

# CHINESE ENVIRONMENTAL LAW ENFORCEMENT: CURRENT DEFICIENCIES AND SUGGESTED REFORMS

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## *Abstract*

*Chinese environmental laws and regulations are abundant, but suffer from a lack of proper adherence and enforcement. This deficiency remains prevalent because: legislative objectives remain unachieved; enforcement is superficial; excessive time exists between noncompliance and enforcement; available punishment for noncompliance is inadequate; injured parties are not properly compensated; and some environmental crimes receive administrative instead of criminal punishments. In order to overcome these current deficiencies, Chinese authorities should: establish an Environmental Supervision Bureau within SEPA responsible for “spot” law enforcement; transform the environmental protection agency into smaller, detached entities; reform current assessment methods of local governmental compliance and achievement; replace the traditional Gross Domestic Product (GDP) analysis with a Green GDP; reform current judicial management mechanisms; free courts from the influence of local governments; establish environmental public interest legislation; and create a successful procedure for enhancing public participation in Chinese environmental protection.*

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† The translation of all Chinese materials is the author's, as is the responsibility for any inaccuracy in the translation. This article follows the Chinese practice of placing the family name before the given name. Therefore, all sources cited in short form use the author's family name. The original Chinese text for most laws and their implementing regulations cited herein can be found on the Law Info China database located at <http://www.lawinfochina.com>.

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I. THE CURRENT SYSTEM OF CHINESE ENVIRONMENTAL LAWS, RULES, AND REGULATIONS

Chinese environmental legislation began in 1978 with formal recognition in the *Constitution of the People’s Republic of China*, Article 26, requires that “[t]he state protects and improves the environment in which people live and the ecological environment. It prevents and controls pollution and other public nuisance.”<sup>1</sup> This provision mandates environmental protection as a specific constitutional component and one of the important responsibilities of the state. Since this declaration, environmental protection legislation in China has been consistently developing. Rapid growth over the past 29 years has fostered the formation of a detailed environmental legal system. This system has expanded to influence the functions of local governments, including the incorporation of legislation from pollution control and prevention to natural resource protection and conservation.<sup>2</sup> At present, environmental law in China consists of: legislation addressing comprehensive environmental protection; special litigation for pollution prevention; natural resource protection and conservation; expansion of environmental protection into other areas of legislation; and the ratification of international conventions and treaties focusing on environmental protection.<sup>3</sup> A comprehensive list of this legislation can be found in the Appendix.

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1. XIAN FA art. 26, (1982) (P.R.C.), available at <http://english.people.com.cn/constitution/constitution.html>.

2. WANG CANFA, ENVIRONMENTAL LAW TEXTBOOK 48 (1997) (on file with author).

3. *Id.* at 53–56.

*A. Provisions on Environmental Protection in Non-Environmental Legislation*

On April 12, 1986, the National People's Congress (NPC) adopted the *General Principles on Civil Acts of the People's Republic of China*.<sup>4</sup> Article 83 stipulates:

In the spirit of helping production, making things convenient for people's lives, enhancing unity, and mutual assistance; and being fair and reasonable, neighboring users of real estate shall maintain proper neighborly relations over such matters as water supply, drainage, passageway, ventilation, and lighting. Anyone who causes obstruction or damage to his neighbor shall stop the infringement, eliminate the obstruction and compensate for the damage.<sup>5</sup>

In addition, on March 14, 1997, the NPC amended the Criminal Law of the People's Republic of China.<sup>6</sup> Section Six, the Crime of Impairing the Protection of the Environment and Resources, of Chapter Six, Crimes of Obstructing the Administration of the Public Order, includes nine articles.<sup>7</sup> These articles address major infractions which include: serious pollution accidents; illegally treating imported solid waste; unauthorized importation of solid waste; illegally acquiring aquatic products; illegal timber acquisition; illegal occupation of cultivated lands; illegal catching and/or killing of endangered species under special state protection; illegal purchase, transport, and/or selling of endangered species and their products; and illegal mining.<sup>8</sup> Other violations include smuggling solid waste, breaching the duty of environmental supervision and control, illegally approving the requisition or occupation of land, and negligence in animal and plant quarantine.<sup>9</sup>

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4. General Principles of the Civil Law (promulgated by the Nat'l People's Cong., Apr. 12, 1986) LAWINFOCHINA (last visited Mar. 8, 2007) (P.R.C.).

5. *Id.*

6. Criminal Law (promulgated by the Nat'l People's Cong., Jul. 6, 1979) LAWINFOCHINA (last visited Mar. 8, 2007) (P.R.C.).

7. Criminal Law (promulgated by the Nat'l People's Cong., Jul. 6, 1979), art. 338–46, LAWINFOCHINA (last visited Mar. 8, 2007) (P.R.C.). Major accidents (as defined by the State Environmental Protection Administration of PRC) mean serious environmental accidents. These are defined as any environmental accidents which cause: direct economic loss over 50,000 Yuan; people to show apparent symptoms of being poisoned; people to suffer from radiation or disability; a group of people to show symptoms of being poisoned; negative impact on social stability as a result of environmental pollution; or relatively serious damage on the environment.

8. JIN WANG, ENVIRONMENTAL LAW 627–32 (2006) (on file with author).

9. *Id.* at 632–35.

Furthermore, on December 6, 2001, the Supreme People's Court adopted the *Several Provisions on the Evidence of Civil Litigation*.<sup>10</sup> Judicial interpretation of Article Four articulates the burden of proof for compensation of environmental damage as the following: "if the litigation of environmental damage compensation is caused by the environmental pollution, then the injurer shall bear the burden of proof of the statutory exemptions and the fact that there is no causation between his act and the damages."<sup>11</sup> According to this provision, after the injured party brings an action against a polluter, the polluter shall bear liability if he can prove causation between the damage and his polluting act. The injured party, however, must only prove an injury and resulting damages caused by the polluters action, or inaction.<sup>12</sup>

*B. International Conventions and Treaties on Environmental Protection  
Approved by China*

China has been actively participating in global efforts of environmental protection through its involvement in international conventions and treaties. For example, China has joined 48 international conventions on environmental protection to date, including the United Nations Framework Convention on Climate Change,<sup>13</sup> the Convention on Biological Diversity,<sup>14</sup> the International Tropical Timber Agreement,<sup>15</sup> the International Convention for the Regulation of Whaling,<sup>16</sup> and the Convention on International Trade in Endangered Species of Wild Fauna and Flora,<sup>17</sup> among many others.<sup>18</sup> These conventions are implemented by multiple agencies within the Chinese government.

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10. Latest Development of Judiciary Protection of IPR in China, Jan. 1, 2004, available at [http://www.sipo.gov.cn/sipo\\_English/gfxx/zyhd/200401/t20040102\\_33950.htm](http://www.sipo.gov.cn/sipo_English/gfxx/zyhd/200401/t20040102_33950.htm).

11. *Id.*

12. WANG, *supra* note 2, at 167–68.

13. United Nations Framework Convention on Climate Change, May 9, 1992, KAV 3339, 1771 U.N.T.S. 164, available at <http://unfccc.int/2860.php>.

14. *The Convention on Biological Diversity*, available at <http://www.biodiv.org/convention/convention.shtml>.

15. International Tropical Timber Agreement, July 1994, 33 I.L.M. 1014 (1994), available at [http://untreaty.un.org/English/Opening\\_Signature/english\\_19\\_46.pdf](http://untreaty.un.org/English/Opening_Signature/english_19_46.pdf).

16. International Convention for the Regulation of Whaling, Dec. 3, 1946, available at <http://www.rirel.whu.edu.cn/ruleshow.asp?ID=543> (establishing that China and other nations will promote the sustainability of whaling by, inter alia, preventing over-hunting).

17. Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243, available at <http://www.cites.org/>.

18. See generally 国际环境公约, <http://www.zhb.gov.cn/inte/gjgy/> (last visited Jan. 16, 2007).

## II. PROBLEMS WITH ENVIRONMENTAL LAW ENFORCEMENT IN CHINA

After a few decades of development, with special emphasis on the past decade, China's environmental legislation has formed a strong base and is now actively developing effective implementation strategies.<sup>19</sup> Over this period, it has become apparent that many issues remain unresolved and require urgent attention. For example, the implementation of environmental laws falls under the jurisdiction of administrative agencies rather than under the jurisdiction of the judiciary.<sup>20</sup> Formal supervisory power over the implementation of environmental laws rests with the legislature. In reality, however, the government is not properly enforcing this supervisory power.<sup>21</sup> According to existing legislation, non-governmental organizations (NGOs) and citizens should play a role in the implementation of environmental laws.<sup>22</sup> Currently, no institution of citizen litigation or public-profit litigation exists, and public participation in the Environmental Impact Assessment (EIA) is limited in scope.<sup>23</sup> While the development of environmental laws in China shows promise, there is a long way to go in realizing satisfactory public involvement in the legal system.

### *A. Problems with Implementation*

In order to address environmental challenges, China enacted its *Environmental Protection Law*.<sup>24</sup> Article One clearly states the law's objective as "protection and improving of the environment."<sup>25</sup> Although progress exists in the protection of ecosystems, the Chinese environment is deteriorating as a whole, even with localized areas of improvements.<sup>26</sup> One

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19. JIN, *supra* note 8, at 27.

20. Wang Canfa, *On Limitations of Legislation on Environmental Administration Mechanism of China and the Ways of Perfecting It*, 21 J. OF CHINA UNI. POL. SCI. & L. (Aug. 2003) (on file with author).

21. *Id.*

22. Wang Canfa, *The Disadvantages in the Process of Enforcing Environmental Administration—Simple Analysis the Problem of Environmental Pollution Produced Enterprises after Administrative Punishment*, <http://www.cnjlc.com/Article/200606/16438.html> (last visited Jan. 16, 2007).

23. *Id.*

24. JIN, *supra* note 8, at 119.

25. Environmental Protection Law (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 26, 1989, effective Dec. 26, 1989), art. 1, available at [http://english.sepa.gov.cn/zffg/fl/198912/t19891226\\_49697.htm](http://english.sepa.gov.cn/zffg/fl/198912/t19891226_49697.htm).

