

ANNUAL REVIEW OF CHINESE ENVIRONMENTAL LAW DEVELOPMENTS: 2021

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In China, the year 2021 witnessed the further evolution of environmental protection and development of legislation and rulemaking. This included revision of the Law on the Prevention and Control of Noise Pollution and adoption of the Wetland Protection Law, the Regulations on Administration of Pollutant Discharge Permits, Measures for Administration of Carbon Emissions Trading, judicial interpretations on environmental injunctive orders, and some departmental rules. This Comment summarizes some of the year's major developments.

I. Law on the Prevention and Control of Noise Pollution

The Standing Committee of the National People's Congress (NPC Standing Committee) revised the Law of the People's Republic of China on the Prevention and Control of Noise Pollution on December 24, 2021.¹ This law revises the definition of "noise pollution," further specifies the rights and duties of relevant actors, and makes better use of some key regulatory tools.

A. Definition of "Noise Pollution"

The term "noise" is defined as sound generated from industry, construction, transportation, and social life that interferes with the surrounding living environment. The term "noise pollution" is defined as the phenomenon of generating noise in violation of applicable standards on discharge of noise pollution or without taking legally required pre-

ventive measures, and interfering with others' normal life, work, or study.²

However, this law excludes certain situations from its scope. The negative impact of worksite noise on an employee is excluded from this law. If a person is affected by worksite noise in the course of work, he or she may not seek remedies from the Law on the Prevention and Control of Noise Pollution and may only seek remedies in labor law and other relevant laws.

B. Rights and Duties Related to Noise Pollution

This revision further specifies the duties of the local governments and the rights of the public, and adds the role of "grassroots autonomous organizations."

The revision further specifies the duty of local governments to prevent and control noise pollution in line with the general requirements of the Environmental Protection Law of the People's Republic of China, as revised in 2014.³ According to the revision, local governments at all levels are responsible for the environmental quality standards of their respective administrative regions. The State evaluates the performance of local governments as to their efforts to prevent and control noise pollution.⁴

Local governments at or above the county level shall specify the duties of various relevant departments in the prevention and control of noise pollution, and establish coordination mechanisms if necessary to promote inter-departmental coordination and information-sharing.⁵ If a county or districted city fails to meet the national environmental quality standard on noise, the local government of the county or districted city shall make timely plans to

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1. Law of the People's Republic of China on the Prevention and Control of Noise Pollution (adopted by the NPC Standing Committee Dec. 24, 2021, effective June 5, 2022), NPC STANDING COMM. GAZETTE, Issue 1 of 2022, at 58-68 [hereinafter Law on the Prevention and Control of Noise Pollution].

2. *Id.* art. 2.

3. Environmental Protection Law of the People's Republic of China (adopted by the NPC Standing Committee Dec. 26, 1989, revised by the NPC Standing Committee Apr. 24, 2014, effective Jan. 1, 2015), NPC STANDING COMM. GAZETTE, Issue 3 of 2014, at 332-39, art. 6(2) [hereinafter Environmental Protection Law]; see also Mingqing You & Yan Wang, *Annual Review of Chinese Environmental Law Developments: 2014*, 45 ELR 10419, 10419-23 (May 2015).

4. Law on the Prevention and Control of Noise Pollution, *supra* note 1, art. 6.

5. *Id.* art. 7.

improve environmental quality.⁶ This indicates that the county government and governments of districted cities are primarily responsible for the prevention and control of noise pollution, although local governments at all levels are responsible.

The revision further specifies that the public has the right to information, the right of participation, and the right to report violations. When making plans to control noise pollution and demarcating the scope of application of relevant environmental standards, the government shall make this information available to the public.

The role of “grassroots autonomous organizations” is new to environmental law. The so-called grassroots autonomous organizations include villagers’ committees in rural areas and residents’ committees in urbanized areas. Technically, they are not governments; however, they can assist in governmental work. Therefore, the Law on the Prevention and Control of Noise Pollution provides that grassroots autonomous organizations shall assist local governments and their departments in the prevention and control of noise pollution.⁷

C. Key Regulatory Tools on Noise Pollution

The environmental quality standard for noise is the first regulatory tool. The Ministry of Ecology and Environment (MEE) has authority to make environmental standards, and issued the Environmental Quality Standard for Noise (GB 3096-2008) in 2008.⁸ The revised Law on the Prevention and Control of Noise Pollution adds a new term—“area centered with noise-sensitive buildings”—and requires stricter law enforcement in such areas.⁹

The emission standard is another regulatory tool. The revised Law on the Prevention and Control of Noise Pollution requires the governmental agency in charge of standardization to make noise emission standards in consultation with various other governmental departments for industrial equipment, machinery, vehicles, and other products. Producers are required to specify the maximum limits of noise emissions in relevant technical documents. Products exceeding such limits are prohibited from being produced, imported, or sold.¹⁰ So far, the MEE has issued noise emission standards for motorcycles, but has not done so for other products.

