

Clearing the Air on China's New Environmental Protection Law

by Philip Cheng, Andrew McGinty, Daniel Fogarty, Roy Zou, and Jun Wei

On April 24, 2014, the Eighth meeting of the Standing Committee of the 12th National People's Congress of the People's Republic of China (PRC or China) adopted the *People's Republic of China Environmental Protection Law* (EPL).¹

I. Background

It has taken 25 years for the revised EPL to become law, which is an incredibly long gestation period even by Chinese standards. The most likely explanation for the delay is that political factions within the Chinese government took decades to align on the basic principles of environmental protection as it relates to modern-day China. In the two-and-one-half decades since the previous version of the law was promulgated at the end of 1989, China has experienced phenomenal growth and development that has greatly changed the political, social, and natural environment. Progress toward enacting the EPL has been long and labored, suggesting that there was difficulty in achieving broad consensus on China's political, social, and environmental priorities. The question that has taken 25 years to answer is whether China should prioritize economic growth and/or social stability over heavier penalties and strict enforcement of environmental protection laws and regulations. The EPL seems to answer that question with a shift toward recognizing environmental priorities in addition to political and social ones.

In general, the EPL seems to be a move in the right direction and a positive development for the enhance-

ment of environmental protection in China. However, an important question regarding implementation of the EPL remains. Is there political will to empower the Ministry of Environmental Protection (MEP) and its local organs to enforce the EPL considering that strict enforcement could lead to undesired consequences, such as mass layoffs (e.g., by closing down the most polluting State-owned enterprises)? Such upheaval would impact the achievement of other key political goals, such as social harmony.

Given the large income and wealth disparities between places and people in China, along with China's broad and varied environmental problems, effective implementation of the EPL will require a concerted, multifaceted approach. In order for the EPL to make a real difference, it will need to be backed by clear and effective national and local measures on implementation and enforcement—measures that must be coupled with the determination to ensure that the risk of enforcement becomes a real deterrent for potential violators.

II. Key Developments in the EPL

In this article, we do not attempt to cover every change in the EPL since 1989. Instead, we focus on what we consider to be the most significant developments in environmental law that have emerged from the EPL. The EPL contains over 20 more provisions than its predecessor, suggesting a more thoughtful and fuller treatment of the subject matter. It sets out a much more forceful position on environmental protection, backed with more “teeth,” particularly in the five areas discussed below.

1. Increased Transparency

Enterprises and local government authorities will be required to publicly disclose information on environmental quality, environmental monitoring, environmental inci-

Philip Cheng and Andrew McGinty are Partners, and Daniel Fogarty is a Senior Associate, in Hogan Lovells' Shanghai office. Roy Zou and Jun Wei are Partners in Hogan Lovells' Beijing office.

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Contact orders@eli.org or 1-800-433-5120.

2000 L Street NW, Suite 620, Washington, DC 20036

202.939.3800, law@eli.org, www.eli.org

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dents, administrative licensing and penalties relating to the environment, and the collection and use of pollutant discharge fees.² For enterprises that are heavy polluters, there is a requirement to publicly disclose the names of the principal pollutants discharged, the methods of discharge, the discharge concentrations and total amounts, information on discharges that exceed standards, and information on the construction and operation of pollution control facilities.³ If this requirement is adequately enforced, it could expose those enterprises to much more acute levels of public scrutiny and more lawsuits.

Most significantly, any enterprise preparing environmental impact assessment (EIA) documents, which are required for all construction projects, must publicly disclose such documents and solicit public opinion to a greater extent than required under existing laws, and the government-approved EIA documents must be publicly disclosed (except for information containing State or commercial secrets).⁴ This requirement is not far short of putting every construction project with environmental implications on trial in “the court of public opinion,” in addition to exposing officials who approve EIA documents to scrutiny over whether they have done their jobs properly. It could make it much more difficult for local MEP officials to approve EIA reports for projects that are potentially damaging to the environment without being able to justify their decisions.

2. Increased Liability for Polluters

One feature of the new EPL is that it has more “teeth.” This enhanced enforcement authority is evident in a provision that makes the responsible persons of a noncompliant enterprise subject to detention for up to 15 days when the enterprise commits certain violations. Violations subject to this provision include (1) failing to obtain EIA approval or a pollutant discharge permit, (2) refusing to cease the violating act, (3) illegally discharging pollutants, or (4) refusing to cease production or use of a banned pesticide.⁵ In addition, enterprises that violate environmental protection laws and regulations are now subject to fines that may accumulate on a daily basis,⁶ and any violations may be made public.⁷

3. Increased Liability for Government Officials

Performance evaluations for local government departments and officials will take into account attainment of environmental protection targets, and the evaluation results will be made public.⁸ In addition, government

officials will be subject to heavier penalties (i.e., demerits, demotions, dismissal, and criminal prosecution) for committing unlawful acts such as granting permits where criteria are not met, covering up violations, failing to issue an order to suspend or cease operations in accordance with the law, or failing to disclose environmental information that is subject to public disclosure.⁹

4. Whistleblower Protections

Any citizen, legal person, or other organization will have the right to report: (i) environmental pollution or ecological damage caused by any institution or individual; and (ii) failure of any environmental regulatory body to perform its legal duties, and such report must keep the relevant information on the informant confidential.¹⁰ Again, there appears to be an attempt to shine a spotlight on MEP officials carrying out their duties.

