

# China's Environmental Administrative Enforcement System

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Over the past three decades, the Chinese government has established a comprehensive environmental legal system and organizational infrastructure to address the increasing environmental degradation that has resulted from its unprecedented economic growth. As of 2008, approximately 3,000 local environmental protection bureaus (EPBs) with about 180,000 staff members were working at the sub-national level throughout the nation.<sup>1</sup>

This Comment presents an overview of China's environmental administrative enforcement primarily regarding pollution control. It introduces the institutional framework of China's environmental enforcement at the national and local levels and discusses the role of citizens and courts. The main challenges with China's environmental enforcement are also presented.

## I. Overall Institutional Framework of China's Environmental Enforcement

The Chinese environmental administration reflects the basic features of the Chinese state, which is a multilayered institutional structure with territorial divisions at the center, province, city, county, township, and village levels.<sup>2</sup>

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At the top is the Ministry of Environmental Protection (MEP), a cabinet-level ministry in the executive of the Chinese government. Directly under the State Council, the MEP has 15 divisions and is primarily charged with the task of protecting China's air, water, and land from pollution and contamination. Examples of the MEP's primary responsibilities are to organize the formulation of national policies, laws, and regulations, to develop national environmental quality and pollutant discharge standards, to guide and coordinate major environmental problems, e.g., severe pollution accidents, at the regional and local levels, to formulate pollution reduction programs and supervise their implementation, and to manage environmental monitoring, statistics, and information.

While the MEP is primarily responsible for supervising local environmental enforcement, it has also taken direct enforcement measures.<sup>3</sup> This has often been done through special environmental enforcement campaigns launched in cooperation with local EPBs. Almost every year, the MEP initiates countrywide campaigns to address specific environmental problems, such as excessive pollution from Township and Village Industrial Enterprises, prevention of accidents in the chemical sector, pollution from mining activities, etc. For example, the MEP launched a major campaign in 2005 to enforce the Environmental Impact Assessment (EIA) Law, which came into effect in September 2003.<sup>4</sup> The campaign, widely known as the "Environmental Protection Storm," started with a nationwide public education program on the EIA Law. In an unprecedented move, the MEP slapped "regional permit restrictions" on four cities and four major power companies, suspending approval of any new projects until they brought their existing facilities into compliance with environmental regulations. The campaign even halted some Three Gorges-related dam construction activities. However, the construction

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1. MINISTRY OF ENVIRONMENTAL PROTECTION (MEP), 2008 BULL. CHINA'S ENVTL. STAT. (in Chinese), available at [http://zls.mep.gov.cn/hjtj/qghjtjgb/200909/t20090928\\_161740.htm](http://zls.mep.gov.cn/hjtj/qghjtjgb/200909/t20090928_161740.htm).  
2. Kenneth Lieberthal, *China's Governing System and Its Impact on Environmental Policy Implementation*, 1 CHINA ENV'T SERIES 3-8 (1997).

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3. ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD), ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT IN CHINA: AN ASSESSMENT OF CURRENT PRACTICES AND WAYS FORWARD (2006), available at <http://www.oecd.org/dataoecd/33/5/37867511.pdf>.  
4. *Id.*

activities were soon permitted to continue after additional documentation was provided.

The MEP is replicated at the provincial, city, city-district/county level, and, in some places, township level, in units known as EPBs.<sup>5</sup> Like most local government agencies in China's unique bureaucratic system, local EPBs must be responsive to two leaders: the administratively higher tier EPB; and the local governments where they reside. Under this **dual leadership, the MEP and provincial EPBs provide** city EPBs with policy directives and guidance for the implementation of national and provincial environmental regulations. District and county EPBs are below the city level in the Chinese bureaucracy, and thus receive guidance from city EPBs. Therefore, the chief responsibility of EPBs at and below the provincial levels are to enforce laws and policies designed by the MEP and to assist in drafting local rules to supplement central ones. Monitoring, recordkeeping, fee collection, on-site inspection, and violation and accident investigation are also assigned to them.

