

Annual Review of Chinese Environmental Law Developments: 2017

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The year 2017 witnessed further development of environmental law in China. Environmental protection was affirmed in the 19th National Congress of the Communist Party of China (CPC) held in October 2017, and was stressed in various parts of President Xi Jinping's report to this CPC Congress.¹ In line with the environmental protection policies, the Standing Committee of the National People's Congress (NPC) revised some laws related to environmental protection, and the Supreme People's Court (SPC) also took some initiatives for environmental protection.

I. Major Legislation

A. The Nuclear Safety Law

As a member of the International Atomic Energy Agency, China is required to establish a legal regime for the development of atomic energy and related issues. However, the first specialized national legislation, the Law of the People's Republic of China on Nuclear Safety (Nuclear Safety Law), was only adopted by the NPC Standing Committee on September 1, 2017.² It is the first step

taken by the NPC to regulate the use of nuclear energy before adopting full-fledged legislation on nuclear energy and nuclear materials.

The purpose of the Nuclear Safety Law is to ensure the safe use of nuclear power and the safety of nuclear facilities and materials; to prevent and properly handle nuclear accidents; to protect the public and personnel working for nuclear facilities or handling nuclear materials; and to protect the environment.³ The "nuclear facilities" regulated by this law include: (1) nuclear electric power plants, nuclear thermal power plants, nuclear plants supplying steam and heat, and any other nuclear power plants or installations; (2) research reactors, experimental reactors, critical facilities, or any reactors other than a nuclear power plant; (3) facilities in which nuclear fuel is produced, processed, stored, or reprocessed, or any other nuclear fuel cycle facility; or (4) facilities processing, storing, or disposing of radioactive waste. "Nuclear material" means uranium-235, uranium-233, and plutonium-239, or any product of them; or any other nuclear material required to be controlled according to laws and administrative regulations.⁴ However, this law does not regulate radioactive pollution from associated radioactive mines, which falls within the scope of the Law on the Prevention and Control of Radioactive Pollution.⁵

This law mainly concerns three different departments of government, namely the authorities responsible for nuclear safety, the authorities supervising nuclear industries, and the authorities in charge of energy. Nuclear safety is mainly the responsibility of the Ministry of Ecology and Environment (MEE) (formerly the Ministry of Environmental Pro-

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1. Xi Jinping, Secretary General of the CPC, Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism With Chinese Characteristics for a New Era, Report at the 19th National Congress of the CPC (Oct. 18, 2017).
2. The Law of the People's Republic of China on Nuclear Safety [hereinafter Nuclear Safety Law] (adopted by the NPC Standing Comm. Sept. 1, 2017, effective Jan. 1, 2018), http://www.npc.gov.cn/npc/xinwen/2017-09/01/content_2027930.htm.

3. *Id.* art. 1.

4. *Id.* art. 2.

5. Law of the People's Republic of China on the Prevention and Control of Radioactive Pollution (adopted by the NPC Standing Comm. June 28, 2003, effective Oct. 1, 2003), http://www.gov.cn/gongbao/content/2003/content_62270.htm.

tection, MEP), specifically the Administration of Nuclear Safety within the ministry.⁶

As nuclear facilities and nuclear materials are ultra-hazardous and their safety is of paramount importance, this law requires the close collaboration of governmental agencies and provides for the administrative licensing for virtually all related activities, particularly the site selection, designing, construction, operation, and retirement of nuclear facilities, as well as storage and disposal facilities for nuclear wastes.⁷ Other important regulatory tools include zoning and planning, standards, and reporting.⁸

B. Revision of the Water Pollution Control Law

The NPC Standing Committee adopted a decision on June 27, 2017,⁹ that significantly revised the Law of the People's Republic of China on the Prevention and Control of Water Pollution (Water Pollution Control Law).¹⁰ This revision is in line with the 2014 revised Environmental Protection Law,¹¹ as well as recent water pollution control policies enacted by the CPC and the State Council, the central government of China. This section describes the main aspects of the revision.

I. Strengthened Responsibilities of Local Governments

The revision strengthens the responsibilities of local governments and their political leaders. The political leaders of local government include both heads of local governments, and heads of local CPC commissions who usually simultaneously take a leading position either in the respective local people's congress or the respective local government.