26. Liu Hong, Deputy Dir. of the Science and Technology Department, State Env'tl. Prot. Admin., Comments at the Opening Ceremonies of the Second National Environmental Management and Technology Meeting (Nov. 9, 2005), available at [http://www.sepa.gov.cn/zxbd/jlh/tu/200511/t20051109\\_71439.htm](http://www.sepa.gov.cn/zxbd/jlh/tu/200511/t20051109_71439.htm).

major problem is air pollution in large cities, as it remains severe and heavy with particulate matter.<sup>27</sup> For example, of the 555 cities monitored in 2002, 279 cities (50.3%) have registered occurrences of acid rain.<sup>28</sup>

Water shortages and pollution are also major problems affecting the environment. Water consumption has reached unsustainable levels in China. As a result, drinking water is in severe shortage.<sup>29</sup> Of the seven major water systems, level five quality accounts for 40.9% of human consumption.<sup>30</sup> The disposal rate for municipal domestic sewage is only 22.3%,<sup>31</sup> as rural areas lack treatment and discharge facilities. Marine pollution has increased, and in 2003 there were 80 registered marine pollution accidents, polluting an area up to 90,262 hectares.<sup>32</sup> These recorded accidents have economically damaged the fishery, recording losses as high as RMB 2,740,000,000 Yuan (US\$354,069,071).<sup>33</sup>

As a whole, the Chinese ecosystem is in grave danger. Trends show soil and water erosion facilitating the expansion of an arid, desert-like climate into one-third of the country's territory.<sup>34</sup> All of these problems are direct evidence that the objectives outlined in the environmental laws have not yet been achieved. This is further demonstrated by the environmental protection plan. This plan, created by various government administrative departments, has the stated legal objective not to improve the environment but to only mitigate environmental deterioration.<sup>35</sup>

### *B. Superficial Enforcement of Environmental Mechanisms*

There are many environmental management mechanisms within Chinese environmental laws regulating various behaviors. These mechanisms include various precautionary approaches to prevent pollution, regulations governing the operation of various facilities, environmental recovery institutions, and enforcement obligations of environmental

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27. See generally STATE ENVTL. PROT. ADMIN., 2002 REPORT ON NAT'L. ENVT. CONDITIONS, ATMOSPHERIC ENVT., available at <http://www.sepa.gov.cn/english/SOE/soechina2002/air.htm> (describing environmental problems associated with air pollution and environmental degradation).

28. *Id.*

29. *Id.*

30. *Id.* Level Five is the lowest level of water quality monitored in China on a one to five scale.

31. *Id.*

32. Qu Xia, *Walking Towards Oceans and Treat Oceans Well*, 6 ENVIRONMENTAL ECONOMICS 21 (2004) (on file with author).

33. *Id.*

34. 2002 REPORT, *supra* note 27.

35. State Envtl. Prot. Admin., SEPA Released Information on Environmental Quality during the Tenth Five-Year Plan Period and Implementation of Environmental Plan, Apr. 12, 2006, [http://www.sepa.gov.cn/xcyj/zwhb/200604/t20060412\\_75714.htm](http://www.sepa.gov.cn/xcyj/zwhb/200604/t20060412_75714.htm).

protection supervisors.<sup>36</sup> These regulations have not been fully implemented. For example, China's Environmental Impact Assessment Law (EIA Law) requires the assessment of construction projects affecting the environment.<sup>37</sup> Article 17 specifically lists the required elements for this assessment.<sup>38</sup> According to the State Environmental Protection Administration (SEPA), environmental assessments for construction sites exceeded 90% since 1998, and increased to 98.3% in 2002.<sup>39</sup> If these statistics are accurate, and all environmental assessments have been conducted and approved by the appropriate departments, there would be substantially less environmental pollution. The fact remains that China's environmental condition is continually deteriorating. As an example, 1,921 pollution accidents occurred in 2002 alone.<sup>40</sup> While SEPA has addressed 82 serious violations,<sup>41</sup> 80% of the 70 approved steel construction projects have yet to comply with the EIA Law.<sup>42</sup> These statistics show that regulation of construction projects is superficial, reaching only as far as the environmental assessment. Those agencies responsible for drafting reports tend to falsify them in order to satisfy construction entities.<sup>43</sup> For example, in one report, the real distance between a proposed plant and a residential district was 20 meters, while the EIA report stated the distance at 400 meters.<sup>44</sup> Consequently, the construction project was approved and later

36. *On Limitations of Legislation on Environmental Administration Mechanism of China and the Ways of Perfecting It*, *supra* note 20.

37. See Provisions on Code of Conduct for Environmental Impact Assessment, (promulgated by the Nat'l People's Cong., Nov. 23, 2005) LAWINFOCHINA (last visited Mar. 8, 2007) (P.R.C.)

Article 1 states the purpose as "regulating the environmental impact assessment of construction projects, strengthening the administration of environmental impact assessment of construction projects and the construction of honest and clean administration, and guaranteeing that the administration of environmental protection of construction projects be carried out legally, honestly and cleanly at a high efficiency.

*Id.*

38. *Id.*

39. National Development and Reform Commission (NDRC), *Cleaner Production in China*, [http://www.chinacp.com/eng/cporg/cporg\\_sepa.html](http://www.chinacp.com/eng/cporg/cporg_sepa.html) (last visited Mar. 8, 2007); State Env'tl. Prot. Admin., National Env'tl. Statistics 2002, [http://www.sepa.gov.cn/plan/hjtj/qghjtjgb/200306/t20030605\\_85524.htm](http://www.sepa.gov.cn/plan/hjtj/qghjtjgb/200306/t20030605_85524.htm) (last visited Apr. 8, 2007).

40. STATE ENTL. PROT. ADMIN., THE STATISTICS OF THE STATE ENTL. PROT. ADMIN. IN 2002 (June 5, 2003), [http://www.sepa.gov.cn/plan/hjtj/qghjtjgb/200306/t20030605\\_85524.htm](http://www.sepa.gov.cn/plan/hjtj/qghjtjgb/200306/t20030605_85524.htm).

41. State Env'tl. Prot. Admin., 82 Projects Seriously Violating EIA Rules Blacklisted and EIA Approval of Construction Projects in Some Regions or Enterprises Suspended (Jan. 12, 2007), [http://english.sepa.gov.cn/zwx/xwfb/200701/t20070112\\_99526.htm](http://english.sepa.gov.cn/zwx/xwfb/200701/t20070112_99526.htm).

42. *Id.*

43. See generally Center for Legal Assistance to Pollution Victims (CLAPV), 焦化厂建到居民区：“政府行为”使受害者走十年官司路, Oct. 19, 2005, <http://www.clapv.org/new/show.php?id=1111> (describing construction violations of a coke plant).

44. *Id.*

caused severe pollution.<sup>45</sup>

### C. Lax Investigation and Delayed Punishment of Illegal Activities

Chinese environmental laws create regulations for various activities and establish corresponding penalty provisions. Ideally, thorough implementation of environmental laws would forbid illegal actions and protect the environment. In reality, many violations cannot be investigated and punished in time; and these offenders are often free from corrective responsibilities. This problem has greatly influenced the effectiveness and authority of the environmental legal system. The “three-simultaneity” institution stipulates that environmental protection facilities involved in construction projects must be designed, constructed, and implemented along with the main buildings under construction.<sup>46</sup> According to the law, this scheme applies to all construction projects likely to cause environmental pollution and damage.<sup>47</sup> Although this scheme has been in effect since the 1970s,<sup>48</sup> some construction projects with severe environmental consequences began construction without environmental supervision or approval.<sup>49</sup> As a consequence, this lax enforcement is one reason small enterprises responsible for environmental harm remain active and perpetuate new pollution emissions.

### D. Unavailability of Adequate Compensation for Pollution Victims

Severe pollution inevitably leads to environmental disputes. In 2005, complaints submitted to environmental authorities within SEPA numbered more than 50,000.<sup>50</sup> Many of these conflicts are not settled in a timely fashion, with some remaining in dispute for over 10 years.<sup>51</sup> This lax enforcement has discouraged public involvement and reduces incentives for polluters to comply with existing legislation. As long as no added cost

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45. *Id.*

46. WANG, *supra* note 2, at 93. The concept of “three-simultaneity” is a social term common in Chinese culture and is explained in the regulation Environmental Protection Management of Construction Projects, Article 16, Nov. 18, 1998.

47. *Id.* at 94.

48. *Id.* at 93.

49. Li Jin & Wang Dongdong, *Existing Problems of Environment System-Three Meantimes-Executed in Construction Project and Corresponding Measures*, 24 CHINA RESOURCES COMPREHENSIVE UTILIZATION 35 (2006).

50. Pan Yue, Vice Minister, State Evtl. Prot. Admin., Address to the First National Environmental Policy Legal System Workshop, [http://www.sepa.gov.cn/info/ldjh/200701/t20070118\\_99754.htm](http://www.sepa.gov.cn/info/ldjh/200701/t20070118_99754.htm) (last visited Mar. 31, 2007).

51. CLAPV, *supra* note 43.

associated with pollution exists, there is no reason for the polluter to invest millions of dollars in compliance. Within the Chinese government there is no appraisal agency to determine causation between the polluter's action and the pollution, and no detailed law that determines proper procedures for assessment. With no direct procedure to redress pollution victim's claims, the public often remain confused and uninformed, distant from a process unable to effectively aid them, even when claims are brought to appropriate authorities.