However, it is local governments, not the MEP or higher tier EPBs, that provide local EPBs with their annual budgetary funds, approve institutional advancements in rank, and appoint the bureau directors.<sup>6</sup> As a result, the local government is considered to be the more powerful of local EPB's two administrative supervisors. Local EPBs are so dependent on local governments that they must take those governments' concerns into account when regulating polluting sources or taking enforcement actions. The MEP has limited control over the priority and activities of local EPB enforcement.

To strengthen its influence at the local level, by 2009, the MEP had created six regional "environmental protection supervision centers" (known as "regional environmental watchdogs").<sup>7</sup> These centers were modeled directly after the U.S. Environmental Protection Agency's Regional Office system. Under the sole and direct leadership of the MEP, each center is entrusted with supervision of local enforcement and with coordination and resolution of major and transboundary pollution disputes (involving multiple regulatory jurisdictions) and ecological destructive accidents. In practice, the centers have largely served to keep the MEP informed of important local problems and check on regulatory compliance violations of local polluters.<sup>8</sup> The centers themselves have limited autonomy. They have no monitoring capacity and rely on local EPBs for that. Nor may they engage in direct enforcement actions. Moreover, a center cannot direct the EPBs' work in its jurisdiction.

5. Abigail Jahiel, *The Organization of Environmental Protection in China*, CHINA Q. 757-87 (1998).

6. *Id.*

7. OECD, *supra* note 3.

8. Interview with the vice-director of a regional supervision center conducted by the author.

## II. Local Environmental Enforcement

In China, local EPBs have relied on a number of specific regulatory instruments for industrial pollution control. The most important ones, introduced by the 1989 Environmental Protection Law (EPL), include environmental quality and emission/discharge standards, "Three Synchronizations," EIA, Pollution Levy System (PLS), and the Discharge Permit System (DPS).<sup>9</sup> The MEP is authorized to establish national environmental quality standards, which are maximum allowable concentrations of pollutants in water, air, or soil, and national discharge/emission standards, which are maximum allowable concentrations of pollutants in industrial emissions or discharges. Those standards provide a basis for EPB inspections.

The "Three Synchronizations" requires that (1) the design, (2) the construction, and (3) the operation of a new industrial enterprise (or an existing factory expanding or changing its operations) be synchronized with the design, construction, and operation of an appropriate pollution treatment facility. Once the construction of the project is completed, inspection and approval by EPBs are required (for large projects, or in case of a dispute at the local level, the approval has to be confirmed by the national-level authority). If project operations begin without EPB approval, the owner of the project can be sanctioned. The 1989 EPL requires projects with potentially negative environmental effects to be subject to EIA before approval by local Development and Reform Commissions. The MEP conducts nationwide checks on the implementation of EIA, while local EPBs are responsible for the compliance of EIA requirements at the local level.

The PLS links an economic incentive for pollution reduction with sanctions in case of noncompliance. The polluting sources that refuse to register their waste releases or fail to pay the amount of due pollution levies face an administrative penalty. In practice, the actual levy paid by a firm is usually negotiated between the EPB and the firm, rather than calculated using formulas detailed in regulations. Under the DPS, EPBs issue permits that limit both the quantities and concentrations of pollutants in an enterprise's wastewater discharges and air emissions. DPS rules require enterprises to register with EPBs and apply for a permit. The discharge permits provide a basis for collecting pollution levies and are used to verify whether polluting sources discharge wastes illegally. The violations of the discharge permit requirements are subject to administrative penalties.

At present, the most common offenses found in practice are failure to comply with the EIA or "Three Synchronizations" requirements, noncompliance with environmen-

9. OECD, *supra* note 3. XIAOYING MA & LEONARD ORTOLANO, ENVIRONMENTAL REGULATION IN CHINA: INSTITUTIONS, ENFORCEMENT, AND COMPLIANCE (2000).

tal standards and failure to pay pollution levies, operating without necessary environmental permits, and failure to operate pollution control facilities.<sup>10</sup> The violations are usually detected by EPBs through regular inspections or by the victim, local public, or media, and then made known to EPBs. In most cases, violations are detected following citizen complaints.