5. Standing to File Environmental Pollution Claims

A significant development in the EPL has been broadening the scope of parties with standing to file environmental pollution claims. A social public interest organization (NGO) will now have standing to file claims in the People’s Court for environmental pollution and ecological damage if it meets these (quite stringent) requirements.¹¹

- (a) The NGO is registered with the civil affairs department of the People’s Government at the municipality divided into districts level or higher; and
- (b) The NGO has specialized in environmental protection public benefit activities for five consecutive years or more, and has no record of violating the law.

Currently, there are around 300 registered NGOs in China that may meet these requirements. Given the complexity of the legal system in China and the perceived political sensitivities around NGOs, it remains to be seen how receptive local governments will be to this type of accountability to third parties.

III. Impact of the EPL on Enterprises in China

A. Practical Implications

The primary impact of the EPL will be the message it delivers to enterprises in China: the business cost of polluting the environment will significantly increase. The actual impact on an enterprise will depend on the nature and

extent of its operations, although operational costs associated with compliance can be expected to increase. More specifically, the EPL requires enterprises to:

- (1) reduce the generation of pollutants by giving priority to clean energy resources, adopting processes and equipment to increase resource utilization and minimize emission of pollutants, and adopting technologies to handle waste and treat pollutants¹²;
- (2) adopt an environmental protection accountability system¹³;
- (3) pay environmental discharge fees (or be subject to an environmental protection tax) for pollutant discharge¹⁴; and
- (4) solicit public opinion for construction projects.¹⁵

B. Cost of Noncompliance

For enterprises that do not comply with the EPL, the impact of the new regime is potentially quite far-reaching and may start to affect their bottom lines (assuming adequate enforcement follows). Under the existing environmental protection regime, enterprises that did not comply with environmental laws were subject to fines or penalties, but these were often kept at bay by using “relationships” or simply paid as a cost of doing business, as the cost of complying may have been much higher. As a result, the incentive to comply was low. By increasing the range of fines and penalties (e.g., daily additional penalties to run consecutively with the original fines), this situation may change.

C. Potential Economic Benefits of Compliance

For enterprises that comply with the EPL or who operate in this space, the impact may be both positive and negative. Under the EPL, the Chinese government must introduce fiscal, tax, price, and government procurement policies and measures to encourage and support enterprises, public institutions, and other business operators to further reduce emissions of pollutants.¹⁶ This may translate into more work for environmental protection industry participants and specialist environmental consultants to provide advice on how to achieve this mandate.

It remains to be seen, however, whether these government incentives will fully offset any additional operational costs that arise from complying with the new environmental protection regime. There may be additional

hidden costs to some business operators, such as owners of future construction projects, who will henceforth be subject to greater public scrutiny under the EPL. In addition, businesses may suffer delays and cost increases associated with dealing with the “court of public opinion” and NIMBY (Not in My Backyard)-type protests as a result of greater exposure to public scrutiny (e.g., hiring public relations firms or legal advisors).

IV. Looking Forward

The EPL articulates a change of mind-set from the “development at any price” model that has prevailed in China in recent years. Historically, however, the real issue with the EPL and all environmental legislation in China has not been the lack of legislation, but consistent and even-handed enforcement of existing legislation.

Above all, environmental protection in China (and elsewhere) is essentially an issue that has to be addressed locally with the means and resources available in the locality where the environmental issue or incident arises. Environmental protection is very difficult to manage and police effectively from the central government level. Simultaneously, local governments and politicians are more likely to be swayed by local issues and considerations which may be at odds with vigorously and effectively enforcing environmental legislation.

At the very least, the enactment of the EPL may indicate a change in the policy direction in China, as it signals a recognition (at least on paper) of the continued and growing importance of environmental protection in the midst of economic development. This change was 25 years in the making. Changes in the law of environmental protection over the coming years will likewise develop at the intersection of China’s political, social, and environmental priorities as they continue to evolve.

ENDNOTES

- 1 Environmental Protection Law (promulgated by the Standing Comm. Nat’l People’s Cong., Apr. 24, 2014, effective Jan. 1, 2015) (P.R.C.).
- 2 *Id.* arts. 53, 54.
- 3 *Id.* art. 55.
- 4 *Id.* art. 56.
- 5 *Id.* art. 63.
- 6 *Id.* art. 59.
- 7 *Id.* arts. 53, 62.
- 8 *Id.* art. 26.
- 9 *Id.* art. 68.
- 10 *Id.* art. 57.
- 11 *Id.* art. 58.
- 12 *Id.* art. 40.
- 13 *Id.* art. 42.
- 14 *Id.* art. 43.
- 15 *Id.* art. 56.
- 16 *Id.* arts. 21, 22.

Annual Review of Chinese Environmental Law Developments: 2013

by Mingqing You and Gengzheng Wang

As the Communist Party of China (CPC) is the leading political party of China and in effect determines the policies of the Chinese government, this article reviews the policy developments of the CPC during 2013, and what these mean for the development and enforcement of environmental law. This article then examines developments in criminal law, control of air pollution, and administrative regulations. The new administrative regulations are mainly related to the pollution of large-scale livestock and poultry facilities and urban drainage and sewage. Finally, this article discusses some minor revisions of existing laws and regulations.

