

Annual Review of Chinese Environmental Law Developments: 2012

by Mingqing You and Jiaqi Liu

As the Communist Party of China (CPC) is the leading political party of China that effectively determines the policies of the Chinese government, this article reviews the change in top CPC leadership during late 2012 and what that change means for environmental protection and environmental law. It also looks at recent developments concerning water protection, the Clean Production Promotion Law, the Civil Procedure Law, public participation in environmental protection, and some important implementation plans of the Twelfth Five-Year Plan.

I. The Policy of New Leaders of the CPC: “A Beautiful China”

The CPC held its 18th National Congress from November 8-14, 2012. This congress elected a new group of Politburo members, the caucus of the CPC, who will lead China in the next 10 years and will certainly exert their influence on environmental protection and related issues. Hu Jintao, the outgoing General Secretary of the CPC Central Committee, delivered a report on behalf of the 17th CPC Central Committee to the 18th CPC National Congress (the Report to the 18th CPC National Congress),¹ setting a path for the future work of the Chinese government over the next 10 years.

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The Report to the 18th CPC National Congress addressed environmental issues in various parts. It confirmed achievements in the past 10 years by saying that “[s]olid steps have been taken to promote ecological progress, and comprehensive progress has been made in resource conservation and environmental protection.”² The Report also acknowledged that “[u]nbalanced, uncoordinated and unsustainable development remains a big problem,” “[r]esource and environmental constraints have become more serious,” and “[t]here are many problems affecting people’s immediate interests in [. . .] the ecological environment, [. . .] law enforcement, administration of justice, etc.”³ The Report required the CPC and, in effect, the Chinese government, to “take these difficulties and problems very seriously and work harder to resolve them,” to “fully implement the overall plan for promoting economic, political, cultural, social, and ecological progress, [. . .] and continue to expand the path of development that leads to increased production, prosperity and a good ecosystem.”⁴

This Report set a development goal of achieving moderate progress by 2020, which includes environmental protection mandates:

Major progress should be made in building a resource-conserving and environmentally friendly society. The establishment of functional zones should be basically completed, and a system for recycling resources should begin to take shape. Energy consumption and carbon dioxide emissions per unit of GDP as well as the discharge of major

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pollutants should decrease sharply. Forest coverage should increase, the ecosystem should become more stable, and the living environment should improve markedly.⁵

In Part VIII, entitled “Making Great Efforts to Promote Ecological Progress,” the Report set forth four specific requirements: (1) improve development of China’s geographical space; (2) promote all-around resource conservation; (3) intensify protection of the ecosystem and the environment; and (4) enhance system-building to promote ecological progress. As to how to intensify protection of the ecosystem and the environment, the Report explicitly claimed that China “will work with the international community to actively respond to global climate change on the basis of equity and in accordance with the common but differentiated responsibilities and respective capabilities of all countries.”⁶

Generally speaking, the words of this report on environmental issues primarily restated China’s policy established in the past decade. It is difficult to claim that these requirements and proclamations are new or different from the established policy. Notably, however, the Report used the term “beautiful China” in the following sentence: “We must give high priority to making ecological progress and incorporate it into all aspects and the whole process of advancing economic, political, cultural, and social progress, work hard to build a beautiful China, and achieve lasting and sustainable development of the Chinese nation.”⁷ The idea of building “a beautiful China” is now used to cover all aspects of environmental protection work.

Although these requirements and policies were made by Hu Jintao, the outgoing Secretary General of the CPC Central Committee, rather than Xi Jinping, the new

Secretary General, it is customary for the outgoing General Secretary to set forth policy. This practice symbolizes the legitimacy of new leaders and the continuation of policy. Accordingly, the Report to the 18th CPC National Congress in fact contains the policy of the new group of leaders headed by Secretary General Xi Jinping and throws much light onto the future development of Chinese environmental law.

II. Water Protection

The policy of highly strict water resources administration adopted by the CPC and the Chinese government provides a great impetus for water resources management.⁸ Working toward that end, on January 12, 2012, the State Council issued the Decision of the State Council on the Implementation of the Strictest Water Resources Administration Regime.⁹ The Decision requires China to meet or to approach the world’s highest standard of water use efficiency by 2030 and sets interim goals for the years 2015 and 2020 as well (see Table 1).

The Decision provides for policies and legal mechanisms to achieve these water resource goals, including water resource planning, pre-project evaluation, monitoring, catchment/regionwide water use control, permitting and payment, underground and drinking water protection, centralized allocation of water resources, use quotas, technological innovation, water function zoning, protection and restoration of aquatic ecosystems, local government responsibility and accountability in water resources management, continued improvement of laws and regulations, and public participation.¹¹

As the strictest administration of water resources is essentially a program promoted by the Central Government, assessing the performance of local governments is important for its implementation. In this

Table 1: Water Resources Goals: 2015, 2020, and 2030

Goals		2015	2020	2030
Total amount of water use		< 635,000 million m ³	< 670,000 million m ³	< 700,000 million m ³
Water use efficiency	Water use of industrial added value of each 10,000 Yuan (in the constant value of the Yuan as of the year 2000)	< 74 m ³ ¹⁰	< 65 m ³	< 40 m ³
	Effective utilization coefficient of irrigation water	> 0.53	> 0.55	> 0.6
Percentage of water function zones meeting quality targets		> 60%	> 80%	95%

regard, the General Office of the State Council issued the Measures for Assessment of Implementation of the Strictest Administration of Water Resources on January 2, 2013.¹² This document further specified how to assess the performance of local governments in implementing the strictest administration of water resources. It also specified the goals for water use efficiency, the total amount of water used, and the percentage of water function zones meeting the water quality targets to be achieved by each province or municipality in 2015.

Regarding improvement of water use efficiency in agricultural sectors, the National Outlines for Water Conservation in Agriculture (2012-2020) cover general requirements for saving water in agricultural work, establish a water saving system, differentiate treatment of different regions, and set forth major projects and implementation mechanisms.¹³

III. Revision of the Clean Production Promotion Law

The National People's Congress (NPC) Standing Committee originally adopted the Clean Production Promotion Law in 2002,¹⁴ but years of implementation revealed the need to make it more operational and enforceable. Because it is called a "promotion law," many people, including some governmental officials, incorrectly believe this law contains mere incentives for clean production and does not impose legal obligations. Yet the law does provide mandatory obligations, most importantly those related to compulsory clean production. However, the provisions on compulsory clean production should be more specific to increase the law's effectiveness.

The NPC Standing Committee revised the Clean Production Promotion Law on February 29, 2012.¹⁵ First, the revisions increase the responsibility of the government to make governmental plans for the promotion of clean production. It provides for the inclusion of clean production promotion work in national economic and social development plans and annual governmental work plans¹⁶; it also provides national, sectoral, and local promotion plans for clean production.¹⁷

The revised law expressly provides for both compulsory and voluntary clean production examination. Enterprises subject to compulsory clean production examination are: (1) those whose discharges exceed the applicable national or local standards or the total amount of discharges allocated to it; (2) those who exceed the limits on energy consumption for each unit of product (deemed excessive consumers of energy); and (3) those who use or discharge toxic or hazardous materials in production.¹⁸

The revised law also specifies incentives and disincentives, including:

- an incentive fund for clean production¹⁹;
- information systems and technical counseling services for clean production²⁰;
- updated lists of clean production technology, processes, equipment, and products;
- clean production guidelines for important areas and industrial sectors²¹;
- lists of technology, processes, equipment, and products to be phased out because they waste resources or seriously pollute the environment²²;
- financial supports for enterprises entering into clean production agreements with the government²³;
- financial supports for those engaged in the research, demonstration, and training of clean production and for those implementing key technological innovation projects for clean production²⁴; and
- preferential tax treatment for enterprises that legally use wastes and those who recycle materials from wastes and make products with such materials.²⁵

Lastly, the revised Clean Production Promotion Law specifies the requirements on information disclosure to facilitate public supervision and participation. For example, competent provincial governmental authorities must publish in the primary media of the locality concerned the list of enterprises that fail to meet energy consumption limits or the discharge limits for key pollutants, and such enterprises shall disclose information on energy consumption or the discharge of key pollutants.²⁶ Enterprises subject to compulsory clean production examination also must publish the results of those examinations.²⁷ Competent government authorities must also publish the list of enterprises entering into voluntary clean production agreements and their achievements.²⁸

IV. Revision of the Civil Procedural Law

The NPC Standing Committee revised the Civil Procedure Law on August 31, 2012.²⁹ Several revisions are related to environmental protection, especially public interest litigation and rules of evidence.

