

# ANNUAL REVIEW OF CHINESE ENVIRONMENTAL LAW DEVELOPMENTS: 2019

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## I. Policies of the Communist Party of China

The Communist Party of China (CPC) reaffirmed its emphasis on environmental protection in a decision adopted by the fourth plenum of its 19th Central Committee, held in December 2019.<sup>1</sup> Part 10 of this decision specifically addresses environmental protection under the topic of Developing a System of Rules for Ecological Civilization. This part contains an introductory paragraph and four additional paragraphs calling for (1) the most stringent legal rules for environmental protection, (2) rules on the efficient use of resources, (3) rules on ecological protection and restoration, and (4) rules on responsibilities and liabilities. This is a summary of experimental measures and rules adopted in recent years as well as a plan to further develop environmental rules in the future.

The CPC and the State Council adopted some general and specific policy documents on environmental protection in recent years. Notable examples of these policy documents are the Integrated Reform Plan for Promoting Ecological Progress jointly issued by the CPC Central Committee and the State Council on September 21, 2015,<sup>2</sup>

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1. CPC Central Committee, *The CPC Central Committee's Decision on Some Major Issues Concerning How to Uphold and Improve the System of Socialism With Chinese Characteristics and Advance the Modernization of China's System and Capacity for Governance* (adopted on Oct. 31, 2019), PEOPLE'S DAILY, Nov. 6, 2019.
2. Integrated Reform Plan for Promoting Ecological Progress (issued by the CPC Central Committee and the State Council Sept. 21, 2015, effective Sept. 21, 2015), [http://www.gov.cn/guowuyuan/2015-09/21/content\\_2936327.htm](http://www.gov.cn/guowuyuan/2015-09/21/content_2936327.htm) (in Chinese), and [http://english.gov.cn/policies/latest\\_](http://english.gov.cn/policies/latest_)

and measures to make local governmental officials more accountable.<sup>3</sup> The significance of the decision of the fourth plenum for environmental protection is that it makes this body of policies on environmental protection more systematic and coherent. In effect, it is more a systematic restatement of existing environmental policies than a proclamation of new policies.

Most policies required in the decision of the fourth plenum need to be transformed into legal rules for implementation. Some have been completed, such as the revision of the Forestry Law and adoption of a Resource Tax Law discussed below. Some are in the legislative process, such as the law on national parks and the law on protection of the Yangtze River Basin.

## II. Revision of the Forestry Law

The Standing Committee of the National People's Congress (NPC) revised the Forestry Law on December 28, 2019.<sup>4</sup> The main revisions are outlined below.

### A. Differentiated Management

The revised Forestry Law differentiates more clearly public interest forests from commodity forests, each with their own main functions. Public interest forests are mainly for ecological purposes and shall be strictly protected. Commodity forests are mainly for economic benefit and shall be managed by the operators on their own initiative.

releases/2015/09/22/content\_281475195492066.htm (in English) (last updated Sept. 22, 2015). See also Mingqing You, *Annual Review of Chinese Environmental Law Developments: 2015*, 46 ELR 10386 (May 2016).

3. Measures on Accountability of Leading Officials of the CPC and Government for Ecological Environmental Damage (for Trial Implementation) (published by the General Office of the CPC Central Committee and the General Office of the State Council Aug. 17, 2015, effective Aug. 9, 2015), [http://www.gov.cn/zhengce/2015-08/17/content\\_2914585.htm](http://www.gov.cn/zhengce/2015-08/17/content_2914585.htm). See also You, *supra* note 2.
4. Forestry Law of the People's Republic of China (adopted by the NPC Standing Committee Sept. 20, 1984, first revision Apr. 29, 1998, second revision Aug. 27, 2009, third revision Dec. 28, 2019, effective July 1, 2020), <http://www.npc.gov.cn/npc/c30834/201912/cdb75f0436604da58ddad953f6fb14c2.shtml>.

Public interest forests are defined as those at the source of important rivers, along the trunk stream of important rivers and their tributaries, within protected areas of drinking water sources, around important wetlands and reservoirs, within protected areas for forest and land-based wildlife, around seriously desertified and eroded areas, undeveloped primeval forests, or otherwise considered as appropriate for the public interest.<sup>5</sup> If a forest is not listed as a public interest forest, it is a commodity forest.<sup>6</sup> In general, the revision enhances the protection of public interest forests and gives owners and operators of commodity forests more leeway.

