

Academic Article

Environmental Protection Law of China: How do the Supreme People's Court Decisions Reflect on the Pollution Control Policy?

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Abstract

This paper will examine the environmental lawsuits that have a substantial impact on environmental protection in China. Since the amendment of the Environmental Protection Law (EPL) in 2014, it can be assumed that the Supreme People's Court prioritized the restoration of the environment, as a large amount of compensation was awarded and the liable party was sentenced to imprisonment. With regard to the revised version of the EPL, some changes are very significant in terms of stating environmental protection as a national policy and increasing public awareness. Violation of this law, therefore, will be harmful to business entities. Furthermore, the historical background of environmental laws and regulations will also be discussed in this paper. All the regulators also play an essential role in environmental control which can enhance the environmental management system of each business entity. Importantly, this paper will also provide an aspect of the Chinese government in this regard.

Keywords: environmental protection law, pollution, industrialization, Ministry of Ecology and Environment, China

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1. Introduction

China has been dealing with an environmental crisis due to the rapid increase in industrialization for decades. As the world's largest source of greenhouse gas emissions in recent years, China suffers from bad air pollution. Its carbon-intensive industries have caused environmental challenges, including water and soil contamination. Furthermore, like the rest of the world, China will face increasingly severe consequences of climate change in the upcoming years. Flooding and droughts are seemingly unavoidable. Therefore, in response to this crisis, the Chinese government has implemented policies to decrease emissions by signing the 2015 Paris Agreement on climate and pledging to be carbon neutral by 2060. However, this plan will not be easy as the government struggles to maintain economic growth, and industrialization plays a huge part in it. Environmental protection, therefore, is needed in this regard (Maizland, 2021). Since the revised version of the EPL officially came into effect in 2015, there have been some significant changes that can provide an effective outcome from the Supreme People's Court decision regarding legal liabilities and compensation for environmental restoration. Currently, environmental protection has become one of the basic national policies that the Chinese government gives priority to.

2. Historical Background

During the forty years of reform and opening-up, China has rapidly developed with great momentum. With a population of almost 1.4 billion, it has grown from a poor and backward country into the world's second-largest economy. Starting in 1972, China's ecological and environmental protection developed originally from a temporary agency, namely the Leading Group of Environmental Protection of the State Council and its office, to the present Ministry of Ecology and Environment (MEE). According to the economic development and industrial transfer during the late 1970s, increasingly severe environmental problems had attracted the national authorities' attention. In 1979, the formulation of the Environmental Protection Law (EPL) (Trial) opened the establishment of the environmental legal system in China. The special legislation related to environmental protection was started in the latter. In August 1982, the Standing

Committee of the National People's Congress deliberated and adopted the Marine Environment Protection Law, followed by the Law on the Prevention and Control of Water Pollution and the Law on the Prevention and Control of Air Pollution, which were adopted in May 1984 and September 1987, respectively.

In December 1989, the EPL was officially unveiled after amendment. In 1990s, the Law on the Prevention and Control of Air Pollution and the Law on the Prevention and Control of Water Pollution were amended; the Law on the Prevention and Control of Solid Waste Pollution and the Law on the Prevention and Control of Environmental Noise Pollution were formulated and enacted, initially forming the legal system of ecological and environmental protection in China. After it acceded to the WTO in December 2001, China experienced rapid economic development. The resource and energy consumption dramatically grew, and the total quantity of main pollutants discharged also increased greatly. This alerted the Chinese government to implement stricter energy conservation and emission reduction policies for the control of total discharge. The EPL was revised in 2014 and enforced from January 1, 2015. This law is a national environmental law formulated for the purpose of protecting and improving the environment, preventing and controlling pollution and other public hazards, safeguarding public health, promoting ecological civilization improvement, and facilitating sustainable economic and social development. The revised version is a massive improvement from the previous one since it requires an environmental impact assessment to be carried out before construction, contains a new chapter on information disclosure and public participation, and further strengthens public oversight by allowing public interest litigation with a three-year statute of limitation. This version also sets stricter penalties for non-compliance, financially encourages eco-friendly techniques and services, and creates a pollution discharge license management system and the environmental protection tax to regulate pollution (Qing et al., n.d.).