I. Policy Developments in the Third Plenum of the 18th CPC Central Committee

In its 18th National People's Congress (NPC), the CPC proposed the notion of "a beautiful China" and emphasized the importance of environmental protection.¹ The 18th CPC Central Committee convened its third plenary session, known as the Third Plenum, from November 9-12, 2013, in Beijing. The meeting resulted in adoption of a decision entitled, "Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform,"² as well as a communiqué.³

The Decision adopted at the Third Plenum is a new round of initiatives to further the reform initiated in 1978. The overall goal of this new round of reform is "to improve and develop socialism with Chinese characteristics, and to promote the modernization of the national governance system and capacity."⁴ "Socialism with Chinese characteristics" is a goal set forth by previous Chinese leaders and was reiterated here to indicate that the new group of leaders will follow the predetermined course of the CPC and China. Important to understanding the new

policy development is the newly added goal "to promote the modernization of the national governance system and capacity," which is vital for the development of environmental law and governance in the years to come.

The word "governance" may indicate a fundamental change in political and governmental behavior. Governance implies attention to the market and civil society; a transition from "government" to "governance" may indicate the government will give more power to market forces and civil society. This change is significant because both the market and civil society have been suppressed and underdeveloped since 1949, due to ideological disputes on their roles in a socialist country. Top political leaders adopted a policy of reform and "opening up" in the late 1970s, allowing a market economy to evolve and gain gradual acceptance, though there were still ideological disputes after the reform policy was adopted. In contrast to the market, which has developed greatly since 1978, civil society is still quite underdeveloped.

The market economy will continue to expand, resulting in environmental impacts. The Decision of the Third Plenum of the 18th CPC Central Committee illustrates the emphasis on economic reform by centering on the decisive role of the market in allocating resources.⁵ Giving the market a "decisive role" is a further development in the CPC's policy on a market economy. It means restricting governmental powers and freeing market forces. Under this policy, the Chinese government is currently engaged in something similar to "deregulation": reducing the number of governmental licensing requirements; loosening restrictions on investment (including eliminating the minimum registered capital requirements on companies engaged in most fields of business); and switching from reliance on prior governmental permits to an emphasis on the daily supervision of market actors. This policy is indeed conducive to encouraging a market economy and economic development, but, if not properly applied, may reduce the government's power to prevent environmental degradation, and may also lead to underfunded companies with insufficient capacity to shoulder their environmental responsibilities.

The cultivation of civil society may lead to more open government and more public participation in environmental governance. The general public used to have little access to governmental information and little influence

Mingqing You is an Associate Professor at the Environmental and Resources Law Institute, Zhongnan University of Economics and Law, Wuhan, China. He is also an Associate Professor at Hubei Water Affairs Research Center, Wuhan, China, and a lawyer with Hubei Zhong He Xin Law Firm, Wuhan, China. Gengzheng Wang is an environmental law graduate student of the Law School, Zhongnan University of Economics and Law, Wuhan, China.

on governmental or business decisions with major environmental impacts. However, the government has gradually begun to recognize the public's right to information. For instance, the 2002 Environmental Impact Assessment Law requires information disclosure and public participation.⁶ The State Council promulgated the Regulations on Open Governmental Information in 2007,⁷ and the former State Environmental Protection Administration (SEPA) issued the Measures for Disclosure of Environmental Information for trial implementation.⁸ However, there were still many cases of communication failure. Partly because of the lack of disclosure of environmental information and suspicion of possible collusion between the government and polluters, many public protests occurred, including, among others, the Xiamen PX Incidents,⁹ the Qidong Incident,¹⁰ and the Shifang Incident.¹¹ Developing civil society, as envisioned by the Third Plenum, may afford the public access to governmental and business information related to the environment, provide the public more mechanisms to participate in the environmental decisionmaking process, and eventually improve environmental protection, repair jeopardized governmental credibility, and reduce social tension. The policy may also give environmental nongovernmental organizations (NGOs) a larger role in environmental work.

The Third Plenum pointed out the need to accelerate the transformation of economic development and the need for sustainable development.¹² This policy is largely a continuation of the scientific outlook on development. The CPC and Chinese government have put forth some policies to constrain economic and social development in cases where it may harm the environment, such as water resources management.¹³

The Third Plenum requests further reform of the policies and rules on environmental protection, with the notion of "Beautiful China" as the center of the eco-civilization work. The Plenum reaffirmed key environmental protection policies and rules, such as land use planning, ownership of natural resources, resource conservation, ecological redlines, ecological compensation, and the reform of environmental protection governmental agencies.

In sum, the Third Plenum sent a positive signal for environmental protection. However, there are also some hidden conflicts among different parts of the Decision. Considering the strong desire for economic development, environmental protection within and without the government may still face many hard obstacles. The market-oriented reform may also lead to challenges in the governmental capacity of environmental administration.

II. Judicial Interpretation of Environmental Crimes

The 1997 Criminal Law of the People's Republic of China provides for several environment-related crimes. The Standing Committee of the NPC adopted eight amendments in 2011; these amendments have been incorporated into the 1997 Criminal Law.¹⁴

The Supreme People's Court and Supreme People's Procuratorate jointly issued a judicial interpretation entitled "Interpretation on the Application of Law in the Handling of Environmental Pollution Criminal Cases" on June 17, 2013.¹⁵ This judicial interpretation is mainly related to Articles 338 and 339 of the 1997 Criminal Law as amended.