### B. Economic Incentives and Protection of Rights and Interests

One incentive under the law is ecological compensation, a form of payment for ecological services. Before the latest revision, the Forestry Law provided that the state shall establish a fund for the ecological effects of forests. In essence, this is a subsidy fund for forest owners or operators. The subsidy helped to protect forests, but the amount was still insufficient. The revision requires more support for public interest forests, improvement of policies on transfer payments to key ecological function zones, and guidance on compensation by local governments benefiting from ecological services of a forest to the local government of that forest.<sup>7</sup>

The revised Forestry Law more clearly defines and better protects the rights and interests of forest owners and operators. If the state wants to nationalize or use forests or forest land for public purposes, it needs to go through approval procedures and give fair and reasonable compensation.<sup>8</sup> If a non-state-owned forest is classified as a public interest forest, the government needs to enter a written contract with the owner or operator and give reasonable compensation.<sup>9</sup> The revised Forestry Law also reduces the burden of administrative licensing and makes it easier for owners or operators to manage their forests.<sup>10</sup>

## III. Resource Tax Law

The NPC Standing Committee adopted the Resource Tax Law on August 26, 2019, which will be implemented on September 1, 2020.<sup>11</sup> This law replaces the provisional regulations on resource taxation issued by the State Council.<sup>12</sup>

Resources covered by this new law are mineral resources and water resources. However, the new law does not set

the tax rate for water resources; instead, it authorizes the State Council to conduct pilot projects on the collection of water resources tax.<sup>13</sup> This provision aside, the law primarily covers mineral resources. The appendix lists taxable minerals and their corresponding tax rates. However, most tax rates in the appendix are just ranges of tax rates, not a definite rate. Provincial governments are authorized to propose specific tax rates within the range, and the provincial people's congresses are authorized to approve the tax rates thus proposed.<sup>14</sup>

In certain situations, the resource tax may be exempted or reduced. These exemptions include (1) crude oil or natural gas used for heating during exploration for crude oil, as well as transportation of crude oil within the scope of the oil field; and (2) coal (layer) gas required to be extracted by coal mining enterprises due to work safety needs. In the following circumstances, the resource tax can be reduced: (1) 20% reduction for crude oil or natural gas exploited from low-abundance oil and gas fields; (2) 30% reduction for high-sulfur natural gas, tertiary oil recovery and mining of crude oil, and natural gas from deepwater oil and gas fields; (3) 40% reduction for heavy oil/high-condensation oil; and (4) 30% reduction for mineral products exploited from depleted mines.<sup>15</sup>

The State Council may, based on the needs of national economy and social development, exempt or reduce the resource tax to promote conservation and intensive use of resources, environmental protection, or for other purposes. If the State Council decides to reduce the resource tax on this ground, it needs to file a record with the NPC Standing Committee.<sup>16</sup> Further, provinces, autonomous regions, and municipalities directly under the State Council may adopt rules on the exemption or reduction of the resource tax in the following two situations: (1) the taxpayer incurs major losses due to an accident or a natural disaster in the process of mining or production of taxable products; and (2) the taxpayer engages in mining of co-contained ore, low-grade ore, or tailings.<sup>17</sup> In sum, the actual tax rate as well as the exemption and reduction will to a large extent be determined at the provincial level.

## IV. Central Environmental Protection Inspection

The General Office of the CPC Central Committee and the General Office of the State Council jointly issued Working Rules on the Central Environmental Protection Inspection in June 2019.<sup>18</sup> This document builds on an experimental rule adopted in July 2015 and on the experience of the first round of central environmental protection inspection,

5. *Id.* art. 48.

6. *Id.* art. 47.

7. *Id.* art. 7.

8. *Id.* art. 21.

9. *Id.* art. 48.

10. *Id.* arts. 57-59.

11. Resource Tax Law of the People's Republic of China (adopted by the NPC Standing Committee Aug. 16, 2019, effective Sept. 1, 2020) [hereinafter Resource Tax Law], <http://www.npc.gov.cn/npc/c30834/201908/d80a-55c3e81d48ec861399d2c73fe0f6.shtml>.

12. *Provisional Regulations of the People's Republic of China on Resource Tax* (issued by the State Council Dec. 25, 1993, revised Sept. 30, 2011, effective Jan. 1, 1994), ST. COUNCIL GAZETTE, Dec. 30, 2011, available at [http://www.gov.cn/gongbao/content/2011/content\\_1977816.htm](http://www.gov.cn/gongbao/content/2011/content_1977816.htm).

13. Resource Tax Law, *supra* note 11, art. 14.

14. *Id.* art. 2.

15. *Id.* art. 6.

16. *Id.*

17. *Id.* art. 7.