In 2018, the Chinese government adopted the institutional reform scheme of the State Council. The MEE was established by integrating the pollution control functions of relevant elemental departments, adding the functions for climate change and marine environmental protection, and unifying the responsibilities for regulating urban and rural pollutants. As a result of the reform, the government unified regulations in the fields of pollution control, ecological protection, and nuclear and radiation protection, thus laying an institutional foundation for solving

the fragmentation problem. Furthermore, the unity and authoritativeness of ecological and environmental protection rose remarkably, and the relevant departments can therefore uniformly exercise the regulation and administrative law enforcement for ecology and various pollutant discharges in urban and rural areas. The ecological and environmental protection undertaking and management system reform set a new historical position and starting point, and stepped towards the goals of building a moderately well-off society and constructing a green and beautiful China (Environmental Policy Reform, n.d.).

3. Regulators

The MEE is the central authority in enforcing environmental laws and regulations in China. As of November 2020, the MEE takes major responsibility for the implementation of 14 laws, 30 administrative ordinances, 88 ministerial regulations, and 203 environment-related compulsory standards. Provincial, prefectural, and county governments have their own departments of environmental protection that work under the supervision of the MEE. The State Oceanic Administration is responsible for maritime ecosystem and environment protection, while the Ministry of Water Resources, the Ministry of Land Resources, the Ministry of Agriculture, and the Administration of Forestry have certain authorities and duties in environmental protection related to water resources, land and mining resources, agriculture and forestry, respectively.

These agencies may issue administrative licenses, compel preventive or remedial measures, and impose administrative penalties in their law enforcement if the authority is empowered to do so by laws and regulations. Administrative decisions rendered by the regulatory authorities may be challenged before the people's courts, which decide whether the decision is legitimate, but generally should not interfere with the exercise of discretionary power of the agency.

Pollution matter may also give rise to civil liabilities that may be referred to the courts. According to the Opinions of the Supreme People's Court on Providing Judicial Services and Supports for the Protection of the Ecological Environment, dated June 4, 2018, certain qualified high and intermediate people's courts may set up specialized collegiate benches or judicial teams in relevant courts to take charge of environmental resources judicial work. The final purpose is to

have the criminal, civil, and administrative cases concerning environmental resources handled by special judicial agencies or professional trial teams (Jian et al., 2021).

5. Typical Lawsuits

According to the revised version of the EPL, environmental NGOs have spent a lot of time testing it through a succession of public interest environmental lawsuits. It started in July 2015, when agents representing 13 provinces and authorized by the National People's Congress started bringing cases to trial. While the case outcomes are essential, the procedure is already playing a vital role in increasing public awareness of environmental protection. There are typical lawsuits that are decided by the Supreme People's Court, which provide notable precedents for future cases.

5.1 Taizhou Pollution Case

One of the notable environmental cases is the Taizhou pollution case. From January 2012 to February 2013, the Taixing Jinhui Chemical Company, six defendants, dumped nearly 26,000 tons of acid by-product into the Rutai Canal and the Gugaman River, causing severe ecological damage. All six defendants entered into contracts to sell the acid by-product to companies that were not licensed to handle hazardous wastes. The plaintiff Taizhou Environmental Protection Federation (TEPF) petitioned the court to assign environmental restoration expenses of RMB 160,666,745 (approximately USD 26 million). According to the actions of the defendants, the Taizhou Intermediate Court reasoned that even though the water quality at the site where the acid by-product was dumped has been improved over time, the river ecosystem has not been fully restored. Due to the fact that the cost for restoration is difficult to calculate, the court supported the method called "Virtual Remediation Cost" to calculate the damages, which are mostly based on the costs that the defendants should have spent if they had legally treated the acid by-product. The amount of the damage, therefore, is approximately USD 26 million, accordingly. The court of appeal, the Jiangsu High Court affirmed this decision, however the court changed the method that the defendants had to carry out by ordering that 60% of the owned damages were to be paid into a special account at the Taizhou Environmental Welfare Fund and

the remaining 40% was to be used for technological upgrades for pollution prevention and control. Three out of six defendants filed a retrial application to the Supreme People's Court (SPC) (Lin, 2017).

