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ENVIRONMENTAL POLICY AND LEGISLATION IN CHINA

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This paper provides a general description of environmental policy and legislation in China as background information for this Sino-U.S. Environmental conference. Chinese environmental policy and legislation are very broad topics and include many issues. Here we provide only a brief introduction.

HISTORICAL CHANGES IN CHINESE ENVIRONMENTAL POLICY

From 1949 to 1982, the value of total Chinese industrial production increased 49.7 times. Accompanying this rapid economic development, environmental pollution was quietly spreading in cities and industrial areas. By the 1970s the conditions in some areas had become very serious.

With the development of a world-wide environmental consciousness, China became aware of the seriousness of industrial pollution. The United Nations Human Environment conference in 1972, which resulted in the publication of the Declaration of Human Environment, marked a new era in global environmental awareness, and had a great influence in China as well. In 1973, at the initiation of the late Premier Zhou En Lai, the first Chinese environmental protection conference was held. A national environmental management organization—Environmental Protection Group of the State Council—was formed. The prevention of industrial pollution found a place in the agenda of the State, and a series of prevention measures were adopted.

While China recognized the need to address environmental pollution, in general, the concept of environmental protection was limited. Environmental problems were regarded only as pollution problems. Attention was limited to situations where industrial pollutants tainted air, water, and soil,

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endangering people's health. We could say that the center of Chinese environment policy at that time was simply harnessing "three wastes".

This policy approach was one-sided. First, it did not link environmental pollution with ecosystem deterioration, thus underestimating the complex and dangerous nature of environmental problems; second, it did not link environmental pollution with social and economic development so as to find the source of the environmental problems and solve them accordingly.

This approach developed as it did because of the pattern of Chinese economic development. Economic development in China has been based on a traditional growth strategy during 30 years of economic construction. The main feature of this strategy was to follow a single economic goal—that is, increase industrialization and gross national product (GNP). As a result, birth control, quality of life, environmental protection, and municipal construction were ignored. Many serious problems developed, such as rapid population increase, imbalanced economy, aggravated environmental pollution, and ecosystem deterioration.

This has been a global problem. After World War II, western countries generally used new technology to achieve rapid economic development. Development occurred, but at great expense to the environment. Most countries made the mistake of "value development, ignore environmental protection" and "pollute first and then harness". After 20 years, the serious nature of environmental problems became obvious and taught these countries an important lesson. Japan is a good example of a country which went through this process.

Since 1978, China's political and economic situation has changed greatly. The economic development strategy changed as well. It turned from simply promoting economic growth (mainly GNP growth) to a broader set of interests: balancing the ratio of national economic sectors, striving for beneficial results, gradually satisfying people's material needs, developing education, and improving scientific research. It includes environmental protection, resources protection, and ecosystem maintenance as organic parts of social economic development. In the Sixth Five-Year Plan of National Economic and Social Development (1981-1985), environmental protection was, for the first time, listed as a special section of the plan. It emphasized that ecosystem degradation should be controlled, that the most serious pollution problems should be solved first, and that environmental protection should be carried out under the guidelines of plans. Consequently, environmental

protection is now included in the national plan of economic and social development.

The Second National Conference on Environmental Protection (1983) was a milestone in Chinese environmental protection history. The conference confirmed that environmental protection, like population control, was a strategic task in modernization and a basic policy of the country. The conference also established the principle that environmental protection should be addressed at the same time as economic construction. Thus, the problems of environmental pollution and ecological degradation are to be solved during the course of economic construction. This policy was worked out on the basis of the experience gained by Chinese and foreign countries over several decades. It represents a major step forward and an important change in Chinese environmental protection policy.

This approach recognizes that the development of society is determined by factors which are related to each other and are controlled by each other, such as population increase, food requirements, industrial development, urbanization, resource consumption, and ecosystem and environment changes. The environmental problem is essentially an economic problem. They both are causal to each other. The development of the social economy caused environmental problems, while environmental problems in turn affect economic development. This essential link between the economy and the environment requires a policy that solves environmental problems during the time of construction. In this way the two may be developed in harmony; otherwise, environmental problems cannot be fundamentally solved.

The World Environment and Development Committee has suggested that every country adopt a principle called "develop continuously" as its general environmental policy. This principle was formed out of the summation of many countries' experiences over several decades. The basic approach of this principle is the same as the Chinese policy to "develop in harmony". This shows that no matter what methods are tried, the objective law ultimately provides only one choice, and everybody finally will step on the same road.