A. Public Interest Litigation

Article 55 of the newly revised Civil Procedural Law provides that statutorily provided organs and relevant organizations may initiate suits based on pollution of the environment, infringement on the legitimate

interests of a large number of consumers, and other actions jeopardizing the public interest.³⁰ But there are uncertainties about the scope of “statutorily provided organs and relevant organizations” and whether environmental nongovernmental organizations (NGOs) have standing to sue. This needs to be further clarified by legislators or the courts.

Another area needing clarification is how to harmonize this new provision with existing legal rules. For example, the Law on the Prevention and Control of Marine Pollution provides that the governmental agency overseeing marine environment issues may bring claims for damages on behalf of the state in cases of significant losses suffered by the state due to the disruption of marine ecology, marine fishery resources, or protected marine areas.³¹ While this provides for the standing of competent governmental agencies for the losses suffered by the state, are there also damages to the public interest? If so, would a legally provided organ or a relevant organization have standing to bring a public interest action?

Providing standing for public interest litigation may be a big step forward, but many more legal rules are needed for the successful and productive operation of public interest litigation. For example, what remedies can a public interest litigant seek, and who will bear the costs of bringing such actions, including the attorneys fees. The citizen suit process under U.S. law may provide some guidance.

B. Rules of Evidence

The revised law also made important changes to the rules of evidence, most notably, by allowing parties to call expert witnesses—“persons with expertise”³²—to provide testimony on technical or specialized matters. There are in effect two types of experts for the purpose of civil litigation: appraisers who are specifically authorized to practice in certain fields and practice in legally established judicial appraisal agencies; and persons with expertise who may or may not work in a judicial appraisal agency.

The opinion of the judicial appraisers is just one form of evidence and should by no means supersede fact-finding by judges, although some judges overly rely on the opinions of judicial appraisers to mitigate their professional risks. The revisions also changed the term “appraiser’s conclusions” into “appraiser’s opinions,” thereby emphasizing that the opinion of judicial appraisers is not conclusive for fact-finding.³³ The revision also imposes stricter requirements on the appraiser’s duty to appear in court to answer questions.³⁴

The addition of “persons with expertise” is especially important for environmental cases, as there may be no judicial appraisers for many environmental issues. In the past, the hearing of quite a number of environmental cases was delayed because there were no judicial appraisers available and the judges were reluctant to complete fact-finding without a report by a judicial appraisal agency. Now that the law allows the court to hear the opinion of “persons with expertise,” there should be fewer such difficulties. In addition, the opinion of “persons with expertise” may also be used to challenge the opinion of judicial appraisers and aid the court in fact-finding.³⁵

V. Public Participation

The year 2012 saw several protests over environmental issues. Unlike the Xiamen protest against a PX manufacturing plant project³⁶ and public participation in the incident over particulate matter with a diameter of 2.5 or less (PM_{2.5}),³⁷ which were relatively peaceful, the Qidong Protest and Shifang Protest involved some violence.

The Qidong Protest involved a wastewater drainage project for the Jiangsu Oji Paper Company in Nantong City, Jiangsu Province. The project would carry the wastewater some 100 kilometers east into the sea off Qidong. The Nantong government presumed it had the authority to approve the project because Qidong is just one of several counties in Nantong. However, the economic benefits would mainly be enjoyed by the Nantong Economic and Technological Development Zone while the environmental costs would primarily be borne by Qidong. Moreover, the sea off Qidong is one of the four most famous fishery production areas in China, and it is also a tourist resort area. Enraged by the possible disruption of their local economy and environment, the Qidong people protested.

The protest began on Saturday morning, July 28, 2012, and quieted down in the afternoon after the head of the Communist Party of Nantong City promised that the project would be permanently halted. From the perspective of Qidong local residents, the protest was a success. The drainage project was stopped, a disaster to the fishery area and tourist resort was avoided, and several local government officers were held accountable. However, the wastewater is still there and continues to be discharged into the Yangtze River. As the discharge outlet is on the upper stream of Yangtze River and Qidong is at the lower stream, the environmental pollution to Qidong is merely mitigated by dilution, rather than completely avoided.

The Shifang Protest targeted the molybdenum-copper multi-metal comprehensive production project of

Sichuan Hongda Group, a Sichuan-based major Chinese producer of minerals and chemicals. Shifang is a county of Deyang City in Sichuan Province. It lies in western China, where mineral resources are rich but the economy is relatively underdeveloped. This planned project was to be of great economic benefit: annual sales revenue was expected to be more than 50 billion Yuan (about US\$8 billion) and the tax revenue more than 4 billion Yuan (about US\$0.6 billion). The project was expected to create about 3,000 jobs.

All legally required requirements for the project were met. The Shifang government posted an information disclosure document for the project on May 9, 2011, informing the public and soliciting comments,³⁸ and the Chinese Ministry of Environmental Protection approved the environmental impact assessment (EIA) report on March 28, 2012.³⁹ Nevertheless, many local residents of Shifang did not hear of this project until after the project's inauguration ceremony on June 29, 2012, was broadcast on television. On June 30, people began to gather in front of the Shifang government building, and the situation deteriorated quickly by the next day. As the gathering became a mass protest on July 1, the government employed more police forces, including the police forces of nearby cities. Eventually, a small-scale riot occurred. To calm the public, the local government had to promise, on July 3, to stop the project. The protest finally ended on July 4, 2012.

An important cause of these protests was the quality of information disclosure and public participation in the decisionmaking process. Shortly after these protests, the Ministry of Environmental Protection issued two legal instruments to improve the quality of public participation in the EIA procedure. On August 15, 2012, the Ministry of Environmental Protection issued the Requirement on the Drafting of the Simplified Version of the Environmental Impact Assessment Reports for Construction Projects.⁴⁰ Because a simplified version of the EIA is required for public disclosure, the Requirement was issued to ensure that sufficient information is disclosed to the public. Second, on October 30, 2012, the General Office of the Ministry of Environmental Protection issued the Circular on Further Improving the Disclosure of Information on Environmental Protection.⁴¹ This Circular requires environmental protection authorities on all levels, whether on their own initiative or at the request of the public, to disclose more information and to better accommodate the information needs of the public. It explicitly recognizes that information disclosure is critical to the public's right to know about, the right to participate in, and the right to monitor environmental protection work. The Circular also

requires environmental protection authorities to improve the transparency and creditability of environmental protection work.