The SPC affirmed the Taizhou Intermediate People's Court decision and rejected the retrial application. The decision stated that companies that produced hazardous chemicals should pay extract attention or due care to the management of those products and the by-products to avoid pollution and should be in compliance with the relevant laws and regulations. Furthermore, it is necessary to ensure that the production, sales, transportation, and storage of the chemicals are in compliance with the law and do not impose significant risks to the environment. Although the river has a natural capacity for self-purification and the dumping site appears to have returned to its prior water quality, the volume of acid by-products discharged exceeds the environment's capacity to absorb them safely. Without proper promotion and proper remediation, pollution will accumulate to the level that damage cannot be reversed. Therefore, the defendants' liabilities cannot be relieved. Eventually, the defendants were sentenced to fixed terms of imprisonment ranging from two years and three months to five years and nine months, and fined approximately USD 26 million (Zhang, 2014).

Due to the fact that the SPC imposed a large amount of fine in a public interest lawsuit. This could clearly be a warning sign for industrial entities to pay attention to their emission management system. Pursuant to Article 59 of the EPL, the fine punishment shall be determined on the basis of factors which are the operation costs of pollution prevention and control installations, and the direct losses caused by the illegal act. The SPC imposed the maximum amount under this article accordingly. Based on the court decision, this landmark case can reflect what the Chinese government was attempting to achieve in matters relating to environmental control.

5.2 Tengger Desert Pollution Case

Another significant environmental public interest case in China is the Tengger Desert pollution case, which achieved a repair and restoration bill with the amount of RMB 575,000,000 (approximately USD 91 million), the largest so far as of 2018. The Green Development Foundation (GDF) filed a lawsuit on August 13, 2015, at the Intermediate Court of Zhongwei City, alleging that

Ningxia Ruitai Technologies Co., Ltd., and seven other chemical firms illegally discharged untreated industrial wastewater to a remote area in Tengger Desert and caused serious environmental harm to soil and ground water. GDF requested the trial court to order the defendants to stop polluting and pay funds to repair the contaminated sites. The court dismissed the case on the ground that GDF did not have standing to sue under the EPL. The eligible plaintiff NGOs, under the EPL, shall be registered at a civil affairs authority at or above prefecture level, focus on public interest environmental protection activities, and have no law violation records for at least five consecutive years.¹ However, the law does not provide a clear definition of “public interest environmental protection activities,” and the court therefore interpreted the definition of eligible NGOs very narrowly. The court stated that to meet the eligibility, an NGO’s articles of incorporation must provide that the organization’s purpose is to engage in public interest environmental protection activities. However, GDF’s articles of incorporation failed to do so. GDF later appealed to the High Court of Ningxia Hui Autonomous Region, which sustained the trial court’s decision. GDF eventually appealed to the SPC in late 2015.

In January 2016, the SPC reversed the decision of the High Court of Ningxia Hui Autonomous Region and remanded to the trial court. The SPC opinion provided that in deciding whether an organization focuses on public interest environmental protection activities, courts shall not restrict the analysis to the organization’s articles of incorporation. On the other hand, courts shall liberally interpret the provisions by focusing on public interest and considering all the relevant factors. The SPC further reasoned that environmental public interest activities include a broad range of activities such as environmental protection-related public engagement, capacity building, studies, academic exchange, legal aid, and public interest litigation. Such activities also include ones that may improve environmental governance systems, increase the capabilities of environmental governance, and help the public reach consensus on the importance of environmental protection. The SPC found that GDF has filed with adequate evidence to meet all the requirements and concluded that GDF has standing to sue accordingly (Chun, 2017).