After a violation is detected, EPB inspectors carry out on-site inspections (in the case of violations detected during EPB regular inspections, EPBs inspectors are already onsite) to gather evidence, sometimes working in tandem with environmental monitoring staffs who collect pollutant samples and generate monitoring results for verifying the violation.<sup>11</sup> This is difficult, because violators often do their utmost to obstruct EPB work. For example, they might refuse to provide relevant information, to sign the EPB on-site inspection documents, and might use personal connections to influence EPB work. On the basis of the evidence collected, inspectors write a sanction proposal and submit it to EPB leaders for review and a final sanction decision.

In principle, EPBs have jurisdiction over issuing several administrative sanctions, such as warning letters, fines, unlawful gains confiscation, stoppage of production or use, discharge permit revocation, enterprise closure, or relocation orders.<sup>12</sup> In reality, fines are the most frequently applied measure, while closing down a polluter, revoking its permits, or ordering it to stop production are seldom used, because the issuance of those sanctions needs approval from local leaders. Different levels of EPBs have different responsibility and authority to impose penalties. County EPBs can impose fines of up to 10,000 Chinese Yuan Renminbi (CNY) (approximately US\$ 1,500), and city EPBs can impose fines up to CNY 50,000, while provincial EPB can impose up to CNY 200,000. When deciding on the proposed sanction, EPBs look at the statutory sanction limitations and take into account such factors as the degree to which regulations were violated, the number of times violations occurred, and the response to the violation (whether voluntary corrective action was taken).

It is EPB leaders, not on-site inspectors, who exercise considerable discretion in deciding the types and amount of penalties imposed. EPB leaders often face tremendous external pressures in making a final sanction decision.<sup>13</sup> For example, they frequently need to consider “requests” from local leaders on behalf of violators in order to evade the punishment, the future relationships with violators (often influential local enterprises), interpersonal connections of violators with EPB leaders through which violators ask for favors of reducing or waiving fines. The maximum statutory penalty is rarely issued in practice.

Compliance schedules (“pollution control within deadlines”) are also frequently used: they require enterprises to

reduce their pollution releases to acceptable levels by specific dates. Cleanup deadlines for enterprises are usually imposed by the national or local governments, but EPBs can also be authorized to set such deadlines. Enterprises that do not abate pollution on time risk being fined or shut down. In recent years, the system was expanded by offering the possibilities for technological renovation, phaseout of outdated technologies and products, and promotion of cleaner production in exchange for extending the shutdown deadlines.

There are three verification procedures designed to check or review EPB administrative decisions: internal review; administrative review; and court review.<sup>14</sup> Internal review means that higher tier EPBs take initiatives to verify the enforcement work of lower tier EPBs. Administrative review of a county EPB decision can be carried out by a municipal EPB or by the legal office of the county government, when the latter receives a request from a regulated party who disagrees with the county EPB decision. Court review of EPB decisions is usually initiated by regulated parties under the Administrative Litigation Law (ALL).

### III. Role of Courts and Citizens in Local Environmental Enforcement

When administrative enforcement is insufficient or fails, noncompliance can be addressed through the courts in China. This can include actions ranging from gaining court assistance in collecting pollution levies or fines to criminal sanctions for serious environmental degradation. The ALL, which went into effect in 1990, permits citizens and organizations to sue administrative organs in court.<sup>15</sup> One provision of the ALL also allows courts to enforce the administrative decisions of agencies. In judicial practice, the annual number of lawsuits filed by agencies increased from 88,147 in 1993 to 217,488 in 2005, while that of cases filed by citizens merely climbed from 27,911 in 1993 to 96,178 in 2005; the average ratio of two types of cases filed under the ALL is 3.5:1.<sup>16</sup> This indicates that the ALL has largely empowered regulatory agencies.