ESTABLISHMENT OF CHINESE ENVIRONMENTAL LEGISLATION

Legislation is very important in effectively enforcing environmental policy in a country. Environmental management is a comprehensive task requiring economic, technical, administrative, and educational methods and measures including legal means.

In the 1950s and 1960s, although China accomplished much in preventing flooding, conserving water and soil, planting trees, improving hygiene, developing urban and rural construction, making a comprehensive use of materials, as well as in publishing some laws and regulations, no broad environmental protection scheme was established. The laws and regulations that were in existence were little known to the public. Some had never been enforced. During the Cultural Revolution, the legal system was ignored. Environmental protection laws and regulations did very little.

Strictly speaking, the Chinese environmental law system was initiated in 1978. The Constitution of the P.R.C. (1978) clearly provides "to protect environment and nature resources, prevent pollution and other public nuisances." This lays the constitutional foundation for establishing an environmental legal system.

In 1979, the "Environmental Protection Law of the P.R.C. (trial implementation)" marked the beginning of environmental management by legal means. This law is the basic law for environmental protection, somewhat like the National Environmental Policy Act is in the U.S. It sums up the experience of environmental protection in China, refers to comparable foreign environmental laws, provides principles for subject areas, tasks, guidelines, policies, basic requirements, measures, organizations and their responsibilities, scientific research, education, incentives and punishments for environmental protection. The law also confirms the following as the enforceable legal system: environmental impact statement, pollutor's responsibility, discharge fees, and "three at the same time" (environmental protection facilities must be designed, installed and operated at the same time with the main project.)

This environmental protection law has now been in trial implementation for eight years. Today, China's economic situation has changed substantially. The needs for environmental protection have changed as well. The law, therefore, should be amended and completed. It is very possible that a draft amendment will be submitted to the National People's Congress this year for approval.

Since the beginning of the 1980s, Chinese environmental legislation has developed very rapidly and become the most active part of the Chinese legal system.

In the field of pollution control, China promulgated "The Law of Marine Environmental Protection" (1982), "Water Pollution Prevention and Control Law of the P.R.C." (1984), "The Management Regulations on Marine Petroleum Exploration and Development Environmental Protection of the P.R.C." (1984), "Management Regulations on Preventing Pollution of

the Sea Area from Ships" (1984), "Management Regulations on Dumping Wastes into the Sea Area" (1985), "Regulations on Preventing Industrial Pollution by Means of Technical Renovation" (1983), "Decision on Strengthening Dust and Toxic Substances Prevention Work" (1984), and "Regulation on Pesticide Registration".

In the area of natural resources protection, the laws and regulations are: "Forest Law of the P.R.C." (1984), "Regulation on Reproducing and Protecting Aquatic Resources" (1981), "Regulation on Water and Soil Conservation" (1982), "Grassland Law of the P.R.C." (1985), "Fishing Law of the P.R.C." (1986), and the "Decree on Strictly Protecting Precious and Rare Wildlife" (1983).

In environmental management, "Management Guidelines on Environmental Protection of Capital Construction Projects" was published in 1981, amended as "Management Guidelines on Environmental Protection of Construction Projects" in 1986, "Temporary Guidelines on Imposing Discharge Fees" (1982), "Regulation on Environmental Management of Town and Rural Enterprises of the State Council" (1984), "Temporary Regulation on Environmental Management of Special Economic Zone" (1986), "Management Regulation on Environmental Monitoring" (1983), "Management Guideline on Environmental Protection Standards of the P.R.C." (1983), "Guideline on Environmental Protection Check System of Industrial Enterprises (trial implement)" (1985), and "Temporary Regulation on Comprehensive Usage of Resources" (1985).

In addition, some environmental standards were published, such as "Ambient Air Quality Standards" (1982), "Sea Water Quality Standards" (1982), and "Urban Environmental Noise Standards" (1982). In 1983, the Ministry of Urban and Rural Construction and Environmental Protection issued ten pollutant discharge standards for a number of industries.

China has now established its basic legal framework for environmental protection. A completed and workable Chinese style environmental protection law system will be achieved before long.

THEORY AND PRACTICE OF CHINESE ENVIRONMENTAL LEGISLATION

THE BASIC PRINCIPLE OF ECOLOGY IS THE THEORETICAL FOUNDATION IN NATURAL SCIENCE FOR MAKING ENVIRONMENTAL POLICY AND LAWS.