In February 2017, the trial court formally accepted GDF’s case upon the SPC’s order. The parties agreed to solve the disputes through mediation by the court. During the mediation, the

¹ Environmental Protection Law 2014 Art. 58.

defendants started to repair the contaminated sites and clean the polluted groundwater. On August 28, 2017, the trial court approved the mediation agreement reached by GDF and the defendants. Under the agreement, the defendants had already spent RMB 569 million on repairing the polluted environment. The defendants agreed to pay another RMB 6 million for the protection of the environment and biodiversity of the Tengger Desert and the neighboring upper reaches of the Yellow River, including payment for GDF's attorney fees, expert witness fees, and travel expenses. The total amount that was paid before and is to be paid after the approval of the mediation agreement amounted to RMB 575,000,000 (approximately USD 91 million), which is the largest so far achieved in an environmental public interest case in China as of 2018 (Liu, 2018).

5.3 Government Actions

From the above two landmark cases, the decisions can reflect on the government actions in an attempt to decrease and control the emissions or any wrongdoing from any pollutant-discharging entities. According to the amendment of the EPL in 2014, the revision took place at the National People's Congress, against the backdrop of Premier Li Keqiang's speech to the same body declaring a war on pollution. Much of the urgency felt by Chinese leaders and legislators can arguably be attributed to the economic and health costs associated with pollution. Pursuant to the revised version of the EPL, there are some significant changes that can potentially impact the court decision. These include the elevation of environmental protection to the status of a fundamental national policy and the requirement that economic development be coordinated with environmental sustainability.² Notably, the revision holds senior corporate management personally liable for environmental violations on a daily basis,³ replacing the previous system in which fines were imposed per violation. Furthermore, the new law empowers NGOs to bring public interest lawsuits against polluters,⁴ whereas previously, they could only pursue claims for personal injury to individuals.

² Environmental Protection Law 2014 Art. 4.

³ Environmental Protection Law 2014 Art. 63.

⁴ Environmental Protection Law 2014 Art. 58.

Although the legislation apparently steps forward, courts still find it troublesome sometimes due to the capability of local courts to hear the case. According to the China Biodiversity Conservation and Green Development Foundation, environmental courts in economically developed areas are likely to hear the case more than the local ones, particularly in central and western China. Furthermore, another difficulty is what would happen when an NGO filed a lawsuit against a government entity? In 2017, the prominent Beijing NGO Friends of Nature failed in its two cases against a local Environmental Protection Bureau in Yunnan under its right to bring a lawsuit, citing infringement on public interest; the cases were not recognized by the court. A stipulation in the law that can cause problems for NGOs is under Article 58 of the EPL, which states that NGOs must have a continuous registration with the government for a minimum of five years in order to initiate a public interest litigation. Many fail this qualification simply due to the prevalence of re-naming or management change. In this regard, it comes to the question whether it would be more beneficial for the whole public if the court interprets this article broadly by focusing on the exact duration of such entity, regardless of name or management changes (Isalasson, 2020).

Importantly, it is undeniable that public litigation in China can only achieve so much as the Communist Party of China wants it to achieve, according to legal scholars at the Berkeley Law School, University of California. Obviously, the fundamental limitation is political, rather than legal, on what is possible to do in order to keep pollution at low levels in China. Currently, there is much attention both from the Chinese public and the government on the issue of pollution, and it is precisely now that room exists for legal developments that empower NGOs in the environmental sphere. It, however, might change when political priorities change.

6. Conclusion

The revised version of the EPL impacts the SPC decisions toward environmental protection. Such decisions are also in response to the basic national policy in terms of improving environmental protection standards. Large amounts of fines and jail terms are essential matters as warning signs to all the pollutant-discharging entities to pay attention to. However, obstacles to filing a lawsuit remain (in some areas), and perhaps it is time to broaden the interpretation of some provisions to achieve the ultimate benefit for the whole nation. The law provides tools,

but without strong policy support, it struggles as an instrument of social change. Such support can take the form of incentive programs for green enterprises, such as tax benefits or subsidies for companies that adopt clean production technologies or exceed pollution control standards. Additionally, mandatory environmental education and training for corporate senior management would help reinforce their legal responsibilities under the revised EPL, ensuring more effective compliance and enforcement. Lastly, the continued rollout of policy initiatives makes it clear that environmental enforcement is here to stay and is now on par with anti-corruption as a core government priority of China.

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