

# Annual Review of Chinese Environmental Law Developments: 2018

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In China, the year 2018 witnessed important institutional changes for environmental protection and the development of some major environmental legislation. These included administrative restructuring; the revision and adoption of legislation on environmental impact assessment (EIA), soil pollution, and noise pollution; and a judicial interpretation on damage to the marine environment. This Comment summarizes some of the year's major developments.

## I. Restructuring of Administrative Agencies for Environmental Protection

The Chinese National People's Congress (NPC) approved a plan to restructure and streamline commissions and ministries under the State Council, the central government of China, on March 17, 2018.<sup>1</sup> This plan streamlined and restructured institutions for environmental protection at the national level by establishing new ministries and integrating administrative responsibilities.

### A. The New Ministry of Ecology and Environment

China's Ministry of Ecology and Environment (MEE) was established to replace the former Ministry of Environmental Protection (MEP) as the principal administrative agency for environmental protection at the national level.

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1. *State Council Institutional Reform Plan*, XINHUA NEWS AGENCY, Mar. 17, 2018, [http://www.gov.cn/xinwen/2018-03/17/content\\_5275116.htm](http://www.gov.cn/xinwen/2018-03/17/content_5275116.htm).

Compared with the former MEP, the new MEE has much greater authorities.

In addition to the responsibilities of the former MEP, the new MEE also integrated the responsibilities of the National Development and Reform Commission (NDRC) as to climate change and reduction of greenhouse gas emissions; the former Ministry of Land and Natural Resources as to pollution control of groundwater; the Ministry of Water Resources as to water function zoning,<sup>2</sup> regulation of pollutant discharges, and protection of the aquatic environment of catchments; the former Ministry of Agriculture as to agricultural nonpoint source pollution; the State Oceanic Administration on the protection of the marine environment; and the environmental protection responsibilities of the Office of the Construction Commission for South-to-North Water Division. The MEE retained the National Nuclear Safety Administration.<sup>3</sup>

### B. Other Commissions and Ministries With Environmental Protection Responsibilities

A new Ministry of Natural Resources (MNR) was established primarily on the foundation of the former Ministry of Land and Natural Resources. The new MNR also integrated the responsibilities of the NDRC as to the drafting of primary function zoning; the zoning responsibilities of the Ministry of Housing and Urban-Rural Construction; the responsibilities of the Ministry of Water Resources as

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2. The term "water function zoning" means zoning rivers and lakes into various areas allocated for various functions. The water function zoning is required by Article 32 of the Water Law of the People's Republic of China, which was adopted by the NPC Standing Committee on January 21, 1988, and revised on August 27, 2009, and July 2, 2016, successively. The MWR issued the Management Rules on Water Function Zones on July 1, 2003, effective on the same day. This document was replaced by the Supervision and Management Rules on Water Function Zones issued by the MWR on February 27, 2017, effective as of April 1, 2017. Technical standards were also adopted for the zoning of water function zones. Since different categories of water function zones correspond with different water quality requirements, the water function zoning in effect differentiates environmental requirements for surface waters.

3. *State Council Institutional Reform Plan*, *supra* note 1.

to the investigation of water resources and the confirmation and registration of water rights; the responsibilities of the former Ministry of Agriculture as to the investigation of grassland resources and the confirmation and registration of grassland rights; the responsibilities of the former National Forestry Administration as to resources investigation and the confirmation and registration of rights in forests and wetlands; the responsibilities of the State Oceanic Administration; and the responsibilities of the former National Administration of Surveying, Mapping, and Geoinformation.

The State Oceanic Administration was kept under the new MNR.<sup>4</sup> However, a new National Forestry and Grassland Administration was established to replace the former National Forestry Administration.<sup>5</sup> Some ministries and commissions were retained with adjusted responsibilities, for instance the Ministry of Water Resources.<sup>6</sup> Local governments at the provincial, districted city, and county levels have already begun or will begin to restructure their administrative agencies for environmental protection according to the institutional changes at the national level. This work is expected to be finished in 2019.