II. Wetland Protection Law

The NPC Standing Committee adopted the Wetland Protection Law of the People’s Republic of China on Decem-

ber 24, 2021, which goes into effect on June 1, 2022.¹¹ This law’s purpose is to protect wetlands in the territory of China and to perform China’s obligations under the Convention on Wetlands of International Importance Especially as Waterfowl Habitat (the Ramsar Convention). The Convention entered into force as to China on July 31, 1992, and China currently has 64 sites designated as Wetlands of International Importance (Ramsar Sites), with a surface area of 7,326,952 hectares. China will host the Ramsar 14th Conference of the Parties November 21-29, 2022. The adoption of the Wetland Protection Law is partly because of this event.

In the Wetland Protection Law, the term “wetland” refers to natural or artificial, perennial or seasonal waterlogged zones, and water areas with notable ecological functions, including sea areas with a water depth of not more than six meters at low tide, but excluding paddy fields and artificial water areas and tidal flats used for aquaculture.¹²

A. Authorities in Wetland Protection

The protection of wetlands calls for the concerted work of different governmental agencies, and the implementation of the Wetland Protection Law is intertwined with the implementation of other laws such as the Water Law,¹³ the Law on the Prevention and Control of Water Pollution,¹⁴ and the Fishery Law,¹⁵ to name a few. For these reasons, the Wetland Protection Law provides that the agency in charge of forestry and grassland under the State Council shall be the principal governmental agency for the protection of wetlands. This law provides that other governmental agencies also have related authority, including governmental agencies in charge of natural resources, water administration, housing and urban-rural development, ecology and environment, agriculture, and rural affairs.¹⁶ The authorities are distributed in a like manner at the local level.

6. *Id.* art. 20.

7. *Id.* art. 8(3).

8. Environmental Quality Standard for Noise (GB 3096-2008) (issued by the MEE Aug. 19, 2008, effective Oct. 1, 2008), <https://www.mee.gov.cn/ywgz/fgbz/bz/bzwb/wlhj/shjzlbz/200809/W020111121351590491445.pdf>.

9. Law on the Prevention and Control of Noise Pollution, *supra* note 1, art. 14.

10. *Id.* art. 16(2).

11. Wetland Protection Law of the People’s Republic of China (adopted by the NPC Standing Committee Dec. 24, 2021, effective June 1, 2022), NPC STANDING COMM. GAZETTE, Issue 1 of 2022, at 21-28 [hereinafter Wetland Protection Law].

12. *Id.* art. 2.

13. Water Law of the People’s Republic of China (adopted by the NPC Standing Committee Jan. 21, 1988, revised by the NPC Standing Committee Aug. 29, 2002, first amended by the NPC Standing Committee Aug. 27, 2009, second amendment by the NPC Standing Committee July 2, 2016, effective Sept. 1, 2016), NPC STANDING COMM. GAZETTE, Issue 4 of 2016, at 650-58.

14. Law of the People’s Republic of China on the Prevention and Control of Water Pollution (adopted by the NPC Standing Committee May 11, 1984, first amended May 15, 1996, revised Feb. 28, 2008, subsequently amended June 27, 2017, effective Jan. 1, 2018), NPC STANDING COMM. GAZETTE, Issue 4 of 2017, at 489-501; *see also* Mingqing You, *Annual Review of Chinese Environmental Law Developments: 2017*, 48 ELR 10389, 10390-91 (May 2018).

15. Fishery Law of the People’s Republic of China (adopted by the NPC Standing Committee Jan. 20, 1986, first amended by the NPC Standing Committee Oct. 31, 2000, second amendment by the NPC Standing Committee Aug. 28, 2004, third amendment by the NPC Standing Committee Aug. 27, 2009, fourth amendment by the NPC Standing Committee Dec. 28, 2013), NPC STANDING COMM. GAZETTE, Issue 1 of 2014, at 32-37.