Studies have found that court enforcement of EPB decisions has enhanced EPB regulatory power by generating notable deterrent effects on the regulated community.<sup>17</sup> Since the majority of the ALL cases filed by EPBs involved collection of pollution levies and fines from small tertiary industries, court enforcement has not had significant effects on pollution reduction. Although the number of the ALL cases brought by citizens is relatively small, research has found that many lawsuits, such as collective ones filed

10. Interviews with local EPB officials conducted by the author.

11. Interviews with local EPB officials conducted by the author.

12. OECD, *supra* note 3.

13. Benjamin van Rooij, *Organization and Procedure in Environmental Law Enforcement: Sichuan in Comparative Perspective*, 17 CHINA INFO. 36-64 (2003); Interviews with local EPB officials conducted by the author.

14. *Id.*

15. Pitman Potter, *The Administrative Litigation Law of the PRC: Judicial Review and Bureaucratic Reform*, in DOMESTIC LAW REFORMS IN POST-MAO CHINA 270-304 (Pitman B. Potter ed. 1994).

16. CHINA LAW YEARBOOK (1993 and 2005). The ratio is the author's calculation.

17. Xuehua Zhang et al., *Agency Empowerment Through the Administrative Litigation Law: Court Enforcement of Pollution Levies in Hubei Province, China*, CHINA Q. 307-26 (2010).

by citizens against EPBs for inaction, have brought fundamental changes to EPB enforcement procedures and practices.<sup>18</sup> It is these cases that demonstrate the ALL's long-term potential for placing EPB enforcement activities under the supervision of citizens and the courts.

While the 1979 EPL had previously authorized criminal prosecutions of serious pollution accidents, the 1997 amendments to the Criminal Law, for the first time, formally introduced into the criminal code that violation of environmental law would be subject to prosecution.<sup>19</sup> The Criminal Law now stipulates up to three years of imprisonment and/or a fine for individuals involved in illegally discharging pollutants. The police are charged with investigating environmental crimes together with the prosecutor's office. EPBs are consulted to facilitate the investigation and provide information. However, current laws are silent on such issues as liability for activities that are potentially dangerous and liability in the absence of either intent or negligence. Moreover, although a number of high-profile cases of environmental crime have been submitted to the courts, this avenue has generally not been used very often, due to difficulties in establishing causal relationships between pollution and harm, uncertainty over legal responsibility, and lengthy judicial procedures.

In recent years, the Chinese central government has increasingly emphasized the importance of public participation to improve local environmental enforcement and compliance. The most commonly used channel for citizen participation in environmental enforcement is the citizen complaints system. The majority of citizen complaints about the environment are lodged at local EPBs. The government has taken many important measures to encourage citizens to report environmental violations by polluting sources, so that EPBs can undertake quick enforcement actions. Examples of such measures are the passage of the national Environmental Complaint Management Measures in 1990, the revisions in 1997 and 2006 respectively, and a mandatory requirement of the nationwide installation of 24-hour telephone hotlines. As a result, the annual number of environmental complaints increased from 98,207 in 1993 to 738,304 in 2009 throughout the nation, an increase of about 650%.<sup>20</sup>

In many regions, accepting and responding to citizens' complaints has become the priority of local EPBs. EPBs are required to take complaints 24 hours per day, and many EPBs instituted a rotation system, whereby the entire staff of an EPB would rotate taking night shifts to answer phone calls. In urban areas, the EPB staff is required to arrive at the affected areas within two hours after receiving a complaint; this time limit extends to six hours in rural areas. To accommodate the high volume of citizen complaints, EPBs have each established internal structures and procedures

to accept complaints. In many localities, this includes a newly formed complaints department under the direction of the EPB administrative headquarters or supervision stations. This department is responsible for accepting letters, visits, phone calls, and e-mails, arranging follow-up inspections by the EPB supervisory station, and delivering responses to the complainants. In some localities, the reporting parties are rewarded financially for providing information on noncompliance.<sup>21</sup>

While citizen complaints have been a good supplementary source of information on pollution discharges for local EPBs, the complaint system has failed to identify in a timely or consistent manner some of the most important environmental violations that are also uncovered by EPBs' formal pollution data-gathering program.<sup>22</sup> This has primarily resulted from the dominance of complaints about nuisance noise problems, such as noisy air conditioning motors on apartment buildings. In practice, most reported complaints relate to noise pollution, followed by air and water pollution.