Article 338 of the Criminal Law addresses the Crime of Polluting the Environment. This article criminalizes the action of seriously polluting the environment by discharging, dumping, or disposing of radioactive wastes, wastes with infectious pathogens, toxic substances, or other hazardous substances. A key threshold issue is whether an action is sufficiently serious. The Interpretation identifies 14 situations qualifying as "serious." Compared to past interpretations and practices, this judicial interpretation makes it easier to penalize and punish such behaviors. Notably, causing one person serious harm or disability meets the threshold for penalization. The Interpretation also provides that polluters who illegally discharge, dump, or dispose of radioactive wastes, wastes with infectious pathogens, toxic substances, or other hazardous substances, who have been subject to administrative actions twice or more, become punishable under criminal law.

Article 339 addresses the Crime of Illegal Disposal of Imported Solid Wastes and the Crime of Importing Solid Wastes Without Permission. The judicial interpretation outlines 11 situations that qualify as "particularly serious consequences." This standard is also stricter than previous standards.

The judicial interpretation also clarifies some terms. For example, "loss of public and private properties" is clarified to include directly caused property loss or damages, reduced actual values, and expenses incurred for necessary and reasonable measures to prevent and/or eliminate pollution. "Hazardous materials" is clarified to include hazardous wastes, highly toxic chemicals, chemicals containing lead, mercury, cadmium, chromium, and other heavy metals, substances listed in the annexes to the Stockholm Convention on Persistent Organic Pollutants (POPs), and other toxic substances that may pollute the environment.

III. Air Pollution Control

Seventy-four cities have started to monitor fine particulate matter (PM_{2.5}) and assess ambient air quality according to the 2012 Ambient Air Quality Standards.¹⁶ The inclusion of PM_{2.5} as a criterion pollutant significantly affected attainment rates. For 2013, only three cities—Haikou, Lhasa, and Zhoushan—attained Grade II for the annual average concentration of all pollutants. As for the annual averages of other criteria air pollutants, 11 cities attained Grade II for coarse particulate matter (PM₁₀), 29 cities attained Grade II for nitrogen dioxide (NO₂), 64 cities attained Grade II for sulfur dioxide (SO₂), 57 cities attained Grade II for ozone (O₃), and 64 cities attained Grade II for carbon monoxide (CO). The most polluted areas are the Beijing-Tianjin-Hebei Area, the Yangtze River Delta, and the Pearl River Delta. The most polluted season was winter, particularly during December and January.¹⁷ The effect of PM_{2.5} on lowering the attainment rate was obvious for many cities, e.g., Wuhan, and seriously increased the threat of poor performance evaluations of local governmental officials.¹⁸ Considering the importance of environmental evaluation,¹⁹ this increased burden may incentivize local governmental officials to take more environmental protection measures.

Against this background, the State Council issued the Action Plan for Prevention and Control of Atmospheric Pollution on September 10, 2013.²⁰ The Action Plan sets a general goal for the next five years to improve the overall air quality of the whole country, to reduce the number of heavy pollution days, and to achieve an appreciable improvement in the Beijing-Tianjin-Hebei Area, the Yangtze River Delta, and the Pearl River Delta. Specifically, by 2017, the PM₁₀ concentration of cities at or above prefecture level should be reduced by at least 10% from 2012; the PM_{2.5} concentration of the Beijing-Tianjin-Hebei Area, the Yangtze River Delta, and the Pearl River Delta should be reduced by 25%, 20%, and 15%, respectively. The Action Plan sets a goal of 60 milligrams per cubic meter (mg/m³) or less for the annual average of PM_{2.5} concentration for Beijing.²¹ The Action Plan provides for 10 requirements to achieve these goals,²² which are commonly referred to as the Ten Rules of the State Council. The Action Plan covers all sources of air pollution, including stationary point sources, nonpoint sources, and mobile sources, and stresses governmental attention to control air pollution, but lacks innovation in the legal mechanisms to achieve its goals. Responsible actors include local governments and enterprises. Regulatory tools adopted are mainly technology upgrading, investment control, and

pollution discharge standards. Command-and-control regulatory tools are still emphasized, while economic incentive measures are adopted as supplements. As for economic sectors, energy is at the top of the list.

In response to the requirements of the State Council, the China Ministry of Environmental Protection (MEP) issued the Comprehensive Technology Policy for the Prevention and Control of the Pollution of Fine Particulate Matter in the Ambient Air.²³ This document specifies technology upgrades and other technology-based policies to control PM_{2.5} and its precursors.

IV. Controlling Pollution From Large-Scale Livestock and Poultry Facilities

The State Council promulgated the Regulations on Prevention and Control of Pollution From Large-Scale Livestock and Poultry Facilities on November 11, 2013, effective January 1, 2014.²⁴

Facilities covered include farms and yards for breeding and raising livestock or poultry. Only those of a certain scale are covered. The threshold scale shall be determined by each provincial government and shall be filed with the MEP. Environmental Protection Bureaus (EPBs) of local governments are the primary responsible governmental agencies; agencies responsible for agriculture, the economy, and other matters and township governments also share some responsibilities.

Regulatory tools provided in these Regulations include governmental plans, restricted areas, environmental impact assessments (EIA), compulsory pollution control facilities or contracting-out, pollutant discharge standards and possible caps, innocuous disposal of infected carcasses and other substances, and handling of wastes.