## II. Revision and Adoption of Major Legislation

### A. EIA Law

The NPC Standing Commission revised the EIA Law on December 29, 2018,<sup>7</sup> and issued the revised text of this law.<sup>8</sup>

#### I. Abolishing the Qualification Requirements for EIA Service Agencies

In the Chinese legal system, “qualification” is a kind of administrative licensing under the Administrative Licensing Law.<sup>9</sup> The 2018 revised EIA Law abolished the qualification requirement for EIA service agencies. Before this revision, an EIA service agency needed to get an administrative license, as evidenced by a certificate, from the former MEP or authorized local environmental protection

bureaus (EPBs). To obtain this licensing, an applicant EIA service agency needed to have a certain number of qualified EIA engineers as practitioners, and the qualification certificates of EIA engineers were also issued by the MEE and its predecessors.

Before the revision, only qualified EIA service agencies could draft EIA reports and EIA statements. A construction entity (i.e., the owner of a construction project) needed to engage a qualified EIA service agency to draft an EIA report or EIA statement if either was required for its construction project. After this revision, a construction entity may choose to engage EIA service agencies to conduct the EIA and draft the required EIA report or EIA statement, or it may conduct the EIA and draft the required EIA report or EIA statement itself if it has the capacity and technology.<sup>10</sup> However, the revised EIA Law does not specify how to determine whether a company has the capacity to make EIA and draft EIA reports or EIA statements.

This revision is a legislative confirmation of the elimination of the qualification of EIA service agencies by the State Council. In July 2017, the State Council revised the Administrative Regulations on Environmental Protection of Construction Projects.<sup>11</sup> The 2017 revision of these administrative regulations deleted the previous Article 6(2) requiring that the EIA work for construction projects be handled by entities with a corresponding qualification certificate.<sup>12</sup> The abolishing of the qualification requirements on EIA service agencies is part of the market-oriented deregulation initiative.

The MEE issued a public notice for temporary handling of follow-up issues after the abolition of the qualification requirements for EIA service agencies.<sup>13</sup> According to this public notice, a full-time qualified EIA engineer shall lead and perform the majority of the work of drafting EIA reports and EIA statements.

#### 2. Rules Ensuring EIA Quality

The abolition of qualification requirements for EIA service agencies does not mean that the EIA is unimportant or that the government will reduce EIA requirements; on the contrary, the government still stresses EIA requirements. The revised 2018 EIA Law contains the following rules to ensure the quality of EIA work:

- *Legal responsibility.* The revised EIA Law provides that construction entities shall ultimately

4. *Id.*

5. *Id.*

6. *Id.*

7. Decision of the NPC Standing Committee on the Revision of the Seven Laws Including the Labor Law of the People's Republic of China (adopted by the NPC Standing Committee Dec. 29, 2018, effective Dec. 29, 2018) [hereinafter NPC Standing Committee Decision of December 29, 2018], [http://www.npc.gov.cn/npc/xinwen/2018-12/29/content\\_2069934.htm](http://www.npc.gov.cn/npc/xinwen/2018-12/29/content_2069934.htm).

8. EIA Law of the People's Republic of China (adopted by the NPC Standing Committee Oct. 28, 2002, first revision by the NPC Standing Committee July 2, 2016, second revision by the Standing Committee Dec. 29, 2018, effective Dec. 29, 2018) [hereinafter 2018 revised EIA Law], [http://www.npc.gov.cn/npc/xinwen/2019-01/07/content\\_2070264.htm](http://www.npc.gov.cn/npc/xinwen/2019-01/07/content_2070264.htm).

9. Administrative Licensing Law of the People's Republic of China (adopted by the NPC Standing Committee Aug. 27, 2003, effective July 1, 2004), art. 12 [hereinafter Administrative Licensing Law], [http://www.gov.cn/gongbao/content/2003/content\\_62372.htm](http://www.gov.cn/gongbao/content/2003/content_62372.htm).