First, governments at the township level shall be responsible for water quality. Previously, Article 4(2) provided that local governments at or above the county level were responsible for the water quality of their respective administrative regions. In contrast, revised Article 4(2) provides that local governments at all levels are responsible. The revised

article provides that local people's governments at all levels shall be responsible for the water quality of their respective administrative regions, and shall take measures in a timely manner to prevent and control water pollution. The difference from the previous Article 4(2) is that governments at the township level are also included in the responsible local government, as local governments of China include four levels (i.e., provincial, city, county, and township levels) from the top to the bottom.

Second, local leaders need to take the position of river chiefs or lake chiefs. Roughly speaking, a chief is to a river or lake, as a mayor is to a city or the CEO to a company. The new Article 5 provides that provinces, cities, counties, and townships shall establish a hierarchical system of river chiefs, and river chiefs shall organize and lead such work as resource protection of rivers and lakes, administration of water bodies and shorelines, prevention and control of water pollution, and governance of the aquatic environment within its administrative boundaries.

This is a formal recognition of the policy on river chiefs issued by the CPC Central Committee and the State Council,¹² which in turn is the recognition of pilot experiments by some local authorities. The key point of the river chief system is to make top local political leaders personally responsible for the aquatic environment and to prioritize the aquatic environment in the agenda of local governments and CPC commissions. Without the river chief system, water protection is only one of many responsibilities of local governments.

Under the river chief system, a specific person is named as the chief of a specific river or lake. This makes the chief personally responsible to improve the enforcement of relevant rules. According to the current policy, each provincial level of government shall have a general chief of rivers and lakes, and only the secretary of the provincial CPC commission or the provincial governor can take this position. Each major river or lake shall have a chief who shall be one of the provincial political leaders.

An important point is that heads of governmental departments cannot take the position of river chiefs. Only leaders of general duty can take this position, such as leaders of a local CPC commission, congress, government, or even a political consultative body. Likewise, cities, counties, and townships shall establish their systems of river chiefs for rivers and lakes or the part of rivers or lakes within their boundaries.¹³ Nevertheless, the revised Water Pollution Control Law does not provide for legal liabilities of river chiefs. In practice, the consequences for incompetent river chiefs would be more political or disciplinary than legal.

Third, local governments at the city and county levels need to meet additional reporting requirements. If the aquatic environment fails to meet the applicable water quality standards, the respective city and county govern-

6. The Ministry of Environmental Protection (MEP) was restructured and renamed into the Ministry of Ecology and Environment (MEE) as of March 2018. See Reform Plan of Agencies of the State Council, available at http://www.gov.cn/xinwen/2018-03/17/content_5275116.htm.

7. Nuclear Safety Law, *supra* note 2, arts. 23-31.

8. *Id.* arts. 8, 9, 19, 21.

9. Decision of the NPC Standing Committee on Revising the Law of the People's Republic of China on the Prevention and Control of Water Pollution (adopted by the NPC Standing Comm. June 27, 2017, effective Jan. 1, 2018), http://www.npc.gov.cn/npc/xinwen/2017-06/27/content_2024513.htm.

10. Law of the People's Republic of China on the Prevention and Control of Water Pollution [hereinafter Water Pollution Control Law] (adopted by the NPC Standing Comm. May 11, 1984; first amended May 15, 1996; revised Feb. 28, 2008; subsequently amended June 27, 2017; effective Jan. 1, 2018), http://www.npc.gov.cn/npc/xinwen/2017-06/29/content_2024889.htm.

11. Environmental Protection Law of the People's Republic of China (adopted by the NPC Standing Comm. Dec. 26, 1989; revised by the NPC Standing Comm. Apr. 24, 2014; effective Jan. 1, 2015). See also Mingqing You & Yan Wang, *Annual Review of Chinese Environmental Law Developments: 2014*, 45 ELR 10419 (May 2015).

12. The General Office of the CPC Central Committee Issued "Opinions on the Full Implementation of the River Extension System," XINHUA NEWS AGENCY, Dec. 11, 2016, http://www.gov.cn/xinwen/2016-12/11/content_5146628.htm?allContent.

