environmental pollution-related complaint counselors assigned at the consultation desks take charge of the entire process toward settlement of disputes including: hearing residents' complaints, conducting necessary investigation, and providing guidance and advice to the parties concerned on improvement measures through communication with the relevant organs.

As of March 31, 2016, there was a total of 11,053 staff, including general officials, and environmental pollution-related complaint counselors who engage nationwide in providing consultation on environmental pollution-related complaints. They play an important role in preventing environmental disputes.

Current Status of Environmental Pollution-related Complaints

According to the results of the 2015 Environmental Pollution-related Complaint Survey conducted by the Environmental Dispute Coordination Commission, a total of 72,461 complaints were received at the consultation desks of local governments nationwide.

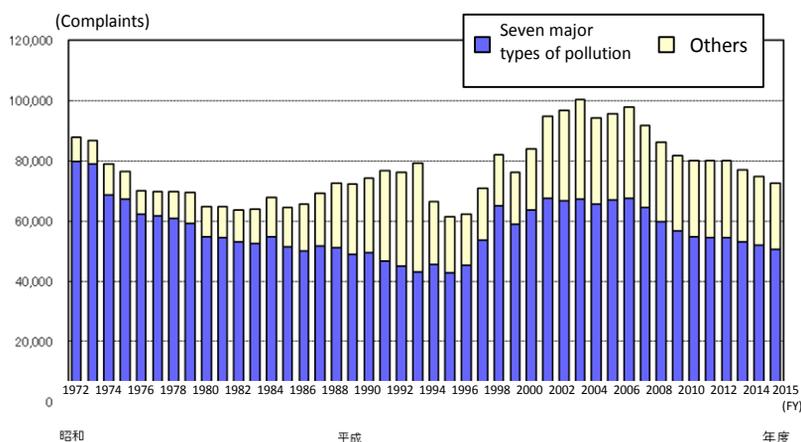
Among these complaints, 50,677 complaints were related to the "seven major types of pollution," i.e., air pollution, water contamination, soil contamination, noise, vibrations, land subsidence, and offensive odors, while 21,784 complaints were related to other types of pollution, such as dumping of waste.

By type of pollution, noise was most complained about among the seven major types of pollution, followed by air pollution, offensive odors, water contamination, vibrations, soil contamination, and land subsidence.

Looking at the trends over the past five years, while the number of complaints about noise, which had been on the rise, decreased in FY2015, the number of complaints about low-frequency noise increased from the previous fiscal year.

Among the complaints about pollution other than the major seven types, dumping of waste accounted for more than 40%.

Trends in the Number of Environmental Pollution-related Complaints



(Note) The data is discrete due to the change in the survey method in FY2004.