VI. Implementation Plans of the Twelfth Five-Year Plan and Other Plans

To meet the environmental protection requirements of the Twelfth Five-Year Plan for National and Social Development adopted by the NPC in 2011,⁴² the State Council and relevant ministries issued various specialized plans during 2012. The following are some of the most notable:

- National Plan for Construction of Facilities for Innocuous Treatment of Urban Domestic Refuse During the Period of the Twelfth Five-Year Plan⁴³;
- National Plan for Construction of Facilities for Urban Sewage Treatment and Recycling During the Period of the Twelfth Five-Year Plan⁴⁴;
- Plan for Development of Energy Conservation and Environmental Protection Industries During the Period of the Twelfth Five-Year Plan⁴⁵;
- Plan for Development of the Energy Efficient and New Energy Automobile Industry (2012-2020)⁴⁶;
- Plan for Development of the National Strategic Emerging Industries During the Period of the Twelfth Five-Year Plan⁴⁷;
- Plan for Energy Conservation and Emissions Reduction During the Period of the Twelfth Five-Year Plan⁴⁸;
- Plan for Prevention and Control of Pollution From Hazardous Wastes During the Period of the Twelfth Five-Year Plan⁴⁹;
- Development Plan for Environmental Protection in Highway and Water Transportation During the Period of the Twelfth Five-Year Plan⁵⁰; and
- Plan for Division of Key Work Among Departments in the National Plan for Environmental Protection During the Period of the Twelfth Five-Year Plan.⁵¹

VII. Conclusion

As noted in this review, the new top leaders of the CPC continue the environmental protection goals of the previous leaders and will promote environmental protection for "a beautiful China." Developments in water protection, clean production promotion law, civil procedural law, and governmental plans will certainly help China to become a beautiful country.

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Environmental Tort Litigation in China

by Adam Moser and Tseming Yang

The use of environmental tort claims to compensate pollution victims or to protect the environment and human health is still in an early stage of development in China. Nevertheless, tort cases play an outsized role in China's environmental law system. From 2004 to 2009, China's courts heard more environmental pollution-related tort cases than pollution-related administrative and criminal cases combined. Since 1998, the number of environmental lawsuits filed with the courts increased at an annual average of 25%.¹ This increase corresponded with a large rise in civil disputes and tort claims in general.² From 1981 to 2009, the number of civil lawsuits handled by courts rose by nearly 400%; the courts received over 8.8 million applications for civil and administrative lawsuits in 2009.³

While these numbers suggest an increasing importance and a growing role for environmental tort law, the numbers do not provide a sense of the challenges that environmental tort plaintiffs and lawyers continue to face in China. Notably, courts are not required to release opinions to the public, nor is there a centralized system for collecting and disseminating court decisions from around the nation. And while it is generally accepted that corruption and local protectionism often unduly influence court decisions regarding civil cases in China,⁴ it would be an oversimplification to characterize such interventions as purely rogue.

There are cultural, developmental, and systematic elements within China's legal system that facilitate political intervention by both local and national-level authorities. First, law in China primarily exists as a tool to facilitate the administration of the country and society and to enable the ruler to achieve governmental objectives more effectively, not to protect individual rights or impose

limits on the power of the ruler.⁵ In addition, Chinese legal systems have strongly favored nonadversarial forms of dispute settlement, and the current court's position on promoting dispute resolution remains strong. Moreover, China's present legal system really only began to operate as a venue for adjudicating civil disputes around 1978,⁶ after then-Supreme People's Court President Jiang Hua argued that civil cases should be treated as important as criminal trials. And while a court's decision should be lawful, a reasonable decision "must" consider the "overall interests," presumably of the state and society. In recent practice, overall interests have been defined as protecting social stability.

I. Chinese Statutory Law and Practice

While the cultural, political, and historical influences on the Chinese legal system have created substantial challenges for plaintiffs bringing environmental tort actions, China's statutory law has designed certain doctrinal elements to favor plaintiffs.

The core principles of private enforcement of China's pollution control laws can be found in the civil liability principles of Article 124 of the General Principles of the Civil Law and Article 41 of the 1989 Environmental Protection Law.

Article 124 of the General Principles of the Civil Law of the People's Republic of China provides:

Any person who pollutes the environment and causes damages to others in violation of state provisions for environmental protection and the prevention of pollution shall bear civil liability in accordance with the law.

Article 41 of the 1989 Environmental Protection Law states:

A unit⁷ that has caused an environmental pollution hazard shall have the obligation to eliminate it and make compensation to the unit or individual that suffered direct losses. A dispute over the liability to make compensation or the amount of compensation may, at the request of the parties, be settled by the competent department of environmental protection administration or another department invested by law with power to conduct environmental supervision and management. If a party refuses to

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accept the decision on the settlement, it may bring a suit before a people's court. The party may also directly bring a suit before the people's court.

If environmental pollution losses result solely from irresistible natural disasters which cannot be averted even after the prompt adoption of reasonable measures, the party concerned shall be exempted from liability.

In addition to bringing tort claims against polluters directly for harms, pollution victims can at times use administrative litigation to challenge government actions that have contributed to or licensed pollution. In both tort case and administrative action, the most common form of redress is a payment for damages or fines. Because of difficulties ensuring compliance, it is rare for a court to require environmental remediation or behavioral change from a polluter. Also, many practitioners and scholars argue that ambiguities in the laws and regulations continue to limit citizen rights and offer discretion to the courts to deny relief.⁸

In 2009, China's National People's Congress passed a new tort law (effective July 2010) that for the first time explicitly and formally addresses liability for environmental pollution.⁹ Though consistent with the existing body of law, its inclusion of a specific chapter on environmental pollution liability (Chapter 8) and its codification of rules that have previously been controversial is expected to clarify ambiguities and benefit plaintiffs. Articles 65 and 66 of the Tort Law unambiguously state that the burden of proof in environmental tort actions is on the polluter.

Article 65 of the 2009 Tort Law states:

Where any harm is caused by environmental pollution, the polluter shall assume the tort liability.

Article 66 of the 2009 Tort Law provides:

Where any dispute arises over an environmental pollution, the polluter shall assume the burden to prove that it should not be liable or its liability could be mitigated under certain circumstances as provided for by law or to prove that there is no causation between its conduct and the harm.

The shifting of the burden of proof from the victim-plaintiff to the polluter-defendant was based primarily on a 2001 interpretive regulation of the Supreme People's Court, which stated: "In compensation lawsuits concerning environmental pollution, the polluter carries

the burden of proof with respect to . . . demonstrating the lack of causal link between the polluter's actions and the harmful result."¹⁰

It is still too early to know whether Articles 65 and 66 of the 2009 Tort Law will actually benefit plaintiffs. Plaintiff's lawyers often claim that judges do not apply Article 66 correctly. Judges claim that China's Civil Procedure Law sets a high bar for plaintiffs. Before accepting a case, most courts require substantial evidence from the plaintiff as to the harm, the source of harm, and even evidence of a causal link. However, even after an environmental tort case is accepted, the plaintiff will likely need to provide additional evidence linking the harm to the polluter before the court will shift the burden of proof to the defendant.¹¹

A further new provision of the tort law is Article 68, which many scholars believe codifies existing law that polluters are subject to no-fault liability.¹²

Article 68 of the 2009 Tort Law provides:

Where any harm is caused by environmental pollution for the fault of a third party, the victim may require compensation from either the polluter or the third party. After making compensation, the polluter shall be entitled to be reimbursed by the third party.

Though these principles have previously been raised in other relevant environmental laws, their former exclusion from the tort law provided ample room for polluters to craft legal arguments why such principles should not be applied to them, an argument many courts were willing to accept.

Under Chinese law, the applicable statute of limitation for environmental tort claims is three years "from the time that the party becomes aware of or should become aware of the pollution losses."¹³ This is one year longer than the statute of limitations for other tort cases. Plaintiffs are also required to pay a case "acceptance fee" of .5% to 4% of the compensation requested of the court. The loser of a lawsuit ultimately becomes responsible for this fee. While plaintiffs may petition to reduce, waive, or postpone payment of the fee, the requirement creates a deterrent effect that makes it difficult for indigent plaintiffs to bring claims. Furthermore, some courts may rely significantly on such fees for their operational budget, hence creating disincentives for waivers. There can also be other fees.