13. Water Pollution Control Law, *supra* note 10, art. 5.

ments shall make plans to meet the standards within a specified period of time according to the water pollution control plans. The city and county governments need to submit such plans to the immediate higher level of government for recordation and shall also disclose such plans to the public.¹⁴ When reporting environmental conditions and achievements of environmental protection goals each year to the corresponding people's congress or the standing committee of the corresponding people's congress, city and county governments shall report on the performance of the plan for meeting water quality standards, and shall also disclose such reports to the public.¹⁵

Fourth, the revision added the interview of lower governmental leaders by environmental protection agencies at or above the provincial level. If a region exceeds the total allowable discharge of key pollutants or fails to meet environmental quality goals within the prescribed time, the environmental agency at or above the provincial level, accompanied by other relevant departments, shall interview the principal responsible person of the region and such interviews shall be disclosed to the public.¹⁶ In practice, the interviewees usually include the major local leaders in charge of environmental protection and the head of the environmental protection bureau. Although the interview per se does not result in legal liabilities, it may lead to political pressure and is in effect a public censure.

2. More Specific Rules on the Licensing of Water Pollutant Discharges

The previous Article 20 provided for the licensing of water pollutant discharges, and authorized the State Council to decide on specific rules and steps to implement this administrative licensing requirement. However, the administrative licensing was not actually implemented nationwide for various reasons, although some regions carried out pilot projects. This revision deleted the wording that allowed the State Council to make decisions on the specific steps to implement this licensing regime.¹⁷ This indicates that the State Council shall not further delay the implementation of licensing requirements on water pollutant discharges.

The revised law still authorizes the State Council to make specific rules on licensing, but requires that licenses shall at least specify the types, concentration, total discharge, and discharge direction of water pollutants.¹⁸ Moreover, the licensee shall monitor the discharged water pollutants and keep original monitoring records. In addition, key pollutant discharge units need to install automatic monitoring equipment to monitor the discharge of water pollutants, and have such equipment connected

through the Internet with the monitoring equipment of the environmental protection authorities.¹⁹ The licensees shall be responsible for the truthfulness and accuracy of the monitoring data.²⁰

3. Protection of Rural Water Quality

Controlling water pollution from agriculture and rural areas is important, but so far has mostly been ineffective. China is still to a large extent a rural country, with a large population that lives and works in the countryside and another large population that works mostly in cities but is still officially registered as villagers. Excessive use of chemical fertilizers, herbicides, and pesticides has led to serious environmental problems. The drinking water of rural areas also has significant problems because of agricultural pollutants, unsafe burial of urban and industrial wastes, and many other reasons. Water treatment facilities are insufficient or nonexistent in most villages. Villagers living in scattered houses still drink water directly drawn from wells.

This revision paid great attention to the control of rural water pollution. The revised law provides that the state shall support the development of treatment facilities for water pollutants and garbage in rural areas and promote the centralized treatment of water pollutants and garbage. Local governments at all levels shall coordinate the development of these treatment facilities in rural areas and ensure their normal operation.²¹ The technical standards for the quality and use of chemical fertilizers, herbicides, and pesticides shall meet the requirements of aquatic environmental protection.²² The governmental agencies in charge of agriculture and other relevant governmental agencies shall take measures and give guidance to farmers so that appropriate agricultural inputs are reasonably used.²³ As to fecal waste and other pollutants from livestock and poultry, the previous legislation required the operators of centralized livestock and poultry breeding plants to properly construct and operate pollution control facilities.

The revised law adds a new requirement on scattered breeding of livestock and poultry. If the livestock and poultry breeding is of a small scale for each household but quite intensive for the whole area, the local county or township government still needs to organize the collection of fecal waste and wastewater for centralized treatment and comprehensive utilization.²⁴ The revised law also requires irrigation water to meet certain standards to prevent polluting soil, groundwater, and agricultural produce. It is prohibited to use industrial and medical wastewater to irrigate farmland. Municipal sewage, wastewater from livestock or poultry breeding plants, and wastewater from agricultural produce processing plants can be discharged

14. *Id.* art. 17.

15. *Id.* art. 18.

16. *Id.* art. 20(5).

17. *Id.* art. 21.

18. *Id.*

19. *Id.* art. 23.

20. *Id.* art. 24.

21. *Id.* art. 52.

22. *Id.* art. 53.

23. *Id.* art. 55.

