

University of Colorado Law School

Colorado Law Scholarly Commons

New Challenges for Environmental Protection:
Second Sino-American Conference on
Environmental Law (October 12-13)

1989

10-12-1989

To Protect Developing City by the Enactment of Local Laws and Regulations

Zilin Wu

Follow this and additional works at: <https://scholar.law.colorado.edu/second-sino-american-conference-on-environmental-law>



Part of the Administrative Law Commons, Asian Studies Commons, Comparative and Foreign Law Commons, Environmental Health and Protection Commons, Environmental Law Commons, International Law Commons, Natural Resources and Conservation Commons, Natural Resources Law Commons, Natural Resources Management and Policy Commons, State and Local Government Law Commons, Urban Studies and Planning Commons, Water Law Commons, and the Water Resource Management Commons

Citation Information

Wu, Zilin, "To Protect Developing City by the Enactment of Local Laws and Regulations" (1989). *New Challenges for Environmental Protection: Second Sino-American Conference on Environmental Law (October 12-13)*.

<https://scholar.law.colorado.edu/second-sino-american-conference-on-environmental-law/5>

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.



William A. Wise Law Library
COLORADO **LAW**
UNIVERSITY OF COLORADO **BOULDER**



Getches-Wilkinson Center Collection

Zilin Wu, *To Protect Developing City by the Enactment of Local Laws and Regulations*, in *NEW CHALLENGES FOR ENVIRONMENTAL PROTECTION* (Natural Res. Law Ctr., Univ. of Colo. Sch. of Law, 1989).

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.

TO PROTECT DEVELOPING CITY
BY THE ENACTMENT OF
LOCAL LAWS AND REGULATIONS

WU ZILIN

CHINA ENVIRONMENTAL SCIENCES SOCIETY
XIAMEN BRANCH

University of Colorado

JUN 27 2000

Law Library

PREPARED FOR THE SECOND SINO-AMERICAN CONFERENCE
ON ENVIRONMENTAL LAWS

Boulder, Colorado, U.S.A.

18-19, September, 1989

1. INTRODUCTION

In recent years, the rapid development of urban economy and the mass resources development have induced many problems of environmental pollution and ecological breakdown which have become, as adverse feedback, the controlling factors getting in the way of the social economy development. As a result, it is a must for the enforcement of environmental management as well as an important responsibility for the local environmental protection agencies to formulate environmental protection laws and regulations in line with the country's situations and regional characteristics for the synchronous and coordinated development of environmental protection and social economy.

Xiamen, one of the four special economic zones in China, is a developing city. Varying economic situation is a global problem challenging the developing cities. This paper attempts to discuss the effective adaptation of local environmental protection laws and regulations to the changable economic situation in the developing cities by the introduction and analysis of the formulation processes and characteristics of local environmental protection laws and regulations in Xiamen City. The author wishes, through the introduction of this paper and discussions with his colleagues attending this symposium, to seek for better ways and means our common target of protecting the "Only One Earth".

2. GENERAL ACCOUNTS OF THE XIAMEN SPECIAL ECONOMIC ZONE

Xiamen, a pearl along the southeast coast of China, has been wellknown in the world with her unique geographical environments, favourable climate and excellent deepwater harbour with long history. Xiamen was designated as one of the four special economic zones in China in an area of 2.5 square kilometres in 1980 when China adopted the policy of opening to the

outside world. In 1984, the State Council decided to expand the Xiamen Special Economic Zone to the whole Xiamen Island (including Gulangyu Islet) covering an area of 131 square kilometres. In May, 1989, China decided to develop an Investment Zone for Taiwan Businessmen of over 120 square kilometres in Xinglin and Haicang which are under the jurisdiction of Xiamen City. The State approves to adopt specially preferential policies and flexible administration measures in the above zones.

Since the foundation of the special economic zone, the economic construction and urban development in Xiamen have been developing with unprecedented speed and scale. Industrial and agricultural production value in 1985 was 4.36 times over that in 1980. The capital construction investment in the period from 1981 to 1986 was 3.43 times over the total amount of 31 years since 1949 when the People's Republic of China was founded. What worthy of notice is the total approved negotiation investment of 1.180 million US dollars in recent years by 400 exclusive foreign investment enterprises. Foreign economy in Xiamen has made a long-footed development.

Increasing environmental pollution load with complicated and changable factors come along with the high-speed development of economy. The environmental protection agencies of the provincial and municipal governments work hard on one hand on the pollution source control and urban fundamental facility construction and on the other hand, the enactment of local environmental protection laws and regulations in order to implement the fundamental state policy of protecting environment by means of law enforcement and to excise effectively the function of environmental management, so as to suit the complicated and varied development of high speed, high efficiency and outward orientation of the special economic zone economy.