Plaintiffs often also face so-called "other litigation costs" that are levied at the court's discretion and which can be a source of abuse. If a losing defendant does not pay the amount ordered by the court, the plaintiff must pay a

fee to institute execution proceedings. . . . Appraisal fees in pollution compensation cases can also be prohibitive. In pollution compensation cases, appraisals by a certified, court-appointed entity typically provide the key court evidence regarding damages and causation.¹⁴

Standing issues have arisen in the context of joint action lawsuits (very similar to class actions) and in public interest litigation (asserting a general community or society interest not specific to a particular individual). How each of these fits into China's legal system remains generally unresolved. Article 55 of China's Civil Procedure Law and Article 88 of the Water Pollution Law permit joint action suits. In practice, however, courts are granted a lot of discretion in deciding whether or not to permit joint actions. Because this discretion is provided even at the basic court level (the lowest level court in China's judiciary), it can amplify the effects of local protectionism.¹⁵

II. Environmental Tort Litigation in the Context of the Xinfang and Mediation Processes

Since the end of the Cultural Revolution in 1976, China has sought to rebuild its judiciary, especially by striving to increase the level of professionalism and qualifications of judges. Nevertheless, the traditional "Xinfang" system of petitioning higher level government officials to correct the perceived failings of their lower level counterparts has persisted as an important avenue for common citizens to seek relief when other options have failed. Literally translated, "Xinfang" means "letters and visits"—the process by which private citizens file petitions with Xinfang offices of various government agencies at successively higher levels of government to seek administrative intervention and redress for grievances against the government bureaucracy or other entities or persons.¹⁶ At its core, one might analogize such efforts to a private citizen seeking the assistance of members of the U.S. Congress in addressing problems and grievances with particular federal agencies, for example. While Xinfang petitions generate responses from the government, only a small fraction leads to positive remedies for the petitioners. And while it is a time-honored practice, it has also remained controversial.

In pollution situations, a victim might directly petition the local environmental protection bureau (EPB) to investigate the pollution, to identify the source of pollution, the specific pollutant, and to provide relief. If the EPB finds the pollution to be harmful, the EPB may suggest that the relevant parties engage in mediation under the EPB's guidance. The authority of EPBs to facilitate mediation processes between victims and polluters to

settle environmental tort claims, in fact, is statutorily set out in provisions in various environmental laws, including Article 41 of the 1989 Environmental Protection Law. If at the end of administrative mediation the victim is not satisfied with the outcome, or the polluter fails to perform under the mediation agreement, the victim can then file a tort claim against the polluter with the local court. It is not, however, a prerequisite that citizens inform the local EPB of an issue before filing suit.

Both petitioning and mediation processes continue to be used widely by the citizenry. In fact, their widespread use in response to pollution issues suggests a set of reasons for why environmental tort litigation and use of the courts as venues for remedies has not increased nearly as much as the growth in pollution and environmental problems would otherwise suggest. Distrust of the legal system, combined with the traditional roots of the petitioning system and a general preference of mediation over litigation as a tool for resolving disputes in China, has limited the rise of environmental tort cases.

III. China's Environmental Courts: If You Build It, Will They Come?

The recent emergence of environmental courts (e-courts) or e-tribunals in China is a pragmatic response to the fact that there is inadequate enforcement from government agencies and that most courts were unwilling or unable to justly adjudicate public enforcement actions. Since 2007, over 40 e-courts and e-tribunals have been established in China at the intermediate and lower levels in the provinces, primarily to enhance the judicial enforcement of pollution laws. In fact, some of these courts have granted standing for plaintiffs, organizations, and government agencies to sue on behalf of the public interest. However, none of China's courts have accepted a case brought by a true NGO as plaintiff in the name of the public interest. Some scholars are concerned that the current trend will limit public interest litigation standing to government entities or organizations with strong government support.

IV. Major Challenges for More Effective Use of Environmental Tort Litigation

The future impacts of the 2009 Tort Law notwithstanding, there are several important obstacles facing plaintiffs suing to redress damages or enforce the law. First, among the most significant challenges remains the cost of filing cases and the difficulties of finding competent lawyers trained in environmental law able to provide assistance to pollution victims. Second, there are significant challenges to proving and quantifying damages; victims must

frequently depend on “experts from law firms, NGOs, or local environmental or other authorities, including for instance agricultural or fishery bureaus.”¹⁷

A third challenge is proving the defendant’s polluting activities. In one case studied, a company added a substance to the water that made it impossible to detect that the original pollution had created a hydrogen ion concentration (pH) level that exceeded the relevant water quality standards there. In another case, even a report by a local EPB attesting to the existence of indoor pollution was deemed insufficient evidence, because the court ruled that it lacked details about “the scope of the pollution.”¹⁸

Causation presents yet another challenge. While the 2001 Supreme People’s Court’s interpretive regulations already placed the burden of proof for causation on the defendant, thereby relieving the plaintiffs of that obstacle to proving their claim, some “local courts [continued to] rule against plaintiffs because [plaintiffs] were not able to provide evidence for the causal relationship between the polluting act and the damages incurred.”¹⁹ The issue of evidence collection for both causation and damages is a major burden for plaintiffs, even though they do not technically shoulder the burden of proof. In general, Chinese courts give great deference to reports from official or certified entities that assess the environmental damage or the causal link between the pollution and the harm. Because environmental cases often involve complex scientific issues, and because many judges are unfamiliar with how to synthesize scientific uncertainty with legal liability, judges very rarely stray from the outcomes contained in a certified report. A certified report on causation or damages is often unassailable evidence that will determine the court’s decision.

Local protectionism also remains an important impediment to just resolution of environmental tort claims. As described elsewhere, it means that local government agencies favor industries or look the other way when pollution causes harm, simply because polluters frequently provide significant economic benefits to local jurisdictions. Because such cases oftentimes pit poor and less-vocal plaintiffs against large enterprises or government agencies, the susceptibility of courts to such influence from local government officials remains a serious challenge.

ENDNOTES

- 1 TUN LIN ET AL., GREEN BENCHES: WHAT CAN THE PEOPLE’S REPUBLIC OF CHINA LEARN FROM ENVIRONMENT COURTS OF OTHER COUNTRIES?, ASIAN DEVELOPMENT BANK 5 (2009).
- 2 In the Chinese legal system, administrative actions are classified separately from civil actions because they are brought before the people’s courts under the Administrative Procedure Law of the People’s Republic of China (PRC) and not the Civil Procedure Law of the PRC.
- 3 Supreme People’s Court 2009 Annual Report to China’s National People’s Congress (Mar. 11, 2010).
- 4 RANDALL PEERENBOOM, CHINA’S LONG MARCH TOWARD RULE OF LAW 281 (2002).
- 5 Not only is this common amongst statist socialist regimes, but this notion can be traced back to the ancient Chinese philosophy of legalism, and its founder Han Feizi (280-213 B.C.). While legalism held that law should rule the country rather than an individual, its focus was on law as a utilitarian tool to assist the ruler, not as something to protect the rights of the governed or limit the ruler.
- 6 FU HUALING & RICHARD CULLEN, FROM MEDIATORY TO ADJUDICATED JUSTICE: THE LIMITS OF CIVIL JUSTICE REFORM IN CHINA 11-12 (Oct. 2007), <http://ssrn.com/abstract=1306800>.
- 7 Under the formerly centrally planned economy, virtually all organized entities, including business entities, were controlled by the state and designated as “work units.” Legislation that preceded China’s opening up in the late 1970s/early 1980s and transition to a market economy (which led to a proliferation of privately owned enterprises) still refers to such units as the responsible entities for purposes of the law. The 1989 Environmental Protection Law was originally enacted in 1979 on a trial basis and then continued in its effectiveness in 1989.
- 8 Benjamin Van Rooij, *People v. Pollution: Understanding Citizen Action Against Pollution in China*, 19 J. CONTEMP. CHINA 63, 68 (2010).
- 9 Tort Liability Law of the People’s Republic of China, Dec. 26, 2009, *available at* http://www.gov.cn/jfjg/2009-12/26/content_1497435.htm.
- 10 Supreme People’s Court Various Regulations Regarding Evidence for Civil Suits (promulgated by the Sup. People’s Ct. Dec. 6, 2001, effective Apr. 1, 2002) (quoted in Alex Wang, *The Role of Law in Environmental Protection in China*, 8 VT. J. ENVTL. L. 196, 209 (2007)).
- 11 Interview With Chinese Environmental Court Judge, June 2011 (notes on file with author).
- 12 Tort Law of the People’s Republic of China (2009).
- 13 1989 Environmental Protection Law, art. 42.
- 14 Alex Wang, *The Role of Law in Environmental Protection in China*, 8 VT. J. ENVTL. L. 192, 212 (2007).
- 15 *Id.* at 192.
- 16 The Xinfang system has roots in ancient China’s imperial governance structure, where the emperor might intervene to mete out justice or other imperial largess to a petitioner’s grievances. For a general discussion, see Carl Minzner, *Xinfang: An Alternative to Formal Chinese Legal Institutions*, 42 STAN. J. INT’L L. 103 (2006).
- 17 *Supra* note 12, at 68-70.
- 18 *Id.*
- 19 *Id.*

