

ANNUAL REVIEW OF CHINESE ENVIRONMENTAL LAW DEVELOPMENTS: 2023

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In China, the year 2023 witnessed the further evolution of environmental protection and development of legislation and rulemaking. This mainly included adoption of the Qinghai-Tibet Plateau Ecological Protection Law, revision of the Marine Environmental Protection Law of the People's Republic of China (MEPL), and adoption of a series of judicial interpretations. This Comment summarizes some of the year's major developments.

I. Qinghai-Tibet Plateau Ecological Protection Law

The Qinghai-Tibet Plateau, also called the Tibetan Plateau, covers the Tibet Autonomous Region, Qinghai Province, as well as some counties of Xinjiang Uygur Autonomous Region, Sichuan Province, Gansu Province, and Yunnan Province, accounting for 23% of the total area of China. As the world's highest plateau, it is an initiator and regulator of the climate in the Northern Hemisphere because it blocks cold air from entering South Asia, and its Himalayas block warm and moist air from the south to the north. It has diverse landforms, including glaciers, lakes, rivers, and plains. It is the source of the Yangtze River, the Yellow River, the Lancang-Mekong River, the Yarlung Zangbo River, and other rivers. It is rich in biodiversity, but some species are in danger.

The Qinghai-Tibet Plateau is sparsely populated compared with other parts of China. As of 2022, Tibet has a population of 3.64 million¹ and Qinghai Province 5.92

million.² The economy of the Qinghai-Tibet Plateau has developed in past decades, and living standards there have improved steadily. Among all economic sectors, tourism developed quite rapidly because of the rich culture and beautiful scenery. However, the Qinghai-Tibet Plateau's environment is fragile and needs special protection.

In response to the special needs of the Qinghai-Tibet Plateau, the Standing Committee of the National People's Congress (NPC) adopted the Qinghai-Tibet Plateau Ecological Protection Law of the People's Republic of China on April 26, 2023.³ It is the first NPC legislation for a particular land area. It is also the NPC Standing Committee's next effort to address a specific environmental unit after it adopted the Yangtze River Protection Law in 2020⁴ and the Yellow River Protection Law in 2022.⁵

The Qinghai-Tibet Plateau Ecological Protection Law supplements and fine-tunes environmental rules applicable nationwide to the specific environment of the Qinghai-Tibet Plateau. The NPC and its Standing Committee have already adopted more than a dozen environmental laws, which are applicable nationwide but may not be sufficiently specific for particular areas. In contrast with the general normative wording of rules applicable nationwide, the Qinghai-Tibet Plateau Ecological Protection Law specifically lists some lakes and nature reserves.

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1. *Economics and Social Development Statistics of Tibet: 2022*, TIBET AUTONOMOUS REGION BUREAU STAT. (Apr. 27, 2023), https://www.xizang.gov.cn/rxxz/gmjjshfztjgb/202307/t20230714_365914.html.

2. Qinghai Provincial People's Government, *Overview of Qinghai Province*, <http://www.qinghai.gov.cn/dmqh/glp/index.html> (last visited Apr. 15, 2024).

3. Qinghai-Tibet Plateau Ecological Protection Law of the People's Republic of China (promulgated by the NPC Standing Committee, Apr. 26, 2023, effective Sept. 1, 2023), 2023(4) STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 431, 431-39 [hereinafter Qinghai-Tibet Plateau Ecological Protection Law].

4. Yangtze River Protection Law of the People's Republic of China (promulgated by the NPC Standing Committee, Dec. 26, 2020, effective Mar. 1, 2021), 2021(1) STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 101, 101-13. See also Haijing Wang & Mingqing You, *Annual Review of Chinese Environmental Law Developments: 2020*, 51 ELR 10478, 10483 (June 2021).

5. Yellow River Protection Law of the People's Republic of China (promulgated by the NPC Standing Committee, Oct. 30, 2022, effective Apr. 1, 2023), 2022(6) STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 843, 843-60 [hereinafter Yellow River Protection Law]. See also Haijing Wang & Mingqing You, *Annual Review of Chinese Environmental Law Developments: 2022*, 53 ELR 10367, 10368 (May 2023).