#### IV. Challenges for China's Environmental Enforcement

China has developed a robust set of environmental regulations and a comprehensive administrative setup, but implementation has been hobbled by systemic impediments. First, local EPBs' continuing dependence on local governments for funding, personnel arrangements, and resources has been a fundamental structural impediment to effective enforcement. The actions of EPBs are thus directed more by local governmental leaders than by the MEP, as those leaders' performance has been evaluated using criteria that emphasize gross domestic product growth, with little, if any, consideration of environmental performance. When stringent environmental enforcement has perceived negative impact on short-term economic development, local leaders frequently intervene in EPBs' work in order to ease environmental requirements. Such intervention has seldom had severe and predictable legal consequences, as China is still in its infancy of developing the rule of law.

Second, Chinese environmental laws are imperfect, and, in particular, EPBs have insufficient enforcement authority and consequently have low status. Chinese environmental laws and regulations are generally vague, broad, impractical, and difficult to enforce. They have granted local EPBs a wide range of enforcement responsibilities without a solid legal basis for their work. The laws usually grant EPBs certain punishment rights without specific punishment provisions. When facing violations, EPBs sometimes lack solid legal provisions to support their punishment decisions. Meanwhile, Chinese environmental laws do not grant EPBs enforcement measures

18. Xuehua Zhang & Leonard Ortolano, *Judicial Review of Environmental Administrative Decisions: Has It Changed the Behavior of Government Agencies?*, 64 CHINA J. 97-119 (2010).

19. OECD, *supra* note 3.

20. CHINA ENVIRONMENT YEARBOOK (1991 and 2009). The percentage is the author's calculation.

21. Xuehua Zhang, *Green Bounty Hunters: Engaging Chinese Citizens in Local Environmental Enforcement*, 11 CHINA ENV'T SERIES 137-53 (2010).

22. Mara Warwick & Leonard Ortolano, *Benefits and Costs of Shanghai's Environmental Citizen Complaints System*, 21 CHINA INFO. 237-68 (2007).

like the ones that other government agencies such as tax bureaus have. Local EPBs' status is regarded as low relative to other governmental departments.

Third, EPBs' insufficient funding, lack of qualified enforcement personnel, and infrastructure have all contributed to poor enforcement. The process of decentralization has resulted in more responsibilities delegated to local governments by the central government for addressing local problems without necessary means to fulfill them. This has created a revenue-raising problem for local EPBs. Without sufficient funds from local governments, particularly ones in the less-developed regions, many EPBs have continued to depend on revenues from the pollution levy to finance their operations. As a result, there has been a greater focus on collecting levies than pollution reduction. EPBs are also found to be involved in both conducting and preparing EIA documentation, as well as assessing EIAs required by the environmental laws—this creates conflicts of interests.

Moreover, when local governments in many regions cannot even pay the salaries of local officials, training for EPB staffs appears to be a nonessential luxury. The lack of qualified enforcement personnel and infrastructure has become increasingly severe at the county level, where the widespread relocation of polluting sources into the outskirts of major cities has been taking place. In general, a county EPB is more dependent on its county government

for resources than a city EPB is on its city government, and has less funding, less qualified enforcement personnel, and poorer infrastructure than a city EPB.

Fourth, the Chinese people represent an inefficiently and inadequately utilized resource in environmental enforcement. Although the number of environmental citizen complaints has increased dramatically in recent years, a significant portion of the complaints have focused on nuisance problems. As a result, such complaints have not provided as much important noncompliance information for local EPBs as might otherwise be expected. This has resulted in the misallocation of EPBs' already constrained enforcement resources, as local EPBs are required to respond to every single complaint swiftly.

Last, but not least important, there has been ineffective court enforcement of EPB decisions and insufficient court oversight of EPB enforcement activities. Many EPBs have largely relied on court assistance for collecting pollution levies and administrative fines; very few have used courts for pollution reduction purposes. Moreover, courts have received a significantly smaller number of lawsuits filed by citizens (compared with a large number of cases filed by EPBs) to challenge EPB decisions or against EPB's inaction; this has greatly limited the judicial oversight of environmental administrative enforcement.