Energy Regulation and Legislation in China

by Xin Qiu and Honglin Li

Energy regulation plays an important role in China's economic development. After providing some history about China's energy regulatory system, this article looks at where things stand today, with a focus on the electricity industry.

I. History of China's Energy Regulatory System and Framework

A. Energy Regulation and Legislation During the Planned Economy Period (1950s-1980s)

The energy industry is essential to the security and independence of a country. After the establishment of the People's Republic of China, energy regulations were subject to the country's planned economy model. At this stage, the understanding was that energy equaled fuel. The Ministry of Fuel Industry (MFI) was set up to regulate the industries of coal, oil, and electricity.¹ The MFI was a product of the planned economy. It set up monthly energy production plans for each energy enterprise. It also controlled and allocated the necessary raw materials and equipment for each energy enterprise, which had to finish the production tasks assigned by the MFI. Strictly speaking, there was barely an energy market and no energy market regulation during this period. The governmental plans replaced the market. Energy enterprises were not market players, and their relationship with the government was like that of children and parents. The implementation of governmental energy plans by energy enterprises was an expansion of government order to the energy sector. Due to the lack of separation between the market and the government, there was neither energy regulation nor a need for regulation. From this perspective, energy

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regulations at this time were not really laws, but energy production plans and administrative orders.

B. Energy Regulation During the Economic Transition Period (1980s-1990s)

In 1978, China launched its economic system reform, transitioning from a planned economy to a market economy. As a result, the economy as a whole developed rapidly and the energy shortage problem became apparent. However, the energy enterprises, their investments, and their operational costs were still completely under the government's control and support. Due to insufficient government investment in the energy industry, the industry developed only slowly.

During the economic transition, legislation focused on changing the system by opening the energy market and cultivating diverse players in the market. For example, in 1985, in order to solve the problem of insufficient investment in the electricity sector, China used legislation to diversify the market. The 1985 Temperate Regulation on Encouraging Investment to Electricity Industry and Using Multiple Electricity Pricing Models² established the principle that anyone could invest in power plants, but the government controlled the power grid. This arrangement was later reinforced by the 1996 Electricity Law.³

Although legislation during this period was mostly statements of general principles and the language was ambiguous, it was definitely a step forward in establishing the legal foundation for opening the energy market, and China's energy industrial model started to transform from "government controlled" to the "market plus government regulation" model. The government started to recognize the role of legislation in energy regulation and use laws instead of administrative orders to regulate the energy market, which itself had been separated from the government. This deepened the reform in the energy field. Nevertheless, due to the legislative environment and economic situation, the legislation during this period still reflected significant influences from the planned economy.⁴

C. The New Era for Legislation on Energy Regulation (2000 to Present)

China's energy regulation in the 21st century is conducted within two contexts. Domestically, the market economy has been established, the market plays a dominant role in resources allocation, and the country's economy has been

developing rapidly for years. However, the down side of this rapid development model—the high-pollution and high-energy consumption—has been realized. Internationally, the energy crisis is a major challenge for every country. Recently, pollution and climate change have become an unavoidable problem and the center of political attention.

Under both domestic and international pressures, China's energy regulatory legislation started to emphasize energy conservation and emission reduction. "Sustainable development" became a key phrase. In 2005, the Renewable Energy Law⁵ was enacted in order to adjust China's coal-centered energy structure and promote the utilization of renewable energy to realize sustainable development from the supply side. In 2007, China amended the Energy Conservation Law, again focusing on the utilization of renewable energy and promotion of green consumption to realize sustainable development from the demand side. Nevertheless, because the country's energy regulatory system is still under reform and market awareness is yet to be improved, the implementation of these two laws is somehow weakened.⁶

II. China's Current Energy Regulatory Framework and System

A. Current Energy Legislation

China has adopted the civil law system, and it focuses on systematic legislation. According to Chinese scholars, the legislative system regarding energy contains six sub-systems, in addition to the basic energy law. These sub-systems focus on coal, oil and natural gas, electricity, nuclear power, renewable energy, and energy conservation.⁷ China is still in need of a basic energy law,⁸ an oil law, a natural gas law, and a nuclear power law. Currently, the four major energy legislative sub-systems are the following.⁹

*The 1995 Electricity Law*¹⁰ was enacted in December 1995. This is China's first energy law, and thus is a milestone for the country's energy legislation. However, because it was enacted during China's economic transition period, when the electricity sector was still under direct government control, its many provisions are now out of date, and it needs to be amended soon.

*The 1996 Coal Law*¹¹ was first issued in August 1996 and later amended in April 2011. It regulates the exploration, utilization, and production of coal, as well as the operation and business of the coal industry. Thus, it plays an important role in promoting and ensuring the development of the coal industry. However, the

2011 Coal Law still has some significant shortcomings, mostly concerning the unorganized regulatory system and conflicted enforcement power of multiple authorities. For example, the operation of coal mining requires nine permits and one license,¹² which are issued by six different government agencies, including the Ministry of Land and Resources, the Administration of Work Safety, the Administration of Industry and Commerce, the State-Owned Assets Supervision and Administration Commission (SASAC), the Ministry of Environmental Protection, and the National Development and Reform Commission (NDRC). These agencies sometimes have different requirements and even conflicting interests. As a result, the effectiveness of regulation is undermined by overlapping authority or lack of a single regulator with ultimate decisionmaking power.

*The 1997 Energy Conservation Law*¹³ was first issued in November 1997 and later amended in October 2007. It is a comprehensive energy law aimed at promoting energy conservation in all sectors of society. It plays an important role in improving the efficiency and economic benefits of energy usage. The amendment aims at improving the lack of enforcement, and it clarifies the related government authority. Article 10 states:

The energy conservation administrative department under the local people's government at or above the county level shall take charge of energy conservation supervision and administration within its own administrative area. The departments concerned under the local people's government at or above the county level shall be responsible for energy conservation supervision and administration within the scope of their respective functions, and accept the guidance of the energy conservation administrative department at the same level.

Furthermore, the amended law emphasizes the market mechanisms and contains a chapter on Incentive Mechanisms, which clarifies the country's policies on energy conservation through finance, taxation, pricing, credit control, and government procurement. Finally, the 2007 Energy Conservation Law specifies the legal liabilities of failure to comply, which makes it more enforceable.