*E. Environmental Violators Often Receive Administrative Punishments Instead of Criminal Penalties*

Worldwide, the application of criminal liability to environmental polluters has proved an effective tool.<sup>52</sup> China has recognized the necessity and successes of these criminal laws and has developed a limited number of environmental criminal articles and penalties that have yet to be fully implemented.<sup>53</sup> In the five years since the revision of China's Criminal Law, the total number of serious environmental accidents has increased to over 387.<sup>54</sup> Each of these accidents, according to the Criminal Law, constitutes an environmental crime.<sup>55</sup> Unfortunately, less than 20 cases have been prosecuted to date under this newly revised criminal code, accounting for less than five percent of the violations.<sup>56</sup> This lack of prosecution can be attributed to two reasons. First, environmental authorities are reluctant to transfer environmental crimes to judicial authorities. Second, there is a general lack of environmental awareness and relevant experience within the judicial community.<sup>57</sup>

*F. The Lack of Authority Within Relevant Environmental Protection Administrations*

Administration of environmental protection in China, according to the legal provisions, is subject to the corresponding administrative departments.<sup>58</sup> Most environmental violations in China are caused by

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52. WANG, *supra* note 2, at 137.

53. *Id.* at 148.

54. GAZETTE ON NATIONAL ENVIRONMENTAL STATE, DATA SOURCE: 1998–2002 (on file with author).

55. Criminal Law (promulgated by the Nat'l People's Cong., Jul. 6, 1979), art. 338, LAWINFOCHINA (last visited Mar. 8, 2007) (P.R.C.).

56. THE STATISTICS OF THE STATE ENTL. PROT. ADMIN. IN 2002, *supra* note 40.

57. Wang Canfa, *Probing into the Causation for Lower Costs of Inflicting Environmental Law and Perfecting Its Ways*, 9 ENVTL. PROT. 32 (2005) (on file with author).

58. *On Limitations of Legislation on Environmental Administration Mechanism of China and*

pollution enterprises.<sup>59</sup> In Pingnan County of Fujian Province, the amount of tax levied on a chemical factory with heavy pollution accounts for 25% of the county's income.<sup>60</sup> If these various government departments enforce environmental protection, polluters will pay large fines and thus divert money from the local community. As a result, local governments tend to interfere with the environmental protection agency and its punishment of pollution enterprises.<sup>61</sup> Also, the environmental protection agency is subject to decisions from the corresponding administrative departments while the power to order company renovations within a certain deadline and to stop operations is authorized through local governments.<sup>62</sup> The environmental protection agency does not have such power.<sup>63</sup>

### III. WHY IS ENVIRONMENTAL LAW IMPLEMENTATION LAX IN CHINA?

There are four main reasons explaining why current implementation of environmental laws in China is lax. The first is largely due to unrealistic legislation resulting from inadequate legal research, rapid creation of legislation, frivolous legislation, and the inability of current legislation to adapt new laws and rules. Second, local governments favor economic benefit over environmental protection. Third, a legislative void exists between administrative departments and the NPC Standing Committee and court system. Lastly, public participation remains underdeveloped in China.

#### A. Unrealistic Legislation

Since 1978, a relatively complete body of Chinese environmental law has formed. This body of law includes constitutional articles, environmental laws, and other legislation and rules containing environmental provisions.<sup>64</sup> This environmental legal system has safeguarded the people's environmental rights. Throughout its development, however, problems have materialized.

One major problem includes inadequate legal research which has led to

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*the Ways of Perfecting It*, *supra* note 20.

59. Lindsay Beck, *China's Pollution Galvanizes Peasants to Action*, PLANET ARK, Feb. 3, 2006, available at <http://www.planetark.org/dailynewsstory.cfm/newsid/34850/story.htm>.

60. *Id.*

61. Gu Haibo, *On the Reformation of the Environment Administration System*, <http://www.ilib.cn/A-xzyf200102029.html> (last visited Jan. 20, 2007).

62. *Id.*

63. *Id.*

64. JIN, *supra* note 8, at 119–23.

disjunction between provisions of the act and the practice of environmental protection. A good example is the drafting process of the *Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Waste*. Lawmakers did not have the necessary basic information detailing both the research on the pollution mechanism of solid wastes and the availability of disposal technology methods for solid waste. Government supervision of the disposal process for solid waste was drafted in the 1990s.<sup>65</sup> This inadequate research has led to the lax enforcement and compliance of the law. The NPC Standing Committee report indicates that the disposal rate of municipal domestic garbage in 2003 was 58.2%.<sup>66</sup> It remains common for most counties and towns to dispose of wastes without any treatment.<sup>67</sup>

Another problem is the rapid pace in which legislation is initially created. In order to successfully accomplish departmental agendas, agencies create legislative deadlines for the adoption of certain laws. Officials then focus on influencing alliances to pass this legislation, rather than the applicability and workability of the legislation itself.

Some Chinese legislation is presented in an attempt to meet international trends and results in superficial influence.<sup>68</sup> China has developed some laws and regulations that are hard to find in other developed countries.<sup>69</sup> These provisions, however, are rarely used and hold little influence.<sup>70</sup> Notwithstanding frivolous legislation, no relevant department has ever suggested the need for required environmental legislation such as the *Law of Recovery of Waste and Used Electric Appliances*. In addition, with this frivolous legislation comes an emphasis on substantial, subject-driven legislation, ignoring the needed procedural and implementation mechanisms.<sup>71</sup> There are many substantial environmental laws in China with inadequate procedural laws.<sup>72</sup> These laws contain many general provisions with a few liability provisions, incorporating small fines that do not deter violations.<sup>73</sup>

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65. THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS LAW ENFORCEMENT INSPECTION GROUP REPORT ABOUT THE PEOPLE'S REPUBLIC OF CHINA SOLID WASTE POLLUTION ENVIRONMENT PREVENTING AND CONTROLLING LAW, *available at* <http://www.law-lib.com/fzdt/newshtml/22/20050822232224.htm>.

66. *Id.*

67. *Id.*

68. JIN, *supra* note 8, at 109.

69. *Id.*

70. *Id.* at 110.

71. *Historical Opportunity for the Transformation of Environmental Protection Policy*, TAIYUAN DAILY, July 11, 2006, [http://www.tynews.com.cn/tyrbmap/2006-07/11/content\\_2304963.htm](http://www.tynews.com.cn/tyrbmap/2006-07/11/content_2304963.htm).

72. *Id.*

73. *Id.*

A final obstacle facing environmental legislation in China is that many of the current regulations are unable to adapt to new laws and rules.<sup>74</sup> The National People's Congress (NPC) adopts any environmental law and regulation that must be implemented in conjunction with those adopted by various government departments.<sup>75</sup> Despite the passage of several years since their approval, many environmental laws still have no viable means of implementation.<sup>76</sup> For instance, the *Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Waste*, adopted in 1995, has no implementing regulations.<sup>77</sup> The *Law of the People's Republic of China on Prevention and Control of Pollution from Environmental Noise*, adopted in 1996, also has no implementing regulations.<sup>78</sup> In many cases where implementation problems exist, solutions may be found in SEPA interpretations of the existing problem.<sup>79</sup>

*B. Local Governments Favor Economic Benefits Rather Than  
Environmental Protection*

The implementation of environmental laws depends on local governments and environmental protection departments.<sup>80</sup> Since 1992, the GDP has served as the core measure of China's economic status and is the primary standard against which the achievements of local governments are measured.<sup>81</sup> The government tends to make short-term actions in pursuing economic benefits because of the importance of the GDP.<sup>82</sup> Many local governments pursue GDP growth instead of comprehensive, coordinated, and sustainable development.<sup>83</sup> These entities are slowly realizing that the public needs both economic growth and environmental protection.<sup>84</sup> The objective of this sustainable development includes economic growth, social development, and environmental protection together. Such ideas are crucial in the implementation of environmental laws.

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74. Sun Youhai, *Green Accelerating Cycle of Economic Legislation to Create Wealth*, SINA NEWS, Dec. 20, 2005, <http://news.sina.com.cn/o/2005-12-20/10157753879s.shtml>.

75. *Id.*

76. *Id.*

77. WANG, *supra* note 2, at 246.

78. *Id.*

79. *Id.*

80. State Env'tl. Prot. Admin., Major Responsibilities of SEPA, May 13, 2004, [http://english.sepa.gov.cn/xztz/jgzl/gszn/200405/t20040513\\_50000.htm](http://english.sepa.gov.cn/xztz/jgzl/gszn/200405/t20040513_50000.htm) (P.R.C.).

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

### *C. Confining Justice within Administrative Departments*

Environmental management mechanisms are subject to administrative laws. These laws are not well-developed and do not have comprehensive administrative organization or administrative procedures for coping with them.<sup>85</sup> As a result, China's administrative departments cannot establish a system in the style of the NPC Standing Committee and court system.<sup>86</sup> China neither possesses any specific law addressing the organization of environmental management departments at the central government, nor has any regulations or provisions at the local level.<sup>87</sup> The relevant provisions governing environmental management mechanisms and their responsible divisions are scattered throughout various laws and regulations.<sup>88</sup> Due to the lack of explicit regulations on environmental management organization, they are subject to frequent changes.<sup>89</sup> This legislative void allows for specific cities to have environmental protection administrations while others do not. It also permits some government departments to have two titles, and can force organizational reforms that suggest possible staff reductions.<sup>90</sup> All these factors greatly influence the judicial enforcement mechanisms of environmental management departments.

### *D. The Citizen's Role is Neglected in Environmental Protection*

Public participation is important for social growth, and more importantly, it directly supports the development of democracy.<sup>91</sup> Public participation also requires a balance between economic interests and environmental protection. Although, in China, this participation remains underdeveloped. Article Five of the EIA stipulates that the state should encourage relevant entities, experts, and the general public to participate in the assessment of impacts on their environment.<sup>92</sup> Articles 11 and 12 separately state that public opinion should be included in the approval of

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85. *On Limitations of Legislation on Environmental Administration Mechanism of China and the Ways of Perfecting It*, *supra* note 20.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. Wang Canfa, 环境维权诉讼是公众参与环境保护的重要途径, Nov. 4, 2005, <http://www.ngocn.org/Article/ShowArticle.asp?ArticleID=762>.

92. Environmental Impact Assessment Law (promulgated by Standing Comm. Nat'l People's Cong., Oct. 28, 2002, effective Sept. 1, 2003) (P.R.C.), available at [http://www.sepa.gov.cn/law/law/200210/t20021028\\_84000.htm](http://www.sepa.gov.cn/law/law/200210/t20021028_84000.htm).