Local governments at or above county level need to approve both the development plan and the pollution control plan for livestock and poultry, which are drafted by the agency responsible for agriculture and the EPB, respectively.²⁵ As for restricted areas, large-scale livestock and poultry facilities are not allowed in drinking water protection areas, scenic resorts, the core zone and buffer zone of natural reserves, urbanized residential areas, areas for culture, education, and research, and other areas excluded by law or regulation.²⁶

The EIA requirements are unusual. A full-fledged EIA report is required for livestock and poultry facilities that are likely to cause considerable environmental impacts. For other large-scale livestock and poultry facilities, an EIA registration form is required.²⁷ These requirements differ from the requirements of the Environmental Impact

Assessment Law.²⁸ The EIA Law provides for three levels of EIA documentation in terms of complexity and completeness: (1) a full-fledged EIA report for construction projects that are likely to cause significant environmental impacts; (2) a simplified EIA statement for construction projects that are likely to cause mild environmental impacts; and (3) a further simplified EIA registration form for construction projects with very little environmental impact.²⁹ Under the EIA Law alone, it is possible for a large-scale livestock or poultry facility to be subject to one of the three forms of EIA documentation requirements, depending on its likely environmental impacts. However, only two options are provided in the present Regulations—either the full-fledged EIA Report or the further simplified EIA registration form. The MEP may therefore need to clarify the requirements of the present Regulations and the EIA Law as applied to large-scale livestock and poultry facilities.

Economic incentives are provided for proper handling and comprehensive use of pollutants. For example, using livestock and poultry facility wastes as fertilizer and as a source of energy (mainly the direct use of methane or power generation with methane) is encouraged.³⁰ Subsidies and other financial assistance may be available for the construction of pollution control facilities,³¹ the business of controlling pollution and comprehensive use of large-scale livestock and poultry facility wastes,³² project consultancy,³³ proper centralized handling of infected or potentially infected carcasses of livestock and poultry,³⁴ and voluntary environmental protection agreements.³⁵

V. Urban Drainage and Sewage

The State Council promulgated the Regulations on Urban Drainage and Sewage Treatment on October 2, 2013, effective January 1, 2014.³⁶ This document was promulgated under the authorities of the Water Law³⁷ and the Law on the Prevention and Control of Water Pollution.³⁸

The legislative purposes of these Regulations were as follows: strengthening administration of urban drainage and sewage treatment; ensuring the safe operation of urban drainage and sewage treatment facilities; preventing and controlling water pollution and flooding disasters in urban areas; safeguarding citizens' lives and property; and protecting the environment.³⁹ The Regulations cover the planning of urban drainage and sewage treatment facilities; the construction, maintenance, and protection of urban drainage and sewage treatment facilities; the drainage and sewage treatment work processed by urban drainage facilities; and the prevention and control of flooding in urban areas.⁴⁰

The impetus for the Regulations is flooding problems as well as insufficient sewage treatment. The main reason for such problems is insufficient infrastructure, though improper and low-efficiency operation of existing facilities is also an important reason. Many cities do not have complete and separate systems of rain drainage pipelines and sewage pipelines. Serious flooding has occurred in many cities. Southeastern cities and eastern cities traditionally have more rainfall during the summer. However, because of a change in rainfall patterns in recent years, many northern cities witnessed a large amount of rainfall, including Beijing. Serious flooding led to the loss of life in several cities.

The Regulations impose duties on the Ministry of Housing and Urban-Rural Construction and the corresponding governmental agencies in local governments at or above the county level.⁴¹ These agencies have responsibilities related to infrastructure in urban areas, including the construction and operation of sewage treatment facilities. Local EPBs and other governmental agencies also share some of these duties.⁴²

The main approach is the construction and operation of drainage and sewage treatment pipelines and facilities. Generally speaking, sewage treatment facilities for cities and big towns are moderately profitable because of guaranteed stable cash flow once the project starts operation. At the construction stage, there may be funding problems, but these are generally minor. Private investments are encouraged for construction and operation of drainage and sewage treatment facilities in the forms of franchises and governmental purchase of services.⁴³ State-owned companies may still continue to own and operate a dominant share of such facilities. However, the Regulations introduce some market mechanisms. According to the Regulations, once the construction of a drainage or sewage treatment facility is completed and examined as qualified, the competent governmental authorities shall determine an operator through auction or entrustment.⁴⁴ The operator needs to meet certain qualifications.⁴⁵ This provision separates construction and operation into two stages and leaves the possibility that the operator is not the same as the construction company. However, in practice, most facilities are operated by the company that invested in the construction. This situation may continue as the competent governmental agencies may determine the operation company through entrustment.

Governmental planning is the key to successful handling of drainage and sewage. Urban drainage and sewage treatment plans are required at the national and local levels. Cities and towns with a high possibility of flooding

need to have a special plan for flooding in their drainage and sewage treatment plans. Such plans shall be compatible with general economic and social development plans, and with other governmental plans.⁴⁶

The rest of the Regulations mainly ensure cooperation with construction and operation of drainage and sewage treatment facilities. When approving plans for other construction projects that need to discharge drainage or sewage, the approving governmental agency needs to first seek the opinion of the governmental agency in charge of drainage and sewage treatment. Such projects shall be constructed according to the approved plan and connect their pipelines with the municipal pipelines.⁴⁷ A new administrative licensing requirement is provided for entities and sole proprietors engaged in industry, construction, cuisine, medical services, and other activities that discharge wastewater or sewage to the municipal sewage system. Such entities and sole proprietors need to satisfy certain requirements, apply for a permit, and discharge wastewater or sewage according to the requirements of the permit.⁴⁸ A fee is payable for wastewater or sewage discharged to the sewage system. The fee shall not be lower than the operation costs of sewage facilities; otherwise, the local government shall subsidize it.⁴⁹

The Regulations also have provisions on water recycling and reuse, discharge standards for the water discharged by sewage facilities, and proper handling of the dredge of sewage treatment facilities.⁵⁰

VI. Minor Revisions of Other Laws and Regulations

The NPC Standing Committee made minor revisions to two environmental laws as well.

