

China's History of Environmental Protection



The Environmental Protection Law of the People's Republic of China was passed in September 1979. The Law absorbed the practical experience of the preceding years, and also some effective parts of other countries' environmental laws. It defined the goals and tasks of environmental protection and some specific regulations on the exploitation and usage of natural resources, as well as the prevention and control of environmental pollution.

The Law established the legal basis for environmental protection - and in particular, four policies that have since played important roles in environmental protection in China.

The first relates to the formation of environmental protection institutions and the definition of their functions; the second defines environmental liability and sets up the Pollution Charging System; the third puts forward the mandate of environmental impact assessment practices; and the fourth stipulates the 'Three Synchronies' system. In order to control industrial pollution, the Three Synchronies system, ie, requiring that the design, construction and operation of the main body of a project be accompanied by the design, construction and operation of appropriate pollution treatment facilities, was adopted in the early '70s.

Following this, the decade from the early '80s to the early '90s was the time when China's environmental protection work grew - the environmental policy system was becoming mature, environmental management was settling into systematic routine procedures, and prominent progress had been achieved in pollution prevention and control.

After the strengthening of environmental legislation in the mid-late '90s, the Standing Committee of the China National People's Congress also amended and formulated many other laws to include environmental protection and resource conservation. One example is the amended Criminal Law, into which a new chapter on 'Crime relating to Endangering the Environment and Resource Protection' was added, defining the penalty for actions which cause environmental pollution and resource damage, and enhancing the legal power of the environmental legislation.

Going forward

The framework that will emerge over the next decade is relatively complex, largely because it is being developed all at once and is driven by different forces within the Chinese government structure. Already, the Government is strengthening its push to commercialize the market and act increasingly in the role of a regulator and creditor and less as an equity holder in environmental protection projects and infrastructure investments.

It is doing this by encouraging the development of the domestic environmental protection industry, by pushing to raise municipal tariffs, and through the encouragement of market-based instruments, such as finance and tax policies. Where solutions may not readily exist, the ability of companies to forge a strong local support network with environmental officials and regional planners through training, sharing of corporate environmental, health and safety practices, and community education should prove fruitful.

So for example, with tougher new standards for environmental protection, responsible companies will be caught between wanting to do the right thing and being able to plug in to a capable infrastructure. The near-term options for hazardous wastes treatment and disposal may be few, but solutions in the form of building domestic capacity will need to be constructed now. If a company wants to introduce advanced pollution prevention technology into its processes, for example, indicating to the local Environmental Protection Bureau (EPBs), in advance, the impact this may have on local conditions, may help to gain their support in negotiating import duty, tariff or tax reductions.

In the end, companies cannot afford to take an approach to environmental compliance that is anything but strict, for two reasons: firstly, the legislation is increasingly comprehensive and based on international standards; and secondly, as international companies are perceived to have more resources and experience with environmental issues than domestic firms, they are often subjected to more stringent enforcement.

Fighting inconsistency

The past 10 years have seen major amendments to China's environmental legislation and the promulgation of many new environmental standards and regulations. The regulations are becoming increasingly comprehensive, strict and comparable to international standards for environmental protection.

However, although the regulatory framework is good, and improving, because it is incomplete, some inconsistencies arise from one region to the next and certain grey areas exist. In particular, there is a difference in regulatory enforcement between economically well-developed and poorly developed areas. So although regulatory enforcement is good in areas that have received significant foreign investment, such as the Shanghai, Beijing and Tianjin municipalities and Guangdong, Zhejiang, and Jiangsu Provinces, outside of these areas, regulatory enforcement is often inconsistent.

In an effort to improve the efficiency of regulatory enforcement, and to incorporate environmental protection in the national policy development, on 27 March 2008, the State Environmental Protection Administration (SEPA, founded in 1982 as the National Environmental Protection Agency (NEPA)) was upgraded to the Ministry of Environmental Protection (MEP).

During the Eleventh Five-Year Period (2006-2010), SEPA (or MEP) has been placing more emphasis on efficient and serious regulatory enforcement within different regions.