10. 2018 revised EIA Law, *supra* note 8, art. 19.

11. Administrative Regulations on Environmental Protection of Construction Projects (issued by the State Council Nov. 29, 1998, revised by the State Council July 16, 2017, effective Oct. 1, 2017), [http://www.gov.cn/gongbao/content/2017/content\\_5217733.htm](http://www.gov.cn/gongbao/content/2017/content_5217733.htm).

12. *Id.* art. 6(2).

13. Public Notice on Follow-Up Work Requirements After Abolition of Administrative License on Qualification of Environmental Impact Assessment for Construction Projects (for Temporary Implementation) (issued by the MEE Jan. 19, 2019, effective Jan. 19, 2019) [hereinafter Public Notice for the Interim Period], [http://www.mee.gov.cn/xxgk2018/xxgk/xxgk01/201901/t20190122\\_690420.html](http://www.mee.gov.cn/xxgk2018/xxgk/xxgk01/201901/t20190122_690420.html).

be responsible for the content and conclusions of EIA reports or statements, and EIA service agencies shall also take commensurate responsibilities.<sup>14</sup> This is reasonable because construction entities are both owners of construction projects and buyers of EIA services. It is also a subtle admission of the fact that EIA service agencies and their EIA engineers are not sufficiently independent from the clients. Under the revised EIA Law, both the entity and the responsible person are liable.

If there is a significant defect in an EIA report or statement, the construction entity is subject to an administrative fine ranging from half a million to two million Yuan and the responsible person of the construction entity is subject to an administrative fine ranging from 50,000 to 200,000 Yuan.<sup>15</sup> Defects in EIA include obvious insufficiency in the supporting information, significant defects, omission, or misrepresentation in content, or incorrectness or unreasonableness in the conclusion.<sup>16</sup>

For significant defects in EIA reports or statements, the EIA service agency may be assessed an administrative fine equivalent to three to five times the service fee collected or collectible from the construction entity. If the defect is serious, the EIA service agency may be prohibited from EIA work in the future,<sup>17</sup> and the leading and main EIA engineers may be prohibited from practice for five years. If the misconduct is so serious as to constitute a crime, they may be subject to life-long prohibition in addition to criminal liability.<sup>18</sup>

- *Supervision by governmental agencies.* The responsible administrative agencies for ecology and environment shall supervise and check the work quality of EIA service agencies. The administrative agencies for ecology and environment shall make a follow-up investigation into the environmental performance of construction projects after they are put into operation. If the follow-up investigation reveals that there were significant defects in the EIA, the construction entity, EIA service agencies, and their EIA engineers may be held liable. Further, the government should maintain a public record to record all misconduct of EIA service agencies and EIA engineers.
- *Technical standards and capacity-building.* Technical standards are important for conducting EIA and for checking the quality of EIA. The MEE shall develop technical standards, guidelines for capacity-building, and rules for supervising the EIA reports and statements.<sup>19</sup>

### 3. Implications for the Qualification of EIA Engineers

The qualification of EIA engineers is provided in three documents jointly issued by the former Ministry of Personnel and the former State Environmental Protection Administration (SEPA) in 2004.<sup>20</sup> According to these rules, to become a qualified EIA engineer, a person needs to get a certificate from the MEE or its predecessors after taking a test or passing the qualification processes on the basis of work experience and other factors. However, these documents do not meet the requirements of the Administrative Licensing Law, which provides that only laws of the NPC or NPC Standing Committee, administrative regulations of the State Council, decisions of the State Council, and local legislation may establish an administrative license.<sup>21</sup> These documents jointly issued by the former Ministry of Personnel and the former SEPA are lower in the hierarchy of legal rules and have no power to establish an administrative license.