First, the NPC Standing Committee revised the Law on the Prevention and Control of Pollution of Solid Wastes. The original Article 44 required the approval authorities on closing, idling, and dismantling to be competent governmental agencies at or above the county level. In the amended version, the approval authorities must be competent governmental agencies at the city or county level.⁵¹ This revision confirms actual governmental practice and stresses the responsibilities of local governments at the county or city level.

In the Grassland Law, Article 70 contains procedures related to the driving of motor vehicles off-road for the purposes of geo-exploration, scientific research, and other activities. The revised Article 70 only requires a prior reporting of areas and routes, while the earlier version also required confirmation by the competent authorities responsible for the grasslands of the county-

level government.⁵² The revision eliminates the confirmation requirement.

The State Council also revised some administrative regulations related to environmental protection. These revisions mainly reduce administrative licensing.

The Administrative Regulations on Prevention and Control of Pollution to the Marine Environment by Vessels were adopted in 2009.⁵³ These Regulations were revised by two decisions of the State Council in 2013. Under the revised Article 29, the locale for vessel repair and dismantling on the water shall be compatible with environmental function zoning and marine function zoning. The previous requirement that such locale shall be approved by the competent authorities was deleted. After the revision of Article 53, the third clause was deleted.⁵⁴ The deleted clause provided that the qualified commercial insurance agencies and mutual insurance agencies shall be determined by the competent authorities on maritime administration after consulting the competent authorities on insurance.⁵⁵ Article 13 was also revised. Before the revision, entities engaged in vessel repair, salvaging, dismantling, and other operations were required to make their management rules on safe operation and pollution control, be equipped with pollution control facilities and materials according to relevant rules and standards, and pass special examination of the maritime administration agencies. The revision deleted the requirement on the special examination of the maritime administration agencies.⁵⁶ Similarly, Article 24 was revised so the risk assessment of goods with unknown risks shall be performed by qualified technical agencies.⁵⁷ Before this revision, such technical agencies were determined and accepted by the competent authorities on maritime administration. The original Article 47 was deleted.⁵⁸ The original Article 47 provided that the agencies determined by the competent authorities in charge of transportation should be involved if there is a need to entrust relevant agencies to make technical assessment or tests in the investigation of accidents.⁵⁹

The Regulations on Safety Administration of Hazardous Chemicals has two revisions. The first is related to Article 6. The competent governmental agency supervising the safety of train transportation of dangerous chemicals is revised in light of the change of the administrative regimes for the railway transportation system. The second revision concerns the qualified agencies that may perform evaluations under Article 53. Before the revision, qualified agencies were those agencies determined by the competent authorities on maritime administration.⁶⁰ After the revision, there is no such requirement. The only requirement is that such agencies should be duly qualified.⁶¹

Article 16 of the Implementation Regulations on the Protection of Aquatic Wild Animals was revised. After revision, a foreign national shall get the approval of fishery authority at the provincial level to conduct scientific research, collect samples, record video, or conduct other similar activities in the territory of China.⁶² Before the revision, the applicant was required to submit the application to the fishery authorities at the provincial level. After the fishery authorities at the provincial level examined the application, the application had to be submitted to the fishery authorities of the State Council or its authorized governmental agencies for approval.⁶³ This revision gives final approval power to fishery authorities at the provincial level.

The approval authority for the operation of hazardous wastes was also revised. The State Council decided to delete Clause 2 of Article 2 of the Measures for Administration of Licenses for Business Operation of Hazardous Waste.⁶⁴ Before this revision, business operation licenses for the following had to be approved by the MEP: (1) incinerating more than 10,000 tons of hazardous wastes annually; (2) disposal of polychlorinated biphenyl (PCB), mercury, and other hazardous wastes having serious risks to the environment or human health; and (3) disposing of hazardous wastes with comprehensive centralized disposal facilities listed in the national plan for the construction of hazardous waste disposal facilities.⁶⁵ This revision transfers those items that used to be approved by the MEP to provincial-level EPBs.

VII. Concluding Remarks and Future Developments

The year 2013 witnessed further development of the CPC's policies, particularly policies related to environmental protection. Some laws and regulations were revised with a view to contributing to the realization of a beautiful China. The decisive role accorded to the market by the Third Plenum also affects environmental protection work, as evidenced by the change of approval authorities in some environmental regulations.

The NPC Standing Committee adopted a major revision of the Environmental Protection Law on April 24, 2014.⁶⁶ After this revision, most other environmental legislation needs to be revised. We may expect another boom of environmental lawmaking in the years to come.