A. Ecological Protection Mechanisms for the Qinghai-Tibet Plateau

The Qinghai-Tibet Plateau Ecological Protection Law stresses the importance of nature. It puts ecological protection at the forefront, and provides that ecological protection of the Qinghai-Tibet Plateau shall respect nature, regard nature as the top priority, secure natural ecology, and mainly use natural rather than man-made methods in ecological recovery.⁶ The law requires coordination, specificity of policies, scientific control, and systematic governance in ecological protection.⁷

This law vests ecological protection authority in both the central government and local governments. The central government shall establish a coordination mechanism to guide and coordinate the ecological work; to examine major policies, plans, and projects; to coordinate major issues involving two or more provinces or governmental branches; and to supervise the implementation of major work. Ministries and commissions of the central government shall be responsible for carrying out such duties.⁸ The responsibilities of local governments at all levels shall be to protect and remediate the ecological environment, control ecological risks, improve industrial structure and layout, and maintain ecological security. Different regions shall cooperate in formulating local regulations, rules, and plans, and in carrying out law enforcement.⁹

B. Ecological Protection and Remediation

The Qinghai-Tibet Plateau Ecological Protection Law comprehensively protects the ecological system as a whole, emphasizes protection and restoration of glaciers in addition to other environmental elements, and requires improving the security, quality, diversity, stability, and sustainability of the ecological system.¹⁰ It provides for three limits—redlines for ecological protection, bottom lines of environmental quality, and upper limits for resource utilization.¹¹ It places further requirements on zoning and planning of land use. The plateau shall be divided into various function zones, and each shall have a detailed risk-control plan and accession plan.

The function zoning shall promote the development of nature reserves. The change of land use shall be conducive to conservation and remediation of forests, grasslands, rivers, lakes, wetlands, glaciers, and other environmental elements. Such risk-control plans and accession plans shall comply with the land use plans, and shall be implemented after the State Council's approval.¹²

The State shall support the development of a system of protected areas, including national parks, natural parks,

and other forms of protected areas. The protected areas shall include relatively undisturbed ecological systems, areas with fragile ecological systems, important habitats of rare or endangered species or of unique local species, important natural heritage, important scenery resorts, and other important areas.¹³ In addition to these general requirements, this law specifically lists some key areas with particular ecological values: for instance, the sources of the Yangtze River, the Yellow River, and the Lancang-Mekong River.¹⁴

This law has a chapter specifically addressing ecological remediation.¹⁵ In particular, it requires protecting and improving corridors of wildlife migration, controlling water erosion of the land, remediating mining sites, and taking other measures to restore the ecological system.¹⁶ It also requires establishing and improving an ecological risk control system, such as monitoring and assessment of climate change, natural disasters, the ecological impacts of major infrastructure projects, protection and management of germplasm resources, and control of invasive species.¹⁷

C. Implementation Mechanisms

This law provides both compulsory and incentive mechanisms to achieve protection goals. The State shall take financial and legal measures, with the former including financial support for scientific research, environmental monitoring, transfer of payments from the central government, ecological compensation, taxation, and other measures.¹⁸ The latter includes administrative law enforcement, public interest litigation, and criminal proceedings.¹⁹

Legal liability may include compensation, administrative liability, criminal penalties, and other legal liabilities. Legal liabilities under this law are not new in that all are already provided in previously adopted laws for nationwide application. However, this law provides that violations shall be heavily punished, and liability shall be selected close to the upper limits allowed.²⁰ To incentivize government officials to implement the law, this law provides that local governments and their officials shall be evaluated as to their performance by higher governments, which affects local government officials' careers.²¹

II. Revision of the Marine Environmental Protection Law

The NPC Standing Committee further revised the MEPL on October 24, 2023.²² The 2023 MEPL stresses land-sea

6. Qinghai-Tibet Plateau Ecological Protection Law, *supra* note 3, art. 3.

7. *Id.*

8. *Id.* art. 4.

9. *Id.* art. 5.

10. *Id.* art. 11.

11. *Id.* arts. 12-14.

12. *Id.* art. 14.

13. *Id.* art. 16.