16. Wetland Protection Law, *supra* note 11, art. 5.

B. Key Regulatory Tools for Wetland Protection

This law requires the State to establish and operate an information collection and disclosure system. The competent department of natural resources under the State Council shall, jointly with other relevant departments with responsibilities for forestry and grassland under the State Council, regularly carry out the investigation and evaluation of wetland resources nationwide; investigate the type, distribution, area, biological diversity, protection, and utilization of wetlands; and establish a unified information release and sharing mechanism.¹⁷ The information so collected is the basis of governmental work and public participation.

This law requires the State to maintain a minimum total quantity of wetlands at the national level as well as at the provincial level. Maintenance of this total quantity of wetlands is one of the targets of wetland protection. The national government determines the minimum national total quantity of wetlands as well as the minimum quantity of each province, autonomous region, or municipality directly under the State Council. Local governments at all levels shall take necessary measures to reach the target quantity of wetlands.¹⁸

This law requires the State to implement a hierarchical management and catalogue system for wetlands. The wetlands are classified as “important wetlands” or “ordinary wetlands,” and important wetlands are further classified into important wetlands at the national level or at the provincial level. Wetlands not listed as important at the national level or provincial level are ordinary wetlands. All wetlands of international importance shall be listed as important wetlands at the national level.

The national list of important wetlands shall be issued by the national agency in charge of forestry and grassland, currently the National Forestry and Grassland Administration, after consultation with other governmental agencies in charge of agriculture, water resources, and other related matters. The list of important wetlands at the provincial level shall be issued by the respective governments at the provincial level or their designated agencies. The list of ordinary wetlands shall be issued by local governments at or above the county level or their designated agencies.¹⁹

This law prioritizes ecological values and restrains the use of wetlands. Wetlands have different potential uses and affect the interests of different stakeholders. One important potential use is for agriculture and fisheries. Villages and farmers are important stakeholders in wetlands and their protection. Urban development affects wetlands because some housing projects use wetlands as scenery and change their natural condition, while other housing projects remove wetlands and transform them into built surfaces. China witnessed a rapid urbanization in past decades, and many wetlands were completely or partly converted into land for housing projects.

This law provides that the State shall strictly control the occupation and use of wetlands for other purposes. It is prohibited to occupy national important wetlands, except for national major projects, disaster prevention and mitigation projects, important water conservation and protection facilities projects, wetland protection projects, and the like.²⁰ Some uses of wetlands are prohibited,²¹ restricted, or encouraged.²²

The restoration and replacement of wetlands are required for the occupation and use of important wetlands. Except for limited situations, an entity legitimately approved to occupy and use important wetlands shall restore or rebuild wetlands with equivalent area and quality to the occupied wetlands according to the local natural conditions. If it is infeasible to restore or rebuild wetlands, a wetland restoration fee shall be payable.²³

III. Regulations on Administration of Pollutant Discharge Permits

The State Council issued the Regulations on Administration of Pollutant Discharge Permits on January 24, 2021, which were implemented on March 1, 2021.²⁴ This formal rule is based on more than a decade of pilot projects, and is a response to the requirement of the Environmental Protection Law to establish a pollutant discharge permit system.²⁵ The responsibility to implement these regulations mainly lies with the MEE at the national level and the corresponding agencies at the local level.

The regulations classify polluters into three categories: those subjected to enhanced supervision, those subjected to simplified supervision, and those exempted from the permit requirement. If a polluter is a key polluter, it will necessarily be subject to enhanced supervision. The MEE will issue further rules on the scope and classification of polluters subject to the permit requirements.²⁶

The requirements in a permit are determined by the licensing agency based on factors of the applicant as well as the place where the applicant is located. Applicant factors include the type, quantity, and concentration of pollutants, compliance with applicable standards on pollutant discharge, and other factors. If a polluter is at a place that falls short of requirements of applicable national environmental quality standards, the polluter shall meet the special requirements of local governments on the improvement of environmental quality.²⁷ In other words, the local government will impose special control on pollutant discharge on all polluters of regions or river basins that fall short of the

17. *Id.* art. 12.

18. *Id.* art. 13.

19. *Id.* art. 2.

20. *Id.* art. 19.

21. *Id.* art. 28.

22. *Id.* art. 26.

23. *Id.* art. 21.

24. Regulations on Administration of Pollutant Discharge Permits (issued by the State Council Jan. 24, 2021, effective Mar. 1, 2021), STATE COUNCIL GAZETTE, Issue 5 of 2021, http://www.gov.cn/gongbao/content/2021/content_5587653.htm.