Thus, technically speaking, the certification for EIA engineers has never had full legal basis as a threshold for EIA practitioners. Previously, the subordinate rules implementing the EIA Law required that an EIA service agency needed to have a certain number of qualified EIA engineers. Now that administrative licensing for EIA service agencies is abolished, the qualification requirement for EIA engineers is further weakened. Nevertheless, EIA engineers with qualification certificates are still quite welcome in the market, as the MEE temporarily still requires qualified EIA engineers to lead and perform the majority of the work of drafting EIA reports and EIA statements.<sup>22</sup>

### 4. Renaming the Supervising Administrative Agency

The new EIA Law also changed the wording for the supervising administrative agency, from the administrative agency in charge of environmental protection into the administrative agency in charge of ecology and environment, in parallel with the change of the former MEP into the newly established MEE.<sup>23</sup>

14. 2018 revised EIA Law, *supra* note 8, art. 20(1).

15. *Id.* art. 32(1).

16. *Id.*

17. *Id.* art. 32(2).

18. *Id.* art. 32(3).

19. *Id.* art. 19(2)-(3).

20. Provisional Rules on the Professional Qualification System of Environmental Impact Assessment Engineers (issued by the Ministry of Personnel and SEPA Feb. 16, 2004, effective Apr. 1, 2004), [http://rss.mee.gov.cn/rlzy/zyzggj/200402/t20040216\\_88832.shtml](http://rss.mee.gov.cn/rlzy/zyzggj/200402/t20040216_88832.shtml); Implementation Rules on the Professional Qualification Test of Environmental Impact Assessment Engineers (issued by the Ministry of Personnel and SEPA Feb. 16, 2004, effective Apr. 1, 2004), [http://rss.mee.gov.cn/rlzy/zyzggj/200402/t20040216\\_88833.shtml](http://rss.mee.gov.cn/rlzy/zyzggj/200402/t20040216_88833.shtml); Rules on the Professional Qualification Examination of Environmental Impact Assessment Engineers (issued by the Ministry of Personnel and SEPA Feb. 16, 2004, effective Apr. 1, 2004), [http://rss.mee.gov.cn/rlzy/zyzggj/200402/t20040216\\_88834.shtml](http://rss.mee.gov.cn/rlzy/zyzggj/200402/t20040216_88834.shtml); Provisional Rules on Registration and Administration of Professional Qualification of Environmental Impact Assessment Engineers (issued by SEPA Feb. 23, 2005, effective July 1, 2005), [http://www.mee.gov.cn/gkml/zj/wj/200910/t20091022\\_172332.htm](http://www.mee.gov.cn/gkml/zj/wj/200910/t20091022_172332.htm).

21. Administrative Licensing Law, *supra* note 9, arts. 14-17.

22. Public Notice for the Interim Period, *supra* note 13.

23. 2018 revised EIA Law, *supra* note 8, arts. 6(2), 9, 13, 16(3), 17(2), 22(1), 23, 31, and 34.

## B. *The Law on Prevention and Control of Soil Pollution*

The NPC Standing Committee adopted the Law on Prevention and Control of Soil Pollution on August 31, 2018.<sup>24</sup> This is the first national legislation directly and comprehensively addressing soil pollution, a serious environmental problem in China. This law will be very costly to enforce.

The main difficulties in drafting this law were how to allocate rights and obligations and how to establish an effective mechanism to control pollution and clean up the polluted soil. These issues are difficult not only because soil pollution is difficult to prevent and control, but also because of five fundamental transitions currently taking place in China: (1) economic development powered primarily by industrialization; (2) market-oriented economic reform; (3) social development driven primarily by urbanization; (4) transition to an information society driven by digital information and communication technologies; and (5) political reform to strengthen rule of law.<sup>25</sup>