EIA program reports and construction projects.<sup>93</sup> The specific number of participants and the procedure, however, has not been explained in the EIA law.<sup>94</sup> The chapter on legal responsibilities does not properly define what should happen when this public participation is violated, with the effect of making public participation meaningless throughout the EIA process.<sup>95</sup>

Laws dictating the responsibilities of specific environmental mechanisms grant too much freedom to violators while remaining weak when enforcing obligations.<sup>96</sup> For those who abuse their power or leave without fulfilling their duties, environmental legislation states that only the individual directly responsible for the situation should face an administrative punishment, with no responsibility for the relevant entity.<sup>97</sup> In order to correct this error, China should adopt institutions of “citizen litigation” and bestow any entity and/or citizen with the right to bring actions against inattentive administrative departments. This institution would ensure obligations of the various administrative departments to move from the abstract legal realm to that of implementation in practice. For example, in the United States the Endangered Species Act (ESA) provides for citizen suits. Section 1533 “allows any person to bring suit to stop the federal government from violating the ESA or for a failure by the Secretary of Interior to perform any act or duty required by ESA.”<sup>98</sup>

#### IV. POTENTIAL REFORMS TO ADDRESS CONSTRAINTS IN THE CHINESE LEGAL SYSTEM

Scholars and officials in China have recognized the problems of implementing environmental law. In recent years, reforms have steadily increased.<sup>99</sup> The following suggested reforms are intended to improve the

93. *Id.*

94. See *Encouraging Public Participation in Environmental Impact Assessments*, Town Planning Network Online, Nov. 17, 2006, <http://www.upla.cn/special/article.shtml?id=3084&sid=105> (discussing public participation in the appraisal of environmental actions).

95. *Id.*

96. See Gu Ruizhen, *The Environmental Protection Decided that Our Country will Aggravate the Punishment to Environment Illegal Activity*, XINHUA NEWS, Feb. 14, 2006, available at [http://news.xinhuanet.com/politics/2006-02/15/content\\_4180517.htm](http://news.xinhuanet.com/politics/2006-02/15/content_4180517.htm) (discussing the low cost of disregarding environmental laws).

97. *Id.*

98. John Braley, *U.S. Supreme Court Rules “Any Person” Can Sue Under the ESA*, Mississippi-Alabama Sea Grant Legal Program, <http://www.olemiss.edu/orgs/SLGC/MS-AL/Water%20Log/esa.htm> (last visited Mar. 9, 2007); see also *Bennett v. Spear*, 520 U.S. 154, 170 (1997); see also 16 U.S.C. § 1533 (2000).

99. See STATE ENVTL. PROT. ADMIN., REVIEW OF ENVIRONMENTAL PROTECTION IN CHINA 2006: A HISTORIC MOMENT OF CHANGE 2006, <http://www.sepa.gov.cn/hjyw/200612/>

efficiency and strengthen the legal force of the numerous Chinese environmental laws.

*A. The Suggested Establishment of an Environmental Supervision Bureau in SEPA to Focus on Spot Law Enforcement*

The primary problem with Chinese environmental law is enforcement. To implement and enforce the various environmental laws, the Environment Supervision Bureau (ESB) was created within SEPA in July 2002.<sup>100</sup> The ESB is charged with spot law enforcement, including: drafting and implementing policies, regulations, and rules to monitor the environment and pollution discharges; guiding and coordinating solutions to pollution problems within local communities, departments, and across jurisdictions; and investigating large-scale pollution accidents and ecosystem destruction.<sup>101</sup>

In 2003, the ESB actively pursued its obligations. It carried out 2,290,000 inspections of 410,000 machines (with some machines inspected multiple times). Of these inspections, 1,015,000 dealt with pollution prevention. The ESB also inspected 197,000 newly built and rebuilt projects, 52,000 of which were given a specific deadline to make improvements, and 118,000 of which were issued discharge licenses.<sup>102</sup> The ESB has proven successful and SEPA has established five regional supervision centers for environmental law enforcement.<sup>103</sup>

*B. Transforming the Environmental Protection Agency into a Detached Agency*

China has managed to accomplish reforms in some provinces by transforming environmental protection administrations at the local level into detached agencies.<sup>104</sup> The responsibilities of these new agencies are “environmental monitoring and pollution fee collecting.”<sup>105</sup> The municipal

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t20061230\_99037.htm (P.R.C.) (describing the increase in environmental legislation in China).

100. See State Env'tl. Prot. Admin., State Env'tl. Prot. Admin. Document No. UNCED 2003 190, <http://www.zhb.gov.cn/epi-sepa/zcfg/w3/fa2003-190.htm> (last visited Apr. 7, 2007).

101. See STATE ENVTL. PROT. ADMIN., ENVIRONMENT SUPERVISION BOARD (2006) (P.R.C.), [http://www.sepa.gov.cn/dept/jgz/gszn/200401/t20040109\\_87952.htm](http://www.sepa.gov.cn/dept/jgz/gszn/200401/t20040109_87952.htm) (describing the role of the ESB).

102. *Environment Problems from Various Law Enforcement Initiatives*, SINA NEWS, Apr. 22, 2004, <http://news.sina.com.cn/c/2004-04-22/09582374471s.shtml>.

103. Admin. of Env'tl. Prot. Inspection Program Set-up Centers (promulgated by the State Env'tl. Prot. Admin., July 8, 2006) (P.R.C.), available at [http://www.sepa.gov.cn/info/gw/huanban/200607/t20060708\\_78477.htm](http://www.sepa.gov.cn/info/gw/huanban/200607/t20060708_78477.htm).

104. STATE ENVTL. PROT. ADMIN., CHINA ENVIRONMENTAL YEARBOOK 2003, at 218 (on file with the author) (hereinafter 2003 YEARBOOK).

105. *Id.*

administrations are left to deal directly with personnel, finances, and project approval.<sup>106</sup> For example, thirteen environmental protection bureaus at the district and county level in Xian City, Shanxi Province, all transformed into detached agencies in 2003.<sup>107</sup>

The first step for such a transformation is a financial audit.<sup>108</sup> The second step is to determine each agency's responsibilities and staffing requirements.<sup>109</sup> The final step is to separate the individual detached agency from the county's financial budget.<sup>110</sup> After this process is complete, the environmental protection departments are not subject to resistance from county governments. This is an important step in safeguarding the independence of the environmental protection administration.

### C. Replacing the Traditional GDP with a Green GDP

Green GDP (GGDP) is a supplement to the traditional GDP. It is calculated by deducting the cost of natural resource extraction and ecological damage from the traditional GDP; in other words, the GDP is adjusted for environmental costs.<sup>111</sup> There have been many discussions about the GGDP in China. One of the most popular opinions is that the traditional GDP is limited because it represents only economic development without any concern for the environment.<sup>112</sup>

When considering a traditional GDP calculation, many people tend to misunderstand economic development. According to China's environmental laws, the local government is responsible for environmental quality.<sup>113</sup> Local governments should be more concerned with their region's environmental quality and work to slowly reduce ecological deterioration.

China is in a period of industrialization and is operating under the traditional outlook of "exhaust much and produce much."<sup>114</sup> The high rate of inefficient natural resource consumption, not to mention the extremely

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106. *Id.*

107. STATE ENVTL. PROT. ADMIN., CHINA ENVIRONMENTAL YEARBOOK 2004, at 416 (on file with author) (hereinafter 2004 YEARBOOK).

108. 2003 YEARBOOK, *supra* note 104, at 218.

109. *Id.*

110. *Id.*

111. Sino-Italian Cooperation Program for Env'tl. Prot., China to Establish a Green GDP System, <http://www.sinoitaenvironment.org/ReadNews.asp?NewsID=710> (last visited Mar. 15, 2007).

112. See China's Fan Network, 绿色GDP的认识误区及其辨析 [Misunderstanding and Analysis of the Green GDP], <http://www.ylji.cn/kxfzg/91233.html> (last visited Apr. 7, 2007).

113. YANGCHOW CITY STATISTICS BUREAU, GDP AND GREEN GDP: A SYNOPSIS, [http://www.yzstats.gov.cn/zbj/zbj\\_gdp.htm](http://www.yzstats.gov.cn/zbj/zbj_gdp.htm) (last visited Apr. 7, 2007).

114. *Id.*

high rate of pollution discharge threatens sustainable use of those resources.<sup>115</sup> Because China is a country dependant on resource exploitation, the calculated adjustment of the GGDP is of great importance.

In response to these concerns, the China Statistics Administration and SEPA jointly established a research team on GGDP in early 2004.<sup>116</sup> The team is actively researching and testing solutions to the above problems. China hopes to accomplish a complex GDP calculation based on the traditional model that would deduct resource and environmental costs in the areas of forestry, water, mines, and soil, among others.<sup>117</sup> As a result, China will establish a GGDP system and make it the key factor in assessing local governments' achievements. SEPA and the National Bureau of Statistics of China published their first joint GGDP report—*Report on Green GDP Calculation of China for 2004*—on September 7, 2006.<sup>118</sup>

#### *D. Reforming Judicial Management Mechanisms*

One large problem with enforcement is that the defendants in environmental civil litigation are usually the major supporters of local economies.<sup>119</sup> Furthermore, most pollution activities involve administrative acceptance.<sup>120</sup> This generated income is seen as a greater asset than local ecological protection. As a result, local polluters often receive minimal punishments.<sup>121</sup>

The existing judicial management mechanism is principally guided by the local Chinese Communist Party (CCP) Committee and supervised by

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115. ADMINISTRATIVE CTR. FOR CHINA'S AGENCY 21, WHITE PAPER ON CHINA'S POPULATION, ENVIRONMENT, AND DEVELOPMENT IN THE 21ST CENTURY ch. 14, para. 1 (1994), *available at* <http://www.acca21org.cn/chnwp14a.html>.