25. Environmental Protection Law, *supra* note 3, art. 45.

26. Regulations on Administration of Pollutant Discharge Permits, *supra* note 24, art. 2.

27. *Id.* art. 11.

national environmental quality standards, and polluters are only eligible for a pollutant discharge permit if they meet such special controls.

IV. Measures for Administration of Carbon Emissions Trading

The MEE issued Measures for Administration of Carbon Emissions Trading (for trial implementation) on December 25, 2020, which were implemented on February 1, 2021.²⁸ This document provides rules governing the allocation, transfer, and use of carbon emission quotas for the purpose of carbon emissions trading, and establishes a national carbon emissions trading market. Before the adoption of this document for nationwide implementation, China initiated seven regional pilot projects, each a regional emission trading market.

This national market covers emitters meeting the following two conditions: (1) the emitter belongs to an industry that is covered by the national emissions trading market, and (2) the emitter's emissions reach 26,000 tons of carbon equivalent. If an emitter emits less than 26,000 tons of carbon equivalent for two successive years or has ceased its production, it will be removed from the national emissions trading market. The bureaus of ecology and environment at the provincial level are responsible for making and revising the list of emitters covered by the national emissions trading market.

The bureaus of ecology and environment at the provincial level will be responsible for distributing emission quotas to emitters. The quotas are mostly distributed free of charge, but emitters may need to pay for emission quotas in the future. Each year, emitters need to submit their quotas equal to their actual emissions before March 31. If an emitter has fewer quotas, it may purchase quotas from other emitters. Other emitters who have a surplus may sell their quotas; this is the trading aspect. To force emitters to reduce their emissions by themselves, this document provides that an emitter may use not more than 5% of the Chinese Certified Emission Reduction to satisfy its obligation to submit emission quotas.

This document also provides for the authority and responsibilities of the MEE and bureaus of ecology and environment of different levels. In addition, it provides for monetary penalties and the reduction of emission quotas of the succeeding year for violations by emitters, which include monetary penalties.

28. Measures for Administration of Carbon Emissions Trading (for Trial Implementation), STATE COUNCIL GAZETTE, Issue 7 of 2021, http://www.gov.cn/gongbao/content/2021/content_5591410.htm.

V. Judicial Interpretation on Injunctive Orders in Ecological and Environmental Torts

The Supreme Court issued its Judicial Interpretation on the Awarding of Injunctive Orders in Ecological and Environmental Tort Cases on December 27, 2021, which was implemented on January 1, 2022.²⁹ The legal basis of this judicial interpretation includes the Civil Code,³⁰ the Environmental Protection Law,³¹ the Civil Procedure Law,³² and other relevant laws.

The injunctive orders under this judicial interpretation are interlocutory. This judicial interpretation is applicable to situations where the respondent is committing or is about to commit conduct that pollutes the environment or disrupts the ecosystem, and where the damages will be hard to remedy without a timely prohibition.³³ The applicant may be natural persons, juridical persons, unincorporated organizations, or authorities stipulated by the State or organizations specified by the law within the meaning of Articles 1234 and 1235 of the Civil Code.³⁴

If a respondent submits an application for injunctive order when bringing a civil lawsuit or during the litigation, the court shall make a ruling within five days. If the circumstances are urgent, the applicant may submit an application for injunctive order before bringing a lawsuit to the competent court of the place where the act polluting the environment or disrupting the ecosystem occurs or where the damage occurs. The court shall make a ruling within 48 hours after receiving the application.³⁵

The applicant needs to submit certain proof when submitting an application for an injunctive order. The key point is to prove that the respondent is conducting or is about to conduct an act polluting the environment or disrupting the ecosystem and that irreparable damage will occur if such conduct is not timely prohibited. The applicant needs to provide a guarantee or submit reasons why a guarantee is unnecessary.³⁶

When the respondent's act poses an actual and immediate significant risk to the environment or ecosystem and the

29. Judicial Interpretation of the Supreme People's Court on the Awarding of Injunctive Orders in Ecological and Environmental Tort Cases (issued by the Supreme People's Court on Dec. 2021, effective Jan. 1, 2022), <https://www.court.gov.cn/fabu-xiangqing-338861.html> [hereinafter Judicial Interpretation on Injunctive Orders].

30. Civil Code of the People's Republic of China (adopted by the NPC May 28, 2020, effective Jan. 1, 2021), <http://www.npc.gov.cn/wxzlhgb/gb2020/202006/44b8280e362043b2a675e11807c6a3c4/files/37d85e644a2f4fd7be9af29f39859830.pdf> [hereinafter Civil Code]; see also Haijing Wang & Mingqing You, *Annual Review of Chinese Environmental Law Developments: 2020*, 51 ELR 10478, 10478-80 (June 2021).