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. *See also* Mingqing You & Jiaqi Liu, *Annual Review of Chinese Environmental Law Developments: 2012*, 43 ELR 10418 (May 2013).
- 2 Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform (adopted by the CPC Central Committee, Nov. 12, 2013), *available at* http://news.xinhuanet.com/politics/2013-11/15/c_118164235.htm (in Chinese) [hereinafter Decision].
- 3 Communiqué of the Third Plenary Session of the 18th Central Committee of the Communist Party of China (adopted by the CPC Central Committee, Nov. 12, 2013), *available at* http://news.xinhuanet.com/politics/2013-11/12/c_118113455.htm (Chinese version) and http://www.china.org.cn/china/third_plenary_session/2014-01/15/content_31203056.htm (English translation) [hereinafter Communiqué].
- 4 Decision, *supra* note 2; Communiqué, *supra* note 3.
- 5 Decision, *supra* note 2.
- 6 Environmental Impact Assessment Law of the People's Republic of China (adopted by the Standing Comm. Nat'l People's Cong. on Oct. 28, 2002, effective Sept. 1, 2003), ST. COUNCIL GAZETTE, Issue 33, Serial No. 1068 (2002), *available at* http://www.gov.cn/gongbao/content/2002/content_61822.htm.
- 7 Regulations of the People's Republic of China on Open Government Information (adopted by the St. Council on Apr. 5, 2007, effective May 1, 2008), ST. COUNCIL GAZETTE, Issue 15, Serial No. 1230 (2007), *available at* http://www.gov.cn/gongbao/content/2007/content_621230.htm. *See also* Mingqing You, *Annual Review of Chinese Environmental Law Developments: 2007*, 38 ELR 10718, 10722 (Oct. 2008).
- 8 Measures for Disclosure of Environmental Information (for trial implementation) (promulgated by the SEPA, Apr. 11, 2007, effective May 1, 2008), ST. COUNCIL GAZETTE, Issue 5, Serial No. 1256, *available at* http://www.gov.cn/gongbao/content/2008/content_892212.htm. *See also* You, *supra* note 7, at 10722.
- 9 *Id.*
- 10 You & Liu, *supra* note 1, at 10422.
- 11 *Id.* at 10422-23.
- 12 Decision, *supra* note 2; Communiqué, *supra* note 3.
- 13 Decision of the CPC Central Committee and the State Council on Accelerating the Reform and Development of Water Resources (issued by the St. 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).
- 14 The Criminal Law of the People's Republic of China (adopted by the Nat'l People's Cong. on July 1, 1979, revised Mar. 14, 1997 by the Standing Comm. Nat'l People's Cong., effective Oct. 1, 1997, last amended by Amendment Eight adopted by the Standing Comm. Nat'l People's Cong. on Feb. 25, 2011, effective May 1, 2011), <http://www.lawtime.cn/faguizt/23.html> (last visited Apr. 27, 2014) [hereinafter 1997 Criminal Law as last amended].
- 15 Interpretation on the Application of Law in the Handling of Environmental Pollution Criminal Cases (jointly adopted by the Supreme People's Court and the Supreme People's Procuratorate, June 17, 2013, effective June 19, 2013), *available at* http://www.court.gov.cn/qwfb/sfjs/201306/t20130619_185492.htm.
- 16 Circular on the Implementation of Ambient Air Quality Standards (GB3905-2012) (issued by the Ministry of Environmental Protection, Feb. 29, 2012), *available at* http://www.mep.gov.cn/gkml/hbb/bwj/201203/t20120302_224147.htm. *See also* You, *supra* note 13, at 10487-88.
- 17 China Ministry of Environmental Protection, The Ministry of Environmental Protection Releases Information on the Air Quality of the 74 Cities and Important Regions During 2013, http://www.mep.gov.cn/gkml/hbb/qt/201403/t20140325_269648.htm (last visited Apr. 27, 2014).
- 18 Mingqing You, *Addition of PM_{2.5} Into the National Ambient Air Quality Standards of China and the Contribution to Air Pollution Control: The Case Study of Wuhan, China*, 1 SCI. WORLD J. (2014), *available at* <http://dx.doi.org/10.1155/2014/768405>.
- 19 Alex L. Wang, *The Search for Sustainable Legitimacy: Environmental Law and Bureaucracy in China*, 37 HARV. ENVTL. L. REV. 365 (2013).
- 20 Action Plan for Prevention and Control of Atmospheric Pollution (issued by the St. Council on Sept. 10, 2013), ST. COUNCIL GAZETTE, Issue 27, Serial No. 1458 (2013), *available at* http://www.gov.cn/gongbao/content/2013/content_2496394.htm.
- 21 *Id.*
- 22 *Id.*