14. *Id.* arts. 15-16.

15. *Id.* arts. 18-34.

16. *Id.* art. 29.

17. *Id.* arts. 35-41.

18. *Id.* arts. 42-44.

19. *Id.* arts. 48-49, 51.

20. *Id.* arts. 54-60.

21. *Id.* art. 53.

22. Marine Environmental Protection Law of the People's Republic of China (promulgated by the NPC Standing Committee, Aug. 23, 1982; first amendment Dec. 28, 2013; second amendment Nov. 7, 2016; third amend-

integration and regional coordination, puts tighter control on marine pollution, improves the protection of the marine ecological system, strengthens supervision of the marine environment, and promotes the exterritorial application of Chinese marine protection rules.

A. Law Enforcement Mechanisms

The 2023 MEPL specifies the responsibilities of different governmental departments and different levels of local governments in order to have a better division of labor and better cooperation among governmental agencies.

Local governments of coastal areas shall be responsible for marine environmental quality of the sea under their authorities. The central government shall set protection goals, and these goals shall be transformed into duties of local governments. Local governments shall be evaluated by higher authorities as to their performance in marine environmental protection and their achievements in protection goals.²³ This revision adds requirements on capacity-building of local governments and their marine protection agencies.²⁴

The 2023 MEPL adds rules on functional zoning and differentiated management based on function zones, comprehensive management of key marine areas, dialogue between higher and lower governmental agencies, information-sharing, credit evaluation, seizure, and other law enforcement tools.²⁵ It also improves rules on planning, environmental standards, environmental monitoring, pre-warning, investigation, environmental impact assessment, and response to emergencies.²⁶

B. Land-Sea Integration and Regional Cooperation

Land-based pollutants are the main sources of marine pollution. The 2023 MEPL stresses the principle of land-sea integration and requires establishment of a marine environmental protection regime integrating the land and the sea. Rules on planning, environmental standards, environmental monitoring, and other issues all demonstrate the land-sea integration requirements.²⁷

The 2023 MEPL promotes integrated environmental management of coastal infrastructure projects and marine infrastructure projects, putting this management in the same chapter, and unifies the environmental requirements on these two types of projects.²⁸ It allows local governments at or above the county level to establish coordination mechanisms for marine environmental protection among

themselves. They may coordinate law enforcement and other issues related to marine environmental protection.²⁹

The 2023 MEPL provides that environmental remediation plans and other protection plans for river mouths shall be based on integrated consideration of both rivers and the sea. This law requires coordinated and comprehensive monitoring of water, sand, salt, tide, species, and the shape of the river mouth. This law requires effective measures to prevent intrusion of seawater into the river and to maintain ecological functions of the river mouths.³⁰

The 2023 MEPL requires stricter management of rivers running to the sea to facilitate protection of the marine environment. Rivers shall meet water quality standards where they enter the sea. This law requires control of total nitrogen and total phosphorus discharged into the sea, and requires the making and implementation of plans for this purpose.³¹

C. Protection of Marine Biodiversity

China is quite rich in marine biodiversity. The 2023 MEPL imposes tighter requirements on protecting marine biodiversity. First, it requires the State to strengthen protection of marine biodiversity. The State shall improve investigation, monitoring, assessment, and protection of marine biodiversity; protect important corridors of the marine ecological system; prevent the disruption of marine biodiversity; and take other necessary measures.³²

Second, the utilization of marine or coastal resources shall not jeopardize important marine ecological systems, species, or genetic resources.³³

Third, scientific assessment shall be made before introducing invasive species to avoid risks to marine biodiversity.³⁴ Fourth, the law supports remediation of the marine environment. Remediation shall improve habitats, and recover marine biodiversity and the basic functions of marine ecological systems. The marine environmental remediation shall mainly be achieved through natural means, and human intervention may be conducted if necessary.³⁵

D. Tighter Control Over Pollutant Discharge

The 2023 MEPL tightens the control of pollutant discharge. A polluter needs to get a permit before discharging water pollutants. The law provides stricter requirements on the establishment and monitoring of discharge outlets. Information on pollutant discharge shall be shared among governmental agencies concerned. No new pollutant discharge outlets may be established within protected areas, key areas for fisheries, tourist resorts, areas within eco-

ment Nov. 4, 2017; second revision Oct. 24, 2023, effective Jan. 1, 2024), 2023(7) STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 744, 744-61.