In making environmental policies and laws, there should be a theoretical foundation based on natural science. In the

1960s, people regarded environmental protection only as a technical problem of pollution control. At that time, environmental legislation attempted mainly to prevent or restrict the development of some industries, or to force individuals to control their pollution. The scientific basis had not yet been established for environmental legislation.

In the 1970s, many countries reviewed their experiences and lessons in handling environmental problems and adopted the principle "prevention is more important than harness"—a so-called "predictive environmental policy". This principle urges people to foresee the possible environmental degradation and pollution caused by development and growth and to adopt various prevention measures beforehand. In order to carry out this environmental policy, the environmental laws include such management regulations as land use plans and environmental impact statements. People then started to study the scientific theory for making environmental policy and laws. Ecology, an ancient science, once again became active.

In recent years, people have used ecological principles to study the human-environment system. Increasingly it is clear that human beings and their society, together with the natural environment and even the biosphere, are an organic whole on which every part relies. Human society is but one part of the biosphere and exists on the earth together with other parts of nature. Each of these parts develops according to its natural law.

Environmental laws must adjust various social relations created during activities of developing, using, and protecting the environment. A major feature of environmental law is to promote harmony in the relation between human beings and nature. Although human/nature relations, as well as people's social relations, are controlled by each other, people's activities must follow the natural law. Environmental laws should follow not only social and economic patterns, but also the ecological laws. That is to say, the harmony between nature and mankind can only be achieved by using and changing nature within the scope limited by ecological law.

In fact, production and consumption are the most relevant elements in the human/nature relationship. People get materials and energy from the natural environment for use in production, and then discharge wastes into the environment. There is a dynamic equilibrium between material changes and energy movement. To balance the dynamic equilibrium, two basic requirements must be satisfied: first, the quantity of materials and energy which people get from nature should not exceed the quantity available in nature; second, the wastes discharged should not be more than the acceptable limit of the en-

vironment and of people's health. This is the key point to maintaining normal living conditions and allowing continuous development. With a better understanding of ecological laws and requirements, environmental management can be established on a foundation of science, and our laws and policies can be more workable and effective.

Now Chinese environmental policies and laws have gone beyond simple pollution control methods and involve a comprehensive approach that considers the development and use of the environment. Pollution control and environmental protection must follow ecological principles. Environmental protection is a part of the social and economic development plan.

THE GOAL AND TASK OF ENVIRONMENTAL LAWS

Every law is made and enforced for certain purposes. The purpose of environmental laws is to protect the environment and people's health. In 1979, the Environmental Protection Law stipulated another purpose: "Promoting economic development" together with the protection of environment and people's health.

Here we confront a problem with profound practical and theoretical significance: how to harmonize the relationship between environmental protection and economic development within the framework of the laws.

For some years, there have been two different schools of thought. One holds that, as a result of the policy of favoring development at the expense of environmental protection in the cause of industrialization, the developed countries paid a great price in economic and societal damages. The environmental pollution and resource exhaustion in the future will be even worse. So development should be restricted. The Club of Rome even suggested "restricting economic development to zero" in the article "The Limits to Growth".

The other point of view emphasizes that in developing countries, economic growth is a basic means of achieving important social goals. It is also the material foundation for improving people's living by satisfying various social needs. Therefore, to restrict the economy for environmental protection is unacceptable. Besides, environmental protection requires a major commitment of funds. What undeveloped countries need most is economic development. Comparing pollution with poverty, the former is secondary. Some people even think "pollute in early stage and then control" is an objective law; thus developing the economy at the expense of the environment is a natural thing. This kind of view is easily accepted in developing countries.

Although these two views are different, they have one point in common—they regard development as a contradictory part of environmental protection.

Can we find a policy or a measure to harmonize the environment with development?

In fact, development and environment are complexly related. On one hand, they contradict and control each other; on the other hand, they relate to and promote each other. Development cannot avoid bringing about resources consumption and environmental pollution. And environmental protection requires money and materials. However, this is only one side of the coin.

On the other side, development and the environment are related and promoted by each other. First of all, the purpose of environmental protection is to protect resources and productive forces. That actually protects the essential conditions of a healthy economic development. Secondly, environmental protection seeks to reduce pollution by technical innovation and comprehensive usage. This saves resources and energy. Thirdly, the improvement of environmental quality can produce very good economic benefits and is a prerequisite for continuous development. Economic development in turn provides the basic material and technical foundation for protecting and improving environmental conditions, thus promoting the cause of environmental protection.