*The 2005 Renewable Energy Promotion Law*¹⁴ was first issued in February 2005 and later amended in 2009. It is the first renewable energy legislation in China, which focuses on the development and utilization of renewable energy to improve the country's energy structure, ensure stable energy supply, and prevent pollution and ecological

damage due to the rapid increase in fossil energy usage. It has five core management mechanisms: total amount control; mandatory grid connection; categorized electricity pricing; cost allocation; and special funds. The total amount control provision specifies the government's development targets in a certain time period, which sends the market a clear signal and promotes the exploration and utilization of renewable energy. The mandatory grid connection provision requires all power grid enterprises to buy up all the renewable energy available to them. It reduces the transaction costs for renewable energy and eliminates its market entrance barriers. The categorized electricity pricing allows different types of renewable energy to set up its own prices based on its average social costs. The cost allocation requires each region to allocate the extra cost of generating renewable energy in a fair manner, so that the energy producers do not have to absorb the whole additional costs. The special funds are set up to address the problem of extra costs of renewable energy production, and they provide subsidies and other forms of financial support to some renewable energy projects whose costs cannot be fully allocated to all market players.¹⁵

B. Current Energy System

China's energy regulatory system has been undergoing many changes. Before 1988, the system was segmented: the Ministry of Oil, the Ministry of Coal, and the Ministry of Water Conservancy and Electric Power were in charge of the respective energy sectors. In 1988, the Ministry of Energy was established, and these three departments were eliminated. The Ministry of Energy was responsible for unified regulation of the energy industry. However, because there were too many department interests involved, this Ministry was dissolved in 1993, and the Ministry of Coal and the Ministry of Electricity were reorganized. Before long, these two ministries were also dissolved, leaving a gap in the energy regulatory system. As the energy market reform deepened, the energy regulation problems became more prominent, and in 2003, the State Electricity Regulatory Commission (SERC) was set up to regulate the electricity market. In order to coordinate the development of different energy sectors, the Bureau of Energy was also established under the NDRC in the same year. However, until now, the problem of inconsistent management systems and overlapping authorities in the energy industry is still unsolved. During the Super-Ministry Reform in 2008, the country established the National Energy Commission, which aims to coordinate all administrative

departments with different aspects of energy industry regulation.¹⁶ There are roughly seven departments in charge of some aspects of energy industry regulation. These departments are described below.

The Bureau of Energy under the NDRC¹⁷ is responsible for: researching the domestic and international energy situation and proposing energy development strategies and important policies; creating energy development plans and system reform recommendations; regulating oil, natural gas, coal, and electricity; managing the country's oil reserves; proposing energy conservation and new energy development policies; regulating energy prices; and approving total amount control plans and main energy construction projects.

*The Ministry of Land and Resources*¹⁸ is responsible for setting up policies and technological requirements related to mining sources; regulating the mining rights for oil and natural gas; approving mining licenses; regulating the geological survey industry; managing the collection and utilization of compensation fees for mineral resources; and managing oil and natural gas storage information and geological information.

*The Ministry of Housing and Urban-Rural Development*¹⁹ is responsible for managing the feasibility studies, economic index, construction standards, construction period, construction land quota, and construction price of energy projects, including oil exploration and design, construction, and construction monitoring.

*The State Administration of Work Safety's*²⁰ main responsibilities are monitoring the production safety of oil and natural gas exploration enterprises, including production safety, safety equipment and facilities, and workplace sanitation; organizing the safety facility design, investigation, and final approval; and participating in investigation of large accidents.

*The Ministry of Commerce*²¹ is in charge of the importation and exportation quotas of oil and natural gas products, designing policies of market operation and circulation rules for oil products; monitoring and analyzing the energy market; and approving big foreign investment projects and the establishment of foreign firms in China.

*The Ministry of Environmental Protection (MEP)*²² issues environmental policies and conducts environmental implementation and supervision. There are many environmental issues related to energy exploration and utilization, such as environmental impacts assessment of energy construction projects and pollution during energy exploration and production. All of these issues are under the MEP's jurisdiction.

*The State Bureau of Tax*²³ is responsible for setting up and collecting resource taxes for oil and natural gas, mine usage fees, and other related taxes.

Currently, China's unorganized energy regulatory system and compromising legislation, which results in the lack of clear law enforcement authority, further weakens the country's energy regulation. The descriptions above demonstrate a huge overlap in the departments' authority involved with energy regulation, and the regulatory system is inconsistent.

To some extent, the ambiguous expressions in legislation exacerbate this problem. Take the Electricity Law, Article 6, for example. The Article says:

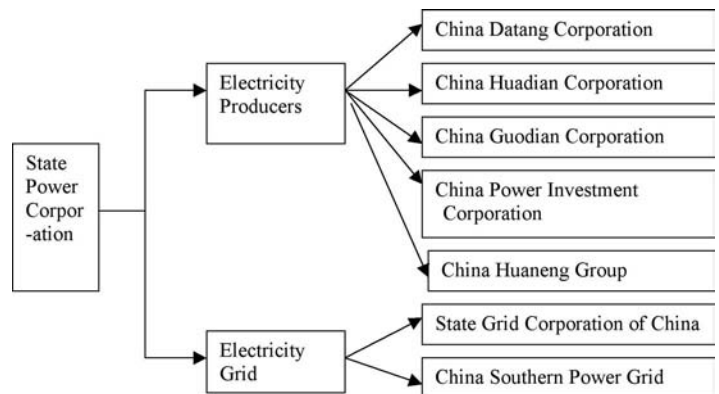
The administrative department of electric power under the State Council shall be responsible for the supervision and control of the electric power industry throughout the country. The departments concerned under the State Council shall, within the scope of their respective authorities, be responsible for the supervision and control of electric power industry. The comprehensive administrative departments of economy under the local people's governments at and above the county level, acting as the administrative departments of electric power in their own administrative divisions, shall be responsible for the supervision and control of the electric power industry. The departments concerned under the local people's governments at and above the county level shall, within the scope of their respective authorities, be responsible for the supervision and control of electric power industry.

However, the Electricity Law fails to specify who the "the administrative department of electric power" is or who the "departments concerned under the State Council" are. In fact, the NDRC and the SERC have both been "responsible for the supervision and control of the electric power industry." This regulatory inconsistency and uncertainty fundamentally weakens energy regulation in China.²⁴

III. The Current Structure of China's Electricity Industry

The energy industry in China is undergoing a process of separating enterprise from the government, the goal of which is to establish a healthy energy sector. Take the electricity industry, for example. More people have understood the nature of the electricity industry as a natural monopoly²⁵ and its importance in the deepening of the nation's economic market reform. In 2002, based on the principle of separation of electricity production

Basic Structure of China's Electricity Industry



and transmission, China reorganized the State Power Corporation, set up independent electricity producers, and ended the government's vertical-control framework in which the electricity production, transmission, distribution, and selling were tied together. The figure displayed above shows the basic structure of China's electricity industry.

All operations under the State Power Corporation were divided into two types of businesses: electricity production; and electricity grid. Five independent electricity-producing enterprises were set up, and they each had more than 30 million kilowatts (kW) of installed capacity. They are: China Datang Corporation; China Huadian Corporation; China Guodian Corporation; China Power Investment Corporation; and China Huaneng Group. These five companies occupied six regional electricity markets, and provided the solid foundation for a competitive electricity market in each of those regions.

The power grid connection is still an oligopoly. Two power grid companies were set up: the State Grid Corporation (SGC); and China Southern Power Grid (CSPG). The SGC was a state-owned corporation, which set up five regional power grid companies. The CSPG was rebuilt by the Guangdong Provincial Government, Hainan Provincial Government, and the SGC on the base of the existing power grid connection.

Generally speaking, China's electricity industry has mostly separated electricity production from transmission, and has made significant progress in investment system reform, opening up the electricity production process, and separating electricity enterprises from the government. However, its structural reform is still incomplete. From the market entrance perspective, civil and foreign investments still have some disadvantages compared to state-owned companies, and a diverse property structure has not yet been established. The power grid companies

still own a number of power plants; thus, the separation of electricity production from the grid-connection is incomplete. Some major electricity consumers, such as large steel factories, still have their electricity allocated to them by the government, instead of being able to bid for a better price in the market. Introducing competition into the generation sector is still experimental. The power grid companies are the only buyers of electricity from the producers, and the only sellers of electricity to the consumers; thus, they have a monopoly. In sum, China's electricity industry is still far from being a competitive market with diverse market players.