3. A BRIEF INTRODUCTION TO THE ENACTMENT OF LOCAL PROTECTION LAWS AND REGULATIONS FOR ENVIRONMENT IN XIAMEN CITY

In April, 1984, the environmental protection agency of Xiamen City accepted the task

assigned by the provincial government to enact local environmental protection laws and organized a working group. In the following 16 months, the working group collected relevant data and information from China and other parts of the world, consulted various scholars and experts in urban environmental management departments, colleges and universities, and scientific research institutions in the country, and revised the draft over 20 times. Based on the approval by the municipal government and municipal People's Congress of Xiamen City and the provincial government and provincial People's Congress of Fujian Province, the 14th Meeting of the Standing Committee of the 6th People's Congress of Fujian Province, which is the legislative organization in the province promulgated on August 30, 1985, "The Regulations on Environmental Protection and Control in Xiamen City" (hereinafter referred to as the regulations). In August, 1986, Xiamen Municipal Government, for the implementation of the regulations, promulgated detailed rules and regulations for controlling each environmental elements, such as "The Rules for Controlling Atmospheric Pollution in Xiamen City" and "The Rules for Controlling Environmental Noise in Xiamen City". In May, 1989, the provincial government of Fujian Province promulgated "Standard for Pollution Discharge in Xiamen City" (hereinafter referred to as the standards) which includes the atmospheric and water discharges. The standards are implemented as supplementaries to the local laws and regulations mentioned above.

Based on the general and specific policies and laws and decrees relevant to environmental protection promulgated by the state and the natural environment features and social, economic and technical conditions in Xiamen City, the regulations, in 39 articles of 6 chapters, was proposed; the general policies (general provisions) of environmental

protection, the institution and its responsibilities of environmental protection, the environmental management of construction projects, the comprehensive control and management of pollution sources and the legal responsibilities. The standards proposed, based on the geographical environment features and the requirements for the construction and development of the Xiamen Special Economic Zone, more strict discharge standards of atmospheric and sewage pollutants than that of the state.

4. ANALYSIS OF MAJOR FEATURES OF LOCAL ENVIRONMENTAL PROTECTION

LAWS AND REGULATIONS IN XIAMEN CITY

1) The Adaptation and Extension of Environmental Protection Laws of the State

The basic principle in the enactment of the environmental laws in Xiamen City is to make the "Environmental Protection Law of the People's Republic of China" and relevant laws and regulations of the state as the soul of the local laws and regulations. In the process of the enactment, the environmental protection laws, decrees, general and specific policies and standards must be observed and implemented. However, due to the limitation of space, local laws and regulation can not and has no need to copy indiscriminately all the articles and clauses of the state laws. As a matter of fact, the local laws and regulations must, based on the principle of seeking for reality instead of perfection, enrich and specify the major principle and contents of the state laws. Let us take the regulations as an example. The "general provisions" of the regulations briefly reiterate the principles of "putting prevention first, combination of prevention and management, and integrated management" and the obligations of a legal person in the environmental protection. The following chapters of the regulations state in detail the formulation of "environmental impact report" of construction projects, credentials of the formulation units and the principles regarding the retrospect assessment of a project after its

operation, and bring up to the high plane of laws enforcement of the various stages of the regulations of " synchronous designing, construction and going into operation of the pollution control facilities and major body of a project" (hereinafter referred to as three synchronous). In addition, the environmental protection systems of the state such as the pollution discharge according to the standards, the collection of pollution discharge fee and the environmental management with a definite time limit have been confirmed and enriched in the local environmental laws and regulations. As a result, the seriousness and authority of the state environmental protection laws have been maintained and at the same time, actual effectiveness has been obtained from the definite and easy enforcement of the local environmental protection laws and regulations.

The local pollution discharge standards have stated the suitable state standards of corresponding functional zones in each region. The state pollution discharge standards should be applied as possible to those projects for which no higher demand is needed. However, standards more strict than that of the state should be introduced into the local standards, according to the needs and possibility, for some susceptible regions and factors.

2). the Adaptation of the Local Environmental Policy to the outwardly oriented Economy

the foundation of the special economic zone has brought into the social and economic development of Xiamen vitality, and at the same time, many new environmental problems. these problems include the high environmental stress induced by the rapid development of economic and urban construction, the imbalance of industrial production distribution and enterprise and the effectiveness of environmental management work brought along by the high speed increase of the proportion of commercial economy; the strong demands for timely decision-making and legal administration coming along with the increase of numbers of joint ventures, cooperative enterprises or enterprises with sole foreign investment. Therefore, it is an imperative and urgent task to develop local environmental protection

laws, regulations and standards with an aim to accurately, strictly and effectively solve the environmental problems arising in large scale in the special economic zone.