Multiple Leverages

Early in July 2007, the MEP, the People's Bank of China (PBC) and the China Banking Regulatory Commission (CBRC) jointly issued the Circular on the Implementation of Environmental Protection Policy and Regulations to Prevent Credit and Loan Risk, which, for the first time, urged the use of banking leverage to facilitate environmental protection measures. Since 2009, carbon tax and environment tax have been the hot topics among different legislative organizations in China.

On 26 December 2009, the China Tort Liability Law (Tort Law) was promulgated and would take effect as of 1 July 2010. The Tort Law focuses not just on environmental liabilities but also covers relatively comprehensive matters pertinent to civil rights; it also includes one specific chapter on environmental liability. Compared with those existing provisions on environmental liability, although embedded in China's environmental legislation for many years, scattered across a wide range of regulations, the Tort Law would serve as a codification of basic principles and, most significantly, it clarifies the nature of some liabilities faced by polluting sources, such as the polluter being responsible to prove if it should (not) be held liable for tort due to its business operations, etc.

Legislative Focus

Survey of Pollution Sources

On 12 October 2006, China launched its first nation-wide pollution resource survey, led by Zeng Peiyan, Vice-Premier, and in October 2007, the State Council issued specific regulations for the survey. Recently a public advertisement about the survey was promoted via China's central television channels with quite a high broadcasting density. On 9 February 2010, the survey results were presented via a public formal media press release from the MEP which, according to the writer's personal experience, is also the first time such press media communication channels have been used for environmental protection, especially for pollution discharge. The public media interpretation is that the survey results would become essential statistics for decision-making on important environmental topics, such as environmental tax, soil contamination control, etc.

Soil and Groundwater Legislation

The Chinese Government is establishing/revising soil and groundwater standards, technical guidelines for investigation and prevention laws.

The MEP set up an expert team to draft the soil standards and a technical guideline on environmental impact assessment (EIA) reporting for soil. The team revised the soil quality standard with updates to more than 100 compounds including all of the industrial organic chemicals and pesticides. They also collected information about standards from the international community and different categories of soil may be considered for agricultural, residential, commercial and industrial purposes in terms of background value, impacted value and contamination value. In 2009, the MEP published for public consultation a series of regulations and standards on soil and groundwater contamination investigation, assessment, monitoring and remediation. It is expected that the revised soil quality standards will be finalized using an accelerated approach.

New Chemical Legislation

A revised Provisions on the Environmental Management of New Chemical Substances was adopted by the MEP on 30 December 2009, to take effect on 15 October 2010. Compared with the 2003 Provisions, the new law is expected to contain more lenient requirements, larger geographical scope, such as Free Trade Zones, and a broader concept of applicable substances, such as articles, imported or domestic. In addition, risk assessment would be regarded as a necessary base for review and approval, and more in line with the REACH mechanism.

Waste Legislation

The Solid Waste Pollution Prevention Law, initially issued in 1995, was adopted on 29 December 2004, with effect from 1 April 2005. Making polluters responsible and encouraging recycling are the key principles driving this amendment.

The amended Law provides requirements for solid waste pollution prevention liabilities when an enterprise is to be separated, merged or acquisitioned, dissolved or goes bankrupt. Before termination, an enterprise is required to deal properly with its generated solid wastes and related solid wastes locations and facilities.

Water Legislation

On 28 February 2008, the Law of the People's Republic of China on the Prevention and Control of Water Pollution was promulgated by the Central Government, taking effect on 1 June 2008 to substitute the existing Law approved by the National People's Congress (NPC) on 11 May 1984. The new Law features many changes addressing issues such as including water environmental quality into the performance evaluation of the local governments; implementing severe legal punishment for un-approved water pollution discharges; and the enforcement of mass loading control for major water pollutants. The most significant modification relates to the section on legal liability/penalty, which has been updated to include much more detailed penalty rules and harsher punishment.

Clearly, progress has been and is being made in China's efforts towards reducing environmental pollution as well as improving energy efficiency through raising awareness supported by legislation and enforcement. A continuing and robust focus on strengthening the regulatory framework will be a positive force towards environmental sustainability for China's future generations.