24. *Id.* art. 56(3).

to irrigation channels as irrigation water if the water quality of the nearest location supplying water for irrigation at lower reaches complies with the water quality standards for farmland irrigation.²⁵

4. Other Revisions

In addition, this revision also enhances the protection of drinking water, and requires coordination of environmental monitoring and information-sharing among governmental departments.²⁶ The revised law also requires the evaluation and monitoring of environmental carrying capacity, restoration of the aquatic ecosystem, and the increase of carrying capacity,²⁷ as well as proper treatment of sludge from sewage treatment facilities.²⁸ The MEE shall establish coordination mechanisms for protection of the catchment-wide aquatic environment in cooperation with the Ministry of Water Resources (MWR) and governments at provincial levels,²⁹ and shall, jointly with the National Health Commission (formerly the Ministry of Health), publicize a list of toxic and hazardous water pollutants according to their impacts on human health and the environment.³⁰ This revised law also controls pollution from the operation and dismantling of ships and boats.³¹

C. Right of Procedure Laws for Public Interest Litigation

The year 2017 witnessed the further development of public interest litigation (PIL). First, the NPC Standing Committee revised the Civil Procedure Law and the Administrative Procedure Law to allow the procuratorate to initiate PIL cases. A new paragraph was added to Article 55 of the Civil Procedure Law to allow the procuratorate to initiate a public interest case against an act that disrupts the ecological environment and resources protection, if there are no statutorily prescribed agencies or organizations or the statutorily prescribed agencies and organizations fail to initiate a public interest case. If such agencies or organizations do bring a PIL case, the procuratorate may support initiation of the case.

Similarly, a new paragraph was added to Article 25 of the Administrative Procedure Law to allow the procuratorate to bring administrative PIL cases against an administrative agency that illegally exercised its power or illegally failed to exercise its power in environmental protection. According to this revision, if an administrative agency with responsibilities for protection of the ecological environment and resources, safety of food and drugs, protection of state property, conveyance of state land use rights, and other fields illegally exercised its power or illegally

failed to exercise its power and led to damages to state interests or public social interests, the competent procuratorate shall prompt the administrative agency to perform its duties according to the law. If the administrative agency still fails to perform its duties, the procuratorate may bring a public interest case in court.³² This revision is a follow-up step taken after the authorization of the NPC Standing Committee allowing the procuratorate to carry out a two-year pilot PIL project.

D. Revision of the Marine Environmental Protection Law

The NPC Standing Committee revised two articles of the Marine Environmental Protection Law of the People's Republic of China on November 4, 2017.³³

The first revision is related to the setup of outlets discharging pollutants into the sea. The previous Article 30 imposed an administrative licensing requirement on construction of outlets for discharging pollutants into the sea. The revised Article 30 replaced this administrative licensing requirement with a requirement of recordation. The revised article provides that any outlets for discharging pollutants into the sea shall be sited in accordance with marine functional zoning plans, marine dynamic conditions, and relevant provisions, and shall, after scientific study, be reported to the environmental protection administrative department of the people's government at or above the level of a districted city for recordation. The environmental protection administrative department shall, within 15 working days after completing recordation, provide information on the setup of the outlets for discharging pollutants into the sea to the oceanic, maritime, and fishery administrative departments, and environmental protection departments of the armed forces.³⁴ This revision is in line with the general deregulation policy to improve efficiency.

The second revision was to insert a new paragraph into Article 77. This new Article 77(2) requires administrative agencies in charge of oceanic affairs, maritime affairs, or fisheries, and the environmental protection agencies of the armed forces, to notify the environmental protection agencies of outlets set up in violation of Article 30. The environmental agencies so notified shall impose administrative penalties on violators.³⁵

25. *Id.* art. 58(2).

26. *Id.* art. 25.

27. *Id.* art. 29.

28. *Id.* art. 51.

29. *Id.* art. 28.

30. *Id.* art. 32.

31. *Id.* arts. 59(1), 61(1), 62.

32. Decision of the NPC Standing Committee on the Revision of the Civil Procedure Law of the People's Republic of China and the Administrative Procedure Law of the People's Republic of China (adopted by the NPC Standing Comm. June 27, 2017, effective July 1, 2017), http://www.npc.gov.cn/npc/xinwen/2017-06/27/content_2024517.htm.

33. Decision of the NPC Standing Committee on Revising Eleven Laws Including the Accounting Law of the People's Republic of China (adopted by the NPC Standing Comm. Nov. 4, 2017, effective Nov. 5, 2017), http://www.npc.gov.cn/npc/xinwen/2017-11/04/content_2031495.htm.

34. The Marine Environmental Protection Law of the People's Republic of China art. 30 (adopted by the NPC Standing Comm. Aug. 23, 1982; first revision Dec. 28, 2013; second revision Nov. 7, 2016; third revision Nov. 4, 2017; effective Nov. 5, 2017), http://www.npc.gov.cn/npc/xinwen/2017-11/28/content_2032721.htm.