116. STATE ENVTL. PROT. ADMIN., CHINA GREEN NATIONAL ACCOUNTING STUDY REPORT 2004 (2006), [http://english.sepa.gov.cn/zwx/xwfb/200609/t20060908\\_92580.htm](http://english.sepa.gov.cn/zwx/xwfb/200609/t20060908_92580.htm) (P.R.C.).

117. *See* DING WEIPING, JIANGSU PROVINCE TAIZHOU STATISTICS BUREAU, DEVELOPING A SCIENTIFIC APPROACH TO "GREEN GDP" (2004), *available at* <http://www.zztj.gov.cn/tjzs/tjzm/200411/2235.html> (P.R.C.) (describing the ways the traditional GDP calculation fails to take into account environmental degradation, leading ultimately to a reduction in overall wealth).

118. Chinese Academy for Environmental Planning, Green GDP Accounting Study Report 2004 Issued (Sept. 11, 2006), *available at* [http://english.gov.cn/2006-09/11/content\\_384596.htm](http://english.gov.cn/2006-09/11/content_384596.htm) (P.R.C.); Macroeconomic Research Institute of the State Planning Commission, 绿色GDP理论研究回顾 [Green GDP Theoretical Research Review], <http://www.amr.gov.cn:8080/information.nsf/c38c316425fd694cc82564600298d8b/278a48b462cad29948256ea5002966a1?OpenDocument>.

119. *See* 浅谈环保执法的障碍及对策 [Removing Barriers to Enforcement of the Environmental Protection Law: An Abstract], (Nov. 12, 2004), <http://dotnet.mblogger.cn/mystar/> (noting the primacy of economic concerns in the politics of regional protectionism as a barrier to effective enforcement).

120. *Id.*

121. *See* Discussion, *supra* Part II.E (discussing administrative punishments).

the high court, which is responsible for trial and personnel affairs.<sup>122</sup> Thus, the first step in reforming the judicial management mechanism is to enhance the independence of the judiciary and to adopt a “vertical” management mechanism. Only through this reform can China avoid local protectionism.

This vertical mechanism has been adopted in some regions. The Supreme People’s Court issued a *Five-Year Reform Compendium of the People’s Court* on October 20, 1994, which stated that by the end of 1999, the superior people’s courts of all provinces, autonomous regions, and cities directly under the jurisdiction of the central government should adopt vertical management and practice this program as long as appropriate.<sup>123</sup> Although this vertical mechanism has not been implemented throughout China, the trend is bound to continue and grow throughout the country.

### *E. Suggested Procedures and Methods for Enhancing Public Participation*

There are only general regulations in China’s environmental laws concerning public participation.<sup>124</sup> Concrete provisions that outline procedures and methods for this participation are absent, making public involvement superficial.<sup>125</sup> The *Law of Administrative Approval*, Article 36, states that administrative departments should inform concerned parties when certain actions have the possibility of affecting those parties’ interests.<sup>126</sup> This notice gives all parties involved the opportunity to present their point-of-view and interest in the proposed action. Both parties, for and against the proposal, should then have their opinions considered by the administrative department.<sup>127</sup> According to the Article, any administrative approval concerning the rights of various parties cannot be granted until the department has heard the opinions of those parties.<sup>128</sup> The United States Endangered Species Act also allows for public comment of proposed listings, stating “[t]he Secretary shall, prior to final approval of a new or

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122. *National Court Organizational System*, XINHUANET GLOBAL NEWS NETWORK, available at [http://news.xinhuanet.com/ziliao/2003-08/13/content\\_1024723.htm](http://news.xinhuanet.com/ziliao/2003-08/13/content_1024723.htm).

123. Zhou Daoluan, *Independent Trial and Justice*, WANDERING LEGAL NETWORK, [http://www.hicourt.gov.cn/theory/article\\_list.asp?id=1831&1\\_class](http://www.hicourt.gov.cn/theory/article_list.asp?id=1831&1_class) (last visited Mar. 9, 2007).

124. See Wang Canfa, *The Importance of Public Participation: Case Studies*, NGO DEVELOPMENT EXCHANGE NETWORK, Nov. 4, 2005, <http://www.ngocn.org/Article/ShowArticle.asp?ArticleID=762> (describing the limit and indirect nature of participation offered to a generally uninformed public).

125. *Id.*

126. See Law of Administrative Approval (promulgated by the Nat’l People’s Cong.), art. 36, [http://www.law-lib.com/law/law\\_view.asp?id=79264&page=4](http://www.law-lib.com/law/law_view.asp?id=79264&page=4) (P.R.C.) (on file with the author).

127. *Id.*

128. *Id.*

revised recovery plan, provide public notice and an opportunity for public review and comment on such plan.”<sup>129</sup>

The Public Participation Principle (PPP) of environmental law contains the following components knowledge of the issue, participating in the decision-making process, and the right to bring a lawsuit where environmental rights have been infringed.<sup>130</sup> In order to achieve a balanced environmental law enforcement and supervision system, China should fully execute the enforcement functions of responsible departments, the supervisory functions of the public, and the self-monitoring functions of enterprises. Furthermore, China should encourage both public and environmental NGO participation.

These reforms involve inherent difficulties and obstacles. Reforming the judicial management mechanisms presents a difficult and unavoidable problem.<sup>131</sup> To reform the judicial system, including the appointment of judges and the precedent of a court, would be to reform the political system. There is also a question of whether there should be a responsible department governing all NGOs. The development, however, of China’s environmental legal system, and a strong relationship between legal provisions and principles, are sure to solve the above mentioned. problems. It is also true that environmental protection is a global task and China’s domestic legislation must reflect its global responsibilities.

## V. EXAMPLES OF ENVIRONMENTAL CASES PROMOTING LAW ENFORCEMENT IN CHINA

The cases below offer a good approach to judicial implementation of environmental laws. The judicial system can not only improve pollution victims’ environment, but can also compel pollution enterprises to manage their emissions, while observing environmental laws and regulations.

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129. 16 U.S.C. § 1533(b)(5)(A)(ii) (1973).

130. China.com.cn, Interim Procedures for Public Participation in Environmental Impact Assessment (Feb. 22, 2006), <http://www.china.org.cn/chinese/PI-c/1131735.htm>.

131. Chinalawedu.com, Judge Deficiencies in the System and Reform Plan (July 22, 2004), [www.chinalawedu.com/news/20800/214/2004/7/li67083248341227400290510\\_125738.htm](http://www.chinalawedu.com/news/20800/214/2004/7/li67083248341227400290510_125738.htm).

*A. Improving the Environment Through Litigation: 97 Families in Shiliang River Reservoir of Jiangsu Province v. 2 Factories in Linmu County of Shandong Province for Pollution Damages*<sup>132</sup>

The Plaintiffs were 97 families in Shilianghe River Reservoir who had bred fish in net cages since July 1997.<sup>133</sup> From July 1999 through June 2000, large fish kills occurred within the reservoir on three separate occasions.<sup>134</sup> The confirmed cause of these incidents was found to be Linmu County Paper Mill of the Shandong Province<sup>135</sup> and Linmu Chemical Plant of Shandong Province. Together the plants discharged a sizeable amount of sewage into the reservoir, suffocating the fish in large numbers.<sup>136</sup> The Plaintiffs brought action in the Intermediate People's Court of Lianyungang City of Jiangsu Province, requesting an injunction for the two parties, damages in the amount of RMB 5,652,000 Yuan (US\$ 730,185), and attorney's fees.<sup>137</sup> The court found in favor of the Plaintiffs and required the Defendants to bear joint liability.<sup>138</sup> The Defendants appealed to the High People's Court of Jiangsu Province on April 16, 2002.<sup>139</sup> After a hearing, the court affirmed the judgment of the intermediate court.<sup>140</sup> More than a year since the judgment became effective, however, Defendants had yet to compensate the families. The Center for Legal Assistance to Pollution Victims (CLAPV) and its lawyers became involved and were able to secure RMB 5,600,000 Yuan (US\$ 723,467) in payment.<sup>141</sup> The most important effects of this litigation are that the defendants dare not discharge sewage into the reservoir again, and fish are once again abundant.<sup>142</sup>

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132. Case Brief, Center for Legal Assistance to Pollution Victims (CLAPV), Ninety-seven Families in Shiliang River Reservoir of Jiangsu Province v. Two Factories in Linmu County of Shandong Province (Sept. 9, 2003), <http://www.clapv.org/new/show.php?id=80&catename=zcaj>.

133. *Id.*

134. *Id.*

135. Linmu County Paper Mill is now the Jinyimeng Company.

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

*B. Encouraging Public Participation in Environmental Protection Via Administrative Litigation: 182 Families in Beijing v. Planning Committee of Beijing*<sup>143</sup>

On December 10, 2001, the Planning Committee of Beijing issued a construction project planning license to two research institutions. Under the direction of the Public Health Department, the plan was to build an animal lab.<sup>144</sup> The lab was to be sited only 19.06 meters away from a residential area, while various laws and regulations require the distance to be at least 20 meters.<sup>145</sup> In order to stop the project, the residents applied to the Legal Affairs Office of Beijing for administrative review.<sup>146</sup> The office granted the review and affirmed the decision of the planning committee.<sup>147</sup> The residents then commenced administrative litigation with the support of CLAPV and won the case. The court required the Planning Committee of Beijing to cancel the license.<sup>148</sup> The committee appealed the decision to the No.1 Immediate People's Court of Beijing, but later withdrew the appeal.<sup>149</sup> The judgment from the administrative litigation was put into effect and the license was cancelled.<sup>150</sup> This was the first case in Beijing where residents sued the government's planning department and won.<sup>151</sup> Not only did residents fully participate in the process, but through media coverage, many other people learned of their rights and gained confidence in participating in environmental protection. Since this case, other residents have brought actions against the Planning Committee of Beijing.<sup>152</sup>

143. Cai Yan Hung, 生活区拟建动物实验房 182户居民状告规划委 [*Residents Living in Households in the Proposed District to House 182 Animals Sue Planning Committee*], Center for Legal Assistance to Pollution Victims (CLAPV) (May 28, 2007), <http://www.clapv.org/new/show.php?id=591>.