18. *Working Rules on the Central Environmental Protection Inspection* (issued by the General Office of the CPC Central Committee and the General Office of the State Council, published June 17, 2019, effective June 6, 2019), ST. COUNCIL GAZETTE, June 30, 2019, available at [http://www.gov.cn/gongbao/content/2019/content\\_5404149.htm](http://www.gov.cn/gongbao/content/2019/content_5404149.htm).

which started in December 2015 with Hebei province, a province bordering Beijing, and ended in May 2019. That round and the ensuing re-inspection led to resolution of more than 150,000 environmental issues, imposition of administrative fines on more than 400,000 polluters, disciplinary punishment of more than 18,000 public officials, and a large number of criminal cases.

### A. Scope of Coverage

The central environmental protection inspection covers the government as well as CPC committees and major state-owned enterprises. Specifically, it covers the CPC committees and governments of provinces, autonomous regions, and municipalities directly under the central government (Beijing, Chongqing, Shanghai, and Tianjin); relevant ministries under the State Council; enterprises directly under the State-Owned Assets Supervision and Administration Commission of the State Council; and other relevant organizations. The CPC committees and governments at the prefectural level can also be subject to central environmental protection inspection if necessary. Relevant departments of these local governments are also subject to the central environmental protection supervision.<sup>19</sup> In sum, the central environmental protection inspection covers both the central-local relationship and interdepartmental relationships at the national level.

The central-local relationship is the main target of the central environmental protection inspection. The main purpose is to make the local governments diligently enforce environmental law and to control “local protectionism.” China has a unitary government, and there is no clear division of powers and responsibility between the central government and provincial governments. Generally speaking, environmental laws are adopted at the national level by the Standing Committee of the NPC and environmental protection goals are set at the national level by the State Council and the Ministry of Ecology and Environment (MEE).

However, environmental law enforcement is mainly carried out by provincial and lower governments. Local governments above the county level are responsible for the environmental quality of their respective administrative regions.<sup>20</sup> Environmental protection agencies at local levels are a part of their corresponding local governments. The local governments need to balance economic development, environmental protection, and other goals. For this reason, local environmental protection agencies may not be able to diligently enforce environmental law. The central environmental protection inspection was an initiative of the MEE and its predecessor, the Ministry of Environmental Protection, and was supported by the CPC Central Committee and the State Council.

The new Working Rules also expand the coverage provided in the previous experimental rules to include inter-

departmental relationships at the national level. The MEE and local environmental protection agencies are in charge of “unified supervision and administration of environmental protection work,” while other ministries and departments also have duties in environmental protection.<sup>21</sup> These ministries and departments may neglect environmental protection work or even sacrifice it to achieve other goals. The MEE are peers of these ministries and commissions at the national level, and local environmental protection agencies are peers of other departments or bureaus at local levels. Therefore, they do not have sufficient power to make these ministries, commissions, departments, or bureaus pay more attention to environmental protection work. The central environmental protection inspection is a new tool to incentivize other relevant parts of the government to perform their duty in environmental protection and cooperate with environmental protection agencies.

Enterprises directly under the State-Owned Assets Supervision and Administration Commission of the State Council are major enterprises in China. Some of them are even listed in the Fortune 500. Their chairpersons and some other members of management have equivalent status in the hierarchy of public officials. This affects environmental law enforcement to a certain degree. Putting these state-owned enterprises under the central environmental protection inspection helps environmental law enforcement.

### B. Organizational Structure

According to the new Working Rules, there will be a steering committee, the Office of Central Environmental Protection Inspection, and individual inspection teams. The steering committee is the supervisory body. The head and associate heads of the steering committee are to be determined by the CPC Central Committee and the State Council. Members of the committee include the General Office of the CPC, the Organization Department of the CPC, the Propaganda Department of the CPC, the General Office of the State Council, the Ministry of Justice, the MEE, the National Audit Office, and the Supreme People’s Procuratorate, among others.<sup>22</sup>

This enhances the political position of the central environmental protection inspection and helps to mobilize political and governmental authorities. The responsibility of the steering committee is to implement the decisions of the CPC Central Committee and the State Council as to environmental protection inspections. It reports inspection work to the CPC Central Committee and the State Council, examines rules of environmental protection inspection, examines the reports of individual inspection teams, examines the reports of the Office of Central Environmental Protection Inspection, and makes decisions on other important issues.<sup>23</sup>

The Office of Central Environmental Protection Inspection is established in the MEE and is responsible for the daily work of central environmental protection inspec-

19. *Id.* arts. 2 & 14.