31. Environmental Protection Law, *supra* note 3.

32. Civil Procedure Law of the People's Republic of China (adopted by the NPC Apr. 9, 1991, first amended by the NPC Standing Committee Oct. 28, 2007, second amendment by the NPC Standing Committee Aug. 31, 2012, third amendment by the NPC Standing Committee June 27, 2017, fourth amendment by the NPC Standing Committee Dec. 24, 2021), NPC STANDING COMM. GAZETTE, Issue 1 of 2022, at 99-128.

33. Judicial Interpretation on Injunctive Orders, *supra* note 29, art. 1.

34. *Id.* art. 2. Civil Code, *supra* note 30, arts. 1234 and 1235.

35. Judicial Interpretation on Injunctive Orders, *supra* note 29, art. 3.

36. *Id.* art. 4.

damage to the applicant or the environment will be hard to remedy without a timely prohibition, the court needs to consider the following factors to determine whether to grant an injunctive order: (1) the respondent continues to engage in the conduct that pollutes the environment or disrupts the ecosystem after the competent administrative authorities took administrative measures against the respondent for the offending conduct; (2) the damages to the applicant, the environment, or the ecosystem outweigh the damage to the respondent if an injunctive order is granted; (3) there are ill effects on the state interests, social public interests, or the interests of other persons if the respondent is prohibited from doing certain acts; and (4) other factors.³⁷

When hearing the application for an injunctive order, the court shall also hear the arguments of the respondent. When necessary, the court may conduct a field examination. However, if the circumstances are urgent and it is infeasible to hear the arguments of the respondent or to conduct a field examination, the court shall hear the respondent's arguments within 48 hours after granting an injunctive order. If the respondent's objection is sustained, the court shall cancel the injunctive order.³⁸ This means that the court may grant an injunctive order *ex parte*, but shall hear the respondent's objection within 48 hours.

The same as in other cases, the injunctive order is effective once served on the respondent.³⁹ The court may publicly disclose the injunctive order in ecological and environmental tort cases. After making a ruling for the applicant, the court may post a version of the injunctive order at the domicile of the respondent, or at the place where the tort act is conducted or the damage occurs. The court may also disclose the injunctive order to the public through the news media.⁴⁰

If the applicant submits an application for an injunctive order when bringing the lawsuit or during the litigation, the court may request that the applicant provide a guaran-

tee. In comparison, if the applicant submits such an application before bringing a lawsuit, the court shall request that the applicant provide a guarantee.⁴¹ This is to say, this guarantee is required if the application is submitted before bringing the lawsuit.

The court shall set a validity period when it grants an injunctive order.⁴² If an applicant fails to bring a lawsuit within 30 days after the granting of an injunctive order, the court shall make a ruling within five days after the expiration of the said 30-day period to terminate the injunctive order.⁴³ During the validity period, if the applicant, the respondent, or an interested party applies for an early termination on the grounds of changed circumstances, the court should decide within five days whether the injunctive order will be terminated.⁴⁴

This judicial interpretation is an effort of the Supreme People's Court to play a more active role in environmental protection, provide better remedies, and respond to challenges to the traditional law.⁴⁵ The injunctive order is an injunctive remedy from the court. It is intertwined with law enforcement by administrative agencies. In many situations, the administrative law enforcement is more efficient in stopping acts that pollute the environment or disrupt the ecosystem. In practice, the court may give much deference to decisions and discretion of administrative agencies on whether to issue an injunctive order. Our interviews with judges indicate that judges are generally quite cautious about issuing injunctive orders.

VI. Conclusion

Currently, China's effort on environmental protection lies in law enforcement instead of legislative work, so this year's review is relatively short. The next major legislative work to come is the codification of environmental laws, but this may take years to finish. Before environmental law is finally codified, some laws will be made and revised, as we will report in the annual reviews to come.

37. *Id.* art. 5.

38. *Id.* art. 6.

39. *Id.* art. 9(1).

40. *Id.* art. 9(2).

41. *Id.* art. 7.

42. *Id.* art. 8.

43. *Id.* art. 11(1).

44. *Id.* art. 11(2).

45. ZHONGMEI LYU, *NEW HORIZONS OF ENVIRONMENTAL LAW* 54-70 (China University of Politics and Law Press 3rd ed. 2019).