144. *Neighborhood Residents Oppose Building Laboratories*, XINHUA, June 20, 2006, [http://news.xinhuanet.com/newscenter/2003-06/20/content\\_928464.htm](http://news.xinhuanet.com/newscenter/2003-06/20/content_928464.htm).

145. *Id.*

146. Liu Shaoren, *Should this Kind of Permit be Issued?* CHINA NEWS, May 10, 2003 (on file with author).

147. *Id.*

148. Hu Xiying Tianjin, 为环境不被污染居民状告规划部门案胜诉 [*Environmental Pollution is Not the Case in Favor of Residents Sued the Planning Department*], Center for Legal Assistance to Pollution Victims (CLAPV) (July 27, 2003), <http://www.clapv.org/new/show.php?id=599>; Lui Shaoren, *Should This Kind of Permit Be Issued?*, CHINA NEWS, May 10, 2003.

149. See Zhong Xinxuan, 北京市民告规划委案胜诉 [*Beijing Residents in Favor of Planning Committee Document*], Center for Legal Assistance to Pollution Victims (CLAPV) (Oct. 8, 2003), <http://www.clapv.org/new/show.php?id=683> (describing the court decision to reject the permit approval).

150. Administrative Decision Writ, Beijing Xicheng District Ct., No. 41 (2003) (on file with author).

151. Zhong, *supra* note 149.

152. Yangruiyong, 百旺家苑业主诉北京市规划委案开审 [*Owners of the Beijing Municipal*

*C. Local Government Action Protecting Polluters and Hindering Enforcement of Environmental Laws: Li Jianguo and Four Victims in Laoting County of Hebei Province are Accused of Disrupting the Social Order by Assembling in a Crowd and Blackmail.*

Li Jianguo and four other victims were peasants living on the bank of the Tingliu River, Laoting County of Hebei Province.<sup>153</sup> In February 2000, Lefeng Steel Plant<sup>154</sup> which lies to the east of Li Jianguo's village, began to manufacture steel.<sup>155</sup> According to the related laws and regulations, the steel plant was a severe polluter and should have been closed. It had not completed either an environmental protection examination or approval procedures during its construction and there were no active environmental protective measures in place.<sup>156</sup> The factory seriously polluted the local environment.<sup>157</sup> In May 2000, crops and vegetation around the plant began to wither and die.<sup>158</sup> The village leader, Zhao Wentu, and several other victims reported the incidents to the local authorities and the county environmental protection agency, but nothing was done.<sup>159</sup> Because of this inaction, 100 villagers blocked the door to the plant, stopping steel production and the noxious emissions.<sup>160</sup> The villagers elected six people as representatives, including Li Jianguo.<sup>161</sup> These representatives petitioned the government to close the plant in accordance with pertinent environmental laws and regulations.<sup>162</sup> Meanwhile, the crowd was disbanded by the police and the representatives were arrested and released on bail pending a trial.<sup>163</sup>

In October 2000, Li Jianguo and other villagers sought legal assistance from CLAPV, and in December 2000 they sued the government of Laoting County.<sup>164</sup> They requested that the court require the government to fulfill

*Planning Commission Hearing the Case*], Center for Legal Assistance to Pollution Victims (CLAPV) (Nov. 11, 2004), <http://www.clapv.org/new/show.php?id=762>.

153. Li Jianquo, 李建国等被诉聚众扰乱社会秩序罪、敲诈勒索罪案 [*Gathering Crowds Disturb Social Order and the Crime of Extortion*], Center for Legal Assistance to Pollution Victims in China (CLAPV) (Dec. 24, 2003), <http://www.clapv.org/new/show.php?id=672&catename=zcaj>.

154. Lefeng Steel Plant is now the Heng'an Steel Industrial Co. of Tangshan City.

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. LEGAL DAILY (Dec. 23, 2003) (on file with author).

164. Administrative Decision Writ No. 4 (Laoting County People's Ct. 2003) (on file with author).

its duties in accordance with the law and to order the plant closed.<sup>165</sup> During the litigation, the plant offered to compensate the victims if they would withdraw their suit.<sup>166</sup> In January 2001, Li Jianguo and other victims accepted the compensation of RMB 300,000 Yuan (US\$ 38,757) and withdrew their claims.<sup>167</sup>

On February 6, 2003, however, the six representatives were again detained for the crimes of racketeering and inciting a mob; unfortunately because of a SARS outbreak,<sup>168</sup> CLAPV could not offer legal assistance.<sup>169</sup> On May 7, 2003, the People's Court of Laoting County held that the six village representatives had committed the crimes of inciting a mob and racketeering and sentenced them to a maximum of four years imprisonment.<sup>170</sup> Li Jianguo and the others appealed the decision and the Intermediate People's Court of Tangshan City sent the case back for a re-trial.<sup>171</sup> CLAPV offered legal assistance and the trial was to be covered by numerous newspapers and media outlets,<sup>172</sup> but nothing was reported by the media.<sup>173</sup> On March 25, 2004, the People's Court of Laoting County found that the defendants committed the above crimes and sentenced the individuals anywhere from one to four years in prison.<sup>174</sup>

The Defendants appealed once again. CLAPV consulted numerous criminal and environmental law experts, who determined the defendants had not violated existing Chinese law.<sup>175</sup> The last decision from the Intermediate People's Court of Tangshan City canceled the racketeering crime, but the mob incitement was upheld.<sup>176</sup>

Many difficulties exist for pollution victims attempting to safeguard

165. *Id.*

166. *Id.*

167. Li, *supra* note 153.

168. Jinghua Shibao, *Beijing Strictly Inspect Vehicles Access to the Dissemination of SARS Prevention*, NATIONAL CAPITAL TIMES, <http://www.bj.xinhuanet.com/zhuanti/feidian1/feidian-151.htm> (last visited Apr. 7, 2007).

169. Nobody could go to the court in Hebei Province during the SARS outbreak.

170. Criminal Decision Writ No.214 (Laoting County People's Ct., 2003) (on file with author).

171. Criminal Ruling Writ No.344 (Tangshan City Interm. People's Ct. 2003) (on file with author).

172. The media included People's Daily, China National Radio, Farmers' Daily, People's Consultative Conference Newspaper, China Reform Newspaper, and China Chemical Industry Newspaper.

173. The local government has many ways of preventing the exposure of negative news.

174. Criminal Decision Writ No.205 (Laoting County People's Ct. 2004) (on file with author).

175. The legal experts' report which was sent to the Intermediate People's Court of Tangshan City has not been opened to the public. The legal experts determined that the defendants had not met the conditions of racketeering as provided in Article 274 of the Criminal Law of People's Republic of China and also has not met with the conditions of mob incitement in the first paragraph of Article 290 of Law.

their environmental rights. First, victims are generally poor and lack knowledge. Second, governments are unable to collect all the information required to make an informed decision. Third, local governments are more likely to favor polluters because of the economic benefit that polluters create. Fourth, courts cannot adjudicate independently because of interference from local governments. And finally, there is not enough legal assistance in China to support all the pollution victims.

#### CONCLUSION

The Chinese government has created, and continues to expand, comprehensive environmental protection over the past 20 years and there is hope that this trend will continue into the future. Implementation, the biggest problem facing Chinese environmental law, is also the next great area of possible growth. With superficial enforcement, minimal compensation to pollution victims, and misplaced administrative oversight, there is little reason for polluters or their victims to comply with or seek protection under existing laws. To overcome these problems, the Chinese government should reform current judicial management mechanisms, limit the involvement of local government in environmental compliance issues, and create procedures that will encourage public participation in protecting their local environment. As the Chinese economy grows, a shift from GDP measurements to GGDP assessments will help enforce the constitutional principles of environmental protection. The Chinese government has a rare opportunity to look at the mistakes of the Western industrialization process and create effective legislation to combat past environmental degradation. The public holds the key to effective implementation. Effective legislation will help ensure that the Chinese population will protect their environment and natural resources, and continue to help China grow and prosper.

## APPENDIX

*I. Special Legislation on Pollution Prevention*

On August 23, 1982, the National People's Congress (NPC) Standing Committee adopted the *Law on Marine Environmental Protection of the People's Republic of China*.<sup>177</sup> The NPC Standing Committee later amended this law on December 25, 1999.<sup>178</sup> Its purpose is to "protect the marine environment and resources, prevent pollution damage, maintain ecological balance, safeguard human health and promote the development of marine programmes."<sup>179</sup> The law pertains to the internal and territorial seas and all other sea areas under the jurisdiction of the People's Republic of China.<sup>180</sup> "It provides for the establishment, management and protection of special marine reserves, marine sanctuaries and seashore scenic and tourist areas by central and local authorities."<sup>181</sup> This law also provides for the formulation and submission of environmental impact statements for coastal construction projects.<sup>182</sup> Article Five establishes state authority to be in charge of the implementation of this law.<sup>183</sup> Pollution prevention efforts are particularly applied to: coastal construction projects; offshore oil exploration and exploitation; land-source pollutants; discharge of oils, oil mixtures, wastes and other harmful substances into the sea by vessels; and dumping of wastes into the sea.<sup>184</sup> Additionally, Chapter Nine establishes legal liability for violations that cause or are likely to cause pollution damage to the marine environment.<sup>185</sup>

On May 11, 1984, the NPC Standing Committee adopted the *Law on the Prevention of Water Pollution of the People's Republic of China*.<sup>186</sup> The NPC Standing Committee later amended this law on May 15, 1996.<sup>187</sup> The purpose of this law is "to prevent and control water pollution, protect

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177. Marine Environmental Protection Law (promulgated by the Nat'l People's Cong., Aug. 23, 1982) LAWINFOCHINA (last visited Mar. 8, 2007) (P.R.C.).

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. Law on the Prevention of Water Pollution (promulgated by the Nat'l People's Cong., May 11, 1984) LAWINFOCHINA (last visited Mar. 8, 2007) (P.R.C.).