In the course of formulating local environmental laws and regulations and standards, attention has been paid to various features of high input, high consumption, high effectiveness, high technology and high growth of economic development and the sudden increase and development of foreign economy and commercial economy in the developing cities. As a consequence, it is important to bring into play every positive factor and surmount the negative factors in the construction of whole strategy system of environmental protection with local features. With this system, the final aim of environmental protection can thus be obtained through the adjustment and control of the relationship between the urban construction and environmental construction by means of law enforcement. The content in this section fully represents another feature of the environmental management regulations and pollutant discharge standards in Xiamen City. This feature is further illustrated by the following points.

" A construction project must strictly abide by the environmental regulations of Xiamen City and put emphasis on the introduction and development of the projects without pollution or with low pollution technology concentrated".

"Pollution transfer is prohibited. The projects introduced from abroad, the projects collaborating with the domestic units or local new projects must introduce or adopt synchronously the advanced pollution control technology and equipment and technical measures if the projects may bring pollution to the environment. The construction projects with pollutant discharge higher than the standards of the state and Xiamen City, should not be introduced into or accepted in Xiamen."

The above articles have provided guiding principles for construction and distribution of industry production in the special economic zone. In the course of developing the construction of the special economic zone, an enterprise, no matter it is a

joint venture, an enterprise with sole foreign investment or a local cooperative enterprise, must abide by the laws and regulations in every step forward and is responsible for the adoption of advanced technology and for discharging pollutants in line with the standards. As everyone is equal in front of law, a legal person has the legal responsibility for the pollutant discharge of a construction project. This principle must be taken into consideration in the formulation of local laws and regulations. In this regard, either an old or a new enterprise must abide by without excuses of the features of investment. As a matter of fact, a foreign businessman who invests in China has become a legal person in China, therefore, he must observe Chinese laws and must be treated equally without discrimination in front of laws. Otherwise, malpractices such as legal inequality of exclusivism and foreign discrimination may occur and therefrom hinders the healthy development of the outward oriented economy in the special economic zone.

3). Distinct Regional Features

Regional environmental features and the social economic and technical conditions act as the foothold in the formulation of local environmental protection laws and regulations. It is the final aim of local environmental protection laws and regulations to protect and promote the positive cycling of the urban ecosystem of the region. Based on the natures of Xiamen City, a harbour and scenic city, and according to the written instruction of the State Council on the function of the Xiamen Special Economic Zone, the environmental protection laws and regulations and discharge standards in Xiamen City take as her major protection targets the scenic spots, bathing beaches and harbours by set strict and definite regulations on these areas. In the scenic spots such as Gulangyu Islet, engineering projects polluting landscape or environment are not allowed to be constructed, and those which have already been there must be controlled within a definite time limit or in a planned way, close down, stop operation, be combined with other units, transform products or be moved away. In the bathing beaches, new sewage falls are not allowed to be

built and the old sewage falls which are discharging higher amount of pollutants than that stated in the standards must be controlled or removed away within a definite time limit. Moreover, strict demands in the field of environmental protection have been proposed for the construction projects of harbour and piers and coasted reclamation projects.

4). Enforcing Administration Function of Environment Monitoring

China is a developing country and Xiamen is a developing city. It is impossible for Xiamen, based on its economic force, to put heavy investment in the control and management of environmental pollution. Therefore, the positive way dealing with environmental problem is to strengthen environmental management and, by doing this, to control the deterioration trend of the environment. The environment of the special economic zone is complicated and changable, therefore, accurate and highly effective decision-making is one of the characteristics in the special economic zone. In front of this characteristics, the formulation of local environmental protection laws and regulations and standards must adsorb, by making great efforts, environmental administration experience both at home and abroad, with an aim to strenthen the environmental management function. In the regulations, sewage discharge report and license systems have been, for the first time, stipulated. This system attempts to build up a databank of pollution source dynamic changes excise the practice of controlling the total pollutant load, aiming at understanding timely the discharge amount of pollutants and controlling effectively the pollutant discharge amount and fate. In addition, environmental monitor system and civil environmental inspector system have been adopted in Xiamen. The local environmental responsible agency is entrusted with the power of charging the enterprise to manage its pollution in a definite time limit, the limited power of penalty and the power to deal with immediately a pollution accident at the same time of making report to the government. All these powers are stipulated in the Environmental Protection Law of the People's Republic of China to be excise only after the approval of the governmental organization of the same level, as

result, this stipulation often ends in the larger resistance and longer period of decision-making, and so unfavourable for the strengthening of environmental management in the special economic zone.