20. Environmental Protection Law of the People’s Republic of China, art. 6(2) (adopted by the NPC Standing Committee Dec. 26, 1989, revised Apr. 24, 2014, effective Jan. 1, 2015) [hereinafter Environmental Protection Law], [http://www.moj.gov.cn/Department/content/2014-04/25/592\\_201403.html](http://www.moj.gov.cn/Department/content/2014-04/25/592_201403.html). See also Mingqing You & Yan Wang, *Annual Review of Chinese Environmental Law Developments: 2014*, 45 ELR 10419 (May 2015).

21. Environmental Protection Law, *supra* note 20, art. 10.

22. *Working Rules on the Central Environmental Protection Inspection*, *supra* note 18, art. 7(1).

23. *Id.* art. 8.

tion.<sup>24</sup> The office reports to the steering committee and performs tasks assigned by it; drafts rules and plans; organizes the implementation of such rules and plans; coordinates the inspection work; gives guidance to provincial environmental protection inspectors; and handles other work designated by the steering committee.<sup>25</sup>

The individual inspection teams are ad hoc teams for individual inspection tasks. Each inspection team shall have a head and an associate head. The head shall be a recently retired or incumbent high official at the provincial/ministerial level, while the associate head shall be an incumbent leader of the MEE.<sup>26</sup> The high position of the head and associate head is to ensure the effectiveness of inspection. Other members of the inspection team mainly consist of officials of the six regional inspection bureaus. Experts and other personnel may also be invited to join inspection teams if necessary.<sup>27</sup>

### C. Forms of Inspection

Central environmental protection inspection takes the form of regular inspection, re-inspection, and specific inspection.

Generally, there shall be a full regular inspection during each five-year term of the CPC Central Committee.<sup>28</sup> The five-year work plan for inspection shall be approved by the CPC Central Committee and the State Council. Annual plans will be made to implement the five-year plan.<sup>29</sup> The regular inspection covers almost all environmental protection: it checks the implementation of laws, regulations, rules, and policies of the CPC and the State Council; the handling of critical environmental issues; the deterioration of regional or basinwide environmental quality; the handling of citizens' environmental complaints; the handling of violations of environmental law; and other relevant issues.<sup>30</sup> In effect, the regular inspection is a comprehensive check on environmental protection work.

Re-inspections are to make sure necessary corrections have been made.<sup>31</sup> Re-inspections mainly check whether the corrective efforts have been made for problems uncovered by regular inspections and whether long-term mechanisms have been developed.<sup>32</sup>

The specific inspection stresses accountability. It focuses on issues pointed out by the CPC Central Committee or the State Council; critical environmental issues of a region, basin, or sector; typical cases of ineffective correction; and other cases calling for specific inspection.<sup>33</sup> The specific inspection may lead to disciplinary punishment or even criminal punishment of officials and polluters.

The inspection team has the authority to get records, visit sites, meet victims, and make investigations on their own initiative. When requested by the inspection team, officials subject to inspection shall make reports and provide required information. The inspection team also has the authority to request others to give assistance.<sup>34</sup>

### D. Results of Inspection

The result of an inspection is a report to the CPC Central Committee and the State Council. The result will affect the evaluation of local public officials. The inspection may lead to further investigation for disciplinary or criminal penalties of public officials. This possibility in turn leads to more stringent law enforcement against polluters.

Similar to the central environmental protection inspection, provinces and autonomous regions also conduct their own environmental protection inspections. Their rules are similar to the rules jointly adopted by the CPC Central Committee and the State Council.

## V. Conclusion

Further legislation is expected in 2020. The Civil Code is to be adopted by the plenary meeting of the NPC, and is expected to contain a "green" principle in the volume on general provisions and to contain some specific provisions on environmental torts in the volume on tort liability. In particular, Article 9 of the draft Civil Code provides that civil subjects shall encourage the conservation of resources and the protection of ecology and environment when conducting civil activities. Articles 1229 to 1235 of the draft Civil Code provide tort liability for environmental pollution and ecological disruption. Notably, Article 1235 provides for compensation for the loss of ecological services.

The 2020 legislative plan also includes the adoption of new laws such as the Law on the Promotion of Rural Development and the Law on Biological Safety, as well as revision of the Law on the Prevention and Control of Environmental Pollution Caused by Solid Wastes and the Law on the Protection of Wildlife. The Law on the Promotion of Rural Development is expected to contain provisions on control of environmental problems in rural areas. The revision of the Law on the Protection of Wildlife is prompted by the COVID-19 outbreak.

24. *Id.* art. 7(2).

25. *Id.* art. 9.

26. *Id.* art. 10.

27. *Id.* art. 11.

28. *Id.* art. 5.

29. *Id.* art. 6.

30. *Id.* art. 15.

31. *Id.* art. 5.

32. *Id.* art. 16.

33. *Id.* art. 17.

34. *Id.* art. 21.