187. *Id.*

and improve the environment, ensure people's health, guarantee the effectively utilization of the water resource, [and] promote the development of the modernized socialism construction."<sup>188</sup> The law applies to the pollution prevention and control of groundwater and surface water body including rivers, lakes, channels, canals, and reservoirs of the People's Republic of China.<sup>189</sup> It, however, does not extend to the sea area.<sup>190</sup> The law provides that such water protection should be incorporated into the working plan of the State Council and people's government of each level.<sup>191</sup> Additionally, the water pollution prevention and control countermeasures and actions should be adopted.<sup>192</sup> This law also establishes that that environment protection department of the State Council should establish water environment quality standards.<sup>193</sup>

On September 5, 1987, the NPC Standing Committee adopted the *Law on the Prevention and Control of Atmospheric Pollution of the People's Republic of China*, which was amended on August 29, 1995 and then April 29, 2000.<sup>194</sup> Article One provides, "this Law is formulated for the purpose of preventing and controlling atmospheric pollution, protecting and improving people's environment and the ecological environment, safeguarding human health, and promoting the sustainable development of the economy and society."<sup>195</sup> Article Two establishes that the State Council and the local people's governments shall: incorporate the protection of the atmospheric environment into the national economic and social development plans, make rational plans for the geographical distribution of industry, improve scientific research in the prevention and control of atmospheric pollution, and adopt measures to prevent and control atmospheric pollution.<sup>196</sup> Additionally, the State, as provided in Article Three, is to take "measures to control or gradually reduce, in a planned way, the total amount of the major atmospheric pollutants discharged in different areas."<sup>197</sup> Article Six stipulates that the administrative department for environmental protection under the State Council shall establish the national standards for atmospheric environment quality.<sup>198</sup> Additionally,

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188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. Law on the Prevention and Control of Atmospheric (promulgated by the Nat'l People's Cong., Apr. 29, 2000) LAWINFOCHINA (last visited Mar. 8, 2007) (P.R.C.).

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

Article 46 establishes legal liability for any unit or individual that violates the law, depending on the circumstances of the particular case.<sup>199</sup>

On October 30, 1995, the NPC Standing Committee adopted the Law on the Prevention and Control of Environmental Pollution by Solid Waste of the People's Republic of China.<sup>200</sup> The law went into effect on April 1, 1996, and was later amended by the NPC Standing Committee on December 29, 2004.<sup>201</sup> While this law provided fairly comprehensive provisions for controlling pollution in the production process, it came up short with regards to the recycling and disposal of used products and packages.<sup>202</sup> In response, the revised law created a system of extended producer responsibility which stipulates that "the central government will carry out the compelling recovery system for part of products and packing, [and] the administrative department of the State council will establish the catalogue and methods."<sup>203</sup> The law also outlines the duties of the solid waste producer when separation, M&A, property transfer, withdrawal, dissolution, and bankruptcy occur.<sup>204</sup> Additionally, the revision promotes sustainable development and the need for a "circular economy by focusing "on the principles that polluters should take charge in accordance with the law and organizations [sic] and individuals should be encourage to pay attention to the concept of recycling."<sup>205</sup>

On October 29, 1996, the NPC Standing Committee adopted the *Law on Prevention and Control of Pollution from Environmental Noise of the People's Republic of China*, which went into effect on March 1, 1997.<sup>206</sup> The purpose of the law is to prevent and control environmental noise pollution, protect and improve the living environment, ensure human health, and promote economic and social development.<sup>207</sup> This law defines environmental noise pollution as noise which exceeds the environmental noise emitted limits set by the State and impairs people's daily life, work, and study.<sup>208</sup> Article Five provides "local people's governments at various levels shall, when drawing up urban and rural development plans, give full

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199. *Id.*

200. Law on the Prevention and Control of Environmental Pollution by Solid Waste (promulgated by the Nat'l People's Cong., Oct. 30, 1995) LAWINFOCHINA (last visited Mar. 8, 2007) (P.R.C.).

201. *Id.*

202. *Id.*

203. *Id.* art. 28–29.

204. *Id.* art. 29.

205. *Id.*

206. Law on Prevention and Control of Pollution from Environmental Noise (promulgated by the Nat'l People's Cong., Oct. 29, 1996) LAWINFOCHINA (last visited Mar. 8, 2007) (P.R.C.).

207. *Id.* art. 1.

208. *Id.* art. 2.

consideration to the impact of noise emitted by construction projects and regional development and renovation projects on the living environment of the neighbourhood [sic], make unified plans and rationally arrange the layout of the function areas and the buildings, in order to prevent or minimize environmental noise pollution.”<sup>209</sup> This law establishes prevention and control measures specifically for noise resulting from industry, construction, traffic, and social activities.<sup>210</sup>

On June 28, 2003, the NPC Standing Committee adopted the *Law on the Prevention and Control of Radiation Pollution of the People’s Republic of China*, which went into effect on October 1, 2003.<sup>211</sup> The purpose of this law is to prevent and control radioactive pollution, protect the environment, ensure human health, and promote the development and peaceful use of nuclear energy and technology.<sup>212</sup> The law establishes pollution and control measures for “radioactive pollution discharged in the course of site selection, construction, operation, and decommissioning of nuclear installations and in the cause of development and utilization of nuclear technology, uranium (thorium) and accompanying radioactive mines in the territory of the People’s Republic of China and in the territorial waters under its jurisdiction.”<sup>213</sup> Article Three presents an important aspect of this law as it stipulates that, when concerning the prevention and control of radioactive pollution, the State should apply the principles of putting prevention first, combine prevention and control measures, exercise rigorous control, and give priority to safety.<sup>214</sup>

## II. Legislation on Natural Resources Protection

On September 20, 1984, the NPC Standing Committee adopted the *Forest Law of the People’s Republic of China*, which was amended on April 29, 1998.<sup>215</sup> This law was formulated to: protect, nurture, and rationally utilize the forest resources, speed up the greening of the country’s territory, bring into play the roles of the forest in terms of storing water, saving soil, adjusting the climate, improve the environment, and supply

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209. *Id.* art. 5.

210. *See generally id.*

211. Law on the Prevention and Control of Radiation Pollution (promulgated by the Nat’l People’s Cong., June 28, 2003) LAWINFOCHINA (last visited Mar. 8, 2007) (P.R.C.).

212. *Id.*

213. *Id.* art. 2.

214. *See generally id.*

215. Forest Law (promulgated by the Nat’l People’s Cong., Apr. 29, 1988) LAWINFOCHINA (last visited Mar. 8, 2007) (P.R.C.).

forest products.<sup>216</sup> The law applies to the conduct of forest and forest tree cultivating, planting, logging and utilization, and in the operation and management of forests, trees and woodlands.<sup>217</sup>

Article Four divides the forests into five categories: (1) protection forests, (2) timber stands, (3) economic forests, (4) firewood forests, and (5) special use forests, which includes environmental protection forests.<sup>218</sup> The law also provides certain protective measures for the forest resources including: a quota on forest cutting and the encouragement of forest planting in order to expand the area of forest coverage; economic support or long-term loans to the collectives and private individuals who plant and cultivate forests according to relevant stipulations of the central and local people's governments; comprehensive utilization and saving on the use of timber and encouragement of the development and utilization of timber substitutes; forest cultivate levies used exclusively for forest planning and cultivation purposes; ensuring that coal and paper sectors shall apportion out of their output of coal, pulp, and paper a certain amount of funds to be used exclusively for the nurturing of mine timber and timber for paper making; and a forestry fund system.<sup>219</sup>

On June 18, 1985, the NPC Standing Committee adopted the *Grass Land Law of the People's Republic of China*, which was amended on December 28, 2002 and then went into effect on March 1, 2003.<sup>220</sup> The purpose of the law is to protect, develop and make rational use of grasslands, improve the ecological environment, maintain the diversity of living things, modernize animal husbandry, and promote the sustainable development of the economy and society.<sup>221</sup> The law establishes provisions for activities pertaining to grassland planning, protection, development, use, and management.<sup>222</sup> Article Three stipulates, "the State applies the principles of scientific planning, all-round protection, giving priority to the development of key grasslands, and rational use, in order to promote the sustainable use of grasslands and the harmonious development of the ecology, economy and society."<sup>223</sup>

On January 20, 1986 the NPC Standing Committee adopted the *Fishery*

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216. *Id.* art. 1.

217. *Id.* art. 2.

218. *See generally id.*

219. *Id.* art. 8.

220. Grassland Law (promulgated by the Nat'l People's Cong., June 18, 1985) LAWINFOCHINA (last visited Mar. 8, 2007) (P.R.C.).

221. *Id.* art. 1.

222. *Id.* art. 2.

223. *See generally id.*

*Law of the People's Republic of China*.<sup>224</sup> The purpose of this law is: (1) to enhance the protection of fishery resources, (2) increase the of development and reasonable utilization of fishery resources, (3) develop artificial cultivation, (4) protect fishery workers' lawful rights and interests, and (5) boost fishery production.<sup>225</sup>

On June 25, 1986, the NPC Standing Committee adopted the *Law of Land Administration of the People's Republic of China*, which was amended on August 29, 1998 by NPC and then went into effect on January 1, 1999.<sup>226</sup> In following the constitutional provisions of the People's Republic of China, the purpose of this law is: (1) to strengthen land administration, (2) maintain the socialist public ownership of land, (3) protect and develop land resources, (4) make proper use of land, (5) effectively protect cultivated land, and (6) promote sustainable development of the society and economy.<sup>227</sup> Under Article Four, the State formulates overall plans for land utilization.<sup>228</sup> Such plans define the purposes of use of land and classify land into three categories: (1) land for agriculture, (2) land for construction, and (3) unused land.<sup>229</sup> In addition, the State "shall rigidly restrict conversion of land for agriculture to land for construction, keep the total area of the land for construction under control, and give special protection to cultivated land."<sup>230</sup>

On January 21, 1988, the NPC Standing Committee adopted the *Water Law of the People's Republic of China*, which was amended on August 29, 2002 by NPC and then went into effect on October 1, 2002.<sup>231</sup> The law was formulated to promote "the rational development, utilization, preservation, and protection of water, for the prevention and control of water disasters, and for the sustainable utilization of water resources."<sup>232</sup> In addition, water resources shall be owned by the State.<sup>233</sup> Article Four provides that the development, utilization, preservation, and protection of water resources and the prevention and control of water disasters shall be carried out

224. Fishery Law (promulgated by the President, Jan. 20, 1986, effective Jul. 1, 1986) (1986) (P.R.C.), available at [http://english.sepa.gov.cn/zffg/fl/198601/t19860120\\_49705.htm](http://english.sepa.gov.cn/zffg/fl/198601/t19860120_49705.htm).