The key problem is: a critical line must be drawn to balance the relation between development and environment. The environmental problem caused by development must be restricted within the limit which human beings and other living things can accept (some people suggest a "bearable limit" principle), so that the economy can develop continuously without degrading environmental quality. A suitable developmental pace should be found to meet environmental requirements and harmonize the environment/economy relationship. In doing so, the economy must be developed in a gradual and sound manner, and the environment must be protected and improved. We must do our best to integrate the benefits of environment, economy, and society.

In theory, the problem seems easy, but in practice, it is much more complex and difficult. It requires great effort.

Adhere to the Principle of Proceeding From Actual Conditions and Being Practical and Realistic in the Work of Legislation.

To proceed from actual conditions and to be practical and realistic are the general principles in Chinese legislation. In environmental legislation, however, these principles need to be specifically emphasized.

The actual conditions should be the political, economic, and social conditions. Practical and realistic laws must follow the objective social and economic development law and work out a Chinese-style feasible law according to the situational requirements.

As a general regulation governing people's social relations, the feasibility and effectiveness of laws should reflect the objective law of such relations. Environmental laws require people to adjust production activities and economic activities so as to eliminate pollution and minimize environmental damages. Not only must environmental legislation reflect economic patterns of socialist society, but it must also reflect the natural law correctly.

During the development of legislation, often complex and important issues arise such as the management system, basic management methods and the legal system, how to make the violator responsible, and how to ensure the enforcement of laws. To solve problems which might arise in the future, we should sum up the experiences of our environmental management and legislation, refer to relevant foreign laws, and engage in a systematic and thorough investigation for the proposed legislation. China is a large country in which the economic conditions, conditions of the environment and resources, and population density differ more greatly than in other countries. So, every management measure and regulation must be feasible for both general and special conditions. This can only be done on the basis of thorough investigations.

Now the economic innovation is in full swing. It will cause many changes in the existing system. One of the basic purposes of this innovation effort is to bring incentives to methods of development and to raise economic benefits. Problems of the environment have a unique feature: the economic benefit to an individual enterprise does not reflect in the same way as the social benefit. Pollution control benefits the society, while the costs are borne by the factories. So it is very possible for factories to follow economic benefits and ignore environmental protection. In order to increase economic benefits, economic reformation will encourage additional development. Under such circumstances, if our environmental management system does not respond, the environment will be put under great pressure. This problem also needs further investigation to determine ways to solve it with future legislation.

Refer to Historical and Foreign Experiences

Our legislative activity should mainly reflect the Chinese experience following the revolution. However, it may also be valuable to refer to historical and foreign experiences. At the

same time we recognize the revolutionary character and class character of laws, and intend to set up a socialist legal system suitable for the Chinese society.

References to foreign experiences are especially necessary in environmental legislation. Environmental problems are a common issue in modern industrialized countries. The problems which China has, or will have, already have been experienced in these countries. Environmental laws involve relationships between economic development, production management, science, and technology. In patterns of social and economic development and in natural laws, there are many things in common for us to study. Western countries as well as the U.S.S.R. and East European countries have many common methods, regulations, laws, standards, and experiences in their environmental management systems. They are worth our careful study and reference.

LEGAL SYSTEMS FOR CHINESE ENVIRONMENTAL MANAGEMENT

Environmental protection laws serve to standardize and systematize environmental policy. They are the summation of basic experiences of environmental management. They play an important role in Chinese environmental management.

SYSTEM OF ENVIRONMENTAL IMPACT ASSESSMENT

Development, construction, planning, or other activities which might affect the environment should be carefully assessed beforehand. A plan must be developed that will ensure the prevention or minimization of environmental damage. This plan must be made available to the responsible authorities. The project or activity cannot be put into operation until approved by the authorities concerned. This is the system of environmental impact assessment.

Environmental impact assessment requires careful analysis. Its purpose is to determine any possible negative environmental effects before construction of a project so that suitable measures can be adopted to prevent or minimize these unwanted effects. This system has proved to be a successful part of China's prevention policy.

Environmental impact assessment is a means of evaluating the environmental effects caused by people's economic activities. In order to keep development in harmony with the environment, there must be rational planning for industry, cities, population, transportation, and other construction and development activities. This represents a change from historical economic development patterns. It overcomes the contra-

diction between economic development and environmental protection, and relates economic benefits to environmental benefits. To prevent environmental tort actions, the laws request those whose activities might result in environmental damage to undertake an environmental impact assessment and to develop preventative measures to avoid damage to the environment. This is a legal duty requested by the basic principle of civil tort law. Developers must fulfill this duty.