In conclusion, the environmental laws and regulations of the Xiamen Special Economic Zone are formulated based on the laws, decrees, general and specific policies of environmental protection in China, and the combined consideration of the social, economic and environmental characteristics and demands in the special economic zone. This is a bold trial which is beneficial to the strengthening of environmental management in the special economic zone as well as an effective service to the social and economic development in the special economic zone. The experiences of excising the laws and regulations and standards have obtained positive and beneficial results. For example, in the past few years, all the large and medium scale construction projects have made environmental impact assessment reports and have carried the regulations of synchronous. Generally speaking, no enterprise refused the collection of pollutant discharge fee. About one hundred enterprises have completed in time the management project which have been asked to be carried out in the definite time limit. The enterprises which discharge over 80% of the pollution load to the major receiving body of water are required to apply for and receive pollution discharge license. More than 10 enterprises which have violated the local environmental protection laws and regulations have been fined and required to make remedies in the definite time limit. All these have greatly enhanced the law enforcement authority and working efficiency of the local environmental protection units and guaranteed the more effectively implementation of the environmental protection laws, decrees, general and specific policies of the state. the direct effects from these practices are the basically control of environmental pollution trend, the maintainence of environmental quality as that before the construction of the special economic zone and distinct improvement of some pollution factors such as smog and transportation noise since

the foundation of the special economic zone. Therefore, in a certain sense, the local environmental protection laws and regulations and standards of Xiamen City are of reference value to the coastal open cities, other special economic zones and developing cities in China.

5. PROBLEMS ENCOUNTERED IN THE FORMULATION AND IMPLEMENTATION OF LOCAL ENVIRONMENTAL PROTECTION LAWS AND REGULATIONS AND THE FUTURE PLANS

As everyone knows, the formulation of local environmental protection laws and regulations, especially standards are industrious and complicated work with strong foundations of policy, technology and science. Higher requirements will hinder the development of the developing cities and may not be easily carried out. Lower requirements will lead to the unreversible environmental costs and the malfunction of the environmental protection units. Therefore, people involved in the formulation should have a cool mind, scientific spirits and broad knowledge. However, an absolutely ideal law or regulation just does not exist. They must be reevaluated in the practice and complemented, revised and perfected with the development and change of social, economic and environmental factors.

The experiences gained in the implementation of the laws and regulations in the past years indicate that it is difficult to make a law but it is still more difficult to enforce the law. In the Xiamen Special Economic Zone, the environmental protection work started later than the other areas, and the environmental administration force is weaker, the legislative units are not so familiar with the environmental protection laws and regulations, some enterprises and construction units just have a blunted sense of environmental protection and legislation or just do not understand very well the environmental protection laws and regulations and environmental administration processes.

As a result, pollution cases are often concealed or failed to be reported, with the aim to escape from the environmental monitoring and management. The environmental administration units, due to shortage of hands, overload of work and insufficient monitoring equipment, can not discover and inspect the pollution cases in time. The phenomena of slack law enforcement often occur. In addition, the necessary rules and regulations are not completed and environmental capacity of various environmental elements in various regions is not well understood. These have excised effects on the effective formulation and implementation of environmental impact assessment, environmental planning and the total amount control of pollutants. Furthermore, the insufficient means of surveillance and monitoring have brought some difficulties to the daily monitoring and administration of environmental problems.

In order to solve the problems and to overcome the difficulties above mentioned, we, on one hand, make great efforts in the propoganda and education work of environmental protection sense and legislative sense in which environmental protection is regarded as a basic policy of China; and on the other hand, fully mobilize the activeness of the present monitoring and administration personels, perfect unceasingly local environmental protection laws and regulations and standards, strengthen scientific research work of environmental monitoring, start to make clear the environmental protection regulations and formulate the environmental plans and implementation programmes. At the same time, inspection of environmental protection law enforcement is organized every year. Based on the inspection, legal punishment is excised to the units and personels that have violated the environmental protection laws and regulations, so as to maintain the seriousness and authority of the local environmental protection laws and regulations, with an aim to protect the envirnments and bring beneficial welfares to the people.

6. CONCLUDING REMARKS

In order to effectively adjust and control the relationship among society, economy and environmental protection in the process of the development of the special economic zone, so as to achieve the unification of economic benefit, social benefit and environmental benefit, we, at the initial stage of the construction of the special economic zone, started to develop local environmental protection laws and regulations through combining the basic policy of environmental protection in China and the actual needs and possibility of Xiamen, with an aim to solve the environmental problems. All these have borne some preliminary results. In the future, we shall insist on steadfastly managing the environment through law enforcement, promoting economic construction, developing coordinately urban construction and environmental construction, and making due contribution to the creation of a prosperous and environmental beautiful modern city.