This Soil Pollution Control Law prioritizes prevention and stresses the prevention and reduction of pollution at the source. Local EPBs at the districted city level or above shall, as required by the MEE, formulate a catalog of entities under special supervision within their respective administrative areas according to the discharge of toxic and hazardous substances. This catalog shall be open to the public and updated at appropriate times. Entities in this catalog shall control, monitor, and report pollution, and perform certain other obligations.<sup>26</sup> This law provides stringent obligations on farmers as well as producers and sellers of agricultural inputs.<sup>27</sup> Unpolluted soil shall be subject to special protection, particularly national parks and other nature reserves.<sup>28</sup>

This law provides for stringent responsibilities and liabilities. The parties responsible for soil pollution shall carry out the soil pollution risk control and remediation. If the responsible parties cannot be identified, the parties with land use rights shall carry out the soil pollution risk control and remediation.<sup>29</sup> The liable parties shall also bear expenses incurred for carrying out or organizing investigation into soil pollution, soil pollution risk assessment, risk control or remediation, assessment of risk control effects, assessment of remediation effects, or post-remediation management.<sup>30</sup>

In the event that the party responsible for the soil pollution changes, the succeeding entities or individuals shall

perform the obligation of soil pollution risk control and remediation and bear the relevant expenses.<sup>31</sup> This makes soil pollution a particularly important issue in the transfer of land use rights and in the merger and acquisition of corporations. Violators are subject to severe legal liability, including criminal liability for both the polluter companies and liable corporate management.<sup>32</sup>

## C. *The Law on Prevention and Control of Environmental Noise Pollution*

The NPC Standing Committee revised the Law on Prevention and Control of Environmental Noise Pollution on December 29, 2018.<sup>33</sup> This revision changed the inspection of regulated facilities for preventing or controlling environmental noise. Before the revision, the inspection was to be performed by the competent local EPB. After the revision, the inspection shall be conducted according to the standards and procedures prescribed by the state.<sup>34</sup>

Although the revised law does not provide who shall conduct the inspection, it is understood that it should be the project owner instead of the local EPB. The penalties for failing to meet the requirements on regulated facilities are also revised, so that a local EPB has the power to request correction within a prescribed period of time, order the polluter to stop operation, or report the violation to the local government that has the power to close the polluter's business.<sup>35</sup>

Similar to other environmental laws, this revision also changed the wording for supervising administrative authorities to accommodate the change of administrative agencies, notably the change of administrative agencies for environmental protection into the administrative agencies for ecology and environment,<sup>36</sup> and the change of administrative agencies for industry and commerce into the administrative agencies for market supervision.<sup>37</sup>

## D. *Revision of Laws to Accommodate the Restructuring of Governmental Environmental Protection Agencies*

The Wildlife Protection Law was revised to reflect the change of the former National Forestry Administration into the newly established National Forestry and Grass-

24. Law of the People's Republic of China on Prevention and Control of Soil Pollution (adopted by the NPC Standing Committee Aug. 31, 2018, effective Jan. 1, 2019) [hereinafter Soil Pollution Control Law], [http://www.npc.gov.cn/npc/xinwen/2018-08/31/content\\_2060158.htm](http://www.npc.gov.cn/npc/xinwen/2018-08/31/content_2060158.htm).

25. Mingqing You, *Changes and Challenges of the 2014 Revised Environmental Protection Law in the Context of China's Five Fundamental Transitions*, 45 HONG KONG L.J. 621 (2015).

26. Soil Pollution Control Law, *supra* note 24, art. 21.

27. *Id.* arts. 26-30.

28. *Id.* art. 31.

29. *Id.* art. 45.

30. *Id.* art. 46.

31. *Id.* art. 47.

32. *Id.* arts. 86-98.

33. NPC Standing Committee Decision of December 29, 2018, *supra* note 6. Law of the People's Republic of China on the Prevention and Control of Environmental Noise Pollution (adopted by the NPC Standing Committee Oct. 29, 1996, revised by the NPC Standing Committee Dec. 29, 2018, effective Dec. 29, 2018) [hereinafter 2018 revised Environmental Noise Control Law], [http://www.npc.gov.cn/npc/xinwen/2019-01/07/content\\_2070263.htm](http://www.npc.gov.cn/npc/xinwen/2019-01/07/content_2070263.htm).