23. *Id.* art. 5.

24. *Id.* arts. 7, 10.

25. *Id.* arts. 12-15.

26. *Id.* arts. 18-28.

27. *Id.* arts. 12-18.

28. *Id.* arts. 61-70.

29. *Id.* art. 25.

30. *Id.* art. 40.

31. *Id.* art. 50.

32. *Id.* arts. 33-37.

33. *Id.* arts. 38-39.

34. *Id.* art. 36.

35. *Id.* arts. 37, 42.

logical protection redlines, and other areas needing special protection. The 2023 MEPL authorizes competent administrative agencies to adopt more detailed rules.³⁶

As to solid waste, the 2023 MEPL prohibits abandonment, stacking, and disposal of solid waste on the coasts, and requires effective measures to prevent solid waste from entering the sea. The local governments of coastal areas at or above the county level shall be responsible for controlling solid waste. They shall monitor and collect solid waste and coordinate the establishment and operation of facilities for the collection, transportation, and disposal of solid waste.³⁷

The 2023 MEPL also tightens control over vessels as to pollutant discharge. No vessels are allowed to discharge pollutants to the sea. Instead, they shall collect and hand over pollutants to facilities on the land.³⁸

III. Judicial Interpretations

A. Opinions on Implementing the Yellow River Protection Law

After the NPC Standing Committee adopted the Yellow River Protection Law on October 30, 2022,³⁹ the Supreme People's Court (SPC) issued its Opinions on the Implementation of the Yellow River Protection Law of the People's Republic of China on June 27, 2003, effective the same day.⁴⁰ The SPC stresses the importance of protecting the Yellow River, and requires all courts concerned to make their best effort to protect the Yellow River with judicial powers.

The SPC requires courts to form a closed circle of prevention-protection-punishment-remediation in the framing of judicial remedies. The court should innovate preventive, punitive, and remedial judicial remedies. Reforestation, offsetting costs of technological innovation with fines, purchase of credits of greenhouse gas reduction, and other new forms of remedies are all encouraged. Violators are also encouraged to remediate the environment by planting trees or taking care of the environment in other ways. If they agree to do so, their work may be used to offset their liability.⁴¹

The SPC also requires establishment of courts and tribunals specializing in environmental cases. Such courts may have jurisdiction over more than one administrative region. This is different from the general practice of establishing a court for each corresponding administrative region.⁴²

36. *Id.* arts. 47-55.

37. *Id.* arts. 56-57.

38. *Id.* art. 79.

39. Yellow River Protection Law, *supra* note 5.

40. The SPC's Opinions on the Implementation of the Yellow River Protection Law of the People's Republic of China (issued by the SPC, June 27, 2003, effective June 27, 2003), 2003(8) SUPREME PEOPLE'S COURT PEOPLE'S REPUBLIC CHINA GAZ. 22-25.

41. *Id.*

42. *Id.*

B. Judicial Interpretation on Environmental Pollution Crimes

The SPC and the Supreme People's Procuratorate (SPP) jointly issued the Interpretation on the Application of Law in the Handling of Cases of Environmental Pollution Crimes on August 8, 2023, effective as of August 15, 2023.⁴³ This judicial interpretation is the fourth one on environmental crimes. It revised and supplemented the previous judicial interpretations on environmental crimes after the NPC Standing Committee's adoption of the Eleventh Amendment to the Criminal Law on December 26, 2020.⁴⁴ This judicial interpretation mainly concerns criteria for finding crimes and imposing punishment, rules against fabricating environmental data, and the policy on the imposition of strict or lenient punishments.⁴⁵