225. *Id.* art. 1.

226. Land Administration Law (adopted by the Standing Comm. of the Nat'l People's Cong., Aug. 29, 1998, effective Jan. 1, 1999, revised Aug. 28, 2004) (2004) (P.R.C.), available at [http://english.sepa.gov.cn/zffg/fl/198606/t19860625\\_49742.htm](http://english.sepa.gov.cn/zffg/fl/198606/t19860625_49742.htm).

227. *Id.* art. 1.

228. *Id.*

229. *Id.* art. 4.

230. *Id.*

231. Water Law (promulgated by the Nat'l People's Cong., Aug. 29, 2002) LAWINFOCHINA (last visited Mar. 8, 2007) (P.R.C.).

232. *Id.* art. 1.

233. *Id.* art. 3.

through comprehensive planning.<sup>234</sup> Such “planning shall seek both a temporary solution and a permanent cure, with emphasis on multipurpose use and achieving maximum benefits to take advantage of the multiple functions of water resources and harmonize water use in production and the environment.”<sup>235</sup>

On August 29, 1996, the NPC Standing Committee adopted the *Mineral Resources Law of the People’s Republic of China*, which went into effect on October 1, 1996.<sup>236</sup> This law was enacted to develop the mining industry and promote the exploration, development, utilization, and protection of mineral resources.<sup>237</sup> Mineral resources belong to the State.<sup>238</sup> As such, those seeking to explore or mine mineral resources shall separately make an application according to the law and shall register after obtaining the right of exploration or mining upon approval.<sup>239</sup> The State protects the right of exploration, mining from encroachment, and the order of production and other work in the mining and exploration areas from interference and disruption.<sup>240</sup> In addition, the State applies the principles of unified planning, rational geographical distribution, multi-purpose exploration, rational mining and multi-purpose utilization.<sup>241</sup>

### III. Legislation on Nature Conservation and Biodiversity Conservation

On June 7, 1985, the State Council promulgated the *Provisional Regulation on the Management of Scenic Resort*.<sup>242</sup> Article 10 provides that all important scenic spots, cultural relics, historical remains, and famous and/or ancient trees shall be investigated and certified.<sup>243</sup> Furthermore, protective measures shall be established and implemented for these resources.<sup>244</sup>

On January 8, 1988, the NPC Standing Committee adopted the *Law of the People’s Republic of China on the Protection of Wildlife*, which went

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234. *Id.*

235. *Id.*

236. Mineral Resources Law (promulgated by the Nat’l People’s Cong., Mar. 19, 1986) LAWINFOCHINA (last visited Mar. 8, 2007) (P.R.C.).

237. *Id.* art. 1.

238. *Id.* art. 3.

239. *Id.*

240. *Id.*

241. *Id.* at art. 7.

242. UNESCO, THE MAUSOLEUM AT QIN SHI HUANG: PERIODICAL MONITORING REPORT ON THE WORLD HERITAGE 29 (2002), available at <http://whc.unesco.org/archive/periodicreporting/cycle01/section2/441.pdf>.

243. *Id.*

244. *Id.*

into effect on March 1, 1989.<sup>245</sup> The purpose of this law is to protect and save rare or near extinct species of wildlife, to protect, develop and rationally utilize wildlife resources, and to maintain ecological balances.<sup>246</sup>

On March 1, 1992, the Forestry Ministry promulgated the *Implementation Regulation on the Protection of Terrestrial Wildlife*.<sup>247</sup> This law was formulated in accordance with the *Law of the People's Republic of China on the Protection of Wildlife*.<sup>248</sup> Article Two defines the term "terrestrial wildlife" as species of wildlife which are precious or being endangered and the species which are beneficial or of important economic and scientific research value.<sup>249</sup> Article Seven establishes the creation of surveys and records of wildlife resources in order to provide the basis for the planning of the protection and development of wildlife resources and the preparation of the list or revised list of wildlife species under special protection by the State or local authorities.<sup>250</sup> This law also prohibits any damage to the living and breeding areas or the living conditions of wildlife under special protection by the State or local authorities.<sup>251</sup>

On September 17, 1993, the Agricultural Ministry promulgated the *Implementation Regulation on the Protection of Aquatic Wildlife*.<sup>252</sup> This law seeks to manage and conserve wild aquatic animal resources.<sup>253</sup> The competent departments of fishery administration shall establish surveys of wild aquatic animals on a regular basis, in order to provide the basis for the planning of the protection and development of wild aquatic animal resources and the preparation of the list or revised list of wild aquatic animal under special protection by the State or local authorities.<sup>254</sup> The law prohibits catching or killing wild aquatic animal species under special protection.<sup>255</sup> The catching of a wild aquatic animal, however, may be allowed upon issuance of a license and for the following purposes: scientific research or production of medicines; education or exhibition;

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245. Law of the Protection of Wildlife (promulgated by the Nat'l People's Cong., Aug. 28, 2004) LAWINFOCHINA (last visited Mar. 8, 2007) (P.R.C.).

246. *Id.*

247. Implementation Regulation on the Protection of Terrestrial Wildlife (promulgated by the Nat'l People's Cong., Mar. 1, 1992) LAWINFOCHINA (last visited Mar. 8, 2007) (P.R.C.).

248. *Id.* art. 1.

249. *Id.*

250. *Id.*

251. *Id.* art. 8.

252. Regulations for the Implementation Regulation on the Protection of Aquatic Wildlife (promulgated by the Nat'l People's Cong., Nov. 8, 1988), available at <http://www.china.org.cn/english/environment/34349.htm> (P.R.C.).

253. *Id.*

254. *Id.*

255. *Id.*

domestication or breeding of wild aquatic animal; or other special reasons.<sup>256</sup>

On June 29, 1991, the NPC Standing Committee adopted the *Law of the People's Republic of China on Water and Soil Conservation*.<sup>257</sup> This law was enacted to prevent and control soil erosion, protect and rationally utilize water and soil resources, mitigate disasters of flood, drought and sandstorm, and improve the ecological environment and the development of production.<sup>258</sup> Article Four provides, "the state shall, in relation to the work of water and soil conservation, implement the policy of prevention first, overall planning, comprehensive prevention and control, adoption of measures suited to local conditions, strengthening management and stress on beneficial results."<sup>259</sup>

On December 1, 1994, the State Council promulgated the *Regulation on the Management of Natural Reserves*.<sup>260</sup> The purpose of this law is to strengthen the development and management of natural reserves and to protect the natural environment and natural resources.<sup>261</sup> Article Two provides

natural reserves refer to areas under special protection and management that are set aside from the land, terrestrial bodies of water or oceans. According to the law, special attention is placed on locations of protected objects, such as representative natural eco-systems, natural concentration and distribution areas of precious and endangered wild fauna, flora species and natural relics.<sup>262</sup>

Additionally, under Article 11, natural reserves can be divided into national natural reserves or local natural reserves.<sup>263</sup>

On September 30, 1996, the State Council promulgated the *Regulation on the Protection of Wild Plant*, which went into effect on January 1, 1997.<sup>264</sup> This law was enacted to protect, develop and rationally utilize wild

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256. *Id.*

257. Law on Water and Soil Conservation (promulgated by the Nat'l People's Cong., June 29, 1991) LAWINFOCHINA (last visited Mar. 8, 2007) (P.R.C.).

258. *Id.* art. 1.

259. *Id.*

260. Regulation on the Management of Natural Reserves (promulgated by the Nat'l People's Cong., Dec. 1, 1994), available at [http://www.chinaculture.org/gb/en\\_aboutchina/2003-09/24/content\\_21464.htm](http://www.chinaculture.org/gb/en_aboutchina/2003-09/24/content_21464.htm) (P.R.C.).

261. *Id.* art. 1.

262. *Id.*

263. *Id.*

264. Regulation on the Protection of Wild Plants (promulgated by the Nat'l People's Cong.,

plant resources, retain the biodiversity, and maintain ecological balances.<sup>265</sup> The law generally provides for the protection and administration of wild plants.<sup>266</sup> Article 10 establishes two categories for wild plants, one under special protection by the state and one under special protection by localities.<sup>267</sup>

On May 23, 2001, the State Council promulgated *Regulations on Safety of Agricultural Genetically Modified Organisms*.<sup>268</sup> The purpose of this law is to strengthen the safety administration of agricultural genetically modified organisms (GMOs), safeguard human health and safety of animals, plants, and microorganisms, protect the environment, and promote research on agricultural GMOs.<sup>269</sup> The law provides measures related to the research and testing, supervision and inspection, production and processing, marketing, and import and export of GMOs.<sup>270</sup> Article Three defines GMOs as “animals, plants, microorganisms, and their products whose genomic structures have been modified by genetic engineering technologies for the use in agricultural production or processing.”<sup>271</sup> Additionally, Article Eight provides for a labeling system of GMOs.<sup>272</sup>

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Sep. 30, 1996), available at [http://english.sepa.gov.cn/zffg/fg/zrbhwaq/199606/t19960630\\_49893.htm](http://english.sepa.gov.cn/zffg/fg/zrbhwaq/199606/t19960630_49893.htm) (P.R.C.).

265. *Id.* art. 1.

266. *Id.*

267. *Id.*

268. Regulation on Safety of Agricultural Genetically Modified Organisms (promulgated by the Nat'l People's Cong., May 9, 2001), available at <http://english.biosafety.gov.cn/image20010518/5420.pdf> (P.R.C.).

269. *Id.* art. 1.

270. *Id.*

271. *Id.*

272. *Id.* art. 3.