34. 2018 revised Environmental Noise Control Law, *supra* note 33, art. 14(2).

35. *Id.* art. 48.

36. *Id.* arts. 6, 10(1), 11, 13(2), 15, 17(3), 20, 21(1), 24(1), 29, 42, 49-51, 52(2), 55, 56, 59, 60(2), and 61(2).

37. *Id.* art. 43(1).

land Administration.<sup>38</sup> The Law on the Prevention and Control of Air Pollution was revised to reflect the change of the former MEP into the newly established MEE<sup>39</sup>; the Law on the Prevention and Control of Desertification was revised to accommodate the newly established National Forestry and Grassland Administration, the MEE, and other restructured administrative agencies on agriculture<sup>40</sup>; the Law on the Promotion of Circular Economy was revised to accommodate the change of the former MEP into the newly established MEE and the change of the National Forestry Administration into the newly established National Forestry and Grassland Administration<sup>41</sup>; and the Environmental Protection Tax Law was revised to reflect the transfer of authorities from the State Oceanic Administration to the new MEE and the change of MEP into the MEE.<sup>42</sup>

### III. Judicial Interpretation for Marine Environmental Damage

The Supreme People's Court (SPC) issued a judicial interpretation on the handling of disputes over damages to marine natural resources and ecosystems on December 29, 2017, which was effective as of January 15, 2018.<sup>43</sup> This judicial interpretation is for lawsuits on damages to marine natural resources and ecosystems brought on the basis of Article 89(2) of the Marine Environmental Protection Law<sup>44</sup> (i.e., lawsuits arising from destruction of marine ecology, marine aquatic resources, or marine protected areas that causes significant losses to the state).<sup>45</sup>

For destruction of marine ecology, marine aquatic resources, or marine protected areas that causes significant losses to the state, the authorities performing marine environment supervision and administration duties shall claim compensation for damages against the accountable person(s) on behalf of the state.<sup>46</sup> This judicial interpretation should be consulted when a court hears compensation disputes arising from activities conducted at sea or on coastal land that threaten marine natural resources and ecosystems within the sea area under the jurisdiction of China.<sup>47</sup> However, this judicial interpretation does not necessarily apply to damages to marine natural resources

and ecosystems arising from ships. If laws, regulations, and judicial interpretations applicable to damages to marine natural resources and ecosystem arising from ships have provisions different from this Judicial Interpretation for Marine Environmental Damages, such laws, regulations, and judicial interpretations shall prevail.<sup>48</sup>

This judicial interpretation mainly specifies who shall have jurisdiction, who are the plaintiffs, and what is compensable. Marine courts shall have jurisdiction over these cases. China currently has 10 marine courts, which are at Beihai, Dalian, Guangzhou, Haikou, Ningbo, Qingdao, Shanghai, Tianjin, Wuhan, and Xia'men. Each court has jurisdiction over an area specified by the SPC. For a particular case, the jurisdiction is determined by the location where the damaging activity took place, where the damage result emerges, or where the precautionary measures were taken.<sup>49</sup> The damaging activities could happen at sea or on coastal land, within or without Chinese territory.<sup>50</sup>

The judicial interpretation reiterates the civil remedies and provides that a plaintiff may request that the defendant stop infringement, remove obstacles, eliminate the danger, restore to the original status, make an apology, compensate losses, or bear other civil liability.<sup>51</sup> The important point is that this judicial interpretation specifies the scope of compensation, which covers the following: (1) expenses for precautionary measures (i.e., expenses incurred for taking reasonable emergency response measures to reduce or prevent marine environment pollution, ecological deterioration, and the decrease in natural resources); (2) recovery expenses (i.e., the expenses needed for measures taken or to be taken to recover all or part of the damaged marine natural resources and ecosystem functions); (3) losses during the recovery period (i.e., the losses to marine natural resources and ecosystem functions before the partial or total recovery of damaged marine natural resources and ecosystem functions); and (4) investigation and assessment expenses (i.e., the expenses incurred for investigation, survey, and monitoring of a polluted area, and assessment of pollution and other risks, as well as the expenses of actual damage).<sup>52</sup>