IV. Conclusion

Law has played an increasingly important role in energy regulation in China, as demonstrated by the announcements of the Coal Law, Electricity Law, Energy Conservation Law, and Renewable Energy Promotion Law. Given the tradition of policy overriding legislation on energy regulation in the country, the emergence of energy laws is a big step forward. However, compared to the more advanced energy laws and regulations in developed countries, the country's system still has four areas that can be improved significantly: overemphasis on energy supply and neglect of other aspects of the industry's impacts; an unclear system of regulation for the energy sector; overregulation of the energy market; and insufficient environmental regulation. These shortcomings could be remedied by improving the understanding of the impacts of the energy sector, reforming the administrative regulation system for the energy sector, deregulating the energy market, and strengthening related environmental regulations.²⁶

ENDNOTES

- 1 According to the 1950 Organic Law of the Fuel Industry, the Ministry of Fuel is responsible for: (1) deciding development plans for the fuel industry and approving the structure of fuel industry and operational plans of fuel enterprises; (2) organizing enterprises' construction and production, including finance, materials, and technology; (3) setting up technical standards and improving the enterprises' capacity; (4) monitoring the operation of private fuel companies; and (5) training technical leaders and instructing schools, research entities, and other social organizations with a focus on fuel issues.
- 2 Issued jointly by the National Economic Commission, National Planning Commission, Ministry of Water and Electricity, Bureau of Pricing (1987), <http://www.cqpn.gov.cn/gb/laws/xxfg/wj20011.htm> (last visited May 22, 2012).
- 3 Electricity Law (1996), <http://www.cqdp.gov.cn/txt/062115.htm> (last visited May 22, 2012), unofficial English translation at <http://www.lawinfochina.com/display.aspx?id=117&lib=law&SearchKeyword=&SearchCKeyword=%B5%E7%C1%A6%B7%A8> (last visited May 22, 2012). Article 3 of the Electricity Law specifies:

The electric power industry shall fit the needs of (the) national economy and social development and develop in advance appropriately. The State encourages and guides legal investment in the development of power sources and the establishment of power production enterprises by domestic and overseas economic organizations or individuals. Investment in the power industry shall implement the principle of "whoever invests benefits."

- 4 Rongsi Ye & Zhonghu Wu, *Studies on China's Energy Legal Framework* 13 (China Electricity Publ.: Beijing 2006).
- 5 The Renewable Energy Law was first issued in 2005 and later amended in 2009, both by the National People's Congress. Chinese official versions at <http://www.chinalaw.gov.cn/article/xwzx/fzxw/200503/20050300027138.shtml> (2005) and <http://www.wangjiang.gov.cn/wjsgf/include/content.php?id=35854> (2009), unofficial English translations at <http://www.lawinfochina.com/display.aspx?id=3942&lib=law&SearchKeyword=coal%20law&SearchCKeyword=%BF%C9%D4%D9%C9%FA%C4%DC%D4%B4%B7%A8> (2005) and <http://www.lawinfochina.com/display.aspx?id=8828&lib=law&SearchKeyword=coal%20law&SearchCKeyword=%BF%C9%D4%D9%C9%FA%C4%DC%D4%B4%B7%A8> (2009) (last visited May 22, 2012).
- 6 Wang Mingyan, *Issues Related to the Implementation of China's Energy Law: Analysis of the Energy Conservation Law and the Renewable Energy Law as Examples*, 8 *Vt. J. ENVTL. L.* 226-48 (2006).
- 7 Ye & Wu, *supra* note 4, at 13.
- 8 Fortunately, the State Council launched legislation for the energy basic law in 2006. The draft was written by the Office of State Energy Leaders, the NDRC, the State Council, and the Ministry of Finance, and was published in December 2007 to solicit comments from the society. The draft has 14 chapters totaling 140 articles. The chapters are: General Principles; Energy Comprehensive Management; Energy Strategy and Planning; Energy Exploration and Transfer; Energy Supply and Service; Energy Conservation; Energy Reservation; Energy Emergency Supply; Energy in Suburban Areas; Energy Price and Taxes; Energy Technology; Energy International Cooperation; Monitoring and Investigation; and Legal Responsibilities. Please visit the State Council website for the complete draft at http://www.gov.cn/gzdt/2007-12/04/content_824569.htm (last visited May 22, 2012).
- 9 We only discuss the laws enacted by the People's Congress and its committee, because there are numerous policies issued by the State Council and other departments, and it is infeasible to try to list all of them.
- 10 Electricity Law, *supra* note 3.
- 11 The Coal Law was first issued in 1996 and later amended in 2011, both by the National People's Congress. Chinese official versions at http://www.law-lib.com/law/law_view.aspx?id=346436 (1996) and <http://www.chinalaw.gov.cn/article/xwzx/fzxw/201104/20110400338906.shtml> (2011); unofficial English translations at <http://www.lawinfochina.com/display.aspx?id=1034&lib=law&SearchKeyword=coal%20law&SearchCKeyword=%C3%BA%CC%BF%B7%A8> (1996) and <http://www.lawinfochina.com/display.aspx?id=8799&lib=law&SearchKeyword=coal%20law&SearchCKeyword=%C3%BA%CC%BF%B7%A8> (2011) (last visited May 22, 2012).
- 12 The nine permits required are mining, coal production, safety production, safety certificate for the mine manager, certificate for the deputy coal manager, safety certificates for mining operational personals, certification for the coal manager, technical certificate for special coal mine workers, and coal mining. The license required is the Business License.
- 13 The Energy Conservation Law was first issued in 1997 and later amended in 2007, both by the National People's Congress. Chinese official version at http://www.gov.cn/flfg/2007-10/28/content_788493.htm.
- 14 Renewable Energy Law, *supra* note 5.
- 15 The amendment focuses on renewable energy planning, mandatory renewable energy purchase mechanisms, and renewable energy funds. First, the responsible department under the State Council will develop a national renewable energy development and utilization plan based on mid- and long-term energy goals and current technology development levels, which needs to be approved by the State Council. Second, the amendment specifies the mandatory percentage of renewable energy of all energy production, gives renewable energy priority to connect to the grid, and ensures all renewable energy generated will be purchased. Third, the country should include renewable energy funding in its annual fiscal planning by establishing special funds and collecting the renewable energy fees.
- 16 Xin Qiu & Honglin Li, *China's Environmental Super Ministry Reform: Background, Challenges, and the Future*, 39 *ELR* 10152-63 (Feb. 2009).
- 17 Official Chinese website: <http://nyj.ndrc.gov.cn/> (last visited May 22, 2012).
- 18 Official English website: <http://www.ml原因.gov.cn/mlrenglish/> (last visited May 22, 2012).
- 19 Official Chinese website: http://www.gjjs.gov.cn/index.php?langtype=cn&pageid=cn_1 (last visited May 22, 2012).
- 20 Official Chinese website: <http://www.chinasafety.gov.cn/newpage/> (last visited May 22, 2012).
- 21 Official English website: <http://english.mofcom.gov.cn/> (last visited May 22, 2012).
- 22 Official English website: <http://english.mep.gov.cn/> (last visited May 22, 2012).
- 23 Official English website: <http://www.chinatax.gov.cn/n6669073/index.html> (last visited May 22, 2012).
- 24 In fact, China's electricity regulatory system has been through four reforms. In 1988, the Ministry of Water Resources and Electric Power was dismissed and the Ministry of Energy was founded; in 1993, the Ministry of Energy was dismantled and the Ministry of Electric Power was reorganized; in 1998, the Ministry of

Electric Power was eliminated and the electricity regulatory authority was given to the State Economic and Trade Commission and the NDRC; and in 2002, some of the electricity regulatory authority was given to the SERC. According to the Electricity Law, the “department in charge of electricity regulation” should be determined by energy regulatory system reform.