The "Environmental Protection Law of the P.R.C. (trial implementation)", "Marine Environmental Protection Law of the P.R.C.", and "Management Guidelines on Environmental Protection of Construction Projects" systematically regulate the scope, contents, procedure, and legal responsibilities of the assessment. According to these regulations, large and medium-sized projects which may negatively affect the environment must contract with a qualified organization in the feasibility study stage to assess the environmental impact, and then report the findings of the study to EPA. Project design and construction require EPA approval. Without this approval such projects cannot get design approval from planning authorities, land-use approval from land management departments, or loans from banks.

SYSTEM OF "THREE AT THE SAME TIME"

The facilities for pollution control must be designed, constructed, and operated at the same time as the new construction, reconstruction, or expansion. This system is called the "three at the same time" system. It is a Chinese-style legal system for preventing new pollution as a part of capital construction.

This system stipulates that the design of construction projects must have a special section for environmental protection; until the environmental protection section is approved, the authority concerned cannot issue a construction license, and the material supply department cannot provide materials and equipment; after completion of construction, the project must be examined by the EPA. The industry and commerce administration authority will issue an operation license with a certificate of quality; enterprises and operators will be legally responsible for any operations without such certificates of quality.

SYSTEM OF REGISTRATION APPLICATION AND LICENSE

The "Water Pollution Prevention and Control Law of the P.R.C." stipulates that those discharging pollutants to a water-body must apply for registration to the local EPA. The applica-

tion must describe the discharge and treatment facilities as well as the category, quantity, and concentration of pollutant discharges. In addition, any major changes in these items must be reported to EPA in a timely manner.

Many kinds of licensing programs are also used for environmental and resources management. Examples include land use for construction within municipal planning zones under "Regulations on Municipal Planning"; manufacture, sale, use, and import of pesticides under "Regulations on Pesticide Registration"; waste discharge into seas under "Marine Environmental Protection Law of the P.R.C."; construction and operation of radioisotope facilities and use, transportation, and storage of radioactive materials under "Management Guidelines of Sanitary Prevention in Radioisotope Work"; manufacture and sale of hunting rifles and ammunition under "Management Guidelines on Hunting Rifle and Bullets"; and fishing activities under "Temporary Regulations on a Few Problems of Fishing License". All of these activities require application, registration, and approval. Licenses must be obtained before the regulated activity may be undertaken.

Such a system of registration and licensing brings certain environment-affecting development, construction, and discharge activities under governmental management. The activities are strictly controlled under state regulations. In addition, they are more easily managed and monitored by governmental authorities and the public. This is a very successful legal system in environmental management.

SYSTEM OF AWARDS FOR COMPREHENSIVE USAGE

Making complete and comprehensive use of wastes is an important tradition in China. Nevertheless, our effective usage rate of resources and energy is now much lower than the international average level. Many useful resources have been discharged into the environment and become the so-called "three wastes". This both wastes resources and pollutes the environment. The system of awards for comprehensive usage makes wastes useful, eliminates pollution, protects the environment, saves resources, and makes money for the country. It is a positive legal system for environmental protection.

The environmental laws in this field stipulate:

- The products from comprehensive usage enjoy a tax deduction for a certain period and an exemption upon approval from the province level.
- Cost and profit of the products from comprehensive usage can be calculated separately. The enterprises can keep profits for controlling "three wastes" and improving the environment for five years.

- If discharging enterprises do not use the three wastes, these wastes should be supplied to other factories free of charge.

SYSTEM OF IMPOSING DISCHARGE FEES

The system of imposing discharge fees requests polluters to pay fees according to the category, quantity, and density of pollutants discharged. There are two fee systems. Under the first, fees are imposed only on those polluters discharging over the discharging standards. The other is the water pollution control system which is a development of the original program. This system imposes fees on all polluters who discharge wastes into a waterbody.

The discharge fees, in theory, should be equal to or higher than the pollutant treatment costs. That would discourage the polluter from simply paying fees without making any effort at pollution control. But in fact, the discharge fees are now generally lower than normal treatment costs because of concern about facility and discharge conditions, management level, energy policy, state financial income, and other factors.

The fees collected are put into a special fund for environmental protection and are mainly used in major waste treatment projects and for local comprehensive control facilities. This system plays a role both in collecting money for environmental protection and in strengthening management, saving resources, and controlling pollution.