Recovery expenses are limited to reasonable expenses that a party actually incurred or necessarily will incur, including expenses for making and implementing recovery plans as well as monitoring and supervision expenses. Future expenses for recovery and interim losses during the recovery period can be determined by the court based on the report of a qualified authentication and appraisal institution. The authentication or appraisal report shall comply with laws and regulations as well as technical standards issued by competent national governmental agencies. The

38. Decision of the NPC Standing Committee on Revising 15 Laws Including the Wildlife Protection Law of the People's Republic of China (adopted by the NPC Standing Committee Oct. 26, 2018, effective Oct. 26, 2018), [http://www.npc.gov.cn/npc/xinwen/2018-10/26/content\\_2064450.htm](http://www.npc.gov.cn/npc/xinwen/2018-10/26/content_2064450.htm).

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. Regulations of the Supreme People's Court on Several Issues Concerning the Hearing of Compensation Dispute Cases of Marine Natural Resources and Ecological Damage (issued by the SPC Dec. 29, 2017, effective Jan. 15, 2018) [hereinafter Judicial Interpretation for Marine Environmental Damages], <http://www.court.gov.cn/fabu-xiangqing-76502.html>.

44. *Id.* art. 1.

45. Marine Environmental Protection Law of the People's Republic of China [hereinafter MEPL] art. 89(2).

46. *Id.*

47. *Id.* art. 12(2).

48. *Id.* art. 12(3).

49. Judicial Interpretation for Marine Environmental Damages, *supra* note 43, art. 2.

50. MEPL, *supra* note 45, art. 2; Judicial Interpretation for Marine Environmental Damages, *supra* note 43, art. 2.

51. Judicial Interpretation for Marine Environmental Damages, *supra* note 43, art. 6.

52. *Id.* art. 7.

litigants can rebut such authentication or appraisal reports with contradictory evidence. Expenses for precautionary measures and expenses for investigation and appraisal shall be calculated according to the reasonable expenses actually incurred and that will necessarily be incurred in the future.

If the liable person has taken reasonable precautionary and recovery measures, which it claims to reduce the amount of compensation, the court shall support such claims.<sup>53</sup> Where the recovery expenses or interim losses are difficult to determine, a court may determine the amount of compensation in light of illegally obtained benefits or illegally reduced pollution control expenses. If it is impossible to determine such illegally obtained benefits or illegally reduced expenses, the court may make reference to the average income or average pollution control expenses of manufacturers or operators of the same kind during the corresponding period, as evidenced by relevant governmental statistics or other information.<sup>54</sup>

This judicial interpretation echoes the judicial interpretation on environmental torts and the judicial inter-

pretation on environmental public interest litigation (PIL). When hearing cases, courts can apply the judicial interpretation on environmental torts, the judicial interpretation on environmental PIL, or other judicial interpretations if there is no relevant provision in the current judicial interpretation.<sup>55</sup>

#### IV. Conclusion

The developments reviewed in this Comment are only part of China's efforts for environmental protection taken in 2018. Some minor developments are not reviewed here, including the revision of some administrative regulations to reflect the change of institutions for environmental protection. The model cases publicized by the SPC are also not reviewed here. Currently, several bills on environmental protection are in the NPC's legislative plan and more bills have been proposed to the NPC, which may result in additional developments in 2019.

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53. *Id.* art. 8.

54. *Id.* art. 9.

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55. *Id.* art. 12(1).