- 23 Comprehensive Technology Policy for the Prevention and Control of the Pollution of Fine Particulate Matter in the Ambient Air (issued by the Ministry of Environmental Protection, Sept. 13, 2013), ST. COUNCIL GAZETTE, Issue 33, Serial No. 1464 (2013), *available at* http://www.gov.cn/gongbao/content/2013/content_2535950.htm.
- 24 Regulations on Prevention and Control of Pollution From Large-Scale Livestock and Poultry Facilities (issued by the St. Council, Nov. 11, 2013, effective Jan. 1, 2014), ST. COUNCIL GAZETTE, Issue 34, Serial No. 1465 (2013), *available at* http://www.gov.cn/gongbao/content/2013/content_2541881.htm [hereinafter Livestock and Poultry Regulations].
- 25 *Id.* art. 9.
- 26 *Id.* art. 11.
- 27 *Id.* art. 12.
- 28 EIA Law, *supra* note 6.
- 29 *Id.* art. 16.
- 30 Livestock and Poultry Regulations, *supra* note 24, arts. 30 and 31.
- 31 *Id.* art. 28.
- 32 *Id.* art. 29.
- 33 *Id.* art. 32.
- 34 *Id.* art. 33.
- 35 *Id.* art. 35.
- 36 Regulations on Urban Drainage and Sewage Treatment (issued by the St. Council, Oct. 2, 2013, effective Jan. 1, 2014), ST. COUNCIL GAZETTE, Issue 34, Serial No. 1465 (2013), *available at* http://www.gov.cn/flfg/2013-10/16/content_2508291.htm.
- 37 Water Law of the People's Republic of China (adopted by the Standing Comm. Nat'l People's Cong., Aug. 29, 2002, effective Oct. 1, 2002), ST. COUNCIL GAZETTE, Issue 28, Serial No. 1063 (2002), *available at* http://www.gov.cn/gongbao/content/2002/content_61737.htm.
- 38 The Law of the People's Republic of China on Prevention and Control of Water Pollution (revised by the Standing Comm. Nat'l People's Cong., Feb. 28, 2008, effective June 1, 2008), *available at* http://www.gov.cn/flfg/2008-02/28/content_905050.htm (Chinese version) and <http://www.chinaenvironmentallaw.com/wp-content/uploads/2008/03/water-pollution-prevention-and-control-law.pdf> (English translation). *See also* Mingqing You, *Annual Review of Chinese Environmental Law Developments: 2008*, 39 ELR 10510, 10511 (June 2009).
- 39 Regulations on Urban Drainage and Sewage Treatment, *supra* note 36, art. 1.
- 40 *Id.* art. 2.
- 41 *Id.* art. 5.
- 42 *Id.*
- 43 *Id.* art. 6.
- 44 *Id.* art. 16.
- 45 *Id.*
- 46 *Id.* arts. 7-9.
- 47 *Id.* art. 14.
- 48 *Id.* arts. 21- 22.
- 49 *Id.* arts. 32-33.
- 50 *Id.* arts. 12-13, 28-31, 35-37.
- 51 Decision of the NPC Standing Committee on the Revisions of Twelve Laws Including the Cultural Antique Law of the People's Republic of China (adopted June 29, 2013, effective June 29, 2013), *available at* http://www.gov.cn/flfg/2013-06/30/content_2437158.htm.
- 52 *Id.*
- 53 Administrative Regulations on Prevention and Control of Pollution to the Marine Environment by Vessels (promulgated by the St. Council on Sept. 9, 2009, effective Mar. 1, 2010), ST. COUNCIL GAZETTE, Issue 27, Serial No. 1314 (2009), *available at* http://www.gov.cn/gongbao/content/2009/content_1425332.htm [hereinafter Vessel Marine Regulations].
- 54 Decision of the State Council on Annulling and Amending Certain Administrative Regulations (adopted July 18, 2013, effective July 18, 2013), ST. COUNCIL GAZETTE, Issue 22, Serial No. 1453 (2013), *available at* http://www.gov.cn/gongbao/content/2013/content_2462993.htm [hereinafter Decision on Revisions].
- 55 Vessel Marine Regulations, *supra* note 53, art. 53.
- 56 Decision on Revisions, *supra* note 54.
- 57 *Id.*
- 58 *Id.*
- 59 Vessel Marine Regulations, *supra* note 53.
- 60 Regulations on Safety Administration of Hazardous Chemicals (promulgated by the St. Council on Jan. 26, 2002, revised by the St. Council on Mar. 2, 2011, effective Dec. 1, 2011), ST. COUNCIL GAZETTE, Issue 8, Serial No. 1367 (2011), *available at* http://www.gov.cn/gongbao/content/2011/content_1825120.htm.
- 61 Decision of the State Council on Amending Certain Administrative Regulations (adopted Dec. 7, 2013, effective Dec. 7, 2013), ST. COUNCIL GAZETTE, Issue 1, Serial No. 1468 (2014), *available at* http://www.gov.cn/gongbao/content/2014/content_2561285.htm [hereinafter Second Revision Decision].
- 62 *Id.*
- 63 The Implementation Regulations on the Protection of Aquatic Wild Animals of the People's Republic of China (approved by the St. Council on Sept. 17, 1993, issued by the Ministry of Agriculture on Oct. 5, 1993, revised on Jan. 8, 2011 by the St. Council), *available at* http://www.gov.cn/gongbao/content/2011/content_1860774.htm.
- 64 Second Revision Decision, *supra* note 61.
- 65 Measures for Administration of Licenses for Business Operation of Hazardous Waste (promulgated by the St. Council on May 30, 2004, effective July 1, 2004), ST. COUNCIL GAZETTE, Issue 21, Serial No. 1128 (2004), *available at* http://www.gov.cn/gongbao/content/2004/content_62826.htm.
- 66 Environmental Protection Law of the People's Republic of China (adopted by Standing Comm. Nat'l People's Cong. on Dec. 26, 1989, revised by Standing Comm. Nat'l People's Cong. on Apr. 24, 2014, effective Jan. 1, 2015), *available at* http://www.gov.cn/zhengce/2014-04/25/content_2666434.htm.