C. Judicial Interpretation on Crimes of Disrupting Forest Resources

The SPC issued the Interpretation on the Handling of Criminal Cases of Disrupting Forest Resources on August 13, 2023, effective as of August 15, 2023.⁴⁶ This judicial interpretation mainly concerns 10 issues: (1) criteria on illegally occupying forestland; (2) criteria on endangering important plants protected by the State; (3) criteria on the crime of stealthy deforestation; (4) criteria on the crime of abusive deforestation; (5) factors for establishing the defendant's knowledge (knowing commission of the crime) in crimes of illegally purchasing or transporting wood illegally or abusively logged, and criteria on finding said crimes and imposing criminal punishments; (6) rules on handling crimes of forging, illegally obtaining, or illegally issuing certificates and documents related to forest resources; (7) rules on handling thefts related to forest resources; (8) related rules on application of law in crimes of disrupting forest resources; (9) the policy of appropriate sentencing and the imposition of stricter or lenient punishments; and (10) rules on the interconnection between administrative law enforcement and criminal cases.⁴⁷

43. The Interpretation on the Application of Law in the Handling of Cases of Environmental Pollution Crimes (issued by the SPC and the SPP, Aug. 8, 2023, effective Aug. 15, 2023), 2023(11) SUPREME PEOPLE'S COURT PEOPLE'S REPUBLIC CHINA GAZ. 3-7 [hereinafter 2023 Judicial Interpretation on Environmental Pollution Crimes].

44. The Eleventh Amendment to the Criminal Law of the People's Republic of China (promulgated by the NPC Standing Committee, Dec. 26, 2020, effective Mar. 1, 2021), 2021(1) STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 123, 123-30. *See also* Wang & You, *supra* note 4, at 10483-84.

45. 2023 Judicial Interpretation on Environmental Pollution Crimes, *supra* note 43.

46. The Interpretation on the Handling of Criminal Cases of Disrupting Forest Resources (issued by the SPC, Aug. 13, effective Aug. 15, 2023), 2023(11) SUPREME PEOPLE'S COURT PEOPLE'S REPUBLIC CHINA GAZ. 8-11.

47. *Id.*

D. *Judicial Interpretation on Ecological and Environmental Torts*

The SPC issued the Interpretation Regarding the Application of Law in Ecological and Environmental Tort Liability Disputes on August 14, 2023, effective as of September 1, 2023.⁴⁸ This judicial interpretation replaces the 2015 judicial interpretation on environmental torts.⁴⁹ This new judicial interpretation was adopted in light of the Chinese Civil Code⁵⁰ and judicial experience in handling ecological and environmental torts.

The interpretation further defines the meaning of “ecological and environmental disputes,” and clarifies the doc-

trine on attributing liability, rules on multiple tortfeasors, and remedies.⁵¹

IV. Conclusion

The NPC Standing Committee announced that it has started codifying the environmental law and expects a first reading of the Code of Environmental Protection in 2024.⁵² The drafting team made some progress, but still faces many challenges. We will closely follow the drafting process and report in annual reviews to come.

48. The Interpretation Regarding the Application of Law in Ecological and Environmental Tort Liability Disputes (issued by the SPC, Aug. 14, 2023, effective Sept. 1, 2023), 2023(10) SUPREME PEOPLE'S COURT PEOPLE'S REPUBLIC CHINA GAZ. 6-9 [hereinafter 2023 Judicial Interpretation on Environmental Torts].

49. The Interpretation Regarding the Application of Law in Environmental Tort Liability Disputes (issued by the SPC, June 1, 2015, effective June 3, 2015), 2015(9) SUPREME PEOPLE'S COURT PEOPLE'S REPUBLIC CHINA GAZ. 10-12. See also Mingqing You, *Annual Review of Chinese Environmental Law Developments: 2015*, 46 ELR 10386, 10393 (May 2016).

50. Civil Code of the People's Republic of China (promulgated by the NPC, May 28, 2020, effective Jan. 1, 2021), STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. (SPECIAL ISSUE FOR CIVIL CODE OF 2020) 2, 2-177. See also Wang & You, *supra* note 4, at 10478-80.

51. 2023 Judicial Interpretation on Environmental Torts, *supra* note 48.

52. *Work Report of the NPC Standing Committee (Excerpts)*, XINHUA-NET (Mar. 8, 2024), http://www.npc.gov.cn/npc/c2/c30834/202403/t20240309_435676.html.