25 Cambell R. McConnell & Stanley L. Brue, *ECONOMICS* 639 (2002).
26 For a detailed analysis of these challenges and potential remedies, see Xin Qui & Honglin Li, *Energy Regulation and Legislation in China*, 42 *ELR* 10678 (July 2012), available at <http://elr.info/news-analysis/42/10678/energy-regulation-and-legislation-china>.

Continued from page 6

ENDNOTES

- 1 HU JINTAO, GENERAL SECRETARY OF THE CPC, FIRMLY MARCH ON THE PATH OF SOCIALISM WITH CHINESE CHARACTERISTICS AND STRIVE TO COMPLETE THE BUILDING OF A MODERATELY PROSPEROUS SOCIETY IN ALL RESPECTS (Nov. 8, 2012), available at http://www.china.org.cn/china/18th_cpc_congress/2012-11/16/content_27137540.htm.
- 2 *Id.* Part I.
- 3 *Id.*
- 4 *Id.*
- 5 *Id.* Part III.
- 6 *Id.* Part VIII.
- 7 *Id.* The English translation on the website is to work hard to “build a beautiful country,” but it is more precise and more in line with the original Chinese text to translate this part as to “build a beautiful China.”
- 8 Decision of the CPC Central Committee and the State Council on Accelerating Reform and Development of Water Resources (issued jointly by the CPC Central Committee and the State Council, Dec. 31, 2011), *ST. COUNCIL GAZETTE*, Issue 5, Serial No. 1374, available at http://www.gov.cn/gongbao/content/2011/content_1803158.htm. See also Mingqing You, *Annual Review of Chinese Environmental Law Developments: 2011*, 42 *ELR* 10482, 10483-84 (May 2012).
- 9 Decision of the State Council on the Implementation of the Strictest Water Resources Administration Regime (issued by the State Council, Jan. 12, 2012), *ST. COUNCIL GAZETTE*, Issue 6, Serial No. 1401, available at http://www.gov.cn/gongbao/content/2012/content_2076102.htm.
- 10 The Decision itself provides that water use for each 10,000 Yuan of industrial added value should be reduced by more than 30% from that of 2010. According to the statistics for the year 2010, water use of each 10,000 Yuan of industrial added value was 105 m³. Statistic Report of National Economy and Social Development of 2010 (issued by the National Bureau of Statistics of China, Feb. 28, 2011), available at http://www.stats.gov.cn/tjgb/ndtjgb/qgndtjgb/r20110228_402705692.htm.
- 11 Decision of the State Council, *supra* note 9.
- 12 Measures for Assessment of Implementation of the Strictest Administration of Water Resources (issued by the General Office of the State Council, Jan. 2, 2013), *ST. COUNCIL GAZETTE*, Issue 2, Serial No. 1433, available at http://www.gov.cn/gongbao/content/2013/content_2313188.htm.
- 13 National Outlines for Water Conservation in Agriculture (2012-2020) (issued by the General Office of the State Council, Nov. 26, 2012), *ST. COUNCIL GAZETTE*, Issue 1, Serial No. 1432, available at http://www.gov.cn/gongbao/content/2013/content_2307035.htm.
- 14 The Clean Production Promotion Law of the People’s Republic of China (adopted by the Standing Comm. Nat’l People’s Cong., June 19, 2002, effective Jan. 1, 2003), *ST. COUNCIL GAZETTE*, Issue 22, Serial No. 1057, available at http://www.gov.cn/gongbao/content/2002/content_61640.htm.
- 15 The Clean Production Promotion Law of the People’s Republic of China (revised by the Standing Comm. Nat’l People’s Cong., Feb. 29, 2012, effective July 1, 2012), available at http://www.npc.gov.cn/wxzl/gongbao/2012-05/29/content_1728285.htm [hereinafter Revised Clean Production Promotion Law].
- 16 *Id.* art. 4.
- 17 *Id.* art. 8.
- 18 *Id.* art. 27. The compulsory clean production examination for enterprises consuming excessive energy is newly added to the list.
- 19 *Id.* art. 9.
- 20 *Id.* art. 10.
- 21 *Id.* art. 11.
- 22 *Id.* art. 12.
- 23 *Id.* arts. 28 and 31.
- 24 *Id.* art. 31.
- 25 *Id.* art. 33.
- 26 *Id.* art. 17.
- 27 *Id.* art. 27.
- 28 *Id.* art. 28.
- 29 The Civil Procedural Law of the People’s Republic of China (adopted by the NPC Standing Comm. Apr. 9, 1991, first revision by the NPC Standing Comm. Oct. 28, 2007, second revision by the NPC Standing Comm. Aug. 31, 2012, effective Jan. 1, 2013), available at http://www.npc.gov.cn/huiyi/cwh/1128/2012-09/01/content_1736001.htm.
- 30 *Id.* art. 55.
- 31 Marine Environmental Protection Law of the People’s Republic of China (adopted by the NPC Standing Comm. Dec. 25, 1999), *ST. COUNCIL GAZETTE*, Issue 2, Serial No. 965, available at http://www.gov.cn/gongbao/content/2000/content_60425.htm, art. 90.
- 32 The Civil Procedural Law, *supra* note 29, art. 79.
- 33 *Id.* arts. 63, 124, and 171.
- 34 *Id.* arts. 76-78.
- 35 *Id.* art. 79.
- 36 Mingqing You, *Annual Review of Chinese Environmental Law Developments: 2007*, 38 *ELR* 10718, 10722 (Oct. 2008).
- 37 Mingqing You, *Annual Review of Chinese Environmental Law Developments: 2011*, 42 *ELR* 10482, 10487-88 (May 2012).
- 38 The Second Public Information Disclosure for Public Participation of the Environmental Impact Assessment Procedure of the Sichuan Hongda Molybdenum-Copper Multi-Metal Comprehensive Production Project, available at <http://egov.shifang.gov.cn/UpFiles/files/1265/201105/20115915398947.doc>.
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- 40 Requirements on the Drafting of the Simplified Version of the Environmental Impact Assessment Reports for Construction Projects (promulgated by Ministry of Envtl. Protection of China, Aug. 15, 2012, effective Sept. 1, 2012), available at http://www.mep.gov.cn/gkml/hbb/bgg/201208/t20120823_235124.htm.
- 41 Circular on Further Improving the Disclosure of Information on Environmental Protection (issued by the General Office of the Ministry of Envtl Protection of China, Oct. 30, 2012).
- 42 See You, *supra* note 37, at 10483.
- 43 National Plan for Construction of Facilities for Innocuous Treatment of Urban Domestic Refuse During the Period of the Twelfth Five-Year Plan (issued by the General Office of the State Council, Apr. 19, 2012), *ST. COUNCIL GAZETTE*, Issue 14, Serial No. 1409, available at http://www.gov.cn/gongbao/content/2012/content_2137639.htm.
- 44 National Plan for Construction of Facilities for Urban Sewage Treatment and Recycling During the Period of the Twelfth Five-Year Plan (issued by the General Office of the State Council, Apr. 19, 2012), *ST. COUNCIL GAZETTE*, Issue 14, Serial No. 1409, available at http://www.gov.cn/gongbao/content/2012/content_2137640.htm.
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- 46 Plan for Development of the Energy Efficient and New Energy Automobile Industry (2012-2020) (issued by the State Council, June 28, 2012), *ST. COUNCIL GAZETTE*, Issue 20, Serial No. 1415, available at http://www.gov.cn/gongbao/content/2012/content_2182749.htm.
- 47 Plan for Development of the National Strategic Emerging Industries During the Period of the Twelfth Five-Year Plan (issued by the State Council, July 9, 2012), *ST. COUNCIL GAZETTE*, Issue 21, Serial No. 1416, available at http://www.gov.cn/gongbao/content/2012/content_2192397.htm.
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