

Implications of the Soil Pollution Prevention Law on Industrial Facilities in China

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China's long awaited Soil Pollution Prevention Law comes into force on 1 January 2019 with significant implications for industrial and manufacturing sites.

China's Soil Pollution Prevention Law was finally passed by the National People's Congress on 31 August 2018 and will come into force on 1 January 2019. The Government has been flagging the need for such a law for well over a decade and draft versions were issued for public comment no fewer than three times over the last five years.

The Law clearly defines the circumstances under which industrial facilities will be required to undertake soil and groundwater investigations and remediate contaminated sites. It will also see the creation of a national database of contaminated sites, maintained by government and accessible to all.

The implementation of the Soil Pollution Prevention Law will have significant implications for industrial and manufacturing sites in China.

Soil Pollution Prevention Law - 15 Years in the Making

The Soil Pollution Prevention Law represents a logical next step in a long list of regulations and government notices concerning soil and groundwater contamination introduced over the last 15 years (Fig. 1).

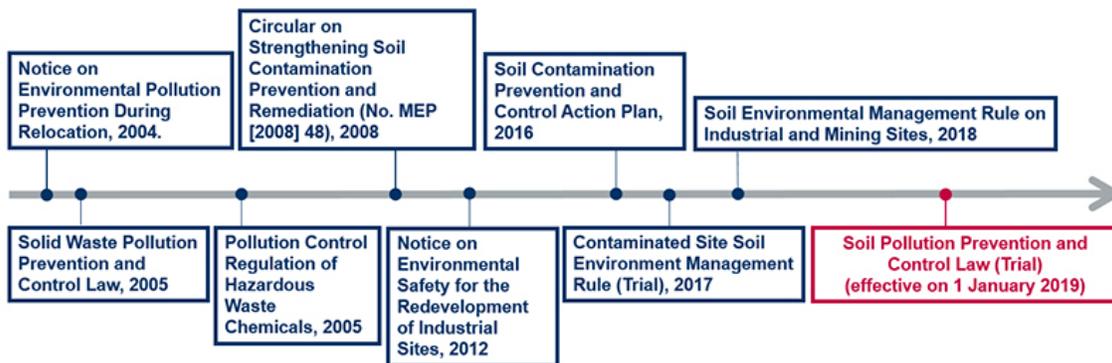


Figure 1: Timeline of soil and groundwater notices and regulations issued by the Chinese government since 2004

Following the Soil Pollution Prevention Law, it is widely anticipated that regulators will now focus on the development of new groundwater related regulations and standards.

Implications for Industrial and Manufacturing Sites

In combination with other recent regulatory changes, the Soil Pollution Prevention Law will have a significant impact on China's industrial and manufacturing facilities by clarifying

liability for soil contamination upon rezoning or change in ownership and detailing requirements for soil investigation and remediation. Industrial facilities that fall into one of the following categories are at greatest risk.

Facilities on “Supervision Lists” for Soil Pollution

As part of China’s ongoing environmental crackdown, authorities have drawn up “Supervision Lists” of industrial facilities in each city across China that will be subject to increased government inspections. Industrial facilities in a number of specified “high polluting industries”, those generating or storing more than 100 tons of hazardous waste annually, waste disposal facilities and sites with a history of soil or groundwater contamination will **automatically** be included on Supervision Lists for Soil Polluters.

In Shanghai alone, **almost 400 industrial facilities** are included in the 2018 Supervision List for Soil Polluters, two-thirds of which are foreign-owned (or foreign JVs). Under existing measures, these facilities are required to undertake intrusive soil and groundwater investigations and submit results to government authorities by the end of 2018. The investigation results will be made available on a national database of contaminated sites that will be publically accessible. Where contamination has the potential to cause human health impacts beyond the site boundary, owners will be required to control the contamination onsite and/or remediate the contaminated site.

In addition, industrial facilities on “Supervision Lists” will be required to conduct soil and groundwater investigations when developing new facilities and expanding or modifying existing sites. The results of such investigations shall also be made available through a publically accessible national database. Where soil contamination is identified through such investigations, human health risk assessment, risk control and/or remediation will be required to be conducted and the contaminated site may not be expanded or re-developed until remediation has been undertaken.

Facilities that are being decommissioned, closed or relocated

Regardless of whether the decision to close or relocate an industrial facility is made by the owner or as a result of a government enforcement action, an increasing number of such facilities will be required to undertake intrusive soil and groundwater investigations and register the investigation report to government authorities who will maintain a national database of contaminated sites.

Specifically, this will be required when: i) the industrial facility is on a “Soil Pollution Supervision List”; and/or ii) where the land is being returned to government and will be rezoned (typically from industrial to residential or commercial). Where contamination is identified, facility owners will be responsible for remediation of the contamination and associated costs. Contaminated sites may not be redeveloped before remediation or risk control targets are met. In the event of decommissioning or demolition of production equipment or facilities, a pollution prevention plan must be prepared and registered with local government 15 working days before the decommissioning commences.

Theoretically, industrial facilities not named on a “Supervision List” are not obliged to undertake soil and groundwater assessments where land is handed back to government (or assets transferred) and the land use remains zoned for industrial use. However, this does not mean that facility owners bear no responsibility for undisclosed contaminated soil and groundwater.

Under the long-established 'polluter pays' principle enshrined in Chinese Environment Protection Law, owners of facilities that cause soil or groundwater contamination are liable for remediation costs. Furthermore industrial facilities that cause soil and groundwater contamination may still be required by local government to carry out environmental site assessment and remediation and anecdotal evidence suggests that this is increasingly being requested of industrial facilities.

Recommended next steps for facilities occupying contaminated sites

For most of the last 30 years of China's industrialization, there has been little incentive or regulatory requirement for industrial facilities to clean up contaminated industrial sites. The Soil Pollution Prevention Law marks a change from the past practices with owners of industrial facilities suspected to be contaminated now obliged to undertake soil and groundwater investigations and cleanup where necessary. A publically accessible national database of contaminated sites will bring unprecedented transparency to the issue.

ERM recommends that owners of industrial facilities that are known or suspected to have soil or groundwater contamination take a proactive approach to addressing the contamination risk themselves (on their terms) before they are directed to do so by government authorities (and cede control to local authorities). In such cases, ERM suggests the following:

- Establish liability for soil and groundwater in lease/land use agreements;
- Undertake soil and groundwater investigation to identify and delineate possible soil and groundwater contamination;
- Identify and remove sources of contamination as soon as possible;
- Control contamination to within the site boundary and periodically test boundary soil and groundwater quality to monitor the potential for contamination of (or from) neighboring properties;
- Proactively remediate soil and groundwater before government intervention and before exiting a site.

Key contacts and how ERM can help

ERM helps clients to assess their regulatory and environmental risk in their operations.

For more information, contact your current ERM consultant or one of the experts below:

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