35. *Id.* art. 77.

II. Judicial Initiatives

A. *Judicial Interpretation on Disputes Related to Mineral Rights*

In June 2017, the SPC issued a judicial interpretation on the handling of disputes related to mineral rights.³⁶ Most provisions of this judicial interpretation are rules of property law, but some of them are on environmental protection. The judicial interpretation has a guiding principle that the court shall promote resource conservation and environmental protection in hearing cases related to mineral rights.³⁷ It recognizes the two legal statuses of the competent authorities of land and resources at or above the county level, the first being regulators as law enforcement agencies, and the second being transferors of mineral rights.³⁸ Under this precondition, the judicial interpretation provides some specific rules for resource conservation and environmental protection.

First, the judicial interpretation provides two situations in which the transferor has the right to rescind a transfer agreement for the reason of environmental protection. One situation is when the transferee fails to meet requirements for the protection of the mineral, geological environment, or environmental restoration plan approved by the competent authorities of land and resources, and refuses to correct transgressions within the time limit prescribed by the competent authorities of land and resources. The other is that the certificate of exploration or the certificate of mining is cancelled because of violation of the law or administrative regulations.³⁹

Second, the court shall find a contract void if a contract provides that the mineral right holder has the right to receive monetary consideration but has no duties in the management of the mine and does not need to perform the legally prescribed duties of safe mining and environmental restoration or assume the corresponding legal responsibilities.⁴⁰

Third, the court shall also find a contract void if the parties agree to explore or extract mineral resources in such areas as natural reserves, resorts, key ecological function zones, or ecologically or environmentally sensitive or fragile areas in violation of the mandatory provisions of laws and administrative regulations or environmental public interest.⁴¹

Fourth, this judicial interpretation provides that a public interest lawsuit can be brought against environmental pollution and ecological disruption caused by exploration or extraction of mineral resources.⁴² The rules applicable to

other environmental PIL cases are also applicable to public interest cases arising from exploration and extraction of mineral resources.

B. *Judicial Support for Green Development of the Yangtze River Economic Belt*

The Yangtze River is the largest river in China and one of the largest rivers in the world. The Yangtze River catchment has a surface area of 18 million square kilometers and covers 19 of 32 provincial-level administrative regions of mainland China. The catchment is one of the most developed and densely populated areas of China, particularly the lower and middle catchment. To further develop the economy of the Yangtze River catchment, the central government issued a development plan for the Yangtze River Economic Belt.

Green development and environmental protection are inherent requirements for the development of the Yangtze River Economic Belt. Therefore, the SPC issued a guideline on the judicial safeguards of green development and environmental protection.⁴³ However, this guideline emphasizes more the SPC's close attention to environmental cases than the creation of new rules. Environmental lawsuits related to the Yangtze River are mostly under the centralized jurisdiction of the Wuhan Maritime Court, which is not established according to administrative regions, but according to the river catchment. With the development of environmental law, the SPC decided that environmental cases that affect the waters of the Yangtze River should also be handled by the Wuhan Maritime Court. One consideration is to better protect the catchment as a whole, while another is to have a court less affected by local governments handle these cases.

III. Conclusion

The CPC's promotion of environmental protection policy will lead to more environmental legislation and cases. The NPC is still drafting the Law on the Prevention and Control of Soil Pollution and has postponed the Law on the Promotion of the Circular Economy. Besides the current changes and planned changes to black-letter environmental law, there are also significant changes in the enforcement of environmental law. Further, the PIL has also led to a subtle change of the actual power distribution among the legislature, the government, the procuratorate, and the courts, as well as among different branches and different levels of government. In sum, more developments are expected and more research is needed.

36. Judicial Interpretation of the SPC on Issues Concerning the Application of Law in Cases on Mineral Rights Disputes (issued by the SPC June 24, 2017, effective July 27, 2017), <http://www.court.gov.cn/fabu-xiangqing-54342.html>.

37. *Id.* art. 1.

38. *Id.* art. 2.

39. *Id.* art. 4(2).

40. *Id.* art. 12.

41. *Id.* art. 18.

42. *Id.* art. 21.

43. Opinions of the SPC on Comprehensively Strengthening the Construction of Ecological Civilization and Green Development in the Yangtze River Basin (issued by the SPC Dec. 1, 2017), <http://www.court.gov.cn/fabu-xiangqing-71562.html>.